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Report of the Working Group on the Universal Periodic Review*

Belgium

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document is being issued without formal editing.



1. Belgium wishes to reaffirm its support for the universal periodic review, which has proved its usefulness as a tool for the promotion and protection of human rights worldwide.
2. Of the 308 recommendations that were made during the dialogue, Belgium immediately accepted 218 and noted a further 21. Belgium deferred its consideration of 69 recommendations. Having now examined those recommendations, it wishes to provide the following responses.
3. Belgium supports recommendations 36.6, 36.10, 36.14, 36.15, 36.16, 36.17, 36.21, 36.22, 36.23, 36.25, 36.26, 36.28, 36.29, 36.30, 36.31, 36.33, 36.37, 36.41, 36.45, 36.47, 36.50, 36.51, 36.52, 36.53, 36.55, 36.56, 36.57, 36.58, 36.60, 36.61, 36.63, 36.64 and 36.69. The words “all competencies” in recommendation 36.6 concerning the Federal Institute for the Protection and Promotion of Human Rights are understood to mean competence at the federal level. Regarding recommendations 36.15 and 36.16, there is no specific action plan to combat Islamophobia, but the issue will be included in the future national action plan against racism. With regard to recommendations 36.55 and 36.57, the authorities of the Flemish Region wish to clarify that they work with targets, not quotas. Concerning recommendation 35.47, Belgium will continue to use its standing body for coordination and consultations on multilateral and global issues and does not intend to create new bodies or mechanisms.
4. Recommendations 36.21, 36.22 and 36.23. Belgium is preparing a national action plan against racism, which will address issues that affect people of African descent; however, there is no strategy aimed specifically at people of African descent. The aim is to develop a federal plan, which will be limited to the areas under federal jurisdiction.
5. Recommendation 36.33. Belgium considers it neither appropriate nor effective to declare certain organizations illegal, given the importance that it attaches to freedom of association, which is guaranteed by the Constitution. Its current legislative arsenal allows for effective action in this area. As a reminder, incitement to racial hatred falls outside the legal boundaries of freedom of expression and is punishable under article 20 of the Anti-Racism Act. Organizations with legal personality can be prosecuted on that basis and sentenced to fines. In such cases, the organization concerned cannot be dissolved by order of the courts; however, in practice, such proceedings often lead to its dissolution. The majority of cases involve de facto organizations and associations, whose members may be prosecuted individually under article 20 and/or article 22 of the Act (which prohibits membership of a group or association that clearly and repeatedly advocates or supports racial discrimination or segregation) and may be sentenced, where appropriate, to fines and/or imprisonment. Many judicial decisions of this kind have already been handed down in Belgium.
6. Belgium partially supports recommendations 36.1, 36.2, 36.3, 36.4, 36.11, 36.27, 36.43 and 36.46. Regarding recommendations 36.1, 36.2, 36.3 and 36.4, it supports the idea that it should ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With regard to recommendation 36.27, it notes that, as a general rule, due diligence legislation is not specific to conflict-affected areas.
7. Belgium accepts only the first part of recommendation 36.46, because the second part is contrary to freedom of expression, which is enshrined in the Constitution. Belgium has undertaken to combat antisemitic imagery, within the limits of the existing regulations on freedom of expression. Regarding recommendation 36.11, freedom of expression is guaranteed by the Constitution but is subject to certain restrictions, for example under the Anti-Racism Act. The Constitution specifically protects the freedom of expression of members of parliament; it states, for example, that members of parliament cannot be prosecuted or investigated for opinions expressed or votes cast in the exercise of their duties.
8. Recommendations 36.2, 36.3, 36.4, 37.1, 37.2, 37.3, 37.4, 37.5, 37.6 and 37.19. Although Belgium attaches great importance to the rights of migrants, it is unable to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. One of the particularities of this treaty signed in 1990 is that it confers equal rights on migrant workers in a regular situation and those in an irregular situation. This approach differs from the one taken in the relevant European Union and national regulations, which clearly distinguish between the two types of migrants.

9. Belgium notes recommendations 36.5, 36.7, 36.8, 36.9, 36.12, 36.13, 36.18, 36.19, 36.20, 36.24, 36.32, 36.34, 36.35, 36.36, 36.38, 36.39, 36.40, 36.42, 36.44, 36.48, 36.49, 36.54, 36.59, 36.62, 36.65, 36.66, 36.67 and 36.68 and recalls that it has already noted recommendations 37.1 to 37.21. These are recommendations that Belgium cannot commit to implementing at this stage, whether or not it agrees with the underlying principles.

10. Recommendations 36.5, 36.12, 36.13, 36.18, 36.19, 36.54 and 36.68. Minorities in Belgium benefit from numerous national and international protection mechanisms. However, Belgium has not yet ratified the Framework Convention for the Protection of National Minorities. When it signed the Convention, it entered a reservation, as did several other States. The reservation entered by Belgium reads as follows: “The Kingdom of Belgium declares that the Framework Convention applies without prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules which currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference of foreign policy.” This matter falls under the jurisdiction of the federal authorities and the federated entities. A conference working group was established to put forward an official definition. The working group has met several times, most recently in March 2021, but has not yet reached a consensus. All the authorities concerned have undertaken to actively continue working on the issue.

11. Recommendation 36.7. Belgium has undertaken to put in place a national human rights institution that covers all fundamental rights throughout the territory and complies with the Paris Principles to the extent that it may be granted A status. The establishment of the Federal Institute for the Protection and Promotion of Human Rights in 2019 was a step forward, since the Institute covers all human rights issues that fall within federal jurisdiction and may gain inter-federal status at a later stage, thus ensuring full coverage of human rights (including at the level of the federated entities). It is also possible for the federated entities to set up their own human rights institutions. Whatever happens, the federated entities and the federal Government need to agree on a shared vision. To that end, they will need to negotiate a cooperation agreement.

12. Recommendation 36.8. In recent years, Belgium has initiated several processes related to its colonial past, including the establishment of a parliamentary commission that began its work in 2021, but the recommendation is very general, too broad and not specific enough.

13. Recommendation 36.9. Belgium attaches great importance to combating both hate crimes and hate speech. However, although Belgium intends to move forward with implementing the three types of measure mentioned in this recommendation, Belgium cannot support the recommendation, because it contains imprecise terms that do not correspond to the categories used in Belgian law. Work is under way to improve the recording of hate crimes and thus the quality of the data available on the subject.

14. Recommendations 36.20 and 36.24. Belgium made a number of comments on the report of the Working Group of Experts on People of African Descent on its visit to Belgium that prevent it from accepting these two recommendations.

15. Recommendations 36.32, 37.9, 37.20 and 37.21. Belgium considers that these recommendations are either too vague or worded in a way that lacks nuance.

16. Recommendation 36.34. Repatriation is available only to certain categories of persons. For persons outside those categories, the Government adheres to the principle of extradite or prosecute.

17. Recommendations 36.35 and 36.36. Belgium considers that these recommendations are contrary to the spirit of the universal periodic review, which is focused on human rights.

18. Recommendations 36.38 and 36.39. Belgium intends to limit the time spent by inmates in prison psychiatric units, including by increasing the number of beds available in regular psychiatric facilities and by upgrading some prison places. Nevertheless, when a decision on committal is handed down, the person concerned is held in a prison psychiatric unit until he or she has been assigned to a health facility outside the prison.

19. Recommendation 36.40. Belgium is using all available means to ensure that the prison population does not exceed prison capacity, but it cannot guarantee that it will achieve that goal by the next cycle of the universal periodic review.
20. Recommendations 36.42, 36.43 and 36.44. In Belgium, freedom of religion and freedom of expression are guaranteed by the Constitution, which states that “freedom of religion and of public worship and the freedom to express one’s opinions on any subject are guaranteed, except where offences are committed in the exercise of such freedoms”. That being said, the Conseil d’État, the country’s highest administrative court, has ruled that the wearing of religious symbols may be banned, provided that there is concrete justification for such a measure. This position is in line with article 18 (3) of the International Covenant on Civil and Political Rights and article 9 (2) of the European Convention on Human Rights on the legal restrictions that may be placed on freedom of religion.
21. Recommendation 36.48. In 2002, Belgium passed a law that decriminalized euthanasia in certain situations. A doctor may perform euthanasia at the request of the patient concerned if the conditions set out in the law have been met. Only the patient concerned may request euthanasia. Euthanasia remains punishable if it is not performed by a doctor or if the doctor does not observe the conditions and procedure established by law. No doctor is required to perform euthanasia. The procedure, which is strictly defined by law, includes a reflection period and the involvement of several independent doctors. Lastly, there is a federal commission responsible for monitoring and evaluating compliance with the law.
22. Recommendation 36.49. Belgium strives to ensure the equal representation of men and women in public administration, but parity cannot be guaranteed at all times.
23. Recommendations 36.59 and 36.62. Belgium cannot accept these recommendations, owing to the use of the word “absolute”.
24. Recommendation 36.66. Economic status is not one of the criteria used with respect to beneficiaries of international protection.
25. Recommendation 36.67. The recommendation is not clearly worded. In theory, all children should receive appropriate care, but the recommendation is worded in such a way that it could also be understood to create obligations for Belgium as regards access to Belgian territory for children who are not yet migrants or who are in other countries.
26. Recommendation 37.7. Since the purposes of the 1960 Convention against Discrimination in Education have already been achieved in the framework of other subsequent instruments, Belgium does not consider it necessary to ratify this Convention.
27. Recommendation 37.8. As a State Member of the United Nations and member country of the European Union, Belgium is required to apply the various sanctions regimes that have been decided upon. Moreover, European regulations are directly applicable in Belgium. The sanctions are consistent with international law and humanitarian principles. Belgium focuses on “smart” sanctions that are not aimed at the general population, for if sanctions are to serve their intended purpose, they must have an impact on the right people and the right products. In addition, exceptions are made for humanitarian aid, medicines and food products.
28. Recommendations 37.10, 37.11, 37.12 and 37.13. In the exercise of their duties as defined by law, police officers may need to use force, doing so in strict compliance with the conditions laid down in the national and international legal framework and the provisions on the protection of human rights contained therein. The police regulations are based on the principles of impartiality, integrity and dignity and prohibit all forms of discrimination. The above-mentioned legal framework confirms that Belgium does not tolerate any form of discrimination, humiliating treatment or excessive use of force by the police. Ethnic profiling is prohibited in Belgium. Any behaviour that is inappropriate, unlawful or detrimental to rights and freedoms is therefore examined and dealt with through both disciplinary and criminal proceedings by the competent internal and external authorities and bodies.
29. Recommendations 37.14 and 37.15. Belgium recognizes the valuable contribution that families can make by strengthening our societies and the need to support their role, while acknowledging that families can take a variety of forms. Belgium complies with its obligation

to promote and protect the human rights of individual members of families, under article 23 of the Covenant.

30. Recommendation 37.16. The Institute for Equality between Women and Men is the federal public institution responsible for guaranteeing and promoting equality between men and women and combating all forms of discrimination and inequality based on sex.

31. Recommendation 37.17. At this stage, Belgium cannot commit to adopting additional legislation on domestic violence and violence against women, although it is examining the possibility and the added value of adopting a framework law and/or a cooperation agreement covering all forms of gender-based violence. The Criminal Code already contains several articles that target gender-based violence through the application of aggravating circumstances.

32. Recommendation 37.18. It is already the case that all women victims of violence, including migrant women in an illegal administrative situation, can file a complaint with the police without this procedure in itself resulting in expulsion or detention in a closed centre.
