

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, 7 April 2016

ENV.D.2/MV/ts/CHAP(2015)2656/D7

Mr A. Lebrun
For F. Doutreloux and
Avala 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 19 November 2015 replying to our pre-closure letter of 22 October 2015 concerning the Complaint to the European Commission made by Mr Doutreloux and Avala ASBL against the Walloon Region for non-compliance with Directive 2003/4/EC on public access to environmental information ('Directive 2003/4/EC').

Our replies to the points you raise are as follows.

1. The applicants "object vigorously to the Commission's conclusion" that the establishment of the CRAIE is to be viewed as correctly transposing and implementing Article 6(1) of Directive 2003/4/EC. In this context, you also allege that the legislation of the Walloon Region fails to comply with article 9, paragraphs 1 and 4, of the Aarhus Convention.
2. The Commission confirms its position that the establishment of the CRAIE correctly transposes Article 6(1) of Directive 2003/4/EC.
3. Furthermore, the Commission does not concur with your interpretation of article 9, paragraph 1, of the Aarhus Convention. The first sentence of paragraph 1 concerns each Party's obligation to ensure that applicants covered by the paragraph itself have access to a review procedure "before a court of law or another independent and impartial body established by law". The second sentence states: "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" (emphasis added).

In order to give effect to these provisions of the Aarhus Convention, the European Union legislature has provided in Article 6(1) of the Directive for access to the reconsideration or review procedure envisaged in the second sentence of article 9, paragraph 1, of the Convention. Article 6(2) of the Directive gives effect to the first sentence of article 9, paragraph 1, of the Convention. Article 6(2) begins: “In addition to the review procedure referred to in paragraph 1”, because the Convention obliges the Parties to provide for a reconsideration or review procedure if the remedy chosen is that of review by a court of law. This position is confirmed by the analysis given in the explanatory document (*The Aarhus Convention: An Implementation Guide*), drawn up by the United Nations Economic Commission for Europe (UNECE), Second edition, 2014, on pages 191 and 192.

4. It follows that the Walloon Region’s requirement that application must be made to the CRAIE before proceedings are, if necessary, brought before the Council of State is in full compliance with the Aarhus Convention and with Directive 2003/4/EC.

5. Following a CRAIE decision,

- if it is wholly or partly negative, the applicant can bring an action before the Council of State against the decision;
- if it is positive but not implemented by the administrative authority holding the documents (or implemented only partially), the applicant can bring an action before the Council of State, as you yourself mentioned in your letter.

6. The applicants, through you, state that they consider “such procedures before the Council of State to be prohibitively expensive (within the meaning of article 9, paragraph 4, of the Aarhus Convention)”.

The Commission does not concur with this opinion and considers that an action before the Belgian Council of State cannot be defined as “prohibitively expensive” within the meaning of the Convention or under the Directive, or in the light of the approach that the Commission has developed in ongoing infringement proceedings.

7. Finally, the applicants state that summary proceedings cannot be used in circumstances such as those of this case.

It should be noted that article 9, paragraph 4, of the Aarhus Convention refers to “adequate and effective remedies, including injunctive relief as appropriate” (emphasis added). In other words, an injunction does not need to be provided for in all circumstances, but only to the extent that it is appropriate and feasible. In Footnote 5 to your letter, you yourself mention the reasons that preclude an injunction *in subjecta materia*. To that effect, further information can be found in the Order of the President of the General Court of 1 September 2015, in Case T-344/15 R *French Republic v European Commission*, which is available on the website of the Court of Justice of the European Union.

Consequently, as your letter of 19 November 2015 has provided no further information that may be inconsistent with the analysis set out in our letter of 22 October 2015, we have proceeded to final closure of your Complaint.

Yours faithfully,

[signature]
Ion Codescu
Head of Unit