

Belgium: Discrimination on the basis of race and national origin in the provision of goods and services

This document outlines legislation in Belgium that prohibits discrimination on the basis of race and national origin in the provision of goods and services.

We are grateful to DLA Piper for preparing this document on a pro bono basis. Their contribution is extremely relevant to disseminating information on equality and anti-discrimination laws.

This document was last updated in May 2008.

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INTRODUCTION: LEGISLATION IN BELGIUM AND THE ORGANIZATION OF THE BELGIAN STATE - LEGISLATIVE IMPLEMENTATION OF EU ANTI-DISCRIMINATION DIRECTIVES IN BELGIUM

The laws in Belgium prohibiting discrimination are made and implemented by six different legislative bodies, each within its own sphere of competence, due to the federal organization of Belgium. The six legislative bodies represent: 1) the Federal State; 2) the Flemish Region/Community; 3) the Walloon Region; 4) the French-speaking Community; 5) the Region of Brussels-Capital; and 6) the German-speaking Community.

After the promulgation of the two major European Community anti-discrimination Directives, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the "Racial Equality Directive") and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (the "Employment Framework Directive"), Belgium began the process of amending its pre-existing anti-discrimination legislation to conform to the Directives. This process was undertaken at different times and with differing emphases by the six Belgian legislative bodies, the results of which are summarized below.

I. LEGISLATION - FEDERAL STATE

A. Law of 30 July 1981 on the Punishment of Certain Acts Motivated by Racism or Xenophobia (amended by Law of 12 April 1994 to cover the provision of goods and services and employment relationships; amended by Law of 20 January 2003 to contribute to the implementation of Directive 2000/43/EC by, in particular, extending the definition of prohibited

discrimination to include the instruction to discriminate; amended by the Law of 10 May 2007 Amending the Law of 30 July 1981 and Bill of 26 October 2006 "Combating Certain Forms of Discrimination").

1. Summary

a. This Law provides for civil sanctions against any person who, providing or offering to provide a service, a good or the enjoyment of a good, commits an act of discrimination against a person on the ground of his or her race, color, descent, or ethnic or national origin. See Olivier De Schutter, Report on Measures to Combat Discrimination: Directives 2000/43/EC and 2000/78/EC: Country Report: Belgium: State of affairs up to 8 January 2007, page 10, *available at* http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm ("2007 Belgium Report").

b. This Law prohibits acts of discrimination when committed in the provision of goods or services that are available to the public.

c. As amended by the Law of 10 May 2007 (see below), this Law implements Directive 2000/43/EC and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination.

2. Links (from the official site of the Centre for Equal Opportunities and Opposition to Racism, an entity established by the Law of 15 February 1993 to track and combat discrimination in Belgium)

a. French

i. Loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme ou la xénophobie

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/Loi%20AR%20du%2030%20juillet%201981_17pg.pdf

b. Dutch

i. Wet van 30 juli 1981 tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/AntiracismeWet%20van%2030%20juli%201981_17pg.pdf

B. Collective Labor Agreement of 7 May 1996 Concluded by the Commission for Temporary Employment with Respect to the Code of Best Practices Relating to Racial Discrimination.

1. Summary

a. This Collective Labor Agreement establishes a code of best practices for temporary employment agencies designed to prevent racial discrimination against immigrant workers. The best practices forbid temporary employment agency personnel from recording

information concerning the race, skin color, religion or national or ethnic origin of applicants and forbid automatic exclusion of work experience obtained in other countries. Temporary employment agency personnel may record data required by law regarding foreign workers (e.g., work permit, visa, etc.).

2. Links (from the official site of the Centre for Equal Opportunities and Opposition to Racism, an entity established by the Law of 15 February 1993 to track and combat discrimination in Belgium)

a. French

i. Convention collective de travail de 7 mai 1996 conclue au sein de la Commission paritaire pour le travail intérimaire relative au code de bonnes pratiques relatif à la prévention de la discrimination raciale

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/Convention%20collective_travail%20interiminaire_6pg.pdf

C. Law of 25 February 2003 Combating Discrimination, Amending the Law of 15 February 1993 Founding the Centre for Equal Opportunities and Opposition to Racism.

1. Summary

a. This Law prohibits acts of discrimination based on race (*inter alia*) in the provision or offering of goods or services that are available to the public.

b. This Law was partially annulled by a judgment of the Constitutional Court of Belgium (Cour d'Arbitration, no. 157/2004). The Law of 10 May 2007 (see below) was passed in order to take into account the decision of the Constitutional Court.

2. Links (from the official site of the Centre for Equal Opportunities and Opposition to Racism, an entity established by the Law of 15 February 1993 to track and combat discrimination in Belgium)

a. French

i. Loi du 25 février 2003 tendant à lutter contre la discrimination et modifiant la loi du 15 février 1993, et créant un Centre pour l'égalité des chances et la lutte contre le racisme

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/Loi%20du%2025%20fevrier%202003%20contre%20la%20discrimination_13pg.pdf

b. Dutch

i. Wet van 25 februari 2003 ter bestrijding van discriminatie en tot wijziging van de wet van 15 februari 1993 tot oprichting van een Centrum voor gelijkheid van kansen en voor racismebestrijding

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/Wet%20van%2025%20februari%202003%20ter%20bestrijding%20van%20discriminatie_13pg.pdf

D. Law of 10 May 2007 Amending the Law of 30 July 1981 and Bill of 26 October 2006 Combating Certain Acts Inspired by Racism and Xenophobia.

1. Summary

a. This Law generally prohibits discrimination on grounds of race, color, descent, national or ethnic origin, and nationality. Specifically as relating to this memorandum, the Law prevents direct and indirect discrimination on the basis of race with respect to access to and provision of goods and services available to the general public, including access to employment.

b. This Law was drafted and passed in response to the judgment of the Constitutional Court (Cour d'Arbitration, no. 157/2004) that partially annulled the Federal Anti-Discrimination Law of 25 February 2003 (Loi du 25 février 2003 tendant à lutter contre la discrimination et modifiant la loi du 15 février 1993 créant un Centre pour l'égalité des chances et la lutte contre le racisme) and to address concerns of the European Commission over Belgium's implementation of the Racial Equality Directive (2000/43/EC).

c. Limits

i. There is an exception for an Essential and Crucial Professional Requirement ("exigence professionnelle essentielle et déterminante"). In the field of employer-employee relations, a distinction based upon race, color, descent, or national or ethnic origin can be justified only if the distinction is essential and crucial by reason of the specific nature of the work or the context in which it is performed and the requirement is based upon a legitimate goal and is proportional to this goal. Pursuant to Art. 8, the determination whether something is an "essential and crucial professional requirement" will be made by a judge on a case-by-case basis.

2. Links (from the official site of the Centre for Equal Opportunities and Opposition to Racism, an entity established by the Law of 15 February 1993 to track and combat discrimination in Belgium)

a. French

i. Loi du 10 mai 2007 modifiant la loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme et la xénophobie

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/Loi%20du%2010%20mai%202007_24pg.pdf

b. Dutch

i. Wet van 10 mei 2007 tot aanpassing van het Gerechtelijk Wetboek aan de wetgeving ter bestrijding van discriminatie en tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/Wet%20van%2010%20mei%202007_24pg.pdf

E. Law of 10 May 2007 Adapting the Judicial Code to the Legislation Combating Discrimination and Repressing Certain Acts Inspired by Racism or Xenophobia.

1. Summary

a. This Law amends the Code of Civil Procedure as regards litigation based on the new Law of 10 May 2007 with respect to anti-discriminatory measures.

2. **Links** (from the official site of the Centre for Equal Opportunities and Opposition to Racism, an entity established by the Law of 15 February 1993 to track and combat discrimination in Belgium)

a. French

i. Loi du 10 mai 2007 adaptant le Code judiciaire à la législation tendant à lutter contre les discriminations et réprimant certains actes inspirés par le racisme ou la xénophobie

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/Loi%20du%2010%20mai%202007%20adaptant%20le%20CJ_5pg.pdf

b. Dutch

i. Wet van 10 mei 2007 tot aanpassing van het Gerechtelijk Wetboek aan de wetgeving ter bestrijding van discriminatie en tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/national/Wet%20van%2010%20mei%202007%20tot%20aanpassing%20van%20het%20GW_5pg.pdf

II. LEGISLATION - FLEMISH REGION/COMMUNITY

A. Decree of 8 May 2002 on Proportionate Participation in the Employment Market

1. Summary

a. This Decree prohibits direct and indirect references to race, color, national origin, and ethnic origin (inter alia) in the advertisement of employment opportunities or provision of services related to employment opportunities, including job placement and vocational training services. The decree provides for measures including the preparation of diversity action plans and reports on progress. *See* 2007 Belgium Report, page 9.

b. The Decree applies to all groups that are not proportionally represented on the employment market. The Socio-Economic Council of Flanders and the Flemish

Region/Community government defines which groups are not proportionally represented on the employment market.

c. Limits

i. The Decree applies only to entities within the competences of the Flemish Region/Community, including: (a) persons or organizations that act as intermediates on the employment market by giving information on employment opportunities and offering vocational training; (b) the public authorities of the Flemish Region/Community, including those in the field of education; (c) other employers and employees with respect only to vocational training and integration of persons with disabilities in the employment market.

2. Links

a. French

i. Décret du Conseil flamand du 8 mai 2002 relatif à la participation proportionnelle sur le marché de l'emploi

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/decreten/Decret%20du%20Conseil%20flamand%20du%208%20mai%202002_11pg.pdf

b. Dutch

i. Decreet van de Vlaamse Raad van 8 mei 2002 houdende evenredige participatie op de arbeidsmarkt

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/decreten/Decreet%20van%20de%20Vlaamse%20Raad%20van%208%20mei%202002_11pg.pdf

III. LEGISLATION - WALLOON REGION

A. Decree of 27 May 2004 on Equal Treatment in Employment and Professional Training

1. Summary

a. This Decree prohibits discrimination in the areas of vocational guidance, socio-professional integration, the placement of workers, the allocation of aid for the promotion of employment and vocational training. *See 2007 Belgium Report, page 10.*

b. Limits

i. Application of this Decree is limited to competences of the Walloon Region, including vocational guidance, socio-professional integration, the placement of workers, the allocation of aid for the promotion of employment, and vocational training, in both the public and the private sectors.

2. Links (from the official site of the Centre for Equal Opportunities and Opposition to Racism, an entity established by the Law of 15 February 1993 to track and combat discrimination in Belgium)

a. French

i. Décret du 27 mai 2004 relatif à l'égalité de traitement en matière d'emploi et de formation professionnelle

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/decreten/Decret%20du%2027%20mai%202004_6pg.pdf

b. Dutch

i. Decreet van het Waals Gewest van 27 mei 2004 betreffende de gelijke behandeling inzake tewerkstelling en beroepsopleiding

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/decreten/Decreet%20van%20het%20Waals%20Gewest%20van%2027%20mei%202004_6pg.pdf

IV. LEGISLATION - FRENCH-SPEAKING COMMUNITY

A. Decree of 19 May 2004 on the Implementation of the Principle of Equal Treatment

1. Summary

a. This Decree prohibits direct and indirect discrimination on the basis of race or ethnic origin (*inter alia*) 1) against public servants of the administration of the French-speaking Community, 2) against the personnel of certain public interest organizations depending on the Community, 3) at all levels of education in the French-speaking Community, and 4) with respect to the Centre hospitalier universitaire de Liège, which depends on the Community.

b. This Decree implements Directives 2000/43/EC and 2000/78/EC on the level of the French-speaking Community.

c. Limits

i. Exception for Genuine Occupational Requirements. There is not considered to be any direct discrimination if a difference in treatment is based on a certain characteristic that, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, constitutes a genuine and determinative occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

ii. Application of this Decree is limited to competences of the French-speaking Community.

2. Links (from the official site of the Centre for Equal Opportunities and Opposition to Racism, an entity established by the Law of 15 February 1993 to track and combat discrimination in Belgium)

a. French

i. Décret du 19 mai 2004 relatif à la mise en oeuvre du principe de l'égalité de traitement

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/decreten/Decret%20du%2019%20mai%202004%20egalite%20de%20traitement_3pg.pdf

V. LEGISLATION - REGION OF BRUSSELS-CAPITAL

A. Ordinance of 26 June 2003 on the Joint Management of the Labor Market in the Region of Brussels-Capital

1. Summary

a. This Ordinance requires that both public employment offices and private employment agencies respect a general requirement of non-discrimination. *See* 2007 Belgium Report, page 10.

2. Links

a. French

i. Ordonnance relative à la gestion mixte du marché de l'emploi dans la Région de Bruxelles-Capitale

ii. None.

VI. LEGISLATION - GERMAN-SPEAKING COMMUNITY

A. Decree of 17 May 2004 on the Guarantee of Equal Treatment on the Labor Market

1. Summary

a. This Decree prohibits direct and indirect discrimination in the advertisement of employment opportunities and provision of services relating to vocational guidance, professional counseling, vocational training and retraining. *See* 2007 Belgium Report, page 10.

b. This Decree implements Directives 2000/43/EC and 2000/78/EC on the level of the German-speaking Community.

c. Limits

i. This Decree applies to the services of the German-speaking Community and the employees of the services of the German-speaking Community, including administrative personnel of the German-speaking Community, personnel employed in the Community's educational system, and intermediaries with respect to the services they offer.

2. Links (from the official site of the Centre for Equal Opportunities and Opposition to Racism, an entity established by the Law of 15 February 1993 to track and combat discrimination in Belgium)

a. French

i. Décret du 17 mai 2004 relatif à la garantie de l'égalité de traitement sur le marché du travail

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/decreten/Decret%20du%2017%20mai%202004_11pg.pdf

b. Dutch

i. Decreet van de Duitstalige Gemeenschap van 17 mei 2004 betreffende de garantie van een gelijke behandeling op de arbeidsmarkt

ii. http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/decreten/Decreet%20van%20de%20Duitstalige%20Gemeenschap%20van%2017%20mei%202004_8pg.pdf

c. German

i. Dekret bezüglich der Sicherung der Gleichbehandlung auf dem Arbeitsmarkt

ii. None.