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Belgium

ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Belgium.

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BELGIUM
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1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

The environmental framework as applicable in Belgium is primarily based on EU instruments, and more specifically on the Treaty on the Functioning of the European Union (**TFEU**) and the directives and regulations implementing the TFEU. Regulations are directly applicable in the national legal order, whereas directives should first be transposed by domestic legislation.

The Belgian environmental framework consists of environmental legislation adopted by the federal state and the federate entities. This structure is the result of the division of competences established in the Belgian Constitution, which attributes legislative powers to the different entities depending on the matter or issue at hand. The constitution attributes the vast legislative authority in environmental matters to the three Belgian regions (i.e. the Flemish, Walloon and Brussels Capital Region). The Belgian federal state has the authority to regulate a limited number of environmental issues. These include the protection of workers from harmful substances like asbestos or radioactive elements in Book VI, Title 3 of the federal Code on wellbeing at the workplace. The federal state does however not have the full competence to enact legislation related to the environment, as the Flemish, Walloon and Brussels Capital Regions were entrusted with nearly exclusive competences in relation to environmental issues.

Key pieces of regional environmental legislation include:

- The Flemish Ambient Permit Statute, dated 25 April 2014, and its implementing decrees;
- The Walloon Environmental Permit Statute, dated 11 March 1999, and its implementing decrees, and;
- The Brussels Environmental Permit Statute, dated 5 June 1997, and its implementing decrees.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The primary environmental regulatory authority at the level of the federal state is the Federal Environmental Inspection of the Federal Public Services for Public Health, Safety of the Food Chain, and Environment.

When it comes to the enforcement of environmental requirements, federal enforcement institutions tend to align their priorities with the agenda set by their European counterparts, such as the European directive on Restriction of Hazardous Substances enforcement network; and, as part of the prioritisation programmes set by the Registration, Evaluation, Authorisation and Restriction of Chemicals Forum for Exchange on Information on Enforcement, under the auspices of the European Chemicals Agency.

The primary environmental regulatory authorities in the Belgian regions are the following:

- The Flemish Region: The Enforcement Section of the Environmental Department and the Flemish Waste Agency are tasked with matters relating to materials and waste and the latter oversees the application of the Flemish Soil Statute and its implementing decrees;
- The Walloon Region: The department for Police and Controls;
- The Brussels Capital Region: The Brussels Institute for Environmental Management.

Regional enforcement instances oversee compliance with the regional environmental permit rules. Enforcement measures could consist of administrative sanctions and measures (such as the suspension of permits). If the case warrants a criminal charge, then the case could be sent to the prosecutor’s office.

Cities and municipalities also have the possibility to

address environmental issues through local policies. By way of example, Low Emissions Zones have been introduced in Antwerp, Ghent and in the Brussels Capital Region, practically banning polluting vehicles from entering and driving in these cities' territories. Cities and municipalities are to some extent also tasked with the enforcement of environmental regulations.

3. What is the framework for the environmental permitting regime in your jurisdiction?

The framework for the environmental permitting regime is regulated at the level of the three Belgian regions. The environmental permitting regime in Belgium can be summarized as follows:

- The Flemish region: The Flemish Ambient Permit Statute of 25 April 2014 (in force since 23 February 2017) repeals and integrates the former system where companies needed to apply for a separate environmental permit and an urban planning permit. The Ambient Permit Statute unified the former system and enacted the ambient permit (*omgevingsvergunning*). Companies now only need to submit one application instead of two, which was the case prior to the adoption of the Ambient Permit Statute. The ambient permit can be requested for a range of activities, including the operation of facilities, effluent discharge, waste storage and disposal and activities that may have negative impacts on the soil and groundwater. The Ambient Permit Statute makes a distinction between class 3, class 2 and class 1 activities:
    - Class 3 activities do not require a permit as they only generate minor impacts on the environment. The exploitation of these facilities requires a notification to the local authority concerned. There is no expiration date on the exploitation of facilities requiring a notification;
    - Class 2 activities generate moderate environmental impacts and therefore require a permit from local authorities. Appeals against the decisions of the local authority can be brought before the competent authority at the level of the province, and;
    - Class 1 activities have a significant impact on the environment, and the exploitation of these facilities require a permit from the provincial authority or the Flemish government in appeal.

Ambient permits have no expiration date unless one would be provided as a specific permit condition. Environmental permits granted under the previous permitting system remained valid until their established expiration date, which principally would be 20 years after the issuance of the environmental permit (and longer if renewed at 12 or 18 months prior to the expiration date). Environmental permits can be converted into ambient permits through:

- A simplified procedure which should be initiated 36 to 48 months before the expiry of the environmental permit; or
- A renewal of the environmental permit 24 to 12 months of the expiration date.

The Walloon Region: The Walloon Environmental Permit Statute of 11 March 1999 (the **Walloon Permit Statute**) applies to the operation of facilities; effluent discharge; waste storage and disposal and groundwater-threatening activities. When granting a permit, the authorities can tie general or specific operating conditions to the permit, which are binding on the operator. A single permit (*permis unique*) should be requested for activities requiring both an environmental and urban permit.

The Walloon Permit Statute makes a distinction between three classes:

- Class 3 operations do not require a permit. The exploitation of these facilities only requires a notification;
- Class 2 operations require a permit from local authorities, in which general or specific conditions could be included;
- Class 1 operations also require a permit from local authorities, which could include general or specific conditions.

- The Brussels Capital Region: the Brussels Environmental Permit Statute of 5 June 1997 (the Brussels Permit Statute) requires a permit or notification to the competent authority prior to setting up, operating, changing, transferring or using certain installations, workshops, appliances, production methods or products classified as hazardous or harmful to the environment or human health.
    - The Brussels Permit Statute distinguishes different categories of installations:

        - Class 3 installations do not require a permit, but rather advance notification to the Council of Mayor and Aldermen of the municipality;
        - Class 2 installations require an environmental permit from the College of Mayor and Aldermen; and,
        - Class 1A and class 1B installations need an environmental permit from the Brussels Institute for Environmental Management (*Leefmilieu Brussel / Bruxelles Environnement*).
    - Unlike in the Flemish and Walloon Region, for class 1A or 1B installations only, two permit applications should be submitted for projects or activities that require an urban planning and environmental permit. The applications will, for class 1A or 1B installations, be handled simultaneously by the competent authorities for each permit, after which two separate permits will be granted.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

When permits, granted to the operator of a facility or an installation, are transferred – as part of an asset deal – the transfer of the permits must be notified to the permit granting authorities. The previous permit holder will remain liable in the absence of a notification.

A change of control does in principle not require a notification or regulatory consent.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

- The Flemish region: Under the Flemish Ambient Permit Statute, appeals against decisions in first instance can be brought before different entities depending on the classification of the activity or installation for which a permit is being sought:
    - Class 2 facilities require a permit from the local authority, whose decision can be appealed against before the provincial authority;
    - Class 1 facilities require a permit from the competent provincial authority. Decisions of the provincial authority can be appealed before the Flemish government.
- The Walloon Region:
    - For the operation of establishments for which an environmental or single permit is granted by the local authority, an appeal is possible before the Walloon government;
- The Brussels Capital Region:
    - Appeals against decisions regarding environmental permits, handed down by the College of Mayors and Aldermen and the Brussels Institute for Environmental Management should be brought before the Brussels Environmental College (*Milieucollege / Collège d'Environnement*). Decisions of the Environmental College could be further appealed before the Brussels government;

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

The Environmental Impact Assessment Directive (*85/337/EEC*) (the **EIA Directive**) and Strategic Environmental Assessment Directive (*2001/42/EC*) ("SEA Directive") have been implemented in the national legal order by the three Belgian regions. Environmental impact assessments (**EIAs**) are therefore required for certain projects or plans that likely have significant effects on the environment. The EIA Directive imposes an environmental impact assessment for all Annex I projects. For Annex II projects, the decision of whether or not an EIA should be conducted is left for national authorities' considerations, on the basis of certain

thresholds. The SEA Directive – applicable to public plans and programmes – does not contain a list of plans or programs requiring an EIA. An SEA will be mandatory for plans or programs that set the framework for future development consent of projects listed in the EIA Directive, or for those that require an assessment under the Habitats Directive (*92/43/EEC*). Additionally, when handling permit requests, Member State are required to carry out a screening of potential environmental impacts which could warrant an EIA.

Permits for projects or plans can be challenged before administrative courts if no (proper) EIA has been carried out.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

The clean-up of contaminated soil is regulated by the Regions (the Flemish, Walloon and Brussels Capital Region). The applicable regulatory regime requires the transferor of land to provide transparency on the state of the soil and groundwater, as well as soil surveys and if necessary any remedial action. This regime allows buyers to ensure that they would not be liable for the clean-up of previously contaminated soil and groundwater.

The regulatory transfer-of-land regime for contaminated land or groundwater is triggered in the Flemish Region and in the Brussels Capital Region by certain corporate and asset transactions, including mergers and the creation / assignment / transfer of rights *in rem*. A mere share transfer does not require the application of the regulatory regime for contaminated land or groundwater. In the Walloon Region, the regulatory regime has a more narrow application and, as such, does not include mere asset transfers. In this Region, the applicable transfer- of- land regime require the seller to provide the buyer with the content of the excerpt from the database on soil conditions.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

The Regions are competent to designate the circumstances in which soil surveys must be conducted, and submitted to the competent authorities (e.g.: the transfer of a site; the application for an environmental permit). If a soil survey indicates that the regulatory threshold for soil or groundwater, then the clean-up responsible party should remedy the situation. The clean-up responsible party could be one of the following:

- The person responsible for causing the pollution, if that person can be clearly identified;
- The operator of the site;
- The holder of a right *in rem* (e.g., the landowner or the long-term leaseholder);
- The person that voluntarily takes on clean-up responsibilities.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

In case of an environmental incident that causes or is likely to case soil contamination, companies must report the contamination to the relevant authorities; upon receiving such report, the competent authorities may require the company that caused the contamination to carry out remedial measures to mitigate or remove the contamination. Federal authorities are required to immediately make public any information regarding threats to human health or the environment, regardless of whether the threat was induced by human activity or natural causes.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Yes. Each of the Regions (i.e. the Flemish, Walloon, Brussels Capital Region) has enshrined the “polluter pays” principle into applicable legislation. If the previous owner that has caused historical pollution can be identified, the owner of land affected by such historical pollution can initiate a private right of action against the previous owner.

A private right of action against the previous owner of the land can be limited through contractual provisions, and is subject to (general) civil law limitation rules.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The regulatory regime for waste is established at the level of the three Regions. The definition of "waste" as introduced in the Waste Framework Directive (2008/98/EC) (the **WFD**) has been implemented in the Flemish, Walloon and Brussels Capital Region. At EU level, the regulatory regime further consists of the following implementing daughter directives of the WFD:

- Waste Electrical and Electronic Equipment Directive (*2012/19/EU*) (the **WEEE Directive**);
- Regulation on shipments of waste (*1013/2006*);
- End-of-Life Vehicles Directive (*2000/53/EC*);
- Directive on the landfill of waste (*1999/31/EC*);
- Directive on industrial emissions (integrated pollution prevention and control) (*2010/75/EU*) which repealed the Directive on the incineration of waste (*2000/76/EC*);
- Batteries Directive (*2006/66/EC*);
- Packaging Directive (*94/62/EC*); and
- Directive on the reduction of the impact of certain plastic products on the environment (*2019/904*).

The key pieces of waste legislation at Belgian level include the following:

- The Flemish statute of 23 December 2011 regarding the sustainable management of material cycles and waste products, and its implementing decrees;
- The Walloon statute of 27 June 1997 regarding waste, and its implementing decrees; and
- The Brussels Statute dated 14 June 2012 regarding waste, and its implementing decrees.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

In the Walloon and Brussels Capital Region, the producer of toxic waste from industrial, trade, agricultural, artisanal or scientific activities is required to bear the costs for the treatment of this waste and to ensure its proper disposal. The producer remains liable for the financing of the waste treatment, regardless of the liability of another person for the treatment or disposal off-site. The producer of this toxic waste also remains liable for any damage that may occur during the disposal or treatment of the waste, even if these tasks were delegated to another person. In the Flemish Region, the 'polluter pays' principle ensures that the costs for managing waste are borne by the producer of waste, the current or previous holder of the waste, the producer of the product which generated waste or the importer or distributor of this product. The Flemish government can adopt more detailed provisions on this matter.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

The obligation for producers of packaging to take back packaging waste is established in the cooperation agreement of 4 November 2008 between the three Regions on the prevention and management of packaging waste. This obligation is part of the extended producer responsibility. This cooperation agreement has binding force (following its adoption by each of the three Regions), allowing it to impose certain requirements and obligations on the producers of packaging, including take-back obligations.

The take-back system applies to every producer that places least 300 kg of packaging on the market on an annual basis. This system allocates the responsibility to collect and process the packaging waste on the producers responsible for the circulation of the packaging. Producers can choose to fulfil their obligation on an individual basis, without delegating this responsibility. The obligation to take back packaging waste can also be delegated to a public or private waste management entity. If companies opt to delegate their responsibility to a waste management entity, they would be required to pay a fee for the waste management services provided by this entity.

As part of the extended producer responsibility, there is also a take-back obligation for sellers, intermediaries, producers or importers of electrical and electronic waste, which entails the obligation to collect and process this waste. These parties are obligated to accept consumers' electronic and electric waste. In practice, the store where the individual buys an electric or electronic product will be required to accept an old, similar, product to the one being bought. In case the individual does not purchase a new product, they could dispose of the electric or electronic waste – without charge – in recycling plants or second hand stores. This acceptance

obligation is regulated at the level of the regions by *inter alia,* the following instruments:

- The Flemish Region: Environmental Policy Agreement (*Milieubeleidsovereenkomst betreffende de aanvaardingsplicht van afgedankte elektrische en elektronische apparatuur (AEEA)*) of 13 November 2015. This Policy Agreement took effect in May 2018 and has a duration of 5 years, and therefore the Policy Agreement is expected to be renewed in the near future. The agreement between the Flemish Waste Agency and representative organisations of producers subject to the obligation to take back electrical and electronic waste (*Aanvaardingsplichtconvenant AEEA*) of 28 July 2021 aims to optimise the management and recycling of electrical and electronic waste;
- The Walloon Region: Environmental Policy Agreement (*Convention environnementale concernant l'obligation de reprise des déchets d'équipements électriques et électroniques*) of 11 May 2010;
- The Brussels Capital Region: Environmental Policy Agreement of 13 March 2019 (*Milieuovereenkomst betreffende de uitvoering van de uitgebreide producentenverantwoordelijkheid inzake afgedankte elektrische en elektronische apparatuur/ Convention environnementale relative à l'exécution de la responsabilité élargie des producteurs en matière de déchets d'équipements électriques et électroniques*).

Take-back schemes also exist for a wide range of other materials (depending on the relevant Region), including batteries, vehicles, oil, solar panels, mattresses, expired medication, paper and carton, tires etc.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

Though the production of cement-asbestos was prohibited in 1998, to this day asbestos remains present on land or in buildings. An issue may present itself when significant construction or demolition works may bring asbestos out in the air. Prior to the start of the construction works, asbestos would need to be removed by a specialized company, which requires an environmental permit. Out of the need to protect the health of workers handling asbestos, the regulatory regime on asbestos is established in the federal Code on wellbeing at the workplace (Book VI, Title 3). These rules apply to everyone, including public authorities, companies, and employers, regardless of ownership status of the land or buildings containing asbestos (owner/ occupier).

Employers are subjected to the duty of prevention and, as such, are required, to the extent possible, to substitute equipment containing asbestos with less dangerous equipment. The employer also has the duty to inform employees of the risks arising from exposure to asbestos and of the protocol applicable to the handling of the material. Furthermore, the employer is tasked with keeping an inventory of all asbestos-containing materials with which workers could come into contact. The inventory should (i) summarize the areas containing asbestos, (ii) assess the condition of the equipment containing asbestos, and (iii) summarize how exposure to asbestos might occur. An asbestos management program should also be established to minimize the risks for employees.The owner of the building in which asbestos is present has the specific responsibility of awareness of the danger that may be caused by the construction or demolition works in the building. It is therefore required for the works to be conducted by people with the necessary expertise. If the materials used for the construction works contain asbestos, they should be classified as hazardous waste and be disposed by a waste management entity, as explained above.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

Various EU product regulations are applicable, including:

- Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (*(EC) No 1907/2006*) (REACH). REACH has the goal to protect the environment and human health by registering, evaluating and restricting certain chemicals;
- Regulation concerning the making available on the market and use of biocidal products (*528/2012*) (BPR). The BPR aims to harmonise the rules on the making available on the market and the use of biocidal products, whilst ensuring a high level of protection of both human and animal health and the environment;

- Restriction of Hazardous Substances Directive (2011/65/EU). This directive prohibits certain hazardous substances in electrical and electronic products. The following substances are prohibited: lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ethers (PBDE), bis(2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP);
- The WEEE Directive. This directive promotes the collection and recycling of electrical and electronic waste.
- Regulation 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP Regulation). This Regulation harmonises the criteria for classification of substances and mixtures, and the rules on labelling and packaging for hazardous substances and mixtures.

The aforementioned Directives have been transposed into domestic legislation in the three Regions.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

Belgium contributes to the binding EU renewable energy target of 32% by 2030. Belgium's contribution consists of primary energy savings accumulated through present and future measures adopted by federal and regional authorities. These measures are based on scenarios "with additional measures" (WAM). Belgium contributes to the 32% target with amendments to the current measures and additional regulatory requirements aiming to:

- Increase energy performance requirements for (existing) dwellings and related measures;
- Reduce CO2 emissions and primary energy consumption in public buildings;
- Conduct renovations of existing buildings and increasing number of new energy-efficient buildings.

The framework on energy products was established in the Royal Decree of 13 August 2011 which implemented in the Belgian legal order the Energy Labelling Directive (*2010/30/EU*). This directive has been repealed by the Energy Labelling Regulation *((EU) 2017/1369*), which currently establishes the applicable framework for energy labelling.

One current measure related to energy efficiency relates to the labelling of energy efficient buildings. The Directive on the energy performance of buildings (*2010/31/EU*) requires Member States to lay down the necessary measures to establish a system of certification of the energy performance of buildings. In the three Regions, it is mandatory for certain buildings to obtain an energy performance certificate, which indicates the building's estimated energy consumption. The certificate must be issued by a recognized expert and must be present during the sale or lease of certain buildings like offices of a certain surface area. Additionally, at the regional level, there are different incentives to increase buildings' energy efficiency, though the grant of financial benefits to owners (e.g. subsidies) for implementing changes to buildings in order to make them more energy efficient. These are to be assessed on a case-by-case basis.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

Regarding the reduction of greenhouse gas emissions, Belgium previously committed to cut these emissions by 30% by 2030. The 2020 EU Green Deal however aims for more ambitious emission cuts, up to 55% and net zero by 2050. It is expected that Member States, including Belgium, will need to increase their reduction targets in the coming years. Reaching this target requires all levels of government to contribute, so as a result, the regions and the federal government cooperate on climate and energy matters, through platforms like the Energy Policy Coordination Platform (*ENOVER/CONCERE*), the Coordination Committee for International Environmental Policy (*Coördinatiecomité Internationaal Milieubeleid/comité de coordination des politiques internationales de l'environnemen*tà and the National Climate Commission (*Nationale Klimaatcommissie/ Commission Nationale du Climat).*

Specific measures related to greenhouse gas emissions are spread out across different legislation from various federal and regional authorities. Both the federal and the regional governments establish their own environmental and climate priorities, though all levels of government cooperate and attempt to harmonize their climate policies. Climate change measures range from the establishment of climate policy plans, to financial incentives for using renewable energy, and energy requirements for certain buildings.

Under the Effort Sharing Regulation (*(EU) 2018/842*), Belgium has an annual greenhouse gas emission targets for the period 2021-2030 for sectors falling outside of the EU emission trading system, like transport, buildings, agriculture, non-ETS industry and waste. The aim of the Effort Sharing Regulation is to reduce emissions by 30% in sectors outside of the ETS system by 2030. According to Article 4 (1) of the Effort Sharing Regulation, Member State must by 2030, limit their greenhouse gas emissions at least by the percentage set for that Member State in Annex I in relation to its greenhouse gas emissions in 2005. According to Annex I, Belgium must reduce its greenhouse gas emissions at least by 35% compared to its emissions in 2005.Belgium indeed participates in the EU emission trading system (**ETS**), which is implemented in phases. In the first three phases of the ETS, until about 2012, Belgium submitted its national allocation plans for approval to the European Commission. In phase 3, which spanned from 2013 to 2020, an EU cap on emissions was established with the aim to annually decrease the amount of emissions allowed by a linear reduction factor of 1.74% of the average quantity of allowances issued every year from 2008 to 2012. Currently, in phase 4 (2021 to 2030) there is an increase in the pace of emission reductions, so the allowances will decrease every year by 2.2%.

Regarding renewable energy, Belgian committed to increase its renewable energy sources by 17.5% by 2030, as part of the collective EU target of at least 32% by 2030. Though offshore wind energy and biofuels are included in Belgium's climate policies, authorities gradually decreased financial incentives to invest in offshore wind farms. Recently, the Council of Ministers has cleared a proposal to expand the size of the (yet-to-be) developed "Princess Elisabeth offshore zone" in the North Sea to 3.15-3.5 GW, and the Belgian Government is expected to launch its first competitive tender to start developing this zone in 2023.

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and ESG due diligence in supply chains becoming mandatory or more common? To what extent are companies obliged to report on ESG matters? Has COVID-19 had any impact in relation to companies' approach to ESG in your jurisdiction?

Nowadays, companies increasingly invest and become aware of environmental, social and governance (ESG) issues. ESG is gaining material consideration though the applicable legal framework does not include a general obligation for companies to report their involvement in ESG. The Non-financial Reporting Directive (*2014/95/EU*) (**NFRD**) is the main EU instrument which requires certain companies to report on ESG matters. This directive has been transposed in Belgium with the Law of 3 September 2017 regarding the disclosure of non-financial and diversity information relating to large companies and groups. As such, large public-interest entities with more than 500 employees are required to provide in their annual reports any non-financial information which includes information on diversity. Under the NFRD, companies have to provide information on how they manage the following issues:

- Environmental matters;
- Social matters and treatment of employees;
- Respect for human rights;
- Anti-corruption and bribery;
- Diversity on company boards.

In 2021, the European Commission published a proposal for a Corporate Sustainability Reporting Directive (**CSRD**), which is intended to revise the current NFRD in order to introduce more robust rules on the reporting of social and environmental matters. This proposal covers all large and listed companies.

There is also sector-specific legislation that mandates reporting, such as the Conflict Minerals Regulation *((EU) 2017/821),* which requires importers of 3TG (tin, tungsten, tantalum and gold) to adhere to OECD standards on ethical sourcing.

The Belgian Vigilance Proposal (*Wetsvoorstel houdende de instelling van een zorg- en verantwoordingsplicht voor de ondernemingen, over hun hele waardeketen heen / Proposition de loi instaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leurs chaînes de valeur*) is a legislative proposal to enshrine into law the principle of corporate responsibility to respect human rights, labour rights and the environment. The proposal also aims to oblige all companies to carry out due diligence regarding their entire value chain and to enact an extensive liability regime for companies disregarding the requirements of this legislation.

Due diligence on environmental issues is common and COVID-19 has had no material impact on this topic.

19. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have

been implemented in order to achieve this target.

The EU Green Deal, first introduced in 2020, includes ambitious plans for the climate, including the goal for the EU to become net zero by 2050. It can be expected that in the coming years Belgium will need to decrease its current greenhouse gas emissions to contribute to the EU goal of net zero. According to the European Commission, all sectors of the society will have to contribute to the reduction of greenhouse gas emissions, so it is expected that the EU legislature will adopt stricter emissions targets across sectors, including in the power sector, industry, mobility, buildings, agriculture and industry. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms?

The EU Ecolabel is granted to products and services of high environmental standards, upheld from the sourcing of the production materials, to the manufacturing, distribution and disposal of the product. The Ecolabel is established in Regulation (EC) No 66/2010. It is a voluntary label for which companies can apply, and eventually obtain after an assessment of their environmental impact in accordance with several criteria set out in the Regulation.

20. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms?

N/A

21. Have there been any notable court judgments in relation to climate change or ESG-related litigation over the past three years?

The NGO Climate Case (*Klimaatzaak/ Affaire Climat*) brought the Belgian state and the three regions before the francophone court of first instance of Brussels, and argued that the defendants’ climate policies failed to comply with their obligation to reduce greenhouse gas emissions. On 17 June 2021 (*case nr. 2015/4585/A*), the court held that the defendants breached their duty of care (article 1382 of the Civil Code) and articles 2 and 8 of the European Convention on Human Rights. The court substantiated its ruling with the arguments that the governments did not reach their emission targets in previous years, a more ambitious climate policy is still lacking and that EU institutions have been warning Belgium since 2011 to increase efforts to meet emission reduction targets. However, the court of first instance did not impose on the state any additional emission reduction targets as this could have implied a breach of the principle of separation of powers. As a result, the Belgian state and the regions are only bound to the reduction targets that have been set at the EU level, and notably in Regulation (EU) 2018/842 (the “Effort Sharing Regulation”) and Directive (EU) 2018/2001 (the “Renewable Energy Directive”).

22. In light of the commitments of your jurisdiction that were made at or surrounding COP26, do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

At COP26 all Parties to the Paris Agreement upheld the collective goal to keep the global average temperature below 2°C above pre-industrial levels, and preferably limit global warming to 1.5°C above pre-industrial levels. It was agreed to reduce global carbon dioxide emissions by 45 per cent by 2030 (compared with 2010) and to reach net zero around mid-century. COP26 also introduced the phase down coal and inefficient fossil fuel subsidies. It is thus expected that Belgium will increase its emission reduction targets and phase out the use of coal and fossil fuel.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

In general, Belgian law recognises the separate legal personality of each group company and the limited liability of its shareholders or 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 on a daily basis and who committed a manifest fault which contributed to the insolvency. This can affect a parent company, an important shareholder or even a lender. However, lenders’ liability for breaches of environmental law is extremely rare. Belgian courts may hold the shareholders of a company liable for the company’s liabilities, if the existence of the legal entity is proven to

be fictitious. This theory of "piercing the corporate veil" is mostly applied in insolvency scenarios. Elements which have been considered to indicate that the separate legal personality of a company has not been respected include situations where important decisions on the subsidiary's affairs are regularly taken by the lenders and not by the group company's board of directors in a formal meeting.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

In an asset sale, the seller usually remains liable for any existing environmental liabilities that occurred before the sale, including pollution, unless such liabilities have been contractually transferred to the buyer.

As indicated above, all three Regions have land transfer regimes in place, requiring a seller not only to provide information on the state of the soil and groundwater, but in some cases to also provide a soil survey and post a guarantee for the completion of remedial works, effectively limiting the risk that a buyer would become responsible for the clean-up of pollution that it did not cause or that it was unaware of.

In a share deal, the buyer of the shares will assume all liabilities of the target company, including environmental liabilities that occurred before the sale, unless contractually excluded. Therefore, it is common for parties to include representations and warranties relating to the absence of environmental liabilities, such as the lack of soil contamination, or to include specific indemnities to allocate costs for clean-up measures.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

It is common for buyers to conduct environmental due diligence prior to an asset or share sale. In an asset sale, information on the state of the soil and groundwater (including soil certificates) must be provided. In relation to a share sale, a seller is not under a legal obligation to provide such information. However, the seller must in good faith provide the buyer with relevant information with respect to environmental issues affecting the sale and cannot deliberately hide such information. Regardless of the type of transaction (asset or share sale), it is common to disclose information regarding environmental permits, and the presence of (potentially) hazardous substances (such as asbestos, PCBs etc.).

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

Environmental risks can be covered by insurance, including incidental environmental damages; clean-up costs for soil or groundwater contamination; environmental liability towards third parties.

Environmental insurance is voluntary. The market for environmental insurance evolves constantly, and obtaining such an insurance depends on insurance companies' terms and conditions. It is however quite common in practice to exclude environmental risk from W&I insurance type of transactions.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Public registers of environmental information are kept by the competent public authorities. Access to these registers may require a request in writing on the basis of public access to environmental information, as such registers are frequently not freely accessible online.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

The Aarhus Convention and the Freedom of Access to Information Directive (*2003/4/EC*), which the three regions implemented, require public bodies to disclose environmental information to parties that request it. As such, public bodies are required to disclose environmental information unless authorities can be exempted from this requirement in order to, *inter alia*, protect their duty of confidentiality or third parties' privacy.

29. To what extent does your jurisdiction have legislation targeting modern slavery issues, both in relation to employers themselves but also their supply chains?

On 10 March 2021, the European Parliament adopted a resolution with a recommendation to the European Commission to initiate the adoption of a directive on corporate due diligence and corporate accountability. This directive would require Member States to adopt binding rules for companies to conduct due diligence on environmental harm and human rights breaches, including modern slavery, in their operations and business relationships. Once adopted, this directive would still need to be transposed into Belgian, domestic legislation.

30. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?

During lockdown periods, improved air quality was measured, to which reduced traffic significantly contributed. With the re-opening of the economy, traffic and other pollution however increased again. The ongoing fight against the pandemic generates a lot of medical waste, from hospital equipment to single-use personal protection materials such as face masks, gloves, hand gel containers, cleaning and other household products. There is currently no policy to address the increased medical and non-medical waste accumulated during the pandemic. With the recommendation of the Superior Health Council to move towards an interdisciplinary human ecological approach, future environmental regulations and enforcement in this field cannot be excluded (Scientific advisory report of the Superior Health Council, “Environmental and sustainability aspects of the COVID-19 pandemic”, No. 9617, 7 July 2021).

Additionally, the EU Covid-19 recovery plan will allocate 30% of the budget to climate objectives and 7.5% to biodiversity, and ensure that national plans allocate at least 37% of their budgets to climate and biodiversity matters. Belgium’s recovery and resilience plan sets aside 50% of its allocation to climate objectives, which includes increasing the energy efficiency of public and private buildings; investments in alternative energy technologies and green mobility. Belgium’s plan also foresees additional investments in biodiversity, recycling and circular economy. The plan furthermore invests 27% of its allocation to green digital transition, including the digitisation of the public administration and justice system; digital skills training; cybersecurity and a legal framework for 5G.

31. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

The EU Green Deal targets to cut emissions by at least 55% by 2030 and intends the EU to become climate-neutral by 2050. These targets are included in the 2021 European Climate Law. It is expected that the federal state and the three regions will contribute to these targets with additional emission reduction measures, which will require legislative reforms over the next decades to come.

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