**BE reply to the questionnaire of the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

1. What obligations does your Government have to ensure the right of access to

information under international, regional and national laws? Please provide, in detail,

the relevant legislation that guarantees the right of access to information on hazardous

substances and wastes, as well as the mechanisms, including grievance mechanisms,

which may be used by individuals and groups.

The Aarhus Convention establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Parties to the Convention are required to make the necessary provisions so that public authorities (at national, regional or local level) will contribute to these rights to become effective. The Convention provides for:

* the right of everyone to receive environmental information that is held by public authorities ("access to environmental information"). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Applicants are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;
* the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it ("public participation in environmental decision-making");
* the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice").

The Aarhus Convention was adopted on 25 June 1998, and signed by 39 European countries, as well as by the European Community itself. It came into force on 30 October 2001 and 36 countries are currently Parties to the Convention, including Belgium. The Aarhus Convention has been in force there since 21 April 2003.

In Belgium the three Regions and the Federal Government implement the Convention and the EU Directive 2003/04/EC on public access to environmental information, each according to its own competences through global regulations on access to environmental information.

In the Flemish Region the Flemish Parliament Act of 26 March 2004 on open government, the Flemish Government Decree of 19 July 2007 establishing the appeal body concerning open government and reuse of public information and the Flemish Government Decree of 28 October 2005 on the dissemination of environmental information are applicable.

In the Walloon Region, the decrees of 16 March 2006 and 31 May 2007 modifying the Environment Code regulate the access to information as required by the EU Directive 2003/04/EC of 28 January 2003.

At federal level it is the law of 5/08/2006 that regulates the access of the public to environmental information, including the setting up of a specific independent appeal body dedicated to review decision from public authorities.

1. Please provide, in detail, the scope and characteristics of hazardous substances and

wastes-related information that is or may be accessible to the public? More

specifically, please explain what type(s) of information is produced, by whom, based

on what criteria, and the time frame/frequency of data production including whether

data collected is disaggregated by gender, age, disability status, etc.

At federal level, the following information is or may be accessible to the public :

- Risk management (REACH)

- Classification-labelling (CLP)

- Asbestos

- Mercury

- Biocides

- Detergents

- Plant protection products

- The Programme for the Reduction of Pesticides and Biocides

- Persistent Organic Pollutants (POP)

-  Import-export of hazardous chemicals and pesticides (PIC)

-  Nanomaterials

- Cosmetics

- Food

- ….

Waste data are available as described in the 2014 National Implementation Reports regarding PRTR: <http://www.unece.org/env/pp/prtr_reports_implementation_2014.html>.

1. Please explain, in detail, how the information on hazardous substances and wastes is

made available to the general public. In addition, what actions does the Government

take to disseminate this information and to raise awareness about the adverse impacts

of hazardous substances and wastes on human rights? How is this information

tailored to the different constituencies?

The Aarhus Convention and EU Directive 2003/4/EC state that the public administrations must make available two "types" of public information channels to allow everyone easy access to all information and official documents concerning the environment.

- Firstly, administrations must respond to any requests made. This is known as "passive" information.

- In addition to this, they must provide a certain amount of basic essential public information, preferably using electronic means (for example through websites). This is called "active" information.

"Active information" does not mean actively giving out all the information held by the public authorities, but rather information considered to be essential for the public, namely:

- basic information for understanding the phenomena and measures implemented (texts of international treaties and conventions, federal, regional and local legislation, policies, plans and programmes, implementation and follow-up reports, data or summaries of data collected, etc.)

- in addition to this, any necessary information that may be required in the event of an imminent threat to the environment or human health, to allow the public to take measures to prevent or limit the damage linked to a particular threat.

Information on chemicals substances and waste is transferred to the public by official websites :

* Federal administration :

http://www.health.belgium.be/eportal/index.htm

<http://www.health.belgium.be/eportal/Environment/Chemicalsubstances/index.htm>

http://www.irceline.be

[www.reachinbelgium.be](http://www.reachinbelgium.be)

* Walloon Region:

<http://environnement.wallonie.be/>

<http://environnement.wallonie.be/data/air/dioxines/index.htm>

<http://environnement.wallonie.be/data/air/valorisation/Pages/PRESENTATION/Presentation__Reseau_de_controle.html>

http://www.awac.be

<http://airquality.issep.be>

* Brussels-Capital Region:

<http://www.ibgebim.be/Templates/Professionnels/niveau2.aspx?id=1532&langtype=2060>

<http://www.environnement.brussels/thematiques/sante-securite>

* Flemish Region:

<https://www.milieuinfo.be/prtr>

http://www.ovam.be/bedrijfsafvalstoffen

<http://www.vmm.be>

<http://www.lne.be>

Additional information: see the 2014 National Implementation Reports regarding PRTR: http://www.unece.org/env/pp/prtr\_reports\_implementation\_2014.html.

Of course, not everyone has access to the information on the Internet. As a result, public administrations also disseminates information in publications, brochures, fliers and so on, to reach the widest possible audience.

1. Please provide examples of how information on hazardous substances and wastes has

been used to:

monitor human rights affected by hazardous substances and wastes (e.g.,

rights to health, safe and healthy working conditions, water and sanitation,

healthy environment, etc.);

protect the human rights of individuals and groups from the adverse impacts of

hazardous substances and wastes;

promote other human rights (e.g., rights to health, safe and healthy working

conditions, water and sanitation, healthy environment, etc.);

prevent potential human rights violations caused by the improper management

of hazardous substances and wastes; and

hold perpetrators accountable and seek remedy for victims.

1. Which businesses are required to provide information on hazardous substances and

wastes (e.g., size, sector, operational context, ownership and structure)? Please

explain, in detail, the obligations of these businesses, have with regard to the type of information they are obliged to provide, to whom the information is made available,

and what measures may be taken if businesses fail to meet these obligations.

In application of article 5.9 of the Aarhus Convention, the Pollutant Release and Transfer Register (PRTR) Protocol was signed in May 2003 in Kiev. On 8 October 2009, the PRTR Protocol entered into force. On 23 October, it counted 38 signatories and 23 ratifications, among which Belgium and the European Community. Since then, the owners or operators of facilities, where at least one activity listed in Annex I of the PRTR Protocol is carried out, must inform public authorities of their releases and transfers of 91 air, water and soil pollutants so that they can be incorporated into the PRTR register, in cases where the level of these pollutants exceeds the thresholds specified in Annex II of the Protocol. They also have to report on their waste production.

Everyone in Belgium can freely consult the data via the websites of the three Regions or via the European PRTR (E-PRTR) on the European Environment Agency (EEA) website (<http://prtr.ec.europa.eu/MapSearch.aspx> ).

The provisions of chemicals regulation (REACH/CLP, PIC, Biocidal product) apply in Belgium.

1. When does the Government limit the right of access to information on hazardous

substances and wastes? Are these criteria on limitation provided by law? Who has the

authority to make decisions on the disclosure/non-disclosure of such information?

As a matter of principle, information is to be provided but this constitutional rule is not absolute : there are certain limits to this transparency.

The Convention, the Directive and the internal regulations envisage certain exceptions to limit the right of access to information. They include, in general, the following:

* a request that is too general or abusive may be refused, but the public authority must first invite the applicant to clarify their request.
* other requests could concern more delicate matters, such as international relations, national security, confidentiality of public procedures, commercial secrecy covered by law, personal data, or may refer to documents still being drafted, or incomplete, or to internal communications. These do not have to be communicated. It will then be up to the administrations to weigh up the interests on a case-by-case basis to assess what best serves the public interest, and only refuse to give out certain information when the public interest would best be served by maintaining confidentiality.
* information concerning the exercise of judicial and legislative powers is considered to be outside the scope of the Convention.
* whenever information is refused, the applicant must be given a reason why.
* the procedure to be followed when the public authority does not have the requested information. If it knows that the requested information is held by another public authority, it will either send on the request to that other public authority and inform the applicant, or it will refer the applicant directly to the other public authority.

In the Flemish Region, the decisions on the disclosure/non-disclosure of environmental information are made by the competent management person, as described in the Parliament Act of open government en depends on the public authority to whom the information was requested.

At federal level, the decision on disclosing or not environmental is also made by a competent management person belonging to the public authority where the request for access to environmental information is made.

1. How does the Government ensure that the right of access to this information is

fulfilled while also respecting the confidentiality of business information? If

available, please indicate relevant cases and attach copies of relevant judgements.

See answer n°6

Please find in annex a decision (2009) of the Federal appeal Body concerning biocides products.

