



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.PP/2005/18/Add.4
9 May 2005

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

(Second meeting, Almaty, Kazakhstan, 25-27 May 2005)
(Item 6 (a) of the provisional agenda)

IMPLEMENTATION REPORT

Belgium^{*/}

Based on the reporting format annexed to decision I/8

1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material, which was used as a basis for preparing the report.

Several authorities are responsible for implementing the Convention, namely the Federal Authority and three federal entities (the Walloon Region, Brussels-Capital Region and Flemish Community). Each authority therefore replied internally to this report on matters within its own remit. As a result, Belgium's official national report comprises four different reports. In order to comply with the 8,500 word-limit set by United Nations rules, this document is a synthesis of all four reports. Belgium consequently does not consider it as its official report but only as reflecting the major points of the official reports. To facilitate the understanding of the national report, hyperlinks to the complete answers for each question are included.

^{*/} This document was submitted late due to the fact that various first-time problems had to be overcome as this is the first reporting cycle under decision I/8 of the Meeting of the Parties. This was compounded by the fact that a considerable volume of other documentation being prepared for the second meeting of the Parties had to be processed during the same period.

The national report was coordinated by the Aarhus network, which is part of the international environmental policy committee comprising political and administrative authorities competent on environmental issues. The Aarhus network is responsible for preparing, and following up on, the international negotiations relating to the Convention. It coordinated the preparation of the national consultations with a view to country-wide harmonization. It decided to hold two types of consultations, namely a coordinated national consultation of the four major environmental protection federations (which therefore covers all the Belgian reports) and a public consultation by each authority on its own report.

NGO federations have provided joint comments on the federal report and individual comments on the regional reports. As those comments do not directly relate to the reporting process but are based more on general issues (e.g. improvements that can be made to access to justice in view of the restrictive case-law), they can be accessed through the federal hyperlink regarding the federal report and the regional hyperlinks for the regional reports.

With respect to the public, each authority organized an on-line consultation during the month of November 2004. While very few comments were received, each authority replied to members of the public, either through a general response on the website or individually.

2. Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

In constitutional terms, Belgium has since 1993 been a federal State comprising three Regions and three Communities. As a consequence, environmental competencies are exercised jointly by the Federal Authority and the three Regions. The three Regions are distinct federal entities that are not subordinate to the Federal Authority or the other Regions. They exercise their own powers in accordance with the territorial basis demarcating their geographical remit. The bulk of environmental policy, such as water, air, waste, nature conservation, rational energy use and planning, and regional development, comes within the remit of the Regions.

The Federal Authority has absolute jurisdiction in the field of limited environmental protection, i.e. transit of waste, import, export and transit of protected non-indigenous species, protection of the North Sea, product standards (e.g. the environmental standardisation of products before they are placed on the market) and the nuclear energy sector. Furthermore, the Federal Authority retains full responsibility for the judicial aspects of “access to justice”, with the Regions having responsibility only for non-judicial administrative appeals.

The Convention is considered a “joint” convention, meaning that it has legal effect not only in the jurisdictional remit of the Regions but also in that of the Federal Authority.

ARTICLE 3

3. List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

Federal Authority

(a) Requests for information are sent by e-mail, telephone or fax. Approximately two-thirds of requests received concern subjects that do not come within the remit of the federal administration but of the regions. Such requests are redirected to the competent authorities.

With regard to e-mail requests, the following generic addresses have been created: (environment@health.fgov.be, risk@environment.be / products@environment.be / climate@environment.be, etc. This represents an average of five to seven requests per day, which can rise to ten to 15 requests per day when topical subjects are mentioned in the media;

(b) The Environment Directorate-General develops awareness campaigns and educational aids on subjects that come under the Federal State's environmental remit. In 2004, it focused particularly on integrated product policy and the protection of the North Sea;

(c) Since 2001, the four federations of environmental protection associations have received an annual federal grant towards each federation's running costs. Ad hoc grants are also regularly awarded to other associations working in the environmental field, including on health and environment and legal issues;

(d) There are no legislative or regulatory provisions governing the application of article 3, para. 7, of the Convention at the federal level. With regard to the composition of the delegations responsible for international negotiations, it has become a growing practice for representatives from non-governmental organizations (NGOs) to be included in the regular delegation;

(e) The Constitution governs the fundamental freedoms of individuals. Of particular note are articles 11 (non-discrimination), 12 (individual freedom), 19 (freedom of expression) and 23 (right to lead a life in keeping with human dignity). Other rights include the right to the preservation of a healthy environment (art. 23, para. 4) and the right of association (art. 27).

Walloon Region

(a) The Civil Service Code (Book I, title 1, art. 2) stipulates that officials of the Ministry of the Walloon Region are required to observe the laws and regulations that are in effect as well as the Charter of Proper Administrative Behaviour. One of the main tools of this policy is the website, which provides the public with a full range of information related to the environment in the Region;

(b) The Regional Decree of 6 May 1999 on an Introduction to the Environment that was recently incorporated in the Environment Code (Book I, part III, title II) made it possible to set

up several Regional Environmental Initiation Centres for the purpose of promoting general knowledge of the environment in the public at large.

The Directorate-General for Natural Resources and the Environment (DGRNE) and the Ministry in charge of environmental affairs often conduct environmental awareness-raising campaigns. In addition, they provide financial, technical and/or logistical support (e.g. housing websites) for various activities carried out by NGOs or public authorities to raise environmental awareness;

(c) Several advisory boards have been set up by decree to provide public authorities with opinions prior to the adoption of legislation and regulations in such areas as sustainable development (the Environment Council of the Walloon Region for Sustainable Development (CWEDD)) and water policy (the Water Commission). If the public authority does not heed these opinions, it must in some cases justify this decision. These commissions are composed of representatives of the Region's business federations, trade unions, associations and NGOs.

Several framework agreements link the Directorate-General for Natural Resources and the Environment to various bodies representing civil society.

The Minister in charge of environmental affairs and the Directorate-General subsidize a series of NGOs each year through the budget act;

(d) As a rule, the Foreign Ministry heads the Belgian delegation. In matters that come under its jurisdiction, the Region strives to ensure that NGOs are informed and participate through prior coordinating activities;

(e) Labour laws and the principles of the Constitution (including freedom of expression) are federal powers. See the Federal Government's report at <http://www.belgium.be>

Flemish Region

(a) The principle of customer-friendly service and assistance is incorporated in the code of professional conduct;

(b) Every public authority has to inform the public of its rights of access to information. Within the Environmental Administration, a specific unit continues to work on citizens' responsibilities for nature and environmental issues;

(c) The recognition and subsidization of environmental associations is regulated by law;

(e) See articles 19 and 23 of the Constitution.

Brussels-Capital Region

(a)

- The Info-Environment Department (general): by telephone, e-mail or on-site at the office located in the city centre;
- Reception of the public for consultation of certain documents (permits, incident studies, etc.): directly in certain departments;

- Training in communication for civil servants who deal with the public, e.g. park wardens provide information to the public concerning parks or the environment in general;
 - Consultation of the public through representative organizations on the Brussels Environment Council that issue opinions on draft legislation as well as on draft plans and programmes adopted by the Brussels Government;
 - Information on the right to appeal is found in all administrative decisions (art. 10 of the Ordinance of 18 March 2004 on Access to Environmental Information, published in the Official Gazette of 30 March 2004);
- (b)
- General awareness tools include free quarterly newspaper (through subscription or on the Internet); a comprehensive website (information for the public and businesses); publications for the public at large or on scientific topics (often free-of-charge); the annual organization of the Environment Festival (an event open to the public, with many environmental professionals in attendance, which hosted over 100 information stands and 14,000 visitors in 2003);
 - Educational programmes in schools include the “Medere” project (environmental education and awareness in schools), coordinated by the Brussels Institute for Management of the Environment and carried out on the ground by two associations, the “Réseau Idée” and “NME-link Brussels”. Their task is to develop and promote an information structure for environmental education for the primary and secondary Brussels educational network. Tools such as educational folders and a calendar of events have also been developed;
 - Awareness tools for companies include a free quarterly newspaper providing information that is sent out to over 7,000 subscribers and is available on the website. Brochures are distributed and many sites are available to inform companies of their obligations and provide advice on eco-management. The Brussels Institute for Management of the Environment also awards the “Eco-dynamic company” label to businesses that get involved in a voluntary environmental management plan;
 - The organization of different seminars, workshops and training sessions, either for the public or for groups of specialists or companies;
- (c)
- On the request of the regional Government or Brussels Environment Minister, the Council for the Environment of the Brussels-Capital Region is tasked to issue a reasoned opinion on any regional topic dealing with the environment (Decree of 15 March 1990);
 - Subsidies are granted to associations active in environmental matters for information missions relating to energy or socio-economic issues, in order to organize activities focusing on nature education;
- (d) No particular measures were taken by the Region;
- (e) The constitutional guarantees are complied with.

4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.

5. Provide further information on the practical application of the general provisions of the Convention.

Brussels-Capital Region

The pre-existing legal framework exists in light of ordinances on access to information, disclosure of administrative acts, regular publication of the state of the environment, etc.; the website of the Brussels Institute for Management of the Environment; the organization of public surveys on draft environmental plans and impact studies; and consultations on the granting of certain environment permits issued jointly with building permits.

6. Give relevant web site addresses, if available:

Federal Authority

www.belgium.be (Portal of the federal Government).

www.health.fgov.be (under construction) (new portal of the Federal Public Service for Public Health, Food Chain Safety and Environment).

www.environment.fgov.be (current site of the Environment Directorate-General of the Federal Public Service for Public Health, Food Chain Safety and Environment).

Ad hoc websites:

<http://www.ecolabel.be>

<http://www.climat.be> or www.klimaat.be

<http://www.climateregistry.be>

<http://www.nehap.be>

<http://www.aarhus.be>

Scientific institutes:

<http://www.mumm.ac.be>

<http://www.biosafety.be>

<http://www.biosafetyprotocol.be>

Flemish Region

www.aarhus.be (under construction)

www.mina.be/aarhus.html

ARTICLE 4

7. List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

Federal Authority

(a) Article 32 of the Constitution reads: “Anyone has the right to consult any administrative document and to receive a copy of it, except in cases and according to conditions laid down by the law (...)”.

Access to environmental information is implemented at the federal level under the Law of 11 April 1994, which aims to give the public access to administrative documents in general and to environmental ones in particular. In this case, the Law does not lay down any conditions of nationality, residence or registered office.

The field of application *rationae personae* covers all the federal administrations as well as the administrative authorities other than the federal administrative authorities, but only where the Law prohibits or limits the disclosure of administrative documents on federal grounds (art. 1, paras. (a) and (b)).

The field of application *rationae materiae* covers any information available in written, visual or audio form, or contained in databases, which concerns the state of water, air, soil, fauna, flora, natural land and areas, as well as activities (including those that cause nuisance such as noise), or measures affecting them or liable to affect them, and activities or measures aimed at protecting them, including administrative measures and environmental management programmes.

The principle of access to information is contained in article 4.

- (i) Except for personal documents, the Law does not require the statement of an interest in the request;
- (ii) The right to consult documents of administrative authorities is guaranteed (art. 4). Consultation of the document, as well as explanations relating to it, is by request (art. 5);
- (iii) The principle contained in the Law is to provide a paper copy. However, provision is made for requesting a copy of the document in another format (art. 7 of the Royal Decree of 30 August 1996);

(b) The statutory time limit for the general disclosure of information is one month (and non-renewable two months for environmental administrative documents). The forthcoming amendment of the 1994 Law is due to change the time limit to one month for environmental information;

- (c)(i) There are three grounds for the refusal of information requests as provided in article 4, para. 3, of the Convention;

- (ii) Article 6, para. 1;
- (d) Article 5, para. 2;
- (e) Article 6, para. 4;
- (f) Article 6, para. 5 (2).

In addition, in accordance with article 2, para. 4, of the 1994 Law, information on appeal rights must accompany any federal notification;

- (g) Article 12 of the Royal Decree of 30 August 1996.

Walloon Region

Access to environmental information is governed by the Decree of 13 June 1991, which has been incorporated in the Environment Code. This Decree transposes into regional law EC Directive 90/313/EC of 7 June 1990 on the freedom of access to information on the environment.

The term “public authority” is defined therein as municipal, provincial, and regional administrations and bodies having public responsibilities related to the environment and under the control of public authorities. Persons acting in a judicial or legislative capacity are not included within the scope of this definition.

The term “environmental information” is defined therein as all data, whether factual or legal, related to one of the areas stipulated in article 6, para. 1 (I), (II), (III), (IV) and (V), of the Special Institutional Reform Act of 8 August 1980 concerning:

- a. the state of the water, air, soil, fauna, flora and natural areas, as well as the deterioration thereof;
- b. plans and activities likely to harm the environment or endanger human health and animal or plant species;
- c. measures to conserve, protect and improve the elements under a).

The Decree of 13 June 1991 institutes an Appeals Commission appointed by the Walloon Government, which is presided over by a judge. It is tasked with handling complaints concerning access to information held by Walloon’s public authorities and constitutes an administrative procedural review board. Its decisions override those of the authority originally empowered to take the decision.

A new decree on the right of access to environmental information abrogating the 1991 Decree is being drafted in order to transpose Directive 2003/4/EC of 28 January 2003 on public access to environmental information, in particular those provisions related to the active dissemination of information. It will align the definitions of public authority, environmental information and the public with those of the Convention.

- (a)(i) Article 3 of the Decree of 13 June 1991 stipulates that the right of access to information is guaranteed to all persons, without an interest having to be stated;
 - (ii) Article 4 of the Decree provides that access to data incorporated in written documents shall be provided on-site free of charge or through the delivery of copies. Access to data incorporated in automated data processing bases, and in visual and/or audio recordings is ensured through the delivery of copies (art 4., para. 2);
 - (iii) See question (ii) above;
- (b) Article 7 of the Decree stipulates that the data shall be diligently made available to the applicant no later than two months from the date on which the request was received;
- (c)(i) See articles 8 (refusal) and 10 (confidentiality criteria) of the Decree of 13 June 1991. The Appeals Commission on the Right of Access to Environmental Information has always restrictively interpreted exceptions to the right of access;
 - (ii) The Appeals Commission decides, according to the circumstances of the matter that is brought to it, what interest the requested information's disclosure holds for the public;
- (d) The principle of good administration requires that a public authority not in possession of the information requested inform the applicant of the appropriate authority;
- (e) Article 10, para. 2, of the Decree provides for partial disclosure when it is possible to separate out confidential information. In this case, the public authority makes available the remainder of the information that has been requested. All refusals to make available part of the requested information are duly explained in writing;
- (f) Under Article 8 of the Decree, a written refusal of a request must include the possible courses of action that are open to the applicant;
- (g) Article 4 of the Decree provides for free on-site or online consultation, or the delivery of copies, the actual cost of which is borne by the applicant.

Flemish Region

The principle of non-discrimination is found in article 11 of the Constitution. The Decree of 28 March 2004 on Open Government is also relevant.

- (a) The applicant is under no obligation to prove an interest. He or she can ask for consultation, explanations or a copy of the document. The document must be provided in the form requested if available or can reasonably be made available (arts. 17, para. 2, 7 and 20, para. 1 of the Decree);
- (b) The time limit for a reply from the authority is 15 days and a decision on the request must be made within 30 days. An extension of 15 days is possible. The applicant can propose a

shorter term; when this period is exceeded, it must be justified (arts. 20, paras. 2 and 3, 17, para. 1 and 20, para. 1);

(c) The grounds for refusal are more restrictive than the Convention requirements (arts. 10, 11 and 15). Articles 10 and 15, para. 1, provide for a balance of interests;

(d) The application has to be forwarded as soon as possible to the competent authority and the applicant informed immediately (art. 17, para. 3);

(e) See article 9 of the Decree;

(f) On time limits, see question (b) above. Reasons for refusals must be stated under the Law of 29 July 1991);

(g) The right to consult and receive explanations on administrative documents is free of charge. An amount may be charged for copies, but the charge shall not exceed a reasonable amount (art. 20, para. 3).

Brussels-Capital Region

Definitions contained in article 2 of the Convention are implemented in article 3 of the Ordinance of 18 March 2004. On article 3, para. 9, of the Convention, see art. 4 of the Ordinance (non discrimination).

(a) See article 4 of the Ordinance;

(b) See article 8;

(c) See article 11, paras. 1-3;

(d) See article 12;

(e) See article 11, para. 5;

(f) See article 13;

(g) See article 5.

8. Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.

Federal Authority

The current federal law does not fully meet the Convention requirements regarding access to environmental information, especially some provisions on exceptions to disclosure and the time limits for a decision. However, this will be remedied by an amendment to the law currently under way which also aims to transpose Directive 2003/4/EC.

The federal level has chosen not to draw up a sectoral law on the environment but to apply the 1994 Law currently in force in order to extend the principles of the Convention to all types of federal information, and not just to environmental information.

9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Brussels-Capital Region

Statistics from the Info-Environment Department show that over 7,000 requests were received in 2003, with 79 per cent of them from private individuals, 8 per cent from companies and 4 per cent from governmental administrations. Half of them were sent by e-mail. The Info-Environment office located in the city centre receives on average 150 visitors per month. The website is also a widely used source of information and the number of visitors increases constantly.

10. Give relevant web site addresses, if available:

Flemish Region

http://www.emis.vito.be/wet_ENG_navigator/index.htm
www.vlaanderen.be/openbaarheid
www.mina.be/aarhus.html

ARTICLE 5

11. List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.

Federal Authority

- (a) (i) The technology chosen (Oracle portal) enables each expert to input the relevant information directly into the content management system that feeds the website;
- (ii) Through sectoral laws, namely the Law on the Environmental Impact Assessment of Activities in the Marine Environment;
- (iii) Crisis management procedures have been defined, including communication. A particular procedure is elaborated for the North Sea;
- (b) See article 4;
- (c) Several databases have been set up;

(d) On account of the State's federal structure, there is no national report on the state of the environment. Each of the three Regions publishes and disseminates its own report. The federal level reports only to international organizations on marine environmental issues;

(e) Article 190 of the Constitution and the Law of 11 April 1994;

(g) Through the communication policy and Law of 11 April 1994;

(h) Several mechanisms currently exist, namely economic and legal instruments (e.g. eco-taxes, the 1998 Law on Products Standards, the 1991 Law on Commercial Practices, the eco-label website and the CO₂ guide).

Walloon Region

(a) The Environment Code (Book I, part V) stipulates that an assessment of the environmental plans and programmes subject to public inquiry must be done in the course of developing the plan or programme and before it is adopted or submitted for legislative approval, depending on the case.

The Decree of 21 April 1994 on Environmental Planning within the Framework of Sustainable Development, which has been integrated into the Environment Code (Book I, part IV), provides for the drafting of an annual report on the state of the Walloon environment, called the Environmental Scoreboard, which is found on the Directorate-General for Natural Resources and the Environment's website. This report puts special emphasis on the constant assessment of the policies that are being implemented as well on as public information, awareness-raising and participation.

The Region has also set up various environmental monitoring networks. The public authority is responsible for keeping the data up-to-date.

The Decree of 11 mars 1999 on Environmental Permits and its implementing orders regulate the procedure for issuing operating permits for activities that are likely to have an environmental impact. It provides for the undertaking of an impact study prior to the filing of a permit application for activities likely to have significant environmental impacts. The permits that are granted must include environmental impact monitoring obligations.

For emergencies, the Region has set up an environmental incident watch and intervention service within the Environmental Police Division called "SOS Pollutions" that is accessible to everyone around the clock;

(b) See the creation of the Directorate-General for Natural Resources and the Environment's website at www.mrw.wallonie.be/dgrne or www.environnement.wallonie.be, as well as the Decree of 13 June 1991 on Citizens' Freedom of Access to Environmental Information (see answer to question 7);

(c)-(e), (g) See the creation of the Directorate-General for Natural Resources and the Environment's website;

(f) Roll-out of annual environmental reporting to the public authority through the Walloon Government's draft.

The Decrees of 11 September 1985 on Environmental Impact Assessment, as integrated in the Environment Code, and of 11 March 1999 on Environmental Permits, both cover the procedure for granting permits to installations engaged in activities that have environmental impacts. A prior impact study is required for a series of activities that can potentially have significant environmental impacts. Information meetings are to be held at the beginning of the impact study process and a public inquiry is required as part of the environmental permitting investigation process;

(g) See (a) regarding plans and programmes, and the annual report on the state of the Walloon environment;

(h) An agreement has been signed with a consumer protection non-profit association and environmental protection associations to set up an "ecological consumption network". It aims to raise consumer awareness, and inform consumers on environmentally-friendly and healthier consumption choices;

(i) See the implementation of the European Pollutant Emission Register (EPER) under Directive 96/61 of 24 September 1996 concerning integrated pollution prevention and control, which institutes an emissions inventory system, and of the Protocol on Pollutant Release and Transfer Registers (PRTRs).

Flemish Region

- (a)(i) Article 30 of the Decree of 28 March 2004 provides that environmental information must be organized, accurate, comparable and up-to-date;
- (ii) The "environmental management information system" enables the step-by-step development of a general and integrated environmental information system in which all available and relevant environmental data of public environmental authorities can be consulted on the Internet.

Environmental information from companies can be found in the Integrated Annual Environmental Report;

- (iii) Several authorities are involved in the issue, and regulations exist on:
- The exchange of information on projects with cross-regional environmental effects;
 - Controlling the hazards caused by major accidents involving dangerous substances;
 - Civil protection;
 - Reporting and warning obligations in accidental emissions and breakdowns.

Up-to-date information about flooding danger and air quality is available on the Internet;

(b)

- The Flemish Government must compile a joint file, containing introductory and primary information, which is freely accessible (art. 29, para. 1, of the Decree of 28 March 2004);
- Officials must assist anyone seeking access to information (art. 7);
- The right to consult environmental information found in lists, registers or files is free of charge (art. 20, para. 3);

(c) A large quantity of environmental information is available in electronic databases on different websites;

(d) The Decree of 5 April 1995 on General Provisions regarding Environmental Policy provides for the preparation of a biannual environmental report containing a description of the state of the environment, environmental policy and projected environmental development. The report is published in book form and widely disseminated.

The Decree on Nature Conservation mandates the production of a biannual report on natural resources, available at <http://www.nara.be>, and in book form.

Indicators on the state of the environment and nature can be found at <http://indicatoren.milieuinfo.be> and <http://www.vlaanderen.be/aps>;

(e) New legislation is published in the Belgian Official Gazette. Flemish coordinated environmental legislation is available through the Flemish Environmental Legislation Navigator. Policy documents are found at www.vlaanderen.be.

Every authority is under the obligation to inform the population in a systematic, correct, balanced, timely and understandable manner of its policies, regulations and services (art. 28, para. 1, of the Decree of 28 March 2004).

The regional environmental policy plan is announced in the Official Gazette and is available for consultation at the provinces and municipalities (art. 2, para.1 (10), of the Decree of 5 April 1995).

(f) Under EC Regulation 761/2001 of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), companies have to provide information on the environmental impact of their activities.

For certain categories of plants, an environmental audit and integrated annual environmental report have to be undertaken under the internal corporate environmental care system;

(g) Information on access to environmental information, public participation and access to justice is published in the annual reports of the environmental authorities and the Flemish Ombudsman, amongst others.

For information relating to public services, see the preliminary acts of the environmental authorities and their websites.

A summary of pollution levels in Flanders can be found in the environmental complaints database;

(i) The integrated environmental report of companies contains information on emissions, waste, water pollution and groundwater extraction, and constitutes the basis for the PRTR.

Brussels-Capital Region

See the Ordinance of 18 March 2004.

- (a)(i) See article 16, para. 1, of the Ordinance. The environmental observatory has the task of collecting, analyzing and disseminating all information that may be useful in understanding the state of the environment and promoting good management by the responsible authorities;
- (ii) See article 16, para. 2;
- (iii) See article 18.

Alerts are sent to the public through the mass media if certain air pollution thresholds are exceeded. A “pollumeter” (air quality indicator in Brussels) is available 24/7 on www.ibgebim.be and via a telephone answering machine. The population is informed of events that may generate pollution, such as a fire hazard at a former industrial site, through the website of the Brussels Institute for Management of the Environment and through press releases;

- (b) See article 10;
- (c) See article 16, paras. 1 (1) and (3) and 2.

Practically speaking, this implies that:

- Plans and programmes are published at www.ibgebim.be (and in printed form), including reports on the results of public surveys and progress reports on plans and programmes, data on the state of the environment (regularly updated) and several study reports;
- Environmental legislation is made available at www.moniteur.be and www.ibgebim.be;

- (d) See article 17 of the Ordinance;
- (e) See article 16, para. 2;
- (f) See article 16, para. 2;
- (g) See articles 10 and 16;

(h) See article 5, para. 1 (6°) of the Law of 21 December 1998 (published in the Official Gazette of 11 February 1999) on product standards designed to promote sustainable production

means, environmental protection and public health. Practically speaking, this means that the public must make environmentally-conscious consumer choices (see above);

- (i) See article 16, para. 2 (e), of the Ordinance.

12. Describe any obstacles encountered in the implementation of any of the paragraphs of article 5.

13. Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?

14. Give relevant web site addresses, if available:

ARTICLE 6

15. List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.

Federal Authority

- (a)(i) The authorization of specific activities, including procedures for environmental impact assessment (EIA), falls primarily within the remit of the Regions. Nevertheless, the Federal Authority remains responsible for authorizing the operation of nuclear activities (Royal Decree of 20 July 2001) and activities in marine areas that come under Belgian jurisdiction (the North Sea) (see article 28 of the Law of 20 January 1999, the Royal Decree of 7 September 2003 and the Royal Decree of 9 September 2003);
- (ii) With regard to offshore bunkering, see the Ministerial Decree of 18 April 2001;
- (b)-(d), (f)-(g) With regard to the nuclear energy sector, see article 6, para. 4, of the Royal Decree of 20 July 2001, and for the marine environment, see article 18, para. 1, of the Royal Decree of 07 September 2003;
- (j) The procedure described above applies to permits and authorizations relating to the marine environment;
- (k) A royal decree will transpose Directive 2001/18/EC of 12 March 2001 on the deliberate release into the environment of genetically modified organisms.

Walloon Region

- (a) The Decrees of 11 September 1985 and 11 March 1999 apply to the permitting procedure for installations that are engaged in activities that have environmental impacts. They require prior EIA for a series of activities that are liable to have significant environmental impacts. For other activities, an EIA sheet (notice) must be appended to permit applications. The

Decrees regulate the public information and participation procedures in these areas, including the matter of deadlines.

The public is defined in the Decrees as one or more natural or legal persons, as well as their associations, organizations and groups.

The Environment Code (Book I, part V) also provides for public participation when it comes to environmental plans and programmes that are developed by public authorities;

(b) When an EIA is required, information meetings take place at the start of the process and a public inquiry is undertaken as part of the environmental permitting investigation;

(c) A 15-day deadline is set for the submission of comments after the information meeting that is part of the impact assessment. A 30-day deadline applies to the submitting of comments after the request for a public inquiry has been submitted under the environmental permitting procedure;

(d) See subparagraphs (b) and (c) above ;

(e) During the undertaking of an EIA, the applicant must publish an announcement specifying the nature of the project at least 15 days before the information meeting;

(f) During the public inquiry, the local administration in charge of issuing the permit must inform the residents and post an announcement that spells out the project's consultation procedures;

(g) See subparagraph (c) above ;

(h) The Decree of 11 March 1999 includes an obligation to take decisions on the basis of the opinions and comments that have been received and to mention possibilities for appeals ;

(i) This Decree also specifies the measures necessary to publicize the decisions that are taken by the authority responsible for granting the permits;

(j) The same procedures apply to the granting of new permits;

(k) See the Federal Government's report at www.health.fgov.be.

Flemish Region

(a) An environmental licence is required to operate or change nuisance-causing plants listed in Vlarem I, which is broader than annex I of the Convention. A town planning licence is required for various activities (construction, deforestation, relief modifications, etc.);

(b), (g) The information disclosure requirement within the participation procedure is regulated under "public inquiry" procedures. The application is available for consultation and announced on posters. For some plants, inhabitants within a radius of one hundred metres are

informed and the public inquiry announced in the press. An information meeting is organized when an EIA or safety report is required.

The publication contains the object of the application, a short description of the plant, the municipal authority services, the possibility to submit objections and remarks, and the place and time of the information meeting. For certain applications for town planning licences, a similar public inquiry is organized;

(c) The public inquiry runs up to 30 days, during which period the information is available for consultation and objections can be formulated;

(d) After the declaration of completion and admissibility of the environmental application, the public inquiry is initiated within ten days;

(e) Flemish environmental legislation does not contain an overall regulation regarding contacts between potential applicants and the public concerned. The notification phase of the environmental impact reporting process gives the initiator the chance to clarify the project objectives at an early stage;

(f) When an environmental impact report is required, it contains a detailed description of the project; the main characteristics of the production processes; the potential significant adverse effects for human health and the environment, including transboundary ones; the intended measures to avoid, restrict and possibly remedy major environmental effects; a prognosis of the expected emissions and residues; a draft of the main alternatives; a description of the knowledge gaps; a report regarding employment, investments and the goods to be produced; and a non-technical summary.

The Act on Environmental Licences (art. 7) requires a further description of the existing state of the air, water, noise level, and flora and fauna in the areas that may be affected by the plant;

(h) The Act of 29 July 1981 contains a general duty to state reasons, and specific obligations to state reasons are found in other legal acts;

(i) Within ten days, information on the decision regarding the environmental licence, and the service where the decision can be consulted, is made publicly available. The applicant for an urban development licence must post the decision immediately;

(j) Reasons for a modification of the environmental licensing conditions must be given (art. 21 of the Decree on Environmental Licences and art. 45 of Vlarem I).

Brussels-Capital Region

(a)

- See the Governmental Decree (AGRBC) of 9 April 2004 adopting the Brussels Land Use Code, title IV, chap III, section III, arts 149 to 152 (published in the Official Gazette of 26 May 2004);

- See the Ordinance of 22 April 1999 providing a list of installations classified as 1A (published in the Official Gazette of 5 August 1999);
- See the Governmental Decree of 4 March 1999 providing a list of installations classified as 1B, 2 and 3 (published in the Official Gazette of 7 August 1999);

(b)-(e), (g)-(j) See the Governmental Decree of 9 April 2004, title IV, chap III, section III, arts. 149 to 152;

(b)-(d), (i) See the Ordinance of 18 March 2004;

(k) See the report of the Federal Authority.

16. Describe any obstacles encountered in the implementation of any of the paragraphs of article 6.

17. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.

18. Give relevant web site addresses, if available:

ARTICLE 7

19. List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Federal Authority

A bill transposing this article of the Convention is currently being drawn up at federal level.

Walloon Region

The Environment Code (Book I, part V) provides for public participation on plans and programmes that are developed by the public authority and affect the environment. The definition of “public” in the Code is the one given in the Convention.

If a plan is likely to have significant impacts on the environment, its author must include an impact report. A 60-day public inquiry is then organized, and the author is required to issue an environmental statement summarizing the way in which the environmental considerations and opinions submitted were integrated into the plan.

Several advisory bodies have been created by decree to provide public authorities with opinions prior to the adoption of legislation and regulations in such areas as sustainable development (Environment Council of the Walloon Region for Sustainable Development) and water policy (Water Commission) by such bodies. The advisory bodies are composed of representatives of business federations, trade unions, associations and NGOs.

Flemish Region

In accordance with the Decree of 5 April 1995, an Environmental Policy Plan is produced every five years together with an Annual Environmental Programme, which is submitted for advice to the Flanders' Socio-Economic Council and the Environment and Nature Council of Flanders. At the local level, an environmental policy plan is produced every five years. In addition, more detailed plans at the sectoral, departmental or thematic levels contain detailed provisions on participation.

Article 4, para. 2 (4), of the Decree of 5 April 1995 provides for the possibility to participate in the notification stage of strategic environmental assessment (SEA) reporting. SEA also concerns plans other than those "relating to the environment".

The draft environmental policy plan is made available for consultation at the municipalities for 60 days. During this period anyone can submit comments, and an information and participation meeting is organized for each province. This procedure is announced in the press, on the radio and on the television (art. 2, para.1 (9) of the Decree of 5 April 1995).

The appraisal document details the way in which comments were taken into account. The plan is published both on paper and electronically, and is publicized in the Belgian Official Gazette.

Regional spatial structure plans are subjected to public inquiry (arts. 20 and 42 of the Decree on Spatial Planning). The provision of information and opportunities to formulate comments and objections are publicized through posting, notices in the Belgian Official Gazette, newspapers, and on the radio and television. The regional spatial structure plans are the object of an information and participation meeting in each province (art. 20 of the Decree on Spatial Planning).

The same participatory opportunities exist for the determination of the provincial and municipal environmental planning and spatial policies.

Brussels-Capital Region

- See arts. 11 and 13 of the Ordinance of 18 March 2004;
- See art. 5 of the Ordinance of 7 March 1991 on the Prevention and Management of Waste and art. 5, paras. 2-8, of the Ordinance of 17 July 1997 on Noise Abatement in Urban Settings, which explicitly require the organization of a public survey on draft waste plans and noise abatement plans.

Public surveys were organized during the drafting of the waste and noise abatement plans, as well as on the development of the air and climate plan, management plan for the Sonian Forest

and the plan for assigning CO₂ emission quotas to Brussels. These surveys and consultations were a big success. Over 7,000 responses from the public surveys were received concerning the second waste plan, over 5,000 on the third waste plan and over 8,000 on the draft noise abatement plan.¹

20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.

21. Describe any obstacles encountered in the implementation of article 7.

Flemish Region

- Problems with the definition of the plans to which the Convention applies;
- Some regulatory participation provisions seem to be inadequate for effective participation;
- Problems in the SEA reporting process regarding the procedural harmonization of participation in the environmental impact reporting procedure and the procedure for drawing up the plan.

22. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 7.

23. Give relevant web site addresses, if available:

Flemish Region

www.milieubeleidsplan.be

ARTICLE 8

24. Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Federal Authority

The federal level has set up the Federal Council for Sustainable Development, composed of civil society major stakeholders, which issues opinions to the Federal Authority on the federal policy for sustainable development. Since 1994, it has issued more than 100 opinions on planned regulations and policy.

The Council carries out tasks at its own initiative or at the request of the Ministers or Secretaries of State, the House of Representatives and the Senate. It can call upon public federal

administrations and bodies to assist it in accomplishing its tasks and can consult anyone whose collaboration is deemed useful for the consideration of certain issues.

The Council issues an opinion within three months of the request for an opinion. In an emergency, a shorter time frame may be stipulated by the applicant, which can however not be shorter than two weeks.

The Council drafts an annual report of its activities. The Government must state the reasons for disregarding its opinions.

Walloon Region

See the answer to question 19.

Flemish Region

Draft regulations are submitted for advice to the Environment and Nature Council of Flanders, the Flanders' Socio-Economic Council and the Flemish Commission for Spatial Planning, which are composed primarily of civil society groups and experts. A similar regulation exists at the provincial and municipal levels.

Brussels-Capital Region

Public participation is guaranteed by representative organizations brought together in the Brussels Environment Council. See the Decree of the Brussels-Capital Region Executive of 15 March 1990 regulating the creation, functions and composition of the Environment Council for the Brussels-Capital Region (published in the Official Gazette of 6 July 1990).

25. Describe any obstacles encountered in the implementation of article 8.

26. Provide further information on the practical application of the provisions on public participation in the field covered by article 8.

Brussels-Capital Region

The opinions of the Environment Council are not binding on the public authorities, who must nevertheless justify any decision running counter to the Council's opinions. These opinions, as well as the schedule and agendas of meetings, are available at www.cerbc.be.

27. Give relevant web site addresses, if available:

Federal Authority

<http://www.belspo.be/frdocfdd>

<http://www.billy-globe.org>

ARTICLE 9

28. List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.

Federal Authority

- (a)(i) The Law of 1994 establishes an administrative procedure allowing applicants to file for a reconsideration of their request for information to the federal administrative authority. This request is systematically coupled with a request for an opinion from the Committee on Access to Administrative Documents, an independent and impartial body established by the Royal Decree of 27 June 1994. The Committee must issue its opinion within 30 days of receiving the request, and the Federal Authority then has 15 days in which to take its decision. If the Authority fails to take a decision on reconsideration within the stipulated time frame, the request is deemed to have been refused.

Common law applies with regard to judicial remedies. The applicant may therefore petition for the administrative decision to be quashed by the Council of State in accordance with the rules applying thereto;

- (ii) The reconsideration procedure is free of charge;
- (iii) If an administrative decision to refuse access to information is quashed, it is binding on the administrative authority. Both the opinion of the Committee on Access to Administrative Documents and the decision of the Council of State must be substantiated;
- (b) The parties concerned have available several judicial appeals avenues:
- Appeals to the Council of State;
 - Appeals to the Court of Arbitration;
 - Appeals to the President of the Court of First Instance, who gives emergency interim rulings;
 - Proceedings before a magistrates' courts;
 - Proceedings before civil courts.

In environmental matters, there is a further appeal avenue for an action on discontinuance under the Law of 12 January 1993 concerning a right to bring an action in environment matters (see subparagraph (c) below);

(c) Apart from the conventional avenues for judicial and administrative remedy, the Law of 12 January 1993 is of particular relevance. It states that if “the President of the Court of first instance, at the request of the Public Prosecutor, an administrative authority or a corporate entity (non profit-making association with an environmental protection corporate aim) establishes the existence of an act, even one for which punitive action has been taken, that seriously threatens to infringe one or more laws, regulations or decrees on environmental protection, the President can

order the discontinuance of acts that have started to be carried out or can impose measures aimed at preventing such acts from being carried out or at preventing damage to the environment (...);

(d) The following constitutional provisions are relevant to judicial remedies:

- Article 148 provides that “Court hearings shall be public, unless disclosure is a threat to public order or decency; and, in this case, the court shall declare this in a ruling”;
- Article 149 reads: “Grounds must be given for any ruling. Rulings must be declared at a public hearing”;
- Article 151 stipulates that “Judges shall be independent in carrying out their judicial duties. The Public Prosecutor’s Office shall be independent in carrying out individual investigations and proceedings (...);”

(e) In order to ensure that persons without sufficient resources are entitled to effective access to justice, the Judicial Code establishes two legal assistance schemes that apply to both civil and criminal matters. Articles 446 bis and 508, paras. 1-23, of the Judicial Code and royal implementing decrees firstly concern primary and secondary legal assistance. Secondly, legal aid is provided under articles 664 to 699 of the Judicial Code.

Primary legal assistance entails the provision of practical and legal information, as well as of an initial legal opinion or referral to a specialized body or organization. Primary legal assistance is available to both individuals and corporate entities. Secondary legal assistance means legal assistance to an individual in the form of a detailed legal opinion or legal assistance, whether or not in the context of formal proceedings, and assistance with a court action, including legal representation.

Legal aid, on the other hand, consists in full or partial exemption from stamp duties and registration charges, and other costs of proceedings, and is available to litigants who do not have adequate income to cover the cost of judicial or extrajudicial proceedings.

It should be noted that appeal procedures (application to set aside, appeals on a point of law or fact and appeals to the court of cassation) are not free of charge for litigants.

The Federal Public Justice Service draws up the annual statistics of courts and tribunals, including, for environmental dossiers, the number of environmental cases registered by the civil court’s office and environmental cases referred to examining magistrates.

Walloon Region

(a) See the answer to question 7 regarding the Appeals Commission for access to information. Besides this body, the petitioner can take his or her claim to the various courts and jurisdictions of the judicial system;

(b) – (e) See the federal Government’s report at www.belgium.be concerning appeals to the Court of Arbitration and Council of State, the highest administrative authority which functions as the administrative tribunal of last resort.

Flemish Region

(a) An appeal, free of charge, to an independent administrative appeals body is possible against any decision, after the expiry of the deadline or in the event of the decision being carried out unwillingly. A higher appeal is possible to the Council of State. Decisions are binding, and the authority has to implement them as soon as possible and at the latest within 40 calendar days (Arts. 20, 22, 24, para. 3, and 26 of the Decree of 28 March 2004);

(b) An administrative and judicial appeal exists for environmental and town planning licences;

(c) Challenging acts and omissions by private persons and public authorities which contravene environmental law is possible through various administrative and judicial appeals procedures when the above-mentioned administrative appeals procedures have been exhausted;

(d) If the public authority complies with the decision taken upon appeal, it grants publication. In cases where it does not implement the decision, the appeals body carries out the decision itself as soon as possible. It informs the applicant of its decision in writing, by fax or by e-mail within a period of 30 days. Decisions of the appeals body are made publicly available;

(e) In principle, any decision mentions all appeals avenues, otherwise the deadline for submission of the appeal is not triggered (art. 35 of the Decree of 28 March 2004).

Decisions on licences and under sectoral environmental legislation also mention appeals avenues.

Brussels-Capital Region

(a) See the Ordinance of 18 March 2004 and the Ordinance of 30 March 1995 on disclosure by the administration (published in the Official Gazette of 23 June 1995);

(b) Appeal to the Council of State (federal level);

(c)-(d) See the Law of 12 January 1993 on the right to act in environmental matters (published in the Official Gazette of 19 February 1993);

Appeals avenues must always be mentioned in administrative decisions.

29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.

30. Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?

31. Give relevant web site addresses, if available:

Federal Authority

<http://www.just.fgov.be>

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

Articles 10-22 are not for national implementation.

General comments on the Convention's objective:

The consecration of the three procedural rights in the Convention, and their countrywide implementation by the Regions and the Federal Authority, give full meaning to article 23, para. 4, of the Constitution which sets forth "the right to the preservation of a healthy environment".

Notes

¹ The Brussels Capital-Region has approximately one million inhabitants.