



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

FLASH REPORT

Country:	Belgium
Title:	Creation of a Federal Institute for the Protection and the Promotion of Human Rights
Date:	3 June 2019
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<u>Context</u>	
Issue at stake:	New legislative Act creating a Federal Institute for the Protection and Promotion of Fundamental Rights
Grounds of discrimination:	All grounds
Field of application:	All fields
Source:	National legislation
Applicable law:	Legislative Act to create a Federal Institute for the Protection and the Promotion of Human Rights of 20 March 2019, adopted by the House of Representatives on 25 April 2019, DOC 54 3670/001, not yet published in the Belgian OJ

Content

Law development: On the 25th of April 2019, the Belgian Federal Chamber of Representatives adopted a legislative Act that would allow the creation of a Federal Institute for the Protection and the Promotion of Human Rights. This is the first Institute transversally competent for Human Rights, unlike the several different specialised bodies (e.g. **Unia**: competent for discrimination; **Myria**: migrants' rights; **IEFH**: gender equality, ...), whose respective jurisdictions will remain untouched.

Key points of analysis: The project of creation of a 'national mechanism of Human rights', in conformity with the United Nations 'Paris Principles', is not new. It was first initiated under the former federal government, and then included in the 2014 (current) Federal Governmental Agreement. The Federal Minister of Justice and the Federal Secretary of State for Equal Opportunities started elaborating a draft but the process got stuck due to the opposition of the N-VA, the biggest Flemish political party in the federal government.

Meanwhile, since 2014, Unia had launched a collaborative network in the field of Human Rights and, in 2015, a Protocol of collaboration had been signed between all Federal and Regional independent public bodies, accessible to the citizens, that are active in the field of human rights in order to foster cooperation in this field and exchange good practices (i.e., Federal Ombudsmen, Walloon Ombudsman, Ombudsman of the German-speaking Community, General Delegate to the Rights of the Child, Commission for the Protection of Privacy, High Council of Justice, Institute for the Equality of Women and Men, Standing Police Monitoring Committee or Committee P, etc.). This platform for Human Rights gathers on a monthly basis with a rotating chair and served as a starting point for the future national mechanism of Human rights.

However, Belgium was under political pressure to accelerate the process as it had committed to set up such a mechanism at the former Universal Periodical Review before the Council of Human Rights of the United Nations, yet it was not implemented yet when Belgium had to undergo the Universal Periodical Review in 2016. In its 2017 report for the assessment of the 2007 Anti-discrimination Federal Acts, the Expert Commission also made recommendations as to the creation of a National Human Rights Institution (§ 155).¹ Eventually it was thanks to the political crisis at the end of 2018 and the departure of the N-VA from the federal government that the process could fruitfully be relaunched at the beginning of 2019.

To bring the project to a successful conclusion before the end of the legislature in April 2019, a pragmatic approach has been adopted to prioritize an institute for the protection and promotion of human rights at the federal level, while expecting that it should become "inter-federal", in a second stage, to cover the areas of competence of the regional entities. In order to achieve an overall coverage of fundamental rights, it was decided to define the competences of the new Institute in a "complementary" or "residual" way. Thus, this new Federal Institute would be competent to ensure the respect of all fundamental rights, in the federal fields not covered by an existing specialized body. The Institute should work in close cooperation with the specialised public bodies active in the field of human rights and take part in the platform for Human Rights. At this stage it is not entirely clear which role the Institute is going to play in the field of discrimination as it will have to define its action in complementarity with the mandate of UNIA and the Institute for the Equality of Women and Men.

The Institute will have a consultative role and will be able to intervene in front of the judiciary and the Constitutional Court.

Some points of concern remain:

- The Institute will not be able to receive individual complaints, which highly diminishes its action ability.
- The Institute is for now created as a Federal Institute. However, in Belgium there are different levels of power, and a Federal Institute does not cover the scope of competences of the Regions and Communities in Belgium. Ideally, it should take the form of an Inter-federal Institute, as Unia is, to be competent for ensuring the respect of fundamental rights in the entire country in any field of application.

Internet link source: <http://www.lachambre.be/FLWB/PDF/54/3670/54K3670001.pdf>.

¹ Commission d'évaluation de la législation fédérale relative à la lutte contre les discriminations, Premier rapport d'évaluation 2017 (www.UNIA.be/en).