

THE DISTRIBUTION OF ENVIRONMENTAL COMPETENCES

INSTIT 1

The Belgian institutional system incorporates a division of powers between the various actors which make it up. In environmental matters, the regional level has been given the main competences since the introduction of regionalisation. However, the federal level has retained certain environmental responsibilities and important levers, particularly economic levers, which can influence environmental policies¹.

The EU, an important source of environmental regulations

Walloon environmental legislation is largely guided by European Union (EU) law². The EU structures its environmental policy within the framework of action programmes, developed for a specific period of time. This policy is reinforced with the adoption of directives, regulations, recommendations, decisions and opinions with distinct objectives and implementing rules. These may be measures implementing international commitments (conventions, treaties or protocols) or decisions based on initiatives taken in certain Member States, or recommendations from international institutions. Importantly, the regulations are directly and immediately applicable. Directives must necessarily be transposed into the law of each Member State.

The environment, a largely regional competence

Since the first stage of Belgium's regionalisation in 1980, environmental protection and management have been largely assigned to the regional level. Environmental competence in Wallonia can be grouped into two main areas: the environment in the strict sense (protection of environmental components, noise control, waste policy, etc.), rural development and nature conservation (areas of green spaces, forests, hunting, fishing, non-navigable water courses, etc.). In these two areas, the federal government only has competences explicitly reserved for it: the establishment of product standards when they are placed on the market (including eco-labels) and protection against ionising radiation (including the management of radioactive waste³). Waste transit and animal welfare were regionalised in 2015 following the 6th state reform.

Vital and effective cooperation

The regionalisation of competences has gone hand in hand with the introduction of compulsory or voluntary coordination mechanisms between federated entities, to ensure policy coherence both within the federal State and vis-à-vis international bodies. This cooperation is carried out through various forums, including the Interministerial Conference for the Environment, the Belgian Interregional Environment Agency and the Coordination Committee for International Environmental Policy. Interaction also takes the form of cooperation agreements (The Interregional Agreement of 04/11/2008 on the management of packaging waste⁴, for example), a mechanism created by the special law of 08/08/1988 that formalises the introduction of common policies.

Some concrete examples

There are many examples of environmental issues where multiple levels of government operate within the limits of their respective competences. The impetus often comes from a commitment made at the international level, which is implemented through European directives that are themselves transposed into Belgian laws and Walloon decrees. These interactions take place in the context of:

- reducing greenhouse gas emissions and air pollutants;
- applying the "polluter pays" principle;
- access to information, public participation in the decision-making process and access to justice in environmental matters (the Aarhus Convention);
- the conservation of natural habitats and of fauna and flora, etc.

^[1] → TRANSV Focus 1 | ^[2] → INSTIT 2 | ^[3] → WASTE 7 | ^[4] → WASTE 3

Tab. INSTIT 1-1 Institutions involved in improving access to information, public participation and access to justice in environmental matters*

INSTITUTIONS INVOLVED	LEGAL BASES
United Nations	<p>The Aarhus Convention, adopted in 1998 within the framework of the United Nations Economic Commission for Europe (UNECE), and based on three pillars:</p> <ul style="list-style-type: none"> • access to environmental information; • participation in the decision-making process; • access to justice in environmental matters. <p>Moreover, it is within this framework that the Protocol on Pollutant Release and Transfer Register (PRTR Protocol) was drawn up and progress made on the issue of information regarding genetically modified organisms (GMOs) (proposed amendment, not yet in force but already implemented in Belgium).</p>
European Union	<ul style="list-style-type: none"> • Access to information: Directive 2003/4/EC on public access to environmental information, implementing the first pillar; • Participation in the decision-making process: Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, implementing the second pillar. The principle of public participation in environmental decisions is also included in other directives (e.g. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment). • Access to justice: the proposal for a directive specific to the third pillar (COM (2003) 624) was withdrawn by the Commission in 2014. <p>Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.</p>
Belgian State	<ul style="list-style-type: none"> • Access to information: Article 32 of the Constitution granting the right to consult and obtain a copy of any administrative document, except in cases and under conditions laid down by law; Law of 05/08/2006 on public access to environmental information; • Participation in the decision-making process: definition of the consultation procedure by the federal level in matters falling under its competence (impact assessments for the North Sea, nuclear, GMOs; the Law of 13/02/2006 on public participation in the preparation of plans and programmes relating to the environment); • Access to justice: judicial remedies.
Walloon Region	<ul style="list-style-type: none"> • Access to information: Book 1 of the Environment Code (Art. D.10 to D.20.18). The reports on the state of the Walloon environment are considered to be elements of active information (Art. D.20.16.d). • Participation in the decision-making process: Book 1 of the Environment Code (Art. D.29-1 to D.29-27) defining the arrangements for information meetings, public inquiries, etc. • Access to justice: Book 1 of the Environment Code (Art. D.20.3 to D.20.14) setting out non-judicial recourse with the Recourse Commission for the right of access to environmental information (<i>Commission de recours pour le droit d'accès à l'information en matière d'environnement - CRAIE</i>).

* Illustrative and non-exhaustive table

SOERW 2017 – Sources: www.aarhus.be; <http://ec.europa.eu/environment/aarhus/index.htm>**Tab. INSTIT 1-2** Institutions involved in biodiversity conservation*

INSTITUTIONS INVOLVED	LEGAL BASES
United Nations	<ul style="list-style-type: none"> • Bonn Convention on Migratory Species of 1979 to protect terrestrial, marine and avian migratory species throughout their range. The Eurobats Agreement (Agreement on the Conservation of Populations of European Bats) and the African-Eurasian Migratory Waterbird Agreement were developed under the Bonn Convention. • Rio Convention or Convention on Biological Diversity of 1992, adopting the following three main objectives: <ul style="list-style-type: none"> - the conservation of biological diversity; - the sustainable use of biodiversity components; - the fair and equitable sharing of benefits arising from the use of genetic resources.
Council of Europe	Berne Convention of 1979 on the Conservation of European Wildlife and Natural Habitats
European Union	<ul style="list-style-type: none"> • "Birds" Directive (79/409/EEC) on the conservation status of wild birds and the "Habitats-Fauna-Flora" Directive (92/43/EEC) on the conservation of natural habitats, wild fauna and flora, requiring the designation of "special protection areas" ("Birds" Directive) and "special areas of conservation" ("Habitats-Fauna-Flora" Directive). All of these areas must form a coherent ecological network, called the Natura 2000 network. • Biodiversity strategy to 2020 with the primary objective of fully implementing the "Birds" and "Habitats-Fauna-Flora" Directive; • Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species.
Belgian State	National strategy for biodiversity, developed in response to the Rio Convention, updated in 2013 under the term "Biodiversity 2020".
Walloon Region	Law of 12/07/1973 on nature conservation, amended in 2001 to introduce the concept of Natura 2000 sites, and again in 2010 to implement the Natura 2000 system.

* Illustrative and non-exhaustive table