

5 September 2014

Aarhus Convention Secretariat
United Nations Economic Commission for
Europe
Environment, Housing and Land Management
Division
Palais des Nations
CH-1211 GENEVA 10
SWITZERLAND
public.participation@unece.org

By registered mail with acknowledgement of receipt

Madam/Mr Chair,

Our Ref.: COALITION NATURE 00000524 AL/LR/1534
Your Ref.: COMMUNICATION TO THE AARHUS CONVENTION COMPLIANCE COMMITTEE

Please find enclosed a communication to the Aarhus Convention Compliance Committee, submitted on behalf of *Coalition nature*.

Yours faithfully,

Alain LEBRUN
Lawyer
[signed]

COMMUNICATION TO THE AARHUS CONVENTION **COMPLIANCE COMMITTEE**

I. INFORMATION ON CORRESPONDENT SUBMITTING THE COMMUNICATION, WITH CONTACT DETAILS

Coalition nature, a Belgian de facto association of the non-profit association Sauvegarde de la vallée de la Befve ASBL, *Brabant Ecologie*, the non-profit associations Ardennes liegeoises ASBL, L'Erablière ASBL, Grez-Doiceau Urbanisme et Environnement ASBL, Terre wallonne ASBL and Avala ASBL, the *Réseau Mignée Ecologie* [Mignée Basin Environmental Network] and the non-profit associations Uilekot ASBL and Rangers ASBL,

with its registered office established at 8, rue de la Passerelle, 4031 Angleur (Belgium),

with the chambers of its counsel Alain Lebrun, lawyer, at 6, Place de la Liberté, 4030 Grivegnée (Liège, Belgium) as its address for service for the purpose of this procedure, and represented by him,

makes the following complaint against three States Parties (see **II**).

II. PARTIES CONCERNED

Belgium, Netherlands and Luxembourg. These States have ratified and approved the Aarhus Convention.

III. COMMUNICATION

According to article 3, paragraph 1, of the Aarhus Convention:

“Each Party shall take the necessary legislative, regulatory and other measures [...] to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.”

Article 3, paragraph 7, expands on this obligation and states:

“Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.”

These provisions clearly impose a positive obligation on the Parties.

In giving certain competences in the field of environmental matters to the Benelux Union without giving it the ability to accede to the Aarhus Convention arising from such environmental competence or without stating clearly that this organization is subject to the provisions of the Aarhus Convention, the member states of the Benelux Union have infringed their obligations under article 3, paragraph 1, and article 3, paragraph 7, of the Convention.

The transfer of competence to the Benelux Union is illustrated inter alia by the Benelux Convention on Hunting and the Protection of Birds of 10 June 1970 and by the Benelux Convention on Nature Conservation and Landscape Protection of 8 June 1982 and by numerous decisions taken by the Committee of Ministers to implement these Conventions.

Failing to plead infringement of the Convention would serve only to legalize the absurd situation in which a State Party to the Convention could transfer all its competences in matters falling within the scope of the Convention to an international organization that is not subject to the Convention and, consequently, would mean that no complaints could be brought against that organization's infringements of the Aarhus Convention, since, firstly, that organization is not a Party and, secondly, the State Party is no longer responsible for the organization's actions.

Yet the rules of Benelux Law do not implement any of the three pillars of the Aarhus Convention in terms of access to information as concerns decisions taken by the Benelux Committee of Ministers, in terms of public consultation prior to those decisions and in terms of access to the Benelux Court of Justice. As matters stand therefore, the Benelux Union – an instrument of Belgium, the Netherlands and Luxembourg – is free to infringe the Aarhus Convention!

IV. NATURE OF ALLEGED INFRINGEMENT/NON-COMPLIANCE

This is a general failure to implement and apply the Convention. Failure to observe article 3, paragraph 1, and article 3, paragraph 7, of the Convention entails infringement of all the guarantees of the Convention contained in articles 4 to 9.

V. USE OF DOMESTIC REMEDIES OR OTHER INTERNATIONAL PROCEDURES

A letter on the subject of the accession of the Benelux Union to the Aarhus Convention was sent on 10 March 2014. The Secretariat-General of the Union replied on 7 April 2014. These two letters are attached.

No other procedure has been invoked.

VI. CONFIDENTIALITY

The correspondents do not request any guarantee of confidentiality.

VII. ANNEXES

Annex 1: Letter of 10 March 2014 sent to the Secretariat-General of the Benelux Union

Annex 2: Letter from the Benelux Secretariat-General sent on 7 April 2014.

VIII. SUMMARY

In the light of the brevity of this communication, no summary of it seems to be required.

IX. SIGNATURE

Liège, 5 September 2014

For *Coalition nature*
Counsel
Alain LEBRUN
Lawyer
a.lebrun@avocat.be

[signed]

Annex 1

10 March 2014

Benelux Economic Union
Secretariat-General
39, rue de la Régence
1000 BRUSSELS

The Secretary-General

Dear Sir

Our Ref.: COALITION NATURE - AVALA 00000524 AL/LR/1472

Your Ref.:

I am writing to you on behalf of *Coalition nature*, which brings together the *Groupement Environnement de l'Eau d'Heure*, the non-profit association Sauvegarde de la vallée de la Befve ASBL, *Brabant Ecologie*, the non-profit associations Ardennes liegeoises ASBL, L'Erablière ASBL, Grez-Doiceau Urbanisme et Environnement ASBL, Terre wallonne ASBL and Avala ASBL, the *Réseau Molinee Ecologie* [Molinee Basin Environmental Network] and the non-profit associations Uilekot ASBL, La Florentine ASBL and Rangers ASBL.

As you know, the 'Economic Union' is misnamed, since it also concerns itself with issues related to hunting, the protection of birds, spatial planning and development, nature conservation and landscape protection.

Therefore it is important that the international organization you represent should accede to the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Denmark on 25 June 1998.

Under article 19, paragraph 2, this Convention has been open for accession as from 22 December 1998, not only by States but also by regional economic integration organizations.

It is essential that decisions on environmental matters should be subject to public access to information consistent with the Convention, public participation and wide access to justice. (Perhaps some reservations would be necessary with regard to the last of these, since citizens cannot bring relevant cases directly before the Benelux Court of Justice.)

We very much hope that the Secretariat-General will actively endeavour to move forward on this issue, and we would like to thank you in advance for your reply.

Yours sincerely,

Alain LEBRUN,
lawyer.

Annex 2

Benelux

SECRETARIAT-GENERAL

Coalition nature

For the attention of Mr A. Lebrun
6, Place de la Liberté,
4030 Grivegnée

Dear Mr Lebrun

Thank you for your letter of 10 March 2014, sent on behalf of *Coalition nature*, concerning the accession of the Benelux Union to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998.

First of all, I can confirm that the scope of the Benelux Union's activities has, for several decades, covered not only economic co-operation but also environmental issues, justice, and internal affairs. In the Treaty of 17 June 2008 Revising the Treaty Establishing the Benelux Economic Union signed on 3 February 1958, therefore, the 'Benelux Economic Union' was officially replaced by the 'Benelux Union'.

I would like to make it clear that the Benelux Secretariat-General devotes special attention to transparency and access to information inter alia on environmental matters. Indeed, we ensure them particularly by means of booklets, other publications (including the official publication, in the *Bulletin Benelux*, of formal measures decided by the Benelux Committee of Ministers) and our website www.benelux.int. The latter includes – among other things – a legal database, an overview of the various topics we cover, and the most recent information relating to measures implemented, as well as the above-mentioned booklets and publications in digital format.

As regards the accession of the Benelux Union to the Aarhus Convention as an intergovernmental organization, I regret to inform you that this cannot take place, since the Benelux Union does not have the international legal personality essential for that purpose, as required by article 17 of the Aarhus Convention. Although the Benelux Union seeks inter alia to protect the environment, the Benelux countries have not transferred the competence to enter into relevant treaties to the Union. Indeed, the same is true of the Benelux Union's other policy areas.

DATE & REFERENCE

Brussels, 7 April 2014
14-SG-S(NO-035)FR

OFFICIALS DEALING WITH THE CASE:

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SUBJECT

Accession to the Aarhus Convention

Your reference:
Coalition Nature-Avala 00000524
AL/LR/1472

However, this legal restriction in no way limits the Benelux Secretariat-General's attention to the principles enshrined in the Aarhus Convention, in so far as these fall within its competence.

Yours sincerely,

[signed]

J.P.R.M van Laarhoven
Secretary-General

