

10-18 September 2015

*European Commission*  
*Secretariat-General*  
**B-1049 Brussels**

**By registered mail with acknowledgement of receipt**

Dear Madam/Sir,

**Our Ref.: DOUTRELOUX / S.A. SCIERIE CLOSE 00000012 AL/LR/2038**  
**Your Ref.:**

Please find enclosed a Complaint that my clients, Mr Francis Doutreloux, residing at 5, route de Cheneux, 4970 Stavelot (Belgium), and Avala ASBL, with its registered office at 61, Chession, 4987 Stoumont (Belgium), have lodged against Belgium for failure to comply with European Union law concerning the right of access to environmental information.

Yours faithfully,

Alain LEBRUN  
Lawyer.

[signature]

**Complaint against Belgium for breach of  
European Union law concerning the right of access to  
environmental information**

**I. IDENTITY OF COMPLAINANTS, WITH CONTACT DETAILS**

1) **Mr Francis Doutreloux**, residing at 5, route de Cheneux, 4970 Stavelot, Belgium;

2) **Avala ASBL (Association du Val d'Amblève, Lienne et Affluents)**, a non-profit environmental protection association for the Amblève Valley, the River Lienne and its tributaries, a legal entity with legal personality under Belgian law (the Law of 27 June 1921), with its registered office established at 61, Chession, 4987 Stoumont, Belgium, and Business Registration No. 0445.142.-896;

counsel for both: **Alain Lebrun**, lawyer, in chambers at 6, Place de la Liberté, 4030 Grivegnée, Belgium, which is his **address for service** for the purpose of this procedure.

**II. SUBJECT MATTER OF THE COMPLAINT**

**A. Member State and authority in question**

The Belgian State and the Walloon Region of Belgium

**B. Unlawful national measure**

Decree of 16 March 2006 amending Book I of the [Walloon] Environmental Code as far as concerns the public's right of access to environmental information (published in the *Moniteur belge* of 6 April 2006, 'the Decree of 16 March 2006') in so far as it establishes Articles D.10 to D.20.14 inclusive as part of Book I of the Environmental Code.

### **C. European provision contravened**

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 93/313/EEC ('Directive 2003/4/EC').

### **D. Context**

To the applicants' knowledge, neither the Belgian State nor the Walloon Region has received/will receive European Union funds related to the issue that has given rise to this Complaint.

### **E. Breach**

The applicants claim that the Decree of 16 March 2006 failed to transpose or, in the alternative, incorrectly transposed Directive 2003/4/EC, given that the Belgian system of access to environmental information is currently ineffective.

In Belgian law, under Article D.10 et seq. of the Environmental Code, when an applicant has requested access to environmental information from a public authority and the latter has not replied within one month, the applicant is entitled to seek an administrative review of the authority's omission before a [regional] Appeal Commission for the Right of Access to Environmental Information ('the CRAIE'), within a period of 15 days.

The ineffectiveness of this system relates to the question of the legal scope of decisions made by the CRAIE.

A CRAIE decision does not conclude with any element that gives it immediate effect, unlike judgments of the courts of law (see Article 790 of the Belgian Code of Civil Procedure, according to which: "The authenticated copy shall contain a full copy of the judgment, preceded by the heading and followed by a clause conferring authority to enforce the judgment, failing which the authenticated copy is not valid").

The fact that CRAIE decisions are unenforceable means that the system of access to information cannot in any way have direct effect. This is because there is nothing to directly force a public authority to comply with a decision taken by the CRAIE, even though that decision is binding upon the authority. Therefore the bailiff cannot undertake compulsory enforcement of the decision (Articles 516 and 1494 of the Civil Procedure Code); and no other system of coercive payment or financial penalty can be brought to bear on the authority to which a CRAIE decision is addressed.<sup>1</sup>

However, according to recital 19 in the preamble to Directive 2003/4/EC:

"Applicants should be able to seek an administrative or judicial review of the acts or omissions of a public authority in relation to a request" (emphasis added).

The complainants conclude from this that CRAIE review is the weapon that remains to citizens when an administrative authority infringes the right of access to information.

But what impact can this weapon have if no clear system of sanctions is attached to it?

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<sup>1</sup> Moreover, it should be noted that there is no specific criminal penalty for failure to comply with CRAIE decisions.

Consequently, the complainants claim that the underlying principle of the European law must be observed and that therefore CRAIE decisions ought to be binding in nature, which is not the case in this instance.

Moreover, this reasoning is borne out by the Aarhus Convention, which provides for a right of access to justice in environmental matters.

According to article 9, paragraph 1, of the Aarhus Convention:

“Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not 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.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that 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.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph” (emphasis added).

The applicants point out that the Aarhus Convention constitutes a reliable guide to interpreting Directive 2003/4/EC, which is intended to implement the Convention.

In conclusion, the crux of the breach alleged by the applicants is that no enforcement orders are attached to CRAIE decisions, nor is there any other equivalent system of sanctions.

### **III. PROCEEDINGS BROUGHT BY THE APPLICANTS IN CONNECTION WITH THE BREACH IN QUESTION**

A. The complainants wish to point out that the breach which is the subject of their Complaint is a **general failure** by the Decree of 16 March 2006 to **transpose** Directive 2003/4/EC, that the six-month deadline for bringing an action for annulment of the Decree<sup>2</sup> before the Constitutional Court has expired, and that no general appeal against this legislation is possible.

B. In the specific cases to which this Complaint relates, the applicants have already attempted to overcome the absence of enforcement orders in CRAIE decisions by bringing court actions before the Justice of the Peace or the courts of first instance, with a view to securing compliance with the CRAIE decisions by the recalcitrant authority, subject to financial penalties for non-compliance.

However, it must be said that this solution cannot be regarded as a normal, adequate one, because:

- Bringing a court action is costly, since it requires payment for a bailiff’s writ and of fees for counsel;

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<sup>2</sup> which is a legislative measure of the Walloon Parliament.

- Court action in itself takes time, particularly because the courts do not always grant the right to a brief hearing (enabling one to put one's arguments when the court sits to commence the proceedings), which therefore means that the court will set out a timetable for the exchange of pleadings – and, consequently, that there will be a minimum of several months before a ruling on the case is given.

These difficulties are in complete conflict with the right of access to environmental information as provided for by Directive 2003/4/EC, under which the information must be made available “as soon as possible or at the latest within one month after the receipt” [of the request] (emphasis added) and which allows only a reasonable charge to be made for obtaining this information. (Here, being obliged to resort to other remedies makes the cost of access to information prohibitive and unreasonable).

C. Seeking observance of the right of access to environmental information as provided for in European Union law, the complainants have also already asked the Minister for Local Government to send a Special Commissioner, on the basis of Article L.3116-1 et seq. of the Local Democracy and Decentralization Code, to investigate the enforcement of CRAIE decisions.

This approach did not prove successful.

#### **IV. FURTHER INFORMATION (LIS ALIBI PENDENS, CONFIDENTIALITY, ETC.)**

A. The complainants have not contacted any other European Union institutions for assistance in this context.

B. The complainants authorise the European Commission ('the Commission') to reveal their identities in the course of any approaches to the Belgian authorities and the authorities of the Walloon Region in connection with this Complaint.

C. The complainants do not agree to the Commission forwarding their Complaint to SOLVIT.

#### **V. LIST OF DOCUMENTS AND EVIDENCE IN SUPPORT OF THE COMPLAINT, WHICH CAN BE SENT TO THE COMMISSION ON REQUEST**

1) Requests for access to environmental information made to administrative authorities

2) Applications to the CRAIE for administrative review, as the information requested had not been supplied;

3) CRAIE Decisions instructing the authority to provide the information within a given period of time;

4) Court summonses issued on application by one or other of the complainants in the light of the authority's failure to comply with CRAIE Decisions;

5) Legal rulings ordering compliance with the CRAIE Decision, subject to financial penalties for non-compliance;

6) email exchanges between counsel for the complainants and the Minister for Local Government on the subject of sending a Special Commissioner.

Liège, 15 September 2015  
for the complainants,  
their counsel,  
Alain LEBRUN,  
Lawyer.