

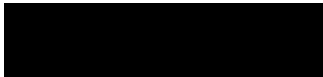
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**Format for the Aarhus Convention implementation  
report in accordance with Decision IV/4  
(ECE/MP.PP/2011/2/Add.1)**

**The following report is submitted on behalf of Belgium, Flemish  
Region in accordance with decisions I/8, II/10 and IV/4.**

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Name of officer responsible for submitting the national report:	Kristof De Cock
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Signature:	
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Date:	28/01/2025
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**Implementation report**

**Please provide the following details on the origin of this report**

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<b>Party:</b>	<b>Belgium, Flemish Region</b>
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**National Focal Point:**

Full name of the institution:	Flemish authorities Departement Omgeving (Department of Environmental and Spatial Development) Afdeling Stafdiensten en Internationale werking (Staff Services and International Affairs)
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## I. Process by which the report has been prepared

*Provide a brief summary of the process by which this report has been prepared, including information on the type of public authorities that were consulted or contributed to its preparation, how the public was consulted and how the outcome of the public consultation was taken into account, as well as on the material that was used as a basis for preparing the report.*

*Answer:*

The Flemish partial report was prepared by the Environment Department on the basis of the report of 2020, through consultation with VMM, OVAM, VLM and the appeal body for open government.

Public consultation:

The Flemish partial report was made available on the Internet from 21 October to 25 November 2024 ([link](#) to website). Everybody got the opportunity to submit written remarks.

Received comments:

The Flemish Region received one (joint) public consultation response from Bond Beter Leefmilieu (BBL), Natuurpunt and Dryade (see attached document).

## II. Particular circumstances relevant for understanding the report

*Report any particular circumstances that are relevant for understanding the report, e.g., whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).*

*Answer:*

Flemish Parliament Acts have the same legal power as federal laws. Belgium is a federal state. See the answer in the federal report ([www.health.fgov.be](http://www.health.fgov.be)).

**Abbreviations used:**

B.S.: Belgian Official Gazette

BD: Governance Decree of 07.12.2018 (B.S., 19.12.2018, err. B.S., 11.01.2019), repeatedly amended (see [Codex Vlaanderen](#))

DABM: Decreet Algemene Bepalingen Milieubeleid: Flemish Parliament Act of 5 April 1995 on the general provisions regarding environmental policy (*B.S.*, 03.06.1995), repeatedly amended (see [Codex Vlaanderen](#))

OVD: Flemish Parliament Act of 25.04.2014 regarding environment permits (*B.S.*, 23.10.2014), repeatedly amended (see [Codex Vlaanderen](#)).

Omgevingsvergunningenbesluit: Government of Flanders Order of 27.11.2015 on the implementation of the decree of 25 April 2014 regarding environmental permits (*B.S.*, 23.02.2016), repeatedly amended (see [Codex Vlaanderen](#))

VMM: Vlaamse Milieumaatschappij (Flemish Environment Agency)

VLM: Vlaamse Landmaatschappij (Flemish Land Company)

INBO: Instituut voor Natuur- en Bosonderzoek (Research Institute for Nature and Forest Research)

SERV: Sociaal-Economische Raad van Vlaanderen (Flanders Social and Economic Council)

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

OVAM: Openbare Vlaamse Afvalstoffenmaatschappij (Public Waste Agency of Flanders)

SIP: Spatial Implementation Plans (RUP-Ruimtelijke uitvoeringsplannen)

VCRO: Vlaamse Codex Ruimtelijke Ordening (Flemish Codex Spatial Planning) Code of 15.05.2009 (*B.S.*, 20.08.2009), repeatedly amended (see [Codex Vlaanderen](#))

### III. Legislative, regulatory and other measures implementing the general provisions in article 3, paragraphs 2, 3, 4, 7 and 8

#### **List legislative, regulatory and other measures that implement the general provisions in article 3, paragraphs 2, 3, 4, 7 and 8, of the Convention.**

Explain how these paragraphs have been implemented. In particular, describe:

- (a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;
- (b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;
- (c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;
- (d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally; including:
  - (i) Measures taken to coordinate within and between ministries to inform officials involved in other relevant international forums about article 3, paragraph 7, of the Convention and the Almaty Guidelines, indicating whether the coordination measures are ongoing;
  - (ii) Measures taken to provide access to information at the national level regarding international forums, including the stages at which access to information was provided;
  - (iii) Measures taken to promote and enable public participation at the national level with respect to international forums (e.g., inviting non-governmental organization (NGO) members to participate in the Party's delegation in international environmental negotiations, or involving NGOs in forming the Party's official position for such negotiations), including the stages at which access to information was provided;

- (iv) Measures taken to promote the principles of the Convention in the procedures of other international forums;
- (v) Measures taken to promote the principles of the Convention in the work programmes, projects, decisions and other substantive outputs of other international forums;
- (e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention are not penalized, persecuted or harassed.

*Answer:*

Paragraph 1 (cfr “Guidance on reporting requirements”): A report is drawn up annually on the appeals regarding public access to administrative documents (Art. 9.1 of the Convention).

(a): With respect to paragraph 2

Article II.6, second paragraph, of the Governance Decree, is an explicit duty of assistance created for all staff members of the Flemish government. If staff members themselves do not have the requested information, they must forward the question directly to the competent body or to the central contact and information point. Information requests must be answered free of charge and within a reasonable time.

The code of professional conduct of 6 July 2011, which applies to all Government of Flanders staff, describes the joint mission of all members of staff as follows: “*We seek to provide the best possible service to the people...*”. The principle of customer-friendly service provision implies among other things that all correspondence mentions the official’s name, position and address or a general telephone number or functional mailbox for the body or part thereof. In addition, it is explicitly stipulated that staff members are to assist customers in complying with administrative formalities and that they must refer them to the right person or department.

This general obligation is explained in greater detail where it concerns obtaining access to environmental information (see the answer to the question regarding Article 5, paragraph 2 of the Convention).

Opportunities for participation are announced in the public media. To that end, the Government of Flanders takes initiatives for digitisation and electronic data exchange. If citizens require any additional information regarding opportunities for participation, they can turn to the public authorities starting at the closest local level. In addition to this, the Flemish Region has a first line information service (telephone number 1700) which acts as a one-stop shop for any questions: the ‘Vlaamse Infolijn’ (Flemish Information Line).

There is an ongoing project to better organise information about participation. This project consists of three parts 1. Building a digital portal with information about current participation periods at regional level in the Environment policy area and about non-Flemish procedures; 2. Developing an information strategy - harmonising regulations on information about participation; 3. Drawing up types of texts that provide a clear explanation about participation. The portal website was developed and can be further optimised. The intention is that citizens and governments will eventually be able to submit public participation responses through this single digital portal and the processing of these public participation responses can be done uniformly through this portal. See also article 6 of the Convention. A note was prepared outlining possible harmonisation of regulations on information on public participation. The typescripts and templates for announcing participation periods were rewritten with a ‘Heerlijk Helder’ (Nice and Clear) approach.

(b): With respect to paragraph 3

Every public authority is under the obligation to inform the public about the rights given to the public with regard to access to information (Art. II.2 1st para BD).

The website <https://www.vlaanderen.be/uw-overheid/werking-en-structuur/hoe-werkt-de-vlaamse-overheid/informatie-en-communicatie/toegang-tot-bestuursdocumenten-via->

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[openbaarheid-van-bestuur](#) contains in this respect a lot of useful information for the citizens, among other things an explanation to the legal framework, thematic information and the anonymized decisions of the appeal body.

From the evaluation of the previous decree on open government, it appears that additional efforts are necessary to inform members of the public in more a systematic way about their right to inspection of official documents.

Environmental education and environmental awareness in general.

Up till now, environmental education has not been laid down by Flemish Parliament Act. On 18 July 2003, the Government of Flanders adopted the “Nature and Environmental Education Programme” (NME) for an unlimited period of time. Within the Environment Department, the PBM division (Partnerships with Authorities and Society) fulfils a catalyst role in the development of target group-oriented, participative and integrated nature- and environmental education. Sustainable development hereby forms the reference framework.

Nature- and environmental education is a part of the social instruments of the environmental policy. The Sustainable Education Point is the Flemish authorities' centre of expertise on sustainability education, offering support to people working in the field of sustainability education with an offering tailored to their needs. The offering targets teachers and management from compulsory education, lecturers and management from higher education, educational organisations, and citizens through educational campaigns or during visits to one of the educational centres. For example, teachers can go to De Helix and De Vroente centres for educational offerings. They can also consult ‘MOS – Duurzame scholen, straffe scholen’. (MOS - Sustainable schools, great schools). In addition, numerous materials have been developed that teachers can use to get started themselves. For individuals wishing to delve more deeply into recent developments and findings, there are a number of evidence-based publications available. With the ‘Nature in your school’ call for projects, schools are encouraged every year to incorporate greenery into their playgrounds. The following are proposed for a more sustainable higher education: a professionalisation offering on sustainability education in higher education, guidance for educational innovation processes, where sustainability education is the key focus, and connecting initiatives where partners can learn from each other, exchange experiences and inspire each other to new engagement. Finally, the Sustainable Education Point also offers a lot of material to inspire educational organisations, and enters into partnerships with these organisations.

The Environment Department organises structural consultation set-ups with key partners within the domain of environment professionals who are responsible for aligning policy development and policy implementation. The department has a broad focus on knowledge sharing regarding environment policy, to (local) administrations, professionals and social actors, and involves them in policy and regulatory processes (e.g. Consultations in the event of changes to VLAREM).

Through the atria the exchange of knowledge and involvement of specific local administrations regarding environmental themes is stimulated. The atria network is an informal knowledge exchange network, where environmental officials, mandataries and general managers of local governments and provinces, inter-communal associations and umbrella organisations are in contact with each other across the levels of government. Within the Atrium Learning Network there are various consultation platforms, each with a specific goal and field of participants. The atria form a platform to co-create Flemish policy, among other things by identifying local initiatives that are relevant to the Flemish agenda, and by working on governance.

Policy forums, digital or physical, are targeted at a broad field of environment professionals and ensure knowledge sharing as regards newly developed environment policies. In this regard, the department reaches administrations, consultants, environmental experts, engineering firms, designers and civil society actors, among others. In line with this networking and interaction with the practice, the Environment Department has a strong focus

on building up-to-date and comprehensive web information that supports implementation in the practice (e.g. Law guide, guidance documents).

(c): With respect to paragraph 4

The following regulation applies in Flanders:

Flemish Parliament Act of 26.04.2024 supporting environmental permits and environmental projects (B.S. 19.06.2024)

Government of Flanders Order of 16 December 1992 laying down the conditions for recognition and criteria for the allocation of a subsidy to recognised associations active in the field of forestry, hunting or wildlife management, (B.S., 02.04.1993);

Government of Flanders Order of 16 December 1992 implementing Articles 8, 9 and 10 of the Flemish Parliament Act of 29 April 1991 establishing the Environment and Nature Council of Flanders and laying down the general rules for the recognition and subsidisation of environmental and nature associations, (B.S., 27.05.1993);

Government of Flanders Order of 10 October 2003 laying down special rules for the subsidisation of projects regarding sustainable nature and environmental policy, (B.S., 04.11.2003);

Government of Flanders Order of 7 June 2024 laying down the recognition and subsidisation of environmental and nature associations, (B.S., 21.08.2024).

(d): With respect to paragraph 7

In the past, a survey was organised within the public services on the application of the PPIF-guidelines. The civil service coordination of the Flemish International environmental policy is conducted by a permanent body: the Flemish International Environmental Policy Consultation (VOIO) and for Belgium by the permanent Coordination Committee for International Environmental Policy (CCIM). Each time the EU Presidency rotates (January and July), an information meeting is organised at Flemish level through the MINA Council and the Liaison Agency Flanders-Europe (VLEVA) not-for-profit organisation, and at Belgian level through CCIM, with civil society organisations involved in environmental policy: professional federations, trade unions, environmental organisations, ... At the six-monthly CCIM- 'Stakeholder Dialogue', priority files for negotiation for the coming six months are further explained. Often, these cases are also discussed at separate consultation sessions among the competent civil servants and the community-based organisations that are most directly involved.

(e): With respect to paragraph 8

The principle of the right to freedom of speech, together with the right to protection of a healthy living environment is constitutionally embedded in Articles 19 and 23 respectively of the Co-ordinated Constitution.

Art. 19 reads as follows with regard to this matter: *"The freedom of worship, the free public practice thereof, as well as the freedom to express one's opinion in any field, are guaranteed, subject to the punishment of offences committed during the application of these freedoms".*

Art. 23 stipulates the following: *"Everyone has the right to a decent existence.*

*This is guaranteed by the law, the decree or the rule referred to in Article 134, taking into account the corresponding obligations, the economic, social and cultural rights of which they lay down the terms for exercise. These rights include especially: (...) 4° the right to the protection of a healthy living environment (...)* See also the federal report: ([www.health.fgov.be](http://www.health.fgov.be)).

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#### IV. Obstacles encountered in the implementation of article 3

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

*Answer:*

#### V. Further information on the practical application of the general provisions of article 3

*Provide further information on **the practical application of the general provisions of article 3.***

*Answer:*

(a) With respect to paragraph 2

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

(b): With respect to paragraph 3

The Convention is promoted on the internet, through the federal portal site [www.aarhus.be](http://www.aarhus.be).

The Convention is also promoted in Flanders on the internet via the following website: <https://emis.vito.be/nl/artikel/ken-je-je-milieurechten>.

#### VI. Website addresses relevant to the implementation of article 3

*Give relevant website addresses, if available:*

<http://www.aarhus.be>

<https://www.vlaanderen.be/uw-overheid/werking-en-structuur/hoe-werkt-de-vlaamse-overheid/informatie-en-communicatie/toegang-tot-bestuursdocumenten-via-openbaarheid-van-bestuur>

<https://www.vlaanderen.be/duurzaam-educatiepunt>

## VII. Legislative, regulatory and other measures implementing the provisions on access to environmental information in article 4

### List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

Explain how each paragraph of article 4 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

- (i) Any person may have access to information without having to state an interest;
- (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
- (iii) The information is supplied in the form requested;

(b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;

(c) With respect to **paragraphs 3 and 4** measures taken to:

- (i) Provide for exemptions from requests;
- (ii) Ensure that the public interest test at the end of paragraph 4 is applied;

(d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;

(e) With respect to **paragraph 6** measures taken to ensure that the requirement to separate out and make available information is implemented;

(f) With respect to **paragraph 7** measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;

(g) With respect to **paragraph 8** measures taken to ensure that the requirements on charging are met.

Answer:

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

- Art. 32 of the Co-ordinated Constitution: "*Anyone has the right to consult each administrative document and receive a copy thereof, except in the cases and under the conditions laid down by the law, the Flemish Parliament Act or the rule referred to in Article 134*".
- Governance Decree of 07.12.2018 (B.S., 19.12.2018, err. B.S., 11.01.2019), repeatedly amended (see [Codex Vlaanderen](#))
- Government of Flanders Order of 19 July 2007 establishing the appeal body concerning open government and reuse of public information (B.S., 05.11.2007), repeatedly amended (see [Codex Vlaanderen](#))
- Government of Flanders Order regulating applications for public access for scientific purposes, as referred to in article II.38 of the Governance Decree of 7 December 2018 (B.S., 10/05/2019).
- Flemish Parliament Act of 20.02.2009 on spatial data infrastructure in Flanders (B.S. 28.04.2009), repeatedly amended (see [Codex Vlaanderen](#))
- Government of Flanders Order of 10 September 2010 specifying further rules for access and reuse by the participants to the spatial data infrastructure (SDI) Flanders



of geographic data sources and geographic services added to the SDI (B.S., 07.10.2010), repeatedly amended (see [Codex Vlaanderen](#))

The right to access to environmental information (and other information) is governed by the regulation on public access. The previous Flemish Parliament Act on open government of 26.03.2004, implementing international and European obligations, was integrated (and amended in a limited fashion) as of 01.01.2019 into the BD of 07.12.2018.

The rules regarding public access on request apply to all public bodies authorities within the Flemish Region, as well as to provinces as municipalities and institutions with a public service mission.

A Government of Flanders Order of 19 July 2007 governs the operation of the appeal body concerning open government.

## **II. APPLICATION OF THE NON-DISCRIMINATION REQUIREMENT**

The principle of non-discrimination is constitutionally laid down in Art. 11 of the Co-ordinated Constitution, which reads as follows: *"The enjoyment of the rights and freedoms granted to the Belgian people must be guaranteed without discrimination. To this end, the law and the Flemish Parliament Act guarantee in particular the rights and freedoms of ideological and philosophical minorities"*. The principle of non-discrimination is also present in Art. 32 of the Constitution as well as in the Parliament Act in which the right to access are guaranteed to everyone.

## **III. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2**

The BD contains the following relevant definitions relating to environmental information:

PUBLIC AUTHORITY (Art. II. 28 and I.3, 6th and 7th BD)

Article II.28

*§ 1. Public access on request applies to the following public authorities:*

*1° the Government of Flanders;*

*2° the local authorities;*

*3° institutions with a public service mission, as far as their public service mission is concerned;*

*4° environmental authorities as regards their environmental responsibilities, functions, or services.*

*As regards institutions with a public service mission that meet the condition referred to in Article I.3, 6°, c), 1), but do not meet the conditions referred to in Article I.3, 6°, c), 2), or 3), this Chapter shall only apply to administrative documents relating to decisions that bind third parties.*

*§ 2. This chapter applies to the administrative documents in the possession of public authorities as referred to in paragraph 1, with the exception of:*

*1° the administrative documents of the Flemish Parliament and the institutions associated with it, which do not relate to public procurement or personnel matters;*

*2° the administrative documents of the Flemish administrative courts that relate to the exercise of the judicial function;*

*3° the administrative documents of other bodies with a judicial capacity, to the extent that the documents relate to the exercise of the judicial function.*

Article I.3, 6°

6° institutions with a public service mission: institutions that do not belong to the Government of Flanders or to a local authority but that meet all of the following characteristics:

a) they have been established with the specific purpose of meeting needs in the general interest which are not of an industrial or commercial nature;

b) that have legal personality;

c) 1) that receive more than half of their financing from the Government of Flanders, a local authority, or another institution with a public service mission;

2) or in which the Government of Flanders, a local authority or another institution with a public service mission holds more than half the votes on the Board of Directors;

3) or their management is supervised by the Government of Flanders, a local authority or another body with a public service mission.

ENVIRONMENTAL AUTHORITY (Art. I.3, 7°):

7° environmental authorities: natural persons, groups of natural persons, legal persons, or groups of legal persons, which do not belong to the Government of Flanders or a local authority, and which are not considered to be an institution with a public service mission as referred to in point 6°, but which meet each of the following conditions:

a) they are under the supervision of the Government of Flanders, a local authority, or an institution with a public service mission;

b) they exercise public responsibilities or functions, or provide public services, with respect to the environment;

ENVIRONMENTAL INFORMATION (Art. I.4, 11 BD): “information about:

a) the environment;

b) measures and activities that lead or may lead to pressure on the environment as well as the analyses and assessments thereof that are relevant for the measures and activities referred to in e);

c) the pressure the measures and activities referred to in b) place on the environment by means of the factors of environmental disruption such as pollution;

d) nature, buildings and areas of cultural importance, the health, safety and living conditions of the population and the impact on these, to the extent that these are or can be affected by the state of the environment, the measures and activities referred to in b), or the factors of disruption referred to in c);

e) measures and activities aimed at preserving, restoring or developing the environment and the elements referred to in d), or at preventing, limiting or compensating for pressures on the environment, as well as the analyses and assessments of such measures and activities;”

Note:

PUBLIC (CONCERNED):

This term is not defined in the BD.

Article II.31, first paragraph of the BD stipulates in this context: “The public authorities, referred to in article II.28, paragraph 1, must give anyone who requests it, access to the administrative documents he requires, by allowing him to inspect the documents, giving a copy of them or providing an explanation about them.”

#### **IV. IMPLEMENTATION OF ART. 4 OF THE AARHUS CONVENTION**

(a) With respect to paragraph 1

“chapeau” (cfr. “Guidance on reporting requirements”): all applications for administrative documents must be registered. There is no difference between environmental information and other information.

(i): the applicant is under no obligation to prove an interest. (Art. II.40, paragraph 3 DB); the only requisite is to provide his name and postal address, this is an admissibility condition;

(ii): the applicant can choose whether he wishes to inspect the requested document, to receive an explanation about it, or to receive a copy of it. The public authority is obliged to respect this choice (Art. II.31, first paragraph BD);

(iii): if the administrative document is available in the form requested, or can reasonably be made available, the authority in question will provide the administrative document in the form requested. If this is not the case, the authority must inform the applicant in its decision in what form or forms the document is available or reasonably can be made so (Art. II.45, first paragraph BD).

(b) With respect to paragraph 2

Applications are replied to as soon as possible and at the latest within twenty calendar days, in writing, by e-mail or, in applicable cases, by webform (applicable both for refusals as for positive decisions) and executed. This term can be extended by twenty calendar days if the information requested is difficult to collect in a timely fashion, or if the verification of the grounds for exemption is difficult to complete in time. (Art. II.43 and 44 BD). When this term is exceeded, the applicant has the right to lodge an appeal (Art. II.48, §1, paragraph 2 BD).

In the case of environmental information, the applicant him- or herself can propose a reasonable term during which he wants to receive the information; if the environmental information cannot be made available within this period, the authority must state reasons as to why it cannot do so (Art. II.40, §4 and II.45 §3 BD).

See following websites:

[Open government | Vlaanderen.be](#) (for public authorities)

[Access to governance documents via open government | Vlaanderen.be](#) (for the public)

(c) With respect to paragraphs 3 and 4

(i) The grounds for refusal are listed in Articles II.33 and II.36 to II.39 BD, quoted hereafter: Art. II.33.

*“Unless the public interest prevails, the public authorities referred to in Article II.28, § 1, may refuse an application:*

*1° if the application remains manifestly unreasonable or formulated in too general a manner after the authority concerned has requested the reformulation of the first application, as referred to in Article II.42;*

*2° if the application concerns administrative documents that are unfinished or incomplete.*

*3° if the application concerns internal communication’.*

Article II.36.

*§ 1. By way of derogation from Articles II.34 and II.35, if the application for public access concerns administrative documents containing environmental information, the following regime shall apply.*

*The public authorities referred to in Article II.28 § 1 shall refuse the application for public access if they consider that the interest of public access is outweighed by the protection of one of the following interests:*

*1° the protection of individual privacy, unless the person concerned agrees to grant public access;*

*2° the confidentiality of the deliberations of the bodies of the Government of Flanders, of the bodies of the local authorities, of the bodies of the institutions with a public service mission and of the bodies of the environmental authorities;*

*3° the confidential nature of administrative documents that have been drawn up exclusively for criminal or administrative penalty proceedings;*

*4° the confidential nature of administrative documents drawn up exclusively for the possible implementation of disciplinary measures, for as long as the possibility of a disciplinary measure continues;*

*5° the protection of information provided by a third party without this party being compelled to do so, and which the said party has explicitly designated as confidential, unless this person agrees to grant public access;*

*6° the confidential nature of the international relations of the Flemish Region or the Flemish Community and of the relations between the Flemish Region or the Flemish Community and the supranational bodies, with the federal government and with other Communities and Regions;*

*7° the confidential nature of commercial and industrial information, when this information is protected to safeguard a legitimate economic interest, unless the party from whom the information originates agrees to the public nature thereof;*

*8° the administration of justice in civil or administrative cases and the possibility to obtain a fair trial;*

*9° the confidentiality of the actions of a public authority, if this confidentiality is required for administrative enforcement, an ongoing audit or the political decision-making process;*

*10° public order and safety;*

*11° the protection of the environment the information relates to.*

*§ 2. Insofar as the application concerns administrative documents on emissions to the environment, the grounds for exemption referred to in paragraph 1(2), 1°, 2°, 5°, 7°, 9° and 11° shall not apply.*

*For the grounds for exemption referred to in paragraph 1(2), 3°, 4°, 6°, 8° and 10°, the fact whether the requested information relates to emissions to the environment is taken into account.*

*§ 3. If the request concerns administrative documents containing information as referred to in the Cooperation Agreement of 16 February 2016 between the Federal State, the Flemish Region, the Walloon Region, and the Brussels-Capital Region on the control of major-accident hazards involving hazardous substances, the provisions of Paragraphs 1 and 2 shall apply.*

#### **Article II.37.**

*If the request for public access relates to administrative documents that were drawn up or received more than ten years ago, the public authorities mentioned in Article II.28, §1, may*

only reject the request if they consider that the interests, mentioned in Articles II.34 to II.36, are still harmed by the public access despite the passage of time.

Article II.38.

*If universities, colleges of higher education or recognised research institutions submit an application for public access for scientific purposes, the public authorities referred to in Article II.28, § 1, may decide not to invoke the following grounds for exemption:*

*1° the grounds for exemption as referred to in Article II.35 and II.36, § 1, second paragraph, 2° to 11°;*

*2° the grounds for exemption referred to in Article II.34, 2°, and II.36, § 1, second paragraph, 1°, within the limits of Article 89, first paragraph, of the General Data Protection Regulation;*

*3° the grounds for exemption referred to in Article II.34, 5°, and 6°, provided that the data subject has consented to the public access.*

*The Government of Flanders shall lay down the detailed provisions for the application of this Article. (See Government of Flanders Order regulating application for publication for scientific purposes, as referred to in article II.38 of the Governance Decree of 7 December 2018 (B.S.,10.05.2019).*

Article II.39.

*The exemptions set out in this section shall be interpreted restrictively on a case-by-case basis.*

*The public authorities, mentioned in Article II.28, §1, shall also apply the applicable provisions of laws, decrees or ordinances when assessing a request for public access, to the extent that these exemptions prohibit or limit public access to administrative documents on grounds that fall under the competence of the federal government or other communities or regions.*

*The exemptions as referred to by virtue of Flemish Parliament Acts also apply to the public authorities of other Communities and Regions and at the federal level to the extent that these exemptions prohibit or limit public access to administrative documents on grounds that fall under the competence of the Flemish Community or Region.*

(ii) the balancing of interests is included in the head sentence of Art.II.33 and in Art. II.36, §1, second paragraph BD, cited below:

Article II.33.

*Unless the interests of public access prevail, the public authorities referred to in Article II.28 § 1 may reject an application: (...)*

Article II.36.

*§ 1. By way of derogation from Articles II.34 and II.35, if the application for public access concerns administrative documents containing environmental information, the following rule shall apply.*

*The public authorities referred to in Article II.28 § 1 shall refuse the application for public access if they consider that the interest of public access is outweighed by the protection of one of the following interests: (...)*

(d) With respect to paragraph 5

In the event of the application being submitted to an authority that does not have the administrative document at its disposal, this authority must forward the application as soon as possible to the authority that presumably does have the document at its disposal, and

inform the applicant of this immediately (Art. II.40, §1, 2nd para BD). In this case, a new term begins.

(e) With respect to paragraph 6

This obligation is included in Article II.45, §2 BD: an administrative document is partly made public if in addition to other information the document contains information to which an exception applies, and if it is possible to separate the latter information from the former. In such case the authority must explicitly indicate in its decision that the administrative document concerned can only partly be made public and indicate to the extent possible the locations where information was left out and also on the basis of which grounds for exemption this was done. (f) With respect to paragraph 7

Applications are replied to as soon as possible and at the latest within twenty calendar days, in writing, by e-mail or by webform both for refusals as for positive decisions. If the information requested is difficult to collect in a timely fashion, or if checking the validity of the grounds for exemption is difficult to complete in time, this term of fifteen calendar days can be extended to forty calendar days. The applicant must be informed in writing of this decision on the extension which must also identify reason or reasons for this extension (Art. II.43 and 44 BD).

If this term is exceeded, the applicant shall be given the right to lodge an appeal (Art. II.48, §1, 2° BD).

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

Any decision or administrative act that is significant for individuals and intended to have legal consequences for citizens or another public authority, must also mention of the possibilities and terms of appeal. Otherwise, the decision has not been validly notified. In the absence of this mention, the term for the submission of an appeal shall commence four months after notification of the decision (Art. II.21 and II.48, §1, fourth paragraph BD), whereas the regular period for lodging an appeal is thirty calendar days.

(g) With respect to paragraph 8

The right to inspection and explanation about administrative documents is free of charge. On the basis of a reasonable cost price, payment may be charged for the provision of a copy (Art. II.31, 2nd paragraph BD).

## VIII. Obstacles encountered in the implementation of article 4

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

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## IX. Further information on the practical application of the provisions of article 4

*Provide further information on the **practical application of the provisions on access to information in article 4**, e.g., are there any statistics available on the number of requests made, the number of refusals and the reasons for such refusals?*

*Answer:*

A model register for the registration of applications for public access has been placed on the website, which can be downloaded by the government authorities.

The decisions of the appeal body (more than 5,000 rulings since it was established in 2004) can currently be consulted on the website in a chronological register, which means all decisions of the appeal body are available to be consulted on a full text basis via a search engine.

### Statistical data:

Access to environmental information can be gained via a range of authorities, such as for instance administrations, provinces and municipalities. Given this range of possibilities, there are no overall statistics available with regard to all applications for environmental information. Statistics are nevertheless available for the number of appeals lodged with the regional appeal body, but these statistics do not make any distinction between appeals relating to environmental information and other information.

## X. Website addresses relevant to the implementation of article 4

*Give relevant website addresses, if available:*

There are two websites, on which a lot of information can be found about “public access to administration”:

<https://www.vlaanderen.be/uw-overheid/informatie-voor-overheden/openbaarheid-van-bestuur> (for government bodies)

<https://www.vlaanderen.be/uw-overheid/werking-en-structuur/hoe-werkt-de-vlaamse-overheid/informatie-en-communicatie/toegang-tot-bestuursdocumenten-via-openbaarheid-van-bestuur> (for the public)

## XI. Legislative, regulatory and other measures implementing the provisions on the collection and dissemination of environmental information in article 5

**List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.**

Explain how each paragraph of article 5 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

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- |       |  |
|-------|--|
| (a)   | With respect to <b>paragraph 1</b> , measures taken to ensure that:  |
| (i)   | Public authorities possess and update environmental information;   |
| (ii)  | There is an adequate flow of information to public authorities;  |
| (iii) | In emergencies, appropriate information is disseminated immediately and without delay;   |
| (b)   | With respect to <b>paragraph 2</b> , measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible; |
| (c)   | With respect to <b>paragraph 3</b> , measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks; |
| (d)   | With respect to <b>paragraph 4</b> , measures taken to publish and disseminate national reports on the state of the environment;   |
| (e)   | Measures taken to disseminate the information referred to in <b>paragraph 5</b> ;  |



(f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;

(g) Measures taken to publish and provide information as required in **paragraph 7**;

(h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;

(i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

*Answer:*

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

- Governance Decree of 07.12.2018 (*B.S.*, 19.12.2018, err. *B.S.*, 11.01.2019), repeatedly amended (see [Codex Vlaanderen](#))
- Flemish Parliament Act of 5 April 1995 containing general provisions regarding environmental policy (DABM), (*B.S.*, 03.06.1995), repeatedly amended (see [Codex Vlaanderen](#))
- Government of Flanders Order of 28 October 2005 on the dissemination of environmental information (*B.S.*, 30.11.2005), repeatedly amended (see [Codex Vlaanderen](#))
- Government of Flanders Order of 28 July 1995 specifying further rules on the environmental report and the regional environmental policy plan (*B.S.*, 27.10.1995), repeatedly amended (see [Codex Vlaanderen](#))
- Flemish Parliament Act of 21 October 1997 on nature conservation and the natural environment (Nature Flemish Parliament Act), (*B.S.*, 10.01.1998), repeatedly amended (see [Codex Vlaanderen](#))
- Regulation (EC) No 1221/2009 of the European Parliament and the Council of 25 November 2009 on the voluntary participation of organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and the Decisions 2001/681/EC and 2006/193/EC of the Commission (OJ L 342, 22 December 2009)
- Commission Regulation (EU) 2017/1505 of 28 August 2017 amending Annexes I, II and III to Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community ecomanagement and audit scheme (EMAS) (OJ L 222, 29 August 2017).
- Commission Regulation (EU) 2018/2026 of 19 December 2018 amending Annex IV to Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community ecomanagement and audit scheme (EMAS) (OJ L 325, 20 December 2018).
- Flemish Parliament Act of 18.05.2018 approving the cooperation agreement of 12 May 2017 between the Federal State, the Flemish Region, the Walloon Region and the Brussels-Capital Region on the implementation of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) and repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (*B.S.*, 06.06.2018)
- Cooperation Agreement of 12.05.2017 between the Federal State, the Flemish Region, the Walloon Region and the Brussels-Capital Region on the implementation of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 allowing voluntary participation by

organisations in a Community eco-management and audit scheme (EMAS) and repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (B.S., 10.09.2018).

- Law of 15.06.2018 approving the Cooperation Agreement of 12.05.2017 between the Federal State, the Flemish Region, the Walloon Region and the Brussels Capital Region on the implementation of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) and repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (B.S., 10.09.2018).

Note: regulations on product standardisation, eco-labels, environmental advertising and eco-labelling are a federal competence.

## **II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2**

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

## **III. APPLICATION OF THE NON-DISCRIMINATION REQUIREMENT**

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

## **IV. IMPLEMENTATION OF ART. 5 OF THE AARHUS CONVENTION**

(a) With respect to paragraph 1

(i) In accordance with Article II.3, first paragraph BD, the public authorities shall ensure that the information that is relevant to their service mission and that they themselves manage or that is managed for them is, as far as possible, orderly, accurate, comparable and up-to-date. This obligation applies a fortiori to the environmental information of the authorities designated by the Government of Flanders in accordance with Article II.4 of the BD. These authorities shall ensure that environmental information is actively, systematically, and transparently disseminated to the public or to the target groups concerned and made accessible in an effective manner. Various environmental authorities in Flanders have targeted monitoring programmes to evaluate the condition of the environment (among other things, the water quality and water levels of groundwater and surface water, channel beds, air quality, vitality of forests, the occurrence of plant and animal species in wildlife areas, land take, land use, etc). These monitoring programmes are systematically harmonised and adjusted to the constantly evolving relevant legislation and national and international reporting obligations and are oriented towards environmental reporting (<https://omgeving.vlaanderen.be/nl/onderzoek-cijfers-en-geotoepassingen/omgevingsrapportage>), nature reporting ([www.natuurrapport.be](http://www.natuurrapport.be)), and spatial reporting (<https://omgeving.vlaanderen.be/het-ruimterapport>) so as to be able to monitor the condition of the environment, nature and land as closely as possible for the benefit of policy.

(ii) “*Guaranteeing*” that public authorities “*possess*” and “*update*” and make environmental information “*flow smoothly*”, is the object of a strategic project that was started early 2000 by the then Flemish Minister responsible for the environment: “*Milieu Management Informatie Systeem*” (MMIS), i.e. the environmental management information system (EMIS), now the “*Omgevingsinfosamenwerkingsgroep*” (OIS), i.e. the environmental information group. This system fits in with the overall “*e-government*” concept of the Government of Flanders.

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

Within the framework of the MMIS project, computer networks of the different environmental authorities were linked to one another (the so-called Vo-net). At the same time, it is tried to logically gear the operational and new databases to one another by using common object descriptions (such as watercourses, land register plots, company data, address data). In this way, environmental data of different environmental authorities that are connected to these objects (for instance, watercourses, companies) can be linked to one another. Since 2018, new regulations concerning the application for permits have been in force. The so-called single permit replaces the building permit, the environmental permit, the retail permit and the permit to change vegetation. The entire permit procedure is supported digitally. Relevant data is captured in a structured manner. This leads to a better understanding of how the environment in Flanders is changing. Policy initiatives will also be more data-driven.

The obligations to inform which companies have within the framework of being a 'classified establishment or operation' (requiring an environmental permit) and within the framework of internationally imposed reporting obligations are retrieved through the 'Integrated Annual Environmental Report' (emission data, waste reporting, discharges, water extraction,...). As of 2005, this is possible via an Internet one-stop-shop where all information is available. The collected and processed data at corporate level are published via the PRTR one-stop shop <https://www.milieuinfo.be/prtr> after validation.

These data are valuable for policy making and the knowledge regarding cause-and-effect relations and the state of nature and the environment. All these emission data are also available to the public, without however violating the confidentiality of business processes, for instance. In a general sense, the ambition to link and publicise data and to ensure due reporting, is to be delivered through INSPIRE and Linked open data technology and initiatives which have developed to become the new de facto standard in recent years.

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

- the Co-operation Agreement of 16 February 2016 between the Federal State, the Flemish Region, the Walloon Region and the Brussels Capital Region on controlling the hazards of major accidents which involve dangerous substances. This Co-operation Agreement contains provisions for the formulation of a prevention policy for major accidents, the submission of a safety report, the formulation of an internal and an external emergency plan, etc. (B.S., 20.04.2016 and B.S., 30.05.2016);
- the Royal Decree of 16 May 2016 on the emergency and intervention plans (B.S., 15.03.2006);
- the Government of Flanders Order of 1 June 1995 on general and sectoral provisions regarding environmental protection, VLAREM II (cf. reporting obligation and warning obligation in accidental emissions and breakdowns, the taking of safety measures etc) (B.S., 31.07.1995).
- the Government of Flanders Order of 28 October 2005 on the dissemination of environmental information (B.S., 30.11.2005).

Flanders pursues a preventive health policy in order to achieve health gains at population level and thus not only allow people to live longer, but also to maintain and increase their quality of life. This is done by taking initiatives within the health care sector (preventive health care) and beyond (the so-called facet policy). These initiatives must be scientifically

substantiated. The legal basis for this policy has been laid in the decree of 21.11.2003 concerning the preventive health policy.

The authority responsible for water policy has made the web portal [www.waterinfo.be](http://www.waterinfo.be) available and provides up-to-date information about flood risks. The web portal also provides information on drought, enabling users to assess the severity of the drought risk. The web site is supported by operational data and prediction systems in which hydrological and hydraulic models are fed by weather forecasts. These web sites also provide updated information for the emergency services in case of flooding.

Information on PFAS contamination is made available via the PFAS explorer of the Subsoil Flanders Service Database. ([www.dov.vlaanderen.be](http://www.dov.vlaanderen.be)).

The air quality and air pollution (immission) are closely monitored in Belgium (and Flanders) (PM, NOx, Ozon, SOx,...) by means of a monitoring programme and are made available on the Internet in real time ([www.vmm.be](http://www.vmm.be)). (b) With respect to paragraph 2

The environmental information which environmental authorities have at their disposal must, to the extent possible, be categorised, accurate, comparable and updated (Art. II.3, first paragraph BD ).

The Flemish government must develop one or more joint data sources with basic information from the Flemish government, local authorities, institutions with a public service mission and environmental authorities. Basic information consists of identifying information, contact details and information on services and formal capacities. Local authorities, bodies with a public service mission and environmental authorities cooperate in one or more joint data sources with basic information (Art. II.5 BD).

Staff members of the public authorities are obliged to provide assistance to anyone who is looking for information (Art. II, 6°, second paragraph BD). The obligation to provide assistance implies, for instance, that the applicant is given an answer to his question whether or not a particular administrative document exists or to the question where a particular administrative document can be found. This obligation to provide assistance is also explained in greater detail in various provisions of the BD, amongst other things in:

the obligation to forward the application (Art. II.40, §1, second paragraph BD ): see question to Article 4, item (d), §5

the terms of the right to inspection (Art. II.44, § 2 BD): if the applicant wishes to use his right to inspect the document in situ, the place, date and time of the inspection will be defined in consultation between the authority and the applicant.

the reformulation of the application (Art. II.42 BD): if the application is manifestly unreasonable or formulated in too general a manner, the public authority must ask the applicant as soon as possible to complete his application or to reformulate it in a more specific manner (see also question to Article 4, where Article II.33 BD is quoted)

the right to inspection of administrative documents, including all environmental information laid down in lists, registers or files, is free of charge (Art. II.31, second paragraph BD).

(c) With respect to paragraph 3

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

The main general addresses are:

<http://www.vlaanderen.be/> (by clicking on the 'Natuur, Milieu en Klimaat' button, you will be directed to the homepage of Natuur, Milieu en Klimaat: <http://www.vlaanderen.be/natuur-milieu-en-klimaat> <http://>)

<https://omgeving.vlaanderen.be> (with, inter alia, direct links to the ‘Vlaamse Navigator Milieuwetgeving’ (Flemish Environmental Legislation Navigator), environmental impact reports, policy plans, research, figures, geo-counters, etc.)

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

In addition, there are the strongly developed and very informative web sites of different environmental authorities which make their information available through the Internet on a step by step basis: waste, materials and soil (OVAM), water, air (VMM), nature, forests (INBO, Agency for Nature and Forest); green spaces, e.g. countryside, fertiliser policy, projects (VLM; administrative data environmental licences, safety reports, environmental impact reports, research, figures and geocounters, (Environment Department). This available information is mainly supply-driven and not integrated. The OIS project referred to above ensures increased integration. The so-called geo-counters (Internet counters providing material about environment, nature and land by means of thematic maps) play an important role in this context. As such, a lot of effort has gone into making the GIS (Geographic Information System) on the environment and land easily accessible through the INSPIRE-compliant infrastructure.

In recent years, the focus has expanded from the development of the INSPIRE-compliant GDI platform (Geographic Data Infrastructure) for the publication of data towards its use for specific purposes. Examples are the ‘ruimtemonitor’

<https://www.vlaanderen.be/geopunt/kaarttoepassingen/ruimtemonitor-vlaanderen> (thematic map- shaped indicators to support spatial research, reporting and policy in Flanders), or the DSI platform (interadministrative exchange platform to arrive at a (geographical) digital overview of all spatial planning plans of the Flemish Region) with accompanying viewer (<https://geoplannen.omgeving.vlaanderen.be/?category=2&t=21&m=1>) and the platform of Databank Ondergrond Vlaanderen along which, with regard to soil and subsoil, data, information, maps, 3D models and network services are made accessible and a user-friendly explorer is available since 2002 (<https://www.dov.vlaanderen.be/> <http://>).

The Government of Flanders Order of 28 October 2005 obliges the governmental bodies to actively disseminate certain electronic environmental information.

Statistical information on the environment and nature is published on <https://www.statistiekvlaanderen.be/nl/omgeving>

(d) With respect to paragraph 4

In conformity with the Flemish Parliament Act on the general provisions regarding environmental policy (DABM) the environmental planning at regional level includes, inter alia, an environmental report to be drawn up by the Environment Department. The environmental reporting contains:

- 1° A description, analysis and evaluation of the existing state of the environment and spatial planning;
- 2° A description, analysis and evaluation of the environmental policy that was conducted so far, insofar as this is relevant for weighing up the results of the conducted environmental policy against the policy objectives laid down in the environmental regulations or the environmental planning;
- 2./1° a description and evaluation of the spatial policy pursued until then in the light of the objectives stated in article 1.1.4 of the Flemish Spatial Planning Code;

3° A description of the expected development of the environment and spatial planning in case the policy remains unchanged or in case it is changed, in accordance with a number of scenarios that are deemed relevant.

All information of the environment report is available online <https://omgeving.vlaanderen.be/nl/onderzoek-cijfers-en-geotoepassingen/omgevingsrapportage>

In conformity with the 21 October 1997 Flemish Parliament Act on nature conservation and the natural environment (Flemish Parliament Act on Nature) the Nature- and Forest Research Institute draws up a report on nature every two years. All information of this report is available online <https://www.vlaanderen.be/inbo/inbo-natuurrapporten/>. The nature report is also made freely available in book form and is sent to public libraries, universities, etc.

In addition, websites with indicators on the state of the environment, space and nature are available: <https://www.vlaanderen.be/inbo/natuurindicatoren/>, and <http://www.statistiekvlaanderen.be>.

(e) With respect to paragraph 5

#### Active disclosure of government documents.

In accordance with Article II.9, §§1 and 2 of the Governance Decree, the decisions of the Government of Flanders, with the exception of decisions with individual scope, must be systematically published on the central website of the Flemish authorities, together with the accompanying documents (<https://www.vlaanderen.be/uw-overheid/werking-en-structuur/hoe-werkt-de-vlaamse-overheid/informatie-en-communicatie/toegang-tot-bestuursdocumenten-via-openbaarheid-van-bestuur/online-beschikbare-documenten-actieve-openbaarheid-van-bestuur>). The Government of Flanders informs citizens about Flemish regulations and, in particular, the rights and obligations arising from them, at least through the central website of the Flemish authorities.

#### Active disclosure of (environmental) legislation, policy documents, reports, etc.

- All new legislation (Acts, Flemish Parliament Acts, Decrees) is published in the Belgian Official Gazette (*B.S.*).
- The Flemish co-ordinated legislation from 1 January 1959 onwards is collected in the Flemish Codex (<https://codex.vlaanderen.be>) and updated on a daily basis.
- The Flemish co-ordinated environmental legislation is available through the “Flemish Environmental Legislation Navigator” (<https://navigator.emis.vito.be/>);
- Policy documents (Government declarations, coalition agreements, policy papers, and policy memorandums) can be found on the Internet([www.vlaanderen.be](http://www.vlaanderen.be)).
- The Flemish regulations in preparation can be found on the internet (<https://beslissingenvlaamseregering.vlaanderen.be/>; <https://www.vlaamsparlament.be/nl/parlementaire-documenten>)
- Public authorities should actively inform, on their own initiative, about their policies, regulations and services, whenever this is useful, important or necessary. They shall ensure that the information reaches as many people, associations or organisations of the target group as possible and shall choose appropriate communication strategies for themes that concern hard-to-reach target groups. The information must be correct, reliable, accurate and relevant and must be disseminated in a targeted, timely and systematic manner (Art. II.2 BD).
- The Environment Department publishes all Flemish Parliament Acts and implementing decrees on its website (<https://omgeving.vlaanderen.be/nl/decreten-en-uitvoeringsbesluiten>). New regulations are also explained through policy forums (<https://omgeving.vlaanderen.be/nl/nl/beleidsfora>).



- The regional environmental report, as stated in Article 2.1.6 of the DABM, is made widely known;
- The provincial environmental policy plan is brought to the notice of a number of specified authorities and is available for public inspection at the municipalities and provinces (Art. 2.1.17, § 4); the municipal environmental policy plan is brought to the notice of a number of specified authorities and is also available for public inspection at the offices of the municipalities (Art. 2.1.23, § 5).

The Government of Flanders Order of 28 October 2005 obliges the public authorities to actively disseminate certain electronic environmental information.

(f) With respect to paragraph 6

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

Providing information about products is a federal competence.

Providing information about activities is a regional competence.

With regard to the provision of information by operators whose activities have a significant impact on the environment, we should in the first instance refer to Regulation (EC) No 1221/2009 of the European Parliament and the Council of 25 November 2009 on the voluntary participation of organisations in a Community ecomanagement and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and the Decisions 2001/681/EC and 2006/193/EC of the Commission (OJ L 342, 22 December 2009), amended by Commission Regulation (EU) No 2017/1505 of 28 August 2017 (OJ L 222, 29 August 2017) and Commission Regulation (EU) No 2018/2026 of 19 December 2018 (OJ L 325, 20 December 2018).

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

On the basis of the co-operation agreement of 12.05.2017 (*B.S.*, 10.09.2018) between the federal state and the Regions, this matter is applied in a co-ordinated way in Belgium. Apart from EMAS, “internal environmental performance” was integrated into the Flemish Parliament Act of 5 April 1995 containing general provisions regarding environmental policy in the Flemish Region. This regulation provides for a partial environmental performance system, which means that certain categories of installations are obliged to meet only the elements that are essential for government policy.

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

Moreover, the Flemish Parliament Act containing general provisions regarding environmental policy also provides for the drawing up of an annual integrated environmental report for specific categories of installations or activities. The integrated annual environmental report consists of the following partial reports: identification, air, energy, water, groundwater, - waste, raw materials, production volumes.

(g) With respect to paragraph 7

As for the publication of facts and numerical analyses, it must first of all be pointed out that the BD provides for a general obligation to provide information: public authorities must actively inform, on their own initiative, about their policies, regulations and services (Article II.2 paragraph 1 BD).

Flemish Parliament Act containing general provisions on environmental policy (Art. 2.1.3-2.1.6) also provides for the drawing up of a regional environmental report, which must, among other things, comprise a description of the state of the environment and spatial planning (see earlier comments to Art. 5, item (d)).

For the publication or the alternative provision of information on access to environmental information, participation and access to justice, we refer to the websites of the Environment Department (formerly LNE). With respect to making available environmental information: see above and see the annual Environmental Enforcement reports put out by the Inspection Division (previously Environmental Enforcement reports by the Environmental Inspectorate Division), OVAM, VMM, VLM (annual fertiliser report), annual Enforcement Reports from the VHRM (Flemish Council for Enforcement for Land and the Environment), the Flemish Ombudsman, etc.

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

The environmental complaints database is a registration and monitoring system for environmental complaints in Flanders introduced by municipalities through the Internet. (<http://milieuklachten.milieuinfo.be>). It offers an overview of environmental nuisance in Flanders.

(h) With respect to paragraph 8

Product information is a federal competence. See the federal report (<https://www.health.belgium.be/nl>)

(i) With respect to paragraph 9

On 4 June 2004, the Government of Flanders Order of 2 April 2004 introducing the annual integrated environmental report (IMJV) was published in the *Belgian Official Gazette*. This report contains the information reported each year by the company (on the basis of activity levels) about the relevant emissions into air and water (on the basis of threshold values), waste reporting, and groundwater abstraction and information regarding groundwater abstraction and statistics.

These data serve as a basis for a PRTR (Pollutant Release and Transfer Register) datasets about emission and transmission of pollutants) which is available on the Flemish web site <https://www.milieuinfo.be/prtr> The Belgian Aarhus website (Aarhus.be) has links to the three regional websites. At EU level, the European Industrial Emissions Portal Regulation (IEPR) website shows the national data (<https://industry.eea.europa.eu/>).

The PRTR Protocol was adopted by the Flemish Region by the 6 July 2007 Flemish Parliament Act, which ultimately led to the international ratification by Belgium on 12 March 2009. Belgium/Flanders also reports data to Europe under the European Industrial Emissions Portal Regulation (IEPR) (<https://industry.eea.europa.eu/>).



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## **XII. Obstacles encountered in the implementation of article 5**

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

*Answer:*

## **XIII. Further information on the practical application of the provisions of article 5**

*Provide further information on the **practical application of the provisions on the collection and dissemination of environmental information in article 5**, e.g., are there any statistics available on the information published?*

*Answer:*

(b): With respect to paragraph 2

The tasks and duties of officials in providing access to environmental information, such as the requirement to provide guidance, were explained in great detail during the various information sessions on the Convention with different public services.

## **XIV. Website addresses relevant to the implementation of article 5**

*Give relevant website addresses, if available:*

There are two websites with information on "public access to government" :

<https://www.vlaanderen.be/uw-overheid/informatie-voor-overheden/openbaarheid-van-bestuur> (for public authorities)

<https://www.vlaanderen.be/uw-overheid/werking-en-structuur/hoe-werkt-de-vlaamse-overheid/informatie-en-communicatie/toegang-tot-bestuursdocumenten-via-openbaarheid-van-bestuur> (for the public)

<http://www.vlaanderen.be/>: for general policy information, click 'Natuur, milieu en klimaat'

<http://www.emis.vito.be/>: environmental legislation, environment and energy, best available techniques

<http://milieuklachten.milieuinfo.be>: environmental complaints register

<https://www.vlaanderen.be/integraal-milieujaarverslag/online-imjv-loket/>: annual integrated environmental report e-window

<https://codex.vlaanderen.be/>: Flemish Codex (legislation)

<http://www.staatsblad.be/>: Belgian legislation

Thematic information (supply-driven) provided by public authorities:

<http://www.omgeving.vlaanderen.be/>: administrative data and policy information, figures, studies and geo-counters, on nature, environment and land (Environment Department)

<https://omgeving.vlaanderen.be/omgevingsvergunning/milieueffectrapportage>: environmental impact reporting

<https://ovam.vlaanderen.be/>: waste, materials and soil

<https://www.vmm.be/>: water and air

<https://www.vlaanderen.be/inbo/home/>: nature and nature report

<https://www.vlaanderen.be/inbo/home/>: forests and wildlife

<https://www.vlaanderen.be/inbo/natuurindicatoren/>: nature indicators (INBO)

open space (contains among other things data on manure policy, rural and planning projects)

<https://www.dewatergroep.be/>: Flemish Water Supply Company

<https://www.vlaanderen.be/inbo/inbo-natuurrapporten/>: nature report

[www.natuurenbos.be](http://www.natuurenbos.be): nature and forests

<https://indicatoren.omgeving.vlaanderen.be/>: indicators regarding environment nature and land

<https://www.vlaanderen.be/statistiek-vlaanderen>: statistics

<http://vmm.be/data>: all manner of data on air and water derived from reports and measurement networks

<https://klimaat.vmm.be>: maps and datasets on the climate situation, effects or impact in Flanders

<https://prtr.omgeving.vlaanderen.be/prtr/website/start/start-flow?execution=e3s1>: PRTR-counters Flanders

<https://www.vlaanderen.be/geopunt/kaarttoepassingen/ruimtemonitor-vlaanderen>: thematic (map) indicators to support spatial research, reporting and policy in Flanders.

<http://dov.vlaanderen.be>: all relevant information on the subsoil in Flanders

<https://omgevingsloketinzage.omgeving.vlaanderen.be/>: inspection of public consultations, decisions and notifications ('inzageloket')

<https://www.mercator.vlaanderen.be/zoekdienstenmercatorpubliek>: GIS data from policy area Environment that are in the public domain

<http://www.geopunt.be>: GIS data from the entire Flemish region that are in the public domain

<https://www.leefkwaliteitvlaanderen.be/>: selection of maps that together given an overview of the environment-related quality of life in Flanders.

<https://omgeving.vlaanderen.be/dsi-platform>: inter-administrative exchange platform to create a (geographical) digital overview of all the spatial planning plans of the Flemish Region.

<https://www.statistiekvlaanderen.be/nl/omgeving>: public statistics on space and the living environment in Flanders

<https://merregister.omgeving.vlaanderen.be/>: all ongoing EIR files

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## **XV. Legislative, regulatory and other measures implementing the provisions on public participation in decisions on specific activities in article 6**

**List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.**

Explain how each paragraph of article 6 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;

(ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;

(b) Measures taken to ensure that the public concerned is informed early in any environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;

(c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;

(d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;

(e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;

(f) With respect to **paragraph 6**, measures taken to ensure that:

(i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure;

(ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;

(g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;

(h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;

(i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;

(j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the

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provisions of paragraphs 2 to 9 are applied, making the necessary changes, and where appropriate;

(k) With respect to **paragraph 11**, measures taken to apply the provisions of article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

*Answer:*

**I. APPLICABLE REGULATIONS WITH REGARD TO PARTICIPATION IN SPECIFIC ACTIVITIES**

- OVD: Flemish Parliament Act of 25.04.2014 regarding environment permits (*B.S.*, 23.10.2014), repeatedly amended (see [Codex Vlaanderen](#)).
- Flemish Spatial Planning Codex (VCRO) of 15.05.2009 (*B.S.*, 20.08.2009), repeatedly amended (see [Codex Vlaanderen](#))
- Government of Flanders Order of 13.02.2015 designating the Flemish and provincial projects (*B.S.*, 04.03.2015).
- Omgevingsvergunningenbesluit: Government of Flanders Order of 27.11.2015 on the implementation of the decree of 25 April 2014 regarding environmental permits (*B.S.*, 23.02.2016), repeatedly amended (see [Codex Vlaanderen](#))
- Flemish Parliament Act of 05.04.1995 containing general provisions regarding environmental policy, (*B.S.*, 03.06.1995) (DABM), repeatedly amended (see [Codex Vlaanderen](#)), Title IV: environmental impact and safety reporting.
- Government of Flanders Order of 10.12.2004 on the determination of the categories of projects subordinate to environmental impact assessment, (*B.S.*, 17.02.2005), repeatedly amended (see [Codex Vlaanderen](#)).
- Government of Flanders Order of 12.10.2007 on environmental impact reports on plans and programmes (*B.S.*, 07.11.2007) repeatedly amended (see [Codex Vlaanderen](#)).
- Government of Flanders Order of 17.02.2017 on more detailed rules for the environmental impact assessment of projects and for the environmental safety assessment (*B.S.*, 30.03.2017), repeatedly amended (see [Codex Vlaanderen](#)).
- Flemish Parliament Act of 25.04.2014 on complex projects (*B.S.*, 27.08.2014), repeatedly amended (see [Codex Vlaanderen](#)).
- Government of Flanders Order of 12.12.2014 in implementation of the Flemish Parliament Act of 25 April 2014 on complex projects (*B.S.*, 21.01.2015), repeatedly amended (see [Codex Vlaanderen](#)).

**II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2**

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

**III. APPLICATION OF THE NON-DISCRIMINATION REQUIREMENT**

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

**IV. IMPLEMENTATION OF ART. 6 OF THE AARHUS CONVENTION**

(a) With respect to paragraph 1

(i)

Since 2018, there has been one important licensing system that regroups various former licensing systems in the Flemish Region: the building permit, the environmental licence, the retail trade permit and the permit to change vegetation. These are grouped together in the single permit.

An environmental licence is required to operate or change category 1 or 2 hazardous installations. Hazardous installations (and their classification into three categories) can be found in Annex 1, Title II of the VLAREM. An environmental licence is also required for various activities such as: construction, deforestation, the felling of standard trees, considerable changes to the relief of the soil, etc..

In the context of safety reporting, the public accessibility of the environmental safety reports is regulated by Title IV of DABM.

In the context of environmental impact assessment, Title IV of DABM provides generic procedures that also contain detailed rules on disclosure. As such, for the generic plan EIR procedure, the possibility for public participation is provided on the notification in which, among other things, the intentions of the intended plan or programme and the approach to preparing the plan EIR are presented. Further in the procedure, a public participation procedure is also envisaged on the draft EIR plan.

In addition to the generic procedures, for specific plans and programmes or projects, EIR procedures have been integrated into the applicable regulations.

The integrated EIR plan procedures for spatial implementation plans, it is regulated by the decree of 16 July 2016 amending the regulations for spatial implementation plans in order to integrate environmental impact assessment and other impact assessments into the planning process for spatial implementation plans.

Further rules on public access were also provided for in the regulations on complex projects.

Since the entry into force of the environmental licence, the provisions on environmental impact assessment have been integrated into the environmental licence procedure and public access has been aligned with the relevant detailed rules in the permit procedure. Prior to this procedure, a public session is optional, except in case of cross-border consequences - in which case a consultation also takes place during the preliminary process. Moreover, the preliminary process is always reported on the website and can also always be consulted together with the request for public access.

Flemish regulations on environmental licences provide opportunities for consultation (see below) and certain activities and/or installations (with environmental impact) for which participation in the decision-making process is possible.

It is stipulated in Flemish Parliament Acts that permit applications requiring an environmental impact report, a safety report or an appropriate assessment are subject to public participation (Annex 1 Government of Flanders Order of 10.12.2004 on the determination of the categories of projects subordinate to environmental impact assessment).

(ii) The list of activities in the Flemish Region is not completely identical to the list in Annex I of the Aarhus Convention. Annex 1 to Title II VLAREM contains a lot more activities and sometimes uses formulations or descriptions that deviate from those used in Annex I of the Aarhus Convention.

(b) With respect to paragraph 2

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

In accordance with article 17 of the OVD and article 13 et seq. of the Omgevingsvergunningenbesluit, each application must in principle be subject to a public consultation. They follow the "ordinary procedure". Only certain applications with a lesser impact are not subjected to a public consultation. They follow the "simplified procedure". This public consultation implies that – for thirty days – the application is made available for public inspection at the town hall and that it is displayed on the site of the project, by a publication on the website of the municipality where the subject of the permit application will be carried out and, in case the application includes a project EIR or an OVR or relates to the operation of an establishment or activity with an IPPC facility, additionally in at least one daily or weekly regional newspaper.

If the application relates to a classified establishment or a category 1 activity, all property owners living within a hundred metres of the installation are also notified in writing of the licence application. Most other applications for the operation of a licensed establishment or activity are addressed to the directly related owners. The public consultation is always announced in an appropriate and clearly designated area for announcements on the web site of the municipality, and at the site of the project itself.

For first category installations for which an environmental impact report or a safety report is required, at least one information meeting must be organised within the framework of the public consultation about the licence application. Public access also covers the content of the project EIR or safety report.

The required content of these notices can be summarised as follows (see art. 18 et seq. Omgevingsvergunningenbesluit). They must contain, among other things, the subject of the application, together with a short description of the object of the application. In addition, it must be announced where the file will be available for inspection during the period of notice. The possibility must also be mentioned to submit objections and remarks to the municipal authority, either orally, via the inspection counter (previously the environment counter) or in writing. If necessary, the notice must also specify the time and place of the information meeting.

Although not required by law, the Flemish government rolled out the 'inspection counter' (formerly the 'environment counter') (<https://omgevingsloketinzage.omgeving.vlaanderen.be/>) on 22 May 2023, which allows public digital inspection during the public consultation, as well as during the appeal period. The current environment counter is the tool that allows applicants to compile and submit a file and complete the authorisation or notification procedure digitally. The environment counter also already offered the possibility of viewing documents from permit files, with the exception of copyrighted information. This possibility already existed, although it was not the initial intention of the environment counter, given the legally prescribed possibility of viewing an application during the public consultation and appeal period at the town hall. Via the inspection counter, public consultations, decisions and notifications can be consulted.

(c) With respect to paragraph 3

The public consultation into the environmental licence application shall last at least 30 days.

During this period the provided information will be available for inspection by the public, which may give objections or remarks.

Through the inspection counter (formerly the environment counter), it is possible the public can submit objections digitally.

(d) With respect to paragraph 4

#### Environmental impact reporting

Within the framework of the environmental impact reporting the public nature of the environmental impact reports on intended plans, programmes and projects is linked to the

possibility for the public concerned to participate. In the case of environmental impact assessment for plans and programmes (generic track), participation is possible in the notification phase (scope of reporting), as well as in the approval phase (draft plan and report). In any case, the public is given the opportunity to participate in plans that are subject to EIR at an early stage when alternatives are still possible.

For projects subject to EIR, public participation is possible during the processing of the licence application. Optionally, a public time can also be provided for in the preliminary phase prior to the licence application.

In the integrated planning process for the preparation of SIPs, opportunities for participation are also provided in a scoping phase and during the further elaboration of the draft SIP and plan EIR.

#### Safety report

Within the framework of spatial safety reporting, the public accessibility of spatial safety reports on planned plans, programmes and projects is linked to the public participation times during the preparation of the SIP.

Similar publicity applies to the projects that follow the procedure in accordance with the regulation for complex projects.

#### Environmental licences

The public consultation starts within 10 days after the application has been declared admissible and complete (see Art. 161 Omgevingsvergunningenbesluit). This is an early stage. The public participation is useful and can be fully taken into account. Moreover, the decision on the licence application must contain, where appropriate, a reference to the nature of the positions, comments and objections submitted during the public consultation into the construction in question, and the manner in which they were dealt with (art. 48 Omgevingsvergunningenbesluit).

##### (e) With respect to paragraph 5

Within the framework of the notification phase of the environmental impact reporting process the public nature of the notification dossier gives the public concerned the opportunity to participate.

The resulting interaction may give an idea of the public concerned and gives the initiator the chance to clarify the project objectives at an early stage. With regard to the projects that observe the procedure in compliance with the complex projects regulations, similar avenues of participation are in place. In addition, prior to the licensing process, there is the possibility of informal pre-consultation, both with the competent authority and advisory bodies.

In preparation of a licence application, if a realistic project study is available, an initiator may also request the competent authority to organise a project meeting with the advisory bodies. This project meeting is intended to ensure procedural coordination between the authorities involved and allow discussion of any changes to the project deemed necessary or useful. At its own initiative or at the request of the initiator, the government may invite third-party stakeholders to a project meeting.

##### (f) With respect to paragraph 6

##### (i) + (ii)

On the basis of the OVD, Omgevingsvergunningenbesluit and the DABM, certain proposed installations are required to submit an environmental impact report in addition to the environmental licence application.



With regard to the content of an environmental impact report, Art. 4.3.7 of the DABM requires to include, inter alia, the following data: a description of the project priorities, namely of the physical characteristics of the project, a description of the main characteristics of the construction- or production processes and a prognosis of the expected emissions and residues. Next, a draft of the main alternatives to the project, a description of probably major environmental effects on man and environment; when the occasion arises: a description of the probably major environmental effects of the proposed project on the territory of a neighbouring EU Member State or on the territory of another Region (Art. 4.3.4); a description of the intended measures so as to avoid, restrict and remedy or compensate major environmental effects of the project; and a non-technical summary.

The documents on establishments operated within the municipality or activities that are already licensed (notifications of third category establishments, licence applications and related decisions, confirmations of notifications of small changes...) are on public display for third parties free of charge at the city/town hall. The documents can be consulted without any interest having to be demonstrated.

During the public consultation, the entire file can be consulted free of charge at the municipality, without any interest having to be demonstrated.

Also, during the public consultation, the opinions of advisory bodies are made available for inspection, to the extent that the authority to which the file is available for inspection has these documents in its possession the day before the start date of the public consultation (art. 24 Omgevingsvergunningsbesluit).

The inspection counter (<https://omgevingsloketinzage.omgeving.vlaanderen.be/>) allows public digital inspection of both pending and decided files (during the public consultation and during the appeal period).

(g) With respect to paragraph 7

#### Environmental impact reporting

There is a possibility to react (see above) in both the generic and integrated environmental assessment procedures for plans and programmes or projects.

#### Environmental licences

In accordance with the legislation, anyone may submit objections and comments to the College of Mayor and Aldermen during the thirty-day period provided for. If an information meeting is to be held (art. 25 Omgevingsvergunningsbesluit), the public may ask questions at this meeting.

(h) With respect to paragraph 8

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

#### Environmental impact reporting

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

It shall state reasons for any decisions on the intended action, in particular with respect to the following aspects:

- The choice of the intended action, a certain alternative or certain partial alternatives, except when it concerns the environmental safety report;
- The acceptability of the potential consequences or the consequences to be expected of the chosen alternative for man and environment;
- The measures proposed in the report(s).

#### Environmental licences.

In accordance with Article 48, §1, 6° Omgevingsvergunningenbesluit, the licence decision must contain the following: “(6) where appropriate, a reference to the nature of the positions, comments and objections submitted during the public consultation into the construction in question, and the manner in which they were dealt with;”

#### (i) With respect to paragraph 9

##### Environmental impact reporting

In accordance with Article 12, §2 of the Government of Flanders Order of 12.10.2007 on environmental impact assessment on plans and programmes, the initiator ensures that the draft plan or programme, together with the draft plan EIR and the decision can also be consulted by the public. These documents can be consulted via the website of the competent administration, where appropriate the website of the initiator, and at the municipality or municipalities concerned and, where appropriate, on their website.

#### Environmental licences

Articles 55 to 64 of the Omgevingsvergunningenbesluit regulate in detail the publication of decisions on applications for environmental licences.

The decision on a single licence shall be published by:

- 1) where appropriate, the display of a poster at the place where the object of the licence application is to be carried out, in accordance with Article 59 Omgevingsvergunningenbesluit;
- 2) publication on the website of the municipality where the licence application is to be carried out, in accordance with Article 60 Omgevingsvergunningenbesluit;
- 3) where appropriate, publication in a daily or weekly newspaper, in accordance with article 61 Omgevingsvergunningenbesluit;
- 4) where appropriate, the individual notification, in accordance with Article 62 Omgevingsvergunningenbesluit;
- 5) analogue or digital notification of the decision in the town hall of the municipality where the licence application is to be carried out, in accordance with Article 63 Omgevingsvergunningenbesluit.

#### (j) With respect to paragraph 10

##### Environmental licences

An amendment or addition to the licence conditions is laid down in Articles 82 and 82/1 of the OVD. The same procedure as for the initial application must be followed. This ensures compliance with the previous points of Article 6. Any change to the object or duration of the environmental licence as regards the operation of a classified establishment or activity is also subject to the ordinary licensing procedure (with public consultation) (art. 83 OVD).

#### (k) With respect to paragraph 11

No longer applicable due to the Almaty amendment.

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## **XVI. Obstacles encountered in the implementation of article 6**

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

*Answer:*

(e) With respect to paragraph 5

Currently, the Flemish environmental legislation does not contain an overall regulation with regard to the encouragement of the contact between potential applicants and the public concerned. In the Flemish Region, (the) formal participation procedure(s) is/are led by the authorities instead of the applicant himself,

The question could be raised whether an implementation is either desirable or necessary. Although it can hardly be disputed that a formal implementation has many advantages, it cannot be denied that formalisation will not simplify the procedure. Moreover, the added value seems to be rather limited compared to the current work method used in the Flemish Region.

## **XVII. Further information on the practical application of the provisions of article 6**

*Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g., are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.*

*Answer:*

National defence is a federal competence.

## **XVIII. Website addresses relevant to the implementation of article 6**

*Give relevant website addresses, if available:*

<https://www.vlaanderen.be/omgevingsvergunning>

<http://navigator.emis.vito.be/>

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## **XIX. Practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment pursuant to article 7**

*List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment, pursuant to article 7. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.*

*Answer:*

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

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

The plans laid down by Flemish Parliament Act are, among other things:

The prevention plans and the sectoral implementation plans resulting from the Flemish Parliament Act of 23 December 2011 on the sustainable management of material cycles and waste, (B.S., 28.02.2012)

The nature policy plan and the nature attainment plans resulting from the Flemish Parliament Act of 21 October 1997 on nature conservation and the natural environment, (B.S., 10.01.1998);

The water management plans resulting from the Flemish Parliament Act of 18 July 2003 on Integrated Water Policy, coordinated on 15 June 2018 (B.S., 18.12.2018, err. B.S., 18.07.2019) (for a more detailed explanation, see below point IV).

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

Where a plan or programme is required by law to be subject to an environmental impact assessment, the public has a right to be consulted on the proposal for scoping (Article 4.2.8 § 3 and § 5 DABM; Article 2.2.7 § 2 VCRO, Article 2.2. 12 § 2 VCRO, Article 2.2.18 § 2 VCRO; Article 8 § 2 Flemish Parliament Act on Complex Projects) on the draft environmental report and on the draft plan (Article 4.2.11 DABM; Article 2.2.10 VCRO, Article 2.2.15 VCRO, Article 2.2.21 VCRO: Article 15 Flemish Parliament Act on Complex Projects).

### **II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2**

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

The Flemish government maintains an extensive advisory and consultative network which is systematically involved in policy developments and through which the voice of a considerable number of stakeholders is heard. See e.g. Annex to the Government of Flanders Order of 12 October 2007 on environmental impact reports on plans and programmes or the Government of Flanders Order of 11 May 2001 designating the institutions and administrations that advise on preliminary drafts of spatial implementation plans.

The regulation provides an adequate and balanced composition of the advisory and consultative bodies.

For the more recent plans, there is also provision for an early participation period. When a plan, programme or policy development has been made subject of a public consultation, there are no restrictions with regard to the 'public' which is authorised to participate. Therefore, a formal 'indication' of such a public is unnecessary.

### **III. APPLICATION OF THE NON-DISCRIMINATION REQUIREMENT**

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

### **IV. IMPLEMENTATION OF ART. 7 OF THE AARHUS CONVENTION**

The afore-mentioned plans and programmes have detailed provisions with regard to participation. By way of example regarding the provisions on participation, detailed information is given on the plans within the framework of the integrated water policy at the end of this section.

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

European Directive 2003/35/EC has encouraged the Flemish government to screen the participation provisions of the various plans and programmes with an eye to improving them. The operation of implementation-oriented plans, programmes and some projects often provides for the establishment of an advisory body where the terms for implementation can be discussed between the government and the different stake holding sectors.

#### **Spatial planning**

Spatial planning in Flanders is conducted in two tiered planning levels: structural planning which is being replaced by policy planning space; the spatial implementation planning. These two sorts of spatial planning are conducted at the three levels of governance: regional, provincial and municipal, each within their own scope of competence. The spatial policy planning sets out a strategic vision and at least a spatial policy framework. Both planning levels, spatial policy planning and spatial implementation planning, involve similar forms of participation, whereby early participation or consultation takes place and information provided and then the subject of the spatial plan is subject to public consultation before final adoption.

Moreover, the spatial implementation planning is subject to the environmental impact reports for plans and programmes at regional, provincial as well as municipal level, in amongst other things because SIPs constitute the framework for the permission to be awarded. For SIPs (at the three levels of government), a participation session is already provided for at an early stage, namely after the drafting of a starting memorandum that includes, among other things, a description of the proposed plan and its possible effects on the environment or nature. After all, this note is submitted to the advisory bodies and to the public. In addition to this paper, a process paper is also drawn up which, among other things, clarifies how further participation will take place during the process. If there could be a substantial environmental impact, an environmental impact report will be drawn up.

#### **Integrated water policy**

The Flemish Parliament Act of 18 July 2003 on Integrated Water Policy coordinated on 15 June 2018 (B.S., 18.12.2018) attaches much importance to citizen participation in the water policy to be conducted. This reveals itself in two ways. First of all, Art. 1.2.3, paragraph 8 of the Flemish Parliament Act – and this is a first in Flemish environmental regulations – explicitly raises the so-called *participation principle* to an environmental principle. On the basis of this principle, all Flemish public administrations, services and agencies carrying responsibility with regard to integrated water policy must allow the citizens to participate – at an *early stage, in time and in an efficient way* – in the preparation, definition, implementation, follow-up and evaluation of the integrated water policy. It is important to mention in this respect that on the one hand the participation principle originates from and

refers to the Aarhus Convention (see the Explanatory Memorandum to the draft Flemish Parliament Act on Integrated Water Policy, *Parl. St.*, Flemish Parliament, 2002-2003, no. 1730/1, page 21), and that it contains on the other hand an imperative obligation for all bodies to actively involve the citizens, not only in the preparation and definition of the integrated water policy (through water management planning), but also in the concrete implementation thereof in the field.

Secondly, the Flemish Parliament Act on Integrated Water Policy develops a participation arrangement at each level of the water management planning (at the level of catchment basin and basin).

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

The measures regarding information and consultation of the public imposed by the Flemish Parliament Act on Integrated Water Policy are partially based on the procedure laid down by the DABM for the regional environmental policy plan. In order to allow the public to be consulted and participate actively, the draft water management plans and a number of preparatory documents must be available for public inspection during six months at the offices of the municipal authorities. During this period anyone can submit written remarks to the local authority with regard to the documents available for public inspection (Art. 1.6.2.5., §1-2 Decree on Integrated Water Policy). Remarks can also be directly submitted digitally to the Coordination Committee for Integrated Water Policy. At the same time, the authorities that drew up the draft plans present these drafts to a number of institutional social target groups (Mina-Council, SERV, Strategic Advisory Council for Agriculture and Fisheries and the basin councils) for advice. These are given ample time (six months) to study these drafts and give advice on them (Art. 1.6.2.5, §3 Decree on Integrated Water Policy). The provisions regarding the announcement of the public consultation (such as the way in which the public consultation is announced, the content of this announcement, the organisation of information meetings) were deleted in the Flemish Parliament Act on Integrated Water Policy by the Decree of 19.07.2013 amending various provisions of the Flemish Parliament Act of 18.07.2003 on Integrated Water Policy. This makes it possible to make the announcement in a more flexible manner that is customised to the target groups, in amongst other ways by way of digital media.

In this context the Explanatory Memorandum to the amended Flemish Parliament Act of 18.07.2003 reads as follows: “*Naturally, this announcement will be done both in time and in an efficient manner in keeping with the participation principle from Article 6,8° (current Article 1.2.3, paragraph 8) of the Flemish Parliament Act.*”

However important citizen participation is, it is best to avoid an excessive inquiry of the population and interest groups. The original Act on Integrated Water Policy already aimed as much as possible at linking the formal procedures for public inspection of and participation in catchment basin management plans, flood risk control plans and those of the basin management plans in time. The flood risk control plans are an integral part of the catchment basin management plans. The amended Flemish Parliament goes even further in this respect. The basin and sub-basin management plans are integrated into the catchment basin management plans as basin-specific parts. Consequently, the water management plans are presented for public consultation at the same time at all levels. The participation procedures are also clustered to a maximum extent in the preparatory documents for the water policy memorandum.

*(2) Procedure after the public consultation has ended*

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

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(municipalities, provinces ...). Finally, the approved water management plans are published by extract in the *Belgian Official Gazette* and they are made available digitally by the Coordination Committee for Integrated Water Policy.

**XX. Opportunities for public participation in the preparation of policies relating to the environment provided pursuant to article 7**

*Explain what opportunities are provided for public participation in the preparation of policies relating to the environment, pursuant to article 7.*

*Answer:*

The water policy memorandum, and the sectoral waste plans are examples of instruments that are referred to as a “plan”, but that hold an overall policy vision covering several years. In that sense these examples could just as well be regarded as “policy” (instruments). The spatial structure plan that is followed up by the spatial policy plan (we are currently in a transitional phase) are plans that have to do with the policy to be followed.

**XXI. Obstacles encountered in the implementation of article 7**

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

**XXII. Further information on the practical application of the provisions of article 7**

*Provide further information on the **practical application of the provisions on public participation in decisions on specific activities in article 7.***

*Answer:*

**XXIII. Website addresses relevant to the implementation of article 7**

*Give relevant website addresses, if available:*

<http://www.integraalwaterbeleid.be/nl/stroomgebiedbeheerplannen>

<https://www.omgeving.vlaanderen.be/nl>

<https://inspraak.omgeving.vlaanderen.be/>

## **XXIV. Efforts made to promote public participation during the preparation of regulations and rules that may have a significant effect on the environment pursuant to article 8**

*Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment, pursuant to article 8. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.*

*Answer:*

### **I. APPLICABLE REGULATION WITH REGARD TO PARTICIPATION IN DRAFT REGULATIONS**

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

- Flemish Parliament Act of 7 May 2004 on Flanders Social and Economic Council, (B.S., 25.08.2004), repeatedly amended (see [Codex Vlaanderen](#))
- Flemish Parliament Act of 26.04.2024 supporting environmental associations and environmental projects (B.S. 19.06.2024)
- Flemish Parliament Act of 30 April 2004 supplementing the Flemish Parliament Act of 5 April 1995 on general provisions regarding environmental policy with a title "Strategic advisory council" and amending various other Flemish Parliament Acts, (B.S., 08.06.2004), repeatedly amended, (see [Codex Vlaanderen](#)).
- Article III.94, §2 BD

### **II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2**

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

### **III. APPLICATION OF NON-DISCRIMINATION REQUIREMENT**

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

### **IV. IMPLEMENTATION OF ART. 8 OF THE AARHUS CONVENTION**

Consultations on draft regulations mainly take place through the organised advisory system of the Flemish Parliament and the Flemish Government. Draft Flemish Parliament Acts and strategic implementing decrees are submitted for advice to the MiNa-Council, the SERV, and SARO: Strategic Advisory Council Spatial Planning. These are mainly composed of social groups and experts (for instance from the academic world). The individual citizen is not directly involved in this. However, if important issues are being addressed, the advisory councils make efforts to gain information – to support their advice – about what is going outside their own environment, for instance by organising hearings.

From now on, a consultation portal has been registered in the Governance decree (art.II.8).



If the Flemish Government wishes to ensure the participation of citizens in the preparation, implementation, or evaluation of its policy, it shall inform them at least via the consultation portal on the central website of the Government of Flanders (art. II.8).

This article is part of the evolution towards open active policy-making and enshrines the principle of a central consultation platform. This involves consultation on vision memorandums, draft memorandums, green and white papers, and on important preliminary drafts of decrees and draft implementing decrees (via "notice and comment") but also on initiatives by other authorities with an impact on Flemish competences (e.g., EU) or possibly on the evaluation of important existing decrees or decisions.

Consultation and participation must be tailor-made. This article therefore does not impose any obligation to consult. It is within the competence of the Government of Flanders or the Ministers to decide whether consultation is useful in the decision-making process on a particular policy initiative.

The provision means that if consultation is deemed useful, the intention is that participation should be made easily accessible to everyone by providing a central consultation platform. The provision also implies that the results of the consultation should be transparent. Principles on quality consultation and feedback on results may be laid down by the Flemish Government (by circular letter). For instance, an obligation to indicate in the memo to the Flemish Government (for draft orders) or in the explanatory memorandum (for preliminary drafts of decrees) what follow-up was given to the consultation.

This consultation portal for the entire Government of Flanders is not yet operational.

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

Apart from giving advice, consultations are often also held between the environmental authorities and target groups. The former project 'target group policy' has now become a permanent task of the Environment Department and optimises the involvement of industry, agriculture and consumers in the policy.

Both the Flemish authorities and the Environment policy area have implemented good practices of effective participation of target groups and citizens, inter alia the updated Sigma Plan through a cross-policy area steering group, a sounding board group of target groups, various thematic working groups involving target groups and hearings for citizens. Another example is participation of all target groups and administrations concerned and consultation with local authorities and citizens regarding conservation targets (conservation targets are targets for conservation of natural living areas and habitats of populations of wild animal and plant species). So as to lend shape to the policy aimed at counteracting food wastage, close cooperation and consultation is maintained with the entire food industry and consumer organisations. This co-operation is concretised in a food wastage chain road map for the 2015-2020 time frame.

Specific instruments of regulations contain an explicit system of participation and involvement, such as for instance the Flemish Parliament Act of 15 June 1994 on environmental policy agreements, B.S., 08.07.1994. This system guarantees that environmental policy agreements are also subject to different external tests.

A public consultation period of thirty days is provided for the proposed adaptation of general and sectoral environmental conditions (Article 5.4.4. DABM). The same deadline applies in case of the public consultation in the preparation of a regional spatial implementation plan (art. 2.2.10. VCRO) and public consultation when a town planning ordinance is drafted (art. 2.3.2. VCRO).

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## **XXV. Obstacles encountered in the implementation of article 8**

*Describe any **obstacles encountered** in the implementation of article 8.*

*Answer:*

## **XXVI. Further information on the practical application of the provisions of article 8**

*Provide further information on the **practical applications of the provisions on public participation in the field covered by article 8.***

*Answer:*

## **XXVII. Website addresses relevant to the implementation of article 8**

*Give relevant website addresses, if available:*

## XXVIII. Legislative, regulatory and other measures implementing the provisions on access to justice in article 9

**List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.**

Explain how each paragraph of article 9 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9. Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;

(ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;

(iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;

(b) Measures taken to ensure that, within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

(c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;

(d) With respect to **paragraph 4**, measures taken to ensure that:

(i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;

(ii) Such procedures otherwise meet the requirements of this paragraph;

(e) With respect to paragraph 5, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

*Answer:*

### **I. APPLICABLE REGULATIONS WITH REGARD TO ACCESS TO JUSTICE**

Governance Decree of 07.12.2018 (B.S., 19.12.2018, err. B.S., 11.01.2019), repeatedly amended (see [Codex Vlaanderen](#))

Government of Flanders Order of 19 July 2007 establishing the appeal body concerning open government and reuse of public information (B.S., 05.11.2007), repeatedly amended (see [Codex Vlaanderen](#))

Flemish Parliament Act of 05.04.1995 containing general provisions regarding environmental policy, (B.S., 03.06.1995) (DABM), repeatedly amended (see [Codex Vlaanderen](#)), Title IV: environmental impact and safety reporting, art. 4.6.4 (EIR/VR: Reconsideration possibilities)

judicial possibilities: see federal report([www.health.fgov.be](http://www.health.fgov.be)).

## **II. TRANSPOSITION OF RELEVANT DEFINITIONS FROM ART. 2**

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

## **III. APPLICATION OF NON-DISCRIMINATION REQUIREMENT**

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

## **IV. IMPLEMENTATION OF ART. 9 OF THE AARHUS CONVENTION**

(a) With respect to paragraph 1

(i) + (ii)

The information seeker may lodge an appeal against any decision made by a public authority with regard to access to environmental information, either after the expiry of the term within which the decision had to be taken, or in the event of the decision being carried out reluctantly (Art. II.48, §1, first paragraph BD). This appeal must be lodged with an administrative appeal body 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 thirty calendar days after the sending of the decision or after expiry of the implementation period.

The autonomy of this appeal body is guaranteed by law (Art. III.91 BD):

*“The appeal body carries out its duties fully independently and neutrally. The members of the appeal body:*

*1) shall be protected against influence or pressure, in particular from persons involved in the administrative document to which the appeal relates;*

*2) have sufficient time to deal with the appeals;*

*3) shall not be subject to evaluation or disciplinary action on account of their findings in the investigation or their judgment on the appeal.”*

The appeal procedure is free of charge.

An appeal for suspension or annulment can be lodged with the Council of State against the decision of the appeal body within sixty days. This is a federal competence. See Federal report (<https://www.health.belgium.be/nl>)

(iii) The decisions of the appeal body to allow an appeal are binding for the authority they are meant for. Art. II.50 §3 BD obliges the public authority that has the information in its possession or has deposited it in an archive, to implement the decision to allow the appeal as soon as possible and at the latest within fifteen calendar days after receiving the appeal body’s 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. For local government, the appeal body may instruct an official to proceed on-site and carry out the decision himself. This can only be done after a warning in writing.

(b) With respect to paragraph 2

**Administrative appeal with regard to provisions of Article 6**

As far as the environmental licence is concerned, there exists an administrative appeal procedure in first instance in accordance with the OVD. Next to this, judicial appeal procedures are available.

An appeal can be lodged with the provincial executive against decisions in first instance of the Board of Mayor and Aldermen and with the Government of Flanders (Minister responsible for Environment) against decisions in first instance of the provincial executive. This appeal can be lodged by the applicant, by the leading civil servant of the advisory public authorities, by the Board of Mayor and Aldermen (first category), and by the public concerned.

The administrative appeal has a devolutive effect: the appeal body must re-examine all aspects of the licence application.

If the above-mentioned administrative appeal possibilities are exhausted, judicial appeal is still possible to the Council for Licence Disputes.

(c) With respect to paragraph 3

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

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

and via various judicial appeal possibilities when the above-mentioned administrative appeal possibilities are exhausted. This concerns a federal competence (see federal report)([www.health.fgov.be](http://www.health.fgov.be)).

(d): With respect to paragraph 4

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

If the appeal body allows the appeal, it also allows that it is made public (Art. II.50, §2 BD). The public authority the appeal has been lodged with implements the decision to allow the appeal as soon as possible and at the latest within fifteen calendar days after receiving the appeal body's decision. If the public authority has not implemented the decision within this period, then the appeal body will carry out the decision itself as soon as possible. For local authorities, the appeal body may order an official to proceed on-site and carry out the decision himself, after a warning in writing.

**In general**

Whether the above-mentioned administrative and judicial review procedures provide “adequate” and “effective” remedies is the subject of much discussion. Nevertheless, a wide range of remedies is available, depending on the case: restoring the original state, damages, imprisonment, a fine, an order to cease a certain act or activity, the execution of adaptation works, ordering the claimant to carry out the sentence himself at the expense of the defendant,

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imposing a penalty per time unit during which the sentence was not complied with or for every violation, etc.

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

The appeal body informs the applicant and the public authority concerned of its decision in writing, by web form or by e-mail within a period of thirty calendar days. This period can be extended to forty-five calendar days if the verification of the application as regards the grounds for exception are difficult to complete in time (Art. II.50, §1 BD).

The decisions of the appeal body are public (art. 12, in fine of the Government of Flanders Order establishing the appeal body with regard to open government) and are published on the Internet

([https://www.vlaanderen.be/publicaties?type=CONTAINS\\_ANY=beslissing%20Beroepsinstantie%20Openbaarheid%20van%20Bestuur&order\\_publicationdate=desc](https://www.vlaanderen.be/publicaties?type=CONTAINS_ANY=beslissing%20Beroepsinstantie%20Openbaarheid%20van%20Bestuur&order_publicationdate=desc))

In general

Whether or not the procedures are “fair”, “fast” and “not disproportionately expensive”, is also the subject of much discussion. Normally, the decisions within the framework of the review procedures mentioned above are in writing, public and accessible. See also federal report: (<https://www.health.belgium.be/nl>).

(e) With respect to paragraph 5

Any decision or administrative act of individual significance and intended to have legal consequences for citizens or another public authority, must also mention of the possibilities and modalities of appeal. Otherwise, the decision has not been brought to notice in a valid way. In the absence of this mention, the term for the submission of an appeal shall commence four months after notification of the decision, whereas the regular period for lodging an appeal is thirty calendar days (Art. II.21, 48 and 69 BD).

In this way, any legal subject who is faced with such government decisions, is informed about the possibilities of appeal, in accordance with the guarantee required by Article 9, paragraph 5 of the Aarhus Convention.

See also Federal report ((<https://www.health.belgium.be/nl>)).

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## XXIX. Obstacles encountered in the implementation of article 9

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

*Answer:*

With regard to art. 9.1: see under ‘obstacles’ in art. 4.

## XXX. Further information on the practical application of the provisions of article 9

*Provide further information on the **practical application of the provisions on access to justice pursuant to article 9**, e.g., are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?*

*Answer:*

## XXXI. Website addresses relevant to the implementation of article 9

*Give relevant website addresses, if available:*

[https://www.vlaanderen.be/publicaties?type=beslissing%20Beroepsinstantie%20Openbaarheid%20van%20Bestuur&order\\_publicationdate=desc](https://www.vlaanderen.be/publicaties?type=beslissing%20Beroepsinstantie%20Openbaarheid%20van%20Bestuur&order_publicationdate=desc)  
<https://www.dbrc.be/rechtspraak>

**Articles 10-22 are not for national implementation.**

## XXXII. General comments on the Convention’s objective

*If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.*

*Answer:*

See Federal report (<https://www.health.belgium.be/nl>)

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### **XXXIII. Legislative, regulatory and other measures implementing the provisions on genetically modified organisms pursuant to article 6 bis and Annex I bis**

**Concerning legislative, regulatory and other measures that implement the provisions on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms in article 6 bis, describe:**

(a) With respect to **paragraph 1** of article 6 bis and:

(i) **Paragraph 1** of annex I bis, arrangements in the Party's regulatory framework to ensure effective information and public participation for decisions subject to the provisions of article 6 bis;

(ii) **Paragraph 2** of annex I bis, any exceptions provided for in the Party's regulatory framework to the public participation procedure laid down in annex I bis and the criteria for any such exception;

(iii) **Paragraph 3** of annex I bis, measures taken to make available to the public in an adequate, timely and effective manner a summary of the notification introduced to obtain an authorization for the deliberate release or placing on the market of such genetically modified organisms, as well as the assessment report where available;

(iv) **Paragraph 4** of annex I bis, measures taken to ensure that in no case the information listed in that paragraph is considered as confidential;

(v) **Paragraph 5** of annex I bis, measures taken to ensure the transparency of decision-making procedures and to provide access to the relevant procedural information to the public including, for example:

a. The nature of possible decisions;

b. The public authority responsible for making the decision;

c. Public participation arrangements laid down pursuant to paragraph 1 of annex I bis;

d. An indication of the public authority from which relevant information can be obtained;

e. An indication of the public authority to which comments can be submitted and of the time schedule for the transmittal of comments;

(vi) **Paragraph 6** of annex I bis, measures taken to ensure that the arrangements introduced to implement paragraph 1 of annex I bis allow the public to submit, in any appropriate manner, any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release or placing on the market;

(vii) **Paragraph 7** of annex I bis, measures taken to ensure that due account is taken of the outcome of public participation procedures organized pursuant to paragraph 1 of annex I bis;

(viii) **Paragraph 8** of annex I bis, measures taken to ensure that the texts of decisions subject to the provisions on annex I bis taken by a public authority are made publicly available along with the reasons and the considerations upon which they are based;



—(b) With respect to **paragraph 2 of article 6 bis**, how the requirements made in accordance with the provisions of annex I bis are complementary to and mutually supportive of the Party's national biosafety framework and consistent with the objectives of the Cartagena Protocol on Biosafety to the Convention on Biodiversity.

*Answer:*

The Almaty amendment was adopted by the Flemish Region by the 19 December 2008 Flemish Parliament Act, which ultimately led to the international ratification by Belgium on 17 June 2009.

Although Art. 6bis and Annex Ibis are only transposed at federal level, the Regions are closely involved in the consultation procedure regarding authorisation procedures for deliberately releasing of GMOs into the environment for any purpose other than their placing on the market. See federal report.

#### **XXXIV. Obstacles encountered in the implementation of article 6 bis and annex I bis**

*Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 6 bis and annex I bis.*

*Answer:*

#### **XXXV. Further information on the practical application of the provisions of article 6 bis and annex I bis**

*Provide further information on the **practical application of the provisions on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms in article 6 bis**, e.g., are there any statistics or other information available on public participation in such decisions or on decisions considered under paragraph 2 of annex I bis to be exceptions to the public participation procedures in that annex?*

*Answer:*

#### **XXXVI. Website addresses relevant to the implementation of article 6 bis**

*Give relevant website addresses, if available, including website addresses for registers of decisions and releases related to genetically modified organisms:*

*Answer:*

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## **XXXVII. Follow-up on issues of compliance**

*If, upon consideration of a report and any recommendations of the Compliance Committee, the Meeting of the Parties at its last session has decided upon measures concerning compliance by your country, please indicate (a) what were the measures; and (b) what specific actions your country has undertaken to implement the measures in order to achieve compliance with the Convention.*

*Please include cross-references to the respective sections, as appropriate.*

*Answer:*

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Flemish government

Department Environment

Division of Staff Services and International Operation (staff)

Sofie Thys

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Brussels, 22 November 2024

## Public Consultation Response on the Implementation of the Aarhus Convention in Flanders – Flemish Regional Report

Dear Sir/Madam,

Bond Beter Leefmilieu, Natuurpunt, and Dryade would like to submit the following comments and proposals regarding the implementation report of the Aarhus Convention in the Flemish Region.

The Aarhus Convention is based on three main pillars: access to environmental information, public participation in decision-making, and access to justice. In this consultation response, we will address these three pillars.

### 1. Transparency in Public Administration

#### Public Environmental Permit Portal: The Importance of an Efficient and User-Friendly System

Since the introduction of the unified environmental permit (formerly the building and environmental permit) in 2017, the Flemish government has focused on digitalizing the application and processing of permit requests. The decree also mandated the establishment of a public [Environmental Permit Portal](#), providing interested third parties with the opportunity to submit objections (during public consultations) and/or appeals (following a decision) digitally.

**Bond Beter Leefmilieu Vlaanderen vzw**

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In addition, the platform also offered, in theory, the possibility of making documents from the applicant's file and/or decisions from the licensing authority digitally accessible to the public. However, under the guise of privacy, copyright and the lack of a decree obligation, these documents were often deliberately not uploaded. This included key reports such as environmental impact assessments, suitable assessments, and stricter nature evaluations.

As a result, many stakeholders rightfully argued that this violated transparency in public administration. In such cases, the government is required to provide the requested documents within 30 days. However, by taking up the full period to provide the documents, the timeframe for submitting objections or appeals often expired, preventing citizens from fully exercising their rights.

Moreover, the concerns raised by environmental and nature organizations were not included in the evaluation of the Environmental Permit Decree at the end of 2021. The Flemish government deliberately defined the scope of this evaluation very selectively (see [direct link](#), p. 23), focusing only on the ease and speed of granting permits—without considering whether permits were granted with greater care, whether ecological limits were better respected, or whether public participation, including the functionality of the Digital Environmental Permit Portal, was adequately addressed.

However, after persistent pressure from environmental and nature organizations, these issues were finally addressed and resolved in 2023 with the introduction of a new version of the Public Environmental Permit Portal. Nevertheless, **we wish to use this consultation to once again emphasize the importance of a well-functioning public portal.** Not only does it create a level playing field between applicants and interested

third parties, but it also serves as a compensatory measure for the fact that, since the introduction of the unified permit, the subject matter of public participation and appeals has become twice as complex, while deadlines have been shortened (e.g., the appeal period for environmental aspects has been reduced from 60 to 45 days).

Moreover, a government that presents itself as a 'civil servant' to its citizens, as stated in the coalition agreement, should ensure a user-friendly public portal—not just for permit applicants but also for interested third parties.

There is still much work to be done in this regard. The portal should allow users to search for new applications based on location and subject matter and offer an alert function that notifies third parties of new investigations or decisions. Additionally, all files and their accompanying documents (including advisory opinions) should remain publicly accessible even after the objection and appeal periods have ended, and after a final decision has been made.

#### Mandatory Notifications Lack Public Participation

Actions requiring only notification (instead of a full permit) do not undergo public

consultation and have no administrative appeal process ([link](#)), making them inherently without public participation or consultation. If issues arise, interested third parties have no other recourse but to immediately take the case to the Council for Permit Disputes (RvVb). However, legal action is not an easy step—it presents significant barriers such as legal fees, court costs, and procedural complexities. As a result, citizens are often discouraged from raising their concerns, ultimately undermining efforts to safeguard the planet's ecological limits. This is particularly relevant when considering the conditions that can be imposed on a permit following public consultation (first instance) or an appeal process (second instance).

Bond Beter Leefmilieu, Natuurpunt, and Dryade therefore urge that this concern be fully considered in the upcoming revision of the classification of "permit-required - notification-required - exempted actions"—a reform that was announced in the previous legislative term but has yet to be implemented.

#### Deficient Access to Environmental Information on Water and Fertilizer

Another pressing issue is the lack of transparency regarding key environmental data. Environmental and nature organizations frequently encounter difficulties accessing information on summary reports, actual groundwater usage, and fertilizer bank declarations from farmers.

For example:

- When applying for irrigation permits, applicants typically declare large agricultural plots to calculate the annual water quota (usually based on 1,000 m<sup>3</sup>/ha/year). However, they are not required to provide proof that they actually operate these plots. We deem a summary report listing the plots in exploitation (cadastral) to be necessary as verification. This does not imply ownership—it could also include leased land, even under seasonal leases. To ensure accuracy, a three-year history of agricultural operations, supported by submitted summary reports, would be highly useful. Groundwater extraction undeniably impacts the surrounding environment and ecosystems. Therefore, the parameters used in applications must be verifiable.
- Along the same lines, annual records of actual groundwater usage per extraction site should be made publicly accessible (e.g., via [Databank Ondergrond Vlaanderen](#)).
- The same concerns apply to fertilizer bank declarations and assigned nitrogen emission rights (NERs). The production, storage, and disposal of fertilizer significantly affect the environment and biodiversity. It is only logical that citizens and environmental organizations should have access to individual fertilizer bank reports and assigned NERs for each operation.

Enforcement data is often lacking. When third parties report potential environmental violations, they receive no confirmation or follow-up on whether any penalties were imposed

or corrective measures were taken.

### A Fundamental Lack of Water Data

Even worse than restricting access to data is the failure—whether intentional or not—to collect essential information. This is particularly concerning regarding groundwater, as climate change forces Flanders to tackle both floods and droughts more than ever.

- The EU Water Framework Directive requires groundwater layers to be monitored every six years, but there is no publicly available overview of their current status. Without this critical data, even licensing authorities lack the information needed to make sound decisions, effectively failing in their duty.
- Additionally, it is not uncommon for environmental permit applications to contain incorrect information, even when compiled by certified consultancy firms. Whether intentional or not, there should be a mechanism allowing citizens to hold these firms accountable.
- Finally, Class 1 enterprises are required to monitor the quantity and quality of their groundwater usage annually. However, besides concerns about the potential bias of these self-reported studies, there is little to no oversight on whether these assessments are even conducted.

### From Passive to Active Information Disclosure

Beyond merely collecting data accurately and granting passive access, the Flemish government should actively inform citizens—especially in cases directly affecting public health.

- For example, while a map of PFAS-contaminated zones exists, residents living in affected areas are often unaware of their exposure. In such cases, an active approach to information disclosure is essential.

## 2. Public Participation in Decision-Making

Article 6 of the Aarhus Convention mandates early public participation when all options are still open, ensuring meaningful engagement in decision-making.

### **a. Environmental Impact Assessment (EIA)**

The implementation report refers to the Decree on General Provisions for Environmental Policy (DABM) but does not yet acknowledge the new decree of May 17, 2024, which amends the April 5, 1995 decree on environmental impact assessments (EIA). This decree, known as the 'modernization of EIA', is set to take effect by December 1, 2025, pending an implementing decision.

## Public Participation in the Scoping Phase of Plan EIAs Becomes Optional

The new decree removes the mandatory public participation in the scoping phase of a plan EIA, making it optional (new Art. 4.4.2, §3 – DABM: *“The initiator may organize public participation in the scoping phase.”*). This is a step backward for early public involvement, as the Aarhus Compliance Committee recognizes public input during scoping as a best practice.

Public participation after the scoping phase—during the formal public inquiry into the final plan—is too late to suggest alternatives. This can cause delays, as additional alternatives might need to be analyzed afterward, requiring revisions to the EIA.

For project EIAs, public participation in scoping had already been made optional in a previous amendment. However, in the integrated RUP/EIA procedure, stakeholders can propose alternatives before the EIA investigation begins—this is the best practice we should follow.

BBL, Natuurpunt, and Dryade urge policymakers to reintroduce the option for the public to propose alternatives before an EIA is developed—both for plan EIAs and project EIAs. While this does not need to be a formal public inquiry with fixed deadlines, the option should always be available during the notification phase, which must be publicly accessible by law.

In their joint opinion, Mina/SERV assess these issues as follows:

*"Pay attention to the added value of consultation at an early stage. Once the Environmental Impact Report (EIR) has been finalized, it is submitted for consultation to the public and the competent advisory bodies, as well as—where applicable—to the competent authorities of the relevant treaty party, member state, or region if the action may have significant cross-border or interregional environmental effects. This is stated in the explanatory memorandum. The councils note that the consultation focuses on the concerned public. Genuine participation in decision-making allows the public to express opinions and concerns that may be relevant to these decisions, enabling decision-makers to take them into account. This enhances accountability and transparency in decision-making and contributes to public awareness of environmental issues and support for the decisions made. The information obtained through public consultation can also be valuable in identifying and developing alternatives. However, under the draft proposal, the moment for participation is pushed further back in time, potentially making it too late to propose alternatives. The councils believe that certain knowledge is thus left unused, even though it could be valuable in the context of researching reasonable alternatives. The councils advise that, even in the case of a plan-EIR and a project-EIR, there should be an optional possibility to propose alternatives before the EIR is drawn up. This can be done informally during the notification phase."*

BBL, Natuurpunt, and Dryade therefore request that the public be given the opportunity to propose alternatives during the notification phase, without this necessarily having to take place through a mandatory public inquiry.



### Exclusion of Informal Associations

The term 'public' should be defined as broadly as possible to ensure the widest possible support. Environmental organizations call for further examination of the definitions of 'public' and 'the public concerned.' The definition of 'the public concerned' (Article 4.1.1, 2° of the DABM, not yet in force) is currently limited to natural persons and associations, organizations, or groups with legal personality. As a result, informal associations are no longer considered 'the public concerned' under the DABM. This raises the question of whether this is in line with the Environmental Impact Assessment (EIA) Directive and the Aarhus Convention.

Minaraad and SERV state the following in their opinion:

*"Justify why informal associations should have no role in environmental impact assessments. The draft legislation aligns the definition of 'the public concerned' with that in the Environmental Permit Decree. The EIA Directive defines 'the public concerned' as: 'the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2).' Non-governmental organizations promoting environmental protection and meeting national legal requirements are considered to have an interest. The term 'public' is defined as: 'one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations, or groups.' According to the definition of 'the public concerned' in the Environmental Permit Decree, the mentioned associations, organizations, or groups must have legal personality. The same definition is now being introduced for environmental impact assessments. As a result, informal associations without legal personality are no longer recognized as 'the public concerned.' The councils acknowledge that the lack of legal personality presents challenges—an informal association can only take legal action collectively through all its members, although a representative can act on their behalf via a power of attorney. However, they believe that this change requires justification. The requirement of legal personality is not included in the definition of 'the public concerned' under the Aarhus Convention (Article 2, fifth paragraph). The Convention does allow for some flexibility for contracting states, as associations, organizations, or groups fall under the 'public concerned' insofar as this is consistent with national legislation or practice. To ensure broad public engagement in environmental assessments, it is desirable to involve the general public as much as possible."*

### The non-technical summary falls short

The 'non-technical summary' in many EIAs (Environmental Impact Assessments) is often still very detailed and technical. This makes the readability and comprehensibility of many EIAs difficult for an average citizen. The content of a non-technical summary could, in our opinion, be better defined in the decree or in the implementing decision, so that such a summary is truly non-technical and not overly detailed. According to BBL, Natuurpunt, and Dryade, a summary 'fact sheet' providing an overview of the relevant emissions to air, water, soil, climate impact, number of traffic movements, raw material usage, etc is necessary.

## Transfer of responsibilities to local authorities

**Article 4.4.7** of the new decree: the Expert Centre for EIA will eventually only provide quality advice on a project EIA and will no longer make approval or rejection decisions. Currently, Team EIA / the Flemish expert centre for EIA also takes into account the responses from the public consultation and the advice related to the EIA. In the future, this responsibility will lie with the competent authority. This means that it will be up to that authority to take into account the responses and (often very technical) advice given. We question the capacity and availability for this. If it has less expertise, doesn't this represent a step backward?

### **b. Environmental Decree**

Environmental Decree: The "Decree on the modular environmental permitting procedure and environmental decree" of May 17, 2024 introduces the so-called environmental decree. This is a new instrument that allows changes to the designation of the regional planning or the spatial implementation plan (RUP), when applying for an environmental permit. This is done at the request of the private party applying for the permit. It is a new exception rule to allow deviation from spatial plans.

The decree also creates a distinction in how stakeholders' participation and legal protection are handled. Unlike a RUP procedure, there is no participation moment for the start note, no explanatory note, no plenary session, halved advisory periods for the Municipal Planning Commission (GECORO), and no administrative appeal to a higher authority in the case of an environmental decree.

Although a spatial plan must also be submitted with the permit application, this spatial plan is rather a simplified 'mini-RUP'. This is far removed from the spatial implementation plans we know today. For instance, a RUP that is part of an environmental decree does not have to include an explanatory note. Therefore, no clear justification will be provided. There is also no start note, no consultation process, no EIA, and no mandatory preparation by a registered spatial planner. A 'simple' graphic plan suffices. Moreover, this mini-RUP can also deviate from a Spatial Planning Policy Plan and does not have to take into account a municipal structural plan.

The projects for an environmental decree will, moreover, be controversial projects. For instance: a zone-exceeding enterprise wishing to expand, a new apartment complex in a village centre, etc. Such projects would greatly benefit from being well integrated into their surroundings. This will not be achieved with just a deviation permit. A participatory process to create a widely accepted spatial plan is therefore essential. The result will be more robust and legally certain with a spatial plan than with a permit.

As mentioned, a spatial implementation plan in an environmental decree does not have to originate from a start note, as is the case in a regular RUP. There is therefore no preliminary process for allowing public participation. As a result, the most important part of the participation process is eliminated. During the start note phase, only the broad outlines are

defined, and a genuine public debate is possible. Now it is replaced by a formal public consultation during the permit application process, where only formal legal objections can be made, and lawyers are involved, eliminating any possibility for public debate. And this for projects that will always be sensitive: densification projects in the center and zone-exceeding companies or zone-exceeding infrastructure in open spaces.

This decree is also a step backward in terms of appeal possibilities. It is, after all, not possible to appeal an environmental decree to a higher authority. In the case of an environmental permit, this is possible. Against an environmental decree, only a procedure at the Council for Permit Disputes is possible.

Again, the political motivation is 'speed'. There are too many appeals, and it takes too long. But since you can no longer ask for a second review from a higher authority, as is the case with most permits, more procedures will be initiated at the Council for Permit Disputes. The buffer of an appeal to a higher authority is removed. In the end, the real delays are at the Council for Permit Disputes. Therefore, there is a good chance that the environmental decree will lead to the opposite result from what it was intended for. Instead of faster procedures, it is highly likely that it will cause more delays.

### 3. Access to the courts

#### Contrary to the framing: legal procedures are the exception

The Flemish Government has shown a deeply rooted mistrust towards concerned citizens over the past decade. This is also evident from the recent coalition agreement and the policy note on the environment (2024-2029), which presents a distinctly negative image of the citizen, as though every permit is being contested and access to the courts is being abused. This narrative is eagerly adopted by the media but does not align with the reality.

Figures from the Flemish Ombudsman ([direct link](#)) show that 80,000 permits are issued annually in Flanders. Only 3,000 of these (a mere 3.75%) are subject to administrative appeal. These appeals are not all initiated by concerned citizens. They also include appeals by applicants themselves (in response to a refusal or imposed conditions), as well as by higher authorities, for example, when they believe a lower-level government has made an unreasonable decision. For instance, a permit in a flood zone. Only 1% is contested in court, a tiny fraction. In as many as 60% of these cases, the court rules that the permit was illegal and that the applicant (often a citizen) was right. Sometimes, even well-founded cases, such as social housing or town centre reinforcement, stumble due to overly complex regulations—this cannot be denied. However, the legislator can solve this with better rules, not by denying citizens access to the courts.

Yet, it is this very path that the Flemish government has pursued for three consecutive terms. Subsequent requests for annulment by the environmental and nature movements have shown that restricting access to the courts is contrary to the Constitution / Aarhus Convention. A brief overview:

- Government term 2014-2019

As part of the so-called 'codex train', the previous Flemish government (and parliament) first attempted to limit access to the courts with the claim 'failure to file an objection means no right to appeal' (see [procedure history](#) of decree amendment).

At the request of the environmental and nature movements, the Constitutional Court reviewed the case and concluded that the condition was unconstitutional, thereby annulling the provision ([ruling of March 14, 2019](#)).

- Government term 2019-2024

In the context of a so-called 'optimization decree', the subsequent Flemish government (and parliament) once again attempted to limit access to the courts with the 'relativity requirement' and 'duty of care' (see [procedure history](#) of decree amendment).

At the request of the environmental and nature movements, the Constitutional Court again reviewed the case and concluded that these requirements violated 'the right to access to the courts' and 'the right to protection of a healthy environment', thereby annulling the contested provisions ([ruling](#) and [press release](#) of April 11, 2023).

- Government term 2024-2029

Despite these two clear rulings, the new Flemish government now plans to limit or restrict access to the courts for a third consecutive term.

In the coalition agreement ([direct link](#)), this is stated as follows:

- (p. 5) "Legally secure government decisions are a horizontal objective across all areas of responsibility. Together with experts and civil society, we will review the permitting policy to remove barriers. By introducing the principle of agents of change, we will limit the avalanche of objections against existing activities." (p. 5)
- (p. 82) "Legally secure, robust permits are a priority. Therefore, the Flemish Government will appoint a mixed commission with experts, government, academia, and legal experts (Council for Permit Disputes and Council of State), which will provide advice within one year of the start of this legislature, with concrete measures for the development of an action program by the Flemish Government. In preparing this opinion, there will also be a consultation round by this committee with the broad civil society.

The action program will focus on:

- faster court rulings for important societal and strategic projects
- technical expertise to support the courts and emphasize the special evidentiary value of scientific research
- how to achieve more constructive and meaningful, solution-oriented public

- participation
- contestability of the content of a favorably advised suitable assessment and environmental impact report
- defining marginal review standards and examining how the judge can give more weight to the general societal interest in his rulings
- exploring possibilities to introduce the concept of 'integrated societal approach'
- defining demonstrated interest and preventing abuse of procedures and access to the courts

Notably, there is no reference to the Aarhus Convention in this list.

The Environmental Policy Note ([direct link](#)) reiterates these controversial ambitions.

If the Flemish government (and Parliament) persists, the environmental and nature movements will again be forced to consider legal action. This does not help anyone progress.

#### Proper recognition and support for associations pursuing legal actions

Article 3, 4 (c) of the Aarhus Convention states that measures must be taken to ensure appropriate recognition of and support for associations, organizations, or groups that promote environmental protection.

The Flemish implementation report refers, among other things, to the Decree of April 26, 2024, to support environmental associations and projects (Belgian Official Journal, June 19, 2024) and the related Decree of the Flemish Government of June 7, 2024, for the recognition and subsidization of environmental associations (Belgian Official Journal, August 21, 2024).

However, it should be noted that the note to the Flemish Government with the aforementioned Decree of April 26, 2024, includes the following provision:

*"[Funds] may not be used for legal costs, including attorney fees, for initiating procedures against the Flemish Region."*

This provision is also included in Article 18 of the explanatory memorandum for this decree. The question arises as to whether this provision aligns with the Aarhus Convention.

Moreover, in January 2024, the Flemish Minister of Environment withdrew Dryade's start-up subsidy under the previous decree supporting environmental associations and projects. This decision was essentially based on the fact that Dryade uses "a legal, reactive toolset". This premise runs through the entire decision, where Dryade was also accused of acting on behalf of other environmental organizations and providing them with legal assistance, thus acting conflictually.

On October 17, 2024, the Council of State annulled the Minister's decision due to exceeding authority ([ruling no. 261.073](#)). The Minister was not authorized to review and withdraw the decision of her administration. In this procedure, it was also argued that this represented a

limitation on the right of access to the courts (Article 9 of the Aarhus Convention) and retaliation for the exercise of the right to access the courts in environmental matters (Articles 3.4 and 3.8 of the Aarhus Convention). The Council of State did not comment on this issue, as it had already annulled the decision on other grounds.

## Conclusion

### Rather than stigmatising citizens and NGOs, embrace them

Reiterating that barely 1% of all permit applications lead to a lawsuit, BBL, Natuurpunt and Dryade ask in conclusion that the Flemish government and parliament safeguard the existing access to justice, but above all embrace and seize participation in order to arrive at broadly supported solutions in spacial and environmental affairs.

### 'Only once principle' for permit applications

Instead of putting a stop to what the new Flemish government refers to as an avalanche of appeals, the government should rather put a stop to the practice whereby permit applicants, in the event of a refusal (or annulment) of a specific project at a specific location, repeatedly submit new, almost unchanged applications with the same object at the same location. The same applies to governments when the courts have annulled an earlier, almost identical permit on substantive grounds.

According to the 'only-once principle', interested citizens cannot and should not be expected to have to file the same objection or appeal over and over again, or to go to court and incur the accompanying costs again and again.

We trust that the arguments in this public participation response will be assessed on their merits and taken into account in further decision-making.

Sincerely,



Danny Jacobs,

Director Bond Beter Leefmilieu Vlaanderen vzw

Also on behalf of Natuurpunt vzw en vzw Dryade