



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Belgium
Title:	Amendments to the anti-discrimination Decree of the French Community regarding positive action measures
Date:	2 February 2016
Expert:	Bribosia, Emmanuelle
<u>Context</u>	
Issue at stake:	The Parliament of the French Community brought amendments to the French Community anti-discrimination legislation on positive action
Ground of discrimination:	Alleged race, colour, descent, national or ethnic origin, nationality, age, sexual orientation, civil status, birth, property, religious or philosophical belief, actual or future state of health, disability, physical or genetic characteristic, political opinion, language, social origin, trade union opinion, pregnancy, childbirth, maternity and gender reassignment
Source:	Parliament of the French Community
Field:	Selection, promotion, working conditions, including dismissals and pay regarding the public service of the French Community, education and vocational training, health policy, social advantages, membership of and involvement in any professional organisation funded by the French Community, access to goods and services available to the public, and access and participation to or any exercise of an economic, social, cultural or political activity open to the public
Applicable law:	Anti-discrimination Decree of the French Community adopted on 12 December 2008 on the fight against certain forms of discrimination (Article 6)

Content

Case:

Article 6 of the Anti-discrimination Decree of the French Community provides that a direct or indirect difference of treatment is not discriminatory when it takes the form of a positive action measure. Article 6, paragraph 2, defines the conditions under which such positive action can be adopted.

The former paragraph 3 provided that it belongs to the Government (of the French Community) to define the hypothesis and conditions to implement positive action measures. Until recently, private and public actors could not legally or validly adopt such measures because no executive regulation was implemented.

This is why, on 13 November 2015, the legislator of the French Community brought an amendment to the Anti-discrimination Decree by adding a fourth paragraph to Article 6. This new paragraph provides that, in the absence of an executive regulation of the Government, the judge is competent to scrutinize the validity of positive action, except in the field of employment. Henceforth, even in the absence of executive regulation, private and public actors can adopt positive action measures, which will be assessed case by case in court.

Key points of analysis:

- amendment brought to Article 6 of Anti-discrimination Decree of the French Community in the field of positive action measures;
- positive action measures can be adopted even in the absence of any executive regulation;
- the court is competent to scrutinize the validity of such measures.

Internet link source:

The new bill adopted on 13 November 2015 and published in the official journal (*Moniteur belge*) on 8 December 2015 is available on the following link: http://www.diversite.be/sites/default/files/documents/law/decret_modifiant_le_decret_du_12_decembre_2008_relatif_a_la_lutte_contre_certaines_formes_de_discrimination.pdf