

The impact of the Racial Equality Directive:  
a survey of trade unions and employers  
in the Member States of the European Union

Belgium

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## **1. Demographic background**

Among Belgium's 10.5m population in 2006 there were 8.6% non-nationals. The largest numbers of non-nationals, in order of importance were: Italian, French, Dutch, Moroccan, Spanish, Turks and Germans. However, if the individual's country of birth is taken into account, the proportion of foreign-born within the total population rises to 12.1%, while among the active labour force the proportion of foreign-born is 13%. There is evidence of significantly higher rates of unemployment among foreigners in Belgium than among Belgian-born workers: in 2005 the figure was double, 22.9% against 10.8% respectively (SPF Emploi, Travail et Concertation sociale, 2008).

Belgium is divided linguistically between the Flemish majority and the Walloon minority and its three official languages are Dutch (spoken by 59%), French (spoken by 40%) and German. Its labour market is highly segmented according to nationality and ethnic origin. Men from minority backgrounds are over-represented in industry, in particular in manual worker occupations such as construction, metal work, road and rail transport, cleaning and in temporary work. Women from minority backgrounds are over-represented in the health sector and social work, teaching and public administration, the hotel and restaurant sector, industrial cleaning, temporary work and agriculture.

## **2. Employment relations background**

Employment relations are strongly institutionalised in Belgium, in part because of the role trade unions play in administering the social insurance system. Social dialogue has played a major part in Belgium since 1945. Trade union density has thus remained very stable since the 1970s, and is among the highest in the EU with more than three million members among the four million working population. In 2000 65% of employed workers were members of trade unions; manual workers have the highest rate of trade union density, at 95%, with public sector workers at 29% and white collar workers at 44%. There are three main confederations, the largest of which are the Christian ACV/CSC (Algemeen Christelijk Vakverbond/Confédération des syndicats chrétiens), with 1.7 million members and the socialist ABVV/FGTB (Algemeen Belgisch Vakverbond/Fédération générale du travail de Belgique) with 1.3 million members. Both are composed of several unions at sectoral, occupational and/or regional level. A smaller, liberal union confederation, ACLVB/CGSLB (Algemene Centrale der Liberale Vakbonden van België/Centrale générale des syndicats libéraux de Belgique), has 225,000 members. The shares of the votes in the 2008 four-yearly national private sector 'labour elections' for works council and health and safety representatives were as follows: the ACV/CSC, 53%, the ABVV/FGTB, 36%, the ACLVB/CGSLB, 10%, and the managers' trade union confederation, the CNC, 1%.

Employers in Belgium are also very highly organised with an estimated membership density of 72%. The main employers' association is VBO/FEB (Verbond van Belgische Ondernemingen/ Fédération des Entreprises de Belgique). The VBO/FEB represents – indirectly through some 50 sector federations – more than 30,000 small, medium-sized, and large companies in a wide range of sectors, ranging from industry to services. Two associations – second in influence at the national level – represent the small and

medium sized companies, and are gaining power in the social dialogue. The membership domain of UNIZO (de Unie van Zelfstandige Ondernemers) embraces the Flemish SMEs in Flanders and Brussels. UCM (Union des classes moyennes) represents the SME sector of the Walloon region and BECI (Brussels Enterprises Commerce and Industry) represents the SMEs in Brussels. The CSPO/CENM (Confédération des Entreprises Non Marchandes/Confederatie van de Social Profit Ondernemingen) is an association of federations from the non-profit sector including the health care, social-cultural and education sectors.

### **3. Trade union and employer awareness**

All laws in Belgium are submitted to social partner bodies for their views before enactment, and both trade unions and employers were consulted on the transposition of the Racial Equality Directive at national level on the National Employment Council (*Conseil national du Travail - CNT*) and at regional level on the Economic and Social Councils (*Conseil économique et social - CES*).

The national level trade union interviewees were generally aware of the EU legislation and national anti-discrimination laws. One FGTB representative, for example, believed the law had increased sensitivity to the issues: *'I think that the laws and the involvement of the social partners has significantly increased awareness of the issue, and that they also helped make the trade union world much more aware, even if the trade union struggle for equality has always been a fundamental principle'*. Another FGTB interviewee added: *'The difference now is the feeling that the Directive and the Anti-racism Act bring more tools and strength to the unions to fight against racism. The legal framework is clearer and gives more opportunity to act. In a certain way, the legal instruments reassure the unionists on the legitimacy of the combat. The issue of ethnic discrimination still remains a sensitive question, but it is no longer taboo.'*

For a CGSLB representative, it was essential to train representatives and make awareness campaigns about anti-discrimination law: *'As social partners, we must have a good technical knowledge to be able to discuss all these matters in the authorities where we sit. In the companies, the consequence of the directive was to wake us up because we were not really conscious of the discrimination reality. What I'm sure is that the laws made possible the debate in the Works Councils, in the trade union organisations, and it forces us to find solutions.'*

A Brussels full-time official of the CSC considered that the delegates are more concerned by the effect of the law on the ground: *'It seems to me that the delegates are not really concerned by the law as such but by its practical effects and their evaluation with social partners. The creation of a diversity working-group in Brussels, and of some diversity advisors have strongly sensitised the delegates, but I would like to encourage them to address the discrimination issue more. Another objective is to make trade unions in public services further aware and committed'*.

The awareness of the employers interviewed was also quite high, as illustrated by the main employers' organisation appeal to its members in a pamphlet called 'Diversity: a

winning trick' to see the business case for the promotion of multiculturalism and diversity. The FEB called on companies: *'to respect the principle of non-discrimination in all its forms in relation to characteristics such as gender, race, ethnic origins, disability, age, religion or beliefs'*. In public sector recruitment the pressure on government ministries to comply with the law was enormous. The SELOR public sector recruitment service representative explained: *'Everyone wanted to revolutionise their Ministry. They asked us for concrete arguments to secure the agreement of their senior managers. The people are convinced, but it is still necessary to convince their top managements.'*

The interviewee from the Brussels employers' organisation, BECI, considered that the legislation helped set a tone that legitimated many steps that had already been taken: *'the laws and the politics and regional campaigns... Well, without being able to prove it, I have a feeling that they haven't really had an impact on the recruitment of people of foreign-origin in firms. But they have helped or structured the process, even though they weren't leading the actions and changes in behaviours.'* The interviewee from the retail distribution employers' federation (FEDIS) argued that diversity was its bread and butter, but was also uncertain whether the law had had any significant effect: *'It's our customers, it's our turnover. It would be a little strange if we didn't take it (diversity) into account. However, I couldn't say whether the law itself has had any real impact. In retailing we are very pragmatic. If the problem is how to find good people, then we have to expand our recruitment: it's an economic necessity.'* Diversity programmes had been adopted by at least ten of the main internationally known retailers like Carrefour, Ikea, Delhaize, Inno, Paris Ixelles, Pizza Hut and Sodexo – motivated mainly by the need to find staff rather than by changes in the law. In the banking sector, FEBELFIN has participated since 2001-2002 in the Brussels Territorial Pact for Employment and in the Actiris training and awareness campaigns that led to the signature of the Bank Diversity Charter unanimously approved by the Joint committee in July 2007. According to employers in retailing, catering and the public hospital sector, the European directive did not have any impact on their diversity policy. The manager of a rail catering company stated that, in their company, employee diversity is *'a natural evolution towards a multicultural employment policy. The crucial role of the legislation is to provide a necessary framework to the companies'*.

#### **4. Comments on the Equality Body**

The trade unions have developed several tools for fighting discrimination, including legal collaboration with Belgium's equality body, the Centre for Equal Opportunities and Opposition to Racism (*Centre pour l'égalité des chances et la lutte contre le racisme*). In 1995, Belgian trade unions signed their first cooperation agreement with the Centre. The FGTB, CSC and CGSLB committed themselves to communicate any racist act and discrimination that has occurred in the workplace, to support the victims involved and to collaborate with the Centre in running any resulting from complaints. In return, the Centre instigates legal proceedings and goes to the court to defend employees discriminated against.

In 2004, this cooperation agreement was enlarged to all forms of discrimination. It considers collaboration in three domains: information and training, individual complaints

and complaint registration. Currently with the three confederations the Centre is defining the method of data transmission for individual cases (type of information, respect for personal privacy, professional secrecy and confidentiality...), the access and the formal registration of the complaints, and the strategy to undertake in civil and penal legal actions against employers.

The cooperation has not been enormously successful. The Centre estimates that only 15% of the 250 complaints it receives each year come through the unions. The unions are unclear as to why this proportion is so low. One interviewee explained: *'The problem is also sometimes linked to our structures. Each regional committee contacts the Centre without necessarily contacting the FGTB centrally.'* For the FGTB representative, while the law had certainly improved the protection of discriminated workers in principle, in practice there is still the need to offer protection to witnesses. A major problem remains with recruitment, and a problem with the Centre is that it prioritises mediation: *'Even when you know the law it is difficult to get a concrete result because the problem of proof is enormous. It is really difficult to prove a refusal to recruit. The cases we have pursued are mainly of dismissals or conflicts on work relations. There we can demand what we can on the basis of anti-discrimination laws. But we hardly ever intervene on recruitment.'* A CSC representative acknowledged its organisation has not been used enough in the judicial framework to fight discrimination in order to increase the jurisprudence on discrimination.

Sometimes, too, there is a difference of approach with the Centre: it is more concerned with legal remedies, while the unions much prefer a negotiated settlement. A CGSLB interviewee summarised: *'Each has their role: between a theoretical approach to the law and its practical application, there, there are sometimes problems.'* The unions recognise that legal action is a very difficult remedy to apply to discrimination. The procedures take a long time, and the issue of proof is still a major problem, since discrimination becomes more and more difficult to identify. One trade union respondent stated: *'It is really difficult to prove discrimination because it is more insidious and hidden. Most ethnic minority workers are disappointed by the Centre's action and by the difficulties involved in winning a law case.'* One full-time official explained that awareness of racism had driven much of it underground: *'Real cases of discrimination are rare. Because of the legal arsenal people are more careful on what they say to workers of ethnic origin. It is very difficult to prove racism or discrimination, particularly if they are based on opinions or feelings. In my private life, I've heard continuously racist discourses and at the moment it is particularly hard for Muslims ethnic minorities who are the object of attacks and abuses.'*

## **5. Trade union and employer policies and measures**

### **5.1 Trade union policies and measures**

Increasingly, and in particular in Brussels, action against discrimination has been taken jointly by the three main trade union confederations. The unions have all implemented information and awareness-raising campaigns and have negotiated agreements and diversity plans. Each of the FGTB, CSC and CGSLB has passed resolutions and rules

condemning racism and reaffirming equal treatment, solidarity, tolerance and the rejection of the extreme right. They have all agreed to exclude members of extreme right political parties from office or membership. The CGSLB interviewee explained that this was done despite the apparent contradiction with the liberalism the union identifies with: *'It was a measure that was hardly challenged, although it was a little shocking in relation to the principles of tolerance and freedom at the base of our organisation.'*

While there is some progress in awareness raising, the interviewees acknowledged there is still some way to go. The CSC interviewee reported that there was growing interest among activists, describing a joint meeting with the two other unions, where: *'There was huge interest in the subject [of diversity].... a massive presence of workplace representatives, of people who understand the need to reflect on these issues. So, alongside those who want to put a brake on change there are others who want things to move forward.'*

Since 2006 the unions have been involved in diversity debates along two distinct axes. On the one hand they promote diversity and on the other they fight against discrimination and racism. Their promotion of diversity involves their asserting the importance of access to and protection of workers' collective rights and equal treatment, and they juxtapose this case with the employers, who often argue from an individual and business logic. Trade union diversity advisors have been supported financially from regional government funds since September 2007. Their job consists of informing workplace representatives about legal instruments and collective agreements related to diversity, in helping them to analyse employment and social statistics, to support to register complaints, to direct victims towards equality body or lawyers and to elaborate diversity action plans at the workplace. In 2008, diversity advisors were created in companies in Brussels and Wallonia while in Flanders they had been created in 2003. They have concretely confronted to the management of intercultural relation or discrimination at the workplace. There are now 25 funded union diversity posts in Brussels (one FGTB, one CSC and one part time CGSLB), nine in Wallonia (four FGTB, four CSC and one CGSLB) and 25 in Flanders (ten ABVV, eleven ACV and four ACLVB). According to one FGTB interviewee: *'Without these financial means, the FGTB would never create the posts of diversity advisors and I would still be alone in my job. Now there are two employees devoted part time to support shop stewards in the promotion of diversity at the workplace.'*

The Christian CSC has created a new service for 'New migration and Diversity'. Its function is to help integrate workers in the union and society and to struggle against racism and all forms of discrimination in recruitment and promotion. The FGTB has created an interregional Committee for Diversity to attempt to take up the issue more at the local level. The liberal CGSLB federation responded to the 2007 law by organising training and spreading information about the law and the importance of promoting diversity. It has created a 'Diversity committee'. However, the interviewee considered that the issues are really difficult to deal with: *'On the ground it appears that a really mechanical application of the law actually has perverse effects. So as a result of the 2003 law we are now facing some cases that are really tricky.'*

The CGSLB appears more aware of the need to transform its own structures to reflect its membership since historically it has been less diverse than the FGTB or CSC. The CGSLB interviewee explained that: *'Sensitivity to diversity and the organising campaigns we've carried out put an emphasis on this and you can see their effects on the profile of our delegates.'* An FGTB interviewee explained: *'We've only been concerned about the diversity of our own staff for the last two or three years. Colleagues of Italian origins have been present for a very long time, but those of Moroccan origin are much rarer. But it's a change that is taking place.'* An ethnic minority official of the CSC in Brussels observed that Moroccan and Turkish ethnic minority are more represented among local full-time officials while the top of the federation remain male Belgian and white as in the FGTB and CGSLB.

In March 2008, the three Brussels trade unions signed a Union Diversity Charter (*Engagements des syndicats bruxellois pour la lutte contre les discriminations et la promotion de la diversité*) in which they committed themselves to act against discrimination and to support diversity both within the unions and on the labour market. It can be regarded as the counterpart of the Company Diversity Charter signed in 2006.

## **5.2 Employer policies and measures**

By the end of March 2009, 132 companies in the Brussels region had signed a Company Diversity Charter. This committed the signatories to: *'reflect the diversity of Brussels, and notably of its cultural and ethnic diversity within their staff and at different levels of qualification, and to elaborate through dialogue with the workforce or their representatives a diversity plan to put into practice.'*

In 1996 the FEDERAGON temporary agency work federation signed a collective agreement with the unions establishing a code of good conduct aimed at preventing racial discrimination. *'Since the 1990s, our federation have been a pioneer. Initially, we addressed the racism at the workplace and then the fight against discrimination and next, the promotion of diversity. Today we try to have a more positive approach in insisting on diversity assets. But the fundamental problems in any case remain the fight against discrimination'*. Ten years later it endorsed a call from the Brussels Employment Ministry to sign up to a Diversity Charter, which 40 of its members then did. In 2007, when a case came up involving one of its larger members, ADDECO, it then issued a new statement that included the call to its members *'to refuse requests from their clients to act in a discriminatory way'*, and it established a kind of sector ombudsman to deal with these issues. The respect of the code of conduct became a necessary condition to be approved as a federation or an agency. In case of non-observance of the code, the approval can be withdrawn. The FEDERAGON representative explained *'Showing ADECCO as a bad example and the impact it had on the company is really a deterrent. I believe that when we point out the finger at bad practice it is a good way to make employers aware of their responsibilities. We also insist in mentioning in the work rules, the non-discrimination principle specifying that one must respect the non-discrimination obligations on the race grounds.'*

The FEDIS retailing employer federation has carried out occasional diversity training

sessions, but the interviewee recognised: *It's not a high priority of the FEDIS. But we do things on the issue because it's human, and because there are problems when firms say they are against diversity.*' Its ethics code condemns any discrimination towards colleagues or clients that is not clearly justified. The Brussels employers BECI also organised training on the new laws, and distributed information on its website. FEBELFIN signed a Banking Diversity Charter encouraging good practices and exchange of experience through the 'employment working group' of the Bank Joint Committee. The Charter stimulated interest from other employers' federations.

At the company level, the Brussels HRM respondent interviewed has been developing for two years a diversity action plan on the grounds of ethnic origin, age and disability. The Territorial Pact of Employment forced the social partners to act through four main lines. *External positioning* focuses on communication in order to publicising the diversity action plan and promoting diversity towards the clients and the others companies. *Recruitment* implies the extending of recruitment channels according to public targeting (ethnic minority, young, etc.), the neutralisation of the examination and the use of public employment programs. The *staff management* axis stresses the reception, language training and mentoring of the public targeted. *Internal communication* supposes the creation of a diversity working-group mainly composed by HRM and trade unions representatives. In the public sector, SELOR focused its diversity action plan on the recruitment process and on the partnership aiming at disseminating job offers among ethnic groups: *'We do our utmost to increase their representation (ethnic minority) in our first stage of the selection process, saying "We do not discriminate against anyone. It is not because you are foreign that you will not be treated equally"'*.

The diversity plan of the public hospital, where ethnic minorities are well represented among the employees as well as the patients, aimed at better managing ethnic and gender diversity: *'The European Directive has not had any impact in our decision to make a diversity-plan. Diversity in the hospital is familiar and quite well accepted. What we wanted to do is to manage it and avoid the creation of new problems. In other words, its objective is to formalise and valorise something that is already done. Thanks to the diversity plan, we want rather to do preventive work.'*

The catering company diversity plan has been undertaken not only to respect the legislation but also to be a model in the sector and to improve work relationships since the profile of the employees changed dramatically: the minority became the majority and that brings about some work organisation and conflicts between employees. *'Our objective is to be seen as the best employer in the sector, respectful of legislation and above the top or always doing more.'*

The retail sector plan targets young people among those ethnic minorities. After having signed the Company Diversity Charter, the interviewee believed it must be followed by concrete actions on the ground. Diversity is considered as a reality but mentalities must be changed: *'The diversity plan has nothing to do with any obligation resulting from the law or the charter signed in 2006. It is a citizen's duty for companies. What we need to provoke is mainly a change in mentality. We were used to working only with BBB (Bleu,*

*Blanc, Belge<sup>1</sup>) employees and not questioning this situation. Now it is normal to reflect the population - but it will take some time.'*

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<sup>1</sup> 'Bleu, Blanc, Belge' is the brand name of the best-known Belgian cow.

## 6. Views on how to tackle discrimination better

Employers as well as trade unions agree that awareness campaigns and training on discrimination issues remain essential instruments. A CSC representative stated that the legal framework and the collective agreements are not sufficient while restrictive policies seem not really appropriate. *'The objective is to change mentalities which should lead to attitudes changes. In addition, positive actions can have some perverse effect when migrant or ethnic minority workers are hired on the basis of cutting social tax measures, which is ultimately criticised by their colleagues'*.

For the Brussels employer's federation, BECI, *'what is increasing awareness raising is not the social dialogue but rather training and awareness campaigns. Step by step the messages are disseminated everywhere and finally trigger off changes. What can also be done is the spreading of good practice in imitation of multinational diversity practices'*. FEDERAGON also mentioned a domino effect: *'If certain companies set the standards very high, the Federation encourages the others to do so. People try to draw upwards.'* For FEBELFIN, the awareness campaign and law complement one another. The interviewee believes that: *'This incentive method is not in conflict with legislation that has, however, some limits. On the other hand, public awareness campaign made by researchers, medias, etc. draw people's attention to some important issues. All these elements will contribute to increase discrimination awareness.'*

Promoting good practices is also a good way to sensitise people. A FGTB representative suggested encouraging the public sector to better reflect diversity and to become in this way a model of good practices: *'The pseudo neutrality of the selection process actually discriminates against ethnic minorities. The criteria required to apply to the public administration are too high and, sometimes, they are not justified or not related to the job'*. The SELOR diversity cell developed the 'Check the test' project aiming at neutralising the recruitment's exam and better identifying competences that are actually needed for the job.

Trade unions raised three dimensions to be addressed for improving the fight against discrimination: legal procedures, the diversity policy evaluation and employer constraints or sanctions. Regarding the legal procedure, an FGTB representative suggested creating only one FGTB service fighting against discriminations and one law instead of the three existing ones: *'It would be more meaningful and powerful to agree that trade unions work against discrimination in general and not in a relation to a specific discrimination ground. If differences exist between discriminations we can develop appropriate strategies according to the problem arising.'* A CSC official proposed first to elaborate a common protocol between trade unions and the Centre for Equal Opportunity and Opposition to Racism rather than individual ones. Secondly, he recommended being more offensive in the judicial field: *'If we want to evolve the discrimination jurisprudence at work, we must intervene more in the legal process especially for all cases related to the workplace.'*

Related to the diversity policy, all trade unions claimed they had evaluated the diversity action plans. In Wallonia, the CSC interviewee had evaluated the regional 'Diversity Prize' that offers 25,000 euros as a condition to pursue social dialogue on diversity policy: *'Currently the companies declare that they are developing a diversity project consisting in just giving information to employees. We want to go further. It means that the project must be discussed in the Works Council or with the trade union delegates.'* The CGSLB considered that the diversity label is a good concept but it would not convince trade unionists if the other employment aspects still remain neglected because nobody gains anything. *'If one lays down objectives on one or two categories of employees whereas the social relations are disastrous (collective redundancies, indecent work conditions etc.) certain delegations could refuse the diversity plan since the stress put on diversity hid the problem of work conditions. Companies must be clean in all aspects - not only on the diversity one.'*

According to the trade unions, the diversity action plans must come with the obligation of providing results in terms of employment, promotion and good work relations. FGTB and CSC are in favour of hiring quotas while CGSLB is not. The FGTB interviewee argues: *'I know that this measure is not popular with the employers but at a certain point we need to put pressure on them. For the moment we accepted the incentives like the labels and diversity plans, but without results then it will be easier for us to justify the quotas or financial sanctions.'* The CSC representative observed that incentive initiatives are not really efficient, particularly in Brussels; this is why quotas with a progressive annual increase for at least ten years should be set. The CGSLB interviewee is more doubtful about any restrictive measures or sanctions that conflict with its liberal tradition and philosophy. Consequently, the organisation rejects any hiring quotas, which, furthermore, it argues can create hierarchies amongst different forms of discriminations.

In 2004, the Federal Ministry of Equal Opportunities submitted to social partners a recruitment testing project intended to fight hiring discrimination. The FGTB welcomed this proposal that should be implemented in particular in railway and urban transport public companies where diversity is not yet a reality: *'The testing can be used as a good anti-discrimination public awareness campaign.'* The CGSLB is reluctant to generalise the testing procedure arguing that it will be likely to bring about some abuse. In addition it contradicts its values of freedom and confidence.

The national employers' federation the FEB opposes both the idea of quotas and the proposal to make CVs anonymous. It considers awareness-raising is the only way to deal with discrimination, and that any law or regulation would be counter-productive if it interfered with *'the decision to take on a new collaborator that must be solely based on their competences, regardless of race, colour or gender'*.

The bank employers' federation, FEBELFIN, underlined that *'the law has a role to play and is not in question. However, incentive diversity policies are more likely to give good results than sanctions'*. The FEDERGON temporary work agency federation also endorses an 'incentive' rather than a 'deterrent' approach. On the other hand, employers complained about the many levels of the state (federation and regions) committed in the diversity policy and advocate a centralisation of the policy in order to decrease the

negotiation and administrative formalities with the different regions. The representative of the Brussels employers' federation, BECI, considered that the fight against discrimination couldn't be efficient since the discrimination has not a concrete reality. There is not a problem of discrimination but a difficulty of recruiting manpower responding to employers' needs: *'In the reality of the companies, what matters, is that anti-discrimination and diversity policies belong to a range of tools but are not functioning as a constraint on employers, practices. Actually, diversity is an element of the manpower adaptation between the respective expectations. The requirements of ethnic minority job seekers cannot meet the labour market supply. So the solution must come from the public institutions and organisations as professionals of placement specialists, schools, office of employment and recruitment.'*

A CSC representative proposed to create a joint diversity fund managed by social partners where employers and trade unions would negotiate the subsidies intended for diversity policy. In so doing, employers and trade unions would be more committed in these policies: *'For the moment employers obtain financial aid without any compensation and do not show any enthusiasm about this important issue. If the grants were granted on the basis of social dialogue, the employers would feel obviously more concerned.'*

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