1. Please provide a clear and simple chronology of the decision-making procedure on the "Oosterweelverbinding" project to date, including the opportunities the public had to participate at each stage.

2. Please clarify for which stages (parts) of the "Oosterweelverbinding" project, the decision-making process has already been completed and for which stages, the relevant decisions are still to be taken.

On the basis of Flemish legislation, these steps are necessary to carry out the Oosterweelverbinding:

1. Amendment of the GRUP (regional land use plan)
1a) Therefore, in this case, a plan EIA must be made first
1b) On this basis, a regional land use plan (GRUP) is established

2. Building permits
2a) Project EIA must be drawn up before a planning application is submitted
2b) The Building permits needs to be submitted

In each of these four stages (1a, 1b, 2a, 2b) the law foresees a public inquiry. However, members of the public can only go to court after stages 1b and 2b.

At present, in the case of the Oosterweelverbinding, we are going through these 4 steps for the second time. The first time was from 1996 to 2007. The second time is from 2008 to the present.

In 2007, the procedure stranded in stage 2b; The Building permit was submitted, but there has never been any decision taken on it. In the period 2008-2011, it was decided to resume the whole decision-making process in stage 1a. At this moment stage 1b is running.

Table:

	1996-2007	2008-...
1(a)	X	X
1(b)	X	NOW
2(a)	X	-
2(b)	STRANDED	-

Today there is no decision that can be challenged in court - but we will explain that despite this, the political decision is already taken AND executed – contrary to what procedural reality allows. The Compliance Committee has to understand that the reality on the ground is totally unrelated to the procedural reality and that that is exactly why we are making this case at this point in time. At this point in time, the opening of the case can still have an effect in the real world, on the project. If we wait until all legal means have been exhausted it is highly unlikely to have any impact on the contested project. We have very good reasons to make this bold prediction because it is based on the track record of actual events in this very same case. Therefore, the Compliance Committee stands for this crucial decision: does it want to be relevant for 150.000 environmental injustice victims?

The Flemish Government has taken its decision and executes it wherever it can, no matter what the formal procedure is. The Flemish Government does this at a moment where
*no public inquiry into the final EIA plan was held;
*no chance was given so far to the public to challenge this practice. The Flemish Government still does not have an official decision contestable in court and has therefore also not yet decided on the objections and comments submitted in the context of the public inquiry.

A public inquiry into the final plan-EIA plan at a time when all options are still open is already impossible. Moreover, this fact proves that the Flemish Government will not take into account the results of the public inquiry. Simultaneously, the plan which has already been decided is already done and prepared. There are no remedies in Belgium to the public and / or environmental groups to call a stop to this. The societal damage is already very high, which puts an intolerable pressure on members of the public who wish to challenge the way things are if they have to wait until a contestable decision is made.

In the context of the following overview of the decision-making procedure, **the actual subject-matter** of each of the public investigations is of key importance. The moments of public investigations are presented below in blue, bold text. The decisions of the Flemish Government on the choice of the BAM tracé are shown in red, italic text.

The following is the procedural trajectory. We repeat that the reality on the ground is running far ahead of this, with over 300 million euro already spend on a project that still needs to be approved.

PART 1: Period 1996-2007 (1)

1.1. GRUP: regional land use plan

1.1a) Plan EIA 'Masterplan Antwerp'

June 2003
Public inquiry in function of the layout of the plan EIA plan 'Masterplan Antwerp' = Global investigating for a comprehensive total mobility plan. The Oosterweelverbinding was only a part of this global plan. There was no investigation into tracé alternatives for the Oosterweelverbinding. That was not possible for all components of the plan, given the size and diversity of the parts.

May 30, 2005
Adoption (approval) of plan EIA 'Masterplan Antwerp'
Public inquiry into final plan EIA was not required in the Flemish legislation at that time.

1.1b) GRUP 'Oosterweelverbinding'

16 sept. 2005
Flemish Government drafts GRUP Oosterweelverbinding on the basis of plan EIA 'Masterplan Antwerp' = Political choice for the Oosterweelverbinding on the BAM tracé

21 October 2005 - 19 December 2005
(this overlaps with public research project EIA, see below)
First public commenting period about the plan Oosterweelverbinding itself,
limited to the scope of the land use plan, without possibility to formulate tracé-alternatives.

16 June 2006
Approval by Flemish Government of GRUP Oosterweelverbinding (= legally binding decision)

1.2. Building permits

1.2a) Project EIA

This stage starts even before the end of the public inquiry into stage 1.1b (GRUP

Oosterweelverbinding) and thus even before there was knowledge of the public comments and objections given there and before there was a decision the public could contest

October 28, 2005
Approval of the notification file (file in function of public investigation)

16 November 2005 - 23 December 2005
(overlaps with public research GRUP 'Oosterweelverbinding' in 1.1b)
Public investigation in the framework of the project EIA
First ' research into alternatives' for Oosterweelverbinding. StRaten-Generaal filed an alternative tracé. The guidelines for the research dictated that the submitted stRaten-General tracé had to be examined. However, the alternatives were de facto not examined. While the alternative was submitted with a tunnel under the docks of the harbor, it was researched as if it included a viaduct over the harbor docks. Furthermore, the alternative was then written away by experts from TV SAM who are not independent from the BAM. TV SAM is the study bureau of the BAM, i.e. the study bureau that developed and researched the so-called BAM-tracé in the period between 2003 and 2009. Not unsurprisingly,in the non-technical summary of the project-EIA nothing can be found on the stRaten-Generaal tracé or any other alternative.

-> The complaint by stRaten-General about the lack of independence of the experts who performed the EIA study was subsequently upheld by the Flemish Ombudsman (report Flemish Ombudsman 18 June, 2008).

April 4, 2007
Approval project EIA

1.2b) Building permit

January 2009
Citizens managed to obtain a referendum in Antwerp on the BAM tracé (organized on 18 October 2009).

4 May 2009
Submission building permit by BAM, after approval from Flemish Government to do this

A subsequent public inquiry into the planning application followed
13,000 objections were received. THEY WERE NEVER TREATED or ANSWERED.

The procedure was never finished. NO DECISION WAS TAKEN on the building permit.

PART 2: Period 2008-present (2)

transition period

18 October 2009
Non-binding referendum in the city of Antwerp where 59.24% of participating residents vote against the tracé for the Oosterweelverbinding.

29 Sept 2010
Political decision (not legally binding) of the Flemish Government to keep the tracé for the Oosterweelverbinding but to replace the Lange Wapper viaduct with a tunnel.

However, due to the modification of the plan, a new procedure needs to start, including a new research into alternatives.

19 Nov 2010
Flemish Government nevertheless already provides environmental permits for the operation of the proposed wharf areas.

2.1. GRUP: regional land use plan

2.1.a) Plan EIA 'Oosterweelverbinding'

8 November 2011
Approval notification file

16 November 2011 - 16 December 2011
public investigation for formatting new plan EIA Oosterweelverbinding
Meccanotracé was already included in the notification file as an alternative tracé to investigate. On the basis of the public inquiry, eight alternatives were taken on board and 5 of them were taken up to the final phase of the investigation.
-> Here, for the first time ever, tracé alternatives were actually investigated
-> It was undoubtedly conceived as a new decision on the entire plan, including alternative tracés.

7 March 2012
The Flemish Parliament adopted resolution 1388 to 'confirm' the 'preconditions' for the Oosterweelverbinding and to ask the municipalities to make an 'unambiguous communication' about these 'choices'.

10 February 2014
Adoption Plan EIA Oosterweelverbinding
The procedure continued without public inquiry into the adopted plan-MER, although this is now also required in the Flemish legislation itself.

14 February 2014
Political decision (not legally binding) by the Flemish Government to proceed with the planned tracé for the Oosterweelverbinding: the BAM tracé.

2.1.b) GRUP 'Oosterweelverbinding changed version'

4 April 2014
Flemish Government fixes the design for 'GRUP Oosterweelverbinding changed version'.

16 June 2014 - 14 August 2014
Public inquiry on draft 'GRUP Oosterweelverbinding changed version'
The notice stated that comments should just go over the areas included in the draft GRUP. The announcement of BAM and the city of Antwerp says: "The tracé is fixed. There you can no longer file objections." At least 15,000 people filed an objection.

December 2014 - February 2015
In this period the legally binding decision is expected on the GRUP.
Based on the current state of the law in Belgium, this will be the first time that a decision will be taken for which the public can go to court, at least since the resumption of the proceedings.

Stage 2.1b was not yet completed at this time. stage 2.2a and 2.2b still have to begin.

Supplement and additional explanation of breach of Art. 6.4 'and' breach or 6.8 '

Until now, we have outlined course of the procedure in its strict sense. HOWEVER, a lot of "preparatory works" and their associated costs are already made and are still being made, even while no final, legally binding decision on the plan is taken and while there's another project EIA to be made and while there is no building permit yet. Both the project EIA as the building permit still require a public inquiry. But this doesn't seem to matter. The Flemish Government makes very explicit that it will build the Oosterweelverbinding on the BAM tracé.

On the website www.hoevlothetnu.be the timing can be found, including an indication of preparatory work that have been done and will be done already. The report of 27 November 2014 in the context of the progress reporting to the Commission on Mobility and Public Works in the Flemish Parliament also shows the extent of the preparatory works already carried out and planned (see ANNEX 1.1). Many trees have already been felled, utility lines are already shifted, numerous grounds have been acquired, a large borehole on a football center was authorized in a green area and the boring has already been realized in function of technical research needed before implementation, the demolition of buildings is already planned (users must already evacuate the buildings), a playground was already removed ....

Here there is a parallel with the Beveren prison, build on the track of the alternative tracé - as explained in detail in our reply to question 6: in that case also the government did not wait until the formal proceedings ended to just create a fait accompli situation. It is for this reason that we can not afford the luxury to wait until all formal decision-making and legal possibilities have been used - because our government acts regardless of official procedures.

The report of the Court of Audit following on the progress report shows which costs have now already been lost and which costs are considered as ("useful") expenses that have already been made by the anticipation of the business. The report includes the following table (Audit Report November 21, 2014, p. 10):

(in miljoen euro)

Oosterweelproject	Bekende realisatiekost	Bijzonderheden
Afloop rente-indekking financiering BAM	41,6	kost vastklikken financieringsrente op maximaal 4,1 tot 4,7%, afgeboekt in jaarrekening BAM 2010
Afschrijving pompstations Schijn en studies rechteroever en stedelijke ringweg	56,5	afgeboekt in jaarrekening BAM 2010
Dading Noriant	37,2	afkoop dreiging schadeclaim
Som verloren kosten	**135,3**	
Geactiveerde studiekost	47,0	o.a. ontwerp rechteroever, plan-MER
Afkoop intellectuele eigendom ontwerp linkeroever	5,1	
Gerealiseerde en verplaatste nutsleidingen	3,0	
Gerealiseerde grondaankopen en onteigeningen	125,5	waarvan 95,5 miljoen euro gronden Vlaams Gewest
Som nuttige kosten	**180,6**	

The sum of 'lost costs' is 135,3 million euro. The sum of 'useful costs' (only useful in case the BAM tracé will be build) is 180,6 million euro. So even long before the procedure has ended and members of the public can act against a final decision (see the answer on question 5), over 300 million euro costs have already been made.

3) With respect to your allegations under article 4 of the Convention, what if any further domestic remedies might be available to challenge the alleged failure to adequately respond to Peter Verhaeghe's 30 March 2014 information request? Why have those domestic remedies not to date been used?

The decree of March 26, 2004 on transparency of governance describes in art. 22 how to appeal when there's a decision not taken in due time.

This legal appeal was brought even while knowing that the Appellate Body's judgment is limited to checking whether the requested document was delivered. Delivering the data by a public authority before the expiration of the period within which the Appellate Body its ruling is apparently sufficient to consider the raised complaint as unfounded. In no way does the Appellate Body check take into account wether the requested information was given within the statutory time limits provided.

This attitude ensures that administrations are in no way reprimanded for providing information beyond the statutory time limit, as long as they give the information before the Appellate Body makes a ruling.

As a result, answering a question on a current situation can be adjourned until a time beyond the legal limits and beyond when the disclosure of the information can have an impact on the related policy decision.

In our complaint to the Appellate Body on 16 May 2014, regarding the non-receival of the report "Oosterweelverbinding kostenrapportage Alternatieven van het studiebureau Arcadis from 24 december 2013" - to which the cost benefit analysis of Oosterweel refers - we expressly stated that the requested information could play an important role in the elections:

The Appellate Body knows this file. Indeed, the answer from the NV BAM of 30 April - in which they announced that the requested information would be delivered throigh a weblink - was also transmitted to the Appellate Body. The Appellate Body, at the start of the processing of a complaint, will always ask the public institution to give them the requested document. Since the NV BAM itself admits that the requested information is indeed a public document, and since the appeal body is, technically, in a position to transmit the requested document, the Appellate Body could, in our opinion ensuring that the society can go through the requested document before the election. Isn't it the task of the Appellate Body to ensure transparent governance to guarantee the essence of the democratic organization of society?

Although we called for a quick ruling, the Appellate Body decided, in contrast to this suggestion, to to extend the treatment period until June 30, 2014 - in effect placing the decision over the elections held at 25 May, 2014. They wrote:

"As stated in article 24, § 1, second paragraph of the Decree of 26 March 2004 concerning open government, I inform you by this letter, of the fact that the appeal period of thirty calendar days is extended to forty-five calendar days .Due to circumstances it is impossible for the body to gather the necessary information within the period of thirty calendar days. Only when all the requested information is in the possession of the body, can a decision with knowledge of the matter be taken."

On June 24 there was a ruling by the Appellate Body. Regarding our second question, about the non-receival of the report "Oosterweelverbinding kostenrapportage Alternatieven van het studiebureau Arcadis van 24 december 2013" (to which the cost benefit analysis of Oosterweel refers) submitted on 16 May 2014, the Appellate Body states:

"Considering that the BAM, with respect to the second part of the public request of Mr Verhaeghe, granted the request on April 30, 2014, but that she had not implemented this at that time and that the applicant appealed against this,

Considering that the Appellate Body has, in the meantime, establish that the BAM, with a mail dated May 27, 2014 send the requested document "Oosterweelverbinding cost-reporting. Alternatives from the consultancy Arcadis" to Mr Verhaeghe; that the Appellate Body has received a copy of this mail; it must be noted that as such the BAM has met the aspirations of the applicant and that this part of the original disclosure request was granted;"

This is not true. The document received by Peter Verhaeghe on 27 May 2014 (after the 25 May 2014 election), is **incomplete**. On many places the document refers to annexes but no annexes were delivered. The index of the report makes it clear that these are integral part of the document and the document can not be used and evaluated without having access to the annexes. It is thus impossible to do a peer review and impossible to understand how the totals mentioned in the report were calculated.

The relevant law on transparancy of governance states that in some case a document will be released only partially - but in this case the government must make a reference to this exception. **This was not the case**. **We received an incomplete document with any mention of a motivation for why it was incomplete.**

This could have been seen by the Appellate Body, who received the same document. However, the Appellate Body also makes no mention of the missing part of the document and considers the document as a complete and thus fulfilling reply. This is just not correct. Anyone who sees the incomplete document can conclude that it is indeed incomplete and impossible to evaluate without the annexes.

For that reason, on 23 July 2014, dhr. Verhaeghe asked for further clarification. 'It probably didn't escape the attention of the Appellate Body that references is made to several annexes that were not part of the received document. With surprise I note that the Appellate Body in no way makes any mention of this in her decision. Because of this I ask the Appellate Body to review her decision and urge the BAM to deliver the document requested on 30 March 2014 in its entirity.

On 28 July the Appellate Body replied that they can not consider a revision of their decision. "This file has been closed and there is no procedure for revision of our decision. Only an appeal tp the The Council of State is still possible. We have already referred to this possibility in our earlier message to you."

Against the decision of the Appellate Body, one can only lodge an appeal at the Council of State. The Council of State can only cancel the decision from the Appellate Body. Since the damage is a derived result of an act, **this court can not deal with the merits of the allegedly incorrect working method.**

In addition, the data exchanged between the governing body in question and the Appellate Body are considered classified information. Consequently, a citizen can never defend its case with equal and full knowledge of the case in this court.

4. Please provide a brief overview of any pending domestic court or administrative proceedings brought by the communicants or their organizations concerning the "Oosterweelverbinding" project.

At present there is, directly related to the "Oosterweelverbinding", one procedure before the Council of State (G/A 212.188/15.777). This proceeding was initiated on 11 April 2014 through the third communicant, mrs. Greet Bergmans, along with another resident of Zwijndrecht. The procedure is directed against the decision of 10 February 2014 which approved the plan EIA and is limited to that aspect of the decision making process. Summarized briefly, it is argued that the plan EIA Oosterweelverbinding is not correct in terms of its content and should not have been approved. This appeal has no connection with the violations of the Aarhus Convention which we wrote about in our communication to compliance committee.

Traditionally, in Belgium, a decision to approve an EIA is regarded as a decision against which an appeal at the Council of State is not possible. The State Council has so far considered that a decision on an EIA doesn't have legal consequences, reasoning that it only serves to prepare the policy, and therefore is not questionable (eg. Council of State no. 226.878, 25 March 2014, www.raadvst-consetat.be).

Mrs. Bergmans has nevertheless opened this case because she believes that this view, certainly in this case, is not correct. She considers that the unjustified adoption of an incorrect and incomplete EIA indeed has legal consequences, largely because the content of the plan EIA is the foundation (or should be the foundation) for further decision making. The Flemish Government itself, as defendant in that procedure, however, considers the action inadmissible because the decision would not be susceptible to an appeal to the Council of State.

In addition, stRaten-General and the other parties involved in the procedures surrounding the Beveren prison instructed their lawyer to file an appeal in Ghent at the Court of Cassation against the judgment of the Court of Appeal. This has not happened yet. This appeal, however, can no longer make any real difference since this building has long been operational by now. Timely and adequate legal protection can no longer be possible.

Otherwise, no legal proceedings are pending because there are no opportunities to do so at this time. This does not mean that the Flemish Government is waiting for the moment legal opportunities arise and it certainly doesn't want to wait until they have been concluded. As described in our answer to questions 1 and 2, the Flemish government is already busy trying to create a point of no return by starting works before proceedings are concluded - at present already at the scale of over 300 million euro (130 million definitive unrecoverable euro and an additional 180 million unrecoverable euro in case the Bam tracé will not be build).

5. On the last page of your communication you ask the Committee to consider the case immediately notwithstanding "that legal options still exist within the country". Please provide an overview of all remaining domestic remedies that are or will be available to the communicants to challenge the decision-making on the "Oosterweelverbinding" project, indicating the stages (parts) of decision-making process on which they can be applied. For each available remedy, please indicate whether it is the communicants' intention to have recourse to that remedy, and if not, why not.

At this point in time, according to the current legal framework, no domestic remedies are available. The remedies that will be available in the near future exist on paper, but don't mean anything on the ground, as we illustrated in our reply.

The communicants want to stress that the Oosterweel project is a VERY large project on the Flemish level and has huge financial implications. It is far from desirable that a court ruling on the proper treatment of comments and participation from the general public and

its environmental interests is possible only at a time when there are already contracts with contractors, consultants and others that are closed and while considerable preparatory work has already been carried out. The societal pressure and responsibility that is thus placed on environmental associations or victims who want to go to court while so many costs have already been made is unacceptable. That can not be considered as fair, equitable or timely. Yet, according to the current state of the law, that is the only option they have. As mentioned earlier, a legal procedure is only possible against decisions in stage 1b or 2b.

6) What is the current status of any complaints regarding Belgium made to the European Commission by the communicants or their organizations concerning any aspect of the "Oosterweelverbinding" project?

Previous steps towards the European Commission are limited to two themes: the question of Noriant (on the tender) - for which we gave the Commission a notification - and the question of Beveren prison. The Beveren prison is especially relevant: it is part of our communication of 30 August 2014 to the compliance committee because the Beveren prison and the Oosterweelverbinding files are connected: the illegal construction of the prison has undermined the alternative to the Oosterweelverbinding proposed by the action groups. What follows is a short reconstruction:

May 30, 2012: we issued a complaint to DG Environment about the issue of the Beveren prison (annex 6.1)

July 4, 2012: we received a reply (annex 6.2)

The reply includes this sentence: "***We consider therefore that on this point you have provided sufficient indication of a breach of EIA Directive"*** *(page 2, last paragraph).*

April 26, 2013: we received a pre-closure letter (annex 6.3)

May 21, 2013: we reply to the pre-closure letter (annex 6.4)

June 10, 2013: we receive a closure letter (annex 6.5)

It includes these lines:: "the file is still the object or several national court proceedings. **As the National Judge is called upon to apply relevant EU law, there are normally no overriding Reasons for the Commission to take steps on it's own.** Once the decision is made by the national judicial authorities before whom you made your presentations, you may make a new complaint to the Commission based on the reasoning which you have set in your most recent reply."

June 20, 2013: we open complaint II (annex 6.6)

We notify the EC that on 24 May 2013 - before the EC wrote its closure letter - the national court decided that our complaint was considered non-eligible. This means that **the national courts failed to even consider our complaint about the breach of EIA Directive, a breach which the EC has recognized in its letter from July 4, 2012**. We write:

"We note - and we reported this already your services on May 21, 2013 - that in the past year no regional or national legal authority applied the necessary procedure that led to the granting of a permission for the prison in Beveren in line with the European EIA regulations. We do this as we did in the original complaint with the EC on May 30, 2012.

Please consider this mail plus the original complaint of May 30, 2012 plus our response by May 21, 2013 as the new complaint, because at present the national court proceedings appear to have reached their end point. On July 4, 2012 you gave a response that your services could in principle follow our reasoning."

TO SUM UP: On June 10, 2013 our file was closed by the EC based on the fact that national court proceedings were ongoing. However, they have ended on 24 May 2013. These national court proceedings failed to act upon what the EC itself calls "sufficient indication of a breach of EIA Directive". (July 4, 2012 letter).

September 7, 2013: we email the EC to ask if they are treating our case and how they see the timing
September 9, 2013 : Commission replies: "We hope to be able to respond at short notice"

TODAY: No more reply from the Commission.

We are now one and a half years later. **The prison has now opened despite the fact that there was - as DG environment wrote in their July 4, 2012 reply, "*sufficient indication of a breach of EIA Directive"*** Please note that the Beveren prison is linked to the Oosterweelverbinding by the very fact that is was build precisely on the alternative tracé proposed by the action groups, while at the time of the building the EIA of the Oosterweelverbinding was ongoing. Much more details about the Beveren prison case and how its construction in breach of the EIA Directive is also in breach of the Aarhus convention are given in the complained we submitted to the compliance committee on 30 August 2014. We have exhausted our national and European legal means and both have failed to act upon their own law.

Note: We have over 20 other relevant annexes (email conversations, national court rulings, ...) that we can send you, upon request.