

# **A Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions**

**Prepared by Latham & Watkins LLP  
for the Pro Bono Institute**

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## FOREWORD

This Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions goes back to an initiative of the Pro Bono Institute and Latham & Watkins to make information about global *pro bono* legal services accessible. The first edition of the survey published in 2005 covered 11 jurisdictions, mostly in Europe. The 2012 edition covers over 70 jurisdictions in Europe, Asia and the Pacific region, the Americas, Africa and the Middle East. As the interest in global *pro bono* has grown, and this survey with it, the conversation about global and international *pro bono* has shifted. Whereas the focus just a few years ago was on issues of permissibility and compatibility with the local legal system, the focus today is decidedly practical: *pro bono* has gained in acceptance and the question is how, not whether, *pro bono* representations can be undertaken. The developments have been profound and exciting.

The survey is part of an ongoing effort, shared by many law firms, organizations and corporate legal departments, to promote and stimulate the growth of *pro bono* representation globally and in international settings. Its purpose is to serve as an introductory resource for law firms, private practitioners, in-house lawyers and NGOs seeking to engage or learn more about the culture and provision of *pro bono* in their own or other countries. The chapters describe, for each jurisdiction, what access-to-justice or publicly funded legal aid programs exist, what unmet needs for legal representation remain, what perceptions or culture shape the discussion of *pro bono*, and what professional-conduct laws and rules provide the framework for *pro bono* representation.

In 2012, lawyers from Latham & Watkins' 30 offices around the globe have updated all prior chapters and added chapters covering nearly 30 new jurisdictions. We consider the survey to be a work in progress and welcome your feedback and comments to help us improve future versions (please direct your requests to: [Gianni.DeStefano@lw.com](mailto:Gianni.DeStefano@lw.com)). While we have worked, to the extent possible, with local counsel and NGOs to provide information that is both current and accurate, we note that the situation in many of the jurisdictions is fluid, and that errors and omissions are unavoidable. The survey is therefore a work in progress in this sense as well and we invite your comments.

We owe a debt of gratitude to Esther Lardent and Tammy Taylor of the Pro Bono Institute, with whom we have collaborated on this project. The survey is the effort of a large team, involving not only many lawyers at Latham & Watkins, but also local law firms and practitioners, in-house lawyers and NGOs around the globe. We are grateful for their contributions and their time.

August 2012

Gianni De Stefano and Wendy Atrokhov



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## THANKS

**The Pro Bono Institute and Latham & Watkins would like to thank the following contributors to this survey:**

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Last, but not least, each individual, both in law firms and legal departments, active in *pro bono* representations to address the unmet legal needs of those with limited means.

## PRO BONO PRACTICES AND OPPORTUNITIES IN BELGIUM<sup>1</sup>

Under the Belgian Constitution, all individuals have the right to legal assistance, which is provided and easily obtained in the form of advisory services (primary legal assistance) and representation in judicial matters (secondary legal assistance). However, as described below, opportunities exist for law firms to provide *pro bono*<sup>2</sup> legal services outside of this state-organized legal assistance and legal aid system, including, for example, advising and representing nonprofit organizations on European law.

### I. LEGAL SERVICES AND THE LEGAL PROFESSION IN BELGIUM

#### A. The Legal Profession

Belgian law is practiced in Dutch, French, and German (the three official languages of the country). As of 2009, there were approximately 16,000 registered lawyers in Belgium.<sup>3</sup> The lawyer-to-inhabitant ratio in Belgium is approximately 14 lawyers per 10,000 inhabitants. Brussels has by far the largest number of registered lawyers in Belgium. There are about 7,200 lawyers in Brussels,<sup>4</sup> amounting to about 45% of the total amount of lawyers in Belgium.

The Belgian court system is modeled after the French system. In general terms, administrative, civil and criminal law proceedings are distinct. The highest administrative court in Belgium is the *afdeling administratie van de Raad van State*. Minor criminal offenses are brought in first instance before a police tribunal (*politierechtbank*); more serious criminal offenses before the District Court (*correctionele rechtbank*). The most serious criminal law offenses are brought before a so-called “*Hof van assisen*,” which is a trial by jury. Civil lawsuits in first instance are dealt with by a so-called “justice of the peace” (*vrederichter*) or the District Court (*burgerlijke rechtbank*), depending on the nature of the dispute and/or the monetary value of the dispute. Certain courts (*rechtbank van koophandel* and *arbeidsrechtbank*) deal exclusively with commercial and labor law matters. Judgments in first instance can normally be appealed. For instance, appeals against District Court judgments are brought before one of the Courts of Appeal. The supreme court in Belgium is called the Constitutional Court (*grondwettelijk hof*). A case may be brought before the Constitutional Court in two ways: (a) in the form of an action for annulment that may be instituted by any authority designated by statute or by any person who has a justifiable interest; and (b) any Belgian tribunal may refer preliminary issues to the Court.

The legal profession is governed by two overarching Bar Associations: the *Orde van Vlaamse Balies* for the Dutch-speaking Bar Associations and the *Ordre des Barreaux Francophones et Germanophones* for the French- and German-speaking Bar Associations (referred to herein collectively as, the “*Ordes*”). Divided over 27 Court Districts, there are in total 14 Dutch, 13 French, and 1 German local Bar Associations.<sup>5</sup> In practical terms, all of the Belgian Bar Associations are organized under and governed by similar principles. Consequently, the Belgian Bar Associations are treated as one in this chapter. The *Ordes* are the principal bodies which organize legal assistance. The *Ordes* monitor lawyers’ legal services and the quality of secondary legal assistance (described below) provided. A lawyer can be disbarred for certain breaches of its legal and ethical duties (regulated by the *Ordes*’ Code of Conduct).

The Belgian *pro bono* system contains two aspects: legal assistance and legal aid (described below). Article 23, 3, 2° of the Belgian Constitution grants all people the right to legal assistance. The Belgian Judicial Code provides for legal assistance at two “levels”: primary and secondary legal assistance.

- Primary legal assistance is provided by a local Legal Assistance Commission<sup>6</sup> (“LAC”). Each Court District has its own LAC, composed of an equal number of representatives from the local Order and social welfare centers. During LAC sessions – which are consultation sessions open to natural persons only – lawyers provide practical and legal information. Lawyers provide primary (yet limited) legal advice on a variety of issues, or they refer persons to lawyers or a

<sup>1</sup> This chapter was drafted with the support of Stibbe Brussels.

<sup>2</sup> In Belgium, *pro bono* is commonly referred to as *pro deo*.

<sup>3</sup> See [http://www.barreaudebruxelles.be/PDF/brochures/Le%20Barreau\\_site.pdf](http://www.barreaudebruxelles.be/PDF/brochures/Le%20Barreau_site.pdf), p. 4 for figures in 2009.

<sup>4</sup> See [http://www.barreaudebruxelles.be/PDF/brochures/Rapp2010\\_site.pdf](http://www.barreaudebruxelles.be/PDF/brochures/Rapp2010_site.pdf), p. 9 (May 31, 2010 figures) together with <http://www.baliebrussel.be/nl/wie-zijn-wij/wat-is-noab> (Dec. 1, 2011 figures).

<sup>5</sup> The Court District of Brussels has both a Dutch and a French Bar Association.

<sup>6</sup> *Commission d’Aide Juridique/Commissie voor Juridische Rechtsbijstand/Ausschuß für rechtlichen Beistand*.



specialized body<sup>7</sup> capable of providing secondary (more elaborate) legal assistance.<sup>8</sup> In practice, each LAC session lasts approximately 10 to 15 minutes per person. Each qualified lawyer willing to participate in primary LAC sessions informs the LAC on the areas of the law that he or she is qualified to advise on. The *Ordes* generally require that every trainee lawyer participate in a minimal number of LAC sessions during their three-year “apprentice” period.<sup>9</sup> Historically, primary legal assistance at LAC sessions was charged at a flat fee, however, as of January 1, 2004 it is a free service.<sup>10</sup>

- Secondary legal assistance is organized by a Legal Assistance Bureau<sup>11</sup> (“LAB”) and consists of giving more sophisticated legal advice and/or assisting and representing someone in a judicial proceeding. A LAB is in charge of organizing the availability of secondary legal assistance in each Court District, depending on the Order to which that district is subject. Secondary legal assistance is available only to natural persons with insufficient financial means. Citizens who fulfill the criteria are partially or completely exempt from paying fees for secondary legal assistance. Lawyers rendering secondary legal assistance services are paid by the Belgian Department of Justice through the intermediary of the local *Ordes*. The remuneration is determined by the Department of Justice and is based on a points system, in which the value of one point is determined annually, taking into account the entire State’s legal assistance budget and the number of matters in that year.<sup>12</sup> Under the *Ordes*’ rules, lawyers cannot accept contingency fees from clients, nor can they seek further remuneration from an indigent client who receives complete legal aid.<sup>13</sup> Secondary legal assistance often results from a referral of the lawyer providing primary legal assistance (the lawyer providing primary legal assistance cannot provide secondary legal assistance for the same matter). However, natural persons have the right to choose any lawyer qualified by the local Order for secondary legal assistance. If the lawyer is willing to accept the case, he or she can request that the LAB designate him or her as the person’s secondary legal assistance provider. Ultimately, every lawyer must be authorized by the Order to give secondary legal assistance in each individual case. In urgent matters, one may contact an on-duty lawyer from the emergency service of the LAB for this authorization.

As of August 2011, under the Statute of August 13, 2011<sup>14</sup> (also called the “**Salduz Statute**” in reference to the Case Law of the European Court of Human Rights), all natural persons have the right to prior consultation and assistance, i.e., every person who is subject to questioning is entitled to consult with a lawyer beforehand, and demand that this lawyer be present at the first interrogation by the police or the judge in charge of an inquest. To effectuate this statutory right, the *Ordes* have established a “Salduz-Permanency.” In theory, when an individual wishes to invoke his or her right to prior consultation and assistance, the police must first contact a call center set up by the *Ordes*, requesting the assistance of an on-duty lawyer from the neighborhood. The on-duty lawyer will then offer a 30-minute (maximum) consultation. After that, the interrogation can take place.<sup>15</sup> In practice, due to

<sup>7</sup> BELGIUM JUDICIAL CODE (BELG. JUD. CODE), art. 508/1; *see also L’aide Juridique: Un Meilleur Accès à la Justice*, SERVICE PUBLIC FEDERAL JUSTICE, available at [http://justice.belgium.be/fr/publications/een\\_betere\\_toegang\\_tot\\_justitie.jsp?referer=tcm:421-138590-64](http://justice.belgium.be/fr/publications/een_betere_toegang_tot_justitie.jsp?referer=tcm:421-138590-64).

<sup>8</sup> Each LAC maintains a list of all lawyers qualified by the local Order wishing to perform services in the context of secondary legal assistance, which is updated annually.

<sup>9</sup> “Trainee lawyers” have law degrees but are required to complete a training period of three years under the supervision of a qualified lawyer before being qualified to practice independently. During this period they must also pass all bar exams. Primary legal assistance provided by trainee lawyers is overseen by both the trainee’s supervisor and an official of the local LAC. Most *Ordes* also require trainee lawyers to provide a fixed, minimal (number of hours of) secondary legal assistance during their traineeship.

<sup>10</sup> Royal Decree, Dec. 18, 2003.

<sup>11</sup> BUREAU D’AIDE JURIDIQUE/BUREAU VOOR JURIDISCHE BIJSTAND/BURÖ FÜR RECHTLICHEN BEISTAND.

<sup>12</sup> For 2012, the budget for secondary legal assistance is approximately € 70 million according to the verbal answer of the Minister of Justice to a written question during the plenary meeting of 24 May 2012, DOC. PARL. CHAMBRE, 2011-2012, PLEN 088, p. 20. The value of one point is € 24.03.

<sup>13</sup> *See* BELG. JUD. CODE art. 459.

<sup>14</sup> Legislation of Aug. 13, 2011; M.B., Sep. 5, 2011.

<sup>15</sup> Before the interrogation, the on-duty lawyer needs to obtain a sworn declaration from the client stating that he or she meets the eligibility conditions for secondary legal assistance.

the limited number of lawyers available, prior consultations are sometimes held over the phone, and lawyers rarely assist in the actual interrogation.

## B. Legal Aid

The other component of state-sponsored legal services is legal aid, which is generally granted within the context of secondary legal advice, but it is also available in other circumstances.<sup>16</sup> The provision of legal aid ensures that everyone has full access to justice, in accordance with Article 6 of the European Convention of Human Rights. By receiving legal aid, one is partially or completely exempt from paying legal fees and judicial or extrajudicial procedural costs (e.g., fees related to the costs for a bailiff's intervention). To be eligible for legal aid, an applicant must show insufficient financial means, and evidence of a well-founded claim (i.e., the claim is not unreasonable and "appears fair").<sup>17</sup> Access to legal aid is available to Belgian nationals, nationals of member states of the Council of Europe, foreign nationals in accordance with international treaties, foreign nationals having their ordinary residence in Belgium or in a Member State of the European Union, and foreign nationals in immigration proceedings.

Individuals can apply for legal aid after receiving a referral for secondary legal assistance, or after seeking a counsel through other channels. The process for requesting legal aid is the same in both instances: the lawyer or the applicant submits a request to the legal aid office of the court before which the action is brought or the court in the district of which a legal act needs to be performed.<sup>18</sup> The request for legal aid must be accompanied by a proof of income. Legal aid is available in the following types of cases: procedural steps related to petitions that have been referred to or are pending before an ordinary or administrative court or panel of arbitrators; procedural steps relating to the enforcement of judgments and decisions; application proceedings; appeal proceedings; procedural steps determined by judges or steps that require action by a professional or official; and family mediation proceedings.

In 2011, legal aid was granted in approximately 198,000 matters, almost double the amount of the year 2004-2005.<sup>19</sup>

## II. PRO BONO IN BELGIUM: OPPORTUNITIES AND OTHER CONSIDERATIONS

### A. Pro Bono Opportunities

Neither the Belgian Judicial Code nor the Code of Conduct for Lawyers of the *Ordres* requires a lawyer to request payment for his or her services. Thus, while the comprehensive Belgian legal system described above renders it possible for individuals to receive legal consultation for free, a free defense, free consultation and assistance, and legal aid, law firms are permitted to provide free legal assistance at their discretion to anyone, regardless of their ability to pay and without being sanctioned for offering services for free or for a fixed fee.<sup>20</sup>

Law firms have commonly provided *pro bono* services to NGOs seeking legal advice on matters relating to European law or information on how to lobby for or against initiatives of European institutions. The main beneficiaries of such *pro bono* 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 nonprofit organizations in Europe."<sup>21</sup>

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 stimulating lawyers from such firms to take up a minimal amount of *pro bono* hours every year. Another reason is the setting up of expansive forms of *pro bono* undertakings like *Avocats Sans Frontières* ("ASF"). This

<sup>16</sup> Legal persons may also make use of legal aid in particular circumstances, such as in the case of mediation.

<sup>17</sup> See BELG. JUD. CODE at arts. 667-668.

<sup>18</sup> See *id.* at art. 670.

<sup>19</sup> Verbal answer of the Minister of Justice to a written question during the plenary meeting of May 24, 2012, DOC. PARL. CHAMBRE 2011-2012, PLEN 088, p.20.

<sup>20</sup> A law firm can provide the service either free of charge, for a minimum charge or for a fee upfront.

<sup>21</sup> MAYER, BROWN, ROWE & MAW LLP, *Pro Bono Update*, 30 (2005), available at [http://www.mayerbrown.com/Files/Publication/ec4bcbbf-cfef-4563-9a1c-9b8fbb2e0b3e/Presentation/PublicationAttachment/6fa6db0c-318e-4ec7-9921-9c0bb4563479/news1\\_probono\\_July05.pdf](http://www.mayerbrown.com/Files/Publication/ec4bcbbf-cfef-4563-9a1c-9b8fbb2e0b3e/Presentation/PublicationAttachment/6fa6db0c-318e-4ec7-9921-9c0bb4563479/news1_probono_July05.pdf).

Belgian association seeks to provide legal assistance in sensitive cases around the world. ASF counts some major international law firms in its International Legal Network.<sup>22</sup> However, the vast majority of its members are individual lawyers, working for international law firms and mid-sized Belgian law firms, choosing independently to commit themselves in accepting difficult or high profile *pro bono* cases.

#### **B. Barriers To *Pro Bono* Work And Other Considerations**

One indirect barrier to maintaining a *pro bono* practice in Belgium is the State's restriction on legal advertising. The importance of these restrictions differs between the *Ordre des Barreaux Francophones et Germanophones* and the *Orde van Vlaamse Balies*. For instance, while the *Orde van Vlaamse Balies* permits its members to publicize the names of past or current clients (*provided* consent is given by the client), the *Ordre des Barreaux Francophones et Germanophones* only permits the publication of clients' names in the framework of calls for tenders (and again subject to client consent). Furthermore, the *Ordre des Barreaux Francophones et Germanophones* explicitly forbids their lawyers to solicit legal work in any form, either by going to the workplace or home of a potential client, or by sending an unsolicited description of potential work (unless it has been requested by the person wishing to receive such information). The *Orde van Vlaamse Balies* does not contain similar restrictions on solicitation; its members are allowed to present their services and applicable fee practices to potential clients as long as the communicated information is unequivocal, general and complete. Consequently, for lawyers who are subject to the *Orde van Vlaamse Balies*, there are no significant restrictions to advertising *pro bono* services. For members of the *Ordre des Barreaux Francophones et Germanophones*, such advertising is restricted and might go beyond the scope of what is permissible.

The relative ease by which natural persons can access state-organized legal assistance and legal aid also attracts potential *pro bono* clients away from law firms. People are indeed more inclined to bring their case to the LAB and receive a referral, rather than starting an independent search for a *pro bono* lawyer willing to assist and represent him or her for free.

#### **C. *Pro Bono* Resources**

As stated on ASF's website, the International Legal Network 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>.

### **III. CONCLUSION**

*Pro bono* work in Belgium takes place in a regulated environment. However, opportunities exist for law firms to provide free legal assistance outside this system. Considering the large amount of presence of various international organizations in Belgium, interesting *pro bono* work can be undertaken here, especially in the capital of Brussels.

July 2012

*Pro Bono* Practices and Opportunities in Belgium

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<sup>22</sup> See <http://www.asf.be/action/>.