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Sector-level bargaining and possibilities for deviations at company level: Belgium

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Research project: The functioning of sector-level wage bargaining systems and wage-setting mechanisms in adverse labour market conditions

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System of collective bargaining and wage-setting

The Belgian collective bargaining system is highly institutionalised and coordinated. Over 90% of employees are covered by a collective agreement, placing Belgium among the countries with the highest coverage in Europe. Also, the Belgian trade unions have a relatively high level of membership compared with the European average, with over 50% of employees belonging to a union. The same applies to the organisation rate of employers, as over 70% of employees work for an employer that is organised (CEC forthcoming, Chapter 1).

Collective bargaining takes place at three main levels: national, sectoral and company. At the national level, two types of agreements are relevant. One type is the interprofessional agreements concluded every two years between the 10 main trade unions and employer representatives forming the 'group of 10' and covering the private sector. These agreements are not formal collective agreements but set a framework for bargaining at other levels, including a wage norm and minimum wage. The other is the intersectoral collective agreement covering all sectors nationally, concluded in the National Labour Council, comprised of the most representative interoccupational employers and workers' organisations.

At the sectoral level, joint committees (or subcommittees, or regional committees) with equal representation of employers and unions bargain on sectoral (or subsectoral or regional-sectoral) collective agreements within the framework of the interprofessional agreements. The joint committees are chaired by a civil servant who also arbitrates when disputes arise between the two sides. Sectoral agreements require the consensus of all representative organisations involved in the committee. These agreements can be made legally binding for all companies and employees in the sector by royal decree upon the request of the relevant joint committee or one of the organisations represented on the committee. The sectoral agreements define the job classification system for the sector and determine which wage increases are implemented and how. They can prescribe exact wage increases and the respective modalities for the entire sector, or can set sectoral minima (Vervecken et al, 2008).

At company level, collective agreements can be concluded between one or more representative trade unions and the employer. A company collective agreement applies to all employees of the contracting employer. About 26% of companies have a company agreement and a characteristic of these agreements is that they supplement the dominant sectoral agreements (Druant et al, 2008). The incidence is higher among larger companies, so the percentage of employees covered by a company agreement is much higher than 26%.

Wage bargaining is shaped by three main institutional factors. One is that the 1996 law on the safeguarding of competitiveness requires unions and employers to take account of a wage margin amounting to the average of the expected wage increases in the country's main neighbours and trading partners (France, Germany and the Netherlands). In practice, this norm is not taken as obligatory but does play an important indicative role (Vervecken et al, 2008). Secondly, Belgium is one of the few countries in Europe with a system of automatic indexation of wages and social benefits to inflation. Hence, in principle, the purchasing power of wages is guaranteed over time. Thirdly, as mentioned above, the interprofessionally agreed minimum wage sets a floor for all wages. The Belgian minimum wage is one of the highest in Europe: at €1,387.50 a month in 2009, it was lower only than the minimum wage in Ireland and Luxembourg. At sectoral level, higher minimum wages can be set as the lowest wage level of the job classification system of the sector. Noticeably, separate agreements are often concluded for white-collar and blue-collar workers.

The Belgian collective bargaining system has been quite stable over the last decade or so, with only limited variation in coverage levels and changes in bargaining practice. There is also no clear shift towards the decentralisation of wage-setting. The main features of the system are not disputed by the social partners.

Legal context

The Belgian labour legislation does not explicitly provide for the possibility of company-level deviations from sectoral collective agreements that go below the standards set at sector level. This does not mean, however, that they are not possible. The Law on Collective Agreements and Joint Committees of 5 December 1968 defines a strict hierarchy of legal sources and determines that a norm set at a lower level cannot, in principle, contradict norms set at a higher level (see box below). This means that if a higher-level norm prescribes a minimum standard, lower-level norms cannot go below this minimum (such as a minimum wage); when it prescribes a maximum standard lower level, norms cannot go above it (such as a maximum number of working hours a week); and when it prescribes an absolute standard, lower-level norms cannot differ from the higher-level norm.

Hierarchy of the main legal sources in labour relations according to the Law on Collective Agreements (1968), from highest to lowest level

1. The mandatory stipulations of the law (including international legal norms), royal and ministerial decrees, etc.
2. Collective agreements that are declared generally binding in the following order:
 - a. Agreements concluded in the National Labour Council
 - b. Agreements concluded in a joint committee
 - c. Agreements concluded in a joint subcommittee.
3. Collective agreements not declared generally binding, when the employer has signed the agreement or is a member of a signing organisation, in the following order:
 - a. Agreements concluded in the National Labour Council
 - b. Agreements concluded in a joint committee
 - c. Agreements concluded in a joint subcommittee.
 - d. Company agreements.
4. The written individual agreement.

Source: *Algemene Directie Collectieve Arbeidsbetrekkingen (2009)*

As a consequence of this hierarchy of legal sources, wages set at company level can, in principle, be higher only than those set at sectoral level. Company-level standards can go below the sectorally defined minimum or absolute standards only when this possibility is explicitly foreseen in the sectoral agreement, including the relevant circumstances in which such a deviation can be made and the conditions that have to be respected. Hence, if at company level local actors want to go below the wages or wage increases defined at sectoral level, they can only do so if the sectoral agreement includes an opening clause allowing this. However, the interprofessional minimum wage has to be respected in all cases, whatever provision the sectoral agreement makes for company deviations.

Use of opening clauses in sectoral agreements

Opening clauses are not very common in sectoral agreements in Belgium and cover only a small part of the economy and labour market. They most often concern opportunities for exemptions for companies in economic difficulties from sectorally agreed wage increases. Other subjects included in opening clauses are early retirement regulations or working time flexibility. Information on opening clauses can be obtained from the collective agreement database of the Federal Government Service for Employment, Labour and Social Dialogue.¹ Where opening clauses dealing with wages are concerned, in the period from 2005 until today, such clauses appeared in sector agreements concluded by six different joint committees covering six different sectors (Table 1). Among these sectors, engineering is the largest and most important sector. Another key sector is food manufacturing, where the major collective agreement, but also collective agreements covering subsectors like the bakery sector or the potato processing sector, all include an opening clause. Thirdly, the various retail sectors include opening clauses. However, these sectors together represent only a minor part of the Belgian economy.

Also, there is little change over time. As will be discussed below, these clauses have been present in most of these sectoral collective agreements for a longer period, often dating back to the 1990s without having suffered any substantial modification over time. Indeed, in Belgium, opening clauses on wages are not a response to the challenges of the late 2000s, but an inheritance of earlier times.

Table 1: *Sectors with a wage-related opening clause in 2005–2009*

Engineering
White-collar workers in the manufacture of fabricated metal products
Manufacture of food products
White-collar workers in the retail of food products
Large retail stores
Department stores

Source: *Collective Agreement Database of the Federal Government Service for Employment, Labour and Social Dialogue*: <http://www.werk.belgie.be/searchCAO.aspx?id=4708>.

The opening clauses emerged on the initiative of the employer organisations with the aim of supporting companies that experience (temporary) economic difficulties. They have some common elements in their definitions, objectives and procedures but also show many differences. Most of all, they are often very general and short and specify very little. A few examples are outlined below (translations by the author).

- The opening clauses in the agreements for the large retail stores and for white-collar workers involved in the retail of food products state, after defining the increases in wages, that ‘these wage increases do not apply to companies in difficulties that conclude a company-level collective agreement to this effect, for as long as the company is in difficulties’.

¹ The Collective Agreement Database of the Federal Government Service for Employment, Labour and Social Dialogue can be found at <http://www.werk.belgie.be/searchCAO.aspx?id=4708>. The database contains the full text of all sectoral agreements concluded since 1 January 1999 in Dutch and French. The database is fully searchable and is coded for a wide range of subjects, including the question of whether an agreement includes the possibility for deviations at the company level from sectoral regulations.

- The major paragraph of the opening clause for the engineering sector agreement of 2009 states that ‘agreed stipulations concerning purchasing power do not apply to companies that are not in a position to award these advantages. The regional joint committees are charged with determining if companies are wholly or partially in this position. They need to take into account clearly identifiable facts and the situation of the company.’
- The opening clause in the manufacture of food products agreement of 2009 states that ‘if the application of one or more clauses of this agreement can cause a company facing difficulties such as high unemployment, reduced production volume, difficulties on the export market, or apparent reduction of profitability, the company can be exempted from implementing the above obligations through a collective agreement signed by all trade unions represented in the company. In any case, the sectoral wage scales and premiums have to be respected.’

The opening clauses allow companies in economic difficulties not to implement the wage increases determined in the respective sectoral agreement or deal with additional wage and labour cost elements such as premiums. In some cases, this includes the increases of the sectoral minimum wages (for example, in the large retail stores and department stores), while in others the sectoral minimum is excluded from the opening clause. However, there are no cases where the opening clause allows for the reduction of wages. Employers remain bound by the statutory minimum wage.

The use of the opening clauses in all cases requires agreement between employers and workers. This agreement should be formalised in a local collective agreement or in a decision from the relevant joint committee. In this way, a one-sided use or abuse of opening clauses is prevented. At the same time, the lack of specification in the opening clauses points to high levels of trust between the social partners, who feel confident that they will manage to use the clause based on mutual agreement when necessary and that the Belgian industrial relations system provides for sufficient solutions in case of disputes.

The definition of economic difficulties differs in the various clauses. In some cases, to qualify as a company in economic difficulties, a formal certificate from the federal government is required, in line with section three of the Royal Decree of 7 December 1992 on pre-pension arrangements. This criterion has been used in some agreements for the retail sectors. The main condition for such a certificate is a period of at least two years of pre-tax losses. In most cases, it is explicitly or implicitly left to the local parties to jointly determine if the company is indeed in economic difficulties. No clear criteria are given in these cases and the determination of the question regarding whether a company is indeed in economic difficulty becomes a matter of local debate or negotiation.

Similarly, there is not necessarily clarity concerning the procedures to be followed in case of disagreements. If disputes occur, arbitration in the relevant (general, sub or regional) joint committee, and in particular in its arbitration bureau, is the obvious procedure following the logic of the Belgian system, but this is not necessarily stated explicitly in the opening clauses.

Finally, there is no official record or any research available on the actual use of opening clauses at the company level. There is no central register of such cases, and at sectoral level information is largely anecdotal. However, from the interviews conducted for this paper it emerges that in the few sectors where opening clauses exist, they are not used much. Based on the information presented below, it seems likely that the yearly number of cases is around or below 10 companies in the whole country.

Opening clauses in engineering and food manufacturing sectors

To get a more detailed view of the history and the various elements of the opening clauses, the report will look closely at two major sectors: engineering and the manufacture of food products.

Engineering

In engineering, the present opening clause has been part of the sectoral agreement since the early 1990s and has been repeated in subsequent agreements without substantial modifications. The clause was originally included on the initiative of the employers, particularly large corporations, who wanted a safety net for companies in serious economic difficulties. The trade unions accepted the inclusion of the clause in the sectoral collective agreement, as well as its continuation over time. The unions consider that it is one way to assure the interest of employers in sectoral agreements and also because they do not want to see jobs disappear in companies in temporary economic difficulties.

The opening clause allows local actors to refrain from implementing (part of) the wage increases (or purchasing power adjustments as in the 2009–2010 agreement) agreed at sectoral level when the company is in economic difficulties. They do not have to conclude a company collective agreement to this purpose. Rather, they have to present a dossier to the regional joint committee, which has the authority to determine if a company is indeed in economic difficulties. In this way, the social partners control the use of the opening clause.

The opening clause of the engineering sector is used only very rarely. In every agreement period (normally two years) the clause is used about three times at the most. It is generally used in large companies, often multinationals in the car or aerospace industry that are of great importance in terms of employment, which face temporary demand problems or other economic obstacles. Often these are also the companies that apply above-average wage increases in times of economic success, which makes it easier for the trade unions to accept the temporary use of the opening clause in hard times. Also, the use of this clause often does not come as a surprise, with the cases already having been discussed during the negotiations on the sectoral agreement.

There is normally no discussion on the continuation of the opening clause during the sectoral negotiations: it is automatically renewed as one of the standard clauses when new sectoral agreements are negotiated. This points to the fact that the few experiences of using the clause have not been seen as seriously negative by workers or employers. It also shows that the opening clause is not an issue of particular importance in industrial relations in this sector.

Manufacture of food products

In the manufacturing of food products, opening clauses date back at least to the late 1980s. The clause, in its present form, has been part of the sectoral agreement since 1999–2000. It provides actors at company level with the option of not implementing agreed increases in wages and wage-related elements (or purchasing power increases) when they consider that these increases can put the company in economic difficulty. To this effect, they have to conclude a collective agreement at company level that has to be signed by the employer and all trade unions present in the company. However, they cannot deviate from the sectoral minimum wages or minimum premiums, or from the agreed increases in these. Hence, the opening clause can be implemented only in companies that previously paid wages above the sectoral minima.

The opening clause in the food manufacturing agreement has not been used in recent years. This does not mean, however, that it has no importance. The clause has substantial symbolic value in that it underlines the agreement by trade unions and employers that the specific circumstances of each company are important in the determination of wages and working conditions. In practice, instead of using the opening clause, this translates to the flexible use of the negotiating space that sectoral agreements allow to the company level. In companies experiencing difficult economic conditions, this space may not be used, providing some wage flexibility, while in flourishing companies this space will be fully used or even expanded.

As with the engineering sector, in the manufacture of food products the initiative for the inclusion of an opening clause has come from the employers. Here, trade unions also accept the clause in order to overcome the reluctance of employers to conclude sectoral agreements and because they also do not want companies to shed jobs during economically difficult periods. The renewal of the clause is not an important item during the bargaining on a new sectoral agreement.

Conclusions

Opening clauses that allow companies to reduce wages or wage growth below sectorally defined standards do not play a major role in Belgian industrial relations and scarcely appear in sectoral collective agreements. In the few sectors where opening clauses exist, they are often routinely renewed elements of sectoral agreements instead of hotly debated items. In addition, the existing opening clauses are hardly applied at company level. This is in line with the fact that both trade unions and employer organisations in Belgium are not seriously questioning the basic characteristics of the Belgian collective bargaining system and are not arguing for substantial modifications of this system. Pressure for decentralisation of wage bargaining and the use of opening and related clauses largely comes from outside Belgium through the respective recommendations of international organisations such as the Organisation for Economic Co-operation and Development (OECD) (OECD, 2007, pp. 82–84).

These recommendations do not find much resonance within Belgium, however. The government, trade unions and employer organisations generally agree that the present wage bargaining system provides enough flexibility. What is important here is that when companies suffer from serious economic difficulties, employers and trade unions often manage to agree on solutions to deal with this situation within the framework of the existing sectoral agreement and without resorting to the use of opening clauses. This can include a minimalist interpretation at local level of the sectorally agreed wage increases and related elements. There are also a number of alternative adjustment mechanisms available to companies in economic difficulties that do not concern wages. Here, the government-sponsored programmes allowing for the temporary reduction of working time or partial unemployment play a key role. These government-sponsored programmes facilitate the emergence of negotiated, competitiveness-enhancing and socially just solutions during times of crisis. In addition, early retirement continues to be an important mechanism in Belgium to deal with excess labour or to reduce labour costs.

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