

THE IMPLEMENTATION OF EUROPEAN LEGISLATION

Walloon environmental legislation is largely inspired by European Union legislation. The EU legislates and imposes its regulations and directives in many environmental areas, including Natura 2000, water and air quality objectives, flood risks, noise, waste management and environmental impact assessments.

Transposition delays improving

Wallonia is required to comply with European Union (EU) legislation and must transpose European directives into its legislation within the set deadlines. Regulations are directly applicable as soon as they enter into force. Of the 22 most important environmental directives that have been adopted by the EU Council and the European Parliament since 2007, 17¹ have already been effectively transposed into Walloon regional law, but in most cases after the transposition deadline. This delay may be explained in some cases by the fact that in Belgium, the transposition procedure requires the involvement of different levels of government (federal, regional and community competences)², or even the drawing up of cooperation agreements. Finally, the complexity of certain directives and thus the time taken to transpose them have sometimes been underestimated³. Moreover, the time limits have not yet expired for two of the five directives

currently being transposed into regional law.

Fewer infringement proceedings

In matters that concern it, Wallonia also has an obligation to implement the means to apply European legislation and monitor compliance with it. If not, the European Commission (EC) can initiate infringement proceedings if it finds that the Member States:

- transpose European law incorrectly or incompletely;
- do not communicate the transposition texts, as they have not yet been adopted;
- do not meet their obligations.

In some cases, these infringements may lead to a referral to the EU Court of Justice and *ultimately* to a ruling to pay fines or penalty payments.

^[1] Situation as of 31/12/2016 | ^[2] → INSTIT 1 |

^[3] E.g.: Directives 2008/101/EC and 2009/128/EC

Tab. INSTIT 2-1 Transposition of European directives into Walloon legislation since 2007

MAJOR EUROPEAN DIRECTIVES	REFERENCE	TIME-LIMIT FOR TRANSPOSITION	EFFECTIVE DATE OF TRANSPOSITION
Infrastructure for spatial information (INSPIRE)	2007/2/EC	15/05/2009	22/12/2010
Assessment and management of flood risks	2007/60/EC	26/11/2009	04/02/2010
Ambient air quality and clean air	2008/50/EC	11/06/2010	15/07/2010
Waste Framework Directive	2008/98/EC	12/12/2010	10/05/2012
Protection of the environment through criminal law	2008/99/EC	26/12/2010	05/06/2008
Inclusion of aviation activities in the scheme for GHG emission allowance trading within the Community	2008/101/EC	02/02/2010	24/10/2013
Environmental quality standards in the field of water policy	2008/105/EC	13/07/2010	17/02/2011
Geological storage of carbon dioxide	2009/31/EC	25/06/2011	24/10/2013
Technical specifications for chemical analysis and monitoring of water status	2009/90/EC	20/08/2011	14/10/2011
Sustainable use of pesticides	2009/128/EC	14/12/2011	11/07/2013
Petrol vapour recovery during refuelling of motor vehicles at service stations	2009/126/EC	01/01/2012	26/01/2012
Revision of the GHG emission allowance trading scheme of the Community	2009/29/EC	31/12/2012	21/06/2012
Industrial emissions (IED)	2010/75/EU	07/01/2013	16/01/2014
Waste electrical and electronic equipment (WEEE) (recast)	2012/19/EU	14/02/2014	2 nd reading on 22/12/2016
"Seveso III"	2012/18/EU	31/05/2015	Cooperation agreement of 5/06/2015
Packaging and packaging waste	2013/2/EU	30/09/2013	22/05/2014
Priority substances in water	2013/39/EU	14/09/2015	22/10/2015
Impact assessment	2014/52/EU	16/05/2017	ongoing
Protection of groundwater	2014/80/EU	11/07/2016	25/02/2016
Deployment of alternative fuels infrastructure	2014/94/EU	18/11/2016	ongoing
Reducing the consumption of lightweight plastic carrier bags	(EU) 2015/720	27/11/2016	ongoing
Reduction of national emissions of certain atmospheric pollutants	(EU) 2016/2284	01/07/2018	ongoing

Situation as of 31/12/2016

- Transposed after the deadline
- Transposed before the deadline

- In the process of transposition: deadline not yet exceeded
- In the process of transposition: deadline exceeded

Since 2003, the number of infringement proceedings in the EU has decreased by 49%. At the end of 2015, Belgium was involved in 7 proceedings compared to 23 in 2014, whereas the European average was 10 per Member State. The number of infringements of EU law has fallen sharply in recent years, as federal and regional governments have given increasing priority to these issues.

Shared responsibilities

In the environmental field, the 12 litigation cases still pending against Belgium as of 31/12/2016 concerned waste (4 cases), air (3 cases), water (3 cases), environmental liability (1 case) and chemicals (1 case). Of these 12 cases, 8 infringement proceedings concerned Wallonia (whether or not associated with Flanders, the Brussels-Capital Region or the Federal State) and the application of Directives 2008/98/EC (Waste Framework Directive), 2004/35/EC (environmental liability with regard to the prevention and remedying of environmental damage), 2014/101/EU (amending Directive 2000/60/EC), 2012/19/EU (waste from electrical and electronic equipment) 2013/56/EU (batteries and accumulators), 2014/99/EU (petrol vapour recovery during refuelling of motor vehicles at service stations, amending Directive 2009/126/EC), 2012/18/EU ("Seveso III") and 91/271/EEC (concerning urban waste water treatment, in particular in small agglomerations from 2000 to 10,000 population equivalents (p.e.))⁴. Three of these eight infringement procedures are solely the responsibility of Wallonia (Directives 2008/98/EC,

2014/99/EU and 91/271/EEC).

Towards more firmness

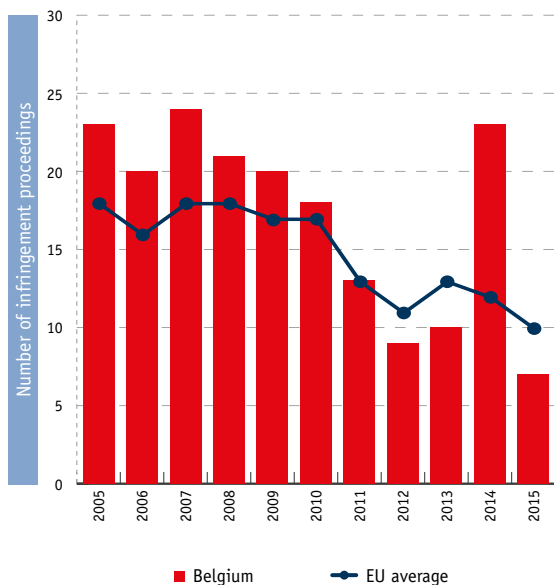
Following the entry into force of the Treaty of Lisbon on 01/12/2009, the infringement procedure underwent two major changes:

- the EC can refer the matter to the Court of Justice more quickly if it considers that the Member State has not complied with the decision of the first conviction (the reasoned opinion of the former procedure has been abolished);
- the Court of Justice may impose financial penalties from the first conviction onwards for failure to notify transposition measures⁵.

In addition, since the end of 2016⁶, the EC has planned to systematically ask the Court of Justice to impose a fine combined with a penalty payment (from the first referral onwards). Moreover, the EC will no longer withdraw its action from the Court of Justice, and a pro rata conviction for the accumulated delay will be applied.

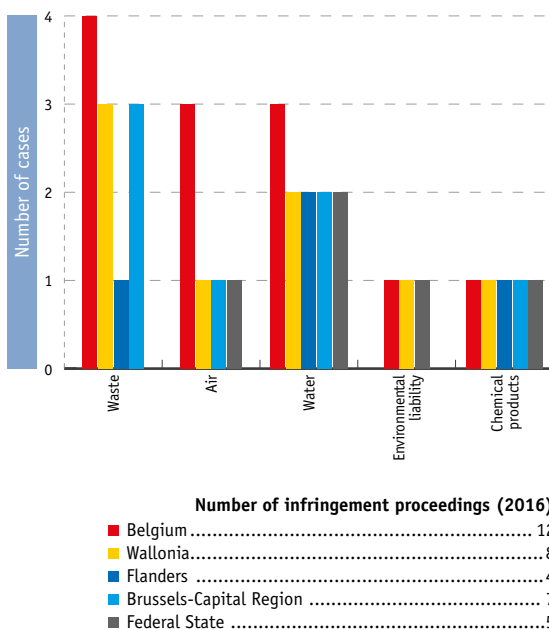
⁴ → WATER 18 | ⁵ E.g. Directive 91/271/EEC: at the second conviction of Belgium of 17/10/2013 following the litigation relating to the treatment of urban waste water from agglomerations of more than 10,000 p.e., a fine of €10 M (paid by the Federal State, not yet divided between the three regions) and a semi-annual penalty payment of €859,404 (not claimed by the EC) | ⁶ COM 2017/C 18/02

Fig. INSTIT 2-1 Number of infringement proceedings initiated by the European Commission against Belgium



SOERW 2017 – Source: EC – DG Environment (statistics)

Fig. INSTIT 2-2 Infringement proceedings concerning European environmental legislation (situation as of 31/12/2016)



SOERW 2017 – Source: WBI