

# Institutional moral hazard in the multi-tiered regulation of unemployment in Belgium – Background paper.

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## Abstract

This paper has been written in preparation of a research project funded by the European Commission (on the Feasibility and Added Value of a European Unemployment Benefit Scheme, contract VC/2015/0006). This paper adds information and detailed analysis to the following deliverable of that research project: *Institutional Moral Hazard in the Multi-tiered Regulation of Unemployment and Social Assistance Benefits and Activation - A summary of eight country case studies*; but it was not a deliverable. We use the concept ‘institutional moral hazard’ to analyse intergovernmental relations within multi-tiered welfare states, specifically in the domain of unemployment-related benefits and related activation policies (the ‘regulation of unemployment’). This paper is one of eight separate case studies, it focuses on Belgium. The Belgian unemployment insurance system represented a classic example of institutional moral hazard: it was federally financed while the regions were in charge of activation but did not have any inherent incentives to do so as effectively as possible. To mitigate that situation, the federal and regional governments concluded a detailed cooperation agreement in 2003 which introduced minimum requirements for the activation of unemployment insurance beneficiaries. A 2015 constitutional reform pushes the existing logic of devolution even further but retained a system of minimum requirements.

**Keywords:** *Institutional moral hazard; multi-tiered welfare states; intergovernmental relations; unemployment insurance; social assistance; Active Labour Market Policies; activation; social policy; Belgium.*

## List of Abbreviations

ALMPs – Active Labour Market Policies

HVV - Hulpkas voor Werkloosheidsuitkeringen (public unemployment fund)

OCMW/CPAS – *Openbaar Centrum voor Maatschappelijk Welzijn/ Centres Publics d'Aide Sociale* (municipal social centre, responsible for SA)

PES – Public Employment Services

RMI/DIS, law on ... - recht op maatschappelijke integratie/droit à l'intégration sociale (law on 'the right to social integration')

RVA/ONEM - Rijksdienst voor Arbeidsvoorziening/Office National de l'Emploi (federal PES)

RWB - Regionale Werkloosheidsbureaus (offices of PES at the district level)

SA – Social Assistance

UI – Unemployment Insurance

VDAB - Vlaamse Dienst voor Beroepsopleiding en Arbeidsbemiddeling (Flemish PES)

## Introduction

Belgium has a multi-layered federal system. Over the course of several decades, a series of constitutional reforms has devolved ever more powers to the regional authorities. On the one hand, the federal level holds important competences with regard to the functioning of the labour market, in particular in the field of labour law and social security legislation (including unemployment benefits). The regions, on the other hand, also have wide powers regarding labour market-related issues, such as the organisation of Active Labour Market Policies (ALMPs) and the matching of demand and supply on the labour market through the (regional) public employment services.

After complex negotiations between the federal government and the three regional governments (and, parallel, many rounds of discussion with the social partners), a cooperative framework for the activation and follow-up of the unemployed was formally agreed in 2004 between the different levels of government.

In 2013, a new *Cooperation Agreement* was negotiated as a follow-up to the 2004 Agreement. The latter will be the last *Cooperation Agreement* of this specific kind; from 2015 onwards, Belgium's institutional architecture changes in the context of a new round of constitutional reform, the so-called Sixth State Reform. In part, this institutional evolution is related to the same challenges with regard to labour market policy as inspired the *Cooperation Agreements*; it devolves the political responsibility for the activation and the follow-up of individuals with unemployment benefits and individuals living on means-tested SA completely to the regions. Thus, we enter a new era, with important consequences for the issues discussed in the following sections.

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<sup>1</sup> We thank Jan Vanthuyne and Tom Bevers for extensive and very useful exchanges on the Belgium case.

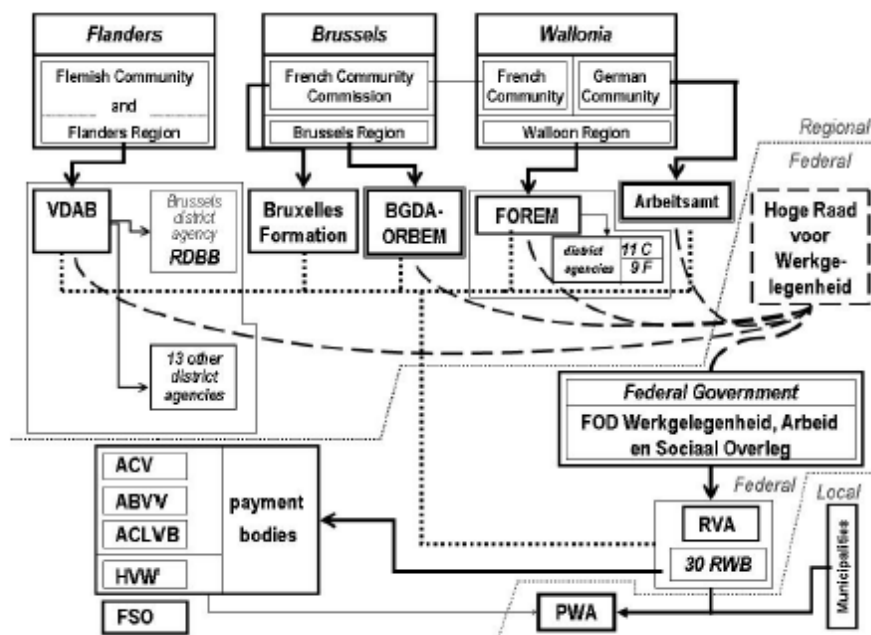
## 1. Unemployment insurance

UI is an exclusive federal competence in Belgium: the level, the duration, and the eligibility criteria of unemployment benefits are completely and solely determined by federal legislation. Trade unions play an important role in the practical administration of the system, as intermediaries between the individual unemployed on the one hand, and the unemployment branch of the federal social security system, which is managed by the *Rijksdienst voor Arbeidsvoorziening (RVA)/Office National de l'Emploi (ONEM)*, on the other hand.

The main responsibility of the RVA/ONEM is the implementation of the UI legislation, i.e. deciding on the entitlement of claimants, determining their benefits, and issuing payment orders to the payment bodies. In addition, the RVA/ONEM monitors unemployment legislation, and makes sure that violations are prevented and, in case they do occur, are sanctioned. The RVA/ONEM operates via 30 district unemployment offices (*Regionale Werkloosheidsbureaus or RWB*; in order to avoid confusion with the Belgian Regions, we translate 'regionale' here by 'district'). The district unemployment offices process the files of the unemployed and decide on the entitlement to benefits. The payment of benefits is done by the payment bodies (*uitbetalingsorganismen*), i.e. one public fund (*Hulpkas voor Werkloosheidsuitkeringen or HVW*) and three auxiliary funds linked to the trade unions. The payment bodies get a compensation for their administration costs based on a formula that takes into account the number of cases they process. Apart from the right to appeal in case of disputes, the unions and their auxiliary funds have no influence whatsoever on the decision of granting unemployment benefits. This decision is solely made by the RVA/ONEM administration. The RVA/ONEM depends upon information of the regional PES (VDAB, FOREM, Actiris and ADG) (de Deken, 2007).

In Figure 1, the dotted lines refer to channels over which information is exchanged. This is in particular the case between on the one hand regional PES (VDAB, Actiris, *Bruxelles Formation*, FOREM, and the Arbeitsamt), and on the other hand the RVA/ONEM. This information exchange is crucial for determining the entitlement to unemployment benefits, as only the regional PES assist the unemployed in finding a job and organise the training and activation programmes (failing to take a job offer or to participate in such a programme can be a reason for suspending UI benefits) (de Deken, 2007).

Figure 1 Institutions and actors in UI. Source: de Deken, 2007.



VDAB: PES for Flemish Region and for Dutch-speaking inhabitants of Brussels; RDBB: district office of VDAB for Dutch-speaking inhabitants of Brussels; Bruxelles Formation: institution overseeing vocational training of French-speaking inhabitants of Brussels; BGDA-ORBEM (now called Actiris): PES for Brussels Region; FOREM: PES for Walloon Region (C: district offices of FOREM for job search assistance (FOREM Consultation, F: district offices of FOREM for training (FOREM Formation)); Arbeitsamt: PES for German-speaking population in eastern districts of Walloon Region; Hoge Raad voor Werkgelegenheid: advisory institution coordinating between federal level and Regions, but also among Regions; FOD Werkgelegenheid, Arbeid en Sociaal Overleg: Federal Public Service Employment, Labour and Social Dialogue; RVA/ONEM: National Employment Office; RWB: district unemployment offices; PWA: local employment agencies; ACV: Christian trade union (auxiliary payment body); ABVV: socialist trade union (auxiliary payment body); ACLVB: liberal trade union (auxiliary payment body); HVW: public payment body; FSO: payment body for redundancy payments (results under RVA/ONEM)

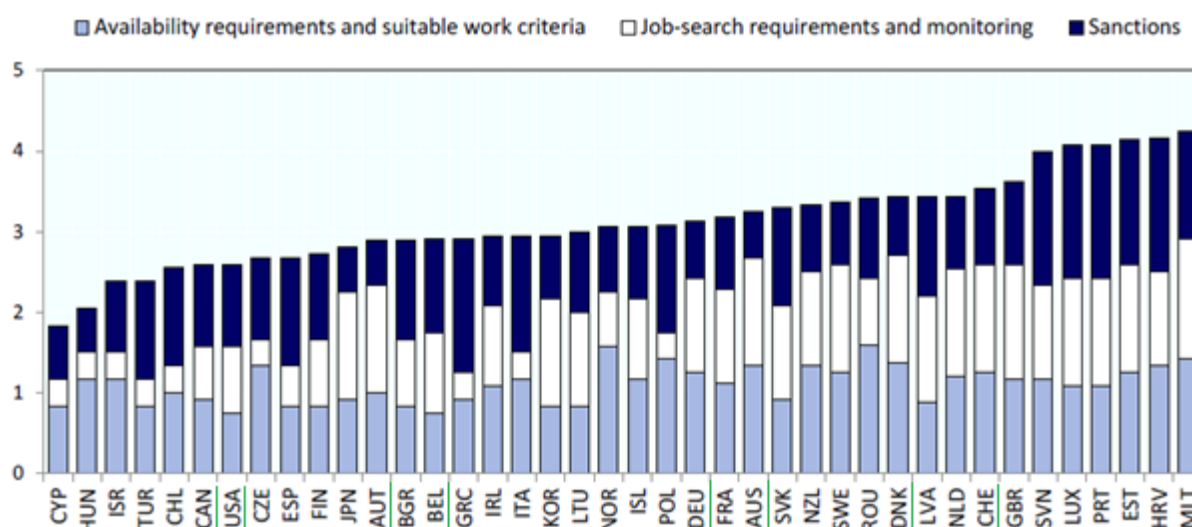
The mere fact that a person is subject to the social security scheme for salaried persons does not give entitlement to unemployment benefits. The person concerned must also prove a sufficient number of worked days or days equivalent to worked days during a particular reference period. In addition, some specific granting conditions have to be met. This normative framework remains a federal competence; the Sixth State Reform has not led to a devolution of power in this respect.

UI in Belgium is different from UI in many other countries in two respects. First, in principle, the duration of unemployment benefits can be unlimited. Second, and not unrelated, the Belgian unemployment case load incorporates a number of inactive individuals who would in other countries not be entitled to unemployment benefits proper, but be entitled to SA, (long-term) invalidity benefits, or early retirement within the pension system. Consequently, the unemployment case load is comparatively big (see Vandenbroucke, 2013, Table 4), but the level of benefits is, in general, not high, certainly not for individuals who are not financially in charge of a household and who are medium- or long-term unemployed. In this sense, the Belgian UI somewhat resembles Austrian UA, which is also (in principle) unlimited and of fairly low generosity.

The notion of an ‘unlimited duration’ needs qualification though, on two counts. First, the eligibility criteria stipulate that the right to benefits implies obligations: searching employment, accepting ‘adequate job offers’, and being ready to cooperate with PES that offer activation or training. Individuals who are seen to fail one of these obligations, can be sanctioned. Second, for many years, article 80 of the unemployment benefit regulation made it possible to exclude unemployed individuals from the benefit system, if the duration of their unemployment was considered ‘abnormally long’. In the 1990s, a relatively high number of unemployed individuals lost benefits via this system. With hindsight, this mechanism can be said to have been rather brutal in its consequences (exclusion from the right to unemployment benefits, often without prior warning that one should look for work), highly selective (it applied only to a sub-category of mainly women), and not very effective in terms of activation (since it was not incorporated into an activation strategy). In the context of the *Cooperation Agreement* of 2004, Article 80 was replaced with a regulation that is broader in scope (it covers all the unemployed, though initially it was restricted to the under-50s) and more nuanced in its application (with gradual sanctions), which has a preventative rather than punitive effect.<sup>2</sup>

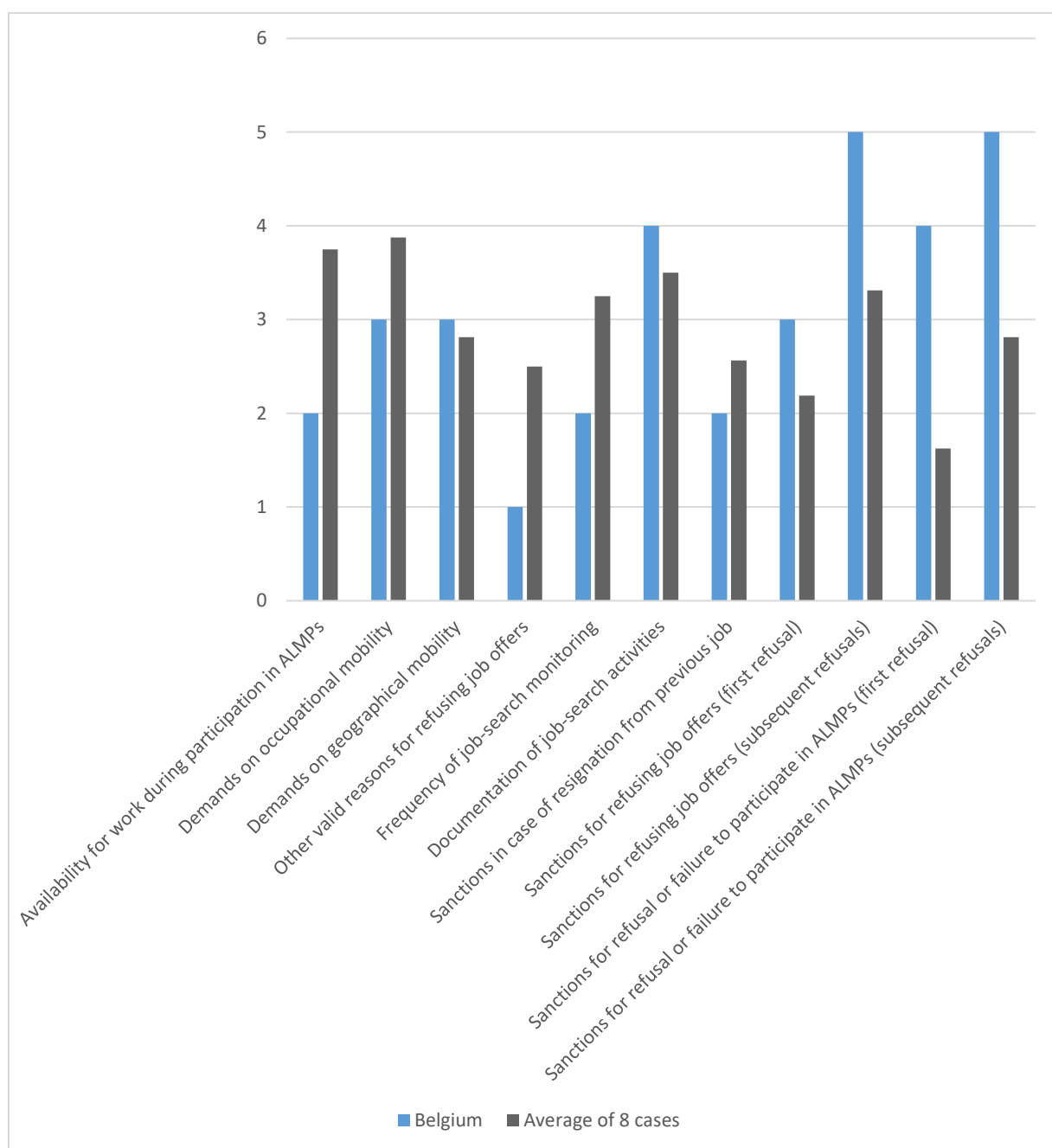
The overall strictness of eligibility criteria of Belgian UI is moderate (Figure 2). This is mainly due to the relatively relaxed availability requirements and suitable work criteria combined with a strong reliance on sanctions. It is, however, important to note that these sanctions have a gradual nature.

Figure 2 Overall strictness of eligibility criteria. Source: Langenbucher 2015, p. 27.



<sup>2</sup> On a critical note, one might say that the activation policies deployed by the regional PES, still do not reach out (or, at least not sufficiently) to the ‘stock’ of long-term unemployed. Hence, in reality, replacing art. 80 by the new mechanisms of sanctions and control may not have changed the situation of the long-term unemployed with regard to activation that much.

Figure 3 Strictness of eligibility in Belgian UI. Source: Langenbucher 2015.



## 2. Social assistance

SA (the so-called *leefloon/revenue d'intégration sociale*) plays a residual role in Belgium; in terms of budgets and caseload, it is relatively marginal (compared to unemployment). Those who do not qualify for any of the benefits discussed up to now have to fall back on the means-tested SA scheme. The legislation with regard to the benefits, but also concerning the principle of activation, is federal, but the practical implementation is completely devolved to the municipal level. The high discretionary power of the municipalities is reflected in the local differences with regard to, for example, the activation approach, the application of laws and rules, the duration of the benefits and their conditionality, the use of activation measures, the demand versus supply-driven approach to social employment and the cooperation with external partners (Hermans, 2005).

The budgetary responsibility for these SA benefits, very roughly formulated, can be seen as starting from a 50/50 division between the federal government and local authorities. These benefits are administered by the Public Social Assistance Centres (*Openbare Centra voor Maatschappelijk Welzijn* or *OMCW/Centres Publics d'Aide Sociale* or *CPAS*). These centres are run by local authorities. The benefits are means-tested for the incomes of other household members and depend upon the household status. The means-test applies to all types of income of the claimant: labour market income, social security transfers, income from real estate, alimentation, income earned by a spouse, of the parents (as long as the young claimant benefits from a family allowance), or of the children in case the patrimony of the applicant was reduced in an 'abnormal way' during the past five years (de Deken, 2007).

### 3. Activation of unemployment insurance

Already since the 1980s<sup>3</sup>, Belgium features a clear-cut distinction between one level of government which is responsible for UI benefits (the legislation, the funding, the administrative management of the system, and the sanctioning of unemployed individuals when they fail to meet the obligations that make them eligible, such as searching employment), and another level of government which is responsible for the PES and the activation of the unemployed (but not the follow-up of their search effort with regard to their eligibility for benefits).

With regard to activation, Belgium has been a laggard. The actual shift from passive labour market policies to activation occurred very late. A systematic approach to activation, conforming to the 1997 guidelines of the European Employment Strategy, was only implemented from 2004 onwards. By that time, the division of labour had created considerable political tensions with regard to the governance of the unemployment system, culminating in this new departure. Before, there was no systematic 'preventative' attempt to activate new entrants into unemployment across all Belgian regions; and the 'curative' approach (activating the stock of long-term unemployed) was also very disparate.

The *Employment Conference* of September 2003 paved the way for the policy change. The basic principles were laid down in the *Cooperation Agreement* of 30 April 2004. The goal was to better coordinate the instruments of the regional authorities (counselling and training) with the responsibility of the federal authorities to control the labour market availability of unemployed benefit recipients. The rights and obligations of the unemployed had to be rebalanced. Within the context of the intensified regional guidance of the unemployed, the federal level provided for an annual maximum contribution of €24.8 million, allocated according to a distribution key. The main points of the agreement are listed in Table 1.

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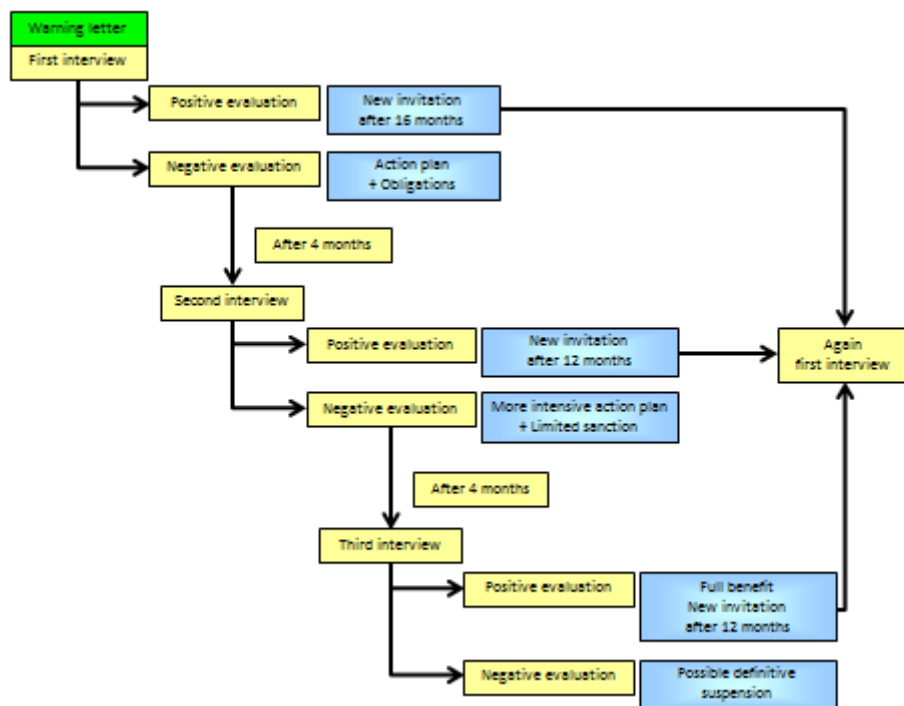
<sup>3</sup> Special Law of 8 August 1980 on institutional reforms



*Table 1 Main points of the Cooperation Agreement of 30 April 2004 between the Federal State, the Regions and the Communities regarding the active guidance and monitoring of unemployed.*

1.	The regional authorities intensify the guidance of the unemployed:
a.	For the new inflow into unemployment: before the sixth month of unemployment for young people (< age 25), before the 12 <sup>th</sup> month for adult people (≥ age 25)
b.	For unemployed who will be subject to the new monitoring system (see point 2), and in case they received no offer as mentioned under point a: within the two months following a warning letter
c.	For the long-term unemployed: where necessary, as soon as possible
2.	The RVA/ONEM sets up its own monitoring system to assess the search efforts of jobseekers and will thus no longer rely solely on rely on the data exchange (transmissions; cf. infra) from the regions. This system will take into account the ongoing actions of the regions in order not to disrupt the counselling. It targets full (meaning unemployed after full-time job or studies) long-term unemployed.
3.	Data exchange between the RVA/ONEM and PES will be intensified and ICT-based, in both directions. By doing so, the administrative burden for the unemployed will be minimised.
a.	The federal authorities provide, inter alia, for the systematic communication of: <ul style="list-style-type: none"> <li>i. Information with regard to the unemployed who have been contacted by the federal level within the context of the monitoring system</li> <li>ii. Data with regard to the outflow from unemployment</li> <li>iii. Data with regard to the exemptions from registration as jobseeker</li> </ul>
b.	The regional authorities provide, inter alia, for the systematic communication of: <ul style="list-style-type: none"> <li>i. The efforts of the unemployed</li> <li>ii. Job and training offers</li> </ul>

The *Cooperation Agreement* implied a marked convergence, across the three regions, with regard to the way activation was organised. The federal *RVA/ONEM* would invite each unemployed person to an individual face-to-face meeting according to a strict time schedule (a first meeting after 15 months of unemployment for people below the age of 25, and after 21 months for older individuals). The regional PES committed themselves to an activation process that would offer all those individuals adequate opportunities (in the form of counselling, training, job offers) before they would be invited by the federal *RVA/ONEM*. If, on the basis of this face-to-face meeting, the search effort of the unemployed was judged to be satisfactory by the *RVA/ONEM*, a new invitation would come after another 12/16 months (if the person would still be unemployed). But if the search effort was considered unsatisfactory, a new invitation would follow after only four months; a second negative evaluation would then lead to a gradual build-up of sanctions. Figure 4 gives an overview of the federal monitoring system. This agreement and the mutual regional and federal commitments attached to it, created a strong incentive for the regional PES to step up their activation effort, but also a rather rigid straightjacket in which they had to organize their own processes.

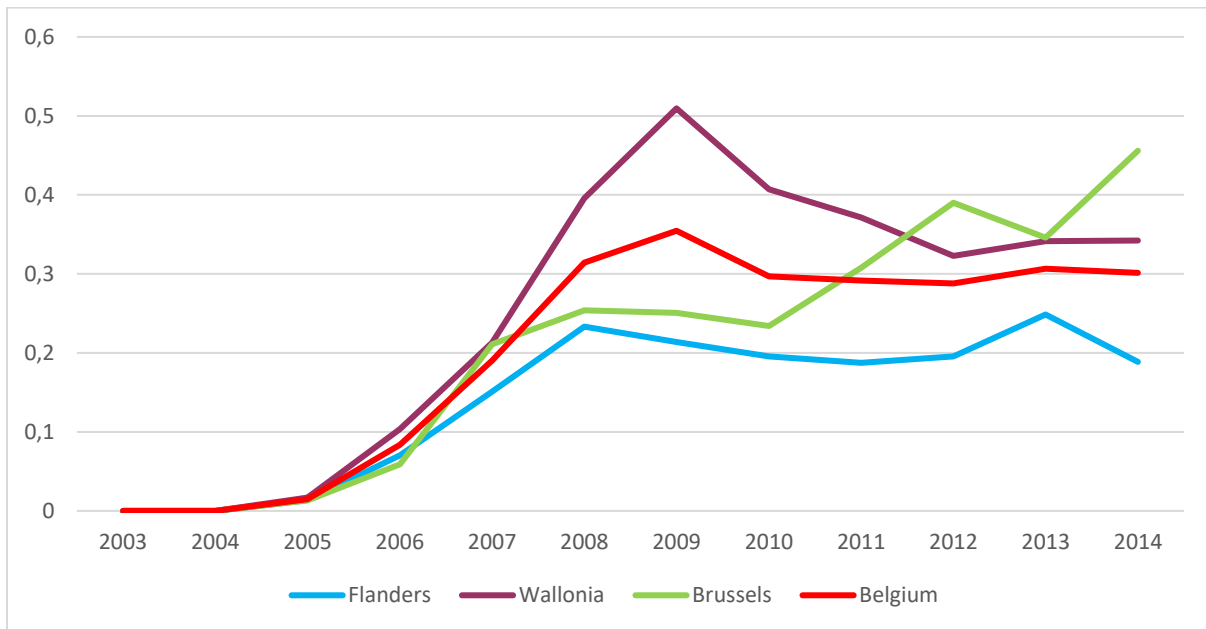


With regard to sanctions, Article 80 was replaced with a regulation that is broader in scope (it allows to target all the unemployed, including men and heads of households, though initially it was restricted to the under-50s) and more nuanced in its application (with gradual sanctions), which has a preventative rather than punitive effect. The essence of the new model is close monitoring rather than imposing harsh punitive sanctions. As a matter of fact, within the activation framework *stricto sensu*, the number of total and definitive exclusions in 2009-2011 (5,906 cases) was 30% lower than under Article 80 between 2001-2003; apart from total and definitive exclusions, the new system also provides for temporary exclusions; over 2009-2011, there were 5640 cases of such temporary exclusions. This largely preventative model was not unsuccessful, according to research by Cockx *et al.* (2011a, 2011b), which is not to say that it cannot be improved. The *Cooperation Agreement* also created a new momentum for the system of so-called 'transmissions', whereby regional employment services can report unemployed persons to the national employment agency for a variety of contraventions of the unemployment regulation: the number of transmissions increased significantly, and so did the number of ensuing sanctions. Although transmissions do not fall within the monitoring scheme applied by the RVA/ONEM, they are closely related to the activation drive and the *Cooperation Agreement*.

We focus here on sanctions, not because we believe that sanctioning ‘undeserving’ unemployed individuals is the *nec plus ultra* of an activation policy. However, the interregional imbalance with regard to sanctions, as it existed in the beginning of the 2000s, came increasingly to be seen as unacceptable. That regional imbalance may be seen as a signal of ‘institutional moral hazard’ which undermines the legitimacy of the system. Figure 5 shows the total number of sanctions, as a percentage of the number of unemployed, linked to the new federal monitoring system (i.e. where the trigger is at the federal level). Figure 6 shows the total number of sanctions that followed from regional ‘transmissions’ to the federal level (i.e. where the trigger is at the regional level). Figure 7

encompasses both categories of sanctions. To be sure, Figure 7 also includes sanctions that are not related to the jointly agreed activation scheme: data mining has made it possible to drastically improve the fight against benefit fraud, which has also resulted in more sanctions.

*Figure 5 Sanctions as a % of the total number of unemployed, directly linked to the federal follow-up. Source: RVA/ONEM and own calculations.*



*Figure 6 Sanctions following from 'transmissions', as a % of the unemployed. Source: RVA/ONEM and own calculations.*

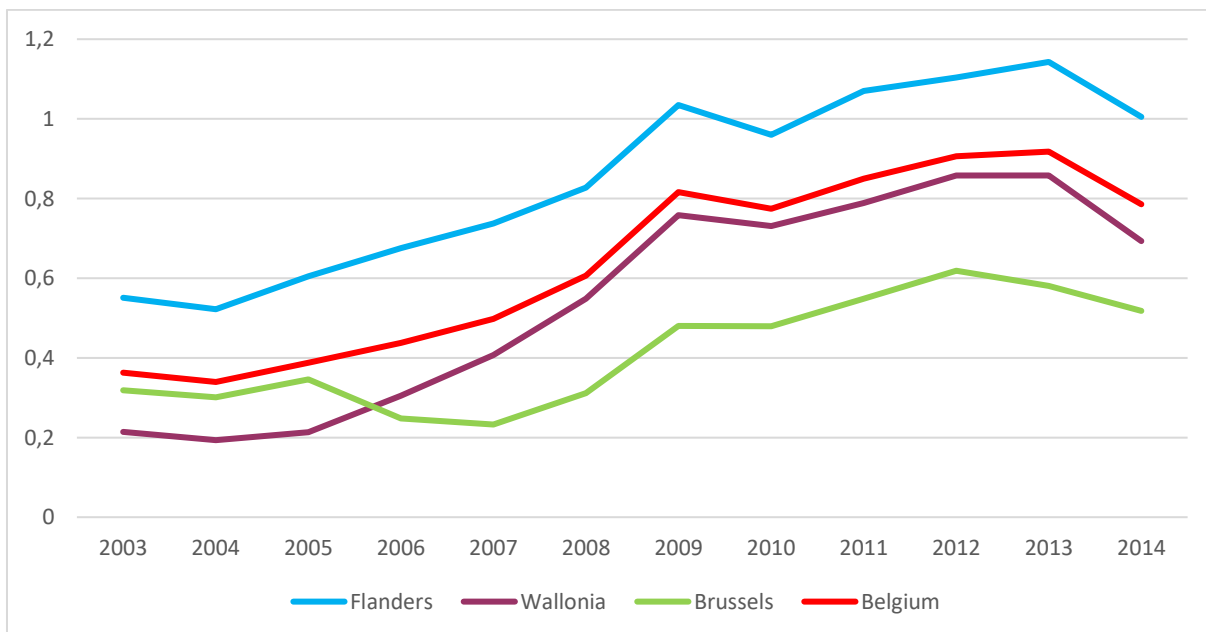


Figure 7 Total number of sanctions, as a % of the number of unemployed. Source: RVA/ONEM and own calculations.

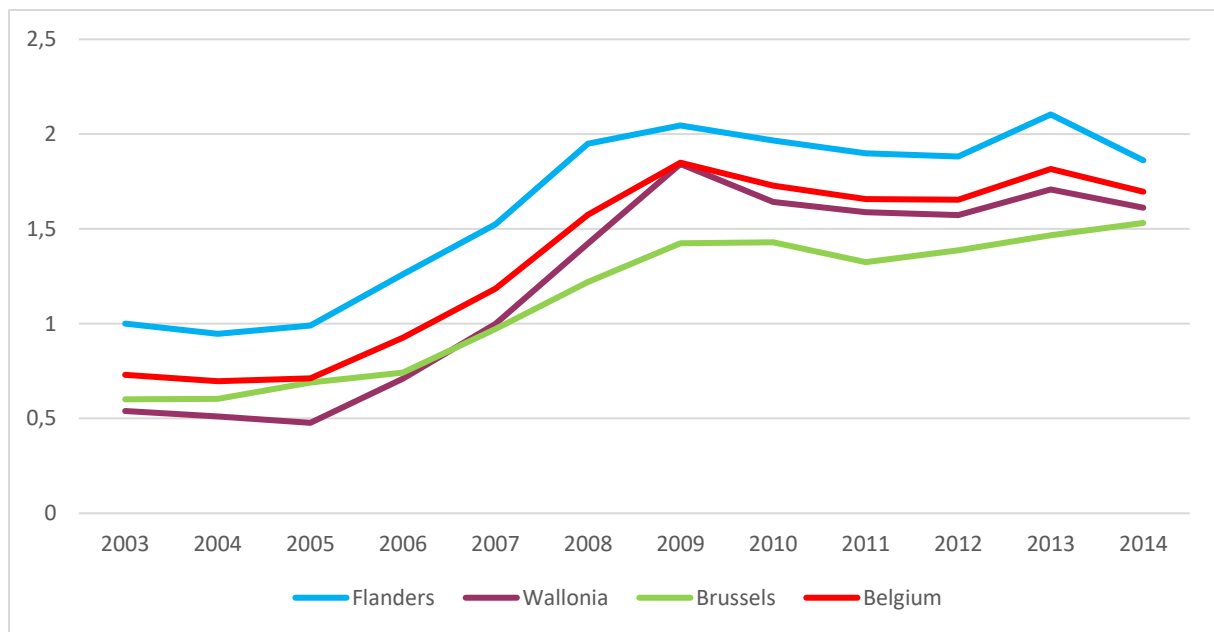


Figure 7 clearly displays a ‘catching-up process’ in terms of the overall number of sanctions in Wallonia and Brussels. The underlying components reveal persistent differences in the patterns of sanctions (with sanctions from ‘transmissions’ remaining relatively more important in Flanders, and sanctions directly linked to the new federal monitoring system being more important in the two other regions); however, the *Cooperation Agreement* not only fuelled activation and training efforts in all regions, but also corrected a situation that was politically unsustainable.

For completeness, we should add that in 2013 a new *Cooperation Agreement* was negotiated, in the same vein as the 2004 Agreement but with some important modifications. For instance, the scope was enlarged (it also extended to unemployed individuals older than 50, and incorporated specific procedures for school leavers) and the intervention periods were shortened (i.e. it implied a speeding up of the follow-up process vis-à-vis the individual unemployed).

In a sense, the *Cooperation Agreements* of 2004 and 2013 can be seen as a translation of key and long-standing guidelines of the European Employment Strategy into Belgian practice, notably the fact that every unemployed individual had to be offered a new start before reaching *x* months of unemployment (depending on the age of the individual) in the form of training, retraining, work practice, a job, or other employability measures. (The observation that Belgium was a laggard with regard to the implementation of these 1997 Guidelines, was an important argument in the internal Belgian debate in the beginning of the 2000s.) Gradually, the European Employment Strategy has become more stringent in this regard, culminating recently in the *Youth Guarantee*.

The 2013 *Cooperation Agreement* will be the last agreement of this type in Belgium; from 2015 onwards, the institutional architecture changes in the context of a new round of constitutional reform, the Sixth State Reform. The devolution of power under the Sixth State Reform mainly involves measures for activating unemployment benefits, both passive and active availability control of jobseekers, as well as sanctions, competences in the field of training (paid educational leave, apprenticeship), policies in favour of target groups, notably via specific reductions in social security

contributions, and the service voucher scheme. However, labour legislation in general and the normative framework defining suitable employment, active search for work, administrative checks and sanctions in particular, remain federal competences. As was the case in the past, the Sixth State Reform is awarding the full spending authority over the transferred funds to the regions. Hence, these will be unconditional. Regions will be able to spend the budget (including possible surpluses) “as they please” for various forms of labour market policy in a broad sense (measures concerning labour costs, training and guidance of jobseekers, employment programmes, etc.) (Government Di Rupo, 2011; Cantillon, 2013).

Since the Sixth State Reform, activation measures are fully designed and financed by the regions. PES are primarily funded by subsidies from the regional governments<sup>4</sup>, on the basis of management agreements. While previous management agreements in Flanders, for example, also defined process objectives, the current agreement with Flemish PES, for the period 2011-2015, is based almost entirely on outcome targets, defined in terms of outflow rates into work for seven categories of jobseekers categorised by age, duration of unemployment, distance from the labour market or having been dismissed due to restructuring, in addition to customer satisfaction measurements<sup>5</sup>. Table 2 gives an overview of these targets. Qualitative evaluation reports are delivered for areas of performance which are difficult to capture in targets or are in experimental phase (Bogaerts et al., 2011; Mosley, 2012).

*Table 2 Targets and objectives for strategic target 1, i.e. “a tailor-made activation of all jobseekers and other non-active persons citizens in order to achieve a sustainable insertion in the labour market”, of the management agreement between the Flemish Government and the Flemish Employment and Vocational Training Service for the period 2011-2015.*

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<sup>4</sup> These subsidies are mainly complemented by European resources and financing from the federal insertion plan.

<sup>5</sup> There are additional strategic targets for other areas (career services, services for employers, recognising and developing competences, and partnerships).

	Type of measurement	Objective
Target parameter 1: satisfaction of the jobseekers	Satisfaction	75.0%
Operational target 1: tailor-made approach of mediation and counselling for new jobseekers < age 25		
Target parameter 2: outflow into work of jobseekers < age 25	Result	57.0%
Operational target 2: tailor-made approach of mediation and counselling for new jobseekers ≥ age 25 and ≤ age 50		
Target parameter 3: outflow into work of jobseekers ≥ age 25 and ≤ age 50	Result	47.5%
Operational target 3: systematic approach for new jobseekers > age 50		
Target parameter 4: outflow into work of jobseekers > age 50	Result	30.0%
Operational target 4: gradually faster activation of medium- and long-term jobseekers by using a suitable approach		
Target parameter 5: outflow into work of jobseekers without work for more than one year	Result	11.5%
Operational target 5: maximal activation of disadvantaged groups (unskilled, allochthonous and disabled persons and persons > age 50)		
Target parameter 6: outflow into work of jobseekers from disadvantaged groups	Result	18.0%
Operational target 6: set-up of a specific approach for vulnerable groups (persons in poverty, persons with medical, mental, psychological or psychiatric problems, single parents, persons with low literacy skills, persons gone bankrupt and re-entrants)		
No target parameter	Evaluation report	
Operational target 7: improve cooperation between Flemish actors on restructuring policy		
Target parameter 7: outflow into work of workers dismissed due to restructuring	Result	41%

## 4. Activation of social assistance

In 2002, the activation of individuals receiving a *leefloon* came on the agenda, partly due to the continuing increase in their number. With the enactment of the law on the right to social integration (*recht op maatschappelijke integratie (RMI)/droit à l'intégration sociale (DIS)*), activation and labour market integration became a crucial task of the OCMW/CPAS, as an addition to administrating and disbursing the traditional minimum income protection. For the applicants for SA, the formal entry conditions remained largely the same. Also the condition of being 'work ready' was, in principle, not new. In 1974, this condition was already enrolled in the predecessor to the RMI/DIS law, i.e. the law establishing the right to a subsistence minimum. But because guidance towards the labour market had gained in importance, the right to social integration was redefined. The right to a minimum income remained not only dependent on the neediness, but was also linked to the displayed efforts to become self-reliant, although it contained no obligation of result.

According to Carpentier (2010), activation has a more individual, and hence a more local character than the grant of benefits itself. As a result, it entails not only a shift in content, but also a question of coordination. Although the federal government sets the legislative framework, the activation of SA in Belgium thus implied, according to Carpentier, an implicit 'transfer of powers' to the local level of the OCMW/CPAS. The legislation in the area of activation is indeed less clearly defined than the legislation on minimum income protection, allowing more room for interpretation and customisation. For example, there is no precise definition of 'work readiness' or 'a suitable job'. In fact, the practical implementation of activation is completely devolved to the municipal level. This high discretionary power is reflected in the local differences with regard to, for example, the activation approach, the application of laws and rules, the use of activation measures, the demand versus supply-driven approach to social employment and the cooperation with external partners (Hermans, 2005).

This decentralisation, in the opinion of Carpentier (2010), was not accompanied by stricter federal steering or monitoring of the OCMW/CPAS (as is the case in Denmark and the Netherlands). The federal government has no information about the manner in which the OCMW/CPAS deal with their local autonomy. "Allocation of SA beneficiaries to employment and financial instruments is based on the access conditions and evaluation by local counsellors or social workers and the public welfare councils. On the federal level, no detailed screening instrument was developed. And also with regard to financing, the principles remained roughly the same. The *leefloon* is paid partly by the federal government and partly by the OCMW/CPAS. *Financiële hulp/aide financière*, the so-called *equivalent leefloon/équivalent du revenu d'intégration sociale*, is fully federally refunded.<sup>6</sup> Besides OCMW/CPAS take additional initiatives with their own resources according to local needs. The federal government is only informed of payments where federal subsidies are involved." With respect to the activation policy of the OCMW/CPAS, according to Hermans (2005), the federal government has hitherto mostly

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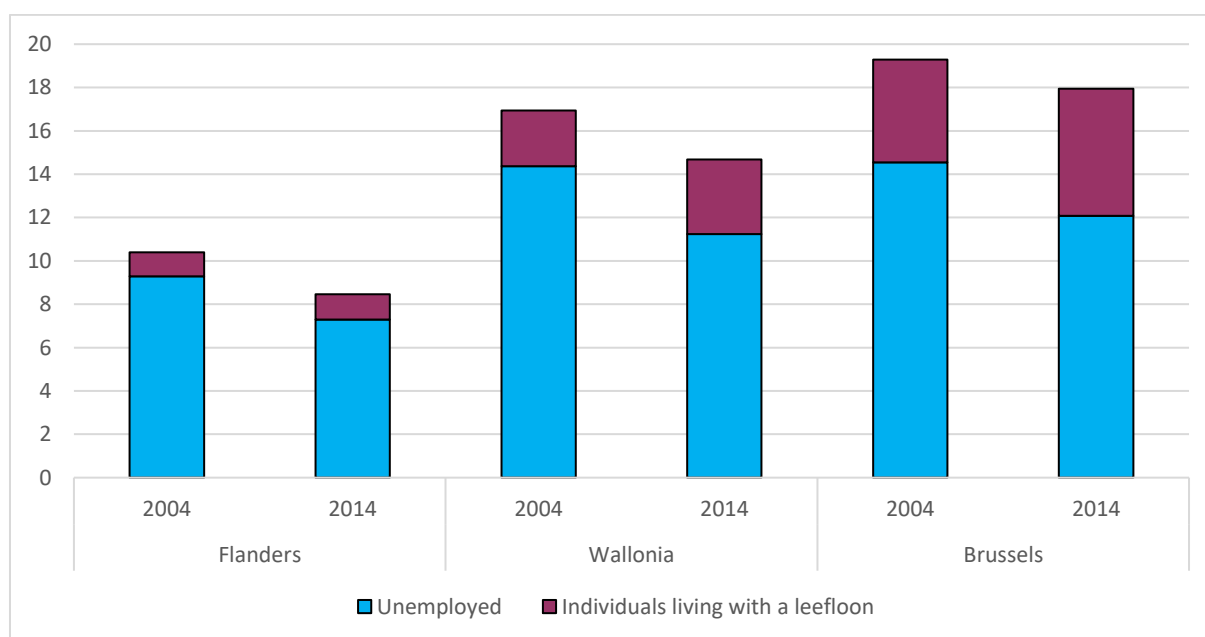
<sup>6</sup> The distinction between *leefloon* and *financiële hulp* lies in the residence condition. Only candidate refugees and foreigners with a residence permit who are not registered in the population register are entitled to *financiële hulp*. In these cases, an amount is granted at the same level as the *leefloon*. This form of financial aid is determined by the law of 2 April 1965 concerning the bearing of the costs of the aid granted by the OCMW/CPAS.

used “input steering”. It mainly created financial possibilities, which OCMW/CPAS can use. How individuals receiving a *leefloon* must be activated, is left to the OCMW/CPAS.

The RMI/DIS law differs from the original law establishing the right to a subsistence minimum in the sense that the duty to work is more pronounced for those under 25 years old, an age distinction which is explained by the strong increase in the number of young people who had to rely on OCMW/CPAS in the 1990s. After three months, OCMW/CPAS must, in principle, offer a labour contract to young people. That is, according to Hermans, the only form of “output steering”. However, in his opinion, it cannot be denied that the RMI/DIS law allows for a broad interpretation. Offering a contract is indeed not an absolute obligation. When professional integration is not feasible in the short term, the possibility was built in to grant a *leefloon* that is linked to an individualised project for social integration. Much therefore depends on the interpretation of the OCMW/CPAS. Again, there is no real output steering (performance management), resulting in significant differences between the OCMW/CPAS.

In Figures 8 to 10, we demonstrate the diversity in the number of individuals living with a *leefloon* and the number of unemployed in the regions, 13 Flemish centre cities and nine Walloon centre cities, each time for 2004 and 2014. The number of unemployed and individuals living with a *leefloon* is compared to the population between 18 and 64 years old. To give a clear view, the numbers are expressed in relation to the population.

Figure 8 Caseload in the regions in relation to the 18- to 64-year-old population. Source: RVA/ONEM, PPS Social Integration, Policy Research Centre Work and Social Economy and own calculations.<sup>7</sup>



<sup>7</sup> With regard to the population numbers, the figures for 2014 are based on an estimate.



Figure 9 Caseload in 13 Flemish centre cities in relation to the 18- to 64-year-old population. Source: RVA/ONEM, PPS Social Integration, Policy Research Centre Work and Social Economy and own calculations.<sup>7</sup>

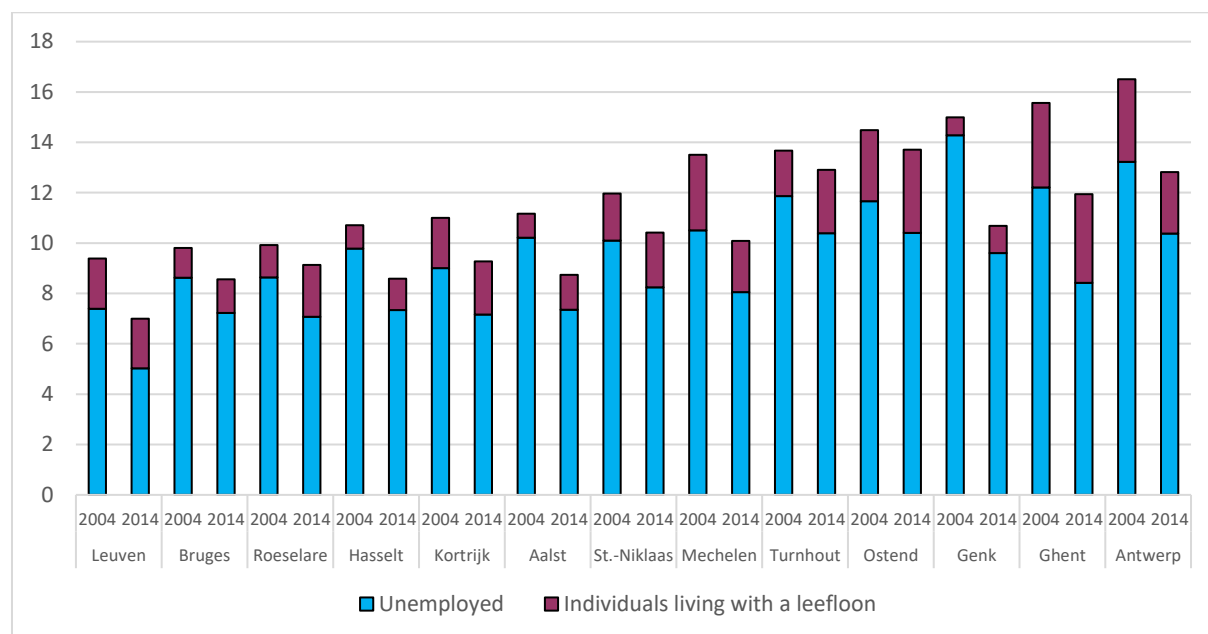


Figure 10 Caseload in 9 Walloon centre cities in relation to the 18- to 64-year-old population. Source: RVA/ONEM, PPS Social Integration, Policy Research Centre Work and Social Economy and own calculations.<sup>7</sup>



A striking finding is that the numbers of unemployed show a general decline, while the numbers of individuals living with a *leefloon* are in a general upward trend, except for Antwerp and Mechelen. Clearly, benefit systems act, at least partially, as if they were communicating vessels.

Numbers are of course only one piece of the puzzle. Another question is which principles are being used by OCMW/CPAS in their policies, and how to judge the quality of these policies. Hermans (2005) distinguishes three types of OCMW/CPAS. “The *inertia type* pays little attention to activation and focuses mainly on the passive payment of benefits. The *disciplining type* places great emphasis on

work readiness and outflow, without this necessarily leading to sustainable integration. The *integration type* uses a broad definition of activation and a diversified range of services, with counselling and customisation” (Bogaerts et al., 2010). Indications for the ‘integration type’ are the degree of freedom of choice that individuals living with a *leefloon* have in the activation process (e.g. the choice of a job), the amount of guidance during and after employment, the possibility to choose other forms of activation (e.g. voluntary work) and the extent to which family responsibility is considered as activation.

At present, much clarity does not exist on how the policies of OCMW/CPAS relate to these characterisations in practice. Although there is some research (indicating, for example, that social workers of some social centres within the OCMW/CPAS of Antwerp are dealing with activation in a disciplinary or an emancipatory way, depending on the centre), but, for time being, we cannot draw strong conclusions from these cases. In the context of the new constitutional reform, the competence for activation of individuals living with a *leefloon* will be devolved to the regions. Whether or not this will lead to a more consequential central steering (by the regions) and less policy discretion at the local level is as yet unclear. In addition, by 2019 at the latest, the Flemish Government will fully integrate the OCMW’s in municipal authorities (at a voluntary basis for the centre cities). In this way, the Flemish government wishes to achieve a more integrated social policy. Models will be developed which municipalities can adopt in this integration process (e.g. privately structured external independent agencies), so that they can continue to incorporate the tasks that they have to perform in the framework of federal legislation. The necessary protection for personal privacy and neutral case treatment, such as those in existing support committees when allocating social services and individual support, would remain guaranteed.

## 5. Concern for institutional moral hazard

The Belgian experience before 2004 can be interpreted as an archetypal case of *institutional moral hazard*: regional authorities were under no financial pressure to commit themselves to systematic activation, given the fact that the funding of unemployment benefits was completely federal. The division of labour between federal authorities (supposed to monitor and eventually sanction the unemployed with regard to their job search effort), and regional authorities (supposed to activate the unemployed), reduced the motivation to activate at the regional level, and made it practically impossible for the federal level to monitor and eventually sanction the unemployed. In theory, the regional PES had to inform the federal social security authority (the RVA/ONEM) about unemployed individuals who were apparently not looking for work or who did not cooperate with activation programmes (the regions had to ‘transmit’ information on non-compliance with the principles of the federal UI; in practice, the amount of so-called *transmissions* remained very limited and was very uneven across the regions, as we will explain below. As a result of this rather schizophrenic situation, the main mechanism applied throughout the 1980s and the 1990s to monitor and sanction the unemployed was the infamous Article 80 (cf. *supra*).

However, apart from this non-benign interpretation of the long stand-still in activation in Belgium before 2004, as a pure case of institutional moral hazard, other factors were at play too. If a regional PES wanted to position itself in the market of placement (in competition with interim agencies, etc.), it had to build and entertain a reputation of sending ‘good and motivated’ candidates to companies. Hence, offering jobs to unemployed individuals as a way to ‘test’ their readiness to work (notably when their motivation would seem limited), was seen as detrimental to the credibility and the competitive position of the PES as a labour market actor. This argument, which is in itself rational, contributed to a policy paradigm that activation had to be a ‘positive’ endeavour, far removed from any sanctioning mechanism. This explains why, at the regional level the willingness to inform the RVA/ONEM about unemployed individuals who were apparently not looking for work, was very limited.

Finally, in order to understand the Belgian policy predicament of the 1990s and the growing political tension with regard to interregional differences in unemployment, one must take on board the very different employment situation in the Belgian regions, with Flanders having an older age structure of inactivity and Wallonia facing, among others, a problem of educational attainment. In the 1990s, given a tighter labour market in Flanders and more unfulfilled vacancies, counsellors in the Flemish PES faced a different reality than counsellors in the Walloon PES. Despite the factors that inhibited forceful activation efforts both in Flanders, Wallonia and Brussels, in the Flemish region, arguments in favour of a more systematic activation effort gained ground. In Wallonia, the low regional employment rate was interpreted by many actors as solely a labour demand problem and not a supply problem, i.e. as indicating that activation of the unemployed would be futile in Wallonia. Data on the (limited) number of sanctions vis-à-vis unemployed individuals by the federal RVA/ONEM suggested that the Flemish PES was more ready to transfer the files of ‘undeserving unemployed’ individuals who declined job offers, to the federal RVA/ONEM, with a view to applying sanctions, than the PES in Brussels and Wallonia (see Figure 7 above, at the start of the period under review, the percentage of unemployed individuals that were confronted with sanctions in the context of the federal unemployment benefit system, was much higher in Flanders than in the other regions).

All this changed radically with the intergovernmental *Cooperation agreement* of 2004. Politically, the basic idea was that regional authorities and PES accepted that they had to contribute actively to the budgetary viability and public legitimacy of the federal unemployment benefit system, which retained its defining feature of organizing unemployment benefits with, in principle, no limitation in duration if the unemployed individual continues to search for jobs. (In a sense, the gradual abolition of Article 80 even reinforced this fundamental feature of the Belgian system.) Practically, the essence was that the instruments of the federal authorities (with regard to the monitoring and possible sanctioning of unemployed individuals) and the instruments of the regional authorities would be much better coordinated with each other, in order to establish a real link between individual rights (to benefits) and obligations (to search employment).

Simultaneously, the *Cooperation Agreement* implied a straightjacket for the regional PES, which made subsequent adjustments of the regional policy frameworks to new realities or new insights more difficult. This led to a call to a new approach from 2008 onwards, in which the complete competence with regard to activation, but also with regard to the monitoring of unemployed individuals would be devolved to the regions. One of the arguments in favour of further devolution was that the federal follow-up of unemployed people cannot be based on a sufficiently fine-grained assessment of the real situation of the unemployed individuals: 'clever' unemployed people are able to conceal lack of effort when they are interrogated by the federal authorities (who do not engage in the mediation and training process themselves, since that is done at the regional PES level); vulnerable individuals, who experience real difficulties in finding a job in the regular labour market may also be very vulnerable vis-à-vis an undifferentiated examination procedure at the federal level.<sup>8</sup> At first sight, devolving the monitoring of unemployed individuals' search efforts to the regions, would seem to exacerbate the risk of institutional moral hazard, since UI remains a federal competence. However, the argument fitted into a broader scheme, in which the impact of success (or failure) of activation on regional budgetary revenues would be enhanced (see Vandenbroucke and Meert, 2010, for a proposal to link budgetary transfers from the federal to the regional level directly to regional performance in employment policy, formulated in the context of this new institutional debate).

The 2004 *Cooperation agreement* was a second-best solution to the problem the Belgian labour market was struggling with since the 1980s: the institutional separation between, on the one hand, the control of the legality of unemployment benefits, which remained a federal competence, and, on the other hand, the assistance of jobseekers, which had become a regional power. Until 2004, there was no effective communication between the 'punitive' and the 'helping' hand, causing activation policy to be impossible. The uncontrolled growth of the group of long-term unemployed men and women resulting therefrom (although, for the latter group, Article 80 intervened, albeit blind), was dramatic, because - mainly in Wallonia - it became particularly difficult to build bridges to the labour market for these people.

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<sup>8</sup> A key to understanding the *Cooperation Agreements* is the following 'division of labour': the regional authorities were ready to share 'facts' with the federal authorities, but not to transmit an overall evaluation of the search effort of the unemployed individual (on which they have much more and more detailed 'first-hand' information than the federal authority).

The cooperation agreement marked a turning point, but a first-best solution should bring control and guidance in one hand. For Cockx et al., a full regionalisation of the implementation of control - as part of a homogenous federal regulation - “would have the advantage that the collection of information about search efforts and availability would be done by the same service, which normally leads to better information flow and decreasing coordination costs”. However, according to Cockx, the advantages of regionalisation do not occur automatically. “If control and sanctioning are assigned to the regional level, this means, after all, that the regions de facto determine the duration of benefits. Those decisions would determine federal spending for UI without the regions having to finance it.” For Cockx, this is problematic, and with good reason. It is necessary to make the regions co-responsible for the consequences of their policies on the funding of the federal UI.

The Sixth State Reform has taken the call for further devolvement of activation policy on board, but no specific intergovernmental ‘financial incentive’ mechanism was attached to it. Implicitly, the negotiators of the Sixth State Reform seemed satisfied that the overall financial architecture of the new Belgian institutions would constitute a sufficient incentive for the regions to pursue an active labour market policy, since regional budgets would automatically benefit from an increased taxable income basis when employment would increase. Moreover, spending freedom should ensure that the regions “feel the consequences of their actions (or their policy) themselves” (Vandenbroucke and Meert, 2010). If, for example, they develop successful employment policies that decrease the number of ‘target groups’ for which reductions in social security contributions are necessary, they will be able to use the resources that are made available for this purpose for other policy purposes (Cantillon, 2013).

The Sixth State Reform has been voted in parliament, but the implementation is still in an early stage. The federal and the regional governments agreed on a common 'normative framework' on the monitoring (and possibly sanctioning) of unemployed persons, to ensure a sufficiently uniform approach across the regions.

The main points of the new framework are listed in Table 3. As mentioned before – stipulated in Article 6 of the Special Law of 8 August 1980 on institutional reforms as amended by the Special law of 6 January 2014 on the Sixth State Reform – the regions are given the full power of decision on and execution of control of active and passive availability of the unemployed and the related sanctions, while the federal authority remains competent for this framework, determining the minimum requirements with regard to the regulations on suitable work, actively seeking employment, administrative controls and sanctions, and for the administrative implementation of sanctions, without prejudice to regional competence. *In concreto*, this means that the regions have jurisdiction to examine, control and decide autonomously whether an unemployed person is available for the labour market and to impose sanctions. The RVA/ONEM, for its part, is no longer competent to intervene in the decision process. It is informed by the regions about the decisions and ensures their implementation. Since the regions have full decision-making and executive competences in controlling availability and imposing sanctions, the RVA/ONEM cannot in any case refuse to reimburse unemployed due to a lack of active availability. As for the control of this active availability, the regions have the flexibility to organise their own control and greater freedom in the choice of sanction levels. In theory, they could delegate the exercise of this jurisdiction to control active availability back to the federal authority against remuneration.

A new element of the normative framework concerns the control of adapted availability. It prescribes that unemployed who have reached the age of 60 are required to take part in personalised guidance, tailored to their individual skills, their physical and mental capacities, as well as their professional experience that corresponds to the needs of the labour market. This adapted availability also applies to unemployed persons receiving a company supplement.<sup>9</sup>

*Table 3 Main points of the normative framework within the context of the cooperation agreement on the implementation of the Sixth State Reform between the Federal State, the Regions and the Communities regarding the active guidance and monitoring of unemployed.*

1. Basic principles of:
a. Active availability of the unemployed (the intensity of their guidance will be defined within the context of the cooperation agreement)
b. Adapted availability of unemployed aged over 60
2. Basic principles of the control of active and adapted availability
3. Definition of the target group
4. Basic rules of the procedure of control of availability by the regional PES, in particular with regard to:
a. Informing the unemployed about their rights and obligations
b. Periodicity of the evaluations (at least twice during the integration period <sup>10</sup> , at least once a year in the other cases of active availability and not later than six months after a negative evaluation or expiration of a sanction period; at latest after one year in case of adapted availability)
c. Minimum requirements for active availability
d. Respect for the rights of defence
e. Evaluation decisions (regional PES inform the RVA/ONEM about their decisions and report periodically in detail about their (number of) evaluations)
f. Unemployed moving to another region in the course of the procedure (the PES of the receiving region takes over the procedure, taking into account the evaluations carried out by the PES of the sending region)
5. Reasons for suspension of the procedure of control of active availability
6. Sanctions, start of the sanction period and combination with other sanctions:
a. Warning in case of first negative evaluation of active availability
b. Reduction in the amount of benefit to the level of the <i>leefloon</i> for 13 weeks or suspension in the case of second negative evaluation
c. Loss of right to benefits in case of third negative evaluation
d. After two consecutive positive evaluations, the previous negative evaluations are no longer taken into account

The agreement on this common normative framework will be given a legal basis in a royal decree. This means that a new form of ‘minimum requirements’ is introduced. In summary, the Sixth State Reform will require as much or even more cooperation and coordination. If successful, this could lead to a form of ‘joint decision federalism’, in which the federal government, social partners and regions shape policy together. Moreover, regions will remain dependent on federal administration for the implementation of their policies, since RVA/ONEM continues to be the sole administrative and technical operator. However, the jury is still out with regard to the impact of this new constellation.

<sup>9</sup> The unemployment scheme with company supplement is reserved for older employees dismissed by their employer, to whom a collective labour agreement is applied, who have reached the required age and who can prove sufficient former employment as a salaried worker. When they are dismissed, they are entitled to unemployment benefits until their actual retirement. They also obtain a company supplement paid by their former employer.

<sup>10</sup> In Belgium, individuals below the age of 25 can receive integration allowances after finishing studies, i.e. without an employment history. The applicant must be enrolled as a jobseeker and must have completed the integration period of 310 working days, whereby job-seeking activities are counted as working days, before being entitled to these benefits.

## 6. Analytical grid

Table 4 Analytical grid Belgium, with focus on the relation between the federal level and the regions (UI), the federal level and the municipalities (SA) and the regions and the municipalities (SA). Source: own compilation.

		Unemployment benefits	Activation of individuals with unemployment benefits	Unemployment-related SA benefits	Activation of individuals with SA benefits
1	Degree of decentralisation (i.e. extent of flexibility on lower level) w.r.t. design of the policy: <ul style="list-style-type: none"> <li>- Formal regulation</li> <li>- Policy goals</li> </ul>	No decentralisation	Total decentralisation (since Sixth State Reform) <p>Before Sixth State Reform: regions, but constrained by Cooperation agreement with federal level w.r.t. process organisation; since Sixth State Reform: regions completely responsible (sanctioning is also completely regionalised, but on the basis of federal unemployment regulation and federal normative framework)</p>	No decentralisation	No decentralisation, but policy goals are formulated in a very generic and non-binding way in the federal legislation
2	Degree of decentralisation (i.e. extent of flexibility on lower level) w.r.t. implementation of the policy	No decentralisation <p>Payment of benefits is done by payment bodies (one public fund and three auxiliary funds linked to national trade union federations) but they don't have policy autonomy w.r.t. UI benefits.</p>	Total decentralisation (since Sixth State Reform) <p>Before Sixth State Reform: regions, but constrained by Cooperation agreement with federal level w.r.t. administrative process organisation; since Sixth State Reform: regions completely responsible</p>	Total decentralisation <p>Benefits are administered by OCMW/CPAS.</p>	Total decentralisation (since Sixth State Reform)
3	Budgetary responsibility	Federal level <p>Federal social security</p>	Regional level (since Sixth State Reform) <p>Before Sixth State Reform: federal lump sum subsidy supports regional budgets</p>	Central and municipal level	Municipalities and (since Sixth State Reform) regional level <p>Before Sixth State Reform: federal level supports municipal budgets with some extra funding for 'leefloners' who are activated</p>
4	Budgetary transfers between levels of government?	n.a.	n.a. (since Sixth State Reform) <p>Before Sixth State Reform: federal lump sum subsidy</p>	Yes <p>Federal state reimburses part of SA benefit cost for municipalities</p>	n.a. (since Sixth State Reform) <p>Before Sixth State Reform: federal level supports regional</p>

			supports regional budgets		budgets with some extra funding for 'leefloners' who are activated
5	Structural redistribution? (measured on a per capita basis)	Yes  Important structural differences in caseloads	n.a.	Yes  Structural differences in caseloads, both across regions and across municipalities	n.a.
6	Political or managerial decentralisation?	Political	Political  Regions	Political  Municipalities	Political  Regions/ municipalities
7	Indicators used in the monitoring of lower-level performance by higher level (on the basis of: input, output and outcome)?	n.a.	Before Sixth State Reform: compliance with Cooperation agreement is monitored, but no monitoring of regional performance	No	Before Sixth State Reform: monitoring by federal level on the basis of input steering, but inconsequential; since Sixth State Reform: whether or not there will be more steering and less policy discretion by the regions is as yet unclear.
8	Is a system of 'minimum requirements' applied?	n.a.	Before Sixth State Reform: Cooperation Agreement can be seen as a (negotiated) system of minimum requirements Since Sixth State Reform: unclear whether a new system of minimum requirements will be negotiated	n.a.	n.a.
9	Are performance-based sanctions/ rewards applied by the higher level at the lower level?	n.a.	No	n.a.	No
10	Conclusion from 5-6-7: perception of, concern about, and approach to problems of institutional moral hazard?	Yes  Before Sixth State Reform: Cooperation agreements of 2004 and 2013 Since Sixth State Reform: it is unclear whether the new architecture (which gives more room of manoeuvre to regions w.r.t. activation) will be seen as creating more or less institutional moral hazard		Intention of Sixth State Reform, but it still needs to be implemented	
11	Conclusion from 5-6-7: approach to principal-agent issues?	n.a. (principal-agent problems might be discussed in the context of the relationships between the regional governments and their PES, but we do not include these in the analysis of the Belgian case)			
12	Contribution to macroeconomic stabilisation by the benefit system	Important (Dolls <i>et al.</i> )			



## 7. Conclusion

The main lesson learned from the Belgian experience, with regard to UI, is the following: a clear-cut distinction between one level of government that is responsible for UI benefits (the legislation, the funding, the administrative management of the system, and the sanctioning of unemployed individuals when they fail to meet the obligations that make them eligible, such as looking for employment), and another level of government that is responsible for the PES and the activation of the unemployed (but not the follow-up of their employment search effort with regard to their eligibility for benefits), does create very serious issues of institutional moral hazard, if not in reality, then certainly so in the political perception. In order to counter this problem, either a constraining cooperative framework is needed, or an intergovernmental financial mechanism that would 'reward' successful activation. In 2003, Belgium chose the first solution, with marked impact.

Simultaneously, this requires difficult and detailed intergovernmental negotiations; the ensuing straightjacket for the governments responsible for activation also has disadvantages, and, most of all, the monitoring of individual search efforts by the federal authority is sub-optimal. The awareness of these disadvantages led to the Sixth Belgian State Reform, which brings the country in uncharted territory with regard to unemployment regulation and activation. Given this Sixth State Reform and the absence of a national performance management framework, the regional PES being accountable only to their own regional governments, the European guidelines on activation become even more important as a unifying framework for increasingly devolved Belgian policies.

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