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Case Summary posted by the Task Force on Access to Justice

BELGIUM: M.-N. Solvay c.s. v. Walloon Region	
1. Key issue	Access to Justice – After hearing the Court of Justice of the EU, the Belgian Constitutional Court annulled a number of permits that were delivered by a Decree from the Walloon Parliament, as they were not considered as “specific legislative act” according to Article 1(5) of the EIA Directive (85/337) – reflecting Article 2, para. 2, of the Aarhus Convention – that can be exempted from full judicial review.
2. Country/Region	Belgium
3. Court/body	Constitutional Court
4. Date of judgment	2012-11-22
5. Internal reference	Constitutional Court, Nr. 144/2012, 22 November 2012
6. Articles of the Aarhus Convention	Art. 2, para. 2, art. 3, para. 9, art. 6, para. 9, and art. 9, paras. 2-4
7. Key words	Access to Justice – Scope – Specific legislative act – Conditions - Court review - Value of Implementation Guide
8. Case summary	<p>A Decree (Legislative Act) of the Walloon Parliament provided that overriding reasons in the public interest had been established for the granting of town-planning consents and environmental permits for the construction of several regional airports, rail networks and waterway links in the Walloon Region. These consents could be granted by the Walloon Government. Within 45 days of their being granted, the Government was required to submit these consents to the Walloon Parliament. The Walloon Parliament then had to ratify the consents submitted to it within 60 days. The Decree also ratified a series of additional consents for airports, rail networks and a waste water treatment plant, again justified by the overriding public interest.</p> <p>The <i>Conseil d’État</i> (Council of State or Supreme Administrative Court) essentially has jurisdiction to rule on actions for annulment brought against administrative acts such as environmental and building consents. It does not, however, have jurisdiction to hear actions brought against acts of a legislative character. The ratification by decree of the Walloon Parliament of the above mentioned acts gave them legislative status. The <i>Conseil d’État</i> consequently ceased to have jurisdiction to hear actions for annulment brought against them. Legislative acts can be challenged only before the Constitutional Court. Before that court, however, only certain grounds may be pleaded, namely violation of the Constitution and provisions of international and European law. The Constitutional Court is in principle not competent to verify the procedural legality (including observance of EIA legislation, public participation, etc.) of consents that have been ratified by the Parliament. Thus, the judicial review of those consents is much more restricted than normal administrative consents.</p>

The Constitutional Court had before it a number of actions seeking annulment of the Decree of the Walloon Parliament. The Court further had before it questions referred by the *Conseil d'État* for a ruling on the lawfulness of that decree. The *Conseil d'État* had previously itself raised the question of the compatibility of the decree with European Union law and the Aarhus Convention and referred questions on that point to the CJEU for a preliminary ruling, on which the Court gave judgment on 18 October 2011 in Joined Cases C 128/09 to C 131/09, C 134/09 and C 135/09 *Boxus and Others* and on 17 November 2011 in Joined Cases C-177/09 to C-179/09, *Le Poumon vert de la Hulpe and Others*.

The Constitutional Court also referred questions for a preliminary ruling to the CJEU. The Court of Justice of the EU answered those questions on 16 February 2012 in Case C-182/10 *Marie-Noëlle Solvay and Others v Région wallonne*. The essential question was whether the Aarhus Convention and the implementing EU directives were applicable to such a decree or not, and if so, if the constitutional review of the Constitutional Court satisfied the requirements of art. 9, paras. 3 and 4, of the Aarhus Convention.

The CJEU held:

“2. Article 2(2) of the [Aarhus Convention] and Article 1(5) of Council Directive 85/337/EEC [“EIA Directive”] must be interpreted as meaning that only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of the Convention and the directive have been achieved by the legislative process, are excluded from the scope of those instruments. It is for the national court to verify that those two conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates. In that regard, a legislative act which does no more than simply ‘ratify’ a pre-existing administrative act, by merely referring to overriding reasons in the public interest without a substantive legislative process enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a specific act of legislation within the meaning of the latter provision and is therefore not sufficient to exclude a project from the scope of that Convention and that directive as amended.”

Following this decision, the Constitutional Court analysed the discussions in the Walloon Parliament and came to the conclusion that the Decree did not satisfy the conditions set out by the CJEU necessary to be considered a “specific legislative act” that can be exempted from full judicial review. The Court therefore annulled the challenged articles of the Decree for violation of the Constitution, and the aforementioned provisions of the Aarhus Convention and Directive 85/337/EEC. It declared that the other articles of the Decree violate the same provisions, so that they must be set aside by the courts.

The result of this case is that all of the consents concerned can now be subject to full judicial review by the Council of State.

<p>9. <i>Link</i> address</p>	<p>Judgement of the Constitutional Court of Belgium of 22 November 2012</p> <p>French: ftp://ftp.const-court.be/pub/f/2012/2012-144f.pdf</p> <p>http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/BELGIUM/ConstCour_Solvay/Belgium_2012_Solvay_JudgementF.pdf</p> <p>Dutch: ftp://ftp.const-court.be/pub/n/2012/2012-144n.pdf</p> <p>http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/BELGIUM/ConstCour_Solvay/Belgium_2012_Solvay_JudgementN.pdf</p> <p>German: ftp://ftp.const-court.be/pub/d/2012/2012-144d.pdf</p> <p>http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/BELGIUM/ConstCour_Solvay/Belgium_2012_Solvay_JudgementD.pdf</p> <p>Related judgments:</p> <p>Judgment of the Constitutional Court of Belgium of 30 March 2010</p> <p>French: ftp://ftp.const-court.be/pub/f/2010/2010-30f.pdf</p> <p>Dutch: ftp://ftp.const-court.be/pub/n/2010/2010-30n.pdf</p> <p>German: ftp://ftp.const-court.be/pub/d/2010/2010-30d.pdf</p> <p>CJEU judgment in case C-182/10 <i>Marie-Noëlle Solvay and Others v Région wallonne</i></p> <p>http://curia.europa.eu/juris/document/document.jsf?text=&docid=119510&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=326959</p>
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