



Striving for an inclusive labour market in Belgium

Positive actions and reasonable accommodation to facilitate hiring and employment of persons with disabilities involving employers and employer initiatives

August 2022

EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Directorate D — Social Rights and Inclusion

Unit D3 — Disability & Inclusion

European Commission

B-1049 Brussels

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Positive actions and reasonable accommodation to facilitate hiring and employment of persons with disabilities involving employers and employer initiatives

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This report has been developed under Contract VC/2020/0273 with the European Commission.

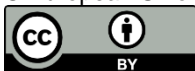
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1 Executive summary

1.1 Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites and advice services

Every level of government (federal, regional and local) has its own quota system for the employment of people with disabilities. The quotas focus exclusively on the number of persons with disabilities in public services without any specification of their position in the workforce or their chances for promotion. The possibility to escape from the quota obligations by contracting with sheltered workshops is contrary to the aim of inclusive employment. The main feature of the quota regulations is the lack of enforcement.

The wage subsidies for employers in the private sector are a clear incentive for the employer to hire employees with a disability,¹ but they have no guarantee that this subsidy will be used to support their work.

The implementation of the obligation of reasonable accommodation for a person with a disability within the context of the Belgian state structure required regulatory action from each level of competence, the scope of which cannot extend beyond the areas of competence that belong to the respective levels.

Countless actions targeted at employers, in both the private and public sectors, have been adopted to promote the employment of persons with disabilities over the last decade. Some examples of good practices have received wide media attention. Scientific evidence of a broad effect on the employment of persons with disabilities of the various awareness-raising actions, good practice guides, websites and advice services to promote the employment of persons with disabilities which are directed at employers is still lacking. The most effective awareness-raising campaign for inclusion in the open labour market is probably delivered by people with disabilities themselves who, often without any name recognition, perform their job to the great satisfaction of their employers, even when the employer is primarily motivated by the objective of increasing the efficiency of the company.

1.2 Support and partnerships available to employers to assist them in making reasonable accommodations

In both the public and private sectors, arrangements are in place for the funding – albeit limited – of certain reasonable accommodations, and a framework is provided with information on and guidelines for the correct implementation of the obligation to make reasonable accommodation. Sometimes this framework has been developed in close consultation with associations of people with disabilities, so that specific accommodations for people with different disabilities were developed. The focus is often on adjustments of a material nature. This is illustrated with personal testimonials from people with disabilities that creative solutions are often possible without a major financial burden falling on the employer. However, a number of deficiencies in the

¹ The Flemish regulations often use the notion ‘persons with a work disability’. In this report on Belgium we use the terminology ‘persons with a disability’.

financing of reasonable accommodation often remain a valid reason for employers to invoke undue burden.

1.3 Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities

The guides on reasonable accommodation from Selor, the recruitment body of the federal Government, and UNIA, the Interfederal Centre for Equal Opportunities, describe in detail the assessment process that must take place when implementing reasonable adjustments, in line with the cooperation agreement of 19 July 2007 that was concluded between the federal and regional authorities. Training on reasonable accommodation is given by the National Institute for Health and Disability Insurance and by UNIA. An extensive sample list of possible reasonable adjustments can be found on the website of AVIQ (*Agence pour une vie de qualité*), the Walloon Government's Agency for a Life of Quality, and real-life examples illustrate that, with an active search by both the person with a disability and the employer for appropriate material and human support, sustainable results can be obtained.

1.4 Recommendations

Numerous, and often excellent, initiatives have been taken in recent years to inform and raise awareness among employers about reasonable accommodation. However, increased information and activities to raise awareness among employers are not sufficient. Some important gaps in quota regulations and in reasonable accommodation funding arrangements need to be addressed.

2 Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites and advice services

2.1 Employment quotas

In Belgium, mandatory employment quota exist only in the public sector.

The Belgian Federal administration is legally bound to have 3 % full-time-equivalent (FTE) persons with disabilities within its staff.²

The Royal Decree of 6 October 2005 specifies that those who may be employed under the quota are those recognised as persons with disabilities by a federal or regional authority. Persons with a substantial need of assistance count as two persons for the purpose of the quota. One third of the obligation can be fulfilled by the provision of services from sheltered workshops.³

The Guidance Commission that has been set up to organise follow-up offers the following statistics on the rate of employment of people with disabilities in the federal public sector in its last evaluation report:⁴

| 2016 | 2017 | 2018 | 2019 | 2020 |
|--------|--------|--------|--------|--------|
| 1.44 % | 1.37 % | 1.25 % | 1.22 % | 1.22 % |

Only two federal organisations out of all of them achieved the 3 % quota in 2020.

Compliance with this obligation is monitored by the delegate of the budget minister in each federal department and public institution.

The Flemish public administration has no quotas imposed upon it, but it is legally bound to reserve 1 % of FTE vacancies for persons with disabilities within its staff.⁵

Research revealed that the number of annually reserved vacancies shrank from 20 in 2009 to only one in 2013.⁶ However, the answer of the Flemish Minister for Equal Opportunities to a question by a member of the Flemish Parliament shows that, except

² Art. 25, *Wet van 22 maart 1999 houdende diverse maatregelen inzake ambtenarenzaken* (Law of 22 March 1999 on diverse measures concerning public service), entered into force on 4 November 2005.

³ Arts. 1 and 3 § 1, *Koninklijk besluit van 6 oktober 2005 houdende diverse maatregelen met betrekking tot de vergelijkende aanwervingsselectie en met betrekking tot de stage* (Royal Decree of 6 October 2005 on diverse measures concerning recruitment, selection and apprenticeship).

⁴ Begeleidingscommissie voor de aanwerving van personen met een handicap in het federaal openbaar ambt, *Evaluatieverslag 2020*, p. 4 (Evaluation report 2020 of the Guidance Commission for the recruitment of people with disabilities in the federal public office), www.fedweb.belgium.be.

⁵ Art. 1.5 § 4, *Besluit van de Vlaamse regering van 13 januari 2006 houdende vaststelling van de rechtspositie van het personeel van de diensten van de Vlaamse overheid* (Regulation of the Flemish Government of 13 January 2006 establishing the staff regulations of its personnel).

⁶ Bossens, N., Van Damme, J., Hondeghem, A., *Een optimale inzet van instrumenten voor de tewerkstelling van personen met een handicap en chronische ziekte in de Vlaamse overheid* (Optimal use of instruments for the employment of people with disabilities and chronic diseases within the Flemish public service), Final report of July 2014, Instituut voor de Overheid (Public Governance Institute), KU Leuven (Catholic University of Leuven), p. 111.

for 2020, the obligation of 1 % has been met over the years from 2016 to 2020. Unfortunately, this recruitment path presents an obstacle for further promotions.⁷

| | Reserved vacancies | Total vacancies | Recruitments in reserved vacancies |
|------|--------------------|-----------------|------------------------------------|
| 2016 | 11 | 460 | 10 |
| 2017 | 7 | 731 | 7 |
| 2018 | 10 | 896 | 9 |
| 2019 | 23 | 780 | 16 |
| 2020 | 2 | 792 | 2 |

In addition, the local municipalities and provinces in Flanders must have 2 % FTE persons with disabilities within their personnel.⁸

The Walloon regional public administration is legally bound to have 2.5 % FTE persons with disabilities within its staff. The Regulation of the Walloon Government of 18 December 2003 specifies the recognitions as a person with a disability by a federal or regional authority that can be taken into consideration to meet this obligation. One half of the obligation can be fulfilled by contracting with sheltered workshops.⁹ The last published report mentions that the objective of 2.5 % FTE persons with disabilities was surpassed, with a rate of 3.2 % as of 31 December 2019.¹⁰

The local municipalities and provinces in Wallonia must have 2.5 % persons with disabilities (with at least a half-time commitment) within their personnel.¹¹ The last published report states that 100 % of the provincial authorities, 84 % of the municipal authorities and 82 % of the public centres for social welfare, at least insofar as these public authorities responded to the survey conducted by AVIQ (*Agence pour une vie de qualité*) (Walloon Agency for a Life of Quality), met this quota as of 31 December 2019.¹² However, the report indicates that it was not only the contracting with sheltered

⁷ Answer by Flemish Minister for Equality Bart Somers, to Parliamentary Question No. 279 by Joke Schauvliege, 30 April 2021, www.docs.vlaamsparlament.be.

⁸ Art. 28, *Besluit van de Vlaamse Regering van 7 december 2007 houdende de minimale voorwaarden voor de personeelsformatie, de rechtspositieregeling en het mandaatstelsel van het gemeentepersoneel en het provinciepersoneel* (Regulation of the Flemish Government of 7 December 2007 establishing the minimum standards for staff regulations of the personnel of the local communities and the provinces).

⁹ Art. 270, *Code wallon de l'action sociale et de la santé* (Walloon Decretal Code for Social Action and Health) and Arts. 81-85, *Arrêté du Gouvernement wallon du 18 décembre 2003 portant le Code de la fonction publique wallonne* (Regulation of the Walloon Government on the Codex of the Walloon public service).

¹⁰ *Rapport relatif à la mise en œuvre au 31 décembre 2019 des dispositions du code wallon de la fonction publique (a.g.w. du 18 décembre 2003) relatives à l'emploi des personnes handicapées au sein des services du gouvernement wallon et dans certains organismes d'intérêt public* (Report on the implementation on 31 December 2019 of the provisions of the Walloon Civil Service Code relating to the employment of persons with disabilities in Walloon government services and in certain public interest bodies), August 2020, Agency for a Life of Quality, www.aviq.be.

¹¹ Art. 3, *Arrêté du Gouvernement wallon du 7 février 2013 relatif à l'emploi de travailleurs handicapés dans les provinces, les communes, les centres publics d'action sociale et les associations de services publics* (Regulation of the Walloon Government on the employment of workers with a disability in the provinces, local municipalities, public welfare centres and associations of public services).

¹² Executive summary, *Rapport relatif à la mise en œuvre au 31 décembre 2019 des dispositions de l'Arrêté du Gouvernement wallon du 7 février 2013 relatif à l'emploi de travailleurs handicapés dans*

workshops but also the financial investments granted to sheltered workshops by the public authorities, in particular the provinces, as organising authorities, that were taken into account in order to meet the quota obligation.

In the French Community, the Government Regulation of 21 December 2000 on the employment of persons with disabilities in government services and in certain public-service bodies within the remit of the French Community sets the percentage of persons with disabilities to be employed within those services and bodies at 2.5 %.¹³

In the Brussels-Capital Region, the Regulations of 6 May 1999 on the administrative and salary regulations applicable to officials of the Ministry of the Brussels-Capital Region¹⁴ and of 26 September 2002 on the administrative and salary regulations applicable to officials of public-service bodies of the Brussels-Capital Region¹⁵ impose a figure of 2 % representation of employees with disabilities.

The Brussels Ordinance of 2 February 2017 concerning the obligation to recruit persons with disabilities in the local authorities obliges them to employ at least one person with a disability on a half-time basis for each tranche of 20 full-time equivalents in the personnel structure. The conclusion of contracts for works, supplies and services with sheltered workshops is equivalent to the quota obligation.¹⁶ A report published on 16 May 2019 shows that only 3 of the 19 Brussels municipalities achieved the target of 2.5 % of the workforce.¹⁷

For the administrations of the French Community, the Brussels-Capital Region and of the local municipalities and provinces in Flanders, data on the percentage of public employers that comply with the employment quota and on the number of persons with disabilities that are employed under these quota is hardly available.

The Flemish Minister for Equal Opportunities stated, in answer to question No. 252 of 31 March 2021 by Flemish MP Immanuel De Reuse about the target of 2 % introduced for the employment of people with disabilities in the local authorities, that 'such data is not subject to the reporting obligation of the local authorities. My administration therefore has no recent data on this'. The minister also argued that 'it is not easy to find out effectively who qualifies as a person with a work disability. After all, we have

les provinces, les communes, les centres publics d'action sociale et les associations de services publics (Report on the implementation on 31 December 2019 of the provisions of the Walloon Government Regulation of 7 February 2001), published in June 2020 on the AVIQ website, www.aviq.be.

¹³ Art. 1, *Arrêté du Gouvernement de la Communauté française du 21 décembre 2000 relatif à l'emploi de personnes handicapées dans les Services du Gouvernement et dans certains organismes d'intérêt public relevant de la Communauté française*.

¹⁴ Art. 319bis, *Arrêté du Gouvernement du 6 mai 1999 de la Région de Bruxelles-Capitale portant le statut administratif et pécuniaire des agents du Ministère de la Région de Bruxelles-Capitale*.

¹⁵ Art. 325bis, *Arrêté du Gouvernement de la Région de Bruxelles-Capitale du 26 septembre 2002 portant le statut administratif et pécuniaire des agents des organismes d'intérêt public de la Région de Bruxelles-Capitale*.

¹⁶ Arts. 2 and 5, *Ordonnance de la Région de Bruxelles-Capitale du 2 février 2017 relative à l'obligation d'engager des personnes handicapées dans les administrations des pouvoirs locaux*.

¹⁷ *Rapport sur l'emploi des personnes handicapées dans les administrations communales de la Région de Bruxelles-Capitale* (Report on the employment of persons with disabilities in the municipal administrations of the Brussels-Capital Region), <https://servicepublic.brussels>.

to take into account the privacy regulations, which make it difficult to request personal data without the consent of the data subjects'.¹⁸

2.2 Tax relief / reduced social security contributions / wage subsidies for employers employing persons with disabilities

There are no specific reliefs of taxes or social security contributions for employers employing persons with disabilities. Employers employing persons with disabilities can receive significant wage subsidies, the amounts and grant conditions of which are determined by regional regulations.

For the employment of a person with a disability who lives on the territory of the Flemish Region, a private employer, educational institution or a local public authority can receive a wage subsidy from the Department of Work and Social Economy of the Flemish Government. The subsidy can be awarded for a maximum period of five years, but is renewable after a new evaluation. There is no budgetary limit for this specific expenditure item.¹⁹

Assessment of the disability and of the degree of efficiency loss of the employee with a disability is carried out by the Flemish Service for Labour Mediation and Vocational Training (*Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding*, VDAB). At the first request for work support measures by the employer, this evaluation takes place either on the basis of pre-existing certificates of recognition of disability by a federal or regional authority, or on the basis of pre-existing situations, such as the termination of special education training. When applying for a change in the level or duration of the wage subsidy, the evaluation on the basis of an employment investigation carried out by VDAB or a partner working with VDAB takes into account the functioning of the employee at the workplace.²⁰

The wage subsidy, known as VOP (*Vlaamse Ondersteunings Premie*), consists of an allowance for the employment of employees with a disability of at least 20 % and a maximum of 60 % (corresponding with the loss of efficiency of the employee with a work disability) of the wage costs, including social and tax charges, but capped at 200 % of the guaranteed average minimum monthly income.²¹ The employer is not required to submit supporting documents to justify the use of these funds. He is free to use the subsidy for measures that benefit the employee with a disability, or to add it to the company's income to compensate for the loss of return.

Insight into the number of entitled employers and the budgetary burden of this specific support is made more difficult because the VOP also applies to self-employed people

¹⁸ Parliamentary Question No. 252 from Immanuel De Reuse, member of the Flemish Parliament, 31 March 2021, www.vlaamsparlement.be.

¹⁹ Arts. 12-15, *Vlaams decreet van 4 maart 2016 houdende het Vlaamse doelgroepenbeleid* (Flemish Decree of 4 March 2016 concerning the Flemish target group policy).

²⁰ Art. 4, *Besluit van de Vlaamse regering van 18 juli 2008 betreffende de professionele integratie van personen met een arbeidshandicap* (Regulation of the Flemish Government of 18 July 2008 on the professional integration of people with a work disability).

²¹ Arts. 28-34, Regulation of the Flemish Government of 18 July 2008 on the professional integration of people with a work disability.

with disabilities, albeit to a limited percentage.²² The Flemish Department of Work and Social Economy mentions expenditure of EUR 91 million for 12 600 beneficiaries in 2019, equating to an average pay-out of EUR 7 200, and noted an increase of approximately 5 % in both the number of beneficiaries and the total expenditure for the years 2017 to 2019.²³

The new Flemish Decree of 14 January 2022 on tailor-made solutions for individual integration,²⁴ which will probably come into effect on 1 January 2023,²⁵ broadens the target group of VOP beneficiaries to people who find it difficult to access the labour market due to psychosocial problems. This decree increases the wage subsidy for the employment of a person with a disability up to a maximum of 75 % of the capped reference wage and introduces an additional premium for employers who make their own arrangements or outsource the coaching of the person with a disability in the context of a support plan. However, according to the draft implementing regulation, the work support measures would be granted within the limits of the annually available budget.²⁶

For the employment of a person with a disability who lives in a French-speaking region,²⁷ the private employer or the public authority²⁸ can make use of various subsidies from AVIQ, within the budgetary limits set for each specific measure.²⁹ AVIQ ensures the registration of persons whose ability to acquire or retain a job is effectively reduced as a result of an insufficiency or a reduction of at least 30 % of their physical capacity or at least 20 % of their mental capacity.³⁰

For the recruitment of a person with a disability who has been professionally inactive or employed in a sheltered workshop for at least six months, the employer can receive a wage subsidy, known as a *prime à l'intégration* (start-up premium). This consists of

²² According to a research report, only 178 self-employed persons were paid a Flemish support premium in the final quarter of 2017. Van Rampelberg, L., on behalf of the Foundation Innovation and Work (Stichting Innovatie & Arbeid) (October 2018), *'Ondernemen met een arbeidshandicap in Vlaanderen'* (Entrepreneurship with a work disability in Flanders), www.serv.be, p. 14.

²³ *Departement Werk en Sociale Economie* (WSE) (Flemish Department of Work and Social Economy), Annual Report for 2019, www.vlaanderen.be/publicaties/jaarrapport-vlaams-doelgroepenbeleid.

²⁴ *Vlaams Decreet van 14 januari 2022 over maatwerk bij individuele inschakeling*, *Belgisch Staatsblad* (Belgian Official Journal) 11 March 2022.

²⁵ Art. 94, *Ontwerp van Besluit van de Vlaamse Regering tot uitvoering van het decreet van 14 januari 2022 over maatwerk bij individuele inschakeling* (Draft Regulation of the Flemish Government implementing the Decree of 14 January 2022 on tailor-made solutions for individual integration), approved on 1 April 2022 by the Flemish Council of Ministers, <https://beslissingenvlaamseregering.vlaanderen.be>. This draft regulation sets the date of entry into force of the Regulation of the Flemish Government implementing the Decree of 14 January 2022 on tailor-made solutions for individual integration, but fails to specify the date of entry into force of the provisions of the decree.

²⁶ Art. 68, Draft Regulation of the Flemish Government implementing the Decree of 14 January 2022 on tailor-made solutions for individual integration, <https://beslissingenvlaamseregering.vlaanderen.be>.

²⁷ Art. 275 § 1, Walloon Decretal Code for Social Action and Health.

²⁸ Art. 1069, 2°, *Code réglementaire wallon de l'Action sociale et de la Santé* (Walloon Regulatory Code for Social Action and Health).

²⁹ Art. 1093 (Prime de tutorat), Art. 1101 (Prime à l'intégration) and Art. 1112 (Prime de compensation), Walloon Regulatory Code for Social Action and Health.

³⁰ Art. 261, Walloon Decretal Code for Social Action and Health, and Art. 408, Walloon Regulatory Code for Social Action and Health.

an allowance of 25 % of the wage costs, including social and tax charges, but the amount is capped at 150 % of the guaranteed average minimum monthly income. The subsidy can be awarded for a maximum period of one year.³¹

For the employment of a person with a disability, the employer can receive a wage subsidy, known as a *prime de compensation* (compensation premium). This subsidy can be awarded for a maximum period of five years, after AVIQ has conducted an investigation at the company into the costs of the measures that serve to match the requirements for the workstation and the aptitudes of the employee. The premium consists of an allowance of a maximum of 45 % of the wage costs (corresponding with the costs of the measures), including social and tax charges, but capped at 150 % of the guaranteed average minimum monthly income.³²

For the coaching of an employee with a disability, the employer can, for a maximum period of six months, receive a subsidy of EUR 250/month, known as a *prime de tutorat* (tutoring premium) for a person they appoint to accompany and advise the employee.³³

AVIQ's Annual Report for 2019³⁴ gives the following figures:³⁵

| | Beneficiary employees | Beneficiary companies |
|-----------------------|-----------------------|-----------------------|
| Prime à l'intégration | 682 | 613 |
| Prime de compensation | 4 253 | 2 228 |
| Prime de tutorat | 410 | 387 |

The annual budgetary burden of these measures is as follows:

| | 2018 | 2019 |
|-----------------------|----------------|----------------|
| Prime à l'intégration | EUR 1 718 372 | EUR 1 821 648 |
| Prime de compensation | EUR 28 041 034 | EUR 31 495 584 |
| Prime de tutorat | EUR 306 063 | EUR 378 945 |

The most important contribution is therefore without a doubt that of the compensation premiums, whose average annual cost per employee is about EUR 7 000. About 35 % of the compensation premiums are awarded to public sector employers.

The employer is not required to submit supporting documents to justify the use of these funds.

In all regions, employees with disabilities themselves have little insight into or control over the use of wage subsidies.

Wage-cost subsidies often decrease over the years. The 2010 scientific study into the use of the VOP (*Vlaamse Ondersteunings Premie*) criticised the fact that this subsidy

³¹ Arts. 1101-1111, Walloon Regulatory Code for Social Action and Health.

³² Arts. 1112-1123, Walloon Regulatory Code for Social Action and Health.

³³ Arts. 1093-1100, Walloon Regulatory Code for Social Action and Health.

³⁴ AVIQ, *l'intégration professionnelle des personnes handicapées dans les entreprises ordinaires, rapport relatif à l'année 2019* (Professional integration of people with disabilities in ordinary companies, report for 2019), <https://www.aviq.be>.

³⁵ These figures should be interpreted with caution, as a single day of subsidised employment in the course of 2019 is sufficient to be included in the statistics.

decreases with the seniority of an employee, while there is no reason to assume that the support need automatically decreases the longer one is employed. Quite the contrary: a number of disabilities are progressive in nature and lead to a higher need for support. The limitation of the reference wage for the calculation of the subsidy to double the guaranteed minimum monthly income hinders the further career development of highly qualified persons with a work disability.³⁶

At the federal level, the labour legislation has been amended so that incapacity for work as a result of illness or accident, which makes it definitively impossible for the employee to perform the agreed work, only terminates the employment contract due to force majeure following a reintegration process, whereby the possibility of reasonable adjustments is also examined. Employers are exempted from statutory sick pay if the people they employ who have received reasonable accommodation (for example, by means of a changed schedule or an adjustment to their tasks) in the context of this reintegration process subsequently go on sick leave.³⁷

2.3 Reasonable accommodation

The implementation of the obligation of reasonable accommodation for the person with a disability within the context of the Belgian state structure required regulatory action from each level of competence (federal, community, region), the scope of which cannot extend beyond the areas of competence that belong to the respective levels, as allocated under the Constitution and the Special Institutional Reform Acts.³⁸

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation has been implemented by the following legal instruments.

At the federal level, the directive has been implemented through the Law of 10 May 2007 combating certain forms of discrimination, which qualifies 'a refusal to make reasonable accommodations for the benefit of a person with a disability' as prohibited discrimination.³⁹ Reasonable accommodations are defined as 'appropriate measures taken in a particular situation and as needed to enable a person with disabilities to access, participate in and advance in the matters to which the Anti-Discrimination Act applies, unless these measures place a disproportionate burden on the person who has to take these measures'.⁴⁰

³⁶ Roosens, B., Huys, R., Van Gramberen, M., Van Hootegem, G., *Werken met een VOP* (Working with a VOP, a study by the Leuven Centre for Sociological Research (CeSO) on behalf of the Flemish Minister responsible for Work, in the context of the VIONA research programme), p. 79.

³⁷ Art. 34, *Wet van 3 juli 1978 betreffende de arbeidsovereenkomsten, zoals hersteld bij Art. 2 van de wet van 20 december 2016 houdende diverse bepalingen inzake arbeidsrecht in het kader van arbeidsongeschiktheid* (Art. 34, Law of 3 July 1978 on employment contracts, as restored by Art. 2 of Law of 20 December 2016 on various provisions on employment law in the context of incapacity for work), in force since 9 January 2017.

³⁸ Huys, J., *'Het niet voorzien van redelijke aanpassingen voor de persoon met een handicap is een vorm van discriminatie'* (Failure to provide reasonable accommodation for the person with a disability is a form of discrimination), *Tijdschrift voor Sociaal Recht*, 2003, pp. 387-429.

³⁹ Art. 14, *Wet van 10 mei 2007 ter bestrijding van bepaalde vormen van discriminatie* (Law of 10 May 2007 combating certain forms of discrimination).

⁴⁰ Arts. 4 and 12, Law of 10 May 2007 combating certain forms of discrimination).

At the level of the Flemish Community and the Flemish Region, the directive has been transposed by means of the Decree of 8 May 2002 on proportional participation in the labour market, which obliges employers and intermediary organisations to provide reasonable accommodation⁴¹ (not just for persons with disabilities), and through the Flemish Framework Decree for equal opportunities and equal treatment policy of 10 July 2008, which qualifies ‘a refusal to make reasonable accommodations for a person with a disability’ as prohibited discrimination.⁴²

The directive has been implemented at the level of the French Community through the Decree of 12 December 2008 on the fight against certain forms of discrimination and, in the Walloon Region, through the Decree of 6 November 2008 on the fight against certain forms of discrimination. Both of these decrees qualify ‘a refusal to make reasonable accommodations for the benefit of a person with a disability’ as prohibited discrimination.⁴³

In the Brussels-Capital Region, the directive has been implemented by the Ordinance of 4 September 2008 relating to the fight against discrimination and to equal treatment in the employment field, which limits the duty of reasonable accommodation for persons with disabilities to intermediary organisations and operators in the field of social and professional integration.⁴⁴

A cooperation agreement (which is legally binding) was concluded between the federal and regional authorities.⁴⁵ It defines the concept of accommodation as ‘a concrete measure that can neutralise the limiting influence of an unadapted environment on the participation of a person with a disability’, and indicates the criteria to assess when the accommodation entails a disproportionate burden.

On 30 March 2021, the *Belgian Official Journal* published the text of the new article 22ter of the Belgian Constitution, which reads as follows (free translation): ‘Art. 22ter. Every person with a disability has the right to full inclusion in society, including the right to reasonable accommodation. The law, the decree or the regulation, provided for in article 134, guarantee the protection of this right.’

This provision supplements the principle of non-discrimination, including the prohibition to refuse reasonable accommodation for persons with a disability, with a progressive realisation obligation on the part of the federal and regional authorities. Both aspects are inextricably linked. Indeed, generally speaking, the burden imposed on the employer as a result of the obligation to provide reasonable accommodation will not be considered disproportionate if the employer may apply for public funds. The federal and state legislators must, however, abide by international law and the constitutionally

⁴¹ Arts. 5 § 4, *Vlaams Decreet van 8 mei 2002 houdende evenredige participatie op de arbeidsmarkt*.

⁴² Art. 15, 6°, *Vlaams Decreet van 10 juli 2008 houdende een kader voor het Vlaamse gelijkekansen- en gelijkebehandelingsbeleid*.

⁴³ Art. 5,4°, *Décret de la Communauté Française du 12 décembre 2008 relatif à la lutte contre certaines formes de discrimination*, and Art. 15, 6°, *Décret de la Région Wallonne du 6 novembre 2008 relatif à la lutte contre certaines formes de discrimination*.

⁴⁴ Art. 14, *Ordonnance de la Région de Bruxelles-Capital du 4 septembre 2008 relative à la lutte contre la discrimination et à l'égalité de traitement en matière d'emploi*.

⁴⁵ Cooperation agreement of 19 July 2007 between the Federal State, the Flemish Community, the French Community, the German-speaking Community, the Walloon Region, the Brussels-Capital Region, the Common Community Commission and the French Community Commission in favour of persons with disabilities; Protocol on the concept of reasonable accommodation in Belgium.

recognised right to inclusion of persons with disabilities, which implies that support measures may not exclusively concern separate facilities outside mainstream society or, within the scope of this report, outside the open labour market.⁴⁶

2.4 Other relevant actions targeted at employers

The federal and regional anti-discrimination laws allow positive action in favour of protected groups, including persons with disabilities, under certain conditions.

Specifically, in the field of industrial relations, the Royal Decree of 11 February 2019 determining the conditions for positive actions stipulates that a positive action plan is established by collective labour agreement or by act of accession determining the conditions for positive actions. When the affirmative action plan is approved by the Minister of Work, it must be determined as conforming to non-discrimination legislation, and the positive action plan cannot be regarded as a prohibited form of discrimination.

The Report to the King to the Royal Decree mentions some typical examples for clarification: recruitment campaigns for specific target groups; targeted promotion of vacancies to specific target groups; and support programmes for applicants through the application process. This could mean, for example, that a company offers to provide candidates from a certain target group with information or preliminary training explaining how they can successfully apply for a job at the company.

Companies can also initiate positive actions in forms other than those established by the collective labour agreement or the accession action. In such cases, they can communicate their plan to the Minister of Work for information. The Federal Public Service Employment, Labour and Social Dialogue will draw up an evaluation report every two years in collaboration with the National Labour Council. This will make it possible to study which forms of positive action plans have been used and whether or not they have had a positive effect.⁴⁷ Although the provisions of the royal decree have already entered into force from 11 March 2019, such a report has not yet been published.⁴⁸

Furthermore, countless actions targeted at employers in both the private and public sectors to promote the employment of persons with disabilities have been set up over the last decade.

For example, a work experience day is organised every year through a partnership between the various regional authorities, urging employers to pair an employee from their company with a jobseeker with a disability, with the message that 'It is an easy way to discover the possibilities of these workers and to get acquainted with the

⁴⁶ Huys, J., *'Inclusie in de Constitutie'* ('Inclusion in the Constitution'), published online on 2 December 2020 on the VZW GRIP website, www.gripvzw.be.

⁴⁷ *Verslag aan de Koning bij het Koninklijk besluit van 11 februari 2019 tot bepaling van de voorwaarden inzake positieve acties*, *Belgisch Staatsblad* 01.03.2019. (Report to the King by the Royal Decree of 11 February 2019 determining the conditions for positive actions, Belgian Official Journal, 1 March 2019).

⁴⁸ The most recent activity report of the National Labour Council, available at: <http://www.cnt-nar.be>, covers the years 2019-2020.

benefits for you as an employer. In addition, you give the job seeker a taste of the job content'.⁴⁹

The first annual Federal Day of Diversity, on 3 December 2013, focused on the disability theme, with the slogan: 'Stop prejudice! Competencies transcend disability'.⁵⁰ On 3 December 2020, the annual Belgian Federal Diversity Award was awarded by the Federal Diversity network to the National Employment Office for its contributions to the project Inclusion@work, specifically the organisation of awareness sessions for all employees about visible and invisible disabilities and chronic diseases and the development of tools to facilitate the support of people with disabilities within the organisation.⁵¹

Since February 2021, Hands-On Inclusion has organised free Dutch-language 'bootcamps' for employers to explore interactive and practice-oriented processes to work out an inclusive strategy together, with the aim of attracting and retaining talented employees, even if they are hindered by disabilities.⁵²

The PHARE service (*Personne Handicapée Autonomie Recherchée*), an administrative department of the French Community Commission in Brussels, awards employers a one-time 'awareness bonus for inclusion' of a maximum EUR 1 000 to cover the costs encountered in an awareness-raising programme and/or in training their staff on workers' disabilities. Training and awareness-raising activities must be provided by people outside the company's staff.⁵³

There is also a postcard campaign, in which visitors to an event are asked to sign a postcard in which attention is drawn to the need not to forget people with disabilities when there are vacancies, and in which the postcards are then sent to companies in Flanders and Brussels.⁵⁴ However, it is highly questionable what employers will do with them.

Actions to encourage employers in the public sector to comply with the quota scheme, such as 'employer branding' (the public sector presents itself as an inclusive employer) in the federal action plan for disability 2021-2024,⁵⁵ as well as in the 2020 diversity plan of the administration of the Flemish Government,⁵⁶ have been too non-committal to bring about a real turnaround. Image is important, of course, but this amounts to little until the basic conditions for more disability-friendly vacancies are met, such as wheelchair accessibility of company buildings, effective compliance with quota obligations, legibility of company websites for the blind and partially sighted, etc.

There is no scientific evidence of the concrete effect of the awareness-raising actions mentioned above on the labour market position of persons with disabilities. The most

⁴⁹ See: <https://www.duoday.be>.

⁵⁰ See: <https://fedweb.belgium.be>.

⁵¹ See: <https://www.rva.be>.

⁵² See: <https://handsoninclusion.be>.

⁵³ See: <https://phare.irisnet.be>.

⁵⁴ Initiative at the REVA fair in Ghent, 19 to 21 May 2022. See: <https://reva.be>.

⁵⁵ *Federaal actieplan handicap 2021-2024* (Federal disability action plan 2021-2024), approved by the federal Government on 16 July 2021, www.handicap.belgium.be, p. 25.

⁵⁶ *Het Gelijkekansen- en Diversiteitsplan Vlaamse overheid 2020* (Equal Opportunities and Diversity Plan of the Flemish Government), www.overheid.vlaanderen.be, p. 7.

effective awareness-raising campaign for inclusion in the open labour market is probably delivered by the people with disabilities themselves, who, often without any name recognition, perform their job to the great satisfaction of their employers.

2.5 Examples of good practice

Being entitled to a VOP (the Flemish wage subsidy) has a favourable impact: for job seekers with a disability, their chances of getting employed are significantly higher when they give their employer the right to a VOP.⁵⁷

The introduction of a legal obligation for the employer to examine the possibility of reasonable accommodation in the context of a reintegration procedure before proceeding with a dismissal due to force majeure could become a lever to encourage the retention of employees with disabilities within the company.

The amendment of the Belgian Constitution with a new article 22ter, which reiterates the international law obligation of progressive realisation of the inclusion of people with disabilities, is an incentive for the various authorities at the different policy levels in Belgium to further develop a voluntarist policy with regard to employment in the open labour market, too.⁵⁸

2.6 Good practice guides, websites and advice services directed at employers

A 'Diversity Unit' has been set up in the Federal Public Service. It ensures the implementation of an action plan with a view to improving the employment rates of people from disadvantaged groups, such as people with disabilities. It develops projects and actions within the framework of the Federal Diversity network (a network of federal diversity managers).⁵⁹ For example, the unit formulates recommendations for the 'reception and integration of an employee with a disability or a chronic illness'.⁶⁰ The Flemish administration also has a diversity policy department and a network of diversity officials (the Flemish Government Diversity Committee) and issues a 'diversity scan' that provides an indication of the status of the equal opportunities and diversity policy of an entity within the Flemish Government.⁶¹

eDiv is an online tool of the Interfederal Centre for Equal Opportunities, UNIA. Through this tool, everyone can discover anti-discrimination legislation for free and in an accessible way. eDiv promotes the exchange of knowledge about anti-discrimination. The website helps companies and organisations to develop a diversity policy. eDiv focuses on concrete situations in the workplace, and everyone can access information about anti-discrimination on the website. eDiv is especially relevant for human

⁵⁷ Desiere, S., Cabus, S., and Cockx, B. (2020), *Evaluatie van het Vlaamse doelgroepenbeleid* (Evaluation of the Flemish target group policy), KU Leuven / Catholic University of Leuven, <https://www.vlaanderen.be/publicaties/evaluatie-van-het-vlaamse-doelgroepenbeleid>, p. 175.

⁵⁸ The text is inspired by the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which was implemented as part of Belgian legislation by the law of 13 May 2009, coming into effect on 1 August 2009.

⁵⁹ See: <https://fedweb.belgium.be>.

⁶⁰ See: <https://www.vzwtoelbo.be>.

⁶¹ See: <https://overheid.vlaanderen.be>.

resources staff, diversity officials, confidential advisers and prevention advisers for psychosocial well-being.⁶²

In 2014, the Government of the Brussels-Capital Region launched the 'Pool H' pilot project for private and public sector employers active in the Brussels Region. It offers first-line advice and refers to organisations that are actively involved in the employment of people with disabilities. Managers and human resources managers of Brussels companies have received a 'Topo Diversity Handicap', a brochure of practical advice with tips for adjusting selection tests, making use of financial support measures, training selection staff in the recruitment of people with disabilities, welcoming (student) trainees with a disability, guiding an employee with a disability, appointing an internal disability manager, drawing up a clear procedure for discrimination against people with disabilities, etc.⁶³

Prevent developed a website about disability management. It contains information about the reintegration and job retention of employees who are confronted with health problems and/or functional limitations. The website is used to empower, support and guide companies and organisations in systematically setting up a disability management policy tailored to the organisation or company. This involves developing a system at company level within which reintegration processes can be approached and supervised proactively, consistently and purposefully.⁶⁴

Diversicom, a non-profit organisation, aims to strengthen the professional integration of people with disabilities, to empower those involved in integration and to raise awareness of the benefits of diversity in the workplace. The association focuses on support for ordinary employment for persons with all types of disability. It provides advice to companies at all stages of the recruitment process, as well as on training and staff awareness and follow-up during integration. The 2021 activity report mentions that a total of 97 companies were given advice, of which 39 benefited from training courses, 64 recruited staff and 6 mandated the non-profit organisation for more specific tasks (coaching cycles and developing action plans). The Diversicom project is approved and subsidised by the PHARE Service for a period of five years from 1 January 2018.⁶⁵ The website contains 'diversistories' (examples of good practice).

'Social clauses in Brussels public contracts: Guide for the attention of contracting authorities' is a handbook that explains the obligations of the regional administrative bodies resulting from the Circular of the Government of the Brussels-Capital Region of 26 November 2020 relating to the obligation to include social clauses (e.g. social clauses for subcontracting to sheltered workshops) in regional public contracts. The contracting authority will be assisted by the social clauses division of the Brussels Office for Employment (Actiris), which is designated as the supervisory body.⁶⁶

⁶² See: <https://www.ediv.be>.

⁶³ See: <https://vzwtolbo.be>.

⁶⁴ See: <https://www.prevent.be>.

⁶⁵ See: <https://www.diversicom.be>.

⁶⁶ See: <https://www.actiris.brussels.be>.

3 Support and partnerships available to employers to assist them in making reasonable accommodations

3.1 Support available to employers for making reasonable accommodation

An annual budget is set aside at the Federal Government Policy and Support Office (BOSA) to co-finance projects by the federal Government bodies in the field of cultural diversity, equal opportunities or the adaptation of workstations for employees with disabilities.⁶⁷ In 2020, a total of EUR 42 803 was allocated for these projects, and in the 2021 financial year, the expenditure amounted to EUR 74 865.⁶⁸

The Diversity Policy Service of the Flemish Government offers employment support measures to employees with a disability or chronic illness, their managers and teams (including a layout integration protocol, the determination of reasonable material and non-material adjustments, and advice on and funding for certain identifiable costs such as job post adjustments, job coaching and adapted transport). Every adaptation requires customisation, as specified in the integration protocol, and all agreed adjustments are recorded in an integration protocol. The agreements in the integration protocol can be of a material nature, but they also concern work agreements (including teleworking, flexible hours, adapted task content, use of a separate space in an open-plan office and communication). In 2018, 91 new integration protocols were drawn up by the Diversity Policy Service.⁶⁹

Private sector employers mainly make use of the financial interventions covering the costs of job post adaptations provided by the regional authorities responsible for the social integration of persons with disabilities.

The Flemish Service for Labour Mediation and Vocational Training (VDAB, *Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding*) grants an allowance for the costs of adapting the job post, which are borne by employers who employ persons with a disability under an employment contract or statutory employment. In order to be able to claim the allowance for the costs of adapting the work post, the employer must meet strict conditions. First, the employer shall demonstrate that the adaptation of the work post is not customary in the profession in which the person with a disability works or where he is undertaking training, and that it is directly necessary for the exercise of the person's professional activities; secondly, he must undertake to keep the person with

⁶⁷ See: <https://fedweb.belgium.be>.

⁶⁸ *Koninklijk besluit van 6 december 2020 en Koninklijk besluit van 21 december 2021 houdende gedeeltelijke verdeling van het provisioneel krediet ingeschreven op het programma 06-40-2 van de Algemene uitgavenbegroting voor het begrotingsjaar 2020 en bestemd tot dekking van de uitgaven voortvloeiend uit initiatieven inzake culturele diversiteit, gelijkheid van kansen en de aanpassing van arbeidsposten voor personen met een handicap in verschillende federale overheidsdiensten en departementen en in sommige instellingen van openbaar nut, B.S.* 18 December 2020 and 31 January 2022 (Royal Decrees of 6 December 2020 and 21 December 2021 concerning the partial distribution of the provisional credit entered in programme 06-40-2 of the General expenditure budget for the financial year 2020 and intended to cover the expenditure resulting from initiatives relating to cultural diversity, equal opportunities and adaptation of employment posts for persons with disabilities in various federal public services and departments and in some public benefit institutions, Belgian Official Journal, 18 December 2020 and 31 January 2022).

⁶⁹ *Jaarverslag 2018 Gelijkekansen- en Diversiteitsbeleid Vlaamse overheid* (Annual Report 2018, Equal Opportunities and Diversity Policy, Flemish Government), <https://overheid.vlaanderen.be>.

a disability whose work position has been adapted in service for a minimum period of six months; thirdly, he must undertake in future to reserve any work post adapted with a subsidy from VDAB as a matter of priority for a person with a disability; fourthly, he must undertake not to include the adjustment, if an allowance has been granted for it, among his operating expenses in his tax return; finally, he must demonstrate that the adaptation concerns an adjustment of the work post for a person with a disability who lives and works in the Flemish Region. The intervention only covers the difference between the costs of adapting the workstation for an able-bodied person and the costs of adapting the workstation as required because of the disability.⁷⁰

No figures are given in VDAB's annual reports about the number of workstation adjustments that are subsidised each year, nor about the budgetary cost of this intervention. Despite the lack of a specific budgetary ceiling for this expenditure item, it is rather limited. It appears from the answer of the Flemish Minister of Work to parliamentary question No. 583 of 16 March 2021 by the MP Robrecht Bothuyne that 61 applications for subsidising workstation adjustments were granted by VDAB in 2020.⁷¹

Under similar strict conditions, but within the credits available for this specific item of expenditure, the Walloon Agency for a Life of Quality (AVIQ) provides allowances to employers who wish to adapt a work position for an employee or trainee with disabilities.⁷² The 'Report on the actions taken in 2019 for the professional integration of persons with disabilities in ordinary companies' published by AVIQ states that 151 companies were effectively subsidised by a total of EUR 428 931.⁷³

The AVIQ website provides employers with some examples of the most frequent measures, such as alternating working positions, modifying the controls of a machine, adjusting the light, reducing noise, acquiring specific equipment taking the disability into account (such as a telephone with amplification or a computer with voice synthesis), and improving architectural accessibility (with changes of levels, width of doors and corridors, etc.).⁷⁴

The PHARE service (*Personne Handicapée Autonomie Recherchée*), an administrative department of the French Community Commission in Brussels, can support the employment of persons with disabilities registered with it by covering the costs of adaptations to the workplace.⁷⁵ PHARE's annual report for 2019 lists 22 subsidised labour post adjustments.⁷⁶

⁷⁰ Arts. 15 and 16, Regulation of the Flemish Government of 18 July 2008 on the professional integration of people with a work disability.

⁷¹ See: <https://docs.vlaamsparlement.be>.

⁷² Arts. 1130-1133, *Code réglementaire wallon de l'Action sociale et de la Santé* (Walloon Regulatory Code for Social Action and Health).

⁷³ AVIQ, *L'intégration professionnelle des personnes handicapées dans les entreprises ordinaires, rapport relatif à l'année 2019*, pp. 54 and 81, <https://www.aviq.be>.

⁷⁴ AVIQ, *Quelques exemples des mesures les plus fréquentes que les entreprises mettent en place* (Some examples of the measures most frequently implemented by companies), <https://www.aviq.be>.

⁷⁵ Art. 48,7°, *Decreet van de Franse Gemeenschapscommissie van het Brussels Hoofdstedelijk Gewest van 17 januari 2014 betreffende de inclusie van personen met een handicap* (Decree of the French Community Commission of the Brussels-Capital Region of 17 January 2014 on the inclusion of people with disabilities).

⁷⁶ Service PHARE, *Rapport d'activités 2019* (Annual Report for 2019), <https://phare.irisnet.be>, p. 19.

3.2 Partnerships to assist employers to make reasonable accommodations

The Federal Public Service Policy and Support has developed a brochure headed 'Reception and integration of an employee with a disability or a chronic illness', with personal testimonies and useful tips for approaching reasonable adjustments in the workplace for people with different types of disabilities (auditory, visual, intellectual, etc.), which were developed in consultation with interest groups for persons with disabilities and technical expertise centres.⁷⁷

'*Handicap en Arbeid*' (Disability and Work) is a consultation platform of associations and authorities on disability and chronic illness and has mandates in the Diversity Committee of the Social Economic Council of Flanders (SERV), in the Stakeholder Forum of the Flemish Service for Labour Mediation and Vocational Training (VDAB) and in the governing body of the Specialised Trajectory Guidance (GTB). It developed a web page headed 'Work environment adaptations' with a list of possible adaptations for the blind and partially sighted, the deaf and hard of hearing, and persons with a physical disability, as well as a web page with 33 personal testimonials of good practices.⁷⁸

A joint brochure was drawn up by the Training Fund for the Temporary Employment Sector and Actiris Brussels under the title 'Persons with disabilities as temporary workers? That's a good thought!' one page of which is devoted to the duty of reasonable accommodation.⁷⁹

All these publications have an attractive visual presentation, but they sometimes lack substantive precision.

⁷⁷ *Federale Overheidsdienst Beleid en Ondersteuning* (Federal public service policy and support), 'Onthaal en integratie van een medewerker met een handicap of een chronische ziekte' (Reception and integration of an employee with a disability or a chronic illness), available at: <https://fedweb.belgium.be>.

⁷⁸ See: <https://www.handicapenarbeid.be>.

⁷⁹ *Vormingsfonds voor uitzendkrachten* (Training Fund for the Temporary Employment Sector) and Actiris Brussels, 'Personen met een handicap als uitzendkracht? Dat is een goed gedacht!' (Persons with disabilities as temporary workers? That's a good thought!), <https://travi.be>.

4 Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities

4.1 Good practice guides for employers regarding reasonable accommodation

The cooperation agreement of 19 July 2007 that was concluded between the federal and regional authorities gives examples and further explanations of reasonable accommodations, which could entail the adaptation of the workspace or the use of specific equipment or organisational arrangements. It also provides that the reasonable accommodation must be efficient, must ensure equal participation of the person with a disability as well as autonomous participation, and must ensure the security of the person. The agreement then sets out a non-exhaustive list of criteria to determine whether the measure constitutes a disproportionate burden. This takes into account the financial impact of the measure (assessed on the basis of possible financial interventions by the state and the financial capacity of the employer), as well as its organisational impact, the frequency of use of the accommodation, the impact on the quality of life of other persons with disabilities, the impact on the general environment or other people, the lack of appropriate alternatives, and the non-application of current compulsory rules. Finally, the agreement puts in place a monitoring mechanism, requiring each authority to collect information on reasonable accommodation and examples of best practice.⁸⁰

Selor, the recruitment body of the federal Government, has developed an explanatory brochure entitled 'Labour Post Adjustments – Optima Handicap' that provides guidance to various Government departments on the process of labour post adjustments and other reasonable accommodations for taking on persons with disabilities. Employers in the federal public sector can contact the diversity policy unit at Selor to get information and advice and to request adapted selection tests. Selor enters all the adjustments made in a database. A number of steps in the selection process involve input from the network of experts that Selor has set up. The network consists of about 25 people who are active in specific organisations for people with a disability.⁸¹

The Diversity Policy Service of the Flemish Government has developed a 'Reasonable Adjustments Checklist' that is widely distributed to confidential advisers and HR staff in the Flemish Government administrations. The checklist briefly summarises the trade-offs to be made when assessing reasonable accommodations. The tool can be used in various situations, and not just in the selection process.⁸²

UNIA, the Interfederal Centre for Equal Opportunities, has made a detailed brochure available on its website, in both national languages, with explanations of the legislation on reasonable accommodation at work. It describes which criteria reasonable accommodations must meet and how the reasonableness of the accommodations must be viewed on a case-by-case basis, in accordance with the provisions of the Protocol on the concept of reasonable accommodation in Belgium, which was

⁸⁰ Protocol of 19 July 2007 on the concept of reasonable accommodation in Belgium, Belgian Official Journal, 20 September 2007.

⁸¹ Selor, 'Arbeidspostaanpassingen – Optima HA' ('Labour Post Adjustments – Optima Handicap'), <https://www.selor.be>.

⁸² Diversity Policy Service, Flemish Government, Checklist *Redelijke aanpassingen* (Reasonable Adjustments Checklist), <https://overheid.vlaanderen.be>.

approved in the Cooperation Agreement of 19 July 2007. Recommendations and practical tips are then formulated for employers and personnel managers to make reasonable adjustments in practice during the selection procedure, during the person's career, and when the person returns to work after sick leave. The brochure clarifies how a request for reasonable accommodation should be addressed, which internal and external experts can help, and what can be done in case of disagreement between employee and employer. For further information on the various premiums or measures that reduce the financial and organisational burden for employers who employ people with disabilities, reference is made to the websites of the competent regional authorities. This brochure is also available in audio description, in Flemish and French sign language on YouTube, and in an easy-to-read version.⁸³

The above-mentioned guides describe in detail the assessment process that must take place when implementing reasonable adjustments. The UNIA brochure in particular is of high quality and can provide guidance for many employers and mediators.

4.2 Any other sources of information regarding good practice for employers regarding reasonable accommodation

The National Institute for Health and Disability Insurance organises an annual certified training session in disability management. This training is aimed at professionals who work on job retention and reintegration in the job (e.g. occupational physicians and HR managers).⁸⁴ The training is certified by the Canadian National Institute of Disability Management and Research (NIDMAR), which provides extensive know-how on reasonable accommodation for persons with disabilities in the workplace.⁸⁵

UNIA also organises counselling and training for HR staff and heads of departments. The Handicap module focuses on reasonable adjustments and their implementation in practice. The online tool uses videos and exercises, so that users can discover a wide range of possible adjustments, and it presents a step-by-step plan to determine whether an adjustment is reasonable or not for the company or organisation.⁸⁶

UNIA also provides a database of summaries, and often also the full text, of court rulings on disability discrimination, including cases revolving around the refusal to adopt reasonable accommodations. Often, these are cases in which the lawfulness of a dismissal is contested, partly because the alternative of reasonable accommodation has not been sufficiently examined.⁸⁷

⁸³ UNIA, 'Aan het werk met een handicap. Redelijke aanpassingen op het werk' ('Working with a disability: Reasonable adjustments at work'), <https://www.unia.be>.

⁸⁴ Rijksinstituut voor ziekte- en invaliditeitsverzekering (RIZIV) (National Institute for Health and Disability Insurance), 'Disability management. Van opleiding tot certificatie' (From training to certification), available at: <https://www.riziv.fgov.be>.

⁸⁵ See: <https://www.nidmar.ca>.

⁸⁶ See: <https://www.unia.be>.

⁸⁷ See: <https://www.unia.be>.

4.3 Examples of individual reasonable accommodations which reveal good practice

An extensive sample list of possible reasonable adjustments can be found on the AVIQ website.⁸⁸ This list is largely inspired by the 'Searchable Online Accommodation Resource', a service of the US Department of Labor.⁸⁹

Telework

A real-life example of good practice that has received media attention is that of the judge who, following a skiing accident resulting in quadriplegic paralysis, resumed his duties after intensive rehabilitation.⁹⁰ Reasonable adjustments were made in consultation with the presiding judge, such as the adaptation of a workstation at the person's home, where he teleworks three or four days a week.

This is a significant example of a public sector employer enabling a wheelchair user with a severe physical disability to perform his job through a mix of reasonable accommodations, including flexible working hours and financial support to create an adapted workspace. A multifaceted package of support tailored to the needs of the person with a disability has been brought together, enabling him to provide his professional services on an equal footing with that of his colleagues. The example illustrates that, with active collaboration between the person with a disability and the employer, sustainable results can be achieved.

⁸⁸ See: <https://www.aviq.be>.

⁸⁹ See: <https://askjan.org>.

⁹⁰ See: <https://www.knack.be>, 20 February 2018.

5 Recommendations and guidance regarding good practice and reasonable accommodation

5.1 Recommendations regarding good practice and reasonable accommodation in recruitment and hiring

Good support for employers should be given in order for them to adopt reasonable adjustments in the recruitment and selection process, including through options for adapted tests, as carried out by Selor for the federal Government. Other employment agencies or employers can take inspiration from this as, for small and medium-sized enterprises, these recommendations are sometimes difficult to implement in practice.

5.2 Recommendations regarding good practice and reasonable accommodation in initial employment

The information guides should make clear for which adjustments sufficient funding is provided. Strict allocation conditions, such as the location of the person with a disability's place of residence or their place of employment in a particular region, should be explained. An alternative solution could be that reference is made to the websites and contact addresses of the competent authorities for reimbursement of the costs of reasonable adjustments.

The definition of 'workplace adjustments' leaves too little room for reasonable adjustments of an organisational nature. As the budgetary impact of this Government intervention is marginal, there certainly is room for expansion, all the more so as cover of up to 100 % of the additional costs incurred by the employer is state aid exempt from the notification requirement referred to in Article 108(3) of the Treaty on the Functioning of the European Union.⁹¹

5.3 Recommendations regarding good practice and reasonable accommodation in promotion and career development

In the guides on reasonable accommodation, more attention should be given to the possibility of changing the employment support needs of the person with a disability.

The person with a disability should gain more control over the use of wage subsidies by the employer, so that a range of reasonable adjustments, in particular those of an organisational nature, can be made with these funds.

5.4 Recommendations regarding good practice and reasonable accommodation in retention, i.e. enabling people to stay in work if they develop an impairment or their impairment changes

All too often, the possibility of reasonable accommodation is considered too late and in an atmosphere of conflict, especially when the employee has already been dismissed and invokes the refusal of reasonable accommodation in order to classify his dismissal as discrimination and to claim compensation. Disability managers, preferably those working within companies, should play an important supporting role

⁹¹ Art. 8(6), Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

for people with developmental disabilities or who acquire a disability during their employment, and for their employer. Good relationships between employee and employer often develop after years of cooperation and can be maintained with the prospect of reasonable adjustments.

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Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU.

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