

Annex

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

The following report is submitted on behalf of the Flemish Region in accordance with decision I/8

Name of officer responsible for submitting the national report:	SMAERS Marc
Signature:	
Date:	25/01/2005

IMPLEMENTATION REPORT

Please provide the following details on the origin of this report

Entity	The Flemish Region
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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:

The Flemish partial report was prepared by AMINAL

Consulted governments: VMM, VLM, OVAM (Public Waste Materials Company for the Flemish Region), AROHM (Town and Country Planning, Housing and Monuments and Sites Administration)

Public consultation:

The Flemish draft report was made available on the Internet from 1 to 30 November 2004

(www.mina.be/aarhus.html), giving everyone the opportunity to submit comments in writing. The report could also be consulted in situ with the environmental authority in Brussels. Advice was also gained from the MiNa-Council (representative advisory body with regard to environment).

This procedure was announced in the press.

Number of reactions received: 1 from the BBL (NGO) and 1 from a lawyer's office. The reaction of the Mina-council is still expected.

Content of the remarks: they were from a general nature:

1. Access to information: is quite well regulated by the new Flemish Parliament Act of 26 March 2004 concerning open government, although the legislation could be improved by codification and a better transparency.
2. Participation: some participation procedures could be improved, especially with regard to town planning licences and plans related to transport. In practice the outcome of the public participation is not always taken into account and the participation is often limited to a formal participation
3. Access to justice: the Law of 12 January 1993 is a step in the right direction. The right to introduce a claim can be expanded. Legal aid should be better organised and administrative courts need to be established.

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:

Flemish Parliament Acts have the same legal power as federal laws. Belgium is a federal state: see the answer in the federal report (www.belgium.be).

Abbreviations used:

B.S.: Belgian Official Gazette

DOB: *Decreet betreffende de Openbaarheid van Bestuur*: Flemish Parliament Act of 26 March 2004 concerning open government, *B.S.*, 01.07.2004, err. *B.S.*, 18.08.2004.

DABM: *Decreet Algemene Bepalingen Milieubeleid*: Flemish Parliament Act of 5 April 1995 on the general provisions regarding environmental policy, *B.S.*, 03.06.1995

VLAREM I: Flemish Government Decree of 6 February 1991 laying down the Flemish regulations regarding environmental licences, *B.S.*, 26.06.1991

AMINAL: Administratie Milieu-, Natuur-, Land- en Waterbeheer (Flemish Environment, Nature, Land and Water Management Administration)

VMM: Vlaamse Milieumaatschappij (Flemish Environment Agency)

VLM: Vlaamse Landmaatschappij (Flemish Land Company)

VMW: Vlaamse Maatschappij voor Watervoorziening (Water Supply Company of Flanders)

IN: Instituut voor Natuurbehoud (Institute of Nature Conservation)

IBW: Instituut voor Bosbouw en Wildbeheer (Institute for Forestry and Game Management)

SERV: Sociaal-Economische Raad van Vlaanderen (Flanders' Socio-Economic Council)

MiNa-Council: Milieu- en Natuurraad van Vlaanderen (Environment and Nature Council of Flanders)

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 are not be penalized, persecuted or harassed.

Answer:

(a) With respect to paragraph 2

The code of professional conduct of 1 September 1998, which applies to all Flemish Government personnel, describes the joint mission of all members of staff as follows: “*We seek to provide the best possible service to the people...*”. The principle of customer-friendly service provision implies among other things that all correspondence mentions the official’s name, position and address. In addition, it is explicitly stipulated that staff members are to assist customers in handling administrative formalities and that they must refer them to the right person or department.
This general obligation is explained in greater detail where it concerns obtaining access to environmental information (see the answer to the question regarding Article 5, paragraph 2 of the Convention).

Opportunities for participation are announced in the public media. If citizens require any additional information regarding opportunities for participation, they can turn to the public authorities starting at the closest local level. In addition to this, the Flemish Region has a first line information service which acts as a one-stop shop for any questions: the ‘*Vlaamse Infolijn*’ (Flemish Information Line).

(b): With respect to paragraph 3

Every public authority is under the obligation to inform the public about the rights given to the public with regard to access to information (Art. 28, § 1 DOB).

Environmental education and environmental awareness in general.

Up till now, environmental education has not been laid down by Flemish Parliament Act. Initiatives are in the pipeline to legally embed nature and environmental education in the DABM.

On 18 July 2003, the Flemish Government permanently adopted the ‘Nature and Environmental Education Programme’ for which a specific sub-entity was set up within the Environmental Administration.

The idea is that the Nature and Environmental Education and Information Unit concerns itself with promoting citizens’ responsibility with regard to nature and environmental issues by increasing the influence of target group-oriented, integrated and participatory nature and environmental education in

Flanders within the framework of sustainable development. In doing so, nature and environmental education adopts a more interactive steering approach with explicit attention to the participation of citizens and the involvement of social actors at an early stage of the policy process. (Vision and policy memorandum on nature and environmental education 2004-2009)

In its advisory opinion of 24 June 1999 the MiNa-Council also pointed out the importance of nature and environmental education, as a policy instrument, in consumers.

The section on social instruments of the Environmental Policy Plan 2003/2007 stresses the permanent and intense attention to nature and environmental education in education. A regional co-ordination mechanism also develops and promotes extracurricular activities regarding nature and environmental education in young people, adults, families and specific target groups.

Nature and environmental education, for instance, is one of a combination of instruments and aims in particular at giving depth to viewpoints that should – in the long term – result in the formation of more capable and critical citizens.

Through the co-operation agreement 'Environment as the Stepping Stone to Sustainable Development' (2002-2007) the Flemish government encourages local governments to increase the awareness regarding several environmental issues (such as waste and product policy, water, mobility, energy, nuisance, nature/forests/green spaces/landscapes) of the internal organisation as well as of the public at large. In exchange for the implementation of a number of action programmes set up within this framework, local governments can receive subsidies.

By analogy with the co-operation agreements with local governments, agreements were also concluded with NGOs. Projects that increase this awareness are also subsidised by the Flemish government. To this end a special Project Fund was established (by means of the Flemish Government Decree of 10 October 2003 laying down the special rules for the subsidisation of projects regarding sustainable nature and environmental policy)

(c): With respect to paragraph 4

The following regulation applies in Flanders:

- Flemish Parliament Act of 29 April 1991 laying down the general rules for the recognition and subsidisation of environmental and nature associations, *B.S.*, 31.05.1991;
- Flemish Government Decree of 16 December 1992 laying down the conditions for recognition and the criteria for the allocation of a subsidy to recognised associations active in the field of forestry, hunting or wildlife management, *B.S.*, 02.04.1993;
- Flemish Government Decree of 16 December 1992 implementing Articles 8, 9 and 10 of the Flemish Parliament Act of 29 April 1991 establishing the Environment and Nature Council of Flanders and laying down the general rules for the recognition and subsidisation of environmental and nature associations, *B.S.*, 27.05.1993;
- Flemish Government Decree of 10 October 2003 laying down the special rules for the subsidisation of projects regarding sustainable nature and environmental policy, *B.S.*, 04.11.2003;
- Flemish Government Decree of 10 October 2003 laying down the special rules for the recognition and subsidisation of environmental and nature associations, *B.S.*, 10.12.2003.

The Flemish government also supports initiatives to get newer forms of participation adopted. The Flemish Institute for Science and Technology Assessment (ViWTA), attached to the Flemish Parliament, organises projects which mainly focus on citizen participation, and provides methodological support to this end by distributing a guide, among other things.

(d): With respect to paragraph 7

No concrete initiatives have been taken to this end so far.

(e): With respect to paragraph 8

The principle of the right to freedom of speech, together with the right to protection of a healthy living

environment is constitutionally embedded in Articles 19 and 23 respectively of the Co-ordinated Constitution.
Art. 19 reads as follows with regard to this matter: "*The freedom of worship, the free public practice thereof, as well as the freedom to express one's opinion in any field, are guaranteed, subject to the punishment of offences committed during the application of these freedoms*".
Art. 23 stipulates the following: "*Everyone has the right to a decent existence. This is guaranteed by the law, the Flemish Parliament Act or the rule referred to in Article 134, taking into account the corresponding obligations, the economic, social and cultural rights of which they lay down the terms for exercise. These rights include especially: (...) 4° the right to the protection of a healthy living environment (...)*"
See also the federal report (www.belgium.be)

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

Answer:

(b) With respect to paragraph 3

It is considered to launch a campaign to announce and promote the rights people have as a result of the Aarhus Convention. It was believed, however, that prior to such a campaign for the public at large, internal info sessions ought to be organised for the training of officials, so as to make them acquainted with the obligations resulting from the Convention.

The promotion of government web sites providing relevant environmental information is also considered.

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

Answer:

(a) With respect to paragraph 2

The principles of the Aarhus Convention, including the obligation of officials to provide guidance, were explained in great detail during various info sessions on the Convention organised with several public services.

(b): With respect to paragraph 3

See "obstacles" under (b)

Give relevant web site addresses, if available:

www.aarhus.be (under construction)

www.mina.be/aarhus.html

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:

I. APPLICABLE REGULATIONS WITH REGARD TO THE PASSIVE PUBLIC NATURE OF ENVIRONMENTAL INFORMATION

- Art. 32 of the Co-ordinated Constitution: "*Anyone has the right to consult each administrative document and receive a copy thereof, except in the cases and under the conditions laid down by the law, the Flemish Parliament Act or the rule referred to in Article 134*".
- Flemish Parliament Act of 26 March 2004 concerning open government, *B.S.*, 01.07.2004, err. *B.S.*, 18.08.2004.
- Flemish Government Decree of 4 June 2004 establishing the appeal body concerning open government, *B.S.*, 01.07.2004.
- Circular VR 2004/26 on open government, *B.S.*, 01.07.2004.

The right to access to environmental information (and other information) is governed by the regulation regarding open government. In order to comply with its international and European obligations, the Flemish Parliament adopted the Flemish Parliament Act on open government on 26 March 2004. This Flemish Parliament Act was officially announced in the *Belgian Official Gazette (B.S.)* of 1 July 2004 (erratum, *B.S.*, 18.08.2004).

Until 30 June 2004, the Flemish Parliament Act of 18 May 1999 applied to the public authorities of the Flemish Region. The new Flemish Parliament Act of 26 March 2004 replaces the Flemish Parliament Act of 18 May 1999 and applies as of 1 July 2004 to all public authorities in the Flemish Region, as well as to provinces and municipalities. A Flemish Government Decree of 4 June 2004 governs the operation of the appeal body concerning open government.

II. APPLICATION OF THE NON-DISCRIMINATION REQUIREMENT

The non-discrimination requirement is laid down constitutionally in Art. 11 of the Co-ordinated Constitution, which reads as follows: "*The enjoyment of the rights and freedoms granted to the Belgian people must be guaranteed without discrimination. To this end, the law and the Flemish Parliament Act guarantee in particular the rights and freedoms of ideological and philosophical minorities*".

III. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2

The Flemish Parliament Act of 26 March 2004 concerning open government contains the following relevant definitions relating to environmental information:

PUBLIC AUTHORITY (Art. 3, 1° DOB):

- "a) a legal person established by virtue of or pursuant to the Constitution, a law, a Flemish Parliament Act or ordinance;*
- b) a natural person, an association of natural persons, a legal person or an association of legal persons, the operation of which is determined and controlled by a);*
- c) a natural person, an association of natural persons, a legal person or an association of legal persons, to the extent that these have been charged by a public authority in the sense of a) with the performance of a service of collective interest or to the extent that they perform a service of collective interest and make decisions binding on third parties.*

The judiciary does not fall under the above definition, except when it acts in a capacity other than a judicial one. The legislative councils and any bodies associated with them do not fall under the above definition, except in cases involving matters related to public procurements and members of personnel of their services. To the extent that it is acting in a judicial capacity, neither does the executive power fall under the definition above".

ENVIRONMENTAL AUTHORITY (Art. 3, 2° DOB):

- "a) a public authority;*
- b) any legal person, natural person or association thereof which is under the supervision of a public authority, insofar as it has public responsibilities or duties or performs public services relating to the environment.*

The judiciary does not fall under the above definition, except when it acts in a capacity other than a judicial one. The legislative councils and any bodies associated with them do not fall under the above definition, except in cases involving matters related to public procurements and members of personnel of their services. To the extent that it is acting in a judicial capacity, neither does the executive power fall under the definition above".

AUTHORITY (Art. 3, 3° DOB):

"a public authority or environmental authority".

Remark: The term "authority" as referred to in Article 3, 3° DOB fully corresponds, both legally and in terms of content, with the description of "public authority" as referred to in Art. 2, 2 of the Aarhus Convention. That is why we continue to refer below to the term "authority" used in the Flemish regulations.

ENVIRONMENTAL INFORMATION (Art. 3, 5° DOB):

"information about:

- a) the environment;*
- b) measures and activities that lead or may lead to pressure on the environment, as well as the analyses and assessments thereof that are relevant for the measures and activities referred to in e);*
- c) the pressure the measures and activities referred to in b) place on the environment by means of the factors of environmental disruption such as pollution factors;*
- d) nature, buildings and areas of cultural importance, the health, safety and living conditions of the population and the impact on these, in each case insofar as these are or can be affected by the state of the environment, the measures and activities referred to in b), or the factors of disruption referred to in c);*
- e) measures and activities aimed at preserving, restoring or developing the environment and the elements referred to in d), or at preventing, limiting or compensating for pressures on the environment, as well as the analyses and assessments of such measures and activities;*

Note:

PUBLIC (CONCERNED):

This term is not defined in the DOB.

Article 7, second paragraph of the DOB stipulates in this context: *The authority must give any natural person, legal person or association thereof who requests this, access to the administrative documents he*

requires, by allowing him to peruse the documents, providing an explanation about them, or giving a copy of them."

IV. IMPLEMENTATION OF ART. 4 OF THE AARHUS CONVENTION

(a) With respect to paragraph 1

- (i): the applicant is under no obligation to prove an interest. (Art. 17, § 2 DOB);
- (ii): the applicant can choose whether he wishes to peruse the requested document, to receive an explanation about it, or to receive a copy of it. The public authority is obliged to respect this choice (Art. 7, second paragraph DOB);
- (iii): if the administrative document is available in the form requested, or can reasonably be made available, the authority in question will provide the administrative document in the form requested. If this is not the case, the authority must inform the applicant in its decision in what form or forms the administrative document is available or reasonably can be made so (Art. 20, § 1 DOB).

(b) With respect to paragraph 2

The application must be responded to as soon as possible and at the latest within fifteen calendar days, either in writing, by fax or by e-mail, and be executed as soon as possible, but at the latest within thirty calendar days. These terms can be extended by fifteen calendar days if the information requested is difficult to collect in a timely fashion, or if the verification of the grounds for exception is difficult to complete in time. (Art. 20, § 2 and § 3 DOB). When this term is exceeded, the applicant has the right to lodge an appeal (Art. 22 DOB). In the case of environmental information, the applicant can propose a shorter term; if the environmental information cannot be made available within this period, the environmental authority must state reasons as to why it cannot do so (Art. 17, § 1 and Art. 20, § 1 DOB).

(c) With respect to paragraphs 3 and 4

- (i) The grounds for refusal are listed in Articles 10, 11 and 15 DOB, quoted hereafter:

Art. 10:

"The exceptions specified in Articles 11, 13, 14 and 15 are interpreted in a restrictive way case by case. Furthermore in the case of Articles 11, 14 and 15 this is done taking into account the public interest served by the making public".

Art. 11:

"The authorities referred to in Article 4, § 1, may refuse an application:

- 1° *if the application remains manifestly unreasonable or formulated in too general a manner after the authority has requested the reformulation of the first application, as referred to in Article 18;*
- 2° *if the application concerns administrative documents that are unfinished or incomplete".*

Art. 15:

"§ 1. The environmental authorities referred to in Article 4 will reject an application to make public, insofar as it is concerned with environmental information, if they are of the opinion that the importance of making public does not outweigh the importance of protecting any one of the following interests :

- 1° *the protection of individual privacy, unless the person concerned consents to the making public;*
- 2° *the confidentiality of the deliberations of the Flemish Government and of the responsible bodies that depend from it, the confidentiality of the deliberations of the organs of the Flemish Parliament as well as the confidentiality specified by law or Flemish Parliament Act of the deliberations of the organs of the authorities referred to in Article 4, §1, 3° to 10°;*
- 3° *the confidential nature of administrative documents that were compiled exclusively for*

- criminal or administrative penalty proceedings;*
- 4° *the confidential nature of administrative documents compiled exclusively for the possible implementation of disciplinary measures, for as long as the possibility of a disciplinary measure continues;*
 - 5° *the protection of information provided by a third party without this party being compelled or obliged to do so, and which the said party has explicitly designated as confidential, unless this person consents to the making public;*
 - 6° *the confidential nature of the international relations of the Flemish Region or the Flemish Community and of the relations between the Flemish Region or the Flemish Community and the supranational bodies, with the federal government and with other Communities and Regions;*
 - 7° *the confidential nature of commercial and industrial information, when this information is protected to safeguard a legitimate economic interest, unless the party from whom the information originates agrees to the public nature thereof;*
 - 8° *the dispensation of justice in civil or administrative proceedings and the possibility to obtain a fair trial;*
 - 9° *the confidentiality of the actions of an environmental authority insofar as this confidentiality is required for administrative enforcement, the performance of an internal audit or the political decision-making process;*
 - 10° *public order and safety;*
 - 11° *the protection of the environment the information relates to.*

§ 2. To the extent the requested information concerns emissions to the environment, the grounds for exception referred to in §1, 1°, 2°, 5°, 7°, 9° and 11° do not apply.

For the grounds for exception referred to in §1, 3°, 4°, 6°, 8° and 10°, the fact whether the requested information relates to emissions to the environment is taken into account.”

Remark:

The grounds for exception incorporated into the federal regulations also apply to the Flemish Region insofar as it concerns grounds falling within the federal competence.

The grounds for exception incorporated into the Flemish regulations also apply to the federal government insofar as it concerns grounds falling within the Flemish competence (Art. 4 § 2 DOB).

(ii) the balancing of interests is included in Art.10 and the head sentence of Art.15, § 1 DOB:

Art. 10:

“The exceptions specified in Articles 11, 13, 14 and 15 are interpreted in a restrictive way case by case. Furthermore, in the case of Articles 11, 14 and 15 this is done taking into account the public interest served by making public.”

Art. 15:

“§ 1. The environmental authorities referred to in Article 4 will reject an application to make public, insofar as it is concerned with environmental information, if they are of the opinion that the importance of making public does not outweigh the importance of protecting any of the following interests:(...)”.

(d) With respect to paragraph 5

In the event of the application being submitted to an authority that does not have the administrative document at its disposal, this authority must forward the application as soon as possible to the authority that presumably does have the document at its disposal, and inform the applicant of this immediately (Art. 17, § 3, second paragraph DOB).

The same applies when the application is submitted to the communications official appointed for each ministry: this official must also forward the application immediately and inform the applicant of this.

If the application is submitted to an archive and concerns a document that was deposited in an archive by an authority, then the archive must forward the application to this authority immediately.

(e) With respect to paragraph 6

This obligation is included in Article 9 DOB: an administrative document is partly made public if in addition to other information the document contains information to which an exception applies, or to which the obligation to prove an interest applies (in the case of information of a personal nature), and if it is possible to separate the latter information from the former. In such case the authority must in its decision explicitly indicate that the administrative document concerned can only partly be made public and indicate to the extent possible the locations where information was left and also on the basis of which grounds for exception this was done.

(f) With respect to paragraph 7

An application to make public must be responded to as soon as possible and at the latest within fifteen calendar days, either in writing, by fax or by e-mail (Art. 20, § 2, first paragraph DOB). If the information requested is difficult to collect in a timely fashion, or if the verification of the grounds for exception is difficult to complete in time, this fifteen calendar day term can be extended to thirty calendar days. The decision to extend the term must include the indication of the reason or reasons for the delay and the applicant must be informed of this decision in writing (Art. 20, § 2, fourth paragraph DOB).

If an application for making public is refused, reasons must be explicitly stated for this. This obligation to state reasons results from the general federal Act of 29 July 1991 *on the explicit stating of reasons for administrative acts B.S., 12.09.1991*).

The notification of a decision or administrative act of individual significance and intended to have legal consequences for the citizens or another public authority, must also include the possibilities and modalities of appeal. Otherwise the decision has not been notified in a valid way and the term for the submission of the appeal does not commence (Art. 35 DOB).

(g) With respect to paragraph 8

The right to perusal of and explanation about administrative documents is free of charge. An amount may be charged for the provision of a copy, calculated on the basis of a reasonable cost price (Art. 20, § 3, third paragraph DOB). The ministerial circular VR 2004/26 of 4 June 2004, *B.S., 1 July 2004* also referred to this right being free of charge: "*The perusal and explanation are free of charge. In principle, the provision of a copy is so as well, but the authorities may ask a fee for this, the amount of which has been defined in advance on the basis of a reasonable cost price (personnel costs, for instance, must not be charged). Thus, each authority can decide for itself whether or not to ask such a fee for the provision of a copy. (...) The existing decisions by municipal councils that impose the payment of a fee continue to be in force after this Flemish Parliament Act of 26 March 2004 has come into effect*".

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

Answer:

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:

Statistics:

Access to environmental information can be gained through a range of authorities, such as for instance via administrations, provinces and municipalities. Given this range of possibilities, there are no overall statistics available with regard to all applications for environmental information. There are statistics available, however, with regard to the number of appeals lodged with the regional appeal body, but not with regard to the number of appeals that were lodged before the new Flemish Parliament Act concerning open government (so before 1 July 2004) became effective with other appeal bodies that have been abolished in the meantime. Moreover, the existing partial statistics do not make any distinction between appeals relating to environmental information and other information.

Give relevant web site addresses, if available:

www.vlaanderen.be/openbaarheid

www.mina.be/aarhus.html

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:

I. APPLICABLE REGULATIONS WITH REGARD TO THE ACTIVE PUBLIC NATURE OF ENVIRONMENTAL INFORMATION

- Flemish Parliament Act of 26 March 2004 concerning open government, *B.S.*, 01.07.2004, err. *B.S.*, 18.08.2004
- Circular VR 2004/26 on open government, *B.S.*, 01.07.2004
- Flemish Parliament Act of 5 April 1995 on the general provisions regarding environmental policy (DABM), *B.S.*, 03.06.1995
- Flemish Government Decree of 28 July 1995 laying down more specified rules with regard to the environmental report and the regional environmental policy plan, *B.S.*, 27.10.1995, amended by the Flemish Government Decree of 16 April 1996, *B.S.*, 08.06.1996
- Flemish Parliament Act of 21 October 1997 on nature conservation and the natural environment (Nature Flemish Parliament Act), *B.S.*, 10.01.1998
- Flemish Government Decree of 6 February 1991 laying down the Flemish regulations regarding environmental licences, (Vlarem I), (Chapter IX Making Public of and Access to Environmental Information) *B.S.*, 26.06.1991
- Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114, 24.04.2001)
- Co-operation agreement of 30 March 1995 between the federal state, the Flemish Region, the Walloon Region and the Brussels Capital Region on the implementation of Council Regulation (EEC) No 1836/93 of 29 June 1993 allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme, *B.S.*, 03.10.1995

Note: Although environmental information is already being widely disseminated by the governments, amongst other electronically, no overall legal regulation is yet available for this. In order to remedy this, a preliminary draft of implementing order is currently being prepared.

Note: the regulation regarding product standardisation, eco-labels, environmental advertising and eco-labelling is a federal competence.

II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2

See earlier comments to Article 4 of the Aarhus Convention.

III. APPLICATION OF THE NON-DISCRIMINATION REQUIREMENT

See earlier comments to Article 4 of the Aarhus Convention.

IV. IMPLEMENTATION OF ART. 5 OF THE AARHUS CONVENTION

(a) With respect to paragraph 1

(i)

In accordance with Article 30, first paragraph DOB the environmental authorities are to ensure that, to the extent possible, the environmental information relevant to their duties and which they have at their disposal or which is managed for them, is categorised, accurate, comparable and kept up to date.

Various environmental authorities in Flanders have targeted programmes to monitor the condition of the environment (among other things, the water quality and water levels of groundwater and surface water, channel beds, air quality, vitality of forests, the occurrence of plant and animal species in wildlife areas, etc). These monitoring programmes are systematically harmonised and oriented towards the nature and environmental reporting, so as to be able to monitor the condition of nature and the environment as closely as possible for the benefit of policy.

(ii)

The “*ensurance*” that public authorities “*possess*” and “*update*” environmental information and have it adequately “*flow*”, is the object of a strategic project that was started early 2000 by the former Flemish Minister responsible for the environment: “*Milieu Management Informatie Systeem*” (MMIS), i.e. the environmental management information system (EMIS). This system fits in with the overall “*e-government*” concept of the Flemish Government.

The strategic EMIS project aims at developing – on a step by step basis – a general and integrated environmental information system where all available and relevant environmental data of all public environmental institutions can be consulted through a generally accessible medium (the Internet). Such an environmental information system is used for the nature and environmental policy or other policy sections at all government or decision-making levels or for all kinds of reports and research assignments in society’s general interest.

Within the framework of the EMIS project the computer networks of the different environmental authorities were linked to one another (the so-called Environment Extranet). At the same time, it is tried to logically gear the operational and new databases to one another by using common object descriptions (such as watercourses, land register plots, company data, address data). In this way, environmental data of different environmental authorities that are connected to these objects (for instance, watercourses, companies) can be linked to one another. Data regarding environmental licences (for an operation), for instance, can be linked to the data regarding the taxes and maintenance for that same operation. The exchange of this information takes place through the Environment Extranet.

In addition, the information obligations which companies have within the framework of the operation (for which an environmental licence is required) and within the framework of internationally imposed reporting obligations are retrieved through the ‘Integrated Annual Environmental Report’ (emission data, waste reporting, discharges, water extraction,...). As of 2005, this will be possible through an Internet counter where all information will be available. The related database is accessible to all environmental authorities concerned (their information systems will be harmonised with this), as well as through the Environment Extranet. This information is valuable for the policy and the knowledge regarding cause-and-effect relations and the state of nature and the environment. All these emission data will also be made available to the public, without however violating the confidentiality of business processes, for instance.

(iii)

In the event of any imminent threat to human health or the environment, the public is jointly informed by the federal, regional, provincial and municipal authorities. Depending on the concrete situation, explicit provisions have been laid down regarding this matter in:

- the Co-operation Agreement of 4 July 1994 between the Flemish Region, the Walloon Region and the Brussels Capital Region on the exchange of information about projects with cross-regional environmental effects, *B.S.*, 11.08.1994;
- the Co-operation Agreement of 21 June 1999 between the Federal State, the Flemish Region, the Walloon Region and the Brussels Capital Region on controlling the hazards of major accidents which involve dangerous substances (cf. the formulation of a prevention policy for major accidents, the submission of a safety report, the formulation of an external emergency plan, etc) (*B.S.*, 12.10.2000 and *B.S.*, 16.06.2001);

- the Royal Decree of 23 June 1991 organising the duties of the civil protection and co-ordination of the operations in disastrous events, catastrophes and accidents (*B.S.*, 24.07.1991);
- the Flemish Government Decree of 1 June 1995 on general and sectoral provisions regarding environmental protection, VLAREM II (cf. reporting obligation and warning obligation in accidental emissions and breakdowns, the taking of safety measures etc) (*B.S.*, 31.07.1995).

An additional regulation will be proposed in a draft Flemish Government Decree.

Recently, the administration responsible for water policy has made available a web site comprising up-to-date information about floods and flooding danger. This web site is supported by a database which is fed by hydraulic models of surface water (flooding prediction models). This web site also provides updated information for the emergency services in case of flooding. The air quality and air pollution (immission) are closely monitored in Belgium (and Flanders) (Nox, Ozon, SOx,...) by means of a monitoring programme and are made available on the Internet in real time.

(b) With respect to paragraph 2

- The environmental information which environmental authorities have at their disposal must, to the extent possible, be categorised, accurate, comparable and updated (Art. 30, first paragraph DOB).
- The Flemish government must compile a joint file, containing familiarisation information and primary information from and about all public authorities. The familiarisation information indicates where the person looking for information can find either information about a specific subject, or where he should address himself in the case of a specific problem or administrative procedure to be dealt with. Primary information is basic information that is not bound to a specific dossier, and which is made easily accessible. The data file is freely accessible to anyone without any restrictions, both digitally and through the counters of the public authorities concerned (Art. 29, § 1 DOB).
- Personnel at authorities must always be ready to help anyone who is looking for information held by authorities (Art. 7, first paragraph DOB). This general principle is explicitly repeated in the ministerial circular VR 2004/26 of 4 June 2004 which is specifically intended for public officials. The obligation to provide guidance implies, for instance, that the applicant is given an answer to his question whether or not a particular administrative document exists, or where a particular administrative document can be found. This obligation to provide guidance is also explained in greater detail in various provisions of the DOB, amongst other things in:
 - the obligation to forward the application (Art. 17, § 3, second paragraph DOB): see question to Article 4, fifth paragraph
 - the terms of the right of perusal (Art. 20, § 3, second paragraph DOB): if the applicant wishes to use his right to peruse the document in situ, the place, date and time of the perusal will be defined in consultation between the authority and the applicant.
 - the reformulation of the application (Art. 18 DOB): If the application is manifestly unreasonable or formulated in too general a manner, as soon as possible the authority must ask the applicant to complete his application or to reformulate it in a more specific manner (see also question to Article 4, where Article 11 DOB is quoted)
- the right to peruse administrative documents, including all environmental information laid down in lists, registers or files, is free of charge (Art. 20, § 3, third paragraph DOB).

(c) With respect to paragraph 3

A lot of environmental information has already been made available in electronic databases through public telecommunication networks, among other things via the web sites of environmental authorities. The main general addresses are:

- www.milieuinfo.be
- www.vlaanderen.be (by clicking on 'Leefmilieu en Natuur' you arrive at the homepage of Leefmilieu en Natuur: www.vlaanderen.be/start/thema/leefmilieu_en_natuur/leefmilieu_en_natuur.htm)
- www.mina.be (with direct links to the Flemish Environmental Legislation Navigator, the Database on

Environmental Doctrine, the Database on Environmental Jurisdiction, environmental impact reports, safety reports, environmental policy plans, annual environmental programmes, etc)

- www.emis.vito.be (the “Energy and Environmental Information System for the Flemish Region”). The web site <http://www.emis.vito.be> contains information about energy and environment in Flanders. The information provided with regard to (European, federal and regional) legislation is very detailed and up-to-date. The English translation of the basic environmental legislation can also be found at this web site.

In addition, there are the strongly developed and very informative web sites of different environmental authorities which make their information available through the Internet on a step by step basis: waste and soil (OVAM), water, air (VMM), nature, forests and green spaces (IN, IBW and VLM), administrative data (environmental licences: AMINAL), etc. This available information is mainly provision-oriented and not integrated. The EMIS project referred to above ensures increased integration. The so-called geo-counters (Internet counters providing material about nature and environment by means of thematic maps) play an important role in this context.

(d) With respect to paragraph 4

In conformity with the Flemish Parliament Act on the general provisions regarding environmental policy the environmental planning at regional level includes, among other things, the drawing up (currently by the Flemish Environment Agency (VMM), and later on by the Institute for Nature and Forest Research) of an environmental report (which will then serve as the basis for the environmental policy plan to be drawn up every five years and for the annual environmental programme) every two years. This environmental report comprises:

- A description, analysis and evaluation of the existing state of the environment
- A description, analysis and evaluation of the environmental policy that was conducted so far, insofar as this is relevant for weighing up the results of the conducted environmental policy against the policy objectives laid down in the environmental regulations or the environmental planning
- A description of the expected development of the environment in case the policy remains unchanged or in case it is changed, in accordance with a number of scenarios that are deemed relevant.

The environmental report is currently produced by the VMM in the form of a book, and distributed at least to the provinces and municipalities. It is also available at the bookseller’s (Art. 2.1.6 and Art. 3 of the Flemish Government Decree of 28 July 1995 laying down more specified rules with regard to the environmental report and the regional environmental policy plan). The report is also made public through the press, at study days, through direct mailings and in publicity folders.

In agreement with the Flemish Parliament Act of 21 October 1997 on nature conservation and the natural environment (Nature Flemish Parliament Act) the Institute of Nature Conservation draws up the nature report every two years. All information about this report is available through the Internet <http://www.nara.be>. The nature report is also made freely available in book form and is sent to public libraries, universities, etc,...

Apart from the environment and nature report, web sites are available with indicators on the state of the environment and nature: <http://indicatoren.milieuinfo.be> (as of May 2005) and <http://www.vlaanderen.be/aps>

(e) With respect to paragraph 5

- All new legislation (Acts, Flemish Parliament Acts, Decrees) is published in the Belgian Official Gazette (B.S).
- The Flemish co-ordinated legislation from 1 January 1976 onwards is collected in the Flemish Codex
- The Flemish co-ordinated environmental legislation is available through the “Flemish Environmental Legislation Navigator”
- Policy documents (Government declarations, coalition agreements, policy papers, and policy memorandums) can be found on the Internet (www.vlaanderen.be)
- Every authority referred to in Article 4, §1, 2° to 8°, is under the obligation to inform the public or the

target groups concerned in a systematic, exact and balanced manner, in good time and using plain language about its policies, regulations and service (Art. 28, § 1, first paragraph DOB).

- The duties of communications officials to be appointed in accordance with Article 31 DOB include providing information to the public in general about the policies pursued and about specific decisions concerning them (Art. 32, § 1 DOB).
- The regional environmental report and the nature report are, as mentioned in paragraph four of Article 5, made widely known.
- The regional environmental policy plan is announced in the *Belgian Official Gazette* and is available for perusal with the provinces and municipalities (Art. 2.1.10 DABM); the provincial environmental policy plan is brought to the notice of a number of specified authorities and is available for perusal with the municipalities and provinces (Art. 2.1.17, § 4); the municipal environmental policy plan is brought to the notice of a number of specified authorities and is also available for perusal with the municipalities (Art. 2.1.23, § 5).

(f) With respect to paragraph 6

This provision relates on the one hand to providing information about activities and on the other hand to providing information about products. Both aspects are the subject of two different levels of competence in the Belgian rule of law.

Providing information about products is a federal competence.

Providing information about activities is a regional competence.

With regard to the provision of information by operators whose activities have a significant impact on the environment, we should in the first instance refer to Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114, 24.04.2001).

The main lines of the EMAS Regulation can be summarised as follows. The basic principle is that companies in the industrial sector can participate voluntarily in the evaluation and improvement of their environmental performance. In addition, the public must be informed of this. A system of environmental verifiers and registration is used. Before a registration can be made, the sites in question must meet a number of requirements, such as the drawing up of an environmental policy, review, programme, management system, audit, and statement.

On the basis of the co-operation agreement of 30 March 1995 (*B.S.*, 03.10.1995) between the federal state and the Regions, this matter is applied in a co-ordinated way in Belgium.

Apart from EMAS, there is also the “Internal Corporate environmental care” of the Flemish Parliament Act of 5 April 1995 on the general provisions regarding environmental policy in the Flemish Region.

This regulation provides for a partial environmental care system, which means that certain categories of plants are obliged to meet only the essential elements that are important for government policy.

A first relevant regulation mentioned in this respect is the compulsory environmental audit. This may be either a one-off or a periodical (that is three-yearly) environmental audit. This is to be understood as a systematic, documented and objective evaluation of the management, organisation and equipment of the plant or activity concerned in terms of environmental protection. Concretely, it is examined, among other things, how the plant provides information externally and an explanation is also given of its production methods.

Moreover, the Flemish Parliament Act on the general provisions regarding environmental policy also provides for the drawing up of an annual integrated environmental report for specific categories of plants. This report consists of four partial reports: annual emission report, waste register, noise and immission measurements.

(g) With respect to paragraph 7

As for the publication of facts and numerical analyses, it must first of all be pointed out that the DOB provides for a general information obligation: environmental authorities have the obligation to inform the public or the target groups in a systematic, exact and balanced manner, in good time and using plain language about its policies, regulations and service (Art. 28, § 1 DOB).

The Flemish Parliament Act on the general provisions regarding environmental policy (Art. 2.1.3-2.1.6)

also provides for the drawing up of a two-yearly regional environmental report, which must, among other things, comprise a description of the state of the environment (see earlier comments to Art. 5, fourth paragraph).

For the publication or the alternative provision of information on access to environmental information, participation and access to justice, we refer to the annual reports of AMINAL (environmental licences, environmental inspectorate), OVAM, VMM, VLM, the Flemish Ombudsman, etc.

With regard to the provision of information relating to public functions or the provision of public services we refer to the provisions in the Acts of Establishment of environmental authorities such as OVAM, VMM and VLM, and to annual reports, information on web sites, etc.

In order to gain an insight into pollution in Flanders, the environmental complaints database has recently become operational. This is a registration and monitoring system for environmental complaints in Flanders. The complaints are introduced by municipalities through the Internet. (<http://milieuklachten.milieuinfo.be>).

(h) With respect to paragraph 8

Product information is a federal competence. See the federal report (www.belgium.be)

(i) With respect to paragraph 9

On 4 June 2004, the Flemish Government Decree of 2 April 2004 introducing the annual integrated environmental report was published in the *Belgian Official Gazette*. This report comprises the information which is reported each year by the company (on the basis of activity levels) with regard to the relevant emissions into the air and the water (on the basis of threshold values), the waste reporting, the declaration for the tax on water pollution and groundwater catchment and the declaration with regard to groundwater catchment and statistics.

The first paper report will be submitted by 15 March 2005. By 2006, reports will be submitted electronically. This information constitutes the basis for the set-up of a PRTR (Pollutant Release and Transfer Register).

Meanwhile, the government is taking the necessary steps in order to be able to provide the information to the public as soon as possible.

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

Answer:

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:

(b): With respect to paragraph 2

The tasks and duties of officials in providing access to environmental information, such as the requirement to support the public, were explained in great detail during the various information sessions on the Convention with different public services and were also explained in writing in the ministerial circular VR 2004/26 of 4 June 2004, *B.S.*, 01.07.2004. This information is also available electronically through the Internet (www.vlaanderen.be/openbaarheid).

Give relevant web site addresses, if available:

www.vlaanderen.be/openbaarheid
www.mina.be/aarhus.html

www.milieuinfo.be: webguide to information about the environment and nature in government
www.vlaanderen.be: for general policy information, click on 'natuur en milieu'
www.emis.vito.be: environmental legislation, environment and energy, best available techniques
<http://milieuloket.milieuinfo.be>: service guide (electronic services)
<http://milieuklachten.milieuinfo.be>: environmental complaints register
<http://milieujaarverslag.milieuinfo.be>: annual integrated environmental report counter

Information (provision-oriented) from public authorities by topic:

www.mina.be: administrative data and policy information regarding nature and environment (AMINAL)
www.mervlaanderen.be: environmental impact reporting
www.ovam.be: waste and soil
www.vmm.be: water and air and environmental reporting
www.instnat.be: nature and nature report
www.ibw.vlaanderen.be: game and forest
www.vlm.be: open space
www.vmw.be: Water Supply Company of Flanders
www.milieurapport.be: environmental report
www.nara.be: nature report

<http://indicatoren.milieuinfo.be>: indicators regarding environment and nature (under construction)
www.vlaanderen.be/aps: statistics

<http://212.123.19.141>: Flemish Codex (legislation)
www.staatsblad.be: Belgian legislation

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:

I. APPLICABLE REGULATIONS WITH REGARD TO PARTICIPATION IN SPECIFIC ACTIVITIES

- Flemish Parliament Act on Environmental Licences (Flemish Parliament Act of 28 June 1985 on environmental licences, B.S., 17.09.1985)
- VLAREM I (Flemish Government Decree of 6 February 1991 laying down the Flemish regulations regarding environmental licences, B.S., 26.06.1991)
- Co-ordination Flemish Parliament Act on Spatial Planning (Flemish Parliament Act on spatial planning co-ordinated on 22 October 1996, B.S., 15.03.1997)
- Flemish Parliament Act on Spatial Planning (Flemish Parliament Act of 18 May 1999 on the organisation of spatial planning, B.S., 08.06.1999).
- Flemish Government Decree of 5 May 2000 on the public inquiries into applications for town planning licences and land division applications (B.S., 20.05.2000).
- Flemish Parliament Act of 5 April 1995 on the general provisions regarding environmental policy, B.S., 03.06.1995 (DABM), Title IV: environmental impact and safety reporting

II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2

See earlier comments to Art. 4 of the Aarhus Convention.

III. APPLICATION OF THE NON-DISCRIMINATION REQUIREMENT

See earlier comments to Art. 4 of the Aarhus Convention.

IV. IMPLEMENTATION OF ART. 6 OF THE AARHUS CONVENTION

(a) With respect to paragraph 1

(i)

In the Flemish Region there are two important licensing systems: on the one hand the environmental licence and on the other hand the town planning licence. The first licensing system is governed by the Flemish Parliament Act on Environmental Licences and by VLAREM I, whereas the second system is regulated, on the one hand, in the Co-ordination Flemish Parliament Act on Spatial Planning and, on the other hand, in the Flemish Parliament Act on Spatial Planning.

An environmental licence is required to operate or change category 1 or 2 nuisance-causing plants. The nuisance-causing plants (and the subdivision thereof into three categories) can be found in Annex I of VLAREM I. In accordance with Article 99 of the Flemish Parliament Act on Spatial planning, a town planning licence is required for various activities (construction, deforestation, the felling of standard trees, considerable changes to the relief of the soil, etc).

There are also other licensing systems as well as other forms of decision-making regarding activities (than licensing systems).

Within the framework of the environmental impact reporting, the public nature of the notices of environmental impact reports on intended plans, programmes and projects is governed by Title IV of the DABM. This public nature is linked to the possibility for the public concerned to participate in the EIR approach mentioned in the notice.

The Flemish regulations regarding environmental licences (Flemish Parliament Act on Environmental Licences and VLAREM I) and town planning licences (Flemish Parliament Act on Spatial Planning) provide opportunities for participation (see below) and lists of activities and/or plants for which participation in the decision-making process is possible.

(ii)

The list of activities in the Flemish Region is not completely identical to the one in the list in Annex I of the Aarhus Convention. Annex I of VLAREM I contains a lot more activities and sometimes uses formulations or descriptions that deviate from those used in Annex I of the Aarhus Convention.

(b) With respect to paragraph 2

The information of the public concerned with a view to participation in decisions on specific activities, specified by Art. 6, second paragraph, is regulated at the level of the Flemish Region in the “public inquiry” procedures as laid down in the regulations regarding environmental licences and town planning licences.

Environmental licences.

In agreement with the Flemish Parliament Act on Environmental Licences and VLAREM I, each environmental licence application must in principle be subject to a public inquiry (Art. 11 Flemish Parliament Act on Environmental Licences and Art. 17-19 VLAREM I). This public inquiry implies that – for thirty days - the application is made available for perusal at the town hall and that it is announced by posting it on the site of operation and on the place for official notices in the municipality. If the application concerns a first category activity, all people living within a hundred metres of the plant are notified in writing of the licence application and the public inquiry is announced in at least two daily and/or weekly magazines, one of which has a regional nature. For first category installations for which an environmental impact report or a safety report is required, at least one information meeting must be organised within the framework of the public inquiry into the licence application.

The required content of these notices can be summarised as follows: They must contain, among other things, the subject of the application, together with a short description of the plant. In addition, it must be announced at which municipal authority services the dossier will be available for perusal during the period of notice. The possibility must also be mentioned to submit objections and remarks to the municipal authority, either orally or in writing. If necessary, the time and place of the information

meeting, which must begin between 6 and 9 p.m., must also be communicated.

Town planning licences

With regard to town planning licences, there are two licensing systems, namely the system which currently still applies everywhere and under which the municipalities are not “emancipated” yet and the other system which allows them to grant licences fully autonomously. The first system (hereinafter referred to as (1)) is laid down in the Co-ordination Flemish Parliament Act on Spatial Planning and the second one (hereinafter referred to as (2)) in the Flemish Parliament Act on Spatial Planning.

Municipalities can only be “emancipated” when they meet the following five conditions: have an adopted municipal structure plan, a licence and plan register and a register of the vacant parcels, and a municipal town planning official.

The overview below describes each time both procedures one after the other.

(1)

Article 51 § 3 of the Co-ordination Flemish Parliament Act on Spatial Planning (as implemented by the Flemish Government Decree of 5 May 2000) stipulates that the Flemish Government determines the cases in which special rules for making information public must be complied with when treating certain licence applications. The application for the town planning licence must be submitted in accordance with the set terms to the Board of Mayor and Aldermen or to the regional town planning official (Article 127 Flemish Parliament Act on Spatial Planning). After that, the submitted dossier is regarded as either complete or incomplete and the applicant is given notice. If an environmental impact report is required or in one of the cases referred to in the above mentioned Decree, a public inquiry is opened during thirty days. This fact is made public so that anyone can lodge a notice of objection during this period. During the next stage, the Board decides on the written objections and remarks and appends them to the dossier together with a declaration that the notice was posted. Only then is the advice of the proper authorities gained, after which the Board of Mayor and Aldermen or the regional town planning official makes a decision.

(2)

Art. 109 of the Flemish Parliament Act on Spatial Planning (as implemented by the Flemish Government Decree of 5 May 2000) lays down the basic rules regarding the public inquiry into town planning licences. The application for the town planning licence must be submitted in accordance with the set terms to the Board of Mayor and Aldermen or to the regional town planning official (Article 127 Flemish Parliament Act on Spatial Planning). After that, the submitted dossier is regarded as either complete or incomplete and the applicant is given notice. If an environmental impact report is required or in one of the cases referred to in the above mentioned Decree, a public inquiry is opened during thirty days. This fact is made public so that anyone can lodge a notice of objection during this period. During the next stage, the municipal town planning official draws up an official report within five working days after the public inquiry has ended which comprises the starting date, the closing date and an inventory of the objections submitted (both orally and in writing) during the public inquiry. Only then is the advice of the proper authorities gained, after which the Board of Mayor and Aldermen or the regional town planning official makes a decision.

(c) With respect to paragraph 3

Environmental licences.

In principle, each environmental licence application must be subject to a public inquiry. Any natural or legal person who may experience nuisance as a result of the establishment of the plant, and any legal person the objective of whom is to protect the environment which may be affected by this nuisance, can submit objections and remarks during the period of the public inquiry (Art.11 Flemish Parliament Act on Environmental Licences and Art. 17 – 19bis VLAREM I). The terms provided for the public inquiry within the framework of an environmental licence application are mentioned in the afore-mentioned provisions of VLAREM I. Both for first and second category activities a public inquiry of thirty days takes place. During this period the provided information will be available for perusal to the public which may give objections or remarks.

Town planning licences

In agreement with Art. 8 of the above-mentioned Flemish Government Decree of 5 May 2000, the municipal authority posts during thirty days from the beginning of the public inquiry a notice on the regular posting places and in any case at the town hall. To this end, the municipal authority uses a duly completed standard form. If the municipality itself is the applicant of the licence, it posts the notice during thirty days on the regular posting places and on the site of the works itself before sending the dossier to the regional town planning official. During the period of thirty days anyone can submit objections or remarks regarding the subject to the Board of Mayor and Aldermen in writing.

(d) With respect to paragraph 4

Environmental impact reporting

Within the framework of the environmental impact reporting the public nature of the notices of environmental impact reports on intended plans, programmes and projects is linked to the possibility for the public concerned to participate in the approach to the environmental impact reporting mentioned in the notice. Thus the public is given the opportunity to participate - be it to a limited extent - for activities that are compulsory within the framework of the environmental impact reporting at an early stage when alternatives are still possible.

Environmental licences

In agreement with the Flemish Parliament Act on Environmental Licences and VLAREM I a separate procedure has been set up for first and second category plants. Both procedures are similar as far as the time and the duration of the public inquiry are concerned. The same framework regulation is applied with regard to the public inquiry, irrespective of the category to which the intended plant belongs. After submission of the application, the dossier is, if necessary, declared complete and admissible. The applicant is given notice of this within fourteen days. Once this has been done, the official starting date of the procedure has been fixed. The public inquiry must be started within ten days of the start of the procedure. It must last thirty days and during this period everyone must have the opportunity to formulate objections and remarks. At the same time advice is gained from the appropriate authorities after which a decision can be taken.

Town planning licences

In agreement with the Co-ordination Flemish Parliament Act (1) and the Flemish Parliament Act on Spatial Planning (2) and the Flemish Government Decree of 5 May 2000 the application must be submitted in accordance with the set terms to the Board of Mayor and Aldermen or the regional town planning official. After that, the submitted dossier is regarded as either complete or incomplete and the applicant is given notice. If an environmental impact report is required or if in accordance with the Flemish Government Decree of 5 May 2000 the application must be subject to a public inquiry, a public inquiry is opened for thirty days. This fact is made public so that anyone can lodge a notice of objection during this period.

(1) During the next stage the Board decides on the written objections and remarks and appends them to the dossier together with a declaration that the notice was posted.

(2) During the next stage the municipal town planning official draws up an official report within five working days after the public inquiry has ended which comprises the starting date, the closing date and an inventory of the objections submitted (both orally and in writing) during the public inquiry.

Only then is the advice of the appropriate authorities gained, after which the Board of Mayor and Aldermen or the regional town planning official takes a decision.

(e) With respect to paragraph 5

Within the framework of the notification phase of the environmental impact reporting process the public nature of the notification dossier gives the public concerned the opportunity to participate. The resulting interaction may give an idea of the public concerned and gives the initiator the chance to clarify the project objectives at an early stage.

(f) With respect to paragraph 6

(i) + (ii)

Environmental licences

On the basis of the Flemish Parliament Act on Environmental Licences, VLAREM I and the Flemish Government Decree of 23 March 1989 on the organisation of the environmental impact assessment of certain categories of nuisance-causing plants (B.S., 17.05.1989) ("EIR-Decree"), certain proposed plants are required to submit an environmental impact report in addition to the environmental licence application.

With regard to the content of an environmental impact report, the above mentioned EIR-Decree puts the following data first and foremost (Art.4) : a detailed description of the project, namely of the physical characteristics of the project, a description of the main characteristics of the production processes and a prognosis of the expected emissions and residues. Next, a draft of the main alternatives to the project, a description of the probably major environmental effects for man and environment; when the occasion arises: a description of the probably significant environmental effects of the proposed project on the territory of a neighbouring EU member state or on the territory of another Region; a description of the intended measures so as to avoid, restrict and possibly remedy major environmental effects of the project; a description of the knowledge gaps that were found; a report regarding employment, anticipated investments, and the nature and quantity of the goods (or services) to be produced and a non-technical summary.

Apart from the elements in the EIR-Decree, the Flemish Parliament Act on Environmental Licences (Art. 7) also requires a description of the existing condition of the air, the water, the noise level, the flora and fauna in the areas that may be affected by the plant or by the works carried out for it.

Town planning licences

The Flemish Government Decree of 23 March 1989 defining categories of works and actions, other than nuisance-causing plants, for which an environmental impact report is required in order for the application of a building permit (B.S., 17.05.1989) to be complete, is important here.

In agreement with Art. 3 of this Decree the environmental impact report must at least contain: a project description, if the occasion arises a draft of the main alternatives which the initiator has had examined indicating the main motives for his choice with respect to the environmental effects; a description of the probably important environmental effects of the intended project, namely: on the population, the fauna and flora, the soil, the water, the air, the climatological factors, material goods, including the architectural and archaeological heritage, the landscape and the interrelation between the disciplines mentioned; a description of the probably significant environmental effects of the proposed project and a description of the method used for the environmental impact assessment (this description must relate to the project's direct, and if the occasion arises, the indirect, secondary and cumulative effects in the short, medium and long term, both lasting and temporary, both negative and positive); a description of the intended measures so as to avoid, restrict and possibly remedy the project's important harmful environmental effects; a non-technical summary of the information provided in agreement with the points mentioned above; a description of the difficulties (technical gaps or lacking knowledge) the commissioning body may have experienced when collecting the required information; an employment report, the anticipated investments, and, if the occasion arises, the nature and quantity of the produced goods.

(g) With respect to paragraph 7

Environmental impact reporting

There is a limited possibility for the public concerned to give a reaction (see above) due to the public nature of the notification dossier in the environmental impact reporting.

Environmental licences

As indicated earlier, a public inquiry is organised for each environmental licence application for a category 1 and 2 nuisance-causing plant. For plants that are subject to the environmental impact or safety

reporting obligation, at least one information meeting is also organised on the environmental licence application within the framework of the public inquiry. The Board of Mayor and Aldermen may decide to organise an information meeting for other applications as well. In agreement with Art. 17 VLAREM I anyone can submit objections and remarks in writing to the Board of Mayor and Aldermen during the provided period of thirty days. These can also be communicated orally to the Mayor or to a civil servant that has been appointed by him, who will draw up an official report of this to be signed by the party concerned.

Town planning licences

As indicated earlier, a public inquiry must be organised - in agreement with the Co-ordination Flemish Parliament Act on Spatial Planning (1), the Flemish Parliament Act on Spatial Planning (2) and the Flemish Government Decree of 5 May 2000 – on all applications for a town planning licence that are subject to the environmental impact reporting obligation or that are mentioned in the above mentioned Decree. During the provided period of thirty days, anyone can submit his objections or remarks with regard to the draft in writing to the Board of Mayor and Aldermen.

(h) With respect to paragraph 8

General obligation to state reasons in agreement with the Act of 29 July 1981 on the explicit stating of reasons for administrative acts.

Environmental impact reporting

Art. 4.1.7. DABM contains a specific obligation to state reasons on the basis of which the decision-making on projects, plans or programmes should take into account the results of the environmental impact reports drawn up to this end.

Environmental licences.

Article 17 of the Flemish Parliament Act on Environmental Licences stipulates that reasons must be stated for the decisions regarding environmental licence applications. In addition Art. 21, §1 of the Flemish Parliament Act on Environmental Licences stipulates that the environmental licence conditions can be modified or supplemented through a decision stating reasons. Article 33 of the Flemish Parliament Act on Environmental Licences states that within the framework of the supervision and the compulsory measures as well reasons must be stated for the measures taken. Finally, Art. 36 of the Flemish Parliament Act on Environmental Licences also stipulates that an environmental licence can only be suspended through a decision for which reasons are stated.

Apart from the Flemish Parliament Act on Environmental Licences, VLAREM I also imposes specific rules for stating reasons. For the decisions within the framework of an environmental licence application, this can be found in Art. 35 VLAREM I and Art. 36 VLAREM I respectively. A similar regulation is laid down in Art. 30 VLAREM I (regarding the ignoring of advisory opinions and the taking of the final decision respectively) and Art. 47 VLAREM I (which provides for the complete or partial suspension of an environmental licence).

The appeal decision as well contains a decision, for which reasons have been stated, regarding the objections and claims made by those who lodged the appeal (Vlarem I Art. 50, 3°, b and 52, 3°, b)

Town planning licences

It can be derived from Art. 43 of the Co-ordination Flemish Parliament Act on Spatial Planning (1) that reasons must be stated for the decision on the licence application within the framework of the town planning licence as well. This can also be drawn from Art. 110, § 3 of the Flemish Parliament Act on Spatial Planning (2): *“at least the first part of the report of the municipal town planning official is taken over by the Board when stating reasons for the decision”*.

Practical measures

The environmental licence procedure contains the obligation for the Mayor to compose a dossier at the end of the public inquiry to which he must append, apart from a report of the information meeting (Art.18 VLAREM I) an official report describing the objections and remarks that have been submitted both in writing and orally during the public inquiry (Art.19, § 3 VLAREM I).

It has been decided for the town planning licensing procedure that the municipal town planning official is to complement the application dossier with the official report of the public inquiry. This official report contains the starting and closing dates, as well as an inventory of the objections submitted in writing and orally during the public inquiry (Art. 109, § 4 Flemish Parliament Act on Spatial Planning). In addition, the municipal town planning official draws up a report, as part of the dossier, formulating a proposal of reply to the notices of objection that were submitted (Art. 110, § 2 Flemish Parliament Act on Spatial Planning).

(i) With respect to paragraph 9

Environmental licences

With regard to the environmental licensing procedures, it has been laid down in Article 35, 5° VLAREM I and Art.36, 5° VLAREM I respectively that the final decision must be made known to the public through posting within ten calendar days from the date of the decision by the Board of Mayor and Aldermen, or from the date of receipt of the decision by the provincial executive. Both Articles refer to Chapter IX of VLAREM I. This includes, among other things, Art. 31 which describes what information must be made publicly known. Thus, not only the decision taken must be made known, but also the name of the service of the municipal authority where the decision can be perused and where an oral explanation can also be asked. This notification is also provided for the appeal procedure in the framework of an environmental licence application (Art. 50 and 52 VLAREM I).

Town planning licences

(1)

Art. 52, § 1 of the Co-ordination Flemish Parliament Act on Spatial Planning stipulates that notice must be given of the decision of the Board of Mayor and Aldermen to grant or refuse the licence of the applicant by registered letter within 75 days from the date of the receipt. The applicant can use the licence granted to him 25 days after the notice and must post a notice at the site saying that the licence has been granted. The appeal procedure in the framework of a town planning licence application must also be made publicly known (Art. 53, § 1 Co-ordination Flemish Parliament Act on Spatial Planning). In this case, notice will probably be given of the decision of the provincial executive to the applicant, the Board of Mayor and Aldermen and the authorised official within 60 days from the date of the appeal. During the further course of the procedure no notice by posting is provided by the applicant.

(2)

Within 75 days the Board of Mayor and Aldermen sends the decision on the application to the applicant by registered letter (Art. 113 Flemish Parliament Act on Spatial Planning). After that, the applicant is responsible for posting this decision at once on the site which the application relates to (Art. 113 Flemish Parliament Act on Spatial Planning). This notification is also provided for the appeal procedure in the framework of a town planning licence application (Art. 122 Flemish Parliament Act on Spatial Planning). In this case, the provincial town planning official will indeed send the decision on the appeal of the provincial executive within 75 days to the applicant by registered letter (Art. 122 Flemish Parliament Act on Spatial Planning). Finally, it is stipulated that in case the decision was made only after the applicant had sent a reminder, this decision must yet be posted at once by the applicant on the site which the application relates to (Art.124 Flemish Parliament Act on Spatial Planning). This notice obligation, however, does not apply when a decision of the government remains forthcoming. This is the case when the government has not taken a decision even after the reminder of the applicant. In this case the silence of the provincial executive is equated with a positive decision, which means that the applicant can start carrying out works or actions without further formalities.

(j) With respect to paragraph 10

Environmental licences

A modification of or addition to the licensing conditions is laid down in the regulations regarding environmental licences (Art. 21 Flemish Parliament Act on Environmental Licences, Art. 45 VLAREM I). Reasons must be stated for such a decision and it must be taken by the government that is competent in

the first instance, unless a higher authority has granted one or more of the running licences or has changed the licensing conditions thereof. In this case the higher authority is competent. This decision can be taken officially or at the request of the advisory government bodies, of the operator or of the people who may experience nuisance from it.

Town planning licences

Neither the Co-ordination Flemish Parliament Act (1), nor the Flemish Parliament Act on Spatial Planning (2) provide for the opportunity to reconsider or adjust the conditions for the implementation of an activity after the town planning licence has been granted.

(k) With respect to paragraph 11

This mainly concerns a federal competence: see federal report (www.belgium.be)

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

Answer:

(e) With respect to paragraph 5

Currently, the Flemish environmental legislation does not contain an overall regulation with regard to the encouragement of the contact between potential applicants and the public concerned. Taking into account the fact that in the Flemish Region the participation procedure is led by the authorities instead of the applicant himself, the question could be raised whether an implementation is either desirable or necessary. Although it can hardly be disputed that this work method has many advantages, it cannot be denied that, once it has been formalised, it will not simplify the procedure. Moreover, the added value seems to be rather limited compared to the current work method used in the Flemish Region.

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:

National defence is a federal competence.

Give relevant web site addresses, if available:

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:

I. APPLICABLE REGULATIONS WITH REGARD TO PARTICIPATION IN PLANS AND PROGRAMMES

The Flemish environmental policy contains a wide range of plans and programmes relating to the environment.

First of all, there is the co-ordinating environmental policy plan which is laid down by the Flemish Government and normally runs five years. Each year, an annual environmental programme is appended to

this which is linked to the annual budget cycle and is also submitted for advice to SERV and the MiNa-Council. A five-yearly environmental policy plan is also drawn up at the local level of provinces, cities and municipalities. The legal basis for this is the Flemish Parliament Act of 5 April 1995 on the general provisions regarding environmental policy (DABM).

Next to this, there are more detailed plans and programmes at sectoral, compartmental or thematical level. The plans laid down by Flemish Parliament Act are, among other things:

- The sectoral implementation plans resulting from the Flemish Parliament Act of 2 July 1981 on the prevention and management of waste, *B.S.*, 25.07.1981)
- The nature policy plan and the nature attainment plans resulting from the Flemish Parliament Act of 21 October 1997 on nature conservation and the natural environment, *B.S.*, 10.01.1998;
- The water policy plans resulting from the Flemish Parliament Act of 18 July 2003 on Integrated Water Policy, *B.S.*, 14.11.2003, *err. B.S.*, 05.12.2003 (for a more detailed explanation, see below point IV).

Apart from these instruments there also exists a wide range of regional plans and programmes, such as emission reduction plans, decontamination plans, For any of these instruments the government seeks the participation of at least the target groups and other actors that are directly involved.

Title 4 of the DABM (environmental impact reporting – Art. 4.2.4) also contains a possibility to participate in the notification stage of a strategic environmental impact reporting (strategic EIR). This (indirect) execution of the Aarhus requirement has – theoretically speaking – a larger scope because the strategic EIR is also aimed at plans and programmes other than those relating to the environment. The field of application of the strategic EIR, however, has currently not yet been actually delimited.

II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2

See earlier comments to Art. 4 of the Aarhus Convention.

The Flemish government maintains an extensive advisory and consultative network which is systematically involved in policy developments and through which the voice of a considerable number of stakeholders is heard. The regulation provides an adequate and balanced composition of the advisory and consultative bodies. When a plan, programme or policy development has been made subject of a public inquiry, there are no restrictions for the public which is authorised to participate. Therefore, a formal ‘indication’ of such a public is unnecessary.

III. APPLICATION OF NON-DISCRIMINATION REQUIREMENT

See earlier comments to Art. 4 of the Aarhus Convention.

IV. IMPLEMENTATION OF ART. 7 OF THE AARHUS CONVENTION

The afore-mentioned plans and programmes that have been laid down by Flemish Parliament Act contain detailed provisions with regard to participation. By way of example regarding the provisions on participation, detailed information is given on the plans within the framework of the integrated water policy at the end of this section.

For the sectoral implementation plans regarding waste policy there exists a strongly established practice of involving other authorities and actors (mainly sectors involved in the waste chain, but other organisations as well).

Directive 2003/35/EC of the European Parliament and of the Council has encouraged the Flemish government to screen the participation provisions of the various plans and programmes with an eye to improving them. The operation of implementation-oriented plans, programmes and some projects often provides for the establishment of an advisory body where the terms for implementation can be discussed between the government and the different stakeholding sectors. In the current reorganisation of the Flemish public administration a limited screening is taking place of the operation of these bodies with a

view to further optimising them.

Regional environmental planning

When drawing up the regional environmental policy plan, the possibility has been provided for the public to participate (Art. 2.1.9 DABM). After a few intermediate stages, the draft plan is made available for perusal by the public in the municipalities for sixty days. During this period anyone can submit written remarks to the Board of Mayor and Aldermen. In addition at least one information and participation meeting is organised during this period per province. In this way, reasonable periods are provided which, in addition, take place at a sufficiently early stage in the procedure, which leaves all options open. The Flemish Government informs the population about this through publications in the press and through communications on radio and television (Art. 2.1.9 DABM). Consequently, this all takes place in an open and honest framework, as anyone who wishes so, can be informed of what is going on.

The Flemish Government gains the necessary remarks and advisory opinions and lays down the plan by a Decree for which reasons are stated. For the second draft the administration draws up a 'consideration document' explaining how the remarks of the people who participated were taken into account. This information is also sent to the Flemish Government when the plan enters the final stage of the political decision-making process (Art. 2.1.10 DABM). The plan is published both on paper and electronically. In addition the plan is announced by extract in the *Belgian Official Gazette* and it is made available for perusal with the provincial and municipal authorities (Art.2.1.10 DABM).

Spatial planning

The above mentioned forms of participation within the framework of the regional environmental planning can also be found within the framework of the regional spatial planning:

- The regional spatial structure plans and spatial implementation plans are subject to a public inquiry (Art. 20 and 42 Flemish Parliament Act on Spatial Planning), with: extensive announcement through posting, *Belgian Official Gazette*, (news)papers and radio and television; ample provision of information with regard to the plans; wide range of opportunities to formulate remarks and objections;
- The regional spatial structure plans are subject in each province to at least one information and participation meeting (Art. 20 Flemish Parliament Act on Spatial Planning).

The final definition of the regional spatial structure plans and spatial implementation plans is announced by extract in the *Belgian Official Gazette* and a copy of the plans, advisory opinions and Decrees containing the final definition is sent to the provinces and municipalities where they can be perused (Art. 21 and 43 Flemish Parliament Act on Spatial Planning).

For the determination of the provincial and municipal environmental planning and spatial policy there are the same participation opportunities as for the definition of the regional plans.

Integrated water policy.

The Flemish Parliament Act of 18 July 2003 on Integrated Water Policy attaches much importance to citizen participation in the water policy to be conducted. This reveals itself in two ways. First of all, Art. 6, 8° of the Flemish Parliament Act on Integrated Water Policy – and this is a first in Flemish environmental regulations – explicitly raises the so-called *participation principle* to an environmental principle. On the basis of this principle, all Flemish public administrations, services and agencies carrying responsibility with regard to integrated water policy must allow the citizens to participate – *at an early stage, in time and in an efficient way* – in the preparation, definition, implementation, follow-up and evaluation of the integrated water policy. It is important to mention in this respect that on the one hand the participation principle originates from and refers to the Aarhus Convention (see the Explanatory Memorandum to the draft Flemish Parliament Act on Integrated Water Policy, *Parl. St.*, Flemish Parliament, 2002-2003, no. 1730/1, page 21), and that it contains on the other hand an imperative obligation for all bodies to actively involve the citizens, not only in the preparation and definition of the integrated water policy (through water management planning), but also in the concrete implementation thereof in the field.

Secondly, the Flemish Parliament Act on Integrated Water Policy develops a detailed participation

arrangement at each level of the water management planning. Apart from cross-border catchment basin management plans, basin and sub-basin management plans will be drawn up in Flanders as well. For the first two plan levels mentioned (catchment basin and basin) the Flemish Parliament Act has provided ample opportunities for public participation that can be summarised in three consecutive steps: (1) consultation of the population and of the social target groups; (2) information and participation; (3) procedure after the public inquiry has ended. For the lowest level, namely that of the sub-basins, no separate participation regulation has been provided, however, as the Flemish Parliament believed this would lead to an abundance of participation procedures. That is why the Flemish Parliament Act on Integrated Water Policy explicitly stipulated that the sub-basin management plans will be appended to the basin management plans (Art. 43, second paragraph) of which they are an integrated part (Art. 46, § 6, third paragraph).

(1) Consultation of the population and of the social target groups

The measures regarding information and consultation of the public imposed by the Flemish Parliament Act on Integrated Water Policy are partially based on the procedure laid down by the Flemish Parliament Act on the general provisions regarding environmental policy for the regional environmental policy plan. In order to allow the public to be consulted and participate actively, the draft water management plans, among other things, must be available for perusal for some time with municipal authorities. This period varies between 180 calendar days (six months) for the catchment basin management plans and 60 calendar days (two months) for the (sub-) basin management plans. During this period anyone can submit written remarks to the municipal authority with regard to the documents available for perusal (Art. 37, § 2 and 47, § 1, first paragraph). At the same time, the authorities that drew up the draft plans present these drafts to a number of institutional social target groups (MiNa-Council, SERV, basin councils, district water boards) for advice. These are given ample time to study these drafts and give advice on them (Art. 37, § 3 and 47, § 1, second and third paragraphs). The fact that the draft plans are available for perusal and that one or more information meetings are organised is announced on a large scale through communications in the written press, on radio and television and through electronic carriers. This announcement mentions at least: the starting and closing date of the public inquiry, the site where documents can be perused, the authorities to whom written remarks can be submitted, and the place and date of the information meeting (Art. 37, § 5 and 47, § 3).

However important citizen participation is, it is best to avoid an excessive inquiry of the population and interest groups. That is why the Flemish Parliament Act wants to aim as much as possible at linking the formal procedures for perusal of and participation in catchment basin management plans and those of the basin management plans in time. This intention has been legally laid down in Art. 47, § 2. The Article formulates the possibility to make the drafts of (sub-) basin management plans available for perusal to the public together with the documents for drawing up the catchment basin management plans. If there is one joint participation procedure, the period for perusal of the draft of (sub-) basin management plans of sixty days is extended to 180 days (or six months). The period of thirty days during which the basin authorities are to organise an information and consultation meeting is then extended to ninety days (or three months).

(2) Information and participation

The authorities in charge will organise at least one information and participation meeting for the draft of catchment basin and (sub-) basin management plans. These information and participation meetings must take place after the authority concerned has announced that the plans will be made available for perusal and a great deal of time before the set closing date of the public inquiry (Art. 37, § 6 and 47, § 4). In this way there is still sufficient time to submit written remarks or objections.

(3) Procedure after the public inquiry has ended

After the public inquiry has ended, the authorities forward all written remarks which they received to the authorities responsible for drawing up the water management plans (namely the Co-ordination Commission on Integrated Water Policy, basin secretariats). These authorities examine all remarks and advisory opinions they receive, harmonise the various water management plans, and draw up a final draft plan which they submit to the Flemish Government for approval. When the Flemish Government has defined the final draft of the water management plan, it informs all authorities concerned of this

(municipalities, provinces ...). Finally, the approved water management plans are published by extract in the *Belgian Official Gazette* and they are made available for perusal with the provinces, municipalities, basin secretariats and district water boards concerned (Art. 37, §§ 7 and 8, Art. 38, Art. 47, §§ 5, 6 and 7 and Art. 48).

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

Answer:

The environmental policy plan, the water policy plan, and the waste plan are examples of instruments that are referred to as a “plan”, but that hold an overall policy vision covering several years. In that sense these examples could just as well be regarded as “policy”(instruments).

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

Answer:

1.

The description “relating to the environment” does not ensure a sufficient or sound definition of the type of “plans and programmes” to which the provisions of the Convention apply. That is why the Flemish Government has opted to consider the whole of participation regulations of the plans and programmes coming under the Environment and Nature policy domain in the light of the Aarhus Convention. In a first stage it has been found that there are many participation regulations, but that only a few of them have been the object of policy evaluation research. As a result, it cannot be assessed with certainty for each regulation whether or not it is sufficiently effective and efficient.

In order to increase the basis for and quality of plans, the public and private actors concerned are starting to co-operate more and more with other actors involved. It indeed seems generally more difficult to organise participation successfully when:

- participation takes place at a late stage (when the citizen has the impression that everything has already been decided anyway);
- there is a huge ‘mental’ distance between the actors (for instance, higher authority with individual citizen).

In the case of strongly implementation-oriented “plans and programmes” various forms of ‘interactive policy’ are – in addition to formal regulations - increasingly experimented with. This is due to the fact that sometimes regulatory provided participation provisions are insufficient to reach local citizens and other parties involved to a sufficient extent in the field, for instance in the case of a development project.

2.

In the case of the strategic environmental impact reporting problems sometimes arise with regard to the procedural harmonisation of the participation requirement and possibilities in the environmental impact reporting procedure and the appropriate procedure for drawing up the plan.

3.

There are two remarks with regard to the participation regulation in the Flemish Parliament Act on Integrated Water Policy.

At legal level, it is unclear how the Flemish Government will deal with the formulated remarks or objections. The Flemish Parliament Act on Integrated Water Policy does not give any ruling on this matter. However, with regard to the catchment basin management plans, the Flemish Parliament Act stipulates that the Co-ordination Commission on Integrated Water Policy will examine the submitted remarks and advisory opinions (Art. 37, § 8). For the (sub-) basin management plans, on the other hand, the Flemish Parliament Act merely stipulates that the basin secretariat will collect and co-ordinate the

remarks submitted during the public inquiry (Art. 47, § 6, first paragraph), which does not exactly mean that it will actually examine them. This is not in keeping with the obligation resulting from Art. 6, paragraph 8 of the Aarhus Convention on the basis of which the government must take the outcome of the participation into due account when issuing an environmental decree.

The second remark has to do with the drawing up of the basin progress reports. Each year, a basin progress report will have to be drawn up for each catchment basin. This report will have to indicate, among other things, to what degree the government has already implemented the basin management plans. These progress reports are not subject as such to a wide consultation by the public, because they are rather of an operational nature. Prior to their final approval, however, they will be submitted for advice to the basin council which will be composed of representatives of the relevant social interest groups. Nevertheless, the question arises as to whether the consultation of the basin council will suffice in itself as a form of participation in the light of the Aarhus Convention.

Provide further information on the practical application of the provisions on public participation in decisions on [specific activities] in article 7.(plans and programmes?)

Answer:

Give relevant web site addresses, if available:

www.milieubeleidsplan.be

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:

I. APPLICABLE REGULATION WITH REGARD TO PARTICIPATION IN DRAFT REGULATIONS

The most important regulations with regard to participation in draft regulation by the advisory system is laid down in the following Flemish Parliament Acts:

- Flemish Parliament Act of 27 June 1985 on Flanders' Socio-Economic Council, *B.S.*, 03.09.1985
- Flemish Parliament Act of 29 April 1991 establishing the Environment and Nature Council of Flanders and laying down the general rules for the recognition and subsidisation of environmental and nature associations, *B.S.*, 31.05.1991
- Flemish Parliament Act of 30 April 2004 supplementing the Flemish Parliament Act of 5 April 1995 on the general provisions regarding environmental policy with a title "Strategic advisory council" and amending various other Flemish Parliament Acts, *B.S.*, 08.06.2004)

II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2

See earlier comments to Art. 4 of the Aarhus Convention.

III. APPLICATION OF NON-DISCRIMINATION REQUIREMENT

See earlier comments to Art. 4 of the Aarhus Convention.

IV. IMPLEMENTATION OF ART. 8 OF THE AARHUS CONVENTION

Consultations on draft regulations mainly take place through the organised advisory system of the Flemish Parliament and the Flemish Government. Draft Flemish Parliament Acts and Decrees are submitted for advice to the MiNa-Council, the SERV, and the VLACORO (Flemish Commission for Spatial Planning). This Council is mainly composed of social groups and experts (for instance from the academic world). The individual citizen is not directly involved in this. However, in case of important issues the advisory councils make efforts to gain information – to support their advisory opinions - about what is living outside their own environment, for instance by organising hearings.

In its intention to practice regulatory management, the Flemish Government has decided to set up a system of 'regulatory impact analysis' (RIA), together with a 'regulatory agenda' indicating draft regulations. The idea is to have external consultations on policy intentions regarding regulations take place more systematically and more easily.

There exists a similar regulation at provincial and municipal level: participation is only possible through the provincial or municipal advisory councils for environment and nature respectively and through the provincial or municipal commissions for spatial planning respectively during the preparation of implementing regulations and/or generally applicable legally binding normative instruments.

Apart from giving advice, consultations are often also held between the environmental authorities and the target groups. Currently, a 'target group policy' project is running to optimise the involvement of target groups in policy, to make it more transparent and efficient among other things. Specific instruments of environmental regulations contain an explicit system of participation and involvement, such as for instance the Flemish Parliament Act of 15 June 1994 on environmental policy agreements, *B.S.*, 08.07.1994. This system guarantees that environmental policy agreements are also subject to different external tests.

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:

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:

I. APPLICABLE REGULATIONS WITH REGARD TO ACCESS TO JUSTICE

- Flemish Parliament Act of 26 March 2004 concerning open government, B.S., 01.07.2004, err. B.S., 18.08.2004.

- Flemish Government Decree of 4 June 2004 establishing the appeal body regarding open government, B.S., 01.07.2004.
- Flemish Parliament Act of 5 April 1995 on the general provisions regarding environmental policy, B.S., 03.06.1995 (DABM), Title IV: environmental impact and safety reporting, Art. 4.6.4 (EIR/VR: Reconsideration possibilities)
- Flemish Parliament Act of 28 June 1985 on environmental licences, B.S., 17 September 1985
- judicial possibilities: see federal report (www.belgium.be)

II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2

See earlier comments to Art. 4 of the Aarhus Convention.

III. APPLICATION OF NON-DISCRIMINATION REQUIREMENT

See earlier comments to Art. 4 of the Aarhus Convention.

IV. IMPLEMENTATION OF ART. 9 OF THE AARHUS CONVENTION

(a) With respect to paragraph 1

(i) + (ii)

The applicant may lodge an appeal against any decision made by a public authority with regard to access to environmental information, either after the expiry of the term within which the decision had to be taken, or in the event of the decision being carried out reluctantly (Art. 22 DOB). This appeal must be lodged with an administrative appeal body composed of officials appointed by the Flemish Government. This appeal is free of charge and must be submitted in writing, by fax or e-mail within thirty calendar days after the sending of the decision or after expiry of the implementation period.

The autonomy of this appeal body is guaranteed by law (Art. 26 DOB): *“The appeal body carries out its duties fully independently and neutrally. It is not allowed to receive instructions when hearing appeals. Its members may not be evaluated and no disciplinary proceedings may be brought against them on the basis of the reasons constituting the grounds for their decisions within the framework of the tasks assigned to them in this Flemish Parliament Act”*.

The appeal procedure is free of charge.

An appeal for annulment can be lodged with the Council of State against the decision of the appeal body within sixty days. This is a federal competence. See federal report. (www.belgium.be)

(iii)

The decisions of the appeal body to allow an appeal are binding for the authority they are meant for. Art. 24, § 3 DOB obliges the authority that has the information in its possession or has deposited it in an archive, to implement the decision to allow the appeal as soon as possible and at the latest within forty calendar days. The period for the implementation may be extended to fifty-five calendar days. If the authority has not implemented the decision of the appeal body in due time, then the appeal body will carry out the decision itself as soon as possible. The appeal body may instruct an official to proceed on-site and carry out the decision himself. This can only be done after a warning in writing. The implementation is performed at the personal expense of the person responsible for the decision of the appeal body not being carried out.

Council of State: federal competence

(b) With respect to paragraph 2

Administrative appeal with regard to provisions of Article 6

As far as the environmental licence and town planning licence is concerned, there exists an administrative appeal procedure in first instance in accordance with the Flemish Parliament Act on Environmental

Licences and the Flemish Parliament Act on Spatial Planning. Next to this, there are judicial appeal procedures available.

In case of environmental licences, an appeal can be lodged with the provincial executive against decisions in first instance of the Board of Mayor and Aldermen and with the Flemish Government (Minister responsible for Environment) against decisions in first instance of the provincial executive (Art. 23 Flemish Parliament Act on Environmental Licences). This appeal can be lodged by the applicant, by the governor, by the advisory public authorities, by the Board of Mayor and Aldermen (first category), and by natural persons and legal persons, who may experience direct nuisance as a result of the establishment and the operation, as well as by any legal person that has set himself the statutory objective of protecting the environment, has had legal personality for at least five years and whose statutes describe the territory to where his activities extend (Art. 24, § 1 Flemish Parliament Act on Environmental Licences).

As for the town planning licence, a distinction must be made between the licensing system as laid down in the Co-ordination Flemish Parliament Act on Spatial Planning (1) and the licensing system as laid down in the Flemish Parliament Act on Spatial Planning (2) (see above under the question on Art. 6, paragraph 1):

(1) Only the applicant of the licence can lodge an appeal with the provincial executive against any decision of the Board of Mayor and Aldermen, as well as against a tacit refusal (Art. 53, §1 Co-ordination Flemish Parliament Act on Spatial Planning). The Board of Mayor and Aldermen and the authorised official can lodge an appeal with the Flemish Government against the decision of the provincial executive. The applicant can only do so if the provincial executive has failed to make a decision in time (Art. 53, § 2 Co-ordination Flemish Parliament Act on Spatial Planning).

(2) The applicant of the licence can lodge an appeal with the provincial executive against any decision of the Board of Mayor and Aldermen, as well as against a tacit refusal (Art. 115 Flemish Parliament Act on Spatial Planning). If the application was not subject to a public inquiry, any natural or legal person who may experience direct nuisance from the licensed activities, can lodge an appeal against a licence granted by the Board of Mayor and Aldermen; if, on the other hand, the application was subject to a public inquiry, the possibility of appeal is restricted to those who submitted an objection during the public inquiry (Art. 116 Flemish Parliament Act on Spatial Planning).

If the above mentioned administrative appeal procedures are exhausted, there are still possibilities for judicial appeal. This concerns a federal competence (see federal report) (www.belgium.be)

(c) With respect to paragraph 3

Challenging, through administrative or judicial procedures, acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment is possible via various administrative appeal possibilities:

- submission of a complaint with an ombuds service;
- voluntary appeal with the authority that took the decision;
- hierarchical appeal with the higher authority;
- organised appeal provided by Act or Flemish Parliament Act;
- appeal with the supervisory authority

and via various judicial appeal possibilities when the above mentioned administrative appeal possibilities are exhausted. This concerns a federal competence (see federal report) (www.belgium.be)

(d): With respect to paragraph 4

(i) For the appeal body with regard to open government

If the appeal body allows the appeal, it permits the making public (Art. 24, § 2 DOB). The public authority the appeal has been lodged with implements the decision to allow the appeal as soon as possible and at the latest within forty calendar days (55 calendar days when it has been decided to extend the period). If the public authority has not implemented the decision within this period,

then the appeal body will carry out the decision itself as soon as possible. For most authorities, the appeal body may order an official to proceed on-site and carry out the decision himself, after a warning in writing (Art. 24, § 3 DOB).

In general

Whether the above mentioned administrative and judicial review procedures provide “adequate” and “effective” remedies is the subject of much discussion. Nevertheless, a wide range of remedies is available, depending on the case: restoring the original state, damages, imprisonment, a fine, an order to cease a certain act or activity, the execution of adaptation works, ordering the claimant to carry out the sentence himself at the expense of the defendant, imposing a penalty per time unit during which the sentence was not complied with or for every violation, etc.

(ii) For the appeal body with regard to open government

The appeal body informs the applicant of its decision in writing, by fax or by e-mail within a period of thirty calendar days. If the information requested is difficult to collect in a timely fashion, or if the verification of the application as regards the grounds for exception are difficult to complete in time, then the period can be extended to forty-five calendar days (Art. 24, § 1 DOB).

The decisions of the appeal body are public (Art. 10, in fine of the Flemish Government Decree establishing the appeal body with regard to open government).

In general

Whether or not the procedures are “fair”, “fast” and “not disproportionately expensive”, is also the subject of much discussion. Normally, the decisions within the framework of the review procedures mentioned above are in writing, public and accessible.

See also federal report: (www.belgium.be)

(e) With respect to paragraph 5

Any decision or administrative act of individual significance and intended to have legal consequences for citizens or another public authority, must also mention of the possibilities and modalities of appeal. Otherwise, the decision has not been brought to notice in a valid way and the term for the submission of the appeal does not commence. (Art. 35 DOB)

The Flemish Parliament Act on Environmental Licences and the Flemish Parliament Act on Spatial Planning (and their respective implementing provisions) stipulate that in case of decisions on applications for environmental licences and town planning licences, the possibilities of appeal - if there are any- must be mentioned. Similar provisions were included in other sectoral environmental legislation. In this way, any legal subject who is faced with such government decisions, is informed about the possibilities of appeal, in accordance with the guarantee required by Article 9, paragraph 5 of the Aarhus Convention. See also federal report: (www.belgium.be)

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

Answer:

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:

Give relevant web site addresses, if available:

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:

See federal report: (www.belgium.be)