

EUROPEAN COMMISSION
DIRECTORATE GENERAL FOR THE ENVIRONMENT
Directorate D - Implementation, Governance & European Semester
ENV.D.2 - Enforcement, Cohesion Policy & European Semester. Cluster 2
Head of Unit

Brussels, **22 October 2015**
ENV.D.2/MV/ts/CHAP(2015)2656/D4

Mr A. Lebrun
For F. Doutreloux and
Avale ASBL

Email: a.lebrun@avocat.be

Re : your Complaint about the implementation of Directive 2003/4/EC in Belgium

Dear Sir,

We are in receipt of your letter of 10 September 2015, in which you make a Complaint on behalf of Mr Doutreloux and Avale ASBL to the European Commission against the Walloon Region for non-compliance with Directive 2003/4/EC on public access to environmental information ('Directive 2003/4/EC').

Your Complaint has been recorded under 'CHAP(2015)2656'. Please use this reference number in all subsequent correspondence.

Your Complaint alleges that the Decree of 16 March 2006 amending Book I of the Environmental Code as far as concerns the public's right of access to environmental information ('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, failed to transpose or, in the alternative, incorrectly transposed Directive 2003/4/EC.

You state that 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 an Appeal Commission for the Right of Access to Environmental Information ('the CRAIE'), within a period of 15 days. In your view, the ineffectiveness of this system relates to the question of the legal scope of decisions made by the CRAIE, since a CRAIE decision does not conclude with any element that gives it immediate effect, unlike judgments of the courts of law. The fact that CRAIE decisions are unenforceable means that the system of access to information cannot in any way have direct effect, since 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 and, you claim, no other system of coercive payment or financial penalty can be brought to bear on the authority to which a CRAIE decision is addressed.

Having studied your Complaint carefully, we have arrived at the following conclusions.

Article 6 of Directive 2003/4/EC provides as follows:

“Access to justice

1. Member States shall ensure that any applicant who considers that his request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or otherwise not dealt with in accordance with the provisions of Articles 3, 4 or 5, has access to a procedure in which the acts or omissions of the public authority concerned can be reconsidered by that or another public authority or reviewed administratively by an independent and impartial body established by law. Any such procedure shall be expeditious and either free of charge or inexpensive.
2. In addition to the review procedure referred to in paragraph 1, Member States shall ensure that an applicant has access to a review procedure before a court of law or another independent and impartial body established by law, in which the acts or omissions of the public authority concerned can be reviewed and whose decisions may become final. Member States may furthermore provide that third parties incriminated by the disclosure of information may also have access to legal recourse.
3. Final decisions under paragraph 2 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 Article.”

The Commission considers that the establishment of the Appeal Commission for the Right of Access to Environmental Information (the CRAIE) by the Decree of 16 March 2006 is to be viewed as the transposition and implementation of Article 6(1) of Directive 2003/4/EC. The Commission considers that the CRAIE is not a court of law but, rather, an administrative review body.

It should also be noted that Article 6(1) of the Directive does not in itself require that the decision taken in the context of such a review must be provided with an element conferring authority to enforce it. In other words, the absence of such an element does not in itself constitute a breach of European law.

On the other hand, so far as concerns the implementation of Article 6(2) and (3), the Commission considers that Belgian law provides more generally for review (via action for annulment or suspension) by the Council of State of administrative decisions (those taken by Walloon Regional authorities and those taken by the CRAIE).

Implementation of Article 6(2) is to be viewed as embodying the principle of guaranteeing the effectiveness of European law, which necessitates not only review by the courts of decisions taken by administrative authorities, but also that these authorities comply with judgments delivered.

As you have stated in your Complaint, in Belgium a judgment (like those of the Council of State) contains a clause conferring authority to enforce it.

Therefore it appears that if the CRAIE, ruling in a review, decides that the administrative authority must give access, in whole or in part, to the documents requested by the applicant but this authority refuses to do so, the applicant has access to the Council of State. In other

words, the applicant has a remedy against the implicit refusal of the authorities to implement the CRAIE decision, which recognizes the applicant's right of access to the documents.

Furthermore, if the CRAIE, reviewing the decision of the administrative authority to which the request for access to documents has been made, makes a wholly or partly negative decision, the applicant can bring an action before the Council of State against its ruling.

Therefore, in the knowledge that there appears to be a remedy before the Belgian Council of State against any decision – positive or negative – taken by the CRAIE in consequence of a request for access to documents and that a judgment of the Council of State contains a writ of execution, we cannot conclude that there is sufficient support for the allegation of a breach of European law.

If you are able to provide further information that may be inconsistent with the above analysis, I would be grateful if you could reply within four weeks of receipt of this letter. Otherwise we shall proceed to final closure of your Complaint.

Yours faithfully,

[signature]

Ion Codescu