4 Human rights and digital divide

Recent developments in the case law of the Belgian Council of State[1]

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4.1 Introduction

In April 2024, Prof. Elise Degrave suggested in newspaper *Le Soir* (Degrave, 2024) that a new fundamental right should be enshrined in the Belgian Constitution: the right not to use the Internet (see also, Degrave, 2023: 212–244; Kloza, 2024).

In Belgium, constitutional amendment itself presupposes a preliminary step: the Constitution must be first declared open to revision on the point in question, either to incorporate the proposed new provision or to amend an existing provision (Belgian Constitution, art. 195).[2]

In view of the data currently available, this preliminary hurdle could be considered to have been passed. The declaration of revision of the Constitution, published in the Belgian Official Journal on 27 May 2024, indeed allows for the insertion, in Article 23 of the Constitution, of a right to a universal communication service, the negative aspect of which could, among other things, include the right not to use the Internet (*Moniteur belge*, 2024). All that remains is to find the necessary governmental majority to proceed – after the constitution of the Federal Government – with the actual revision.

There are undoubtedly very good reasons for producing such a constitutional effort. If the right not to use the Internet implies, among other things (Kloza, 2024), the need to provide an alternative to "all-digital" for the victims of the "digital divide", then, according to the latest figures available (King Baudouin Foundation, 2022; UNIA, 2023), there is a real urgency to do so in Belgium. According to figures from the King Baudouin Foundation (King Baudouin Foundation, 2024), in 2023, 40% of people aged 16 to 74 are in a situation of digital vulnerability (compared to 46% in 2021): 5% do not use the Internet and 35% have low digital skills. Despite this positive development, the proportion of Belgians with weak digital skills remains higher than the European average and, more importantly, higher than that of our neighbouring countries. Furthermore, in terms of digital vulnerability, the gap between low- and high-income individuals widens by 3 percentage points.

The aim of this chapter is to show that, while awaiting the desired constitutional revision, the Belgian legal system has already, on more "classical" legal bases, produced some interesting solutions to the problem at hand. The principle

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of equality and non-discrimination were important levers in this respect (Section 4.1). More recently, the constitutional provision dedicated to the inclusion of people with disabilities also offered a welcome boost (Section 4.2). However, the ideal of "concrete and effective rights", to use the famous words of the European Court of Human Rights (ECHR, *Airey*, 1979), cannot be satisfied with these early achievements, and will require more than the pure and simple inclusion in the Constitution of a new provision that would merely codify this *constitutional acquis*: this is what will be outlined in Section 4.3.

This contribution is essentially based on an observation of the advisory practice of the Legislation Section of the Belgian Council of State (*Conseil d'Etat*),[3] to whose office the two authors contribute as, respectively, auditor and assessor.

4.2 Digitalisation, equality and non-discrimination: the aftermath of the "Moniteur belge" judgment

"Indirect" discrimination occurs when an apparently neutral practice is likely to cause particular harm to a category of people because of their age, disability, sex or particular socio-economic situation.[4]

Clearly, the increasing digitisation of the provision of goods and services – both private and public – will come into tension with this aspect of the ban on discrimination (Langlois & Van Drooghenbroeck, 2023): Statistically, elderly people, those with disabilities, or in situations of socio-economic hardship are indeed overrepresented in the category of victims of the digital divide. Access to these goods and services for these categories of people will become increasingly difficult, if not impossible.

Although this precise concept of "indirect discrimination" was not used at the time, this tension first came to light in the ruling handed down by the Belgian Constitutional Court on the changeover from the paper version to the electronic version of the Belgian official journal (*Moniteur belge*, *Belgisch Staatsblad, Belgisches Staatsblatt*).

At the end of 2002, a legislative reform abolished the paper version of the *Moniteur* and replaced it with an electronic version,[5] which was considerably less expensive. Only three paper copies remained, deposited with the Royal Library, the Ministry of Justice and the Directorate of the *Moniteur*, respectively. The resulting reform was challenged before the Constitutional Court on the grounds that, in breach of Articles 10 and 11 of the Constitution (i.e., principles of equality and non-discrimination), it resulted in *a de facto* disadvantage for certain categories of people, i.e., the victims of the "digital divide". The Court, in judgment no. 106/2004 of 16 June 2004 (Constitutional Court, 2004), accepted this argument:

> B.14. The contested provisions do not in themselves create any difference in treatment, since all persons to whom legislative and administrative acts apply can acquaint themselves with them in the same way. But the criticism levelled against those provisions is precisely that they fail to take account of the fact that not everyone has equal access to computer technology. The principle of equality

> and non-discrimination may be breached when the legislature treats people in essentially different situations in the same way.

The aim pursued by the legislator was certainly legitimate. However, it was still necessary to ensure compliance with the proportionality requirement. To this end, judgment no. 106/2004 had listed the accompanying measures that had been put in place (retention of three paper copies, right to demand a particular document in print, …) or vaguely envisaged (promise of computer equipment for municipalities), but found that they were not sufficiently effective, *hic et nunc*. The Court therefore concluded that:

> B.21. The paper edition of the Moniteur belge no doubt did not ensure that everyone was aware of the texts that were binding on them. For some people, making the texts available on a website will even make them more accessible and less expensive.
>
> But the fact remains that, as a result of the measures taken, a large number of people will be deprived of effective access to official texts, in particular due to the absence of accompanying measures that would give them the opportunity to consult these texts, whereas previously they were able to consult the content of the *Moniteur belge* without having to have any special equipment and without having any qualifications other than knowing how to read.
>
> B.22. In the absence of sufficient measures to ensure equal access to official texts, the contested measure has disproportionate effects to the detriment of certain categories of persons.
>
> It is therefore incompatible with Articles 10 and 11 of the Constitution.

Aware of the difficulties likely to arise in terms of legal certainty as a result of the annulment it had pronounced, the Constitutional Court nevertheless maintained the effects of the annulled provisions until a year after, i.e., 31 July 2005.

The legislator therefore had to adapt the system. This was done with an Act of 20 July 2005. Unlike its predecessor, this reform introduced accompanying measures, in particular the introduction of a free telephone helpdesk at the *Moniteur*'s head office. The reform was again challenged before the Constitutional Court which, taking into account the aforementioned accompanying measures, no longer considered that Articles 10 and 11 of the Constitution had been violated (Constitutional Court, 2007).

This line of reasoning has been emulated in a number of ways in the advisory practice of the Legislation Section of the Belgian Council of State.[6] We will mention here the most significant and recent examples: older others have already been analysed in a previous publication (Langlois & Van Drooghenbroeck, 2023).

A first series of recent advisory opinions was issued in the field of education.

First of all, mention should be made of advisory opinion no. 73.507/2 issued on 5 June 2023 (Council of State, 2023 (b)) on a draft decree of the French-speaking Community[7] relating, in substance, to the digitisation of the pupil's support file

(*Dossier d'accompagnement de l'élève*; DACCE).[8] The explanatory memorandum to the draft stated that

> digitalising the procedure will make it possible (…) to simplify the work of schools and the Administration by facilitating the transmission of documents between the various parties, and to secure these exchanges. This project also seeks to prevent the effects of a possible digital divide. To this end, alternatives are systematically envisaged for parents who do not have access to IT tools (consultation within the school or CPMS [*Centres Psycho-Médico-Sociaux/Psycho-Medico-Social Centers*], provision of a paper copy, sending copies of decisions by post, etc.).

However, the Council of State considered that

> Although *many* provisions do indeed provide for an alternative to the service of documents on interested parties by digital means, it has been noted that this alternative is not s*ystematically* provided for (emphasis added).

The French-speaking Community was therefore invited to complete its draft on this point.

Still on the subject of digitalisation in schools, advisory opinion no. 71731/2 of 1 August 2022 (Council of State, 2022) stated the following in relation to the guarantee of equality specifically set out in Article 24(4) Constitution:

> The Legislation Section notes that the draft regulation examined and its appendix 1 establish a set of rights for parents or students of legal age which can only be exercised electronically and to an electronic address.
>
> Such a system, which is aimed at the general population and not at recipients who can reasonably be assumed to have an e-mail address and to be familiar with exercising their rights 'online', therefore assumes that 'parents' or students of legal age have a computer and the basic knowledge that will enable them to effectively exercise the rights that the system under review is designed to grant them.
>
> Although the digital divide is constantly shrinking, it still affects a significant percentage of the population living in the French-speaking Community.
>
> In the view of the Legislation Section, it would therefore be contrary to Article 24(4) of the Constitution not to provide for the right of parents who are victims of the digital divide to be given a computer session at the school or CPMS centre [*Centres Psycho-Médico-Sociaux/Psycho-Medico-Social Centers*] and to obtain specific assistance in carrying out all the procedures that the draft text provides must be carried out electronically.

The advisory opinion adds: "It would even be preferable for the parents concerned to consider written procedures". The "paper" procedure or, at the very least, "specific assistance" is also the alternative recommended by the Legislation

Section in the name of the principle of equality in its advisory opinion of 6 November 2023 on the registration of cats in an electronic database (Council of State, 2023e). The draft decree examined in this opinion established an official database for the registration of cats, allowing the identification of the responsible party when an abandoned or lost cat is found, monitoring compliance with the obligation for cat identification and sterilisation, monitoring compliance with the conditions for the approval of shelters and breeders, and monitoring the trade and movement of cats. In this context, an obligation for the electronic registration and updating of data was specifically imposed on individuals, cat owners or custodians, who regularly manage or directly supervise the animal. According to the Council of State:

> (s)uch a system, which targets the general population (…), therefore assumes that 'individuals, cat owners or custodians who regularly manage or directly supervise the animal' have access to a computer and possess basic knowledge that will allow them to meet the obligations imposed by the examined system. However, the digital divide continues to affect a non-negligible percentage of the population living in the Walloon Region.

The digitisation of justice is also a recurring point of attention in the practice of the Council of State (see Council of State, 2015). In an opinion no 72.861/1-2 (Council of State, 2023a), the Legislation Section stated the following about the organisation of hearings by videoconference:

> the draft legislation introduces a difference in treatment between litigants depending on whether or not they have access to an internet network, a connection of sufficient technical quality to this network and the computer equipment to enable effective and efficient use of videoconferencing in accordance with the 'practical arrangements' to be specified later by the King.
>
> In these conditions, some litigants could find themselves in situations where they are unable to appear by videoconference or are obliged to do so under unacceptable technical conditions.
>
> It is the duty of the author of the draft legislation to take into account, by means of accompanying measures, the situation of litigants who currently do not have access to the Internet or who do not have technical equipment of sufficient quality to be able to appear by videoconference, otherwise there will be disproportionate effects to the detriment of certain categories of people.

It is certainly remarkable that, in a subsequent advisory opinion, the Council of State emphasised that these considerations relating to the digital divide and the need to take accompanying measures, can be applied even when the litigant is not a natural person but a legal entity. Indeed, according to advisory opinion no 74.291/1-2-3 (Council of State, 2023a) people who are digitally disadvantaged "may be the organs of legal entities, particularly when these are small or even one-person entities".

Additionally, in the case law of both the Constitutional Court and the Council of State, the accompanying measures required under the prohibition on indirect discrimination must remain "reasonable and proportionate". This requirement needs a contextual assessment.[9] One key to analysis may lie in whether we are dealing with the public or private sector: it is indeed reasonable to expect more from a public actor than from a private one (Langlois & Van Drooghenbroeck, 2023). However, this first "organic" criterion still needs to be refined in the light of the possibly essential nature of the service provided by the private actor, which may justify a heavier "burden". This seems to be the conclusion of an advisory opinion issued by the Legislation Section on 23 June 2023 (Council of State, 2023c). The main purpose of the proposed draft law was to require financial institutions to guarantee "sufficient access, throughout the country, to basic non-digital financial payment services (…)". In the idea of the MPs who drafted the bill, this accessibility should entail "collectively guaranteeing that ATMs, self-banking machines and systems for printing bank statements are spread throughout the country at a minimum level". According to the Council of State, such an obligation does restrict the freedom of enterprise of the establishments concerned. However, this restriction was admissible in the view of the Council. Firstly, it pursues a legitimate aim of "consumer protection" and "combating the digital divide in the banking sector". With regard to proportionality, the advisory opinion states that "even if it does not fall within the scope of the public service, the profession of banker is nevertheless exercised in a context of general interest". The Legislation Section therefore concludes that

> (t)aking into account the 'digital divide' within society and the fact that not everyone has equal access to information technology, the obligations imposed on credit institutions by the proposal under consideration can be analysed as support measures for the digitally disadvantaged.

According to the Council, however, it is important that when defining the concrete measures for implementing the law, the King should "ensure that these accompanying measures are reasonable, by balancing the interests involved".[10]

4.3 The right to inclusion for people with disability as a boost

Article 22*ter*, inserted into the Belgian Constitution in March 2021 (see Hachez, 2022), states that

> Every person with a disability has the right to full inclusion in society, including the right to reasonable accommodation.
>
> The law, federate law or rule referred to in Article 134 guarantees the protection of this right.

The preparatory work for this provision is not very precise on what it requires, and the issue of the digital divide is not mentioned (see Hachez, 2022). It is clear, however, that it can usefully be mobilised to "reinforce" the conclusions that can

already be drawn from the implementation of the "general" principle of equality and non-discrimination. Article 22*ter* in fact highlights the particular need for protection of people with disabilities, and explicitly states the need to adopt reasonable accommodation measures for their benefit.

On 17 August 2023, the Legislation Section issued an advisory opinion on this subject that is of the utmost importance for the issues we are dealing with here (Council of State, 2023d). In essence, the proposed legislation aimed to further the digital transition in the functioning of public services in Brussels, and, among other things, to systematise the digitisation of online administrative procedures and communications with public authorities. The Council of State considered that in combination with Articles 10, 11 and 23[11] of the Constitution, and Articles 9, 19 and 27 of the United Nations Convention on the Rights of Persons with Disabilities, Article 22*ter* of the Constitution requires that a "non-digital alternative" to the electronic administrative procedure be provided. This alternative, in the terms of the advisory opinion, must have certain precise characteristics in order to secure its real effectiveness. Firstly, it is, in the words of Article 22*ter*, subject to a principle of legality: "the essential elements of the right to digital support and to continued interaction with an official of the public authority, such as cost, minimum quality requirements and minimum requirements in terms of timetables and proximity", must be specified in the legislative text itself. Furthermore, the alternative must be effective. In this respect, the Legislation Section does not take it for granted that, as a non-digital alternative, and in addition to organising contact by post, the public authority may choose at its discretion to organise "either a physical reception or a telephone service". According to the Council of State, "Telephone reception by definition requires access to a telephone". Consequently, it is up to the legislator to demonstrate that the open option does in fact make it possible to guarantee the desired inclusiveness and accessibility.

4.4 A new constitutional provision. And what next?

The foregoing developments show that, on the basis of existing constitutional law, a right not to use the Internet is already firmly established. At least in part: Articles 10, 11 and 22*ter* of the Constitution in any case guarantee for the people who are digitally vulnerable, in particular because of a disability, the right to obtain the necessary accompanying measures in the event of a switch to digital access to certain services.

This is not to say that the insertion of a new, autonomous provision dedicated to the right not to use the Internet would be superfluous and deprived of any legal relevancy. A constitutional "insistence" can, beyond its purely symbolic dimension, affirm the Constituent's attachment to the protection of certain values and interests, and give them more "weight"[12] in the balance when they are opposed to other rights – for example, freedom to conduct a business. Constitutionalisation may also provide an opportunity to enshrine the other side of the right not to use the Internet – i.e., the right to access the Internet – which, in its social dimension, is also essential to effectively combating the negative effect of the digital divide.

Finally, the insertion of a new constitutional provision would be an opportunity to enrich the right not to use the Internet. It could no longer relate solely to the issue of accompanying measures for victims of the digital divide, but could be extended to new dimensions, such as the right to disconnect. The "right to disconnect" was introduced into Belgian labour law (private sector) by a law of 3 October 2022. Essentially, it is the right for workers not to be connected to professional digital tools (mobile phones, smartphones, PCs, email, etc.) outside of their working hours. Constitutionalising this right to disconnect would likely give it more substance and ensure a common baseline of guarantees for all Belgian workers – whether they belong to the private or public sector (federal, community, regional, provincial, municipal).

What is important, however, is to realise that, even with the insertion of a new constitutional provision dedicated to it, the guarantee of the right not to use the Internet, particularly in its dimension of protecting the victims of the digital divide, cannot be concrete and effective without any supplementary legislative implementation.

In this respect, the existence of appropriate and robust anti-discrimination legislation seems essential, in particular to ensure the enforceability of the right to accompanying measures in the "horizontal" relationships that develop between the victims of the digital divide on the one hand and private suppliers of goods and services on the other. In a previous contribution (Langlois & Van Drooghenbroeck, 2023), we attempted to show that Belgian anti-discrimination legislation, both federal and federated, offers a relatively effective – but still virtual at this stage[13] – tool for combating the discriminatory consequences of the digital divide thanks to its broad scope *ratione materiae* and *ratione personae*. A recent reform of this legislation has further enhanced this potential, in two respects. Firstly, the legislation now includes a ban on discrimination on the basis of "social condition", which includes a major vector of digital vulnerability.[14] Secondly, the amended legislation now explicitly authorises the competent judge to issue "positive injunctions".[15] These are better adapted and more refined tools than outright bans for preserving the "best" of digitisation while correcting its undesired discriminatory effects through targeted accompanying measures.

4.5 Conclusions

One final comment remains to be done. The assistance of the law and the Constitution is essential to guarantee a "non-digital" alternative or accompanying measures for those who, for reasons such as age or disability, are unable to handle all the consequences of the increasing digitalisation of the supply of goods and services and contacts with the authorities. However, the purpose of the right not to use the Internet should not be to create, and even to legitimise, a structural situation of dualisation or digital segregation, condemning for all eternity the victims of the digital divide to the use of alternatives and to begging for assistance. Still striving for effectiveness, positive measures must be associated with the new constitutional right, not only to effectively *counter the negative consequences* of the

digital divide, but also to *reduce the divide* itself. Those who "unwillingly" benefit from the *right not to use the Internet* must also be able to benefit from the *right to use the Internet*. Victims of the digital divide must ultimately have the right to ask for positive measures which will assist in overcoming this divide.

This is where the difficulty arises. It is illusory to think that global and structural solutions to a problem as complex and "multi-polar" in terms of origins, as that of reducing the digital divide, can be obtained solely on the basis of anti-discrimination law, even if it is revitalised. This is particularly the case in the Belgian federal design. The fight against discrimination is in fact a competence shared between the Federal State, the Communities and the Regions: in principle, it is up to these authorities, and them alone, to put in place anti-discrimination measures in their areas of competence, and only in those areas. Each entity acts for itself, exclusively.

However, none of the legislators (federal or federated) responsible for combating discrimination has, on its own, all the competences needed to build a coherent and comprehensive solution to the problem of the digital divide in the areas for which it is responsible. As evidence of this, we refer to the advisory opinion no. 34.380/VR issued on 21 November 2002 by the Legislation Section of the Council of State (Council of State, 2002). In essence, the draft legislation under review was designed to grant, via *La Poste* (Belgian postal service), a subsidy to certain groups of disadvantaged people in order to provide them with access, on favourable conditions, to an Internet connection and, where appropriate, a computer interface. It aims at promoting access to communication, to resources promoted in particular with a view to e-government, and to the employment market in the context of teleworking. In this case, however, the Council of State concluded that the federal authority did not have all the necessary competence to grant such a subsidy.

In federal Belgium, reducing the digital divide (in the same way as the fight against climate change (El Berhoumi & Nennen, 2018), the fight against poverty, or the fight against the pandemic (El Berhoumi, Losseau & Van Drooghenbroeck, 2021) is the responsibility of no one in particular, and of everyone in general: only a cooperation agreement, rather than unilateral initiatives in a scattered order, will make it possible to tackle this issue in any meaningful way.

Notes

1 The authors speak strictly in their personal capacity. Unless specified otherwise, all translations from French are made by the authors. All decisions of the Belgian *Conseil d'Etat* are available on their official website at www.raadvst-consetat.be.

2 See Article 195 of the Belgian Constitution:

> The federal legislative power has the right to declare that there are reasons to revise such constitutional provision as it determines.
> Following such a declaration, the two Houses are automatically dissolved.
> Two new Houses are then convened, in accordance with Article 46.
> These Houses make decisions, in common accord with the King, on the points submitted for revision.

> In this case, the Houses can only debate provided that at least two thirds of the members who make up each House are present; and no change is adopted unless it is supported by at least two thirds of the votes cast.
>
> (translation available on www.dekamer.be)

3 The Belgian Council of State, like many of its European counterparts, has two functions (article 160 of the Constitution): a jurisdictional function, performed by the Administrative Litigation Section, and an advisory function, performed by the Legislation Section. This latter function consists of issuing advisory opinions to the authority on draft legislation submitted to it by the latter: proposals or drafts of laws, decrees or orders; draft decrees of federal, community or regional executives of a regulatory nature (i.e., general and abstract).

4 This definition is reconstructed on the basis of those provided by the European directives adopted on the basis of Article 19 TFEU. See for example art. 2 (2) b of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation:

> indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless.

5 Previously, any citizen could subscribe to the *Moniteur belge* for a fee. They could also consult it at a subscribed public library. As part of the 2002 reform, only three paper copies are maintained. The first copy is deposited with the Royal Library of Belgium; a second copy is kept with the Minister of Justice; and the last copy remains with the Directorate of the Moniteur belge, where it is available for consultation by any interested party.

6 See also, still on the subject of the publication of normative texts, Council of State, Advisory opinion no 69.024/2-3, 19 March 2021 and Council of State, Advisory opinion no 75.§11/4, 15 April 2024.

7 Under Belgian federalism, the Communities are responsible for education (article 127 of the Constitution).

8 A fully digital file is created for each pupil. It includes information about the pupil's school career – including changes of school – and the support measures that have been put in place for them. It can be accessed by members of the educational teams responsible for the pupil, as well as the pupil's parents.

9 It should be noted that, in some cases, the Legislation Section recognises the limits of its *ex ante* control in deciding whether the accompanying measures already envisaged by the draft legislation will be sufficient, in terms of effectiveness, to adequately compensate for the disadvantages created to the detriment of the victims of the electronic divide. See Council of State, Advisory opinion no 76.470/1, 11 June 2024; Advisory opinion no 76.427/1, 6 June 2024.

10 Council of State, Advisory opinion no 76.470/1, 11 June 2024; Advisory opinion no 76.427/1, 6 June 2024.

11 Article 23 of the Constitution recognises that everyone the right to lead a life in keeping with human dignity. Paragraph 3, 2°, 3° and 5° of the said provision precises that this right includes in particular: the right to social security; the right to healthcare and to social, medical and legal aid; the right to adequate housing; and the right to cultural and social development. According to the Council of State, "(a)ll of these rights, especially for a public that is more vulnerable because of disability, age, gender, wealth or social

origin, are often based on access to administrative procedures or communication with public authorities" (Council of State, Advisory opinion no 74001/2, 17 August 2023).

12 See, by analogy, Constitutional Court, no 159/2004, 20 October 2004, B.5.6, where the Constitutional Court deduced from Articles 10(3) and 11*bis* of the Constitution that the Constitution "attaches particular importance to equality between men and women" (own translation).

13 To our knowledge, there has not yet been any specific judicial application of this legislation in the fight against the negative effects of the digital divide. However, mention should be made of a legal procedure introduced by UNIA (Belgian Equality Body) and a consumer rights organisation (Test-Achats) against Société Nationale des Chemins de Fer Belge (SNCB). The aim of this procedure is to have the fact that certain products or advantageous fares can only be acquired or obtained via the SNCB's digital application (and not via ticket offices and digital terminals), which necessarily requires the possession of a smartphone, declared as discriminatory. See UNIA, "Testsachats et Unia s'opposent aux tarifs discriminatoires de la SNCB", 16 July 2024, available on www.unia.be.

14 See Article 4(4) of the Federal law of 10 May 2007 "pertaining to fight certain forms of discrimination" by the Federal Act of 28 June 2023 (*OJ (Moniteur belge*), 20 July 2023. See also Article 4, 12° of the Joint Decree and Ordinance of the Brussels-Capital Region, the Joint Community Commission and the French Community Commission of 4 April 2024 establishing the Brussels Code on Equality, Non-Discrimination and the Promotion of Diversity (*Moniteur belge,* 16 April 2024). In its *Opinion on the impact of the digitalisation of services (public or private)* (February 2023), Unia also recommended that "illiteracy" be explicitly included in the list of criteria protected by law. This suggestion has not been followed yet.

15 The possibility of "positive injunction" has been introduced in the Federal law of 10 May 2007 "pertaining to fight certain forms of discrimination" by the Federal Act of 28 June 2023 (*OJ (Moniteur belge*), 20 July 2023), following a recommendation of the Final Report of the Expert Commission for the Assessment of the 2007 Anti-Discrimination Federal Acts (see https://equal.belgium.be/sites/default/files/Commission%20e%CC%81val%20lois%20antidiscrimination_Rapport_Synthe%CC%80se.pdf, pp. 134–136). The possibility to issue "positive injunction" has also been introduced in the anti-discrimination law of some federated entities. See for example article 20, § 2/1 of the Decree of 6 November 2008 on the fight against certain forms of discrimination (Walloon Region), as modified by a decree of the Walloon Region of 13 July 2023 (*Moniteur belge,* 14 September 2023); article 41, § 1, of the Joint Decree and Ordinance of the Brussels-Capital Region, the Joint Community Commission and the French Community Commission of 4 April 2024 establishing the Brussels Code on Equality, Non-Discrimination and the Promotion of Diversity (*Moniteur belge,* 16 April 2024).

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