Environmental Impact Statements in Belgium

Marc Boes

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I. JURISDICTION IN ENVIRONMENTAL MATTERS

A. General Principles of Jurisdiction

Until the constitutional amendments of December 24, 1970,1 Belgium was a centralized state, with legislative power vested in the House of Representatives, the Senate, and the King2, executive power vested in the King, and judicial power vested in the Courts3.

The constitutional amendments of 1970 initiated a process, not yet complete, whereby legislative and executive powers were devolved to three regions (Flanders, Wallonia, and Brussels) and to three Communi-

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* In the following Article, Professor Boes analyzes the statutory framework implementing the use of the environmental impact statement ("EIS") in Belgium. Authority for the EIS flows from the EEC Directive, but as yet, the national government in Belgium has erected no regulatory structure. Thus, the Article examines two of Belgium's regions which have established a regulatory system for EIS's.

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2 Belgium is a British-type monarchy, and while nominally the Constitution vests executive power, BELG. CONST. art. 29, and some legislative power, BELG. CONST. art. 26, in the King, these powers are, in fact, exercised by the government. This results from article 63 (the King is not answerable, but the Ministers are) and article 64 (no act of the King is valid unless countersigned by a Minister, who is solely responsible) of the Belgian Constitution.

3 While judicial power is exercised by the Courts and Tribunals, there are jurisdictional colleges which do not belong to the judicial power. The most notable of these colleges is the Arbitration Court, which originally had jurisdiction only to annul national, regional, or community legislative acts as ultra vires. The Arbitration Court now has a limited jurisdiction to annul acts which violate articles 6 (all Belgian citizens are equal under the law) and 17 (freedom of education) of the Constitution. Another jurisdictional college is the Council of State, an administrative court modeled after the French Conseil d'Etat.
ties (the Flemish Community, the French Community, and the German-speaking Community). Each region and each community has legislative power vested in a council and an executive; executive power is vested in an executive.

This system of devolution has several major characteristics. Regions and communities have legislative power to promulgate acts that have the same force and value as national acts. Since national acts have no precedence over regional and community acts, conflicts have to be resolved by the Arbitration Court. Furthermore, regions and communities have exclusive jurisdiction in matters devolved to them. The national state cannot preempt those matters, and any attempt to regulate would be ultra vires and subject to annulment by the Arbitration Court. Finally, the jurisdiction of the regions and communities is limited to those matters which have been expressly attributed to them by the Special Act on the Reform of the Institutions of August 8, 1980, as amended by the Special Act of August 8, 1988. Matters not expressly attributed to the regions and communities or not expressly reserved to the national State (the so-called "residuary matters") fall under the jurisdiction of the national state.

B. Jurisdiction in Environmental Matters

The 1980 Institutions Reform Act, as amended, has transferred jurisdiction in environmental matters largely, but not totally, to the regions. "Protection of the environment," an important concept in the Act, was defined by the Arbitration Court to cover the policy to combat air, water, and noise pollution. Other aspects of the environment are treated in other articles and sections of the Act, in terms that qualify the jurisdiction of the regions.

There are restrictions, however, on the jurisdiction of the regions. The national authority retains jurisdiction to set minimum general and

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7 Id.

8 1980 Institutions Reform Act, supra note 5, art. 1, § 2, cl. 1.

sector standards—technical, quality, product, and emission standards. The regions must respect these standards, which means that they can set more restrictive, but not less restrictive, measures.

The national authority's jurisdiction is superseded by general and sector standards enacted by the European Economic Community ("EEC") under its authority in environmental matters provided in the Single European Act which entered into force on July 1, 1987. When such European standards exist, the national authority loses jurisdiction and the regions are bound to respect these European norms.

II. ORIGIN OF THE ENVIRONMENTAL IMPACT STATEMENT IN BELGIUM

Even before the Single European Act was enacted into law, the EEC used its broad powers under articles 100 and/or 235 of the EEC Treaty to legislate (most often in the form of directives) in environmental matters. The environmental impact statement ("EIS"), however, was first introduced in the United States and then made its way to other countries.

On June 27, 1985, EIS officially came to Europe when the Council of Ministers of the EEC adopted a directive on the assessment of the effect of certain public and private projects on the environment. According to the directive, member states had three years from the date of notification (July 3, 1985) to take all necessary measures to implement the directive.

As far as Belgium was concerned, whether the EIS was performed by the regions or by the national state depended on whether the particular project, from a list provided in the Directive, pertained to the jurisdiction of the regions or of the national state. Only the national state, however, is responsible to the EEC for any delay in implementing the

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10 Id.
15 Id. art. 12.
16 Id. art. 4. Article 4 was implemented into the law of Belgium's Walloon Region in the Walloon Regional Act of 11 September 1985, Annex I, B.S.M.B. (Jan. 24, 1986) [hereinafter Walloon Regional Act]. See infra notes 22-24 and accompanying text.
III. JURISDICTION TO IMPLEMENT ENVIRONMENTAL IMPACT STATEMENTS IN BELGIUM: EXISTING ACTS AND REGULATIONS

A. The Question of Jurisdiction

In principle, the question of who has jurisdiction for the EIS depends on which entity—the state or the region—has jurisdiction to license a project which the directive stipulates must have an EIS. Thus, one should look at the projects requiring an EIS to determine which authority has jurisdiction in these matters. While the subject matter of most projects belongs under the jurisdiction of the regions, two areas fall under the jurisdiction of the state: nuclear power stations and other nuclear reactors, and construction of long-distance railway lines and airports with runways longer than 2,100 meters.

For projects licensed by regional authorities (e.g., building permits), the Arbitration Court has decided that the region may not use its powers in such a way as to interfere with matters under the jurisdiction of the national state. It is not yet clear, however, what kind of restraint the regions must exercise in this respect. Nevertheless, in this same judgment, the Arbitration Court annulled as ultra vires that part of the Walloon Regional Act which imposed EIS on construction projects of nuclear power plants and reactors.

B. Existing Acts and Regulations Concerning EIS in Belgium

As of December 1, 1989, no act or regulation implemented the EEC directive at the national level or in the Brussels Region. The Walloon Region implemented EIS in the regional act of September 11, 1985 and

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19 1980 Institutions Reform Act, supra note 5, art. 6, § 1, cl. 6.
20 The 1980 Institutions Reform Act did not transfer responsibility for these major construction projects to the regions.
22 Walloon Regional Act, supra note 16.
23 Id.
in a regional decree of December 10, 1987.\textsuperscript{24}

For the Flemish Region, there is the Environmental Permit Act of June 28, 1985.\textsuperscript{25} Article 7 of this act allows the Flemish executive to designate categories of establishments requiring either an EIS or a safety report. The act, in its entirety, has not entered into force due to the absence of an implementing decree; in March of 1989, however, in order to provide the required legal basis for EIS in the Flemish Region, article 7 was made applicable by decrees of the Flemish executive.\textsuperscript{26}

\section*{IV. ENVIRONMENTAL IMPACT STATEMENTS IN THE WALLOON REGION}

\subsection*{A. The Genesis of the Walloon Regional Act of September 11, 1985}

The proposal which led to the Walloon Regional Act ("the Act") was introduced by Mr. Daras, a member of the Green Party (Ecolo). Although the proposal was amended in some places, it retains a strong pro-environment flavor. The effect of the proposal was subsequently diminished by the December 10, 1989 regional implementing decree.\textsuperscript{27} Some allege that reducing the effect of the proposal was illegal.\textsuperscript{28}

The evolution of the Act is unusual in two respects. In the Commission on the Environment of the Walloon Legislative Council, there is no record of discussion on the Act, and, even in the Council itself, there has been almost no discussion of the Act. This almost complete absence of \textit{travaux préparatoires} makes it difficult to interpret the Act.

\subsection*{B. The Nature of the EIS System}

The EIS structure was not conceived as a self-sufficient regulatory system. Article 4 of the Walloon Regional Act states that every permit granted under the Act is subject to the system of environmental impact evaluation as organized by the Act.\textsuperscript{29} The Act leaves the existing permit granting systems largely intact. The EIS system is simply an additional, though important, requirement that must be followed before a permit is granted.

The importance of the EIS requirement is stressed by article 5 of the

\textsuperscript{24} Walloon Regional Decree of 10 December 1987, B.S.M.B. (May 11, 1988) [hereinafter Walloon Regional Decree].

\textsuperscript{25} B.S.M.B. (Sept. 17, 1985).

\textsuperscript{26} Six Flemish executive decrees were promulgated on this date. Two of these regulate EIS in the Flemish region. See infra notes 63-95 and accompanying text.

\textsuperscript{27} Walloon Regional Decree, supra note 24.

\textsuperscript{28} Jadot, supra note 15, at 317.

\textsuperscript{29} Walloon Regional Act, supra note 16, art. 4.
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regional act: any permit granted in violation of the EIS system can be annulled by a competent authority or an administrative judge. In any case, a permit must be annulled upon the occurrence of certain specific violations.30

C. Projects Covered by the Regional Act

Article 1, § 4 of the Act covers permits granted in the following areas: dangerous, unhealthy or noxious installations,31 building and subdivisions. The provision also covers administrative acts designated by the Executive pursuant to other acts and regulations. “Other administrative acts” is further defined32 to apply to: (1) projects to use fallow or semi-natural land for intensive agricultural exploitation; (2) installations for producing, enriching, or treating nuclear fuel; (3) installations for collecting and treating radioactive waste other than wastes mentioned in the EEC directive;33 (4) building permits for airports with runways longer than 1,200 meters, and for dams and other installation to hold back or store water in a durable way; (5) building and subdivision permits for holiday villages and residential weekend parks; and (6) permits for permanently used racing circuits, or grounds and dancehalls located within less than 300 meters from a residentially zoned area.

While the Walloon Regional Act covers all building and subdivision permits,34 the subsequent implementing decree evidently attempts to limit the application of the EIS system to only those permits expressly listed within the Act.35 The legality of such a limitation is doubtful, since the Act itself does not provide that implementing decrees can restrict the scope of these provisions. Hence, all building and subdivision permits granted without an EIS may be voided by an administrative judge or declared illegal by the courts.36

D. The EIS System

The EIS system provides for two steps: the preliminary impact no-

30 See infra notes 55-62 and accompanying text.
31 For an English commentary of this regulation see L. Suetens & D. Soetemans, THE LAW AND PRACTICE RELATING TO POLLUTION CONTROL IN BELGIUM AND LUXEMBOURG 20-39 (1982) [hereinafter Suetens].
32 Walloon Regional Decree, supra note 24, art. 2, § 2.
33 EEC Directive, supra note 14, art. 4, nos. 7, 14.
34 Walloon Regional Act, supra note 16, art. 2, § 4 (act covers permits for building and subdivisions).
35 Walloon Regional Decree, supra note 24, art. 2, § 2, 4-5.
36 While this sanction is not expressly granted in the Walloon Regional Act, the Belgium Constitution stipulates that the courts may refuse to allow administrative acts which are not in conformity with the law. BELG. CONST. art. 107.
The preliminary impact notice is a relatively simple procedure which allows the "competent authority"—i.e., the authority which has power to grant the permit—to decide whether the project must be submitted to a full impact study and report. The projects covered by Annex I of the Act must always be submitted to a full impact study.

1. The Preliminary Impact Notice

All permit applications covered by the regional act must contain a preliminary impact notice. The implementing decree defines the minimal information that the notice must contain. First, the notice describes the location and surroundings of the site. This description should include: a map of the region; the legal and regulatory framework governing the site (indicated by zoning plans and specific environmental decrees applicable at the site); and a plan for the development of the site, including plans for the use of wildlife and the immediate surroundings of the site. Second, the notice describes the project. The regional decree establishes a "system of evaluation norms" against which the approving authority will compare the description of the project in the preliminary impact notice. Finally, the notice will also include an analysis of the foreseeable effects of the project on the environment and a list of the essential measures contemplated to eliminate or reduce the possible negative effects on the environment.

After evaluating the impact of the project, taking into account the preliminary notice and all other information it deems useful, the approving authority must notify the applicant, within thirty days after receipt of the application, whether the application is complete or whether a full impact study is required. If the application is incomplete, the approving authority must notify the applicant, within the thirty-day period, that additional information is required. Within thirty days after receipt of the additional information, the authority must decide whether a full impact study is required. Failure of the authority to make a decision within the original or extended thirty-day period effectively exempts the project from a full impact study. The authority may also notify an applicant that no full impact study is required.

37 Walloon Regional Act, supra note 16, art. 7.
38 Id.
39 Note that Annex I of the Walloon Regional Act is identical to article 4 of the EEC directive. EEC Directive, supra note 14, art. 3.
40 Walloon Regional Act, supra note 16, art. 7.
41 Walloon Regional Decree, supra note 24, art. 5.
42 Id. at art 3.
2. The Full Impact Study

A full impact study is required for all projects listed in Annex I of the Walloon Regional Act and for all other projects where the authorizing authority has reviewed the preliminary impact notice and decided that the project needs a full impact study. The authorizing authority sets the content and conditions of the study in accordance with the importance of the project and the nature of its impact on the environment. A special body, the Walloon Environmental Council, may request to be informed of the progress of the study; the Council may also give the executive any advice on the study which it deems fit.43 When the study is finished, the applicant transmits a copy to the authorizing authority, receiving a receipt in return.44

As for the study itself, the author is chosen by the applicant from a preapproved list provided by the applicant. The study must contain: a description of the project, including information on location, conception, and size; data to identify and evaluate the likely effects of the project on the environment; a description of measures proposed to avoid, reduce, and, if possible, alleviate harmful effects of the project; and a non-technical summary of all these points.45

The authority, after receipt of the study, must perform a variety of tasks. The authority transmits a copy of the study to the Walloon Environmental Council, and, in the case of a building permit, to the Advisory Regional Zoning Commission. These bodies are required to give their advice on the project to the authority within forty-five days.46 Within eight days after the receipt of the study, the authority organizes (or requests the executive board of the municipality to organize) a thirty-day public inquiry. The authority must make available at a local municipal hall a complete file of the project, including the impact study, advisory opinions, and letters written by citizens or public agencies. Twenty copies of the nontechnical summary must be given to those requesting, and the authority accepts comments, in writing, from interested parties.47

The authority must organize a consultation meeting48 if more than twenty-five persons make objections or remarks. The meeting, to be held within seventy-five days from the start of the public inquiry, will include

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43 Walloon Regional Act, supra note 16, art. 13.
44 Walloon Regional Decree, supra note 24, art. 26.
45 Walloon Regional Act, supra note 16, art. 14.
46 Walloon Regional Decree, supra note 24, art. 27.
47 Walloon Regional Act, supra note 16, arts. 16, 17; Walloon Regional Decree, supra note 24, arts. 28-30.
48 Walloon Regional Decree, supra note 24, arts. 30-34
the following groups (no group will include more than nine persons): the authorized authority or its representative; representatives of other authorities it wishes to invite, including, in any case, the executive board of the municipality; the representatives of the petitioners and the experts they wish to invite; and the applicant and the author of the project and their representatives. In addition, the Walloon Environmental Council may send one or two of its members. The authorizing authority appoints a chairperson and insures that a record is kept.

Within thirty days after the end of the public inquiry, or after the date of the consultation meeting if one was held, the authorizing authority announces the results of the impact study. This report contains the principal conclusions of the impact statement, public inquiry, and consultation meeting. Notice is given to the applicant, the municipal authority, and may be given to the parties present at the consultation meeting. The report is also filed and available for consultation at the municipal hall.

3. Decision on the Application

The authority must decide whether to grant or to deny the permit within thirty days after the publication of the report. Criteria for the decision include: the impact of the project on the environment, the protection and enhancement of the human environment, the preservation and rational use of natural resources, and the attainment of a balance between the environment and human needs.

Neither the act nor the decree determines legal consequences if no decision is reached within the thirty-day period. Absent a decision, the thirty day period becomes, in effect, a delai d'ordre, or nonbinding period. Thus, the authority must still deliver a decision even after this period has lapsed.

Notice of the decision must be given to the applicant and the municipal authority. The municipality in turn must post the decision and make it available for consultation.

49 Id. at art. 35.
50 Walloon Regional Act, supra note 16, art. 17.
51 Id. at arts. 2, 6.
52 Jadot, supra note 18, at 342.
53 Walloon Regional Act, supra note 16, art. 17.
54 Walloon Regional Decree, supra note 24, art. 41.
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E. Sanctions and Remedies

1. Sanctions

The Walloon Regional Act stipulates that interference with the
course of public inquiry, or withdrawal of documents from the file are
acts punishable by imprisonment for one to six months and/or by a fine
of 100 to 250 Belgian francs.55 Improperities on the part of persons
responsible for the impact study are separately punishable as acts com-
mited by “persons in charge of a public service.”56

Furthermore, certain violations of the EIS process require the au-
thood to suspend decision making on the permit application. The au-
thood may suspend a decision when allegations have been filed with
administrative or judicial authority charging that the evaluation system
of a project’s environmental impact study has been violated.57 The au-
thood must also void any permit when the following violations have
occurred:58 the preliminary notice is missing, unless a full impact study
was made; a nontechincal summary is missing or was not released or
public inquiry was not held; a full impact study is missing when it was
required; or a municipal executive did not agree on the author of the
impact study.

2. Remedies

The Act does not provide remedies to interested parties for wrongful
actions taken by the authority.59 Nevertheless, since all actions taken by
the authority have immediate legal effects, any party with a personal,
direct, or existing interest may bring suit before the Council of State to
annul the action.60 Recourse to the Council of State does not, however,
suspend execution of the decision.61 To obtain suspension, a parallel suit

55 Walloon Regional Act, supra note 16, art. 18. Criminal fines are multiplied by 80. Id. Nu-
merous acts and decrees in Belgium provide for fines in case of violation of the rules they establish.
Of course, after a certain period of time, the amounts of these fines lose part of their value due to the
depreciation of the currency. Since it is not practical to modify every act and decree, the Belgian
practice consists in issuing, from time to time, a short legislative text stating that all fines must be
multiplied by a certain factor. Since January 19, 1990, this factor of multiplication has been 80.
56 Id.
57 Id. at art. 21.
58 Id. at art. 5.
59 These actions may include: whether a project falls within the scope of the Act and thus re-
quires, at the very least, a preliminary notice; whether the authority made the correct decision about
quiring or not a full impact study, or about requiring additional information for a project’s file.
60 The Council has jurisdiction to annul all administrative regulations and decisions that are
illegal. Coordinated Acts on the Council of State, Royal Decree of January 12, 1973, art. 14,
61 The recent Institutional Reforms Act of 16 June 1989, art. 15, B.S.M.B. (June 17, 1989), gave
must be brought before the president of the Tribunal of First Instance.\textsuperscript{62} The president has general jurisdiction to issue temporary measures in urgent cases, and can thus enjoin decisions of the authority either pending final judgment by the Council of State or for any period of time the president deems fit.

When appealing to the Council or the Tribunal, interested parties must be careful to assert their rights in a timely fashion. Since administrative actions taken under the Act are immediately contestable before the Council of State, any interested party which fails to take early action and decides to await final decision on the permit application is arguably estopped from invoking the violation of the Act when it brings a suit before the Council of State against the final decision. Affected parties always have the right to sue the authority before judicial tribunals and courts for damages when the party can prove that the Act was violated in procedure preceding the permit decision.

V. ENVIRONMENTAL IMPACT STATEMENTS IN THE FLEMISH REGION

The EIS procedure in the Flemish region, in contrast to Wallonia, is not governed by a single act and implementing decree. The Flemish Executive in 1989 adopted six decrees, of which two regulate EIS procedure and were executed to apply EIS to existing regional acts.\textsuperscript{63} These two decrees define the projects which are subject to EIS. One decree governs projects that require a nuisance permit (hereinafter Nuisance Permit De-
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cree) and the other governs building permits (hereinafter Building Permit Decree).

A. EIS and the Nuisance Permit Decree

1. Projects Covered by the Decree

The decree enumerates what projects require an EIS before a permit can be granted. The list exceeds the projects listed in article 4 of the EEC directive.\(^\text{64}\) In general, the description of projects in the Nuisance Permit Decree is sufficiently precise as to eliminate all doubts as to whether a project falls within the scope of the decree. It should be noted that these projects require a nuisance permit, and an environmental impact statement is a precondition for the handling of the permit application.\(^\text{65}\)

2. Content of the EIS

The minimal content of the environmental impact statement must cover multiple areas.\(^\text{66}\) These include a description of the project, an outline of alternatives to the project, the probable environmental impact of the project, and remedial measures to correct the harmful impact of the project. In addition, the EIS must include a nontechnical summary of the report, a summary of difficulties encountered in gathering the information, and a description of the employment and investment in the project.

The description of the project should list the physical aspects of the whole project, and the requirements for the use of the area during the construction phase. Principal aspects of production processes and material to be used by the project should be enumerated. The statement must also contain a prognosis of the nature and quantity of expected residues and emissions (e.g., water, air and ground pollution, noise, vibrations, heat, radiation) expected from operation of the project.

An evaluation of the impact of the project should include an outline of alternatives to the project, a list of effects on the environment, and a

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\(^{64}\) EEC Directive, supra note 14, art. 4.

\(^{65}\) Nuisance permits have a legal basis outside the Nuisance Permit Decree. This decree was executed by the Flemish executive so that the EIS requirements of article 7 of the Environmental Permit Regional Act could be implemented to cover nuisance projects. See supra note 26 and accompanying text. The remainder of the Act will probably enter into force by the mid-1990s and will give environmental impact statements an independent legal basis. In the meantime projects governed by the Nuisance Permit Decree must obtain nuisance permits under the Regulation on Dangerous, Noxious or Unhealthy Installations of the General Regulation on Labor Protection of 11 February 1946, B.S.M.B. (Apr. 3, 1946) [hereinafter Regulation on Installations].

\(^{66}\) Nuisance Permit Decree, supra note 63, art. 4, 5.
description of applicable remedial measures. If applicable, an outline of the principal alternatives to the project investigated by the applicant should indicate the motives for this choice, in view of the environmental impact. Environmental effects include a description of the project's impact on the population, fauna and flora, ground, water, air, climate, architecture (both current and historic), and landscape. The change in the interrelation among these factors in light of the project should also be discussed. Describing the impact of a project will necessitate discussing the project's use of natural resources and emission of polluted materials, evaluating the project's potential for becoming an environmental nuisance, and describing plans both for the project's elimination of waste and EIS methodology. This description must reflect long- and short-term and immediate effects as well as the permanent, temporary, positive and negative effects of the project. The EIS will also include a description of measures to avoid, limit, or remedy negative effects of the project.

Finally, the EIS should include a nontechnical summary of all the data collected, a description of expected data gaps, and an investment and employment report. The EIS should describe difficulties in gathering information for the study, including technical or knowledge gaps. An employment report, projected investment, and, if applicable, the nature and quantity of the produced goods should also be described. While industrial and commercial secrets should be excluded from the EIS, the applicant must provide all information requested; secrecy, however, is guaranteed.

3. Choice of Authors for the EIS

The applicant must choose a panel of experts to perform the EIS. The applicant chooses one or more, and one or more is chosen from a list provided by the executive. A written contract is signed between the applicant and the experts. This contract, along with a list of names and addresses of all the experts chosen and a summary description of the project, is sent by registered mail to the Administration of the Environment, which reviews the proposed list of experts in light of the potential environmental impact of the project. If the Administration rejects the experts, the process starts over again. When the Administration fails to respond within fifteen days of the applicant's notice, the group of experts is deemed adequate.

67 Id. at arts. 7-9, 14, 15.
4. Approval of the EIS

The EIS approval process requires thirty days. The process begins when the applicant delivers to the Administration two copies of the completed EIS signed by the experts. Though delivery is not specified, applicants are advised to effect delivery in person since the date of receipt is important.

The Administration has thirty days to complete its functions. Beginning on the date it receives the EIS, the administration reviews the EIS for conformity with the Nuisance Permit Decree and responds to the applicant by registered mail. If the EIS fails this review, the applicant must cure and start the process again by delivering new copies to the Administration. If the EIS is satisfactory, the Administration returns a copy of the EIS together with a conformity code and notifies the Authority who issues the nuisance permit that the applicant's EIS is in conformity with the Nuisance Permit Decree. The applicant then adds the returned EIS with its conformity code to the nuisance permit application already on file.

If the Administration fails to respond within the thirty-day period, the EIS is deemed satisfactory though it is still missing the crucial conformity code. The Nuisance Permit Decree does not indicate how the applicant must proceed in this event. As a practical matter, the applicant should send an ordinary copy of the EIS together with a statement that the EIS is satisfactory by failure of the Administration to respond within the statutory thirty-day period. The authority which grants the nuisance permit application may, if necessary, verify this statement with the Administration. Upon successful completion of the EIS process, the procedure for nuisance permit applications follows its normal course.

B. EIS and the Building Permit Decree

1. Projects Covered by the Decree

The Building Permit Decree enumerates the projects which require an environmental impact statement before a building permit can be granted. Certain ambiguities, however, make this decree less effective

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68 Id. at arts. 17-19.
69 For a description of the nuisance permit procedure, see SUETENS, supra note 31.
70 The Building Permit Decree, supra note 63, art. 2—requiring an EIS for certain projects before a building permit can be granted—resembles the requirement for EIS in the application process for a nuisance permit. See supra notes 65-69. As the Nuisance Permit Decree applies EIS to the regulatory act governing nuisance permits, the Environmental Permit Act, supra note 63, so does the Building Permit Decree apply EIS to the act governing building permits, the Zoning and Planning Act.
than the Nuisance Permit Decree. The Building Permit Decree, like the
nuisance decree, makes environmental impact statements a necessary
step in the permit application process for, in the case of building permits,
the Zoning and Planning Act. The Building Permit Decree, however,
has two problems: it conflicts with the Zoning and Planning Act, and it
creates an imprecisely crafted list of projects.\textsuperscript{71}

The language covering building permits in the Decree contains a list
of projects that is more comprehensive than similar language in the Act.
The Decree enumerates projects which need environmental impact state-
ments.\textsuperscript{72} When those projects, however, are compared to the projects
listed in the zoning act as requiring a building permit,\textsuperscript{73} it is not clear
that all projects listed in the Decree would need a building permit in the
first place.

Uncertainty stems from the Building Permit Decree. The Decree
stipulates that certain projects require an EIS before the building permit
application can be filed "\textit{insofar as this project or part of it requires a
permit}" pursuant to the Zoning and Planning Act.\textsuperscript{74}

One example, the treatment of golf courses, in the Decree and the
Act clearly demonstrates the potential for conflict between the two. The
Decree requires an EIS prior to construction of a complete golf course.\textsuperscript{75}
Under the language of the Act, however, a golf course can conceivably be
built without requiring a building permit,\textsuperscript{76} and indeed the Court of Ap-
peal of Brussels has held that a golf course does not require a building
permit when it is built in such a way that it does not "modify the relief of
the soil in an appreciable way."\textsuperscript{77} If a golf course does not require a
building permit, then it also does not require an EIS, because environ-
mental impact statements are not an independent permit system, but
merely an addition to existing permit systems.

\textsuperscript{71} Zoning and Planning Act, supra note 63. The Nuisance Permit Decree, in contrast with the
Building Permit Decree, is very clear. It does not conflict with the Environmental Permit Act, the
act governing nuisance permits, and the list of projects in the decree is precisely crafted.
\textsuperscript{72} Building Permit Decree, supra note 63, art. 2.
\textsuperscript{73} Zoning and Planning Act, supra note 63, art. 44, § 1.
\textsuperscript{74} Building Permit Decree, supra note 63, art. 2 (emphasis added).
\textsuperscript{75} Id. at art. 2, no. 11. The text of this article requires an EIS prior to the "construction of a
recreational or touristic accomodation that . . . can comprise a complete golf course." Id.
\textsuperscript{76} Zoning and Planning Act, supra note 63, art. 44, § 1. Under the Act, permits are required for
certain construction or demolition of installations incorporated in the soil, for deforestation or modi-
fication of the land in any appreciable manner, for certain felling of trees, for reclamation or modifi-
cation of moorlands and fens and other protected areas, for junkyards, and for many mobile parks.
\textit{Id.} Conceivably golf courses which are explicitly covered by the Building Permit Decree, supra note
63, are not required to apply for a building permit under the Zoning and Planning Act.
\textsuperscript{77} Judgment of 8 November 1988, Court of Appeal of Brussels, Brussels, Rechtskundig Week-
blad 1329 n.D.
An additional problem with the Decree is the ambiguity of the language covering projects requiring impact statements. In some cases where a building permit is required under the zoning act, it is not clear whether the Decree would require an EIS. For example, the Decree requires an EIS for "the construction and/or radical modifications of railway sections for long distance railway traffic." But even when it is clear that a particular modification of a railway section requires a building permit, it is not always clear that it is also a "radical" modification in the sense of the decree, and hence, whether an EIS is required.

2. Substantive and Procedural Provisions in the Building Permit Decree

Provisions in the Building Permit Decree covering the content of the EIS, the selection of authors, and the administrative approval process for completed statements are identical to those described above for the Nuisance Permit Decree. The expressly or implicitly approved EIS is added to the building permit file. The file is then handled like any other building permit application, except that applications containing environmental impact statements are required by the EEC directive to be available for public inquiry and comment.

C. Sanctions and Remedies

I. Sanctions.

Neither the nuisance nor building permit decrees contain criminal or administrative sanctions. Noncomplying permits, however, will be declared illegal or void. There can be no doubt that nuisance or building permits granted for projects requiring an EIS, when the existence of the EIS has not been established, are illegal and can be annulled by the Council of State on request of an interested party or can be declared illegal by the Courts and Tribunals. Defects in an otherwise effective EIS may also render the subsequent permit illegal. These defects may include: absence of proof that experts chosen by the applicant were approved by the administration, lack of evidence that the EIS was explicitly

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78 Building Permit Decree, supra note 63, art. 2, no. 3 (emphasis added).
79 Id. at art. 3.
80 Id. at arts. 6-8, 13-14.
81 Id. at arts. 16-17.
82 See supra notes 66-70 and accompanying text.
83 EEC Directive, supra note 14, art. 6(2). Two of the Flemish executive decrees of March 23, 1989, supra note 63, provide the statutory framework for requiring that all building permits with an EIS be available for public comment and inquiry.
84 See supra notes 36, 52, 60 and accompanying text.
or implicitly approved by the administration, or nonavailability of the EIS for public inquiry.

An otherwise complying EIS may be illegal when the granting authority has not duly evaluated either the EIS or the public comments. Conclusions of the EIS and public comment are not binding on the authority, but where the authority rejects the conclusions, it must do so on the basis of objective and sufficient reasons.

2. Remedies

a. Administrative Appeals

While the decrees do not provide causes of action for appeals, administrative appeals are available within the framework of the Regulation on Dangerous, Noxious or Unhealthy Installations, and the Zoning and Planning Act. These appeals cover two issues: the threshold question of whether the decree applies to the project, and the issue of what weight must be given to both the conclusions of the EIS and the objections and remarks of the public.

b. Administrative Appeals and the Nuisance Permit Decree

Under the Regulation on Installations, permit decisions made by the executive board of the province where the project is located are appealable by the applicant or any interested party to the minister or member of the executive who has jurisdiction over this matter. The appeal must be made by registered mail within ten days of the permit decision.

Grounds for the appeal concern whether the permit decision applies, and whether the executive board gave sufficient weight to the conclusions of the EIS and to the remarks and objections of the public. Thus, for instance, suppose a permit is granted and no EIS is filed because the executive board determines the project is not covered by the decree. On appeal the minister may reverse the decision and order an EIS before a final decision is made.

c. Administrative Appeals and the Building Permit Decree

The Zoning and Planning Act creates a rather complicated system of administrative appeals for building permits. The authority competent to decide on building permit applications locally is the executive board

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85 Regulation on Installations, supra note 65.
86 Supra note 63.
87 Projects covered by this decree concern class I installations covered by article 2 of the Regulation on Installations. Regulations on Installations, supra note 65, art. 2.
88 Id. at art. 13.
(mayor and aldermen) of the municipality where the project is located.\textsuperscript{59} When a permit is denied, the applicant may appeal the decision to the provincial executive board within thirty days after notification of the decision.\textsuperscript{90} A denial by the provincial board may be appealed by the applicant to the minister (member of the executive) within thirty days. When an appeal is granted, it is contestable by a representative of the central administration of zoning and planning (the delegated official) and/or the municipal executive board. The minister must then hear their arguments.\textsuperscript{91}

Third parties have no right of administrative appeal against granted building permits. The delegated authority may, however, suspend the permit within fifteen days of notification, and the minister may annul the permit within forty days after suspension. The municipal executive board may also revoke the permit within this period.\textsuperscript{92} If after suspension the permit is not annulled or retracted, it becomes executory.

Decisions of the minister must be made sixty days. When no decision has been made, the applicant may “remind the matter” to the minister, by registered mail. If the applicant does not receive a ministerial decision within thirty days of the date that the reminder was sent, the applicant is dispensed of the necessity of a permit (the so-called “implicit permit”).\textsuperscript{93}

3. Judicial Appeals

A final administrative decision may be appealed to the Council of State by any interested party in order to obtain annulment of the decision.\textsuperscript{94} Suits may also be brought before judicial courts which have the power to declare decisions illegal and award damages.\textsuperscript{95}

VI. ENVIRONMENTAL IMPACT STATEMENTS: CONCLUSION

The importance to the business community of the environmental impact statement need hardly be stressed. Businesses contemplating projects in Belgium must first discover which environmental regulation is applicable. Belgium could have four different EIS regulations; at present, however, only two exist. EIS regulations have been enacted in the Wal-

\textsuperscript{59} Zoning and Planning Act, \textit{supra} note 63, art. 44.
\textsuperscript{90} \textit{Id.} at art. 55, § 1.
\textsuperscript{91} \textit{Id.}
\textsuperscript{92} \textit{Id.} at art. 54, § 2.
\textsuperscript{93} \textit{Id. at art. 55, § 2.}
\textsuperscript{94} See \textit{supra} notes 60-61 and accompanying text.
\textsuperscript{95} See \textit{supra} note 36 and accompanying text.
loon and Flemish regions, but nothing is in place at the national level or in the Brussels region.

Upon determining the applicable regulation, the business must ascertain whether a project falls within the scope of the regulation. The failure to answer this difficult threshold question correctly may result in delays and extra costs—if, for example, an EIS is filed for a project not requiring one—or may result in an illegal permit—if, for example, an EIS is not filed for a project requiring one. If an EIS regulation applies, its requirements must be carefully fulfilled, because a violation of any requirement could easily result in an illegal permit.

EIS regulations in Belgium are of recent origin, and have been applied to only a few projects. Many legal questions remain; but definite answers must come from the judicial courts and the Council of State.