

ANSWER TO THE COMPLIANCE COMMITTEE WITH RESPECT TO THE COMMUNICATION PRE/ACCC/C/2019/172 SUBMITTED ON BEHALF OF 'AVALA' CONCERNING BELGIUM TO BE CONSIDERED FOR PRELIMINARY ADMISSIBILITY AT THE 65TH MEETING OF THE COMPLIANCE COMMITTEE (4 NOVEMBER 2019)

1. Belgium wishes to thank the Compliance Committee for the opportunity to deliver preliminary comments on the communication lodged by AVALA regarding the decision of the Council of State n° 241.458 of 9 May 2018.
2. In an initial preliminary investigation Belgium has carefully considered the arguments set out and the information provided in the communication. We wish to raise the following points in relation to the question of admissibility of the communication.
3. The communication mentions non-compliance by Belgium with Articles 9(3) and 9(4) of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters as signed at Aarhus, Denmark, 24th June 1998.
4. It is appropriate to bring to the attention of the Committee at this stage of the procedure the fact that the communicant refers only to one particular ruling, i.e. ruling no. 241.458 of 9 May 2018 of the Belgian Council of State. No evidence has been presented to substantiate that the alleged non-compliance in this case was due to a systematic error. Moreover, in his communication, the communicant has never questioned the legal framework or a general deficient application. In this context it is also worth noting that the applicant in case finally got redress by the new order of the Walloon Government of 7 June 2018, correcting the breeding season¹. For all those reasons, we believe that in the context of this case the allegations concerning access to justice do not pass the threshold of **de minimis**. We would respectfully request the Committee to consider that the communication is found inadmissible under paragraph 20 (d) of the annex to decision I/7.
5. Therefore, Belgium, as the Party concerned, respectfully requests, either that the Committee disregards this communication or that it defers making any preliminary determination on the admissibility of this communication.
6. Finally the Belgian State reserves the right to make a subsequent statement as to the inadmissibility of the communication.
7. Belgium remains committed to fully cooperate with the Committee in the event that the Committee determines that this communication is admissible. We would be happy to provide further clarification on any points to assist the Committee in its deliberations **after internal consultations**.

¹ See communication p. 4