

**REGIONAL CONSULTATION ON  
NATIONAL SECURITY AND THE RIGHT TO INFORMATION**

**National Questionnaire  
European Consultation, Copenhagen, Denmark, 20-21 September 2012**

**Country analysed:**

BELGIUM

**Expert analyst:**

Name of person completing this form:

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**1. A National Security Exception to the Right to Information**

- a. Does the term “national security” or a similar term (*e.g.*, “state security”; “vital national interest”) appear in the law as a basis for restricting the public’s access to information? [*Principle 2*]

Please check one:  Yes  No

If your answer refers to a similar term, please state that term here:

the security or the defence of the country/public security

If you checked “Yes”:

- i. How is “national security” (or the similar term) defined for purposes of justifying non-disclosure of information? [*Principle 2, 3a*]

no definition available

- ii. Does the definition of “national security” include international relations?

Please check one:  Yes  No

- iii. Does the definition of “national security” include protection against domestic security threats (*e.g.*, law enforcement)?

Please check one:  Yes  No

- b. Are there any categories of information (*e.g.*, intelligence operational files) that are exempt from disclosure on the basis of national security? [*Principle 9*]

Please check one:  Yes  No

If you checked “Yes”:

- i. Please list the categories of information that are exempt:

classified documents

ii. Is exemption of these categories absolute?

Please check one:  Yes  No

If you checked “No”, please explain when the exemption does and does not apply?

c. Are there any public offices or officials (e.g., military branches, intelligence agencies, police) that are exempt from disclosure obligations? [Principle 6]

Please check one:  Yes  No

If you checked “Yes”:

i. Please list the offices or officials that are exempt:

ii. Is the exemption of these offices or officials absolute?

Please check one:  Yes  No

If you checked “No”, please explain when the exemption does and does not apply?

d. Do disclosure obligations apply to non-state actors that are serving as agents or contractors for the government? [Principle 1a]

Please check one:  Yes  No

e. Beyond any obligation to disclose information upon request, do public authorities have an affirmative obligation to publish information? [Principle 1b]

Please check one:  Yes  No

If you checked “Yes”, what information do the security sector, defence, and intelligence agencies have an affirmative obligation to publish? How often is this information affirmatively published by these agencies in practice?

## 2. **Requirements for Denying a Request for Information**

a. Upon receipt of a request for information, is a public authority always required to confirm or deny whether it holds the requested information? [Principle 21]

Please check one:  Yes  No

If you checked “No”, under what circumstances may a public authority refuse to confirm or deny whether it holds the requested information?

classified documents. Under classification is understood the attribution of a security level by or through a law, by or through conventions or agreements that bind Belgium (art. 2 of the law of 11 December 1998)

- b. In denying a request for information, is a public authority required to provide written reasons for the denial? [Principle 22, 4c]

Please check one:  Yes  No

- c. What requirements are there for a public authority to describe information responsive to a request that it withholds (e.g., Is there a duty to specify the number of pages withheld, or to identify the category of information)? [Principle 25]

only for environmental information: the environmental authority should in so far it is possible indicate where information is left out and on what provision this is done.

- d. Is a declaration or certification by the public authority, denying a request for information, that disclosure would cause harm to national security conclusive? [Principle 4d]

Please check one:  Yes  No

- e. What information or documentation must support an assessment that disclosure would cause harm to national security? Is this information provided to the public? [Principle 4c]

Reasoning with concrete elements of the information that is not disclosed unless this information itself unveils information that is protected; also a public interest test has to be made and reasoned with concrete elements

- f. Where there is doubt about whether disclosure would harm national security, does the law favour disclosure? [Principle 4b]

Please check one:  Yes  No

- g. Is a public authority required to segregate and disclose non-exempt information within a document if those portions of the document are reasonably segregable? [Principle 24]

Please check one:  Yes  No

- h. What time limits exist for a public authority to respond to a request for information? Are these time limits enforced in practice? [Principle 27]

30 workings days - if not respected: a administrative appeal procedure is possible

### 3. Classification Procedures

- a. Are classification rules publicly available? [Principle 13]

Please check one:  Yes  No

Cite:

Loi de 11 decembre 1998 relative à la classification et aux habilitations, attestations et avis de sécurité

- b. What criteria are used to determine whether information may be classified?  
[Principle 12]

The criteria are limited:

- only for some specific reasons classification is possible
- the levels of the classification
- the document has the level of classification that corresponds to the part of the document with the highest classification level.
- information of documents classified in executing international conventions that are binding for Belgium hold their classification.
- the classification level cannot be higher than the security level of the authority
- only high officials indicated can attributed the level "VERY SECRET"

Loi de 11 decembre 1998 relative à la classification et aux habilitations, attestations et avis de sécurité

informations, documents ou données, le matériel, les matériaux ou matières, sous quelque forme que ce soit, dont l'utilisation inappropriée peut porter atteinte à l'un des intérêts suivant:

- a) la défense de l'intégrité du territoire national et des plans de défense militaire;
- b) l'accomplissement des missions des forces armées;
- c) la sûreté intérieure de l'Etat, y compris dans le domaine de l'énergie nucléaire, et la pérennité de l'ordre démocratique et constitutionnel;
- d) la sûreté extérieure de l'Etat et les relations internationales de la Belgique;
- e) le potentiel scientifique et économique du pays;
- f) tout autre intérêt fondamental de l'Etat;
- g) la sécurité des ressortissants belges à l'étranger;
- h) le fonctionnement des organes décisionnels de l'Etat.
- i) la sécurité des personnes auxquelles en vertu de l'article 104, § 2, du Code d'instruction criminelle, des mesures de protection spéciales sont octroyées

translation: Law of 11 December 1998 concerning the classification and the security authorisations, security certificates and security advices: In a classification can be brought: information, documents or data, materials or objects, independent of the form, of which the inappropriate use could damage one of the following interests:

- a) the defense of the integrity of the national territorium and military defense plans;
- b) the execution of missions of the armed forces;
- c) the internal security of the State, including in the domain of nuclear energy en the existence of the democratic en constitutional order;
- d) the external security of the State and the international relations of Belgium;
- e) the scientific and economical potential of the country;
- f) each other fundamental interest of the State;
- g) the security of the Belgian subjects abroad;

h) the working of the decision making organs of the State;  
i) the security of the persons that join a special protection regime

- c. Is the classification status of information conclusive in determining whether a request for that information will be denied? [Principle 20]

Please check one:  Yes  No

- d. Does the law consider the public's interest in the disclosure of information when deciding whether to classify information? [Principle 5]

Please check one:  Yes  No

If you checked "Yes", please explain, in the terms provided by the law, what consideration is given to the public's interest:

- e. Does the law specify levels of classification (e.g., "Top Secret", "Secret", "Confidential")? [Principle 12c]

Please check one:  Yes  No

If you checked "Yes", please list and define the classification levels:

3 levels: VERY SECRET, SECRET, CONFIDENTIAL  
Article 4 fo the law of 11.12.1998: The classification consists of three levels: VERY SECRET, SECRET, CONFIDENTIAL.

Article 4 de la loi du 11 décembre 1998:  
La classification visée à l'article 3 comprend trois degrés : TRES SECRET, SECRET, CONFIDENTIEL  
Le degré TRES SECRET est attribué lorsque l'utilisation inappropriée peut porter très gravement atteinte à un des intérêts visés à l'article 3.  
Le degré SECRET est attribué lorsque l'utilisation inappropriée peut porter gravement atteinte à un des intérêts visés à l'article 3.  
Le degré CONFIDENTIEL est attribué lorsque l'utilisation inappropriée peut porter atteinte à un des intérêts visés à l'article 3.  
L'utilisation susvisée comprend notamment la prise de connaissance, la détention, la conservation, l'utilisation, le traitement, la communication, la diffusion, la reproduction, la transmission ou le transport.

For nuclear documents: 4 levels: VERY SECRET-NUC, SECRET-NU, CONFIDENTIAL-NUC and LIMITED DISTRIBUTION  
Article 2 of the Royal decree of 17 Oktober 2011 concerning categorising and protection of nuclear documents

- f. Who has the authority to classify information? May this authority be delegated? [Principle 14a]

an authority of origin, that is holder of a security approval of at least "secret" has the possibility to classify

g. Do classification authorities have a duty to classify information? *[Principle 11b]*

Please check one:  Yes  No

If you checked “Yes”, when is that duty triggered?

h. Is there a duty for public authorities to state reasons for classifying information? *[Principle 11b]*

Please check one:  Yes  No

i. Are there any penalties for improperly classifying information?

Please check one:  Yes  No

If you checked “Yes”, what are the penalties?

j. When documents are classified, must the documents bear classification markings? *[Principle 12]*

Please check one:  Yes  No

If you checked “Yes”:

i. What information is contained in the classification marking?

ii. Is a separate classification marking needed for each section of a document?

Please check one:  Yes  No

k. Is the identity of the person responsible for a classification decision indicated on the document, or otherwise easily traced, to ensure accountability? *[Principle 14b, 22b]*

Please check one:  Yes  No

l. Does classified information lose its classified status if it becomes widely available in the public domain?

Please check one:  Yes  No

If you checked “Yes”, please explain how the declassification of information based on its availability in the public domain is triggered in practice:

m. Can information be classified if it originated in the public domain?

Please check one:  Yes  No

If you checked “Yes”, please explain under what circumstances:

[Empty box]

**4. Declassification Procedures**

- a. When information is classified, does the classifier specify a time (date or event) that triggers the declassification of the information? *[Principle 18b]*

Please check one:  Yes  No

- b. What is the maximum duration of classification? Can this time period be extended? *[Principle 18c]*

[There is no limitation in time.](#)

- c. May information ever be classified indefinitely (in law or in practice)? *[Principle 18c]*

Please check one:  Yes  No

- d. Are decisions to classify information reviewed periodically to ensure that the original reason for the classification is still valid? *[Principle 14a]*

Please check one:  Yes  No

If you checked “Yes”, how often are classification reviews performed?

[Empty box]

- e. What is the procedure for requesting the declassification of documents?

[There is no procedure for requesting the declassification](#)

- f. Can declassification requests be made by the public? *[Principle 19d]*

Please check one:  Yes  No

- g. Does the law consider the public’s interest in the disclosure of information when deciding whether to declassify information? *[Principle 19a]*

Please check one:  Yes  No

If you checked “Yes”, please explain, in the terms provided by the law, what consideration is given to the public’s interest:

[Empty box]

**5. Categories of Information that are Classifiable**

- a. Does the law list specific categories of information that may be classified on national security grounds?

Please check one:  Yes  No Cite: [Empty box]

If you checked “Yes”:

- i. What categories of information are included in this list? *[Principle 9]*

[Empty box]

- ii. Is this list exhaustive?

Please check one:  Yes  No

- b. Does the law prohibit any categories of information from being classified?

Please check one:  Yes  No Cite:

If you checked “Yes”, please identify which categories: *[Principle 10]*

In particular, does the law prohibit classification of:

- i. human rights violations

Please check one:  Yes  No

- ii. government corruption

Please check one:  Yes  No

- iii. the existence of a government entity

Please check one:  Yes  No

- iv. the budget or expenditures of a government entity

Please check one:  Yes  No

- v. the existence of a law (or portion of a law)

Please check one:  Yes  No

- vi. emergency response plans

Please check one:  Yes  No

If you checked “Yes” to any of the above, please provide additional detail:

## 6. Review of a Denied Request for Information

- a. Is there an opportunity for a speedy, low-cost review of a denied request for information by an independent authority? *[Principle 28a, 3e]*

Please check one:  Yes  No

- b. Is there an opportunity for judicial review of a denied request for information? *[Principle 28a, 3e]*

Please check one:  Yes  No

## 7. Judicial Proceedings

- a. Do courts have the authority to examine classified information that the government seeks to keep secret on national security grounds? *[Principle 29b]*

Please check one:  Yes  No

If you checked “Yes”:

- i. May a judge order the release of information if s/he determines that the information does not need to be kept secret, despite a public authority's assertion that national security justifies withholding the information? [Principle 29d]

Please check one:  Yes  No

- ii. Do judges normally defer to the public authority's assessment that disclosure would harm national security? [Principle 29c]

Please check one:  Yes  No

- b. Are judicial decisions required, according to the law, to be made available to the public (subject to redactions to protect privacy interests)? [Principle 31b]

Please check one:  Yes  No

If you checked "Yes":

- i. May national security justify withholding part of a court decision?

Please check one:  Yes  No

- ii. May national security justify withholding an entire court decision?

Please check one:  Yes  No

- c. Are court hearings and trials presumptively open to the public? [Principle 31c]

Please check one:  Yes  No

- d. Can a court case ever be kept entirely secret, such that it is not even recorded on the court's public docket? [Principle 31b]

Please check one:  Yes  No

- e. Must all evidence that forms the basis of a criminal conviction be made available to the public? [Principle 31c]

Please check one:  Yes  No

What, if any, exceptions exist on the basis of national security?

access to criminal records is only possible with autorisation of the official prosecutor - there are no legal criteria for his decision and no appeal is possible - after 30 years all records has to be layed down in the General Archives and for that reason become accessable for the public

- f. Must all evidence that forms the basis of a criminal conviction be shown to the accused, including in cases involving national security? [Principle 32]

Please check one:  Yes  No

If you checked "No":

- i. What limitations exist on the disclosure of information to the accused on the basis of national security?

It is the judge who decides, but reasons must be given.

- ii. What information, if any, must be provided to the accused in lieu of the classified evidence?

- iii. Are there other safeguards to protect the accused's right to a fair trial? (e.g., Can the accused hire special counsel who have access to all of the classified evidence, pursuant to security clearance?)

no, there is only a possibility to control if classified personal data are threatened according to the law of 8 December 1992 concerning the treatment of personal data

- g. May the government refuse to disclose information to the opposing party in any of the following court proceedings, on the basis of national security?

- i. A *habeas corpus* claim

Please check one:  Yes  No

- ii. A claim of grave human rights violations (e.g., torture) brought against a public authority [Principle 33a]

Please check one:  Yes  No

- iii. A tort claim brought against a public authority [Principle 33a]

Please check one:  Yes  No

If you checked "Yes" for any of the above, please indicate what safeguards, if any, are in place to protect the fairness of the proceeding.

The judge make a decision on it

- h. Can a judge dismiss a case, without reviewing the case on its merits, because reviewing the case would involve state secrets? [Principle 29a]

Please check one:  Yes  No Cite:

## 8. Autonomous Oversight Bodies

- a. Is there an autonomous oversight body with authority to review classification decisions by security sector, defence, and intelligence agencies? [Principle 34a]

Please check one:  Yes  No

If you checked "Yes":

- i. Identify the body. What are its mandates and powers? [Principle 34a, 35]

- ii. What, if any, limitations are there on this body's ability to review classified information? [Principle 7, 34b, 34c, 35]

- b. Can the public make requests for access to information held by the autonomous oversight body? [Principle 36a]

Please check one:  Yes  No

## 9. Whistleblower Protections

- a. May public personnel who have authorized access to classified national security information be subject to criminal penalties if they disclose that information to the public? [Principle 46]

Please check one:  Yes  No Cite:

If you checked “Yes”:

- i. What is the maximum penalty for this crime?

- ii. What must the government prove in order to obtain a conviction?

- iii. Does the law take the public’s interest in the disclosure of the information into consideration when deciding whether to penalize the disclosure? [Principle 46b]

Please check one:  Yes  No

If you checked “Yes”:

- 1) Who bears the burden of proof in regard to whether the disclosure was in the public interest?

- 2) What factors must be present to meet this burden?

- iv. Is a showing of either actual or probable harm to national security, resulting from the disclosure, required in order for a penalty to be imposed? [Principle 46c]

Please check one:  Yes, actual  Yes, probable  No, neither

If you checked “No”, is it a defence or mitigating circumstance that the disclosure did not harm national security?

Please check one:  Yes  No

- v. Is it a defence or mitigating circumstance that the personnel making the disclosure had used, or tried to use, internal reporting procedures before making a disclosure to the public? [Principle 46c]

Please check one:  Yes  No

If you checked “Yes”, what constitutes adequate exhaustion of the internal procedures?

- vi. Is it a defence or mitigating circumstance that the personnel had a good faith belief that using the internal reporting procedure would be ineffectual, or would result in retaliation?

Please check one:  Yes  No

- vii. Are there other defences or mitigating circumstances?

- b. Have any public personnel been charged with a crime for disclosing classified national security information in the past two decades? *[Principle 46]*

Please check one:  Yes  No

If you checked “Yes”:

- i. Approximately how many prosecutions have there been?

- ii. Approximately how many convictions have there been, and what punishments were imposed, if any?

If you checked “No”, have any personnel been investigated or otherwise threatened with government sanction as a result of disclosing classified national security information in the past two decades?

Please check one:  Yes  No

If you checked “Yes”, please explain what happened:

- c. Do laws protect “whistleblowers” who disclose certain categories of classified information pertaining to government wrongdoing?

Please check one:  Yes  No Cite:

If you checked “Yes”:

- i. What categories of information are covered by the whistleblower protection laws? *[Principle 39]*

Do the protected categories vary depending on whether the information is disclosed publicly, internally, or to a designated independent body?

Please check one:  Yes  No

If you checked “Yes”, please identify the type of disclosure that is protected for each listed category.

- ii. Do these whistleblower protections apply to whistleblowers in the security sector, defence, and intelligence agencies?

Please check one:  Yes  No

- iii. How do the protections afforded to whistleblowers in the security sector, defence, or intelligence agencies differ from whistleblowers in other government sectors, if at all?

- d. Are public personnel prosecutable if they disclose classified national security information, in making a complaint *internally*, to someone within their own ministry, department, or unit, even if not a direct supervisor? [Principle 39-41]

Please check one:  Yes  No

- e. Is there an *independent* body, expressly designated to receive complaints involving classified information from public personnel? [Principle 42]

Please check one:  Yes  No

If you checked “Yes”:

- i. Are public personnel prosecutable if they disclose classified national security information to the designated independent body? [Principle 34d]

- ii. Must such personnel complain internally before approaching the independent body?

- f. Are public personnel encouraged to make internal disclosures when they encounter information about government wrongdoing?

Please check one:  Yes  No

If you checked “Yes”:

- i. How are internal disclosures encouraged? [Principle 47]

- ii. Do public personnel have a duty to disclose information of governmental wrongdoing to an internal or designated independent body? [Principle 39]

- iii. What criminal, civil, and/or administrative penalties, if any, are there for retaliation (*e.g.*, firing, demotion, harassment) against personnel who provide information concerning governmental wrongdoing to an internal or designated independent body? [*Principle 44*]

no real sanctions unless the actions are crimes

- g. Are there criminal penalties for the unauthorized *possession* of classified information by a person who had authorized access to that information? [*Principle 50a*]

Please check one:  Yes  No

If you checked “Yes”, do whistleblower protections apply to unauthorized possession of information?

Please check one:  Yes  No

## 10. Media Protections

- a. May a person who does *not* have authorized access to classified national security information (such as a journalist) be subject to criminal penalties for disclosing this information to the public? [*Principle 50b*]

Please check one:  Yes  No Cite:

If you checked “Yes”:

- i. What is the maximum penalty for this crime?

- ii. What must the government prove in order to obtain a conviction?

- iii. Does the law take the public’s interest in the disclosure of information into consideration in deciding whether to impose a penalty?

Please check one:  Yes  No

- i. Who bears the burden of proof in regard to whether the information that was disclosed was in the public interest?

- ii. What factors must be present to meet this burden?

- iv. Is a showing of actual or probable harm to the national security, resulting from the disclosure, required in order for a penalty to be imposed?

Please check one:  Yes, actual  Yes, probable  No, neither

If you checked “No”, is it a defence or mitigating circumstance that the disclosure did not harm national security?

Please check one:  Yes  No

v. What other defences are available?

there is no intention to reveal secret information

b. Have any members of the media (journalists, editors, publishers, etc.) been charged with a crime for publishing government secrets in the past two decades? [Principle 50b]

Please check one:  Yes  No

If you checked “Yes”:

i. Approximately how many times have charges been brought?

ii. Approximately how many convictions have there been, and what punishments were imposed, if any?

If you checked “No”, have any member of the media been investigated or otherwise threatened with government sanction as a result of publishing government secrets in the past two decades?

Please check one:  Yes  No

If you checked “Yes”, please explain what happened:

c. Are there criminal penalties for the *possession* of classified information by a person who did not have authorized access to that information (such as a journalist)? [Principle 50a]

Please check one:  Yes  No Cite:

If you checked “Yes”:

i. What is the maximum penalty for this crime?

ii. What must the government prove in order to obtain a conviction?

iii. What are the defences?

d. May the government compel a member of the media to reveal a confidential source in the interests of national security? [Principle 51]

Please check one:  Yes  No

- e. May the government prevent the media from publishing information on the basis of national security? [Principle 52]

Please check one:  Yes  No

If you checked “Yes”:

- i. What information must the government provide to justify a prior restraint on publication?

- ii. To whom must this information be provided?

- f. May the government prevent or sanction the dissemination of information even after that information has entered the public domain (e.g., having been published on the Wikileaks website)?

Please check one:  Yes  No

If you checked “Yes”, please explain what is required for the government to prevent or sanction dissemination of this information:

No possibility to prevent, but the person who has leaked the information can be sanctioned.

## 11. Record Maintenance

- a. Is there a duty to archive classified documents? [Principle 17]

Please check one:  Yes  No

If you checked “Yes”, does the duty to archive classified documents apply to the security sector, defence, and intelligence agencies?

Please check one:  Yes  No

- b. Under what circumstances is classified information permitted to be destroyed? [Principle 49]

Authorisation of the General Archivist of the State

- i. May classified information ever be destroyed before becoming declassified?

Please check one:  Yes  No

- ii. What oversight is involved in the decision to destroy classified information?

no scientific or historical value

- iii. Are there certain categories of information that are not permitted to be destroyed (e.g., information pertaining to human rights violations or corruption)?

Please check one:  Yes  No

If you checked “Yes”, please indicate which categories of information are not permitted to be destroyed:

- c. Is each public authority that classifies information required to maintain a list of classified documents that it holds? *[Principle 16]*

Please check one:  Yes  No

If you checked “Yes”:

- i. What information must be included in this list?

- ii. What information from this list, if any, must be made available to the public?

**Sources:** To the extent not already provided, please cite the key laws and regulations that provide the legal framework for allowing, and controlling, public access to information, including national security information. If you are aware of any useful secondary materials, please cite these resources as well. Please also note any significant case law or examples, exemplifying or contradicting the draft Principles.

[Law of 11 April 1994 concerning access to administrative documents](#)  
[Law of 5 August 2006 concerning access of the public to environmental information](#)  
[Law of 11 December 1998 concerning the classification and the security authorisations, security certificates and security advices](#)  
[Royal Decree of 24 March 2000 to execute the law of 11 December 1998](#)  
[Law of 15 April 1994 on the protection of the population and environment against the hazards of ionizing radiation and on the Federal Agency for Nuclear Control](#)  
[Royal Decree of 30 November 2011 concerning security prescriptions for nuclear installations](#)  
[Royal Decree of 17 October 2011 concerning the categorisation en protectionof nuclear documents](#)  
[Royal Decree of 17 October 2011 concerning the categorisation of nuclear material](#)

Additional comments? (optional)

[Point 10a: there is a difference between the public in general and journalists. Journalists are protected by the Law of 7 April 2005 concerning the protection of journalistic sources. There is also a different treatment for the civil servant who has unauthorised acces and other persons who have unauthorised access .](#)

## Follow-up questions for Frankie Schram – BELGIUM

1. For question (1)(a), you have indicated that the definition of “national security” does not include either international relations or protection against domestic security threats. Is this because there is no definition, as such, or because these areas are not commonly understood to be included in the meaning of “national security” in Belgium?

There are different exemptions: other than national security there is also a different exception for international relations and there is also the exception for public order.

2. For question (2)(a), you have indicated that a public authority may refuse to confirm or deny whether it holds requested information, when responding to a request for information, if the information is classified. Can you please provide additional explanation? Does this mean that any time any classified information is requested, the public authority can refuse to answer whether it is even aware of any responsive documents in its possession? How is this reconciled with your answer to question (2)(h), which indicates that the public authority is required to provide written reasons for a denial?

For classified information the legislation on freedom of information is not applicable. For giving reasons the law of 1991 on the motivation of administrative decisions is applicable, but this law contains an exception in the case of external and internal security. According to the law on classification: the existence of a classified document can also be classified. For information that is not classified the exemptions of the freedom of information laws are applicable and the authority has to provide written reasons unless these reason reveals protected information that has to do with the internal and external security of the country. So for not classified information international relations, national security and public order are exemptions that in principle should be motivated.

3. For question (2)(e), what information, if any, supporting an assessment that disclosure would cause harm to national security must be provided to the public?

There must be made be given reasons in what way the disclosure of certain information could cause harm to national security with concrete elements of the information requested. Also it is necessary to make a balance exercise: if the exist a specific public reason for disclosure the information, that it must be given reasons that that reason is not more important than the interest of national security.

4. For question (3)(f), who is an “authority of origin”?

The authority that has produced the document or information

5. For question (3)(f), may the power to classify information be delegated?

Yes, if the person to whom the power to classify is delegated has the same security level as the person who delegates the power.

6. For question (5)(b)(i-vi), do I understand correctly that Belgian law does not prohibit the classification of human rights violations, government corruption, the existence of a government entity, the budget or expenditures of a government entity, the existence of a law, or emergency response plans?

All information can be classified if that information falls within the interests enumerated in the classification law.

7. For question (7)(f)(ii), when information forming the basis of a criminal conviction is not provided to the accused, what information must be provided to the accused instead, if any? If it is difficult to say exactly, please explain.

It is the judge who decides which information is given to the accused. Because there is a great uncertainty for public authorities that deal with national security, there are not a lot of cases where someone is brought before court. In most cases disciplinary sanctions are given.

8. For question (8)(b), you have indicated that the public may make requests for access to information held by an autonomous oversight body, but also in regard to (8)(a) that no such body exists: please explain.

Sorry, the answer on 8(b) should be no.

9. For question (9)(g), are there criminal penalties for the unauthorized possession of classified information by a person who had some authorized access to that information? If a clear Yes/No answer is not possible, please explain.

Yes, there are criminal penalties and disciplinary sanctions. There are not only sanctions on the unauthorized possession of classified information, but the fact can also be brought under other criminal offences according to the concrete context.

10. For question (10)(a) and (10)(a)(i-ii), please provide separate answers for A) journalists and B) persons who do not have authorized access to this information.

In principle no sanctions for persons that do not have authorized access to this information. Journalist are better protected if the fact that they have unauthorized acces to classified information could be brought under another qualification of normal crimes, f.e. helping to steal information, ...

11. For question (10)(b), to your knowledge, have any members of the media been investigated or otherwise threatened with government sanction as a result of publishing government secrets in the past two decades? If so, please describe in general terms what happened.

To my knowledge, members of the media are investigated by national security services, but there are no cases where they are formally threated with government sanctions as a result of publishing government secrets in the past two decades. But there are some cases where justice has put investigations on journalist on other legal grounds, because they are suspected of having illegal instruments or they are member

of an illegal group.

12. For question (10)(c), are there criminal penalties for the unauthorized possession of classified information by a person who did not have any authorized access to that information? If so, what is the maximum penalty? What must the government establish to obtain a conviction? And what defences are available? Please also provide separate answers concerning journalists, if appropriate.

In principle no sanctions for persons that do not have authorized access to this information. Journalists are better protected if the fact that they have unauthorized access to classified information could be brought under another qualification of normal crimes, f.e. helping to steal information, ...

13. For question (10)(d), may the government compel a member of the media to reveal a confidential source in the interests of national security? If so, how?

In principle no, unless to prevent crimes that have a great danger for the integrity of persons and that information cannot be found elsewhere and that information is crucial for the prevention of that kind of crimes.

14. For question (10)(f), can a person who obtained classified information, posted on a public website, be sanctioned or prevented from further disseminating it?

In principle prevention is not possible, but a judge can prevent damage to national security by preventing further dissemination of information. It is not because information is on a public website, there is free use of that information.

15. For question (11)(b)(ii), what oversight procedures are there for the destruction of classified information?

There are general lists accepted by the General Archivist that are the basic instruments for the destruction of information. Also an authorisation has to be asked to the General Archivist for the destruction of documents. If classified information has no historical value classified information can be destroyed.

## Feedback on Draft Report from Frankie Schram – BELGIUM

p. 9, b. A Presumption in Favor of Secrecy:

In Belgium there is a presumption in favor of disclosure, unless the information is classified. Precisely in the field of national security classification of information is possible.

p. 11, footnote 40: exemption is absolute only for classified information. The way it is presented now could be wrongly interpreted.

p. 12: footnote 45: to the no a more nuanced vision is necessary: for environmental information and all information within the competence of the Flemish Region there exist an obligation to publish information to the public. The normal exemptions that exist for passive access are also applicable. According to all freedom of information acts in Belgium, there is at least an affirmative obligation to publish organizational charts.

p. 13, fourth alinea: that requirement exists only according to the Flemish freedom of information legislation.

p. 14, footnote 54: in all freedom of information legislation in Belgium the principle is "as soon as possible", but with a maximum delay (between 15 - Flemish Region - or 30 working days)

p. 15, footnote 63: the principle is segregation of non exempt information in Belgium, unless information in a document is classified: the classification of an information extends the classification to the whole document.

p. 16 footnote 73: it al little bit the same as in France: according to the law of 29 July according the explicit motivation of administrative decisions, no motivation has to be given when that motivation could have a negative influence on the external security of the State and could infringe public order.

p. 17 footnote 84: what is told is correct, but not for classified documents, there must only be invoked that the information is classified.

p. 18. second alinea: in Belgium the access to information before the courts is ruled by other rules, not according to the freedom of information legislation: there is a difference if the court is an administrative court, a civil court or tribunal or a penal court or tribunal.

p. 19, footnote 96: there exists an opportunity for a speedy review by an independent authority in case of environmental information or in case the Flemish freedom of information decree is applicable.

p. 26 first alinea: I don't exclude that a penal sanction could be imposed on civil servants that classify information improperly indirectly. Article 151 of the Penal Code sanctions each civil servant of arbitrary that infringe the by the Constitution guaranteed rights and freedoms is sanctioned with a imprisonment of 15 days to a year. Because classification has an impact on the possibility to access documents and

access to documents is a fundamental right guaranteed by the Constitution (art. 32 Const.), this article could be invoked. But in reality it hasn't been used at this moment.