

- 2° where the worker has not submitted the request referred to in § 3, first paragraph and the judge has ruled that the dismissal or unilateral amendment of the labour terms and conditions 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 *repealed* (14)]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 substantiated complaint is started in the enterprise or institution, the prevention advisor immediately informs the employer of the fact that the worker who has lodged the substantiated complaint or the worker who has made a witness statement, enjoys the protection referred to in this Article as of the moment that this complaint was lodged, or as of the moment that the witness statement was made.

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 second paragraphs, 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 was lodged. (14)]

[Section 4. – Information and access to documents

Art. 32quaterdecies. – The complainant receives a copy with the substantiated complaint.

Within the context of the investigation into the substantiated complaint, the accused and the witnesses receive copies of their statements.

Art. 32quinquiesdecies. – The prevention advisor 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:

- 1° the prevention advisor and the confidential counsellor inform the persons who participate in the reconciliation of the information which, in their opinion, is relevant to the good course of this reconciliation;
- 2° within the context of the investigation of the substantiated complaint, the prevention advisor is obliged to inform the accused of the facts with which s/he is charged;
- 3° the prevention advisor submits to the employer a written recommendation on the results of the impartial investigation of the substantiated complaint, the contents of which are determined by the King;
- 4° the prevention advisor 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 substantiated complaint was lodged, and of the request for the intervention of the official charged with supervision referred to in Article 32septies;

5° the prevention advisor keeps at the disposal of the official charged with supervision the individual complaint dossier, with the exception of the documents that contain the statements of the persons heard by the authorised prevention advisor.

Art. 32sexiesdecies. – Where the employer, in application of this Chapter, considers taking measures that can amend the labour terms and conditions or where the worker considers instituting a legal claim, the employer shall furnish this worker only with a copy of the following elements of the prevention advisor’s recommendation:

- a) a summary of the facts;
- b) the establishment or, according to the prevention advisor, the facts that can or cannot be regarded as acts of violence, harassment or sexual harassment at work and the justification for this establishment;
- c) the result of the reconciliation attempt;
- d) the analysis of all the causes of the facts;
- e) the measures that must be taken in the individual case to put an end to the acts, or the recommendation to the employer to take suitable individual measures within the context of preventing psychosocial burdening.

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 and the confidential counsellor made during the interviews conducted outside the investigation of a substantiated complaint, subject to the application of Article 32quinquiesdecies, second paragraph, 1°;
- 2° the substantiated complaint, subject to the application of Article 32quaterdecies, first paragraph and Article 32suinsuiesdecies, second paragraph, 2°;
- 3° the documents that contain the statements of the persons whom the prevention advisor heard during the investigation of the substantiated complaint, subject to the application of Article 32quaterdecies, second paragraph;
- 4° the prevention advisor’s report, subject to the application of Article 32sexiesdecies;
- 5° the special data of personal nature established by the prevention advisor 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 that were established pursuant to the acts of violence, harassment or sexual harassment at work.

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)]

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 32, 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 establishes 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 can 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 can 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 determines 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 determines 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 determines 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.

[The King establishes 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 establishes 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 determines 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. – The King determines all other terms and detailed rules regarding the establishment, composition and operation of the High Council.

[Art. 47bis. – Within the High Council, a 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. giving advice on the operation of medicine controlling absence at work;
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;
6. giving advice regarding allowances destined for social research and for training workers' representatives in the undertaking.

The King can 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 Article 69, 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 economical 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 can, 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 prescribes 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 can 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 can 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 can, by means of a decree deliberated in the Cabinet, 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 during this reference period, only the part of the reference period after the transfer of undertaking in accordance with the agreement shall be taken into account. (3)]

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 determines by means of a decree deliberated in the Cabinet, in which way this participation takes place.

Art. 54. – The King can 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 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 determines 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 determines 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. The King determines 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 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 employ-

ment 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 an 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. An 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 determines 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 establishes 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 can 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 65bis, § 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 65bis, § 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 Cabinet and after unanimous advice by the National Labour Council and the Central Economic Council, can 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 authorised 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 sub-section.

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 October 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 determines 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 determines which minimum points the in-house regulations must contain. The joint committees can compile template in-house regulations which the King can 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 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.

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 can take all measures to nationally, locally and professionally co-ordinate 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 can determine within which timeframe the claims referred to in § 1 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. – Without prejudice to the powers of the officers of the judicial police, the officials designated by the King supervise compliance with this act and its executive decrees.

These officials exercise this supervision in accordance with the provisions of the act of 16 November 1972 regarding labour inspection.

Art. 81. – Without prejudice to the provisions of Articles 82 to 87, the following are punished with a prison sentence of between eight days and one year and with a fine of between [EUR (5)] 50 and 1,000 or with only one of the punishments:

- 1° the employer, his/her mandatories or appointees, who have contravened the provisions of this act or of its executive decrees;
- 2° persons who do not belong to the personnel of the employer and who execute the assignments with which they have, in implementation of this act, been entrusted, in contravention of the provisions of this act and its executive decrees, or who do not execute these assignments in accordance with the terms and detailed rules provided by this act and its executive decrees;
- [3° the employer who obstructs the assignments of the Committee by not providing the Committee with information or not consulting it on the subjects or in the way referred to by or in accordance with Articles 65*bis* to 65*undecies*. (17)]

Art. 82. – The employer, his/her mandatories or appointees who do the following, are punished with a fine of [EUR (5)] 100 multiplied by the number of workers employed in the undertaking, without that fine being allowed to exceed [EUR (5)] 100,000:

- 1° set up no Service or Committee in the undertaking, in implementation of this act or its executive decrees;
- 2° hinder its (the Service or Committee's) operation as provided in this act, the executive decrees and the collective labour agreements that have been declared generally binding by the King;
- 3° obstruct the execution of their assignments, in particular, by not providing the prescribed information or providing it but not in accordance with the rules laid down by this act, its executive decrees, or the collective agreements declared generally binding by the King, or by not holding the prescribed deliberations in accordance with the prescribed rules;
- 4° obstructing the exercise of the mandate of the personnel representatives in the Committee as stipulated by this act, its executive decrees and the collective agreements declared generally binding by the King;

5° obstructing the exercise of the mandate of the trade union representatives responsible for the assignments of the Committees.

Art. 83. – The entrepreneur, his/her mandatories or appointees who have contravened Article 7 §§ 1 and 2, (16)] or its executive decrees, are punished with a prison sentence of between eight days and one year and with a fine of between [EUR (5)] 50 and 1,000 or with only one of the punishments.

Art. 84. – The following are punished with a prison sentence of between eight days and one year and with a fine of between EUR 50 and 2,000 or with only one of the punishments:

- 1° the employer in whose establishment contractors and, if applicable, sub-contractors come to execute work, his/her mandatories or appointees who have contravened the provisions of Article 9, § 1 and its executive decrees;
- 2° the contractors and sub-contractors, their mandatories or appointees who have contravened the provisions of Article 10, § 1 and its executive decrees. (16)]

Art. 85. – The following are punished with a prison sentence of between eight days and one year and with a fine of between EUR 50 and 1,000 or with only one of the punishments:

- 1° the employer in whose establishment contractors and, where applicable, sub-contractors come to execute work, his/her mandatories or appointees who have contravened the provisions of Article 9, § 2 and its executive decrees;
- 2° the contractors and sub-contractors, their mandatories or appointees who have contravened the provisions of Article 10, § 2 and its executive decrees;
- 3° the occupant, his/her mandatories or appointees, who have contravened the provisions of Article 12^{ter} and the temporary employment agency, its mandatories or appointees who have contravened the provisions of Article 12^{quater}. (16)]

Art. 86. – The following are punished with a prison sentence of between eight days and one year and with a fine of between [EUR (5)] 50 and 1,000 or with only one of the punishments:

- 1° the client or the project supervisor responsible for the design, his mandatories or appointees who have contravened the obligations established in terms of Articles 15 to 17 and 19 of this act and their executive decrees;
- 2° the client, project supervisor responsible for the design, his mandatories or appointees who have not or not adequately supervised the obligations to be complied with by co-ordinators for safety and health matters at the project preparation stage of the design.
- [3° the co-ordinators for safety and health matters during the project preparation stage of the design, regardless whether they are employers or self-employed and, when they are workers, their employers, when these co-ordinators execute the assignments with which they have been entrusted in implementation of this act, in contravention of the provisions of this act and its executive decrees or who do not execute these assignments in accordance with the terms and detailed rules provided by this act and its executive decrees. (9)]

Art. 87. – The following are punished with a prison sentence of between eight days and one year and with a fine of between [EUR(5)] 50 and 2,000 or with only one of the punishments:

- 1° the client, project supervisor responsible for the execution or the project supervisor responsible for the supervision of the execution, their mandatories or appointees who have contravened the provisions of Articles 15, 20, 21 and 23 and their executive decrees;