



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

### FLASH REPORT

<b>Country:</b>	Belgium
<b>Title:</b>	Conditions for positive action in the private sector
<b>Date:</b>	02 April 2019
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	New Regulations fixing conditions to adopt positive actions to remedy inequalities based on all grounds covered by the federal anti-discrimination legislation.
<b>Grounds of discrimination:</b>	All grounds, Other ground
<b>Field of application:</b>	Employment
<b>Source:</b>	Legislation
<b>Applicable law:</b>	Antidiscrimination Acts of 10 May 2007

### **Content**

**Law development:** Under the triple set of Federal antidiscrimination Acts of 10 May 2007, the "Gender Equality Federal Act" (implementing all the EU gender directives), the "Racial Equality Federal Act" (implementing Directive 2000/43/EC) and the "General Anti-Discrimination Federal Act" (implementing Directive 2000/78/EC, but adding a series of additional criteria – e.g. health, wealth, language- to the four envisaged by this directive) an identical provision (Article 16 in the Gender Equality Federal Act and Article 10 in the other two Acts) allows for positive action.

These should comply with four conditions;<sup>1</sup> they should be a response to situations of *manifest inequality*; the removal of such situations should be identified as a target worth pursuing; the 'corrective measures' must be of a temporary nature; and finally, these corrective measures should not restrain the rights of others unduly. Within these terms, the hypotheses and conditions under which a positive action can be implemented remained to be determined by way of an ancillary Royal Decree.

This ancillary Royal Decree has finally been adopted on 11 February 2019.<sup>2</sup> It came into force on 11 March 2019.

**Key points of analysis:** This R.D. is only applicable to positive action relating to employment in the private sector. Its main purpose is therefore to provide private employers with a secure legal framework within which positive action may be undertaken.

A positive action plan may be adopted either through a collective agreement or through an employer's "deed of accession", conditional on complying with a format annexed to the R.D.

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<sup>1</sup> Constitutional Court (*Cour d'Arbitrage/ Grondwettelijk Hof*), 27 January 1994, Case no. 9/94.

<sup>2</sup> Royal Decree of 11 February 2019 setting on the conditions of positive actions, *Moniteur belge/Belgisch Staatsblad*, 01 March 2019, p. 21169.

Article 5 of the R.D. reiterates that positive action should only be adopted in case of a *manifest* inequality (to be documented by any means by the company or the sector), should describe clearly the objectives, steps and expected outcome, may be pursued for a maximum of three years, should be submitted to a proportionality test and approved by the competent Minister (i.e. the Collective Relations Directorate of the Department of Employment).

Employers may also devise positive action plans under other forms than a collective agreement or "deed of accession"; in that case they should communicate such plans for information to the Minister in charge of Employment. The R.D fails to provide a definition of the term 'employers', thereby causing uncertainty as to its scope, at least for autonomous public economic bodies covered by the Act of 21 March 1991. It seems that they can use that latter route to implement a positive action plan.

Implementation of the R.D. will be assessed every two years by the Collective Relations Directorate jointly with the National Labour Council.

**Internet link source:** The R.D. of 11 February 2019 is accessible at <http://www.ejustice.just.fgov.be/eli/arrete/2019/02/11/2019200431/justel>.