

Third National Report of Belgium to the Convention on Biological Diversity

C. ARTICLES OF THE CONVENTION

Article 14 - Impact assessment and minimising adverse impacts

101. On Article 14.1(a), has your country developed legislation requiring an environmental impact assessment of proposed projects likely to have adverse effects on biological diversity?

a) No

b) No, legislation is still in early stages of development

c) No, but legislation is in advanced stages of development

d) Yes, legislation is in place (please provide details below)

X

e) Yes, review of implementation available (please provide details below)

Further information on the legislation requiring EIA of proposed projects likely to have adverse effects on biodiversity.

Flemish Region: through its regional law, the Flemish Region has implemented EC Directive 85/337/EEC (the Environmental Impact Assessment Directive), which applies to a wide range of projects that include physical interventions in the environment. Besides this, a number of regulations for impact assessments exist under the Decree for Nature Conservation, the Decree for Integrated Water Policy, the Decree for landscape protection and the Forest Decree.

Brussels Capital Region: EIA has been integrated in the regional law. It applies to a wide range of projects that include physical interventions in the environment. EIA and impact regulations exist also in general for green spaces, especially green spaces with biological value and protected areas (cfr. Transposition of habitatdirective).

Walloon Region:

- the Environment Code identifies the projects requiring an impact assessment and the format and minimal elements of the assessment (articles 55 & 56). The articles 57 to 61 define the agreement procedure;
- the Decree in relation to the Environment Permit (11.03.1999), which entered into force on 01.10.2002, reforms the regime on the environmental impact assessment and on the approval of exploitation (replacing it by the Environment Permit). Objective is to integrate in one permit all former authorisations required in relation to the environment, such as on exploitation, water collection, discharge of used water, explosifs, etc. The Decree creates also the 'Permis Unique', bringing together the Environment Permit and the Urbanism Permit when a mixed project needs this two authorisations. This new regulation thus allows for the integration of all environmental aspects in one permit, the integration of environment and urbanism in a faster procedure due to strict and shorter delays, as well as the transposition of a number of European directives for which the Region had accumulate some delay. The decree foresees also a simplified declaration procedure for companies with small environmental impact;
- furthermore, the Decree on the conservation of Natura 2000 sites and wild fauna and flora foresees, in his article 29 §2, that each plan or project subject to licensing [...] which is not directly linked to or necessary for the management of the site, but susceptible to affect the site significantly [...] is subject to an impact assessment as foreseen in the legislation.

Federal: concerning environmental risk assessment of GMO's, Belgium has transposed in a Royal Decree dated 25.02.2005 the European directive CE/2001/18 relative to deliberate release and placing on the market of GMO's, precisely based on environmental risk assessment and management.

North Sea: the general principles described in chapter two of the Belgian Law of 20.01.1999 on the protection of the marine environment in the areas under Belgian jurisdiction are the following: the principle of preventive action, the precautionary principle, the principle of sustainable management, the polluter pays principle and the restoration principle. The primary purpose of the law is the

conservation of the specific character, biodiversity and pristine nature of the marine environment through protection and restoration measures. The Royal Decree of 09.09.2003 related to the law on the protection of the marine areas under Belgian jurisdiction (MMM Law) imposes a procedure of environmental impact assessment in the case of industrial activities.

102.  On Article 14.1(b), has your country developed mechanisms to ensure that due consideration is given to the environmental consequences of national programmes and policies that are likely to have significant adverse impacts on biological diversity?

a) No	
b) No, mechanisms are still in early stages of development	X
c) No, but mechanisms are in advanced stages of development	
d) Yes, mechanisms are in place (please provide details below)	X

Further comments on the mechanisms developed to ensure that due consideration is given to the environmental consequences of national programmes and policies that are likely to have significant adverse impacts on biodiversity.

b) **Brussels Capital & Walloon Region:** a mechanism is in early stage of development.

d) The **Flemish Region** has implemented the EC Strategic Environmental Assessment (SEA) Directive (2001/42/EC), which requires that certain (mainly public sector) plans and programmes that are required by legislative, regulatory or administrative provision and which set the framework for development consent are made subject to an SEA. The owners of relevant plans and programmes must conduct an SEA, hold a public consultation, and explain publicly the reasons for taking a course of action. Among the factors looked at in the SEA process are effects on biodiversity. Specific attention is given to possible impact on Natura 2000 sites and nature of forest sites indicated on the land use maps.

103.  On Article 14.1(c), is your country implementing bilateral, regional and/or multilateral agreements on activities likely to significantly affect biological diversity outside your country's jurisdiction?

a) No	
b) No, but assessment of options is in progress	
c) Yes, some completed, others in progress (please provide details below)	X
d) Yes (please provide details below)	

Further information on the bilateral, regional and/or multilateral agreements on activities likely to significantly affect biodiversity outside your country's jurisdiction.

Application of the Espoo Convention (Convention on Environmental Impact Assessment in a Transboundary Context).

Bilateral agreements exist with the Netherlands regarding developments in the estuary of the Scheldt river (developments in both of the countries that may affect the estuary system), and for developments in the river Grensmaas (gravel extraction by the Netherlands). For each of the agreements a bilateral follow up commission has been established, under which several operational and scientific working groups are active.

104.  On Article 14.1(d), has your country put mechanisms in place to prevent or minimise danger or damage originating in your territory to biological diversity in the territory of other Parties or in areas beyond the limits of national jurisdiction?

a) No	
-------	--

b) No, mechanisms are still in early stages of development	
c) No, but mechanisms are in advanced stages of development	
d) Yes, mechanisms are in place based on current scientific knowledge	X

105.  On Article 14.1(e), has your country established national mechanisms for emergency response to activities or events which present a grave and imminent danger to biological diversity?

a) No	
b) No, mechanisms are still in early stages of development	
c) No, but mechanisms are in advanced stages of development	
d) Yes, mechanisms are in place (please provide details below)	X

Further information on national mechanisms for emergency response to the activities or events which present a grave and imminent danger to biodiversity.

Under the EIA legislation a mechanism exists that indicates the obligations to respond to activities or events that present imminent danger to biodiversity. In the Nature and in the Forest Decrees, specific responsibilities are given to the divisions to act in such cases of imminent danger such as for fires or flooding.

Concerning unintentional transboundary movements of GMO's that could have adverse effects on biodiversity (or health), Belgium has designated a contact point (DG Environment of the **Federal Public Service for Health, Food Chain Safety and Environment**) having the role for that purpose described in article 17 of the Cartagena Protocol. Besides that and following the European legislation (a.o. directive CE/2001/18 transposed into a Belgian Royal Decree) in application in Belgium, notifiers have to submit, in their application forms for GMO's field trials or placing on the market, control, risk management measures and emergency plans; following that legislation, authorisations for placing on the market can be immediately suspended or withdrawn if new information related to environmental or health risks of those GMO's appears after authorisation.

North Sea: the national responsibility for dealing with catastrophic events, including grave pollution incidents (oil or other dangerous substances) in the Belgian marine waters is dealt with in the national contingency plan for the North Sea. The Federal Public Service Health, Food Chain Security and Environment organises response to oil pollution at sea (booms and skimmers), with vessels from the Flemish Region and the Navy.

106. Is your country applying the Guidelines for Incorporating Biodiversity-related Issues into Environment-Impact-Assessment Legislation or Processes and in Strategic Impact Assessment as contained in the annex to decision VI/7 in the context of the implementation of paragraph 1 of Article 14? (decision VI/7)

a) No	
b) No, but application of the guidelines under consideration	
c) Yes, some aspects being applied (please specify below)	X
d) Yes, major aspects being applied (please specify below)	

Further comments on application of the guidelines.

The **Flemish** and **Brussels Capital Regions** have implemented the EC Strategic Environmental Assessment (SEA) Directive (2001/42/EC), which requires that certain (mainly public sector) plans and programmes that are required by legislative, regulatory or administrative provision and which set the framework for development consent are made subject to an SEA. The owners of relevant plans and programmes must conduct an SEA, hold a public consultation, and explain publicly the reasons for taking a course of action. Among the factors looked at in the SEA process are effects on

biodiversity. Specific attention is given to possible impact on Natura 2000 sites and nature of forest sites indicated on the land use maps.

The **Federal** level is transposing Directive 2001/42/EC. The Law imposes a Strategic Environmental Assessment when plans or programmes are elaborated which, due to the expected impact these will have, are subject to an evaluation following articles 6 and 7 of the Habitats Directive.

107. On Article 14 (2), has your country put in place national legislative, administrative or policy measures regarding liability and redress for damage to biological diversity? (decision VI/11)

a) No	X
b) Yes (please specify the measures)	

Further comments on national legislative, administrative or policy measures regarding liability and redress for damage to biological diversity.

The European Commission recently adopted the Liability Directive. This Directive will be translated by Belgium in regional legislation in the near future.

Flemish Region: environmental impact assessment is a prerequisite before a licence can be issued for main developments and transport infrastructure projects. A specific procedure for impact assessment and derogation has to be followed for infrastructure projects that may have an impact on FEN sites (art 26bis of the Decree for Nature Conservation) or on Natura 2000 sites (art 36ter, 3-6 of the same Decree that includes the transposition of art. 6 of the EU Habitats Directive). For each EIA study an interdepartmental steering committee is established to ensure proper follow up of issues relevant to each of the concerned sectors.

At the initiative of the EIA unit of AMINAL (Administration for Environment, Nature, Land and Water Management) a research study was carried out on the composition of technical EIA Guidelines. The book of directives for guiding EIA reporting groups effects and describes possible methodologies per group. It gives practical and methodological suggestions for all activities subject to EIA, including motorways and railways. Spatial attention was made to mitigation measures, management aspects and monitoring of the measures taken.

With regard to infrastructure works, the effect groups studied are the following:

- immediate space occupation by motorways and railways, and the works of art, slopes, and earthmoving resulting from the former: destruction of existing ecotopes (and their vegetation) and habitat spots or complete biotopes;
- barrier effects;
- disturbance by road use, more specifically vibrations and noise but visual stimuli just as well (nightly road lighting, motorcar and train lights);
- water and soil pollution (soot, oil, other hydrocarbons, dust, rust, heavy metals, salt for icy roads, etc.) with indirect effects on verges and their fauna and flora and on waterways, ditches, and dikes by the run-off water from roads;
- ecotope and biotope changes by the lowering of groundwater level as consequence of (temporary or permanent) drainage for the construction of works of art or by breaking soil layers that are difficult for water to penetrate, or by drainage (permanent);
- over-fertilisation and acidification because of NO_x and SO₂ emission by road traffic;
- ecotope and biotope changes as result from soil disturbances (close concentration, structural changes, pollution, etc.) because of motorway and railway construction;
- higher order effects: due to ecotope changes or disappearance of specific species habitat requirements of other animal species are no longer met or they do no longer have sufficient prey (food chain, food web).

For projects or plans that may have an impact on Natura 2000 sites an internal directive "Protection of Special Protection Zones" of the Department Environment and Infrastructure that outlines a detailed procedure has been developed in 2001 to comply with art. 6 of the Habitats Directive. The directive has been updated in 2003 taking into account the transpositions of the EU directives into the Decree for Nature Conservation as adopted by the Flemish government on 19 July 2002. In 2001

and in 2002 training sessions on the procedure were held for all administrations of the Department.

The procedure for assessment and derogation for projects that may have an impact on FEN sites is outlined in art. 26bis of the Decree for Nature Conservation, and proves to be even more complex than the one for Natura 2000 sites.

One of the most important positive outcomes of the introduction of above-mentioned procedures is the increasing concertation with the nature sector, administration as well as institute and NGO, at the onset of the planning or in the project preparation phase. It also supports a better integration of biodiversity into the transport sector.

The book of EIA directives mentioned above is now being revised to integrate specific procedural steps and assessments for Natura 2000 and FEN.

North Sea: the Belgian law of 20.01.1999 on the protection of the marine environment in the areas under Belgian jurisdiction includes the polluter pays principle and the restoration principle.

Federal: No specific legislative measures regarding liability and redress for damage to biological diversity caused by GMO's exist presently in Belgium, but are presently being established in the process of the Cartagena Protocol (see also answer to question 109). Moreover, liability and redress regime will be foreseen in the regional decrees currently being established for coexistence rules between GMO's and non-GMO's cultures.

108. Has your country put in place any measures to prevent damage to biological diversity?

a) No	
b) No, but some measures are being developed	
c) Yes, some measures are in place (please provide details below)	X
d) Yes, comprehensive measures are in place (please provide details below)	

Further information on the measures in place to prevent damage to biological diversity.

Walloon Region: article 28 of the Decree on the conservation of natura 2000 sites and the wild fauna and flora forbids the degradation and perturbation of the species for which the Natura 2000 site has been designated, if these perturbations are susceptible to have a significant impact. Article 26 of the designation Order will regulate the specific bans in or around the Natura 2000 site as well as each other preventive measure in or around the site to prevent the degradation of the natural habitats and the perturbation of the species for which the site has been designated.

See also above.

109. Is your country cooperating with other Parties to strengthen capacities at the national level for the prevention of damage to biodiversity, establishment and implementation of national legislative regimes, policy and administrative measures on liability and redress? (decision VI/11)

a) No	
b) No, but cooperation is under consideration	
c) No, but cooperative programmes are under development	X
d) Yes, some cooperative activities being undertaken (please provide details below)	
e) Yes, comprehensive cooperative activities being undertaken (please provide details below)	

Further comments on cooperation with other Parties to strengthen capacities for the prevention of damage to biodiversity.

The EC has recently adopted the Liability Directive as mentioned above. Besides that, a liability and redress legal regime is currently developed in the framework of the Cartagena Protocol. It should be established in 2008. The Flemish and Walloon Regions are participating in the *ad hoc* legal and technical experts group on liability under the Biosafety Protocol. The elaboration of Belgian points of view is coordinated by the Federal Ministry of Environment and the Belgian Focal Point for the Protocol.

Belgium participates to annual Benelux-Biotechnology meetings where administrative authorities in the relevant fields discuss on possible common positions or collaborations on related matters, a.o. coexistence problematics between GMO's and non-GMO's cultures and alert systems for non-intentional transboundary movements of GMO's.

Box LIII.

Please elaborate below on the implementation of this article and associated decisions specifically focusing on:

- a) outcomes and impacts of actions taken;
- b) contribution to the achievement of the goals of the Strategic Plan of the Convention;
- c) contribution to progress towards the 2010 target;
- d) progress in implementing national biodiversity strategies and action plans;
- e) contribution to the achievement of the Millennium Development Goals;
- f) constraints encountered in implementation.