

**FORMAT FOR AARHUS CONVENTION IMPLEMENTATION REPORT
CERTIFICATION SHEET**

The following report is submitted on behalf of the Federal Authority of the Kingdom of Belgium in accordance with decision I/8

Name of officer responsible for submitting the national report:	ISTASSE Maud
Signature:	
Date:	

IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

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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.

Answer:

In Belgium the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters is a “joint” convention, meaning that several authorities are responsible for implementing it. In practical terms they are the federal authority and the three federal entities (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 national report comprises four different reports.

Since certain responsibilities remain national in scope and are therefore managed by the federal authority, the regional reports refer certain points to the federal report (particularly with regard to the judicial aspect of access to justice). Conversely, certain responsibilities are exclusively regional in scope. In this case, the federal report expressly mentions this.

This national report was coordinated by the Aarhus network, which comes under the international environmental policy committee, a committee comprising Belgium’s competent political and administrative authorities for the environment. The Aarhus network is responsible for preparing and following up international negotiations relating to the Aarhus Convention.

The Aarhus network coordinated the preparation of the national consultation with a view to Belgium-wide harmonisation.

The Aarhus network decided to hold two types of consultation: firstly, a coordinated national consultation of the four major environmental protection federations in Belgium (which therefore covers all the Belgian reports) and, secondly, a public consultation by each authority on its own report.

The online consultation was organised from the 1st of October till the 14th of November 2007 via the websites of the different authorities (www.health.fgov.be and www.belgium.be for the federal level) and also via the national portal www.aarhus.be.

The federal public service has elaborated a questionnaire that measured the public's knowledge of and experience with the rights of the Convention of Aarhus and also gave the possibility to make comments on the federal report. Two persons filled in this questionnaire. The remarks rather concerned the portal site www.health.fgov.be, which was considered not very user-friendly.

The four environmental protection federations also provided a joint position on the federal report. They welcome the public consultation, but underline some aspects that need improvement:

- concerning the report in general:
 - o few description of the practical implementation of the provisions of the convention, which does not help to mobilise for such consultation;
- concerning access to information:
 - o the need to make the distinction between popularisation and awareness raising on the one hand, and access to information on the other hand (such as existing figures, reports, etc.);
 - o the need to make certain websites more clear and transparent;
 - o the need for an adequate and recurrent financial support for NGO's;
 - o the ignorance of the public regarding the fact that it doesn't have to demonstrate an interest in order to have access to environmental information;
 - o the restrictions and the refusals concerning the access to certain types of information (for example in the nuclear field and the branch agreements);
 - o the need to render certain information more transparent (for example studies, data concerning pesticides, chemical substances, etc);
- concerning the participation of the public:
 - o the need to mobilise the public
 - o the need to inform the public on the remarks that were taken into account and the reason why certain remarks were excluded;
 - o the lack of feedback between the public and the authorities;
- concerning the access to justice:
 - o the difficulties for the environmental associations to access to justice effectively, before the Council of State and before the civil and criminal jurisdictions;
 - o the need to modify the law of 12 January 1993 as well as the dispositions of the judicial Code.

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).

Answer:

In constitutional terms, since 1993 Belgium has been a Federal State comprising three Regions and three Communities. This federal mechanism has repercussions on environmental powers, since they 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. The Regions exercise their own powers in accordance with the territorial basis demarcating their geographical remit.

The law of 08/08/80 on institutional reforms, amended several times, lays down this division of powers. Thus, in Belgium the bulk of the environment policy comes within the remit of the Regions. In particular this means the policy on water, air, waste, nature conservation, rational energy use, planning and regional development, and so on.

The federal authority has absolute jurisdiction in the field of environmental protection:

- Transit of waste.
- Import, export and transit of protected non-indigenous species.
- Protection of the North Sea.
- Product standards (i.e. the environmental standardisation of products before they are placed on the market)
- Nuclear energy sector.

Furthermore, Belgium's federal authority retains full responsibility for the judicial aspect of "access to justice", with the Regions having responsibility only for non-judicial administrative appeals.

In Belgium, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, commonly referred to as the Aarhus Convention, is a "joint" convention. This means that it has legal effect not only in the field of jurisdiction of the Regions but also in that of the federal authority. Thus the four competent Parliaments for this dossier (Federal Parliament, Parliament of the Walloon Region, Council of the Brussels-Capital Region and Parliament of the Flemish Community) gave their opinion on the dossier for approving the Convention, separately and with regard to the remit of the authority of which they are the legislative authority. This means that Belgium joined the Convention when all the approval dossiers were passed by the various Belgian parliaments concerned.

As a result, this implementation report reflects the distinctive nature of Belgium's federal system. The document entitled "Report of the Kingdom of Belgium to the Aarhus Convention" compiles the reports of the four competent authorities for the dossier with respect to their field of jurisdiction.

In view of the federal authority's exclusive jurisdiction for the judicial aspect of access to justice, the "regional" reports use a system of referral to the "federal" report.

Although the chosen methodology for the dossier for implementing the Convention in Belgium may seem a little fragmented, it scrupulously respects Belgium's current federal system.

LA BELGIQUE

L'ETAT FEDERAL



LES COMMUNAUTES

 **LA COMMUNAUTE FLAMANDE**



 **LA COMMUNAUTE FRANÇAISE**



 **LA COMMUNAUTE GERMANOPHONE**



LES REGIONS

 **LA REGION FLAMANDE**



 **LA REGION DE BRUXELLES-CAPITALE**



 **LA REGION WALLONNE**



Article 3

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

Explain how these paragraphs have been implemented. In particular, describe:

(a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;

(b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;

(c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;

(d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally;

(e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention shall not be penalized, persecuted or harassed.

Answer:

*** Paragraph 2**

Besides the general law of 1994 regarding disclosure of information by the administration, a new law relating to public access to information on environmental matters (*Moniteur belge*, 28/08/2006; see the answer to the question relating to article 4) came into existence on 5th August 2006. This law obliges staff members of environmental authorities "to assist anyone requesting access to environmental information" (art. 19, § 3).

Within the framework of this law, a special information desk for the public was set up on 28 September 2006 within the Directorate-General for the Environment of the Federal Public Service Health, Food Chain Safety and Environment. This Environment Information Desk centralises and deals with all requests for environmental information from the Federal Public Service, Health, Food Chain Safety and Environment (see further on the last question relating to article 4).

*** Paragraph 3**

The Environment DG develops awareness campaigns and educational aids on subjects that come under the Federal State's environmental remit, i.e.:

- **The integrated product policy.**
- **Reduction of greenhouse gas emissions** in compliance with Kyoto protocol commitments.
- The policy relating to **marketing chemicals** and preventing risks associated with non-ionising radiation (cell phones) and noise.
- **Inspection** relating to the marketing, approval and use of such chemicals.
- Registration and control of **waste transit**.
- Coordination of the **international environment policy**.
- **Protection of the North Sea**
- The import, export and transit of **protected non-indigenous species**

Among other things, the DG conducted the following campaigns:

- Ecolabel (2004 and 2006; a leaflet and website www.ecolabel.be)
- “clean cars” (2004, 2005, 2006 and 2007; a CO2 guide and website www.voitureeconomie.be, www.zuiningewagen.be ; the campaign won the Gold PAMPA Award (FR) and Silver PAMPA Award (NL) in 2005 (Pampa = Public Authorities Magazine Print Awards)
- “La mer du Nord, notre 11^{ème} province” (2005; a leaflet, website www.de-noordzee.be and exhibitions)
- the climate (2005; a survey, leaflet and website www.climat.be, www.klimaat.be)
- “energivores” (2006; website www.energivores.be, a calculation module designed to calculate and reduce energy consumption at home)
- “Bombylius” (2006 and 2007; various leaflets on biodiversity, the electronic game Bombygame and the website www.bombylius.be)
- the Aarhus Convention (2006; a leaflet and website www.aarhus.be)
- Sustainable Development Day and Week (2006)
- Biodiversity Day (2007)
- sustainable construction (2007; website www.underECOconstruction.be)

In 2005, the federal portal site of the FPS www.health.fgov.be was also launched (see the answer to the last question relating to article 3 for a complete list of the websites). The portal is currently being updated and developed (2007-2008). At the same time, the DG published leaflets on the ozone problem (2004), paints and varnishes (2004), heat waves and ozone peaks (2005), rapeseed oil (2006), asbestos (2006), sustainable wood (2006), the National Biodiversity Strategy 2006-2016 and pesticides and biocides (2007), among other things. The DG is defining new campaign themes that take into account the questions received via the information desk.

The DG also compiled several educational publications; an educational boxset on the lifecycle of paper (Ecolabel), an educational file on the climate, and an educational book, Bombybook, on biodiversity. These publications encourage teachers to deal with these subjects in school.

NGO’s often play a partnership role in the implementation of communication campaigns, in terms of writing, production, distribution and promotion of the information.

Furthermore, the federal government distributes the “Belgopocket” guide (and created the www.belgopocket.be website), which presents the majority of the measures taken by the federal government in a question and answer form. One of the chapters in the guide is dedicated to the environment.

*** Paragraph 4**

Since 2001, the four Belgian 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, or in the health/environment or environmental law fields.

In accordance with the Aarhus Convention, environmental protection associations legally have the right to participate as members of the public during the decision-making process with relation to plans and programmes.

*** Paragraph 7:**

There are no legislative or regulatory provisions governing the application of article 3, § 7, of the Convention at Belgian federal level. However, it should be highlighted that the Second Federal Plan for Sustainable Development, which covers the years between 2004 and 2008, explicitly refers to the Aarhus Convention. Paragraph 1304 of the Convention acknowledges that “Through its driving force, it (i.e. the Convention) also contributes to promoting the implementation of the principle of participation in

sustainable development on an international and European level".

As regards the coordination of Belgium's opinions in terms of multilateral policy relating to sustainable development, the representatives of non-governmental organisations are invited to meet through the representation they assume for their organisation within the Federal Council for Sustainable Development. Belgium is therefore particularly conscious of the importance of the Aarhus Convention and is endeavouring, within the framework of various negotiations relating to texts on the environment and international affairs in the broad sense, to ensure that it is given the appropriate attention and visibility.

With regard to the composition of our delegations responsible for international negotiations, it has become a growing practice for representatives from non-governmental organisations to be included in the regular delegation.

In order to have a more precise idea of the implementation of article 3.7 of the Convention, the Aarhus network has launched a consultation among the various groups of the CCIEP. The aim is to be able to identify their practices as regards the involvement of stakeholders in the preparation of Belgian stances on the one hand, and in terms of the European and/or international negotiations of their dossiers on the other hand. The results reveal quite diversified practices in this area. Certain groups, such as the "chemical products" group, regularly involve the stakeholders in the preparation of the Belgian stances, but do not, however, associate them with international negotiations. The CCIEP's "climate change" group is atypical insofar as its practice is relatively progressive compared with other groups since the stakeholders are regularly associated with the preparation of Belgian stances on the initiative of the public authorities. Therefore, they are regularly informed and have the opportunity to share their point of view with the authorities concerned. Furthermore, it should be noted that the stakeholders are systematically part of the Belgian delegation during international negotiations relating to climate change.

This first consultation will be completed by a more in-depth analysis, carried out by external contracting parties, on the implementation of the guidelines by Belgium as well as on the formulation of recommendations, if necessary.

*** Paragraph 8:**

The Belgian Constitution governs the fundamental freedoms of individuals in section II "Belgians and their Rights" (Des Belges et de Leurs Droits). The following provisions are of special note:

- Article 11: Enjoyment of the rights and freedoms to which Belgians are entitled must be guaranteed without discrimination. To this end, the law and the decree guarantee in particular the rights and freedoms of ideological and philosophical minorities.
- Article 12: Individual freedom is guaranteed.
- Article 19: (...) the freedom to express one's opinions on any subject (is guaranteed) unless to repress offences committed when availing oneself of these freedoms.
- Article 23: Every individual has the right to lead a life in keeping with human dignity. To this end, the law, the decree or the rule mentioned in article 134 guarantees economic, social and cultural rights, taking into account the corresponding obligations, and lay down the conditions for exercising those rights. These rights include in particular:
 1. (...)
 2. (...)
 3. (...)
 4. The right to the preservation of a healthy environment.
- Article 27: Belgians have the right of association; this right may not be subject to any preventive measures.

- Article 32: Anyone has the right to consult any administrative document and to receive a copy of it, except in cases and conditions laid down by the law, the decree or the rule mentioned in article 134.

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

Answer:

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

Answer: The www.aarhus.be portal was launched nationally on 18 September 2006. It offers general information relating to the Aarhus Convention and its implementation in the European Union and Belgium. In March 2007, this website was voted “Best National Node (2007) of the Aarhus Clearinghouse Mechanism”.

The federal and regional public consultations are also announced on the homepage of the www.aarhus.be website. Moreover, the federal public consultations are announced via the www.belgium.be website and the www.health.fgov.be federal portal site.

Give relevant web site addresses, if available:

- Portal site of the FPS Health, Food Chain Safety and Environment (www.health.fgov.be), which includes pages specifically dedicated to the Aarhus Convention and the public information desk (www.health.fgov.be/infoaarhus)
- <http://www.aarhus.be>: Belgian portal site relating to the implementation of the Aarhus Convention
- portal site of the federal government (www.belgium.be)

In addition, ad hoc sites have been created for the majority of themes within the remit of the federal domain. These sites meet national (cooperation agreements between the various levels of power in Belgium), European or international obligations.

- <http://www.ecolabel.be>: Belgian site relating to the European “ecolabel” and the categories of products that can benefit from it
- <http://www.climat.be> or www.klimaat.be: site relating to the climate and climate changes
- <http://www.climateregistry.be>: website of the Belgian national register of greenhouse gases, a protected electronic database that allows emission quotas within the European Union to be exchanged online
- <http://www.nehap.be>: Belgian portal site on the Environment-Health National Action Plan
- <http://www.de-noordzee.be>: site dedicated to the North Sea, our eleventh province
- <http://www.noordzeecentrale.be>: site dedicated to the sustainable management of the North Sea
- <http://www.voitureeconomie.be/www.zuinigewagen.be> : site with a database including the cars available on the Belgian market, ranked according to their fuel consumption and their CO₂ emissions
- <http://www.bombylius.be>: site on biodiversity, where you can find the “Bombygame” game, files and e-cards
- <http://www.energivores.be/www.energievreters.be> : calculation module designed to calculate and reduce energy consumption at home
- <http://www.underECOconstruction.be>: website dedicated to a more respectful construction of the environment, where you can find information on energy efficiency at home in particular

Scientific institutes that come under the Federal Public Service for Public Health, Food Safety and the Environment have also developed web sites:

- <http://www.mumm.ac.be>: website of the Management Unit of North Sea Mathematical Models, an institute devoted to studying the marine environment of the North Sea
- <http://www.biosafety.be>: Belgian biosafety server
- <http://www.biosafetyprotocol.be>: Belgian clearing-house of the biosafety Protocol

Finally, the following federal sites should also be mentioned:

- http://statbel.fgov.be/port/env_fr.asp (the Environment portal of the Federal Public Service Economy, SME, Self-employed and Energy)
- <http://www.mineco.fgov.be> (website of the Federal Public Service Economy, SME, Self-employed and Energy)
- <http://www.fanc.fgov.be> (website of the Federal Agency for Nuclear Control)

Please refer to the www.moniteur.be site and the www.ejustice.just.fgov.be/cgi/welcome.pl site for the Belgian legislative texts.

Article 4

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

Explain how each paragraph of article 4 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Any person may have access to information without having to state an interest;
 - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
 - (iii) The information is supplied in the form requested;
- (b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;
- (c) With respect to **paragraphs 3 and 4**, measures taken to:
 - (i) Provide for exemptions from requests;
 - (ii) Ensure that the public interest test at the end of paragraph 4 is applied;
- (d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;
- (e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;
- (f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;

(g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.

Answer:

Paragraph 1:

Article 32 of the Constitution, under the section “Belgians and their Rights”, states that “*Anyone has the right to consult any administrative document and to receive a copy of it, except in cases and conditions laid down by the law, the decree or the rule mentioned in article 134*”.

As well as the general law of 11 April 1994 regarding disclosure of information by administration, a new law came into existence on 5 August 2006 relating to public access to information on environmental matters (*Moniteur belge*, 28/08/2006). This law aims to transpose the provisions of the Aarhus Convention as regards access to information, as well as Directive 2003/4/CE concerning public access to information on environmental matters and repealing Council Directive 90/313/CEE. As in the general law of 1994, it does not lay down any conditions linked to nationality, domicile or registered office.

-The *rationae personae* scope is very broad: henceforth, the law refers to “environmental authority” and no longer refers to the more restrictive term of “administrative authorities” contained in the general law of 1994. It now covers not only all the federal public services but also private persons who exercise (a) public duties or (b) provide public services related to the environment.

-The *rationae materiae* scope covers all information in an environmental authority’s possession, regardless of the medium or the material form, concerning the environment, defined in a very broad sense.

-The principle of access to information is contained in article 18, § 1: “Anyone requiring environmental information has the right, according to the conditions provided for by the present law, to consult it on site, obtain explanations about it and to receive a copy”.

(a) (i) The law does not require the statement of an interest in the request.

(a) (ii) The right to consult an environmental information by an environmental authority is guaranteed (article 4). Consultation of the document, as well as the explanations relating to it, is by request (art.21, §1er).

(a) (iii) If the environmental information is available or can be reasonable made available on the medium, in a given electronic form or format, the law provides for the distribution of the copy according to the request.

Paragraph 2:

(b) The time limit laid down by the law is 30 calendar days, which can be extended to a maximum of 45 calendar days.

Paragraphs 3 & 4:

(c) (i) The law also provides for three possibilities for refusing to disclose information, as laid down in article 4.3 of the Aarhus Convention.

1. The environmental authority can reject a request if it concerns environmental information whose disclosure may lead to a misunderstanding owing to the fact that the document is unfinished or incomplete. In this case, the authority only makes a decision after having weighed up the interests, i.e. the public interest served by its disclosure and the specific interest served by refusing to disclose it.

However, it can reject the request (1) if its formulation remains too general after the environmental

authority has asked the person in question to reformulate their request or (2) if it is clearly abusive.

2. The environmental authority shall reject any request if it considers that the public interest served by advertising does not prevail over the protection of interests defined exhaustively in the law, in accordance with the Convention.

(c)(ii) See point 2 above

Paragraph 5:

(d) Article 21, §2, paragraph 2, provides for an obligation to automatically transfer the request as quickly as possible to the authority that possesses or is presumed to possess the information. The person who has made the request must be informed immediately.

Paragraph 6:

(e) Article 31: *“Environmental information is made public in part if it contains information other than that which is the subject of an exception and if it is possible to separate the afore-mentioned information from the other information”*.

Paragraph 7:

(f) According to Article 22, §5, the environmental authority must notify the person making the request of its decision as well as the reasons for rejecting the request within 30 days at the latest (45 days in the case of an extension). The reason must, in any case, be concomitant with the decision to reject the request.

Furthermore, in accordance with Article 8 of the law of 5/8/2006, information on the right to appeal must accompany all federal notification: *“any document, whereby a decision or an administrative action on a personal level issued by a federal public service is notified to a citizen, must indicate the possibilities for making an appeal, the relevant authorities and the time limits to be respected, failing which the time limit for submitting the appeal will not be applied”*.

Paragraph 8:

(g) Article 19, §2, of the law states that payment, whose amount is determined by the King, may be required for the copy. The Royal Decree of 17/08/2007 determines the payment system for the copy of an administrative document or the copy of a piece of environmental information. It states that a fee may be requested as from the 51st copy. The payment is fixed at EUR 0.05 and reduced to EUR 0.02 as from the 101st page. A payment at cost price is applied when a medium other than paper is used. The payment is payable to the public service in cash, on site, if the copy is given directly to the person making the request. However, the payment is made beforehand if the copy has to be sent by post.

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

Answer:

Within the framework of the practical application of the provisions relating to access to information (also see the following question), it appears that it is not always easy to determine whether a question must be considered or not as a "request for environmental information" in the sense of the Convention (and if the procedure described must or not be applied).

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?

Answer:

As mentioned in article 3, paragraph 2, the DG Environment of the FPS Health, Food Chain Safety and Environment has set up a special information desk for the public, which centralises and deals with all the requests the FPS receives. In order to guarantee that all the requests are treated in a uniform manner, internal procedures have been established, in accordance with the law of 5 August 2006.

The Environment information desk is accessible by post, fax, telephone, e-mail or using a form which has been created on the www.health.gov.be/infoaarhus website in order to make the information desk even more accessible. The aim is to make the existence of this new information desk known to as many citizens as possible. It was therefore officially launched in September 2006 via a press release and a leaflet describing the procedure to follow to obtain the environmental information in the possession of the federal authority ("Do you have a question about the environment? Ask, and we'll reply!"). There are more detailed explanations regarding the procedure on the portal site of the FPS (www.health.fgov.be/infoaarhus).

All the requests received and the answers given are recorded in an electronic database (see Art. 21, § 3, of the law of 05/08/2006). Statistics concerning the quantity and type of requests are collected on a monthly basis. On average, the information desk receives around fifty requests a month (without taking orders for publications into account), mainly from citizens. There are all sorts of requests (and, therefore, also requests for information), with only a few (less than 20 %) that fall under the scope of the law of 5 August 2006 relating to public access to information on environmental matters. Approximately one third of the requests concern matters that fall under the scope of other environmental authorities (the majority concern the Regions). These requests are sent to the relevant authority. The themes that are most often the subject of a request are "clean cars" (concerning the financial benefit when purchasing a car that emits less CO₂, LPG and biofuel), "asbestos" and "mobile phones and radio waves". The information desk tries to satisfy all requests for information within a reasonable time limit. The average time to obtain an answer is currently 10 days.

These figures are provisional: the centralisation process for all the requests that arrive at the information desk via the various channels (also via the call centre, information officer, experts, etc.) has not yet been completely finalised. These figures can, however, already serve as a starting point for a general communication strategy for the Environment DG. The most commonly recurring questions allow the Frequently Asked Questions (FAQ) to be drawn up for the federal portal site.

Give relevant web site addresses, if available:

www.health.fgov.be/infoaarhus: Environment Information Desk page, including an electronic form and explanations on the procedure, in accordance with the law of 5 August 2006.

Article 5

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

Explain how each paragraph of article 5 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Public authorities possess and update environmental information;
 - (ii) There is an adequate flow of information to public authorities;
 - (iii) In emergencies, appropriate information is disseminated immediately and without delay;
- (b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;
- (c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;
- (d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;
- (e) Measures taken to disseminate the information referred to in **paragraph 5**;
- (f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;
- (g) Measures taken to publish and provide information as required in **paragraph 7**;
- (h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;
- (i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

Answer:

*** Paragraph 1:**

i) The public authorities possess and update environmental information:

The new law of 5 August 2006 stipulates that the environmental authority is required to take the necessary measures to organise the environmental information it possesses, in relation with its duties, with a view to making it actively and systematically available to the public, especially by using electronic means of communications (see article 12).

The portal site of the FPS Health, Food Chain Safety and Environment (<http://www.health.fgov.be>), which was created in 2005, is currently undergoing a vast updating and development operation (2007 and 2008). The working method adopted is a “theme by theme” process: all the information available (such as law texts, studies, publications, frequently asked questions and answers, possible public consultations, etc.) is updated and added “theme by theme”.

Furthermore, “news” is also regularly placed on the homepage of the portal site, such as the announcement of the publication of a new brochure or an event. In addition, various thematic websites have been developed (see the last question relating to article 3).

ii) There is an adequate flow of information to public authorities:

On a federal level, the information relating to the environment is centralised in the Federal Plan for Sustainable Development, on the one hand, and a federal report especially dedicated to the environment will be published in 2010, on the other hand. A metadatabase will also be created and updated in association with this report. In addition, the various federal public authorities will adhere to the EMAS certification system.

Besides these public reports, environmental data is collected and processed further within the framework of compulsory and voluntary reports aimed at international authorities. As regards the reports produced on a voluntary basis, the environmental information is exchanged via the existing EIONET structure in Belgium. The compulsory reports are compiled through the CCIEP.

iii) In emergencies, appropriate information is disseminated immediately and without delay

As regards the FPS Health, Food Chain Safety and Environment, crisis management procedures were defined, consisting of issuing notifications via a network including all the areas of competence, and assessing their impact on health and the environment. In the event of a crisis, a crisis team is activated by a permanent on-call department. The crisis communication manager is an integral part of it and is the spokesperson. Crisis communication involves all the traditional communication tools (press releases and briefings, website, purchasing of space in the press, etc.) and has a call centre for internal and external crisis communication. In case of a wide-scale crisis, or a crisis requiring a multidisciplinary approach, everything is referred to the government’s crisis centre managed by the FPS Interior, which has all the necessary infrastructure to manage a crisis on a national level.

At the DG Environment, within the framework of federal competence relating to the protection of the “North Sea”, and more precisely, the “North Sea Catastrophe Plan”, crisis management procedures exist within the Coast Guard Structure. These procedures include the crisis communication, which is managed in partnership with the other levels of power concerned (such as the department of the Governor of West Flanders, in particular) and provides for a coordinated communication for the press.

*** Paragraph 2:**

As mentioned in paragraph 1, the law of 5 August 2006 stipulates that the environmental authority will take the necessary measures to organise the environmental information it possesses, in relation with its duties, with a view to making it actively and systematically available to the public, especially by using electronic means of communications (see article 12).

See paragraph 1: in order to allow a great many members of the public to have access to environmental information, the updated www.health.fgov.be portal site will eventually include (as soon as several themes have been fully processed) a summary of all the environmental information available at federal level (such as the legislation), a list of publications, frequently asked questions and answers, public consultations in progress, etc.

Furthermore, the dissemination of environmental information is ensured by the traditional means such as brochures and leaflets or press releases. In order to facilitate the dissemination of this type of material, the details of bodies that distribute information were entered into databases. These bodies can be mobilised with the aim of making these publications and documents known to the public. These bases especially concern the press (general press/specialised environmental press/youth press/marine environment press), NGO (editors in chief and journalists for NGO), and business federations and universities.

There is also a metadatabase with statistics on the environment, with links to the websites of the various relevant authorities: the Environment portal http://statbel.fgov.be/port/env_fr.asp of the FPS Economy, SME and Energy. The federal metadatabase on the Environment, which the DG works on within the framework of the federal report on the environment, will also be made accessible to the public when the report on the environment is published.

*** Paragraph 3:**

The law of 5 August 2006 stipulates that the environmental authorities are required to make sure that a series of environmental information, such as the texts of international treaties, federal legislation, federal plans and programmes, are made available electronically (see article 14, § 1).

See paragraph 1: this information already exists in part on the portal site of the FPS and will continue to be completed within the framework of the website update.

Databases have been set up as part of the Federal Public Service portal for matters under federal remit, i.e.:

- A guide to cars marketed in Belgium, which are classed according to their fuel consumption and CO2 emissions (Environment DG)
<http://www.voitureeconomie.be>
- Biocides authorised for marketing in Belgium (Environment DG)
<http://www.health.fgov.be/biocids>
- Phytosanitary products authorised for marketing in Belgium (Food Safety DG)
<http://www.fytoweb.fgov.be>
- the website www.nehap.be contains reports of studies regarding environment and health, for example on persistent organic pollutants in human milk

In addition, the web sites of the scientific institutes that come under the Federal Public Service disseminate a lot of technical information that can be consulted in databases. This includes the following web sites:

- <http://www.mumm.ac.be>: web site of the Management Unit of North Sea Mathematical Models, a department of the Royal Belgian Institute of Natural Sciences, which studies the marine environment in general and the North Sea in particular. This website includes an environmental database specific to the marine environment (Belgian Marine Data Centre).
- <http://www.biosafety.be>: Belgian bio-security server
<http://www.biosafetyprotocol.be>: Belgian bio-security clearing-house
- <http://www.biodiversity.be/bbpf>: portal site of the Belgian Biodiversity Platform of the Belgian Science Policy

The nuclear energy sector is managed by the Minister of the Interior. There are several web sites relating to these activities:

<http://fanc.fgov.be>: web site of the Federal Agency for Nuclear Control

<http://www.nirond.be>: web site of the Belgian Agency for Radioactive Waste and Enriched Fissile Materials

Furthermore, EMAS reports feature on the websites www.mineco.fgov.be (FPS Economy, SME, Self-employed and Energy), www.belspo.be (Federal Science Policy), www.poddo.be (FPS Sustainable Development Programming) and www.mobilit.fgov.be (FPS Mobility and Transport). The other FPS shall adhere to the EMAS system at a later date.

Finally, a portal site that will include all the geographically associated environmental data will be developed: www.inspire.be

*** Paragraph 4:**

For the first time, the new federal law of 5/8/2006 provides for the establishment of a federal report on the state of the federal environmental policy as well as the state of the marine environment in marine areas under the jurisdiction of Belgium. This report will complete the three regional reports that already exist on the state of the environment. The first report on the federal state of the environment will be published in 2010, given to Parliament by the Minister of the Environment and will be disseminated to the general public.

*** Paragraph 5:**

The new law of 5/8/2006 explicitly stipulates in article 14, § 1st, that a series of environmental information must be made available in electronic form, in accordance with Directive 2003/4/CE (texts of international law, texts of federal legislation regarding the environment, governmental statements, federal plans and programmes relating to the environment, authorisations and permits that can have a significant impact on the environment, etc.).

*** Paragraph 6 :**

The question relating to the manner, in which the authorities encourage operator to inform the public about their activities that have a significant impact on the environment, essentially falls under the remit of the regional policy. As regards the information policy on products, see the answer in question 8.

*** Paragraph 7:**

- a) Via the communication policy of the DG Environment and of the other federal authorities concerned.
- b) DG Environment conducted an information campaign on public rights as regards the environment:

-thanks to the launch of the www.aarhus.be national website, which disseminates information on the Aarhus Convention and its implementation in Belgium and which includes a NEWS section announcing public consultations;

-thanks to the launch of the information desk via the leaflet "Do you have a question about the environment? Ask, and we'll reply!" which describes the procedure allowing people to obtain the environmental information, held by the federal authority, from the desk. This brochure will be distributed for the second time during the course of 2007.

- c) The law of 2006 (see article 12) states that each public service authority must publish and make available to the public a document describing its competences and the organisation of its duties. This is organised in the form of the publication of annual reports. This information also features on the FPS portal site.

*** Paragraph 8:**

In connection with the policy on product standards, several mechanisms currently exist at the Belgian federal level which are aimed at improving public information:

- Economic instruments: in Belgium ecotaxes are charged on certain products considered to be highly damaging to the environment. For example, the ecotax on disposable cameras and batteries has had a significant positive impact in terms of collection and recycling, as well as in terms of raising public awareness of the issue.

- Legal instruments:

* The aim of the 1998 law on product standards is to promote sustainable modes of production and consumption. Several public information initiatives have resulted from this law.

* The law of 14/07/91 on commercial practices and on consumer information and protection enables the King to regulate product labelling in order to guarantee consumer protection. Furthermore, this law prohibits any misleading advertising about a product's impact on the environment.

* The Royal Decree of 05/09/01 concerning the availability of information on fuel consumption and CO2 emissions aimed at consumers during the marketing of new cars requires this information to appear on labels, in guidebooks and on posters in the points of sale.

* The Royal Decree of 19/03/04 concerning vehicle product standards obliges manufacturers and/or importers to publish information on the internet relating to the processing of vehicles that are no longer roadworthy. This information must be made available free of charge to potential buyers in each point of sale.

- communications tools:

* the CO2 guide (see article 3) and the www.voitureeconomie.be/www.zuinigewagen.be website: The publication of the CO2 guide is a legal obligation governed by European Directive 99/94/CE and the Royal Decree of 05/09/01. The aim of this guide is to help citizens choose a car that is economic in terms of fuel consumption and more respectful of the environment. This guide is distributed at the place of sale. In order to promote this guide, the Environment DG conducted a communication campaign in 2004, 2005, 2006 and 2007.

* campaigns on www.ecolabel.be, www.underECOconstruction.be and www.energivores.be / www.energievreters.be (see article 3)

For the implementation of the legislation, the DG Environment is negotiating with companies and business federations. As regards the "Ecolabel", participation goes through a committee where different stakeholders are represented.

*** Paragraph 9:**

This matter is not federal but regional in its remit.

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

Answer:

The main obstacles encountered are inherent in the very nature of administrations. The implementation of the concrete measures in the Aarhus Convention regarding access to environmental information demands

significant funding (la mise en œuvre des mesures concrètes prévues par la Convention d'Aarhus en matière d'accès à l'information environnementale exige des moyens financiers importants), which must be mobilised every year.

It is also difficult to check what citizens think of the Environment DG's communication strategy. The indicators available concern the number of visitors to the portal site and number of publications and brochures ordered by citizens. Given that the publications rapidly run out and that the press and organisations regularly use information from communication products, the DG will therefore carry out a satisfaction survey in order to sound out public opinion.

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?

Answer: The Environment DG has figures relating to the number of web pages and the number of news items published on the portal site. These figures are used internally to develop the communication strategy.

Give relevant web site addresses, if available:

See above

Article 6

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

Explain how each paragraph of article 6 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;
 - (ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;
- (b) Measures taken to ensure that the public concerned is informed, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;
- (c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;
- (d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;
- (e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;
- (f) With respect to **paragraph 6**, measures taken to ensure that:

- (i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure;
- (ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;
- (g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;
- (h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;
- (i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;
- (j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied making the necessary changes, and where appropriate;
- (k) With respect to **paragraph 11**, measures taken to apply the provisions of article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Answer:

*** Paragraph 1:**

(a)

(i) The authorisation of specific activities, and hence the introduction of a procedure for environmental impact assessments, comes primarily within the remit of the Regions. Nevertheless, the federal authority remains responsible for authorising the operation of nuclear activities as well as for authorising activities in marine areas that come under Belgian jurisdiction (North Sea).

- With regard to the nuclear energy sector, the Federal State is responsible for authorising the operation of nuclear activities. The general regulation on safeguarding the public and workers against the threat of ionising radiation has instigated this authorisation system, which must be preceded by a public inquiry (royal decree of 20/07/01).
- With regard to activities and installations in marine areas, article 28 of the law of 20/01/99 states that *“Any activity in marine areas that is subject to a permit or authorisation, (...) is subject to an environmental impact assessment by the competent authority appointed to this task by the Minister, both before and after granting the permit or authorisation. The environmental impact assessment is designed to assess the effects of these activities on the marine environment”*. The royal decree of 07/09/03 establishes the procedure for granting permits and authorisations required for carrying out certain activities in marine areas under Belgian jurisdiction. The royal decree of 09/09/03 lays down the rules governing this procedure for environmental impact assessments.

(ii)

- The ministerial decree of 18/04/01 makes offshore bunkering activities subject to permits or authorisations in line with the procedure involving consultation, as defined in the royal decree of

7 September 2003 laying down the procedure for granting permits and authorisations required for carrying out certain activities in marine areas under Belgian jurisdiction.

(b) (c) (d) (f) (g)

- **With regard to the nuclear energy sector**, article 6.4 of the royal decree of 20/07/01 provides that the burgomaster of the district concerned by the planned operation (class I) should post up a notice in the town hall mentioning the subject of the application for operation and should state that this request, the environmental impact study and any notice relating thereto can be consulted for a period of 30 calendar days after the first day of posting in the town hall. Any complaints or remarks should be notified within this time frame. Public inquiries are to be suspended between 15/07 and 15/08. Each burgomaster should submit the request for, and outcome of, the public inquiry to the college of municipal councillors for its opinion. After this, the scientific council responsible for the nuclear energy sector should issue a reasoned opinion, based notably on the remarks formulated during the public inquiry. The final decision must be published in the 'Moniteur Belge'.

- **With regard to the marine environment:**

Article 18§1 of the royal decree of 07/09/03 states that the administration shall publish the permit application in the 'Moniteur Belge' within a maximum period of 15 days as from the start date of the application processing period. Any interested party is allowed to notify his or her points of view, remarks or objections to the administration with a period of 60 days as from the start of the period for processing the application.

Moreover, in accordance with article 18 § 2, between the fifteenth and forty-fifth day from the start of the application processing period, the application may be consulted at the administration's premises from Monday to Friday inclusive, except on public holidays, for at least half a day on each day.

Without it being a requirement the failure to comply with which could undermine the legality of the minister's decision, the administration requests the town councils of the coastal region to ensure that the application can be consulted in all coastal district council offices, from Monday to Friday, inclusive, except on public holidays, for at least half a day on each day.

The administration can place the impact study on its web site for consultation, without it being a requirement the failure to comply with which could undermine the legality of the minister's decision.

When formulating its opinion, the administration takes into account the following factors, amongst others:

1. The aims and general principles of the law, in particular the principles of prevention, precaution and sustainable management.
2. The outcome of the environmental impact assessment referred to in article 28 of the law.
3. The points of view, objections and remarks notified in accordance with article 18.
4. As appropriate, the points of view, objections and remarks notified in accordance with article 19 and with the consultation carried out in application of article 19.

The minister gives reasons for his or her decision. The decision mentions in particular the reasons for which contradictory opinions and remarks have been rejected. It refers to the aims and general principles of the law and to the outcome of the environmental impact assessment relating to the application.

The decision is published as an extract in the 'Moniteur Belge'.

Any interested parties may consult the decision at the offices of the administration. Consultation is subject to a prior written request to the administration.

(j) The same procedure as described above applies for the following permits and authorisations relating to the marine environment:

1. The permit and authorisation for carrying out activities.
2. The permit and authorisation for modification, i.e. for changing activities that are subject to a permit or authorisation, in cases where the change is not substantial and has no major repercussions on the permitted or authorised activity.
3. The permit and authorisation for revision, i.e. for changing activities that are subject to a permit or authorisation, in cases where the change is substantial or has major repercussions on the activity in question.

(k) Belgium has transposed Directive 2001/18/CE on the deliberate release of genetically modified organisms through the Royal Decree of 21 February 2005, which provides for an information and public consultation mechanism during the decision-making process relating to the deliberate release of GMO for experimental purposes as well as the marketing of GMO as products or parts of products. Furthermore, Regulation (EC) 1829/2003 of 22 September 2003 concerning genetically modified food and feed is directly applicable to Belgium and also contains provisions regarding information and public consultation before authorising the marketing of genetically modified food and feed. The conformity of these provisions with the amendment to the Aarhus Convention on genetically modified organisms will allow Belgium to take care of the ratification. This ratification procedure was launched at federal level in the second half of 2007.

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

Answer:

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.

Answer:

Military activities in Belgium's marine areas are also subject to permits and authorisations. Such an application is made upon joint proposal of the Minister responsible for the marine environment and the Minister of Defence. The permit or authorisation is therefore issued jointly by the two ministers.

Give relevant web site addresses, if available:

<http://www.mumm.ac.be>: web site of the Management Unit of North Sea Mathematical Models, a department of the Royal Belgian Institute of Natural Sciences devoted to the study of the marine environment in general and the North Sea in particular

<http://fanc.fgov.be>: web site of the Federal Agency for Nuclear Control

Article 7

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.

Answer:

Article 7 of the Convention was transposed via the law of 13 February 2006 relating to the assessment of the effects of certain plans and programmes on the environment and public participation in the elaboration of the plans and programmes relating to the environment (*Moniteur belge*, 10/03/2006). This law includes a unique chapter on public participation, which is valid both for consultations that must take place within the framework of the Aarhus Convention and those planned within the framework of the strategic assessment of the effects on the environment of the federal plans and programmes (Directive 2001/42/EC). Therefore, this law harmonises the public participation procedures for plans and programmes at federal level.

In 2006, the federal government organised a consultation of the general public on the national strategy pilot study on biodiversity. In total, 175 people responded to the consultation, among which 91 % participated as individuals and 9 % as members of an institution / NGO / association, etc.

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

Answer: The term "policy" is covered, at federal level, in the concept of plans and programmes (see above).

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

Answer: Even if the majority of the comments received were judgments on quality, it has to be said that considering the relatively low number of people who responded to the pilot study of the national biodiversity strategy, there is still some way to go to encourage public participation in very general plans/programmes concerning the environment. Indeed, given the distribution of competences in particular, the plans and programmes are most often elaborated at federal level from a "meta-strategic" point of view, and therefore with contents whose immediate impact on the daily lives of citizens is difficult to assess and express.

Provide further information on the practical application of the provisions on public participation in decisions on plans and programmes in article 7.

Answer:

Give relevant web site addresses, if available:

<http://www.aarhus.be> which features the public consultations on plans or programmes that are organised at federal and/or regional level. It is also possible to find former consultations that were organised.

Article 8

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.

Answer:

The federal level has set up a Federal Council for Sustainable Development (Conseil Fédéral de Développement Durable), made up of the major stakeholders in society¹, 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 framework of action of the Federal Council for Sustainable Development is established on the basis of Belgium's international commitments, such as *Action 21*, the *Convention on the Climate* and the *Convention on Biological Diversity*. These commitments are a result of the *United Nations Conference on Environment and Development* (UNCED), held in Rio de Janeiro in June 1992.

The Federal Council for Sustainable Development was created by the law of 5 May 1997. This law governs the coordination of the federal policy for sustainable development. A four-year federal plan for sustainable development has been created and the Federal Council for Sustainable Development issues an opinion on the draft plan that reflects the planned federal policy for sustainable development.

Furthermore, the Federal Council for Sustainable Development acts as a *forum*. The Council encourages the debate on sustainable development by organising symposiums, for example. This enables experts, public authority representatives and professional organisations, as well as the general public, to explain their points of view and enter into dialogue. The Council then uses the outcome of the exchange of views as a basis for formulating its opinions.

Lastly the Council is also responsible for the task of *raising the awareness* of organisations and citizens about sustainable development.

In accordance with article 11 of the law of 5 May 1997, the Council is responsible for:

- a) Issuing opinions on any measures relating to the federal policy for sustainable development that have been taken or are envisaged by the federal authority, particularly in application of Belgium's international commitments;
- b) Acting as a forum for discussing sustainable development;
- c) Proposing research in all fields relating to sustainable development;
- d) Fostering the optimum involvement of public and private bodies, as well as of citizens in achieving these objectives.

2. The Council carries out the tasks referred to in paragraph 1 on its own initiative or at the request of the Ministers or Secretaries of State, the House of Representatives and the Senate.

3. The Council can call upon public federal administrations and bodies to assist it in accomplishing its tasks. It can consult anyone whose collaboration is deemed useful for the consideration of certain issues.

4. 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 requester of an opinion. However, this time frame may not be less than two weeks.

¹ Such as: environmental organisations, development cooperation organisations, consumer organisations, workers' organisations, employers' organisations, energy producers' organisations and scientific organisations.

5. The Council drafts an annual report of its activities. This report is sent to the Council of Ministers, the Legislative Chambers and the assemblies and governments of the Regions and Communities.

6. If the Council's opinion is disregarded, the government must state the grounds for this.

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

Answer:

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

Answer:

Give relevant web site addresses, if available:

<http://www.belspo.be/frdocfdd>: web site of the Federal Council for Sustainable Development

<http://www.info-durable.be>: all the latest Belgian news on sustainable development

ARTICLE 9

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

Explain how each paragraph of article 9 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
 - (i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;
 - (ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;
 - (iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;
- (b) Measures taken to ensure that within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

- (c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;
- (d) With respect to **paragraph 4**, measures taken to ensure that:
- (i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;
 - (ii) Such procedures otherwise meet the requirements of this paragraph;
- (e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

Answer:

*** Paragraph 1:**

(i) The law of 5/8/2006 created a Federal Appeal Committee for access to environmental information. It exercises its mission independently and neutrally. A person may make an appeal according to two hypotheses: (1) the decision of the environmental authority is negative or partially negative, (2) the authority has not notified its decision within the given time limit or (3) the authority has not given a positive decision within the given time limit. The person making the appeal has 60 days in which to do so either (1) the day after the negative decision was sent, or (3) when the time limit for execution has expired, or (2) at any moment if the authority has not reached a decision.

As regards judicial remedies, it is common law that applies. The person making the appeal can therefore appeal to the Council of State to quash the administrative decision, in accordance with the applicable rules.

(ii) The appeal procedure is free.

(iii) The decision of the Committee ruling on the appeal is compulsory for the environmental authority. If the authority has not executed the decision within the time limit provided for by the Committee (40 days that may be extended to a maximum of 55 days), the Appeal Committee shall execute the decision itself if the environmental information concerned is in its possession.

*** Paragraph 2:**

- The parties concerned have several judicial avenues of appeal open to them:

* Appeal to the Council of State

* Appeal to the Constitutional Court

* Appeal to the President of the Court of First Instance, who gives an emergency interim ruling

* Proceedings before a magistrates' courts

* Proceedings before civil courts

In environmental matters, there is a further avenue of appeal under the law of 12/01/93 regarding an action for discontinuance in environmental matters (see explanation above for article 9.3).

*** Paragraph 3:**

Apart from the conventional avenues of judicial and administrative remedy, the law of 12/01/93 concerning a right to bring an action in environment matters 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 the corporate aim of environmental protection) 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. (...)*”.

*** Paragraph 4:**

- Within the framework of judicial remedies under the judicial system:

- Article 148 of the Constitution: “*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 of the Constitution: “*Grounds must be given for any ruling. Rulings must be declared at a public hearing*”

- Article 151 of the Constitution: “*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 (...)*”.

*** Paragraph 5:**

In order to give a person without sufficient resources effective access to justice, under positive law there are two systems of legal assistance provided for in the Judicial Code (Code Judiciaire) that apply to both civil and criminal matters. Firstly there are primary legal assistance (l’aide juridique de première ligne) and secondary legal assistance (l’aide juridique de deuxième ligne) (articles 446 *bis* and 508/1 to 508/23 of the Judicial Code and royal implementing decrees). Secondly there is legal aid (l’assistance judiciaire) (articles 664 to 699 of the Judicial Code).

Primary legal assistance takes the form of practical information, legal information, an initial legal opinion or referral to a specialised body or organisation. 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.

Primary legal assistance is available to both individuals and corporate entities.

Legal aid, on the other hand, consists of 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 extra judicial proceedings.

It should be noted that appeal procedures (application to set aside (opposition), appeal on a point of law or fact (appel) and appeal to the court of cassation (pourvoi en cassation)) are not free of charge. Litigants must pay the costs.

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

Answer: On 10 March 2005, the federation of Flemish environmental associations (Bond Beter Leefmilieu - BBL) presented a communication to the Compliance Committee for the respect of the Convention’s provisions to contest Belgium’s application of the pillar relating to access to justice. The BBL particularly revealed the restrictive nature of the Council of State’s jurisprudence to positively welcome collective interest actions initiated by environmental protection associations. The Compliance Committee issued its conclusions in June 2006; they reveal a potential violation by Belgium of the Convention’s provisions as regards the right of environmental protection associations to appeal to the Council of State. The potential nature of the violation can be explained by the temporal particularity of

the file submitted. Indeed, given that the BBL based its main argument on case law initiated before the Convention came into force in Belgium, the Committee considered that it was unable to give a definite ruling owing to the lack of legal elements after the date it came into force. Nevertheless, the Committee considered that if this jurisprudence particular to the Council of State as regards environmental associations, such as reflected in the case law submitted by the BBL, was still applied in Belgium after the Convention had been brought into force, Belgium would be neglecting its obligations in terms of access to justice. Belgium has therefore failed to respect the Aarhus Convention. For the Committee, it is clear that the Council of State must clearly establish a new jurisprudence as regards access to justice for environmental organisations.

With a view to helping Belgium fully meet its obligations in terms of access to justice, the Committee recommends that it should initiate two specific measures:

1/ take the appropriate legislative measures (laws coordinated according to the Council of State) so that environmental protection associations no longer have to endure a restrictive jurisprudence;

2/ promote knowledge of the Aarhus Convention; in particular, its provisions in terms of access to justice, within the Belgian legal system.

In order to meet the recommendations of the Compliance Committee, various initiatives were launched by the Federal Minister of the Environment in 2006:

1/ as regards the promotion of the Aarhus Convention within the legal system, the training programme for magistrates and legal trainees for the years 2006 and 2007 included a part dedicated exclusively to the Aarhus Convention in its thematic training on the environment, with an emphasis on the pillar relating to access to justice. The participants in the training sessions received doctrine books in 2007 from the Minister of the Environment on access to justice in environmental matters, as well as other themes relating to Belgian environmental law. It should be noted that this initiative was supported by the Minister for Justice.

2/ as regards the part relating to the adaptation of Belgian standards, two legislative initiatives were taken, both initiated thanks to the behest of the Federal Minister of the Environment.

- The Federal Minister of the Environment first launched a debate in Parliament in May 2006, with other partners, on the general problem of access to justice for non-governmental associations; especially in the domain of the environment. Following this debate, several senators brought in a private bill aimed at modifying the laws coordinated by the Council of State, in view of granting the right to institute a collective interest action. This private bill was voted on 15 March 2007 and was sent to the Chamber on 16 March 2007. In view of the legislative elections, Parliament was dissolved on 1st May 2007. This private bill (which became a bill when it was sent to the Chamber) has become null and void. It is therefore the responsibility of either the new government, or Parliament to reinstate (or not) the bills. When the present report was written, the new government still had not been formed.
- With the support of the Minister of Justice, the Federal Minister of the Environment elaborated a bill modifying the law of 12 January 1993 concerning a right of action in environmental matters. Indeed, it became apparent that after ten years of applying the law, it was time to assess its reach as well as its efficiency. The main objective of this modification is to fill the gaps and restore the main objective of the law. This way, the bill offers a response to the recommendations of the Compliance Committee concerning the respect of the provisions of the Aarhus Convention by extending the possibilities, both as regards the scope of *rationae materiae* and *rationae personae* for environmental associations to contest infringements of the environment law before the President of the Court of First Instance, in accordance with article 9.3 of the Convention.

However, it should be noted that it has not yet been possible for Parliament to approve this law given that the Chamber was dissolved on 1st May 2007, just before the federal elections. Therefore this private bill should be reinstated at the level of the federal government or the new parliament.

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?

Answer:

The Federal Public Justice Service (Service Public Fédéral de la Justice) draws up annual statistics of courts and tribunals, including for environmental dossiers: the number of environmental cases registered by the office of the civil court, the number of environmental cases referred to examining magistrates, and so on.

Give relevant web site addresses, if available:

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

Articles 10-22 are not for national implementation.

General comments on the Convention's objective:

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.

Answer:

The establishment of the three procedural rights by the Aarhus Convention and their implementation Belgium-wide by the Regions and the federal authority gives full meaning to article 23, point 4 of the Constitution "the right to the preservation of a healthy environment".

Translation of diagram on p. 4:

FRENCH	ENGLISH TRANSLATION
<i>LA BELGIQUE</i>	BELGIUM
<i>L'ETAT FEDERAL</i>	THE FEDERAL STATE
<i>LES COMMUNAUTES</i>	THE COMMUNITIES
<i>LA COMMUNTAUTE FLAMANDE</i>	FLEMISH COMMUNITY
<i>LA COMMUNAUTE FRANCAISE</i>	FRENCH COMMUNITY
<i>LA COMMUNAUTE GERMANOPHONE</i>	GERMAN-SPEAKING COMMUNITY
<i>LES REGIONS</i>	THE REGIONS
<i>LA REGION FLAMANDE</i>	FLEMISH REGION
<i>LA REGION DE BRUXELLES-CAPITALE</i>	BRUSSELS-CAPITAL REGION
<i>LA REGION WALLONNE</i>	WALLOON REGION