Environmental law and practice in Belgium: overview

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**ENVIRONMENTAL REGULATORY FRAMEWORK**

1. **What are the key pieces of environmental legislation and the regulatory authorities?**

   Environmental legislation is based on the EU Treaty and the implementing directives and regulations.

   Following the Belgian State reforms initiated in the 1980s, the regions (Flemish, Walloon and Brussels Metropolitan) have become almost exclusively competent for environmental matters, including granting environmental permits and ensuring permit compliance.

   The federal authority remains competent for certain limited areas, for example, workers’ exposure to asbestos or radioactive substances.

   In each of the three regions, several diverse regulatory authorities are responsible for enforcing environmental legislation. Local municipalities also play an important role in setting the environmental agenda, especially in the area of enforcement, and add local focus.

2. **To what extent are environmental requirements enforced by regulators?**

   In some areas, the national or federal enforcement agencies align their actions with the priorities and approaches set by their European counterparts, for example:
   - Through the European directive on Restriction of Hazardous Substances (RoHS) enforcement network.
   - As part of the prioritisation programmes set by the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Forum for Exchange on Information on Enforcement, under the auspices of the European Chemicals Agency.

   In other areas, local municipalities can address environmental breaches under the regional environmental permit regulations, however, they are usually willing to grant grace periods or enter into settlements. Regional enforcement authorities also tend to set deadlines that companies must comply with and usually only resort to enforcement when a company does not comply despite repeated warnings. Enforcement includes: repealing or suspending permits, imposing administrative sanctions or starting criminal proceedings.

**ENVIRONMENTAL PERMITS**

4. **Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?**

   Integrated/separate permitting regime

   Directive 2010/75/EU on industrial emissions (IED) aims to minimise pollution from various industrial sources. Operators of industrial installations covered by the IED must obtain an integrated permit from the local, competent authorities. This integrated approach means that the permit must take into account the whole environmental performance of the plant, including the different types of emissions.

   The IED had to be transposed into national legislation by 7 January 2013 and has been integrated into the existing regional permitting system in Belgium.

   Single/separate permits

   In most cases, various operations are covered by one single base permit, which can subsequently be amended or extended, depending on the actual activities carried out by a company.

5. **What is the framework for the integrated permitting regime?**

   **Permits and regulator**

   Each region (Flemish, Walloon and Brussels Metropolitan) has a different permitting system:
   - The Flemish Environmental Permit Statute of 28 June 1985 (FEPS) covers the operation of commercial or industrial facilities, effluent discharge, waste storage and disposal and groundwater-threatening activities. Under this regime, installations, workshops, appliances, production methods or products that are classified as hazardous, harmful or unhealthy...
cannot be set up, operated, changed, transferred or used without an environmental permit.

The FEPS and its implementing decree of 6 February 1991 divide the listed facilities into three categories: 1, 2 and 3. Class 3 facilities do not need a permit. The operation of these facilities only has to be notified to the local authorities. Class 2 facilities require a permit from the local authorities, whereas a class 1 facility must be authorised by the Provincial Government. It is anticipated that the FEPS will be replaced by the Flemish Statute of 25 April 2014 in relation to the environment permit (omgevingsvergunning), which will amend the current permitting system and will provide for a single environment permit covering both urban planning and environmental aspects. However, the Flemish Statute of 25 April 2014 has not yet entered into force.

• The Walloon Environmental Permit Statute of 11 March 1999 (WEPS) also covers the operation of industrial facilities, effluent discharge, waste storage and disposal and groundwater-threatening activities. The WEPS classifies the listed facilities into three classes. Class 3 operations do not need a permit. Operation of Class 3 facilities merely need to be notified to the local authorities. Class 1 and class 2 operations require a permit from the local authorities. The authorities can impose general or specific operating conditions in the permits. These conditions are binding on the operator of the equipment.

• The Brussels Environmental Permit Statute of 5 June 1997 (BEPS) provides that installations, workshops, appliances, production methods or products that are classified as hazardous or harmful to the environment or health, cannot be set up, operated, changed, transferred or used without first obtaining a permit from or giving advance notification to the appropriate authority. The BEPS classifies these installations into four categories: class 1A, 1B, 2 and 3. Class 3 installations do not need a permit and only require advance notification to be given to the Council of Mayor and Aldermen of the relevant Municipality. Class 2 permits are granted by the College of Mayor and Aldermen, and class 1A and class 1B permits are granted by the Brussels Institute for Environmental Management (BIM-IBGE).

Length of permit

The validity period of environmental permits depends on the relevant region. Environmental permits are usually granted for a renewable 20-year period in the Flemish and the Walloon regions, and for a renewable 15-year period in the Brussels Metropolitan region. However, the competent authorities can determine a shorter validity period, for example, to cover the operation of a temporary installation.

Restrictions on transfer

In principle, environmental permits are granted to the operator of a facility or an installation. When transferring these permits as part of an asset deal, the authorities must be notified. Failure to notify can result in the previous permit holder or operator still being held liable by the competent authorities. Generally, a change in control does not of itself trigger a requirement for regulatory consent.

Penalties

Grace terms are usually allowed. However, regulators have a wide range of powers available to impose penalties for permit non-compliances, including the following:

• Permit granting authorities or enforcement agencies can impose administrative sanctions (including temporary suspension of permits, withdrawal of permits or administrative sanctions including monetary sanctions or other remediation actions).

• Most, if not all environmental breaches are subject to criminal sanctions. Each of the three regions has adopted a wide variety of criminal sanctions associated with all possible types of environmental infractions or breaches. Criminal actions can be brought directly by the public prosecutor, or by a third party that can seize the instructing judge to start criminal proceedings.

• Companies can be subject to summary procedures. Generally, any party that fears imminent damage, whether on the basis of a breach or not, can begin summary proceedings before the civil court to obtain an injunction or compensation. Also, under a federal law dated 12 January 1993, the prosecutor, NGOs and local municipalities or individual citizens acting on behalf of the municipality can request that the court suspend works where there is an imminent threat to the environment.

• Environmental breaches can give rise to claims for damages in civil courts. This means that the plaintiff must prove that damage has occurred and it was caused by a negligent wrongdoing of the site owner. The plaintiff must also prove that there must be a causal link between the negligent wrongdoing and the damage.

WATER POLLUTION

6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

Permits and regulator

In the three regions (Flemish, Walloon and Brussels Metropolitan), an environmental permit is required for wastewater discharge that exceeds certain thresholds or parameters. These permits are issued by local or regional authorities (see Question 5).

Prohibited activities

In each of the three regions, the administrative regulations allow the permit-granting authority and the enforcement agencies, regional or municipal, to impose measures on an operator. They can do so even if there has been no breach of a permit or of legislation, for example, where there is imminent threat to public health.

Additionally, in civil law, the courts have applied the concept of undue interference (hinder uit nabuurschap or troubles de voisinage) for more than 50 years. This concept applies to industrial sites and their industrial or residential neighbours. Under the concept, neighbours only have to tolerate interference from each other that does not exceed normal levels. Therefore, any facility, even if it complies with its permit conditions, can be held liable if damages are the result of “excessive” nuisance.

For any incident or accident that may impact on humans or the environment, environmental permit operators must take the necessary measures to avoid any consequences for humans or the environment. They must also take measures to prevent any future incidents or accidents.

Clean-up/compensation

Failing to comply with the obligations (see above, Permits and regulator and Prohibited activities) can trigger the obligation to carry out remedial actions such as clean-up measures or the duty to pay compensation.

Penalties

Regulators have a wide range of powers available to impose penalties for permit non-compliances. Penalties range from formal warnings through to (temporary) suspension or repeal of permits, however, they will usually grant grace periods (see Question 5).
AIR POLLUTION

7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

Permits and regulator
In the three regions (Flemish, Walloon and Brussels Metropolitan), air emissions are regulated under the integrated environmental permitting regime. These permits are issued by the local or regional authorities (see Question 5).

Prohibited activities
In each of the three regions, the administrative regulations allow the permit-granting authority or the enforcement agencies, regional or municipal, to impose measures on an operator. They can do this even if there is no breach of a permit or of legislation, for example, where there is imminent threat to the public health.

Any facility, even if it complies with its permit conditions, can be held liable if damages are the result of "excessive" nuisance. Operators must take the necessary measures to avoid incidents or accidents that have consequences for humans or the environment and to prevent any (future) incidents or accidents (see Question 6).

Clean-up/compensation
Failing to comply with the obligations (see above, Permits and regulator and Prohibited activities) can trigger the obligation to carry out remedial actions such as clean-up measures or the duty to pay compensation.

Penalties
Regulators have a wide range of powers available to impose penalties for permit non-compliances. Penalties range from formal warnings through to temporary suspension or repeal of permits, however, they will usually grant grace periods (see Question 5).

CLIMATE CHANGE, RENEWABLE ENERGY AND ENERGY EFFICIENCY

8. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)? Is there a national strategy on climate change, renewable energy and/or energy efficiency?

Policies and measures to reduce greenhouse gas emissions are mapped out at different levels of responsibility, based on the division of powers between the Federal Government and the three regions (Flemish, Walloon and Brussels Metropolitan). Each level establishes its own environmental and climate policy priorities. However, co-ordination bodies have been set up to harmonise the policies and measures implemented by the different levels.

These measures include:
- Establishing of climate policy plans.
- Financial incentives (for example, for electricity generation from renewable energy sources and the rational use of energy in certain sectors).
- Imposing energy and indoor requirements for certain buildings.

9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?

Each of the three regions (Flemish, Walloon and Brussels Metropolitan) has adopted a regional climate plan to comply with greenhouse gas emissions during the first regulatory period under the Kyoto Protocol, requiring Belgium to reduce emissions by 7.5% compared to the 1990 emission levels.

In addition to the UNFCCC and the Kyoto Protocol, the European climate and energy package applies, which intends to deliver on the "20-20-20" targets (that is a 20% reduction in EU greenhouse gas emissions from 1990 levels, raising the share of EU energy consumption produced from renewable sources to 20% and a 20% improvement in the EU's energy efficiency). The EU emission trading system (ETS) is a key tool for cutting (industrial) greenhouse gas emissions. Decision No. 406/2009/EC, as further implemented by a 2013 Commission Decision, also establishes binding annual greenhouse gas emission targets on member states for 2013 to 2020 (including emissions from sectors that are not included in the EU ETS system).

For Belgium, these targets are set at -15% of greenhouse gas emission levels in 2020 compared to the 2005 greenhouse gas emission levels. Under Directive 2009/28/EC, member states have taken on binding national targets for raising the share of renewable energy in their energy consumption by 2020, and Directive 2009/31 establishes a legal framework for the environmentally safe geological storage of CO2 to contribute to the fight against climate change.

10. What, if any, emissions/carbon trading schemes operate in your jurisdiction?

Belgium is subject to the EU emission trading system (ETS) (see Question 9).

For the emission trading periods from 2005 to 2007 and from 2008 to 2012 Belgium had to submit a national allocation plan to the European Commission for its approval.

For the third emission trading period from 2013 to 2020, Directive 2009/29/EC anticipates that emission allowances for the production of electricity will, in principle, be auctioned.

ENVIRONMENTAL IMPACT ASSESSMENTS

11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

Scope
Each of the three regions (Flemish, Walloon and Brussels Metropolitan) has implemented the EU Environmental Impact Assessments (EIAs) and Strategic Environmental Assessment (SEA) Directives. Companies within the scope of those directives must perform an EIA as part of the permit-granting process for certain projects or plans detailed in the directives, that is projects or plans that are likely to have significant effects on the environment.

For projects, the EU EIA Directive requires a mandatory environmental impact assessment for all projects listed in Annex I, as these are considered to have significant effects on the environment. For projects listed in Annex II of the Directive, the national authorities must decide whether an EIA is required, taking into account certain criteria or thresholds.

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The EU SEA Directive applies to public plans and programmes. Unlike the EU EIA Directive, it does not contain a list of plans or programmes that are subject to an EIA. However, generally, an EIA is required for plans related to the future development of projects listed in the EU EIA Directive or if an assessment is required under the EU Habitats Directive. Member states must also carry out a screening procedure to determine whether other plans or programmes are likely to have significant environmental effects and, therefore, whether an EIA is needed.

Permits and regulator

The EU EIA and SEA Directives require the competent authorities to carry out an environmental impact assessment as part of the permit-granting or planning process for certain projects or plans. Since 2008, the regulator in the Flemish region allowed for the simultaneous elaboration of certain plans and the related EIA. However, the Belgian State Council found this rule discriminatory.

To continue to rely on the plans established through this simultaneous procedure, the Belgian regulator proposed the possibility of a “legal validation” of such plans. In a judgment dated 31 July 2013, the Belgian Constitutional Court found this “legal validation” rule to be in breach of the Belgian Constitution. To remediate this unconstitutionality, a new statute was adopted in 2014, specifying different procedures that can apply, depending on the status of the plan.

Penalties

The duty to carry out an EIA as part of the permit-granting process or planning process for certain projects and plans rests with the competent authorities and not with the permit holder. A failure to carry out an EIA can be a ground for challenging the related permits or plans before the administrative courts.

WASTE

12. What is the regulatory regime for waste?

Permits and regulator

Each of the three regions (Flemish, Walloon and Brussels Metropolitan) has copied the waste definitions of the EU Waste Framework Directive (WFD). The regions also regulate certain special types of waste in line with the WFD sister directives (Waste Electrical and Electronic Equipment Directive (WEEE), end of life vehicles (ELV), batteries and packaging waste). Additional categories, for example, paper and tyres, have been created to reflect the conditions of re-use, recycling or recovery or use as a secondary raw material.

An operator can store this waste provided its environmental permit allows it to do so. Discussions with the authorities can relate to the “by-product” versus “waste” status of production residues so that if a production residue is not classified as “waste” (but as a by-product) then storage is allowed without the need to comply with the waste handling conditions.

Disposal always requires compliance with waste conditions.

Prohibited activities

Environmental legislation states that criminal liability attaches for the failure to dispose of waste lawfully, including meeting requirements to dispose of waste to properly regulated waste disposal companies. However, if a company discharges these responsibilities lawfully it is not held liable for breaches by others at a licensed site.

Operator criteria

Waste disposal in Belgium is heavily regulated and each person involved in the disposal has specific duties to comply with in the waste chain. With certain types of waste, specific requirements can apply, such as the duty for landfill operators to put in place sufficient financial guarantees to cover landfill operations and to ensure appropriate aftercare.

Special rules for certain waste

There is a range of legislation covering a number of different products, which requires that producers and importers ensure that their products are safely disposed of at the end of each product’s lifecycle. This includes electrical and electronic goods, packaging, batteries and vehicles. Legislation on electrical and electronic goods also required the phasing out of certain hazardous substances from such equipment.

Penalties

Regulators have a wide range of powers available to impose penalties for permit non-compliances including the handling or disposal of waste, ranging from formal warnings through to temporary suspension or repeal of permits. Failing to dispose of waste lawfully can also give rise to criminal liability.

ASBESTOS

13. What is the regulatory regime for asbestos?

Prohibited activities

The presence of asbestos or asbestos-containing materials is not prohibited. However, certain major construction works that may lead to the asbestos becoming airborne can trigger the duty to remove the asbestos or the asbestos-containing materials. Here the removal may be subject to an environmental permit and must be carried out by a designated asbestos-removal company.

Main obligations

The laws and regulations on asbestos have mainly developed in response to safety concerns arising from workers’ exposure to asbestos fibres. The rules apply to all companies, authorities or persons employing workers, including the lessees of buildings.

In line with the duty of prevention resting on every employer, whenever and wherever possible, asbestos or asbestos-containing equipment must be substituted with less harmful or hazardous materials. An employer must also inform its employees of the risks associated with asbestos and about any measures or procedures that must be observed.

An employer must create an inventory of all asbestos or asbestos-containing materials that are present in the buildings, machinery and equipment. This document must:

- Summarise the existence of asbestos in each area.
- Assess the condition of the asbestos or asbestos-containing equipment.
- Identify work or activities that may lead to exposure.

If asbestos is present at the workplace, an asbestos management programme must be set up. The management programme must include regular inspection, which must be at least once a year. It must also outline the appropriate measures to be taken whenever the asbestos-containing materials or the asbestos itself is in a poor (hazardous) condition or is used in locations where damage may easily occur.

The owner of a building that contains asbestos must be aware that the demolition of the building or major reconstruction works may lead to the asbestos becoming airborne. Here, an acknowledged expert must carry out the works. Also, construction materials containing asbestos must be regarded as hazardous waste and be removed by a registered waste removal firm at the building owner’s expense.
Permits and regulator
The removal of any asbestos or asbestos containing materials may be subject to an environmental permit that is granted by the local or regional authorities.

Penalties
Regulators have a wide range of powers available to impose penalties in relation to permit non-compliances, ranging from formal warnings through to temporary suspension, repeal of permits or criminal or administrative sanctions.

CONTAMINATED LAND

14. What is the regulatory regime for contaminated land?

Regulator and legislation
The three regions (Flemish, Walloon and Brussels Metropolitan) have a clean-up regime for contaminated land or transfer of land. The regime requires a transferor to provide information on the state of the soil and groundwater and also requires soil surveys and, post-bond, the completion of remedial actions. This effectively limits the risk for buyers becoming responsible for the clean-up of pollution that they did not cause or are not aware of.

In the Flemish region and the Brussels Metropolitan region, these protective regimes are triggered by a number of corporate and asset transactions, including mergers and the creation, assignment or transfer of in rem rights; however, other than for a merger or transfer of a branch, not by a share transfer.

In the Walloon region, a similar regime is anticipated in the existing statute. However, its key article, which lists the triggering events, has not yet entered into force.

Investigation and clean-up
The regional soil legislation sets out the situations where soil surveys must be carried out. For example, on the transfer of a site or the application for an environmental permit. If the soil surveys show that the thresholds for soil or groundwater pollution set out in the soil legislation have been exceeded, remediation must be carried out by the clean-up responsible party (CRP) identified in the relevant soil legislation.

In all three regions, the CRP is one of the following:
- The person who caused the pollution, if that person can be clearly identified.
- The operator of the site (exploitant).
- The holder of a right in rem (landowner, long-term leaseholder, lessee).

Penalties
Non-compliance with the transfer of land rules and the related soil investigation or clean-up obligations can result in either:
- The transfer being void.
- Giving rise to criminal or administrative sanctions.

15. Who is liable for the clean-up of contaminated land? Can this be excluded?

Liable party
In the Walloon and Brussels Metropolitan regions, the clean-up regimes can identify multiple parties at the same time.

In the Flemish region, clean-up laws provide for a phased mechanism for determining the person responsible for remediation, that is, first the operator, then the user and finally the owner can be held responsible for remedying any pollution caused on its land.

A partial exemption from remediation obligations is not possible, even if any of these people fulfilled the exemption requirements for part of the pollution. Under the Flemish Statute dated 28 March 2014, a new mechanism was introduced, allowing a person responsible for remediation to obtain a (partial) exemption from remediation obligations. Where there is a partial exemption, part of the remediation obligations can pass to the next person in the chain. When all three persons (the operator, user and owner) are partially exempt from remedying the pollution, the Flemish Waste Agency (Openbare Vlaamse Afvalstoffenmaatschappij) can carry out remediation obligations ex officio in relation to the relevant aspect of the pollution.

Owner/occupier liability
Each of the three regions (Flemish, Walloon and Brussels Metropolitan) have specific clean-up legislation allowing an operator that must pre-finance the remediation works to claim damages or indemnification from the responsible party.

Transferring clean-up costs to a purchaser or acquirer of a site is possible as each of the three regions’ legislation specifically provides for such a possibility.

Previous owner/occupier liability
In each of the three regions, a transfer of land, in principle, triggers a clean-up regime requiring at least the transferor to perform soil surveys or to prepare remedial action plans, as well as the posting of financial security to cover the actual clean-up costs and clean-up procedures. Each of these pieces of legislation allow a transfer to take place, with the transferor (under certain circumstances) providing the financial security and committing to continue or execute the surveys or clean-up obligations.

Limitation of liability
Contractual provisions like warranties and indemnification clauses can limit the trigger, duration and amount of an environmental indemnity.

The regional clean-up regimes even provide a specific mechanism for a purchaser to take over clean-up obligations.

16. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

Lender liability
Generally, the law recognises the separate legal personality of each group company and the limited liability of its shareholders and lenders.

If a company is declared bankrupt, the liability can be extended further than the directors of the company, to any person who de facto managed the company and who committed a manifest wrong that contributed to its bankruptcy. This can affect a parent company, an important shareholder or even a lender, although actual lenders’ liability is extremely rare.

Minimising liability
To minimise a lender’s liability, it is not unusual to carry out environmental due diligence to include appropriate protection in the contractual documentation.

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17. Can an individual bring legal action against a polluter, owner or occupier?

Each of the regions’ (Flemish, Walloon and Brussels Metropolitan) clean-up regimes allows a party that must pre-finance the clean-up costs to claim damages or indemnification from the responsible party (see Question 15).

18. Is hydraulic fracturing being pursued or considered in your jurisdiction? If so, please describe the regulatory framework which applies to manage environmental risks.

There is no specific regulatory framework allowing for fracking in Belgium or requiring any related consents or assessments.

19. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

**Asset sale**

With an actual asset transfer, most of the civil law protection schemes apply, unless expressly excluded. However, it has become very common to perform due diligence and to provide appropriate contractual wording to cover any possible liability.

**Share sale**

Classic legal theory and case law hold that with a share transfer, the only underlying collateral that is being delivered is the share. Therefore, classic civil law remedies that would be available to a buyer are only available if they relate to the actual title or share and not to the underlying company or facility's value. Classic civil law remedies available to buyers include proof that the buyer was misled (bedrog-dol), mistaken (dwaling-erreur) or that there were hidden defects (verborgen gebreken-vices cachés). This has led to buyers performing due diligence both for asset and share transfers to identify and deal with any breaches in the contract.

20. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

**Asset sale**

With a transfer of assets under which the seller has caused or increased pollution, the seller can retain environmental liability for such pollution, unless the liability is contractually excluded or passed on to the buyer of the assets.

**Share sale**

With a share deal, it is also possible that the former shareholders retain environmental liability, for example, if the environmental damage can be allocated it is not unusual to include specific contractual wording, which allocates the liability to the seller.

21. Does a seller have to disclose environmental information to the buyer in an asset sale/share sale?

**Asset sale**

The three regions (Flemish, Walloon and Brussels Metropolitan) have a transfer of land regime, requiring a transferor to not only provide information on the state of the soil and groundwater, but also requiring soil surveys and, post-bond, completion of remedial actions. This effectively limits the risk of buyers becoming responsible for the clean-up of pollution that they did not cause or are not aware of.

In the Flemish and Brussels Metropolitan regions, these protective regimes are triggered by a number of corporate and asset transactions, including mergers, and the creation, assignment or transfer of in rem rights. However, other than with a merger or a transfer of a branch, not by a share transfer.

In the Walloon region, a similar regime is anticipated in the existing statute. However, its key article, which lists the triggering events, has not yet entered into force and is unlikely to enter into force in its current form. It is thought that the existing statute will be amended, and that the transfer of rights in rem will no longer automatically be considered to be a triggering event but will give rise to certain information obligations.

**Share sale**

In principle, a mere transfer of shares will not trigger any information or clean-up obligations in the three regions.

22. Is environmental due diligence common in an asset sale/share sale?

**Scope**

Due diligence includes common issues such as permit compliance and investigation and remediation obligations. More specific issues are increasingly becoming part of a legal environmental due diligence, such as compliance with European product regulations including the:

- Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).
- European directive on Restriction of Hazardous Substances (ROHS).

**Types of assessment**

As well as “traditional” legal due diligence, it has become more common to simultaneously carry out a technical due diligence or valuation, to assess the practical implications of non-compliances or to determine the relevant capital expenditure (CAPEX).

**Environmental consultants**

In the framework of environmental due diligence, it is usual to rely on technical or legal environmental consultants. The contractual framework for this collaboration is usually governed by an engagement letter, specifying the exact scope of the due diligence, including financial limitations on the consultants' liability.
23. Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale?

Asset sale
Depending on the type of business and relevant findings during the environmental due diligence process, environmental warranties and indemnities can be included in an asset purchase agreement. Such warranties and indemnities can cover a wide range of issues, from more standardised wording to tailored contractual wording.

Share sale
This is the same as for asset sales (see above, Asset sale).

24. Are there usually limits on environmental warranties and indemnities?

Environmental warranties and indemnities are usually limited in time. They can also be subject to a maximum cap that limits the seller's liability.

REPORTING AND AUDITING

25. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

Public registers
Regulators keep public registers of environment information, although these may not always be accessible online or may require a prior request to access the registers.

Third party procedures
Access to information is one of the key elements under the Aarhus Convention and Directive 2003/4/EC on public access to environmental information. Therefore, each of the regions (Flemish, Walloon and Brussels Metropolitan) and the Federal Government has implemented rules so that the public can access environmental information in line with the rules under the Aarhus Convention and the 2003 Directive.

In principle, access must be granted to environment-related information, unless exemptions apply, for example:
- A duty of confidentiality owed by the authorities.
- The protection of privacy.
- If information was submitted on a voluntary basis but is subject to confidential treatment.

26. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Environmental auditing
There is no general environmental auditing requirement. However, companies can be required to carry out audits or can be subject to regulatory monitoring (for example, based on specific provisions in their environmental permits or after an incident or accident occurs).

Reporting requirements
Although there is no general environmental reporting requirement, companies can be required to report on certain incidents or accidents (for example, if soil or groundwater pollution is discovered or caused).

27. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

Companies must report information to regulators and the public about environmental incidents (see Question 26).

28. What access powers do environmental regulators have to access a company?

Not all environmental regulators' agents are entrusted with the same inspection rights.
Some agents are entrusted with supervisory or enforcement powers, for example, the right to:
- Access a company.
- Inspect or copy company data.
- Conduct investigations that may include sampling, measurement or testing.

ENVIRONMENTAL INSURANCE

29. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

Types of insurance and risk
Several insurance policies are available, depending on the type of risks companies wish to cover, for example:
- Incidental environmental damages.
- Clean-up costs related to soil or groundwater pollution.
- Environmental liability to third parties.

However, these policies have not really had an impact on the market, apart from in relation to transactions.

Obtaining insurance
Subscribing to an environmental insurance policy is not compulsory. However, the increasing importance of environmental issues has led to modernised facilities and to investment in the anticipation of environmental damage.

The environmental insurance market is evolving and obtaining this insurance is subject to the terms and conditions of specialised insurance companies.

ENVIRONMENTAL TAX

30. What are the main environmental taxes in your jurisdiction?

A wide range of environmental taxes exist, both at a federal and a regional level and even at local level, for example, taxes on:
- Waste disposal and collection.
- Packaging material.
- The use of surface water.
- Environmental permits.
Fishery or hunting rights.
Municipal taxes.

Tax liability
Usually, the actual beneficiary or operator is liable to pay these taxes, such as the waste disposing company or the permit holder.

Tax rates
Although the applicable tax rates are laid down in laws and regulations, the actual rates are often linked to, and vary according to, the factual elements, such as the relevant volumes treated or generated by the company.

REFORM

31. What proposals are there for significant reform (changes) of environmental law in your jurisdiction?

It is anticipated that:

The FEPS will be replaced by the Flemish Statute of 25 April 2014 in relation to the environment permit. This statute will amend the current Flemish permitting system and provide for a single environment permit covering both urban planning and environmental aspects.

In the Walloon region, the key article of the Walloon Soil Statute, which lists the triggering events, has not yet entered into force and is unlikely to enter into force in its current form. It is thought that the existing statute will be amended, and that the transfer of rights in rem will no longer automatically be considered to be a triggering event but will give rise to certain information obligations.

THE REGULATORY AUTHORITIES

Flemish Waste Agency
Main activities. The Flemish Waste Agency is, among other things, responsible for preparing and implementing the Flemish waste policy and the prevention and remediation of soil or groundwater pollution.
WWW www.ovam.be

Main activities. The Department of Environment, Nature and Energy is active in relation to a very broad range of environmental issues, including the protection of soil or groundwater, sustainable development, climate change, air pollution, environmental permits and environmental inspections.
WWW www.lne.be

Brussels Institute for Environmental Management
Main activities. The Brussels Institute for Environmental Management is active in relation to a very broad range of environmental issues, including the protection of soil or groundwater, sustainable development, climate change, air pollution, environmental permits and environmental inspections.
WWW www.leefmilieu.brussels

Environmental Department of the Walloon Public Services
Main activities. The Environmental Department of the Walloon Public Services is active in relation to a very broad range of environmental issues, including the protection of soil or groundwater, waste management, environmental permits and environmental inspections.
WWW http://environnement.wallonie.be

ONLINE RESOURCES

WWW www.ejustice.just.fgov.be/wet/wet.htm
Description. This website contains Belgian legislation. The relevant legislation can only be accessed in the official languages (that is, Dutch, French or German). English translations are not available online.

Description. This website contains EU legislation. The relevant legislation can only be accessed in the official languages (that is, Dutch, French or German). English translations are not available online.
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**Publications**
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**Publications**
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