I. Constitutional Foundations

Articles 7*bis* and 23 of the Belgian Constitution enshrine a right to the protection of a healthy environment and are recognizing sustainable development as an objective of public policies at all levels of government. Article 7*bis* of the Belgian Constitution obliges the Federal State, the Communities and the Regions (Flemish Region, Walloon Region and the Brussels Capital Region) to pursue the aims of sustainable development in its social, economic and environment related aspects, and to take into consideration the solidarity between generations. Article 23 of the Belgian Constitution enshrines a fundamental right of a dignified existence. With a view to this fundamental right of a dignified existence, acts and decrees have to guarantee economic, cultural and social rights and determine the conditions for the execution of these rights. The right to the protection of a healthy environment is one of those constitutional rights. The right to the protection of a healthy environment implies a standstill obligation on behalf of the competent authorities. They are not allowed to reduce the level of protection of the environment obtained by environmental regulations except for compulsory reasons.

Citizens have the right to invoke especially article 23 of the Belgian Constitution directly in administrative and judicial procedures. But its application depends on the discretion that the federal and regional authorities have in achieving the objectives of article 23 of the Belgian Constitution. Parties to an administrative or judicial procedure can rely directly on provisions of international agreements that have been ratified by Belgium if these provisions have direct effect. Before the Constitutional Court, all binding international law provisions can be invoked in combination with a relevant constitutional provision, independently of the question if they have direct effect or not. Administrative bodies and courts are entitled to apply the Aarhus Convention directly. The Aarhus Convention has been approved by the Federal and Regional Parliaments and ratified by Belgium. The Aarhus Convention entered into force in Belgium on 21 April 2003.

II. Judiciary

The Belgian Constitution has set up beside the legislative and executive branches of the government a judicial branch provided by the courts and tribunals. The courts and tribunals constitute an independent authority and work within the framework of constitutional and legal provisions. The court hearings are held in public unless holding them in public is considered prejudicial to public order or morals. The judgments are reasoned and declared publicly in open court. The obligation of reasoned judgments means that the judge must respond to grounds based on fact and on law raised in the submissions of the parties. Courts and tribunals are organized according to a hierarchical pyramid structure. At the bottom of the pyramid structure are the Justices of the Peace (*Vrederechters / Justice de Paix).*There are 187 Justices of the Peace whose jurisdiction for certain civil matters correspond to that of the sub district (*kanton / canton*) to which they belong. Magistrates' Courts (*Politierechtbanken / Tribunaux de Police*) are competent for minor infringements, certain misdemeanors and breaches of traffic regulations. At the second level of the pyramid structure are the District Courts (*Rechtbanken van Eerste Aanleg / Tribunaux de Première Instance*), the Commercial Courts (*Rechtbanken van Koophandel / Tribunaux de Commerce*) and the Labour Courts (*Arbeidsrechtbanken / Tribunaux de Travail;*) the territorial scope of these courts corresponds to those of judicial district. There are twenty-seven judicial districts in Belgium. At the third level of the pyramid structure are five Courts of Appeal and Labour Courts in Belgium. At the top of the hierarchal structure is the Supreme Court (*Hof van Cassatie / Cour de Cassation).* The Supreme Court covers the entire territory of Belgium. It examines whether the decisions referred to it contravene the law or the rules of procedure. Beside the abovementioned Courts, there is one Constitutional Court (*Grondwettelijk Hof / Cour constitutionnel*) and one highest administrative court, the Council of State (*Raad van State / Conseil d'Etat)* in Belgium.

The Constitutional Court has jurisdiction over conflicts between acts of federal parliament and decrees and ordinances of the parliaments of the Regions and Communities, as well as between one decree and another and one ordinance and another, in cases of infringement of rules laid down by the Constitution or by virtue of the latter, to determine the respective jurisdictions of the federal state, the communities or the regions. It is also competent concerning infringements by an act, decree or ordinance of provisions of Section II of the Constitution (Articles 8 to 32 concerning fundamental rights) and of Articles 170 (legality principle in tax-related matters), 172 (equality in tax-related matters) and 191 (protection of aliens) of the Belgian Constitution.

The highest and most important general administrative court is the Council of State (*Raad van State / Conseil d'Etat*). It has two divisions, an advisory body and the Division Administrative Jurisprudence with mainly a jurisdictional function. The Division Administrative Jurisprudence has been set up in the first place to remedy the defects in the legal protection of citizens against abuse on the part of the administration (the so-called "*direct legality test*"). The Division has been given the power to suspend and annul decisions of the administration (both of a regulatory and an individual nature) and of the various judicial bodies and panels that act as administrative judges of first instance.

In the *Flemish Region* two recently established administrative courts deserve special attention: the Flemish Council for Permit Disputes ('*Raad voor Vergunningsbetwistingen*') and the Environmental Enforcement Court of Flanders ('*Milieuhandhavingscollege*'). Since 1 September 2009, the regionally

established Council for Permit Disputes has been responsible for dealing with disputes regarding building permits in the Flemish Region, instead of the (federal) Council of State, that continues to act as a cassation judge for those matters. The Council for Permit Disputes is an independent administrative court that hears judicial appeals lodged against administrative decisions (building and allotment permit decisions) in last instance (delivered/refused on administrative appeal) taken by administrative authorities (one must exhaust indeed first the administrative appeal procedure). The decisions of the Council for Permit Disputes can be appealed on points of law before the Council of State (Supreme Administrative Court), acting as a "cassation judge". The Environmental Enforcement Court of Flanders was created by the Flemish Act of 21 December 2007, published in the *Belgian Official Journal* of 29 February 2008. It effectively started its work on the 1st of May 2009. This Court has a few specific tasks allocated to in this Act, especially hearing appeals against administrative fines imposed for breaches of environmental law in the Flemish region. Its decisions can be appealed before the Council of State.
In the *Brussels Capital Region* one can appeal against decisions relating to environmental permits taken in first instance by the Brussels Environmental Agency before the "*Milieucollege / Collège de l'environnement*" (Environmental Appeal Board) that is a kind of specialized Environmental Administrative Court that is presided by a professional judge and composed of 5 other independent experts (environmental lawyers and scientists). They can review the decision of the Brussels Environmental Agency in all aspects and thus grant a permit when it was refused in first instance or refuse it when it was granted in first instance, modify the conditions of the permit etc. The Environmental Appeal Board can also review decisions to modify, withdraw, suspend or to prolong a permit. Against the decision of the Environmental Appeal Board one can appeal again before the Regional Government that can review on its turn the decision in all its aspects. The decisions of the government can be appealed before the Council of State.
At the top of this system stands the Council of State that serves as an administrative cassation judge for appeals against the decisions of the aforementioned administrative courts, judicial bodies or panels. The Council of State serves as a first and final administrative judge for administrative decisions and regulations for which there are no competent administrative judicial bodies or panels, what is the case with the large majority of administrative acts and regulations.
The Code of Judicial Procedure stipulates which court is competent so there is no relevant possibility for forum shopping (choosing between competent courts in order to present the case before a more favorable judicial body). The distinction has to be made between the full jurisdiction (material jurisdiction) and the territorial jurisdiction. The court of first instance has full jurisdiction and can examine all cases including those that fall within the jurisdiction of other legal forums. The court of first instance shall examine all claims except those directly before the court of appeal and the court of cassation. The full jurisdiction of the court of first instance is therefore conditional, because the defendant may plead lack of jurisdiction on grounds of the special jurisdiction of another court. In addition, the court of first instance also has a number of exclusive powers. A number of disputes should be referred to this court even if the value of the claim is less than a certain amount (e.g. claims concerning personal status of capacity). The other legal forums having each full jurisdiction described by law are the justices of the peace, the police courts, the commercial courts, the employment tribunals and the youth judges. The basic rule of territorial jurisdiction is that the plaintiff has the freedom of choice. Normally the plaintiff brings the case before the judge of the place of residence (place of business) of the defendant or one of the defendants. In a number of cases the plaintiff has a choice of referring the case to another judge. A few exceptions do exist to this basic principle of freedom of choice for e.g. in disputes about contracts of employment.
In Belgium there are ordinary appeals through the court of appeal and special appeals on points of law to the Supreme Court. There are two kinds of ordinary appeals: the opposition against default judgments and the appeal. Any judgment by default - when a defendant is failing to appear - can be subject of an opposition. Notice of this is given by a bailiff serving a summon to appear before the judge who handed down the judgment by default. He will judge the case again. The appeal on points of law before the Supreme Court is lodged against final decisions, in all cases handed down in trails or proceedings at last instance. Decisions are referred to the Supreme Court on grounds of error of law or of a failure to comply with formal procedural requirements. Extraordinary legal remedies are meant to challenge legally binding decisions. The law determines under what special conditions such an extraordinary remedy can be applied.
In procedures against administrative decisions a competent court will annul the decision if the applicant has proven the decision is in breach of the law. In most cases the annulment of the decision will lead to a new decision by the same administrative authority, which should observe the judgment given. Ordinary courts are able to award damages to citizens against the administrative authority that has taken the decision that has been found in breach of the law.
Citizens can introduce an administrative procedure against a decision of an administrative authority in environmental matters. In some cases the federal or regional laws have introduced specific appeal procedures before specialized administrative courts, judicial bodies or panels that decide on certain environmental matters. At the end of the system stands the Council of State that serves as an administrative cassation judge for appeals against the decisions of the aforementioned specialized administrative courts, judicial bodies or panels. The Council of State serves as a first and final administrative judge for administrative decisions and regulations for which there are no competent administrative judicial bodies or panels, what is the case with the large majority of administrative acts and regulations. Citizens are also entitled to act against environmental disturbances by reporting those acts to the competent administrative authority. The administrative authority can take the measures provided by law against the person who infringes the environmental regulations.
The Code of Judicial Procedure provides also a procedure in matters of special urgency that the citizens can introduce before the president of the competent court of first instance who can take temporary measures against the person who infringes the environmental regulations.
In criminal procedures citizens are entitled to report criminal acts to the public prosecutor who decides whether or not the case has to be taken to the criminal judge. The citizen can also be a party in the civil matters that are at stake in criminal procedures. He can also directly summon the person who infringes the environmental regulations to appear before the criminal court, but then he will have the whole burden of proof. Citizens who suffered damage caused by environmental disturbance can also submit a claim against the person who infringes the environmental regulations to the civil court. They can claim compensations and in some cases temporary measures if liability can be proven. In accordance with the Act of 12 January 1993 on a right of action for the protection of the environment, the president of the court of first instance can state the existence of acts that are or could be infractions of environmental regulations. The public prosecutor, an administrative authority or a non-profit organization that has as statutory goal and activities the collective environmental protection can introduce such a demand before the president of the court of first instance.
In administrative court procedures the courts do not have the possibility to investigate parts of an administrative decision that have not been attacked by the applicant. Parties have generally and especially in environmental matters the duty to provide evidence out of their own motion. However courts have the authority to investigate the facts of the case by hearing witnesses, asking evidence or appointing an expert as long as it concerns the case that has been brought to the court by the parties.

III. Access to Information Cases

In accordance with the Act of 5 August 2006 concerning the access to environmental information (*wet van 5 augustus 2006 betreffende de toegang van het publiek tot milieu-informatie / loi du 5 août 2006 relative à l'accès à l'information en matière d'environnement*) those who seek remedies against a refusal of a request for information, an incomplete answer or an insufficient answer for environmental information from a federal environmental authority can introduce an appeal before the Federal Commission of Appeal for access to environmental information (*Federale Beroepscommissie voor de toegang tot milieu-informatie / Commission fédérale de recours pour l'accès aux informations environnementales*). This Act of 5 August 2006 concerning the access to environmental

information is in line with the Act of 11 April 1994 concerning the freedom of information (*wet van 11 april 1994 betreffende de openbaarheid van bestuur / loi du 11 avril 1994 relative à la publicité de l'administration*) that introduced in Belgian law the general obligation of access to information. According to the Council of State both legislations express the constitutional principle foundd in article 32 of the Belgian Constitution. In case the Federal Commission of Appeal decides that the demand for environmental information has to be granted, the environmental authority will deliver the environmental information to the applicant. In case the environmental authority fails to deliver the environmental information to the applicant within a certain delay, the Federal Commission of Appeal can deliver the environmental information that is in its possession to the applicant (http://www.bestuursdocumenten.be/ – http://www.documentsadministratifs.be). The applicant can go into appeal before the Council of State against a decision of the Federal Commission of Appeal. He also can address Judicial Court and Tribunals.

The three Regions (Walloon, Flemish and Brussels Capital) have regulations quite similar to the abovementioned federal act that are applicable to their respective environmental authorities.

In the Flemish Region the applicant may, in accordance with the Act of 26 March 2004 concerning open government, lodge an appeal against any decision made by a public authority with regard to access to environmental information, or after the expiry of the term within the decision had to be taken, or in the event of the decision being carried out reluctantly. This appeal before an administrative independent appeal body (*beroepsinstantie inzake openbaarheid van bestuur en hergebruik van overheidsinformatie, afdeling openbaarheid van bestuur*) is free of charge. If the authority has not implemented the decision of the appeal body in due time, the appeal body will carry out the decision itself; the appeal body may instruct an official to proceed on-site and carry out the decision himself. Against the decision of the appeal body, an appeal for annulment can be lodged with the Council of State (https://overheid.vlaanderen.be/openbaarheid-van-bestuur).

A refusal of the request of information is accompanied by a statement of reasons for the refusal and contains all the relevant information about the remedies available. It especially mentions the competent authority of appeal, the formalities to be fulfilled and the delay of appeal. In Belgian federal and Flemish public law any decision or administrative act of individual significance and intended to have legal consequences for citizens or another public authority, has to mention the possibilities and modalities of appeal. Otherwise, the decision has not brought to notice in a valid way and the term for the submission of the appeal starts 4 months after the citizen has been informed of the administrative decision.

The request for information has in principle to be introduced in written form and it has to mention the matter and if possible the environmental information requested. It also mentions the form or the electronic format in which the information can be preferably put at the disposal of the applicant. The name and the address of the applicant have to be clearly indicated. The applicant does not have to prove any interest. In case the environmental authority, to which the demand is introduced, does not possess the requested information, the environmental authority will send the request to the environmental authority that possesses the requested information. In administrative procedures mandatory counsels are not to be involved. For appeals to the Council of State, one has the choice to act oneself or trough or with the aid of an attorney. When relevant for the dispute the courts are competent to demand information from the administrative authority. In the Flemish Region the appeal body also can examine all administrative documents on site or obtain them from the relevant authority (This is also the case for the Federal Commission).

If the Council of State finds the appeal justified, the decision refusing the information is nullified. The administrative authority is bound by the judgment of the Council of State and in succession obliged to disclose the information in case of confirmation of the decision by the Council of State.

IV. Access to Justice in Public Participation

The administrative procedures in environmental matters are governed by both federal and regional regulations. The general principles of the different administrative procedures in environmental matters in the federal and regional regulations are similar. The environmental permitting decisions that federal or regional regulations consider as to have a possible important environmental impact are submitted to an environmental impact assessment. The demand for a permit will be submitted to a public enquiry during which interested citizens can introduce their written observations and remarks to the competent authorities within a certain period of time. The competent authorities will have to take these observations and remarks into account while taking a well-reasoned decision. The final decision of the competent authorities has to be made public so that interested citizens can introduce an appeal against the decision before specialized administrative courts, judicial bodies or panels that decide on the introduced appeals or, in the absence of such administrative jurisdiction of first instance, directly to the Council of State. The interested citizens can go to the Council of State against the decisions that are taken in last instance by the abovementioned specialized administrative courts, judicial bodies or panels. It should be noted that in case the competent authority has a certain level of policy freedom, it could reconsider its decision on demand of the interested citizens. The interested citizens invoke then the good will of the competent authority. The interested citizens can in certain circumstances also appeal to an Ombudsman. But an Ombudsman can only give a non-binding suggestion to the competent authority.

Most of the federal and regional regulations provide the possibility to interested citizens to administratively appeal a decision of an administrative authority to an administrative body of a higher level (e.g. decisions of a local government can be appealed with the provincial government, decisions taken in first instance by the provincial government can be appealed with the regional or federal government). One must exhaust such an administrative appeal possibility, before lodging an appeal to an administrative judge of first instance or the Council of State. First instance administrative decisions can only be taken to the Court directly if there is no organized administrative appeal procedure that has to be exhausted first. Only after the exhaustion of administrative remedies, interested citizens can challenge decisions before taking a case to court. The courts review both the substantive and procedural legality of administrative decisions. They will verify material and technical findings and calculations that have been used by the administrative authorities. The Council of State as last final administrative appeal judge is entitled to review both the substantive and procedural legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute that the Council has to decide on. When the public authority has been granted a margin of appreciation by the legislator in making specific decision, the Council will allow for this margin by applying a marginal review and upholding any decisions that it finds it reasonable. The Council will annul an unlawful challenged decision.

The civil courts will look beyond the administrative decision and verify material and technical findings and calculations that have been used by the administrative authorities. The civil court is competent to appoint an independent expert who will give a non-binding report to the civil court. If the civil court has to pronounce on the substantive legality in accordance with article 159 of the Belgian Constitution, it will not be entitled to annul the administrative decision but will set it aside. The courts are eligible to find evidence by asking parties to supply it or by gathering the evidence when the applicant has raised doubts about the way the competent authority has established the facts in relation to its duty of care.

The regional regulations provide the obligation to submit draft land-use plans, zoning plans and other normative type of environmentally relevant decisions defining the use of space to an extensive procedure with a strategic environmental assessment during which any interested citizen can introduce objections and remarks. The Council of State can review in first and last instance environmental relevant decisions defining the use of space like land use plans or zoning plans. Interested citizens can file a case with the Council of State against land use plans, zoning plans or any other normative type of environmental relevant decisions defining the use of space. An interested citizen is anyone whose interest is directly affected by the administrative decision concerning land

use plans, zoning plans or any other normative type of environmental relevant decisions defining the use of space. Someone living in or nearby the area concerned will have standing. The scope of review is the same as is the case with individual decisions like permit decisions. The Council of State is entitled to review both the substantive and procedural legality of administrative decisions and will annul an unlawful land use plan.
Projects, that are by the regional or federal legislation considered to have a possible substantial impact on the environment are submitted to an Environmental Impact Assessment (EIA) report that has to be drawn up by the applicant before the public authority is able to decide on an application. The EIA procedure is regulated by the federal legislation or the regulations of one of the three regions in Belgium depending on the nature of the project. The general principles are nearly the same on the federal level and in the three regions. For those projects that are not *ex officio* subjected to EIA (Annex II of the EIA Directive), in general the competent regional or federal authority has to decide if an EIA is necessary or not at the end of a screening procedure, that start with a notification by the project initiator. Any interested citizen can make observations and remarks on the notification that is made public during a period of public inquiry. Any final decision on EIA screening decisions of an EIA report by the public authority are made public together with the decision that allows or refuses the plan, program or project and can be challenged in specialized administrative courts, judicial bodies and panels by any interested citizen. In general, there are no special rules on standing, forum, hearing, evidence or the extent of the review by those administrative appeal authorities. However, the principles are that the parties are entitled to be heard, that the administrative appeal authorities have the right to gather evidence and that generally they have the right to review both the substantive and procedural legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute that those administrative appeal authorities have to decide on. At the top of the system stands the Council of State that serves as an administrative cassation judge for appeals against the decisions of the aforementioned judicial bodies or panels. When the public authority has been granted a margin of appreciation by the legislator in making specific decision, the Court of Council will allow for this margin by applying a marginal review and upholding any decisions that it finds it reasonable. The Court of Council will annul the challenged decision if found unlawful.
Any final EIA decision or authorization by the public authority is made public together with the decision that allows or refuses the project and can be challenged in court. In generally there are no special rules on standing, forum, hearing, evidence or the extent of the review by the administrative courts. However, the principles are that the parties are entitled to be heard, that the courts have the right to gather evidence and that generally they have the right to review both the substantive and procedural legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute that those courts have to decide on. The courts are entitled to review the procedural and substantive legality of EIA decisions and to verify material and technical findings and calculations as well as the EIA documents. However the administrative authorities have a margin of appreciation when establishing what the best available technology for the specific installation is. The courts will restrict themselves to a marginal review. They will also verify if the competent administrative authority has taken its decision in respect of the general principles of good administration.
In order to have standing before the courts it is not necessary to participate in the public consultation phase of the EIA procedure and to make comments during that period. However, administrative appeals, if available, should be exhausted first. Before the Flemish Council for Permit Disputes (as building permits in the Flemish region are concerned) or the Council of State (all other cases) - as final administrative appeal court it is possible to petition for annulment and in urgent cases also for suspension of the final administrative decision including the EIA-decision. Both remedies have the same standing-requirements since a petition for suspension can never stand alone. The interest of the citizen must be personal, present, certain, direct and legitimate. On request by the applicant, the Council of State (or the Flemish Council for Permit Disputes as building permits in the Flemish region are concerned) are empowered to suspend the execution of a final administrative decision including an EIA decision that is disputed by means of an action for annulment insofar a serious plea can be alleged and that the immediate application of the disputed administrative decision threatens to cause a serious damage that is difficult to repair. The requirement of a serious damage that is difficult to repair is not a standing-requirement, but is a separate condition that should be met for the suspension of the act or regulation.
An application for an administrative authorization for an IPPC-installation will be dealt with in an extensive administrative procedure. When the final decision has been taken and made public, any interested party that has exhausted the administrative appeals available, can file a case with the Council of State. The courts are entitled to review the procedural and substantive legality of IPPC decisions and to verify material and technical findings and calculations as well as the IPPC documents. However the administrative authorities have a margin of appreciation when establishing what the best available technology for the specific installation is. The courts will restrict themselves to a marginal review. They will also verify if the competent administrative authority has taken its decision in respect of the general principles of good administration. In order to have standing before the courts it is not necessary to participate in the public consultation phase of IPPC procedure and to make comments during that period. However, the available administrative appeals should have been exhausted. Before the Council of State it is possible to petition for annulment and in urgent cases also for suspension of the final administrative decision on an IPPC permit application. Both remedies have the same standing-requirements since a petition for suspension can never stand alone. The interest of the citizen must be personal, present, certain, direct and legitimate. On request by the applicant, the Council of State is empowered to suspend the execution of a final administrative decision that is disputed by means of an action for annulment insofar a serious plea can be alleged and that the immediate application of the disputed administrative decision threatens to cause a serious damage that is difficult to repair. The requirement of a serious damage that is difficult to repair is not a standing-requirement, but is a separate condition that should be met for the suspension of the act or regulation.

V. Access to Justice against Acts or Omissions

Citizens can introduce different procedures against private individuals or legal entities in environmental matters before the civil court. These proceedings are not specific to environmental matters. They are brought to civil courts based on tort law that is regulated in articles 1382 and 1384 of the Civil Code. Citizens who suffered damage caused by environmental disturbance can submit a claim against private individuals who or legal entities that infringe the environmental regulations to the civil court in accordance to with the civil liability rules. The citizens have to prove the fault on part of the private individual or legal entity, the caused damage and that the act or omission is causal with regard to the produced damage. They can claim restoration in kind and/or financial compensations and in some cases temporary measures. The Civil Code provides also the possibility to sue the person who infringes the environmental law without having to prove the fault on behalf of the person on basis of good neighborhood (“nuisances”). There is no injunctive relief provided and a favorable judgment will not be obtained if the disturbance is the result of an installation approved by the administrative authority. In that case the neighbor has to tolerate the impact, but he can be (partially) compensated. The Code of Judicial Procedure provides a procedure in matters of special urgency that the citizens can introduce before the president of the competent court of first instance who can take temporary measures against the person who infringes the environmental regulations.
In accordance with the Act of 12 January 1993 on a right of action for the protection of the environment, the president of the court of first instance can state the existence of acts that are or could be infractions of environmental regulations and order to cease them. The public prosecutor, an administrative authority or a non-profit organization that has as statutory goal and activities the collective environmental protection can introduce a demand before the president of the court of first instance. The liability provisions within environmental laws are specific and therefore applied preferably in relation to the abovementioned civil liability regime. Citizens are also entitled to act against environmental disturbances by reporting those acts to the competent administrative authority. The administrative authority can take the measures provided by environmental law against the person who infringes the environmental regulations. In criminal procedures citizens are entitled to report criminal acts to the public prosecutor who decides whether or not the case has to be taken to the criminal judge.

The citizen can also be a party in civil matters connected to the criminal procedure. He can also directly summon the person who infringes the environmental regulations to appear before the criminal court but in that case he will bear the whole burden of proof.
Citizens can submit claims directly to the civil court against states bodies in environmental matters to obtain damages and if the civil court has to pronounce on the substantive legality of an administrative decision in accordance with article 159 of the Belgian Constitution, it will be entitled to set aside the unlawful administrative decision. The same rules apply as in the case of private persons causing damages or nuisances. Some public bodies are criminally liable, where others are not, and criminal liability will rest in that case on the natural persons through which the public authority has acted or failed to act. The same procedural rules apply as in the case the offender is a private person.
The competent federal authority for the prevention and limitation of environmental damage caused by ships and operators in the Belgian part of the North Sea is the Federal Public Service Health, Food Chain Safety and Environment (*Federale Overheidsdienst Volksgezondheid, Veiligheid van de Voedselketen en Leefmilieu / Service Public federal Santé Publique, Sécurité de la Chaine alimentaire et Environnement*). For the prevention and limitation of the environmental damage caused by the introduction on the Belgian market of Genetically Modified Organisms or products containing Genetically Modified Organisms the competent federal authority is also the Federal Public Service Health, Food Chain Safety and Environment. The competent authority for damage caused to the environment in the Walloon Region is the Administration of the Environment of the Directorate-General of Environmental Resources and the Environment (*Administration de l'environnement de la Direction Générale des Ressources naturelles et de l'environnement*). In the Brussels Capital Region it is the Brussels Institute of Environment (*Institut bruxelloise pour la gestion de l'environnement / Brussels Instituut voor Milieubeheer*). The competent authority in the Flemish Region is the Department of Environmental Preservation, Environmental Damage and Crisis Management of the Department Environment, Nature and Energy (*Afdeling Milieuhandhaving, Milieuschade en Crisisbeheer van het Departement Leefmilieu, Natuur en Energie*).
In the three regions of Belgium natural or legal persons affected by or likely to be affected by environmental damage or having a sufficient interest in environmental decision-making relating to the damage 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 measures. Environmental associations can also submit the aforementioned observations or introduce the aforementioned request to the competent authority under certain conditions to be fulfilled. The request has to be accompanied by all relevant information and data supporting the observations in relation to the environmental damage. In the Flemish Region and the Walloon Region the decision of the competent authority can be directly challenged at the Flemish respectively the Walloon Government. In the Region of Brussels Capital the decision has first to be introduced for review by the environmental college (*Milieucollege / Collège d'environnement*). The decision of this environmental college can be challenged at the Brussels Government. The Council of State is entitled to suspend and annul the abovementioned decisions taken in last instance.
In the three Regions the person must have been party at the foregoing procedure with the administrative competent authority to enforce environmental liability. Final decisions to act or not to act can be challenged before the Council of State according to the general procedural rules as set out before. Civil courts can on demand of interested parties oblige the authorities to act if non-action could be considered as a fault in the context of civil liability.

VI. Other Means of Access to Justice

An ombudsperson can be related to an administrative authority, a sector or a certain public company. There are ombudspersons designated by federal and regional law. The federal or regional offices of ombudsmen have concluded general cooperation protocols with especially certain administrative authorities and public companies competent in environmental matters. On the website https://www.ombudsman.be/ can be found which ombudsman is competent for which problem to be handled. The competent federal or regional ombudsman investigates individual complaints brought to him by citizens concerning the decisions and the behavior of certain administrative authorities or public companies. He analyses the complaint and acts as a mediator between the parties. He proposes solutions to the parties and when appropriate can formulate proposals to ameliorate the functioning of the administrative authority, sector or public authority. He also provides annual reports to the competent federal or regional authorities (e.g. to the federal or regional parliaments). In general the citizen can only complain by the ombudsman after having introduced a complaint to the administrative authority or public company that did not sufficiently deal with the complaint. The federal and regional regulations introduce procedural rules to be followed by the citizens when introducing a complaint to the federal or regional ombudsmen. Therefore it is indicated to investigate which ombudsman is competent and which regulations have to be followed. The procedure introduced before the ombudsman will however not suspend the term of appeal against the decision before the appeal authority or the Council of State.
The public prosecution (*Openbaar Ministerie / Ministère public*) – a part of the judiciary – is responsible for prosecuting criminal acts against the environment that are determined by the Belgian Criminal Code or by Environmental Acts, Decrees or Ordinances. Federal and regional laws include specific provisions concerning the prosecuting of criminal acts against environmental regulations. The public prosecutor, attached to a district court, leads the investigation in those proceedings. In some larger districts there are prosecutors specialized in environmental crime. According to Belgian Criminal Procedure Law interested parties can sue themselves perpetrators before the criminal courts. This possibility is however seldom used because the interested parties have to bear in such case the burden of proof. However citizens who suspects that criminal offenses have been or are committed are entitled to report this to the respective law enforcement agencies (environmental inspectorates and police forces), to the public prosecutor or, as a civil party, to the investigating judge (*onderzoeksrechter / juge d'instruction*). In the latter case a deposit can be asked, but there is an obligation to investigate the case. The administrative authorities are under the direction and supervision of the supreme administrative organs and bound to their instructions. The Council of State is the highest administrative court that executes the final judicial control. The ombudspersons are competent to act on inappropriate administrative actions or omissions. The prosecutor on corruption issues is competent in the field of corruption.

VII. Legal Standing

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	There are no common rules applicable for all specialized administrative courts, judicial bodies or panels. Therefore the standing requirement is regulated on a case-by-case basis and is different before every appeal court or appeal body. However the rationale of standing stays the same: the petitioner must prove a sufficient interest, i.e. a direct, personal, clear and lawful interest in the relief sought. The requirement to establish a sufficient interest must be at all stages of the proceedings from the filing of the petition until the decision has been rendered.	As the Belgian standing requirement is interested-based, the petitioner must prove a sufficient interest, i.e. a direct, personal, clear and lawful interest in the relief sought. The requirement to establish a sufficient interest must be at all stages of the proceedings from the filing of the petition until the decision has been rendered. The requirements are the same in the first instance (Council of State or administrative courts or judicial bodies of first instance) and – as the case maybe – in the cassation phase (Council of State acting as cassation judge to courts and judicial bodies of first instance). It should be noted that the Council of State is empowered to suspend the execution of an administrative act or regulation that is disputed by means of

		an action for annulment insofar a serious plea can be alleged and that the immediate application of the disputed act or regulation threatens to cause a serious damage that is difficult to repair.
NGOs	There are no common rules applicable for all administrative courts. Therefore the standing requirement is regulated on a case-by-case basis and is different before every appeal court or appeal body. However the rationale of standing stays the same: the petitioner must prove a sufficient interest, i.e. a direct, personal, clear and lawful interest in the relief sought. The requirement to establish a sufficient interest must be at all stages of the proceedings from the filing of the petition until the decision has been rendered. The NGO especially has to show a “capacity” or “quality” that is interpreted in that sense that there should be a clear match between the statutory objective of the NGO and the contested project.	Before the Council of State a NGO has to show “capacity” or “quality” that is interpreted in that sense that there should be a clear match between the statutory objective of the NGO and the contested project. In environmental matters it is interpreted as a regional organization can in that view only challenge projects of regional interest not smaller projects that are of local relevance. Bigger projects are the projects that are of supra regional interest. The Act of 12 January 1993 establishing a right of action for the protection of the environment allows environmental organizations that satisfy certain requirements to bring an action for cessation of acts that are evident infringements of environmental law or serious threats of such infringements before the President of the Court of first instance (District Court).
Other legal entities	There are no common rules applicable for all administrative courts. Therefore the standing requirement is regulated on a case-by-case basis and is different before every appeal court or appeal body. However the rationale of standing stays the same: the petitioner must prove a sufficient interest, i.e. a direct, personal, clear and lawful interest in the relief sought. The requirement to establish a sufficient interest must be at all stages of the proceedings from the filing of the petition until the decision has been rendered.	Any natural or legal person concerned, whether of private or public law, may petition the Council of State for an annulment. Local authorities can also bring proceedings before the Council of State to annul decisions passed by the supervisory authority that they consider to be illegal. The abovementioned Act of 12 January 1993 establishing a right of action for the protection of the environment allows administrative and municipal authorities to bring actions for cessation of violation of environmental acts.
Ad hoc groups	There are no common rules applicable for all administrative courts. Therefore the standing requirement is regulated on a case-by-case basis and is different before every appeal court or appeal body. However the rationale of standing stays the same: the petitioner must prove a sufficient interest, i.e. a direct, personal, clear and lawful interest in the relief sought. The requirement to establish a sufficient interest must be at all stages of the proceedings from the filing of the petition until the decision has been rendered.	Associations or groupings without legal personality, such as trade unions and political parties in Belgium, may take action before the Council of State for an annulment, when they act in defense of a prerogative recognized by laws or regulations (for the defense of a functional interest). The Regional Municipal Decrees allow one or several residents of a municipality to act on behalf of the municipality if the mayor and aldermen fail to do so. It is accepted in the case law that this provision could be combined with the abovementioned Act of 12 January 1993 so that individual citizens are able to bring such an action themselves on behalf of a defaulting municipal authority by taking the place of the municipality that refuses to bring such an action. No interest needs to be demonstrated because the municipality is presumed to have an interest.
foreign NGOs		See the judicial procedure for the NGOs.
Any other	There are no common rules applicable for all administrative courts. Therefore the standing requirement is regulated on a case-by-case basis and is different before every appeal court or appeal body. However the rationale of standing stays the same: the petitioner must prove a sufficient interest, i.e. a direct, personal, clear and lawful interest in the relief sought. The requirement to establish a sufficient interest must be at all stages of the proceedings from the filing of the petition until the decision has been rendered.	Local authorities can bring proceedings before the Council of State to annul decisions passed by the supervisory authority that they consider to be illegal.

There are no common rules applicable for all administrative courts regarding standing. Standing requirements are regulated on a case-by-case basis and there are different rules applicable in sectoral or procedural legislation. However the rationale of standing stays the same: the petitioner must prove a sufficient interest, i.e. a direct, personal, clear and lawful interest in the relief sought. The requirement to establish a sufficient interest must be at all stages of the proceedings from the filing of the petition until the decision has been rendered. In Belgium an *actio popularis* is possible when it is provided by a specific regulation. The Act of 12 January 1993 establishing a right of action for the protection of the environment allows environmental organizations that satisfy certain requirements to bring an action for cessation of acts that are evident infringements of environmental law or serious threats of such infringements before the President of the Court of first instance (District Court). The regional Municipal Acts or Decrees allows one or several residents of a municipality to act on behalf of the municipality if the mayor and aldermen fail to do so. It is accepted in the case law that this provision could be combined with the abovementioned Act of 12 January 1993 so that individual citizens are able to bring such an action themselves on behalf of a defaulting municipal authority by taking the place of the municipality that refuses to bring such an action. No interest needs to be demonstrated because the municipality is presumed to have an interest.

The federal or regional ombudspersons do not have legal standing in any procedure before any administrative or civil court. Public prosecutors have legal standing within criminal proceedings. The federal and regional regulations have given legal standing to certain administrative bodies in first instance that can go into appeal against decisions taken by a higher administrative body that annuls partly or totally the decision of the administrative bodies in first instance. There are no different rules for standing of individuals and NGOs and for access to justice applicable to EIA and IPPC.

Lawyers play an important role in judicial procedures in environmental matters because environmental law in Belgium is more and more complex. There are four different environmental law systems in Belgium, i.e. federal, Flemish, Walloon and Brussels environmental regulations, what makes it even more complex. Lawyers give legal advice and represent their clients in judicial or administrative proceedings. Legal counsel is not compulsory in civil procedures before the civil courts and in administrative environmental procedures before the Council of State and the Constitutional Court. In proceedings before the

Supreme Court (*Hof van Cassatie / Cour de cassation)* legal counsel is compulsory in civil matters. The Flemish speaking and French and German speaking bar associations provide information on registered lawyers by region and field of activity (http://www.advocaat.be/ for the Bar Council of the Flemish Lawyers; https://avocats.be/fr for the Bar Council of the Francophone and German speaking Lawyers).

IX. Evidence

The federal and regional environmental regulations do not have specific rules of evidence that apply in environmental matters. In civil procedures the parties have to propose all of the evidence for their statements and facts to the civil court in accordance with the dispositions of the code of judicial procedure. The civil court can order to each of the parties to produce evidence that they possess. The parties can ask that witnesses are to be heard and that the civil court designates an expert. The procedures before the Council of State are inquisitorial, i.e. the Council of State can order an expertise even if the parties do not ask the designation of an expert, correspond directly with the administrative authorities and demand any information and acts from the administrative authorities. In civil and administrative procedures the civil courts and the Council of State will evaluate all the evidence presented and will conclude which evidence is most probably in line with the truth. The civil courts and the Council of State have solely a limited judicial review concerning the scientific evaluation undertaken by the administrative authority. The civil courts and the Council of State have to evaluate whether the decision of the administrative authority is a decision that is not contrary to the principles of good government, i.e. the principle of carefulness, proportionality principle, the principle of reasonableness.

Parties can introduce new evidence before the civil courts and the Council of State. The civil courts and the Council of State can request evidence on their own. Parties can ask the civil courts and the Council of State to get expert opinions in the procedures. The Council of State however can decide to appoint an expert without to be asked by the parties. The civil courts can designate an expert to establish findings or to give technical advises. The expert opinion is not binding on the judges of the civil courts and the Council of State in case it is against their conviction. The judges can ask a complementary expertise by the same expert or designate another expert in case the resume of the expert does not give them clarification.

X. Injunctive Relief

The appeal to administrative courts has in general not a suspensive effect. However, specific federal or regional regulations sometimes diverge from this general rule. The petitioner can ask the Council of State or the Flemish Council for Permit Disputes (for building permits in the Flemish region) to suspend the execution of an administrative act or regulation that is disputed by means of an action for annulment insofar a serious plea can be alleged and that the immediate application of the disputed act or regulation threatens to cause a serious damage that is difficult to repair. The requirement “a serious damage that is difficult to repair” is not a standing-requirement but is a separate condition that should be met for the suspension of the act or regulation. In general administrative decisions can be immediately executed when they have been notified to the petitioner in accordance with the federal, regional or local regulations. However specific federal, regional or local regulations sometimes diverge from this general rule. The execution of an administrative decision can for example depend on the obtaining of other administrative decisions. The execution of an administrative decision can also depend upon specific conditions to be fulfilled before the general administrative decision can be executed. However it is indicated to wait with the execution of administrative decisions till the end of the appeal period so to be sure that the administrative decision cannot be subject of an appeal procedure anymore. Any execution of a decision that is annulled by an administrative court or the Council of State may lead to liability.

The Code of Judicial Procedure provides a procedure in matters of special urgency that the citizens can introduce before the president of the competent court of first instance who can take temporary measures against the person who infringes the environmental regulations. The president of the competent court sits in chambers to deal provisionally with matters of special urgency. The judge needs to conduct a balancing of interests (the interest of the petitioner on legal protection versus other public or private interests) in order to take a decision on the exclusion of the suspensive effect. The Council of State (and the Council for Permit Disputes concerning building permits in the Flemish region) is empowered to suspend the execution of an administrative act or regulation that is disputed by means of an action for annulment insofar a serious plea can be alleged and that the immediate application of the disputed act or regulation threatens to cause a serious damage that is difficult to repair. The requirement “a serious damage that is difficult to repair” is not a standing-requirement but is a separate condition that should be met for the suspension of the act or regulation. The request to take temporary measures against the person who infringes the environmental regulations based on article 584 of the Code of Judicial Procedure can solely be introduced in matters of special urgency. The judge decides case by case whether there is a matter of special urgency. It is indicated to introduce the request to take temporary measures within a short period of time starting from the date the petitioner has knowledge of the existence of the fact that could cause an irreversible environmental damage. The judge can only pronounce temporary measures that are compulsory to avoid a threat or an urgent matter of environmental damage. The judge can order that some activities are temporarily stopped or even forbid some activities. However, in general the judge will appoint an expert who will investigate the situation in the light of an eventual indemnity procedure. The request to take temporary measures against the person who infringes the environmental regulations can also be introduced to the president of the court of first instance that can state the existence of acts that are or could be infractions of environmental regulations in accordance with the abovementioned Act of 12 January 1993 on a right of action for the protection of the environment. This procedure can only be introduced by a public prosecutor, an administrative authority, a non-profit organization that has as statutory goal and activities the collective environmental protection or an inhabitant of the concerned municipality if local government refuses to act. Such demand can be introduced before the president of the court of first instance. This procedure does not request that the matter is of special urgency.

The judge can order that the activities are stopped or impose measures to prevent further environmental damages. He can also appoint an expert who will investigate the situation in the light of an eventual indemnity procedure. There is an appeal against the decision of the court regarding injunction that has to be introduced within a period of thirty days starting from the notification of the judgment.

XI. Costs

The fee to introduce an appeal procedure before the Council of State or the Flemish Council for Permit Disputes for suspension and annulment of an administrative decision is 175 EUR. This amount has to be paid by the party that has lost the case when the decision has been notified to this party. The fees before the civil court depend on the value of the litigation:

Value in litigation	Court fee
Less than 500 €	+/- 125 €
Between 500 € and 2.500 €	+/- 200 €
More than 70.000 €	+/- 250 €

The party that loses the case will pay the court fee. The fee to introduce an appeal procedure before the Council of State for suspension and annulment of an administrative decision is 175 €. The fee to introduce an appeal before the higher court is 210 € for affairs that are not of special urgency. The fee to introduce an appeal in affairs that are of special urgency is 160 €. The fee to introduce an appeal to the Court of Cassation is 375 €. The fees of lawyers are not regulated and therefore they are free in setting their fees. But lawyers must still set them within suitably restrained limits because the lawyers’

associations may check that lawyers do not exceed these limits. The fees of lawyers specialized in environmental matters can be estimated above 125 € an hour. The lawyer can also ask a percentage on the value in litigation. A survey done by the Bar of Lawyers of the Flemish Region indicates the use of following rates:

Value in litigation	Lawyers' fees
0 € - 6.200 €	15 %
6.200 € - 49.500 €	10 %
49.500 € -124.000 €	8%
124.000 € - 248.000 €	6%
More than 248.000 €	4%

The Judicial Code prohibits agreements between the client and the lawyer solely linked to the outcome of the action. The lawyer is obliged to inform the client in advance of their fee calculation method. The code of judicial procedure does not regulate the expert fees. Experts therefore set freely the amount of their fees case by case. However the judge monitors these fees in a marginal way or may intervene in the event of disagreement between the parties and the expert. The costs for interim measures in civil proceedings are calculated according the abovementioned court fees. On 21 April 2007 the legislator introduced a cost shifting system by amending article 1022 of the Code of Judicial Procedure. The basic, minimum, and maximum amounts of the procedural allowance before the ordinary courts (contribution to the honorarium and costs of the lawyer of the winning party) are determined by the Royal Decree of 26 October 2007 (Moniteur belge, 9 November 2007). These allowances apply per instance (first instance, appeal, cassation). When the claim is or can be expressed in money the allowance will vary according the value of the claim. E.g. for a claim of less than 250 €, the basic allowance is 150 €, with a minimum of 75 € and a maximum of 300 €. For a claim between 10.000 and 20.000 €, the basic allowance will be of 1.100 €, with a minimum of 625 € and a maximum of 2.500 €. For a claim of more than 1.000.000 € the basic allowance is 15.000 €, with a minimum of 1.000 € and a maximum of 30.000 €. For claims that cannot be expressed in money the basic amount is 1.200 €, with a minimum of 75 € and a maximum of 10.000 €. The "loser pays principle" is not applicable in administrative cases before special administrative tribunals or the Council of State, nor for the Constitutional Court.

XII. Financial Assistance Mechanisms

The Code of Judicial Procedure does not provide exemptions from procedural costs, duties, filing fees, taxation of costs, etc. in especially environmental matters. The code of judicial procedure however provides two systems of legal assistance applicable in both civil and criminal matters. There is the 'primary and secondary legal assistance' and the 'legal aid'. The 'primary legal assistance means legal assistance in the form of practical and legal information, an initial legal opinion or referral to a specialized body or organisation. This form of assistance is available for individuals and corporations. The 'secondary legal assistance' means legal assistance to an individual in the form of a detailed legal opinion or legal assistance, whether or not in the context of formal proceedings and assistance with a court action including legal representation. 'Legal aid' consists of full or part exemption from stamp duties and registration charges and other costs of proceedings and is available to petitioners who do not have adequate income to cover the cost of judicial or extra judicial proceedings. The petitioner shall have to prove that he/she fulfills certain conditions, amongst others that his/her income is inadequate, in accordance with the dispositions of the Code of Judicial Procedure. There are no other financial mechanisms available to provide financial assistance to applicants. In Belgium there is no legal aid available particularly in environmental matters. Natural persons and NGO's can apply for the primary and secondary legal assistance and the legal aid as mentioned above. There are no legal clinics dealing with environmental cases in Belgium. There are no public interest environmental law organizations or lawyers in Belgium.

XIII. Timeliness

The federal and regional regulations impose in general a time limit to deliver a decision. These time limits vary with the administrative authority and the type of decision to be taken. If the applicable regulation by rare exception does not mention a time limit the administrative authority will have to provide a decision within a reasonable time period. Some federal and regional environmental regulations stipulate that if an administrative authority does not provide a decision within the imposed time limit or within a reasonable time limit, the decision of the authority is considered to be negative (e.g. the petitioner introduced a demand for an environmental permit). The petitioner then can go into appeal before the higher administrative authority. If the regulations do not include such a disposition, the only appeal possible against the absence of a decision of an administrative authority, is the Council of State. The petitioner will notify to the administrative authority a demand to make a decision. If within four months, starting from the day of notification of this demand, the administrative authority did not notify a decision to the petitioner, it is considered to be a negative decision against which the petitioner can go into appeal before the Council of State. There are no sanctions against administrative authorities delivering decisions in delay beside the abovementioned procedure that the petitioner can introduce before the Council of State. The petitioner can introduce a procedure before the civil court for damage occurred because of inadequate management on behalf of the administrative authority. The Code of Judicial Procedure does not set time limits especially for procedures in environmental matters. In procedures before the civil courts the parties have to introduce their conclusions within a time frame submitted to the court. The major time limit set by the code of judicial procedure for civil procedures is the period of one month after the debates have been closed within which the judge has to deliver a judgment. In procedures before the Council of State the parties have to introduce their written statements within a time frame established by law. The Council of State delivers its judgment within six months starting from the deposition of the report of the auditor. Generally the Council of State does not respect this period of six months. The typical duration of an environmental court case is 9 to 12 months according to practical experience. The Code of Judicial Procedure provides that the judges have to deliver their judgment within one month after the debates have been closed. In case the judge cannot deliver the judgment within this period of one month, the reason for this delay has to be mentioned in the minute book of the clerk. The judge has to be able to justify the delay in an objective way before the higher court authorities that are in charge of the control on the delays of consideration. If a judge cannot deliver a judgment within a period of three months he must inform the higher court authorities who will consider with him a solution that has to lead to a reduction of the delay. The judge will be evaluated periodically on his performances and in case his evaluation is negative the judge can be submitted to a disciplinary punishment.

XIV. Other Issues

The public can challenge environmental decisions that are final, after exhaustion of the administrative appeal procedure that is available. Appeal to the Council of State must be introduced within 60 days after one has knowledge of the decision taken (45 days as the Flemish Council for Permit Disputes is concerned). The information on access to justice in environmental matters is provided to the public in a structured and accessible manner: Please consult the following websites:

(i) The Federal State: https://www.health.belgium.be/en

(ii) The Walloon Region: http://environnement.wallonie.be/

(iii) The Flemish Region: https://www.lne.be/environment-and-health

(iv) The Region of Brussels Capital: http://environnement.brussels/thematiques/air-climat-0.

In Belgium the authorities are more and more convinced that alternative dispute resolution can be a valid alternative to court proceedings. In Belgium mediation is often used in environmental matters to solve conflicts proactively to avoid court proceedings.

XV. Being a Foreigner

Discrimination regarding language or country of origin is forbidden by article 11 of the Belgian Constitution. The use of languages in court procedures in Belgium is organized by the Act of 15 June 1935 concerning the use of languages in court cases. The use of languages is based on the division of Belgium in four language territories: the Flemish, the French, the German and the bilingual territory of the Region of Brussels Capital (French and Flemish) as established by the Belgian Constitution. In general the language, in which the court procedure is held, is the language of the district in which the competent court is established. The rules that are applicable in the Brussels district are complex because it contains Flemish speaking communities as well as Flemish and French speaking communities. However parties can introduce a demand of the application of exceptions on the abovementioned general rules. The general rule is that all documents used in a court procedure should be translated in the language in which the court procedure is held. The government can in certain court procedures provide translation or the designation of translators who are officially credited and listed. The cost of a translator is to be paid by, the respective party and ultimately by the losing party unless the party was entitled to legal aid.

XVI. Transboundary Cases

The federal and regional environmental regulations contain transboundary EIA procedures to be followed when an activity in Belgium could have an environmental impact in another country. According to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) the definition of ‘the public’ is to be understood in federal and regional regulations as ‘one or more natural or legal persons and their associations, organizations or groups’. NGOs, neighbors and neighboring municipalities of the affected country do have standing in federal and regional EIA procedures. The abovementioned parties will have the same rights as NGOs or neighbors have in Belgium. However, in the context of the Act of 12 January 1993, only Belgian NGO’s can act, because only NGO’s that satisfy certain requirements (namely, being set up in the form of a non-profit association according the Act of 27 June 1921 on nonprofit organizations, having the protection of the environment as its purpose, having existed for at least 3 years and actually being active) can bring such an action. No legal aid or pro bono legal advice is granted in administrative procedures for public or foreign NGOs. Individuals or NGOs cannot choose between courts of different countries in environmental matters. However, in cases of transboundary pollution, it seems possible to sue before civil courts in the country of origin or in the country were the environmental harm occurs.

Related Links

National legislation on access to justice in environmental matters:

Federal: https://www.health.belgium.be/en/environment

Flemish region: https://www.lne.be/environment-and-health

Walloon Region: http://environnement.wallonie.be/

Region Brussels Capital: http://www.environnement.brussels/

Bar associations:

Flemish speaking bars: http://www.advocaat.be/

French and German speaking bars: https://avocats.be/fr

Ombudsman offices, prosecutor offices

https://www.ombudsman.be/

Last update: 28/05/2018