

New Legislation for Local Staff of Diplomatic and Consular Missions in Belgium

February 23, 2018

New rules, more uncertainty

As of 15 February 2018, a multitude of new rules apply to “local staff” of diplomatic and consular missions in Belgium, including permanent missions and representations to international organizations having their seat in Belgium. The application of these new rules was triggered by a legislative change which enlarged the scope of application of the Belgian law of 5 December 1968 on Collective Bargaining Agreements and Business Sector Committees.

In short, all collective bargaining agreements (CBAs) – which constitute secondary, but binding, legislation – that previously only applied in the private sector, today also apply to local staff of diplomatic missions. It concerns over 100 different CBAs regulating topics ranging from drug prevention to motivation of dismissals. In the wake of these changes, other legislation (which refers to the law of 5 December 1968 regarding its scope of application) will also become applicable, such as Belgian legislation which limits or blocks the possibility to give bonuses or salary increases to employees.

Taking appropriate action following the new legislation is important for the following reasons:

- The new Belgian legislation applies to local staff of diplomatic and consular missions as of 15 February 2018.
- There is no transition period, there are no transitional measures.
- Over 100 different CBAs are now applicable to local staff. This affects your existing employment agreements, work rules and employment policies for local staff.
- The new legislation does not resolve the problematic interaction of the rules of the public and private sector. Conflicts between rules should be expected.
- Belgian trade unions, united under the “intersyndicale” label are:
 - sending out information letters to missions and employees: the content of these letters contain substantial inaccuracies and non-valid conclusions
 - unions are already approaching ministries and decision makers to enact important follow up legislation and decisions which are not always in the advantage of the missions
- In this context, the trade unions are proposing to consider diplomatic and consular missions as private non-profit organizations (by assigning them to the business sector committee for non-profit organizations and having CBAs specific to non-profit organizations apply to diplomatic

missions as well). The legislative change has made it possible for the competent Ministry to propose a Royal Decree making diplomatic and consular missions subject to an existing or a new sector committee, although this is not necessary. The trade unions have requested these changes to be formalized in the weeks to come.

- Considering diplomatic and consular missions as private non-profit organizations is not logical and can be problematic for different reasons (e.g. missions would need to apply CBAs tailored to the non-profit sector, they would no longer benefit from the flexibility of the public sector, they would be represented by local Belgian non-governmental organizations in the sector committee, trade unions could continue to propose new legislation in this committee where missions are not represented, etc.).
- Requesting either the Ministry of Foreign Affairs or the competent Ministry for Work to act with caution could be considered. Diplomatic and consular missions should be entitled to a regime for their local staff which is in line with the public nature of the mission and which offers legal certainty for all concerned. Which business sector committee would apply (if any) is a decision that should be carefully examined and the missions should be given time to prepare for changes.
- Because diplomatic and consular missions are not being consulted, the Belgian legislator may be unaware of any concerns missions have. Currently, only the guidance of the trade unions is followed.

A little bit of background

In Belgium, every company or organization of the private sector is governed by secondary legislation concluded by permanent bodies composed of representatives of employers and employees (trade unions), called collective bargaining agreements (CBAs). The Law of 5 December 1968 on Collective Bargaining Agreements and Business Sector Committees determines which employers are subject to these CBAs and how they are regulated.

In short, aside from national laws on employment, the Belgian private sector is regulated on three levels:

- National: governed by a permanent body called the National Labor Council; this council has enacted over 100 CBAs which apply to the entire private sector.
- Business Sector: governed by the permanent body called business sector committee or joint committee (in French "commission paritaire") based on the company's principal activity (e.g. steel industry, petroleum industry, etc.); in Belgium, around 100 of such committees exist in which the employers' and employees' representatives conclude CBAs applicable to their specific sector;
- Company level: governed by agreements between employers and recognized trade unions.

The public sector is subject to different rules and regulations which reflect the public nature of the administration and the specific situation of working for a public authority. The public sector is not subject to CBAs and public entities do not resort under any business sector committee.

As a consequence, diplomatic missions in Belgium did not resort under any CBA or business sector committee until the legislative change. On pay slips, the number of the relevant business sector

committee or "commission paritaire" was (or should have been) left blank or showed "999".

Change introduced by the Law of 15 January 2018

The Law of 15 January 2018 entered into effect on 15 February 2018 and amended the Law of 5 December 1968 to include in its scope the staff members employed by diplomatic missions, missions to international organizations having their seat in Belgium, consulates, and foreign diplomatic officials or consular officials if these staff members do not enjoy a privileged status under the Vienna Convention on Diplomatic Relation, the Vienna Convention on Consular Relations or any other applicable international treaty.

Neither the Ministry of Foreign Affairs nor the Ministry of Work informed or consulted the diplomatic and consular missions concerned. When the *Commission de Bons Offices* was requested whether diplomatic missions would be informed or consulted before such legislative changes would take place, they opted not to react.

Consequences of this legislative change

What is certain?

- Over 100 CBAs and other rules apply as of 15 February 2018:
 - You will need to align your employment contracts and work rules.
 - You will need to inform your payroll agency and decide on the rules to apply (note that you still cannot freely choose to apply the rules of any business sector committee and that you are still subject to many rules of the public sector).
 - You will need to implement policies, address requests, award benefits, etc. immediately
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- Other legislation, such as the Belgian law of 1996 on salary levels also applies as of 15 February 2018 and will substantially limit giving salary increases and bonuses to your local staff.
- No transition period is foreseen, no transitional measures are foreseen.
- The scope of all other laws that apply to the public sector remains unchanged and therefore the application of many rules of the public sector is still mandatory. Since the interaction of the new rules and the rules of the public sector was never examined, conflicts can be expected.

What is possible?

- The trade unions have already requested to make all diplomatic and consular missions part of the business sector committee for private non-profit organizations; this would have as a consequence that:
 - The CBAs of private non-profit organizations (local non-profit organizations and international NGOs in Belgium) would apply to local staff.

- Diplomatic and consular missions would be represented by employers of such private non-profit organizations in the business sector committee.
- In certain cases, employers and employees of private non-profit organizations would make decisions that affect the diplomatic and consular mission and its staff, which could be delicate depending on the country and NGOs concerned.
- The competent Belgian minister is entitled to make such a decision but he has other options:
 - Make diplomatic and consular missions part of a different business sector committee; in such case many of the same arguments as above would apply.
 - Create a new business sector committee for diplomatic and consular missions; this would have several benefits compared to the foregoing option but this would still have some inconvenient consequences such as representation (i.e. who of the diplomatic or consular missions would represent all of the missions).
 - No business sector committee; it is not necessary to resort under any business sector committee; in this option, only the national CBAs would apply.
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- Affected missions should consider requesting either the Ministry of Foreign Affairs or the competent Ministry for Work to act with caution and to avoid that diplomatic and consular missions would become part of a business sector committee before all aspects are considered.

Regarding the communication of the trade unions on the legislative change which you might have received:

- The trade unions (united under the “intersyndicale” label) have made a communication which portrays their interpretation of the consequences of the new legislation.
- Certain inaccuracies deserve some explanation:
 - The new law does not make diplomatic and consular missions part of the private sector, it only enlarges the scope of this one specific law on business sector committees.
 - Not all laws of the private sector apply, many provisions of the public sector still apply.
 - Whether all CBAs will apply is still uncertain: the interaction of the CBAs and the legislation on the public sector was never examined; it is however a fact that in case of conflict, the national law will always prevail over the CBAs.
 - There is no right of choice to apply the rules of the private sector if there are rules of the public sector providing differently.
 - The scope of the new legislation is largely exaggerated; in particular, it does not apply to

local staff of international organizations.

- Certain suggestions deserve your consideration:
 - The trade unions are advocating for assigning all diplomatic and consular missions to the committee for private non-profit organizations (local non-profit organizations and international NGOs in Belgium); as far as we know, no missions have made alternative proposals so far.
 - The trade unions would like to install as soon as possible a union delegation in every mission; the installation of such union delegation triggers a number of obligations for the employer.
 - The trade unions want to install rules on salary levels and job classifications of local staff.

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What now?

In each case, the new legislation will have a substantial impact on all diplomatic and consular missions employing local staff in Belgium:

- Over 100 CBAs and other rules apply as of 15 February 2018.
 - It will be necessary to verify your employment contracts and work rules and make changes if necessary.
 - It is recommended to sit together with your payroll agency and discuss the new situation together with an HR expert (or any other expert competent to advise on the conflicts between laws of the public sector and the private sector).
 - It is recommended to have someone of the embassy or diplomatic mission trained on these new CBAs and other rules that now apply.
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- It should be considered to request the Ministry of Foreign Affairs (or the competent Ministry for Work) to act with caution.
 - Diplomatic and consular missions should be entitled to a regime for its staff members which is in line with the public nature of the work of missions.
 - The conflict between the rules governing the public sector will conflict with these new CBAs. It is a legitimate request to have legal certainty for both employers and employees.
 - Appointing an existing business committee to govern diplomatic and consular missions and have Belgian private sector organizations govern your local staff seems inappropriate or questionable at least.

