

**Act of 4 August 1996 on well-being of workers  
in the performance of their work  
(Belgian Official Gazette 18 September 1996)**

- Amended by:
- (1) act of 13 February 1998 on measures in favour of employment (Belgian Official Gazette 19 February 1998)
  - (2) act of 28 February 1999 on some measures regarding social elections (Belgian Official Gazette 18 March 1999)
  - (3) act of 5 March 1999 regarding social elections (Belgian Official Gazette 18 March 1999)
  - (4) act of 7 April 1999 regarding the PWA (local employment agency) employment contract (Belgian Official Gazette 20 April 1999)
  - (5) act of 11 June 2002 relating to protection from violence, bullying and sexual harassment at work (Belgian Official Gazette 22 June 2002)
  - (6) act of 17 June 2002 in amendment of the Civil Code pursuant to the act of 11 June 2002 relating to protection from violence, bullying and sexual harassment at work (Belgian Official Gazette 25 June 2002)
  - (7) act of 25 February 2003 on measures to reinforce the prevention regarding the well-being of workers at work (Belgian Official Gazette 14 March 2003)
  - (8) act of 3 May 2003 on various provisions regarding social elections (Belgian Official Gazette 16 May 2003 – 2<sup>nd</sup> Edition)
  - (9) programme act of 27 December 2004, Chapter VI, Section II (Belgian Official Gazette 13 December 2004 – 2<sup>nd</sup> edition)
  - (10) act of 9 March 2005 in amendment of Chapter V “Special provisions regarding temporary or mobile construction sites” of the act of 4 August 1996 (Belgian Official Gazette 6 April 2005 – erratum Belgian Official Gazette 13 May 2005)
  - (11) act of 11 July 2006 in amendment of the act of 26 June 2002 regarding the closure of enterprises (Belgian Official Gazette 24 August 2006)
  - (12) act of 20 July 2006 on various provisions, title XIII, Chapter VIII (Belgian Official Gazette 28 July 2006 – 2<sup>nd</sup> edition)
  - (13) act of 27 December 2006 on various provisions (I), title XIII, Chapter VII (Belgian Official Gazette 28 December 2006 – 3<sup>rd</sup> Edition; erratum: Belgian Official Gazette 12 February 2007)
  - (14) act of 10 January 2007 in amendment of the various provisions regarding the well-being of workers at work, including those regarding the protection against violence, bullying and sexual harassment at work (Belgian Official Gazette 6 June 2007)
  - (15) act of 6 February 2007 in amendment of the act of 4 August 1996 regarding legal proceedings (Belgian Official Gazette 6 June 2007)
  - (16) act of 3 June on various labour provisions, title IX (Belgian Official Gazette 23 July 2007 – 1<sup>st</sup> edition)
  - (17) act of 23 April 2008 as a supplement to the transposition of Directive 2002/14/EC of the European Parliament and the Council of 11 March 2002 to the establishment of a general framework regarding the information and consultation of workers in the European Community (Belgian Official Gazette 16 May 2008)

- Amended by:
- (18) act of 6 May 2009 on various provisions, Title 5, Chapter 1 (Belgian Official Gazette 19 May 2009)
  - (19) act of 30 December 2009 on various provisions (Belgian Official Gazette 31 December 2009)
  - (20) act of 6 June 2010 establishing the Social Criminal Code (Belgian Official Gazette of 1 July 2010)
  - (21) act of 22 April 2012 on combating the pay gap between men and women (Belgian Official Gazette of 28 August 2012)
  - (22) act of 27 May 2013 amending various acts on the continuity of the undertakings (Belgian Official Gazette of 22 July 2013)
  - (23) act of 12 July 2013 amending the act on combating the pay gap between men and women (Belgian Official Gazette of 26 July 2013)
  - (24) act of 17 August 2013 amending the act of 15 February 1993 establishing a Centre for Equal Opportunities and Opposition to Racism in view of its transformation into a federal center for the analysis of migration flows, the protection of fundamental rights of aliens and the fight against human trafficking (Belgian Official Gazette of 5 March 2014)
  - (25) act of 8 December 2013 amending Article 30bis of the act of 27 June 1969 amending the Decree-Law of 28 December 1944 on the social security of workers and amending the provisions of the Act of 4 August 1996 concerning the prior declaration and registration of attendance as far as temporary or mobile construction sites are concerned (Belgian Official Gazette 20 December 2013)
  - (26) act of 28 February 2014 supplementing the act of 4 August 1996 on the prevention of psychosocial risks at work, including violence, harassment and sexual harassment at work (Belgian Official Gazette 28 April 2014)
  - (27) act of 28 March 2014 modifying the Judicial code and the act of 4 August 1996 concerning legal proceedings (Belgian Official Gazette 28 April 2014)
  - (28) act of 15 May 2014 in amendment of the act of 4 August 1996, for the servants and the domestic workers (Belgian Official Gazette 18 June 2014 – errata Belgian Official Gazette 29 April 2015) [*comes into force on a date yet to be defined by Royal Decree*]
  - (29) act of 2 June 2015 in amendment of the act of 4 December 2007 on the social elections, of the act of 20 September 1948 on the organization of the economy and of the act of 4 August 1996 (Belgian Official Gazette 22 June 2015)
  - (30) Act of 27 November 2015 repealing the Article 96 of the Act of 26 December 2013 concerning the introduction of a single status for blue and white collar workers regarding the notice periods, the unpaid waiting day and accompanying measures and amending the Article 40 of the Act of 4 August 1996 (Belgian Official Gazette 9 November 2015)
  - (31) Royal Decree of, in pursuance of Article 31bis, § 2, of the Act of 4 August 1996 on well-being of workers in the performance of their work, as regards the revision of the limit for the registration of attendance (Belgian Official Gazette 19 February 2016)
  - (32) Act of 29 February 2016 supplementing and amending the Social Criminal Code and various provisions of social criminal law (Belgian Official Gazette 21 April 2016)
  - (33) Act of 15 January 2018 on various provisions regarding employment (Belgian Official Gazette 5 February 2018)

Transposition of Framework Directive 89/391/EEC of the Council of 12 June 1989 on the implementation of measures to promote the improvement of employees' safety and health at work into Belgian law.

**Article 1.-** This act regulates a matter as referred to in Article 78 of the Constitution.

## CHAPTER I. – Scope of application and definitions

**Art. 2.- § 1.** This act applies to employers and workers.

For the purposes of this act, the following persons shall be equated to:

1° workers:

- a) persons who perform work under the authority of another person, other than in terms of an employment contract;
- b) persons who follow a vocational training curriculum that provides a form of work which may or may not be performed within the educational institution;
- c) persons bound by an apprenticeship contract;
- d) trainees;
- e) pupils and students who follow an educational curriculum that provides for a form of work that is performed in an educational institution;

2) employers: persons who have an employment relationship with the persons stated under 1° above.

**§ 2.** In addition, the provisions of Chapter V are applicable to persons involved in the activities regarding temporary or mobile construction sites.

**§ 3.** The King may declare the provisions of this act and its executive decrees fully or partially applicable to persons other than those referred to in § 1 who are at the workplaces as stipulated in this act and its executive decrees.

[§ 4. This act is not applicable to domestic servants and other domestic personnel and their employers, with the exception of Sections 1 and 3 of Chapter *Vbis* (5)]<sup>1</sup>

**Art. 3.- § 1.** For the purposes of this act, the following definitions shall apply:

- 1° well-being: the entirety of factors regarding the circumstances under which work as referred to in Article 4, second paragraph, is carried out;
- 2° Committee: Committee for Prevention and Protection at Work;
- 3° Service: Internal Service for Prevention and Protection at Work;
- 4° High Council: High Council for Prevention and Protection at Work;

---

<sup>1</sup> § 4 is abrogated by the act of 15 May 2014, which will come into force on a date yet to be defined by Royal Decree (28)

- 5° organisation: the most representative employers and workers' organisations referred to in § 2;
- 6° the act of 19 March 1991: the act of 19 March 1991 containing Special Dismissal Arrangements for Workers' Representatives in the Works Council and in the Committees for Prevention and Protection at Work, and for applicant workers' representatives;
- 7° client: any natural or legal person for whom a project is carried out;
- 8° project supervisor responsible for the design: any natural or legal person responsible for the design of a project acting on behalf of the client;
- 9° project supervisor responsible for the execution: any natural or legal person responsible for the execution of a project and acting on behalf of the client;
- 10° project supervisor responsible for the supervision of the execution: any natural or legal person responsible for the supervision of the execution of a project and acting on behalf of the client;
- 11° contractor: any natural or legal person who performs activities during the execution stage of a project, regardless whether s/he is an employer, a self-employed person or an employer who, together with his/her workers, works on the work site;
- 12° coordinator for safety and health matters at the project preparation stage: any person entrusted by the client or the project supervisor responsible for the design, with seeing to the co-ordination regarding safety and health matters at the project preparation stage;
- 13° coordinator for safety and health matters at the project execution stage: any person entrusted by the client, the project supervisor responsible for the execution or the project supervisor responsible for the supervision of the execution with seeing to the co-ordination regarding safety and health matters during the execution of the project;
- 14° temporary or mobile construction site: any work site where civil engineering works or building works are carried out, of which the King has established a list;
- 15° workplace: any place where work is done, regardless whether it is inside or outside an establishment and regardless whether this is in an enclosed or open space;
- 16° self-employed person: any natural person exercising a professional activity for which he is not bound by an employment agreement or for which his legal position is not unilaterally regulated by the government.

**§ 2.** For the implementation of this act, the following shall be regarded as [representative employers and workers' organisations (3)]:

- 1° [the inter-professional organisations of employers and of workers that are represented on the Central Economic Council and the National Labour Council; (19)]
- 2° the professional and inter-professional organisations that have joined or form part of the inter-professional organisation stated in 1°.

In addition, the organisations which, in accordance with the acts regarding the organisation of the small firms and traders, co-ordinated on 28 May 1979 and representing the small firms

and traders in the National Labour Council, are regarded as representative employers' organisations.

[The organisations which represent the non-commercial sector, to which the composition of the National Labour Council was extended in accordance with Article 2, § 2, third subparagraph of the National Labour Council Act of 29 May 1952, are likewise regarded as representative employers' organisations. (1)]

## CHAPTER II. – General provisions

**Art. 4. – [§1. (4)]** The King may impose on the employers and workers any measures necessary for the well-being of the workers at work.

Measures relating to the following are used to strive for well-being:

- 1° work safety;
- 2° protecting workers' health at work;
- [3° psychosocial aspects of work; (26)]
- 4° ergonomics;
- 5° work hygiene;
- 6° embellishing the workplaces;
- 7° the enterprise's measures regarding the natural environment, relating to their influence on points 1° to 6°.

The King may establish special measures to take into account the specific situation regarding home workers, [servants and domestic workers, (28)]<sup>1</sup> small and medium-sized enterprises, the armed forces, the police and civil protection services, with a view to achieving a similar protection level.

[§ 2. During the period that a worker, who is bound by a PWA (Local Employment Agency) contract works for a user, the latter shall be responsible for applying the provisions of this act and its execution decrees applicable to the workplace, under the same conditions as an employer.

The King may determine which obligations are imposed on the user and the employer respectively and he may determine further provisions to apply this act and its execution decrees.

The provisions of Chapter XI are likewise applicable to the user. (4)]

**Art. 5. - § 1.** Employers shall take the necessary measures to promote the well-being of the workers at work.

For this purpose, the employer shall apply the following general principles of prevention:

- a) to avoid risks;

---

<sup>1</sup> The act of 15 May 2014, which will come into force on a date yet to be fixed by a royal decree replaces the words "home workers" by the words "home workers, servants and domestic workers" (28)

- b) to evaluate the risks which cannot be avoided;
- c) to combat the risks at source;
- d) to replace the dangerous by the non-dangerous or the less dangerous;
- e) to give collective protective measures priority over individual protective measures;
- f) to adapt the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at predetermined work rate and to reducing their effect on health;
- g) to limit risks as much as possible, taking technical progress into account;
- h) to limit the risk of serious injury by taking material measures, and giving them priority over any other measures;
- i) to plan prevention and implementing the policy regarding the well-being of the workers at work with a view to a system approach in which the following elements, among others, are integrated: technology, organisation of work, working conditions, social relationships and the influence of factors related to the working environment;
- j) to inform the worker on the nature of his/her work, on the associated residual risks and on the measures aimed at preventing or limiting these hazards:
  - 1° when commencing employment;
  - 2° whenever necessary for protecting well-being
- k) to give appropriate instructions to the workers and establishing guiding measures to reasonably guarantee compliance with these instructions;
- [l) to provide or ascertain the existence of appropriate safety and health signs at work whenever risks cannot be avoided or adequately limited by the collective technical protective measures or by measures, methods or practices regarding work organisation. (9)]

**§ 2.** The employer shall determine the following:

- a) the means and manner in which the policy referred to in § 1 regarding the well-being of the workers at work can be conducted;
- b) the competence and responsibility of the persons charged with the implementation of the policy regarding the well-being of workers at work.

The employer shall adapt his/her well-being policy in the light of past experience, the development of the working methods or the working conditions.

**§ 3.** The King may specify the general principles of prevention referred to in § 1 and develop them in further detail by applying them on or in order to prevent specific risk situations.

**Art. 6.** – In their behaviour at the workplace, every worker must, to the best of his ability, take good care of his own safety and health and that of other persons concerned in accordance with their training and the instructions given by their employer.

For this purpose, workers must particularly do the following in accordance with their training and the instructions given by their employer:

- 1° make correct use of machinery, apparatus, tools, dangerous substances, transport equipment, and other means of production;
- 2° make correct use of the personal protective equipment supplied to them and, after use; return it to its proper place.
- 3° refrain from disconnecting, changing or moving arbitrarily safety devices fitted e.g. to machinery, apparatus, tools, plant and buildings and use such safety devices correctly;
- 4° immediately inform the employer and the internal service for prevention and protection at work of any work situation they have reasonable grounds for considering as representing a serious and immediate danger to safety and health and of any shortcomings in the protection arrangement;
- 5° cooperate with the employer and the internal service for prevention and protection at work, for as long as may be necessary to enable any tasks or requirements imposed by the competent authority to protect the well-being of the workers at work to be carried out;
- 6° cooperate with the employer and the internal service for prevention and protection at work, for as long as may be necessary to enable the employer to ensure that the working environment and working conditions are safe and pose no risk to safety and health within their field of activity;
- [7° contribute positively to the prevention policy that is brought about within the context of the protection of workers against violence, bullying, sexual harassment at work, refrain from any act of violence, bullying or sexual harassment at work and refrain from any unlawful use [of the procedures (26)]. (5)]

The King may specify the obligations of workers and develop them in further detail by applying them on or in order to prevent specific risk situations.

#### **[CHAPTER II bis. Specific provisions regarding companies with certain high-risk activities**

**Art. 6bis.** – Every employer is obliged to call in an authorized company to carry out demolition or disposal work where substantial amounts of asbestos may be released.

Every employer who performs demolition or disposal work where substantial amounts of asbestos may be released must be authorized with a view to protecting the workers on whom s/he calls to execute the work.

The King shall determine the conditions and rules according to which the companies referred to in the first paragraph and the employers referred to in the second paragraph can be authorized, regarding the technical capacities necessary to execute the work, the workers' protective equipment, and their training and information.

By means of a Decree deliberated in the Council of Ministers, the King may expand the obligations referred to in the first and second paragraphs to those cases where the fact that ex-

tremely specialised work is not executed correctly can lead to serious problems for the workers. (9)]

[**Art. 6ter.** - The activities referred to in Article 30bis of the Act of 27 June 1969 amending the Decree of 28 December 1944 on the social security of the blue collar workers are subject to a prior declaration to the authority designated by the King for that purpose.

This declaration is made in accordance with the provisions of Article 30bis of the Act of 27 June 1969 and its implementing decrees

The King may also determine in which cases the declaration is required for the safety and health of workers. (24)]

### **CHAPTER III. – [Special provisions regarding employment at the same workplace or at adjoining or neighbouring workplaces (16)]**

[**Art. 7. - § 1.** Several undertakings or establishments sharing the same workplace where workers work, regardless whether they employ workers there themselves, shall be obliged to the following:

- 1° cooperate to implement the measures regarding the well-being of the workers in the execution of their work;
- 2° considering the nature of their work, coordinate their actions with a view to protecting the well-being of the workers at work against risks and to prevent such risks;
- 3° provide one another with the necessary information specifically regarding the following, as appropriate:
  - a) the risks for the well-being as well as the preventive measures and activities for every type of workstation and/or every type of function and/or every activity to the extent that this information is relevant to collaboration or coordination;
  - b) the measures that have been taken for first aid, fire-fighting and the evacuation of workers and the designated persons required to implement such measures.

**§ 2.** Several undertakings or establishments operating on adjacent or neighbouring workplaces situated on the same property and sharing equipment, access, evacuation or rescue provisions, shall cooperate and coordinate their actions regarding the use and, where applicable, the management of this equipment and these provisions which may affect the safety and health of the workers who work at these workplaces.

**§ 3.** The King may determine the manner in which the information referred to in § 1, 3° is provided.

He may also stipulate the rules for the collaboration and coordination referred to in §§ 1 and 2.

**§ 4.** The provisions of this Chapter shall not be applicable if the provisions of Chapter IV or V are applicable. (16)]

**[CHAPTER IV. – Special provisions regarding work executed by  
outside undertakings or temporary workers (9)]**

**[Section 1. – Work by outside undertakings or self-employed persons**

**Art. 8. - § 1.** The provisions of this section are applicable to contractors and sub-contractors who execute work in the employer's establishment, and to that employer him/herself.

**§ 2.** The following definitions shall apply for the application of the provisions of this section:

1° 'facility': the geographically demarcated area that forms part of an undertaking or establishment, and falls under the responsibility of an employer who him/herself employs workers there.

Plants operated by an employer are equated to facilities;

2° 'contractor': an outside employer or a self-employed person who performs work on behalf of an employer or with his/her consent at the latter's facility and in accordance with an agreement concluded with the latter;

3° 'sub-contractor': an outside employer or a self-employed person who, within the context of the agreement referred to in 2°, performs work in the facility of an employer, based on an agreement concluded with a contractor.

For the purposes of the provisions of this Section, an outside employer or a self-employed person who, within the context of the agreement referred to in the previous sub-paragraph 2°, performs work at the facility of an employer, based on an agreement concluded with a sub-contractor.

**Art.9. - § 1.** The employer in whose facility work is being done by contractors, and, where applicable, by sub-contractors, shall be obliged to the following:

1° provide the contractors with the necessary information for the benefit of the workers of the contractors and sub-contractors and for the benefit of the deliberation regarding the measures referred to in 4°.

This information specifically concerns the following:

a) the risks for the well-being of the workers and the protective and preventive measures and activities, both for the facility in general and for every type of work station and/or every type of function or activity to the extent that this information is relevant to the collaboration or coordination;

b) the measures that have been taken for first aid, fire fighting and evacuation of workers and the designated persons required to implement such measures;

2° ascertain that the workers referred to in 1° have received appropriate training and instructions inherent to his/her (the employer's) business activity;

3° take appropriate measures for the organisation of the reception, peculiar to his/her establishment, of the workers referred to in 1° and, where applicable, to entrust them to members of their hierarchical line;

4° coordinate the actions of contractors and sub-contractors and ensure the collaboration

between these contractors, sub-contractors and his/her facility in implementing the measures regarding the well-being of the workers in the execution of their work;

5° see to it that contractors meet their obligations regarding the workers' well-being in the execution of their work, pertaining to his/her facility.

**§ 2.** The employer in whose facility contractors and, where applicable, sub-contractors, are executing work, shall be obliged to do the following:

- 1° deter any contractor of whom s/he may know or of whom s/he establishes that this contractor fails to meet the obligations laid down by this act and its implementation decrees aimed at protecting the workers.
- 2° conclude an agreement with every contractor in which the following provisions are specifically included:
  - a) the contractor undertakes to meet his/her obligations and to make his/her sub-contractors meet the obligations regarding the workers' well-being at work pertaining to the facility where s/he executes the work;
  - b) if the contractor fails to meet or inadequately meets the obligations referred to in a), the employer in whose facility the work is executed, can, at the expense of the contractor, take the necessary measures him/herself in the cases stipulated in the agreement, and at the expense of the contractor;
  - c) the contractor who relies on (a) sub-contractor(s) for the execution of work at the facility of an employer, undertakes to incorporate in the agreement (s) with this (these) sub-contractor(s) the provisions as referred to under a) and b), which, in particular, entails that if the sub-contractor fails to meet or inadequately meets the obligations referred to in a), s/he can,, take the necessary measures him/herself in the cases stipulated in agreement at the expense of the sub-contractor;
- 3° after having given the contractor a notice of default, him/herself immediately take the necessary measures regarding the workers' well-being at work pertaining to the facility if the contractor does not take these measures or meets them inadequately.

**Art.10. - § 1.** The contractors and, where applicable, the sub-contractors who execute the work at the facility of an employer shall be obliged to do the following:

- 1° meet and make their sub-contractors meet their obligations regarding the workers' well-being in the execution of their work, pertaining to the facility where they execute their work;
- 2° provide the information referred to in Article 9, § 1, 1° to their workers and sub-contractor(s);
- 3° provide the necessary information regarding the risks inherent to the work to the employer where they will execute the work;
- 4° cooperate to the coordination and collaboration referred to in Article 9, § 1, 4°.

**§ 2.** The contractors and, where applicable, the sub-contractors have the same obligations towards their sub-contractors as the employer, in application of Article 9, § 2 has towards the contractors.

**Art. 11.** – In derogation from Articles 9, § 2, 2°b) and 10 § 2, a contractor or, where applicable, a sub-contractor, can agree with the employer in whose facility s/he executes the work, that, on behalf of and at the expense of the contractor, the employer shall ensure the compliance of the measures regarding the workers' well-being in the execution of their work pertaining to the facility.

**Art. 12. - § 1.** The King may do the following:

- 1° declare the obligations of Articles 9 and 10 applicable to the employer in whose facility the work is being executed by employers or self-employed persons, without them having concluded an agreement with the first-named employer, and to those employers or self-employed persons, when this work is executed in circumstances similar to those referred to in Articles 9 and 10;
- 2° determine the manner in which the information referred to in Articles 9, § 1, 1° and 10, § 1, 2° and 3° is provided;
- 3° establish more specific rules regarding coordination and collaboration;
- 4° determine which obligations regarding the workers' well-being in the execution of their work are inherent to the facility where contractors and, where applicable, sub-contractors, execute work;
- 5° determine in further detail the obligations of the employers in whose facility contractors and, where applicable, sub-contractors, execute work and the obligations of these contractors and sub-contractors.

**§ 2.** The King may also determine under which terms and in accordance with which specific rules the employers referred to in Article 9, § 1 have to inform and train the workers of contractors and sub-contractors.

**§ 3.** The manner in which the information referred to in § 1, 2° is provided, the further specific rules referred to in § 1, 3°, or the terms referred to in § 2 can be established, for the employers for whom the act of 5 December 1968 regarding the collective labour agreements and the joint committees is applicable, in the case of a collective labour agreement concluded in a joint committee or in the National Labour Council which has been declared generally binding, and for the other employers, in the case of an agreement concluded between the organizations that represent the respective employers and workers and the Minister responsible for the workers' well-being at work.

**§ 4.** The King shall take the decrees referred to in §§ 1 and 2 pursuant to the advice of the Minister responsible for self-employed persons, if these decrees can be applicable to self-employed persons (16)]

## **[Section 2. – Work by temporary workers for user undertakings**

**Art. 12bis.** – The provisions of this section are applicable to user undertakings and temporary agencies, as referred to in the act of 24 July 1987 regarding temporary work, temporary employment and the provision of workers to user undertakings.

**[Art. 12bis/1.** – A centralized database is established in accordance with the act of 8 December 1992 on the protection of privacy in relation to the processing of personal data. The main objective of this database is to allow the follow-up of health assessments of temporary work-

ers, avoid unnecessary repetition of health assessments and facilitate data exchange.

The database referred to in the first paragraph contains the identification data of the temporary worker, the temporary agency and the prevention advisor-occupational doctor, the nature of the work station and the associated risks, and the decision concerning the temporary worker's medical fitness with regard to their exposure to one or more risks. These data are kept for a period of five years.

The health data which might have been included in the database referred to in the first paragraph may only be processed under the responsibility of a healthcare professional.

The King shall determine the body which shall be responsible for managing the database referred to in the first paragraph. (33)]

**Art. 12ter.** – Every user undertaking shall be obliged to refuse the services of the temporary agency of which s/he may know that it does not meet the obligations towards temporary workers as imposed by this act and by the act of 24 July 1987 regarding temporary work, temporary employment and the provision of workers to user undertakings, and the implementation decrees (of these acts).

The provision as referred to in the first paragraph, does not derogate from the obligations that the user undertaking has regarding temporary workers in terms of this act and the act of 24 July 1987 concerning temporary workers, temporary employment and the provision of workers to user undertakings, and the implementation decrees (of these acts).

**Art. 12quater.** – Every temporary agency is obliged to refuse to provide temporary workers to a user undertaking of whom it (the agency) may know that, as regards his temporary workers, this user undertaking does not comply with his obligations imposed by this act and the act of 24 July 1987 concerning temporary workers, temporary employment and the provision of workers to user undertakings, and the implementation decrees (of these acts).

The provision as referred to in the first paragraph, does not derogate from the obligation that the temporary agency has regarding temporary workers in terms of this act and the act of 24 July 1987 concerning temporary workers, temporary employment and the provision of workers to user undertakings, and the implementation decrees (of these acts). (7)]

**Art. 13.** – [The provisions of Chapter IV, Section 1 are not applicable to the temporary or mobile construction sites referred to in Chapter V. (7)]

## **CHAPTER V. – Special provisions regarding temporary or mobile construction sites**

### **Section 1. – Preliminary provisions**

**Art. 14.** – The following persons are involved in the obligations regarding work on temporary or mobile construction sites:

- 1° client;
- 2° project supervisor responsible for the design and the persons to whom s/he has entrusted certain assignments under a sub-contract;
- 3° project supervisor responsible for the execution;

- 4° project supervisor responsible for the supervision of the execution of a project and the persons to whom s/he has entrusted certain assignments under a sub-contract;
- 5° contractor;
- 6° coordinator for safety and health matters at the project preparation stage;
- 7° coordinator for safety and health matters at the project execution stage;
- 8° worker.

Whenever an architect, as referred to in the act of 20 February 1939 on the protection of the title and the profession of architects, fully or partly executes the assignments of the project supervisor responsible for the design, or of the project supervisor responsible for the supervision of the execution, this architect shall be obliged to comply with the obligations imposed by this act and its implementation decrees on these project supervisors.

**Art. 15.** – The persons who, in application of this Chapter, are in any way involved in the obligations regarding the work at a temporary or mobile construction site, shall apply the general principles of prevention referred to in Article 5.

## **Section 2. – Project preparation stage**

**Art. 16.** – The client or the project supervisor responsible for the design:

- 1° shall appoint a coordinator for safety and health matters at the project preparation stage for any construction site on which more than one contractor is present;
- 2° shall ensure that prior to the setting up of a construction site a safety and health plan is drawn up.

**Art. 17.** – During the design, study and execution stages of the project, the project supervisor responsible for the design or his/her sub-contractor and, where applicable, the client, shall take account of the general principles of prevention referred to in Articles 5 and 15, when architectural, technical or organisational aspects are being decided, in order to plan the various items or stages of work which are to take place simultaneously or in succession, as well as when estimating the period required for completing such work or work stages.

**Art. 18.** – The coordinator for safety and health matters at the project preparation stage, shall, in particular:

- 1° coordinate the implementation of the provisions of Article 17;
- 2° draw up, or cause to be drawn up, a safety and health plan, setting out the rules applicable to the construction site concerned, taking into account where necessary, the industrial activities taking place on the site; this plan must also include specific measures concerning work which falls within one or more of the categories determined by the King;
- 3° prepare a file with appropriate characteristics of the project containing relevant safety and health information to be taken into account during any subsequent works.

**Art. 19. - § 1.** The King shall determine the following:

- 1° the terms and detailed rules for the application of Article 16;

- 2° in which cases [(10) a safety and health plan is drawn up, its contents and specific application measures;
- 3° in which cases the obligations referred to in Articles 16 and 17 belong to the client and in which cases they belong to the project supervisor responsible for the design;
- 4° the terms that the coordinators for safety and health matters at the project preparation stage have to meet to exercise their function [including their training and the terms, and more specific rules regarding the organisation and possible recognition of this training, (9)], as well as their competences and the resources at their disposal;
- 5° the more specific obligations pertaining to the project preparations stage resulting from the Directives that have been laid down by the European Union, said rules relating to the client, the project supervisor responsible for the design and his/her sub-contractor and the coordinator for safety and health matters at the project preparation stage.

[When determining the terms, cases, obligations and more detailed rules referred to in the first paragraph, the King may make a distinction between construction sites according to scale, complexity or risk level, with a view to achieving an equivalent protection level for the workers. (10)]

§ 2. The decrees referred to in this Article shall be taken pursuant to the recommendation of the Minister responsible for small firms and traders, whenever they concern the profession and responsibilities of the architect.

### **Section 3. – Project execution stage**

**Art. 20.** – The client, the project supervisor responsible for the execution, or the project supervisor responsible for the supervision of the execution shall organise the coordination of the work of the various contractors and, where applicable, of other persons involved, as well as the collaboration between these various contractors, and, where applicable, other persons involved with a view to safety and health on the construction site:

- 1° when they work simultaneously on the construction site;
- 2° when they work in succession on the construction site.

The contractors and, where applicable, the other persons involved, shall be obliged to cooperate with this coordination and collaboration.

**Art. 21.** – The client, the project supervisor responsible for the execution or the project supervisor responsible for the supervision of the execution shall

- 1° appoint a coordinator for safety and health matters at the project execution stage, for any construction site on which more than one contractor is present;
- 2° *repealed* (24)

**Art.22.** – The coordinator for safety and health matters at the project execution stage shall

- 1° coordinate the implementation of the general principles of prevention and safety when technical or organisational aspects are being decided in order to plan the various items or stages of work which are to take place simultaneously or in succession, as well as when

estimating the period required for completing such work or work stages;

- 2° coordinate the implementation of the relevant provisions in order to ensure that contractors:
  - a) apply in a consistent manner the general principles of prevention, and the principles to be complied with during the project execution stage referred to in Articles 4, 5 and 15;
  - b) apply the safety and health plan referred to in Article 16, 2°;
- 3° make, or cause to be made, any adjustments required to the safety and health plan referred to in Article 16, 2° and the file referred to in Article 18, 3° to take account of the progress of the work and any changes which have occurred;
- 4° organise the collaboration and coordination of the contractors, including successive contractors on the same construction site, with a view to protecting workers, preventing accidents and occupational health hazards, and to provide reciprocal information;
- 5° coordinate arrangements to check that the working procedures are being implemented correctly;
- 6° take the steps necessary to ensure that only authorised persons are allowed onto the construction site.

**Art. 23.** – The King shall determine the following:

- 1° the terms, and detailed rules for the application of Articles 20 and 21;
- 2° in which cases the obligations referred to in Articles 20 and 21 belong to the client, in which cases they belong to the project supervisor responsible for the execution and in which cases they belong to the project supervisor responsible for the supervision of the execution;
- 3° *repealed* (24)
- 4° the terms that the coordinators for safety and health matters at the project execution stage have to meet to exercise their function [including their training and the terms, and the more specific rules regarding the organisation and possible recognition of this training, (9)] as well as their competences and the resources at their disposal;
- 5° the more specific obligations pertaining to the project execution stage resulting from the Directives that have been laid down by the European Union for:
  - a) the client;
  - b) the project supervisor responsible for the execution;
  - c) the project supervisor responsible for the supervision of the execution;
  - d) the sub-contractors of the project supervisor responsible for the supervision of the execution;
  - e) the coordinators for safety and health matters at the project execution stage;

f) the contractors.

[When determining the terms, cases, obligations and more specific rules, referred to in the first paragraph, the King may make a distinction between construction sites according to scale, complexity or risk level, with a view to achieving an equivalent protection level for the workers. (10)].

**Art. 24.** – The King shall determine the safety and health measures that should be respected by the contractors involved in the project execution stage.

**Art. 25.** – The project supervisor responsible for the execution is obliged to comply with all measures taken in implementation of Articles 23, 5° and 24, and to enforce these with all contractors and sub-contractors involved in the project execution stage.

**Art. 26.** – Every contractor is obliged to comply with all measures taken in implementation of Articles 23, 5° and 24, and to enforce these with (impose these on) every person who acted as sub-contractor for him/herself or for any other sub-contractor at any stage whatsoever, as well as with (on) any other person who provides him/her with workers.

**Art. 27.** – Every sub-contractor is obliged to comply with all measures taken in implementation of Articles 23, 5° and 24, and to enforce these with (impose these on) every person who acted as sub-contractor for him/herself, as well as with (on) any other person who provides him/her with workers.

**Art. 28.** – If the project supervisor responsible for the execution, the contractor or the sub-contractor enlists self-employed persons for the execution of certain work, they shall ensure that these self-employed persons comply with all measures taken in implementation of Articles 23, 5° and 24.

The self-employed persons are obliged to collaborate on the application of the measures pursuant Articles 23, 5° and 24.

**Art. 29.** – With a view to the application of the provisions of Articles 25, 26, 27 and 28 and depending on the case, the project supervisor responsible for the execution, the contractors or the sub-contractors, have the following obligations:

- 1° to exclude the contractors, sub-contractors or self-employed persons of whom they may know that these do not comply with the obligations imposed by this act and its implementation decrees;
- 2° to conclude an agreement with the contractors, sub-contractors or self-employed persons in which the following provisions have specifically been included:
  - a) the contractor, the sub-contractor or the self-employed person undertakes to comply with safety and health requirements on temporary or mobile construction sites;
  - b) if the contractor, sub-contractor or self-employed person does not comply with or inadequately complies with the requirements referred to in a), the project supervisor responsible for the execution or the contractors themselves may take the necessary safety and health measures on temporary or mobile construction sites in the cases determined in the agreement and at the expense of the person in default;
- 3° to take the necessary measures themselves, if the contractors, sub-contractors or self-

employed persons do not comply with or inadequately comply with the safety and health obligations on temporary or mobile construction sites, after having sent these contractors, sub-contractors or self-employed persons a notice of default.

**Art. 30.** – *repealed* (18)

**Art. 31.** – The employer is obliged to comply with all measures laid down for the implementation of Articles 23, 5° and 24 and to enforce (impose) these measures on his/her workers.

#### **[Section 4. - Presence Registration system**

**Art. 31bis.** - § 1. This Section shall apply to:

- 1° the employers referred to in Article 2, § 1, and equivalent persons engaged as a contractor or a subcontractor in the activities during the execution of the realization of the project;
- 2° the workers and assimilated persons referred to in Article 2, § 1, second paragraph, performing missions for the employers referred to in 1°;
- 3° the self-employed persons engaged as a contractor or a subcontractor in activities during the execution of the realization of the project;
- 4° the project supervisor responsible for the design, as defined in Article 3, § 1, 8°;
- 5° the project supervisor responsible for the execution, as defined in Article 3, § 1, 9°;
- 6° the project supervisor responsible for monitoring the execution, as defined in Article 3, § 1, 10°;
- 7° the co-ordinator for safety and health during the development phase of the design of the project, as defined in Article 3, § 1, 12°;
- 8° the co-ordinator for safety and health matters during the execution of the project, as defined in Article 3, § 1, 13°.

The contractor responsible for the declaration pursuant to Article 30bis of the Act of 27 June 1969 amending the Decree of 28 December 1944 on the social security for workers shall, for the purposes of this section, be assimilated to the project supervisor responsible for the execution.

**§ 2.** This section applies to temporary or mobile construction sites comprising activities amounting to a total value, excluding VAT, equal to or higher than [500.000 euro (31)].

For the purposes of this section, the term temporary or mobile construction site applies to any place where activities are executed as referred to under Article 30bis, § 1, 1°, a) of the Act of 27 June 1969 amending the Decree-Law of 28 December 1944 on the social security for workers.

The King may change the amount referred to in the first paragraph.

**Art. 31ter.** - § 1. For each temporary or mobile construction site, the presence of each natural person, as defined in Article 31bis, § 1, first paragraph, shall be registered:

- 1° by means of an electronic presence recording system, hereafter referred to as the registra-

tion system, or;

- 2° by using any other automatic recording mode or by putting it at the disposal of their subcontractors, if this device provides equivalent guarantees to the registration system referred to in 1 and evidence is provided that the persons who present themselves at the temporary or mobile construction site are actually registered.

The King shall, by decree deliberated in the Council of Ministers, fix the equivalent guarantees to which the registration referred to in the 2nd paragraph, must at least correspond.

The registration system referred to in subsection 1°, shall comprise:

- 1° a database: the database operated by the authorities collecting certain data in order to supervise and exploit them;
- 2° a registration device: the device allowing the registration and the transmission of these data to the database or a system allowing the registration of the above mentioned information and enabling its transmission to the database;
- 3° a means of registration: a means that any natural person should use to prove his/her identity when registering.

**§ 2.** The registration system referred to in § 1, first paragraph, 1°, and the registration mode, referred to in § 1, first paragraph, 2° shall provide the following data:

- 1° the identity data of the natural person;
- 2° depending on the case, the address or the geographical description of the location of the temporary or mobile construction site;
- 3° the capacity in which a natural person performs services on a temporary or mobile construction site;
- 4° the identity data of the employer, if the natural person is an employee;
- 5° if the natural person is a self-employed person, the identification data of the natural or legal person on whose behalf the work is performed;
- 6° the time of registration.

The data referred to in this article are social data of a personal nature as defined in Article 2, paragraph 6° of the Act of 15 January 1990 establishing and organizing a Social Security Crossroads Bank.

The data are sent to a database kept by the authority appointed by the King.

The Federal Public Service Employment, Labour and Social Dialogue is responsible for the processing of the data referred to in Article 1, § 4 of the Act of 8 December 1992 on the protection of privacy with regard to the processing of personal data.

The registration system guarantees that the data cannot be altered imperceptibly after they have been forwarded and that their integrity is upheld.

**§ 3.** Following the advice of the Commission for the protection of privacy, the King shall, by

decree deliberated in the Council of Ministers , determine the conditions and the specific further rules to which the registration shall have to comply and in particular:

- 1° the characteristics of the system;
- 2° the detailed rules for keeping the system up-to-date;
- 3° the information that the system should contain concerning the data that have to be recorded;
- 4° the arrangements for forwarding the data, in particular the forwarding timing;
- 5° the different means of registration and their technical specifications which are allowed to register;
- 6° the data that are not to be registered if they are already available electronically elsewhere for the authorities and can be used in the context of this act.

**Art. 31quater. - § 1.** The project supervisor responsible for the execution puts the registration system at the disposal of the contractor he calls in, unless it has been mutually agreed upon that the contractor applies another equivalent registration system as provided for in Article 31ter, § 1, subsection 2°.

Each contractor called in by the project supervisor responsible for the execution shall have to use the registration system made available to him by the project supervisor for the execution and shall have to make it available to the subcontractors that he calls in, or shall have to apply the registration mode as provided in Article 31ter, § 1, first paragraph, 2°.

Each subcontractor called in by a contractor referred to in the second paragraph is required to use the registration system made available to him by the contractor and to make it available to the subcontractors called in by him , or apply the registration mode referred to in Article 31ter, § 1, first paragraph, 2°.

Each subcontractor called in by a subcontractor referred to in the third paragraph, or called in by any subsequent subcontractor, shall use the registration system made available to him by the subcontractor he is bound to by agreement and shall make it available to the subcontractors called in by him, or apply the registration mode referred to in Article 31ter, § 1, first paragraph, 2°.

**§ 2.** If the registration occurs via a registration device on the construction site, the persons referred to in paragraph 1 shall be responsible for the delivery, installation and proper operation of the registration device on the temporary or mobile construction site.

If the registration occurs in a different place, they shall take the necessary measures to ensure that this registration offers the same guarantees as the registration that occurs on the site.

The King may, after consulting the Commission for the protection of personal privacy, detail further the measures referred to in this paragraph.

**Art. 31quinquies.** - Each contractor and each subcontractor guarantees that the data referred to in Article 31ter, § 2, first paragraph, relating to its undertaking are effectively and correctly registered and forwarded to the database.

Each contractor or subcontractor who calls in a subcontractor takes measures to ensure that

his co-contractor records all data effectively and correctly and forwards them to the database.

Each contractor and each subcontractor guarantees that every person entering the temporary or mobile construction site in his command is registered before entering the site.

The King may, after consulting the Commission for the protection of personal privacy and a by decree deliberated in the Council of Ministers, detail further the measures referred to in the second paragraph.

**Art. 31sexies.** - § 1. Each person referred to in Article 31bis, § 1, first paragraph, checking in at a temporary or mobile construction site, shall immediately and daily register at the construction site.

§ 2. The employer is responsible for the delivery to his workers of the means of registration, compatible with the registration device used on the construction site.

The project supervisor responsible for the execution, the contractor or the subcontractor calling in a self-employed person is responsible for the delivery to this self-employed person of the means of registration, compatible with the registration device used on the construction site.

The King shall, after consulting the Commission for the protection of privacy and by a decree deliberated in the Council of Ministers, determine who is responsible for the delivery of the means of registration for other persons.

The King shall, after consulting the Commission for the protection of privacy and by a decree deliberated in the Council of Ministers, also determine what is to be understood by 'compatible'.

§ 3. If the registration occurs in a place other than the construction site, § 1 does not apply.

In that case, the persons referred to in § 2, first to third paragraphs, shall take the necessary measures to ensure that this registration is actually happening and offers the same guarantees as the registration which occurs on the site.

The Minister of Employment checks whether the registration offers the same guarantees as the registration which is done on site.

**Art. 31septies.** - Notwithstanding the application of Article 14 of the Act of 15 January 1990 establishing and organizing a Social Security Crossroads Bank, the social inspectors and the social security institutions, subject to a prior authorization by the Social Security Department of the Social Security and Health Sectorial Committee under Article 37 of the Law, may consult, mutually exchange and use the information contained in the registration system, in connection with the exercise of the assignments allocated to them under the law.

The social inspectors may, on their own initiative or upon request, notify the information referred to in the first paragraph to foreign inspection services.

The King shall, after consulting the Commission for the protection of privacy and by a decree deliberated in the federal Council of Ministers, determine the terms and the further details under which the data can be consulted in the database by:

1° any person referred to in Article 31bis, § 1, first paragraph: for his own performances;

- 2° the client: for his construction site;
- 3° the public administration: in the case of a public contract;
- 4° the project supervisor responsible for the realisation: to perform its missions relating to the construction site;
- 5° the project supervisor responsible for monitoring the realisation: to perform its missions relating to the construction site;
- 6° the coordinator for safety and health matters during the execution of the construction work: to perform his mission in relation to the construction site.

**Art. 31octies.** - Liabilities associated with presence registration, held by the employer with application of this section, in accordance with Article 19 of the Act of 24 July 1987 on temporary work, temporary employment and the provision of workers for users, are at the expenses of the user.

## **Section 5. - Coordination Structure (25)]**

**Art. 32.** - The King shall determine when the scale of the construction site requires a coordination structure.

Taking into account the scale of the construction site and the risk level, he also determines the terms and specific rules regarding the institution of this coordination structure on the construction site.

### [[CHAPTER Vbis. –

### **Special provisions regarding the prevention of psychological risks at work, including stress, violence, harassment and sexual harassment at work**

#### **Section 1. – General**

##### Sub-section 1. — Definition of psychosocial risks at work

**Art. 32/1.** - For the purposes of this Act, « psychosocial risks at work » shall mean the probability that one or more worker(s) suffer(s) a psychological damage, which can also be accompanied by physical damage, resulting from exposure to some elements of the work organisation, job content, working conditions, living conditions at work and interpersonal relationships at work, on which the employer has an influence and which objectively involve a danger.

##### Sub-section 2. — Prevention measures

**Art. 32/2. - § 1.** The employer identifies situations that can lead to psychosocial risks at work, determines and assesses these risks.

He/She takes into account the situations that can lead to stress, violence, harassment and sexual harassment at work.

**§ 2.** In accordance with the general prevention principles set out in Article 5, the employer shall take, insofar as s/he has an influence on the danger, the necessary preventive measures in order to prevent situations and actions that can lead to psychosocial risks at work and to

prevent or limit the damage.

The minimum prevention measures applied to psychosocial risks at work are defined in Article 32quater, paragraph 3. They are taken after the Committee has been consulted, except for the procedures.

Within the framework of the measures referred to in paragraph 2, the employer shall implement procedures that are directly accessible to the worker who considers s/he has suffered damage within the meaning of Article 32/1, allowing him/her to ask for:

- a) an informal psychosocial intervention to the confidential counsellor or the prevention advisor referred to in Article 32sexies, consisting of informally looking for a solution through interviews or an intervention with a third party or conciliation;
- b) a formal psychosocial intervention to the prevention advisor referred to in Article 32sexies, § 1, consisting in asking the employer to take the appropriate collective and individual measures, following the analysis of the applicant's specific work situation and the measures suggested by this prevention advisor, which are also included in a notice which content is determined by the King.

These procedures are established after the Committee has given its agreement, according to Article 32quater, paragraphs 4 to 6 and, where appropriate, comply with the collective labour agreements prescribed as mandatory by Royal decree.

These procedures are without prejudice to the possibility, for the workers, to address directly the employer, a member of the hierarchical line, a member of the Committee or the union delegation in order to obtain an intervention from these people.

**§ 3.** The prevention advisor referred to in Article 32sexies, § 1, shall refuse the introduction of a request for a formal psychosocial intervention referred to in § 2, paragraph 3, b) when it is obvious that the situation described by the worker does not imply any psychosocial risk at work as defined in Article 32/1.

When a request for a formal psychosocial intervention that does not concern acts of violence or harassment or sexual harassment at work has mainly to do with risks of a collective nature, the prevention advisor informs the employer about it after a discussion with the worker, so that the employer takes the necessary collective measures.

When the employer includes a Committee or a union delegation, these collective measures shall be taken after the said bodies have been consulted.

When the employer does not take any collective measure within the time limit set by the King or if the worker considers that these measures do not suit his/her individual situation, the prevention advisor examines the request and forwards the notice referred to in § 2, paragraph 3, b) to the employer.

The provisions of paragraphs 2 to 4 are without prejudice to the obligation, for the prevention advisor, to propose measures to the employer which may have a protective dimension and are designed to address the risks of an individual nature in order to limit the damage to the physical or mental integrity of the worker who made the request.

**§ 4.** The employer shall take the appropriate prevention measures in order to eliminate the danger arising from a specific work situation or to prevent or limit the resulting damage inso-

far as he/she has an influence on the danger.

§ 5. The King may determine the terms and conditions of the risks analysis, the prevention measures and the procedures.

## **Section 2. – General provisions regarding violence, harassment and sexual harassment at work**

### Sub-section 1. — General provision and definition (26)]

[**Art. 32bis.** – The employers and workers and the persons who have been assimilated to them as referred to in Article 2, § 1, and the persons other than those persons referred to in Article 2, § 1 who come into contact with the workers in the execution of their work, shall refrain from any act of violence, harassment or sexual harassment at work.

The persons other than those persons referred to in Article 2, § 1 who come into contact with the workers in the execution of their work shall apply the provisions of Articles 32*decies* to 32*duodecies* with a view to their protection.

The King shall determine the terms, and more specific rules regarding the application of [this section (26)] to the workers of the outside enterprises who will be continuously present in the facility of the employer where the work is to be executed. (14)]

**Art. 32ter.** – For the purposes of this act, the following definitions shall apply:

- [1° violence at work: every act whereby a worker or another person to whom [this section (26)] is applicable, is psychologically or physically threatened or attacked during the execution of his/her work; (14)]
- [2° harassment at work: wrongful series of several behaviours, outside or within the undertaking or the organisation, taking place over a specific period of time, the goal or consequence of which is that the personality, dignity or physical or psychological integrity of a worker or of another person to whom [this section (26)] applies, is affected in the execution of his/her work, that his/her position is placed at risk or that a threatening, hostile, insulting, demeaning or hurtful environment is created manifesting particularly in words, threats, actions, gestures or one-sided communication. Such behaviour is frequently associated with [age, civil status, birth, wealth, religious or philosophical belief, political opinion, union belief, language, current or future health, a disability, physical or genetic trait, social origin, nationality, any alleged race, skin colour, descent, national or ethnic origin, gender, sexual orientation, gender identity and expression; (26)] (14)]
- [3° sexual harassment at work: any form of unwanted verbal, non-verbal or physical behaviour with a sexual connotation, the goal or consequence of which is a compromise of the dignity of a person, or the creation of a threatening, hostile, insulting or injurious environment. (14)]

All function titles used in this Chapter, such as prevention advisor or confidential counsellor, relate to both men and women.

[Insofar as [harassment or violence at work are associated (26)] with religion or beliefs, disabilities, age, sexual orientation, gender, race or ethnic origin, the stipulations of the Chapter are the transposition into Belgian law of the following:

- 1° Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
- 2° Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; (14)]
- [3° Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. (26)]

[Sub-section 2. — Specific prevention measures (26)]

**Art. 32<sup>quater</sup>**. – [In application of the general principles of prevention referred to in Article 5, the employer shall determine which measures must be taken to prevent violence, harassment and sexual harassment at work.

He shall determine these prevention measures based on a risk analysis and taking into account the nature of the activities and the size of the enterprise.

The minimum measures referred to in the second paragraph are the following:

- 1° material and organisational measures that can prevent violence, harassment and sexual harassment at work;
- 2° whenever an act is reported, the applicable procedures that specifically concern the following:
  - a) the reception of and advice to persons who declare to have been the object of violence, harassment or sexual harassment at work;
  - b) the specific rules according to which these persons can appeal to the prevention advisor [referred to in Article 32<sup>sexies</sup>, § 1 and the confidential counsellor; (26)]
  - c) a quick and completely impartial intervention by the confidential counsellor and the prevention advisor;
  - d) the reintegration of workers who have declared to have been the object of violence, harassment or sexual harassment at work and the guidance of these persons following reintegration;
- 3° the specific measures to protect workers who come into contact at work with persons other than those persons referred to in Article 2, § 1;
- 4° the obligations of the hierarchical line to prevent acts of violence, harassment and sexual harassment at work;
- 5° informing and training workers;
- 6° informing the committee.

The measures referred to in the third paragraph are taken pursuant to the committee's advice, with the exception of the measures referred to in 2°, which are established after the committee has given its consent.

If no agreement is reached, the employer shall, subject to the terms and in accordance with the detailed rules determined by the King, request the advice of the official charged with the supervision referred to in Article 80.

Without prejudice to the provisions governing the relationship between the government and the trade unions of its personnel, the employer can, if no agreement has been reached in accordance with the advice referred to in the fifth paragraph, take measures insofar as at least two-thirds of the member-representatives of the personnel members on the committee agree. (14)]

**[Art. 32quinquies** – The employer shall ensure that workers who, in the execution of their work, have been the object of an act of violence committed by a person other than those persons referred to in Article 2, § 1 of the act, and who are at the workplace, receive suitable psychological support from specialised services or institutions.

Without prejudice to other legal provisions, the employer bears the costs of the measure referred to in the first paragraph.

The King may determine the limits within which the costs referred to in the second paragraph are borne by the employer. (14)]

**[Art. 32sexies. - § 1.** In accordance with the provisions established in implementation of Chapter VI, the employer decides whether the tasks assigned to the prevention advisor in this Chapter shall be carried out by the internal service for prevention and protection at work or by an external service for prevention and protection at work.

If s/he entrusts these tasks to the internal service for prevention and protection at work, s/he shall, after prior agreement of all representatives of the members of personnel on the committee, appoint a prevention advisor specialised in the psychosocial aspects of work, including violence, harassment and sexual harassment at work.

[People who are part of the management staff cannot perform the function of specialized prevention advisor. (26)]

If no agreement is reached, the employer shall, subject to the terms, specific rules determined by the King, request the official charged with the supervision referred to in Article 80 for his advice

If, in accordance with the advice referred to in the third paragraph, there is still no agreement or if the employer employs fewer than 50 workers, the employer shall call upon a prevention advisor who is part of an external service for prevention and protection at work and who is specialised in the psycho-social aspects of work, including acts of violence, harassment and sexual harassment at work.

The employer who has a prevention advisor specialised in psycho-social aspects of work, including acts of violence, harassment and sexual harassment at work, in his/her internal service for prevention and protection at work, may make an additional appeal to an external service for prevention and protection at work.

The prevention advisor referred to in this paragraph may not simultaneously exercise the position of prevention advisor in occupational medicine.

**§ 2.** Where applicable and after prior agreement by all representatives of the members of personnel on the committee, the employer appoints one or more confidential counsellors.

[He removes them from office:

- 1° either on his/her own initiative, and after prior agreement by all representatives of the members of personnel on the Committee;
- 2° or on the request of all representatives of the members of personnel on the Committee. and with his agreement (26)]

If no agreement is reached on the appointment of the confidential counsellor or on removing him/her from office, and subject to the terms and specific rules determined by the King, the employer requests the advice of the official charged with supervision, before making a decision. If s/he does not follow this official's advice, s/he shall also inform the committee of the reasons for this.

If the employer only calls on a prevention advisor from an external service for prevention and protection at work, [at least one of the the confidential counsellors (26)] must be one of the employer's personnel if the employer employs more than 20 workers.

Confidential counsellors perform their duties with total autonomy and may experience no disadvantage because of their activities as confidential counsellors.

Confidential counsellors may not simultaneously exercise the function of prevention advisor in occupational medicine.

[The confidential counsellor who is part of the staff of the company in which he/she performs his/her function cannot be neither an employer delegate, nor a staff representative in the works council or Committee for prevention and protection at work or be part of the trade union delegation.

People who are part of the management staff cannot perform the function of confidential counsellor either. (26)]

The King shall determine the terms and specific rules regarding the confidential counsellor's legal position.

[§ 2/1. When all the members representing the workers in the Committee request it, the employer is obliged to appoint a confidential counsellor in accordance with the conditions and procedure referred to in § 2.

**§ 2/2** The missions of the confidential counsellor can also be carried out under the same conditions as mentioned in § 2, paragraph 4-9, by:

- 1° the prevention advisor referred to in § 1;
- 2° the prevention advisor of the internal service for prevention and protection at work referred to in Article 33, § 1, paragraph 2, following the conditions set by the King, except in the companies counting less than 20 workers in which the employer performs the func-

tion of prevention advisor and except when the person concerned or the Committee disagrees.

§ 2/3 For the purposes of this provision, « management staff » shall refer to the people in charge of the daily management of the company or institution having authority to represent and commit the employer, as well as the staff members directly reporting to these people, when they also assume daily management tasks. (26)]

§ 3. The King shall determine the assignments and the tasks of the prevention advisor and the confidential counsellor, as well as the training required to execute their assignment adequately. (14)]

[**Art. 32septies.** – § 1. Whenever the employer is informed of acts of violence, harassment or sexual harassment at work, he/she shall take appropriate measures, in accordance with the provisions of this chapter.

When the seriousness of the facts requires it, the employer takes the necessary protective measures.

If the worker has resorted to the procedure referred to in Article 32/2, § 2, paragraph 3, b, the employer shall take these protective measures, if need be, on the basis of the suggestions of the prevention advisor referred to in Article 32sexies, § 1, passed on pursuant to Article 32quinquiesdecies, paragraph 2, 3°, c, before the latter gives him/her the recommendation referred to in Article 32/2, § 2, paragraph 3, b.

§ 2. The prevention advisor has to refer to the official charged with supervision when:

- 1° the employer does not take the necessary protective measures referred to in § 1;
- 2° s/he notices, after having submitted a recommendation, that the employer did not take any measure or did not take the appropriate measures and:
  - a) either there is a grave and immediate danger to the worker;
  - b) or the person who is the subject of the complaint is the employer or is part of the management staff as defined in Article 32sexies, § 2/3. (26)]

**Art. 32octies.** – *repealed* (26)]

[Sub-section 3. — (26)]

Protection [of the employers, workers and other persons  
present at the workplace(14)] against violence, harassment  
and sexual harassment at work

[**Art. 32nonies.** – [The worker who considers him/herself the object of violence, harassment or sexual harassment at work may, according to the terms and conditions established pursuant to Article 32/2, § 5, address the prevention advisor or the confidential counsellor referred to in Article 32sexies to ask for an informal psychosocial intervention or address the prevention advisor referred to in Article 32sexies, § 1, to ask for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work. (26)]

The worker referred to in the first paragraph can also address the official charged with the supervision referred to in Article 80, who, in accordance with [the Social Criminal Code

(20)], examines whether the employer complies with the stipulations of this Chapter and its implementation decrees. (14)]

**[Art. 32decies. - § 1.** [Without prejudice to the application of Articles 1724 to 1737, about mediation, of the Judicial Code, can anyone who demonstrate an interest can institute a claim before a competent court to enforce compliance with the provisions of this Section. (27)]

If the labour court establishes that the employer has compiled a procedure to deal with [a request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work (27)] in application of this act and its implementation decrees and it establishes that this procedure can be legally applied, the court can, if it is approached by the worker, order this worker to apply the abovementioned procedure. In that case, the matter is suspended until the end of the procedure.

**[§ 1/1.** Any person having a legitimate interest can start proceedings before the Labour court to claim damages.

To compensate for the material and moral damage caused by violence or harassment or sexual harassment at work, the perpetrator owes the victim damages corresponding, depending on the victim's choice:

- 1° either to the actual damage suffered by the victim, on the condition that he/she proves the extent of this damage;
- 2° or to a lump sum equal to a three months gross salary. The amount shall reach a six months gross salary in one of the three following cases:
  - a) the behaviours are linked to a discrimination criterion referred to in the laws aiming at combating discriminations;
  - b) the perpetrator is in an authority relationship with the victim;
  - c) because of the gravity of the facts.

The lump sum referred to in paragraph 2, 2°, can only be granted to the persons referred to in Article 2, § 1, who are in contact with the workers during the exercise of their work when these persons act outside the scope of their professional activity.

The gross monthly salary of the self-employed worker is calculated by taking into account the gross taxable income mentioned on the most recent earnings sheet of the income tax, divided by twelve.

The gross monthly salary used as a basis to set the amount of the lump sum referred to in paragraph 2, 2°, cannot exceed the amount of the wages mentioned in Article 39 of the Act of 10 April 1971 on industrial accidents, divided by twelve. (27)]

**§ 2.** At the request of the person who declares that s/he is the object of acts of violence, harassment or sexual harassment at work or of the organisations and institutions referred to in Article 32duodecies, the Chairperson of the labour court shall establish the existence of these acts and [make a cease-and-desist order to the perpetrator (27)], within a term that s/he determines, even if these acts fall under criminal law.

[The claim in the first paragraph is instituted as an application *inter partes* and dealt with in interlocutory proceedings. (27)]

A ruling is given on the claim, notwithstanding prosecution due to the same acts before any criminal court.

Within five days of the pronouncement of the ruling, the Clerk of the Court sends an unsigned copy of the ruling to every party and the labour prosecutor by ordinary post.

The Chairperson of the labour court can lift the cease-and-desist order as soon as it has been proven that the acts of violence, harassment or sexual harassment at work have ceased.

The Chairperson of the labour court can order that his/her decision or the summary that s/he compiles be put on a notice board for a term that s/he determines and, where applicable, both inside and outside the employer's establishments and that his/her judgement or the summary that s/he compiles be published in newspapers or in any other manner. This is all done at the perpetrator's expenses. These publication measures may, however, only be imposed if they can contribute to putting an end to the objectionable act or its impact.

**§ 3.** Measures can be imposed on the employer with the purpose of enforcing compliance with the stipulations [of this Section (27)] and its implementation decrees.

The measures referred to in the first paragraph specifically concern the following:

- 1° application of the prevention measures;
- 2° measures that see to it that an actual end is put to the acts of violence, harassment or sexual harassment at work.

[These measures can be provisional.]

The claim regarding these measures is subject to the same rules of procedure as referred to in § 2, paragraphs 2 to 4. (27)] (15)]

**Art. 32undecies.** – Where a person who can show an interest before the competent court submits facts leading one to believe that the existence of acts of violence, harassment or sexual harassment at work is possible, the burden of proving that there is no violence, harassment or sexual harassment at work lies with the defendant.

The first paragraph is not applicable to criminal proceedings and does not derogate from other more favourable legal provisions regarding the burden of proof.

**Art. 32duodecies.** – The following persons may lawfully act to defend the rights of the persons to whom [this Section (27)] is applicable and in all disputes to which application [of this Section (27)] may lead:

- 1° the representative workers' and employers' organisations, such as those that have been determined in Article 3 of the act of 5 December 1968 on Collective Labour Agreements and Joint Committees;
- 2° the representative trade unions in the sense of Article 7 of the act of 19 December 1974 on relations between public authorities and the trade unions representing their staff;
- 3° the representative trade unions in the appointed body of trade union deliberations for the administration, services and institutions to which the act of 19 December 1974 on relations between public authorities and the trade unions representing their staff is not applicable;

4° [the foundations and the non-profit organisations referred to in the act of 27 June 1921 on non-profit organisations, international non-profit organisations and foundations (27)], with at least three years of legal personality on the day that the claim is instituted where acts of violence, harassment or sexual harassment compromise what they strive for in terms of their Articles of Association;

[5° the Inter-federal Centre for Equal Opportunities and Opposition to Racism and Discrimination created by the cooperation agreement of June 12, 2013; (24)]

[6° the Institute for the Equality of Women and Men instituted by the act of 16 December 2002, in disputes regarding gender. (14)]

[The authority of the organisations referred to in the first paragraph does not derogate from the right of the person who is of the opinion that s/he is the object of violence, harassment or sexual harassment at work to act him/herself or intervene in the dispute. (14)]

However, the organisations referred to in the first paragraph can only exercise their authority on condition that the person [who is of the opinion that s/he is the object of violence, harassment or sexual harassment at work (14)] is agreeable.

**Art. 32tredecies.** [§ 1. Except for reasons that are alien to the request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work, the complaint, legal claim or witness statement, the employer may neither terminate the legal relationship of the workers referred to in § 1/1, nor take, after the employment relationship has ended, any measure detrimental to the same workers.

Moreover, during the existence of labour relationships, the employer cannot take any measure detrimental to the same workers that would be linked to the request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work, to the complaint, the legal proceedings or the testimony. The measure taken in connection with the obligation in Article 32septies showing a proportional and reasonable character is not considered as a detrimental measure.

**§1/1.** Shall benefit from the protection of paragraph 1:

- 1° the worker who has lodged a request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work in accordance with the applicable procedures regarding the undertaking or establishment employing him/her;
- 2° the worker who has lodged a complaint with the official charged with the supervision referred to in Article 80 by which s/he asks the intervention of the official for one of the following reasons:
  - a) the employer did not appoint any prevention advisor specialized in the psychosocial aspects of work;
  - b) the employer did not implement any procedure according to section 2 of this chapter;
  - c) the worker feels that the request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work did not succeed in ending the acts of violence or harassment or sexual harassment at work;

- d) the worker feels that the procedures referred to in section 2 of this chapter have not been legally applied;
- 3° the worker who has lodged a complaint with the police services, a member of the public ministry or the examining magistrate in which s/he asks for an intervention for one of the following reasons:
- a) the employer did not appoint any prevention advisor specialized in the psychosocial aspects of work;
  - b) the employer did not implement any procedure according to section 2 of this chapter;
  - c) the worker feels that the request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work did not succeed in ending the acts of violence or harassment or sexual harassment at work;
  - d) the worker feels that the procedures referred to in section 2 of this chapter have not been legally applied;
  - e) the internal procedure is not appropriate, considering the seriousness of the facts s/he has undergone;
- 4° the worker who institutes a legal claim or for whom a legal claim is instituted aimed at enforcing the provisions of section 2 of this chapter;
- 5° the worker who intervenes as a witness for the investigation of the examination of the request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work, by informing the prevention advisor referred to in Article 32*sexies*, § 1, in a signed and dated document, of the acts that s/he him/herself has seen or heard and that are related to the situation that is the object of the request, or by acting as a witness *in jure*.

**§ 2.** The burden of proof of the reasons and justification referred to in § 1 lies with the employer if the labour relationship is broken or measures are taken within twelve months after the filing of the request for intervention, the complaint has been lodged or the witness statement made.

This burden of proof likewise lies with the employer when this breakdown intervenes or measure is taken after a legal claim was instituted, until three months after the judgement became a definitive ruling. (26)]

**§ 3.** Where the employer terminates the labour relationship or unilaterally amends the labour terms and conditions in contravention of the stipulations of § 1, the worker, or the workers' organisation of which s/he is a member, can request that s/he be re-employed in the enterprise or the institution under the terms and conditions that existed [before the breakdown or modification (26)].

The request must be made by registered letter within thirty days following the date of the dismissal notice, of the termination without notice or of the unilateral amendment of the labour terms and conditions. The employer must respond within thirty days of the notification of the letter regarding the request.

The employer who again employs the worker in the enterprise or institution or re-instates him/her to exercise his/her position under the terms and conditions that existed [before the breakdown or modification (26)], shall have to pay the wages lost as a result of the dismissal or amendment to the labour terms and conditions, as well as the employers' and workers' contribution for those wages. (5)]

[§ 4. The employer must pay the worker compensation in the following cases:

- 1° where the worker is not re-employed in the enterprise or cannot exercise his/her position under the terms and conditions that existed [before the breakdown or modification (26)] after the request referred to in § 3, first paragraph and the judge ruled that the dismissal or unilateral amendment of the labour terms and conditions infringes on the stipulations of § 1;
- 2° where the worker has not submitted the request referred to in § 3, first paragraph and the judge has ruled that the dismissal or [the measure taken by the employer (26)] infringes on the stipulations of § 1.

Depending on the worker's choice, this payment is equal either to a fixed amount that corresponds to six months' gross wages, or the damage actually suffered by the worker. In the latter case, the worker must prove the extent of this damage. (14)]

[§ 5. *repealed* (14)]

[§ 6. [Where a procedure on the grounds of a request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work is started in the enterprise or institution, the prevention advisor referred to in Article 32*sexies*, § 1, informs the employer, as soon as the request is accepted according to the terms set by the King, of the fact that the worker who has lodged the request or the worker who has made a witness statement, enjoys the protection referred to in this Article as of the moment that this request is received on the condition that it has been accepted, or as of the moment that the witness statement was made.

The King shall define the terms for the receipt of the request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work. (26)]

The witness *in jure* him/herself informs the employer that the protection referred to in this Article is applicable to him/her as of the moment of the subpoena or the summons to act as witness *in jure*. The subpoena and the summons state that the worker must inform his/her employer of this protection.

In cases other than these referred to [in the first and third paragraphs (26)], the person who receives the complaint is obliged to inform the employer as quickly as possible of the fact that a complaint was lodged and that the respective persons therefore enjoy the protection referred to in this Article as of the moment that the complaint [,in accordance with the rules in § 1/1, 2° and 3°, is received by its addressee. (26)] (14)]

[When a worker or an organisation referred to in Article 32*duodecies*, paragraph 1, starts legal proceedings aimed at enforcing the provisions of this section, the worker benefits from the protection from the date on which the summons have been notified or on which the request has been filed to the Registry. It is the workers' responsibility to inform his/her employer that s/he benefits from the protection. (26)]

### **[[Section 3. – Communication of information and access to documents**

**Art. 32quaterdecies.** – The worker asking for a formal psychosocial intervention receives a copy of his/her request.

Within the context of a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work, the accused and the witnesses receive copies of their statements.

**Art. 32quinquiesdecies.** –The prevention advisor referred to in Article 32sexies, § 1, and the confidential counsellor are bound by their professional secrecy as referred to in Article 458 of the Criminal Code.

In derogation from this obligation, the following provisions are enforced:

- 1° within the framework of the informal psychosocial intervention, inform the prevention advisor and the confidential counsellor the persons who participate in the intervention of the information which, in their opinion, is relevant to the good course of this intervention;
- 2° within the framework of the examination of the request for a formal psychosocial intervention from a worker:
  - a) the prevention advisor informs the employer of the complainant's identity as soon as the request is accepted, except within the framework of the information referred to in Article 32/2, § 3, paragraph 2;
  - b) the prevention advisor shall inform the employer in writing of the risks of a collective nature arising from the request pursuant to Article 32/2, § 3, paragraph 2, and shall, if need be, forward to the employer written suggestions for individual measures pursuant to Article 32/2, § 3, paragraph 5;
  - c) submits the prevention advisor a written recommendation on the results of the impartial investigation of the request , and the contents of which are determined by the King, to the employer and to the confidential counsellor when s/he intervened for the same situation within the context of an informal psychosocial intervention;
  - d) the prevention advisor shall forward to the complainant and the other directly involved person written suggestions for preventive measures about the specific work situation, included in the recommendation referred to in point c) and their justifications; the latter should facilitate the understanding of the situation and the acceptance of the procedure outcome;
  - e) the prevention advisor who is part of an external service for prevention and protection at work forwards to the prevention advisor of the internal service for prevention and protection at work the written suggestions for preventive measures about the specific work situation and suggestions aimed at preventing any recurrence of the facts in other work situations, included in the recommendation referred to in point c), and their justifications; the latter should allow him/her to assume his/her coordination tasks;

- 3° without prejudice to the application of point 2°, the prevention advisor shall provide the following information within the framework of the examination of the request for a formal psychosocial intervention introduced by a worker following acts of violence or harassment or sexual harassment at work:
- a) s/he shall communicate to the employer the identity of the witnesses referred to in Article 32*tredecies*, § 1/1, 5°;
  - b) s/he informs the accused of the facts with which s/he is charged;
  - c) s/he shall forward the proposals for protective measures to the employer before delivering his/her recommendation referred to in point 2°, c, if the seriousness of the offences requires it;
  - d) s/he furnishes every person who can show that he s/has an interest a copy of the document in which the employer was informed of the fact that a request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work was lodged, and a copy of the request for the intervention of the official charged with supervision referred to in Article 32*septies*;
  - e) s/he shall communicate to the Centre for Equal Opportunities and Opposition to Racism and to the Institute for the Equality of Women and Men the recommendation referred to in point 2°, c), when these institutions ask for it in writing, provided that the worker has given his/her written consent about this request, however without that the Centre and the Institute can forward this recommendation to the worker;
- 4° the prevention advisor keeps at the disposal of the official charged with supervision the individual dossier concerning the request, including the documents that contain the statements of the persons heard by the authorised prevention advisor within the framework of a request for a formal psychosocial intervention;
- 5° the prevention advisor keeps at the disposal of the Public prosecutor the individual request file, including the documents containing the statements of the persons heard by the prevention advisor within the framework of a request for a formal psychosocial intervention, provided that these persons, in their statements, gave their consent to such communication;
- 6° the prevention advisor and the confidential counsellor can exchange the information they deem necessary with the prevention advisor-occupational doctor so that appropriate actions can be taken regarding a worker who considers s/he suffers damage resulting from psychosocial risks at work provided that the worker has given his/her written consent for this exchange;
- 7° the prevention advisor and the confidential counsellor exchange with each other the information needed to fulfil their missions.

**Art. 32*sexiesdecies*.** – The employer shall furnish a copy of the prevention advisor’s recommendation referred to in Article 32*quinquiesdecies*, second paragraph, 2°, c) only to the following persons:

- 1° the worker towards whom the employer in application of this Chapter, considers taking measures that can amend the labour terms and conditions;

2° the person who made the request for a formal psychosocial intervention following acts of violence or harassment or sexual harassment at work or the person who is the subject of the complaint in this request, in the event that they consider instituting a legal claim.

If s/he deems it necessary for the application of preventive measures, s/he provides the members of the hierarchical line of the complainant with the elements of the recommendation needed to achieve this goal.

The legislation on the publicity of the administrative acts does not apply:

- 1° to the copy of the recommendation of the prevention advisor referred to in paragraph 1 regarding the employer, who is an administrative authority within the meaning of that legislation;
- 2° to the documents in the individual request file that are in the possession of the official charged with supervision. (26)]

**Art. 32septiesdecies.** – In derogation from Article 10 of the act of 8 December 1992 on the protection of privacy in relation to the processing of personal data, the respective person has no access to the personal data and the origin of the data that have been included in the following documents:

- 1° the notes that the [prevention advisor referred to in Article 32sexies, § 1, (26)] and the confidential counsellor made during the interviews conducted [within the framework of the informal psychosocial intervention (26)], subject to the application of Article 32quinquiesdecies, second paragraph, 1°;
- [2° the request for a formal psychosocial intervention, subject to the application of Article 32quaterdecies, first paragraph, and Article 32quinquiesdecies, second paragraph, 3°; b) (26)]
- 3° the documents that contain the statements of the persons whom the [prevention advisor referred to in Article 32sexies, § 1, (26)] heard during the investigation of [the request for a formal psychosocial intervention (26)], subject to the application of Article 32quaterdecies, second paragraph;
- [4° the recommendation of the prevention advisor referred to in Article 32sexies, § 1, subject to the application of Article 32quinquiesdecies, second paragraph, 2°, c), d), e), and Article 32sexiesdecies; (26)]
- 5° the special data of personal nature established by the [prevention advisor referred to in Article 32sexies, § 1, (26)] or the confidential counsellor pursuant to the steps that they undertook and which are reserved exclusively for them. (14)]

**[Art. 32octiesdecies.** - The clerks of the labour court and of the labour court of appeal inform, by ordinary letter, the service appointed by the King of the decisions taken pursuant to Article 578, 11° of the Judicial Code.

The clerks of the correctional court and of the court of appeal inform, by ordinary letter, the service appointed by the King of the decisions regarding crimes [arising from the application of this chapter (26)].

The clerk of the Council of State, administrative department, informs by ordinary letter the service appointed by the King of the judgements relating to matters in which resources regarding the application of this Chapter are invoked. (14)]

**[Art. 32noniesdecies.** – The minimum elements to be incorporated into the labour regulations shall be the following:

- 1° names, address and telephone number of the prevention advisor referred to in Article 32sexies, § 1, or the service for prevention and protection at work for which this advisor carries out tasks, and, where applicable, those of the confidential counsellor;
- 2° the procedures referred to in Article 32/2, § 2, second paragraph, and 32quater, § 1, third paragraph, 2°.

**Art. 32vicies.** - The official charged with supervision keeps at the disposal of the Public prosecutor the individual request file, including the documents containing the statements of the persons heard by the prevention advisor within the framework of a request for a formal psychosocial intervention, provided that these persons, in their statements, gave their consent to such communication. (26)]

## **CHAPTER VI. – Prevention and protection services**

### **Section 1. – General provisions**

**Art. 33. - § 1.** Every employer is obliged to establish an Internal Service for Prevention and Protection at work.

For this purpose, every employer has at least one prevention counsellor.

In companies with fewer than twenty workers, the employer himself may exercise the function of prevention counsellor.

This service assists the employer and workers in applying the measures referred to in Articles [4 to 32vicies (26)], regarding workers' well-being at work.

**§ 2.** If the internal service referred to in § 1 cannot itself execute all assignments with which it has been entrusted in accordance with this act and the executive decrees, the employer must call upon a recognised external service for prevention and protection at work.

**§ 3.** The King may establish the detailed rules regarding the operation, the required skills and the assignments of the Internal Service for Prevention and Protection at work.

### **Section 2. – Specific provisions regarding the Internal Service for Prevention and Protection at work**

**Art. 34.** – For the implementation of this section, the technical operational unit and the legal entity are determined in accordance with Articles 49 and 50.

**Art. 35. - § 1.** If the legal entity consists of one technical operational unit, one Service is established.

**§ 2.** If the legal entity consists of multiple technical operational units, each of which employs too few workers to establish separate Committees, one Service is established.

**§ 3.** If the legal unit consists of multiple technical operational units and if more than one Committee must be established, one Service is established with a department for every part of the undertaking for which a Committee must be established.

**§ 4.** If the technical operational unit is formed by more than one legal entity, only one Service shall be established for the technical operational unit in its entirety.

**Art. 36. - § 1.** In government services that are subject to the act of 19 December 1974 on relations between public authorities and the trade unions representing their staff, one Service is established for every area of a high consultation committee.

However, if various ministries or public-law legal persons fall under one high consultation committee, a Service is established for every ministry or for every public-law legal person.

If at least fifty personnel members are employed in the government services that form the area of one basic consultation committee, the service referred to in the first paragraph can consist of departments per basic consultation committee.

**§ 2.** In the government services not subject to the act of 19 December 1974 on relations between public authorities and the trade unions representing their staff but to which legal or regulatory provisions that determine their trade union status and that provide for measures concerning consultation regarding safety, health and embellishment of the workplaces are applicable, one internal service is established for every government service.

This service may consist of departments where multiple bodies that are competent for consultation regarding safety and health have been established, on condition that each body involves at least fifty persons.

**§ 3.** In derogation from this Article, Article 35 is applicable to the government services whose personnel is not subject to legal or regulatory provisions that determine their trade union status and that do not provide for measures concerning consultation regarding safety, health and embellishment of the workplaces.

**Art. 37. –** The Service has one or more prevention counsellors. If there is more than one prevention counsellor in the Service, one of them shall be responsible for managing the Service. If the Service consists of departments, in accordance with Article 35, § 3, or Article 36, § 1, third paragraph, and § 2, second paragraph, then at least one prevention counsellor is designated for the whole Service and per department. If there is more than one prevention counsellor in a department, then one of them is responsible for managing the department.

**[Art. 38. - § 1.** The King may determine the terms, conditions and detailed rules in accordance with which an employer or group of employers can be allowed to establish a joint Service for Prevention and Protection at work.

**§ 2.** The King may authorise an employer or a group of employers to establish a joint Service. Where this is done, he determines its competence, composition, and working method. (1)]

**Art. 39. –** The King shall determine the terms with which the persons exercising the function of prevention counsellor have to comply.

The terms regarding the employers who themselves exercise the function of prevention counsellor in implementation of Article 33 § 1, third paragraph, can only be determined pursuant to the advice by the minister under whose competence the small firms and traders fall.

[The King shall determine the terms required with regard to the training needed to exercise the function of prevention counsellor, and the terms, conditions and specific rules regarding the organisation for the possible recognition of the training. (9)]

**Section 3. – Specific provisions regarding the external Services for Prevention and Protection at work and their sections responsible medical supervision of the workers and the external services for technical inspections of the workplace**

**Art. 40. - § 1.** External Services for Prevention and Protection at work are established. These services have one or more prevention counsellors.

Individual sections that are responsible for the workers' medical supervision are established in the external services for Prevention and Protection at work.

**§ 2.** Likewise, external Services for technical inspection at the workplace are also established.

**§ 3.** The King shall determine the terms subject to which and the detailed rules in accordance with which an external Service as referred to in §§ 1 and 2 can be authorised.

He also establishes the rules regarding its organisation, assignments and legal status, as well as those regarding the competencies of the prevention counsellors. [Thus, He shall define the method of financing of the external services for prevention and protection at work in particular by establishing minimum rates which may vary depending on the nature of the activities of the employers, and on the basis of which the lump-sum contributions will be calculated the employers will have to pay per worker to their external service, covering the performances of that external service, which He shall define. For employers employing a maximum of five workers, adequate minimum rates shall be provided. (30)]

[The King may establish the terms that the training of the prevention counsellors must meet and the terms, conditions and detailed rules concerning the organisation of and the possible authorisation for this training. (9)]

The sections responsible for the medical supervision of the workers have separate accounting and compile reports of their activities regarding medical supervision and their prevention assignments, they work under the authority of a manager who is a doctor in occupational medicine and can be authorised by the Communities.

**Section 4. – Co-ordination within the context of the Services for Prevention and Protection at work**

**Art. 41. –** The King may establish the measures to promote collaboration between the following:

- 1° the different departments of which the internal or external service consists;
- 2° the internal service and the external service;
- 3° the external services mutually.

In any event, this collaboration must lead to joint action by the different services, which aims to promote prevention in undertakings.

## Section 5. Joint provisions

**Art. 42.** – The prevention counsellors of the internal Service for Prevention and Protection at work belong to the staff of the employer, except in the case referred to in Article 33, § 1, third paragraph.

The external Service for Prevention and Protection at work must establish a contractual relationship with the prevention counsellor to whom it appeals in such a way that it offers sufficient guarantees to arrive at a sustainable collaboration between the employer and the prevention counsellor.

**Art. 43.** - The prevention counsellors fulfil their assignment in total independence as regards the employer and workers.

They may experience no disadvantage in their activities as prevention counsellors.

### CHAPTER VII. – The High Council for Prevention and Safety at Work

**Art. 44.** – A High Council is established by the Ministry of Employment and Labour.

The High Council is composed of the following:

- 1° a chairperson and a vice-chairperson;
- 2° an equal number of representatives of the employers' and workers' organisations.
- 3° one or more secretaries.

Only the representatives of the employers' and workers' organisations have voting rights.

[The most representative employers' and workers' organisations are represented in the High Council in the same way as in the National Labour Council[, including their number of mandates (19)]. (1)]

The King may determine which other persons participate in the High Council's work as permanent or temporary experts.

**Art. 45. - § 1.** The representatives of the employers' and workers' organisations, the secretaries and the persons who participate as permanent experts in the High Council's work are appointed by the King and in the way that he determines.

**§ 2.** The chairperson must:

- 1° be Belgian;
- 2° be at least 30 years old;
- 3° be independent in respect of the organisations represented in the High Council;

The chairperson's mandate lasts for six years. It can be renewed.

The chairperson and vice-chairperson are appointed by the King, who determines their status.

**Art. 46.** – The High Council has the task, either on its own initiative or upon request, of giving advice on the measures referred to in this act.

The powers that have been allocated to the High Council in accordance with this act and regarding the workers' well-being in the execution of their work as determined in Article 4 do not prejudice the powers of the National Labour Council regarding the general labour terms.

**[Art. 47. – § 1.** The King shall determine the terms, conditions and specific rules regarding the creation, composition, operation and assignments of the High Council.

**§ 2.** When exercising the powers referred to in the first paragraph, the King may set up a permanent commission within the High Council, which shall be responsible for providing scientific support to the High Council in preparing advice and propositions falling under the competence of the High Council.

This permanent commission shall be made up of people who, by reason of their occupation or activities in the academic sphere, are particularly knowledgeable about one or more of the areas relating to the well-being of workers in the performance of their work.

**§ 3.** When exercising the powers referred to in the first paragraph, the King may transfer the following assignments connected with communication and research in the field of well-being at work and falling under the competence of the High Council, to a permanent commission set up within the High Council, whose composition and rules of procedure he shall lay down:

- 1° giving advice and formulating propositions regarding the action plans drafted by the competent authority and connected with communication and research in the field of well-being at work, and evaluating those action plans;
- 2° serving as the Belgian focal point's permanent office of the European agency for safety and health at work;
- 3° giving advice regarding allowances destined for social research and for training workers' representatives in the undertaking.

**§ 4.** When exercising the powers referred to in the first paragraph, the King may set up permanent commissions responsible for a particular branch of activity or subject, whose assignments, composition and rules of procedure he shall lay down. (33)]

**[Art. 47bis.** – Within the High Council, a [permanent operational (33)] commission is set up that is charged with specific assignments, referred to in the second paragraph, within the context of the implementation of this act and its executive decrees and within the context of the implementation of other acts and decrees that concern workers' well-being at work and that fall under the competence of the Minister responsible for Labour.

The specific assignments referred to in the first paragraph are the following:

1. giving advice regarding the recognition of the services, establishments, persons and undertakings;
2. formulating propositions regarding the authorisation criteria referred to in point 1;
3. giving advice on the annual activity reports of the services that are required to co-operate with the implementation of the well-being policy that is formulated by the undertakings;

4. *repealed (33)*
5. giving advice within the context of the requests for allowances to support actions regarding the promotion of the quality of the working conditions of older workers;

The King may allocate additional specific assignments to the commission.

He establishes all other terms and detailed rules regarding the establishment, composition and operation of this commission. (9)]

## **CHAPTER VIII. – The Committee for Prevention and Protection at work**

### **Section 1. – Scope of Application**

**Art. 48.** – The provisions of this Chapter are not applicable to the establishments and institutions of which the personnel is subject to legal or regulatory provisions that establish their trade union status and that provide for measures concerning deliberation regarding safety, health and embellishment of the workplaces.

### **Section 2. – Setting-up**

**Art. 49.-** Committees are set up in all the undertakings that usually employ an average of 50 workers. These Committees are instituted in the mines, surface mines and underground quarries as soon as they usually employ an average of 20 workers.

Without prejudice to the provisions of Articles 69 [and 76bis (22)], the following definitions shall apply for the application of this Section:

- 1° undertaking: the technical operational unit determined [within the context of this act (8)] on the grounds of the economic and social criteria; in the event of doubt, the social criteria shall prevail;
- [2° workers: the persons employed in terms of an employment contract or apprenticeship contract; the King may, in the cases that he determines, assimilate certain categories of persons who, without being bound by an employment or apprenticeship contract, perform work under the authority of other persons; the researchers recruited by the National Fund for Scientific Research and the Funds associated with the National Fund for Scientific Research are regarded as workers of the institution where they perform their research assignments. (8)]

The King shall prescribe a procedure that must be followed to determine, by way of joint representation, the concept of technical operational unit.

[To determine the number of workers referred to in this section, the King may exclude certain categories of workers who temporarily replace workers of the undertaking. (3)]

**Art. 50. - §1.** The undertaking is also obliged to set up a Committee whenever, as a legal entity, it employs at least 50 workers, however many workers may be employed in each of the branches.

For the application of the first paragraph, at least 20 workers in the mines, surface mines and underground quarries are taken into account.

§ 2. The King may take all measures to guarantee participation in the elections for all workers of the respective technical operational units, and the operation of the Committees.

[§ 3. Until the contrary is proven, multiple legal entities are presumed to form a technical operational unit if proof of the following can be provided:

- (1) that either these legal entities form part of one and the same economic group or is managed by one and the same person or by persons who have a joint economic tie, or that these legal entities have one and the same activity or activities that are geared to one another;
- (2) and that there are elements that point to a social cohesion between these legal entities, such as a community of people in the same buildings or in buildings in the vicinity, joint personnel management, joint personnel policy, labour regulations or joint collective labour agreements or that contain similar provisions.

Whenever proof of one of the terms referred to in (1) and the proof of certain elements referred to in (2) are provided, the respective legal entities shall be regarded as forming one single technical operational unit except if the employer(s) provide(s) proof that the personnel management and personnel policy do not bring to light any social criteria that are characteristic for the existence of a technical operational unit in the sense of Article 49. (3)]

[That presumption may have no reflection on the continuity, operation and field of competence of the already existent bodies and may only be invoked by the workers and the organisations that represent them in the sense of Article 3, § 2, first paragraph. (8)]

**Art. 51.-** The King may, by means of a decree deliberated in the Council of Ministers, expand the obligation to establish a Committee to employers who usually employ fewer than 50 workers. He determines the competence of the abovementioned Committees and regulates their methods of operation.

[**Art. 51bis.** - The calculation of the average number of workers usually employed as referred to in Articles 49, 50 and 51 is made on the basis of a reference period determined by the King; in the case of a transfer of undertaking in accordance with an agreement in the sense of Section 6 of this Chapter or in the case of transfer under judicial authority in the sense of Section 7 of this Chapter, during this reference period, only the part of the reference period after the transfer of the undertaking in accordance with the agreement or after the transfer under judicial authority shall be taken into account. (22)]

**Art. 52.-** Whenever no Committee has been established in the undertaking, the trade union representatives are responsible for executing the assignments of the Committees.

In that case, the trade union representatives enjoy the same protection as the personnel representatives on the Committees, without prejudice to the provisions of the collective labour agreements that apply to all of them, as this is provided in the act of 19 March 1991 containing Special Dismissal Arrangements for Workers' Representatives in the Works Councils and the Committees for Prevention and Protection at Work and for Reserve Representatives. This protection commences on the date of the start of their assignment and terminates on the date on which the candidates are elected as members of the Committee at the next elections.

[The first paragraph is not applicable to Chapter VIII, Section 4, Sub-section 2 of this act. (17)]

**Art. 53.** – In the undertakings where there is neither a Committee nor trade union representatives, the workers themselves participate in dealing direct with questions regarding the workers' well-being at work.

The King shall determine by means of a decree deliberated in the Council of Ministers, in which way this participation takes place.

[**Art. 53bis.** - The provisions in Articles 52 and 53 shall also apply when specific tasks are assigned only to the members representing the workers in the Committee in accordance with the provisions of this Act and its implementing decrees, unless expressly otherwise stipulated in the Act or its implementing decrees. (26)]

**Art. 54.** – The King may allow a group of workers to establish a joint Committee. He determines the competence and regulates their method of operation.

That Committee is jointly composed of ordinary and substituting representatives who represent employers and workers in accordance with the provisions determined by the King.

**Art. 55.** - In the undertakings where a Committee has to be established or renewed, the establishment or the renewal of the Committee can be suspended with the prior agreement of the inspector district head of the social law inspection within whose official area the undertaking is registered in the following cases:

- a) whenever the undertaking has decided to definitively put a stop to all its activities;
- b) in the case of partial closure, by stopping one or more activities, insofar as the number of employed workers falls to below 50, or the number determined by the King in accordance with Article 51.

The inspector district head requests the permission of the Committee; if this Committee has not yet been established, s/he requests the permission of the employer and of the trade union representatives.

The postponement may under no circumstances exceed one year. The existing Committee continues to function during that period.

The personnel representatives and the candidates continue to enjoy the protection granted by the abovementioned act of 19 March 1991 during the same period.

The King may determine the date of the elections.

### **Section 3. – Composition**

**Art. 56.** – The Committees are composed of the following:

1. the head of the undertaking and one or more ordinary and substituting representatives designated by him/her, in accordance with the provisions established by the King, which delegates have the competence to represent him/her and to commit him/her on the grounds of the management functions that they hold in the undertaking. These representatives[, including the head of the undertaking, (13)] may not outnumber the personnel representatives.

The mandates of the representatives of the employer are valid for four years, on condition that they do not lose the functions stated during that period; they hold their functions until the date that the candidates who are elected by the workers in the following elections have taken up their duties;

- [2. a number of actual and substituting representatives of the personnel. The number of actual representatives may not be lower than two and not higher than twenty-five. There are as many substituting as actual representatives. (8)]

**[Art. 57.-** The prevention counsellor [or the confidential counsellor (29)]<sup>1</sup> who is part of the personnel of the undertaking where s/he exercises his/her function can be neither the employers' nor the personnel's representative. (3)]

**[Art. 58. –** The ordinary and substituting representatives are elected by secret ballot on candidates' lists provided by inter-professional representative workers' organisations, referred to in Article 3, §2, 1°, of which each list may not include more candidates than there are ordinary and substituting mandates available. (3)] [These organisations are entitled to grant powers of attorney to submit these candidates' lists. They may only give a power of attorney for one single candidates' list per worker category to which one or more mandates were allocated. (8)]

The King shall determine the terms of the right to vote, as well as the election procedure.

The elections for the Committees are held every four years.

The King shall determine the period during which those elections shall take place and the employers' obligations in this respect.

Whenever an undertaking reaches the average number of employed workers between two of these periods, as provided in Article 49 or in accordance with Article 51, the elections will only have to be held during the course of the following period determined by the King and insofar as the undertaking still employs the required average number of workers at that moment.

**Art. 59. – § 1.** To be electable as personnel representative in the Committees, the workers must comply with the following terms on the date of the elections:

- 1° be at least 18 years old. The representatives of the young workers must, however, be at least 16 years old and may not have reached the age of 25 years;
- [2° not form part of the management personnel, neither have the capacity of prevention counsellor of the internal service for prevention and protection at work [or confidential counsellor (26)]. The King shall determine what is to be understood by management personnel; (8)]
- 3° either be employed continuously for six months in the legal entity to which the undertaking belongs or in the technical operational unit formed by various legal entities in the sense of Article 50;  
  
or be employed in a legal entity to which the undertaking belongs or in the technical operational unit formed by various legal entities in the sense of Article 50 during the year

---

<sup>1</sup> Only applicable as from the social elections of May 2016

that precedes the one in which the elections take place, for a total period of nine months for various periods; to calculate this period of nine months, all the periods during which the worker was employed are taken into account, either in accordance with an employment contract, an apprenticeship contract, or under similar terms as referred to in Article 19, fourth paragraph;

4° to be under sixty-five years of age.

[To calculate seniority as referred to in the first paragraph, 3°, the periods during which the researcher of the National Fund for Scientific Research or of the Funds associated with the National Fund for Scientific Research has executed his/her research assignment in the institution, and the periods during which a worker has been put in the undertaking for vocational training by the community institution authorised for vocational training are taken into account. (8)]

The causes of suspension of the execution of the agreement have no influence on terms for seniority.

**§ 2.** It is forbidden to present a single candidacy on more than one list.

**§ 3.** The worker who was dismissed in contravention of the provisions of the act of 19 March 1991 may be presented as candidate.

**Art. 60.** – The King shall determine which time there must be between putting up notices of the date of the elections for the personnel representatives of the Committees and the date on which the candidacies must be submitted.

The services of the witnesses in attending the elections is regarded as actual work and remunerated as such.

**Art. 61.** – The mandate of the personnel representative ends:

- 1° if the person is not re-elected as an ordinary or substituting member, as soon as the Committee is appointed;
- 2° if the person concerned is no longer part of the personnel;
- 3° if the person resigned;
- 4° if the person concerned is no longer a member of the workers' organisation that presented the candidacy;
- 5° if the mandate is withdrawn due to a serious fault as pronounced by the court referred to in Article 79, at the request of the workers' organisation that presented the candidacy;
- 6° if the person concerned no longer belongs to the category of workers to which s/he belonged at the time of the elections, unless the organisation that presented the candidacy requests, by registered letter addressed to the employer, that the mandate be maintained;
- 7° as soon as the person concerned is part of the management personnel;
- 8° in the event of death.

The provision of the first paragraph, 6°, is, however, not applicable to the member who represents young workers.

**[Art. 62.** – The substituting member shall sit in the place of the ordinary member in the following cases:

- 1° if the ordinary member is prevented from doing so;
- 2° if the mandate of the ordinary member is terminated for one of the reasons summarised in Article 61, first paragraph, 2° to 8°.

In these cases, the substituting member fulfils this mandate.

If a substituting member becomes an ordinary member or if his/her mandate is terminated, the non-elected candidate of the same category and of the same list who has obtained the most number of votes replaces the former in the capacity of substituting member and s/he completes his/her mandate. This provision is not applicable to candidates referred to in Article 2, § 3, second paragraph of the abovementioned act of 19 March 1991.

If there are no more substituting members and if there are no non-elected candidates as referred to in the previous paragraph, an ordinary member whose mandate is terminated for one of the reasons summarised in Article 61, first paragraph, 2° to 8° is replaced by the non-elected candidate of the same category and of the same list who has obtained the largest number of votes as referred to in Article 2, § 3, second paragraph, of the abovementioned act of 19 March 1991. This candidate completes the mandate and falls under the provisions of Article 2, § 2, of the abovementioned act of 19 March 1991. (8)]

**[Art. 63.** – If the number of personnel representatives is less than two, the Committee is renewed. The King may establish the special rules for the elections.

**[Art. 64.** – The mandate of the personnel representatives or the capacity of candidate may not lead to any disadvantage, or to special advantages.

The personnel representatives and candidates enjoy the normal promotions and benefits of the workers' category to which they belong.

These provisions are also applicable to the members of the trade union representatives responsible for executing the assignments of the Committees, in implementation of Article 52.

#### **[Section 4. – Competence**

##### **Sub-section 1. – General competence**

**[Art. 65.** – The Committee's main assignment is to detect and propose all means and to contribute actively to everything that is undertaken to promote the workers' well-being in the execution of their work. The King may describe this assignment in further detail and entrust the Committee with additional assignments within the context of the fields referred to in Article 4.

## Sub-section 2. – Special powers

**Art. 65bis. - § 1.** In the absence of a works council, the employer submits to the Committee basic economic and financial information regarding the following:

- a) the status of the undertaking;
- b) the competitive position of the undertaking on the market;
- c) production and productivity;
- d) the programme and the general future expectations of the undertaking.

The members of the Committee are informed of this basic information within two months following their election or re-election.

**§ 2.** In the absence of a works council, the employer provides the Committee with a copy of the balance sheet, profit and loss account, appendix and annual overview.

These documents form the basis of the annual information. They must be provided and discussed during the course of the three months following the closure of the accounting year.

If the undertaking or legal entity of which it forms a part was established under the form of a partnership, it is mandatory for the meeting of the Committee, dedicated to the examination of this information, to take place before the general meeting during which the shareholders express their opinions on the management and the annual accounts. The shareholders are informed of the report of this meeting on the occasion of the aforementioned general meeting.

The documents that concern the annual information are submitted to the members of the Committee at least fifteen days before the meeting scheduled to examine this information.

**Art. 65ter.** – The information stipulated by Article 65bis, § 1, first paragraph, a), regarding the status of the undertaking or, possibly, of the legal, economic or financial entity of which it forms a part, shall contain at least:

- 1° its legal form;
- 2° its Articles of Association and any amendments to them;
- 3° its management;
- 4° its financial resources in the medium and long terms, and, especially, the economic and financial relationships that it maintains with other legal, economic or financial entities, and the nature of these relationships;
- 5° possibly, the existence and nature of the contracts and agreements that have fundamental and lasting consequences for the situation of the undertaking.

**Art. 65quater.** – The information referred to in Article 65bis, § 1, first paragraph, b), concerning the competitive position on the market of the undertaking or of the legal entity of which it forms a part, includes at least:

- 1° the most important national and international competitors that the undertaking must take into account;

- 2° the competition possibilities and difficulties;
- 3° the areas of sales activity;
- 4° the purchase and sales contracts and agreements that have fundamental and lasting consequences for the undertaking;
- 5° the different types of agreements concluded with the FOD Economy, such as programme, objective and progress, and restructuring contracts;
- 6° the elements that must allow one to have a general insight into the way in which the undertaking's products are commercialised, such as distribution channels, sales techniques, indicative data regarding the distribution margins;
- 7° accounting data regarding the turnover, and its evolution over five years, with a percentage indication of the shares achieved, respectively, on the local market, in the European Union and in the other countries. Whenever the undertaking comprises various parts, where applicable, a breakdown of the data shall be provided per part;
- 8° an overview of the cost and sales prices per unit, in which the level and the development of those prices shall be provided, where possible, per unit. If it is not possible to provide similar information, the employer shall provide data on the evolution of the cost and sales prices per group of products or per component, or for a number of representative products;
- 9° the market position of the undertaking and its evolution locally, in the European Union and in the other countries, possibly per component.

**Art. 65quinquies.** – The information regarding the production and productivity provided in Article 65*bis*, § 1, first paragraph, c), contains at least:

- 1° the evolution of the products expressed in volume, number, or weight and in value and added value;
- 2° the appropriation of the economic production capacity;
- 3° the productivity evolution, in particular to focus on the added value per working hour or the production per worker. The data must be provided in the form of time series that run over five years. They must, if possible, be supplied per component.

**Art. 65sexies.** – The information concerning the programme and the general future expectations for the undertaking, or for the legal, economic or financial entity of which it forms a part, provided by Article 65*bis*, § 1, first paragraph, d), extends to all aspects of the activity of the undertaking, in particular the industrial, financial, commercial and social aspects, and the investigative work, including the prospects regarding its further development and information on the financing of the proposed investments.

**Art. 65septies.** – In derogation from Article 95 of this act, the King, by decree established after deliberation in the Council of Ministers and after unanimous advice by the National Labour Council and the Central Economic Council, may clarify other rules regarding the nature, extent, periodicity and manner in which the information has to be provided.

**Art. 65octies.** - § 1. When supplying a piece of information in the prescribed form and within the specified term can cause the undertaking harm, the head of the undertaking can be author-

ised to derogate from the principle of the mandatory information regarding the following points:

- 1° the announcement of the turnover in absolute value and its breakdown per component;
- 2° regarding the programme and general future prospects of the undertakings in the distribution sector, the intended implanting of new sales points;
- 3° the breakdown per component of the data regarding the profit and loss account.

**§ 2.** The application of this derogation possibility is subject to the prior approval of one of the officials appointed by the King in accordance with Article 80 of this act to supervise this subsection.

The request for derogation must be substantiated. All documents necessary to assess whether the request is founded and the excerpt from the meeting of the Committee during which the head of the undertaking announced the object of the information in advance are enclosed with the submission of the request for derogation.

The approval of the request is granted or refused after deliberation of an *ad hoc* Committee, formed in the Central Economic Council: the composition, powers and operational modalities of this Committee shall be defined by ministerial decision.

The request cannot be refused when the unanimous advice of the *ad hoc* Committee confirms the possible unanimously expressed agreement of the Committee on the occasion of the information discussed in the previous paragraph. Every decision of the competent official must be substantiated.

**§ 3.** The competent official informs the head of the undertaking and the chairperson of the Committee.

Whenever the information cannot be provided in the prescribed form, the Committee is given other data, the nature of which is such as to provide equivalent information.

If the information cannot be provided immediately, the head of the undertaking shall announce this after the expiry of a term carefully indicated by him/her and announced to the competent official.

**Art. 65novies.** – On the occasion of his/her announcement to the Committee, the head of the undertaking, where applicable, points out the confidential nature of certain information, which, if spread, could cause the undertaking harm.

If there is disagreement in the Committee in this respect, the confidential nature of this information shall be subject to the approval of one of the officials designated by the King in accordance with Article 80 of this act to supervise this sub-section. This approval is granted or refused in accordance with the procedure prescribed in Article 65octies § 2.

**Art. 65decies.** – In the absence of a works council and trade union representatives, the Committee takes the place of the works council or, in its absence, the trade union representatives for the right to information and consultation referred to in Article 38, § 3, of the Labour Act of 16 March 1971 and the collective labour agreements no. 9 of 9 March 1972, without the Committee obtaining more information than the trade union representatives, no. 24 of 2 Oc-

tober 1975, no. 32bis of 7 June 1985, no. 39 of 13 December 1983 and no. 42 of 2 June 1987, concluded in the National Labour Council.

**Art.65undecies.** – The expansion of the competence provided in this sub-section does not affect the competence referred to in Article 11, § 2, of the act of 19 December 1974 on relationships between the government and the trade unions representing their staff. (17)]

### **Section 5. – Operation**

**Art. 66.** – As regards remuneration, the performances of the members on the Committees are equated to the actual time worked, even if this is done outside normal working hours.

The additional transport costs of the personnel representatives are at the expense of the employer in the cases and subject to the terms determined by the King.

**Art. 67.** – The Committees can hear other personnel members regarding the matters that they are investigating.

The King may determine under which terms the members of the Committees may demand the presence of experts. He determines the scale of their remuneration, to be paid by the employer.

**Art. 68.** – Every Committee determines in its in-house regulations its detailed operational modalities. The King may determine which minimum points the in-house regulations must contain. The joint committees can compile template in-house regulations which the King may declare to be generally binding.

### **Section 6. – Transition of undertaking and asset takeover**

**Art. 69.** – For the purposes of this section, the following definitions shall apply:

- 1° undertaking: legal entity;
- 2° asset takeover: establishing a property right on the whole or part of the assets of a bankrupt undertaking where the main activity of the undertaking or of one of its departments is continued.

**Art. 70.** – In the case of a transition of one or more undertakings in accordance with an agreement:

- the existing Committees continue to function so that the undertakings concerned can maintain their type of technical operational units;
- in the other cases, and until the next elections, the Committee of the new undertaking is formed by all the members that were elected by the respective undertakings to the earlier Committees, unless the parties decide otherwise. This Committee functions for all the personnel of the undertakings concerned.

**Art. 71.** – In the case of a transition in accordance with an agreement, of one part of an undertaking to another undertaking, both of which have a Committee:

- the existing Committees continue to function if the existing technical operational units remain unchanged;

- if the nature of the technical operational unit is changed, the existing Committee continues to function in the undertaking of which a part is in transition; the personnel representatives of the Committee employed in the part of the undertaking that is in transition are added to the Committee of the undertaking to which the part in question is in transition.

**Art. 72.** – In the case of a transit in accordance with an agreement of one part of an undertaking with a Committee to an undertaking without a Committee:

- the existing Committee continues to function if the nature of the technical operational unit is maintained;
- if the nature of the technical operational unit is changed, the Committee of the undertaking whose part is in transition, functions with the personnel representatives that were not employed in the part of the undertaking that is in transition;
- in addition, until the first elections, a Committee is established in the undertaking to which a part of another undertaking has been put in transition. This Committee consists of the personnel representatives employed in the part in question, unless the parties make another arrangement.

**Art. 73.** – Where a technical operational unit is divided into various legal entities, which does not bring about a change to the nature of the technical operational unit, the existing Committee is maintained until the next elections. If different technical operational units are created, then the Committee continues to exist for the totality of the units until the following elections, unless the parties make another arrangement.

**Art. 74.** – In all transition cases of an undertaking or a part of it in accordance with an agreement and in the case of a division of a technical operational unit into legal entities, the members that represent the personnel and the candidates continue to enjoy the protection measures provided in the abovementioned act of 19 March 1991.

**Art. 75.** – If the transfer in accordance with an agreement, the split or another change of the technical operational units takes place after the establishment of the technical operational unit has become definitive and before the day of the elections, the transition, split or change to the technical operational unit shall only be taken into account as of the appointment of the Committee. The rules provided in Articles 70 and 74 apply in that case.

**Art. 76.** – In the case of an asset takeover of a bankrupt undertaking:

- 1° a committee is maintained until the next elections if the technical operational unit or the technical operational units of which the undertaking consists, maintain the nature that they had before the bankruptcy without being incorporated in another undertaking; the committee is composed exclusively of a number of actual personnel representatives, proportional to the number of employed workers in the new undertaking in accordance with the rules determined by the King; the personnel representatives are designated from among the ordinary or substituting representatives who were taken over, or from among the non-elected candidate personnel representatives for the previous elections of the committee that was taken over [and they are designated] by the workers' organisations which presented the representatives that were elected at the previous elections;
- 2° a committee is maintained until the next elections if the technical operational unit or technical operational units of which the undertaking consists, is taken up in another un-

undertaking or its technical operational unit and if the undertaking or technical operational unit in which it is taken up does not have such a committee; the committee is composed exclusively of a number of actual personnel representatives proportional to the number of workers taken over in accordance with the rules determined by the King; the personnel representatives are designated from among the ordinary or substituting representatives who were taken over, or from among the non-elected candidate personnel representatives for the previous elections of the committee that was taken over and they are designated by the workers' organisations which presented the representatives that were elected at the previous elections; this committee works for the part of the undertaking that was taken over.

The workers' organisations which presented the elected representatives at the previous elections, can conclude another valid agreement with the new employer until the next elections.

### **[Section 7. - Transfer under judicial authority**

**Art. 76bis.** - The fate of the Committees existing at the time of a judicial reorganization by transfer under judicial authority in the sense of the Act of 31 January 2009 on the continuity of the undertakings, shall, unless the parties have agreed otherwise when concluding the transfer agreement, be governed by the provisions of this section.

This Section shall apply until the next election of a Committee.

For the purposes of this section shall be understood by "undertaking", the "legal entity".

**Art. 76ter.** - Upon transfer of an undertaking under judicial authority:

- the existing Committees continue to function if the undertakings retain their nature of 'technical operational units';
- in the other cases, the Committee of the new undertaking is constituted by all the members of the Committees that have previously been elected in the undertakings concerned. This Committee functions for the entire staff of the undertakings concerned.

**Art. 76quater.** – In the case of a transfer under judicial authority of part of an undertaking to another undertaking, having both a committee:

- the existing Committees continue their activities if the existing technical operational units remain unchanged;
- if the nature of the technical operational units is changed, the existing Committee continues to act in the undertaking of which part is transferred; the staff representatives of the Committee employed in the part of the undertaking that is transferred join the Committee of the undertaking to which the part referred to was transferred.

**Art. 76quinquies.** – In the case of a transfer under judicial authority of part of an undertaking having a committee to an undertaking having no committee:

- the existing Committee continues to function if the nature of technical operational unit is maintained;
- the Committee of the undertaking of which part has been transferred, in case the nature of technical operational unit has been altered, continues to function with the staff representatives who were not employed in the part of the undertaking that has been transferred;

- and additionally, in the undertaking to which part of another undertaking has been transferred, a Committee is set up consisting of the staff representatives employed in that part of the undertaking.

**Art. 76sexies**- In all cases of transfer under judicial authority of an undertaking or a part thereof, the members and candidate-members representing the staff continue to enjoy the protection measures provided for in the aforementioned Act of 19 March 1991.

**Art. 76septies** - . If the transfer under judicial authority takes place after the determination of the technical operational units has become final and before the day of the social elections, the transfer shall only be taken into account from the moment of the appointment of the Committee onwards. The rules set out in Articles 76ter to 76sexies shall apply in that case. (22)]

#### **CHAPTER IX. – Provisions common to the bodies**

**Art. 77.** – All orders, advice and educational recommendations that the bodies referred to in Chapters VI to VIII give to the workers in writing by means of notices to be put up or by individual memoranda, shall be written in such a way that all workers understand them.

**Art. 78.** – The King may take all measures to nationally, locally and professionally coordinate and promote the work of the bodies referred to in Chapters VI to VIII.

He can establish committees in mines, surface mines and underground quarries.

#### **CHAPTER X. – Appeal to the Labour Courts**

**[Art. 79. – § 1** [Without prejudice to the provisions of Article 32*duodecies*, the employers, workers and the representative workers' organisations can institute a claim to resolve all disputes in connection with this act and its executive decrees. (6)]

[The representative workers' organisations may have a representative, holder of a written power of attorney, represent them before the labour tribunals. This person may perform all actions pertaining to this representation, submit an application, plead, and receive all announcements regarding the commencement, the proceedings and the settlement of disputes on behalf of the organisation to which s/he belongs. (15)]

**§ 2.** [Whenever the claims referred to in § 1 concern the disputes regarding the implementation of Chapter VIII, the following procedural rules apply: (15)]

- 1° the claims are instituted by an application sent by registered letter or submitted to the office of the clerk of the competent court;
- 2° the time spans in which to institute the claims are subject to the provisions of Articles 52 and 53 of the Judicial Code; the day of the dispatch of a letter posted by registered mail or of the submission of the application to the office of the clerk of the court must, at the latest, coincide with the last day of these time spans;
- 3° the claimant is obliged, at the very outset, to submit the identity and full address of the parties concerned to the office of the clerk of the labour tribunal where the case is instituted; the full address is understood to be the place of residence, the main place of abode or the usual place of employment;

- 4° the labour tribunal where the case is instituted pronounces judgement without prior reconciliation after the parties concerned have been heard or have been formally summoned;
- 5° the employer, the workers concerned, the representative workers' organisations and the persons expressly stipulated in the act are informed of the rulings and judgements by the court by legal notice;

For the application of the first paragraph, the party in question must be understood to mean every person or representative workers' organisation which, in the context of the proceedings, is involved in the dispute.

**§ 3.** The King may determine within which timeframe the claims referred to in [§ 2 (27)] must be instituted. He can also determine if a further appeal or objection can be lodged and within which timeframe, and within which timeframe the labour tribunals must pronounce judgement. (2)]

## **CHAPTER XI. – Supervision and fixing the penalty**

**Art. 80.** – Infringements of the provisions of this Act and of the executive decrees thereof shall be detected, identified and punished in accordance with the Social Criminal Code.

The social inspectors have the competences referred to in Articles 23 to 39 [and 43 to 49 (32)] of the Social Criminal Code when acting, officially or on request, within the framework of their mission of information, mediation and monitoring compliance with the provisions of this Act and the executive decrees thereof. (20)]

**Art. 81 to 94.** – *repealed* (20)

## **CHAPTER XIbis. – Measures to prevent recurrence of serious accidents**

### **Section 1. – Definition**

**Art. 94bis.** – For the purposes of this Chapter, the following definitions shall apply:

- 1° serious occupational accident: an accident that happens at the workplace itself and which, due to its seriousness, requires a thorough specific investigation with a view to taking preventive measures to avoid its recurrence.

The King may determine the criteria on which to base the occupational accident to regard it as serious; (9)]

- 2° expert: an expert regarding the investigation into serious occupational accidents, and who is included in a list compiled by the administration, of which the supervisory officials referred to in Article 80, who have the work safety under their competence, are a part.

### **[Section 2. – Investigation into and reporting of the serious occupational accidents – Appointing an expert (9)]**

**Art. 94ter.** – **§ 1.** After every serious occupational accident, the employer of the victim sees to it that the accident is immediately investigated by his/her competent prevention service and s/he submits a circumstantial report to the officials referred to in the previous Article within ten days following the accident.

§ 2. After every serious occupational accident with a worker at a workplace where the provisions of Chapters IV or V are applicable, depending on the case, the employers, other employers, temporary employment agencies, project supervisors responsible for the execution, contractors, sub-contractors and self-employed persons collaborate to see to it that the accident is immediately investigated by one or more competent prevention services and that, within ten days following the accident, a circumstantial report is provided to all the people concerned as referred to above and to the officials as referred to in the previous Article.

The practical arrangements regarding this co-operation, the competent prevention services which shall investigate the possible serious accidents and the arrangement of the possible costs that may emanate from these investigations, are, for this purpose, incorporated in specific clauses in the following:

- 1° the agreement referred to in [Article 9, § 2, 2° (16)] on the initiative of the employer at whose establishment workers of outside enterprises or self-employed persons come to execute work;
- 2° without prejudice to Article 19 of the act of 24 July 1987 regarding temporary employment, temporary workers and temporary workers on loan to other employers, the agreement concluded between the other employer and the employment agency, on the initiative of the latter, in accordance with the specific rules to be determined by the King;
- 3° the agreement referred to in Article 29, 2°, on the initiative of, depending on the case, the project supervisor responsible for the execution, the contractor or sub-contractor.

§ 3. The officials referred to in the previous Article can also accept a report within the same term.

§ 4. Without prejudice to Article 80, these officials can, in the case of absence of a circumstantial or preliminary report within ten days, appoint an expert.

The King may determine other cases in which these officials can appoint an expert. (9)]

### **Section 3. – The expert**

**Art. 94quater.** – The expert has the following assignments:

- 1° to investigate the cause and circumstances of the serious occupational accident and to formulate appropriate advice to prevent recurrence of the accident;
- 2° to include the elements of the investigation, established causes and formulated advice in a written report;
- 3° to communicate the report referred to in 2° to each of the following persons:
  - a) the officials referred to in Article 95bis;
  - [b) depending on the case, the employer referred to in Article 94ter, § 1, or the persons concerned as referred to in Article 94ter, § 2; (9)]
  - c) depending on the case, the [insurance companies (9)] or the institution, as referred to in Article 94quinquies, § 2.

## **Section 4. – Expert’s fees**

**Art. 94quinquies. -§ 1.** The expert receives a fee for the work performed in executing his/her assignments.

[In the circumstances referred to in Article 94ter, § 2, first paragraph, the fee is divided into part-fees, in accordance with the arrangement referred to in Article 94ter, § 2, second paragraph. (9)]

[§ 2. The fee referred to in § 1 is owed by the insurance undertakings regarding occupational accidents with whom, depending on the case, the employer referred to in Article 94ter, § 1, or the persons referred to in Article 94ter are members for the insurance of their workers.

In the circumstances referred to in Article 94ter, § 2, first paragraph, the part-fees are paid by the respective insurance companies in accordance with the regulation referred to in Article 94ter, § 2, second paragraph.

In the absence of the regulation referred to in the previous paragraph, the total amount of the fees is owed by the insurance company with whom the person is subscribed responsible for reporting the corresponding provisions in the agreement referred to in Article 94ter, § 2, second paragraph.

In the absence of one or more of the insurance undertakings referred to in the first paragraph, the fees or, in implementation of § 1, second paragraph, a part thereof, are owed by the establishment which, in the case of an occupational accident, is responsible for the payment of the workers of the employer referred to in Article 94ter, § 1, or the persons referred to in Article 94ter § 2.

The fee is owed to the expert or his/her employer on submission of a claim that reflects a detail of the expert’s work.

In implementation of § 1, second paragraph, the possible partial claims are submitted, of which the amount is calculated on the basis of the arrangement referred to in Article 94ter, § 2, second paragraph. (9)]

## **Section 5. – Re-claiming the amount of the expert’s fee**

**Art. 94sexies.** – The insurance companies or the establishment that have or has paid the fee or a part of the work of the expert, can re-claim the amount from the employer referred to in Article 94ter, § 1, or from the persons referred to in Article 94ter, § 2. (9)]

## **[Section 6. – General**

**Art. 94septies. - § 1.** In order to allow, depending on the case, either prevention counsellors of the prevention services referred to in Article 94ter, §§ 1 and 2, to investigate the serious occupational accident, or the expert to complete his/her assignments referred to in Article 94quater, the employer referred to in Article 94ter § 1, or the persons referred to in Article 94ter § 2 are obliged to co-operate with these prevention counsellors or this expert.

The employer referred to in Article 94ter § 1, or the persons referred to in Article 94ter § 2 likewise co-operate with the committees for prevention and protection at work of the other employers involved in the serious occupational accident.

The King may determine the terms and detailed rules regarding this co-operation.

§ 2. To prevent an immediate recurrence of the same or a similar serious occupational accident, precautionary measures are taken by or under the supervision of the following, and depending on the case:

- 1° the employer who calls on outside enterprises, within the context of the work referred to in Chapter IV, Section 1;
- 2° the occupant, within the context of the work referred to in Chapter IV, Section 2;
- 3° the project supervisor responsible for the execution, within the context of work at temporary or mobile construction sites referred to in Chapter V;
- 4° the employer of the victim in the other cases.

Precautionary measures are understood to mean the precautionary measures that are proposed by the prevention counsellors referred to in § 1 or at least equivalent measures and, if similar measures have not yet been suggested, any obvious measure that can remove one or more direct causes of the same or similar accidents. (9)]

**Art. 94octies.** – The King may determine the following:

- 1° the terms that the expert must meet to be able to exercise his/her function and to be included in the list referred to in Article 94bis, 2°;
- 2° the detailed rules for the appointment of the expert, referred to in Article 94ter;
- 3° the detailed rules regarding the assignments of the experts, referred to in Article 94quater;
- 4° the amount of the fees referred to in Article 94quinquies, §1;
- 5° the date that the provisions of this Chapter come into effect (7)];
- [6° the criteria which the report, referred to in Article 94ter, §§ 1 and 2, first paragraph, must meet to be regarded as circumstantial, as well as the way in which it is submitted to the officials referred to in Article 92bis, 2°;
- °7 the terms under which the officials referred to in Article 92bis, 2° can accept a preliminary report as referred to in Article 94ter, § 3. (9)].

#### **[Section 7. – Reporting serious occupational accidents**

**Art. 94nonies.** – The employer of the victim must immediately report every serious occupational accident that meets the criteria determined by the King to the officials referred to in Article 94bis, 2°.

The King likewise may determine the manner in which the notice referred to in the previous paragraph must be made. (9)]

## CHAPTER XII. – Concluding provisions

**Art. 95.** – The King shall take the measures referred to in this act after obtaining the advice by the High Council referred to in Article 44, except for the measures referred to in Articles 49, 50, 51, 53, 56, 58 to 60, 62, 63, 65, second paragraph, 66 and 76. He takes these measures after obtaining the advice by the National Labour Council.

The High Council gives its advice within six months after it has been requested to do so. In cases of emergency, the minister who requests the advice can limit this term to two months. As soon as this term has expired, it may be disregarded.

**Art. 96.** – *amendment and repeal*

**Art. 97.** – The provisions of Articles 15 to 19 are applicable for the first time to the design of the project of which the preparation commences after Chapter V takes effect, as determined by the King.

The King may determine special rules for the implementation of the provisions of Articles 15 and 20 to 31 on the project of which the execution has commenced before Chapter V took effect, as determined by the King.

**Art. 98.** – *repealing provisions*

**Art. 99.** – The provisions of the general labour protection rules and of the decrees for the implementation of the act of 10 June 1952 on workers' health and safety and workplace cleanliness and of the decrees taken in implementation of the acts on mines, surface mines and underground quarries, co-ordinated on 15 September 1919, remain in force until they are expressly repealed or until their validity date expires.

**Art. 100.** – The King may amend current legal provisions to adjust them to the provisions of this act.

**Art. 101.** – This act takes effect on the first day of the first month after the one in which it is published in the Belgian Official Gazette, with the exception of Chapter V, which takes effect on the date determined by the King and with the exception of Chapter VI, which takes effect on the first day of the [nineteenth month (1)] after the one in which this act is published in the Belgian Official Gazette.