



## **NATIONAL ACTIVITY REPORT BELGIUM ANTI-DISCRIMINATION AND DIVERSITY TRAINING**

**CommunicArt (Diversity Management seminars)**

**May 2008**



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The training manuals used in the anti-discrimination seminars and the diversity management seminar can be downloaded from the European Commission website:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm#train](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#train)

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The national activities for the Diversity Seminars were carried out by CommunicArt Co.

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## **II. Introduction**

No organisation in Belgium could be found who had the interest and capacity to carry out the anti-discrimination seminars. That many seminars for NGOs have been carried out in Belgium on anti-discrimination was the most important factor mentioned.

The country specific chapters of the training manual for the anti-discrimination seminars were drafted by staff of the Ligue des droits de l'Homme and have been added to this activity report.

CommunicArt organised the Diversity Management Seminars. It was decided to have two Diversity Seminars, in Belgium's two main languages: Dutch and French.

### III. Anti-discrimination seminars

#### a) Mapping exercise: NGOs/Trade Unions working to combat discrimination

#### I. Profile of NGOs/trade unions working to combat discrimination

##### 1. What types of NGOs/trade unions working on anti-discrimination exist on the national level?

The situation in Belgium is specific in that there is no anti-discrimination NGO operating on a national level: one has to consider both French and Flemish speaking regions or communities, even though NGOs from both sides have contacts on specific issues and sometimes work together. For example, the *Ligue des droits de l'Homme* (LDH), the oldest Belgian NGO working on human rights in general and on all grounds of discriminations, was set up in 1901 but split in 1978 to reflect the changes in the state structure and funding. The range of NGOs working on anti-discrimination is quite wide but few of them explicitly refer to anti-discrimination as such and even less do use anti-discrimination laws. Beside a very limited number of NGOs who operate on a (linguistic) community level, such as the LDH, the *Liga voor Mensenrechten* (LVM) or the *Mouvement contre le racisme, l'antisémitisme et la xénophobie* (MRAX), there are many smaller NGOs acting either locally or only on one specific ground of discrimination. Another Belgian specificity is the state approach to religion: contrary to France, Belgium does not claim to be laic but neutral, which means for instance that although the state will not interfere in the appointment of worship ministers, it pays for their salary and pension, and provides substantial funding for buildings maintenance and repair. Six cults are officially recognised (i.e. catholic, protestant, islamic, jewish, orthodox and anglican), to which one must add laicity, represented by the *Centre d'action laïque* (CAL) and the *Unie Vrijzinnige Verenigingen* (UVV), federating numerous organisations.

In a deeply federal country, Belgian trade unions remain among the few organizations to still be united at national level – unlike political parties for instance. They tend to be organized along two lines : sector-based and regional. The three main national trade unions are committed to anti-discrimination. These are, in decreasing order of members : ACV-CSC (Christian union), ABVV-FGTB (socialist union), CGSLB (liberal union).

##### 2. What ground(s) of discrimination, scope or sector are they concerned with (if they are concerned with a specific ground or a specific sector such as for example education)?

With the exception of LDH and LVM, most NGOs tend to focus on one specific ground of discrimination : for example, MRAX on race and religion, *Tels Quels* on sexual orientation, Belgian Disability Forum on disability, *Courant d'âges* on age, etc. Some can be very specific (for example, the *Ligue Braille* for blind people , the *Fédération francophone des sourds de Belgique* for deaf people, the *Vlaamse Liga tegen Kanker* against cancer) but will generally be part of a larger federation.

Trade Unions focus more specifically on discriminations on the workplace – hiring and promotion – with a scope extending to all equality grounds, although historically, gender and ethnic origin were the first criteria to be thoroughly examined at trade union level.

##### 3. Is anti-discrimination their main area of work or only a small part of what they do? Do they work on anti-discrimination?

Again, except for a few NGOs gathering expertise, training and funding, anti-discrimination is generally a small part of their work. However, many NGOs work on anti-discrimination without formulating it explicitly: they do not refer to anti-discrimination as such and do not use the law but their work has an impact on discrimination. For instance, in the race sector, many NGOs work on diversity, education and integration, providing assistance to find work and housing; in the disability

sector, many NGOs claim reasonable accommodation (for example changes in building structure to grant accessibility for disabled people) without referring to anti-discrimination law.

But the situation is gradually changing: some NGOs in the race and sexual orientation sector are well aware of the law and well trained; the disability sector is starting to get familiar with the law; the age sector does not use it yet. Finally, the CAL refers explicitly to anti-discrimination in its actions (for example, to have a catholic cross removed from a court room).

Anti-discrimination is not the main area of work for trade unions. As such, it has emerged fairly recently in their activities, which are mainly concerned with the whole range of issues affecting employment rights – including the management of the social security system. Their anti-discrimination work is completed by educational and promotional work, mainly aimed at the trade unions affiliates and delegates, in a top-down approach.

**4. Are these NGOs/trade unions registered on the national level? Is it easy or problematic to register as an NGO/trade union?**

It is very easy to register as an NGO – there are more than 90.000 NGOs registered in Belgium – and the registration is valid on the national level. The law was modified in 2002 in order to update and simplify the registration procedure. The legal personality is granted when a governing document with specific mandatory information (such as location of the seat, founding members, board members, etc.) is deposited at the *tribunal de commerce*.

As such it is easy to register a trade union, but getting it recognized so as to enable it to take part in the social elections and the Belgian joint commission system requires the meeting of many conditions that are difficult to meet (e.g. 50.000 members, national coverage...). This explains the stability of trade union representation in Belgium, with only three of them registered at national level.

**5. Generally how large are these NGOs/trade unions? (Please mention the size of membership for the main trade unions)**

Even the main NGOs are relatively small in terms of workers: the largest ones have less than 15 employees. NGOs are reluctant to communicate on their membership but their networks (including experts, volunteers, political contacts, members, etc.) can be substantial.

Trade unions are quite large in Belgium. Given the size of the total population (just over 10 millions), TUs are proportionally as important as in Germany or in Nordic countries. This is mainly due to the fact that they offer a broad array of services (particularly towards the unemployed). In terms of affiliation, the biggest trade union is ACV-CSC (Christian), with 1.600.000 affiliates, followed by ABVV-FGTB (socialist) with 1.370.000 and ACLVB-CGSLB (liberal) with 250.000.

**6. Are they part of larger national networks? Or are they working on their own?**

There are many networks, platforms or federations regrouping numerous NGOs but nothing specific on discriminations. Generally, these networks tend to focus on one specific ground (for example, the Belgian Disability Forum or the Holebi Federatie). The meetings of the steering committee set up for the 2007 European Year of Equal Opportunities for All, which included NGOs working on six grounds (race, religion, disability, age, sexual orientation and gender), showed the necessity to develop cross-grounds discussions and exchanges of expertise.

The three trade unions are not part of an extensive national network, as such. They often cooperate on local, sector-based or general social issues (such as anti-discrimination and the promotion of equality), but these cooperations did not take place through a unified institution or network.

**7. Are they mainly based in the Capital or spread out in the country?**

The main NGOs tend to be based in the capital but there are many smaller organisations spread out in the country. Very few have local sections, such as the CAL or the *Ligue des droits de l'Homme*, which is based in Brussels and counts eight sections (made of volunteers only) in as many cities of the French speaking part of Belgium. Flemish NGOs have first developed in cities like Antwerp or Gent since, until recently, Brussels was not perceived as a “Flemish” city. This is changing and many Flemish NGOs are now based in the capital.

The three main TUs’ headquarters are in Brussels but their offices are evenly spread across the rest of Belgium – including regional headquarters and local offices.

**8. Are NGOs/trade unions from the capital and the rest of the country doing the same type of work?**

Mostly yes, except that NGOs based in Brussels tend to have better contacts and better access to MPs and ministerial cabinets. They are also likely to attract more media attention although this is not always the case: for instance, the *Liga voor Mensenrechten* is based in Gent and does not seem to suffer from this location. As for TUs, national or regional headquarters tend to be more focused on influencing national or regional governments than local offices. But the “field work” is very similar in Brussels and in the rest of the country : in Brussels, one can find local offices as well as headquarters.

**9. What is the political or societal weight of these NGOs/trade unions on the national level? (Towards, the general public, the civil society, the companies/employers, the government)**

NGOs do attract media attention, mobilise public opinion and can persuade the government to take action or amend existing legislation. For example, NGOs have had regular contacts with the government during the discussions on the anti-discrimination bills in 2007 and later with MPs when the bills were discussed in parliament; eventually, some filed an action against the new anti-discrimination laws before the constitutional court. The political weight of these NGOs is quite important and they do attract attention from the government, the general public and the civil society.

TUs carry a lot of social and political weight in Belgium, due to the very high rate of affiliation and the country’s long-standing history of social dialogue. This can be measured on an institutional level. For instance, most of Belgian national and regional legislation has to be examined by social and economic councils where trade unions representatives make up half of the members (the other half being employers). On a sector-based level, the agreements made between trade unions and employers in joint-commissions are legally binding. This influence also has an impact on the general public and civil society where trade unions are seen as a central part of Belgian society : their opinions are being taken into account on many more subjects than workers’ rights (e.g. the future of Belgian federalism). It is not uncommon for TUs representatives to become MPs or even ministers.

**10. Are NGOs/trade unions working in the field cooperating together: (NGOs with other NGOs, trade unions with other trade unions and also NGOs together with trade unions)**

**a. For what purpose(s) (e.g. exchange of expertise, collaboration on case work or campaigns, organising events jointly)**

There is a broad and regular cooperation between NGOs on campaigns but also on (technical) position papers or on legal proceedings. Unions and NGOs do not cooperate on a regular basis but, recently, have started to collaborate on specific campaigns or studies (e.g. diversity in employment). Trade unions often work together on larger social issues such as anti-discrimination. This cooperation is mainly seen in Diversity Plans involving TUs and single companies working together to promote concrete measures in favour of diversity at company level, with financial support from public authorities. Such Plans currently exist in Flanders and Brussels and are soon to be implemented in

Wallonia. TUs also collaborate in awareness-raising campaigns, which are often led on an inclusive basis.

**b. *Is there greater collaboration in relation to certain grounds of discrimination? If so, which?***

Unsurprisingly, there is a greater collaboration in relation to specific grounds where many NGOs are operating (race, handicap) and/or where they are very active politically (sexual orientation). It is less the case for the grounds of age or religion. Generally speaking, there is a clear lack of cooperation between NGOs working on different grounds. On the TUs level, Diversity Plans are targeting age and ethnic origin discriminations more specifically.

**11. How are these NGOs funded?**

**a. *Do they receive state funding?***

Most of the NGOs receive state funding, though not often for their anti-discrimination actions specifically, but mainly for their educational activities : studies, campaigns, conferences, etc. State funding is also channelled through employment policies (e.g. employment tax exemption), enabling NGOs to hire workers at lower costs. In that case, NGOs are not funded for their activities as such, but for their contribution to unemployment reduction. Belgian NGOs funding system is often seen as lacking transparency.

**b. *What are the conditions in order to receive public funding?***

The conditions of funding can vary from one level of government to another. First of all the applicant has to have the right legal form (vzw/asbl), and it will have to demonstrate its capacities to elaborate and deliver a programme of work in accordance to the funder's priorities. This is often done through reputation.

**c. *Do they also receive/apply for private funding?***

NGOs do apply for private funding, generally from charitable trusts such as the Koning Boudewijnstichting-Fondation Roi Baudouin. This form of funding is not very developed in Belgium and the competition to get access to it is therefore very fierce. Individual membership can be another form of private funding for those NGOs that are well-known enough to attract a high number of members.

**d. *Do private funders impose any restrictions or conditions?***

The conditions imposed by private funders vary from one funder to the other. They can include linguistic, geographic or methodological criteria. The Fondation Roi Baudouin often works with "project calls" with well-defined criteria within which NGOs can submit their projects.

**12. How are these trade unions funded?**

**a. *Do they receive state funding? (Generally speaking do trade unions receive state funding?)***

Trade unions are voluntary organisations whose main activities are funded by members' fees. They receive state funding only for the services they offer to the unemployed. This funding is transferred on separate bank accounts and is controlled by the same governmental body that controls public bodies accounts (Rekenhof/Cour des comptes). In anti-discrimination matters, trade unions receive funding for the role they play in Diversity Plans (in Brussels and Flanders only). This takes the form of free hiring of staff dedicated to this task in the trade unions.

**b. *Are they funded by a political party? If so, do they have to adhere and respect the party's line?***

Trade unions are not funded by political parties though some of them are historically close to certain political parties.

**c. Do they function only/also with their members' fees?**

Trade unions function mainly with their members' fees.

**d. Are they able to receive private funding and/or participate in project funded by European/international institutions?**

Trade unions could apply for private funding on their own or joint funding with an NGO, but this is rare. They can also apply for projects funded by the European Union or other international institutions: this has often been the case with the EQUAL programme from the European Commission.

**13. Is the lack of funding a significant factor in the size of NGOs/trade unions or in restricting the scope or scale of their activities?**

The lack of funding is certainly a significant factor impeding NGOs activities. The situation appears more problematic in the French-speaking part of the country, even though an NGO like *Minderhedenforum* (which is in the Dutch-speaking part of the country) says it would engage in assistance to victims of racial or religious discriminations and do case work should it get funds to do so. However, *Tels Quels*, a French-speaking NGO working on the ground of sexual orientation and providing assistance to victims, claims not to be looking for more state funding in order to remain independent. On the other hand, funding is not a major issue for Belgian TUs, which can rely on the financial support of their many affiliates.

**14. Do they work (or are in contact) with similar NGOs/trade unions in other countries?**

**a. Neighbouring countries?**

**b. Other new EU Member States?**

**c. Others?**

NGOs do not work on a regular basis with NGOs from other countries, with the exception of a few leading organisations (for example, the MRAX and the *Ligue des droits de l'Homme* have contacts with SOS Racisme or the MRAP in France, Interights in the UK or NEKI in Hungary) or, obviously, international NGOs that are represented in Belgium (Amnesty International, FIDH, ILGA, etc.). Belgian national NGOs have contacts with international organisations represented in Belgium and collaborate on specific programs such as SOLID. Moreover, most NGOs, at least in the race, disability and sexual orientation sectors, are members of a European or an international federation such as European Network Against Racism (ENAR), European Disability Forum or International Lesbian and Gay Association (ILGA).

Belgian trade unions are members of European Trade Union Congress (ETUC) and International Labour Organisation (ILO) where they push an anti-discrimination agenda.

**15. Do they work on the international level (campaigning, case work, other)**

Most NGOs do not work on the international level: being member of an international federation, they choose to – or have to, due to the lack of funding – delegate work on the international level. Generally, being a member gives them access to information but they are not directly active in the federation, except to pass on information to their own members. More international campaigns have taken place recently in which local NGOs have played a direct role, for example on asylum policies and migrants detention. Few NGOs have the expertise and the practice to involve in UN and CoE reporting (only the LDH does so systematically). These NGOs generally tend to submit a joint shadow report to the various committees but, for example, the LDH was the only NGO to submit a report for the 72<sup>nd</sup>

session of the CERD in February 2008. As for trade unions, most of their anti-discrimination work on the international level takes place at ETUC and the ILO.

**16. Can they work in English?**

Not as a matter of policy: it generally depends on the people in charge. However, most of the main NGOs whether French speaking or Dutch speaking have enough internal resources to work in English. This does apply to trade unions as well.

**17. For countries where this is the case, where trade unions are linked to political parties, does the involvement or non-involvement of the political party has an impact on the trade union's ability to work on anti-discrimination?**

The links between political parties and trade unions are not formal but mainly historic. Moreover, TUs' autonomy is respected by the main political parties (with an exception for a strong extreme-right party in Flanders). On matters such as anti-discrimination, the involvement or non-involvement of a political party has no impact on the TUs' involvement.

**18. Can specific regional branches of a trade union work on anti-discrimination even if headquarters does not?**

This could theoretically be the case as long as this regional involvement does not contradict the TU's doctrine. But in practice the question does not arise since TUs' headquarters are all working on anti-discrimination.

**II. Expertise of NGOs/trade unions working to combat discrimination**

**19. What kind of work do they do?**

The work of NGOs is wide and includes public awareness campaigns, information guides, intervention in the media (press conferences, opinions in the press, television and radio interviews), advocacy, contacts with the government and parliament (both national and European), social and legal assistance to victims, mediation, legal proceedings, research and studies, education, training, intervention in schools, networking, reporting, etc. TUs are mainly involved in campaigning and lobbying. They also provide advice to members on discriminatory practices. Individual complaints, though, are transferred to the national equality body, the Centre for Equal Opportunities and Opposition to Racism (CEOOR), with whom they have a specific convention for such cases.

**20. Do they take up complaints of discrimination?**

Very few do : the MRAX and *Kif Kif* for race and religion, *Tels Quels* for sexual orientation. The LDH and *Liga voor Mensenrechten* cover all grounds but do not take up individual complaints unless they fit in their litigation strategy (test cases). Most NGOs redirect individual complaints to the CEOOR, whether based on a specific convention or on a tacit agreement. De facto, the huge majority of legal actions brought to court comes from the CEOOR, sometimes jointly with one or more NGOs. See also question 34.

**21. Do they focus on their own community?**

They usually focus on a ground (race, disability, etc.) rather than a community, even though the two concepts may overlap. TUs tend to focus on their members first but they are not organized along community lines.

**22. Do they work with victims directly?**

Most NGOs provide social – and sometimes legal – assistance to victims. However, they generally turn to the Centre, especially where case work is involved (see question 20). The same principle applies to TUs.

**23. Within the company, can trade unions represent only their members or any worker?**

Within a company TUs represent any worker : the outcome of negotiations will apply to all workers, whether member of the trade union or not, but individual assistance is mainly offered to members. In case of legal assistance in an anti-discrimination case, the complaint is redirected to the CEOOR.

**24. Do they do ‘case work’?**

Again, very few do: MRAX, *Kif Kif*, LDH, *Liga voor mensenrechten*, *Tels Quels*. Given its human and financial resources, the place of the CEOOR is overwhelming in this respect.

**25. Are they able to access state funding for casework?**

There is no specific state funding for case work but the projects submitted to obtain funding may include case work (for example, a campaign on equal access to bars and clubs may involve case work to draw the public attention). Some NGOs like the LDH organize special events where the public is told in advance that the profits will be used for case work.

**26. Does this include legal representation?**

See question 25: funding allowed for case work will include legal representation. In most cases, NGOs work with “friendly” lawyers, sympathetic to the cause, who significantly lower their fees or work pro bono.

**27. Is it possible for NGOs/trade unions to engage on behalf or in support of victims of discrimination in judicial or administrative procedures?**

NGOs and TUs cannot engage *on behalf* of victims of discrimination in judicial or administrative procedures. Indeed, as class action does not exist in Belgian law (except in very limited fields, such as environment issues), the Cour de cassation (judicial Supreme Court) ruled that NGOs have, in such cases, no direct prejudice and therefore are not admissible to represent human rights victims in judicial procedures. However, NGOs and TUs can engage *in support* of victims of discrimination in judicial or administrative procedures, provided that the victim is party to the procedure and has given its consent. On the other hand, the CEOOR can, if no victim is identified, pursue an action against any offender. Other ‘interested parties’ (NGOs and TUs) can also pursue such actions, but only if they can prove a prejudice to their object. Most NGOs have modified their governing documents to enable them to do so. Where victims are identified, both the CEOOR and the interested parties will need to prove that they have the consent of the victims.

**28. Are NGOs/trade unions able to pursue class actions if the latter is allowed on the national level?**

Class actions are not permitted for discrimination complaints in Belgium (see also question 27).

**29. Do they do other practical work? (e.g. assistance to victims or potential victims, social assistance, etc)**

Most NGOs concentrate on political lobbying, exchange or transmission of information between their members, social and legal assistance. Larger NGOs tend to extend their activities to educational programs (towards youth and/or adults), cultural activities (movie premieres, plays, etc.), academic activities (conferences, seminars, etc.). Smaller NGOs tend to restrict their activities, but are often

active, for the least, in political representation of their interests and exchange of information. TUs offer little practical and individual work on anti-discrimination matters. They focus more on lobbying, campaigning or structured actions, such as the co-elaboration of Diversity Plans.

**30. Do they advocate changes in legislation and policies?**

Most NGOs (but not all of them) advocate changes in legislation and policy. Some are directly consulted on proposed changes to public policies or initiatives, other use political lobbying to bring their point of view to political representatives. But, except for a few NGOs, most of the time this advocacy policy does not take anti-discrimination legislations as focus point for action. Some TUs advocate changes in legislation, asking for instance for trade union affiliation to be recognized as a discrimination criterion.

**31. What are their relations with the central government?**

Some NGOs have developed effective relationships at legislative or executive levels which ensure that they have the ear of political representatives. Specialised NGOs often make submissions to the government, the parliament or local authorities. Smaller NGOs or those with an interest in issues that are low on the political agenda can struggle to have their voice heard or develop effective relationships at higher levels. TUs have strong and numerous relationships with the federal government, which are institutionally inscribed in many advisory councils where TUs' voice can be heard. Traditionally, Belgium's social dialogue includes government, employers and TUs.

**32. With regional governments or municipalities?**

At regional level, NGOs participate in inter-agency work and partnership with local authorities. NGOs sometimes find that the relationships they establish at this level are more effective and allow for closer engagement on issues of mutual concern. For example, NGOs representing a disabled public are sometimes consulted by architects on changes to be made to public buildings. As far as TUs are concerned, what applies to federal government remains true for regional ones, but relationships with municipalities are probably looser and seen as less central by the TUs.

**33. For the trade unions, with the employers organisations?**

Dialogue is a key word in social relationships : Belgian TUs being very strong, they can effectively have the ear of employers organisations without resorting too often to "direct actions" such as strikes. On matters of common interest, such as anti-discrimination, they often find ground for agreement, which can be materialized in Diversity Plans or Collective Conventions (which are the outcomes of negotiations at sector-based joint commissions level) focusing on anti-discrimination. In these matters, difficulties arise more often at company level than with the employers organisations.

**34. Do they have relations with the specialised bodies/ombudsman?**

TUs and most NGOs have very good relations with the CEOOR. In most cases (if not all), NGOs redirect individual complaints to the CEOOR, leaving to the CEOOR the duty to file complaints if necessary. Agreement protocols are often signed with the CEOOR to allow such collaboration. Some NGOs file complaints in association with the CEOOR (and the victims if identified) when their object is prejudiced. For example, *Tels Quels*, the MRAX, the LDH and the LVM file complaints in association with the CEOOR. Collaboration can also take other aspects: advisory or consultative fora in which NGOs and unions participate, public awareness campaign, joined training sessions, etc. Relations between NGOs and the CEOOR are facilitated by the fact that, so far, there are no significant differences of opinion or strategy regarding the work to combat anti-discrimination.

**35. What are the qualifications of the staff?**

Depending on their size and resources, NGOs may have staff that is legally trained, researchers, social scientists, policy specialists, communications experts or lobbyists. Other NGOs employ or use volunteers who act as community based advocates or grassroots activists. Qualifications are less sharp in smaller NGOs with less resources.

Some NGOs, which have the resources, provide their own training (for example *Minderhedenforum*, *Tels Quels*). TUs are large organisations with a very broad range of qualifications : the main issue is therefore the communication between the different departments and the implementation of mutual empowerment.

**36. What training has the staff had in relation to anti-discrimination work?**

This will depend on the resources available to an NGO or TU or their ability to access training offered by others. Some larger NGOs have training departments or can fund external experts but the anti-discrimination element of their training programmes will vary from non-existent to more comprehensive, depending on their work programme and strategic objectives. However, information, advice and guidance are available from a variety of sources. For example, the CEOOR organises training programmes on demand.

**37. Are they trained in writing funding proposals and reporting?**

This will also depend on the resources available to an NGO: the level of training in relation to preparing funding proposals and reporting will depend on resources available. But mainly, there is no training in writing funding proposals and reporting and staff has to learn from scratch: learning tends to take place ‘on the job’. The same goes for TUs as far as their anti-discrimination departments are concerned.

**38. How do they evaluate their “success” and the quality of their anti-discrimination work?**

Evaluation of the quality and success of NGO’s activities depends of the nature of the action intended: report on outputs and outcomes, measurement and evaluation towards funders, adoption of legislative acts following a lobbying campaign, judicial decision, etc. However, most NGOs do not have a strong culture of evaluation. The main anti-discrimination tool which TUs use – Diversity Plans – is said to be too recent to be subject to an accurate evaluation yet.

**III. Needs and problems of NGOs/trade unions working to combat discrimination**

**39. What is the main problem faced by NGOs/trade unions involved in anti-discrimination work?**

One of the main problem is the lack of funding and thus the lack of staff and expertise: NGOs are forced to divert time and effort to fund raising. But the main problem lies in the lack of expertise and knowledge about existing legislation. It is therefore leading to a situation where many NGOs do not use the anti-discrimination legislations available, even when those legislations are quality ones and would therefore permit effective changes. For TUs, the main complaint coming from the anti-discrimination department has to do with the lack of interest from many affiliates and delegates on these matters : their first concern would therefore be to raise the issue higher on the TUs agenda.

**40. Is the lack of staff/funding/expertise one of the main problems faced by NGOs/trade unions involved in anti-discrimination work?**

Yes, as outlined above, the lack of staff, funding and expertise is a key issue, for NGOs in particular. For TUs the main problem has probably more to do with internal communication, priority-setting and legal expertise in the anti-discrimination departments.

**41. Is the fact that staff lack necessary knowledge and/or skills one of the main problems faced by NGOs involved in anti-discrimination work?**

Yes, as outlined above, the lack of necessary knowledge leads to situations where NGOs ignore the possibilities lying in the anti-discrimination laws, except for a small number of specialised NGOs.

**42. What training is needed by the NGOs/trade unions in order to perform their work the way they would wish to?**

Training in legislation and case law is required and should be more widespread. It should also concentrate on the judicial possibilities (different possible judicial actions, burden of proof, etc.). This is particularly true for some discrimination criteria: NGOs active in the field of age hardly use antidiscrimination legislations. The same thing, in a smaller scale, can be said of NGOs active in the field of disability, even if it seems that those NGOs are starting to take notice of the possibilities offered by the legal framework. NGOs working on sexual orientation and race/religion seem to be more aware of the existing legal possibilities.

**43. Is their staff sufficiently trained in relation to national anti-discrimination legislation?**

In some cases yes – those with a specific anti-discrimination or human rights brief, for example, or the larger NGOs – but mainly no (see question 36). Within TUs, communication seems to be insufficient between the judicial department and the anti-discrimination one : “diversity workers” in TUs tend to complain about their lack of specific legal and judicial training.

**44. Is their staff sufficiently trained in relation to European anti-discrimination legislation?**

The same can be said about European anti-discrimination legislation: if some NGOs are well informed, most of them are not. The same applies for most of the “diversity workers” in TUs, whose knowledge of European anti-discrimination legislation is poorer than their knowledge of the national one.

**45. Is their staff trained in relation to advising government: formulating policy proposals? Legislative proposals?**

Large NGOs and TUs are becoming more engaged with government consultations on policy and legislative proposals and can provide government with feedback and comment. TUs and some NGOs have good lobbying and advisory expertise with access to experts who can propose legislative changes and options for policy interventions. But mainly, the training takes place ‘on the job’, from self learning and internal culture.

**46. Do they need to do more to promote their anti-discrimination role?**

In some areas, particularly age and disabilities, NGOs definitely need to do more on the basis of the anti-discrimination legislations and promote their anti-discrimination role. But greater awareness raising and promotion activity can generate a demand for services that some may find difficult to meet. For example, the LVM and Kif Kif have issued joined guidelines on situation testing in 2007 but

are unable to follow up. So, generally speaking, NGOs would welcome more resources to help them promote the work they do. As for TUs, their anti-discrimination role sometimes fails to trickle-down to their affiliates and delegates. In that respect, the focus should probably be put on internal communication.

**47. Do they need to “do more” with victims, clients or potential clients, members or potential members?**

Because of a lack of resources and staff available, NGOs have trouble to 'do more' to support victims. But, they could do so and, through promotion and education programmes, raise awareness with their members. More work is definitely needed on age and disability discriminations. As for TUs, it is too early to have a clear evaluation of the convention signed with the CEOOR, whose consequence is to alleviate the amount of work they do directly with victims.

**48. Do they need to “do more” with government – to increase their credibility and status?**

In the field of discrimination, credibility and status of the TUs and competent NGOs are, in most cases, not a problem. If these NGOs could certainly 'do more', the government could also engage more with NGOs (for example through greater funding). Trade unions could probably “do more” to establish themselves as key anti-discrimination organisations, since this remains at present only a small fraction of their activities.

**49. For the trade unions, do they need to “do more” with the companies/employers organisations?**

A lot is already done, mainly through the Diversity Plans in Flanders and Brussels. Their extension to Wallonia will be a welcomed move. Anti-discrimination is seen as a “common interest” issue by employers organisations and trade unions, but this message is often difficult to get across individual companies.

**50. Would they need to “do more” with public opinion and awareness raising?**

NGOs could 'do more' to promote and educate the public (not only their members) on equality, diversity and human rights. However, this depends of the availability of resources and expertise to support campaigns, education programmes and other initiatives. NGOs could also 'do more' awareness raising with some key actors: employers, architects (for disability discrimination), public officials, teachers, etc.

**51. What would they need to develop?**

For TUs, this includes improving internal communication between their legal and anti-discrimination departments, and making anti-discrimination issues a priority concern for their 3 million members, through innovative actions. For NGOs, this might include an appropriation of anti-discrimination tools for those of them which are only starting to consider their activities from that perspective (mainly the disability NGOs), an improvement of their fundraising methods, education programmes and media training to reach a larger audience than their own members.

## **b) National legislation in the field of anti-discrimination**

### **1. The transposition of the Directives into national law**

Articles 10 and 11 of the Constitution, which prohibit discrimination on any ground, in principle could apply in Belgium to all contexts, including but not limited to employment and occupation, both in the public and in the private sectors. However, they are in fact rarely invoked in private relationships, because of their very general formulation and the delicate issues which would be entailed by their invocation in this context, for instance to protect an individual from private acts of discrimination by an employer. These constitutional provisions have been most effective when invoked against either legislative norms or administrative acts which violate the principles of equality and non-discrimination which they contain.

Prior to the adoption of the Racial Equality and Employment Equality Directives, there also existed in Belgium since 1981 of a Law criminalising certain acts inspired by racism or xenophobia (*Loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme ou la xénophobie*). This law initially made it a criminal offence to publicly incite discrimination against a person or a group on the basis of 'race', colour, ascendancy or national or ethnic origin, and it was extended by the Law of 12 April 1994 to cover the provision of goods and services and employment relationships. In addition, there existed the Law of 15 February 1993 setting up the Centre for Equal Opportunities and Opposition to Racism, setting up an independent body entrusted with the enforcement of this legislation (*Loi du 15 février 1993 créant le Centre pour l'égalité des chances et la lutte contre le racisme*).

After the directives were adopted, initiatives were taken both at the federal level and at the level of Regions and Communities (which, in Belgium, share with the Federal State law-making powers), in order to implement these directives.

#### *At the federal level*

At federal level, agreement was reached on the Federal Law of 25 February 2003 on combating discrimination and amending the Act of 15 February 1993 setting up the Centre for Equal Opportunities and Opposition to Racism, which seeks to implement both Directives in a large number of spheres, even going beyond the scope of application of the Racial Equality Directive. However, this legislation – in part, because it was drafted on the basis of a bill which was pending before the House of Representatives when the directives were not in force yet, and whose approach was therefore not entirely consistent with the directives – was not fully compatible with the requirements of the Racial Equality and the Employment Equality directives. In addition, the Law of 25 February 2003 was partially annulled by the Belgian Constitutional Court (then Court of Arbitration) on 6 October 2004. As a result, on 26 October 2006, the government has proposed to abrogate the Law of 25 February 2003, and to replace that legislation, while at the same time amending the Law of 30 July 1981 (which implements Belgium's obligations under the 1965 International Convention for the Elimination of All Forms of Racial Discrimination).

This new legislative package was adopted on 26 April 2007 by the Parliament following a wide-ranging debate in which non-governmental organisations were strongly implicated. It is composed of four pieces of legislation promulgated on 10 May 2007. The Law of 10 May 2007 amending the Law of 30 July 1981 criminalizing certain acts inspired by racism and xenophobia seeks to implement both the Racial Equality Directive and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, in one single legislation prohibiting discrimination on grounds of 'race', color, descent, national or ethnic origin, and nationality. While the current 1981 Law is criminal, the amended version will include civil provisions. The second piece of legislation contained in the legislative package is the Law of 10 May 2007 combating certain forms of discrimination (*Loi tendant à lutter contre certaines formes de discrimination*).

This law provides for the abrogation of the Law of 25 February 2003 and for the adoption, in its stead, of a specific law seeking to implement Directive 2000/78/EC of 27 November 2000, and prohibiting discrimination on all the grounds other than those dealt with by the other bills contained in the legislative package. Most of the grounds listed were already present in the Federal Antidiscrimination Law of 25 February 2003 (age, sexual orientation, civil status, birth, property (Fr. ‘fortune’), religious or philosophical belief, actual or future state of health, disability, physical characteristic). Other grounds were added, in particular in order to take into account the concern expressed by the Constitutional Court in its judgment n° 157/2004 of 6 October 2004 that the list of grounds should not arbitrarily exclude certain grounds which are found in international human rights instruments (political opinion and language ; genetic characteristic and social origin were also added, but this was not required by the abovementioned judgment).

In addition to the two pieces of legislation already referred to, the legislative package also includes:

- a) the Law of 10 May 2007 amending the Law of 7 May 1999 on equal treatment between men and women in working conditions, access to employment and to promotion opportunities, access to self-employment and social security,<sup>1</sup> in order to implement the directives relating to equal treatment between men and women adopted on the basis of Articles 13 EC<sup>2</sup> and 141 EC<sup>3</sup>; and
- b) the Law of 10 May 2007 amending the Code of civil procedure as regards litigation based on the above antidiscrimination legislation.

### *Regions and Communities*

The Regions and Communities have adopted certain acts in their respective fields of competence. The Flemish Community/Region adopted the Decree of 8 May 2002 on proportionate participation in the employment market (*Decreet houdende evenredige participatie op de arbeidsmarkt*). This seeks both to prohibit direct and indirect discrimination on a number of grounds, including but not limited to those listed in Article 13 EC. These grounds are sex, race, colour, descent, national or ethnic origin, sexual orientation, marital status, birth, wealth, age, belief or conviction, present or future state of health, disability or physical characteristic. Furthermore it aims to encourage the integration of target groups into the labour market by positive action measures (preparation of diversity plans and annual reports on progress made) in the limited fields which fall under the competence of the Flemish Region or Community (public administration of the Region/Community, educational institutions, intermediaries in the labour market; and all employers, but with respect only to disability).

The French-speaking Community adopted a Decree on the implementation of the principle of equal treatment (*Décret relatif à la mise en œuvre du principe de l'égalité de traitement*) on 19 May 2004, which prohibits direct and indirect discrimination chiefly in the public administration of that Community and in the education sector. Under the terms of this decree, this prohibition relates to discrimination on grounds ‘such as’ race, ethnic origin, religion or belief, disability, age, or sexual orientation.

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<sup>1</sup> *Loi sur l'égalité de traitement entre hommes et femmes en ce qui concerne les conditions de travail, l'accès à l'emploi et aux possibilités de promotion, l'accès à une profession indépendante et les régimes complémentaires de sécurité sociale*, Law on equality of treatment between men and women concerning working conditions, access to employment, opportunities for promotion, access to self-employment and social security. *Moniteur belge*, 19 June 1999.

<sup>2</sup> Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39 of 14.2.1976, p.40) as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (OJ L 269 of 5.10.2002, p.15) and, now, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006, p. 23).

<sup>3</sup> Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373 of 21.12.2004, p.37).

The Walloon Region adopted a Decree of 27 May 2004 on equal treatment in employment and professional training (*Décret relatif à l'égalité de traitement en matière d'emploi et de formation professionnelle*), prohibiting direct and indirect discrimination in vocational guidance, socio-professional integration, the placement of workers, the promotion of employment and vocational training, in both the public and the private sectors, based on the following grounds : religious and philosophical convictions, a disability or a physical characteristic, current or future state of health, age, civil status, sex, gender, sexual orientation, ethnic or national origin, family or socio-economic origin or situation.

Finally, the German-speaking Community adopted a Decree on the guarantee of equal treatment on the labour market (*Dekret bezüglich der Sicherung der Gleichbehandlung auf dem Arbeitsmarkt*) on 17 May 2004, which prohibits direct and indirect discrimination with respect only to the bodies or persons who fall under the powers of the German-speaking Community. The grounds concerned are sex, race, colour, descent, national or ethnic origin, sexual orientation, civil status, birth, property, age, religious or philosophical convictions, current or future state of health, disability or physical characteristic.

### *Evaluation*

The efforts by the Belgian authorities to implement the directives have been impeded by the competing understandings of the division of tasks between the Federal State, the Regions and the Communities, which to this day has not been satisfactorily clarified by the competent bodies (Council of State (legislative section) and Constitutional Court). In addition, the Regions and Communities have failed to negotiate an agreement with the Federal State in order to allow the Centre for Equal Opportunities and Opposition to Racism (which is a federal body, entrusted solely with the enforcement of federal legislation relating to discrimination) to contribute to the enforcement of their legislative decrees. As a result, while the reforms made with the adoption of the important legislative package adopted in May 2007 will result in a substantial improvement of the federal antidiscrimination legislation – largely remedying the insufficiencies of the Federal Antidiscrimination Law of 25 February 2003 –, certain shortcomings remain.

First, certain legislative initiatives need to be taken in order for the process of implementation to be complete : the Walloon Region and the Region of Brussels-Capital have not legislated in order to implement the Racial Equality and Employment Equality Directives as regards their own statutory personnel ; the Commission communautaire française, to which the French-speaking Community has transferred its competences from 1993 in the sphere of vocational training, and the Region of Brussels-Capital, with respect to its own personnel, still have to take action in order to ensure implementation of Directives 2000/43/EC and 2000/78/EC ; finally, since social housing is in principle a competence of the Regions,<sup>4</sup> the Regions should take action in order to ensure the implementation of the Racial Equality Directive in this field, which the federal bills (the general antidiscrimination bill and the racial equality bill) do not cover.

Second, initiatives should be taken to enlarge the competences of the equality body (the Centre for Equal Opportunities and Opposition to Racism) which should be empowered to fulfil the tasks defined under Article 13 of the Race Directive, also with respect to legislation adopted at regional and community level to implement this Directive. This body is currently competent at federal level as it a federal agency, created initially by the Federal Law of 15 February 1993. It is not institutionally linked to either the Regions or the Communities. In order for the regional or community decrees to be monitored by the Centre, a protocol of cooperation must be concluded between the Federal Government and the executive of the relevant Region or Community.

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<sup>4</sup> Article 6, § 1er, IV, of the Special Law of 8 August 1980; Article 4, al. 1, of the Special Law of 12 January 1989 on the institutions of Brussels .

Third, the existing legal framework is not satisfactory. The hesitance of the Regions and Communities concerning their competence to adopt procedural rules, relating for instance to sanctions (penal or civil), to the *locus standi* of organisations, to the shift of the burden of proof in discrimination cases, or to the powers of the court to which a complaint is filed alleging discrimination, means that the implementation of Council Directives 2000/43/EC and 2000/78/EC remains unsatisfactory on a number of issues which fall under the competences of the Regions and Communities. In particular, neither the Decree adopted on 19 May 2004 by the French-speaking Community nor the Decree adopted by the Walloon Region on 27 May 2004 seem to accord with the requirement set forth in Article 7(2) of Directive 2000/43/EC or Article 9(2) of Directive 2000/78/EC, and these instruments lack any provision giving certain appropriate organisations the power to engage, on behalf or in support of the complainant, in judicial or administrative procedures provided for the enforcement of the guarantee of equal treatment set out by these Decrees. Moreover, neither the Decree adopted by the French-speaking Community, the Decree adopted by the Walloon Region, nor the Decree adopted by the German-speaking Community contain any provisions on reprisals, which may be in violation with Article 9 of Directive 2000/43/EC and Article 11 of Directive 2000/78/EC.

Fourth, two of the laws contained in the legislative package adopted in May 2007 present one potentially important difficulty. The Law of 10 May 2007 combating certain forms of discrimination and the Law of 10 May 2007 amending the Law of 30 July 1981 criminalizing certain acts inspired by racism and xenophobia both contain a “safeguard clause” (Article 11 in both texts) stating that they will not, per se, apply to differences in treatment imposed by another legislation, or by virtue of another legislation : the idea is to ensure that national jurisdictions will not refuse to apply existing legislation because it would be in violation with antidiscrimination legislation ; it is not to immunize any laws or regulations which might be found in violation of the principle of equal treatment, but the procedures will remain the classical ones in cases where a law is found to be potentially unconstitutional (referral to the Constitutional Court, or – more exceptionally – direct application of an international human rights instrument in order to disapply the national legislation in violation with that instrument). Whether these means of ensuring that the requirement of equal treatment be complied with will suffice to weed out existing laws or regulations from any discriminatory clause remains to be seen.

### *Conclusion*

The directives adopted in 2000 led to very important changes in the Belgian antidiscrimination legislation. Although the pre-existing legislation, particularly the Law of 30 July 1981 referred to above, already prohibited discrimination in certain contexts – in addition to the equality provisions of the Constitution –, this was a criminal legislation, and therefore was not considered an effective tool to combat discrimination ; it prohibited only discrimination on grounds of ‘race’, colour, ascendancy or national or ethnic origin, the other grounds of Article 13 EC not benefiting the same degree of protection (with the exception of sex<sup>5</sup>); and it did not make a clear distinction between ‘direct’ and ‘indirect’ discrimination, which are now better defined in Belgian legislation, in line with the definitions provided in the directives. Perhaps as important, the debates which led to the adoption of the Federal Law of 25 February 2003 and, now, to the adoption of a legislative package abrogating that law and establishing a new framework for combating discrimination, brought the attention of the public to forms of discrimination which are too often ignored or underestimated, in particular discrimination on grounds of disability or of sexual orientation.

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<sup>5</sup> See the Law of 7 May 1999 on equal treatment between men and women in working conditions, access to employment and to promotion opportunities, access to self-employment and social security (*Loi sur l'égalité de traitement entre hommes et femmes en ce qui concerne les conditions de travail, l'accès à l'emploi et aux possibilités de promotion, l'accès à une profession indépendante et les régimes complémentaires de sécurité sociale*), *Moniteur belge*, 19 June 1999. One of the bills presented in the legislative package presented to the Parliament on 26 October 2006 will amend this legislation, in order to implement the directives adopted in the field of equal treatment between men and women on the basis of Articles 13 or 141 EC.

There is no widespread discrimination in Belgium on a ground not covered in the directives, although the situation of undocumented migrants (or even, more generally, of third country nationals) has raised certain concerns, amply justifying the inclusion of ‘nationality’ among the grounds of prohibited discrimination in the legislative instruments adopted in Belgium in order to implement the Racial Equality Directive.<sup>6</sup> Apart from this, few concerns have been expressed about this issue by human rights expert bodies established under the UN human rights treaties. However, the Human Rights Committee was concerned in his most recent Concluding Observations (mentioning in this regard both freedom of religion (Art. 18 ICCPR) and the prohibition of discrimination (Art. 26 ICCPR)) that ‘not a single mosque has yet been granted official recognition in Belgium’, and took the view that Belgium ‘should step up its efforts to ensure that mosques are recognized and that Islam enjoys the same advantages as other religions’.<sup>7</sup> The Committee on the Rights of the Child suggested that Belgium should ‘review existing policies and practice in relation to children with disabilities, including draft legislation, with due regard to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and to the Committee's recommendations adopted at its day of general discussion on children with disabilities (see CRC/C/69)’.<sup>8</sup>

The Committee on the Elimination of Discrimination against Women however made the following remark : ‘While recognizing that the existence of numerous federal and local structures on the advancement of women ensures that adequate attention is given to women's issues in the country and provides enhanced conditions for gender mainstreaming, the Committee notes that these various structures, based on different levels of autonomy and authority, might create difficulties as regards implementation of the Convention [on the Elimination of All Forms of Discrimination against Women] , as well as regarding coordination, accountability, responsibility and uniformity of results in the implementation of the Convention. The Committee recommends to the State party that it ensure, through effective coordination of all efforts at all levels in all areas, that uniformity of results in the implementation of the Convention is achieved’.<sup>9</sup> These remarks apply, *mutatis mutandis*, to the implementation of the Equality Directives, which has been chaotic, and is still in certain respects insufficient, because of the failure to adequately coordinate efforts made at federal and Region/Community levels.

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<sup>6</sup> In the ‘list of issues’ presented to Belgium by the UN Committee on Economic, Social and Cultural Rights, in advance of the examination of the periodic report submitted by Belgium to the Committee, the Committee asks Belgium to ‘indicate whether the State party intends to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families’ – an issue which is examined under the heading ‘discrimination’ (Art. 2(2) of the International Covenant on Economic, Social and Cultural Rights) – and asks ‘information - including statistical data disaggregated by sex, age and country of origin - on migrant workers presently in the territory of the State party’ (List of issues to be taken up in connection with the consideration of the second to third periodic report of Belgium concerning the rights covered by articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BEL/3), E/C.12/BEL/Q/3, 10 April 2007, para. 7).

<sup>7</sup> CCPR/CO/81/BEL, 12 August 2004, para. 26. In the abovementioned ‘list of issues’ presented to Belgium by the UN Committee on Economic, Social and Cultural Rights, the Committee notes that ‘According to the 2005 report of the Centre for Equal Opportunities and the Fight against Racism, racial discrimination as well as discrimination based on - inter alia - sexual orientation, disability, or health conditions are on the rise in the country’. Accordingly it asks Belgium to ‘provide updated information on the implementation of the Anti-Discrimination Act adopted in February 2003, including information on cases of discrimination for which civil and criminal proceedings were instituted’. See List of issues to be taken up in connection with the consideration of the second to third periodic report of Belgium concerning the rights covered by articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BEL/3), cited above, para. 6).

<sup>8</sup> Concluding observations of the Committee on the Rights of the Child : Belgium (CRC/C/15/Add.178, 13 June 2002), para. 20.

<sup>9</sup> Concluding comments of the CEDAW Committee, 21 June 2002, doc. A/57/38, at paras. 143-144 (upon consideration of the combined third and fourth periodic reports of Belgium (CEDAW/C/BEL/3-4)).

## **2. Procedures – administrative and legal channels appropriate for challenging violations of anti-discrimination legislation**

### **2.A Employment and occupation related - all grounds**

Apart from any internal grievance procedures set up within the undertaking concerned, the victim of a discrimination in the field of employment – whether in the private or in the public sector – will usually turn to the Centre for Equal Opportunities and Opposition to Racism and seek advice from this organisation. Indeed, this is the independent Equality Body (Article 13 of the Racial Equality Directive), initially established under the Law of 15 February 1993 with a competence only in discrimination based on ‘race’, color, ethnic or national origin (the grounds covered by the law of 30 July 1981), but whose competence now has been extended to all the grounds of prohibited discrimination defined in Article 13 EC, as well as to a few supplementary grounds (physical characteristic, property, health, and in the future, political opinion). The Centre assists victims of discrimination, and it may file actions on the basis of the Law of 25 February 2003, although only with the consent of the victim of the alleged discrimination if the victim is a natural or legal person.

If the Centre considers that an instance of discrimination has occurred, it will first seek to encourage an amicable settlement of the case, by ensuring that measures will be taken in order to avoid a repetition or a continuation of the discriminatory practice. If the attempt at mediation fails, the Centre may – with the consent of the victim, where there is an identified victim – file proceedings against the perpetrator of the discrimination, which can be done in two ways. The first way is to seek to obtain the criminal conviction of the perpetrator, if it concerns discrimination based on ‘race’ or colour, descent, ethnic or national origin in access to employment or to vocational training or in the course of dismissal procedures (Art. 24 and 25 of the Law of 30 July 1981, as amended by the Law of 10 May 2007). The second method, used in all other cases, is to seek civil remedies by relying either on the Law of 10 May 2007 combating certain forms of discrimination (for the following grounds: age, sexual orientation, civil status, birth, property, religious or philosophical belief, actual or future state of health, disability, physical characteristic, political opinion, language, genetic characteristic and social origin), or on the Law of 30 July 1981 criminalizing certain acts inspired by racism and xenophobia, as amended by the Law of 10 May 2007 (where the discrimination is on grounds of ‘race’, colour, descent, national or ethnic origin, and nationality). Where the discrimination occurs in a situation covered by a Region or Community Decree, the Centre for Equal Opportunities and Opposition to Racism will not be able to go beyond its advisory role to the victim, because it has not yet been attributed the legal powers it would require to do more.

The victim of discrimination in employment may also bypass the Centre for Equal Opportunities and Opposition to Racism. If the discrimination was based on race or colour, descent, ethnic or national origin, he/she may seek to obtain a criminal conviction of the author of the discrimination (Art. 24 and 25 of the Law of 30 July 1981, as amended by the Law of 10 May 2007). In this case the victim may file a complaint with the public prosecutor or an investigating judge, or even summon directly the defendant before the criminal division of a tribunal (*citation directe*). However the burden of proof in criminal procedures is entirely on the prosecution, and this route will not be the most effective in the majority of cases. Very few criminal convictions have been pronounced on the basis of the law of 30 July 1981.

The more promising route – and the only one available for victims of discrimination on a ground other than race or ethnic or national origin, or of discrimination even on the basis of race or ethnic or national origin outside the scope of application of the Law of 30 July 1981 – will be to seek civil remedies by relying on the Law of 10 May 2007 combating certain forms of discrimination. The Law nullifies any contractual clauses which go against its provisions, making this law paramount (Art. 15); it gives the judge the power to deliver an injunction prohibiting the continuation of the discriminatory practice when aggrieved parties lodge an injunction procedure (“action en cessation”) alleging discrimination (Art. 20); it also gives the judge the power to order the cessation of that practice, under the threat of a fine (*astreinte*) (Art. 19). Where an employment relationship is concerned, such actions are brought before specialised tribunals (*tribunal du travail, arbeidsrechtbank*).

In these proceedings, the individual victim may seek the assistance of organisations. In *criminal suits*, the Law of 30 July 1981 criminalising certain acts inspired by racism and xenophobia provided that certain associations whose mission is to defend human rights and combat racism and discrimination could claim damage as a result of a violation of the provisions of this legislation (see Art. 32 of the Law of 30 July 1981, as amended by the law of 10 May 2007). However, both the Centre for Equal Opportunities and Opposition to Racism and associations who have a recognised legal interest in combating racism may only launch proceedings on the basis of the Law of 30 July 1981 with the agreement of the individual victim for certain offences defined in the Law including discrimination in employment (Art. 33). As regards *civil claims of discrimination*, the Law of 10 May 2007 combating certain forms of discrimination has largely borrowed from the Law of 30 July 1981 with respect to the *locus standi* of organisations. The Centre for Equal Opportunities and Opposition to Racism has received powers with respect to all grounds of discrimination (see art. 29 of the Law of 10 May 2007 combating certain forms of discrimination). In addition, article 30 of the Law of 10 May 2007 also provides that every public utility institution and every association which has been legally founded for at least five years and states as its objective the defence of human rights or the fight against discrimination, as well as workers' and employers' organisations may file a suit on the basis of this Law, although these organisations also may only do so with the agreement of the victim, if there is an identifiable victim.

In order to facilitate the proof of discrimination, the law allows for a shifting of the burden of proof in civil procedures. Article 28 of the Law of 10 May 2007 combating certain forms of discrimination provides for such shifting of the burden of proof. The victim seeking damages in reparation of the alleged discrimination, on the basis of art. 1382 *Code Civil*, will be authorised to produce certain evidence – Art. 28 mentions statistics and the repetition of instances of alleged discrimination revealing a “recurrence” of the discriminatory behaviour as two examples – which, when presented to a judge, could lead the judge to presume that discrimination has occurred, thus obliging the defendant to demonstrate that, contrary to that presumption, there has been no discrimination. “Situation testing” is not mentioned, but neither is it formally excluded; it will be for the judge to decide which weight to afford to this element in evaluating an allegation of discrimination.

The adoption of the legislative package which reformed the anti-discrimination framework in May 2007 modified the current system of enforcement in one significant respect : instead of there being one criminal law (Law of 30 July 1981) applying to discrimination on grounds of ‘race’, colour, ascendancy or national or ethnic origin race or ethnic origin, and another general antidiscrimination law (Law of 25 February 2003) containing both civil and (some) criminal provisions for any form of discrimination (including discrimination based on race or ethnic origin), two separate legislative texts now coexist, which are essentially similar but cover different grounds of discrimination : one law (the Law of 30 July 1981 as amended) prohibits discrimination on grounds of ‘race’, color, descent, national or ethnic origin, and nationality, but it now includes civil provisions in addition to criminal provisions ; another law (the Law of 10 May 2007 combating certain forms of discrimination, which abrogates and replaces the Law of 25 February 2003) concerns all the other prohibited grounds of discrimination, with the exception of sex (covered by yet a third text). Both legislative texts contain identical provisions relating to implementation, including in particular the role of organisations in assisting victims of discrimination, the shifting of the burden of proof, or the role of the Centre for Equal Opportunities and Opposition to Racism. However the reform does not answer satisfactorily to the absence of any competence of the Centre for Equal Opportunities and Opposition to Racism as regards the enforcement of the legislative decrees adopted by the Regions and Communities.

Of course, none of the above – which describes the usual procedure, which will be followed in most of the cases of discrimination in employment – disallows the victim of discrimination to resort to other means to challenge the practice he or she denounces, whether by informal means (through a discussion with the employer, directly or with the support of a trade union representative) or through means such as collective action by the employees or communications to the Parliament or other public bodies.

In addition, the procedures described above concern both the private and the public sector, as regards individuals who are in an employment contract relationship with either a private undertaking or a public employer. However, as regards public servants (with a statutory position within the administration, rather than being bound by a contractual relationship), while the Centre for Equal Opportunities and Opposition to Racism may still play its role in seeking mediation, the competent court will be the administrative court (Council of State, Conseil d'Etat), who will annul the contested measure if it is found to be discriminatory.

Finally, the principles described above apply to a number of contexts in which discrimination may be alleged in employment, including in particular the advertising of posts, recruitment procedures and selection as well as promotion, the definition of terms and conditions in employment including working hours and holidays, remuneration including allowances and bonus payments as well as social security benefits and pension benefits, discrimination in the workplace, dismissals, or access to vocational training.

## **2.B Non-employment or occupation related - race and ethnic origin**

The procedures described above apply similarly to discrimination outside the context of employment. However, while the *Tribunal du travail* (Employment Court) is competent as regards employment (including the benefits attached to employment such as pay or social security benefits), the *Tribunal civil* (civil section of the First Instance Court) is competent in other, non-specialized areas. The Tribunal civil is competent both as regards discrimination in the private and the public sector, however administrative acts (as distinct from the individual behavior of public servants in an administration) are to be challenged before the administrative court (Conseil d'Etat, Council of State).

## **2.C What avenue for an employment or non-employment complaint**

### *Federal legislation*

In the current state of Belgian federal legislation, individual victims of discrimination may seek to obtain the criminal conviction of the perpetrator in a limited range of cases (where the alleged discrimination has been on grounds of 'race', colour, descent or national or ethnic origin, and where the discrimination has occurred in the provision of goods and services or in employment relationships : see Articles 24 and 25 of the Law of 30 July 1981, as amended by the Law of 10 May 2007). However, because of the requirement in such cases to prove the intent of the perpetrator, and the impossibility to do so on the basis of facts which in other contexts could establish a presumption of discrimination, this route is very uncertain and, in practice, only where the perpetrator has openly practiced discrimination (or, indeed, has publicly acknowledged that s/he was committing discrimination) will it be explored : prior to the recent legislative reform at least, the number of convictions on the basis of Article 2bis of the Law of 30 July 1981 – the equivalent to the current Article 24 – has been very minimal.

Much more promising is the civil route, whereby the victim of a discrimination seeks damages for a discriminatory behavior, and which – under both the Law of 30 July 1981 criminalizing certain forms of racism or xenophobia as amended by the Law of 10 May 2007 and under the Law of 10 May 2007 combating certain forms of discrimination – allows for the reversal of the burden of proof. Prior to the most recent legislative reform, the amount of compensation which the victim may hope to obtain was usually minimal or even symbolic : in all cases where the damage is of a moral rather than a material nature, the courts would award, in principle, one symbolic euro in reparation.

In comparison, the changes brought about by the legislative changes introduced by the laws of 10 May 2007 represent a very significant improvement insofar as federal antidiscrimination law is concerned.

Victims of discrimination, under both the Law of 30 July 1981 as amended by the Law of 10 May 2007, and the Law of 10 May 2007 combating certain forms of discrimination, may a) seek a finding that discriminatory provisions in a contract are null and void (Art. 15 of the Law of 10 May 2007 combating certain forms of discrimination; Art. 13 of the Law of 30 July 1981); b) seek a reparation (damages) according to the usual principles of civil liability (Art. 18 and 16 respectively), although the victim now may opt for a payment of the lump sums defined in the law (1300 euros, reduced to 650 euros if the defendant provides evidence that the measure creating the disadvantage would have been adopted anyway, even in the absence of the discriminatory element ; or, in the field of employment, 6 months' salary, reduced to 3 months if the employer demonstrates that the measure creating the disadvantage would have been adopted anyway, even in the absence of the discriminatory element) rather than for a damage calculated on the basis of the 'effective' damage ; c) seek from the judge that he/she delivers an injunction imposing immediate cessation of the discriminatory practice, under the threat of financial penalties (Art. 19 and 20 of the Law of 10 May 2007 combating certain forms of discrimination; Art. 17 and 18 of the Law of 30 July 1981)<sup>10</sup> ; d) seek from the judge that he/she imposes the publicity of the judgment finding a discrimination, by the posting of the judicial decision on the premises where the discrimination occurred, or by the publication of the judicial decision in newspapers (Art. 20 § 3 and 18 § 3 respectively).

Finally, the Centre for Equality of Opportunities and Opposition to Racism and qualified non-governmental organisations in existence since a minimum of three years<sup>11</sup> may assist the victim of discrimination in his/her claim, and they are even authorized to file a claim on behalf of the victim, with his/her consent (unless the claim relates to an instance of discrimination for which there exists no identifiable victim, for instance where an employer publishes a job announcement referring to a discriminatory criterion ; in that case the Centre for Equality of Opportunities and Opposition to Racism and qualified non-governmental organisations may file a claim in their own right, without having to receive the consent of a victim).

### *Regions and Communities*

The developments referred to above concern the situations which fall under the competence of the Federal State. The procedural provisions contained in the instruments adopted by the Regions and Communities are weaker – in certain respects, they do not comply with the requirements of the directives –, and for good reason : there remain a number of hesitations concerning the competence of the Regions and Communities to adopt procedural rules concerning the powers of courts, such as rules relating to the evidentiary burden or to the legal standing of organisations, even in relation to legislative decrees the Regions and Communities adopt.

Thus, the Decree adopted by the French-speaking Community does not contain specific rules governing the proof of discrimination – a situation which is, in regard of Directive 2000/78/EC, problematic, although it is to be explained by the understanding of the French-speaking Community that all it could do within of the scope of its competence was to impose obligations on the public servants of the Community, backed by the threat of disciplinary sanctions, whilst any civil or criminal sanctions for discrimination were already defined by the existing federal legislation.

The other instruments adopted at regional or community level go further, however. The Decree adopted by the Walloon Region contains (in Article 17) a rule on the burden of proof, drafted in accordance with Article 8(1) of Directive 2000/43/EC and Article 10(1) of the Directive 2000/78/EC. Article 14 of the Flemish Decree of 8 May 2002 provides for the reversal of the burden of proof in the context of civil actions brought on the basis of the Decree – the mechanism will not apply in criminal procedures<sup>12</sup> – although the Decree remains vague as to which facts should count as weighing sufficiently to impose the switch of the burden of proof.

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<sup>10</sup> It is a criminal offence to refuse to comply with a judgment delivered under this provision (Art. 24 of the Law of 10 May 2007 combating certain forms of discrimination; Art. 26 of the Law of 30 July 1981).

<sup>11</sup> Previously, these organisations had to exist since a minimum of five years.

<sup>12</sup> See Art. 10(3) of Directive 2000/78/EC.

There will be, therefore, a great deal of room for judicial interpretation: the judge will have to consider what weight should be afforded to the facts presented by the victim, and whether these facts lead to a presumption that discrimination may have occurred. The same remark can be made concerning the Decree adopted by the German-speaking Community. Article 18 of this Decree provides for the possibility of certain facts being presented to the judge leading to the burden of proof shifting. This possibility is excluded with respect to criminal procedures. As in the Flemish Decree of 8 May 2002, the facts which may lead to this are not specified.

## 2.D Technical procedural requirements of each available remedy

As mentioned above, the Equality Body established in Belgium is the Centre for Equal Opportunities and Opposition to Racism. The website of the Centre ([www.diversiteit.be](http://www.diversiteit.be)) includes a section on 'how to report a discrimination' which describes not only which assistance the victim may expect from the Centre, but also which other procedures could be explored by the victim.<sup>13</sup> A form may be downloaded from the website, which the victim should fill in so as to provide the Centre with all the information it requires in order to fulfil its duties under the applicable legislation. In addition, efforts have been made to ensure that the Centre will be accessible to all victims, in three directions :

- A green line has been opened which allows victims to denounce discriminations (the line is free of charge : 0800/14912 (FR) or 0800/ 17364 (NL)). The Centre is of course accessible by phone (+32 (0)2 212 30 00) and by email ([epost@cntr.be](mailto:epost@cntr.be)), and appointments can be made for a consultation at the Centre (located 138 rue Royale at 1000 Bruxelles); a walk-in service, for consultations without prior appointment, is organized on Thursday mornings.
- Local sections of the Centre have been opened in Brugge, Ghent, Willebroeck, Leuven, Mechelen, Molenbeek (Brussels), Hasselt, Antwerpen, Charleroi, La Louvière, Liège, Mons, Jemappes, Saint-Servais, Verviers and Tubize. In most cases, these local services, organized with the collaboration of local associations, only provide advice concerning racism (or discrimination on grounds of race, color, ethnic or national origin), rather than on discrimination on any other prohibited ground. It is nevertheless remarkable that such a network of contact points has been established throughout Belgium, greatly facilitating the possibility for victims of discrimination outside the capital to seek advice on an informal, and free of charge basis.
- Finally, the Centre is closely cooperation with a number of non-governmental organisations or unions who are equipped to deal with complaints of discrimination. The list includes not only unions' legal services, but also non-governmental organisations specialized on certain grounds such as disability or sexual orientation. They are based for the most part in Brussels, but some are in Antwerpen or in Ghent. A (non exhaustive) list of the organisations from which assistance may be sought is the following :

FGTB-ABVV (trade union, socialist) (legal service)	All grounds	Rue Haute 42 1000 Bruxelles 02/552.03.45 <a href="http://www.fgtb.be">www.fgtb.be</a>
CSC-ACV (trade union, christian) (legal service)	All grounds	Chaussée de Haecht 579 1030 Bruxelles 02/508.87.11 <a href="http://www.csc-en-ligne.be">www.csc-en-ligne.be</a>
CGSLB – ACLVB (trade union, liberal) (legal service)	All grounds	Bld. Poincaré 72-74 1070 Bruxelles 02/558.51.50 <a href="http://www.cgsלב.be">www.cgsלב.be</a>

<sup>13</sup> A separate website ([www.cyberhate.be](http://www.cyberhate.be)) has been established in order to receive complaints concerning racism of other forms of hate speech on the internet.

Orbem (office régional bruxellois de l'emploi ; administration implementing the employment policy of the Region of Brussels Capital) (has a specific contact point for discrimination)	All grounds	Boulevard Anspach 65 1000 Bruxelles 02/505.79.00 <a href="http://www.orbem.be">www.orbem.be</a>
Fédération des Associations Gayes et Lesbiennes (FAGL)	Sexual orientation	Rue Marché au Charbon 42 1000 Bruxelles 0494/25.38.25 <a href="http://www.fagl.be">www.fagl.be</a>
Tels Quels	Sexual orientation	Rue Marché au Charbon 81 1000 Bruxelles 02/512.45.87 <a href="http://www.telsquels.be">www.telsquels.be</a>
Alliège	Sexual orientation	En Hors-Château 7 4000 Liège 04/223.65.89 <a href="http://www.alliage.be">www.alliage.be</a>
Holebifederatie	Sexual orientation	Kammerstraat 22 9000 Gent 09/223.69.29 <a href="http://www.holebifederatie.be">www.holebifederatie.be</a>
Wel Jong Niet Hetero	Sexual orientation	Kammerstraat 22 9000 Gent 09/269.28.17 <a href="http://www.weljongniethetero.be">www.weljongniethetero.be</a>
Sensoa	Health	Kipdorpest 48a 2000 Antwerpen 03/238.68.68 <a href="http://www.sensoa.be">www.sensoa.be</a>
Katholieke Vereniging Gehandicapten (KVG)	Disability	Arthur Goemaerelei 66 2018 Antwerpen 03/216.29.90 <a href="http://www.kvg.be">www.kvg.be</a>
Vlaamse Federatie Gehandicapten (VFG)	Disability	St. Jansstraat 32-38 1000 Bruxelles 02/515.02.62 <a href="http://www.vfg.be">www.vfg.be</a>
Ligue Braille	Disability (visual impairments)	Rue d'Angleterre 57 1060 Bruxelles 02/533.32.11 <a href="http://www.liguebraille.be">www.liguebraille.be</a>

Oeuvre National des Aveugles (ONA)	Disability (visual impairments)	Av. Dailly 90-92 1030 Bruxelles 02/241.65.68 <a href="http://www.ona.be">www.ona.be</a>
Association chrétienne des invalides et handicapés – Aide aux malades (ACIH-AAM)	Disability	Chaussée de Haecht 579 BP 40 1031 Bruxelles 02/246.42.26 <a href="http://www.enmarche.be/ACIH_AAM">www.enmarche.be/ACIH_AAM</a>
Association Socialiste de la Personne Handicapée (ASPH)	Disability	Rue Saint-Jean 32-38 1000 Bruxelles 02/515.06.65 <a href="http://www.mutsoc.be/asph">www.mutsoc.be/asph</a>
Handiplus	Disability	Jardins de Foutenay Rue des Champs 67 1040 Bruxelles 02/646.34.76 <a href="http://www.handiplus.com">www.handiplus.com</a>
Federatie van Vlaamse DovenOrganisaties (FEVLADO)	Disability (hearing impairments)	Coupure Rechts 314 9000 Gent 09/224-46-76 <a href="http://www.fevlado.be">www.fevlado.be</a>

Whether the individual victim of a discrimination seeks to arrive at an amicable settlement with the perpetrator through the mediation of the Centre for Equal Opportunities and Opposition to Racism or of one of the organisations or unions listed above, or whether s/he seeks to file a legal action, the formal requirements are minimal. In particular, in order to prove discrimination, no specific formal requirement is imposed. Any piece of evidence may be presented to the court, which will weigh the evidence presented by both parties. In addition, the assistance of the above organisations is free of charge, and a system of legal aid is set up in Belgium (it has significantly improved since 2002) which generally is considered to ensure that any person who does not have the required resources will be able to obtain legal representation. No specific regime is organised in discrimination related cases.

## **2.E Existing support and obstacles at national level**

As explained above, the organisations who could support a discrimination claim are generally easily accessible and well equipped to deal with such instances; and they are free of charge. In addition, a legal aid scheme allows indigent victims to benefit from pro bono legal representation. One possible obstacle however could reside in a development of the case-law of the Court of Cassation (2 September 2004), according to which the party who loses a civil case may be required to pay the costs of the other party, including the legal fees. It is too early to evaluate whether this new development could constitute an obstacle for victims of discrimination, and could chill them from filing a legal action.

## **2.F Referrals to the European Court of Justice**

Referrals to the Court of Justice of the European Communities are made on a routine basis by Belgian courts. This calls for no further comments.

## **2.G Petitions to the European Parliament**

The Committee on Petitions of the European Parliament can receive petitions from Citizens of the Union who wish the Committee to investigate their complaint/s that their rights under European Union law are not being properly respected.

## **2.H Alerting the European Commission to discriminatory administrative practices**

It is also possible to write directly to the Commission, which may often be a quicker process than that outlined above under 3.2.G. This could be done with a view to encouraging the Commission to initiate infringement proceedings against the offending State.

The Commission and the Parliament would be bound by the EU Charter of Fundamental Rights' provision on the right to good administration (Article 41) if adopted:

- Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
- This right includes
  - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - the right of every person to have access to his or her file, while respecting the legitimate interest of confidentiality and of professional and business secrecy;
  - the obligation of the administration to give reasons for its decisions.
- Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
- Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

## **2.I Complaints to the European Court of Human Rights**

In addition, when all effective national legal remedies have been exhausted, a person may, if the case concerns issues covered by the European Convention on Human Rights, apply to the European Court of Human Rights in Strasbourg (see Key Concepts section).

This can be done under Article 14 of the Convention provided another Article is also engaged or, if the country has ratified it, under Protocol 12 to the Convention. Belgium has not ratified Protocol n°12 to the European Convention on Human Rights (2000), providing for a general guarantee of non-discrimination.

Collective complaints can also be made under the Council of Europe's European Social Charter.

## **2.J Other international remedies**

Belgium has ratified the 1966 Optional Protocol to the International Covenant on Civil and Political Rights, allowing for the filing of individual communications before the Human Rights Committee. It has also ratified the 1996 Revised European Social Charter and the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints.

## 2.K Professionalism

Everyone in a NGO/trade union who takes up the case of an individual or a group of individuals must be aware of the need to observe high standards of professionalism, including confidentiality and efficient management of case files.

For individuals whose cases the NGO/trade union is not able to assist with, the NGO/trade union should be able to provide relevant information and, wherever possible, referrals to another agency that is able to provide further advice and support.

## 3. Societal issues

Belgium may be said to constitute a laboratory for Europe in the sense that it is divided among two quite different constituencies, whose relationship to antidiscrimination law and policy is markedly different. While the French-speaking part of the country (French-speaking Community, Walloon Region and to a large extent the Brussels-Capital Region) has traditionally opted for an individualistic model of combating discrimination, the Dutch-speaking part (Flemish Region and Community) has been more willing to seek inspiration from the experiences of the United Kingdom or of the Netherlands. These latter countries have a more communitarian approach implying, for instance, a greater willingness to promote equal treatment through statistical monitoring of the situations of different groups within society and to allow for affirmative action schemes. Thus for instance, when it adopted the Decree on equal participation on the labour market, the Flemish Community/Region was heavily influenced by Canadian and Dutch precedents<sup>14</sup> in seeking, not only to prohibit direct and indirect discrimination in the areas falling under the competences of the Flemish Community/Region, on the grounds of, *inter alia*, sexual orientation, but also to improve the representation in the labour market of ‘target groups’, defined in general terms as all groups within the active segment of the population which are under-represented on the labour market.

The stakes are also higher in the Flemish Region/Community, because of the relatively significant representation in that part of the country of the Vlaams Belang.<sup>15</sup> Its representation allows this extremist and xenophobic party to influence the debates on issues such as the integration of migrants or the wearing of headscarves by Muslim women in schools or in employment. Indeed, recent events have put a new strain on intercommunal relationships. While this has led the mainstream political parties to accuse the Vlaams Belang of igniting such tensions and, thus, of being ‘morally responsible’ for the multiplication of racist incidents, it is uncertain that it will diminish the attractiveness of this party to the Flemish voters.

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<sup>14</sup> The Flemish legislature was inspired by the Canadian 1995 Employment Equity Act as well as the Dutch Law on the Promotion of Labour Participation of Ethnic Minorities (*Wet stimulerend arbeidsdeelname minderheden (SAMEN)*) of 29 April 1998, which improves on the previous Law on the Promotion of proportional labour participation of ethnic minorities (*Wet bevordering evenredige arbeidsdeelname allochtonen*) of 1 July 1994. The initiative was also stimulated by the desire to achieve the objectives set out in the conclusions of the Lisbon European Council, which aims to increase the level of employment within the active population up to 65 % by 2004 and 70 % by 2010.

<sup>15</sup> This is an extreme-right, nationalistic political party, previously called the ‘Vlaams Blok’, and whose denomination was modified after its constituent associations were convicted for incitement to racial hatred and discrimination on the basis of the Law of 30 July 1981.

### c) Funding opportunities in the field of anti-discrimination

#### I. EU FUNDING AT THE EUROPEAN LEVEL FOR NGOs/TRADE UNIONS OPERATING AT THE EU LEVEL

##### 1. EU funding for NGOs/Trade Unions operating at the EU level

###### a) *European-level NGOs*

European-level NGOs are in a central position to influence and contribute to European employment, social and equal opportunity policies at different levels – both in its formulation and implementation – through the information and expertise supplied by their national members. This is vital in order to ensure that EU policies meet the actual needs of EU citizens, and that citizens are informed about them.

Between 2001 and 2006, the Community Action Programme to combat discrimination provided funding for a number of European umbrella NGO networks representing and defending the rights of people exposed to discrimination:

AGE (The European Older People's Platform); ILGA Europe (International Lesbian and Gay Association – Europe); ENAR (European Network Against Racism); and EDF (European Disability Forum) have been granted a total of 3 000 000 € per year towards their running costs up to the end of April 2007. A number of smaller organisations – the European Blind Union, The European Union of the Deaf, Inclusion Europe, Autisme-Europe – also received support under the Action Programme.

Until the end of 2006, the European Women's Lobby received running cost support through the Gender Equality Programme with an annual amount of around 800.000 €

A number of NGOs working to tackle social exclusion (European Anti-Poverty Network, European Federation of National Organisations Working with the Homeless, European Transregional Network for Social Inclusion, Eurochild, European Social Network, Caritas-Europe) received funding from the Community Programme to Combat Social Exclusion with a total of 3.600.000 € between 2005 and 2007.

For the new 2007-2013 programming period, the European Commission decided to create a new integrated programme known as **PROGRESS** (Programme for Employment and Social Solidarity). The programme was approved by the European Parliament and Council in November 2006: [http://ec.europa.eu/employment\\_social/progress/index\\_en.html](http://ec.europa.eu/employment_social/progress/index_en.html)

PROGRESS combines the four former Community Action Programmes, including that relating to non-discrimination: Section 4 of PROGRESS, entitled "Anti-discrimination and diversity", thus aims to support the effective implementation of the principle of non-discrimination and to promote its mainstreaming in all EU policies.

Calls for proposals and tenders under PROGRESS are published on the Calls for Tender/Calls for Proposals website of DG Employment, Social Affairs and Equal Opportunities on: [http://ec.europa.eu/employment\\_social/emplweb/tenders/index\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/tenders/index_en.cfm)

A first PROGRESS call for the award of a financial contribution towards the operating costs in 2007 of European-level networks active in the field of combating discrimination, promoting gender equality and promoting the integration of disabled people in society was launched in November 2006. Grant agreements for the successful EU-level networks will run until December 2007.

## ***b) European Trade unions***

The European Trade Union Confederation (ETUC) represents workers across the industries at European level. Set up in 1973, the ETUC includes 81 national organisations from 36 European countries (among them all the EU countries) and 11 European industry federations, with some 60 million members.

The ETUC is one of the four main European social partner organisations. Numerous European social partners' projects are supported every year by the European Commission's social dialogue budget lines (04.03.03.01, 04.03.03.02 and 04.03.03.03). For more information:

[http://ec.europa.eu/employment\\_social/social\\_dialogue/grants\\_en.htm](http://ec.europa.eu/employment_social/social_dialogue/grants_en.htm)

### **2. EU funding for national NGOs/Trade Unions**

While the EU does not provide for core-funding of national NGOs or national trade unions under PROGRESS, organisations may be able to receive funding for projects through their participation in specific initiatives such as national awareness raising activities or trans-national projects. National organisations are therefore advised to regularly check the Calls for Tender/Calls for Proposals website of DG Employment, Social Affairs and Equal Opportunities and consult the guidelines published there to check whether projects from national NGOs/trade unions are eligible for funding:

[http://ec.europa.eu/employment\\_social/emplweb/tenders/index\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/tenders/index_en.cfm)

The EU-level NGOs such as AGE, ILGA-Europe, EDF or ENAR are also a good source of information. It is therefore recommended to also check the information that is provided on their web page.

In addition to PROGRESS, the European Social Fund (ESF) can be a source of project financing for national organisations. The ESF will between 2007 and 2013 focus on four key areas for action, including reinforcing social inclusion by combating discrimination and facilitating access to the labour market for disadvantaged people. More information can be obtained from:

[http://ec.europa.eu/employment\\_social/esf2000/2007-2013\\_en.html](http://ec.europa.eu/employment_social/esf2000/2007-2013_en.html)

The European Commission does not directly fund ESF projects. Member States are responsible for identifying their priorities for funding and for selecting individual projects. For further information, you should contact the relevant national/regional authority whose contacts are available on:

[http://ec.europa.eu/employment\\_social/emplweb/esf/esf\\_matrix\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/esf/esf_matrix_en.cfm)

## **II. FUNDING OPPORTUNITIES FOR NGOs/TRADE UNIONS WORKING ON ANTI-DISCRIMINATION AT NATIONAL LEVEL**

### **1. Does the European Commission delegation in your country provide for specific funding for NGOs/trade unions working on non-discrimination at national level? What form does that funding take? (project subsidy, provision of meeting room, etc). Is it easy to access such funding? What are the conditions to receive such funding?**

The European Commission delegation in Belgium does not provide for funding in that area.

### **2. Does the central government provide for specific funding for NGOs/trade unions working on anti-discrimination?**

Most of federal government funding for anti-discrimination NGOs comes from the Impulsfonds voor het Migrantenbeleid / Fonds d'impulsion à la politique des immigrés (FIPI), whose management committee includes members appointed by federal and regional governments and by the Centre for Equal Opportunities and Opposition to Racism (CEOOR). Its yearly call for projects provides project funding for selected NGOs.

Information about the FIPI can be found here:

<http://www.diversiteit.be/?action=onderdeel&onderdeel=60&titel=Impulsfonds&setLanguage=2&titel=Centre+pour+l%27%C3%A9galit%C3%A9+des+chances+et+la+lutte+contre+le+racisme>

NGOs may also apply directly to the Ministry for Employment and Equal Opportunity to get funding for specific projects but the decision of the Minister is discretionary. Indeed, most of the time, when NGOs apply to a Ministry, the request is passed on to a member of the Minister's cabinet. This member gives an opinion on the request, according to the Ministry's policy and, sometimes after consultation of his administration, sends the file to the Minister for approbation, whose decision is final. The web site of the administration can be found here: <http://www.emploi.belgique.be/home.aspx>

Historically, a number of projects involving TUs and NGOs have been co-funded at federal government level (Employment and Equal Opportunity Ministry) under the European Commission's EQUAL program (see [www.emploi.belgique.be/](http://www.emploi.belgique.be/)). But, under the new 2007-2013 program, most of the co-funding will come from Belgium's three communities and three regions, and will be managed by regional agencies. For more on the actions of the European Social Fund (ESF) in Belgium, see: [http://ec.europa.eu/employment\\_social/esf/members/be\\_en.htm](http://ec.europa.eu/employment_social/esf/members/be_en.htm) and [www.fse.be](http://www.fse.be) or [www.esf-agentschap.be/](http://www.esf-agentschap.be/)

There were two important project calls within the framework of the 2007 European Year of Equal Opportunities for All. The first one was called "10 days for equal opportunities" and was launched and implemented jointly by the Equality ministers and secretary of state of the different regions and communities (Brussels Region, Flemish Community/Region, Walloon Region, German-speaking Community, French-speaking Community). The second, about cross-grounds discriminations, was implemented by the CEOOR and aimed at supporting projects that tackled multiple grounds discriminations towards people of foreign origin. This project is also intended to be connected with the 2008 European Year of Intercultural Dialogue (see [www.interculturaldialogue2008.eu](http://www.interculturaldialogue2008.eu)).

Finally, an important source of funding also comes from federal employment measures at national level which give NGOs and TUs access to "cheaper labour" (see question 3). For more information, see [www.onem.be](http://www.onem.be)

**3. What form does this funding take? (core funding, project funding, facilities) Are such funding possibilities part of specific governmental programmes? (which ones and from which ministries?)**

At federal government level, most of the funding is done through project funding (FIPI) and under the Ministry for Employment and Equal Opportunity programmes aimed at enabling NGOs and TUs to hire workers at reduced cost within an unemployment reduction framework. The latter also exists at regional level but TUs do not have access to it at that level. For more information, see <http://www.onem.be>

Facilities can be offered to NGOs (but not to TUs) through the Public Building Agency (Regie der Gebouwen/Régie des bâtiments) but this possibility is rare and the selection procedure often considered arbitrary. See [www.buildingsagency.be](http://www.buildingsagency.be)

**4. Is it easy to access such funding? What are the conditions?**

Access to funding proves relatively difficult to either small or new NGOs lacking the expertise in paperwork or lobbying but the main complaints concern the lack of core-funding possibilities. The conditions of access vary a lot according to the programmes: they can include working across community boundaries, proof of financial stability, etc. Except for federal Employment policies and Equal programmes, this funding is not directed to TUs.

**5. In case of federal countries, are there funding possibilities at the federated level?**

Belgium is a federal country where Communities (through their “Popular Education” policies) and Regions (through their Employment policies) have the possibility to offer funding to anti-discrimination NGOs. To be recognized as a “Popular Education NGO”, as it is the case for the *Ligue des droits de l’Homme*, for instance, is about the only way for an NGO to get access to core-funding. But neither “Popular Education” policies nor Employment policies are funding NGOs for their anti-discrimination activities as such, but rather for their contribution to awareness-raising or unemployment reduction. As mentioned in question 2, Communities and Regions have become the main source of co-funding under the new EQUAL programme (2007-2013).

There was also an important source of funding coming from regional programs to promote employment to which only NGOs could apply: if they were selected, the region paid for a very large proportion of the person’s salary. Historically, the idea was to combat unemployment and to help NGOs to develop. These programs are still in place but , due to the lack of public funding available, it is getting extremely difficult for NGOs to obtain such advantage. The programs are run by the unemployment agencies of the 3 regions: Actiris for Brussels ([www.actiris.be](http://www.actiris.be) ), Forem for the Walloon Region ([www.leforem.be](http://www.leforem.be) ) and VDAB for Flanders (<http://vdab.be/> ).

Lastly, there may be more specific funding available depending on each federated entity’s political agenda. For example, the Walloon Region offers funding for field projects targeting people of foreign origin in order to promote integration and equal opportunities. For more, see:

<http://socialsante.mrw.wallonie.be/pages/d1400.html>

TUs working on Diversity Plans in either Flanders or Brussels can receive employment subsidy. For more information, see:

[http://www.vlaanderen.be/servlet/Satellite?pagename=Infolijn%2FView&c=Solution\\_C&p=1186804409590&cid=1147406421486](http://www.vlaanderen.be/servlet/Satellite?pagename=Infolijn%2FView&c=Solution_C&p=1186804409590&cid=1147406421486) (for Flanders)

and

<http://www.pactbru.irisnet.be/site/diversite/plans/> (for Brussels)

**6. Are there other governmental funding possibilities at regional level? At municipality level?**

Belgium’s provinces (10) have occasionally been a source of punctual project funding for local anti-discrimination NGOs (but not TUs), but this is generally marginal and varies from province to province. The same applies for Belgium’s 589 municipalities whose action in the area is almost non-existent, with an exception for bigger and more multicultural municipalities such as Antwerp, Gent, Charleroi and Liège.

**7. Are there any private funding possibilities? (private foundations, private companies, headquarters of trade unions, etc.) What are they? Is it easy to access these sources of funding?**

Private funding, foundations and charitable trusts are relatively poorly developed in Belgium, with a few exceptions such as:

- Koning Boudewijns Stichting / Fondation Roi Baudouin (KBS-FRB), see [www.kbs-frb.be](http://www.kbs-frb.be)
- Fortis Foundation, see <http://www.fortis.be/FR/foundation/home/index.htm>

With the exception of KBS-FRB, anti-discrimination is not among their higher priorities. TU headquarters are generally not a source of funding for NGOs.

**8. Are there any other source of funding?**

The National Lottery fund and members fees (the latter, especially for TUs) can be an important source of punctual funding for NGOs and TUs. They can also generate income on their own by organizing activities such as seminars, paid interventions as experts, etc.

#### **IV. Diversity Management seminar**

##### **Design of the training**

Contacts between the organizer and the international trainer have been made by emails and telephone conversations.

The national and the international trainer had a final meeting in Brussels the day before the first seminar.

##### **Preparation of the seminar**

In Belgium, DM is understood as being an American concept. In subsidiaries of US companies, it is mostly known as a gender issue: How many women do we have in management? .When discussing or debating DM in Belgium, Gender is the most common issue. The more recent issue is ethnicity: workers with foreign names (Turkish, Moroccan etc.) are faced with discrimination in recruiting procedures. Language is an issue in Belgium for migrant populations. Employment rate for native men is 13% higher than for native women. There are too few women in top decision making positions. Population growth is declining (0,2%), and population aged over 65 is 17% in 2005, expected to be 20,5% in 2020. Employment rate of aged between 55 and 65 is only 32%. This is a big issue, because of income for retirement pensions: the discussions concern retirement age, immigration, education. Foreign born and foreign population is 20%. Employment rate for foreign born men is 9% lower than for native men, it is 15% lower for foreign born women than for native women. State school do not allow girls to wear a headscarf. A Muslim school was opened in September 2007.

Belgium has a history of early immigration after WWII, from south of Europe (Italy, Spain, Portugal, Greece). The second largest foreign community still is the Italian community, but mostly well integrated. There is an extreme rightist political party.

US companies have organised Diversity Trainings with mixed success. The trainings have to be adapted to local culture and expectations. A good reason for a company in Belgium to take up the issue of DM is access to a wider pool of qualified workforce. There are many vacancies that employers find hard to fill. Other reasons are the possibility to tap the market of older people with money and time to spend, and to present themselves as “worthy employers”.

In order to motivate companies/businesses to attend DM workshop, there is need to inform them about DM, what it means in general and what it means in Belgium; to explain what DM can do for them; to give them some practical examples of how to implement DM in their companies; to give them a chance to ask questions and discuss issues; to give them tools to take away; and to identify somebody they can turn to for help.

In order to prepare the seminar, the trainer took part in the Diversity seminar in Köln on 30 November 2007 as an observer, and met with the local organizer IDM.

Invitations to the seminar were sent by email. The different Chambers of Commerce and Employers Organisations were asked to relay the invitation to their members.

A conference room was booked at the Holiday Inn Airport Brussels because of location outside the city centre and parking facilities.

The seminar took place in an hotel seminar room, fully equipped with video projector, wide screen, paperboards.

The room has been organized in order to promote interactivity between participants.

## Carrying out the seminar

On arrival, participants were presented with four documents:

- the programme of the day
- the EU brochure “The Business Case for Diversity”, in English for the Dutch speakers, in French for the French speakers
- the Training Manual in Dutch or in French
- the publication by the Centre for Equality of Chances and Fight against Racism, in Dutch or in French.

### *Ratio of participants*

Participants: 39	Seminar Dutch: 15	Seminar French: 24
NGO	5%	18%
Government	12%	5%
Recruiters	12%	9%
Consultants	30%	32%
Business	41%	36%

The same framework was used for both sessions.

### *1. Welcoming and introduction*

On 12 February, brief introduction on the EU project, based on Gesa Böckermann’s slides for the next day.

On 13 February, Gesa Böckermann gave the introduction in French. The introduction was useful to put the Forum in the EU Diversity context, the past and the future actions.

### *2. Getting to know each other*

Participants were asked to meet in 3 rounds:

1. Tell your name and function
2. Tell your name and personal experience with diversity
3. Tell your name and your experience with diversity in the organisation

This exercise was very lively and useful: after this, exchanges of experiences were easy.

### *3. Presentation by Didier Boone or Yves Dario from the Centre for Equality of Chances and Fight against Racism.*

This presentation summarised the findings of a series of meetings with organisations in Belgium, summarising the topics under: ethnic diversity, age, handicap, diversity plans, partnerships. According

to the evaluations by the participants, the presentations were rather abstract, but the brochure gives several cases of good practices.

#### 4. *Business Cases:*

On 12 February, we had 2 Business Cases: Janssen Pharmaceutica and Air Products.

Janssen Pharmaceutica's presentation by Mieke Smet centred on action and results in gender issues in the organisation.

Air Product's presentation by Pim Meyboom explained how the organisation's diversity management is based on values such as respect and inclusion, and how they achieve the implementation of these values.

On 13 February, we had 2 Business Cases: L'Oréal and HP Belux.

L'Oréal's presentation by Sylviane Ballustre-d'Erneville gave an overview of the policy on 6 diversity criteria: nationality, ethnic origin, social origin, gender, handicap and age.

HP Belux' presentation by Michelle Van Damme explained how Belux (Belgium-Luxemburg) has chosen to focus on 3 diversity aspects: gender, age, and culture.

Evaluation of the Business Cases was very positive.

#### 5. *Discussion*

Following the Business Cases, there was a discussion per table, based on the following questions:

1. What impressed us?
2. What are our reflections?
3. What questions do we have?

Each table then could put 2 questions to the presenters, who answered to the whole room.

There were clarification questions and critical questions (Example: These are all ideas for big companies with lots of money and resources. How can SMEs use any of this?)

#### 6. *Lunch from 1 to 2 p.m.*

#### 7. *World Café*

Discussion per table in 3 rounds, with a question for each round:

1. What have we as an organisation done already?
2. What topics/ problems/ issues do we have for which diversity management could be a solution?
3. What could be done more/ different/ new?

One person per table was host, and had some guidelines as to facilitating the discussions. This seemed to be a weak point. Participants would have preferred to have a "professional" facilitator, indicating that the discussions would then have been more fruitful.

There were paper and markers on the table, and participants were invited to write down the ideas. The flipcharts were then put on the walls, and participants could go round and read them.

More important than reading what was there, was the fact of writing things down: participants said that writing them down fixed ideas in their minds.

#### 8. *Take-away*

Participants were invited to think for themselves about 2 questions:

1. How has the Forum/ have the results stimulated me?
2. What am I going to try out?

After silent thinking time, participants were asked to share their answers with the others. This showed what participants had learned and were taking away to their organisations, inviting them to take actions in their organisations.

An extremely useful and interesting exercise, with a host of good ideas and resolutions:

One SME director indicated he was going to put the topic of diversity on the agenda of the next meeting, and organise a brainstorming Saturday on the topic. The idea of networking lunches was very popular, where “diverse” employees would be asked to share their experiences with others at work. The idea of organising meetings with colleagues, putting the issue on the agenda, was also very popular. Networking lunches with business schools. Many participants indicated that the Forum had stimulated them, either to continue what they were doing with new energy, or to try out new ideas/arguments they received from other participants. The possibility to exchange ideas and practices was seen as one of the greatest values of the Forum, together with the business cases.

### **Main lessons learned seminar**

On the whole, the evaluation of the seminar was very positive for both days. The French speaking group tends to be more satisfied than the Dutch speaking group.

Participants found the content relevant to their job, and the activities stimulating. The trainer, the environment and the materials received excellent marks.

Participants found that the objectives of the seminar were accomplished, and that they would use what they had learned. What they appreciated most was the cases and the possibility for exchange. The World Café moderators were least appreciated.

In order to improve the seminar, participants suggested a summary of good practices and resolutions, and a SME case study.

Participants indicated that they would use the information and skills acquired during this seminar for their own trainings, to put into practice cultural exchange activities by employees or to design programmes/ trainings in Diversity. They would integrate ideas in order to improve the quality of their offer in the development of social competences, and raise awareness of diversity management with their trainees and/or employees. Some would use the skills to convince customers of the necessity to recruit a wide spectrum of candidates, or to brainstorm with the management group.

They found the form of day seminar useful to get an overview and to meet others, with more business cases, adding that a second day after 2 months might be interesting in order to give feedback on their action plan. As a follow-up, they suggested to invite participants to a follow-up meeting in order to continue networking and exchanging, workshops on what works and what doesn't, and to include the participants in the actions of DG in 2008 (e.g. organizations and business schools). They would like to be informed about other actions concerning Diversity.

For the participants, it was good that “the EU came down to the level of people and practices”, and contacts need to be organised between EU and organizations.

The design of the training programme was good. The introduction of cases was extremely interesting and appreciated by the participants. What they were most interested in was the opportunity to exchange experiences and learn from each other, to hear about and examples of good practice. They stated they they could use this information and these skills in their own environment.

Participants appreciated that the EU is interested in organisations' issues, their needs and practices. They appreciated this communication to the basis, explaining what the Commission has done, does, and is planning.

A follow-up would be welcome, giving participants the possibility for feedback. It would be interesting to create reminders, such as a platform shared by the participants, the trainers and the Commission, with information, 'this month's action, 'this successful practice'.

Participants were also interested in receiving a "toolkit of good practice", and an evaluation tool for organisations in their respect for diversity







## Annexes

### The role of trade unions combating discrimination

#### Intended learning outcome:

- For the participants to have explored the roles trade unions can and should play in combating discrimination.

#### **1. What is a trade union?**

A trade union is an organised association of workers, whose aims are to protect, and further workers' rights and interests and represent them at a variety of levels (workplace, sector, national). Originally, unions organised workers along the lines of specific 'trades' and professions (such as hairdressers, teachers, construction workers) but increasingly common are unions with a wider remit (like: workers in commercial services or 'the public sector'). Trade unions can be organised at company level (which is quite common in several countries) or by sector (education, transport, etc.). Unions can also be organised as federations and can also be part of European or international networks.

In several countries, trade unions may have historical links with certain political groupings, ideologies or denominations (socialist, communist, liberal, Christian), and a few have close links with a political party.

However, a common and essential feature to all trade unions is that they are democratic and independent organisations. Democratic because they are membership based and representative organisations, in which every member has a vote and is part of the decision-making process. Independent, because they have to be independent from employers and public authorities to be able to play their role of representatives of workers properly, in which negotiations and compromises but also conflicts (such as strikes) are part of the game.

Trade unions are normally funded by members' subscriptions.

#### **2. What is the role of a trade union in combating discrimination?**

When considering what role trade unions can have in combating discrimination, they should take full advantage of the special roles that have been given to them under Articles 7 and 11 of Council Directive 2000/43/EC, and Articles 9 and 13 of Council Directive 2000/78/EC.

Trade unions are clearly important to the development of peaceful, democratic, well-managed, healthy and prosperous workplaces that engage with and promote equal opportunities, and through the workplace also contribute to these same goals in society at large.

Trade unions as instruments of social dialogue can combat discrimination in the following ways:

- Negotiating with employers to ensure that discrimination in the workplace is eliminated and that equal opportunities are promoted.
- Providing a means for expressing and addressing the needs of workers who are discriminated against in the workplace.
- Supporting victims of discrimination in securing a settlement with the employer (alternative dispute resolution).
- Supporting victims of discrimination in their search for access to justice.
- Promoting equality and diversity in the workplace and in the sector.
- Establishing mechanisms to influence decision-making by employers and Government.

- Mainstreaming non-discrimination and equal treatment in policies and practices.
- Challenging employers, organisations and authorities to combat discrimination.
- Monitoring, documenting and denouncing discrimination.
- Ensuring that equality is prominent on the political agenda and encouraging campaigns and action to eliminate discrimination and promote equality.

A trade union can

- Work in partnership with other trade unions to achieve shared aims.
- Work in partnership with NGOs in order to achieve shared aims.
- Cooperate with national equality bodies, for example in building up networks of equality representatives, or in organising training and expertise for workers' representatives.
- Empower groups to engage in campaigns, to be self-advocates and to assert and enforce their rights.
- Work, where appropriate, in partnership with Governments/employers to achieve common aims and objectives.
- Challenge, where appropriate, Governments/employers when they are promoting policies which are contrary to the trade union's objectives.
- Where appropriate deliver services to members efficiently and effectively where those services promote equal opportunities within the framework of Government policies and adopt and promote strategies of Trade unions and strategies negotiated between Trade unions and Government.
- Where appropriate deliver services to members efficiently and effectively where those services promote equal opportunities outside the framework of Government policies and adopt and promote trade unions' objectives and, strategies even if those are contrary to Government policies.
- Ensure the co-ordination of its own services and to engage Government/employers in discussions on the co-ordination of services between the Government and trade unions, where those services relate to equal opportunities.
- Provide properly professionally researched advice to Governments/employers on issues of concern.
- Advocate and campaign for change as a response to need.
- Guide and contribute significantly to legislative and policy making processes, by providing properly researched advice and briefings to politicians in Government and to employers and other persons of influence.
- Be vigilant "watchdogs" - pointing out where Governments/employers are actively discriminating, or failing in their obligations to combat discrimination or where they need to improve their performance, and enforcing the operation of the checks and balances that characterise democratic society. In this role trade unions must target Government and the business community by advocacy, lobbying and negotiating functions when required.
- Challenge, by appropriately selected mechanisms, acts, omissions, administrative practices or policies which are contrary to the trade unions' and the workers' objectives.
- Keep track of and ensure that advantage is taken of all new developments in combating discrimination, e.g. new legislation (national, EU and international), new policies (national, EU and international), new sources of funding, and landmark judicial decisions (at both national, EU and international level).
- Be open, transparent and accountable to members and to the public.
- Increase the strength of trade unions' participation in social dialogue by forming networks and coalitions, and promoting original initiatives and solutions. This can help to reduce prejudice within society, thus promoting equality.
- Work openly and in a spirit of collaboration with other trade unions and NGOs operating in related fields and prevent conflicts and disputes occurring between trade unions or NGOs.

- Put pressure on a state to ratify international instruments which allow for the international spotlight to be shone on Government practices relating to equal opportunities.
- Supply national and international bodies with essential and reliable information on which they can draw when examining a country's record on discrimination.

In summary, the role of trade unions should be to check, monitor and challenge the actions of employers and Governments and other organisations, in order to combat discrimination and to assist workers and groups of workers in asserting their rights.

### **3. What activities can a trade union do to combat discrimination?**

The following is a suggested list of activities and services that a trade union can carry out or provide in order to help combat discrimination on all grounds:

- Negotiating.
- Awareness-raising.
- Monitoring/Influencing the development of policy & law.
- Providing support to individual victims of discrimination, and to individuals as part of a collective complaint.
- Litigation.
- Alternative Dispute Resolution including mediation.
- Campaigning and organising.
- Advocating changes in practice (as distinct from policy or law).
  - Promoting the establishment of focal groups around a specific ground of discrimination (disability, race-ethnicity, etc.) to offer workers a place where they can share common experiences and discuss which policies to develop in their workplace and their union, and how to join forces to put their interests on the general trade union agenda
  - Adapt their recruitment campaigns to an increasingly diverse workforce, and making the diversity of the trade union movement more visible in internal and external publicity
  - Promote female members and members from a minority background in positions of decision-making and leadership.

### **4. What does a trade union need to fulfil its role?**

- Human Resources.
- Skills.
- Knowledge.
- Expertise.
- Openness.
- Transparency.
- Accountability to their members.
- Non discriminatory attitudes within its own organisation.
- Appropriate national legislation in place regarding its establishment and functioning.
- Funding. Although clearly the core functions and activities must be funded independently by members' contributions, many unions make use of project subsidies by governments and private funds for specific aims. Especially in the area of non-discrimination, a variety of possibilities for funding are available.

**5. Why are trade unions better placed than other organisations to work towards combating discrimination in the employment field?**

- Because trade unions are active in the workplace, they are often best placed to detect patterns of discrimination at work, and to take action to combat disadvantage.
- Trade unions can represent workers collectively, for instance in works councils and collective bargaining, which can often be the most effective way of achieving change and eliminating discrimination in the workplace.
- Trade unions play a crucial role in engaging with workers and employers at the local, regional, national and international level.

**6. What are the obstacles for trade unions and how might these be overcome?**

- Lack of standing in order to participate in relevant political debates. Trade unions will need to be sure that they brief an individual or organisation that does have standing.
- Lack of standing in order to bring complaints, either individually or collectively. Trade unions can support and assist those who do have standing, or seek to reform the rules.
- Perception of affiliation to Government or a political party or other group so undermining their reputation as impartial advocates of equality issues. A trade union needs to ensure to act in a way that does not conflict with members' fundamental rights to equality, and ensure that any connections with political parties or other organisations or causes do not conflict with members' rights.
- Passivity from some of their members/employees or even their leadership regarding action to be taken against discrimination.
- Conflicts between the interests of the majority of members, and the rights of minority members.
- Own prejudices.
- Lack of effective 'partnership' between Government/employers and trade unions. Lack of effective cooperation with NGOs.
- Lack of membership among the discriminated groups of workers, and therefore a lack of interest among the members and the leadership to deal with these issues. This may be a vicious circle, as clearly a trade union that does not show an interest in representing the interests of for instance women or migrant workers will not easily convince those workers that they should join a union.
- Inability to reach some parts of the workforce or senior management due to ineffective structures, poor organisation, externally imposed priorities, or cultural or language barriers. Trade unions should ensure that *their own organisations* have a diverse workforce with personnel who have received equal opportunities training and who are aware, of relevant social and political history, including the history of exclusion and discrimination of certain groups within the community and, where relevant, a range of language skills.