Access to justice in environmental matters

Belgia

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Access to justice at Member State level

1.1. Legal order – sources of environmental law

Main elements of the fact sheet:

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

1.1.1. A Complex Federal State

Belgium is a federal state (article 1 of the Constitution). It is a federal state with a somewhat complex character, because it is composed at the same time of three communities (the Flemish-, French- and German-speaking Communities) and three regions (the Flemish, Walloon and Brussels-Capital Regions), which partly overlap. The powers of the state are indeed distributed over the Federal State, on the one hand, and the regions and communities, on the other hand. It is a basic characteristic of the Belgian federal system that powers are *allocated* to the regions and communities (by the Constitution and the related institutional legislation), while the Federal State has *reserved* powers assigned to the legislator by the Constitution, and *residual powers*. The competencies of the communities are in the areas of culture, education, social welfare and other so called “person-related matters”, while the competencies of the regions are in fields such as *land use planning*, *environmental protection*, housing, agriculture, economic development, energy, local government, employment, mobility and the related infrastructure. A particular feature is that the German-speaking Community has taken over some competencies of the Walloon Region in the German-speaking part of Belgium, including *land use planning* and *the conservation of landscapes and monuments*. All matters that have not been entrusted to the regions or communities continue to fall under federal competence, even if this is not explicitly stated in law. The Federal State has some competencies in the field of environmental protection and has an important role to play in the enforcement of legislation through its competence for policing and justice. One other important basic characteristic of the Belgian constitutional system is that the regions and communities in principle have *exclusive powers* which are hierarchically not subordinated to those of the federal legislator. The federal government cannot intervene in matters entrusted to the regions and communities. They are autonomous in these fields. However, certain exceptions apply. As regards environmental matters, the regions are particularly important. In fact, like the communities, they have their own legislative power and their own executive power. The legislative power is exercised respectively by the Flemish, the Brussels-Capital and the Walloon Parliaments. These institutions are directly elected every five years, together with the elections for the European Parliament. The Flemish, Walloon and Brussels-Capital Governments are at the head of the respective regional executive powers. Legislative power on the federal level is exercised by Acts of Parliament (called *loi*/*wet*), while executive power is exercised by means of Royal Decrees (*arrêtés royaux*/*koninklijke besluiten*). Regional and community competencies are exercised through Decrees (*décrets*/*decreten*), except in the Brussels-Capital Region, where they are called Ordinances (*ordonnances*/*ordonnanties*).

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

1.1.2 The Constitution

In the Belgian Constitution there is reference to environmental protection in two different provisions. Article 7*bis*, the single provision of Title I*bis* “General Policy objectives of Federal Belgium, the Communities and the Regions” of the Belgian Constitution, introduced by the Constitutional Amendment of 25 April 2007, states: “*In the exercise of their respective competencies the Federal State, the Communities and the Regions foster the objectives of sustainable development in their social, economic and environmental aspects, taking into account the solidarity between generations*”. This provision is the only provision of the Constitution that sets policy objectives for the different authorities. It calls for integration of sustainable development concerns in the different policies of the authorities concerned. The fundamental rights of the Belgians are established in Title II of the Constitution. One of the provisions of that Title deals with social, economic and cultural rights. Article 23 of the Constitution, introduced by the Constitutional Amendment of 31 January 1994, provides: “*Everyone has the right to lead a life in conformity with human dignity. To this end, the laws, decrees […] guarantee, taking into account corresponding obligations, economic, social and cultural rights, and determine the conditions for exercising them. These rights include notably: […] 4° the right to enjoy the protection of a healthy environment; [...]*”. The Constitution also recognises everyone’s right to consult any administrative document and to obtain a copy, except in relation to the cases and conditions stipulated by law (Art. 32).

Article 23 of the Constitution has no direct effect. It cannot be invoked by private persons in regard to authorities or third parties. Art. 23 offers a framework within which legislators can establish more specific rights for individuals. Article 23 of the Constitution includes, however, a *standstill* obligation, also known as the principle of non-regression. The authorities may not reduce the level of environmental protection guaranteed by the applicable environmental laws. The standstill obligation does not prohibit any relaxation of environmental laws, but opposes significant reductions in the level of protection, unless these can be justified by reason of public interest. When interpreting legal norms, judges should choose the interpretation which is most in accordance with the right to enjoy the protection of a healthy environment (principles of "constitutional interpretation" and "*in dubio pro natura*"). In case of conflicting interests, judges must take into account the constitutional status of the right to the protection of a healthy environment. The Constitutional Court can directly examine laws for

compatibility with article 23 of the Constitution. The Council of State can test government decisions against article 23 of the Constitution. In accordance with the Aarhus Convention, it is believed that article 23 of the Constitution contains not only substantive rights, but also procedural rights on access to information, on public participation in decision-making and on access to justice in environmental matters.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

1.1.3 *Environmental legislation*

The main environmental legislation on the **federal level** consists of:

Federal Act of 12 January 1993 *on a right of action for the protection of the environment*

Federal Act of 15 April 1994 *on the protection of the population and the environment against the dangers of ionising radiation and concerning the Federal Agency for Nuclear Control*

Federal Act of 21 December 1998 *concerning product standards for the promotion of sustainable production and consumption patterns and for the protection of the environment, public health and employees*

Federal Act of 20 January 1999 *on the protection of the marine environment and the marine spatial planning in the marine areas under Belgian jurisdiction*

Federal Act of 13 February 2006 *concerning strategic environment assessment of certain plans and programmes and public participation concerning plans and programmes related to the environment*

Federal Act of 5 August 2006 *concerning public access to environmental information*

In the **Flemish Region**, the main environmental legislation consists of:

Forest Decree of 13 June 1990

Decree of 5 April 1995 *concerning general provisions of environmental policy* (with provisions concerning objectives and principles of environmental policy, environmental policy planning, environmental quality standards, corporate environmental management, environmental impact assessment and safety reporting, the operation of establishments and activities and recognised persons, environmental covenants, climate change, environmental agencies, advisory boards, environmental damage and enforcement)

Decree of 21 October 1997 *concerning nature conservation and the natural environment*

Decree of 18 July 2003 *on integrated water management (coordinated)*

Decree of 27 October 2006 *concerning soil remediation and protection*

Decree of 22 December 2006 *concerning the protection of waters against pollution by nitrates from agricultural sources*

Flemish Land Use Code of 15 May 2009

Decree of 23 December 2011 *concerning the sustainable management of material cycles and waste*

Decree of 25 April 2014 *on the integrated environmental permit*

Decree of 27 November 2015 *on low emission zones*

In the **Walloon Region**, the main environmental legislation consists of:

Decree of 27 June 1996 *on waste*

Decree of 11 March 1999 on *environmental licences*

Decree of 10 November 2004 *establishing a system of negotiable emission rights for greenhouse gases, setting up a Walloon Kyoto Fund and on the flexible mechanisms of the Kyoto Fund*

Decree of 27 May 2004 introducing *Volume I of the Walloon Environmental Code*

Decree of 3 March 2005, introducing *Volume II of the Walloon Environmental Code*

Decree of 15 July 2008 containing the *Forest Code*

Decree of 20 February 2014 *on climate policy*

Decree of 1 March 2018 *on soil protection and soil remediation*

Territorial Development Code of 20 July and 22 December 2016

Decree of 17 January 2019 *combatting air pollution from cars*

In the **Brussels-Capital Region**, the main environmental legislation consists of:

Ordinance of 5 June 1997 *concerning environmental permits*

Code on inspections, prevention, reporting and sanctioning of environmental offences and on environmental liability (25 March 1999)

Ordinance of 17 July 1997 *on combatting noise pollution in an urban environment*

Ordinance of 18 March 2004 *on the environmental assessment of plans and programmes*

Brussels Land Use Code of 9 April 2004

Ordinance of 29 April 2004 *on environmental covenants*

Ordinance of 20 October 2006 *establishing a framework for water policy*

Ordinance of 1 March 2007 *concerning the protection of the environment against potential negative effects of non-ionising radiation*

Ordinance of 5 March 2009 *on the management and remediation of polluted soils*

Ordinance of 1 March 2012 *on nature conservation*

Ordinance of 14 June 2012 *on waste management*

Ordinance of 2 May 2013 containing the *Brussels Code on Air, Climate and Energy*

Common Ordinance and Decree of 16 May 2019 of the Brussels-Capital Region, the Joint Community Commission and the French Community Commission *on the publicity of the administration in the Brussels institutions*

Those Federal Acts and Regional Decrees and Ordinances have been complemented with a large number of executive orders in the form of Royal Decrees or Executive Orders of the respective regional governments.

Some matters are regulated in a uniform way for the whole country by **Co-operation Agreement**. That is the case with:

Co-operation Agreement of 25 April 1997 between the Federal State and the Regions *concerning administrative and scientific coordination in the field of Biosafety*

Co-operation Agreement of 14 November 2002 between the Federal State and the Regions *concerning the national climate plan*

Co-operation Agreement of 4 November 2008 between the Regions concerning *the prevention and management of packaging waste*

Co-operation Agreement of 16 February 2016 between the Federal State and the Regions *on the control of major-accident hazards involving dangerous substances*

Co-operation Agreement of 12 February 2018 *concerning the intra-Belgian effort-sharing of climate and energy objectives for the period 2013-2020*

4) Examples of national case-law, role of the Supreme Court in environmental cases

1.1. 4. Jurisprudence

In general, we can say that through amending existing (Art. 17 of the Judicial Code Amended by the Federal Act of 21 December 2018) and introducing new legislation and the evolution of the case law of the courts, the Belgian legal system is now in line with the Aarhus Convention insofar as procedural rights of natural and legal persons and NGOs are concerned. We can refer in this respect e.g. to the case law of the Constitutional Court (Constitutional Court, N° 7 /2016, 21 January 2016 *Vogelbescherming Vlaanderen*) and of the Court of Cassation, the supreme court, (Cass. 11 June 2013, *PP and PSLV v. Gewestelijk Stedenbouwkundig Inspecteur and vzw Milieusteuntpunt Huldenberg*, Nr. P.12.1389.N) on the right of environmental NGOs to claim moral damages for harm to the environment and to take action as a civil party for reparation in criminal proceedings, or to the case law of the Council of State, the supreme administrative court, on access to justice and interim relief (e.g. Council of State, N° 193.593, 28 May 2009, *VZW Milieufront Omer Wattez*; Council of State, N° 221.784, 18 December 2012, *BVBA Immo Dominique)*.

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

1.1.5. International law before the Courts

International law can be relied upon before the courts insofar as its provisions have so-called direct effect, i.e. they are ratified by Belgium and are sufficiently clear and unconditional. Before the Constitutional Court it is, however, not necessary that the provisions of international law have direct effect. Parties can indeed rely on them *in conjunction* with constitutional and other institutional law provisions. In practice, parties are relying very often on e.g. the Aarhus Convention, especially those provisions that have not been transposed in EU or domestic law.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Constitutional Court

The *Constitutional Court* has the exclusive power to review federal acts, decrees or ordinances for compliance with the rules that determine the respective powers of the Federal State, the communities and the regions. These power-defining rules are set forth in the Constitution as well as in federal acts (usually passed by a special majority) that are enacted with a view to institutional reform in federal Belgium. The Constitutional Court is also competent to decide on any violation by a federal act, decree or ordinance of the fundamental rights and freedoms guaranteed in Title II of the Constitution (Articles 8 to 32), of Article 170 (legality principle in tax-related matters), Article 172 (equality in tax-related matters), Article 191 (protection of foreigners) and Article 143, §1 (principle of "federal loyalty"). The Constitutional Court combines its constitutional review with the review of compliance with international and European Law, including environmental law. The Constitutional Court can annul or suspend federal acts, decrees or ordinances (or part thereof). In the event that the lower courts have doubts about the conformity of federal acts, decrees or ordinances with the above-mentioned articles of the Constitution, they must refer the case to the Constitutional Court for preliminary ruling. Of such cases, 7 to 9% concern environmental law in the broad sense.

General courts

Belgium is judicially organised on the basis of a territorial subdivision on four levels with a supreme court *(Court of Cassation*) for the whole country at the top, five major judicial areas, each within the jurisdiction of a Court of Appeal and a Labour Appeal Court (Antwerp, Brussels, Ghent, Liège and Mons), 12 districts (largely coinciding with the provincial borders) and 162 cantons (each with a Justice of the Peace Court). There are nine Labour Tribunals and nine Commercial Courts, each with local departments. There are 13 Courts of First Instance, each with local departments, and 15 Magistrates' Courts.

The *Court of Cassation* is the highest court of law and oversees the correct enforcement of the law by the courts and tribunals. The Court of Cassation does not examine the facts of the case referred to it, but rather whether the judgment complies with the law. Appeal to the Court of Cassation does not constitute a third instance. A lawsuit can only be brought before the Court of Cassation after it has already been adjudicated by the court hearing the main action and by the appeal court. When the Court of Cassation finds that a court has infringed the law, it will quash the verdict and refer the case to a court of law of the same level as the court that passed the unlawful verdict. That court will have to hear the case all over again.

The five Belgian *Courts of Appeal* and *Labour Appeal Courts* are the appeal bodies for the courts in the districts of their jurisdiction. A Court of Appeal has three divisions. There are the divisions for civil cases, which hear appeals against judgments delivered in the first instance by the civil divisions of the courts of first instance and the company courts. Then there are the criminal law divisions, which decide in criminal cases on appeals against sentences passed by the corresponding divisions of the courts of first instance. Finally, there are the family and juvenile divisions, which handle appeals against judgments of the family and juvenile judges at the court of first instance. The Courts of Appeal of Antwerp and Ghent have chambers specialising in environmental and town planning law and a specialised Attorney-General. The Labour Appeal Courts have jurisdiction in matters of social and labour law.

2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?

A *Court of First Instance* has three divisions. The civil divisions have jurisdiction in all cases that have not been exclusively assigned to other courts of law. These divisions also rule on appeals against judgments delivered by the Justices of the Peace and the Magistrates' Courts in civil matters. Divisions for criminal law (also called the penal court or *tribunal correctionnel*) decide on offences that have not been assigned to the Magistrates' Court or the Assize Court (criminal court). They also rule on appeals against sentences passed by the Magistrates' Courts in criminal cases. The juvenile divisions (or juvenile court) rule on protective measures towards minors or take repressive measures against juvenile offenders. The Court of First Instance has general and full jurisdiction. This means that it has power to rule on all matters that are not reserved for another court of law. So the Court of First Instance tries most environmental cases, in criminal matters as well as in civil matters. It is, however, not mandatory to install specialised environmental chambers as is the case for juvenile cases or tax-related matters. Only the Courts of First Instance of Antwerp (Antwerp department), West-Flanders (Kortrijk department), Liège (Huy department), Luxemburg (Arlon department) and Namur (Namur department) have formally installed a department specialised in and handling all the environmental cases of the district. The president of the Court of First Instance has special powers in urgent cases. He may decide in interim injunction proceedings on urgent matters. Judgments delivered by the Court of First Instance (except for cases that are already an appeal against a decision of a Justice of the Peace or a Magistrates' Court) are open to appeal before a Court of Appeal. The Industrial Tribunals and Company Courts have jurisdiction in cases of social and labour law and in conflicts between companies respectively.

Each canton has one *Justice of the Peace Court* (162 in total). This court stands closest to the citizens. A Justice of the Peace hears all cases where the value of the petition does not exceed 5,000.00 euro. Some cases of neighbourhood nuisances can be considered as environmental, dealing with issues such as noise, odour or distance of plantations. In addition, the Justice of the Peace has extensive powers in rent disputes, expropriations, easements, agricultural affairs and the mentally ill. Judgments delivered by a Justice of the Peace are open to appeal before the Court of First Instance or the Company Court, depending on the type of case. *Magistrates' Courts* decide on claims for compensation for damage suffered in road accidents. Magistrates' Courts also punish traffic offences and some offences against the Forest Code, the Rural Code, the River Fishery Code and the Railway Code. Judgments are open to appeal before the Court of First Instance.

Administrative Courts

The Council of State is the supreme administrative court. The Council of State is not part of the ordinary judiciary. It has two sections: the Legislation Section, which advises the legislator on new legislation, and the Administrative Jurisprudence Section, which rules as an administrative court. The

Administrative Jurisprudence Section protects citizens against unlawful administrative acts (individual legal acts and regulations). Any natural or legal person having an interest can bring a request for annulment before the Administrative Jurisprudence Section of the Council of State against irregular administrative acts that have caused them detriment. As the highest administrative court, the Council of State also acts as a cassation body against judgments of lower administrative courts. The rulings of the Council of State are not open to appeal. A request for suspension may be brought along with a request for annulment. The Council of State may suspend the challenged decision, provided that the grounds for annulment seem valid and there is urgency. Within the Administrative Jurisprudence Section of the Council of State there are two Dutch-speaking chambers and two French-speaking chambers specialising in environmental and town planning cases. The environmental cases and town and country planning cases account for around 25% of all cases.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

Specialised environmental administrative courts in the Flemish Region

The Flemish Region has two specialised environmental administrative courts: the Council for Permit Disputes (*Raad voor Vergunningsbetwistingen*) and the Enforcement College (*Handhavingscollege*). The Council for Permit Disputes was established in 2009 as an administrative court for permits in the area of town and country planning and, recently, for "integrated environmental permits" (the former town planning permit and environmental permit combined) and other related matters. The Council for Permit Disputes has taken over the competencies of the Council of State with regard to permits in the Flemish Region. The Council of State now acts as an appeal (cassation) body against judgments of the Council for Permit Disputes. The Council for Permit Disputes has competence for annulment and suspension of permits. The 'public concerned' can bring a request for annulment before the Council against illegal permits. Some administrations also have standing in front of the Council. A request for suspension may be brought along with the action for annulment. The Council can suspend the challenged decision if the grounds for annulment are found to be valid and if there is urgency. The Council for Permit Disputes has the power to decide on the suspension and annulment of permits. The Council also has the competence to impose an injunction on administrative authorities. In rare cases, and only if the administrative authority has circumscribed powers, the Council can make a decision instead of the administrative authority. The Council can also decide on mediation at the request of the parties.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion.

The Environmental Enforcement College was established in 2009 and was renamed the Enforcement College when the "integrated environmental permit" came into force. Infringements of environmental law are often sanctioned through administrative fines. These administrative fines can be challenged before the Enforcement College. The appeal has a suspensive effect. The Enforcement College can annul and substitute a decision of the government agency. The Council of State acts as an appeal (cassation) body against judgments of the Enforcement College.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

1.3.1. Administrative decision making

Permits are a very important tool in environmental policy. Traditionally in Belgium a distinction is made between the building permit, which is *inter alia* necessary for the construction of projects, including infrastructure projects and industrial installations, and the operating or environmental permit, which regulates the operation of installations that can cause environmental disturbances. In the Walloon Region, a "*permis unique*" (integrated permit) has been introduced. If a project needs both permits, they are integrated and delivered through a unified procedure, resulting in a building permit (without limitation in time) and an environmental permit with a term of validity of maximum 20 years (renewable) delivered by one authority. In the Brussels-Capital Region, measures have also been taken to co-ordinate building and environmental permits, but in a more lenient way than in the Walloon Region. In the case of a "mixed project", where the project requires an environmental permit for 1A or 1B class and a building permit, both applications are to be introduced at the same time, will be submitted to the opinions of the environmental and planning authorities and a public inquiry at the same time, and will result in two decisions taken by the authorities at the same time, resulting in a planning permission that is not limited in time and an environmental permit with a validity of maximum 15 years (renewable). In the Flemish Region, a new permitting system integrates the building and environmental permit in a new integrated permit, the "*Omgevingsvergunning*" or "Integrated Permit".

Environmental, building or integrated permits are delivered, generally after public consultation and expert opinions of relevant specialised environmental agencies, by political or administrative authorities in first instance on the local, provincial or, exceptionally, regional level, depending on the size of the project and the nature of the operator. Permit decisions must be formally reasoned. An administrative appeal with a higher political authority (on the provincial or regional level) is generally possible. However, in the Brussels-Capital Region there is a somewhat unusual situation. In that region, an appeal can be made against decisions taken in first instance by the Brussels Environmental Administration (the administration in charge of the environment for the Brussels-Capital Region) or by municipalities/towns before a specific organ, the "*Milieucollege – Collège d'environnemen*t" (Environmental Appeal Board or Environmental College), which is a kind of specialised Environmental Administrative Body presided over by a professional judge and composed of nine independent experts (environmental lawyers and scientists) proposed by the Brussels-Capital Parliament and appointed by the Brussels-Capital Government. They can review the decision of the Brussels Environmental Administration or the decision of a municipality/town (local level) in all aspects and thus grant a permit where it was refused in first instance, refuse it when it was granted in first instance, modify the conditions of the permit, etc. The Environmental Appeal Board can also review decisions to modify, withdraw, suspend or extend a permit. It can also take decisions on appeals on administrative fines/sanctions, accreditations and law enforcement measures relating to the management and remediation of polluted soil. The decision of the Environmental Appeal Board can in turn be appealed before the Regional Government, which can again fully review the decision.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

1.3.2. Administrative appeals

In administrative appeals, all aspects of the permit decision are reviewed, both from a legal and from an "opportunity" point of view. The decision shall replace the one taken at first instance, having regard to the same matters of fact and law. A full review of the case shall be carried out. This is called an "action for reversal" (*recours en réformation*). The appeal body is not restricted in its review by the arguments that have been introduced by the appellant; it exercises discretion. In general, administrative appeals can be introduced by the natural or legal person who applied for or holds the permit, by members of the "public concerned" in the sense of art. 2 (5) and 6 of the Aarhus Convention, including environmental NGOs, and by some representatives of competent authorities and advisory agencies. In the Walloon region, administrative appeals can be lodged "by any natural or legal person justifying an interest as well as to the technical official and the municipal college of the municipality in the territory in which the establishment is located". In the Brussels-Capital Region, the administrative appeal before the Environmental Appeal Board and the Government is open to the applicant, to any member of the public concerned, including environmental NGOs, and to other public bodies, such as the municipality, the Brussels Environmental Administration and the competent land use planning officer (*gemachtigde ambtenaar ruimtelijke ordening – Fonctionnaire délégué de l'urbanisme*).

As permits for operating nuclear installations are delivered by the King (the Federal Government), there is no administrative appeal available in such cases. The same holds true for permits delivered by the Federal Minister for the North Sea for activities in the Belgian marine areas.

3) Existence of special environmental courts, main role, competence

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references.

1.3.3. Administrative court appeals

Permit decisions and other administrative decisions (safety measures, some administrative sanctions, other types of authorisations or approval, etc.) that are final because they cannot be further appealed in the administrative track can be challenged in court. After exhaustion of the administrative appeals, permit decisions taken in the last instance by the administrative/political authorities can be appealed before the Council of State (within 60 days of notification of, or acquaintance with, the challenged administrative decision), which can review the legality of the decision, both from a procedural and from a substantive point of view. Only the final decision can be challenged before the Council of State (for instance, if an appeal before the Brussels-Capital Government can be lodged against a decision of the Environmental Appeal Board (Environmental College), only the decision of the Government may be annulled by the Council of State). Insofar as there are no other competent courts, any natural or legal person can bring an action for annulment and suspension before the Council of State against unlawful administrative acts that have caused them detriment. In the past, there were no administrative courts of first instance dealing with environment-related issues, so all these cases went directly to the Council of State.

This situation has partially evolved, but only in the Flemish Region. Since 1 September 2009, the regionally established Council for Permit Disputes has been responsible for dealing with disputes regarding building permits and, for the mean time, integrated permits in the Flemish Region instead of the Council of State. The Council for Permit Disputes is authorised to deal with appeals against explicit or implicit administrative decisions that are final (decisions taken on administrative appeal or that cannot be administratively appealed) on the granting or refusal of an integrated permit. The appeal must be lodged within 45 days of notification of, or acquaintance with, the challenged administrative decision. The Enforcement Court hears appeals against administrative fines imposed for breaches of environmental and planning law in the Flemish Region. The appeals can be introduced, within 30 days, by persons who have been fined. The judgments of both courts are subject to cassation appeal before the Council of State.

In the other regions, and in the areas not covered by those Courts, appeals against administrative decisions, such as permits, must be made directly to the Council of State. The same holds true for administrative decisions taken under federal legislation. Administrative fines for breaches of Walloon environmental legislation can be appealed, within 30 days, before the Magistrates' Court or the Penal Court, depending on the category of sanctions imposed.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

1.3.4. Mediation

Mediation in environmental matters is not very well developed. The Council for Permit Disputes has a mediation option available that suspends the annulment or suspension procedure, but the number of mediations is very low and the success rate even lower.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

There are different Ombudsmen active at the various government levels in Belgium (NL; FR). Regional, federal and local Ombudsmen work in their respective competence fields, including the environment (NL; FR).

In the *Brussels-Capital Region*, the Common Ordinance and Decree of 16 May 2019 on the publicity of the administration in Brussels institutions provides the establishment of an ombudsman for complaints regarding unilateral administrative acts with individual scope (to be implemented).

In principle, Ombudsmen will not treat the complaint if it is on the same subject as an administrative appeal or a court case has been introduced. The deadline for the introduction of a demand for annulment before the Council of State will, however, be suspended if a complaint is introduced with an Ombudsman, for a maximum of 4 months while the complaint is handled.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

1.4.1. Who can challenge environmental administrative decisions?

The procedure for judicial review of administrative decisions by the Council of State is laid down in its basic act (*lois coordonnées sur le Conseil d'Etat)* and complementary regulations. This procedure can be used to challenge *any unilateral, final, legally binding act of a Belgian administrative authority, whether of an individual or regulatory nature* (i.e. administrative decisions in individual cases as well as executive orders and administrative regulations laying down generally applicable rules). An action for annulment of an administrative act can be brought by any party (any natural or legal person) which has been "harmed" or has an "interest" at stake. Meeting this requirement does not pose particular problems for individual claimants (legal or natural persons) in environmental cases, and the standing requirements do not vary according to the type of environmental legislation concerned. Proof of actual harm is not required. A legitimate interest in the contested act is sufficient. This interest need not necessarily be based on a legally recognised subjective right. Whether a natural person has the interest required to seek judicial review of an administrative decision affecting their environment is essentially a factual matter, which will be judged by the Council of State based on the specific circumstances of the case. Although the notion "public concerned" within the meaning of the Aarhus Convention is not actually used as such, the case law on the criteria for standing for individual members of the public in substance comes very close to the definition of this notion in the Convention. The Council will examine whether the claimant will or may be affected by the environmental effects of the implementation of the decision. The nature and range of those effects will be taken into account. In the event of uncertainties, the decision on standing tends to be in favour of the claimant. The distance between the claimant's home and the activity that is the subject of the contested decision is an important consideration, but it is not necessarily decisive. In planning cases, e.g., the settled case law is that any "inhabitant of the neighbourhood" has a legitimate interest to seek review of planning decisions affecting its aspect and development. There is also case law in which the Council held that a person using a forest area for recreational purposes (e.g. walking) can challenge the legality of an administrative act which will result in the deterioration of that area.

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

1.4.2. Standing of NGOs

Insofar as standing of NGOs is concerned, the jurisprudence of the Council of State, which had been developed in a strict way in the past, was relaxed more than a decade ago under the influence of the case law of the Constitutional Court, the CJEU and the ECtHR and brought into line with the Aarhus Convention. Since a judgment of the general assembly of the Council of State of 2008 (Council of State, N° 187.998, 17 November 2008, *Coomans*), the Council is using the formula of the Constitutional Court concerning standing requirements for NGOs in stating that a non-profit organisation that has legal personality (*association sans but lucratif*) has standing if its statutory objective is of a particular nature, and thus different from that of general interest, that it is defending a collective interest, that the statutory aim can be affected by the challenged act, and that it is obvious that it is pursuing its statutory objective in an active way. There are no recent cases in which an environmental NGO has been declared inadmissible. In principle, foreign NGOs should be treated on an equal footing, as is the case with foreign administrative authorities (Council of State, N° 239.291, 5 October 2017, *Provincie Noord-Brabant*). The Council for Permit Disputes is following the same approach (RvVb 5 September 2017, RvVb/A/1718/002, *vzw Natuurpunt*).

Organisations without legal personality have no standing, but different persons can introduce a collective demand for annulment and suspension, each of them being required to pay the court fee. The judgments of the Council of State or the Council of Permit Disputes have an "*erga omnes*" effect. Thus, when an administrative act or regulation is annulled, everyone who would have been harmed by the act or regulation benefits from the annulment, even if they were not a party in the procedure.

4) What are the rules for translation and interpretation if foreign parties are involved?

1.4.3. Use of languages

Cases can only be introduced in the official languages, namely Dutch, French and German for the Council of State and Dutch for the Council of Permit Disputes. Foreign parties have to rely in practice on lawyers or representatives who have mastery of (one of) the official language(s). When the case is treated by the Council of State in an official language other than that used by a party, interpretation or translation can be requested. The State will have to cover the costs.

1.5. Evidence and experts in the procedures

Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

2) Can one introduce new evidence?

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

3.2) Rules for experts being called upon by the court.

3.3) Rules for experts called upon by the parties.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

The Council of State (and its court advisers), the Council of Permit Disputes and the Enforcement College may, at their own initiative or at the request of a party, appoint an external expert to advise the court on a technical matter. In practice, this possibility is never used. If a court finds that a certain relevant aspect has not been (sufficiently) investigated by the public authority, the challenged administrative decision will usually be annulled and the public authority must ensure that it is adequately investigated and assessed when taking a new decision. The court may order as an injunction (order) that this investigation must be carried out (e.g. granting of a permit in the vicinity of a special protection zone without appropriate assessment: injunction to make a new decision based on results of an appropriate assessment the applicant must prepare).

The court can also annul the decision and refuse the permit application due to incompleteness (in the absence of the required investigation) such that the application must be resubmitted (with the required documents, e.g. an appropriate assessment, an EIA, an air quality investigation, etc.).

The most important source of "expert advice" in the files of the Courts can be found in the administrative file. The administrative file contains the project EIA (if required), other documents that have to be annexed to the permit application (e.g. mobility report, memorandum on environmental effects prepared by recognised experts) and the mandatory advice of certain specialised bodies. The opinions of the advisory bodies are deemed to have been prepared by technical experts in various areas (nature, heritage, water, etc.).

The legislation leaves considerable margin for discretion by the government agency which adopts administrative decisions in environmental matters. The courts only verify whether the decision of the government agency is in this respect not manifestly unreasonable. If a party relies on expert advice that is contrary to the advice on which the government has relied when taking the decision, the court will check whether the government agency has taken its decision carefully and whether the decision is not manifestly unreasonable.

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

1.6.1. Barristers

Cases before the Council of State, the Council of Permit Disputes and the Enforcement College can be introduced in person without legal assistance or through a barrister (including a trainee barrister). Specialised barristers can be found through the websites of the bar associations (NL - FR).

1.1. Existence or not of pro bono assistance

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

1.3 Who should be addressed by the applicant for pro bono assistance?

1.6.2. Legal aid

A distinction can be made between primary and secondary legal aid. Primary legal aid consists of practical information, referral to a specialist, or initial legal opinions given by a lawyer or representatives of public welfare assistance centres or of the social sector. This consultation is totally free. Primary legal aid is also organised by the commissions for legal aid in each judicial district. They are composed of barristers and representatives of the social sector.

Secondary legal aid consists of detailed legal advice or legal assistance/representation within the framework of proceedings and is exclusively provided by barristers (NL - FR). The federal government finances the system of secondary legal aid. In each judicial district, there is a bureau for legal aid, operated by the local bar association, which takes care of secondary legal aid. The barristers providing legal aid are registered once a year on a list drawn up by the bar association. The bureau for legal aid appoints barristers on the basis of this list. The bureau for legal aid can grant partially or completely free of charge secondary legal aid, depending on the income situation of the client. In that case, the barrister will be paid by the government after, as the case may be, reclamation of the compensation or "judicial allowance" (see further below).

Persons with insufficient resources may also enjoy "free of charge" procedures by decision of the concerned court or of the bureau for judicial assistance (art. 664–699*ter* of the Judicial Code). Judicial assistance consists of exempting those who do not have sufficient resources to pay the cost of proceedings (not the lawyers' fees), in full or in part, from paying the relevant costs, which are consequently paid from the State budget.

Articles 508/13/1 to 508/13/4 of the Judicial Code determine who can benefit from free legal aid and judicial assistance and who can benefit from partially free legal aid and judicial assistance. The Council of State and the Council of Permit Disputes can, under the same conditions, grant exemption from court fees and expenses.

There are no specific provisions concerning legal aid for legal persons or NGOs. Judicial assistance can be granted to legal persons (art. 666 Judicial Code).

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

4) List of international NGOs, who are active in the Member State

1.6.3. Environmental NGOs

Some environmental NGOs are litigating and will from time to time support citizens who are going to court. These include:

ClientEarth

Greenpeace (FR - NL)
WWF (FR - NL)
Friends of the Earth
Bond Beter Leefmilieu (the Flemish umbrella ENGO) and its member organisations
Inter-Environnement Wallonie (the Walloon umbrella ENGO) and its member organisations
Inter-Environnement Bruxelles (a Brussels umbrella ENGO) and its member organisations
BRAL/ Stadsbeweging voor Brussel (a Brussels umbrella ENGO) and its members.

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).

2) Time limit to deliver decision by an administrative organ

3) Is it possible to challenge the first level administrative decision directly before court?

4) Is there a deadline set for the national court to deliver its judgment?

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

Administrative appeals in environmental permitting procedures

The procedural time limits in administrative appeals depend on the legislation concerned and reference should thus be made to each piece of relevant legislation for the details. To give an idea of those limits, we will present the most relevant legislation here, namely the regional environmental or integrated permit legislation.

In the *Flemish Region*, the legislation concerning the integrated permit (*omgevingsvergunning*) provides a regular and simplified procedure. Decisions taken in first instance can, as a rule, be appealed to the higher authority, so decisions of the local government *(college van burgemeester en schepenen*) can be appealed to the provincial government (*deputatie van de provincieraad)* and decisions taken in first instance by the provincial government can be appealed to the regional environmental minister (*minister van omgeving).* No administrative appeal is, however, possible against decisions taken at first instance by the minister or the regional environmental officer. These can only be challenged before the Council for Permit Disputes. The appeal must be introduced within 30 days after notification or publication of the decision concerned and must contain the objections. Furthermore, the appeal must include all information specified in the legislation and all supporting material, and a fee of 100 EUR is payable). An appeal can be made using a registered letter or via the digital platform *Omgevingsloket*. In the event that the person making the appeal wishes to be heard, they must indicate this in their appeal. In principle, the appeal suspends the permit decision taken in first instance. The higher authority has to render its decision within a period of 120 days, which will be reduced to 60 days where the simplified procedure is applicable or extended by 60 days where a new public inquiry is needed (because of a modification of the application), an administrative loop is applied (to correct a failure earlier on in the procedure) or an intervention of the municipal council is necessary (if road-related issues are at stake). The authority has to review the matter entirely and is not bound by the arguments introduced or to the specific provisions that are challenged. If the authority takes no decision within those time limits, the appeal is considered to be rejected and that implicit decision can be challenged in court.

In the *Walloon Region*, any interested natural or legal person and the technical officer of the Department of Permits and Authorisations of the Walloon Region (*fonctionnaire technique du Département des Permis et Autorisations du Service public de Wallonie*) can lodge an administrative appeal against an environmental permit (*permis d'environnement*) or integrated permit (*permis unique*) decision taken by the competent local authorities in first instance (*collège communal*). The communal college of the place where the establishment is or will be situated can appeal if the decision in first instance has been taken by the regional technical officer. The appeal has to be introduced by registered letter within 20 days after notification or publication of the contested decision and a fee of 25 EUR must be paid. The appeal has no suspensive effect on the challenged decision, except when lodged by the technical officer. The Government has to decide on the appeal within 70 days (in the case of a class 2 establishment) or 100 days (in the case of a class 1 establishment). Those time limits will be extended in the event that a (new) public inquiry is organised in the appeal phase. In the event that no decision is notified within the time limit, the appeal against the first-instance decision is considered to be rejected. A different solution is applicable in the event that the first-instance decision was not taken on time and that "tacit decision" to refuse the permit was appealed.

In the *Brussels-Capital Region,* the Environmental College (*Milieucollege - Collège d'environnement)* is competent for administrative appeals against first-instance decisions on environmental permits (*milieuvergunning – permis d'environnement*), against administrative fines, law enforcement measures relating to the management and remediation of polluted soil, accreditation measures and Natura 2000 exemption decisions. An appeal must be lodged within 30 days after notification or publication of the permit by means of a registered letter. The parties can ask to be heard. The college has to decide on the appeal within 60 days. In the event of multiple appeals, that period can be extended by maximum 25 days; the period is also extended by 15 days in the case of an oral hearing. In summertime (appeals lodged between 15 June and 15 August), an extra 45-day period applies. The lodging of an appeal has no suspensive effect on the challenged decision, except in some particular instances for appeals introduced by public bodies and when duly motivated by grave peril or irreparable harm, if the College suspends the decision under appeal. When no decision is taken within those time limits, the appeal is considered to be rejected and the challenged decision is confirmed. A further administrative appeal against the explicit or implicit decision of the Environmental College is possible with the Government of the Brussels-Capital Region within 30 days, except for decisions regarding accreditations and administrative fines (those decisions of the Environmental Appeal Board can be challenged before the Council of State). The parties can ask to be heard. The Government decides within 60 days, extended by 15 days, in the case of an oral hearing. When the decision is not notified within those time limits, the applicant can send a reminder by letter. If no decision is notified within another period of 30 days, the challenged decision is confirmed. In that case, the decision of the Environmental College which is thus confirmed may be challenged before the Council of State.

That procedure is clearly described on a webpage of the Brussels Environmental Administration (FR or NL).

Regarding the publicising of the decision on appeal, the decision of the Environment College shall be notified to the applicant and to the competent authority. The Government's decision shall be notified to the parties. The addressee of the decisions is required to post a notice on the building housing the facilities, in a place visible from the public highway, mentioning the existence of the decision. The display must be kept in a perfect condition of visibility and readability for a period of 15 days.

The Brussels Environmental Administration shall keep a register of all decisions. Each municipality shall also keep a register of decisions regarding the facilities located in its territory. The register must also contain the decisions of the Environmental College and the Government. The registers shall indicate, as a minimum, the identity of the holders, the sector of activity, the date and nature of the decision and its expiry date. The register kept by the Brussels Environmental Administration shall be made accessible to the public by electronic means of communication. The website of the Brussels Environmental Administration provides information about environmental permits that are either under investigation, valid or invalid (refused or cancelled within the last 3 months).

Exhaustion of the administrative appeal as precondition for a court appeal

Where an administrative appeal is available, that avenue should be used first. Only after exhaustion of such an administrative appeal should an appeal with the competent administrative court be lodged. There are no time limits for the administrative courts to decide the matter.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

Effect of introducing an administrative appeal on the appealed decision

There is no uniform rule concerning the effect on the appealed decision of introducing an administrative appeal. In the *Flemish Region,* administrative appeals concerning first-instance decisions with regard to the integrated permit (*omgevingsvergunning*) have suspensive effect. Consequently, the appealed decision cannot be executed as long as no decision on appeal has been taken. In the *Walloon Region*, an administrative appeal against environmental and integrated permit decisions (*permis d'environnement / permis unique*) has no suspensive effect, except when lodged by the technical officer. In the *Brussels-Capital Region,* administrative appeals concerning first-instance environmental permit (*permis d'environnement / milieuvergunning*) decisions with the Environmental College have no suspensive effect, but if the appeal is lodged by the local authority, the Brussels Environmental Administration (*Leefmilieu Brussel – Bruxelles Environnement*) or the competent land use planning officer (*gemachtigde ambtenaar ruimtelijke ordening – fonctionnaire délégué de l' urbanisme*) and it is duly motivated by serious danger or irreparable harm, the president of the Environmental College or a member assigned by them will suspend the decision within five working days, after having heard the parties. The further appeal to the Government has no suspensive effect.

Effect of introducing a judicial appeal on the challenged decision

Introducing a judicial appeal against a final administrative decision has no suspensive effect of its own. Both the Council of State and the Council for Permit Disputes can, however, if suspension has been requested, suspend the challenged decision until the final judgment on the merits.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

Interim relief

The Council of State is empowered to *suspend* the implementation of a challenged administrative decision or regulation and to *order provisional measures*. An action for cessation (*vordering tot schorsing*/*demande de suspension*) may be brought immediately along with the action for annulment or later on, as long as the court adviser (*auditeur*) has not submitted his written report on the pending case (in that case, however, the party can ask the presiding judge to organise a hearing within a short period). No financial deposit is required, but a court fee of 200 EUR per requesting party is charged. The interim judgment should, in principle, be given within 45 days after its introduction, however this time limit is not sanctioned and not respected in practice. The Council of State may suspend the challenged decision if the grounds for annulment are found to be valid at first sight (a serious plea must be invoked, known as "*moyen serieux*" or "*ernstige middelen*") and the case is considered urgent where serious harm cannot be prevented if the case is treated in the usual way. Even when the conditions for suspension are present, the Council is, however, not obliged to suspend, considering the different interests at stake, including those of the authority that has taken the challenged decision and those of the intervening party that is the beneficiary of that decision (e.g. the permit holder). According to the law, the Council shall reject the demand for suspension "if the adverse consequences of it are in a manifestly disproportionate way outweighing the benefits of it". In the case of "extremely urgent necessity", a fast-track procedure can be followed. If a provisional suspension is ordered without a hearing, such a hearing will be ordered in view of confirming or withdrawing the suspension. In the case of suspension, a final decision should be taken within 6 months, but this is also a time limit that is often not respected in practice. The case law shows that environmental harm of a certain seriousness is accepted as a reason to consider the case urgent and fit for interim relief (e.g. Council of State, 30 March 2017, n°. 237.852, *vzw Unizo Vlaams-Brabant & Brussel*; Council of State, 20 June 2017, n° 238.574, *Dieltjens*; Council of State, 7 February 2019, n°. 243.627, *De Jaeghere*). Interim judgments cannot be appealed.

In the *Flemish Region,* the Council of Permit Disputes has the same powers. The court fee in this case is 100 EUR per requesting party. The procedure is very similar to the procedure before the Council of State. The case law is also very similar to the case law of the Council of State (e.g. Council of Permit Disputes, 14 January 2020, RvVb-S-1920-0438, *Machiels;* 28 January 2020, RvVb-S-1920-0492, *Van Den Broeck*; 4 February 2020, RvVb-S-1920-0514, *Bahri*;11 February 2020, RvVb-S-1920-0543, *Gommers*;11 February 2020, RvVb-S-1920-0539, *De Belder*).

Furthermore, according to Article 584 of the Judicial Code, the President of the Court of First Instance has the power to give a provisional solution (interim relief) to any case in summary proceedings (*kort geding*, *procedure en référé*) that is not beyond its competence. So in urgent cases, after summary proceedings, the president can order temporary measures in order to avoid serious detriment, without prejudice to the final solution of the case. This procedure can be used in the event that the administrative action for suspension before the Council of State or the Council of Permit Disputes cannot be used, e.g. when subjective civil rights are at stake.

The permit holder will be informed that a case has been introduced and can defend its interest, prior to the decision on interim relief, in the procedure before the Council of State, the Council for Permit Disputes or the President of the Court of First Instance. The decision of the latter can be appealed, also by the permit holder.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

5) Is the administrative decision suspended once challenged before court at the judicial phase?

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

Right of action for the protection of the environment

The *President of the Court of First Instance* also has special powers for the protection of the environment on the basis of the Federal Act of 12 January 1993 on a right of action for the protection of the environment (*vorderingsrecht inzake bescherming van het leefmilieu*, *droit d'action en matière de protection de l'environnement*). In accelerated proceedings, the public prosecutor, an administrative authority or an environmental organisation with legal personality can ask the President to order the cessation of actions that constitute, or threaten to constitute, an obvious breach of environmental law. In a judgment of 8 November 1996 (Cass., 8 November 1996, n° C.95.0206.N, *Eurantex nv / Boterstraatcomité vzw*), the supreme court considered that the purpose of the Act was not only to prevent damage to the environment, but also to ensure a viable environment for the population, so that the protection of the environment also extends to a protection of town and country planning. According to the Court, the Act not only makes it possible to order the cessation of illegal works that impair the environment, but also for works already completed to be undone if such an injunction is necessary to prevent further damage to the environment. The special environmental action on the basis of the Act of 12 January 1993 is normally only available to the public prosecutor, the administrative authorities (including municipalities) or environmental organisations with legal personality meeting the following requirements: their purpose is to protect the environment, their statutes define the territory to which their activities extend and they meet the conditions provided for in Article 17 of the Judicial Code. These conditions include:

the corporate purpose of the legal person is of a special nature distinct from the pursuit of the public interest in general;

the legal person pursues this social objective in a sustainable and effective manner;

the legal person takes legal action within the framework of that corporate purpose with a view to the defence of an interest related to that objective;

the legal person pursues merely a collective interest with the legal claim.
However, article 271 of the Federal Municipal Act and its regional successors such as art. 194 of the Flemish Municipality Decree – a Decree that had abolished article 271 of the Federal Municipal Act has been annulled by the Constitutional Court for violation of the *standstill* obligation of article 23 of the Constitution (Constitutional Court, N° 129/2019, 10 October 2019) – allows *one or several residents of a municipality* to act on behalf of the municipality if the mayor and aldermen fail to do so. This provision can be combined with the Act of 12 January 1993 such that individual citizens living in the municipality concerned are able to bring such an action themselves on behalf of a defaulting municipal authority by taking the place of the municipality that refuses to bring such an action. It follows from the joint reading of the two aforementioned Acts that, if the mayor and aldermen fail to act under those circumstances, one or several residents can take legal action on behalf of the municipality in order to protect the environment. No particular interest needs to be demonstrated because the municipality is presumed to have an interest. The circumstance that residents can bring an action for cessation on behalf of the municipality if the latter fails to do so actually gave rise to another problem. What if the municipality itself shares responsibility for the breach of environmental law by having issued an illegal permit? This matter has been settled by the Constitutional Court, which ruled that not allowing the action under such circumstances would constitute an infringement of the principle of equality and non-discrimination (Constitutional Court, n° 70/2007, 26 April 2007*, M. Lenaerts and others/n.v. 's Heerenbosch*).

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

Court fees

In cases before the Council of State, there is a *court fee* (*rolrecht*, *droit de rôle*) *per applicant* and *per request* of 200 EUR (demand for suspension and demand for annulment). The same is true for the Council of Permit Disputes, where the fee is 200 EUR per annulment request per applicant and 100 EUR per suspension request (regular suspension as well as suspension by extreme emergency) per applicant. The court fee for a mediation with the Council of Permit Disputes is 700 EUR and will be shared between the parties in the event of a mediation agreement. Furthermore, there is a *mandatory contribution* of 20 EUR per demand to the Legal Aid Fund.

In the *Brussels-Capital Region*, for an administrative appeal before the Environmental College or the Government concerning environmental permits or measures relating to the management and remediation of polluted soil, there is a fee of 125 EUR per applicant. An appeal before the Environmental Appeal Board for disputing an administrative fine is free.

Judicial allowance

The unsuccessful requesting or defending party has to pay a *compensation or judicial allowance* (*rechtsplegingsvergoeding*, *indemnité de procedure)* to the successful party. This is a flat-rate allowance for the costs and fees of the lawyer of the successful party. A basic amount has been set (700 EUR), which can be increased or decreased depending on the circumstances of the case and within certain limits (minimum 140 EUR; maximum 1,400 EUR). It will be increased by 20% in the event of a demand for interim measures. The Council has to take the following into account when deciding on the compensation in a particular case: 1) the financial capacity of the unsuccessful party to reduce the amount of the compensation; 2) the complexity of the case; 3) the manifestly unreasonable nature of the situation. If the unsuccessful party benefits from secondary legal aid, the legal compensation is set at the minimum amount, except in the case of a manifestly unreasonable situation. If several parties are awarded compensation at the expense of one or more unsuccessful parties, the amount thereof is at most double the maximum compensation to which the beneficiary who is entitled to claim the highest compensation can claim. It is divided between the parties. No party can be held liable for payment of compensation for the intervention of the lawyer of another party in excess of the amount of the court fee. The compensation cannot be granted or imposed on an intervening party. The amounts are adapted from time to time to developments in the cost of living (indexation). Most of the time, the basic amount of 700 EUR is awarded.

Aarhus Convention

The Constitutional Court has ruled, by referring *inter alia to* the Aarhus Convention case law of the CJEU and Directive 2011/92/EU, that the above-mentioned system of court fees and compensation does not violate art. 10, 11 and 23 of the Constitution (Constitutional Court, n° 17/2015, 12 February 2015, *Neyrinck c.s.;* n°48/2015, 30 April 2015, *Meurant c.s.*; n° 103/2015, 16 July 2015, *GERFA c.s.*; n° 152/2015, 29 October 2015, *vzw Ademloos c.s.;* n° 87/2018, 5 July 20018, *vzw Aktiekomitee Red de Voorkempen).*

Other fees

In the event that a party wished to call witnesses, appoint experts or conduct extra investigations – this is extremely rare – the fees and disbursements of the experts, the witness money and the accommodation and travel costs arising from investigative acts would be at the expense of the losing party.

Costs of attorneys

The preparation of a case and the elaboration of additional documentation in the procedure and the pleadings are time consuming. With an hourly rate ranging from € 125 to € 200 or more (without VAT), barristers' cost for a case will easily reach € 4,000 to € 10,000, and € 5,000 to € 12,000 if there is also a demand for suspension. In the event that a further appeal is necessary (before the Council of State against a judgment of the Council of Permit Disputes), another € 4,000 to € 8.000 will be needed. Environmental NGOs give an average cost of € 5,000 for a Council of State case and € 2,000 for a case before the ordinary courts. They often try to do a maximum of preparatory work themselves so that they can limit barristers' costs. In some instances, barristers agree to a preferential tariff for an NGO (e.g. € 75 hourly). A case for less than € 2,000 seems, however, impossible. In complex cases, and in cases where there is a need to appeal, the cost can be much higher.

These costs have increased further since Belgium abolished VAT exemption for barristers in 2014. Barristers currently have to charge 21% VAT on their fees and costs. The Constitutional Court was of the opinion that this increase does not violate art. 10, 11 and 23 of the Constitution (Constitutional Court, n° 27 /2017, 23 February 2017, *Ordre des barreaux francophones et germanophone c.s.*), after having consulted the CJEU on the validity of the EU VAT Directive in the light of art. 47 of the EU Charter of Fundamental Rights and the Aarhus Convention (CJEU, 28 July 2016, Case C543/14, *Ordre des barreaux francophones et germanophone and Others*).

Total costs

Together with the court fees, and the risk of having to pay a judicial allowance as intervention in the lawyers' fees and costs of the winning party if the case is lost, these costs might be an obstacle for access to justice by ordinary people and NGOs. If these costs are not covered by insurance (which can often be the case when a private party is suffering damages that can be considered as environmental), a party might often think or more before launching procedures. Although procedures in Belgium cannot be considered "prohibitively expensive", lawyers' fees and the new system of court fees, judicial allowances and VAT might have a dissuasive effect.

3) Is there legal aid available for natural persons?

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

5) Are there other financial mechanisms available to provide financial assistance?

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

Legal aid

There are no specific provisions concerning legal aid for legal persons or for NGOs. There is only one case reported in which legal aid was awarded to an environmental NGO. The Constitutional Court held that Articles 508/1 and 508/13 of the Judicial Code violated Articles 10 and 11 of the Constitution, read in conjunction with Article 6.3 (c) of the European Convention on Human Rights, by not providing legal aid for legal persons that are prosecuted and have insufficient income (Constitutional Court, n° 143/2016, 17 November 2016, *M.S.*). However, the articles concerned have not been modified yet. There is no specific public funding for environmental litigation by environmental NGOs. However, apart from project-related subsidies, federal and regional governments (as well as local governments) are giving some general subsidies to support the activities of certain environmental NGOs. Such non-earmarked subsidies can of course to some extent support litigation of those NGOs, but this is not seen as a very reliable source for funding litigation. Except the assistance provided for in the context of legal aid (see 1.6 above) by "pro deo" lawyers – junior lawyers are obliged to participate in the system, senior lawyers can do it voluntarily – there is no tradition of organised pro bono assistance. Public interest litigation as an institution is not known in Belgium. However, there are, within the group of specialised environmental lawyers, a few lawyers that nearly exclusively work for environmental NGOs or citizens keen to protect the environment. Law School Clinics dealing with environmental law do not exist.

Security

The appellant in an environmental case does not have to pay a bond in order to obtain an injunction of the appealed decision. However, when an individual citizen, or a group of citizens, acts instead of the defaulting municipality on the basis of art. 271 of the Municipal Act (and its regional counterparts), there is an obligation for the party to "offer" security that it will pay the costs of the proceedings and the condemnations if it loses. In general, a declaration that it will bear the costs and that it has paid the initial court fee is accepted as being sufficient in that regard. Protective cost orders as such are not known. The need for such orders may be felt less than that for other legal orders because most of the costs can be assessed more or less in an early stage or are fixed by law, with the notorious exception of the costs of experts.

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

On the *federal level*, information on access to information, including the applicable rules, can be found through this website (NL/FR/DE/EN).
Information about the Federal Appeals Commission for access to environmental information is accessible through this website (NL/FR/DE).
For the *Flemish Region*, this website can be referred to.
For the *Walloon Region*: consult this website.
For the *Brussels-Capital Region*, information is provided on these websites (NL/FR):

Toegang tot milieu-informatie
Accéder à l'information environnementale
De Commissie voor Toegang tot Bestuurdocumenten (CTB)
La Commission d'Accès aux Documents Administratifs (CADA)
Commission for Access to Administrative Documents
Toegang tot rechtspraak in milieuzaken
Accéder à la justice en matière d'environnement?

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Information during environmental permitting procedures

During environmental permitting procedures, most of the time there is an opportunity for public participation in which information on the application is at the disposal of the public. Insofar as access to information is concerned, there is no variation in the legislation between the rules applicable to and those applicable to other establishments, although the permit application for IPPC/IED installations will generally contain more information than that for smaller establishments, according to Directive 2010/75/EU.

In the *Flemish Region*, the legislation on the integrated permit (*omgevingsvergunning*) provides (except in cases where the simplified procedure is applicable) a public inquiry of 30 days, during which the application can be consulted at the local government of the place where the project is planned. The inquiry is announced with a poster at the affected location, a message on the website of the local government, for bigger projects, an announcement in a daily or weekly newspaper, and through some individual notifications. In the event that an EIA or Safety Report is part of the application in which location alternatives are discussed, the local governments affected by the alternatives shall also publish a notification on their websites. The application and the EIA and safety documentation can be consulted in hard copy at the local authority or digitally through the *Omgevingsloket* and, where EIAs are concerned, through the *MER-dossierdatabank* (on request). Apart from the permit application, other documentation that will be available for consultation includes, when applicable, the EIA screening note, the scoping decision concerning the EIA, the approval or rejection of the EIA Report, the opinions of the specialised public bodies (on request), the EIA Report and the Safety Report. In the event of transboundary effects (meaning both regional and national borders) of the proposed project, the application will be sent to the competent authorities of the regions or countries concerned to obtain their opinion. The public concerned of those regions or countries can take part in the public participation process organised by the local authority in the Flemish Region or the public inquiry organised by the competent authority of the other regions or countries.

In the *Walloon Region*, applications for environmental permits and integrated permits are, as a rule, subject to a public inquiry of 30 days (if an EIA is necessary) or 15 days (in other cases) organised by the local authority(s) concerned. The public inquiry is announced through a poster at the location and on the official local announcement billboards. Some individual notifications (hard copy or digital) are necessary. When an EIA is required, additional notification should also be made in two newspapers (at least one with local circulation), in the local information journal or equivalent publication, and on the website of the local government. The file can be consulted by the public during the public inquiry and includes the application, and, if necessary, the EIA Report (with an executive summary and technical annexes), the comments and suggestions brought forward during the initial consultation in view of the EIA, and the opinions of competent bodies as soon they are available here.

In the *Brussels-Capital Region*, so-called special publication measures (*speciale regelen van openbaarmaking, mesures particulières de publicité*) are nearly always applicable for environmental permit procedures. This means that the local authorities where the effects of the planned project will occur shall organise a public inquiry. Reasonable time is given to the public to take part in a public consultation (no fewer than 15 days, but more generally 30 days (if an EIA is required). The public inquiry will be announced through different posters at the location and in the vicinity. The "public" is referred to in a very broad way, namely "one or more natural or legal persons, associations, organisations or groups" (or even "whoever" as per the Land Use Planning Code). Also, the local consultation commission (*overlegcommissie, commission de concertation)* will be asked to provide an opinion. During that period, the application file can be consulted at the local administration, including at least one evening a week, and a request can be made to be heard by the consultation commission.

A website provides information about all ongoing public inquiries for building and environmental permits in the *Brussels-Capital Region* territory. The permit application file selected on this website can be viewed via an interactive map. Another website of the Brussels Environmental Administration provides information about environmental permits that are either under investigation (as soon as the file is declared complete), valid or invalid (refused or cancelled within the last three months). To further facilitate participation, public consultations will soon be centralised on a single webpage on the website of the Brussels Environmental Administration. That webpage will present both current and past public consultations.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

Environmental Impact Assessment

In the *Flemish Region*, the EIA Report and all related documents (screening, scoping and quality control decisions) will be submitted for public participation together with the permit application within the framework of the integrated permitting procedure (see above). Prior to submitting the permit application to the competent authority, the initiator can ask the administration to withdraw information in the EIA Report that falls under one or more of the grounds for refusing access to environmental information during the public inquiry. They must explain which information is involved and on what grounds the withdrawal from public access should take place. The administration will balance the interests concerned against the right of access to environmental information. The administration may withdraw all or part of the aforementioned information from the public domain. If it decides to withdraw all or part of the indicated data from the public, it must include the relevant data in an appendix. That appendix to the EIA Report is not made available to the public during the permitting procedure.

In the *Walloon Region*, in the event that an EIA Report (*étude d'incidence*) is required, a first consultation of the public will take place in view of a scoping decision. Furthermore, within the framework of the permitting procedure, a file accessible to the public can be consulted during office hours at a place indicated by the competent authority. The file contains the permit application, a non-technical summary, the EIA notice (*notice d'évaluation*) or the EIA Report, and the opinions received. The competent authority can decide to withdraw from the file information that falls under one or more of the grounds for refusing access to environmental information, in which case this will be indicated in the file. The inquiry takes 30 days.

In the *Brussels-Capital Region,* the EIA Report (*Etude d'incidences ou rapport d'incidences – Effectenstudie of effectenverslag*) is part of the permit application and is submitted to the special publication measures mentioned above. The EIA Report is prepared by a licensed office that provides recommendations and includes a non-technical summary. The follow-up of the study is ensured by the Accompanying Committee, of which the Brussels Environmental Administration, Urban Brussels, the Municipality and Brussels Mobility are members.

The ordinance of 5 June of 1997 provides for an appeal *sui generis* before the Government if the Accompanying Committee fails to meet the deadline for a decision on the scope of the study (art. 24) or the completeness of the EIA Report, or against the decision of the Accompanying Committee considering the impact study incomplete (art. 28, §4). The Government replaces the Accompanying Committee. It shall notify its decision within 60 or 30 days of referral.

Strategic Environmental Assessment

On the *Federal level*, the competent administration decides on a case by case basis, and based on the advice of a Special Advisory Committee drawn from different federal administrations, whether federal plans and programmes can have a considerable environmental impact and should therefore be subject to an SEA. The authority that is initiating the SEA shall submit a draft outline of the SEA (*ontwerpregister*, *projet de répertoire*) to the Committee, which will give scoping advice. The initiating authority will take a scoping decision taking account of that advice. The author of the plan or programme shall submit the draft plan or programme, accompanied by the environmental impact report, to the public for consultation. The public consultation is announced no later than 15 days prior to commencement by means of a message in the Belgian Official Journal, on the Federal Portal site, and by at least one other means of communication chosen by the originator of the plan. The public consultation lasts 60 days and is suspended between 15 July and 15 August. The publication in the Belgian Official Journal states the start and end date of the public consultation and the way in which members of the public can make their advice and comments known. The comments and opinions are sent to the author of the plan or programme by post or electronically within the investigation period. Additional means of public consultation can be provided for in order to make the draft plan or programme and the environmental impact report as widely known as possible (EN/NL/FR/DE).

In the *Flemish Region*, it is up to the EIA/SEA Team (Team Mer) of the Department of Environment and Spatial Development in the screening phase to decide if an SEA is necessary for a certain plan or programme on the basis of a notification of the authority concerned and after consulting with some specialised authorities. In the event that an SEA is necessary, a detailed notification is submitted in view of scoping. This notification is published on the website and can be consulted at the local authorities concerned and the authority that is taking the initiative for the plan or programme. Within a period of 30 days, anyone can submit their comments and suggestions to the EIA/SEA Team or to the local authorities in view of the scoping decision of the EIA/SEA Team. Once the EIA Report has been drawn up, it will, together with the concerned plan or programme, be submitted to a public inquiry in all concerned communities for 60 days. In the case of transboundary effects, there will be a transboundary public inquiry. Similar rules apply for SEAs concerning land use plans within the framework of the integrated planning process of the Flemish Land Use Planning Code (*Vlaamse Codex Ruimtelijke Ordening* or *VCRO*).

In the *Walloon Region*, the Walloon Government determines the content (scoping) of an SEA Report after consulting with the Environmental Section of the Economic, Social and Environmental Council of Wallonia (*Pôle Environnement du Conseil économique, social et environnemental de Wallonie*), the local authorities concerned, and the agencies and persons that it decides to consult. In the event that an SEA is necessary, the SEA Report will be submitted to public participation, together with the related draft plan or programme, by the local authorities concerned. The public inquiry will be announced by posters and on websites, and, depending on the category, by notices in the Belgian Official Journal, newspapers or local bulletins, on the radio, or through the local information bulletin. The public inquiry will last 45 or 30 days, depending on the category to which the plan or programme belongs. The inquiry is suspended between 16 July and 15 August and between 24 December and 1 January. The publicly accessible file contains the draft plan or programme, the EIA notice or EIA Report, all complementary documentation and opinions received.

In the *Brussels-Capital Region*, the SEA procedure starts with a draft outline of the SEA (*ontwerpbestek, projet de cahier des charges*) that the initiator has to submit to some advisory bodies. They shall deliver their opinion within 30 days and the authority that is initiating the plan or programme will than decide on the outline of the SEA. When the SEA Report is finalised, it is submitted, together with the draft plan or programme, for public consultation. The public inquiry is announced by posters in every municipality of the Region, by a notice in the Belgian Official Journal, and in at least three Dutch-language and three French-language newspapers distributed across the Region, as well as by a radio and television announcement. The announcement states the beginning and the end of the public inquiry. The public inquiry is also announced electronically on the website of the Brussels Environmental Administration.

After these announcements have been made, the draft plan or programme and the environmental impact report are made available to the public for at least 60 days at the town hall of each municipality of the Region. The comments and objections, the authors of which can send a copy to the mayor and aldermen of the municipalities concerned, are addressed to the initiating authority within the investigation period either by post or electronically. In the case of transboundary effects, there will be a transboundary public inquiry.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

Information on access to justice

According to art. 19 of the basic act on the Council of State, individual administrative decisions must provide information about the possibility to challenge the decision with the Council of State, otherwise the period of 60 days to introduce a demand for annulment will, as a rule, not start to run.
Insofar as the *Flemish Region* is concerned, integrated permit decisions must be made public and notified to the concerned parties and should indicate the possibility for and means of appeal against the decision taken. This includes information about the possibility to introduce a demand for annulment and suspension with the Council of Permit Disputes in the case of decisions that cannot be appealed any further within the administrative track.
The same obligation applies to administrative decisions in the *Brussels-Capital Region*: citizens must be informed about available appeals. Any unilateral administrative act with individual scope notified to a citizen, or any decision to refuse access to information (totally, partially or in the requested format), must indicate:
the possibility to contact the Brussels mediator (with the means); and
the means of and time limits for administrative appeal to which it may be subject as well as the competent authorities and the procedures for lodging this appeal.
The concerned parties may initiate an appeal procedure:
to the College of the Environment against decisions, acts or omissions of the competent authority; and
to the Government against decisions of the Environment College. Further appeal to the Council of State is possible.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Translation and interpretation

Before the Council of State, private parties, including NGOs, can use the official language of their choice (Dutch, French or German), while public authorities must use the language determined by the strict and complex Belgian administrative language legislation. In exceptional circumstances, the case will be processed by the bilingual chamber of the Council. If the case is processed by the Council of State in a language other than that used by the private party – in principle, the case will be treated in the language of the challenged decision – that party can ask for translation and interpretation. The costs are at the expense of the State. There are no provisions for the use of other languages. Thus, foreigners must rely on barristers that use one of the national languages when representing them before the Council and themselves meet the costs of translation.
Similarly, there are no rules on translation of documents for foreigners in the legislation concerning the Council of Permit Disputes in the Flemish Region, which has Dutch as its working language. However, during oral hearings the Council can, *ex officio* or at the request of the concerned party, provide interpretation for persons who are unable to speak or understand Dutch sufficiently. The costs will be at the expense of the Council. It seems that this possibility has not been used yet.
In the *Brussels-Capital Region*, the applicant can choose to submit their appeal in French or Dutch, the two official languages of the Region, before the Environmental Appeal Board. The decision will be rendered in both languages if another party speaks the other official language.
Decisions of the Government are bilingual.

Access to information and the right of administrative appeal

Access to information is essential for effective public participation and access to justice.
On the federal level, access to environmental information is dealt with in the Federal Act of 5 August 2006 concerning access of the public to environmental information. Appeals against refusals and the absence of a decision within the timeframe of 30 days can be addressed to the Federal Appeal Commission for Access to Environmental Information (*Federale Beroepscommissie voor de toegang tot milieu-informatie – Commission fédérale de recours pour l'accès aux informations environnementales*). The appeal is free of charge. An appeal shall be sent to the Commission within 60 days after the requester has been informed of the refusal or, in the absence of such a decision, after the date of expiry of the period within which the environmental instance had to take a decision on the request. The Commission has investigation and decision powers. It takes its decision within 30 days after the introduction of the appeal. The Commission publishes its decisions as soon as possible after the applicant has received the decision. The Commission also has an advisory function for federal environmental instances. All decisions and advice can been found on its website. Against decisions of the Commission, appeal is possible before the Council of State.
The Brussels-Capital Region has recently streamlined its legislation on access to information, including environmental information, into a single and comprehensive text. The new Brussels legislation on the publicity of the administration also provides for specific regional appeal bodies: a mediator (not entered into force yet) and a Regional Commission for access to administrative documents (*La Commission d'accès aux documents administratifs (CADA) - De Commissie voor Toegang tot Bestuurdocumenten (CTB)).* The Regional Commission deals with appeals relating to the dissemination of information, the refusal of access to information and the refusal to correct inaccurate or incomplete information relating to a person. The appeal is free of charge. The appeal shall be sent to the Commission within 30 days (five working days in cases of urgency) of gaining knowledge of the decision of refusal or, in the absence of such a decision, of the date of expiry of the period within which the administrative authority had to take a decision on the request.
The Regional Commission has investigation and coercive power. It also has the power to grant access or demand rectification of the information in dispute. The Commission shall publish on its website, within 20 working days of adoption, the decisions, opinions and proposals it adopts. An annual report is also published. The Commission's decisions can be contested before the Council of State.
In the Flemish Region, the right to access to environmental (and other) information is governed by the Governance Decree (*Bestuursdecreet*). Appeal can be lodged against any decision made by a public authority with regard to access to information, either after expiry of the term within which the decision had to be taken, or in the event of the decision being carried out reluctantly. This appeal must be lodged with an administrative appeal body (*Beroepsinstantie openbaarheid van bestuur*) composed of officials appointed by the Government of Flanders. This appeal is free of charge and must be submitted in writing, by web form or by e-mail, within 30 calendar days after the sending of the decision or after expiry of the implementation period. The decisions of the appeal body are public and are published on the internet (Publicaties | Vlaanderen.be). The public authority has to implement the appeal body's decision as soon as possible and at the latest within 15 calendar days after receiving the decision. If the public 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. An appeal for annulment can be lodged with the Council of State against the decision of the appeal body within 60 days.

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

6) At what stage are decisions, acts or omissions challengeable?

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?
9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
10) How is the notion of "timely" implemented by the national legislation?
11) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?
Screening and scoping decisions
In Belgium, screening and scoping decisions, as well as decisions concerning the approval of SEA or EIA Reports by competent authorities, cannot be challenged in court separately. They are considered to be "preparatory decisions" that can only be challenged together with the administrative acts that are subject to SEA or EIA: the plans, programmes and permits concerned. The rules on standing and access to justice are thus those applicable for plans and programmes and permits, as presented above. It is settled case law of the Council of State that the Council is not authorised to substitute its assessment of the EIA screening, scoping or quality control for that of the competent authority. In the exercise of the legality check entrusted to the Council, the Council is only authorised to verify whether the competent authority could reasonably have decided, on the basis of correct factual information, that the intended plan, programme or project does not give rise to significant environmental impacts, that the drawing up of an SEA or EIA was not necessary, that the scope of the SEA or EIA was acceptable, or that the quality of the report was sufficient. However, although the Council is restricting itself to a "marginal review" of the legality of screening, scoping and quality decisions, we are witnessing over time that the Council is becoming more demanding concerning those decisions. The legality control includes both the substantive and the procedural legality. The Council can raise a plea on its own initiative. In the event that there is an organised administrative appeal provided for, that appeal must have been exhausted first before it is possible to challenge the decision taken on administrative appeal before the Council of State, but it is not necessary to have participated in the public consultation phase. We can say that the procedure applied by the Council is fair and equitable, but although things are improving over time, the procedure is still too time consuming (see above). Interim relief is available under the general conditions presented above.
The same can be said concerning the Council of Permit Disputes in the *Flemish Region*, with that exception that within the framework of the new system of integrated permits, by a Decree of 8 December 2017, some provisions had been introduced meaning that members of the public concerned could, in principle, only have access to administrative appeal and judicial appeal to the Council for Permit Disputes if they had participated in the public inquiry by submitting a reasoned opinion, comment or objection. Those restrictions have, however, been annulled by the Constitutional Court for violation of Articles 10, 11 and 13 of the Constitution (Constitutional Court, n° 46/2019, 14 March 2019, *vzw Aktiekomitee Red de Voorkempen and Others*).
1.8.2. Integrated Pollution Prevention and Control (IPPC) / Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC
Country-specific IPPC/IED rules related to access to justice
1) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?
2) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
3) Rules on standing relating to scoping (conditions, timeframe, public concerned)
4) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
5) Can the public challenge the final authorisation?
6) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?
7) At what stage are these challengeable?
8) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
9) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?
10) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
11) How is the notion of "timely" implemented by the national legislation?
12) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?
13) Is information on access to justice provided to the public in a structured and accessible manner?
IPPC installations are subject to the general rules of the different environmental permitting procedures in place. We refer to the explanations given in points 1.7.1.-1.7.4.
1.8.3. Environmental liability[1]
Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13
1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?
2) In what deadline does one need to introduce appeals?
3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?
5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?
6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?
7) Which are the competent authorities designated by the MS?
8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
In the *Flemish Region*, the following persons who are aware of environmental damage may submit comments to the competent authority of the Enforcement Division of the Department of the Environment (*Afdeling Handhaving van het Departement Omgeving*) and request that the competent authority take action: 1) natural and legal persons affected or likely to be affected by environmental damage; 2) natural and legal persons who have an interest in the decision-making regarding the damage; 3) legal persons referred to in Article 2 of the Federal Act of 12 January 1993 on a right of action for the protection of the environment (i.e. environmental NGOs) (see point 1.7.2). A request for measures must contain the following elements: name, capacity and address of the applicant; the way in which the applicant is suffering or is likely to suffer; description of the nature, extent, location and date of assessment of the damage; indication that it concerns a request for measures as provided for in Title XV, Chapter VI of the Decree of 5 April 1995; date and signature of the applicant. As far as possible, the request for measures should contain: 1) a description of the probable cause of the environmental damage; 2) an indication of the

operator likely to cause environmental damage; 3) an inventory of the attached documents. The competent authority has to decide on the request within 30 days. The persons that have applied for measures to be taken can appeal to the Flemish Government by registered letter within 30 days of the notification. The Flemish Government has to decide on the appeal within 105 days. The appeal is not suspensive. The decision on appeal can be challenged with the Council of State.

In the *Walloon Region*, natural or legal persons (a) affected or likely to be affected by environmental damage or (b) having sufficient interest in environmental decision-making relating to the damage may submit to the competent authority, the Environmental Policy Board of the Walloon Public Service Agriculture, Natural Resources and Environment (*Direction de la Politique Environnementale du SPW Agriculture, Ressources Naturelles et Environnement*), any observations relating to any occurrence of environmental damage of which they have become aware, and are entitled to request that the competent authority take action. ENGOs are deemed to have sufficient interest provided that they have legal personality and that they have environmental protection as a statutory objective. These associations should provide proof, by producing their activity report or any other document, that they undertake genuine activities in accordance with their statutory objective. The request for action is accompanied by relevant information and data supporting the observations presented in relation to the environmental damage in question. If a request for action is formulated too vaguely or too generally, the competent authority invites the applicant as soon as possible to formulate it in more detail and helps the applicant to do so adequately. In the case of damage to the soil, the request for action only applies to pollution that generates a risk of a serious negative impact on human health. If the request for action and accompanying observations plausibly indicate the existence of environmental damage, the competent authority examines these observations and this request for action. In such cases, the competent authority gives the operator concerned the opportunity to make known their views on the request for action and accompanying observations. The competent authority shall acknowledge receipt of the request for action within ten working days of receipt. The competent authority shall inform the persons that have submitted observations of its decision to act or not and of the reasons thereof: (1) as soon as possible, and at the latest within one month of receiving the request; (2) or within two months of receipt of the request where the extent or complexity of the situation reported are such that the one-month period cannot be respected. The notification of the reasoned decision of the competent authority indicates the appeal to which it may be subject as well as the procedures for lodging this appeal. If the competent authority does not notify its decision on the request for action within the deadlines provided for, the request is deemed to be rejected. Any claimant who considers that their request for action has been improperly disregarded or wrongfully rejected, in whole or in part, or that it has been insufficiently considered or has not been processed in accordance with the Environmental Code, may appeal to the Walloon Government. Under penalty of inadmissibility, this appeal shall be brought within ten working days of receipt of the notification of the decision of the competent authority or, in the absence of a decision, within ten days of the expiry of the applicable time limits. The Walloon Government decides on the appeal after having obtained the opinions of the environment administration and of any person or body it deems useful to consult. It shall rule as soon as possible, and at the latest within 90 days of receipt of the appeal. The decision of the Walloon Government is notified to the applicant indicating the appeals which they can make and the time limits within which these appeals must be lodged. That decision can be appealed with the Council of State.

In the *Brussels-Capital Region*, any natural or legal person having an interest to assert that they are affected or likely to be affected by environmental damage is entitled to submit to the competent authority, the head of the Brussels Environmental Administration (*leidend ambtenaar Leefmilieu Brussel /fonctionnaire dirigeant de Bruxelles Environnement*), any observation related to any occurrence of environmental damage or to an imminent threat of environmental damage of which it becomes aware, and has the right to request that the competent authority take measures, with regard to the Code on inspections, prevention, reporting and sanctioning of environmental offences and on environmental liability. Any association which works for the protection of the environment in the territory of the Brussels-Capital Region is deemed to have an interest provided that:

the association is incorporated as a non-profit association (*vzw/asbl*);

the non-profit association was pre-existent on the date of occurrence of the environmental damage or the imminent threat of damage;

the statutory object is the protection of the environment; and

the interest at stake in their observations and/or request for action falls within the scope of the statutory object of the association as it stands at the date of the damage or of the imminent threat.

This provision applies without prejudice to the right of action provided for by the Federal Act of 12 January 1993 (see point 1.7.2). The request is accompanied by the relevant information and data supporting the observations presented in relation to the environmental damage in question. If the request and accompanying observations indicate in a plausible way the existence of environmental damage, the authority examines these observations and this request. In such a case, the authority gives the operator concerned the opportunity to make known its position on the request and accompanying observations according to the forms and deadlines fixed by the Government. The authority informs the persons who have submitted observations of its decision to act or not, indicating the reasons behind it, as soon as possible, and at the latest within one month of receiving the request. The notification of the reasoned decision of the authority indicates the means and time limits for appeal to which it may be subject as well as the procedures for lodging this appeal. The aforementioned persons may initiate an appeal procedure:

to the College of the Environment against decisions, acts or omissions of the competent authority; and

to the Government against the decisions of the Environment College.

A further appeal to the Council of State is possible.

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

2) Notion of public concerned?

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

5) At what stage is the information provided to the public concerned (including the above parties)?

6) What are the timeframes for public involvement including access to justice?

7) How is information on access to justice provided to the parties?

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

9) Any other relevant rules?

Federal plans and programmes

Regarding SEA for *federal plans and programmes* that can have a significant effect on the environment of another Member State of the European Union or another State party to the Espoo Convention, the following shall be communicated to the competent authorities of those States: 1) the draft plan or programme together with the environmental impact report and any information about the cross-border effects; 2) a description of the preparation and assessment procedure applicable to the plan or programme in question. The competent authorities are informed that they can specify whether they intend to cooperate in the assessment procedure for the plan or programme within a period of 45 days from the notification. The State concerned informs the author of

the plan or programme within a period of 45 days whether it wishes to submit the plan or programme to a national consultation. The author of the plan or programme and the concerned State jointly determine a reasonable period within which the consultation in the concerned state will be arranged. The concerned State that announced the arranging of a national consultation shall forward its opinion to the author of the plan or programme within that period.

Nuclear installations

Operating permits for nuclear installations are a federal competence. Following the judgment of the Court of Justice of the European Union of 29 July 2019, C411/17, *Inter-Environnement Wallonnie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL*, the Constitutional Court (Constitutional Court, n° 34/2020, 5 March 2020, *Inter-Environnement Wallonnie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL*) has judged that the extension in time of industrial production of electricity constitutes a 'project' within the meaning of Directive 2011/92/EU, and that an environmental impact assessment must, in principle, be carried out with respect to that project prior to the adoption of such a decision. Such a project must undergo an assessment procedure in relation to its transboundary effects in accordance with Article 7 of the EIA Directive.

Regional plans and programmes

In the *Flemish Region*, transboundary consultation and public participation will in the first place happen in the context of SEA. If the plan or programme concerned can have significant effects on people or the environment in other Member States of the European Union and/or in contracting parties to the Aarhus Convention and/or in other regions, or if the competent authorities of these Member States, contracting parties and/or regions so request, the EIA /SEA Team (*Team MER*) shall send a copy of the fully declared notification to the competent authorities of the Member States, contracting parties and/or regions. When the copy is sent, it shall be clearly indicated that any comments about the SEA can be submitted to the administration within a period of 60 days from receipt of the copy in view of scoping. A similar notification is necessary when the draft plan or programme and the SEA documentation are submitted to public consultation. By mutual agreement, practical arrangements are made concerning the way the citizens of the concerned countries and regions can introduce their observations. Similar provisions apply in the case of EIA, although transboundary consultation on the EIA Report will be combined with the consultation on the application of an integrated permit. If the competent administration determines that the subject of the permit application can have significant effects on people and the environment in another region, another EU Member State or a contracting party to the Espoo Convention, or if the competent authority of that other region, EU Member State or contracting party to the Espoo Convention so requests, the competent administration makes the application available to the competent authority for advice. In addition, it shall be clarified whether or not the application is subject to an EIA or to consultations between the regions, the EU Member States or other contracting parties involved. That information serves as the basis for the necessary consultation according to the principle of reciprocity and equal treatment. As soon as possible, and no later than the day before the start of the public inquiry, the authority with which the file is available for inspection will inform the competent authority. The interested residents of the region concerned, the EU Member State concerned or the contracting party to the Espoo Convention concerned may participate in: 1) the public inquiry organised in the Flemish Region; 2) the public inquiry that the competent authority may organise in its own territory based on the application file received. The competent authority shall at the same time communicate its possible comments, together with the results of any public inquiry it has organised, to the competent permitting authority and to the EIA administration within a period of 50 days from the date of receiving the file. If the application relates to an establishment subject to an EIA, consultations are held with the region or the EU Member State concerned about, among other things, the potential transboundary effects of the establishment and the measures that are envisaged to limit or eliminate those effects within an agreed reasonable time. Similar provisions apply when the competent administration determines that the subject of the application is the operation of a so-called Seveso plant with a major transboundary major-accident risk.

When in the *Walloon Region* a plan, programme or project is subject to a SEA or EIA and the Government or the competent authority notes that it is likely to have significant effects on the environment of another region, another Member State of the European Union or another party to the Espoo Convention, or when another region, another Member State of the European Union or another State party which is likely to be significantly affected makes the request, the draft plan, draft programme or permit application, accompanied by the SEA or EIA Report and any information on the cross-border implications of the case, is sent for consultation to the competent authorities of that other region, other Member State of the European Union or party at the same time as these documents are subject to public inquiry in the Walloon Region. In addition, the following information is also transmitted:

the contact details of the authorities competent to take the decision, of those from which relevant information can be obtained, of those to which comments or questions may be addressed, as well as details of the deadlines for transmitting comments or questions;

the nature of the possible decisions or, where it exists, the draft decision;

where applicable, details concerning a proposal to update a permit or the conditions attached to it;

an indication of the date and place where the relevant information will be made available to the public and the ways it will be made available;

the precise means of public participation and consultation;

the main reports and opinions addressed to the competent authority or authorities at the time when the public was informed.

The consultation procedure may be implemented through an appropriate joint body.

When the implementation of a plan or programme under development in *the Brussels-Capital Region* is likely to have significant effects on the environment of the Flemish Region, the Walloon Region or a Member State of the European Union, or when the Flemish Region, the Walloon Region or a Member State of the European Union likely to be significantly affected, so requests, the Government transmits to the region or Member State of the European Union, before said plan or programme is adopted or submitted to the legislative or regulatory procedure, a copy of the draft plan or programme as well as a copy of the SEA Report. When the Flemish Region, the Walloon Region or a Member State of the European Union receives a copy of a draft plan or programme as well as a copy of the SEA Report, it informs the Government if it wishes to start consultations before the plan or programme is adopted or submitted to the legislative procedure and, if this is the case, the Government and the region or Member State of the European Union concerned enter into consultations on the likely transboundary implications of implementation of the plan or programme and on the measures envisaged to reduce or eliminate these impacts. When such consultations take place, the Government and the region or Member State of the European Union concerned shall mutually agree on arrangements to ensure that the competent authorities and the public in the region or Member State of the European Union whose territory is likely to be significantly affected are informed and can send their opinion within a reasonable time. When the regions or the Member States are required to consult under this article, they shall agree from the start of negotiations on a reasonable period for carrying out the consultations.

When the competent authority, insofar as EIA and environmental permits are concerned, determines that a project could have a significant impact on the environment of another region, another Member State of the European Union or another party to the Espoo Convention, or when the concerned region, State or party to the Convention so requires, the competent authority shall arrange for the transfer to the competent authority of the concerned region or State, at the latest at the time when the public inquiries in the Brussels-Capital Region start, all available information about the project and its possible cross-border effects as well as the nature of the decision that could be taken. The competent authority grants a reasonable time to the addressee of this information to indicate whether there is a desire to participate in the decision-making procedure. In this case, the competent authority will also hand over the following as soon as possible, with the instruction to arrange the participation of the intended public:

the relevant content of the application file in relation to the project;

the government data from which relevant information can be obtained and on which comments can be made;
the correct means of public participation;
the period within which the decision must be taken.
The competent authority considers the comments made during this procedure and communicates its decision to the body that participated in the decision-making process.
Foreign individuals and NGOs
In Belgium, there are no specific rules concerning standing of individuals or NGOs of an affected country. Thus, the general rules on standing, timeframes and use of languages will apply, as discussed above in points 1.4, 1.6 and 1.7. Like Belgian nationals or persons living in Belgium, foreign nationals or persons living in another country can, under the same conditions of having an interest, introduce a demand for annulment and request interim measures (e.g. Council of State, n° 187.971, 17 November 2008, *De Cloedt*; Council of State, n° 210. 478, 18 January 2011, *De Cloedt*). The same is true for foreign NGOs (e.g. Council of State, n° 231.609, 18 June 2015, *Sucaet*; Council of State, n° 241.778, 14 June 2018, *Sucaet*).

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[1] See also case C-529/15.

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Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Standing of individuals and NGOs

The standing rules are the same as those mentioned in paragraph 1.4. In general, we can say that Belgian law and jurisprudence have evolved in such a way that access to justice in environmental matters is now consistent with the requirements of the Aarhus Convention and related EU law (see paragraph 1.3).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Administrative appeals and court review

As set out in paragraph 1.3, in administrative appeals all aspects of the administrative decision can be reviewed, while the judicial review by the administrative courts will cover both the procedural and substantive legality. There are no grounds or arguments precluded from the judicial review phase.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Exhaustion of administrative review procedures

When an administrative appeal is provided for in the legislation at stake, that avenue should be exhausted first before recourse is taken to the judicial review procedure (see paragraph 1.3).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Public participation

In order to have standing before the administrative courts, it is not necessary to participate in the public consultation phase of the administrative procedure.

5) Are there some grounds/arguments precluded from the judicial review phase?

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Fairness

The principle of equality of arms is part of the notion of fair trial. In Belgium, the principle is interpreted in a way that is consistent with the case law of the ECtHR and the CJEU.

7) How is the notion of "timely" implemented by the national legislation?

Timeliness

The main weakness of the Belgian situation concerning access to justice is that, although we have seen improvement in recent years, the courts still need still too much time to decide cases.

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief

Injunctive relief is available under the conditions set out in point 1.7.2.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

Cost rules

The rules set out in point 1.7.3 are applicable.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[1]

Standing of individuals and NGOs

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The standing rules are the same as those mentioned in paragraph 1.4. An important difference with EIA-related permit decisions is that, in general, for SEA-related plans and programmes there is no administrative appeal, only judicial review by the Council of State. The time limit for introducing a case is 60 days

after the day of publication of the plan or programme. The main weakness of the Belgian situation concerning access to justice is that, although we have seen improvement in recent years, the Council of State still needs too much time to decide cases (see point 1.8.1).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Court review

As set out in paragraph 1.3, the judicial review by the Council of State will cover both procedural and substantive legality. Judicial review of SEA is only possible together with the plan or programme concerned, as set out in point 1.8.1. There are no grounds or arguments precluded from judicial review.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Exhaustion of administrative review procedures

Administrative appeal procedures for plans and programmes are, in general, not provided for in the legislation. Thus, the rule to exhaust that avenue first before having recourse to the judicial review procedure is not applicable (see paragraph 1.3).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Public participation

In order to have standing before the Council of State, it is not necessary to participate in the public consultation phase of the administrative procedure.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief

Injunctive relief is available under the conditions set out in point 1.7.2.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Cost rules

The rules set out in point 1.7.3 are applicable.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

Standing of individuals and NGOs

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The standing rules are the same as those mentioned in paragraph 1.4. In general, for plans and programmes there is no administrative appeal provided for, only judicial review by the Council of State. The time limit is 60 days after publication of the plan or programme. In general, we can say that Belgian law and jurisprudence have evolved in such a way that access to justice in environmental matters is now consistent with the requirements of the Aarhus Convention and related EU law (see paragraph 1.1).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Court review

As set out in paragraph 1.3, the judicial review by the Council of State will cover both procedural and substantive legality. Through the control of general principles of proper administration, the legality control allows to reach out to facts. There are no grounds or arguments precluded from the judicial review phase.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Exhaustion of administrative review procedures

Administrative appeal procedures for plans and programmes are, in general, not provided for in the legislation. Thus, the rule to exhaust that avenue first before having recourse to the judicial review procedure is not applicable (see paragraph 1.3).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Public participation

In order to have standing before the Council of State, it is not necessary to participate in the public consultation phase of the administrative procedure.

Timeliness

The main weakness of the Belgian situation concerning access to justice is that, although we have seen improvement in recent years, the Council of State still needs too much time to decide cases (see point 1.8.1).

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief

Injunctive relief is available under the conditions set out in point 1.7.2.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Cost rules

The rules set out in point 1.7.3 are applicable.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[3]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

Standing of individuals and NGOs

The standing rules are the same as those mentioned in paragraph 1.4. There is no variation in respect of the form in which the plan or programme is adopted.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Court review

As set out in paragraph 1.3, the judicial review by the Council of State will cover both procedural and substantive legality. There are no grounds or arguments precluded from the judicial review phase.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Exhaustion of administrative review procedures

Administrative appeal procedures for plans and programmes are, in general, not provided for in the legislation. Thus, the rule to exhaust that avenue first before having recourse to the judicial review procedure is not applicable (see paragraph 1.3).

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Public participation

In order to have standing before the Council of State, it is not necessary to participate in the public consultation phase of the administrative procedure.

6) Are there some grounds/arguments precluded from the judicial review phase?

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Fairness

The principle of equality of arms is part of the notion of fair trial. In Belgium, the principle is interpreted in a way that is consistent with the case law of the ECtHR and the CJEU.

8) How is the notion of "timely" implemented by the national legislation?

Timeliness

The main weakness of the Belgian situation concerning access to justice is that, although we have seen improvement in recent years, the Council of State still needs too much time to decide cases (see point 1.8.1).

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief

Injunctive relief is available under the conditions set out in point 1.7.2.

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Cost rules

The rules set out in point 1.7.3 are applicable.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[4]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Standing of individuals and NGOs

Administrative regulations of the federal, regional, community, provincial and local governments can be challenged before the Council of State. The standing rules are the same as those mentioned in paragraph 1.4. There is no administrative appeal provided for, only judicial review by the Council of State. The time limit is 60 days after publication of the regulation in the Belgian Official Journal (*Belgisch Staatsblad/Moniteur belge)* or, where provincial or local regulations are concerned, after their official publication. Furthermore, Art. 159 of the Constitution states that Courts only apply general, provincial or local decisions and regulations where they are in accordance with the law. This "exception of illegality" can be raised in
any court case without a specific time limit.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Court review

As set out in paragraph 1.3, the judicial review by the Council of State will cover both procedural and substantive legality. There are no grounds or arguments precluded from the judicial review phase.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Exhaustion of administrative review procedures

Administrative appeal procedures for regulations are not provided for in the law. Thus, the rule to exhaust that avenue first before having recourse to the judicial review procedure is not applicable (see paragraph 1.3).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Public participation

In general, there is no formal public consultation phase for regulations. Most of the time, however, some specialised advisory bodies composed of stakeholders shall be consulted. In the Flemish Region, the Flemish Government is required to publish draft regulations containing general and sectoral environmental conditions on the website of the Environment Department for a period of 30 days. The draft is available for inspection at the Department of the Environment during the same period. During that period, any person can submit their comments to that Department.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief

Injunctive relief is available under the conditions set out in point 1.7.2.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Cost rules

The rules set out in point 1.7.3 are applicable.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[5]?

EU regulatory acts

It is not possible to bring a direct legal challenge before the Council of State concerning any EU regulatory act, because the Council is only competent to annul or suspend administrative acts and regulations issued by a Belgian administrative authority. However, if an administrative act of a Belgian administrative authority is challenged for violation of an EU act and the validity of that EU act is questioned, the Council of State is obliged to refer to the CJEU under Article 267 TFEU (compare with CJEU 19 October 201, C-281/16, *Vereniging Hoekschewaards Landschap*) before deciding the case.

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[1] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[2] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[3] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case law of the Court of Justice of the European Union, such as Case C-237/97, Janecek, and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[4] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774.

[5] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774.

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Other relevant rules on appeals, remedies and access to justice in environmental matters

Enforcement of administrative court decisions

- *Council of State*

When the Council of State or the Council of Permit Disputes annuls a challenged administrative decision, such a judgment has retroactive effect and the administrative decision is considered never to have existed.

At the request of one of the parties, the Council of State clarifies the grounds for its annulment judgment and the measures to be taken to remedy the illegality which led to that annulment. If the judgment entails a new decision by the concerned administration, the Council may order that this administrative decision should be taken within a specified period. It may order this in a subsequent judgment, provided that the party at whose request the annulment was pronounced has given notice of default to the administration to make a new decision, by registered letter, and that at least three months have passed since the date of the notification of the annulment judgment. If the administration has no discretionary power regarding the new decision, the judgment of the Council of State shall take the place of that decision (substitution). Where the judgment of the Council of State implies that the authority concerned refrains from taking a decision, the Council may order such an obligation to refrain from taking a decision.

If the administration fails to comply with that obligation, the party at whose request the annulment was pronounced may request that the Council of State impose a penalty payment on this authority. The periodic penalty shall be enforced at the request of the party at whose request it was imposed and with the intervention of the Minister of the Interior. Half is allocated to the general resources of the Treasury. The other half is paid to the party at whose request the penalty payment has been imposed. Such penalty can be important. For example, in a case of illegal permits for clearing forests, the Council imposed a penalty of € 50,000 per site and breach. In another case, the penalty payment was set at € 15,000 per breach and per day.

At the request of a defendant or intervening party, and if it considers it necessary, the Council of State shall designate those consequences of annulled administrative decisions which shall be deemed to be definitively or provisionally maintained for the period it determines. Such a measure can only be ordered for exceptional reasons that justify an infringement of the principle of legality by a decision that is specifically reasoned and after a contradictory debate. This decision may take into account the interests of third parties.

- *Council of Permit Disputes*

The rules applicable to the Council of Permit Disputes are similar. If the Council of Permit Disputes declares the appeal to be well-founded, the Council will annul the contested permitting decision in whole or in part. The Council has a right of injunction: it can order the authority that took the annulled decision to take a new decision within a period determined by the Council. The Council can also impose certain conditions. Only in the event that the authority that should take a new decision has no discretionary power can the Council substitute its judgment for that decision. In all other cases, the Council cannot replace the authority that took the contested decision. It is then up to that authority to take a new decision respecting the Council's ruling. This new decision can be appealed again. The Council of Permit Disputes can impose penalty payments under conditions similar to those for the Council of State.

The Council can apply an "administrative loop". In the event that the Council finds an illegality in a challenged decision, it can, under certain circumstances, give the administrative authority the possibility to take a new decision, not containing the same error, that will be reviewed again by the Council.

The Council of Permit Disputes can also maintain the legal consequences of an annulled permit decision under circumstances similar to those for the Council of State.

Compensation for reparation

Anyone requesting the annulment of a decision with the Council of State can request that compensation be awarded to them in order to rectify the damage suffered as a result of the illegality. Compensation for damages may be sought in the application for annulment during the course of the procedure or no later than 60 days after notification of the judgment finding the illegality. The Council of State has to take into account all circumstances of public and private interest. After a claim for compensation has been introduced with the Council of State, the petitioner can no longer bring civil liability claims before the ordinary courts regarding the same disadvantage. Anyone who has already brought a civil liability claim with the ordinary courts can no longer claim damages from the Council of State.

Silence of the administration

When an administrative authority is obliged to take a decision, upon expiry of a period of four months, counting from a reminder notified to it by an interested party, the silence of the administration is deemed to be a negative decision that can be appealed before the Council of State. This provision is without prejudice to special provisions which stipulate a different period or attach different consequences to the silence of the administrative authority, as is the case in some environmental permitting procedures (see point 1.7.1).

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