
Case Studies of Good Practice for the Prevention of Racial Discrimination and Xenophobia and the Promotion of Equal Treatment in the Workplace

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**CASE STUDIES OF GOOD PRACTICE
FOR THE PREVENTION OF RACIAL DISCRIMINATION
AND XENOPHOBIA AND THE PROMOTION OF EQUAL
TREATMENT IN THE WORKPLACE**

BELGIUM

by

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CHAPTER 1

NATIONAL CONTEXT

1.1 Migration in Belgium

In the second half of the nineteenth century there were some 200 000 foreigners in Belgium, mainly from neighbouring countries.

From 1920 on the patterns of immigration began to change, with increasing numbers now coming from Central Europe and Italy. Almost all of them ended up in Wallonia, where they were employed in the coal mines and in heavy industry.

In 1946 a protocol agreement was concluded between Belgium and Italy under which Belgium would accept as many as 50 000 Italian workers and provide employment for them in the coal mines. The final total was to be 70 000. This substantial flow of migration from Italy eased off in 1956 after the Marcinelle pit disaster, when over 260 miners lost their lives, half of which were Italians.

The Belgian authorities then turned, initially, to Spain to fill the gap in the labour force, followed in turn, by Greece, Turkey and Morocco. Bilateral agreements were concluded with these countries, governing work and residence permits and social security arrangements for the foreign workers.

During the 1960s the shortage of unskilled workers in Belgium reached a peak, affecting other sectors besides the mining and metal industries. A vigorous recruitment drive then took place in North Africa and Turkey, while migration from Spain, Portugal, Greece and Italy continued unabated.

With the economic crisis in the 1970s and, more specifically, the freeze on immigration for unskilled jobs announced in 1974, mass immigration came to an end. The increase in the foreign population in the country was almost entirely due to the birth rate and family reunification.

The immigrants of the 1960s and 1970s began gradually to integrate into Belgian society. The number of mixed marriages thus increased, as did the rate of naturalization. There are a number of factors holding back the integration of the second and third generations. Politically, for example, immigrants do not have the right to vote and, on the labour market, they find it difficult to advance upwards in the employment hierarchy, which has to do partly with their significantly poorer school results.

The main phenomenon of the 1990s, finally, is an increasing flow of refugees from Africa and Eastern Europe.

Looking at the composition of the foreign population in Belgium in 1991 we find that, of the 10% of foreigners in Belgium, 6% are of European origin.

This breakdown is not the same throughout the three regions (see Table 1). In the Brussels-Capital region 29.5% of the total population is made up of foreigners, 15.2% of them of non-European origin. In Wallonia, on the other hand, where 10.9% of the population is of non-Belgian origin, the great majority, i.e. 8.5%, have European roots. In Flanders, finally, foreigners account for 4.7% of the population, with 2.6% from Europe.

Table 1.1: Numbers of Belgians and foreigners in the three regions at 01.01.1995

Nationality	Belgium	%	Flemish region	%	Brussels-Capital	%	Walloon region	%
Total population	10 130 574	100.0	5 866 106	100.0	951 580	100.0	3 312 888	100.0
Total Belgians	9 208 236	91.0	5 582 989	95.2	665 909	70.0	2 959 338	89.3
Total foreigners	922 338	9.0	283 117	4.8	285 671	30.0	353 550	10.7
Total foreigners - EC	552 326	5.4	150 339	2.5	133 660	14.0	268 327	8.1
Total foreigners - Europe	662 317	6.5	201 957	3.4	163 364	17.2	296 996	8.9
Foreigners from outside Europe*	238 590	2.3	81 160	1.4	122 307	12.8	56 554	1.7

* Including refugees

Source: NIS (1995), Population statistics

Most foreigners come from Italy, Morocco, France, Turkey, the Netherlands, Spain, Germany, the United Kingdom, Portugal and Greece, in that order. Only two of these are non-European countries (see Table 2).

Table 1.2: Main foreign nationalities in Belgium per region at 01.01.1995

Nationality	Belgium		Flemish region		Brussels-Capital		Wallon region	
	number	rank	number	rank	number	rank	number	rank
Italy (EC)	213 526	1	24 632	4	29 784	3	159 110	1
Morocco	143 969	2	46 117	2	76 424	1	21 428	3
France (EC)	98 731	3	12 608	5	30 215	2	53 025	2
Turkey	85 981	4	43 215	3	21 828	5	20 938	4
Netherlands (EC)	75 029	5	64 111	1	4 771		6 147	9
Spain (EC)	48 937	6	9 907	8	23 737	4	15 293	5
Germany (EC)	31 041	7	10 691	7	5 798	10	14 552	6
UK (EC)	25 862	8	12 608	6	7999	8	5255	
Portugal (EC)	23 033	9	4 075		14 474	6	4 484	
Greece (EC)	20 112	10	3 857	10	10 397	7	5 858	
Zaire	16 542		2 826		7 295	9	6 421	7
USA	11 735		4 239	9	2 929		4 567	
Algeria	10 001		1 514		2 333		6 154	8

Source: NIS (1995) Population statistics

1.2 Employment

The economic activity rate is much the same for both Belgians and foreigners: 51.7% and 50.4% respectively. There is a greater difference in terms of sex: in both population groups the rate is much lower for women.

Foreigners are mainly to be found in industry, where they are employed in manual jobs for which few or no qualifications are required.

They occupy more or less disadvantaged positions, depending on nationality, with Belgians and foreigners from neighbouring countries at the top of the scale, followed by Italians, Greeks and Spaniards, then Turks and Moroccans, who are over-represented in the lower echelons.

Here too, however, sex is a more significant variable. On the basis of wages paid, it can be concluded that women are systematically employed at the lowest levels, whatever sector is involved.

Depending on the source consulted, unemployment in Belgium is between 10% and 15%. Proportionally, foreigners account for 15% of total unemployment. Their rate of

unemployment is double that of Belgians, however. The difference between men and women is again of major significance. For both Belgians and the foreign population, unemployment among women is roughly twice as high as among their male counterparts.

1.3 Legal framework

a) International law

A great many international texts and conventions exist to combat racial discrimination and to promote equality.

One international convention seeking to prevent all forms of racial discrimination is that of 19 December 1965, ratified by Belgium on 9 July 1975.

It defines racial discrimination as any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

However, this does not include any distinction which may be made between citizens and non-citizens, between nationals and non-nationals of a country. Nor does it relate to existing national legislation on nationality, citizenship or naturalization.

b) National law

According to Article 10 of the Constitution "all Belgians are equal before the law".

Article 191 of the Constitution relates to foreigners in the country, stipulating that every alien present in the territory of Belgium shall enjoy the protection afforded to persons and goods, except where provided otherwise by law.

The rule is thus that foreigners enjoy the same rights and obligations as Belgians. Article 8 of the Constitution is pertinent where the exceptions are concerned; this states clearly that the Constitution and other laws governing political rights determine what requirements must be satisfied, besides being of Belgian nationality, in order to exercise those rights. In other words, in order to take part in elections in Belgium, as candidate or voter, it is indeed necessary to have Belgian nationality.

However, under the European Directive of 1994, which becomes effective in 2000, the position is that EC nationals resident in another EC country do have the right to participate in both European and municipal elections, as candidates and as voters.

Belgium has succeeded in obtaining a number of exemptions to these provisions (De Morgen, 11/3/97). Thus EU citizens can only take part in municipal council elections if they have lived in Belgium for at least six years and the municipality itself comprises fewer than 20% foreigners. Consequently foreigners are again excluded in precisely those municipalities where voting rights are crucial.

The Act of 30 July 1981, as amended by the Act of 12 April 1994, provides for the transposition of the International Convention of 19 December 1965. The 1994 amendment provided for the addition of Article 2bis. This outlaws discrimination in the field of placement and vocational training, job offers, recruitment, implementation of contracts of employment and dismissal.

c) Labour law

Foreign workers do not have freedom of access to the Belgian labour market. A foreign worker must apply for a work permit. An employer must also apply for authorization to employ a foreign worker. Two Royal Decrees regulate this area: Royal Decree No 34 of 20 July 1967 and the Royal Decree of 6 November 1967.

There are three types of work permit: A, B and C. Only EU citizens, Zaïreans, Rwandans and Burundians are exempt from these requirements. The legislation was relaxed by a Royal Decree of June 1995. This contains a list of exemptions under which a large number of foreigners no longer need to apply for a work permit. In short the position is that any foreigner whose name is entered in the population register (and accordingly is in possession of a yellow residence permit) is exempt from the work permit requirement. Anyone who has been resident on Belgian territory for five years can apply for this type of residence permit. Anyone married to a person who is permanently resident in Belgium can apply for a yellow card after a year and a half.

The Royal Decree also establishes new rules for 're-entrants'; if a person returns to Belgian territory within a period of five years, he or she can immediately apply for a yellow residence permit and is consequently exempt from the obligation to apply for a work permit.

A work permit of type A is valid indefinitely for all employers and all sectors. It is issued subject to three criteria, namely place of residence, employment and family, and can be obtained by anyone who has been continuously resident in Belgium for five years or has worked in the country for a number of years. Members of the family of a holder of a type-A work permit can also obtain one, subject to certain conditions.

A work permit of type B is specific to a certain employer or sector and is valid for one year but can be renewed. It is, however, limited to nationals of countries with which Belgium has an agreement on manual labourers. Moreover, it is normally only issued if the employer can prove that there is a shortage of manpower on the national labour market.

Work permits of type C relate to particular occupations and are subject to the same restrictions as work permit B.

As regards employment opportunities for foreigners in the public sector, a distinction is made between EC nationals and third country nationals. Under the Maastricht criteria governing the free movement of goods and persons it is in principle permitted for EC nationals to exercise public office unless there are good grounds for reserving the post for Belgian citizens. These grounds must relate to 'State security'.

d) Collective agreements

On the eve of the 1991 national works council elections (*Sociale Verkiezingen/Elections Sociales*) the ACV and ABVV trades unions took a joint stand on combating racial discrimination. Together with the then Commissioner for Migration Policy, Paula D'Hondt, they put pressure on the employers' organizations to focus attention on the problems surrounding recruitment of workers of foreign origin. In 1991 Collective Agreement No 38 of 6 December 1983 was thus amended, where it related to the selection and recruitment of employees, resulting in Collective Agreement 38bis of 29 October 1991. Article 10 of the revised agreement stipulates that recruiting employers may not treat candidates in a discriminatory manner. They may not make any distinction as to age, sex, marital status, medical history, race, colour, descent or national or ethnic origin.

This provision has, however, not been declared binding and prosecutions cannot be brought in respect of violations.

Collective Agreement 9bis of 29 October 1991 enables works councils to hold information on nationality and on patterns of employment and ways in which they have changed.

e) Centrum voor Gelijkheid van Kansen en voor Racismebestrijding

The *Centrum voor Gelijkheid van Kansen en voor Racismebestrijding* (Centre for Equal Opportunities and the Prevention of Racism) was set up by the Prime Minister in 1993 to promote equal opportunities and to combat racism.

Among other things, the Centre may:

- carry out studies and research;
- advise and make recommendations to public authorities;
- assist all persons inquiring about matters regarding their rights;
- bring civil actions in the event of complaints about violations of the Act of 30 July 1981;
- procure any information and documentation it may require for the accomplishment of its tasks.

CHAPTER 2

CASE STUDIES

2.1 Case Study 1: The Code of Conduct to prevent racial discrimination against immigrant workers supplied by temporary employment agencies

On 7 May 1996 the social partners in the temporary employment agency sector concluded a collective agreement on a Code of Conduct (annex) for the prevention of racial discrimination. This was declared generally binding on 9 September 1996 (*Belgisch Staatsblad/Moniteur belge* [Official Gazette] 7/11/1996).

Mrs Kohnenmergen, adviser to the Department of Labour Affairs of the *Verbond van Belgische Ondernemingen* (Federation of Belgian Enterprises - VBO), suggested this collective agreement as the possible subject for a case study. Because of the growing importance of the temporary employment agency business in general and with regard to foreign workers in particular, we took up this suggestion.

It has to be recognized, of course, that temporary workers as a group are difficult to monitor because of the specific nature of the employment agency business, which involves short-term contracts, changing users and the fact that the temporary staff themselves may be enrolled with a number of different employment agencies. This unstable and shifting situation in which agency staff find themselves and the fact that there was no generally known channel through which complaints could be lodged made it almost impossible to record any abuses, including those of a discriminatory nature.

Both our contact¹ at the *Union Patronale des Entreprises de Dépannage Intérimaire* (Employers' Association for Temporary Employment Agencies - UPEDI) and the spokespersons from the *Algemeen Belgisch Vakverbond* (Belgian General Federation of Labour - ABVV) and *Algemene Centrale der Liberale Vakbonden* (Federation of Liberal Trades unions of Belgium - ACLVB) admit that the temporary employment sector is indeed beset with problems of racial discrimination. Hence the commitment of the parties to the agreement to do something about the problem.

According to an internal study by UPEDI, 13-15% of immigrants are employed in this sector, which is significantly more than the proportion they represent in society as a whole² (UPEDI interview).

Each day, employment agencies supply some 40 000 (full time equivalents) temporary workers; on an annual basis this amounts to 200 000 (different) workers (UPEDI, 1995). Compared with 1981, when 'only' 29 000 workers were employed through agencies, this is a sevenfold increase.

This means that the share of the temporary employment agency sector in total employment amounts to about 1.09% (CIETT, Bakkenist Management Consultants, Eurostat, 1995).

¹ A detailed list of contacts is attached as an annex.

² The proportion of foreigners in the total population is 8.4%.

In contrast to most other sectors the temporary employment agency business in 1995 experienced growth of 17% over the preceding year. Turnover was BEF 54 586 billion, an increase of no less than 18% compared with the preceding year (UPEDI, 1995).

As regards the breakdown into manual and non-manual workers there are striking regional differences. Generally speaking the figures break down into 70% manual and 30% non-manual workers. The Brussels-Capital region diverges substantially from this pattern; here 71.5% of temporary staff are white collar workers (UPEDI, 1995).

The Flemish region accounts for as much as 61% of agency employment, Wallonia for about 26% and Brussels for 13% (UPEDI, 1995).

If we look at the age distribution in the sector, it is noticeable that almost 70% of temporary workers are under thirty; 50% are even under twenty-five (UPEDI, 1995).

In the temporary employment agency sector as a whole 50% of manual workers are male and 18% female; on the other hand, female white-collar workers account for 21% of the total, compared with 12% for male white-collar staff (UPEDI, 1995).

While there were forty temporary employment agencies in 1985, the number had risen to 89 by 1995. Altogether there are 622 local agencies (UPEDI, 1995). Three agency supply firms account for a market share of between 10% and 20%. In addition there are about a dozen firms with a market share of between 1% and 10%. The rest (about 75) have a market share below that level (UPEDI, 1997).

The metal sector, the food industry, the white collar sector and the chemical industry employ the largest number of temporary staff (see table below).

Table 2.1. Top 20 of Belgian industries in terms of hours of temporary work performed

Ranking	Share (%)	Joint Committee³ (Paritair Comité - PC)	Sector
1	20.09	PC 111	Metal working - manual workers
2	13.41	PC 118	White collar staff - auxiliary
3	11.49	PC 118	Food workers
4	8.04	PC 116	Chemical workers
5	4.15	PC 149	Metal and allied sectors
6	4.07	PC 151	Manual workers - auxiliary
7	3.64	PC 140	Transport
8	2.72	PC 207	Chemical industry - white collar staff
9	2.49	PC 209	Metal working - white collar staff
10	2.35	PC 119	Food distribution
11	2.34	PC 126	Carpentry/joinery
12	2.31	PC 120	Textiles
13	1.85	PC 201	Self-employed - retail trade
14	1.80	PC 121	Cleaning trade
15	1.66	PC 302	Hotel trade
16	1.64	PC 201	Food industry - white collar staff
17	1.19	PC 130	Printing
18	1.19	PC 109	Clothing
19	1.15	PC 136	Paper and card processing
20	0.96	PC 112	Garage trades

Source: UPEDI (1996) Annual Report 1995

³ Today, Joint Committees are permanent bodies at sectoral or sub-sectoral level on which representative employers' associations and trade unions are represented; they are established by the Executive and in most cases are chaired by an official conciliator. They are established only for the private sector, with the exception of public credit institutions. If a Joint Committee so requests, a Joint Subcommittee is set up. Some Committees have several Subcommittees. The personnel, industry or enterprises covered by each Joint Committee are defined by Royal Decree.

The tasks of a Joint Committee or Subcommittee are as follows:

1. Overseeing the conclusion of collective agreements by the organisations represented.
2. Preventing and settling disputes between employers and employees.
3. Advising the government, the National Labour Council, the Central Economic Council and work councils on matters falling within their respective spheres of responsibility, either on request or on its own initiative.
4. Fulfilling any other function entrusted to it or in execution of the law.

In the first instance all the signatories were approached. Each of them, with the exception of VBO, was questioned extensively on the inception and application of the agreement.

UPEDI was represented by H. Muyltermans. ACV, ABVV and ACLVB were represented by R. Delarue, D. Plaum and J. Roelandt respectively. They had all been personally involved in the negotiations. Only VBO was not prepared to give an interview.

Because the collective agreement obliges temporary employment agencies to take account only of functional criteria in the recruitment of temporary staff, we decided to conduct a small-scale survey in some 80 agencies in five areas: Antwerp, Brussels, Ghent, Limburg and Liège. These areas were chosen because they have a high level of immigrant population. Special attention was paid to knowledge of the Code of Conduct, its implementation and how it is regarded by agencies.

2.1.1 The Code of Conduct

Following the Joint declaration on the prevention of racism and xenophobia and promotion of equal treatment at the workplace, agreed at the Social Dialogue Summit in Florence on 21 October 1995, the social partners in each joint committee were obliged to transpose these guidelines into a collective agreement.

In the temporary staff supply sector the Code of Conduct was incorporated into the 1995-1996 Sectoral Agreement (effective until the first months of 1997). All the social partners were immediately prepared to cooperate. However, trades unions complain that the Code is not applicable to the users of temporary staff.

Article 1 of the collective agreement annexed to the Royal Decree of 9 September 1996 sets out the scope of the Code of Conduct. It states that the collective agreement is binding on employment agencies affiliated to UPEDI and on temporary staff supplied.

One major figure in the temporary staff employment process is not mentioned, namely the user. In view of the fact that the temporary employment sector functions as an interaction between three parties - temporary workers, employment agencies and users - that is an omission of some significance.

The Code refers in the first instance to the Joint Declaration signed by the European social partners in Florence in 1995 and states that by adopting the Code of Conduct the social partners reaffirm openly, clearly and publicly their commitment to take an active part in joint efforts to prevent racial discrimination and to take joint action to combat it within their own sector, namely the temporary employment agency sector.

Article 1 of the Code of Conduct: basic principles

Paragraph 2: In accordance with the principles set out in the preamble, temporary employment agencies reject discrimination on the grounds of colour, race, religion, ethnic origin or nationality.

Paragraph 3: The Code of Conduct should make employment agencies, their staff, temporary agency workers and users more aware of how discrimination, whether conscious or unconscious, can and should be avoided.

Paragraph 4: Everyone must be aware of the procedures to combat racial discrimination; no-one may be penalized or disadvantaged for having made a complaint in this connection.

The last point means that everyone must be informed of the Code, agency staff, staff supplied by agencies and users alike.

Two channels of communication are available to impart information to temporary workers: employment agency staff and the trades unions.

UPEDI reports that it has sent each affiliated agency a number of copies of the booklet⁴. In principle it should be possible for any person seeking temporary work to peruse and indeed take away the booklet. The chance of it not being read at all, however, is considerable. It would be more effective to inform temporary workers personally.

The trades unions themselves have informed their rank and file through the usual trades union channels. The ACV publicizes the Code of Conduct in its leaflet material and has published a number of articles in the publications *ACV-Vakbeweging* and *TELEX* (96/10, annex). The ABVV has done the same in its magazines (*De Werker* 17/5/96, p. 5) and in booklets and leaflets. These of course do not reach temporary workers who are not members of a trades union.

Employment agencies were informed by UPEDI, and the various branches should have been put in the picture by their respective head offices.

Finally, the VBO has kept the federations affiliated to it informed on the negotiations via its weekly bulletin, *VBO-Infor* (17/5/96, p. 3).

Article 3: the supply of temporary staff

In selecting temporary staff and supplying them to users, employment agencies may only be guided by functionally relevant requirements, in accordance with Article 1.2. This means that no account must be taken of colour, race, religion or ethnic or national origin. In accordance with this Article, the imposition of non-functional requirements is prohibited in all cases.

The third paragraph of this Article is also important, as it stipulates that employment agencies must make their staff aware of the problem of racial discrimination and must prepare them in such a way that temporary staff of different origins are ensured proper guidance.

Training courses are provided annually by UPEDI; these feature the Code of Conduct to a limited extent, according to Mr Muyldermans. Otherwise most agency staff are trained internally.

Article 4: attitude towards users

Paragraph 1: Temporary employment agencies may not communicate, either of their own accord or at the request of a user, information on temporary workers and applicants for temporary work other than those which are relevant to the job in question, in accordance with Article 3. No information may be communicated to a user regarding race or ethnic origin even at the request of the temporary worker or applicant for temporary work.

⁴ This booklet reproduces the provisions set out in the collective agreement (see annex).

Paragraph 2: Temporary employment agencies may not put questions to users which could give rise to discriminatory conduct on the part of the latter.

Paragraph 3: In the cases detailed above temporary employment agencies should inform users that they cannot entertain requirements or wishes of a discriminatory nature.

This Article presupposes that employment agencies, when given to understand by users that they do not want any foreign workers, will make it clear to them that they cannot comply with such requests. However, as users are not bound by the Code of Conduct, they can easily move on to another employment agency which does not take the rules so literally.

In these circumstances commercial considerations will be decisive, and the most employment agencies can do is to try to win over the user. The customer is always right.

The proper training of agency staff plays a major role here, if sufficient powers of persuasion are to be brought to bear on users.

Article 5: attitude towards temporary workers/persons applying for temporary work

Paragraph 1: When enrolling temporary workers temporary employment agencies may not record details of race, colour, religion or ethnic or national origin. Such details may be recorded only if the applicant qualifies for positive action or preferential treatment aimed at redressing factual inequalities.

Point 2: Temporary employment agencies may, however, record data which are necessary in order that foreign workers can be employed in accordance with relevant legislation (work permit, residence permit etc.).

In the previous section on current labour legislation, it was viewed as a step in the right direction that works councils were enabled, by way of Collective Agreement 9bis, to request information on the nationality distribution of employees in an enterprise. Is it then not somewhat contradictory that employment agencies may no longer even record this information?

Firstly, this means that an important source of information on the basis of which the foreign population can be monitored is lost. Secondly, if an employment agency employee does want to discriminate or to comply with a discriminatory request from a user, all he or she need do is look at names and physical appearances.

Article 6: dealing with complaints

"In the event of failure to observe this Code of Conduct, any injured person may lodge a complaint, either under a procedure specifically laid down for the purpose in the rules of service or by representation to the Conciliation Board set up under the collective agreement of 8 July 1993 (declared generally binding by Royal Decree of 15 September 1994)."

The Conciliation Board (*Commissie van Goede Diensten* - CGD) is a joint body consisting of the parties involved in the original negotiations on the agreement to establish the Code of Conduct, i.e. UPEDI (Muyldermans), ACV (Delarue), ABVV (Plaum), ACLVB (Roelandt) and VBO (Kohnenmergen). The Board was set up to mediate, as it were, between the Joint Committee (the official conciliation body) and the person making the complaint. When a complaint is brought before the Board, the first step is to ascertain whether the complaint is admissible or not. If there are good grounds to suspect that discrimination may indeed have

occurred, the employment agency concerned is questioned and, if necessary, reprimanded. If complaints against the agency persist and it is a member of UPEDI its membership may be cancelled. If it is not a member of UPEDI, the trades unions may publicize its policy in the press.

In the event of flagrant violations, a complaint may be lodged with the *Centrum voor Gelijkheid van Kansen en voor Racismebestrijding* (Centre for Equal Opportunities and the Prevention of Racism - CGKR).

If that does not produce a result either, the Conciliation Board can make use of its right of interpretation in the Accreditation Committee and seek to have the agency's accreditation withdrawn.

In addition to the Board, an ombudsman service was set up on 1 April 1996, to which all kinds of questions and complaints involving the temporary staff sector can be referred. UPEDI wanted to exploit social legislation to the full to the employers' advantage too. The trades unions are not entirely happy with this, as the ombudsman service has exactly the same tasks as the Conciliation Board. This reduces the strength and unity of purpose of the Board⁵.

Article 7: Dissemination

"Temporary employment agencies shall undertake to keep their permanent staff, temporary workers users informed of the existence of this Code of Conduct and of its application."

The importance of information was also referred to in Article 1(4). Reference to it again here lays further emphasis on this aspect.

2.1.2 A first assessment: the impact of the Code

The basic aim of the Code of Conduct is to secure equal treatment for foreign temporary workers in recruitment and selection.

The value of such a Code is endorsed by the various parties to the negotiations. The high proportion of immigrants (15%) in this sector and the fact that problems of a discriminatory nature were cropping up every so often in any case (interviews with ABVV, ACLVB and UPEDI) were the main reasons for taking concrete action in this field. This resolve was further strengthened by the Joint Declaration agreed at the Social Dialogue Summit in 1995.

The mere fact of drawing up a Code of Conduct for this area is of course not enough to change the behaviour of the temporary employment agencies and their users.

Both ABVV and ACV thus see this Code as a first step in the right direction.

The problem that arises in the assessment of such a Code of Conduct is the difficulty of verifying its application in practice. We therefore sent a short questionnaire on the implementation of the Code to members of UPEDI located in Antwerp, Brussels, Ghent, Limburg and Liège. We sought to establish whether and how the Code was being applied using a partially open questionnaire.

⁵ So far no complaints have been referred either to the Board or to the UPEDI Ombudsman.

The questionnaire (annex) was put together on the basis of a number of problems we felt could arise in the application of the Code by agency staff.

Scope. Firstly, users are not covered by the collective agreement. Although the employers' organization VBO had to participate in the negotiations, one might wonder as to the value of that. More important is the fact that this puts an agency's staff in a difficult position. According to the Code they are obliged not to entertain discriminatory requests from users. In Belgium there are, all told, 622 agencies, a substantial proportion of which are not affiliated to UPEDI and hence not bound by the Code. UPEDI represents in fact around 70% of the private employment agency sector (Lambrechts, B., UPEDI, statistics department). It is not very likely that agency staff would allow the Code to take precedence over the commercial aims of their companies.

Information. Secondly, there is an express requirement that all the parties concerned must be properly informed. On the one hand one might wonder how information is communicated to temporary workers by agency staff. In my view, handing over the Code personally with a brief explanation will have a very different impact from leaving it in the waiting room among the many other booklets and magazines. On the other hand, agency staff must themselves be informed and moreover be properly trained to deal with temporary workers of different origins. During the training of agency staff at UPEDI the Code is said to feature as a routine item in the course material though, on the organization's own admission (UPEDI interview), without overmuch attention being paid to it. In view of the problem outlined above, namely the approach agency staff must adopt towards users, staff would benefit from more comprehensive training.

Selection criteria. A third point concerns the requirement that no questions which are not functionally relevant may be asked and, following on from that, the prohibition on the recording of race, colour and ethnic or national origin by agency staff.

We have already pointed out that not allowing nationality to be recorded results in the loss of an important source of information. Recent personal experience in the temporary staff sector has led me to doubt whether the principle of not recording nationality is in fact followed. In many cases identity cards are simply photocopied and filed together with all other functional information.

To sum up, it can be said that, despite the value of and the need for a Code of Conduct of this nature in this sector, a number of points call for comment. One is the fact that users are not covered by the Code; another is the potential for problems in the implementation of the Code by employment agency staff.

2.1.3 The study

a) Definition of the problem: what questions were asked ?

"One of the main objectives of this Code of Conduct is thus to make temporary employment agencies, their staff, temporary agency workers and users more aware of how racial discrimination, whether conscious or unconscious, can and should be prevented." (Article 1(3)).

For agency staff in particular the question arises of whether and how they apply the Code and what problems they experience in the process.

Before they can apply the Code, of course, they must be informed of its existence (question 1). In addition, the application of the Code requires a certain skill in dealing with temporary workers of different origins but also with users who make discriminatory demands. Such skills could be developed through internal training courses or courses organized by UPEDI (question 4). Of course the fact that the Code only recently came into effect must be taken into account here. It was declared generally binding by Royal Decree in September but only appeared in the Official Gazette in November. Many agency staff will therefore not yet have received any training.

Temporary workers then also need to be informed. Is this done personally, are copies of the Code made available to take away? (questions 2 and 3)

The opinion of agency staff on the value of the Code was also sought. In that connection they were asked whether they had had clients who refused to take foreign temporary workers. It could be that the value of such a Code might not be recognized because no problems had ever arisen in this area. Other questions referred to the various options which agency staff considered they had in the event of a user indicating that he did not want foreign workers (questions 5, 6, 8 and 9).

It emerged from a study conducted by the *Hoger Instituut voor de Arbeid* (Higher Institute for Labour - HIVA) (Lamberts, 1992) that 17.5% of agencies did not enrol foreign temporary workers. Has that increased or decreased? (The same question was used for this: question 7a and 7b)

According to Article 5 of the Code of Conduct nationality may not in principle be recorded. Is this rule consistently followed by the agencies? (question 10a and 10b)

b) Method: how did we proceed ?

Seventy-six agencies, all of firms affiliated to UPEDI, in Antwerp, Brussels, Ghent, Limburg (Hasselt and Genk) and Liège were surveyed using a partially closed questionnaire. We restricted our survey in this way because these are the areas that have the highest concentrations of immigrants, both in the total population and in the unemployment figures⁶.

⁶ The proportions of foreigners both in the total population and among the unemployed were calculated (calculations based on NIS Population Statistics for 1995 and 1996) for the districts of Antwerp, Ghent, Hasselt, the Brussels-Capital region and Liège. In the Antwerp district the figures are 8.4% and 14.7%, respectively. For Ghent the figures are 4.1% and 11.4%. Hasselt has a foreign population of 8.4%, but they account for 17% of unemployment (in the municipality of Genk the figures are 23.2% and 19%, respectively). The proportion of foreigners in the Liège area is 15%, and foreigners account for 24% of the unemployed there. The situation is the most shocking in the Brussels-Capital region. While the proportion of foreigners is 30%, their representation in the unemployed population in the Brussels region is a staggering 78%. This might have to do with the fact that 56% of jobs are filled by commuters. This could give rise to a considerable shortage of jobs for the inhabitants of Brussels in their own region (Timmerman, 1996).

The questionnaires were sent by post to the various agencies. The Dillman method⁷ was deliberately not used for this postal survey because of the time constraint. The respondents were contacted once. Except for the Ghent area, where the rate of response was really very low, agencies which had not yet responded were once more urged to fill in the questionnaire and return it. A number of agencies were also contacted by telephone.

c) The results

Response and representativity. Of the 77 agencies contacted, of which 12 were in Antwerp, 24 in Brussels, 12 in Ghent, 15 in Limburg and 13 in Liège, thirty returned completed questionnaires. In order to boost this fairly low response, agencies which had not yet responded were contacted either by telephone, or (in the case of Ghent) by letter. A response rate of 64% was finally achieved, i.e. 49 questionnaires. For Antwerp, Brussels, Ghent, Limburg and Liège rates of 70%, 60%, 66%, 66% and 68% respectively were recorded.

Altogether nine large, sixteen medium-sized and twenty-four small employment agencies were reached. The large agencies are, relatively speaking, over-represented here, since they have more branches spread across the country. As regards job differentiation, 75% of the agencies in Brussels only supplied white-collar workers. These figures are entirely consistent with the breakdown of temporary work by job category in the Brussels area (see above).

In the other areas most agencies supplied both manual and white-collar staff.

Before any discussion of the results, it should be noted that the small number of questionnaires does not permit any significant links to be established. For this reason only general tendencies are identified below, where differences by region or agency size were noted.

Communication of information to agency staff and temporary workers. Except in three agencies, all respondents had been made aware of the entry into force of the Code of Conduct. Half had received a memo from UPEDI, the others had been informed by their head offices.

The temporary workers themselves were informed of the booklet and invited to study it in 38 cases (70%). Only in Antwerp and Ghent were three and four cases respectively noted in which temporary workers were personally informed about the Code.

As regards copies to take away, ten agencies stated that they did not have any available. Out of a total of 49 agencies, this is a fairly significant number. It was mainly small and medium-sized agencies that were found wanting in this respect.

Training of agency staff. The question of training for staff was hardly answered at all. Most respondents indicated that they had had no training whatsoever, either internally or with UPEDI, in the past six months.

Assessment of the Code of Conduct by consultants. The assessment of the Code of Conduct by respondents was linked to the question of whether they had ever encountered

⁷ The Dillman method is a fairly time-consuming process. After all respondents have been sent a questionnaire, there is a second and a third postal contact in the form of a reminder. Then a new questionnaire is sent to those who have not yet responded. The interval between each dispatch is two to three weeks.

discriminatory demands on the part of users. To the last question, 39 respondents, i.e. 80%, gave an affirmative answer. The manner in which users indicate their wishes ranges from imposing certain job requirements, such as perfect bilinguality for manual occupations, which is regarded in the temporary staff sector as a kind of secret code for the exclusive selection of Belgian workers, to explicit requests not to be sent any foreigners.

Of these 39 respondents most (34) considered the Code worthwhile, though it was also felt that it was "only words".

Although most considered the Code to be worthwhile, there were ten respondents who did not. These seemed mainly to be from small agencies. One explanation for this might be that, because of their small market share and the intense competition in the sector, they had little to gain from opposing the wishes of a user. "The customer is always right" was a comment often made. The same tendency was in evidence in respect of the question concerning the effectiveness of the Code; here too it was mainly the small agencies which gave a negative response.

Reasons for non-enrolment of temporary workers. In order to arrive at a comparison with the 1992 HIVA study a question was included on the reasons for not enrolling temporary workers. For the purposes of this study our interest was in the following possible responses: 'headscarf' and 'nationality'. In four cases (8.16%), temporary workers were not enrolled if they were of foreign origin or if they wore a headscarf. In the case of white-collar workers this was the case in five agencies (10.20%).

A clear difference is to be noted between this and the previous study carried out in 1992, in which 63 employment agencies were surveyed and 17.5% stated that they did not take on any foreign temporary workers. Although the numbers in both studies are too small to speak of significant differences, this finding might suggest a favourable trend.

Strategies of agency staff. The next three questions concerned the options respondents felt they had if they encountered users who indicated that they would not accept foreign workers.

In the questionnaire, four strategies were possible.

The first was simply to go along with the user's request. In eight cases this is what happened. The reason frequently stated for this was that on commercial grounds it was not justifiable to oppose a client's request.

Closely linked to this strategy was that of only defending temporary workers of foreign origin in exceptional cases. Only where the agency is convinced of the exceptional qualities of a temporary worker and it knows the user well would an attempt be made to place the worker despite user opposition (this happened in eight cases).

Another possibility was systematically to try to persuade clients. Here too, however, the client has the last word. This was cited as the strategy most commonly followed by 31 agencies.

Finally, the agency could abide by the rules of the Code and not entertain such demands (this was the response given in three cases).

As regards the last three strategies, the responses were evenly distributed. The option of simply going along with a racist request from a user is taken mainly in the small agencies (six out of the eight) and to a lesser extent in the medium-sized ones (two). Here too their less stable position in the sector may play a role; this would be a reason for not putting up much resistance to clients' demands.

Records. Finally, the last question was about whether or not the nationality of temporary workers was recorded. Here we can be very brief: in all agencies bar one, nationality is always (routinely?) recorded.

2.1.4 Final assessment

With the Code of Conduct the social partners have made a first attempt to make the temporary staff sector more accessible to temporary workers of foreign origin. Given the results of this study, it is to be hoped that it will not be the last.

1. For example, the mere availability of booklets is considered to suffice as a means of providing temporary workers with the relevant information. In my view, however, the chance that such a booklet will then actually be read is relatively small. It would be better if temporary workers were personally informed of the existence of the Code. Giving them the booklet during an application interview would be enough.
2. Furthermore, ten agencies do not have take-away copies available; care should be taken that copies are always in stock.
3. The fact that the Code of Conduct is not applicable to users does indeed seem to be a source of problems, particularly for the smaller temporary employment agencies. For example, most agency staff have indeed encountered discriminatory demands from users. However, because this party is not bound by the Code, the small agencies in particular are powerless to resist their pressure. In commercial terms they need every user who approaches them if they are to hold their own in the sector. It is thus no accident that it is these agencies which do not see the value of such a Code and, moreover, relatively more often admit that they simply go along with discriminatory demands from users.
4. Another point relates to the ban on recording the nationality of temporary workers (Article 5 (1)). Although the number of respondents is too small to draw generally applicable conclusions, the fact that all respondents bar one stated that nationality is indeed recorded in their agency suggests that this is in fact happening on a large scale.

2.1.5 Conclusion

The Social Dialogue Summit in Florence in 1995 issued a declaration in which the participants committed themselves to combating racism in general and at the workplace in particular. This declaration was also signed by Belgium, which means that each joint committee must conform to this arrangement by concluding collective agreements on the matter.

In the temporary employment agency sector this was done on 7 May 1996. Almost all the social partners have undertaken to combat discrimination in the recruitment and selection of

staff. Almost all, because one important partner - the user - not involved. Although the VBO has signed the Code, the users do not appear in the scope of the Code of Conduct. One might well question the value of having had the VBO as a partner in the negotiations. According to the ACV and ABVV an attempt was made during the negotiations to involve the user. Clearly this attempt did not succeed. This gives rise to a distortion in the agency-user relationship, especially where smaller agencies are concerned, in which staff have to choose between losing clients and applying the code. One way of restraining users in their attitudes and practices would be for the employment agencies (completely anonymously) in one way or another to inform the Conciliation Board of enterprises that discriminate. The sensitization campaigns to which the Code repeatedly refers could thus be conducted in a more purposeful and effective manner.

If attention is also paid to providing more effective information to temporary workers and to proper training for agency staff, so as to make them more self-assured in their dealings with users, the Code has a chance of success. It is to be hoped that, in this way, the fear of a number of respondents that "it is only words" will eventually prove groundless.

Finally, we might look at some further steps which might be taken as part of the social dialogue on the Code of Conduct. It would be possible to develop the Code further at intersectoral, sectoral or enterprise level. At intersectoral level the 1995 Florence Joint Declaration would need to be transposed into a collective agreement in the other sectors too. In principle every joint committee is under an obligation to do this because Belgium has ratified the guidelines. Consequently this recommendation must be transposed into collective agreement texts. Up to now only the temporary staff sector has taken this step. An important role falls to the trades unions here, since it is they who can take the initiative in getting negotiations underway. As the VBO was involved in the negotiations in the temporary employment agency sector, it could encourage its affiliated federations to observe the provisions of the Code of Conduct. At enterprise level, finally, works councils could encourage companies only to make use of employment agencies which are bound by the Code when recruiting temporary staff.

2.2 Case Study 2: ElectroCoat-Genk

2.2.1 Introduction

Since the 1980s the Limburg coalfields have been in a deep economic recession because of pit closures on a massive scale. In the period 1987-1992 a total of 9 791 mine workers joined the ranks of the unemployed while 7 120 employees took early retirement (Donckier and Mathy, 1992).

If we look at the situation on the labour market of the mine workers who were made redundant (age over 35), we find that the worst off are the Turks and, albeit less so, the Italians. 17% and 70% respectively were back in work by 1990, compared with 80% for the Belgian ex-mine workers (Donckier and Mathy, 1992).

In order to revitalize employment in the province, *Begeleiding Limburgs Mijng gebied* (Guidance Centre Limburg Mining Area - BLM) was set up. The task of this agency was to provide guidance and assistance to former miners, and later also poorly qualified young immigrants, in their search for new employment. For this purpose a broad network was devised consisting of the *Vlaamse Dienst voor Arbeidsbemiddeling* (Flemish Employment and

Placement Service - VDAB), employers' organizations and trades unions, immigrants' organizations, local councils, OCMWs (*Openbaar Centrum voor Maatschappelijk Welzijn* (Public Social Welfare Centre), the adult education sector and, last but not least, the bodies which had backed *Toekomstkontrakt: Europa, België, Vlaanderen en Limburg* ('Contract for the Future: Europe, Belgium, Flanders and Limburg', BLM booklet, 1993).

It is in this context that the cooperation between ElectroCoat and BLM has to be seen.

ElectroCoat-Genk was set up in November 1991 and is a subsidiary of the Weert Group. It can currently be ranked among the world's biggest electrocoating businesses. The plant deposits a durable coating of paint on steel which may or may not have been previously galvanized. The paint is applied in powder form by electrically charging and earthing the powder and steel. The job of the workers consists in the cleaning, hanging, spraying, taking down and packaging of the material. The company currently has about 60 employees, of whom 80% were recruited from risk groups (ex-mine workers, immigrants).

2.2.2 Contacts

I first found out about ElectroCoat through a magazine published by the King Baudouin Foundation *Ondernemen met risicogroepen* (Enterprise with risk groups; De Visch, 1994). The magazine reviews fourteen plants and enterprises each of which had made special efforts to employ risk groups. Risk groups can be defined as potential job-seekers who, for a particular reason, cannot find employment and for whom suitable guidance services have been set up. These often include immigrants who, because of their poor standard of education, language problems and cultural differences, have little chance of being recruited. In order to increase their chances on the ordinary labour market, they need assistance.

In this list of fourteen firms ElectroCoat caught our eye because of the very high proportion of 'risk employees' on its workforce, a full 80% of which consisted of workers from these groups. Moreover the number of immigrants here was also very high.

In order to form a clear picture of the cooperation involved, an approach was made to the persons most closely concerned. These included the personnel officer, Marc Corijn, because he was directly involved in the selection and recruitment of the workers. Since ElectroCoat is an SME, run by family members, little is governed by way of formal structures, with the result that little written source material was available. I had to collect the key information through interviews.

One BLM project worker, Karel Hertogen, who selected, trained and supervised the last two groups of ex-mine workers and poorly educated persons in the firm, was naturally involved in the study.

On the basis of his successive project reports it was possible to follow the development of the cooperation process.

Finally, an employee belonging to one of the poorly educated groups was interviewed. He was also a foreman and an immigrant, which had given him a role as a mediator in the firm.

2.2.3 Cooperation between ElectroCoat and BLM

The first contact between ElectroCoat and BLM dates back to the end of 1989.

BLM had heard that the firm in Stramproy (NL) wanted to set up a second plant in the Limburg coalfield area. Following a number of informal consultations it was decided to entrust BLM with the task of recruiting a number of poorly educated persons, with the emphasis on ex-mine workers. Between November 1989 and May 1990 the first group training course was held at the hot galvanizing plant in Stramproy, after which four of the five trainees were taken on. This cooperation was judged to have been successful and, between February and November 1991, 19 people, including 17 ex-mine workers, underwent group training at ElectroCoat in Stramproy with a view to the further expansion of ElectroCoat-Genk. After six months' training these 19 people were given indefinite contracts. In December 1991 they began work to start up a new plant in Genk.

Between December 1991 and July 1992 a second group of 18 people attended a training course at ElectroCoat-Genk. In July 1992 they were given indefinite contracts.

Finally, a third group were trained by ElectroCoat between June and September 1993, this time in cooperation with the VDAB. They too were then offered permanent contracts. A target for the last two groups was that at least 50% of the trainees should be immigrants.

A look at the resulting workforce at ElectroCoat shows that 80% is made up of risk cases, the immigrant contingent accounting for 46% (see overview table).

Table 2.2 Group composition by age and origin of all course participants

<i>Origin</i>	Belgians	Turks	Moroccans	Italians	Tunisians
	29	14	8	2	1
<i>Age</i>	18-24	25-29	30-34	35-39	40-45
	7	16	19	7	5

Source: Hertogen, K. (1994) Project report.

The fact that ElectroCoat wanted to cooperate with BLM can be explained by a variety of factors. Firstly, ElectroCoat already had experience of working with immigrants and the educationally disadvantaged in the Netherlands. The general philosophy of the firm is that it must take account of the environment in which it exists. In the Genk area there are a great many people with few educational qualifications and a great many immigrants. According to the personnel officer, the firm has a duty to open its doors to such people. In this firm people who are more difficult to place get the chance of a job despite their disadvantages. This is all handled informally; there is no social policy blueprint, it is not set down in any rules of service. It is more appropriate to describe it as a social climate in which special attention is devoted to the educationally disadvantaged and immigrants.

Secondly, it is also necessary to take account of the financial advantages involved in cooperating with BLM. Because ElectroCoat was providing six months' on-the-job training, it benefited from free labour for six months. In addition, BLM took on most of the administration involved in the recruitment and training.

Thirdly, the work at ElectroCoat is simple, though heavy and dirty. This type of firm experiences high labour turnover, particularly among somewhat better educated workers who can do other and better jobs. The advantage of using workers of a very low educational standard is that they are less likely to go looking for another job, because they themselves realize that they do not stand much of a chance elsewhere.

A detailed account of the training process is given below.

a) Recruitment

BLM was given the task of recruiting suitable workers. Together with the personnel officer a number of criteria which applicants had to satisfy were drawn up; one of these was readiness to work with and be tolerant of people of a different ethnic origin. In keeping with BLM practice, only people who were just about employable on the labour market were sought out. People who could get jobs anyway were not considered. Moreover, for the first group it was mainly ex-mine workers who were targeted; for the last two groups it was decided to aim for a minimum of 50% immigrants. In a certain sense it would be possible to describe this as positive discrimination in favour of immigrants.

After a group had been put together by BLM there was a final screening by ElectroCoat itself.

b) Training

The training consisted of six months' familiarization on the shop floor under the direction of a supervisor appointed by BLM. Apart from technical training, attention was also devoted to working attitude and disposition, to language mastery and to intercultural cooperation. As regards the latter, the aim in the firm is to establish among the multi-ethnic workforce a working climate in which each employee feels respected and has a sense of belonging to the firm. Thus meetings are held at regular intervals between foremen and trainees. Any problems, the best ways of dealing with cultural differences, and so on, are then discussed. Communication exercises are an important element here.

Following on from this, negotiations were held on the introduction of a project to encourage the use of Dutch on the shop floor. However, because only three employees qualified for this, it was decided to allow them to continue their language training at the centre they were attending. On the shop floor the supervisor concentrated on ensuring that these linguistically weak trainees understood instructions and the production process. In association with this, guidance was also given to foremen on the communication of instructions.

Because these activities involved persons with a very low standard of education and job applicants who were difficult to place, attention was also devoted during the training to attitude to work. Such people often have problems adjusting to a rigid pattern of working hours and working rhythms; this emerges clearly from the difference between the first group,

consisting mainly of ex-mine workers, and the next two groups, which included younger immigrants. In order to improve their attitude to work, regular evaluation meetings were held at which absenteeism and the like were discussed as well as administrative and social problems. The supervisor was thus intensively engaged for a period of six months on the education and training of the prospective employees.

After a short 'running-in' period it was the intention that this support function would be taken over by the company management itself. No separate structure was set up for this purpose, however. As mentioned above, this is an SME, which is also a family firm; here problems are solved and matters settled in a more informal manner, though it must be said that one of the three foremen is a Moroccan who, on his own assessment, was promoted precisely because of his nationality. It was felt that he would be in a better position to deal with cultural problems and that he would be able to act as a kind of bridge between the immigrant workers and management.

The company itself has taken a number of initiatives for the benefit of workers of Maghreb origin wishing to observe certain religious practices. They can, for example, take a longer leave period in the summer months if they put in a request to do so. This arrangement was introduced in order to give them a chance to return to their countries of origin and spend some time there. Those who wish to pray can withdraw to the changing rooms to do so during breaks.

2.2.4 Evaluation

During the long period of cooperation between ElectroCoat and BLM activities focused exclusively on unemployed persons of a low standard of education who were just about employable. According to the personnel officer, this has its advantages and disadvantages. The advantage is believed to be that you are have a closely knit group of workers who will not be overly inclined to look for another job. Staff turnover is said to be about 15% per year, which is fairly low for a firm of this kind.

Such a group also has its disadvantages, however. Its diversity is felt to be too limited: each worker has the same weak and strong points. This means that the workforce is not very versatile. Consideration is therefore being given to recruiting in the future from more diverse channels so as to build a more diverse and hence more versatile workforce. In this, however, the firm is not in any way saying that the cooperation with BLM was not a success. The three parties involved have all fared well as a result of the cooperation. The firm has acquired a stable workforce on financially advantageous terms. BLM has been able to place some 54 people in employment and has hence achieved one of its main aims, namely to find jobs for unemployed workers in the Limburg mining area who are difficult to place. Finally there are the 54 employees, who have been given the chance of a steady job despite their disadvantages. About half of them are immigrants. For the Muslims among them there are a number of arrangements with regard to annual holidays and religious practices. Compared with the rest of Genk and the surrounding area, conditions for workers at ElectroCoat are relatively good. In most firms the work is very heavy and poorly paid. According to a foreman, who has also taken a BLM course, everyone at ElectroCoat has found work within his own capabilities.

To sum up, the cooperation between ElectroCoat and BLM was very good. According to personnel officer Marc Corijn: "The structures for the re-integration of risk groups into the labour market have proved to us their viability."

A less positive point seems to me to be the fact that, after this period of cooperation, no special structure was set up to continue monitoring the specific problems that such a group may have to contend with, such as communication problems between the different nationalities. Attention was rightly paid to this during the training process and, in my opinion, it is something to which the parties should continue to be alert. Although the management is open to complaints and comments from its employees, it is not in the nature of these employees to raise complaints with management; this function would be better performed by an intermediary. It would have been interesting if the firm had been able to designate an independent person to whom employees could turn with their specific problems. There are, for example, still complaints over language problems from various employees, and sometimes there are real tensions between workers of different nationalities. Such matters do not always percolate through to management and can in the long term lead to problems.

2.2.5 Conclusion

Before drawing any general conclusions with regard to the policy of ElectroCoat, I think it is necessary briefly to outline the social context in which Flemish industry currently finds itself.

Anyone leafing through a journal on business ethics these days will without fail regularly come across the term 'social responsibility'. Then there is 'caring capitalism', 'social marketing', 'ethical business' etc. They all relate to "the careful management of the relations of an enterprise with its stakeholders in society" (Riley, 1996 in Bouckaert and Vandenhove, 1996). The function of an enterprise is not only to maximize profit, it must also create social value-added for the various parties involved. These include, in addition to the firm's shareholders in the narrow sense, its suppliers, customers and workers and local groups.

A firm is now seen as part of its environment, to which it should be accountable.

In order to determine the status of the concept of 'social responsibility' in Flemish business, Professor L. Bouckaert and J. Vandenhove devised a study in 1996 in which, on the basis of some 250 completed questionnaires, they came to some illuminating conclusions. Company managers were presented with a list of 35 areas for which they might be responsible, to which they had to assign a degree of importance. These areas ranged from technological innovation, through work organization and tax matters, to somewhat broader social topics. One related to the integration of socially weaker groups on the labour market. Out of the 35 areas this came very low on the list; it was ranked last but one.

It was rightly concluded by the investigators that in terms of the firm's business objectives social responsibility was considered unimportant by most company managers. Commercial interests were paramount.

Bouckaert (1996) states that "concern for the community is regarded as a value external to the enterprise, for which the authorities or other agencies are responsible. In other words, they make little or no provision to meet the expectations of weaker groups. They take a limited interest in social and cultural developments and innovations as part of their business objectives.

Lack of long-term vision? Probably. There is evidently still too little understanding of the economic potential of broader social responsibility."

If we look at a company like ElectroCoat in this context, I am of the view that it scores better on the broad social scale than most firms in Flanders. It has, after all, attached considerable importance to being open to socially weaker groups, such as the educationally disadvantaged and immigrants. This may have something to do with the fact that it is a Dutch company which, in its own country, has already had experience of working with risk groups. It also benefited, both financially and administratively, from having BLM on board.

On the other hand we should not lose sight of the fact that working with such groups is not always the obvious way to go.

"Employing workers from risk groups is thus not an exercise without strings attached; it is an extremely difficult assignment, in which employers are trying to reconcile their moral code with business results and thereby pursuing a dual social objective." (De Visch, 1994)

The workers in this case study had to be intensively supported over the first six months; their attitude to work had to be improved; attention had to be devoted to general communication between foremen and workers; dealing with different cultures does not come equally naturally to everyone; their intellectual capacities were only just adequate - and there was no absolute guarantee of success. In this respect the company did indeed make an impressive effort in the interests of a group of people that would in the normal way have fallen by the wayside on the ordinary labour market. Aside from the fact that, in my opinion, their social policy could have been placed on a more structured and formal footing, I think that this company could serve as a viable model for the many other Flemish firms which are not yet convinced of the possibility of working, with support, with risk groups and immigrants.

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LIST OF ABBREVIATIONS

ABVV	Algemeen Belgisch Vakverbond (<i>Belgian General Federation of Labour</i>)
ACLVB	Algemene Centrale der Liberale Vakbonden (<i>Federation of Liberal Trades unions of Belgium</i>)
ACV	Algemeen Christelijk Vakverbond (<i>Confederation of Christian Trades unions</i>)
BLM	Begeleidingsdienst Limburgs Mijng gebied (<i>Guidance Centre Limburg Mining Area</i>)
Cao	Collectieve arbeidsovereenkomst (<i>collective agreement</i>)
CGKR	Centrum voor Gelijkheid van Kansen en voor Racismebestrijding (<i>Centre for Equal Opportunities and Opposition to Racism</i>)
HIVA	Hoger Instituut voor de Arbeid (<i>Higher Institute for Labour</i>)
KMO	Kleine en Middelgrote Ondernemingen (<i>SMEs - small and medium-sized enterprises</i>)
NIS	Nationaal Instituut voor de Statistieken (<i>National Statistical Office</i>)
OCMW	Openbaar Centrum voor Maatschappelijk Welzijn (<i>Public Social Welfare Centre</i>)
UPEDI	Union Patronale des Entreprises de Dépannage Intérimaire (<i>Employers' Association for temporary employment agencies</i>)
VBO	Verbond van Belgische Ondernemingen (<i>Federation of Belgian Enterprises</i>)
VDAB	Vlaamse Dienst voor Arbeidsbemiddeling (<i>Flemish Employment and Placement Service</i>)
PC	Paritair Comité (<i>Joint Committee</i>)

ANNEX 1

ROYAL DECREE REGARDING THE PREVENTION OF RACIAL DISCRIMINATION IN THE TEMPORARY EMPLOYMENT (AGENCIES) SECTOR

9 SEPTEMBER 1996. - Royal Decree giving binding effect to the collective labour agreement of 7 May 1996, concluded in the Joint Committee for the temporary employment (agencies) sector, on the Code of Conduct regarding the prevention of racial discrimination⁸

ALBERT II, King of the Belgians,
To all here present and to come, Greetings.

Having regard to the Act of 5 December 1968 on collective labour agreements and joint committees, and in particular Section 28 thereof;

Having regard to the request from the Joint Committee for the temporary employment (agencies) sector;

On the recommendation of Our Minister for Employment and Labour,

We hereby approve and decree:

Article 1. The collective labour agreement of 7 May 1996 concluded in the Joint Committee for the temporary employment (agencies) sector, on the Code of Conduct regarding the prevention of racial discrimination, which is attached as an annex hereto, shall hereby be declared binding.

Article 2. Our Minister for Employment and Labour shall have responsibility for the implementation of this Decree.

Done at Brussels, 9 September 1996.

ALBERT
For the King:
The Minister for Employment and Labour,
Ms M. SMET

⁸ Reference to the *Moniteur Belge/Belgisch Staatsblad* (Official Gazette): Act of 5 December 1968, *Moniteur Belge/Belgisch Staatsblad* of 15 January 1969.

Annex (to Royal Decree on previous page)

Joint Committee for the temporary employment (agencies) sector

Collective Labour Agreement of 7 May 1996

Code of Conduct regarding the prevention of racial discrimination (Agreement registered on 21 May 1996 under number 41822/CO/322)

Article 1. This collective agreement shall apply to:

- a) temporary employment agencies as referred to in Section 7 (1) of the Act of 24 July 1987 on temporary work, agency supply work and the supply of workers to users;
- b) temporary staff as referred to in Section 7 (3) of the above-mentioned Act of 24 July 1987 placed in employment by temporary employment agencies.

Article 2. In accordance with the terms agreed in the 1995-1996 sectoral agreement protocol for the temporary employment (agencies) sector, a Code of Conduct shall be instituted for the prevention of racial discrimination in respect of temporary staff of immigrant origin provided by employment agencies.

This Code of Conduct is attached as an annex to the present collective agreement.

Article 3. In the event of failure to observe this Code of Conduct, without prejudice to the procedures customarily applicable in the event of violation of a collective agreement, any injured person may make a complaint either through the procedure provided for this purpose in the rules of service or to the Conciliation Board, the powers of which are laid down in the collective agreement of 8 July 1993, declared binding by Royal Decree of 15 September 1994.

Article 4. The present collective agreement shall take effect on 7 May 1996 and has been concluded for an indefinite period.

It may be revoked by any of the signatories subject to three months' notice given by registered letter addressed to the Chairman of the Joint Committee for the temporary employment (agencies) sector.

Approved as an annex to the Royal Decree of 9 September 1996.

The Minister for Employment and Labour,
Ms M. SMET

Annex to the Collective Labour Agreement of 7 May 1996 on the Code of Conduct regarding the prevention of racial discrimination.

I. Provisions of international law and of Belgian law

The social partners in the temporary employment (agencies) sector would, by way of an introduction, like to stress the importance of the texts which already exist in this area, namely:

- the collective agreement of 8 September 1993 on the introduction and assimilation of temporary staff in an enterprise;
- collective agreement No 38 of 6 December 1983 on the recruitment and selection of employees, as amended by collective agreement No 38*bis* of 29 October 1991;
- communication No 6 of 29 October 1991 from the National Labour Council on the problems regarding the integration of immigrants and communication No 7 of 25 July 1995 on the problems regarding the integration of persons of foreign origin;
- ILO Convention No 111 on Discrimination in respect of Employment and Occupation;
- the Act of 30 July 1981, as amended by the Act of 12 April 1994 on the penalties for certain acts inspired by racism or xenophobia.

II. Preamble

As set out at length in the Joint Declaration on the prevention of racial discrimination adopted by the European social partners on 21 October 1995, racism constitutes a grave threat, not only to society in Europe but also to the proper functioning of the economy.

It is a problem which affects society as a whole and it is both in everyone's interest and the responsibility of all to ensure that it is solved.

While the public authorities bear a large measure of the responsibility for the prevention of racism, the social partners also have a crucial role to play.

In view of the large number of immigrants among temporary workers supplied by employment agencies, and in accordance with the sectoral agreement of 19 May 1995, the social partners in the temporary employment (agencies) sector affirm the great importance they attach to the elimination of all forms of racial discrimination and to the promotion of equal opportunities in employment.

By adopting this Code of Conduct they wish openly, clearly and publicly to reaffirm their commitment to take an active part in joint efforts to prevent racial discrimination and to take joint action to combat it in their own sector, namely the temporary employment agency sector.

Work is after all essential to both the survival and the social integration of human beings.

Moreover, harmonious working relations and the optimum use of all talents and skills are crucial to the efficiency of enterprises.

Racial discrimination and inequality of opportunity and treatment at the workplace may occur in a variety of circumstances in the working life of a temporary worker (e.g. enrolment with an agency, selection, tests, assignment of a task, reception by the client-user, chances of securing a permanent job, dismissal, etc.).

The promotion of equal opportunities and the prevention of racial discrimination in respect of immigrant temporary workers call for a campaign of information and for specific projects with the joint and active involvement of all those involved in the sector, namely temporary employment agencies, user enterprises, temporary workers and trades unions and employers' organizations.

The institution of a Code of Conduct offering advice to all concerned can contribute positively to raising awareness on the part of the public of the various forms of discrimination.

III. Code of Conduct

Article 1. Basic principles

1. There is a demand for temporary labour among both job-seekers and employers. Temporary employment agencies seek to meet this demand, on the one hand by offering work to those wishing to work on a temporary basis and on the other hand by making temporary agency workers available to users.

This activity can and must only be performed taking into account the interests of the temporary workers, the users and the labour market in general, in accordance with the general and special acts and decrees in force at any time, in particular rules on enterprise recognition, the terms of collective labour agreements etc.

2. In accordance with the principles set out in the preamble, temporary employment agencies reject discrimination on the grounds of colour, race, religion, ethnic origin or nationality.

3. This Code of Conduct has been drawn up in order to encourage temporary employment agencies to apply the principle set out above in their policy and work.

One of the main objectives of this Code of Conduct is thus to make temporary employment agencies, their staff, temporary agency workers and users more aware of how racial discrimination, whether conscious or unconscious, can and should be avoided.

4. In addition, everyone must be aware the procedures to combat racial discrimination; no-one may be penalized or disadvantaged for having made a complaint in this connection.

Article 2. Definitions

For the purposes of this Code of Conduct the following definitions shall apply:

- temporary employment agency: an enterprise whose activity consists in enrolling temporary workers in order to make them available to users for the performance of temporary work (see Section 7 of the Act of 24 July 1987);
- temporary worker: any natural person made available to a user through the mediation of a temporary employment agency;
- user: any natural or legal person who, through the mediation of a temporary employment agency, uses temporary workers to perform tasks.

Article 3. Supply of temporary workers

1. When selecting and supplying temporary workers, temporary employment agencies shall, with due regard to the provisions of law, take account only of functionally relevant job requirements, in accordance with Article 1 (2).

2. By extension to paragraph 1, and in order to prevent any unlawful distinction being made, the imposition of non-functional criteria, whether or not at the request of the user, in respect of the assignment to be carried out, shall be prohibited.

In concrete terms, when supplying temporary workers, the staff of temporary employment agencies must check in every instance whether the criteria imposed by the user are relevant to the normal performance of the job in question.

3. Temporary employment agencies shall draw the attention of their employees to the problem of racial discrimination and prepare them to provide guidance to applicant temporary workers of different origins.

Article 4. Attitude to users

1. Temporary employment agencies may not communicate, either of their own accord or at the request of the user, information on temporary workers and applicants for temporary work other than those which are relevant to the job in question, in accordance with Article 3. No information may be communicated to a user regarding race or ethnic origin, even at the request of the temporary worker or applicant for temporary work.

2. Temporary employment agencies may not put questions to users which could give rise to discriminatory conduct on the part of the latter.

3. In the cases detailed above, temporary employment agencies shall inform users that they cannot entertain requirements or wishes of a discriminatory nature.

4. If a worker only has limited knowledge of the main language, the temporary employment agency shall insist that the user take the necessary measures to ensure communication, so that general information and, more particularly, information relating to safety, is properly understood.

Article 5. Attitude to temporary workers/persons applying for temporary work

1. When enrolling temporary workers, temporary employment agencies may not record details of race, colour, religion or ethnic or national origin.

Such details may be recorded only if the applicant qualifies for positive action or preferential treatment aimed at redressing factual inequalities.

2. Temporary employment agencies may, however, record information which is necessary in order that foreign workers can be employed in accordance with relevant legislation (work permit, residence permit, etc.).

3. When allocating jobs, qualifications and experience gained in other countries may not be disregarded automatically without being examined.

4. Tests to determine suitability for a job or trial periods shall be used in a consistent and impartial manner and shall be based on the actual performance of workers.

Article 6. Dealing with complaints

In the event of failure to observe this Code of Conduct, any injured party may lodge a complaint, either under a procedure specifically laid down for this purpose in the rules of service, or by representation to the Conciliation Board set up under the collective agreement of 8 July 1993 (declared generally binding by Royal Decree of 15 September 1994).

Article 7. Dissemination

Temporary employment agencies shall undertake to keep their permanent staff, temporary workers and users informed of the existence of this Code of Conduct and of its application.

Approved as an annex to the Royal Decree of 9 September 1996.

The Minister for Employment and Labour,
Mrs M. SMET

ANNEX 2

QUESTIONNAIRE TEMPORARY EMPLOYMENT AGENCIES

- Name and address of temporary employment agency:
- Tel.:
- Your job:
- For what jobs do you seek temporary staff?
 - Manual workers
 - White-collar workers
 - Professional and managerial staff
 - All

In some questions a distinction is made between manual and white-collar workers. You only need to fill in the box which applies to your agency.

If you do not have enough space for your answer, you may use the reverse side of the preceding sheet.

P.S.: the information will be stored anonymously.

On 7 May 1996 a "Code of Conduct on the prevention of racial discrimination in respect of immigrant temporary workers" was introduced by the social partners.

- Has your agency been made aware of this? If so, in what manner (by whom, how, when)?
- How are temporary workers informed of the content of this Code?
- Are copies available to take away in your agency?
- Does the Code feature in the training of agency staff by UPEDI or in internal courses? If so, in what manner? Do you consider that adequate?
- What is your own opinion of the Code? Do you consider such a code to be useful/necessary?
- Do you think that it can bring results? If so, in what manner?

- For what reasons would you not enrol a person as a temporary worker?

Manual workers	0	lacks the right training
	0	lack of motivation
	0	problems (personal)
	0	nationality
	0	knowledge of Dutch
	0	headscarf
	0	employment history
	0	other reasons: which?

White-collar workers	0	lacks the right training
	0	lack of motivation
	0	problems (personal)
	0	nationality
	0	knowledge of Dutch
	0	headscarf
	0	employment history
	0	other reasons: which?

- When enrolling a new applicant, what information do you consider important and also keep on file?

Manual workers	0	name and address
	0	marital status
	0	number of children
	0	nationality
	0	age
	0	gender
	0	driving licence
	0	number of years' experience
	0	training
	0	further training/retraining
	0	knowledge of languages
	0	duration of unemployment
	0	reasons for unemployment
	0	employment history
	0	aspirations: what does the applicant want to do?
	0	willingness to do shift work/night work
	0	pay expectations
	0	full-time/part-time
	0	willingness to undergo training
	0	motivation
0	presentation	
0	skills	
0	other information: what?	

White-collar workers	0	name and address
	0	marital status
	0	number of children
	0	nationality
	0	age
	0	gender
	0	driving licence
	0	number of years' experience
	0	training
	0	further training/retraining
	0	knowledge of languages
	0	duration of unemployment
	0	reasons for unemployment
	0	employment history
	0	aspirations: what does the applicant want to do?
	0	willingness to do shift work/night work
	0	pay expectations
	0	full-time/part-time
	0	willingness to undergo training
	0	motivation
	0	presentation
	0	skills
	0	other information: what?