

# THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY BELGIUM

## ARTICLE 10 UNCAC

### PUBLIC REPORTING

#### BELGIUM (SIXTH MEETING)

##### **Belgium\_Ministry of the Interior**

1. Describe, cite and summarize the measures Belgium has taken or is planning to put in place a system of transparency for the public administration (including the obligation to proactively publish information on the risks of corruption).

Beneath the attribution to everyone of a right of access to administrative documents and the legal obligation to state reasons for legal decisions, other measures were taken to enhance the transparency of public administration, although there is not so much developed to proactively publish information on the risk of corruption.

Within administrations some instruments were introduced to limit the risk of corruption. A system of internal control has been introduced in almost all administrations and a control of the internal control systems by audits is more and more the case. Also the Court of Audit has changed its control from a legal perspective to an approach where efficiency, effectiveness and integrity are important. The reports of the Court of Audit are available to the public on its website. The Court of Audit performs financial, legality and regularity audits and examines the sound use of public funds. It checks the income and expenses of the Federal State, the Communities, the Regions, public service institutions depending on them and the provinces. The outcome of those audit activities are regularly reported to the legislative assemblies and the provincial councils. The Court carries out specific tasks of good governance (lists of mandates and declarations of assets filed by political representatives and senior officials, advice on financial reporting by the political parties and the campaign expenditure), as well as tasks regarding the distribution of resources between the Communities and Regions (school students counting, personal income tax honesty) and expertise (budgetary impact of bills, accounts of institutions which receive an appropriation). The Bureau worked out also a deontological framework for the federal civil servants (*OJ* 27 August 2007) that contains a collection of already existing legal obligations and values, but brings them together under certain values: respect, impartiality, professional ernst and loyalty.

More proactive actions against corruptions are organized by the ‘Bureau for Administrative Ethics and Deontology’. The Bureau has developed tools for the control of conflicts of interest and more specific for conflicts of interest within the field of public procurement.

Although the different ombudsmen (Federal Ombudsman, Flemish Ombudsman, Mediator of the Walloon Region and the Federation Wallonie-Bruxelles, the Ombudsman of Pensions, several local Ombudsman) are primarily competent to find solutions for complaints, their recommendations help to create a better functioning administration. In order to facilitate the finding of the competent ombudsman, a common website has been set up.

New legislation has been developed to protect whistleblowers. First the Flemish Region worked out a decree (5 May 2004) on the protection of civil servants who mention irregularities and introduce also some articles on the same topics in the Flemish Personnel Statute. With the Law of 15 September 2013 a similar system was introduced on the federal level. In both systems the Flemish/Federal Ombudsman plays an important role.

The reforms in administrations on the different levels have leaded to more client orientation.

Already in the '90 of the past century, measures were introduced to make administration more transparent. This was not formalized with legislation but with internal instructions that are binding for the administrations. There most important was the Charter of 4 December 1992 of the user of public services built up on three pillars: transparency, flexibility and legal protection was sought for a fair balance between the rights and obligations of the administrations and the ones of the public.

More recently some legislation has worked out on the different levels of the federal state to make the functioning of some institutions more transparent. This is for example the case with the law of 21 December 2013 to enhance the transparency, independency and credibility of decisions and opinions in the field of health insurance, the health, the safety of the food chain and the environment (*OJ* 20 February 2014). On the level of the Flemish Region a decree of 22 November 2013 concerning good governance in the Flemish public sector (*OJ* 9 January 2014). A similar decree was introduced in the French community (the decree of 31 March 2011 concerning the board in the implementation of the government mandates with the Government agencies and within the of the Government derived entities, *OJ* 24 May 2011) and in the Walloon Region (the decree of 7 April 2011 concerning good governance in the execution of public mandates, *OJ* 5 May 2011). On the level of the Brussels Region the ruling of 12 January 2006 concerning the transparency of the remunerations and benefits of the Brussels public officials (*OJ* 1 February 2006), executed by the Decision of the Government of the Brussels Region of 6 March 2008 to implement the articles 4, §§ 1 and 3 , and 8 of that ruling (*OJ* 1 April 2008) can be mentioned. The French community Commission of the Brussels Region has its one Decree of 24 April 2014 concerning governance and transparency in the execution of public mandates (*OJ* 19 January 2015).

2. Describe, cite and summarize the measures Belgium has taken or is planning to provide for members of the public to have the right and opportunity to access information on the (a) organization, (b) functioning and (c) decision-making processes of the public

administration, and (d) on decisions and legal acts that concern members of the public decisions, with due regard for the protection of privacy and personal data.

Since 1995 article 32 of the Belgium Constitution guarantees a right of access to administrative

documents. This fundamental right is worked out in different laws on the level of the federal state, the regions and the communities as a result of a rule of division of competences. An administrative document concerns each information regardless the form and the content which an administrative authority has in its possession. This could be a preparatory document, a document of a third person, and internal document, ... The procedure to exercise the right of access is low level. It is not necessary to designate an administrative document, it's enough to indicate the matter in question. The exemptions on access are subjected to a harm or a general interest test and reasons for refusal has to be given in concreto. If the access refused, a free administrative appeal is possible: in most cases it's a two steps procedure

- Law of 11 April 1994 concerning freedom of information
- Law of 12 November 1994 concerning freedom of information in provinces and municipalities
- Decree of the Flemish Parliament of 26 March 2004 concerning freedom of information
- Decree of the Parliament of the French Community of 22 December 1994 concerning freedom of information
- Decree of the Walloon Parliament of 30 March 1995 concerning freedom of information
- Certain articles in the Walloon Code of Local Democracy and Decentralization
- Decree of 14 December 2006 concerning the implementation of Directive 2003/98/EC of the European Parliament and the Council of 17 November 2003 concerning the reuse of public information and concerning freedom of information for matters in which the Region exercises the powers of the French community.
- Ordonnance of the Brussels Parliament of 30 March 1995 concerning freedom of Information
- Decree of the Parliament of the German speaking community of 16 October 1995 concerning freedom of information
- Decree of the Assemblee of the French speaking community commission of the Brussels Region of 11 July 1996 concerning freedom of information
- Ordonnance of the Common community commission of the Brussels Region of 26 June 1996 concerning freedom of information

Because of the implementation of the Convention of Aarhus and Directive 2003/4/EC, a special

regime is applicable on environmental information. The implementation is done in a different manner depending the different legislative levels. On the federal level and the Brussels Region there are two different laws, on the Flemish level the access to environmental information is integrated in the general access to information law and in the Walloon region it is integrated in the Environmental Code. Although the procedure is

very similar, there are less exemptions possible for the access to environmental information and in the administrative appeal procedure the independent body has a decision power.

General decisions and legal acts have to be made public before they can have legal force. Individual decisions are meant to the persons considered. Legal acts of central governments have to be published in the Official Gazette (Moniteur belge, Belgisch Staatsblad) that is accessible through the internet. Legal acts of local governments have also to be made public on the internet through the website of the local governments. The opposability of the legal act depends on the publication of it.

Individual decisions need always a formal motivation because of the law of 29 July 1991 concerning the explicit obligation to give reasons for administrative decisions. In some cases a broader publicity has to be given to individual decisions, for example in the case of regional and urban planning. According to the case law also for general decisions and legal acts reasons must be found in the administrative file so the courts can control the quality of the decision making process and this file is accessible according to the freedom of information legislation.

3. Describe, cite and summarize the measures Belgium has taken or is planning to facilitate public access to the competent decision-making authorities, including simplifying administrative procedures.

Belgium has created within the field of the development of e-government important steps to simplify administrative procedures by the introduction of different Services Integrators. The first

one, the Crossroads Bank for Social Security (Law of 15 January 1990), has already a long history.

New Service Integrators were introduced, such as the e-Health-platform (Law of 21 August 2008), the Federal Services Integrator (Law of 15 August 2012), the Flemish Services Integrator (Decree of 13 July 2012), the Crossroads Bank for data exchange eWS (Cooperation agreement between the Walloon Region and the French Community of 23 May 2013) and the Brussels Services Integrator (Ordonnance of 8 May 2014). These services integrators not only will facilitate exchange of data, but also assure a more transparent way for citizens to know what is done with his data.

In the framework of the development of e-government also authentic sources have been developed that facilitate the exchange of data, but also limit the possibility for administrations to ask citizens and enterprises for their data several times (only once principle) and assure an efficient dealing of it. Legal frameworks were introduced such as the Law of 5 May 2014 on the establishment of the principle of the unique data collection in the operation of the services and agencies that belong to or are tasks for the Government and to the simplification and equalization of electronic and paper based forms and also the Flemish Decree of 18 July 2008 concerning the electronic administrative data traffic. In some cases the unique collection of data can be found in the legislation that organizes also the services integrator.

To give more transparency, the service that organizes the National Register, a centralized register of all natural persons living in Belgium, has created an online application that gives each citizen the possibility to control which government agency and person have access to and is using his personal data.

4. Describe, cite and summarize the specific challenges which Belgium might be facing in respect to (strengthen or improve) the measures described above (challenges in developing the legislative framework, implementation challenges, financial challenges, communication challenges, coordination challenges, other challenges).

The freedom of information system should progress from a passive to a more active system: a new legislative framework on the different central levels of government should be worked out, but the transformation has also financial challenges. No concrete steps have been set at this moment.

5. Does Belgium require technical assistance in relation to the measures described? If so, specify the forms of technical assistance that would be required.