

Recent Developments in Environmental Law in Belgium

Luc Lavrysen

On 25 May 2014 there were in Belgium general elections for the Federal and the Regional Parliaments. As is customary, towards the end of the legislature a lot of acts (federal laws), decrees ordinances (regional laws) were adopted. These laws were most of the time published in the period after the elections. Most of them require Executive Orders to become effective. In a substantive number of cases these Executive Orders have not been issued yet.

Federal legislation

- Update of the Act of 15 April 1995 concerning the protection against ionizing radiations (Act of 19 March 2014/ Act of 15 May 2014)
- Update of the Act of 22 July 1985 concerning liability for nuclear energy (Act of 29 June 2014)
- Update of the Act of 21 December 1998 concerning product Policy
- Abolishment of ecotax on plastic bags (Act of 19 December 2014)

Flemish Region

- Both the Decree about the integration of building permits and environmental permits (Decree of 25 April 2014 "*betreffende de Omgevingsvergunning*") and the Decree about the enforcement of the integrated permit (Decree of 25 April 2014 "*betreffende de handhaving van de omgevingsvergunning*") haven been published in the *Official Journal* (on August 27 2014 and 23 October 2014 respectively). The actual Flemish government is working on the Executive Orders to make the system operational. This is planned for 2016. Meanwhile the Decree has been challenged before the Constitutional Court by Environmental and Nature Protection Organizations, for violation of (mainly) Art. 23 of the Constitution (violation of the stand still principle in environmental matters). The critiques have to do with the, in principle, unlimited validity of the integrated permit (now max. 20 years for the environmental permit), the modification of the proper assessment and some other restrictions of rights of third parties.
- Decree of 9 May 2014 updating the legislation concerning nature and forests – Executive Orders in preparation

- Decree of 28 March 2014 updating the Decree of 27 October 2006 concerning Soil Sanitation and Protection
- Decree of 25 April 2014 concerning complex projects + Executive Order of 12 December 2014 (streamlining plan and project procedures, SEA and EIA included)
- Conservation measures for *Natura 2000* sites
- Update of general and sectoral environmental conditions for the operation of activities subject to environmental permit (+ 1.400 pages in the Official Journal)

Walloon Region

- Various updates of the Walloon Environmental Code (Decree 15 April 2014 – recognition and subsidizing ENGO's – Decree of 13 June 2014 – nitrogen in agriculture)
- Update of the Walloon Code on Town and Country Planning, Patrimony and Energy – Provisions concerning Heritage (Decree of 11 April 2014)
- Environmental Covenants of 5 December 2013 concerning extended producer responsibility for various waste streams
- Conservation measures for *Natura 2000* sites

Brussels Capital Region

- Ordinance of 8 May 2014 concerning environmental and social clauses in public procurement
- Ordinance of 8 May 2014 updating the Ordinance of 25 March 1999 concerning the enforcement of environmental law

Case law

Constitutional Court

- Constitutional Court, n° 74/2014, 8 May 2014 – annulment of the “administrative loop” as given to the Council for Permit Disputes under Flemish town and country planning law (violation of separation of powers and art. 6 (9) Aarhus Convention)
- Constitutional Court, n° 98/2014, 30 June 2014 – annulment of the reduction of some terms in the procedure for the Council of Permit Disputes
- Constitutional Court, n° 106/2014, 30 June 2014 - Rejection of appeal against increase of tax on nuclear electricity production

Court of First Instance East-Flanders – Ghent division

On 27 June 2014, the Criminal Court of First Instance of East Flanders (Ghent division) pronounced judgment in an important case of illegal trade in protected and endangered birds. The case is the result of a long and extensive judicial inquiry, including international legal cooperation between Belgium, the United Kingdom, Spain, France, Germany, Austria and The Netherlands.

Four defendants have been found guilty of forgery of breeder's declarations and CITES-certificates regarding birds (of prey) listed in Annex A of the EU CITES Regulation 338/97. Eggs and fledglings of the birds, mainly birds of prey, were stolen from the wild among others in the south of France or Spain, and handed over to collaborators responsible for hatching out. The young birds were then hand-reared and ringed. Through forging of rings and breeder's declarations, the defendants obtained CITES-certificates for captive-born and bred species, which allowed them to commercialize the birds in spite of the general prohibition with respect to Annex A species.

The birds species included among others Egyptian Vulture (*Neophron percopterus*), African Fish Eagle (*Haliaeetus vocifer*), Imperial Eagle (*Aquila heliaca*), Bald Eagle (*Haliaeetus leucocephalus*), Bonelli's Eagle (*Aquila fasciata*), Golden Eagle (*Aquila chrysaetos*), Booted Eagle (*Hieraetus pennatus*), several Falcon species such as Peregrine (*Falco peregrines*), Merlin (*Falco columbarius*), Hobby (*Falco subbuteo*), Red-footed Falcon (*Falco tinnunculus*), Lesser Kestrel (*Falco naumanni*), Black-winged Kite (*Elanus caeruleus*), Red Kite (*Milvus milvus*), Black Kite (*Milvus migrans*) but also Spoonbill (*Platalea leucorodia*), Great Bustard (*Otis tarda*), Great Grey Owl (*Strix neohelotina*), Snowy Owl (*Nyctea scandiaca*), Short-eared Owl (*Asio flammeus*).

The four defendants were also found guilty of participating in a criminal organization with international branches in Spain, the United Kingdom, Austria, Germany, France and The Netherlands. The purpose of this criminal organisation was the withdrawal of protected bird species from their habitats, obtaining forged CITES-certificates and finally, marketing the birds. Typical of the criminal organisation was a clear hierarchy and division of tasks, the use of (police) officials and the creation of an animal zoo to obtain credibility and access to the market.

The defendants were also convicted of fraud regarding CITES export permits, the failure to keep a CITES-register and the use of illegal traps and nets. The birds of prey commerce was extremely profitable. Bonelli's Eagles (*Aquila fasciata*) were sold for 10.000 euro, Bald Eagle (*Haliaeetus leucocephalus*) for 5.000 euro, African Fish Eagle (*Haliaeetus vocifer*) for 6.000 euro and Booted Eagle (*Hieraetus pennatus*) for 5.000 euro. The leading defendant and his wife were convicted of the laundering of the profits through a contractor's company. The court underlined that international trade in endangered plant- and animal species has approached a scale and lucrativity comparable to international drugs and arms trafficking. The defendants took advantage of the lack of political priority and thus enforcement of the CITES-regulations. In the decision the courts stress that the defendants committed a direct and irreversible assault on biodiversity. For profit, the defendants seriously undermined national and international efforts to preserve and protect these already vulnerable bird species.

The four defendants were sentenced to 4 years (1 year suspended), 2 years (1 year suspended), 18 months (suspended) and 1 year (suspended). The court also imposed fines of 90.000 euro, 30.000

euro and 12.000 euro.The court confiscated 835.800 euro of illegal gains of the trade (including realstate).All seized birds were confiscated and entrusted to the Belgian CITES-authority.

The verdict was confirmed (in absentia of the two main defendants) by the Court of Appeal in Ghent on 7 May 2015.