BELGIAN REPORT

1. Instruments ensuring the enforcement of environmental law

A the outset, one should stress that in Belgium, the main responsibility for environmental law lies within the three regions: the Flemish, Walloon and Brussels Capital Regions. As a result, the implementation of the IPPC-Directive is deemed to be an exclusive competence of the regions. Therefore, Federal authorities are not involved. Though the regional environmental Acts differ across the three regions, European environmental directives ensure a certain degree of harmonization.

- In the **Flemish Region** the IPPC Directive is meanly implemented through the *Decree* (Act of the Regional Parliament) *of 28 June 1985 on Environmental Licences* (as amended), supplemented by a series of executive orders (regulations from the regional government).

- In the **Walloon Region** the IPPC Directive is implemented trough the *Decree of 11 March 1999 on Environmental Licences* (as amended) and its implementing orders.

- In the **Brussels Capital Region** the IPPC Directive is implemented trough the *Ordinance of 5 June 1997 on Environmental Licences* (as amended) and its implementing orders.

2. Review of legality

After exhaustion of the administrative appeals, the claimant be it a local NGO or be it a neighbour, can lodge an appeal against licensing decisions taken in last instance by the administrative/political authorities. The appeal is taking place before the Council of State (Supreme Administrative Court), which can review the legality of the decision, both from a procedural as from a substantive point of view, including the compliance of the challenged decisions with relevant European Directives such as the IPPC-Directive. This procedure is open to all interested parties: operator, neighbours, some authorities, other interested parties.

If the Council of State is taking the view that the challenged decision is infringing either a substantial either a procedural rule, it will annul the decision. Interim proceedings are provided. In urgent cases, the Council of State can also suspend the challenged decision. However, the Council of State cannot modify the challenged decision. In case of annulment, the administrative authorities will have to instruct again the proposal for a licence. They must off course in such case respect the judgement of the Council of State and avoid committing the same illegality.

3. Criminal and administrative offences

The fact of operating a listed installation without the required permit, of not respecting the conditions laid down in the permit, of obstructing inspections by the competent environmental inspectors or of not abiding by their instructions is deemed to be an offence. Depending on the severity of the infringement, the offence will be a criminal or an administrative offence.

Criminal offences have to be prosecuted by the attorney general before criminal courts. In such cases IPPC-related questions can arise before these courts, including requests for checking the legality of the permit on the basis of article 159 of the Constitution.

In case of administrative offences, the competent authority is empowered to fine the operator. Appeal against the administrative fine is possible before the Environmental Appeal Board in Flanders ("*Milieuhandhavingscollege*") and before the Brussels Capital Appeal Board, as that region is concerned. Against their decisions one can appeal again before the Council of State.

As regards sanctions, the regimes differ tremendously from one region to another. The Brussels Capital lawmaker has codified all the sanctions in one single Decree of 25th March 1999 regarding investigation, indictment and repression in the environmental field.

In the Walloon Region, the sanctions were formerly found in a cluster of regional acts. With the enactment of the Decree of 5th of June 2008 regarding investigation, indictment and repression in the environmental field *(Décret relatif à la recherche, la constatation, la poursuite et la répression des infractions et les mesures de réparation en matière d'environnement*). The decree differentiates between offences of second and third category.
- Second category offence :

a) criminal sanction : jail sentence of 8 days to 3 years ; fine of at least 100 euros and maximum de 1.000.000 euros ;

b) administrative sanction : 50 euros to 100.000 euros.

The person operating a first of second class listed installation without a licence or operating a third class listed installation without notifying the activity to the competent authority.
The operator not complying with the conditions laid down in his license.

- Third category offence :
a) criminal sanction : jail sentence of 8 days to 6 months or/and a fine of minimum 100 euros and maximum 100.000 euros ;
b) administrative sanction : 50 euros to 10.000 euros.
The fact of bringing modifications without listing these changes in a register. To start to operate a plant without notifying it the activity to the competent civil servant. The operator omitted to take all preventive measures with the aim of avoiding accidents.

4. Possibility for private parties to challenge the enforcement

The Act of 12 January 1993 on a Right of Action for the Protection of the Environment, allows different categories of claimants to bring a civil action for cessation of acts that constitute a breach of the protection of the environment. The President of the Court of First Instance is competent to adjudicate these lawsuits. "Acts causing a manifest infringement of environmental regulations" can be subject to such review. The notion of "act" is understood as material act (pollution, operating a plant without a license, dumping waste,..). In addition, the claimant has to demonstrate that the infringement is "manifest". That does not amount to demonstrate that the harm is significant. The infringement of all environmental provisions, including land planning, can be invoked. Such civil action can be brought in cases of breaches of regional legislation implementing the IPPC-Directive.

Among the potential claimants, one finds:

a) environmental organizations that fulfil different requirements (namely, being set up in the form of a non-profit association, the statutory aim being the protection of the environment, having existed for at least 3 years and actually being active in that field),
b) public prosecutors
c) administrative authorities such as municipal authorities,
d) individual citizens on behalf of a defaulting municipal authority by taking the place of the municipality that refuses to bring such an action.

In addition, Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage provides for request for a specific review system (article 12). The plaintiffs - natural or legal persons - are entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive. This regime has been implemented by the three regions.

By way of illustration, in the Walloon Region (D131), plaintiffs have to lodge their complaints before the regional administration, which must consider or not to review its decision within a month. The Walloon Act provides for a further appeal before the regional government

The conclusion of all this is that both administrative judges, especially the Council of State, and ordinary judges (penal and civil judges alike) can be confronted with IPPC-related cases.

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