Belgian Science Policy Office
belspo

**CHANGE**
**Changing work, changing incomes: designing a responsive social protection system for all**

Ninon Ramlot (Université Libre de Bruxelles – Centre for Public and Social Law)

# Non-standard work relationships in Belgium: a legal overview

**WORKING PAPER**

PAPER 2024/N°1

ANTWERP/ BRUSSELS / LEUVEN

CSO
CENTRUM VOOR SOCIOLOGISCH ONDERZOEK
CENTRE FOR SOCIOLOGICAL RESEARCH

CENTRE de DROIT PUBLIC et SOCIAL

University of Antwerp
CSB | Centre for Social Policy Herman Deleeck

## The CHANGE project

The CHANGE project is a research project between the Herman Deleeck Centre for Social Policy (CSB, University of Antwerp, coordinator), the Centre for Public and Social Law (CDPS, Université Libre de Bruxelles), and the Centre for Sociological Research (CESO, KU Leuven).

This collaborative initiative is driven by a partnership between academic institutions and funded by BELSPO, the Belgian Science Policy Office under the BRAIN-be program. The core mission of the project is to comprehensively examine and address the challenges faced by non-standard workers within the social protection system. These workers, including the self-employed, part-time employees, fixed-term workers, and those engaged in hybrid work arrangements, often experience gaps in social security coverage. The project exploits existing survey and register data sources. Also, it gathers new data on a broad and diverse group of non-standard workers, including different types of self-employed workers and atypical employees. This will enable us to understand the various (and often common) challenges they are confronted with, such as substandard coverage by social protection and fluctuating incomes.

https://www.uantwerpen.be/nl/onderzoeksgroep/csb/onderzoek/projecten/change/

Suggested citation:

Ramlot, N. (2024), *Non-standard work relationships in Belgium: a legal overview*, CHANGE Working Paper no. 1, Antwerp/Brussels/Leuven: CHANGE, 85 p.

# CHANGE Working Paper 1

# Non-standard work relationships in Belgium: a legal overview

Ninon Ramlot

Université Libre de Bruxelles (ULB), Centre for Public and Social Law (CDPS)

ninon.ramlot@ulb.be

## Abstract

The working paper provides a legal definition of non-standard work and an overview of legally possible non-standard work relationships under Belgian legislation. The adopted legal definition allows to consider standard and non-standard work also in terms of access to the social security schemes. The legal definition of non-standard work relies on five alternative and non-mutually exclusive criteria, namely (1) part-time employment relationships, (2) multipartite or triangular employment relationships, (3) temporary employment relationships, (4) work relationships that do not involve the exchange of work for pay, and (5) work relationships without legal subordination. An additional criterion has been identified and consists of (6) the existence of an ad-hoc derogatory social security regime resulting in a lack of or partial coverage. This criterion makes it possible to account for weaker social security coverage that is not the indirect result of labour law characteristics. Criterion (6) is not sufficient by itself to qualify a work relationship as a non-standard one. Subsequently, the different non-standard work statuses that exist in the Belgian legal framework are explained, distinguishing between non-standard forms of work that involve one or multiple employment contracts on the one hand and forms of non-standard work outside an employment contract on the other hand.

## Acknowledgements

The author warmly thanks prof. Elise Dermine (Université Libre de Bruxelles) and prof. Sarah Marchal (University of Antwerp) for their very valuable comments on a first version of this working paper. She would like to extend her warmest thanks to Amaury Mechelynck (Université Libre de Bruxelles) and prof. Daniel Dumont (Université Libre de Bruxelles) for sharing their thoughts about the legal conceptualisation of atypical work, which helped to bring this paper to fruition. She also thanks Marie Beudels (Université Libre de Bruxelles), Lien Steyaert (KU Leuven) and Esmée Vanpoucke (University of Antwerp) for their formal proofreading the paper. She would like to thank the other members of the CHANGE project for their contribution to the development of this paper.

This project benefited from financial support from the Belgian Federal Science Policy (CHANGE project – Contract B2/233/P3/CHANGE). The views, opinions, findings, and conclusions or recommendations expressed in this paper are strictly those of the authors and do not necessarily reflect the views of the funding agencies or the authors' employers.

# Table of contents

# WP 1 of the CHANGE project : Charting income and needs concepts in social security legislation

WP1 of the CHANGE project charts the different income and needs concepts currently used in the main social protection branches that cover the labour-related risks of unemployment and incapacity. By charting the current solidarity design, it lays down the groundwork towards RO2.3, understanding how well social security currently protects non-standard workers.

As a prerequisite, WP1 first establishes a typology of non-standard work relationships in Belgium. These forms of work have proliferated in recent years. We have seen the emergence of specific legal categories to accommodate the growing demand for more flexible and on-demand work. We aim to provide a short but encompassing overview of non-standard forms of work currently organised under Belgian law. This will allow to stabilise the terminology and the categories that will be mobilised in the further research. Most importantly, WP1 will dissect the legal concepts of income and needs used in the different sectors of social protection that cover the risks of unemployment and incapacity. It will do so by studying both the insurance and assistance sides: the regulations of unemployment insurance (bridging right for the self-employed workers) and minimum income, as well as incapacity for work insurance and disability benefits will be analysed. It seems that many non-standard workers facing professional inactivity or health issues do not manage to meet the contribution requirements set by the insurance protections and are therefore referred to the local welfare agency or the administration for disabled people. In order to clarify why and how, WP1 maps the (numerous and divergent) concepts used to determine income - insurance side - and needs - assistance side. Often formulated in obscure technical terms, these concepts will be clarified and compared with each other, in search of coherence.

# Preliminary comment on the use of language

The deliverable is written in English. Quotations from legislative and regulatory texts are written in Dutch and French according to the terms of the law, so that the translation does not distort the meaning of the law.

Footnotes are written according to the *Guide des citations, références et abréviations juridiques*[1] and translated in English. The French and Dutch references are mentioned in the bibliography. Legal sources refer to consolidated legislation.

[1] N. BERNARD, *Guide des citations, références et abréviations juridiques*, 6th ed., Waterloo, Wolters Kluwer, 2017.

# List of translations and abbreviations

| English terminology | Abbreviations | Dutch and French legal terminology |
|---|---|---|
| / | B.S.<br>M.B. | *Belgisch Staatsblad*<br>*Moniteur Belge* |
| Agency work | | *Uitzendarbeid*<br>*Travail intérimaire* |
| Collective labour agreement | CLA | *Collectieve arbeidsovereenkomst (C.A.O.)*<br>*Convention collective de travail (C.C.T.)* |
| Constitutional Court | C.C. | *Grondwettelijke Hof (GwH.)*<br>*Cour constitutionnelle (C.C.)* |
| Employee | | *Werknemer*<br>*Travailleur salarié* |
| Employment Contract Act | ECA | |
| Explanatory Memorandum | | *Memorie van toelichting*<br>*Exposé des motifs* |
| Financial social assistance | | *Financiële sociale bijstand*<br>*Aide sociale financière* |
| Joint Committee | J.C. | *Paritaire comité*<br>*Commission paritaire* |
| Living wage | | *Leefloon*<br>*Revenu d'intégration* |
| Local employment agency | | *Plaatselijk werkgelegenheidsagentschap (P.W.A.)*<br>*Agence locale pour l'emploi (A.L.E.)* |
| National Labour Council | | *National arbeidsraad (NAR)*<br>*Conseil National du travail (CNT)* |
| Non-standard employment | NSE | *Atypische arbeidsovereenkomsten / atypische banen*<br>*Emploi (salarié) atypique* |
| Non-standard work | NSW | *Atypische arbeidsvormen / atypisch werk*<br>*Relation de travail atypique / travail non-standard* |
| Public social action centres | | *Openbare centra voor maatschappelijk welzijn (O.C.M.W.'s)*<br>*Centres publics d'action social (C.P.A.S.)* |
| Social Security Act | | *RSZ-wet*<br>*Loi-ONSS* |
| Social security scheme for salaried workers | | *Sociale zekerheidsstelsel voor werknemers*<br>*Régime de sécurité sociale des travailleurs salariés* |
| Standard employment relationship | SER | *Typisch werk / typische arbeidsvormen*<br>*Travail typique / relation de travail standard* |
| Temporary work | | *Tijdelijke arbeid*<br>*Travail temporaire* |
| Unemployment insurance benefits | | *Werkloosheidsuitkeringen*<br>*Allocations de chômage* |
| Work relationship | | Work relationship is here used as a litteral translation from the french "*relation de travail*". It is here understood as a relationship involving the exchange of work, whether under a contract of employment, self-employment or unpaid work. |

# 1 Introduction

1. Standard employment relationship (SER) and non-standard employment (NSE) are concepts referring to a classification made in the international scientific literature in the analysis of work relationships, even though they usually do not appear as such in domestic legal texts. Rather, these concepts refer to the types of contracts implicitly enshrined by national legislators through various legal rules. On the one hand, SER allude to the standard employment contract during the Fordist era and through that classic social laws were designed. On the other hand, NSE encompasses types of work relationships which have increased in number or importance in post-industrial societies as a result of various social, demographic and economic phenomena which have changed the labour markets. However, although SER and NSE refer to similar economic and social phenomena, they were not given the same legal translation in all domestic legal orders.

This paper provides a legal definition of non-standard work fitting with the Belgian legal framework and an overview of the various legally possible non-standard forms of work under this framework. The paper is written with the aim of establishing a common definition of the terms that will be used in the next work packages (WPs). It therefore does not cover all the rules governing these forms of work, but is limited to the main rules that allow to understand the different statuses in general, with a focus on the rules that indicate the non-standard nature of the work relationships under analysis.

2. The paper first presents a brief social and historical context (2). It then provides a legal definition of non-standard work specific to the Belgian legal framework (3). Next, it gives a systematic explanation of non-standard forms of work relationships involving one or multiple employment contracts (4), followed by non-standard forms of work that do not take the shape of employment contracts (5). Finally, an overview table summarising the different statuses with their main non-standard characteristics is provided in the conclusion (6).

# 2 Social and historical context : a quick reminder

3. Standard employment relationship (SER) and non-standard employment (NSE) may be apprehended both as social and economic phenomena and within the spectrum of law and regulation.

4. Following the first view which is the purpose of this section, SER may refer to a social reality as it constitutes the norm,[2] understood as "a situation or type of behaviour that is expected and considered to be typical".[3] Generally speaking, SER refers to the full-time permanent employment contracts which were the dominant work relationship on the male labour market in industrial wage-earning societies during the Fordist era.[4]

[2] J.-C. BARBIER, "A Conceptual Approach of the Destandardization of Employment in Europe since the 1970s", *Non-Standard Employment in Europe. Paradigms, Prevalence and Policy Responses*, M. Koch and M. Fritz (eds.), Houndmills, Basingstoke, Palgrave Macmillan, 2013, p. 13.

[3] CAMBRIDGE DICTIONNARY, "Norm", accessible online https://dictionary.cambridge.org/dictionary/english/norm (3 October 2023).

[4] P. SCHOUKENS and A. BARRIO, "The changing concept of work: When does typical work become atypical?", *European Labour Law Journal*, 2018, no. 8, p. 307.

Since then, labour markets in wage-earning societies have undergone changes under the influence of several phenomena.[5] Firstly, the demand for skilled workers has increased since the 80's under the effect of technological evolutions, migration flows, globalisation and deindustrialisation.[6] Secondly, women participation in workforce has significantly increased in Western countries since the late twentieth century.[7] In Belgium, the rate of women participation in the labour force has risen from 36,5% in 1990 to 50% in 2021.[8] In comparison, male participation has fluctuated between 58% and 62% on the same period.[9] This led to the emergence of "typically feminine jobs", in terms of characteristics of the work relationship (such as part-time jobs) or in terms of sectors (mostly in care and services sectors). This latter transformation of the workforce, combined to the diversification of family structures,[10] led to new structures of household's incomes. The traditional male breadwinner model has gradually given way to the dual earner model. But single-parent families, whose proportion is increasing, are also based on a different income model.

Moreover, economic crises and rising unemployment have prompted legislators to make the labour market more flexible so that companies can meet economic challenges, and to promote an employment policy that has partly been based on the flexibilisation of the labour market. It should also be mentioned that in a context of economic crisis or high unemployment, the balance of power between trade unions and employers can be weakened as explained by Micheline Jamoulle in 1996 on the subject of flexible working hours :

> *"la consécration juridique des statuts nouveaux s'est réalisée pour l'essentiel "avec l'aide de la négociation collective et le soutien ou la tolérance des organisations syndicales". Ce fut là l'un des effets du déplacement du rapport des forces syndicales et patronales, lié à la montée du chômage".*[11]

Those demographic, economic and social phenomena have changed the labour market and the importance of the SER. The proportion of SERs in Belgium is decreasing but remains the majority form of employment.[12] While open-ended jobs still represent 90 % of employment

[5] S. VANDEKERCKHOVE, K. LENAERTS, J. HOREMANS, S. KAMPELMANN and M. GOOS, *In-work poverty and shifts in work, income, and the composition of households. Final Report*, Brussels, Belgian Science Policy Office, 2018, p. 9-10.
[6] *Ibid*., p. 7 and 9.
[7] INTERNATIONAL LABOUR ORGANIZATION, "Labor force participation rate, female (% of female population ages 15+) (national estimate) - European Union", accessible on https://data.worldbank.org/indicator/SL.TLF.CACT.FE.NE.ZS?locations=EU (3 October 2023).
[8] INTERNATIONAL LABOUR ORGANIZATION, "Labor force participation rate, female (% of female population ages 15+) (national estimate) – Belgium", accessible on https://data.worldbank.org/indicator/SL.TLF.CACT.FE.NE.ZS?locations=BE (3 October 2023).
[9] INTERNATIONAL LABOUR ORGANIZATION, "Labor force participation rate, male (% of female population ages 15+) (national estimate) – Belgium", accessible on https://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS?locations=BE (3 October 2023).
[10] Draft law laying down general principles of social security for workers, *Explanatory Memorandum, Doc.,* Sen., 1979-1980, no. 508/1, p. 2.
[11] M. JAMOULLE, "Du salariat traditionnel aux emplois atypiques", *Revue de Droit Social* / *Tijdschrift voor Sociaal Recht*, 1996, p. 334.
[12] M. NAUTET and C. PITON, "An analysis of non-standard forms of employment in Belgium", *National Bank of Belgium Economic Review*, june 2019, p. 1-28 ; D. DUMONT, S. GÉRARD, J. GILMAN and A. MECHELYNCK, « Le droit social face au travail précaire. Enseignements d'une cartographie juridique du travail atypique », *Revue belge de sécurité sociale/Belgisch Tijdschrift voor Sociale Zekerheid*, vol. 64, no. 3, 2022, p. 285.

relationships,[13] the proportion of part-time jobs is growing, with approximetely one in four employment contracts being part-time.[14] But above all, as a result of these various transformations, there has been an increase in the number of non-standard statuses and therefore a fragmentation of norms and protections.

[13] OCDE, "Emploi temporaire", accessible on https://data.oecd.org/fr/emp/emploi-temporaire.htm (10 November 2023).
[14] M. NAUTET and C. PITON, *op. cit*., p. 11.

# 3 Legal aspects of non-standard work : towards a definition

## *3.1 Legal definitions of standard and non-standard work: a brief state of the art*

5. Next to a historical, social and economic analysis, SER and NSE may be analysed from a legal perspective. SER and NSE usually do not have any legal existence −at least in the Belgian legal framework− as those concepts do not appear in sources of domestic law. They are nevertheless indirectly enshrined in the law, through the way in which specific forms of work relationships – the non standard ones – are treated as exceptions and the way in which the legislator tries to limit their use. Those concepts can also be made out through the protections that are or are not attached to different forms of work relationships, including social security benefits.

6. SER and NSE have been developed in international scientific literature by analysing the evolution of labour market regulations during the postwar period.[15] Scholars have attempted to identify the legal characteristics of SER. In this way, Katherine Stone and Harry Arthurs proposed to define the standard employment contract as "a stable, open-ended and direct arrangement between a dependent, full-time employee and their unitary employer".[16]

In the same vein, in a study on the concepts of standard employment relationships and non-standard work forms, Paul Schoukens and Alberto Barrio identify the following characteristics as those traditionally used to define SER :

(1) Personal subordination of the employee towards the employer;
(2) A bilateral relationship;
(3) An open-ended relationship;
(4) A full-time relationship;
(5) A relationship in which the employee is economically dependent, that is, in which the wage earned through the employment relationship is the main source of income of the worker.[17]

SER is therefore defined as an employment contract. The latter is circumscribed through three key elements which include :

- A relationship of subordination between employer and employee in the form of "direction and control" (it should be noted that the degree of direction and control varies greatly depending on the job): this characteristic is fundamental to the distinction between employees and self-employed workers;

[15] It should be noted that some authors contest the very notion of SER as the predominant form of employment, but some also refute its decline, by limiting its scope. See, on this subject, K. STONE and H. ARTHURS, "The Transformation of Employment Regimes: A Worldwide Challenge", *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment*, K. Stone and H. Arthurs (eds), New York, Russell Sage Foundation, 2013, p. 5.

[16] M. J. WALTON, « The Shifting Nature of Work and Its Implications », *Industrial Law Journal*, no. 45/2, 2016, p. 112 referring to K. STONE and H. ARTHURS, "The Transformation of Employment Regimes: A Worldwide Challenge", *op. cit*, p. 58.

[17] P. SCHOUKENS and A. BARRIO, *op. cit*., p. 310 and 312.

- Reciprocity of obligations: the worker must be willing to work and the employer must provide work;
- Payment of remuneration for the work performed.[18]

7. The qualification of employment contracts with the above mentioned characteristics as standard work relationships is explained by the protections these contracts are associated with. SER refers to an employment contract that offers on the one hand, stability of employment, being concluded for an indefinite period, and on the other hand, stability of income, being concluded on a full-time basis and giving entitlement to adequate social protection, and thus making it possible to ensure an adequate standard of living for the household.[19] Those protections may be analysed both as effects and as objectives of standardisation. Indeed, an employment contract that meets the above mentioned characteristics may be seen as standard because it was used by the legislator as an ideal type for legal intervention[20]. In other words, SER was used as a model for the legislator in developing social law and it is therefore associated with a higher level of protection, both in terms of labour law (including employment contract law and collective labour law) as social security law. Reciprocally, as SER is associated with greater protection, the legislator has aimed to make SER the rule and, as a result, to make work relationships that deviate from it, the exceptions, the use of which must be limited.

8. Symmetrically, NSE is defined in the negative, *i.e.* a work relationship is deemed non-standard if it does not have one (or several) of the previously mentioned characteristics of SER.

This typology leads Michael J. Walton to identify two general groups among non-standard work relations: "The first is a group of arrangements which constitute an employment contract but do not bear the aforementioned features of the standard employment contract. This group includes part-time, short-term or project-specific work, as well as casual employment. The second group exists outside of the contract of employment entirely (…). Other arrangements are blurred within or between those categories (…)".[21]

Thus, in legal terms, non-standard work (just as SER) is defined in relation to labour law characteristics. An incidental consequence of the absence of SER's characteristics is that NSE does not guarantee job and income security. This stems from the fact that the weakening of the characteristics of the standard employment contract, or even the absence of an employment contract, implies less protection (or sometimes none at all) under labour law and social security law.

[18] *Ibid*., p. 309 and 310.
[19] *Ibid*., p. 311.
[20] S. DEAKIN, "Addressing labour market segmentation: The role of labour law", *I.L.O. Working Paper no. 52*, 2013, p. 4.
[21] M. J. WALTON, *op. cit.*, p. 113.

9. This is particularly true in Belgium, where the Employment Contracts Act (ECA)[22] was developed with the explicit aim of providing legal and economic security, while emphasising the role of contributory social security in ensuring continuity of income.[23]

Faced with the development of new forms of non-standard work in Belgium, studies have attempted to establish the impact of non-standard work on the precariousness of employment relationships.[24] The literature also points to the consequences for social security coverage, in that the contributory social security system is largely organised around full-time, permanent employment, with the result that employment relationships that do not have the characteristics of SER may not be adequately covered.[25] As a consequence, although NSE is defined based on its characteristics in labour law, the consequences in terms of protection are visible in both labour law and social security law.

### *3.2 The legal definition of non-standard work adopted for the purposes of this study*

10. The definitions and criteria of NSE identified so far require a number of comments. The first two comments are of a general nature and relate to the scope of what is meant by NSE. The third and last comment relates to the setting up of a definition of NSE and its implementation within the CHANGE research framework, which aims at analysing the social security coverage of non-standard workers in Belgium specifically. Through the final comment, the aim is to establish a legal definition of NSE specific to the Belgian legal framework, which will make it possible to identify all the forms of non-standard work that may be subject to different (and probably lesser) social security protection.

11. According to the classic typology mentioned above (no. 6), SER involves an employment contract, so that all work relationships that do not involve an employment contract must be considered as NSE. Thus, the absence of a legally subordinate relationship is an element that leads, in that perspective, to the classification of all self-employed workers as "non-standard workers". This classification is the subject of a first comment.

---

[22] Employment Contract Act of 3 July 1978, *B.S./M.B.*, 22 August 1978. In the following footnotes, we refer to this law as ECA.

[23] Employment Contract draft Act, Report on behalf of the Committee on Employment, Labour and Social Welfare, *Doc.*, Sen., 1977-1978, no. 258/2, p. 28-30.

[24] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, "Le travail précaire. Une cartographie juridique des statuts précaires et des protections (non) garanties par le droit social", rapport pour Observatoire de la santé et du social de Bruxelles-Capitale, p. 60, accessible online on https://difusion.ulb.ac.be/vufind/Record/ULB-DIPOT:oai:dipot.ulb.ac.be:2013/329137/Holdings (3 October 2023) ; A. MECHELYNCK, *Le droit social face à l'instabilité – Étude des défis juridiques posés par le recours aux contrats de travail à durée limitée)*, thesis to be defended.

[25] S. REMOUCHAMPS, "La (non-)prise en compte du travail à temps partiel par la sécurité sociale", *Questions transversales en matière de sécurité sociale*, D. Dumont (coord.), Bruxelles, Larcier, 2017, p. 100-153 ; G. VAN LIMBERGHEN, O. BERTRAND, D. DUMONT, M. FONTAINE, I. TOJEROW, B. CANTILLON, H. DELANGHE, K. HERMANS, F. LOUCKX and S. MARCHAL, *L'accès des travailleurs salariés et indépendants à la sécurité sociale en Belgique. Mission d'étude pour le SPF Sécurité sociale. Rapport final, 2020* ; P. SCHOUKENS and C. BRUYNSERAEDE, *Access to social protection for self-employed and nonstandard workers*, Louvain, Acco, 2021 ; E. DE BECKER and P. SCHOUKENS, "Atypisch werk, werken in armoede & sociale zekerheid : noodzaak (of kans) om fundamenten van het belgishe socialezekerheidsstelsel te herdenken? ", *T.S.R.-R.D.S.*, 2023/1, p. 9-52 ; D. MEULDERS and R. PLASMAN, *Belgique et Luxembourg. Protection sociale du travail atypique*, Bruxelles, Dulbea, 1990.

Self-employment is certainly not a new form of work relationship, as it even existed before the employment contract. However, from a regulatory point of view, social law, be it labour law or social security law, was developed to organise wage work, as opposed to self-employed work, through employment contracts. From a macro point of view, self-employed workers can be viewed as non-standard workers in that they do not benefit from the protections of labour law, they assume the financial risks of their professional activity and because their social security system is distinct and (deemed) less protective than the social security system for salaried workers. In this sense, the definition of NSE of EUROFOUND in the *European Industrial Relations Dictionary* includes self-employed work in without any further criteria.[26]

From a socio-economic point of view, however, self-employed workers form a very heterogeneous group, not all of whom are exposed to the same risks of income instability.

A certain portion of existing literature already proposes a more refined classification of self-employed status as NSE. For instance, some authors identify only economically dependent self-employed workers as non-standard workers,[27] in that they share the fate of employees together with the risks faced by self-employed workers.[28] This point of view is taken up by the INTERNATIONAL LABOUR ORGANIZATION (ILO), which classifies the economically dependent self-employed workers (as well as bogus self-employed workers) as forms of NSE.[29] Economically dependent self-employed are defined by EUROSTAT in the 2017 Labour Force Survey (LFS) *ad-hoc* module on "Self-employment" as "self-employed without employees who worked during the last 12 months before the reference week of the survey for only one client or for a dominant client [*i.e.* if the client provided at least 75% of the self-employment income of the respondent in the last 12 months] and this client decides about his/her working hours".[30]

---

[26] EUROFOUND, "Atypical work", *European Industrial Relations Dictionary*, Dublin, 2018, accessible online https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/atypical-work (3 October 2023).

[27] In this sense, D. DUMONT, S. GERARD, J. GILMAN et A. MECHELYNCK state : "Concernant les indépendants, ce statut n'est pas, à proprement parler, atypique. Toutefois, la littérature identifie une catégorie grandissante d'indépendants qui se situent dans une zone grise en marge du salariat, en particulier les faux indépendants et les indépendants économiquement dépendants. Ainsi, les faux indépendants sont des personnes qui sont indépendantes d'un point de vue formel, tant et aussi longtemps que leur relation de travail n'est pas requalifiée, mais qui exercent les mêmes tâches que les travailleurs salariés d'une entreprise ou d'un maître d'ouvrage, et de la même manière que ceux-ci, c'est-à-dire dans le cadre d'un lien de subordination au sens juridique du terme. Les indépendants économiquement dépendants, quant à eux, sont des travailleurs indépendants à part entière qui sont employés à titre exclusif ou à titre principal par une seule entreprise ou un seul client et dont la rémunération dépend exclusivement ou principalement des revenus de cette entreprise ou de ce client. Ces formes de travail indépendants entrent dans la notion de travail atypique. Les travailleurs concernés risquent de se trouver dans une situation précaire. Il nous semblait donc indispensable de nous pencher sur leur situation. Dans la mesure où ces indépendants atypiques ne constituent pas une catégorie juridique à part, nous nous sommes intéressés aux travailleurs indépendants dans leur ensemble", D. DUMONT, S. GERARD, J. GILMAN et A. MECHELYNCK, "Le droit social face au travail précaire. Enseignements d'une cartographie juridique du travail atypique", *op. cit*. See also E. DE BECKER et P. SCHOUKENS, *op. cit.*, p. 12-13.

[28] P. SCHOUKENS and A. BARRIO, *op. cit.*, p. 315-316.

[29] INTERNATIONAL LABOUR OFFICE, *Non-standard employment around the world. Understanding challenges, shaping prospect*s, Geneva, BIT, 2016, p. 36.

[30] EUROSTAT, *Labour Force Survey (LFS) ad-hoc module 2017 on the self-employed persons. Assessment Report*, Luxembourg, *Publications Office of the European Union*, 2018, p. 97, available online on https://ec.europa.eu/eurostat/documents/7870049/9439020/KS-39-18-011-EN-N.pdf/eabf6f91-01a1-4234-8a0a-43c13c3bd920 (3 October 2023).

From this perspective, our research project will determine the sub-groups of self-employed workers who are most exposed to income instability in order to identify the at-risk profiles within the self-employed group. Though, as this paper is concerned with legal positions and as the identification of profiles of self-employed workers who are more at risk of poverty will be the subject of forthcoming WPs of the project, we will include here all forms of self-employment within NSE, although we are well aware that is questionable.

12. Secondly, other forms of work are not considered to involve an employment contract because they are not remunerated. This may be work done for free or for a compensation. For instance, voluntary work involves the performance of work tasks without remuneration. Those work relationships, since they are not employment contracts, do not benefit – or they do to a much lesser extent – from the labour law and social security protections associated with employment contracts. In particular, the contributory principle of the social security scheme implies that these forms of work are in principle excluded from the scope of most social security protections schemes. NSE should therefore also be defined as including work relationships which do not involve the exchange of work against remuneration and which are therefore excluded from the scope of the social security system. In order to include these forms of work in our analysis, we will therefore refer to non-standard work (NSW) instead of NSE.

13. The third and last observation stems from the aim of a definition of the SER and NSW that takes into account the social security system. As above mentioned (no. 7), the qualitative characteristics of SER are job stability and income security as it provides better protection under labour law and social security law. Social security system also makes it possible to guarantee, to a certain extent, income stability by granting a replacement income when the worker is faced with a social risk. In Belgium, SER is strongly associated with social security protection as a result of the Bismarckian philosophy. However, the study of the different statuses of NSW in Belgium has led us to realise, inductively, that the weaker social protection attached to NSW is not exclusively an incidental or indirect consequence of the characteristics of the work relationship, but that it can also be explained by a derogatory social security regime that the legislator attaches to particular NSW forms. The legislator has sometimes explicitly ruled out the possibility of specific non-standard workers being covered, in whole or in part, by social security schemes. In this case, social security coverage that is less protective than the one attached to the SER is not incidental, *i.e*. the consequence of one of the characteristics of the contract from the perspective of labour law but constitutes a principal characteristic of the work relationship. Insofar as it affects the protection attached to the employment contract, we retain this derogatory regime as an additional criterion to those already identified. However, while the criteria identified so far are on an equal level, this new criterion must be placed below the others, in the sense that it always exists cumulatively with one of the criteria identified so far. The criterion consists in the fact that the status is attached to a derogatory social security scheme by means of a lack of coverage or partial coverage (*gedeeltelijke onderwerping* / *assujettissement partiel*).

Defined in this way, the criterion does not include derogation rules in terms of payment of social contributions. Even though the latter derogations could have an impact on the financing of the social security system, these do not lead to a lower level of protection in the social security system and therefore, these do not affect the stability of income provided by the social security system and linked to the SER. For instance, we shall see in section no. 4.6 that for flexi-jobs, the Belgian legislator has provided for a favourable social treatment consisting

of the absence of payment of social security contributions for the flexi-jobber. Nonetheless, flexi-jobbers remain covered to the social security system (labour performances are taken into account when calculating benefits). In this case, the derogation in terms of social security law does not lead to a weakening of the protection offered to the worker, but it risks to undermine the financial balance of the social security system. According to our definition of the derogatory social security regime, flexi-jobbers do not meet the criterion.

14. In a nutshell, for the purpose of this paper, NSW can be defined in terms of five alternative but not mutually exclusive characteristics, namely:

(1) Part-time employment relationships;
(2) Multipartite or triangular employment relationships;
(3) Temporary employment relationship, *i.e*. employment relationships with a limited duration;
(4) Work relationships that do not involve the exchange of work for pay;
(5) Work relationships without legal subordination.

These criteria can, but must not, be combined with the sixth criterion that we have identified, namely:

(6) Work relationships to which a derogation is attached in terms of social security coverage compared to the basic schemes for salaried workers, *i.e.* by means of a lack of coverage or partial coverage.

The identified criteria of NSW make it possible to identify statuses that are the subject of separate and less protective social coverage, either incidentally (criteria 1, 2, 3, 4, 5) or primarily (criterion 6).

15. In the remainder of this study, the main characteristics of NSW analysed will be summarised under the following heading. The main characteristics of NSW will be highlighted. An overwiew table is provided at the end of the study.

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

Given this paper is aimed at legal statuses, the typology proposed and the characteristics highlighted will reflect the legal aspects of the statuses analysed. At this stage of the CHANGE project, it will not reflect the empirical reality of the workers occupied under those statuses, or, in other words, the profile of the workers. In that sense, the highlighted characteristics will only emphasise the essential legal aspects. A combined approach that considers both legal aspects and empirical reality will be necessary to define the typical profiles of workers under the statuses presented. This will be carried out in the next work packages.

By way of example, the service cheques contract will be defined as a "multipartite" contract rather than a "part-time" contract, acknowledging that the contract may be concluded on a full-time or part-time basis, despite the fact that a significant proportion of workers under this status are employed part-time.

16. Finally, in the study of legally possible NSW forms in the Belgian framework, identified NSW statuses will be presented in two categories, in the manner of Michael J. Walton. On the one hand, statutes that involve one or more employment contracts will be explained (section 4). It may be expected that these statuses will mostly meet criteria which consist in a

weakening of the characteristics of the standard employment contract (criteria 1, 2, 3). On the other hand, we will analyse NSW forms outside an employment contract (section no. 5), which lack a characteristic of the employment contract (criteria 4 and 5). Criterion 6 can be found for statuses in both categories.

As a remark, the third category of 'blurred schemes' mentioned by Michael J. Walton will not be incorporated. This category could include bogus self-employed and economically dependent self-employed workers. Indeed, this study focuses on a presentation of the legal rules that apply to legal statuses. However, bogus self-employed and economically dependent self-employed workers are not legal statuses, but refer to factual situations that do not fit, or do not fit well, into the legal rules that apply to them. We therefore refer to the section on self-employment.

The study will therefore focus on the following statuses, divided into two categories:

| NSW involving employment contract(s) | NSW outside an employment contract |
|---|---|
| Fixed-term contract | Voluntary work |
| Replacement contract | Apprentices |
| Agency work contract | Work placement agreement |
| Student agreement | *IBO* / *FPIE* |
| Occasional work in the HoReCa sector | Self-employment |
| Occasional work in the agricultural and horticultural sector | Platform work and collaborative economy |
| Occasional work in the funeral services sector | |
| Flexi-job contract | |
| Part-time employment contract | |
| Article 60 contract | |
| *PWA* / *ALE* contract | |
| *Wijk-werk* contract | |
| Service cheques employment contract | |
| Associative work | |

17. While this paper aims to provide a comprehensive overview, it does not claim to be exhaustive. For purposes of time and brevity, some statutes that could be described as NSW will not be discussed. These include the status of artists, the status of *assistent-klinisch artsen kandidaat-specialisten* (*ASO*) / *médecins assistants cliniciens candidats spécialistes* (*MACCS*), the status of PhD students with fellowships (excluding doctoral assistants and PhD students on employment contracts, who are not non-standard workers) and the status of *onthaalouder* / *parent d'accueil*.

# 4 Legally possible non-standard work forms involving employment contract(s) in Belgium

18. This section aims to provide an overview of the legally possible NSW involving one or multiple employment contracts under Belgian law. It defines each work relationship and provides an overview of the main rules that indicate their non-standard nature.

## *4.1 The fixed-term contract* (arbeidsovereenkomst gesloten voor een bepaalde tijd en voor een duidelijk omschreven werk / contrat à durée déterminée ou pour un travail nettement défini)

19. Under article 7, al. 1, the Employment Contract Act of 3 July 1978 (ECA) states:

> *"De arbeidsovereenkomst wordt gesloten hetzij voor een bepaalde tijd of voor een duidelijk omschreven werk, hetzij voor onbepaalde tijd".*
>
> *"Le contrat de travail est conclu soit pour une durée déterminée ou pour un travail nettement défini, soit pour une durée indéterminée".*[31]

The fixed-term contract (*arbeidsovereenkomst gesloten voor een bepaalde tijd / contrat de travail à durée déterminée*) and the contract for a clearly defined work (*arbeidsovereenkomst gesloten voor een duidelijk omschreven werk / contrat pour un travail nettement défini*), may be defined as common employment contracts with a fixed term (*bepaalde termijn / terme certain*) "after which the parties are released from their mutual obligations, unless tacitly renewed".[32] The term takes the form of "a specified day or an event that must occur on a fixed date"[33] in the case of a fixed-term contract or, in the case of a contract for clearly defined work, the completion of a task. In the latter case, the purpose and scope of which must be described precisely so that "the employee is in a position to assess when his/her contract is automatically terminated".[34]

From a psychological point of view, fixed-term contracts, unlike open-ended contracts, are not what are known as relational contracts, *i.e*. contracts aimed at establishing the employment relationship over time.[35] This has consequences for the way in which fixed-term contracts end and can be suspended. Fixed-term contracts are terminated at the end of their term, without notice and without compensation. Furthermore, fixed-term contracts can be suspended in the same circumstances as open-ended contracts,[36] for instance in the event of incapacity for work, maternity leave, annual leave, time credits or thematic leave. However, in the case of a fixed-term contract, the duration of the contract is not postponed according to the duration of the suspension of the employment contract. This means that the fixed-term

[31] ECA, art. 7, al. 1.
[32] Translation of Cass., 15 April 1982, *J.T.T.*, 1982, p. 349.
[33] Cass., 15 April 1982, *J.T.T.*, 1982, p. 349.
[34] C. trav. Liège, 14 octobre 2014, R.G. no. 7340-03, Juportal.
[35] I.R. MACNEIL, « Relational contract theory: challenges and queries », *Northwestern University Law Review*, vol. 94, no. 3, 2000, p. 877-907, cited in A. Mechelynck, *op. cit*., thesis to be defended.
[36] F. VERBRUGGE, « Les particularités du contrat de travail à durée déterminée », *Ors*., 2006, no. 9, p. 25.

contract ends at the end of the original term, regardless of how long the contract is suspended.[37] As a result, fixed-term contracts do not provide job or income security.

20. The common rules and general principles are applicable to employment contracts in accordance with the ECA.[38] Only a few particular rules are applicable to this type of contract, in order to protect workers, since these contracts do not offer stability of employment.

Firstly, formalities relating to the employment contract must be observed, failing which the contract will be subject to the rules governing open-ended contracts.[39]

Secondly, some protecting rules were enacted so as to avoid the use of successive fixed-term contracts. Since this type of contract offers less protection to workers regarding suspension and termination, an employer could want to enter into successive fixed-term contracts.[40] To avoid this, article 10 ECA provides that when the parties have entered into several successive fixed-term contracts without an interruption attributable to the employee, they are deemed to have concluded a contract for an indefinite term, unless the employer proves that these contracts were justified by the nature of the work or by other legitimate reasons.[41] In other words, the law provides a rebuttable presumption of the existence of an open-ended contract.

Article 10*bis* ECA provides two exceptions that allow the entering into several fixed-term contracts without requalification as an open-ended contract. Firstly, an exception applies if a maximum of four successive fixed-term contracts were entered into, and that the total duration of these contracts does not exceed two years. Every single fixed-term contract must have a duration of at least three months.[42] The second derogation is accorded with the prior authorisation of the official designated by the Government. In that case successive fixed-term contracts may be entered into, provided that the total term of the successive contracts does not exceed three years and that each contract has a duration of at least six months.[43]

21. To sum up, the Belgian fixed-term contract is a common employment contract but with a fixed-term clause. The existence of protective rules in favor of workers and of a rebuttable presumption of the existence of an open-ended contract indicate that in the mind of the legislator the open-ended employment contract is deemed to be the rule and the fixed-term contract an exception to it.

22. It should be noted that, in reality, there are two types of employment contracts under Belgian law: open-ended contracts and fixed-term contracts. All the types of employment relationships discussed in this section 4 take the form of either an open-ended contract, a fixed-term contract or successive fixed-term contracts.

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

[37] *Ibid*., p. 25 and 26.
[38] *Ibid*., p. 18.
[39] ECA, art. 9.
[40] P. HUMBLET and M. RIGAUX, *Introduction to Belgian Labour Law*, Cambridge, Intersentia, 2016, p. 30.
[41] ECA, art. 10, al. 1.
[42] ECA, art. 10*bis*, §2.
[43] ECA, art. 10*bis*, §3.

### *4.2 The replacement contract* (vervangingsovereenkomst / contrat de remplacement)

23. The replacement contract is governed by article 11*ter* ECA. It can be defined as a classic employment contract, but with a specific purpose,[44] which is "to provide a temporary replacement for a regular employee whose contract is temporarily suspended".[45] The reasons of the suspension may be incapacity for work, a career break (*tijdskrediet / crédit-temps* or *loopbaanonderbreking / interruption de carrière*), maternity leave, *etc*.[46] The suspension may not be the consequence of economic events, bad weather, strikes and lock-outs. As the replacement contract is expected to provide a replacement for a regular employee whose contract is temporarily suspended, it may not be used to replace a worker whose employment contract ended.[47]

24. Despite the temporary character of the replacement, a replacement contract may be concluded for a definite duration (see above, 4.1) as well as for an indefinite duration. It is the case when it is expected to be terminated by an event whose date is uncertain, for instance when an employee who is in incapacity for work returns.[48] Regardless of whether the contract is for a fixed term or for an indefinite period, the maximum duration of the contract must not exceed two years.[49]

25. The legislator provided for the possibility to conclude successive replacement contracts since it may be difficult to predict the duration of the replacement period when the replacement contract is entered into. The law does not limit the number of successive replacement contracts but it limits the total duration of those successive contracts to two years (with the same condition about interruption as for the fixed-term contract).[50]

26. It should be noted that some employers avoided the two-year limit for fixed-term contracts (article 10 and 10*bis* ECA) and for replacement contracts (article 11*ter* ECA) by alternating between the two types of contract. For instance, a worker had been employed by the Flemish Community for almost 17 years on the basis of successive fixed-term and replacement contracts.[51] In order to avoid such a situation, and in response to the Constitutional Court's ruling that this possibility was contrary to Articles 10 and 11 of the Constitution, the legislator introduced a new Article 11*quater* into the ECA. This provision now prevents the cumulative duration of fixed-term contracts and replacement contracts from exceeding two years.

27. The legislator also provided safeguards regarding the formalities to be completed and the non-compliance of the two-year period for successive replacement contracts. It leads to

---

[44] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit*., p. 60.
[45] Translated from *Ibid.*, p. 60.
[46] *Ibidem*.
[47] *Ibidem* ; S. BOURDEAUD'HUY and P. NILLES, "Le contrat de remplacement et le travail temporaire", *Le travail temporaire, le travail intérimaire et la mise à disposition des travailleurs. Les 30 ans de la loi du 24 juillet 1987*, Ch.-E. Clesse and S. Gilson (dir.), Limal, Anthemis, 2017, p. 13.
[48] F. VERBRUGGE, "Le contrat de travail de remplacement : ses limites et contraintes", *Ors*., 2005, no. 8, p. 25.
[49] ECA, art. 11*ter*, al. 3.
[50] ECA, art. 11*ter*, al. 4.
[51] See the ruling of the Constitutionnal Court: C.C., 17 june 2001, no. 93/2021.

the possibility for the replacement contract to be converted into an open-ended contract if the two-year period is exceeded.[52]

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

## 4.3 *Agency work contract* (arbeidsovereenkomst voor uitzendarbeid / contrat de travail intérimaire)

28. The agency work contract is a type of work relationship regulated by the law of 24 July 1987 on temporary work, agency work and the hiring-out of workers[53] and the Collective Labour Agreement no. 108 (CLA no. 108).[54] This contract is not governed by the ECA.

> By way of comment, CLA no. 108 was concluded within the National Labour Council and made compulsory by Royal Decree, so that it applies to all employers and workers within its scope. In accordance with the law of 5 December 2018, CLAs do not apply to employers from the public sector.

29. As a foreword, the concept of "temporary work" in the Belgian legal terminology should be clarified.

### 4.3.1 The notion of "temporary work" in the Belgian legal framework

30. The legal notion of "temporary work" (*tijdelike arbeid* / *travail temporaire*) is to be found in the law of 24 July 1987 on temporary work, agency work and the hiring-out of workers.

While the international literature both in law and in social sciences refers broadly to temporary work for contracts of a limited duration, the same notion is given a different legal meaning in the Belgian legislation. In the meaning of Belgian law, the notion rather refers to type of activities that allow the conclusion of specific contracts, *i.e.* the contract for the performance of a temporary work and the agency work contract.

31. Under article 1 of the law of 24 July 1987, temporary work is defined as relating to various activities :

> *"§ 1. Tijdelijke arbeid in de zin van deze wet is de activiteit die op grond van een arbeidsovereenkomst wordt uitgeoefend en tot doel heeft in de vervanging van een vaste werknemer te voorzien of te beantwoorden aan een tijdelijke vermeerdering van werk of te zorgen voor de uitvoering van een uitzonderlijk werk (…).*

[52] ECA, art. 11*ter*, al. 5.
[53] Law of 24 July 1987 on temporary work, agency work and the hiring out of workers, *B.S./M.B.*, 20 August 1987.
[54] Collective Labour Agreement no. 108 of 16 July 2013, concluded within the National Labour Coucil, relating to temporary and agency work, made compulsory by the Royal Decree of 26 January 2014, B.S./M.B., 10 February 2014.

*§ 1bis. Tijdelijke arbeid is tevens de activiteit die op grond van een arbeidsovereenkomst voor uitzendarbeid wordt uitgeoefend en die tot doel heeft een uitzendkracht ter beschikking te stellen van een gebruiker voor de invulling van een vacante betrekking, met de bedoeling om na afloop van de periode van terbeschikkingstelling de uitzendkracht vast in dienst te laten nemen door de gebruiker voor diezelfde betrekking (…).*
*§ 6. De artistieke prestaties die worden geleverd en/of de artistieke werken die worden geproduceerd tegen betaling van een loon, ten bate van een occasionele werkgever of een occasionele gebruiker, kunnen tijdelijke arbeid uitmaken (…).*
*§ 7. De tewerkstelling in het kader van een tewerkstellingstraject erkend door het gewest waar de vestiging ligt waarin de werknemer tewerkgesteld wordt kan tijdelijke arbeid uitmaken voorzover zij met een arbeidsovereenkomst voor uitzendarbeid wordt uitgevoerd en mits voorafgaandelijk wordt ter kennis gebracht volgens door de Koning bepaalde procedure".*

*"§1 Le travail temporaire, au sens de la présente loi, est l'activité exercée dans les liens d'un contrat de travail et ayant pour objet de pourvoir au remplacement d'un travailleur permanent ou de répondre à un (surcroît temporaire de travail) ou d'assurer l'exécution d'un travail exceptionnel. (...)*
*§1*bis Le *travail temporaire est également l'activité exercée dans les liens d'un contrat de travail intérimaire et ayant pour objet de mettre un intérimaire à la disposition d'un utilisateur pour l'occupation d'un emploi vacant, en vue de l'engagement permanent de l'intérimaire par l'utilisateur pour le même emploi à l'issue de la période de mise à disposition. (...)*
*§6 Les prestations artistiques qui sont fournies et/ou les oeuvres artistiques qui sont produites contre paiement d'une rémunération, pour le compte d'un employeur occasionnel ou d'un utilisateur occasionnel, peuvent constituer du travail temporaire.*
*§7 La mise au travail dans le cadre d'un trajet de mise au travail approuvé par la région où est situé l'établissement dans lequel le travailleur est occupé, peut constituer du travail temporaire pour autant que celui-ci soit réalisé sur la base d'un contrat de travail intérimaire et moyennant information préalable conformément à la procédure définie par le Roi."*

32. In other words, temporary work is defined by its purpose (different situations are listed by the law) and can be carried out under specific forms of occupation of the worker. There is therefore a limitation of the purpose of the activity and the form of the worker's occupation.

With regard to activities that can be considered for temporary work, the law lists three situations restrictively:

- The replacement of a permanent worker;
- Responding to a temporary increase in workload;
- Performing exceptional work.

As regards the form of the occupation of the worker performing the temporary work, the law organises three forms:

- The employment contract for the performance of temporary work, which takes the form of a direct engagement of the temporary worker with the employer faced with one of the three situations referred to;
- Agency work (see *infra*);
- The hiring out of workers.

33. The following section is limited to agency work contracts. Besides, the contract for the performance of a temporary work is a legal status organised by the Belgian legislation, but there is no use of it.[55] Therefore, the legal rules governing this contract will not be explained. The hiring-out of workers is not examined either.

### 4.3.2 Explanation of the agency employment relationship

34. Agency work contract is legally defined as :

> *"de overeenkomst waarbij een uitzendkracht zich tegenover een uitzendbureau verbindt om, tegen loon, een bij of krachtens hoofdstuk I van deze wet toegelaten tijdelijke arbeid bij een gebruiker te verrichten*."
>
> *"le contrat par lequel un intérimaire s'engage vis-à-vis d'une entreprise de travail intérimaire, contre rémunération, à effectuer chez un utilisateur un travail temporaire autorisé par ou en vertu du chapitre Ier de la présente loi."* [56]

In other words, agency work is a tripartite relationship between :

(1) An interim employment agency;
(2) An agency worker;
(3) A user.

35. As stated in the definition, agency work contracts cannot be used outside the situations and conditions covered by the law of 24 July 1987.

As previously stated, a limited number of cases can be considered as temporary work that can be carried out under an agency work contract. Both the law of 24 July 1987 and CLA no. 108 list among the activites that can be defined as temporary work: the replacement of a permanent worker, a temporay increase in workload and performing exceptional work. The law of 24 July 1987 also lists artistic performance. Agency work may also be used as a recruitment method or as part of a work placement scheme.

36. The limitation of the use of agency contracts may be explained by the fact that it is an exception to the general ban on the hiring out of workers.[57] The hiring out of workers is the

[55] See, on this matter, A. MECHELYNCK, *op. cit.*, thesis to be defended.
[56] Law of 24 July 1987 on temporary work, agency work and the hiring out of workers, *B.S./M.B.*, 20 August 1987, art. 7, 2°.
[57] *Ibid*., art. 31.

activity carried out by a natural or legal person which consists in placing workers hired by it at the disposal of third parties who use these workers and exercise over them any of the authority normally exercised by the employer. The legislator seeked, through the ban of the hiring out of workers, to avoid legal insecurity (as it is more difficult to know who is to be considered as the employer) and social dumping.

37. It should be noted that, in the practice, an agency work relationship takes the form of successive short-terms contracts (fixed-term contracts). If the use of agency work is carried out in accordance with the provisions of the law of 24 July 1987 and within the limits of the situations referred to therein, then, articles 10 and 10*bis* of the ECA do not apply. We will see that for each situation of temporary work, there is a maximum period during which the user can use agency workers.

38. We will examine below the situations in which an agency work contract can be used as well as the maximum duration an employer can use agency workers in each situation (4.3.3). We will then discuss some common rules governing this type of work relationship (4.3.4).

### 4.3.3 Situations enabling agency work

39. Article 21 of the law of 24 July 1987 states :

> *"De uitzendbureaus mogen alleen dan uitzendkrachten ter beschikking van gebruikers stellen en deze mogen alleen dan uitzendkrachten tewerkstellen wanneer het gaat om de uitvoering van een in artikel 1 bedoelde of toegelaten tijdelijke arbeid."*
>
> *"Les entreprises de travail intérimaire ne peuvent mettre des intérimaires à la disposition d'utilisateurs et ceux-ci ne peuvent occuper des intérimaires qu'en vue de l'exécution d'un travail temporaire visé ou autorisé à l'article 1er."*

40. Agency work contracts may be used for a limited number of activites that can be considered as temporary work in the meaning of the law of 24 July 1987.

As mentioned above, temporary work refers mainly to the replacement of permanent workers, responding to a temporary increase in workload and performing exceptional work. Three other types of activites may also constitute a temporary work that can be carried out under the terms of an agency work contract.

#### *4.3.3.1 Replacement of a permanent worker*

41. The first situation in which agency work contracts can be used is to replace a permanent worker.

42. The law defines what the notion of replacement of a permanent worker covers, namely :

> *"1° de tijdelijke vervanging van een werknemer wiens arbeidsovereenkomst in haar uitvoering is geschorst, behoudens bij gebrek aan werk wegens economische oorzaken of bij slechte weersomstandigheden;"*
>
> *"1° le remplacement temporaire d'un travailleur dont l'exécution du contrat est suspendue, sauf en cas de manque de travail résultant de causes économiques ou en cas d'intempéries;"*

43. An employer may use agency work contracts when the performance of the employment contract of one of its permanent worker is suspended. The causes of suspension referred to are those of legal, contractual or case law origin.[58]

The excluded causes of suspension are limited to bad weather or economic reasons. Moreover, it is not possible to hire an agency worker to replace a permanent worker whose employment contract has been suspended due to a strike or lock-out. [59]

> *"2° de tijdelijke vervanging van een werknemer wiens arbeidsovereenkomst is beëindigd."*
>
> *"2° le remplacement temporaire d'un travailleur dont le contrat a pris fin."*

44. An employer may use agency work contracts when the contract of one of its permanent workers comes to an end. This is a case not covered by the replacement contract within the meaning of the ECA.

> *"3° de tijdelijke vervanging van een persoon wiens rechtspositie eenzijdig door de overheid is geregeld en die zijn functie niet of slechts deeltijds uitoefent;"*
>
> *"3° le remplacement temporaire d'une personne dont la situation juridique est réglée unilatéralement par l'autorité et qui n'exerce pas ses fonctions ou ne les exerce qu'à temps partiel;"*

45. This situation will not be explained here.

> *"4° de tijdelijke vervanging van een werknemer die met toepassing van artikel 102 van de herstelwet van 22 januari 1985 houdende sociale bepalingen, zijn arbeidsprestaties*

[58] S. BOURDEAUD'HUY and P. NILLES, *op. cit.*, p. 36.
[59] CLA no. 108, art. 19; A. YERNAUX, *op. cit.,* p. 119.

*heeft verminderd voor zover de wijziging van de arbeidsvoorwaarden niet voor een onbepaalde tijd werd gesloten."*

*"4° le remplacement temporaire d'un travailleur qui a réduit ses prestations en application de l'article 102 de la loi de redressement du 22 janvier 1985 portant des dispositions sociales, pour autant que la modification des conditions de travail n'a pas été conclue pour une durée indéterminée."* [60]

46. The fourth situation refers to a reduction in working hours of 1/5, 1/4, 1/3 or 1/2 compared to the normal number of working hours for a full-time job under the career break system.

47. On the other hand, under CLA no. 108, the replacement of a permanent worker is defined as:

*"1° de tijdelijke vervanging van een werknemer wiens arbeidsovereenkomst in haar uitvoering is geschorst, behoudens bij gebrek aan werk wegens economische oorzaken of bij slechte weersomstandigheden;*

*2° de tijdelijke vervanging van een werknemer wiens arbeidsovereenkomst werd beëindigd :*
- *door ontslag met een opzeggingstermijn;*
- *door ontslag om dringende reden;*

*3° de tijdelijke vervanging van een werknemer wiens arbeidsovereenkomst anders werd beëindigd dan door ontslag met een opzeggingstermijn of door ontslag om dringende reden"*

*"1° le remplacement temporaire d'un travailleur dont l'exécution du contrat de travail est suspendue, sauf en cas de manque de travail résultant de causes économiques ou en cas d'intempéries;*

*2° le remplacement temporaire d'un travailleur dont le contrat de travail a pris fin :*
- *par congé donné avec préavis;*
- *par congé pour motif grave;*

*3° le remplacement temporaire d'un travailleur dont le contrat de travail a pris fin autrement que par congé donné avec préavis ou par congé pour motif grave."* [61]

CLA no. 108 provides for two situations for "the replacement of a permanent worker". Firstly, it refers to the replacement of a permanent worker whose performance of the contract is suspended. The wording is identical to that of the law of 24 July 1987. Secondly, the replacement of a permanent worker refers to the replacement of a worker whose contract has ended. The CLA indicates how the contract was terminated: either with notice, or for serious reasons, or for another reason.

[60] Law of 24 July 1987 on temporary work, agency work and the hiring out of workers to users, *B.S.*/*M.B.*, 20 August 1987, art. 1, § 2.
[61] CLA no. 108, art. 2, § 2.

48. The duration of the agency work relationship for the replacement of a permanent worker whose contract has been suspended may be as long as the length of the suspension.[62] In the case of an agency work relationship for the replacement of a permanent worker whose contract has been ended, the duration is limited to six months regardless of the termination mode: with notice, for serious reasons or for any other reason. That period can nevertheless be extended by six months in the first two cases and, in the latter case, it may be extended several times, up to a maximum of six months.[63]

#### *4.3.3.2 Responding to a temporary increase in workload*

49. Agency work contracts may be concluded in order to respond to a temporary increase in workload.

As explained by Pierre Nilles and Sophie Bourdeaud'huy, the notion of "temporary increase in workload" is not defined by the law or CLA no. 108.[64] It has been defined by case law. The Labour Court of Mons has defined temporary increase in workload as "*l'activité qui s'ajoute à l'activité normale de l'entreprise. Cette hypothèse vise à permettre à l'utilisateur de faire face à une augmentation temporaire du volume de ses activités*".[65]

With regard to this concept, the parliamentary documents indicate that the additional workload may be foreseeable or unforeseeable, that it may be a one-off event or recur on a regular basis.[66]

50. Article 9 of CLA no. 108 indicates the importance of agency work in this context and the role of trade unions in the use of this type of work:

> *"De ondertekenende representatieve werknemersorganisaties vinden dat het beroep op uitzendarbeid omwille van het wettelijk kader en de reglementering zoals onder meer voorzien in deze collectieve arbeidsovereenkomst, een passend antwoord lijkt voor de tijdelijke vermeerdering van werk.*
> *De ondertekenende representatieve werknemersorganisaties beseffen terdege dat de vakbondsafvaardiging een belangrijke rol is toebedeeld in het kader van de procedure inzake uitzendarbeid in geval van tijdelijke vermeerdering van werk.*
> *Daarom verbinden de ondertekenende representatieve werknemersorganisaties er zich toe er bij de vakbondsafvaardigingen op aan te dringen een eventueel verzet tegen de tewerkstelling van uitzendkrachten in geval van tijdelijke vermeerdering van werk te herevalueren."*

---

[62] A. YERNAUX, "Les hypothèses d'utilisation des travailleurs intérimaires et leurs sanctions", *Le travail temporaire, le travail intérimaire et la mise à disposition de travailleurs. Les 30 ans de la loi du 24 juillet 1987*, Ch.-E. Clesse and S. Gilson (dir.), Limal, Anthemis, 2017, p. 132.
[63] CLA no. 108, art. 7, §§ 1-3.
[64] S. BOURDEAUD'HUY and P. NILLES, *op. cit*., p. 41.
[65] C. Trav. Mons (8è ch.), 25 avril 2013, R.G. no. 2009/AM/21.547, quoted in S. BOURDEAUD'HUY and P. NILLES, *op. cit*., p. 41.
[66] Draft law amending, with regard to agency work contracts, the law of 24 July 1987 on temporary work, agency work and the hiring-out of workers, Explanatory memorandum, *Doc*., Ch., no. 53 2740/001, p. 10.

*"Les organisations représentatives des travailleurs signataires estiment qu'en raison du cadre légal et de la réglementation telle que prévue notamment dans la présente convention collective de travail, le recours au travail intérimaire apparaît comme une réponse adéquate au surcroît temporaire de travail.*

*Les organisations représentatives des travailleurs signataires sont pleinement conscientes de l'importance du rôle qui est dévolu à la délégation syndicale dans le cadre de la procédure relative au travail intérimaire en cas de surcroît temporaire de travail.*

*C'est pourquoi les organisations représentatives des travailleurs signataires s'engagent à insister auprès des délégations syndicales pour qu'elles reconsidèrent un éventuel refus opposé à l'occupation d'intérimaires en cas de surcroît temporaire de travail."*

Where there is a trade union delegation in the user undertaking, recourse to agency work to cope with a temporary increase in workload must be subject to the prior agreement of the trade union delegation, which must also agree to the number of agency workers and the period during which the temporary work will be carried out.[67] The request may cover a period of more than one calendar month and is renewable. There is therefore no absolute time limit.[68] If there is no trade union delegation in the user undertaking, the use of agency workers may be authorised under a specific procedure and is limited to six months, which may be extended by another six-months period (the use of agency workers may be again renewed under a specific procedure).[69]

#### *4.3.3.3 Performing an exceptional work*

51. Agency work contracts may be concluded in order to perform exceptional work.

52. The law of 24 July 1987 states that the activities covered must be specified by a CLA concluded within the National Labour Council and made compulsory by Royal Decree. CLA no. 108 lays down the following activities, provided that they are unusual and do not exceed three months : [70]

*"1° de werkzaamheden in verband met de voorbereiding, de werking en de voltooiing van jaarbeurzen, salons, congressen, studiedagen, seminaries, openbare manifestaties, stoeten, tentoonstellingen, recepties, marktstudies, enquêtes, verkiezingen, speciale promoties, vertaling, verhuizingen;*
*2° het lossen van vrachtwagens, op voorwaarde dat de vakbondsafvaardiging van de onderneming die een beroep doet op tijdelijke arbeid vooraf haar akkoord heeft betuigd;*
*3° secretariaatswerk voor zakenlui die tijdelijk in België verblijven;*
*4° werkzaamheden voor ambassades, consulaten en internationale organen, op voorwaarde dat de Belgische representatieve werknemersorganisaties vooraf toelating hebben verleend;*

[67] CLA no. 108, art. 10, § 1.
[68] A. YERNAUX, *op. cit*., p. 137.
[69] CLA no. 108, art. 10, § 2-3.
[70] *Ibid*., art. 6.

*5° werkzaamheden met het oog op de kortstondige uitvoering van gespecialiseerde opdrachten die een bijzondere beroepsbekwaamheid vereisen;*
*6° werkzaamheden bedoeld bij artikel 26 van de arbeidswet van 16 maart 1971;*
*7° de werken van inventarissen en balansen : de duur van de uitvoering van die werken is beperkt tot zeven dagen per kalenderjaar."*

*"1° les travaux de préparation, fonctionnement et achèvement de foires, salons, congrès, journées d'études, séminaires, manifestations de relations publiques, cortèges, expositions, réceptions, études de marché, enquêtes, élections, promotions spéciales, traductions, déménagements;*
*2° le déchargement de camions, moyennant l'accord préalable de la délégation syndicale de l'entreprise qui recourt au travail temporaire;*
*3° les travaux de secrétariat pour les hommes d'affaires séjournant temporairement en Belgique;*
*4° les travaux pour ambassades, consulats et organismes internationaux, moyennant l'autorisation préalable des organisations belges représentatives de travailleurs;*
*5° les travaux en vue de l'exécution momentanée de tâches spécialisées requérant une qualification professionnelle particulière;*
*6° les travaux visés à l'article 26 de la loi du 16 mars 1971 sur le travail;*
*7° les travaux d'inventaire et de bilan : la durée d'exécution de ces travaux est limitée à sept jours par année civile."*

In other words, an exceptional work must be unusual while a temporary increase of workload may be usual.

53. In addition to those activities laid down by the law, CLA no. 108 establishes two further activities that may be considered as exceptional work, namely :

*" - werkzaamheden in het kader van vormingsprojecten, waardoor uitzendkrachten zich gemakkelijker kunnen integreren in de arbeidsmarkt;*
*- werkzaamheden als uitzendkracht in begeleidingsprojecten waarbij het de bedoeling is om werknemers die getroffen worden door een collectief ontslag, zoals bedoeld door het koninklijk besluit van 24 mei 1976 betreffende het collectief ontslag of een sluiting van de onderneming, zoals bedoeld door de wet van 26 juni 2002 betreffende de sluiting van de ondernemingen, via een uitzendbureau te helpen bij het vinden van een nieuwe arbeidsovereenkomst of dienstbetrekking."*

*" - travaux dans le cadre de projets de formation, par lesquels les intérimaires pourront s'insérer plus facilement sur le marché de l'emploi;*
*- les travaux d'intérimaires dans les projets d'accompagnement dont l'objectif est d'aider les travailleurs, victimes d'un licenciement collectif, visé par l'arrêté royal du 24 mai 1976 relatif aux licenciements collectifs, ou d'une fermeture d'entreprise, visée par la loi du 26 juin 2002 relative aux fermetures d'entreprises, à trouver un nouveau contrat de travail ou relation de travail via une entreprise de travail intérimaire".*[71]

[71] CLA no. 108, art 14.

54. In case of a temporary increase of workload, the duration of the agency work relationship is limited to 3 months (except for inventory and balance sheet that is limited to seven days each year). The limit duration is six months for some activities.[72]

#### *4.3.3.4 The provision of artistic services and works*

55. According to the law of 24 July 1987, temporary work may consist of the provision of artistic services or the production of artistic works, where these are provided for remuneration and on behalf of an occasional user (in the case of agency work).

This situation covers the creation, performance or interpretation of artistic works in the audiovisual and visual arts, music, literature, entertainment, theatre and choreography sectors, as well as services provided by entertainment technicians.[73]

An occasional user is one whose main activity does not consist of organising cultural events or marketing artistic creations, or a user "who does not employ other staff for whom he is liable to social security scheme for salaried workers".[74]

This situation is not covered by CLA 108.

56. No specific time limit applies in this case.

57. Alan Yernaux explains the purpose of the recourse to agency work for the provision of artistic services and works :

> "*Le recours au travail intérimaire dans le cadre de prestations artistiques permet à l'artiste de pouvoir réclamer le paiement de sa rémunération à l'agence d'intérim plutôt qu'au donneur d'ordre, et d'épargner aux donneurs d'ordre n'ayant pas habituellement la qualité d'employeur les charges administratives découlant de l'engagement d'artistes*".[75]

#### *4.3.3.5 Temporary work as a recruitment method (*instroom */* insertion*)*

58. As agency work was initially used for flexibility purposes, it has gradually become, for some users, a method for recruitment and trial. [76] This new ability is provided for in paragraph 1*bis* of article 1 of the law of 24 July 1987, which states:

---

[72] For further details, see A. YERNAUX, *op. cit*., p. 141.

[73] Law of 24 July 1987 on temporary work, agency work and the hiring out of workers, art. 1, § 6, al. 1.

[74] Royal Decree of 23 May 2003 implementing Article 1(6) of the Law of 24 July 1987 on temporary work, agency work and the hiring-out of workers, *B.S./M.B*., 17 June 2003, art. 1.

[75] A. YERNAUX, *op. cit*., p. 149.

[76] As Alan Yernaux explains, the philosophy behind the agency work contract has evolved since the beginning of its use. While the initial purpose of the recourse to agency work was to response to temporary staff requirements, in practice, some users use agency work contracts as a way to recruit the agency workers as permanent workers after a probationary period. See A. YERNAUX, *op. cit*., p. 115 and 144-145.

*"Tijdelijke arbeid is tevens de activiteit die op grond van een arbeidsovereenkomst voor uitzendarbeid wordt uitgeoefend en die tot doel heeft een uitzendkracht ter beschikking te stellen van een gebruiker voor de invulling van een vacante betrekking, met de bedoeling om na afloop van de periode van terbeschikkingstelling de uitzendkracht vast in dienst te laten nemen door de gebruiker voor diezelfde betrekking"*

*"Le travail temporaire est également l'activité exercée dans les liens d'un contrat de travail intérimaire et ayant pour objet de mettre un intérimaire à la disposition d'un utilisateur pour l'occupation d'un emploi vacant, en vue de l'engagement permanent de l'intérimaire par l'utilisateur pour le même emploi à l'issue de la période de mise à disposition"*

59. This ability to use agency workers with a view to permanent recruitment is a form of offset for the abolition of the trial period.[77]

60. The conditions for the use of agency workers in such a case are defined by CLA no. 108. The duration of the agency work contract must be at least a week and at most 6 months.[78]

61. CLA no. 108 limits the duration of the agency work and the number of agency workers who may be hired per vacant workstation, according to a "3-6-9" rule :

- The user has three attempts per workstation which means that the user may hire up to a maximum of three agency workers per workstation;
- Each agency worker may be hired for a maximum of six months ;
- The user may not use agency worker for a longer period of nine months per workstation.[79]

#### *4.3.3.6 Agency work as part of a work placement scheme (*tewerkstellingstraject / trajet de mise au travail*)*

62. Agency work may also be used as part of a work placement scheme (*tewerkstellingstraject* / *trajet de mise au travail*). Similar to the case of agency work as a recruitment method, agency work is not used here to meet a need for flexibility.[80]

This is a scheme to provide work for specific target groups, such as jobseekers and living wage recipients. The work must be carried out as part of an employment project approved by the competent region.

63. In this case, the agency work relationship is limited to a period of six months, which can be extended with a total of six months after a certain procedure has been completed.

[77] *Ibidem*.
[78] CLA no. 108, art. 26.
[79] CLA no. 108, art. 27; A. YERNAUX, *op. cit*., p.146.
[80] A. YERNAUX, *op. cit*., p. 151.

### 4.3.4 Common rules governing agency work contracts

#### *4.3.4.1 The agency work contract is an employment contract*

64. Article 8 of the law of 24 July 1987 set up an unrebuttable presumption that an agency work contract is an employment contract. This means that there is a subordination link between the agency worker and the agency.[81]

#### *4.3.4.2 Formal obligation to conclude two contracts*

65. It is required that the agency worker and the agency conclude two kinds of contracts. The first one is a so-called intention to enter into an agency work contract (*bedoeling een arbeidsovereenkomst voor uitzendarbeid te sluiten* / *intention de conclure le contrat de travail intérimaire*).[82] The second one is the proper employment contract.

Failing these, the worker is presumed to be hired through a contract for an indefinite period with the agency. The contract remains an agency work contract with the agency. It does not create an employment contract with the user.[83]

#### *4.3.4.3 Daily successive contracts for the same user*

66. Special rules apply to daily successive agency work contracts for the same user. Those rules apply to successive contracts for the same user, each concluded for a period not exceeding 24 hours, immediately following one another or separated by no more than one public holiday or the company's usual days of inactivity (for instance, the weekend).[84]

These are authorised if the user proves its need of the flexibility which such contracts provide.[85] CLA no. 108 defines the need for flexibility as being proven by the user if and insofar as the volume of work at the user's premises depends on external factors or if the volume of work fluctuates greatly or is linked to the nature of the assignment.[86] There is no objective criteria to assess the need for flexibility.

---

[81] O. MORENO (collab. B. DE WOUTERS), "Le contrat de travail intérimaire", *Le travail temporaire, le travail intérimaire et la mise à disposition des travailleurs. Les 30 ans de la loi du 24 juillet 1987,* Ch.-E. Clesse and S. Gilson (dir.), Limal, Anthémis, 2017, p. 53.

[82] Law of 24 July 1987 on temporary work, agency work and the hiring out of workers, *B.S.*/*M.B.*, 20 August 1987, art. 8, §2.

[83] O. MORENO (collab. B. DE WOUTERS), *op. cit*., p. 61.

[84] Law of 24 July 1987 on temporary work, agency work and the hiring out of workers, *B.S.*/*M.B.*, 20 August 1987, art. 8*bis*, al. 3.

[85] *Ibid*., art. 8*bis*, al. 1.

[86] CLA no. 108, art. 33, §3.

#### *4.3.4.4 Open-ended agency employment contract*

67. The legislator introduced a new article 8*ter* in the law of 24 July 1987 with the adoption of a law of 5 March 2017.[87] This new article makes it possible for an agency to enter into an open-ended employment contract with an agency worker with the view to carrying out successive agency work assignments (*uitzendopdrachten* / *missions d'intérim*) for one or more users. However, in order to enter into force, this provision must be the subject of a CLA concluded by the Joint Committee for agency work and made mandatory by Royal Decree.[88] No CLA has yet been adopted, so the provision is currently a dead letter.

The legislator's aim is not to remove the restriction on the use of agency workers only in the case of temporary work, but is to create a pool of agency workers to carry out successive agency work assignments for different users.[89]

According to the explanatory *memorandum*, this ability has the advantage for the agency of securing the loyalty of agency workers and creating a pool of temporary workers whose profiles are in high demand on the labour market. It also offers the worker the advantage of an open-ended contract with no interruption in the calculation of seniority.[90]

68. The open-ended agency employment contract entered into with the agency worker must set out the general conditions under which the assignments are to be carried out and the duration of the agency worker's employment, as well as a description of the jobs for which the agency worker may be recruited and which correspond to his/her professional qualifications. The agency worker is under an obligation to accept any assignment that is in accordance with these general terms and conditions.[91]

69. There may be breaks between agency assignments, known as "in between assignments" (*periodes zonder uitzendopdracht* / *périodes d'intermission*), which are treated as activity periods for the purposes of determining annual leave entitlement, calculating seniority and applying the legal or contractual provisions that take into account the worker's seniority in the company. During these in between assignments periods, the worker is entitled to a guaranteed minimum hourly wage. In addition, during those periods, the performance of the employment contract may not be suspended due to a lack of work resulting from economic causes.[92] Given these conditions, the open-ended agency employment contract is not similar to a zero-hour contract.

| Part-time | Multipartite | Temporary[93] | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

[87] Law of 5 March 2017 on feasible and manageable work, *B.S./M.B.*, 15 March 2017, art. 32.
[88] Law of 24 July 1987 on temporary work, agency work and the hiring out of workers, *B.S./M.B.*, 20 August 1987, art. 8*ter*, §3, al. 4.
[89] Draft law on feasible and manageable work, explanatory memorandum, *Doc.*, Ch., 2016-2017, no. 54 2247/001, p. 25.
[90] *Ibid.*
[91] Draft law on feasible and manageable work, explanatory memorandum, *Doc.*, Ch., 2016-2017, no. 54 2247/001, p. 25.
[92] Law of 24 July 1987 on temporary work, agency work and the hiring out of workers, *B.S./M.B.*, 20 August 1987, art. 8*ter*, § 3, al. 2-3.
[93] The characteristic is greyed out because the possibility of concluding an open-ended agency contract has not yet been implemented.

## 4.4 *The student agreement* (overeenkomst voor tewerkstelling van studenten / contrat d'occupation étudiant)

70. The student agreement is an employment contract whose specific nature lies in the status of the worker. It is not a *sui generis* employment contract, as explained by Patrick Humblet and Marc Rigaux, "[a]lthough this subject is regulated in a separate title of the Employment Contract Act, there is no 'employment contract for students' *stricto sensu*. Depending on the nature of the work the student will be considered as a blue-collar worker, a white-collar worker, a sales representative or a domestic servant".[94]

71. The student agreement is concluded for a fixed term.[95] The rules applicable to the employment of students derogate in certain respects from the common rules of labour law, namely with regard to the notice period.[96] This report does not comprehensively analyse all the specific rules applicable to the student agreement, but one will be further discussed in the next paragraph.

72. It should be pointed out that students employed under the student agreement are excluded from the scope of the law of 27 June 1969, known as *RSZ-wet* or *Loi ONSS*[97] (here after: the Social Security Act).[98] This means that employers and (student) employees are not liable to pay social security contributions. This is the reason why many employers are willing to hire student employees.

The exclusion of the scope of the Social Security Act is applicable within the limits of a quota of 475 declared hours per calendar year per student employee.[99] The number of hours has been increased to 600 for the years 2023 and 2024.[100] For the hours worked within the quota, a solidarity contribution of 5,42% is due by the employer and 2,71% by the employee on the student's wage.[101] If the student employee exceeds the hours quota, he/she is covered by the Social Security Act. Usual social security contributions, payable by the employer and the employee, are then due.

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

[94] P. HUMBLET and M. RIGAUX, Introduction to Belgian Labour Law, op. cit., p. 160.
[95] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 66.
[96] ECA, art. 130.
[97] Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on social security for workers, *B.S./M.B.*, 25 July 1969.
[98] Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on the social security for workers, *B.S./M.B.*, 5 December 1969, *errat*, *B.S./M.B.*, 22 December 1970, at. 17*bis*.
[99] The quota of hours worked can therefore be spread over the whole year. Previously, the fixed quota of hours could only be performed during the school holiday period.
[100] Royal Decree of 19 December 2022 amending Article 17bis of the Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on social security for workers, *B.S./M.B.*, 27 december 2022, art. 1.
[101] Royal Decree of 23 December 23 1996 concerning measures for the introduction of a solidarity contribution for the occupation of students not subject to the social security system for salaried workers, in application of article 3, § 1, 4° of the law of 26 July 26 1996 aiming to achieve the budgetary conditions for Belgium's participation in the European Economic and Monetary Union, *B.S./M.B.*, 31 December 1996, art. 1.

## *4.5 Occasional work*

### 4.5.1 Common aspects of occasional work

73. Occasional work contract is a work relationship that can be organised through successive fixed-term contracts used in specific sectors.

74. As explained by Sophie Gerard, Juliette Gilman, Amaury Mechelynck and Daniel Dumont, occasional work is not the same as part-time work :

> *"Le travail à temps partiel ne doit pas être confondu avec le travail occasionnel. Le travail occasionnel est « un travail annexe de nature temporaire que quelqu'un effectue occasionnellement, parallèlement à son activité professionnelle habituelle ou à ses études ou au terme de sa carrière professionnelle ». La notion de travail occasionnel concerne la durée du contrat et non la durée des prestations au cours de l'exécution de ce contrat. Un travail occasionnel peut en effet être exercé à temps plein ou à temps partiel mais uniquement pour la durée prévue du contrat. Le travail à temps partiel peut quant à lui s'exercer dans le cadre d'un contrat tant à durée déterminée qu'à durée indéterminée ou pour un travail nettement défini".*[102]

We will look at occasional work in three sectors: the hotel and catering industry, the funeral industry and the agricultural and horticultural sectors.

### 4.5.2 Occasional work in the HoReCa sector (*gelegenheidsarbeid in de horeca*/*travail occasionnel dans le secteur horeca* ("*extra*"))

75. Occasional work in the "HoReCa" sector is a specific status created in 2003.[103] Originally, the status was supposed to be temporary and to only exist for a year and a half (until 31 December 2004). It was latter extended and then repealed. The status was reintroduced in 2013 with further adjustments.[104] It is a *sui generis* status that differs in both labour law and the social security system. It was created for similar reasons as the ones that led to the creation of flexi-jobs : the HoReCa sector is subject to unpredictable workloads and labour requirements, which can vary greatly depending on the time of year and on factors such as the weather.[105]

The scope of application is limited to employers covered by the joint committee (J.C.) for the hotel industry no. 302 and their employees. It also applies to employers from the J.C. on agency worker if the user is covered by the J.C. no. 302.

---

[102] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.,* p. 31, quoting W. VAN EECKHOUTTE and V. NEUPREZ, *Compendium Social Droit du travail 2020-2021*, Malines, Kluwer, 2020, p. 867 itself quoting *Dictionnaire de droit social du Bénélux*.

[103] Royal Decree of 27 May 2003 on occasional work in companies covered by the Joint Committee for the Hotel Industry, *B.S./M.B.*, 11 June 2003.

[104] Royal Decree of 12 November 2013 on the employment of occasional workers in the hotel and catering sector, *B.S./M.B.*, 27 November 2013 ; S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 122-123. The authors note that the term "extra worker" first appeared in 1997.

[105] M. POTTIER, *Un répertoire des contrats de courte durée*, Liège, Wolters Kluwer, 2020, p. 81.

76. The occasional worker in the HoReCa sector, also known as an "extra" worker, is defined as:

> *"de werknemer die verbonden is gedurende maximaal twee opeenvolgende dagen met eenzelfde werkgever, door een arbeidsovereenkomst voor een bepaalde tijd of door een arbeidsovereenkomst voor een duidelijk omschreven werk."*
>
> *"le travailleur engagé pour une durée maximale de deux jours consécutifs chez le même employeur par un contrat de travail conclu pour une durée déterminée ou par un contrat de travail conclu pour un travail nettement défini."*[106]

77. Occasional work contract in the HoReCa sector is characterised by a limited duration (either fixed-term or for a well-defined work) as it may be concluded for two consecutive days at the most. In other words, a worker is considered to be an occasional worker if he/she is employed on a fixed-term contract or on a contract for clearly defined work for a maximum of two consecutive days by an employer covered by J.C. no. 302 or by an employer covered by the J.C. on agency work but for a user covered by J.C. no. 302. The work duration can vary between two and nine hours a day.[107]

78. An advantageous social treatment applies to "extra" worker status. This treatment consists in the fact that social security contributions are calculated on the basis of a reduced flat rate set: at 10,08 € per hour started (with a maximum of six times this daily rate) if the Dimona is expressed in hours or, at 60,48 € in case of a daily Dimona (amounts for the first quarter of 2023).[108]

This advantageous flat-rate applies for a limited number of days, namely :

- For the worker: the flat-rate rate applies to the first 50 days per year of employment as an occasional worker in the hotel and catering sector.
- For the employer (or user): it applies for the first 200 days (the maximum was previously 100 days, but was increased by Royal Decree of 23 October 2015[109]).

Beyond this quota, ordinary social security contributions are due. Social security benefits are calculated on the basis of a higher flat rate, namely the flat rate for "waiter/waitress", equivalent to 136,33 euros/day or 17,94 euros /hour.[110]

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

[106] Royal Decree of 13 November 1997 relating to the keeping of an attendance register in companies which come under the Joint Committee of the Hotel Industry and determining the conditions and procedures according to which the attendance register must be validated, *B.S./M.B.*, 20 December 1997, art. 1, al. 2.

[107] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 123 and the references cited, *contra* M. POTTIER (*op. cit.*, p. 85) says the two-hour limit in the horeca sector does not apply to casual workers.

[108] M. POTTIER, *op. cit.*, p. 86.

[109] Royal Decree of 23 October 2015 amending the Royal Decree of 28 November 1969 in implementation of the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on the social security for workers with regard to the employer's quota of casual working days in the hotel industry, *B.S./M.B.*, 6 November 2015, art. 1.

[110] M. POTTIER, *op. cit.*, p. 86-87 ; SPF SECURITE SOCIALE, "Le travail occasionnel dans le secteur horeca", accessible online https://www.socialsecurity.be/employer/instructions/dmfa/fr/latest/instructions/socialsecuritycontributions/calculationbase/occasionals_horeca.html (3 October 2023).

### 4.5.3 Occasional work in the agricultural and horticultural sectors (*gelegenheidsarbeiders in de land- en tuinbouw / travail occasionnel dans les secteurs de l'agriculture et de l'horticulture*)

79. Occasional work may be carried out in the agricultural and horticultural sectors (J.C. no. 144 and 145). This status is governed by social security legislation (and not by employment law).[111] Specific rules are also to be found in CLA's concluded within J.C. no. 144 and 145.

80. A manual worker will be considered as occasional worker if he/she is employed per calendar year for a maximum of 30 days in the agricultural sector and 65 days in the horticultural sector. Specific deadlines apply for the cultivation and harvesting of chicory, mushrooms, hops, tobacco and ypreaux.

81. In practice, this employment relationship takes the form of a succession of verbal daily fixed-term contracts, which are subsequently recorded in a control document (picking card). This type of contract therefore departs from the usual labour law rules on the succession of fixed-term contracts.[112]

82. Occasional workers in the agricultural and horticultural sectors are only partially covered by the social security scheme. Coverage is limited to mandatory sickness and disability insurance, the unemployment insurance scheme, and the retirement and survivors' pensions scheme for salaried workers.[113] This partial coverage is limited to 65 days per calendar year for each employee. Social security contributions are calculated on the basis of a flat-rate remuneration.[114]

Occasional workers employed in the cultivation and harvesting of hops, tobacco and ypreaux are not subject to social security scheme (under certain conditions and for a limited period of time).[115]

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

[111] Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on the social security for workers, *B.S./M.B.*, 5 December 1969, *errat*, *B.S./M.B.*, 22 December 1970, at. 8*bis*.
[112] A. MECHELYNCK, *op. cit.*, thesis to be defended.
[113] Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on the social security for workers, *B.S./M.B.*, 5 December 1969, *errat*, *B.S./M.B.*, 22 December 1970, at. 8*bis*.
[114] *Ibid.*, art. 31*bis*.
[115] *Ibid.*, art. 17*ter*.

#### 4.5.4 Occasional work in the funeral services sector (*gelegenheidswerknemers in de begrafenissector* / *travail occasionnel dans le secteur des pompes funèbres*)

83. Occasional work may be performed in the funeral services sector (J.C. no. 320). As for occasional work in the agricultural and horticultural sectors, occasional work in the funeral service sector is governed by social security legislation, as well as by CLAs concluded within the relevant Joint Committee.[116]

84. As with the flexi-job contract (*infra*, no. 4.6), a written framework contract must be concluded. A written or verbal contract must then be concluded for each occupation.[117] This contract is concluded for a fixed term or for a clearly defined contract.[118]

Occasional work is exclusively authorised to carry out a number of restrictively defined tasks following a death.[119]

85. These workers are subject to the social security scheme for salaried workers.[120]

86. With regard to working time, the duration of each working period may be less than three hours but not less than one hour. The weekly limit of one third of a full-time job in article 11*bis* ECA does not apply.[121]

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

### *4.6 The flexi-job system* (het systeem van flexi-jobs / le système des flexi-jobs)

87. Flexi-jobs are a new form of work relationship created at the Government's initiative in 2015, specifically for the HoReCa sector (J.C. no. 302). The explanatory *memorandum* explains the two main reasons for creating this new legal form. Firstly, the level of the total wage costs is too high because of fiscal and parafiscal pressure on wages. Secondly, the inadequacy of flexible recourse to employed workers increases employers' recourse to undeclared work. The legislator's intention was to prevent recourse to undeclared work by making it less attractive, by creating a status that was advantageous in terms of tax and social security contributions, and also to take account of the specific nature of the sector. Indeed, in this sector, "the need for labour is highly variable and highly dependent on external

[116] Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on social security for workers, *B.S.*/*M.B.*, 25 July 1969, art. 2/4, al. 2 ; Collective Labour Agreement no. 178878 of 9 Januari 2023, concluded within the Joint Committee of funeral services, concerning occasional workers in firms of undertakers, made compulsory by the Royal Decree of 21 July 2023, *B.S.*/*M.B.*, 10 October 2023.
[117] Collective Labour Agreement no. 178878 of 9 Januari 2023, concluded within the Joint Committee of funeral services, concerning occasional workers in firms of undertakers, made compulsory by the Royal Decree of 21 July 2023, *B.S.*/*M.B.*, 10 October 2023, art. 6.
[118] Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on social security for workers, *B.S.*/*M.B.*, 25 July 1969, art. 2/4, al. 2.
[119] *Ibid*.
[120] *Ibid*.
[121] Collective Labour Agreement no. 178878 of 9 Januari 2023, concluded within the Joint Committee of funeral services, concerning occasional workers in firms of undertakers, made compulsory by the Royal Decree of 21 July 2023, *B.S.*/*M.B.*, 10 October 2023, art. 7.

circumstances such as the weather, the seasons, public holidays, *etc*. The number of workers can change quickly, as can the hours they are required to work. There is a great need for workers who can be assigned flexibly".[122]

88. Besides, flexi-jobs were conceived as an accessory activity. The conclusion of flexi-jobs is therefore limited with regard to the worker's main occupation. The explanatory *memorandum* indicates that the system offers flexi-jobbers the possibility of acquiring additional income alongside their basic remuneration from their main activity, without this income being subject to excessive taxation and parafiscal charges by the State[123]. Thus, the law provides that only workers who are already employed in an occupation of at least 4/5ths of a full-time job with another employer can be occupied under the flexi-job system.[124] This condition is assessed on the basis of occupation in the third quarter preceding the quarter in which the flexi-job occupation takes place (T-3). Some occupations were not (and still are not) taken into account in the calculation of the previous occupation. It is the case for the occupation as a student worker, an apprentice, an occasional worker in the agricultural and horticultural sectors and as an occasional worker employed by an employer who is a member of the Joint Committee for the Hotel Industry or who is a member of the Joint Committee for agency work if the user is a member of the Joint Committee for the Hotel Industry.[125]

It should be noted that if the objective is that the worker should be employed 4/5ths of the time in order to perform a flexi-job, the fact that the condition applies to the T-3 quarter does not guarantee this 4/5ths employment at the time the flexi-job is performed. In this respect, the *Rekenhof* / *Cour des comptes* pointed out that at the time the flexi-job is performed, 17% of flexi-workers do not have a 4/5 of a full-time job and 5,5% have no other job at all.[126]

89. The original system has since undergone two extensions.

90. Firstly, the possibility of using flexi-jobs was successively extended to other sectors. In a nutshell, the program-law of 25 December 2017[127] extended the scope of the flexi-job system to food trade, independent retail, food retail trade, medium-sized food businesses, large retail companies, department stores, hairdressing and beauty care, as well as to agency workers belonging to one of those sectors or to the *Waarborg- en Sociaal Fonds* / *Fonds social de garantie.* The law of 26 December 2022 further extended that scope to the sectors of sports, operation of cinemas, shows and performance, health facilities and services and public

[122] Translation of Draft law on various social provisions, Explanatory Memorandum, *Doc.*, Ch., 2014-2015, no. 54 1297/001, p. 5.
[123] *Ibid*., p. 5 and 6.
[124] Law of 16 November 2015 containing various provisions on social matters, *B.S.*/*M.B.*, 26 November 2015, art. 4, §1.
[125] *Ibid*., art. 4, §2, al. 2.
[126] REKENHOF/COUR DES COMPTES, "Incidence du plan horeca 2015. Flexi-jobs, travail occasionnel et heures supplémentaires nettes", Bruxelles, februari 2019, accessible online https://www.ccrek.be/FR/Publications/Fiche.html?id=aa528964-797d-4770-8275-754dd1c3b156 (3 October 2023).
[127] Program-law of 25 December 2017, *B.S.*/*M.B.*, 29 December 2017, art. 33.

healthcare sector.[128] Finally, the law of 27 March 2023 extended the scope to the food industry whose main activity is the retail sale of artisanal chocolate in specialised shops.[129]

The scope of the flexi-job system with regard to sectors is currently defined as follows :

> *"1° onder het paritair comité voor de handel in voedingswaren (PC 119);*
> *2° onder het paritair comité voor de zelfstandige kleinhandel (PC 201);*
> *3° onder het paritair comité voor de bedienden uit de kleinhandel in voedingswaren (PC 202);*
> *4° onder het paritair subcomité voor de middelgrote levensmiddelenbedrijven (PSC 202.01);*
> *5° onder het paritair comité voor het hotelbedrijf (PC 302);*
> *6° onder het paritair comité voor de grote kleinhandelshandelszaken (PC 311);*
> *7° onder het paritair comité voor de warenhuizen (PC 312);*
> *8° onder het paritair comité voor het kappersbedrijf en de schoonheidszorgen (PC 314);*
> *9° onder het paritair comité voor de uitzendarbeid indien de gebruiker ressorteert onder een van de hier genoemde paritaire comités of onder het Waarborg- en Sociaal Fonds bedoeld in het tweede lid;*
> *10° onder het nationale paritair comité voor de sport (PC 223);*
> *11° onder het paritair subcomité voor de exploitatie van bioscoopzalen (PC 303.03);*
> *12° onder het paritair comité voor het vermakelijkheidsbedrijf (PC 304), met uitsluiting van artistieke, artistiek-technische en artistiek-ondersteunende functies die activiteiten omvatten zoals bepaald door de wet van 16 december 2022 tot oprichting van de Kunstwerkcommissie en tot verbetering van de sociale bescherming van kunstwerkers;*
> *13° onder het paritair comité voor gezondheidsinrichtingen en -diensten (PC 330) of van openbare instellingen en diensten van de publieke zorgsector met als NACE-code 86101, 86102, 86103, 86104, 86109, 86210, 86901, 86903, 86905, 86906, 86909, 87101, 87109, 87301, en 87302 met uitsluiting van functies die taken omvatten behorend tot het materiële toepassingsgebied van de gecoördineerde wet van 10 mei 2015 betreffende de uitoefening van de gezondheidszorgberoepen;*
> *14° onder het paritair comité voor de voedingsnijverheid (PC 118) met als hoofdactiviteit de detailhandel in artisanale chocoladeproducten in gespecialiseerde winkels zoals omschreven in NACE-code 47242."*

[128] Program-law (I) of 26 December 2002, *B.S./M.B.*, 30 December 2022, art. 146.

[129] Law of 27 March 2023 amending the Law of 16 November 2015 containing various provisions on social matters with regard to extending the scope of flexi-jobs to chocolate makers, *B.S./M.B.*, 13 April 2023, art. 2.

*"1° de la commission paritaire du commerce alimentaire (CP 119);*
*2° de la commission paritaire du commerce de détail indépendant (CP 201);*
*3° de la commission paritaire pour les employés du commerce de détail alimentaire (CP 202);*
*4° de la sous-commission paritaire pour les moyennes entreprises d'alimentation (SCP 202.01);*
*5° de la commission paritaire de l'industrie hôtelière (CP 302);*
*6° de la commission paritaire des grandes entreprises de vente au détail (CP 311);*
*7° de la commission paritaire des grands magasins (CP 312);*
*8° de la commission paritaire de la coiffure et des soins de beauté (CP 314);*
*9° de la commission paritaire du travail intérimaire si l'utilisateur ressort d'une des commissions paritaires citées ici ou du Fonds social et de garantie visé à l'alinéa 2;*
*10° de la commission paritaire nationale des sports (CP 223);*
*11° de la sous-commission paritaire pour l'exploitation des salles de cinéma (303.03);*
*12° de la commission paritaire du spectacle (CP 304), à l'exclusion des fonctions artistiques, artistique-techniques et artistiques de soutien qui incluent des activités visées par la loi du 16 décembre 2022 portant création de la Commission du travail des arts et améliorant la protection sociale des travailleurs des arts;*
*13° de la commission paritaire des établissements et des services de santé (CP 330) ou des établissements ou services publics relevant du secteur public des soins de santé dont le code NACE est 86101, 86102, 86103, 86104, 86109, 86210, 86901, 86903, 86905, 86906, 86909, 87101, 87109, 87301 et 87302, à l'exclusion des fonctions qui comprennent des tâches entrant dans le champ d'application matériel de la loi coordonnée du 10 mai 2015 relative à l'exercice des professions des soins de santé;*
*14° de la commission paritaire de l'industrie alimentaire (CP 118) ayant pour activité principale le commerce de détail de chocolat artisanal en magasin spécialisé visé par le code NACE 47242."*

91. The second extension of the flexi-job system had to do with its personal scope. Besides the worker already employed in an occupation of at least 4/5ths of a full-time job with another employer, the program-law of 25 December 2017 extended the possibility to be occupied under the flexi-job system to workers who are retired.[130] These are not submitted to the condition of an occupation of 4/5$^{th}$ of a full-time worker.

92. In a nutshell the flexi-job system is meant to provide a flexible work force to meet a punctual need for reinforcements in specific sectors where it is justified by the fluctuating nature of labour needs. Flexi-jobs are not intended to be a worker's main activity, as workers are obliged to work 4/5 of a full-time job with another employer, with the exception of retired people.

93. The flexi-job system is a form of the internationnally well-known figure of zero-hour contract or on-call contract by which the employer can call on the employee when needed

[130] The worker must be retired during the trimester T-2. Law of 16 November 2015 containing various provisions on social matters, *B.S.*/*M.B.*, 26 November 2015, art. 4, §3 (modified by Program-law of 25 December 2017, *B.S.*/*M.B.*, 29 December 2017, art. 33).

and the employee is not guaranteed a certain amount of work.[131] Globally speaking, zero-hours contracts may be structured in two ways: either in the form of a part-time open-ended employment contract with no minimum guaranteed working hours or, in the form of a framework agreement followed by short-term employment contracts. In Belgium, the latter option has been selected: it is structured by a framework agreement (*contrat-cadre* / *raamovereenkomst*) followed by flexi-job short-term employment contracts. The framework agreement is meant to provide core elements of the work relationship. It must include the identity of the parties, a brief description of the tasks to be performed and the salary. It also indicates how and within what timeframe a flexi-job employment contract must be proposed by the employer to the employee.[132] The employer is not obliged by the framework contract to call the employee and the employee is not obliged to accept the employer's request.[133] If the employee does accept the request, a flexi-job employment contract (*flexi-jobarbeidsovereenkomst* / *contrat de travail flexi-job*) is concluded (either in writing or orally) for a fixed term or for a clearly defined work[134]. Sophie Gerard, Juliette Gilman, Amaury Mechelynck and Daniel Dumont sum up in these terms : "*La relation de travail sera donc structurée comme une succession de contrats de travail qui sont le plus souvent conclus à la journée. Les flexi-jobs se présentent donc comme des contrats de travail à durée déterminée ou pour un travail nettement défini spécifiquement réglementés*".[135] Moreover, flexi-job contracts are subject to the rules of the ECA but specific provisions of the law of 2015 may derogate from these common rules.[136] In short, there is a derogation from the requirement for fixed-term contracts to be in writing (art. 9 ECA). However, this is not a derogation from article 10 ECA as regards successive fixed-term contracts, since the legislator considered that, in these sectors, there are "legitimate reasons" within the meaning of article 10 ECA that justify the use of such contracts.

94. One of the aims of the flexijob system was to reduce undeclared work by providing advantageous treatment in terms of tax and social security contributions. Therefore, the legislator has introduced the concepts of flexisalary (*flexiloon* / *flexi-salaire*) and flexi holiday allowance (*flexivakantiegeld* / *flexipécule de vacances*), which are subject to an advantageous and derogatory social and tax regime.

95. Flexisalary is legally defined as :

> *"het basisloon, zijnde een nettoloon ter vergoeding van een prestatie geleverd in het kader van een flexi-job (…) aangevuld met alle vergoedingen, premies en voordelen van welke aard ook die door de werkgever toegekend worden ter vergoeding van diezelfde prestatie, en waarop overeenkomstig artikel 14, § 2, van de wet van 27 juni 1969 tot herziening van de besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders en artikel 23, tweede lid, van de wet van 29*

[131] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 128 ; E. DERMINE and A. MECHELYNCK, "Zero-hour contracts and labour law: An antithetical association?", Special Issue, *European Labour Law Journal*, Vol. 13, Issue 3, 2022, p. 339-346.

[132] Law of 16 November 2015 containing various provisions on social matters, *B.S.*/*M.B.*, 26 November 2015, art. 6.

[133] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 71.

[134] Law of 16 November 2015 containing various provisions on social matters, *B.S.*/*M.B.*, 26 November 2015, art. 8 and 10.

[135] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 71.

[136] It is the case for instance for common rules on variable timetable.

*juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers en hun uitvoeringsbepalingen, sociale bijdragen verschuldigd zijn."*

*"le salaire de base, qui est un salaire net destiné à rémunérer une prestation fournie dans le cadre d'un flexi-job (…), augmenté de tous les indemnités, primes et avantages quelle que soit leur nature versés par l'employeur à titre de rémunération pour ces mêmes prestations et sur lesquelles conformément à l'article 14, § 2, de la loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs et à l'article 23, alinéa 2, de la loi du 29 juin 1981 établissant les principes généraux de la sécurité sociale des travailleurs salariés et leurs arrêtés d'exécution, des cotisations sociales sont due."*[137]

96. For the worker, the net salary is the equivalent of the gross salary as no social security contributions are due on the flexisalary (as well as on the flexi holiday allowance).[138] A special contribution of 25% on the flexisalary and flexi holiday allowance is due by the employer.[139]

However, flexi-job workers build up social rights in the same way as ordinary workers. Benefits are calculated on the basis of flexi-salary, not gross salary.[140]

97. It should be noted that in the budget agreement of autumn 2023, the government agreed to extend flexijobs to twelve new sectors and to increase the employer contribution to 28%[141]. The flexijobs regulation is therefore likely to evolve in the coming months.

| Part-time[142] | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime[143] |
|---|---|---|---|---|---|

[137] Law of 16 November 2015 containing various provisions on social matters, *B.S./M.B.*, 26 November 2015, art. 3, 2°.
[138] Law of 29 June 1981 establishing the general principles of social security for salaried workers, *B.S./M.B.*, 2 July 1981, art. 23, al. 3.
[139] *Ibid.*, art 38, §3*sexdecies*.
[140] P. NISOL, "Statuts sociaux particuliers, le point sur des modifications récentes : artistes, apprentis, flexi-jobs et médecins en formation", *Ors.*, 2017/1, p. 14.
[141] Budget of revenue and expenditure for the financial year 2024, General Statement, *Doc.*, Ch. 2023-2024, no. 55 3645/001, p. 94 ; Draft Program-law, Explanatory Memorandum, *Doc.*, Ch., 2023-2024, no. 55 3697/001, p. 6.
[142] While the flexi-jobs system is formally categorised as 'temporary' due to the examination of individual contracts, it is important to emphasise that, in terms of social protection, the overall employment relationship more closely resembles a part-time arrangement. Consequently, it shares similar implications on social protection as part-time jobs.
[143] The characteristic is not met since the derogatory social security scheme does not lead to a lower social coverage. It only consists in derogatory rules in terms of social contributions.

### *4.7 The part-time employment contract* (contrat de travail à temps partiel / arbeidsovereenkomst voor deeltijdse arbeid)

98. The law of 5th March 2002 on the non-discrimination principle in favor of part-time workers[144] defines the part-time worker as follows :

> *"een werknemer (…) wiens normale arbeidsduur, berekend op weekbasis of als gemiddelde over een werkperiode van maximaal een jaar, minder is dan die van een voltijdse werknemer in een vergelijkbare situatie"*
>
> *"un travailleur (...) dont la durée normale de travail, calculée sur une base hebdomadaire ou en moyenne sur une période d'emploi pouvant aller jusqu'à un an, est inférieure à celle d'un travailleur à temps plein se trouvant dans une situation comparable"*[145]

99. The part-time employment contract is not a *sui generis* contract.[146] This means that common rules to employment contracts are to be enforced but specific provisions do nevertheless apply. This contract should not be confused with occasional work, temporary work, seasonal work, replacement contract and on-call contract.[147]

Among specific provisions to the part-time employment contract, the ECA requires a written contract for each individual employee, that must be signed before the employee starts working for the employer.[148] The written agreement indicates the agreed work-time regime as well as working hours.[149] If this formality is not implemented, the worker may choose between the most favorable part-time working arrangements and working hours.[150]

According to ECA, the minimum weekly working time may not be less than one third of the weekly working time of full-time workers in the same category in the company or, failing that, of the working time applicable in the same sector of activity.[151] If the minimum limit of the one-third rule is derogated from by the contract, the remuneration due is nevertheless the remuneration due in accordance with the one-third rule. By derogation, the weekly working hours may be lower than a third of a full-time working time. This is possible by means of a decree deliberated by the Council of Ministers or a collective labour agreement for branches of activity, categories of undertakings or branches of undertakings and for categories of workers or work to which this limit cannot be applied.[152]

---

[144] *B.S.* / *M.B.*, 13 March 2002.
[145] ECA, art. 2, 2°.
[146] P. HUMBLET and M. RIGAUX (eds.), *Synopsis van het Belgische arbeidsrecht*, 6th ed., Antwerpen and Cambridge, Intersentia, 2014, p. 74.
[147] P. HUMBLET and M. RIGAUX, *Introduction to Belgian Labour Law*, *op. cit.*, p. 37; P. HUMBLET and M. RIGAUX (eds.), *Synopsis van het Belgische arbeidsrecht*, *op. cit.*, p. 74.
[148] ECA, art. 11*bis*, al. 1.
[149] ECA, art. 121*bis*, al. 2.
[150] ECA, art. 11*bis*, al. 3.
[151] ECA, art. 11*bis*, al. 4.
[152] ECA, art. 11*bis.*

In addition, article 21 of the Law of 16 March 1971 sets a minimum limit of 3 hours per working period.[153] This may be waived by Royal Decree or CLA.

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

## *4.8 Article 60 contract* (artikel 60-contract / emploi d'insertion)

100. Article 60 and 61 contracts are part of the missions of the public social actions centres (*OCMW's/CPAS*) which can grant various types of assistance, such as providing work for people who are distant from the labour market.[154]
We will exclusively discuss Article 60 contracts, as Article 61 contracts have become less common.[155]

After the Sixth State Reform, the competence for the 'article 60 §7' system has been transferred to the Regions.[156] We will refrain from delving into the specifics of each system implemented by the regional authorities, limiting our discussion here to explain the shared philosophy and rules of the system.

101. Article 60 § 7, al. 1 of the organic law on public social action centres states:

> *"§ 7. Wanneer een persoon het bewijs moet leveren, van een periode van tewerkstelling om het volledige voordeel van bepaalde sociale uitkeringen te verkrijgen of teneinde de werkervaring van de betrokkene te bevorderen, neemt het openbaar centrum voor maatschappelijk welzijn alle maatregelen om hem een [...] betrekking te bezorgen, in voorkomend geval verschaft het deze vorm van dienstverlening zelf door voor de bedoelde periode als werkgever op te treden.*
>
> *§ 7. Lorsqu'une personne doit justifier d'une période de travail pour obtenir le bénéfice complet de certaines allocations sociales ou afin de favoriser l'expérience professionnelle de l'intéressé, le centre public d'aide sociale prend toutes les dispositions de nature à lui procurer un emploi (...). Le cas échéant, il fournit cette forme d'aide sociale en agissant lui-même comme employeur pour la période visée".*[157]

102. Article 60 contracts consist in a tripartite relationship between:

- The worker ;
- The employer, which is a public social actions centre ;
- A user which may be intern (the public social actions centre itself) or extern (*i.e.* another public social actions centre, municipalities, non-profit or inter-municipal associations with a social, cultural or ecological purpose, companies with a social

[153] Labour law of 16 March 1971, *B.S./M.B.*, 30 March 1971.
[154] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 82.
[155] *Ibidem*.
[156] Special law of 8 August 1980 on institutional reforms, *B.S./M.B.*, 15 August 1980, art 5, § 1, II, 2° and art. 6, § 1, IX, 2/1°.
[157] Organic law of 8 July 1976 on public social action centres, *B.S./M.B.*, 5 August 1976.

purpose, *etc*.). In the case of an extern user, the occupation is a derogation from the prohibition on the hiring out of workers.[158]

The contract may be concluded on a full-time or part-time basis.[159] The duration of the work placement may not exceed the time required for the person to obtain full unemployment insurance benefit.[160]

103. The remuneration is paid by the employer, *i.e*. the public social actions centre, which receives a state subsidy and is exempted from employer's social security contributions.[161] Remuneration is subject to personal social security contributions and to the standard withholding tax on professional income.[162]

| | | | | | |
|---|---|---|---|---|---|
| **Part-time** | **Multipartite** | **Temporary** | **No remuneration** | **No legal subordination** | ***Ad hoc* social security regime** |

## *4.9* PWA/ALE *contract* (PWA-arbeidsovereenkomsten (plaatselijk werkgelegenheidsagentschap) / contrat ALE (agence locale pour l'emploi))

### 4.9.1 Description of the system

104. The system of *plaatselijk werkgelegenheidsagentschap* / *agence locale pour l'emploi* (*PWA* / *ALE*) was created in 1987 and consists in the occasional employment of specific categories of unemployed persons to carry out specific activities that are not covered by the regular employment circuits, for the benefit of an individual, local authorities, educational establishments, non-profit organisations (*VZW* / *ASBL*) and non-commercial associations.[163]

105. This system enables *PWA* / *ALE* workers to receive an allowance linked to the activity carried out under the *PWA* / ALE system, while keeping both their unemployed person status and their unemployment insurance or social assistance benefit.

It also makes it possible "to meet a need for small-scale services not met by "ordinary" work circuits".[164] This work placement is organised by a local employment agency (*PWA* / *ALE*), which takes the form of a *VZW* / *ASBL* set up by a local authority or group of local authorities.

---

[158] *Ibid*., art 60, §7, al. 3.

[159] Royal Decree of 11 July 2002 determining the conditions for granting, the amount and the duration of the subsidy, granted to public social welfare centres, for part-time employment, in application of article 60, § 7, of the law of 8 July 1976 on the organisation of public social welfare centres, of a person entitled to social integration, *B.S./M.B.*, 31 July 2002, art. 2, 1°.

[160] Organic law of 8 July 1976 on public social action centres, *B.S./M.B*., 5 August 1976, art. 60, §7, al. 2.

[161] Law of 26 May 2002 on the right to social integration, *B.S./M.B.*, 31 July 2002, art. 36 and 37; Law of 2 April 1965 relating to the assumption of responsibility for assistance granted by the public social action centres, *B.S./M.B*., 6 May 1965, art. 5, §4 and §4bis; Law of 22 December 1995 on measures to implement the multi-year employment plan, *B.S./M.B*., 30 December 1995, art. 33.

[162] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, op. cit., p. 87.

[163] M.-C. MENU, *Le travail via une agence locale pour l'emploi (A.L.E.) et le dispositif titres-services : Un terrain commun, des statuts bien distincts*, Liège, Wolters Kluwer, 2020, p. 5.

[164] Translation of S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 89.

106. Since the Sixth Belgian State Reform, this competence has been transferred to the federated entities. The Walloon Region and the Brussels-Capital Region have retained the old federal system. Flanders replaced the *PWA* / *ALE* system with the *wijkwerken* system as of 1st January 2018 (see below, 4.10). The German-speaking community has kept the federal system, but modified it considerably.[165] We will not analyse this system. This section examines the *ALE* system of the Walloon Region and the Brussels-Capital Region. The transfer of competences does not concern the competences related to the payment of unemployment insurance benefits and the exemption from availability (competences of the *RVA*/*ONEM*) or the regulation of the *PWA* / *ALE* employment contract (federal competence).[166]

107. This system has four specific features, namely the activities that can be carried out, the status of the people who can become *ALE* providers, the tripartite nature of the employment relationship and the nature of the employment relationship. The first two characteristics are discussed in the current section, while the last two, requiring further development, are addressed in a separate section (4.9.2.).

Firstly, activities that can be carried out must be either activities that are not encountered on regular work circuit (*reguliere arbeidscircuit* / *circuit de travail régulier*),[167] or local work or services (*wijkwerken* / *travaux ou services de proximité*).[168] Examples of authorised activities include, but are not limited to:

- Activities that can be carried out for individuals include helping to look after or accompany sick, elderly or disabled people or children, helping with administrative tasks, helping with small-scale garden maintenance, etc.[169]

- Activities that can be carried out for local authorities include "activities of prevention and safety assistants"[170] (this branch is being phased out) and "activities which meet needs which cannot be met by regular employment circuits, particularly in view of the temporary and exceptional nature of the need or the fact that this need has arisen or has increased considerably as a result of recent developments in society".[171] This includes, in particular, help to protect the environment and support for children, young people and the socially disadvantaged.[172]

- Activities that may be carried out for the benefit of educational institutions or non-profit organisations include "[a]ctivities which, because of their nature, size or occasional nature, are usually carried out by volunteers, in particular the activities of persons providing assistance at social, cultural, sporting, charitable or humanitarian events".[173]

---

[165] W. VAN EECKHOUTTE, *Memento social 2023-1*, Mechelen, Wolters Kluwer, 2023, p. 353, no. 734.
[166] M.-C. MENU, *op. cit.*, p. 10.
[167] Decree-Law of 28 December 1944 on social security for workers, *B.S.*/*M.B.*, 30 December 1944, art. 8, § 1, al. 1.
[168] *Ibid.,* art. 8*bis*.
[169] Royal Decree of 25 November 1991 laying down the unemployment regulations, *B.S.*/*M.B.*, 31 December 1991, art. 79*bis*, §3, al. 1, 1°.
[170] Translation of *Ibid.*, art. 79*bis*, §3, al. 1, 2°.
[171] Translation of *Ibid.*, art. 79*bis*, §3, al. 1, 3°.
[172] M.-C. MENU, *op. cit.*, p. 24.
[173] Translation of Royal Decree of 25 November 1991 laying down the unemployment regulations, *B.S.*/*M.B.*, 31 December 1991, art. 79*bis*, §3, al. 1, 4°.

- Specific manual activities may also be carried out in the horticultural and agricultural sectors.[174]

- It should be noted that, previously, the *ALE* employment contract could cover local services and work with individuals, but these activities were transferred to the service cheque system (which is a regular work circuit) on 1 March 2004 (it is still possible to be an *ALE* service provider for these activities under very strict conditions). The disappearance of this branch has led to a sharp decline in the use of the *ALE* system.

Secondly, as the system's purpose is to "meet the demand for employment from the long-term unemployed persons and those on minimum subsistence benefits who have difficulty finding a place in the labour market",[175] it is aimed at specific categories of unemployed persons who are the only ones eligible for *ALE* benefits.

Broadly speaking, the system is aimed at:

- Long-term wholly unemployed persons on benefits (*langdurig uitkeringsgerechtigde volledig werklozen* / *chômeurs complets indemnisés de longue durée*)
- Wholly unemployed persons who are registered as jobseekers within a Regional Employment Office and which receive either the living wage (*leefloon* / *revenu d'intégration*) or the financial social assistance (*financiële sociale bijstand* / *aide sociale financière*) (provided additional conditions are met, which are not discussed here).[176]

Depending on the profile of the unemployed person concerned, registration with an *ALE* is either compulsory or voluntary. In the first case, the system is aimed at certain long-term unemployed persons, who must register with the relevant *ALE* and are obliged to accept any suitable job offered to them. If they fail to do so, they may be sanctioned.

### 4.9.2 *PWA / ALE* employment contract

108. The *ALE* employment contract is governed by the law of 7 April 1999 on the *PWA* / *ALE* employment contract.[177]

109. The *ALE* system organises a tripartite relationship between :

- the employer, *i.e*. the *ALE*;
- the worker (or *ALE* service provider);
- the user, who may be a natural person or certain legal entities (local authorities, educational establishments, *ASBL*, etc.) who pays for the activities using *ALE* cheques.

[174] See M.-C. MENU, *op. cit.*, p. 25.
[175] Translation of M.-C. MENU, *op. cit.*, p. 29 quoting Draft Law on the *PWA* / *ALE* employment contract, Report made on behalf of the Social Affairs Committee, Doc., Ch., 1998-1999, no. 2000/5, p.2.
[176] Decree-Law of 28 December 1944 on social security for workers, *B.S./M.B.*, 30 December 1944, art. 8, § 3.
[177] Law of 7 April 1999 on the *PWA* / *ALE* employment contract, *B.S./M.B.*, 20 April 1999.

110. The 1999 law defines the *ALE* employment contract through the same characteristics of an ordinary employment contract (*i.e*. performance of work against remuneration, under subordination). It is defined as follows:

> *"De PWA-arbeidsovereenkomst is een overeenkomst waarbij een werknemer zich verbindt om, onder gezag van het PWA en tegen loon, arbeidsprestaties die men niet aantreft in de reguliere arbeidsmarkt te verrichten."*
>
> *"Le contrat de travail ALE est un contrat par lequel un travailleur s'engage à effectuer, sous l'autorité de l'ALE et contre rémunération, des prestations de travail qu'on ne trouve pas sur le marché du travail régulier."*[178]

However, the *ALE* employment contract is a *sui generis* contract. It is not subject to the ECA.[179]

111. Specifically with regard to remuneration, it should be remembered that :

- It is a remuneration but it is not covered by the Law of 12 April 1965 on the protection of workers' remuneration.[180]
- Remuneration takes the form of an *ALE* cheque worth 7,06 € per hour worked. The *ALE* provider is also entitled to an "ALE income guarantee allowance" (*allocation de garantie de revenus ALE*), which is equivalent to the unemployment insurance benefit to which the *ALE* provider is entitled, less 2,96 € per *ALE* cheque received and accepted. In other words, the *ALE* worker receives his/her normal unemployment insurance benefit plus 4,10 € per *ALE* cheque received.[181]

No personal or employer social security contributions are due on the paid remuneration. *ALE* work services are not taken into account for the purposes of entitlement under the social security scheme for salaried workers[182]. In other words, the work performed under the ALE system is not counted towards eligibility for unemployment insurance benefits and incapacity benefits (workers under the *ALE* system are nevertheless insured against accidents at work[183]). In addition, the remuneration is subject to favourable tax treatment: per *ALE* cheque: 4,10 € are tax-exempt and 2,96 € are subject to a tax reduction identical to the one applicable to unemployment insurance benefits.[184]

112. On the part of the *ALE* provider, the activities carried out in the *ALE* system must be of an ancillary nature.[185] Although the employment contract is open-ended,[186] there is a limit

[178] *Ibid*., art. 3.
[179] *Ibid.,* art. 15.
[180] Law of 12 April 1965 on the protection of workers' remuneration, *B.S./M.B*., 30 April 1965, art. 1*bis.*
[181] M.-C. MENU, *op. cit.*, p. 55.
[182] Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on the social security for workers, *B.S./M.B*., 5 December 1969, *errat*, *B.S./M.B*., 22 December 1970, at. 16*bis*.
[183] Decree-Law of 28 December 1944 on social security for workers, *B.S./M.B.*, 30 December 1944, art. 8, § 5.
[184] Income Tax Code 1992, art. Art. 38, §1, 13° and art. 146, 3°.
[185] M.-C. MENU, *op. cit.*, p. 47.
[186] Law of 7 April 1999 on *ALE* / *PWA* employment contracts, *B.S./M.B.*, 20 April 1999, art. 3.

on the number of hours the service provider can work. This limit is set at 630 hours per calendar year or 70 hours per calendar month (unless an exemption is granted).[187]

113. To sum up, the *ALE* contract is an employment contract. However, the *ALE* worker is not protected under the ECA, which is not applicable to the *ALE* contract. In addition, workers employed under an *ALE* contract are not covered by the social security scheme for salaried workers. Therefore, this contract does not offer the protections normally attached to employment contracts.

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

### *4.10 The flemish* wijk-werken *system*

114. The Flemish *wijk-werken* system was introduced by the Flemish Decree of 7 July 2017 following the transfer of competence for *PWA* / *ALE* to the federated entities by the Sixth State Reform.[188]

115. Article 7 of the decree sets out the aim of the scheme:

> *"Wijk-werken heeft als doelstelling om werkzoekenden met een grote afstand tot de reguliere arbeidsmarkt werkervaring te laten opdoen minstens gericht op het behoud van reeds verworven competenties. Dat gebeurt door het uitvoeren van maatschappelijk relevante activiteiten binnen een reële arbeidsmarktomgeving door middel van werkplekken op lokaal niveau bij een gebruiker. De werkzoekende kan werkervaring opbouwen in functie van een individueel traject naar werk dat gericht is op het normale economische circuit."*
>
> *"Le travail de proximité vise à permettre aux demandeurs d'emploi qui sont à grande distance du marché du travail régulier d'acquérir une expérience professionnelle au moins axée sur le maintien de compétences déjà acquises. Cette expérience professionnelle est acquise en effectuant des activités pertinentes du point de vue social au sein d'un environnement réel de marché du travail au moyen de lieux de travail au niveau local auprès d'un utilisateur. Le demandeur d'emploi peut développer une expérience professionnelle en fonction d'un parcours individuel vers l'emploi qui est axé sur le circuit économique normal."*

116. As with *ALE* work, the *wijk-werken* system organises a tripartite relationship between:

- The employer, referred to as the organiser;
- The user (defined in a similar way as in the *ALE* system);
- The worker or *wijk-werker*.

[187] Royal Decree of 25 November 1991 laying down the unemployment regulations, *B.S./M.B.*, 31 December 1991, art. 79*bis*, §4.
[188] Flemish Government Decree of 7 July 2007 on "*wijk-werken*" and various provisions in the context of the sixth state reform, *B.S./M.B.*, 9 August 2017.

117. The *wijk-werken* system is available to jobseekers and users who live or work in the Flemish Region, for activities that take place in the Flemish Region.[189]

In this scheme, the persons who can be *wijk-werkers* are jobseekers who are distant from the regular labour market. The decree specifies that the jobseeker :

- has a lack of professional experience or recent professional experience ;
- is unable to work at least half-time, which makes entry to another measure unfeasible on the basis of a pathway to employment (*traject naar werk*) ;
- can access the next phase of the pathway to employment after community work.[190]

118. The *wijk-werker* is bound to the organiser by a *wijk-werk* contract (*wijk-werkovereenkomst*).

119. Similar to the *ALE* system, the *wijk-werk* can only be used for specific activities. Under no circumstances may these activities lead to the displacement of regular work, either in the normal economic cycle or in the social economy.[191] The list of authorised activities is decided by the *VDAB* board and can be extended or restricted by the municipalities for the activities carried out on their territory.[192]

120. Services provided are paid for with *wijk-werkcheques* by the user (as in the *ALE* system). The *wijk-werker* then receives an allowance from the *VDAB*. He/she is insured for employment injury benefit.[193]

121. Finally, article 12, al. 2 of the Flemish decree states that a *wijk-werkovereenkomst* (*wijk-werk* contract) is a *PWA* employment contract concluded in application of the law of 7 April 1999. It therefore seems to us that, even if the Flemish decree does not refer to a salary but to an indemnity, the *wijk-werk* contract must be regarded as an employment contract. Nevertheless, the reference to the law of 7 April 1999 on the *PWA* / *ALE* employment contract seems to indicate the same limits regarding the application of the protective rules of labour law stemming from the ECA.[194] It also seems to us that the fact that the employee is not subject to the social security system (except for employment injury benefit, which is explicitly required by the decree) is due to the same exception as in the *PWA* contract (and not to the reference to an "allowance" rather than a salary).

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

[189] *Ibid.*, art. 4, al. 2.
[190] *Ibid.*, art. 10.
[191] *Ibid.*, art. 26.
[192] *Ibid.*, art. 27, al. 1-2.
[193] *Ibid.*, art. 21.
[194] The parliamentary documents indicate in this sense that the indication in the Decree that the *wijk-werk* contract is not an employment contract within the meaning of the ECA is superfluous in that the decree refers to the law on *PWA* contracts, see Draft decree on *wijk-werken* and various provisions within the framework of the sixth state reform, explanatory memorandum, *Doc.*, Vl. Parl., 2016-2017, no. 1197/1, p. 56.

## *4.11 Service cheques employment contract* (arbeidsovereenkomst dienstencheques / contrat de travail titres-services)

### 4.11.1 Explanation of the service cheques system

122. The service cheques contract is a triangular relationship and is unusual in that it is partly funded by a regional subsidy. The service cheques system was originally federal, but was regionalised in 2016, although the labour law aspects remain a federal competence. The common provisions of the Law of 20 July 2001 to encourage the development of proximity services and jobs and the Royal Decree of 12 December 2001 on service cheques are discussed here.[195]

123. The service cheques employment contract (*contrat de travail titres-services* / *arbeidsovereenkomst dienstencheques*) is defined by the Law of 20 July 2001 as:

> *"de arbeidsovereenkomst waarbij een werknemer zich verbindt om onder gezag van een werkgever, erkend in het kader van de wet en tegen loon arbeidsprestaties te verrichten die recht geven op de toekenning van een dienstencheque"*
>
> *"le contrat de travail par lequel un travailleur s'engage à effectuer, sous l'autorité d'un employeur agréé suivant les dispositions de la loi et contre rémunération, des prestations de travail qui donnent droit à l'octroi d'un titre-service".*[196]

124. Broadly speaking, the service cheques system in Belgium can be defined as a triangular working relationship between :

- A user (natural person);
- An accredited company (the company does not have to be involved solely in the provision of proximity services; it can also take a variety of legal forms, such as a *VZW* / *ASBL*, *ALE*, *O.C.M.W.* / *C.P.A.S.*, a commercial company, …[197]);
- A worker hired by the accredited company.

As with the agency employment contract, the service cheque employment contract binds the accredited company and the worker. A civil contract binds the accredited company and the user. There is no contractual link between the user and the worker.

125. A first specific feature of this contract compared to agency work relates to the nature of the activities that can be performed under it: proximity services, *i.e.* work services that give entitlement to a service cheque.

[195] Law of 20 July 2001 to encourage the development of proximity services and jobs, *B.S.*/*M.B.*, 11 August 2001; Royal Decree of 12 December 2001 on service cheques, *B.S.*/*M.B.*, 22 December 2001.
[196] Law of 20 July 2001 to encourage the development of proximity services and jobs, *B.S.*/*M.B.*, 11 August 2001, art. 7*bis*.
[197] M.-C. MENU, *op. cit.*, p. 99.

Proximity services are defined as:

> "*banenscheppende activiteiten, met of zonder handelskarakter, die inspelen op individuele, persoonlijke of familiale noden die zich in het raam van het dagelijkse leven laten gevoelen en die betrekking hebben op thuishulp van huishoudelijke aard*."
>
> "*les activités marchandes ou non marchandes, créatrices d'emploi, qui visent à rencontrer des besoins individuels, personnels ou familiaux dans le cadre de la vie quotidienne et qui concernent l'aide à domicile de nature ménagère*".[198]

The second specific feature is the financing mechanism of the scheme, namely the service cheque.

Service cheque is defined in the Belgian legal framework as:

> *"het betaalmiddel uitgegeven door een uitgiftebedrijf, waarmee de gebruiker, met de financiële steun van [de bevoegde Gewest] in de vorm van een consumptiesubsidie, een prestatie van buurtwerken of -diensten kan vergoeden die door een erkende onderneming wordt geleverd"*
>
> *"le titre de paiement émis par une société émettrice, qui permet à l'utilisateur de régler, avec l'aide financière de [la Région compétente], revêtant la forme d'une subvention à la consommation, une prestation de travaux ou de services de proximité effectuée par une entreprise agréée".*[199]

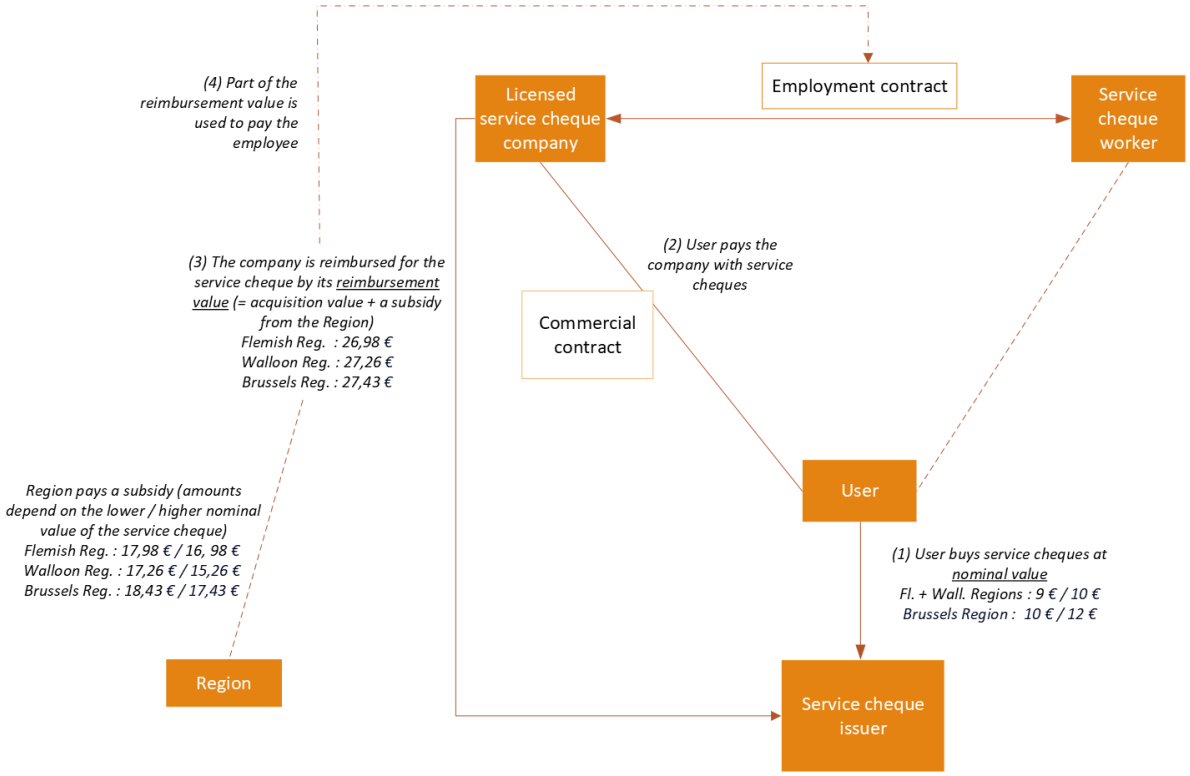
In other words, the user pays for the service provided with a service cheque (at the rate of one service cheque per hour worked). The nominal value of the service voucher, *i.e*. the cost paid by the user, should not be mistaken for the real value of the cost of the service to the accredited company.

The nominal value varies from region to region: between 9 € and 10 € in the Walloon and Flemish regions and between 10 € and 12 € in the Brussels region (the lower price applies for a limited number of service cheques per year, after which the higher price applies within the limit of the number of service cheques authorised per person per year). Users can deduct part of the price of service cheques from their taxes, up to a certain limit. The user obtains the service cheques from an issuing company and uses them to pay the accredited agency for the local service provision.[200]

The accredited company is then reimbursed by the issuing company for the service cheques received, plus a subsidy from the competent region. In other words, the accredited company earns more from a service cheque than the user paid for it.

The service cheque system can be summarised as follows (amounts at 1 March 2023):

[198] Law of 20 July 2001 to encourage the development of proximity services and jobs, *B.S.*/*M.B*., 11 August 2001, art. 2, § 1, 3°.
[199] *Ibid.*, art. 2, §1, al. 1, 4°.
[200] M.-C. MENU, *op. cit*, p. 101-102.




### 4.11.2 Rules governing the employment contract

126. The service cheques employment relationship takes the form of two contracts. The first one consists in the so-called intention to enter into a service cheque employment contract (*de bedoeling een arbeidsovereenkomst dienstencheques te sluiten / l'intention de conclure un contrat de travail titres-services*). This requirement is inspired by the agency work regime.[201] The second contract is the services cheques employment contract as such. It can be concluded for a definite or indefinite period.

127. The provisions of the ECA are applicable, unless the Law of 20 July 2001 expressly provides otherwise.[202] However, the service cheques contract is a "specific" employment contract in the sense that the legislator's aim in creating this specific status was to create a flexible system that allows the employer to adjust the number of workers at the start of the employment relationship (three-month period) according to user demand.[203] The "running-in" period (*période de rodage*) has the flexible characteristics of agency work".[204]

[201] *Ibid.*, p. 140.
[202] Law of 20 July 2001 to encourage the development of proximity services and jobs, *B.S./M.B.*, 11 August 2001, art. 2, § 2, al. 4, art. 7*ter*.
[203] Draft Program-law, Report on behalf of the Social Affairs Committee, *Doc.*, Sen., 2003-2004, no. 3-424/3, p. 7.
[204] M.-C. MENU, *op. cit.*, p. 138.

128. The applicable legal regime varies according to the period of time:

129. During the first three-month period, applicable rules are more flexible. It is modelled on the agency work scheme.

The conclusion of successive fixed-term employment contracts with the same employer does not lead to a requalification in an open-ended employment contract. This rule therefore derogates from article 10 ECA (see above, 4.1, para. 20). There is no minimum weekly working time limit. In other words, the minimum limit of at least one third of the weekly working time applicable to a full-time worker set by Article 11*bis* ECA does not apply. However, the duration of each work period may not be less than three hours.[205]

130. At the end of this three-month period, from the first day of the fourth month, general labour law rules to ensure greater stability apply. The service cheque employment contract must be for an indefinite period. In order to obtain accreditation, the company shall comply with this rule.[206] The contract can be concluded on a full-time or part-time basis. In the latter case, the limit is set at a minimum of 10 hours per week. If the service cheque worker perceives unemployment insurance benefit, the living wage or financial social assistance, the minimum limit is increased to 13 hours per week.[207] In any case, the limit of a minimum of 3 hours per working period must be respected.[208]

131. Finally, the remuneration is treated in the same way as remuneration under a normal employment contract in terms of social security and tax.[209]

| **Part-time** | **Multipartite** | **Temporary** *only during the first 3-month period* | **No remuneration** | **No legal subordination** | ***Ad hoc* social security regime** |
|---|---|---|---|---|---|

### *4.12 Associative work* (verenigingswerk / travail associatif)

132. Associative work refers to a specific form of work for a non-profit organisation, lying somewhere between salaried employment and voluntary work. In 2018, the legislator created this new legal category of work for the first time.[210]
In the parliamentary report, the associative work that is the subject of the legislative intervention is explained as follows :

> *"elke vorm van arbeid in de publieke of private non-profitsector (in de brede zin van het woord), die niet als vrijwilliger, maar tegen een beperkte vergoeding wordt verricht ten behoeve van anderen of van de samenleving. Dit gebeurt steeds via een georganiseerd verband. Het aldus omschreven verenigingswerk onderscheidt zich,*

[205] Law of 20 July 2001 to encourage the development of proximity services and jobs, *B.S./M.B.*, 11 August 2001, art. 7*septies*, al. 2.
[206] *Ibid.*, art. 2, § 2, al. 1, b.
[207] *Ibid.*, art. 7*octies*, al. 2-3; Royal Decree of 12 December 2001 concerning service cheques, *B.S./M.B.*, 22 December 2001, art. 9*bis*.
[208] Law of 20 July 2001 to encourage the development of proximity services and jobs, *B.S./M.B.*, 11 August 2001, art. 7*octies*, al. 1.
[209] M. POTTIER, *op. cit.*, p. 91.
[210] V. FEVRIER, "Le travail associatif : un régime éphémère ?", *J.T.T.*, 2021/13, p. 221.

*enerzijds, van het vrijwilligerswerk en, anderzijds, van de agorale arbeid binnen een reguliere arbeidsmarkt of als zelfstandige ondernemer. De agorale arbeid wordt ook wel professionele arbeid genoemd."*

*"toute forme de travail effectué dans l'intérêt d'autrui et dans l'intérêt de la collectivité dans le secteur non marchand public ou privé (au sens large du terme), qui n'est pas effectué à titre gratuit mais moyennant paiement d'une indemnité limitée. Cela s'effectue toujours dans un cadre organisé. Le travail associatif décrit ici se distingue donc, d'une part du volontariat et, d'autre part du travail agoral effectué sur le marché de l'emploi régulier ou à titre d'entrepreneur indépendant. Le travail agoral est aussi parfois appelé travail professionnel."*[211]

133. In a law of 18 July 2018 on economic recovery and the strengthening of social cohesion,[212] the legislator thus created the status of "associative worker" (*verenigingswerker* / *travailleur associatif*), whose work within an association is not intended to earn a salary but is motivated by the social interest.[213] This status applies to associative workers who carry out activities in their free time, on an occasional basis, but who receive compensation for their work.[214] This compensation constitutes an additional income and the amount is not determined by market mechanisms.[215] According to the legislation, volunteers receive an allowance which does not constitute a compensation for the expenses incurred, but an allowance in return for the work done.

The aim of this new associative work contract (*overeenkomst inzake verenigingswerk* / *contrat de travail associatif*) is to put an end to the legal uncertainty that exists because associative work is often carried out in a relationship of subordination and in return for payment. There is therefore a risk of the relationship being requalified as an employment contract, which would lead to the application of labour law and social security law. The requalification could hinder the development of associative work with added social value, and might not take account of the need for flexibility in the associative sector.[216]

With this status, the employment relationship was not considered as an employment relationship and the compensation was not considered as professional income as long as the amount did not exceed 6,340 € (2020 amount).[217] The so-called *bijkluswet* of 2018 allowed this additional income to be fully exempt from tax and social security contributions.

This scheme was only open to certain activities (*e.g.* sports coaching, childcare for babies and young children and out-of-school care for school children, leading training courses, conferences, presentations or shows on cultural, artistic and societal themes in the socio-

[211] Draft law on economic recovery and the strengthening of social cohesion, explanatory memorandum, *Doc.*, Ch., 2017-2018, no. 54 2839/001, p. 149-150.
[212] Law of 18 July 2018 on economic recovery and the strengthening of social cohesion, *B.S./M.B.*, 26 July 2018.
[213] V. FEVRIER, *op. cit.*, p. 221.
[214] Draft law on economic recovery and the strengthening of social cohesion, explanatory memorandum, *Doc.*, Ch., 2017-2018, no. 54 2839/001, p. 151.
[215] V. FEVRIER, *op. cit.*, p. 221.
[216] Draft law on economic recovery and the strengthening of social cohesion, explanatory memorandum, *Doc.*, Ch., 2017-2018, no. 54 2839/001, p. 151-152.
[217] V. FEVRIER, *op. cit.*, p. 225-226.

cultural, sports, cultural education, arts education and arts sectors).[218] As in the flexi-job regime, the law required a minimum occupation of 4/5ths during the T-3 quarter. This requirement did not apply to retired workers.[219]

The qualification of associative worker (when the above conditions are met) resulted in the application of a largely derogatory regime in terms of employment law and social security law. Associative workers were exempt from most labour law and social security regulations.[220]

134. This law was fully annulled by the Constitutional Court in a ruling of 23 April 2020,[221] mainly on the grounds that there was no reasonable justification in view of the stated objectives for excluding almost entirely the application of labour law. Furthermore, the Court did not agree with the tripartition created between salaried work, voluntary work and associative work.

135. The legislator subsequently adopted a law of 24 December 2020 on associative work. The legislator stipulated that the law would be in force between 1 January and 31 December 2021.[222] This law is therefore no longer applicable.

The 2020 law was only applicable to the sport and culture sectors.[223] According to this law, an associative worker concluded an associative contract, which is a fixed-term contract with a maximum duration of one year. A maximum of three associative contracts, consecutive or not, could be concluded per calendar year between the same associative worker and the same organisation.[224] ECA did not apply to associative workers.[225]

The associative worker could carry out an average of 50 hours of associative work per month.[226] The amount of compensation paid could not exceed 6.540 €.

If these conditions were not met, the law provided that the associative contract would be requalified as an employment contract.[227]

A minimum hourly allowance was set at 3,57 € (not indexed).[228] A 10% solidarity contribution payable by the organisation was due on the allowance. The 2020 law did not provide for complete tax exemption: allowances arising from associative work were considered to be miscellaneous income (*divers inkomen* / *revenus divers*), taxed at 20%, provided that the amount does not exceed 6.540 €.[229]

136. Article 17 of the Royal Decree of 28 November 1969 now governs the regime for associative workers. This provision no longer mentions the notion "associative worker", but

[218] Law of 18 July 2018 on economic recovery and the strengthening of social cohesion, *B.S.*/*M.B.*, 26 July 2018, art. 3, annulled by C.C., 23 April 2020, no. 53/2020.
[219] *Ibid*., art. 4.
[220] V. FEVRIER, *op. cit*., p. 225.
[221] C.C., 23 April 2020, no. 53/2020.
[222]. Law of 18 July 2018 on economic recovery and the strengthening of social cohesion, *B.S.*/*M.B.*, 26 July 2018, art. 72, al. 1, annulled by C.C., 23 April 2020, no. 53/2020.
[223] Law of 24 December 2020 on associative work, *B.S.*/*M.B.*, 31 December 2020, art. 3.
[224] *Ibid.,* art 7.
[225] ECA, art. 1, al. 3.
[226] Law of 24 December 2020 on associative work, *B.S.*/*M.B.*, 31 December 2020, art. 5.
[227] *Ibid.,* art 57.
[228] *Ibid.,* art 27.
[229] Income Tax Code 1992, art. 37*bis*.

refers to activities similar to those mentioned in the law of 24 December 2020.[230] Article 17 stipulates that the following workers are excluded from the application of the Social Security Act :

- Associative workers in the socio-cultural sector for 300 hours per year (maximum 100 hours per quarter (increased to 190 hours in quarter T3));
- Associative workers in the sports sector for 450 hours per year (maximum 150 hours per quarter (increased to 285 hours in quarter T3)).

Workers mentioned in Article 17 of the Royal Decree of 1969 are bound by an employment contract (either for a fixed-term or an open-ended period) and protected by the ECA. However, derogatory provisions, serving as exceptions, apply to notice periods and incapacity for work. [231]

In addition, according to the Income Tax Code 1992, the remuneration for such employment, which is not subject to social security contributions, constitutes miscellaneous income.[232] This remuneration is considered as professional income if the gross amount exceeds 6,540 € per calendar year.[233] The remuneration is therefore taxed at a more favourable rate.

In conclusion, the status of associative worker was initially a status that implied major derogations from labour law and social security law. The status is now governed by social security regulation. The status entails exclusion from the scope of the Social Security Act below the set number of working hours. In terms of labour law, workers are now protected by the ECA, with the exception of a few derogatory provisions.

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

[230] In particular, the scope of application includes "organisations recognised by the competent authorities, or organisations affiliated to a recognised coupole organisation, whose mission is to provide socio-cultural training and/or introduction to sport and/or sporting activities, and the persons employed by these organisations as activity leaders, instructors, supervisors, coordinators, sports trainers, sports teachers, sports coaches, youth sports coordinators, ground or equipment managers, trainers, coaches, and amateur arts organisations, recognised by the competent authorities, which employ persons as teachers, instructors, coaches or trainers outside working or school hours or during holidays, managers of activities outside working hours or school hours or during school holidays, as well as amateur arts organisations recognised by the competent authorities or organisations affiliated to a recognised coupole organisation, which employ persons as teachers, trainers, coaches and persons in charge of artistic or technical (artistic) activities and whose services are not artistic services already covered or eligible for lump-sum compensation within the meaning of Article 1bis, § 3, paragraph 2 of the Law or referred to in Article 17sexies of this Decree".
[231] ECA, art. 37, §3 and 4, art. 52, § 7 and art. 70, al. 3.
[232] Income Tax Code 1992, art. 90, al. 1, 1*ter*.
[233] *Ibid*., art. 37*bis*.

# 5 Legally possible non-standard forms of work outside an employment contract in Belgium

137. The legal statuses presented so far are non-standard work forms involving one or multiple employment contracts. However, some non-standard forms of work relationships do not imply an employment contract because they lack an essential element of it, in particular remuneration or subordination.

Among the forms of activity that do not involve the exchange of work for payment, we will naturally mention voluntary work. There are also a number of statuses created with a view to employment policy, in particular *IBO*/*FPIE*. There are many such schemes, which often fall within the competence of the communities and regions. We will not undertake a comprehensive review of these various non-federal status and will limit ourselves to examining apprenticeships, work placement agreement and *IBO*/*FPIE*. We will then analyse work relationships which do not involve a personal subordination link, namely self-employment and, in certain cases, platform work.

## *5.1 Voluntary work (*vrijwilligerswerk */* volontariat*)*

138. The status of volunteer is regulated by the Law of 3 July 2005.[234] This law defines voluntary work as any activity that has the following cumulative characteristics :

> - The activity is carried out without payment or obligation (*onbezoldigd en onverplicht* / *sans rétribution ni obligation*);
> - The activity is carried out for the benefit of one or more persons other than the person carrying out the activity, a group or organisation or the community as a whole;
> - the activity is organised by an entity other than the family or private environment of the person performing the activity;
> - the activity is not carried out by the same person and for the same organisation under a contract of employment, contract for services or appointment as a public servant.[235]

139. The main feature of voluntary work is the absence of remuneration.[236] However, volunteers may receive a compensation for expenses incurred in the course of their voluntary activity (*kostenvergoedingen* / *défraiement*). This allowance may be a flat rate or based on actual expenses.[237] The law sets a maximum amount that can be paid per day or per year. As this is an allowance and not a salary, no social security contributions are due.

140. The 2005 law empowers the government to mandate organisations engaging volunteers to procure insurance coverage, protecting volunteers from personal injuries resulting from accidents during voluntary service or related travel, as well as illnesses

[234] Law of 3 July 2005 on the rights of volunteers, *B.S.*/*M.B.*, 29 August 2005.
[235] *Ibid.*, art. 3, 1°.
[236] V. FEVRIER, "Le travail associatif : un régime éphémère ?", *J.T.T.*, 2021/13, p. 222.
[237] Law of 3 July 2005 on the rights of volunteers, *B.S.*/*M.B.*, 29 August 2005, art. 10.

contracted during volunteer activities.[238] With no Royal Decree currently in effect, compulsory insurance for these injuries and illnesses is not in place at the moment.

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

## *5.2 Legal status related to professional training*

### 5.2.1 Apprentices

141. The Belgian legal framework contains a large number of status in relation to vocational education and training, as the competence lies with the federal entities.
What they have in common is that the trainee is generally not paid a salary but receives an allowance and is therefore not subject to the social security system applicable to salaried workers.

142. A key element to be considered is the extension of the social security scheme for salaried workers to apprentices. The Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 amending the Decree-Law of 28 December 1944 on the social security for workers defines the scope of the social security scheme for salaried workers. The latter applies to salaried workers and employers who are bound by an employment contract. The law assimilates apprentices to salaried workers. They are therefore subject to the social security scheme for salaried workers.

Apprentices within the scope of the social security system are defined as any person who, in the context of a work-linked training programme (*alternerende opleiding / formation en alternance*), is bound to an employer by a contract and whose training 1) consists of a part in the workplace and a part in an educational or training establishment and 2) leads to a vocational qualification.[239] The legislation sets the conditions with regard to the number of hours of work in the training component and in the course component.[240]

If the apprentice's training does not meet these conditions, the apprentice is not covered by the social security system. In practice, apprentices are considered as students following a combined work/study programme.

The competence for work-linked training lies with the federated entities. According to the Belgian social security website, the most common types of apprenticeship where the apprentice is covered by social security are the following:

> *"de leerovereenkomst, erkend overeenkomstig de reglementering betreffende de voortdurende vorming van de middenstand (erkende leerlingen genoemd)"/ "le contrat d'apprentissage agréé conformément à la réglementation relative à la formation permanente dans les Classes moyennes (dénommés apprentis agréés);"*

[238] *Ibid*., art. 6 §§ 2-3.
[239] Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on the social security for workers, *B.S./M.B.*, 5 December 1969, *errat*, *B.S./M.B.*, 22 December 1970, art. 1*bis*.
[240] *Ibid*., art. 1*bis*, al. 2, 3° and 4°.

*"de leerovereenkomst die valt onder toepassing van de wet van 19 juli 1983 op het leerlingwezen voor beroepen uitgeoefend door werknemers in loondienst (industriële leerlingen genoemd)" / "le contrat d'apprentissage relevant du champ d'application de la loi du 19 juillet 1983 sur l'apprentissage des professions exercées par des travailleurs salariés (dénommés apprentis industriels);"*

*"de overeenkomst voor socioprofessionele inschakeling die erkend is door de Gemeenschappen en Gewesten in het kader van het secundair onderwijs met beperkt leerplan (leerlingen met een inschakelingsovereenkomst genoemd)" / "la convention d'insertion socioprofessionnelle reconnue par les Communautés et les Régions dans le cadre de l'enseignement secondaire à horaire réduit (dénommés apprentis sous convention d'insertion) ;"*

*"de erkende stageovereenkomst in het kader van de vorming tot ondernemingshoofd (stagiairs in opleiding tot ondernemingshoofd genoemd)" / "la convention agréée de stage dans le cadre d'une formation de chef d'entreprises (dénommés stagiaires en formation de chef d'entreprise);"*

*"de overeenkomst 'contrat de formation en alternance' (Wallonië en Brussel, Franstaligen)" / "le 'contrat de formation en alternance' (Wallonie et Bruxelles, Francophones);"*

*"de 'overeenkomst van alternerende opleiding' (Vlaanderen en Brussel, Vlaamse Gemeenschap)" / "le contrat 'overeenkomst van alternerende opleiding' (Flandre et Bruxelles, Communauté flamande)."*[241]

143. We will not go into the rules of each of the existing systems. For example, the *overeenkomst van alternerende opleiding* scheme adopted by the Flemish Community is defined as a full-time contract covering the entire learning pathway, including both the course and workplace components.[242] In other words, the scheme applies to students attending courses at a training establishment as well as training at the employer's workplace.[243] Trainees receive a monthly training allowance,[244] which varies according to the successful completion of their study years (either 567 €, 625,6 € or 674,5 € (2023 amounts)).[245] This allowance is protected by the Law of 12 April 1965 on the protection of workers' remuneration.

[241] SPF SECURITE SOCIALE, "Apprentis – formation en alternance", accessible online https://www.socialsecurity.be/employer/instructions/dmfa/fr/latest/instructions/persons/specific/apprentices.html (3 October 2023).

[242] Decree of the Flemish Parliament of 10 June 2016 regulating certain aspects of alternating training courses, *B.S./M.B.*, 17 August 2016, art. 9.

[243] W. VAN EECKHOUTTE, *Memento social 2022-2*, Mechelen, Wolters Kluwer, 2022, p. 271, no. 543.

[244] Decree of the Flemish Parliament of 10 June 2016 regulating certain aspects of alternating training courses, *B.S./M.B.*, 17 August 2016, art. 17.

[245] W. VAN EECKHOUTTE, *Memento social 2023-1*, Mechelen, Wolters Kluwer, 2023, p. 299, no. 612 (amounts from 1 December 2022).

| Part-time[246] | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime[247] |
|---|---|---|---|---|---|

### 5.2.2 People who are not apprentices for social security purposes

#### *5.2.2.1 Internship – work placement agreement (stages – beroepsinlevingsstage / convention d'immersion professionnelle)*

144. The work placement agreement is governed by the Program-Law of 2 August 2002. It is an agreement under which the trainee, as part of his/her training, acquires certain knowledge or skills from an employer by performing work tasks.[248]
This agreement does not include work placements undertaken by pupils or students with an employer as part of their training at an educational establishment or training organisation, or training undertaken as part of a contract of employment.[249]

The trainee receives an allowance equal to a percentage of half the intersectoral minimum wage. The percentage varies according to the age of the trainee: from 64% if the trainee is 15 years old to 100% if the trainee is 21 years old or more.[250]

145. It should be noted that, as Sophie Gerard, Juliette Gilman, Amaury Mechelynck and Daniel Dumont pointed out, one of the problems in Belgium is that of free, unpaid traineeships. The 2002 law does not explicitly prohibit placements that do not comply with the work placement agreement, which means that these free, unsupervised placements are increasingly being used. Trainees on unpaid placements find themselves in a grey area of the law.[251]

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

[246] It is important to note that the apprenticeship described in this section constitutes a part-time work arrangement of limited duration. However, we do not classify this work arrangement using these two non-standard work characteristics, which typically signify a deviation from or a weakening of the standard employment contract. This is because the apprenticeship contract does not constitute an employment contract.
[247] The derogatory regime offers in this case access to a protection associated to standard work.
[248] Program-law of 2 August 2002, *B.S./M.B.*, 28 August 2002, art. 104, al. 1.
[249] *Ibid.*, art. 104 al. 2, 1° and 2°.
[250] Royal Decree of 11 March 2003 setting the minimum allowance applicable to the professional immersion agreement, *B.S./M.B.*, 18 April 2003, art. 1 ; Royal Decree of 19 August 1998 setting the maximum apprenticeship allowance applicable to apprentices whose apprenticeship contract is governed by the Law of 19 July 1983 on the apprenticeship of occupations carried out by employed workers, *B.S./M.B.*, 5 September 1998, art. 3, a).
[251] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 78-79.

#### 5.2.2.2 *Individuele beroepsopleiding (IBO) / formation professionnelle individuelle en entreprise (FPIE)*

146. The *individuele beroepsopleiding* (*IBO*) / *formation professionnelle individuelle en entreprise* (*FPIE*) schemes are two mechanisms which, broadly speaking, consist in a work placement in a company with a commitment by the employer to take the trainee on at the end of the placement.

147. These types of work relationship come under the competence of the communities. *IBO* is the system set up by the Flemish community, *FPIE* is the one set up by the French community.

In both cases, the trainee is entitled to an allowance. They are not regarded as apprentices for social security purposes and are therefore not subject to the social security scheme for salaried workers. However, trainees are covered against accidents in the workplace.[252]

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

### 5.3 *Self-employment* (zelfstandige arbeid / relations de travail indépendant)

148. As explained in the introduction, social law is divided into different regimes: salaried workers, civil servants and self-employed workers. In particular, there is a dichotomy between salaried and self-employed workers. Self-employed workers do not benefit from the protective rules of labour law, because the legislator has considered that they do not have an asymmetrical relationship with their co-contractor, unlike an employee with his/her employer, and despite the considerable heterogeneity of the group of the self-employed workers.[253]

As mentioned in section 3 (para. 11), self-employed workers will be dealed here as a single category from a macro perspective.

149. The defining characteristic of self-employment is the absence of a subordinate relationship. The co-contractor has no power of "direction and control" over his/her independent co-contractor. Nevertheless, the self-employed worker's co-contractor may exercise simple supervision over the performance of the services (for example, over the quality of the work provided, etc.).[254]

150. It may have been difficult to classify specific work relationships as employment or self-employment. As a result, some workers were notionally self-employed (bogus self-employed), which reduced their social protection. With this in mind, the legislator adopted in the Program-Law (I) of 27 December 2006,[255] subsequently amended, a set of criteria for

[252] Law of 10 April 1971 on accidents at work, *B.S.*/*M.B.*, 24 April 1971, art. 38/1.
[253] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit.*, p. 35-36.
[254] *Ibid.*, p. 39.
[255] Program-law (I) of 27 December 2006, *B.S.*/*M.B.*, 28 December 2006.

objectively classifying a contract as self-employed or employed.[256] The 2006 Program-Law establishes a series of general and specific criteria for determining the existence or absence of a relationship of authority.[257] The general criteria are the will of the parties as expressed in their agreement, freedom to organise working time, freedom to organise work and the possibility of exercising hierarchical control.[258] Specific criteria may be determined by the government for specific sectors or activities. To this day, no royal decree has been adopted for this purpose.

151. In addition, the legislator has created several presumptions of the existence of a contract of employment or, on the contrary, of a contract of self-employment.

A first presumption is set out in Article 337/1 of the Programme Law of 27 December 2006 and applies to certain sectors that are more prone to the phenomena of bogus self-employment and bogus salaried workers.[259]

Broadly speaking, the activities targeted by the law are the execution of building work (construction work), the exercise of the activity of carrying out all kinds of surveillance and/or guard services on behalf of third parties, the transport of goods or persons on behalf of third parties (except ambulance services and the transport of disabled persons), and activities falling within the scope of the Joint Committee for cleaning.[260] The list may be extended by Royal Decree.[261] In this sense, the list has been extended to the performance of a series of activities carried out by agricultural undertakings.[262] The presumption does not apply to family work relationships.[263]

For the activities in question, the work relationships are presumed, until the contrary is proven, to be performed under the terms of an employment contract, when it appears that more than half of the following criteria are met:

a) no financial or economic risk on the part of the person carrying out the work;
b) lack, on the part of the person carrying out the work, of responsibility and decision-making power concerning the company's financial resources;
c) lack, on the part of the person carrying out the work, of any decision-making power concerning the company's purchasing policy;
d) lack, on the part of the person carrying out the work, of any power of decision in respect of the undertaking's pricing policy, unless the prices are fixed by law;
e) lack of an obligation to achieve results with regard to the work agreed;

[256] *Ibid.*, art. 331 and 332.
[257] *Ibid*., art. 333 and 334.
[258] *Ibid*., art. 333, § 1.
[259] Draft law amending Title XIII of the Program-Law (I) of 27 December 2006, concerning the nature of work relationships, Report made on behalf of the Social Affairs Committee, *Doc*., Ch., 2011-2012, no. 53 2319/002, p. 3.
[260] Program-law (I) of 27 December 2006, *B.S.*/*M.B.*, 28 December 2006, art. 337/1, § 1.
[261] *Ibid*., art. 337/1, § 2.
[262] Royal Decree of 20 June 2013 in implementation of certain provisions of the Program-Law (I) of 27 December 2006 concerning the nature of work relationships that are part of the performance of activities that fall within the scope of the Joint Committee for Agriculture or the Joint Committee for Horticultural Enterprises, *B.S.*/*M.B.*, 28 June 2013, art. 2.
[263] Program-law (I) of 27 December 2006, *B.S.*/*M.B.*, 28 December 2006, art. 337/1, § 3.

f) the guarantee of payment of a fixed indemnity regardless of the company's results or the volume of services provided by the contractor;
g) not being itself the employer of staff recruited personally and freely, or not having the possibility of hiring staff or being replaced for the performance of the agreed work;
h) not appear as a company to other persons or to its co-contractor, or work mainly or usually for a single co-contractor;
i) work in premises of which it is not the owner or tenant or with equipment made available, financed or guaranteed by the co-contractor.[264]

Where it appears that more than half of the criteria are not met, the work relationship is rebuttably presumed to be a self-employed contract. This presumption may be rebutted by any legal means.[265]

A second presumption has been created specifically for employment relationships with a digital platform that places orders (*digitale platformen die opdrachten geven* / *plateforme numérique donneuse d'ordres*).

That kind of platform refers to:

"*de aanbieder van een betalende dienst die, via een algoritme of iedere andere gelijkwaardige methode of technologie, in staat is om een beslissings- of controlemacht uit te oefenen ten aanzien van de wijze waarop de prestaties moeten gerealiseerd worden en ten aanzien van de arbeid- of loonvoorwaarden, en die een bezoldigde dienst verstrekt die aan alle volgende vereisten voldoet:*
*a) hij wordt, ten minste gedeeltelijk, op afstand verstrekt via elektronische middelen, zoals een website of een mobiele applicatie;*
*b) hij wordt verstrekt op vraag van een afnemer van de dienst*;"

"*le fournisseur qui, via un algorithme ou toute autre méthode ou technologie équivalente, est susceptible d'exercer un pouvoir de décision ou de contrôle quant à la manière dont les prestations doivent être réalisées et quant aux conditions de travail ou de rémunération et qui fournit un service rétribué qui satisfait à toutes les exigences suivantes:*
*a) il est fourni, au moins en partie, à distance par des moyens électroniques, tels qu'un site web ou une application mobile;*
*b) il est fourni à la demande d'un destinataire du service*".[266]

For those platforms, the work relationship is presumed, until proof to the contrary, to be performed under the terms of an employment contract, when an analysis of the work relationship shows that at least three of the following eight criteria or two of the last five criteria are met:
1° the platform operator can demand exclusivity in relation to its field of activity;
2° the platform operator may use geolocation for purposes other than the proper operation of its basic services;

[264] *Ibid*., art. 337/2, § 1.
[265] *Ibid*., art. 337/2, § 2.
[266] *Ibid*., art. 337/3, § 1, 1°. An exception is made for providers of a service whose main purpose is to exploit or share assets or to resell goods or services, or those who provide a service on a not-for-profit basis.

3° the platform operator may restrict the platform worker's freedom in the manner in which the work is performed;

4° the platform operator may limit the income levels of a platform worker, in particular, by paying hourly rates and/or by limiting an individual's right to refuse offers of work on the basis of the rate offered and/or by not allowing the individual to set the price of the service. Collective labour agreements are excluded from this clause;

5° with the exception of the legal provisions, in particular with regard to health and safety, applicable to users, customers or workers, the platform operator may require a platform worker to comply with binding rules with regard to presentation, behaviour towards the recipient of the service or the performance of the work;

6° the platform operator may determine the allocation of priority for future offers of work and/or the amount offered for a task and/or the determination of rankings using information gathered and by monitoring the performance of the service, excluding the result of that performance, by platform workers using electronic means in particular;

7° the platform operator may restrict, including by means of sanctions, the freedom to organise work, in particular the freedom to choose working hours or periods of absence, to accept or refuse tasks or to use subcontractors or replacements, except, in the latter case, where the law expressly restricts the possibility of using subcontractors;

8° the platform operator may restrict the possibility for the platform worker to form a customer base or to carry out work for a third party outside the platform.[267]

152. Self-employed workers are not protected by the rules of employment law. They therefore have no protective rules in terms of income or working hours and rest periods. As far as social security is concerned, the self-employed workers are subject to a system that is different from and deemed less protective than the one of salaried workers.

| Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|

## *5.4 Platform work and collaborative economy* (platformwerk / travail de plateforme)

153. There is no unified status for workers in the platform economy. These workers may be either employees or self-employed workers, depending on the terms of the work relationship with the platform and the level of control exerted by the platform over the worker (see section 5.3, para 151). There are ongoing debates regarding the classification of platform workers, and jurisprudence has not settled in a specific direction. Many platform workers find themselves at the crossroads of employment and self-employment. [268] In practice, platforms

[267] *Ibid*., art. 337/3, § 2.

[268] It should be noted that because many platform workers are at the crossroad of employment and self-employment, the Law of 3 October 2022 requires platform operators to take out insurance against accidents at work for platform workers, whether they are employees or self-employed workers (Law of 3 October 2022 containing various provisions relating to labour, *B.S./M.B.*, 10 November 2022, art. 19).

typically engage platform workers as self-employed contractors who end up in a situation of false self-employment that could be requalified as an employment contract.[269]

Regarding platform workers under an employment contract, we refer to the sections related to employment relationships involving one or more employment contracts. These workers may be considered as non-standard workers depending on the terms of their employment contract. Regarding self-employed platform workers, we refer to section 5.2.

154. Within the present section, we will focus on a very specific regime applicable to self-employed platform workers in the collaborative economy.

The "De Croo" Law of 1 July 2016[270] created an advantageous tax regime and a derogatory social security regime for certain platform workers in the collaborative economy. Within this framework, platform work is a tripartite work relationship that consists of bringing a worker into contact with a user via a digital platform.

This regime does not apply to all workers in the collaborative economy, but only to those who carry out this activity as a secondary (and even marginal) activity. In order to benefit from this scheme, the worker must carry out these activities outside the exercise of his/her professional activity (*i.e*. it must be occasional work outside his/her usual activity[271]); the services must be provided to natural persons who are not acting in the exercise of their professional activity; and the services must be provided solely on the basis of contracts concluded through an approved electronic platform or an electronic platform organised by a public authority. In addition, the compensation received for the service must only be paid or allocated to the service provider by or through this platform.[272] Finally, the income from this activity must be below 3.830 € (non-indexed amount[273]; or 7.170 € (2023 amount)) gross per year.[274]

If the activity meets the above conditions, then:

- the worker carrying out a collaborative economy activity will not be subject to the social security scheme for self-employed workers for the income related to this activity;[275]
- the income will be taxed as various income of a professional nature and not as professional income. The income is therefore taxed at around 10%.[276]

155. It should be noted that a law of 18 July 2018[277] went further by completely exempting income from platform work from taxes up to a certain amount and exempting it from the

[269] See, for instance : C. Trav. Bruxelles (8e ch.), 21 décembre 2023, R.G. 2022/AB/12, 2022/AB/43, 2022/AB/118, Terra Laboris.

[270] Program-law of 1 July 2016, *B.S.*/*M.B.*, 4 July 2016, art. 22 and 23.

[271] S. GERARD, J. GILMAN, A. MECHELYNCK and D. DUMONT, *op. cit*., p. 54.

[272] Income Tax Code 1992, art. 90, al. 1, 1°*bis*.

[273] Income Tax Code 1992, art. 37*bis*, § 2, al. 2

[274] W. VAN EECKHOUTTE, *Memento social 2023-1*, Mechelen, Wolters Kluwer, 2023, p. 1167, no. 2503.

[275] Royal Decree of 27 July 1967 no. 38 organising the social status of self-employed workers, *B.S.*/*M.B.*, 29 July 1967, art. 5*ter*, al. 1.

[276] Normally, the tax rate is 20% but, due to tax rules that will not be explained here, the final rate is 10%.

[277] Law of 18 July 2018 on economic recovery and the strengthening of social cohesion, *B.S.*/*M.B.*, 26 July 2018, annulled by C.C., 23 April 2020, no. 53/2020.

application of both labour law and social security law. This law has since been struck down by the Constitutional Court, so that the De Croo law applies.

| Part-time | Multipartite[278] | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime<br>*Below the threshold.* |
|---|---|---|---|---|---|

To sum up, platform workers may have different statuses depending on whether the work relationship is qualified as an employment contract or a self-employed contract (see section 5.3, para 151).

- If the platform worker is qualified as an employee, he/she may be considered to be a non-standard worker depending on the terms of his/her employment contract;
- If the platform worker is classified as self-employed worker (which is usually the case in practice):
    - If the platform is part of the collaborative economy and the worker's income does not exceed the set threshold (€3,830 (non-indexed amount) or €7,170 (2023 amount) gross per year), the worker's income from this activity will be taxed as various income and the worker will be subject to a derogatory social security regime. The worker is therefore considered to be a non-standard worker because of the lack of legal subordination and because of the derogatory social security regime ;
    - If the platform is not part of the collaborative economy, even if the worker's income from platform work does not exceed the set threshold, he/she will be considered a self-employed worker whose income will be taxed as professional income and he/she will be subject to social security scheme for self-employed workers. He/she may therefore be considered to be a non-standard worker because of the lack of legal subordination;
    - Above the set threshold, whether or not the platform is part of the collaborative economy, the worker will be considered as a self-employed worker, his/her income will be taxed as professional income and he/she will be subject to social security scheme for self-employed workers. That worker is therefore considered to be a non-standard worker because of the lack of a legal subordination.

[278] The characteristic is not highlighted because this is not a employment relationship. Nevertheless, the tripartite nature creates uncertainty regarding the qualification of the employment relationship.

# 6 Overview table and conclusion

156. The different NSW legal forms explained in this paper may be summarised as follows.

| | Part-time | Multipartite | Temporary | No remuneration | No legal subordination | *Ad hoc* social security regime |
|---|---|---|---|---|---|---|
| Fixed-term contract | | | x | | | |
| Replacement contract | | | x | | | |
| Agency work contract | | x | x | | | |
| Student agreement | | | x | | | x |
| Occasional work in the HoReCa sector | | | x | | | |
| Occasional work in the agricultural and horticultural sector | | | x | | | x |
| Occasional work in the funeral services sector | | | x | | | |
| Flexi-job contract | | | x | | | |
| Part-time employment contract | x | | | | | |
| Article 60 contract | | x | x | | | |
| *PWA* / *ALE* contract | | x | | | | x |
| *Wijk-werk* contract | | x | | | | x |
| Service cheques employment contract | | x | (only during the first 3-monts period) | | | |
| Associative work | x | | | | | x |
| Voluntary work | | | | x | | |
| Apprentices | | | | x | | |
| Work placement agreement | | | | x | | |
| *IBO* / *FPIE* | | | | x | | |
| Self-employment | | | | | x | |
| Platform work and collaborative economy | | (x)[279] | | | x | x Below the threshold |

[279] Although the tripartite nature is identified as a characteristic of the NSW that involves one or multiple employment contracts, this characteristic may be considered here despite the self-employment relationship due to the resulting uncertainty in the qualification of the work relationship and the resulting misclassification of platform workers as independent contractors.

157. The typology set above leads us to several conclusions on the impact of the characteristics of NSW on social security coverage.

158. Some workers may have a different and lesser coverage in the social security scheme for salaried workers, because of contract characteristics, mostly the temporary nature or the part-time basis. Many NSW forms meet one or the other criterium.

However, it should be noted that the table indicates when a contract or a work relationship meets the part-time criterium only when the NSW legal form cannot be performed on a full-time basis. But, the majority of contracts and work relationships here mentioned may be concluded on a full-time or a part-time basis. The same is true for the temporary criterium.

Therefore, depending on the terms of the contract, both these characteristics may have a combined effect on the social security coverage of some categories of non-standard workers. The incental effect may be explained by the contributory principle based on the full-time and open-ended employment contract.

In order to determine more precisely the social security coverage of non-standard workers, it will be necessary to combine above mentioned compulsory legal characteristics with empirical data in order to identify the NSW forms in which the part-time characteristic is recurrent in practice, without being compulsory. The same will have to be done for the temporary characteristic.

159. Other workers may be subject to a different coverage (consisting either in lesser protection or in the lack of coverage) because of an *ad hoc* and derogatory social security scheme from the basic one for salaried workers. This is the case for student workers, occasional workers in the agricultural and horticultural sectors, *ALE* workers, *wijk-werkers*, associative workers as well as platform and collaborative workers.

For self-employed and collaborative workers subject to the self-employed social security scheme (above the set threshold), a derogatory scheme applies but as a consequence of the absence of legal subordination.

160. Finally, volunteers, apprentices, workers engaged in a work placement agreement and those in an *IBO* / *FPIE* program do not exercise work prestations against remuneration. They may do it for free or against an allowance. Because it is not a remuneration in the sense of social security legislation and because it is therefore not subject to social security contributions, those workers are not covered by social security scheme for those activities. An exception is provided for apprentices in specific conditions.

161. However, the multipartite nature of the work relationship has in principle no effect on workers in Belgium. The Belgian legislator has provided for multiple presumptions of existence of employment contracts between the worker and the (non user) company. This makes it easier to identify the employer and therefore who is responsible for the payment of employer's social security contributions as well as incapacity allowance during the first month of incapacity.[280] Furthermore, the problem to reach thresholds in contributions may be visible through the part-time and the temporary characteristics.

[280] P. SCHOUKENS and A. BARRIO, *op. cit.*, p. 329.

An important exception to this last conclusion must be highlighted. In the case of platform workers, the multipartite nature of the work relationship often leads to blur the line between employment and self-employment or to place the worker in a situation of bogus-employment. In this case, multipartite characteristics has an incidental effect on social security coverage in the sense that the worker will be subjected to the social security scheme for self-employed workers.

# 7 References

## *7.1 Doctrine*


BERNARD, N., *Guide des citations, références et abréviations juridiques*, 6th ed., Waterloo, Wolters Kluwer, 2017.

CLESSE, Ch.-E. and GILSON, S. (dir.), *Le travail temporaire, le travail intérimaire et la mise à disposition des travailleurs. Les 30 ans de la loi du 24 juillet 1987*, Limal, Anthemis, 2017.

DE BECKER, E. and SCHOUKENS, P., "Atypisch werk, werken in armoede en sociale zekerheid: noodzaak (of kans) om de fundamenten van het Belgische socialezekerheidsstelsel te herdenken ?", *Revue de droit social/Tijdschrift voor Sociaal Recht*, 2023, no. 1, special issue Les fondements du droit social/De grondslagen van het sociaal recht, p. 3-52.

DEAKIN, S., "Addressing labour market segmentation: The role of labour law", *I.L.O. Working Paper no. 52*, 2013.

DERMINE, E. and MECHELYNCK, A., "Zero-hour contracts and labour law: An antithetical association?", Special Issue, *European Labour Law Journal*, Vol. 13, Issue 3, 2022, p. 339-346.

DUMONT, D., GÉRARD, S., GILMAN J. and MECHELYNCK, A., "Le droit social face au travail précaire. Enseignements d'une cartographie juridique du travail atypique", *Revue belge de sécurité sociale/Belgisch Tijdschrift voor Sociale Zekerheid*, vol. 64, no. 3, 2022, p. 277-344.

FEVRIER, V., "Le travail associatif : un régime éphémère ?", *J.T.T.*, 2021/13, p. 221-230.

GERARD, S., GILMAN, J., MECHELYNCK, A. and DUMONT, D., "Le travail précaire. Une cartographie juridique des statuts précaires et des protections (non) garanties par le droit social", rapport pour Observatoire de la santé et du social de Bruxelles-Capitale, available on https://difusion.ulb.ac.be/vufind/Record/ULB-DIPOT:oai:dipot.ulb.ac.be:2013/329137/Holdings (3 October 2023).

HUMBLET, P. and RIGAUX, M. (eds.), *Synopsis van het Belgische arbeidsrecht*, 6th ed., Antwerpen and Cambridge, Intersentia, 2014.

HUMBLET, P. and RIGAUX, M., *Introduction to Belgian Labour Law*, Cambridge, Intersentia, 2016.

INTERNATIONAL LABOUR OFFICE, *Non-standard employment around the world. Understanding challenges, shaping prospect*s, Geneva, BIT, 2016.

JAMOULLE, M., "Du salariat traditionnel aux emplois atypiques", *Revue de Droit Social / Tijdschrift voor Sociaal Recht*, 1996, p. 313-347.

KOCH, M. and FRITZ, M. (eds.), *Non-Standard Employment in Europe. Paradigms, Prevalence and Policy Responses,* Houndmills, Basingstoke, Palgrave Macmillan, 2013.

MACNEIL, I.R., « Relational contract theory: challenges and queries », *Northwestern University Law Review*, vol. 94, no. 3, 2000, p. 877-907.

MCKAY, S., CALDARINI, C. and GIUBBONI, S., *The "place" of atypical work in the European social security coordination : a transational comparative analysis*, 2022, accessible online on http://csdle.lex.unict.it/biblioteca-20-maggio/collective-volumes/02-place-atypical-work-european-social-security (3 October 2023).

MECHELYNCK, A., *Le droit social face à l'instabilité – Étude des défis juridiques posés par le recours aux contrats de travail à durée limitée)*, thesis to be defended.

MENU, M.-C., *Le travail via une agence locale pour l'emploi (A.L.E.) et le dispositif titres-services : Un terrain commun, des statuts bien distincts*, Liège, Wolters Kluwer, 2020.

MEULDERS, D. and PLASMAN, R., *Belgique et Luxembourg. Protection sociale du travail atypique*, Bruxelles, Dulbea, 1990.

NAUTET, N. and PITON, C., "An analysis of non-standard forms of employment in Belgium", *National Bank of Belgium Economic Review*, june 2019, p. 1-28.

NISOL, P., "Statuts sociaux particuliers, le point sur des modifications récentes : artistes, apprentis, flexi-jobs et médecins en formation", *Ors*., 2017/1, p. 2-18.

POTTIER, M., *Un répertoire des contrats de courte durée*, Liège, Wolters Kluwer, 2020.

REMOUCHAMPS, S., "La (non-)prise en compte du travail à temps partiel par la sécurité sociale", *Questions transversales en matière de sécurité sociale*, D. Dumont (coord.), Bruxelles, Larcier, 2017, p. 100-153.

SCHOUKENS, P. and BRUYNSERAEDE, C., *Access to social protection for self-employed and nonstandard workers*, Louvain, Acco, 2021.

SCHOUKENS, P., and BARRIO, A., "The changing concept of work: When does typical work become atypical?", *European Labour Law Journal*, 2018, no. 8, p. 306-332.

STONE, K., and ARTHURS, H., "The Transformation of Employment Regimes: A Worldwide Challenge", Rethinking Workplace Regulation: Beyond the Standard Contract of Employment, K. Stone and H. Arthurs (eds), New York, Russell Sage Foundation, 2013.

VAN EECKHOUTTE, W., *Memento social 2022-2*, Mechelen, Wolters Kluwer, 2022.

VAN EECKHOUTTE, W., *Memento social 2023-1*, Mechelen, Wolters Kluwer, 2023.

VAN LIMBERGHEN, G., BERTRAND, O., DUMONT, D., FONTAINE, M., TOJEROW, I., CANTILLON, B., DELANGHE, H., HERMANS, K., LOUCKX, F. and, MARCHAL, S., *L'accès des travailleurs salariés et indépendants à la sécurité sociale en Belgique. Mission d'étude pour le SPF Sécurité sociale. Rapport final, 2020*.

VANDEKERCKHOVE, S., LENAERTS, K., HOREMANS, J., KAMPELMANN, S. and GOOS, M., *In-work poverty and shifts in work, income, and the composition of households. Final Report*, Brussels, Belgian Science Policy Office, 2018.

VERBRUGGE, F., "Le contrat de travail de remplacement : ses limites et contraintes", *Ors*., 2005, no. 8, p. 19-36.

VERBRUGGE, F., "Les particularités du contrat de travail à durée déterminée", *Ors*., 2006, no. 9, p. 18-27.

WALTON, M. J., "The Shifting Nature of Work and Its Implications", *Industrial Law Journal,* 2016, no. 45/2, p. 111-130.

## *7.2 Legislation*

Special law of 8 August 1980 on institutional reforms, *B.S.*/*M.B*., 15 August 1980.

Bijzondere wet van 8 augustus 1980 tot hervorming der instellingen, *B.S*., 15 augustus 1980.

Loi spéciale du 8 août 1980 de réformes institutionnelles, *M.B*., 15 août 1980.

Decree-Law of 28 December 1944 on social security for workers, *B.S*./*M.B*., 30 December 1944.

Besluitwet van 28 December 1944 betreffende de maatschappelijke zekerheid der arbeiders, *B.S*., 30 december 1944.

Arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs, *M.B*., 30 décembre 1944.

Law of 2 April 1965 relating to the assumption of responsibility for assistance granted by the public social action centres, *B.S*./*M.B*., 6 May 1965.

Wet van 2 april 1965 betreffende het ten laste nemen van de steun verleend door de openbare centra voor maatschappelijk welzijn, *B.S*., 6 mei 1965.

Loi du 2 avril 1965 relative à la prise en charge des secours accordés par les centres publics d'aide sociale, *M.B*., 6 mai 1965.

Law of 12 April 1965 on the protection of workers' remuneration, *B.S*./*M.B*., 30 April 1965.

Wet van 12 april 1965 betreffende de bescherming van het loon der werknemers, *B.S*., 30 april 1965.

Loi du 12 avril 1965 concernant la protection de la rémunération des travailleurs, *M.B*., 30 avril 1965.

Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on social security for workers, *B.S.*/*M.B.*, 25 July 1969.

Wet van 27 juni 1969 tot herziening van de besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders, *B.S.*, 27 juli 1969.

Loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs, *M.B.*, 25 juillet 1969.

Labour law of 16 March 1971, *B.S.*/*M.B.*, 30 March 1971.

Arbeidswet van 16 maart 1971, *B.S.*, 30 maart 1971.

Loi du 16 mars 1971 sur le travail, *M.B.*, 30 mars 1971.

Law of 10 April 1971 on accidents at work, *B.S.*/*M.B.*, 24 April 1971.

Arbeidsongevallenwet van 10 april 1971, *B.S.*, 24 april 1971.

Loi du 10 avril 1971 sur les accidents du travail, *M.B.*, 24 avril 1971.

Organic law of 8 July 1976 on public social action centres, *B.S.*/*M.B.*, 5 August 1976.

Organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijk welzijn, *B.S.*, 5 augustus 1976.

Loi organique du 8 juillet 1976 des centres publics d'action sociale, *M.B.*, 5 août 1976.

Employment Contract Act of 3 July 1978, *B.S.*/*M.B.*, 22 August 1978.

Wet van 3 juli 1978 betreffende de arbeidsovereenkomsten, *B.S.*, 22 augustus 1978.

Loi du 3 juillet 1978 relative aux contrats de travail, *M.B.*, 22 août 1978.

Law of 29 June 1981 establishing the general principles of social security for salaried workers, *B.S.*/*M.B.*, 2 July 1981.

Wet van 29 juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers, *B.S.*, 2 juli 1981.

Loi du 29 juin 1981 établissant les principes généraux de la sécurité sociale des travailleurs salariés, *M.B.*, 2 juillet 1981.

Law of 24 July 1987 on temporary work, agency work and the hiring out of workers, *B.S.*/*M.B.*, 20 August 1987.

Wet van 24 juli 1987 betreffende de tijdelijke arbeid, de uitzendarbeid en het ter beschikking stellen van werknemers ten behoeve van gebruikers, *B.S.*, 20 augustus 1987.

Loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs, *M.B.*, 20 août 1987.

Income Tax Code 1992.

W.I.B. 1992.

C.I.R. 1992.

Law of 22 December 1995 on measures to implement the multi-year employment plan, *B.S.*/*M.B.*, 30 December 1995.

Wet houdende maatregelen tot uitvoering van het meerjarenplan voor werkgelegenheid, *B.S.*, 30 december 1995.

Loi du 22 décembre 1995 portant des mesures visant à exécuter le plan pluriannuel pour l'emploi, M.B., 30 décembre 1995.

Law of 7 April 1999 on the *PWA* / *ALE* employment contract, *B.S.*/*M.B.*, 20 April 1999.
Wet van 7 april 1999 betreffende de PWA-arbeidsovereenkomst, *B.S.*, 20 april 1999.
Loi du 7 avril 1999 relative au contrat de travail ALE, *M.B.*, 20 avril 1999.

Law of 20 July 2001 to encourage the development of proximity services and jobs, *B.S.*/*M.B.*, 11 August 2001.
Wet van 20 juli 2001 tot bevordering van buurtdiensten en –banen, *B.S.*, 11 augustus 2001.
Loi du 20 juillet 2001 visant à favoriser le développement de services et d'emplois de proximité, *M.B.*, 11 aout 2001.

Law of 5th March 2002 on the non-discrimination principle in favor of part-time workers, *B.S.*/*M.B.*, 13 March 2002.
Wet van 5 maart 2002 betreffende het beginsel van non-discriminatie ten gunste van deeltijdwerkers, *B.S.*, 13 maart 2002.
Loi du 5 mars 2002 relative au principe de non-discrimination en faveur des travailleurs à temps partiel, *M.B.*, 5 mars 2002.

Law of 26 May 2002 on the right to social integration, *B.S.*/*M.B.*, 31 July 2002.
Wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie, *B.S.*, 31 juli 2002.
Loi du 26 mai 2002 concernant le droit à l'intégration sociale, *M.B.*, 31 juillet 2002.

Program-law of 2 August 2002, *B.S.*/*M.B.*, 28 August 2002.
Programmawet van 2 augustus 2002, *B.S.*, 28 Augustus 2002.
Loi-programme du 2 août 2002, *M.B.*, 28 août 2002.

Law of 3 July 2005 on the rights of volunteers, *B.S.*/*M.B.*, 29 August 2005.
Wet van 3 Juli 2005 betreffende de rechten van vrijwilligers, *B.S.*, 29 augustus 2005.
Loi du 3 juillet 2005 relative aux droits des volontaires, *M.B.*, 29 août 2005.

Program-law (I) of 27 December 2006, *B.S.*/*M.B.*, 28 December 2006.
Programmawet (I) van 27 december 2006, *B.S.*, 28 december 2006.
Loi-programme (I) du 27 décembre 2006, *M.B.*, 28 décembre 2006.

Decree of the Flemish Parliement of 7 July 2007 on "wijk-werken" and various provisions in the context of the sixth state reform, *B.S.*/*M.B.*, 9 August 2017.
Decreet van de Vlaamse overheid van 7 juli 2017 betreffende wijk-werken en diverse bepalingen in het kader van de zesde staatshervorming, *B.S.*, 9 augustus 2017.
Décret flamand du 7 juillet 2017 relatif au travail de proximité et à diverses dispositions dans le cadre de la sixième réforme de l'Etat, *M.B.*, 9 août 2017.

Law of 16 November 2015 containing various provisions on social matters, *B.S.*/*M.B.*, 26 November 2015.

Wet van 16 november 2015 houdende diverse bepalingen inzake sociale zaken, *B.S.*, 26 november 2015.
Loi du 16 novembre 2015 portant des dispositions diverses en matière sociale, *M.B.*, 26 novembre 2015.

Decree of the Flemish Parliament of 10 June 2016 regulating certain aspects of alternating training courses, *B.S.*/*M.B.*, 17 August 2016.
Decreet van de Vlaamse overheid van 10 juni 2016 tot regeling van bepaalde aspecten van alternerende opleidingen, *B.S.*, 17 augustus 2016.
Décret flamand du 10 juin 2016 réglant certains aspects des formations en alternance, *M.B.*, 17août 2016.

Program-law of 1 July 2016, *B.S.*/*M.B.*, 4 July 2016.
Programmawet van 1 Juli 2016, *B.S.*, 4 Juli 2016.
Loi-programme du 1er juillet 2016, *M.B.*, 4 juillet 2016.

Law of 5 March 2017 on feasible and manageable work, *B.S.*/*M.B.*, 15 March 2017.
Wet van 5 maart 2017 betreffende werkbaar en wendbaar werk, *B.S.*, 15 maart 2017.
Loi du 5 mars 2017 concernant le travail faisable et maniable, *M.B.*, 15 mars 2017.

Program-law of 25 December 2017, *B.S.*/*M.B.*, 29 December 2017.
Programmawet van 25 december 2017, *B.S.*, 29 december 2017.
Loi-programme du 25 décembre 2017, *M.B.*, 29 décembre 2017.

Law of 18 July 2018 on economic recovery and the strengthening of social cohesion, *B.S.*/*M.B.*, 26 July 2018, annulled by C.C., 23 April 2020, no. 53/2020.
Wet van 18 juli 2018 betreffende de economische relance en de versterking van de sociale cohesie, *B.S.*, 26 juli 2018, vernietigd door GwH, 23 april 2020, nr. 53/2020.
Loi du 18 juillet 2018 relative à la relance économique et au renforcement de la cohésion sociale, *M.B.*, 26 juillet 2018, annulée par C.C., 23 avril 2020, n°53/2020.

Law of 24 December 2020 on associative work, *B.S.*/*M.B.*, 31 December 2020.
Wet van 24 december 2020 betreffende het verenigingswerk, *B.S.*, 31 december 2020.
Loi du 24 décembre 2020 relative au travail associatif, *M.B.*, 31 décembre 2020.

Law of 3 October 2022 containing various provisions relating to labour, *B.S.*/*M.B.*, 10 November 2022.
Wet van 3 oktober 2022 houdende diverse arbeidsbepalingen, *B.S.*, 10 november 2022.
Loi du 3 octobre 2022 portant des dispositions diverses relatives au travail, *M.B.*, 10 novembre 2022.

Program-law (I) of 26 December 2022, *B.S.*/*M.B.*, 30 December 2022.
Programmawet van 26 december 2022, *B.S.*, 30 december 2022.
Loi-programme du 26 décembre 2022, *M.B.*, 30 décembre 2022.

Law of 27 March 2023 amending the Law of 16 November 2015 containing various provisions on social matters with regard to extending the scope of flexi-jobs to chocolate makers, *B.S.*/*M.B.*, 13 April 2023.

Wet van 27 maart 2023 houdende wijziging van de wet van 16 november 2015 houdende diverse bepalingen inzake sociale zaken wat de uitbreiding van het toepassingsgebied van de flexi-jobs tot de chocolatiers betreft, *B.S.*, 13 april 2023.

Loi du 27 mars 2023 modifiant la loi du 16 novembre 2015 portant des dispositions diverses en matière sociale en ce qui concerne l'élargissement du champ d'application des flexi-jobs aux chocolatiers, *M.B.*, 13 avril 2023.

Royal Decree of 27 July 1967 no. 38 organizing the social status of self-employed workers, *B.S.*/*M.B.*, 29 July 1967.

Koninklijk besluit nr. 38 van 27 juli 1967 houdende inrichting van het sociaal statuut der zelfstandigen, *B.S.*, 29 juli 1987.

Arrêté royal du 27 juillet 1967 n° 38 organisant le statut social des travailleurs indépendants, *M.B.*, 29 juillet 1967.

Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on the social security for workers, *B.S.*/*M.B.*, 5 December 1969, *errat*, *B.S.*/*M.B.*, 22 December 1970.

Koninklijk besluit van 28 november 1969 tot uitvoering van de wet van 27 juni 1969 tot herziening van de besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders, *B.S.*, 5 december 1969, *errat*., *B.S.*, 22 december 1970.

Arrêté royal du 28 novembre 1969 pris en exécution de la loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs, *M.B.*, 5 décembre 1969, *errat*., *M.B.*, 22 décembre 1970.

Royal Decree of 25 November 1991 laying down the unemployment regulations, *B.S.*/*M.B.*, 31 December 1991.

Koninklijk besluit van 25 november 1991 houdende de werkloosheidsreglementering, *B.S.*, 31 december 1991.

Arrêté royal du 25 novembre 1991 portant réglementation du chômage, *M.B.*, 31 décembre 1991.

Royal Decree of 23 December 1996 concerning measures for the introduction of a solidarity contribution for the occupation of students not subject to the social security system for salaried workers, in application of article 3, § 1, 4° of the law of 26 July 26 1996 aiming to achieve the budgetary conditions for Belgium's participation in the European Economic and Monetary Union, *B.S.*/*M.B.*, 31 December 1996.

Koninklijk besluit van 23 december 1996 houdende maatregelen met het oog op de invoering van een solidariteitsbijdrage op de tewerkstelling van studenten die niet onderworpen zijn aan het stelsel van sociale zekerheid van de werknemers, met toepassing van artikel 3, § 1, 4° van de wet van 26 juli 1996 strekkende tot realisatie van de budgettaire voorwaarden tot deelname van België aan de Europese Economische en Monetaire Unie, *B.S.*, 31 december 1996.

Arrêté royal du 23 décembre 1996 portant des mesures en vue de l'instauration d'une cotisation de solidarité pour l'occupation d'étudiants non assujettis au régime de la sécurité sociale des travailleurs salariés, en application de l'article 3, § 1er, 4° de la loi du 26 juillet 1996 visant à réaliser les conditions budgétaires de la participation de la Belgique à l'Union économique et monétaire européenne, *M.B.*, 31 décembre 1996.

Royal Decree of 13 November 1997 relating to the keeping of an attendance register in companies which come under the Joint Committee of the Hotel Industry and determining the conditions and procedures according to which the attendance register must be validated, *B.S.*/*M.B.*, 20 December 1997.

Koninklijk besluit van 13 november 1997 betreffende het bijhouden van een aanwezigheidsregister in de ondernemingen die onder het Paritair Comité voor het hotelbedrijf ressorteren en tot bepaling van de voorwaarden en de nadere regelen volgens welke het aanwezigheidsregister moet gewaarmerkt worden, *B.S.*, 20 december 1997.

Arrêté royal du 13 novembre 1997 relatif à la tenue d'un registre de présence dans les entreprises qui relèvent de la Commission paritaire de l'industrie hôtelière et déterminant les conditions et les modalités selon lesquelles le registre de présence doit être validé, *M.B.*, 20 décembre 1997.

Royal Decree of 19 August 1998 setting the maximum apprenticeship allowance applicable to apprentices whose apprenticeship contract is governed by the Law of 19 July 1983 on the apprenticeship of occupations carried out by employed workers, *B.S.*/*M.B.*, 5 September 1998.

Koninklijk besluit van 19 augustus 1998 tot vaststelling van het maximum van de leervergoeding dat van toepassing is op de leerlingen wier leerovereenkomst geregeld wordt door de wet van 19 juli 1983 op het leerlingwezen voor beroepen uitgeoefend door werknemers in loondienst, *B.S.*, 5 september 1998.

Arrêté royal du 19 aout 1998 fixant le maximum de l'indemnité d'apprentissage applicable aux apprentis dont le contrat d'apprentissage est régi par la loi du 19 juillet 1983 sur l'apprentissage de professions exercées par des travailleurs salariés, *M.B.*, 5 septembre 1998.

Royal Decree of 12 December 2001 on service cheques, *B.S.*/*M.B.*, 22 December 2001.

Koninklijk besluit van 12 December 2001 betreffende de dienstencheques, *B.S.*, 22 December 2001.

Arrêté royal du 12 décembre 2001 concernant les titres-services, *M.B.*, 22 décembre 2001.

Royal Decree of 11 July 2002 determining the conditions for granting, the amount and the duration of the subsidy, granted to public social welfare centres, for part-time employment, in application of article 60, § 7, of the law of 8 July 1976 on the organisation of public social welfare centres, of a person entitled to social integration, *B.S.*/*M.B.*, 31 July 2002.

Koninklijk besluit van 11 juli 2002 tot vaststelling van de toekenningsvoorwaarden, het bedrag en de duur van de toelage, verstrekt aan de openbare centra voor maatschappelijk welzijn, voor een deeltijdse tewerkstelling met toepassing van artikel

60, § 7, van de organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijk welzijn, van een gerechtigde op maatschappelijke integratie, *B.S.*, 31 juli 2002.

Arrêté royal du 11 juillet 2002 déterminant les conditions d'octroi, le montant et la durée de la subvention, accordée aux centres publics d'aide sociale, pour une occupation à temps partiel, en application de l'article 60, § 7, de la loi du 8 juillet 1976 organique des centres publics d'aide sociale, d'un ayant droit à l'intégration sociale, *M.B.*, 31 juillet 2002.

Royal Decree of 11 March 2003 setting the minimum allowance applicable to the professional immersion agreement, *B.S.*/*M.B.*, 18 April 2003.

Koninklijk besluit van 11 maart 2003 tot vaststelling van de op de beroepsinlevingsovereenkomst toepasselijke minimumvergoeding, *B.S.*, 18 april 2003.

Arrêté royal du 11 mars 2003 fixant l'indemnité minimale applicable à la convention d'immersion professionnelle, *M.B.*, 18 avril 2003.

Royal Decree of 23 May 2003 implementing Article 1(6) of the Law of 24 July 1987 on temporary work, agency work and the hiring-out of workers, *B.S.*/*M.B.*, 17 June 2003, art. 1.

Koninklijk besluit van 23 mei 2003 tot uitvoering van artikel 1, § 6, van de wet van 24 juli 1987 betreffende de tijdelijke arbeid, de uitzendarbeid en het ter beschikking stellen van werknemers ten behoeve van gebruikers, *B.S.*, 17 juni 2003.

Arrêté royal du 23 mai 2003 portant exécution de l'article 1er, § 6, de la loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs, *M.B.*, 17 juin 2003.

Royal Decree of 27 May 2003 on occasional work in companies covered by the Joint Committee for the Hotel Industry, *B.S.*/*M.B.*, 11 June 2003.

Koninklijk besluit van 27 mei 2003 betreffende gelegenheidsarbeid in de ondernemingen die onder het Paritair Comité voor het Hotelbedrijf ressorteren, *B.S.*, 11 juni 2003.

Arrêté royal du 27 mai 2003 relatif au travail occasionnel dans les entreprises qui relèvent de la Commission paritaire de l'Industrie hôtelière, *M.B.*, 11 juin 2003.

Royal Decree of 20 June 2013 in implementation of certain provisions of the Program-Law (I) of 27 December 2006 concerning the nature of work relationships that are part of the performance of activities that fall within the scope of the Joint Committee for Agriculture or the Joint Committee for Horticultural Enterprises, *B.S.*/*M.B.*, 28 June 2013.

Koninklijk besluit van 20juni 2013 tot uitvoering van sommige bepalingen van de programmawet (I) van 27 december 2006 wat betreft de aard van de arbeidsrelaties die bestaan in het kader van de uitoefening van werkzaamheden die vallen onder het toepassingsgebied van het paritair comité voor de landbouw of van het paritair comité voor het tuinbouwbedrijf, *B.S.*, 28 juni 2013.

Arrêté royal du 20 juin 2013 pris en exécution de certaines dispositions de la loi-programme (I) du 27 décembre 2006 en ce qui concerne la nature des relations de travail qui se situent dans le cadre de l'exécution des activités qui ressortent du champ

d'application de la commission paritaire de l'agriculture ou de la commission paritaire pour les entreprises horticoles, *M.B.*, 28 juin 2013.

Royal Decree of 12 November 2013 on the employment of occasional workers in the hotel and catering sector, *B.S.*/*M.B.*, 27 November 2013.

Koninklijk besluit van 12 november 2013 inzake de tewerkstelling van gelegenheidswerknemers in de horecasector, *B.S.*, 27 november 2013.

Arrêté royal du 12 novembre 2013 relatif à l'occupation des travailleurs occasionels dans le secteur de l'horeca, *M.B.*, 27 novembre 2013.

Royal Decree of 23 October 2015 amending the Royal Decree of 28 November 1969 in implementation of the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on the social security for workers with regard to the employer's quota of casual working days in the hotel industry, *B.S.*/*M.B.*, 6 November 2015.

Koninklijk besluit van 23 oktober 2015 tot wijziging van het koninklijk besluit van 28 november 1969 tot uitvoering van de wet van 27 juni 1969 tot herziening van de besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders wat betreft de quota van dagen gelegenheidswerk in hoofde van de werkgever in het hotelbedrijf, *B.S.*, 6 november 2015.

Arrêté royal du 23 octobre 2015 modifiant l'arrêté royal du 28 novembre 1969 pris en exécution de la loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs en ce qui concerne le quota de jours de travail occasionnel dans le chef de l'employeur dans l'industrie hôtelière, *M.B.*, 6 novembre 2015.

Royal Decree of 19 December 2022 amending Article 17bis of the Royal Decree of 28 November 1969 implementing the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 on social security for workers, *B.S.*/*M.B.*, 27 december 2022.

Koninklijk besluit van 19 december 2022 tot wijziging van artikel 17bis van het koninklijk besluit van 28 november 1969 tot uitvoering van de wet van 27 juni 1969 tot herziening van de besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders, *B.S.*, 27 december 2022.

Arrêté royal du 19 décembre 2022 portant modification de l'article 17bis de l'arrêté royal du 28 novembre 1969 pris en exécution de la loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs, *M.B.*, 27 décembre 2022.

Collective Labour Agreement no. 108 of 16 July 2013, concluded within the National Labour Coucil, relating to temporary and agency work, made compulsory by the Royal Decree of 26 January 2014, *B.S.*/*M.B.*, 10 February 2014.

Collectieve arbeidsovereenkomst nr. 108 van 16 juli 2013, gesloten in de Nationale Arbeidsraad, betreffende de tijdelijke arbeid en uitzendarbeid, algemeen verbindend verklaard door koninklijk besluit van 26 januari 2014, *B.S.*, 10 februari 2014.

Convention collective de travail n° 108 du 16 juillet 2013, conclue au sein du Conseil national du Travail, relative au travail temporaire et intérimaire, rendue obligatoire par l'arrêté royal du 26 janvier 2014, *M.B.*, 10 février 2014.

Collective Labour Agreement no. 178878 of 9 Januari 2023, concluded within the Joint Committee of funeral services, concerning occasional workers in firms of undertakers, made compulsory by the Royal Decree of 21 July 2023, *B.S.*/*M.B*., 10 October 2023.

Collectieve arbeidsovereenkomst nr. 178878 van 9 januari 2023, gesloten in het Paritair Comité voor de begrafenisondernemingen, algemeen verbindend verklaard door koninklijk besluit van 21 juli 2023, *B.S*., 10 oktober 2023.

Convention collective de travail n° 178878 du 9 janvier 2023, conclue au sein de la Commission paritaire des pompes funèbres, rendue obligatoire par l'arrêté royal du 21 juillet 2023, *M.B*., 10 octobre 2023.

### *7.3 Parlementary documents*

Employment Contract draft Act, Report on behalf of the Committee on Employment, Labour and Social Welfare, *Doc*., Sen., 1977-1978, no. 258/2.

Ontwerp van wet betreffende de arbeidsovereenkomsten, Verslag namens de Commissie voor tewerkstelling, de arbeid en de sociale voorzorg, *Doc*., Sen., 1977-1978, nr. 258/2.

Projet de loi relatif aux contrats de travail, Rapport fait au nom de la Commission de l'emploi, du travail et de la prévoyance sociale, *Doc*., Sen., 1977-1978, n° 258/2.

Draft law laying down general principles of social security for workers, Explanatory Memorandum, *Doc*., Sen., 1979-1980, no. 508/1.

Ontwerp van wet houdend algemene beginselen van de sociale zekerheid voor werkenemers, Memorie van toelichting, *Doc*., Sen., 1979-1980, nr. 508/1.

Projet de loi établissant les principes généraux de la sécurité sociale des travailleurs salariés, exposé des motifs, *Doc*., Sen., 1979-1980, n° 508/1.

Draft Law on the *PWA* / *ALE* employment contract, Report made on behalf of the Social Affairs Committee, *Doc*., Ch., 1998-1999, no. 2000/5.

Wetsontwerp betreffende PWA-arbeidsovereenkomst, Verslag namens de Commissie voor de sociale zaken, *Doc*., Ch., 1998-1999, nr. 2000/5.

Projet de loi relatif au contrat de travail ALE, Rapport fait au nom de la Commission des affaires sociales, *Doc*., Ch., 1998-1999, n° 2000/5.

Draft Program-law, Report on behalf of the Social Affairs Committee, *Doc*., Sen., 2003-2004, no. 3-424/3.

Ontwerp van programmawet, Verslag namens de Commissie voor de sociale aangelegenheden, 16 december 2003, *Doc*., Sen, 2003-2004, nr. 3-424/3.

Projet de loi-programme, Rapport fait au nom de la Commission des affaires sociales, 16 décembre 2003, *Doc*., Sen., 2003-2004, n°3-424/3.

Draft law amending Title XIII of the Program-Law (I) of 27 December 2006, concerning the nature of work relationships, Report made on behalf of the Social Affairs Committee, *Doc*., Ch., 2011-2012, no. 53 2319/002.

Wetsontwerp tot wijziging van titel XIII van de programmawet (I) van 27 december 2006, wat de aard van de arbeidsrelaties betreft, Verslag namens de Commissie voor de sociale zaken, *Doc*., Ch., 2011-2012, nr. 53 2319/002.

Projet de loi modifiant le titre XIII de la loi-programme (I) du 27 décembre 2006, en ce qui concerne la nature des relations de travail, Rapport fait au nom de la Commission des affaires sociales, *Doc*., Ch., 2011-2012, n° 53 2319/002.

Draft law amending, with regard to agency work contracts, the law of 24 July 1987 on temporary work, agency work and the hiring-out of workers, Explanatory memorandum, *Doc*., Ch., 2012-2013, no. 53 2740/001.

Wetsontwerp tot wijziging van de wet van 24 juli 1987 betreffende de tijdelijke arbeid, de uitzendarbeid en het ter beschikking stellen van werknemers ten behoeve van gebruikers, wat de arbeidsovereenkomst voor uitzendarbeid betreft, memorie van toelichting, *Doc*., Ch., 2012-2013, nr. 53 2740/001.

Projet de loi modifiant, en ce qui concerne le contrat de travail intérimaire, la loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs, Exposé des motifs, *Doc*., Ch., 2012-2013, n° 53 2740/001.

Draft law on various social provisions, Explanatory Memorandum, *Doc*., Ch., 2014-2015, no. 54 1297/001.

Wetsontwerp houdende diverse bepalingen inzake sociale zaken, Memorie van toelichting, *Doc*., Ch., 2014-2015, nr. 54 1297/001.

Projet de loi portant desdispositions diverses en matière sociale, exposé des motifs, *Doc*., Ch., 2014-2015, n°54 1297/001.

Draft law on feasible and manageable work, explanatory memorandum, *Doc*., Ch., 2016-2017, no. 54 2247/001.

Wetsontwerp betreffende werkbaar en wendbaar werk, Memorie van toelichting, *Doc.*, Ch., 2016-2017, nr. 54 2247/001.

Projet de loi concernant le travail faisable et maniable, Exposé des motifs, *Doc*., Ch., 2016-2017, n°54 2247/001.

Draft decree on *wijk-werken* and various provisions within the framework of the sixth state reform, explanatory memorandum, *Doc*., Vl. Parl., 2016-2017, no. 1197/1.

Ontwerp van decreet betreffende wijk-werken en diverse bepalingen in het kader van de zesde staatshervorming, memorie van toelichting, *Doc*., Vl. Parl., 2016-2017, nr. 1197/1.

Draft law on economic recovery and the strengthening of social cohesion, explanatory memorandum, *Doc*., Ch., 2017-2018, no. 54 2839/001.

Wetsontwerp betreffende de economische relance en de versterking van de sociale cohesive, memorie van toelichting, *Doc.*, Ch., 2017-2018, n°54 2839/001.

Projet de loi relative à la relance économique et au renforcement de la cohésion sociale, exposé des motifs, *Doc*., Ch., 2017-2018, n°54 2839/001.

Budget of revenue and expenditure for the financial year 2024, General Statement, *Doc*., Ch., 2023-2024, no. 55 3645/001.

Begrotingen van ontvangsten en uitgaven voor het begrotingsjaar 2024, Algemene toelichting, *Doc*., Ch., 2023-2024, nr. 55 3645/001.
Budget des recettes et des dépenses pour l'année budgétaire 2024, Exposé général, *Doc*., Ch., 2023-2024, n°55 3645/001.

Draft Program-law, Explanatory Memorandum, *Doc*., Ch., 2023-2024, no. 55 3697/001.
Ontwerp van programmawet, Memorie van toelichting, *Doc*., Ch., 2023-2024, nr. 55 3697/001.
Projet de loi-programme, Exposé des motifs, *Doc*., Ch., 2023-2024, n°55 3697/001.

### *7.4 Jurisprudence*

C.C., 17 june 2001, no. 93/2021.
Gwh., 17 juni 2021, nr. 93/2021.
C.C., 17 juin 2001, n°93/2021.

C.C., 23 april 2020, no. 53/2020.
GwH, 23 april 2020, nr. 53/2020.
C.C., 23 avril 2020, n°53/2020.

Cass., 15 April 1982, *J.T.T*., 1982, p. 348-350.

C. Trav. Bruxelles (8è ch.), 21 décembre 2023, R.G. 2022/AB/12, 2022/AB/43, 2022/AB/118, Terra Laboris.

C. trav. Liège, 14 octobre 2014, R.G. no. 7340-03, Juportal.

C. Trav. Mons (8è ch.), 25 avril 2013, R.G. no. 2009/AM/21.547.

Trib. trav. fr. Bruxelles (25è ch.), 8 December 2021, *BOECCBB*, 2021/34, p. 15-105.

### *7.5 Other references*

CAMBRIDGE DICTIONNARY, "Norm", accessible online https://dictionary.cambridge.org/dictionary/english/norm (3 October 2023).

EUROFOUND, "Atypical work", European Industrial Relations Dictionary, Dublin, 2018, accessible online https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/atypical-work (3 October 2023).

EUROSTAT, Labour Force Survey (LFS) ad-hoc module 2017 on the self-employed persons. Assessment Report, Luxembourg, Publications Office of the European Union, 2018, available online on https://ec.europa.eu/eurostat/documents/7870049/9439020/KS-39-18-011-EN-N.pdf/eabf6f91-01a1-4234-8a0a-43c13c3bd920 (3 October 2023).

INTERNATIONAL LABOUR ORGANIZATION, “Labor force participation rate, female (% of female population ages 15+) (national estimate) – Belgium”, accessible on https://data.worldbank.org/indicator/SL.TLF.CACT.FE.NE.ZS?locations=BE (3 October 2023).

INTERNATIONAL LABOUR ORGANIZATION, “Labor force participation rate, female (% of female population ages 15+) (national estimate) - European Union”, accessible on https://data.worldbank.org/indicator/SL.TLF.CACT.FE.NE.ZS?locations=EU (3 October 2023).

INTERNATIONAL LABOUR ORGANIZATION, “Labor force participation rate, male (% of female population ages 15+) (national estimate) – Belgium”, accessible on https://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS?locations=BE (3 October 2023).

OCDE, “Emploi temporaire”, accessible on https://data.oecd.org/fr/emp/emploi-temporaire.htm (10 November 2023).

REKENHOF/COUR DES COMPTES, “Incidence du plan horeca 2015. Flexi-jobs, travail occasionnel et heures supplémentaires nettes”, Bruxelles, februari 2019, accessible online https://www.ccrek.be/FR/Publications/Fiche.html?id=aa528964-797d-4770-8275-754dd1c3b156 (3 October 2023).

SPF SECURITE SOCIALE, “Apprentis – formation en alternance”, accessible online https://www.socialsecurity.be/employer/instructions/dmfa/fr/latest/instructions/persons/specific/apprentices.html (3 October 2023).

SPF SECURITE SOCIALE, "Le travail occasionnel dans le secteur horeca", accessible online https://www.socialsecurity.be/employer/instructions/dmfa/fr/latest/instructions/socialsecuritycontributions/calculationbase/occasionals_horeca.html (3 October 2023).