The cafeteria plan – a roadmap to flexible remuneration
THE CAFETERIA PLAN

A ROADMAP TO FLEXIBLE REMUNERATION

Conducting a consistent remuneration policy is not always self-evident. In spite of the tax shift, the net percentage of gross salary received by workers remains lower than that received in many other European countries and employers continue to pay higher charges in Belgium. This salary handicap reduces the competitiveness of Belgian companies internationally. The government enhances this competitiveness via the salary standard, but it at the same time limits the leeway available to companies to conduct their own tailored salary policies.

What are the expectations of your workers? Would they like to benefit from greater freedom in terms of determining the volume of work and composition of their salary package? Alternative and flexible working conditions can become an important instrument for your company in order to attract new workers and continue to motivate your existing workers. But do you know where to begin?

A cafeteria plan is a framework within which you can develop a flexible remuneration policy. Workers have the possibility of creating their own salary packages but it is you that defines the framework, the budget available and when they can make their choice. Such a system helps to boost the net purchasing power of your workers but without increasing the company’s salary costs.

Implementation of alternative models of remuneration are all too often influenced by tax and parafiscal considerations. This results in remuneration policies that are as inconsistent as they are uncreative. Putting together various elements of remuneration is not enough to motivate your workers. The choices that you will have to make when developing and implementing a cafeteria plan will allow you to refine your remuneration strategy.

*My Choice* provides guidance to companies on implementing a cafeteria plan. *My Choice* is the result of a partnership between Partena Professional and KPMG and therefore combines the social, legal and salary expertise of Partena Professional with the tax and practical expertise of KPMG.
A cafeteria plan offers your workers the possibility of designing a portion of their salary package themselves. Just like in a self-service cafeteria, workers can select their salary and working conditions from a menu.

The regulations do not contain any specific framework for cafeteria plans. You therefore have great freedom in terms of, for example, the time at which workers have to inform you of their choice, the procedure to follow and the elements of remuneration from which they can choose. The worker’s choice is at the heart of the cafeteria plan but it is the employer that defines the framework governing the choice.

The step-by-step plan detailed in this article will guide you through the development and implementation of a cafeteria plan within your company. By means of six questions, we will set out the different possibilities as well as the difficulties that you may encounter.

Answering these questions will raise other important issues of a socio-legal nature. When do the social security contributions have to be paid and on what basis of calculation? To what extent can an employer unilaterally modify the existing salary package? What is the impact of the “hierarchy of sources of law”? Is it still possible to implement a cafeteria plan despite the tightening up of the salary standard?

Tax aspects also play a significant role when developing and implementing a cafeteria plan. However, this article only focuses on labour law and social security.

**SIX KEY QUESTIONS**

1. What type of cafeteria plan should be applied within the company?
2. Which workers should the cafeteria plan apply to?
3. How can a cafeteria budget be established for participants?
4. What choices should participants be offered?
5. How to give substance to the cafeteria plan?
6. How to introduce the cafeteria plan? Do I have to consult the workers (and their representatives)?
The type of cafeteria plan that you will apply will depend on the objectives that you would like to achieve. Below, we distinguish between the different possible cafeteria plans. You have extensive leeway as the legislation does not impose any specific rule in the area.

**A STRICER FORM AND A MORE EXTENSIVE FORM**

In its most extensive form, the cafeteria plan offers workers a choice of all sorts of elements of remuneration, such as a company car, additional leave days, training, additional child benefit or simply money.

In its most basic form, the cafeteria plan gives workers the option of personalising their employer’s bonus budget. In this case, workers can choose between:

- Building up a supplementary pension;
- A benefit in case of death or work disability resulting from an accident (possibly occupational) or illness (possibly professional);
- Reimbursement of medical expenses relating to hospitalisation, out-patient treatment, serious illness and home palliative care;
- Reimbursement of specific expenses brought about by the worker’s disability;
- Payment of an annuity where the worker is suffering from a serious illness².

It is not possible to combine the two forms³. The granting of a pension commitment cannot be made conditional on an additional decision by the employer⁴, and even less so by the worker. This is a major restriction. To question 4, “What choices should participants be offered?”, we will set out an alternative: the refunding by the employer of premiums paid by the worker to build up an individual supplementary pension (the third pillar).

The first form of cafeteria plan, the extensive version, offers the greatest flexibility to companies and workers. This type of cafeteria plan can be adapted according to the objectives that you would like to achieve.

**A “BONUS” CAFETERIA PLAN OR A GENERAL CAFETERIA PLAN**

You can thereby introduce a “bonus” cafeteria plan. Instead of receiving a cash bonus, workers can choose from a selection of elements of remuneration that you offer them. This enables you to link salary cost-efficiency to individual targets, an obvious advantage over the system of non-recurring performance-related benefits⁵.

Of course, you can also introduce a general cafeteria plan, which can be linked (or not) to an evaluation of the individual performance of workers. Workers can, in this way, supplement their fixed monthly salary with other elements of remuneration, such as a company car, additional leave days or training.

You can also opt for a themed cafeteria plan. The mobility plan is perhaps the most common example. From the budget that you provide to them, workers can, for example, choose from a higher or lower leasing budget for a company car, a limited or unlimited fuel card (depending on consumption or territory), a leasing budget for a company bicycle, an allowance for home-workplace travel or a public transport pass.

**A CAFETERIA BUDGET IN EUROS OR IN “UNITS”**

The company can structure the cafeteria budget in two ways, which will dictate how the workers will subsequently be able to exercise their choice.

The company allocates a cafeteria budget to the workers that is denominated in euros. The value of such a budget is very clear for the worker. He or she can then choose in a transparent manner from the elements of remuneration proposed. Once a choice
has been made, he or she immediately knows the value of the remaining budget in euros.

Second option: the employer allocates a cafeteria budget to the worker that is not expressed in euros but in “units”. The unit can be associated with a fixed value (e.g. one unit = 1 euro), but this value can also be adjusted according to the element of remuneration. You can, in this way, encourage workers to choose elements of remuneration that better contribute to the objectives that you have set yourself for the company. However, it is recommended to set the minimum value of a unit.

Through My Choice, you allocate a budget cafeteria to the worker in euros. Proceeding in this clear and transparent manner makes it easier for you to explain the cafeteria plan to participants.

**SALARY SACRIFICE OR TOP-UP TYPE CAFETERIA PLAN**

The manner in which the cafeteria plan is financed enables a distinction to be made between a “salary sacrifice” type cafeteria plan and a “top-up” type cafeteria plan. (See question 3 - How can a cafeteria budget be established for participants?)

**QUESTION 2 – WHICH WORKERS SHOULD THE CAFETERIA PLAN APPLY TO?**

Your objectives will guide you in defining the scope of application of your cafeteria plan. You will also have to decide whether you want to make participation in the cafeteria plan compulsory or voluntary for all workers falling within its scope. However, we will return to that in question 5: “How to give substance to the cafeteria plan?”

**DIFFERENT GROUPS**

You are not entirely free to determine the workers to whom the cafeteria plan will apply or not. There is a whole series of anti-discrimination rules that prevent you from treating people in a similar situation differently. You may not, for example, make a distinction on the basis of sex, age, sexual orientation or disability. This was undoubtedly not your intention anyway. However, perhaps you planned on only offering the cafeteria plan to full-time workers on permanent contracts? That would not be possible, unless such a difference in treatment can be justified on objective grounds.

As regards working conditions, part-time workers cannot be treated in a less favourable manner than full-time workers. Where necessary, the working conditions can be adapted in proportion to the working hours. Similarly, workers on fixed term contracts cannot be treated less favourably than workers on comparable permanent contracts.

**EXAMPLE**

You cannot therefore exclude workers on fixed-term contracts from the cafeteria plan. However, you may restrict their possible choices to elements of remuneration that do not involve any long-term commitment. You can, for example, offer them a leasing budget for a company car. This would amount to a difference in treatment that you can justify on objective grounds.
In theory, it is always possible to make a distinction between blue collar workers and white collar employees but this has become a much more sensitive subject since the introduction of the “harmonised status”. The “harmonised status” only concerns notice periods and the unpaid first day of sick leave. The gradual harmonisation of supplementary pension schemes began on 1 January 2005, but this legislation does not apply to cafeteria plans either. We are still a long way away from overall harmonisation of statuses.

Over the long-term, it would seem wiser to distinguish between different categories based on the job level. In this way, you can envisage implementing different cafeteria plans or offering different elements of remuneration depending on the job level. However, this will prove more complex.

**TEMPORARY AGENCY WORKERS, FREELancers AND INDEPENDENT COMPANY DIRECTORS**

Temporary agency workers and freelancers are not company workers. It is therefore logical that they cannot participate in the cafeteria plan. Allowing them to participate would increase the risk of violating the legislation on temporary agency work and pseudo self-employed workers.

In general, participation by independent company directors in a cafeteria plan is hardly appropriate. In fact, one of the main objectives of implementing a cafeteria plan, namely to increase net purchasing power for a comparable salary cost, proves to be less relevant in their case. For independent company directors, the gap between net salary and salary cost is less significant because they are responsible for paying their own social security contributions as self-employed workers.

**VOLUNTARY OR COMPULSORY PARTICIPATION**

Depending on how you introduce the cafeteria plan, you can decide whether or not your workers can choose to participate in the plan. If you mandate participation by means of a collective labour agreement, offer workers who do not wish to choose from the elements of remuneration available the possibility of receiving the cafeteria budget in cash (see Question 4: “What choices should participants be offered?”). If you introduce the cafeteria plan via the individual employment contract (or an amendment to it), the consent of the worker will always be required. In this case, it will not therefore be possible to make participation in the cafeteria plan compulsory.

**CROSS-BORDER EMPLOYMENT**

It is recommended that the cafeteria plan is only open to workers that are subject to Belgian social security and are solely taxable in Belgium. Indeed, the objective of increasing the net purchasing power often proves to be less relevant in the case of workers that are not subject to Belgian social security and whose salaries are fully or partly taxed outside Belgium. In addition, this will avoid you having to deal with the complex application of foreign tax and social security rules in the case of a cafeteria plan.
This is a key question when developing a cafeteria plan. Without a cafeteria budget, no choice is possible and therefore no cafeteria plan. A budget can be established in two ways:

1) As part of a top-up plan, the employer devises a new budget, which causes the company’s overall salary costs to rise;

2) As part of a salary sacrifice type plan, the worker relinquishes certain elements (possibly future) of remuneration.

The question of how to establish a cafeteria budget therefore mainly arises in the case of a salary sacrifice type plan.

**RELINQUISHMENT BY WORKERS**

As an employer, you cannot unilaterally decide to modify the salary and working conditions in order to establish a cafeteria budget. You have to introduce the cafeteria plan by means of a collective labour agreement or the individual employment contract (or an amendment to it) (see Question 6 - “How to introduce the cafeteria plan?”).

Any significant unilateral modification of an essential component of the employment contract by the employer amounts to an immediate termination of the contract on the part of the employer. As a result of this “implied dismissal”, the employer is required to pay severance pay to the worker. In principle, any unilateral change to the remuneration, working hours, job or place of work amounts to an implied dismissal.

**EXAMPLE**

A 20% reduction in a worker’s variable salary constitutes a significant unilateral modification of an essential element of the employment contract by the employer.

As part of the introduction of a salary sacrifice type plan, workers relinquish future salary or future elements of remuneration. At the moment of their agreement, the entitlement to the benefit is not yet effective. This renegotiation between the employer and workers does not therefore concern a salary or elements of remuneration to which the workers are already entitled.

In any event, the parties can only modify current or future salary and working conditions in compliance with legislation, regulations or binding collective labour agreements. The legislation on annual leave or the sectoral collective labour agreements setting salary indexing and the minimum salary must, in particular, be complied with.

**THE HIERARCHY OF SOURCES OF LAW**

When implementing a cafeteria plan, numerous regulatory and contractual provisions must be taken into account: the law, sectoral and company collective labour agreements, the individual employment contract, etc. These different sources are ranked according to specific rules of priority.

- **Sectoral collective labour agreements** that have been made binding have priority over company collective labour agreements and the individual employment contract. As a general rule, you cannot therefore modify, at company level, future elements of remuneration set out at sectoral level.

- **Any company collective labour agreements** that you have signed take priority over the individual employment contract. Have you granted certain elements of remuneration that you now wish to
incorporate within the cafeteria budget? You have two options: you can modify the company collective labour agreement with the agreement of all parties to the collective labour agreement, or you can terminate it. In this case, it is not therefore possible to establish an additional cafeteria budget by requesting the agreement of each worker.

- **Individual employment contracts** have priority over the work regulations and practice within the company (e.g. internal policy). Consequently, in order to be able to modify the salary and working conditions set down in the contract to free up a cafeteria budget, the individual employment contract must be amended or a company collective labour agreement must be concluded. In practice, simply amending the work regulations or drafting a new policy is rarely deemed sufficient.

### OBTAIN A CLEAR OVERVIEW OF CURRENT SALARY AND WORKING CONDITIONS

When devising the budget, prepare a clear, exhaustive overview of all existing elements of remuneration to which workers are entitled. Below is an example of such an overview.

This overview helps to clearly distinguish the elements of remuneration that can be exchanged or not from a legal point of view. Depending on the source of law, an element of remuneration may be taken into consideration or not when establishing a budget as part of a cafeteria plan.

<table>
<thead>
<tr>
<th>Source of law</th>
<th>Social security treatment</th>
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<tbody>
<tr>
<td>1. Gross salary</td>
<td>Individual employment contract. Ordinary social security contributions. The minimum salary and indexing are defined in a sectoral collective labour agreement.</td>
</tr>
<tr>
<td>2. End-of-year bonus or 13th month</td>
<td>Sectoral collective labour agreement Ordinary social security contributions.</td>
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<tr>
<td>3. Company car leasing budget</td>
<td>Individual employment contract Excluded from the notion of remuneration subject to ordinary social security contributions. The employer is required to pay a flat-rate solidarity contribution.</td>
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<td>4. Flat-rate reimbursement of expenses</td>
<td>Individuele arbeidsovereenkomst Excluded from the notion of remuneration subject to ordinary social security contributions.</td>
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### 1. GROSS SALARY

A portion of gross salary can be exchanged provided that you comply with the minimum salary set down in the sectoral collective labour agreement. There is nothing therefore preventing the parties from agreeing to a reduction in salary provided that the minimum salary is adhered to and the worker’s agreement is not impaired by an absence of consent.

The worker must therefore always receive the sectoral salary scale. As a general rule, only the gross salary can be taken into consideration for the salary scale. Benefits-in-kind such as the leasing budget for a company car are not taken into account. This applies in the case of all elements of remuneration selected by the worker from the choices offered.

### 2. END-OF-YEAR BONUS OR 13TH MONTH

The end-of-year bonus or 13th month awarded pursuant to a sectoral collective labour agreement (made binding) may not be exchanged, even with the agreement of the individual worker, except where permitted by the sectoral collective labour agreement in question.

### EXAMPLE

Within the Joint Committee 200, each employee is entitled to an end-of-year bonus equal to one month’s salary, paid in December. The end-of-year bonus is not due by companies “regulating at their level by agreement the remuneration and other working conditions of employees, provided that the benefits granted by this agreement are at least on the whole equivalent to the benefits provided by the current collective labour agreement”. The text of the collective labour agreement is subject to debate. The end-of-year bonus may be included in the cafeteria budget, but the manner in which this is to be done remains unclear. Does the alternative benefit have to be defined in a company collective labour agreement or will an amendment to each participating worker’s individual employment contract be sufficient? It is possible to conclude a company collective labour agreement within a company without a trade union delegation. However, this is not easy in practice.
3. COMPANY CAR LEASING BUDGET
The leasing budget for a company car set down in the individual employment contract can be used to establish the cafeteria budget. Where the cafeteria plan is not introduced by means of a company collective labour agreement, the participating worker must, of course, agree to it, but no other condition is imposed.

4. REIMBURSEMENT OF EXPENSES
Flat-rate reimbursement of expenses cannot be included in the cafeteria budget. In effect, such reimbursement is based on an estimate of the expenses incurred by the worker in the performance of his or her employment contract but which are borne by the employer. The inclusion, despite everything, of flat-rate reimbursement of expenses in the plan could compromise the previous exclusion from the Belgian National Office for Social Security’s notion of remuneration. The very nature of reimbursement of expenses would, in this way, be impacted. In addition, the inclusion of reimbursement of expenses in the cafeteria budget would not contribute to enhancing the worker’s net purchasing power.

Your company’s objectives play a crucial role in selecting the elements of remuneration that will be available in the menu of options. In this way, the cafeteria plan is not only about worker autonomy and corporate social responsibility. Your salary costs must, of course, also be taken into account, even where you have a certain amount of flexibility within your HR budget. In effect, the authorities set down limits to changes in your company’s salary costs. The elements of remuneration selected for the menu of options will be a determining factor in changes in salary costs. Depending on the element of remuneration, different social security contributions apply.

This is why we draw attention to the following three points before detailing the elements that will make up the menu of options:
1) The maximum change in salary costs imposed by the salary standard;
2) The moment at which social security contributions must be paid;
3) Social security treatment per element of remuneration.

SALARY STANDARD - LIMIT ON CHANGES IN SALARY COSTS
The salary standard is set every two years.

It determines the margin of increase in salaries in the private sector and in certain state-owned enterprises. The objective is to ensure that any increase in salary costs in Belgium remains below that experienced in France, the Netherlands and Germany. The concept of “salary costs” encompasses employer social security contributions.

For the 2017-2018 period, the salary standard has been set in Collective Labour Agreement no. 119 concluded on 21 March 2017 within the National Labour Council. It has been set at 1.10% for these two years. This margin is independent of indexing and salary scale increases which continue to be guaranteed.

WHEN DO THE SOCIAL SECURITY CONTRIBUTIONS HAVE TO BE PAID?
The establishment of a cafeteria budget that can be used by workers to select a certain number of elements of remuneration from various options results in a shifting of the date on which the social security contributions have to be paid as well as a change in the basis of calculation for the contributions.

The Belgian National Office for Social Security (ONSS) notion of remuneration defines...
“remuneration” as (i) the cash salary or benefits in money’s worth (ii) to which the worker is entitled (iii) on account of his or her employment and (iv) paid by the employer, even where the benefits are not compensation for the work\textsuperscript{23}. The ONSS notion of remuneration is particularly broad: payments made by the employer to the worker are, in principle, considered to be payments due on account of the worker’s employment and therefore as remuneration subject to calculation of social security contributions\textsuperscript{24}. Social security contributions are due as soon as the entitlement to the “remuneration” arises on the part of/becomes due by the worker. As a general rule, determining whether such social security contributions are due is not dependent on the actual payment of the salary to which the worker is entitled but on the fact that this salary is due\textsuperscript{25}.

### EXAMPLES

A worker is entitled to an end-of-year bonus in December. The worker and employer had agreed to this in the employment contract. Nevertheless, the employer does not pay the end-of-year bonus. In January of the next year, the worker relinquishes this end-of-year bonus. Although the worker is no longer claiming the end-of-year bonus, social security contributions are still due on the bonus.

A worker relinquishes his or her entitlement to a portion of gross monthly salary in the future (the sectoral salary scale is respected). The employer and worker also agree that the worker will be entitled to a monthly leasing budget for a company car. Ordinary social security contributions will only be due on the reduced gross salary. However, the employer will have to pay a flat-rate solidarity contribution for the company car.

Let us return to the cafeteria plan: the Belgian National Office for Social Security (ONSS) considers that where a worker agrees to a modification of his or her salary package as part of a renegotiation, social security contributions are due from the moment that the worker can claim his or her entitlement to the awarding or payment of the element of remuneration within the context of the cafeteria plan\textsuperscript{26}. However, there is one condition: the worker cannot yet claim his or her entitlement to the element of remuneration in question at the moment of choosing. The worker therefore makes a choice for the future.

You are not liable for social security contributions on the cafeteria budget you make available to workers. In effect, this cafeteria budget is simply a right of option for the worker, the benefit of which cannot yet be determined at the time it is allocated. The precise value of the benefit for the worker will only be known once the worker has definitely chosen a specific element of remuneration and has notified the employer of his or her choice.

### SOCIAL SECURITY TREATMENT

**PER ELEMENT OF REMUNERATION**

The element of remuneration selected by the worker from the menu of options is subject to the social security contributions applicable to the specific element of remuneration. Where the worker opts for an element of remuneration excluded from the ONSS notion of remuneration, no social security contribution is due. Where the element of remuneration is subject to a solidarity contribution, for example, only the solidarity contribution is due.

### THE MENU OF OPTIONS

When defining the menu of options, it is recommended to include the following **four elements** in order to attract the greatest number of workers possible:

1. Money or warrants
2. Time off: leave days in addition to the statutory requirement
3. Pension: individual supplementary pension (third pillar)
4. Supplements to social security benefits, e.g. supplementary child benefit

You can, of course, include other elements of remuneration in the menu of options. Examples include: company car, mobile phone, ICT devices, as well as training courses or DIY or cleaning services.

However, it is better not to include certain benefits in the menu of options. This is particularly the case for meal vouchers, eco vouchers, worker profit-sharing and share ownership, the innovation bonus and non-recurring performance-related benefits. Meal vouchers “granted” as a replacement for or to convert remuneration, bonuses, benefits-in-kind or any other benefit or supplement to the above, whether or not subject to social security contributions” are always considered as an element
of remuneration subject to salary and employer social security contributions. This is also the case for eco vouchers, worker profit-sharing and share ownership, the innovation bonus and non-recurring performance-related benefits. Furthermore, you cannot guarantee the granting of an innovation bonus or non-recurring performance-related benefits.

1. MONEY OR WARRANTS
A certain number of workers want, first and foremost, to finance personal investments (e.g. family home). So make sure you provide the possibility of opting for money, especially where participation in the cafeteria plan is made compulsory by a company collective labour agreement.

This option does not increase the net purchasing power of workers. The granting of warrants can therefore provide an interesting alternative. As share options, warrant plans satisfy the conditions for exclusion from the ONSS notion of remuneration. How does such a warrant plan operate? I. A financial institution issues exchange-listed warrants that are purchased by the employer. II. The employer offers the warrants free of charge. III. The worker accepts the warrants. From this point onwards, the worker can sell them at the market price. The risk of market fluctuations is therefore limited.

2. TIME OFF: LEAVE DAYS IN ADDITION TO THE STATUTORY REQUIREMENT
This option does not increase the net purchasing power of workers any further. In fact, holiday pay that is additional to the statutory requirement is subject to ordinary social security contributions. Nevertheless, from a more general perspective, the granting of additional leave days within the context of a cafeteria plan may be appealing insofar as it enables workers to find a balance between their work and personal lives.

3. PENSION: INDIVIDUAL SUPPLEMENTARY PENSION (THIRD PILLAR)
Certain workers think longer term and prefer to save in order to build up a supplementary pension. As we saw above, it is not possible to combine a general cafeteria plan with a company pension scheme (second pillar). Refunding the premium paid by the worker within a third pillar pension savings product therefore offers an attractive alternative. This element of remuneration is not subject to ordinary social security contributions but is liable to a special employer contribution of 8.86%.

4. SUPPLEMENTS TO SOCIAL SECURITY BENEFITS, E.G. SUPPLEMENTARY CHILD BENEFIT
Allowances granted by the employer in addition to social security benefits are excluded from the ONSS notion of remuneration. This option therefore enables the net purchasing power of workers to be increased. The employer may, among other things, offer workers a supplement to child benefit, provided that the workers concerned are entitled to the statutory child benefit.

Even where you only grant supplementary child benefit to workers who have chosen it, these supplements shall continue to be excluded from the ONSS notion of remuneration. The fact that it constitutes a supplement to a statutory social security benefit is sufficient to justify this exclusion. This is the case even where the allowance is not paid to all workers in the same category.
You have already had to make a certain number of choices when drawing up the cafeteria plan. Who can participate? What existing elements of remuneration to include in the cafeteria budget? Which elements of remuneration will be contained in the menu of options?

Nevertheless, you will still have to answer a certain number of questions in order to implement the cafeteria plan.

- **When to define the cafeteria budget for an individual worker?** The value of certain elements of remuneration included in the cafeteria budget can only be determined at the moment the choice is made. This may be the case, in particular, with the end-of-year bonus. The gross monthly salary may, for example, be indexed over the course of the calendar year, resulting in a cafeteria budget that is higher than expected, or the employment contract can be temporarily suspended, resulting in a cafeteria budget that is lower than expected.

- **When does the worker have to choose?** The choice must be made before the element of remuneration included in the cafeteria budget becomes due for payment to the worker. The gross monthly salary may, for example, be indexed over the course of the calendar year, resulting in a cafeteria budget that is higher than expected, or the employment contract can be temporarily suspended, resulting in a cafeteria budget that is lower than expected.

- **What cafeteria budget is generated by an existing element of remuneration?** You must define the value of the different elements of remuneration and notify the worker in a timely manner. To do this, you can include (in whole or in part) the employer social security contributions.

- **What value will be charged to the cafeteria budget?** You must define the value of the different elements of remuneration making up the menu of options. To what extent must employer social security contributions be taken into account when calculating this value? You can also promote certain company objectives by giving a higher value to certain elements of remuneration over others.

- **Define the order of priority for charges to the cafeteria budget.** For example, you can decide that workers must first use the budget for the company car and only then the budget for the end-of-year bonus. The budget for the end-of-year bonus will only be made available at the end of the year. In this way, you provide, in a manner of speaking, an advance on the end-of-year bonus in the cafeteria budget, but the amount of the end-of-year bonus can change over the course of the year. This is not the case for the leasing budget.

- **Determine the time and methods of liquidating the cafeteria budget.** Can the worker transfer a positive balance to the next year or does the surplus have to be paid to him or her in cash? What to do in case of a negative balance? The negative balance will have to be deducted from the salary payment, in accordance with certain statutory restrictions. You can make deductions from the salary but the total amount of such deductions may not exceed one fifth of the net salary.
QUESTION 6 – HOW TO INTRODUCE THE CAFETERIA PLAN? DO I HAVE TO CONSULT THE WORKERS (AND THEIR REPRESENTATIVES)?

INSTRUMENT
You can introduce the cafeteria plan by means of a company collective labour agreement or the employment contract (or an amendment to it). The amendment to the employment contract may, in turn, refer to a policy, for example. The actual choice made by the worker must ideally be recorded in writing.

Are you opting to conclude a company collective labour agreement? In this case, expressly exclude the impact of the provisions of the collective labour agreement in the individual employment contract. Do you apply a policy? In this case, specify in the individual employment contract that you do not wish to create an entitlement on the basis of custom.

PROCEDURE
No specific procedure is required when introducing a cafeteria plan. However, the general rules relating to disclosure and consultation of worker representatives apply. Does your company have a works council? If yes, its members must be notified and consulted in advance. Is there a trade union delegation active within your company? If yes, it must be notified of the plan in advance. You will also have to negotiate and conclude the company collective labour agreement with the trade union delegation.

POINTS OF CAUTION FOR WORKERS
A worker who contributes a portion of his or her gross monthly salary to the menu of options will only be entitled to indexing on the remaining portion of the gross monthly salary.

A decrease in gross salary liable to social security contributions may have an impact on social security benefits where the statutory limits are not reached. For example, the remuneration limit for the old age pension is EUR 54,648.70 per year (2016).

Also check to see whether this will have an impact on the supplementary pension (second pillar). You can, for example, limit the impact on the supplementary pension (defined contribution scheme) by using a benchmark salary. The benchmark salary is equal to the sum of the ordinary salary and the cafeteria budget.

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Senior Legal Counsel

Article 4-2 of the Royal Decree of 12 January 2007 amending the Royal Decree of 14 November 2003 implementing the law of 28 April 2003 on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits.

Article 4 of the Royal Decree of 12 January 2007 amending the Royal Decree of 14 November 2003 implementing the law of 28 April 2003 on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits.

Article 13 of the law of 28 April 2003 on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits.

Non-recurring performance-related benefits are benefits that are linked to the collective results of a company or group of companies, or a clearly defined group of workers, based on objective criteria (Article 3 of the Collective Labour Agreement on Non-Recurring Performance-Related Benefits).


Article 4 of the law of 5 March 2002 on the principle of non-discrimination towards part-time workers.

Workers on fixed-term contracts, on employment contracts concluded for specific assignments or on employment contracts with a fixed end date.

Article 4 of the law of 5 March 2002 on the principle of non-discrimination towards workers on fixed-term contracts; Article 1bis of Collective Labour Agreement no. 35 of 27 February 1981 concerning certain provisions of labour law relating to part-time work.

The law of 26 December 2013 on implementation of a harmonised status for blue collar workers and white collar employees in relation to notice periods and the unpaid first day of sick leave and support measures.

Law of 5 March 2014 amending the retirement pension and the hiring out of workers.

The distinction between blue collar workers and white collar employees in the area of supplementary pensions.

The law of 24 July 1987 on temporary employment, agency employment and the hiring out of workers.

The law of 5 March 2002 on the principle of non-discrimination in connection with Article 2, paragraph 1, of the law on the promotion of employment and the preventive protection of competitiveness.

Articles 14, §1-§2, of the Belgian Social Security law and Articles 23, paragraphs 1 and 2 of the law establishing the general principles of social security for salaried workers, in connection with Article 2, paragraph 1, of the law on the protection of workers’ remuneration.

Belgian Court of Cassation, 5 January 2009, JTT 2009, 313.


The ONSS does not, in this regard, refer to the general legal principle prohibiting any evasion of the law (Belgian Court of Cassation, 14 November 2005, RW 2007 –08, 486).

Article 19bis, §1, paragraph 2 of the decree implementing the Belgian Social Security law (meal vouchers); Article 19quarter, §1, paragraph 2 of the decree implementing the Belgian Social Security law (eco vouchers); Article 7, §2, of the law of 22 May 2001 on worker share ownership and profit-sharing schemes; Article 28, paragraph 1, 4) of the law of 3 July 2005 implementing various provisions relating to social dialogue (innovation bonus); Articles 6, §1–§2, of the law of 21 December 2007 on implementation of the 2007–2008 interprofessional agreement (non-recurring performance-related benefits).

Article 19, §2, 18° of the Social Security Royal Decree.

Belgian Court of Cassation, 15 February 2016, JTT 2016, 155.

Article 45 of the Belgian Social Security law: any employer that grants social security type benefits supplementing those arising from this law must grant such benefits without distinction to all workers belonging to the same category.

Social security contributions are due as soon as the entitlement to the ‘remuneration’ arises on the part of/ becomes due by the worker.

Article 23 of the law on protection of workers’ remuneration. The total amount of deductions may not exceed one fifth of the cash remuneration due at each payday, minus any deductions made pursuant to tax legislation, social security legislation and pursuant to individual or collective conventions concerning supplementary social security benefits.

Article 23 of the law of 5 December 1968 on collective labour agreements and joint committees.

Custom may never be relied upon as a source of legal entitlement where implicitly or explicitly excluded by the individual employment contract (Belgian Court of Cassation, 18 September 2000, JTT 2000, 499).

Article 15 of the law on the organisation of the economy; Article 9 of Collective Labour Agreement no. 9 of 9 March 1972 consolidating the national agreements and the collective labour agreements relating to works councils concluded within the Belgian National Labour Council.

Article 14 of Collective Labour Agreement no. 5 concerning the status of company staff trade union delegations.

# Topic 1: The Cafeteria Plan

A "bonus" cafeteria plan can be considered as a form of top-up plan.

Belgian Court of Cassation, 4 February 2002, JTT 2002, 121; Belgian Court of Cassation, 7 May 2007, JTT 2007, 336; Belgian Court of Cassation, 16 September 2012, JTT 2013, 423.

Belgian Labour Court of Liege, 16 March 2015, JTT 2015, 234.


Article 51 of the law of 5 December 1968 on collective labour agreements and joint committees.


The following are taken into account for the salary scale: accommodation, gas, electricity, water, heating and fuel; use of land; food eaten in the workplace; tools, service or work uniform as well as their maintenance/cleaning, provided that the employer is not required by law or agreement to supply and/or maintain the tools or supply and/or clean the uniform; any materials and equipment required for work and for which the worker is responsible under the terms of his or her employment or based on custom.

Article 20, 1° of the law on employment contracts.

The law of 26 July 1996 on the promotion of employment and the preventive protection of competitiveness.

Articles 14, §1-§2, of the Belgian Social Security law and Articles 23, paragraphs 1 and 2 of the law establishing the general principles of social security for salaried workers, in connection with Article 2, paragraph 1, of the law on the protection of workers’ remuneration.

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