

Pro Bono Practices and Opportunities in Belgium

I. Introduction

Under the Belgian Constitution (the “Constitution”), all individuals have a right to legal assistance, which is provided and obtained in the form of advisory services and representation in judicial matters. Even outside the framework of state organized legal assistance and aid, ample opportunities exist for lawyers and law firms to provide voluntary legal services on a pro bono basis including, for instance, advising and representing social enterprises and non-profit organizations on European law issues. Although Belgian law mandates the government to make differing types of assistance available to indigent people, thereby requiring a fair contribution from the legal profession in assuring the constitutional right to legal assistance, a strong pro bono culture has not traditionally existed in the Belgian domestic legal community for various reasons. In fact, the vast majority of pro bono projects were taken-on by the local offices of international associations with UK or US roots, rather than by domestic or Benelux firms. The latter regularly offer legal aid services for which they are remunerated by the Belgian government on a per activity basis.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	<p>1. Describe the laws/rules that regulate the provision of legal services?</p>	<p>According to article 23 of the Constitution, all Belgian citizens have the right to legal assistance and this is extended to anyone residing on Belgian territory, unless the legislator can objectively justify a differential treatment for non-Belgian citizens. Free legal consultation at any Legal Assistance Bureau in Belgium is available to everyone, including non-Belgian citizens and non-Belgian residents, on a first-come-first serve basis, without the need to satisfy any eligibility criteria.¹ However, this does not mean that the government itself should be providing that legal assistance in the broadest possible way or that it should command that all legal assistance should be gratuitous – a great deal of the actual implementation of this right can left to specialized organizations, and notably to the legal profession.</p>

¹ The mentioned free legal consultation is a form of “front-line legal assistance” organized and funded by the Belgian government. Individuals in need of legal representation before the Courts, tribunals, mediators, *etc.*, also referred to as “second-line legal assistance”, will need to meet the relevant eligibility criteria to be entitled to such legal representation for free or partially free. According to Article 508/1 of the Judicial Code, legal aid is available to all natural persons regardless of their nationality or residency provided that they meet the eligibility conditions. These conditions are primarily linked to the financial situation and living conditions of natural persons.

		<p>The provision of legal services is regulated by the Judicial Code of Belgium (Articles 428-477) and the Code of Professional Ethics.²</p>
	<p>2. Describe any licensure requirements governing the provision of legal services.</p>	<p>Although the Judicial Code of Belgium sets out a basic framework of rules of conduct, the legal profession is to a large extent governed by two overarching Bar associations: the “Flemish Bar Council” (<i>Orde van Vlaamse Balies</i>) for the Dutch-speaking Bars and the <i>Ordre des Barreaux Francophones et Germanophones</i> for the French and German speaking Bars (each referred to herein as “Orde” and collectively as, the “Ordes”). Aspirant lawyers must hold law degrees and are required to complete a 3-year apprenticeship under the supervision of a senior qualified lawyer (<i>stagemeester; maître de stage</i>) before being qualified to practice independently. However, even during such time, aspirant lawyers are full members of the Bar association, may handle and represent cases themselves and are allowed to use the title of lawyer.</p> <p>Alternative rules and licensure requirements apply for in-house counsel - the principal difference between a lawyer and in-house counsel being that the former acts as a self-employed legal service provider while the latter provides similar services, except those that remain reserved to the legal profession, under an employment contract. Foreign qualified lawyers can also practice in Belgium by registration to the list of European Lawyers (E-list) or list of associated members of the Brussels Bar (B-list) and Nationals of the EU, European Economic Area (“EEA”), Member States and Switzerland can requalify as Belgian lawyers by completing an aptitude test and completing three years of continuous and effective practice in Belgium under supervision of a Belgian-qualified lawyer.</p>
(b)	Pro Bono Practice and Culture	
	<p>1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or</p>	<p>As part of their 3-year apprenticeship post educational qualification, “aspirant lawyers” (<i>stagiair-advocaat; avocat-stagiaire</i>) do not only have to obtain a declaration of professional aptitude</p>

² The Code of Professional Ethics applicable to lawyers at the French-Speaking and the German-Speaking Bar is available at: <http://www.barreaudebruxelles.info/index.php/en/our-bar/the-rules-of-professional-ethics> (last visited on March 1, 2019).

<p>all contexts, details of any mandatory or minimum fees imposed on provision of legal services.</p>	<p>(awarded after having passed bar exams), but are also enrolled in what is called “pro deo” assistance, i.e. state-subsidized legal assistance to people that are indigent and could not otherwise afford the services of a lawyer. Currently, the Flemish Bar council requires that every aspirant lawyer completes 5 pro deo cases during their apprenticeship. These cases are assigned during monthly aspirant lawyer meetings, which are supervised by senior lawyers appointed by the local bar. Aspirant lawyers who are members of the French-speaking bars are required to attend 16 monthly meetings over the course of 3 years. However, they are not required to complete a specific number of pro deo cases.</p> <p>For decades the Belgian legal profession (mainly aspirant lawyers) was engaged in pro bono activities to indigent individuals, without any form of financial support from the government. This charitable pro bono system was gradually replaced in 1980 (with regard to aspirant lawyers) and in 1995 (with regard to qualified lawyers) by a state-subsidized pro deo scheme as a result of the integration of a directly enforceable right to legal assistance into article 23 of the Constitution. Proposals for mandatory pro bono requirements have come and gone, mainly due to resistance from the Bar associations and the legal profession in general. This led to a proposal in 2013 to reform the regime of second-line legal assistance which, among other things, aspired to establish a framework for mandatory pro bono legal services was abandoned.</p>
<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>No - lawyers are not required to do any pro bono hours. Lawyers’ involvement in pro bono matters is entirely voluntary.</p>
<p>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</p>	<p>Aspirant lawyers are not required to complete a minimum number of hours of pro bono legal services. They are required to attend meetings at a Legal Assistance Bureau in which they are able to take on pro deo cases. See in (b) 1. above. However, these pro deo cases are not part of pro bono legal services, but of state-subsidized legal assistance.</p>

<p>4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?</p>	<p>The main areas in which clients seek pro bono assistance are the following: EU law, assistance with setting up non-profit organizations and related services, and refugee assistance.³ Another area which proved to be successful over the last two years was pro bono assistance to obtain compensation for victims of the Brussels terrorist attack in 2016. Common EU law related matters include divorce proceedings, child allowance claims and other family matters, recognition of judgements rendered in other EU countries, social benefits, <i>e.g.</i> pension.</p> <p>As regards the areas with major unmet legal needs, we understand that these are EU law related matters and legal services offered to non-profit organization. This is due to the fact that companies cannot benefit from second-line legal assistance, subject to one exception. Legal persons, <i>i.e.</i> companies, can only benefit from second-line legal assistance if they become insolvent and criminally prosecuted. Therefore, non-profit organization wishing to benefit from free legal assistance can only use pro bono legal services. Since the emergence of the European migrant crisis in 2015, the number of refugees and asylum seekers has sharply risen in Belgium. Although refugees and asylum seekers are usually entitled to free legal aid offered by pro deo lawyers, the reduction in legal aid has led to an increase in demand for pro bono legal services also in this area.</p>
<p>5. Who are the main providers of pro bono legal services? <i>e.g.</i>, NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?</p>	<p>Law firms - Statistics reveal an increase in the number of pro bono programs undertaken by law firms which coincide with the establishment of branches of big Anglo American law firms, where a vibrant pro bono culture has existed for many years – there has also been spill-over to the Belgian domestic legal landscape but this remains fairly limited. A statistical survey incorporating data of 14 international law firms with offices in Belgium and representing more than 500 lawyers, estimated that in Belgium lawyers performed on average 27.1 hours of pro bono legal services over the last 12</p>

³ See PILnet: 2017 Global Pro Bono Digest 2017, Belgium, p. 15, available at: <https://www.probonoforum.org/europe/wp-content/uploads/2017/10/Global-Pro-Bono-Digest.pdf> (last visited on March 1, 2019). The remainder of the mentioned areas is provided on the basis of the contributor’s experience from attending the monthly meetings organized at the French-speaking part of the Legal Aid Office in Brussels.

		<p>months, which compares favorably with the European average of 17.7 hours.</p> <p>The main beneficiaries of such pro bono legal services are groups like Amnesty International, Human Rights Watch, and Friends of the Earth. According to the results of the Brussels Pro Bono Project, initiated in 2004 and led by lawyers of different Anglo American law firms, Brussels in particular offers a wide “number of opportunities, especially in the area of advising and representing non-profit organizations in Europe.” The handling of (high profile) pro bono cases is in part due to the increasing implementation of corporate social responsibility charters by international law firms, thus obliging or encouraging lawyers from such firms to take up a minimal amount of pro bono hours every year.</p> <p>One of the key pro bono projects with active participation of law firms and NGOs is the Brussels Pro Bono Roundtable (the “Roundtable”). The Roundtable was established in 2015 by PILnet, an NGO, to exchange best practices, serve as a meeting platform and foster the development of a pro bono culture within law firms that are not active in the area. The Roundtable meets on average bi-monthly. 1-2 NGOs are asked to present on their work and pro bono needs at each meeting.⁴</p> <p>NGOs - Belgium’s most prominent pro bono NGO is Avocats Sans Frontières (“ASF”) which seeks to provide legal assistance in sensitive cases around the world. Headquartered in Brussels, ASF organizes seminars for European lawyers on topics such as corporate social responsibility and the role of lawyers in the prevention of torture. However, most of their activities are implemented ‘in the field’, in fragile or post-conflict countries, where it offers legal aid services, among others, through the establishment of legal centers, organization of mobile court hearings and raising awareness and educating the population on their rights. It also offers professional training to lawyers, institutional support to local Bar associations for the development of the profession and organization of legal aid, observation of trials and networking for the creation of local synergies.</p>
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⁴ See PILnet: 2017 Global Pro Bono Digest 2017 referenced above.

		<p>Bar Association Pro Bono Programs - According to the ASF website quite a few Belgian Bar associations financially support the initiatives of the ASF. Similarly, on April 19, 2011 the Dutch speaking Order of the Brussels Bar entered into a protocol agreement (<i>protocolakkoord; accord de jumelage</i>) with the Bar of Lubumbashi in the Democratic Republic of Congo, which facilitates exchange opportunities between members of the respective bars, the financing and establishing of a library containing not only books on Congolese, Belgian, French and International law, but also of legislation in neighboring African countries and the OHADA (<i>Organisation pour l'Harmonisation en Afrique du Droit des Affaires</i>).</p> <p>Pro Bono Resources - As stated on ASF's website, the International Legal Network (the "ILN") is comprised of "lawyers with one or several fields of legal expertise, thematic or contextual, who are available to act in the field or from their local bar association. Whenever there is a new mission to be undertaken, the ILN sends out a 'call for volunteers' to the whole of the network and entrusts the mission to available lawyers according to their fields of expertise of ASF." More information regarding ASF and the International Legal Network are available at http://www.asf.be/international-legal-network.</p>
(c)	Obstacles to Provision of Pro Bono Legal Services	
	1. Do lawyers require a license to provide pro bono legal services?	–Lawyers in Belgium do not need to hold any special license to provide pro bono legal services.
	2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?	Foreign lawyers in Belgium do not need any additional license. However, if the relevant pro bono legal service in question entails representation in Belgian courts, they may only represent and defend clients in association with a Belgian lawyer. Foreign non-EU lawyers cannot plead in Belgian courts.
	3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?	Lawyers do not need to procure professional indemnity legal insurance specific to pro bono legal services. The bar fees paid to any of the Belgian bars will cover indemnity insurance applicable to all legal services including pro bono.

	<p>4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?</p>	<p>There are rules that prohibit advertising of pro bono successes. The Code of Professional Ethics for lawyers of the French-speaking Bar of Brussels⁵ prohibit advertising that enables others to identify clients (Article 5.5). These rules also prohibit lawyers to advertise their case results, success rate, turnover or a number of handled cases. Lawyers are not prohibited from soliciting new pro bono clients. However, the Code of Professional Ethics establishes a number of rules applicable to solicitation of new clients (Article 5.7). In particular, when soliciting new clients, lawyers are required to get in touch with the client first in writing. They are not allowed to visit the client without prior invitation or authorization to visit beforehand. Moreover, lawyers must abstain from soliciting clients in a manner which could alter their freedom of choice when it comes to choosing their legal representation.</p> <p>Unlike lawyers registered with the French-speaking Bar of Brussel, members of the Orde van Vlaamse Balies are not restricted from advertising pro bono legal services. In any event, it is advisable to present any pro bono advertising campaign to a representative of either the Orde van Vlaamse Balies or the Ordre des Barreaux Francophones et Germanophones, and to request an informal approval before launch. Many advertising campaigns will lead to claims from other law firms to the President of the respective orders, and an informal approval will in many cases avoid long discussions with the President and any affected parties.</p>
	<p>5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?</p>	<p>Lawyers in Belgium do not receive any “Continuing Legal Education” or equivalent credit granted for pro bono work.</p>
(d)	Sources of Pro Bono Opportunities and Key Contacts	
	<p>1. Describe any governmental sources of pro bono and/or other legal services in Belgium.</p>	<p>The Constitution grants all citizens the right to legal assistance, and the Judicial Code further identifies two systems of assistance: “legal assistance”</p>

⁵ Source: Code de déontologie des avocats et du Règlement déontologique bruxellois, available at : http://www.barreaudebruxelles.info/images/publications/recueil_codeon_rdb.pdf (last visited on March 1, 2019).

(*juridische bijstand; aide juridique*) where the substantive aspect prevails over the pecuniary one, and “legal aid” (*rechtsbijstand; assistance judiciaire*) which is a purely financial intervention on the part of the state. Legal assistance takes place at two levels, i.e. front-line legal assistance (i.e. lawyers provide preliminary (but limited) legal and practical advice – available to all) and second-line legal assistance (i.e. giving more sophisticated legal advice and/or assisting and representing someone in a judicial proceeding – available to natural persons who have insufficient financial means). Finally, there are also a few opportunities to lodge complaints with Ombudsmen (i.e. mediation services can be solicited in order to assess the fairness of decisions taken by government institutions, autonomous public companies and even private companies). Citizens who fulfil the criteria are partially or completely exempt from paying fees for second-line legal assistance. Lawyers rendering second-line legal assistance services are paid by the Belgian Department of Justice through the intermediary of the local Ordes.

State-Subsidized Legal Aid - The other component of state-sponsored legal services, “legal aid”, means that certain costs and fees incurred during judicial or extra-judicial proceedings are waived either in part or in full, for litigants who do not have adequate income to cover those costs. These fees include, among others, registration fees (*registratierechten; droits d’enregistrement*), registry costs (*griffierechten; droit de greffe*), the fees related to intervention of bailiffs (*rechtsdeurwaarders; huissiers de justice*), notaries (*notarissen; notaires*) and specialists in the context of a judicial expert investigation (*deskundigenonderzoek; expertise*). Access to legal aid is available to Belgian nationals, nationals of EEA member states, foreign nationals in accordance with international treaties, foreign nationals having their ordinary residence in Belgium or in a Member State of the EU, EU, foreign nationals in immigration proceedings, and even legal persons can request legal aid.

Unmet Needs and Access Analysis - Currently, in order to qualify for second-line legal assistance, a single individual, i.e. a person living alone, may not earn more than €1,011 net per month (full exemption from payment) or between € 1,011 and €

	<p>1,298 per month (partial exemption).⁶ However, if the individual is married, co-habiting or single but taking care of dependents, the thresholds are based on total family income and amount to a maximum of € 1,298 (full exemption) and between € 1,298 net per month and € 1,583 (partial exemption), after a deduction of € 188.22 per dependent that the individual is taking care of. The majority of people in need of legal support exceed these thresholds. The law also identifies certain individuals for which it creates a legal presumption of indigence, among others, refugees, minors, disabled people and people receiving other forms of social state-subsidized benefits. There are no current clear figures on whether the current state-subsidized legal assistance scheme meets current unmet legal needs of indigent and marginalized individuals. Certainly, the amount of eligible categories for legal assistance and aid has not kept pace with the increasing volume of legal proceedings, implying that those who rely on the system, use it extensively.</p>
<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Belgium.</p>	<p>NGOs - One of the main beneficiaries of pro bono legal services in Belgium are groups, such as Amnesty International, Human Rights Watch, Save the Children International⁷, ASF (see above) or Friends of the Earth. These NGOs often seek assistance from pro bono lawyers, for example, in preparation of white advocacy papers that can help them to lobby the EU institutions or other public institutions.</p> <p>Brussels Pro Bono Roundtable - The Roundtable serves as a meeting platform for NGOs and law firms to discuss pro bono opportunities. The Roundtable meets on average bi-monthly. During these meetings, NGOs are asked to present on their work and pro bono needs at each meeting. Pro bono work can be distributed among law firms directly at these meetings.⁸</p>

⁶ These thresholds apply as of September 1, 2018 but are subject to a regular change. The conditions of access to a second-line legal assistance are available at: <http://www.aidejuridiquebruxelles.be/index.php/FR/conditions-d-acces-a-l-aide-juridique-de-deuxieme-ligne> (last visited on March 1, 2019).

⁷ Save the Children advocacy office in Brussels, see the relevant contact at: <https://www.savethechildren.net/contact-us> (last visited on March 1, 2019).

⁸ Key contacts: Charles Albert Helleputte, Mayer Brown & Marianne McKeown, PILnet 1 chelleputte@mayerbrown.com & mmckeown@pilnet.org. See PILnet: 2017 Global Pro Bono Digest 2017, Belgium, p. 15, available at: <https://www.probonoforum.org/europe/wp-content/uploads/2017/10/Global-Pro-Bono-Digest.pdf> (last visited on March 1, 2019).

<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>Lawyers can register with the Roundtable. This will give them an access to various NGO pro bono opportunities which are presented at these bi-monthly meetings.⁹</p>
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⁹ For key contacts, see the following website: <https://www.probonoforum.org/europe/wp-content/uploads/2017/10/Global-Pro-Bono-Digest.pdf> , p. 15 (last visited on March 1, 2019).