

EUROPEAN VOLUNTEER CENTRE
The Voice for Volunteering in Europe



CENTRE EUROPEEN DU VOLONTARIAT
Le Porte-Parole du Volontariat en Europe

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Membre de la Plate-forme Sociale et partenaire de IAVE (International Association of Volunteer Effort) et de



COUNTRY REPORT ON THE LEGAL STATUS OF VOLUNTEERS IN BELGIUM

Brussels 2005

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GENERAL DEFINITIONS OF VOLUNTEERISM

VOLUNTEERISM: refers to all forms of voluntary activity, whether formal or informal, full-time or part-time, at home or abroad. It is undertaken of a person's own free will, choice and motivation, and is without concern for financial gain. It benefits the individual volunteer, communities and society as a whole. It is also a vehicle for individuals and associations to address human, social or environmental needs and concerns. Formal voluntary activities add value, but do not replace, professional, paid employees.

VOLUNTEERING: can occur informally (for example neighbourly "helping-out"), or within the structures of a non-profit organisation. It is often (but not always) of a part-time nature. It may occur over one day or many years in a range of different fields. It is good practice to ensure that formal volunteers are covered by appropriate accident, health-care and third party liability insurance, that they receive appropriate training and management, as well as the reimbursement of all out-of-pocket expenses.

FULL-TIME VOLUNTARY SERVICE: refers to specific, full-time project-based voluntary activities that are carried out on a continuous basis for a limited period of time. Voluntary-service activities may occur at home and abroad. It is good practice to ensure voluntary service volunteers are afforded appropriate social protection, such as accident, health-care and third party liability insurance. Volunteers should also receive appropriate training and management, reimbursement of out-of-pocket expenses as well as appropriate accommodation and subsistence allowances as agreed between the volunteer and the non-profit organisation.

Background to the Project

This is one of a series of 'country-reports' produced by the Association of Voluntary Service Organisations (AVSO) and the European Volunteer Centre (CEV). They aim to provide comprehensive and practical information on volunteers and the law in a number of current and future European Union Member States.

Each country report explores, in a standardised format, some of the key questions that face volunteers and volunteer-involving organisations in relation to their legal positions.

Important: the information contained in each country report is subject to resources and quality of information available. It is also subject to frequent change.

If you wish to comment on any of the country reports, or contribute to their annual updates, CEV and AVSO would be delighted to hear from you.

ACKNOWLEDGEMENTS

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1. Concept of Voluntary Work in Belgium

A) Existing Legislation

There is no single, agreed definition of "volunteer" in Belgium. Indeed, the debate concerning the definition of a volunteer is particularly relevant in Belgium, which has French, Flemish and German speaking communities. The French language differentiates between those involved in "*bénévolat*" (charitable work and volunteering of a more informal and part-time nature), from those involved in "*volontariat*" (formal volunteering which takes place through recognised non-profit organisations or project-based volunteering). The Dutch and German languages do not differentiate, and use the terms "*vrijwilligers*" and "*freiwilligen*" to describe all volunteers.

B) Law Proposal for Volunteers in Belgium

The new Law on the Rights of the Volunteer (see below "Volunteerism and the Law") establishes one definition on volunteering for the whole of Belgium. The terms used for "volunteering" are "*bénévolat*" and "*vrijwilligerswerk*", in French and Dutch respectively.

The legislative proposal focuses more on the definition of "volunteer work" rather than of "volunteers". The definition describes volunteering as an activity that is non-compulsory and unpaid. It occurs:

- Within the framework of a recognised or "de-facto" organisation (ie. it occurs in a context other than that of family or other private relations);
- It is for the benefit of other people, groups or organisations, or for society as a whole;
- It differs from activities which are performed under labour legislation (for example, employee);
- It has no profitable aim.

2. Volunteerism and the Law

A) Existing Legislation

To date, there is no law at national level, applying specifically to volunteers in Belgium. Only in a few administrative provisions (on taxation and social welfare allowances) is explicit reference made to volunteers.

At regional level however, there is a Decree applying specifically to volunteers:

"Decreet betreffende het georganiseerd vrijwilligerswerk in de welzijns- en gezondheidssector van 23 maart 1994". This was approved in 1994 by the Department of Health and Welfare of the Flanders region. It provides for the recognition and funding of voluntary organisations in the health and social welfare sector. The Decree places

several obligations on the voluntary organisation if they are to be afforded, and benefit from, the status of “voluntary organisation.” In relation to volunteers, these include the obligation to insure the volunteers they involve, and to provide them with appropriate training at least once a year.

It is often the case in this context that volunteers in Belgium are assimilated under other, recognised legal categories, such as “employees”, “trainees” or “students,” and must therefore comply with the regulations that this status requires.

The Decree is set for evaluation in 2005.

B) Law Proposal for Volunteers in Belgium

A proposal for a Law on the Rights of the Volunteer was submitted before the Federal Parliament in Belgium on 29 November 2001, with majority support from all political parties. This proposal is known in French as “*proposition de loi relatif aux droits des bénévoles*,” and in Flemish as “*wetsvoorstel betreffende de rechten van de vrijwilliger*.” The proposal aims to regulate some of the key issues concerning volunteerism, such as social insurance, third-party liability, fiscal and social security matters.

The Law has been extensively debated in the Federal Parliament and was approved in the Plenary Session of the Parliament in May 2005 (3 abstentions, no “no-votes”). At the moment of writing the Law has already been approved by the Senate and will be registered in the Monitor Belge on the 1st July 2005. The Law will become applicable 6 months after this registration date, that is the 1st January 2006. Organisations already working with volunteers will have a period of another 6 months (after January 2006) to adapt themselves to the new Law.

3. Reimbursement of Expenses

A) Existing Legislation

Volunteers Under The Internal Regulation From The Belgian Ministry Of Taxes - Ci. G. Rh. 241/509.803 Of 5 March 1999

Under the “Circulaire” (internal binding letter) “Ci. G. Rh. 241/509.803”, of the Federal Ministry of Taxes, some volunteers may be grossly reimbursed for the expenses they incur, up to 25.79 EURO per day and 1031.66 EURO per year, without being subject to the Belgian Social Security and Tax systems. To qualify, this amount must be deemed reasonable and according to real expenses.

Above that amount, and under the conditions established in the “Circulaire”, volunteers may still benefit from tax-free reimbursements against full justification of expenses. Volunteer involving organisations must register all reimbursements awarded to volunteers in case of inspection by the competent financial and social authorities.

Note that:

- The “Circulaire” does not create any formal rights for volunteers but only foresees, as an administrative concession, the possibility of exempting certain volunteers from their obligation to contribute to the state. As an administrative regulation, it has no legal force and it has not been published in the “Moniteur Belge”.

- Under this regulation, not all volunteers benefit from equal treatment. For example, volunteers who volunteer in organisations that are subject to corporate taxes are excluded from its application. They must provide justification of every single out-of-pocket expense in order to benefit from any exemption.

Transnational Volunteers: Treated Legally As “Trainees”

Another tax exemption is made in favour of young volunteers participating in transnational, full-time voluntary service programmes, such as the European Voluntary Service (EVS) Programme of the European Commission. They are exempt according to legislation applicable to “non-paid trainees”.

Note that in cases where volunteers are “paid trainees” they are not exempt from their duty to contribute to the Belgian social security system.

For further information see: http://www.cleiss.fr/docs/etudes/stagiaires_belgique.html

Students

Students in Belgium may also earn, untaxed, a maximum of approximately 5480 EURO net per tax-year (as of May 2002). Observe that this maximum taxable income for students may apply to volunteers in the context of the amounts of pocket money they may receive, and other contributions in kind, such as accommodation and board.

Reimbursement Of Volunteers Expenses And Employment Law

Outside the personal and material scope of application of the above regulations, any unjustified reimbursement of expenses will be considered as income and will be subject to social security and tax contributions.

In spite of existing regulations providing tax exemptions for certain volunteers, reimbursement of any non-justified expense or subsistence support for volunteers, such as pocket money, accommodation and food, may qualify under Labour Law as “salary”. This is the case if the amount in question is received on a regular basis, as is normal with full-time volunteers. This has the immediate consequence of legally considering volunteers as “employees” and volunteer-involving organisations as “employers”, rendering the whole bulk of Employment Law, including minimum wage regulations applicable to their relationship.

Concessions were made to this general rule in the case of those who volunteered for the “EURO 2000 Football Cup” in Belgium (in fact organised by a for-profit entity). On that occasion, the Ministry of Taxes accepted that those helping out with the organisation of this event were actually “volunteers” (and not employees), and laid down that pocket money, lodging and food received was therefore not “salary” and would not be subject to taxation and social security contributions.

B) Law Proposal for Volunteers in Belgium

A volunteer will be allowed to receive up to 50 euros per day (1205 euros per month) for its expenses without being subject to taxation. Amounts above these will no longer be considered “volunteering” and the person will need to provide a written justification explaining why the reimbursement of a higher sum can still qualify as volunteering. If the

person is unable to provide this justification, the money will be considered “income” and shall be subject to existing rules of taxation.

Provided the above, a volunteer will be able to receive expenditures back (two different systems are possible) without any other restrictions and without any obligation to give it back. All persons will be allowed to receive refunding without this interfering with the provision of social benefits. However, organisations are not obliged to pay back costs, it is an independent decision.

4. Welfare Protection of Volunteers

A) Existing Legislation

Protection Of Volunteers At Work

Under the existing legal framework in relation to the protection of those at work, volunteers working under the authority of an organisation are subject to specific Labour Law provisions. This means that volunteers are protected by provisions on the equal treatment of men and women, protection against sexual harassment at work, welfare at work, immigration regulations, collective agreements and worker- management committees, statutory holidays, etc.

Volunteers And Social Welfare Benefits

Volunteers' entitlement to any social welfare payment will depend on whether their volunteering affects any parallel legal status they may enjoy, such as student, unemployed, unfit to work etc., which entitles them to claim such welfare payments. These are dealt with in turn.

Volunteering And Family Allowances

Young volunteers (or their families), will retain entitlement to family allowances as long as the volunteer activity does not imply a failure to comply with all necessary requirements that the young person must meet under Belgian Social Security Law to receive them:

- **Residence:** the young volunteer should reside in Belgium;
- **Age:** under eighteen years old, or above if s/he is undergoing an apprenticeship, or until the age of 25 if the young person is still studying or pursuing a traineeship, receiving a remuneration of no more than 409.03 EURO per month (on 1 January 2002), or unemployed in “stage d’attent”, etc.

Source: <http://socialsecurity.fgov.be>

However, the competent authorities may grant exemptions to the general requirements for family allowances. For example, as of 2001, the “residence” requirement has being lifted in cases of young people participating in voluntary service programmes abroad, such as the European Voluntary Service Programme of the European Commission. This is because young volunteers are officially granted the status of “non-paid trainee”. Although framed within the youth sector only, this measure has been welcomed in Belgium as an important step towards the facilitation of transnational voluntary activity.

Volunteering At Home And Unemployment Benefits

Belgian unemployment legislation allows those in receipt of unemployment benefits to volunteer in Belgium under a series of given conditions. According to the information published by the National Employment Office (Office Nationale de l'Emploi - ONEM) at <http://www.onem.fgov.be> the volunteer activities that may be performed while receiving this allowance are:

- Voluntary activities performed on behalf of particulars (e.g. based on friendship);
- Voluntary activities performed on behalf of: a public service; an entity with public interest; an acknowledged grant-maintained school by a Belgian Community; a cultural centre; a youth centre; a non-profit organisation;
- Amateur sports activities.

To retain entitlement to unemployment allowances, the volunteer must inform the relevant unemployment office of their intention to volunteer, and comply with a series of administrative formalities.

In principle, authorisation is granted for a maximum period of 12 months. However this may be extended upon a new formal declaration from the unemployed person indicating their intention to continue volunteering. Once authorisation has been obtained, the unemployed person may benefit from both unemployment allowances and any compensation received in the context of their volunteering. In addition, the ONEM can grant authorisation to entities or associations to recruit those in receipt of unemployment payments as volunteers. In these cases, the voluntary activity must be developed according to the terms established by the ONEM. Authorisation to volunteer will not be granted if it is considered to sensibly diminish the availability of the unemployed person in the labour market.

B) Law Proposal for Volunteers in Belgium

The Law takes into consideration the existing volunteering legislation concerning welfare protection, affirms it and expands it in some cases.

Protection Of Volunteers At Work

A new provision introduced by the new Law concerns third party liability. The Law introduces the concept of an obligatory insurance: every organisation has to take insurance for third party liability for the organisation and on behalf of each individual volunteer. The insurance must be applicable for the activities as well as for the distance from and to the activity. This provision represents a major breakthrough in Belgian legislation on volunteers.

Volunteers And Social Welfare Benefits

Regarding social security the Law stipulates that people living from social security allowance can be active as volunteers without any loss of their benefits. Volunteers can

have cost refunding without having to pay social security contributions on it. Such refunding is not, however, a right of volunteers – it is dependent on the organisation.

Volunteering And Family Allowances

No major changes from the previous legislation. Volunteers and their families are free to receive the allowances.

Volunteering At Home And Unemployment Benefits

Volunteers will be entitled to their unemployment benefits, provided the reimbursement for their activities is not considered “income”. See “Reimbursement of Expenses” above.

5. Volunteering Abroad

Volunteering Abroad: Unemployment Allowances And Health

In order to retain entitlement to social security benefits such as unemployment benefit and medical treatment, those who go abroad to volunteer must register beforehand as job seekers with ONEM.

A special situation applies to young volunteers going abroad who, under the current Belgian legal framework, may be considered automatically as non-paid trainees. In these cases, and according to Article 36, § 2, 5° and article 94 of the *Royal Decree of 25 November 1991* on unemployment benefits, as amended in 2001, the period that a young person spends abroad volunteering can be taken into consideration for the “stage d’attente” (the period of nine months that young people have to wait once they have finished their studies, before they are entitled to receive their first payment of unemployment benefit).

The problem is however, that unemployed people wishing to volunteer abroad are not always granted exemption from their obligation to undergo the regular controls required by the competent unemployment office. This may oblige them to limit the period of time they spend abroad volunteering, if they wish to continue receiving unemployment benefits.

In general terms, the procedure is:

For young people aged under 25: before departing to volunteer overseas, they must submit an application to the competent employment office in order to be registered as an “overseas trainee”. This is essential if they are to be considered for the so-called “periode d’attente”. If such applications are rejected, their waiting period will be suspended during their stay abroad, restarting upon their return. If approved, this decision is valid for three months only, but can be extended every three months up to a maximum period of nine months. At the end of this period, volunteers abroad will be classified as unemployed, in receipt of benefit and will have to complete the corresponding formalities. Information about specific cases or family circumstances can be obtained from local social security offices.

For those who are already unemployed and in receipt of benefit

Retention of social security benefits will depend on their submitting an application for dispensation from having to sign-on, which must be completed in cooperation with the organisation sending the volunteer abroad. This application can be sent to any national unemployment benefit institution, which after approval, will forward it to the ONEM or the corresponding regional office (ORBEM/RVA/FOREM) for a final decision. Acceptance of this application is based on various rules providing for exemptions from the obligation to sign-on. In general, decisions will be based on specific criteria, for example age and employment history of the unemployed person, nature of the volunteering, job market prospects opened up by the volunteering and the unavailability of equivalent experience or training in Belgium. While the volunteer is overseas, the sending organisation can be asked to submit a certificate attesting to the volunteer's presence each month.

For more information, visit: <http://www.onem.fgov.be>

The Special Case Of Volunteers Going To Developing Countries Or Volunteering For Humanitarian Reasons

Certain exemptions regarding unemployment legislation are also foreseen for volunteers in receipt of unemployment allowances who volunteer for the purposes of international development or for humanitarian reasons. These exemptions include, for example, freedom from the obligation of being available in the labour market, of accepting a job, of being registered as unemployed, of being subject to communal control or residing in Belgium. These exemptions are granted to:

- Unemployed people aged 50 or over who volunteer within acknowledged development cooperation or humanitarian programmes. The exemption will be granted for a period of 12 months maximum. This can be extended however, upon submission of a new application.
- Young job seekers, receiving their first unemployment welfare payments after the established waiting period, and who are volunteering within the framework of acknowledged development cooperation or humanitarian programmes. In these cases, the law foresees, in addition, the possibility of accumulating unemployment benefits up to a monthly amount of 99.16 EURO, a lump sum of 247.89 EURO to cover administrative costs, a return flight ticket and insurance against accidents, accidents at work, repatriation and illness.
- Volunteers carrying out humanitarian action within the frame work of acknowledged national or international organisations. The exemptions in these cases may be agreed for a period of 4 weeks per year and may be extended for up to 3 months, under specific conditions.

6. Foreign Volunteers in Belgium

Volunteers From Abroad: The Right To Stay And Volunteer In Belgium

Difficulties can arise in cases of foreigners wishing to volunteer in Belgium.

Volunteers And Work Permits

According to the Law on Foreign Labour Force of 30 March 1999 ('Wet op de tewerkstelling van vreemde arbeidskrachten'; in French?) in general terms, no third country national is permitted to volunteer unless s/he is in possession of a parallel contract of employment and the corresponding work permit. In the specific case of volunteers from the E.U. candidate countries, the volunteer organisation must apply for the relevant work permit.

E.U. citizens and third country nationals legally resident in Belgium are exempted, and are entitled to volunteer in Belgium without restriction, as are students on working holidays, students on training programmes and other categories, as explicitly provided for by the law. Observe that the treatment of volunteers under the age of 25 as non-paid trainees may facilitate the required paper work a great deal. Notwithstanding, the procedure still takes several months.

Asylum Seekers And Refugees

Asylum seekers are not allowed to volunteer in Belgium until their status as refugee has been approved. For some, this procedure can take up to several years.

7. Governmental Action for Promotion For Promotion – Past and Future

The High Council For Volunteers

The "High Council for Volunteers" (Haut Conseil des Volontaires) was launched in October 2002 in the Federal Parliament in Belgium to handle questions and proposals related to the development of volunteering in Belgium. The council will debate, for example, the possibility of a Law on Volunteering (relating to key issues such as insurance, volunteer expenses, mutual rights and responsibilities etc.) and the obstacles to volunteering for unemployed people. The High Council will liaise with designated representatives of Belgium's Flemish and French-speaking volunteer communities.

Sabbatical Year From Work To Volunteer

The Belgian social security system provides assistance to those wishing to take a sabbatical year from employment, to volunteer in a non-profit organisation in the social, cultural or development field. Such a year does not harm the contract with the employer, and can also be used also for family and child-care reasons. It is increasingly being

used by employed persons to participate in organised volunteer activities overseas.

8. Final Remarks, Overview and Recommendation

The Vlaams Steunpunt Vrijwilligerswerk: <http://www.vrijwilligerswerk.be> and the Association pour le Volontariat: <http://www.volontariat.be> (the Flemish and Wallonian National Volunteer Centres) work with both national and regional government for the promotion of volunteerism and more appropriate regulations for volunteers. More recently, the French-speaking community has seen the creation of the “*Plate-forme francophone pour le Volontariat*” which groups together many volunteer and volunteer-involving organisations of Wallonie, and takes their collective “voice” to the Federal Parliament’s “Haut Conseil des Volontaires.”

The work on the Proposal for a Volunteer Law has not been easy. The creation of a “volunteer law” implies amendments and additions to legal texts ranging from the constitution, the civil code, the tax code, social security law and unemployment legislation, the general regulations on pensions and the law on obligatory insurance for health care and family allowance. However, the main reason for the delay in Parliamentary debates can be attributed to the lack of cooperation between the different agents involved. It has been suggested that the different lobby groups have tried to bring to the draft their own agendas, which has hampered fruitful discussions.

Although volunteerism is acknowledged in Belgium, both by the government and by society, for its social value, policy developments have not traditionally reflected this. This weak political and legal recognition is ironic, given that Belgium is recognised as one of the countries of Europe with a higher density of volunteer participation.

However, the word “statute” causes fear in Belgium, and has negative connotations for many, such as the loss of autonomy, restriction of freedom, obligations and duties, social protection, social security contributions, control, rigid framework, etc. On the other hand, there are strong arguments that it is in fact the lack of a legal status for volunteers that has resulted in the application of other legal regulations by default, such as that of full-time young volunteers being considered as non-paid trainees.

However, even within the newly approved volunteer law, it seems that the “legal gap” in relation to full-time and transnational voluntary service may remain unsolved, as these categories of volunteers are not recognised within the present new Law. This should be taken into account, as one of the aims of this Law was said to be the recognition of the current diversification of volunteering. Practical difficulties will remain for those organisations hosting foreign full-time volunteers in Belgium as the lack of recognition of this specific category may still carry as a risk of the application of labour, social security, immigration and other parallel normative provisions to volunteers and host-organisations.

9. Contacts

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European Diaconical Year Network, see: <http://www.timeforgod.org/edyn.htm>

Service Civil International, see: <http://www.sciint.org>.

Other Useful Resources

A comprehensive academic analysis of the political and legal context in Belgium for volunteerism has been published, in Dutch and French, by the “Fondation Roi Baudouin” under the following titles: “Elementen voor een beleid inzake vrijwilligers en vrijwilligerswerk” and “Eléments pour une politique du volontariat”. Available at: <http://www.egss.ulg.ac.be/ces/pdf/volontariat.pdf>

For further references, and other free publications on the subject, for example “Het statuut van de Vrijwilliger: knelpunten en oplossingen”, “Vrijwilligerswerk, Wat kan, mag en moet: een concrete stand van zaken”, contact the “Fondation Roi Baudouin” by telephone: +32 (0)70 233 728 or e-mail: publi@kbs-frb.be

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