

2. Environmental governance and management

Belgium is a small country with a heavily regionalised system of environmental governance. The federal and regional governments use a wide range of good practices in environmental regulation, compliance assurance and promotion of green business practices. However, challenges remain in using enforcement tools to deter non-compliance. This chapter analyses the institutional and regulatory framework for environmental management. It subsequently examines the setting and enforcement of environmental requirements, including environmental liability. Finally, it reviews mechanisms of public participation in decision making, as well as access to environmental information, education and justice.

2.1. Introduction

Since the 1980s, environmental governance in Belgium has been strongly regionalised. The governance systems of the country's three regions – Flanders, Wallonia and the Brussels-Capital Region (BCR) – are institutionally and procedurally distinct. However, the dominance of European Union (EU) directives in the regulatory framework of all jurisdictions partly compensates for the effects of regionalisation of environmental policy.

The general regulatory quality and rule of law in Belgium are high and remained stable in 2008-18. However, government effectiveness decreased somewhat over the same period (World Bank, 2018). This decline was due to difficulties in forming a stable coalition government at the federal level and widespread hiring freezes in government agencies following the 2008 financial crisis.

2.2. Institutional framework for environmental governance

Belgium is a small federal country with four levels of government: federal, regional, provincial and municipal. The three regions are largely autonomous and have their own legislative and executive bodies. The Dutch-, French- and German-speaking communities – another element of the country's institutional architecture – have only language-related competences, such as education, culture and social assistance. The Flemish and Walloon regions are each divided into five provinces. Belgium has 581 municipalities: 300 in Flanders, 262 in Wallonia and 19 in the BCR.

2.2.1. Division of responsibilities

The regions are responsible for most matters related to environmental protection. Control of waste transit was the latest domain to be transferred from the federal jurisdiction to the regions in 2014. The regions also have “implied powers”. These allow them, under certain conditions, to legislate on issues that go beyond their assigned competences. For example, the Flemish Region used these implied powers to create its own environmental courts.

The federal government is responsible for issues such as nuclear safety, product standards,¹ protection of the territorial sea and co-ordination of Belgium's international environmental policy. It also has residual competence for all matters not explicitly allocated to the regions or communities. The federal government's powers in fiscal, energy and transport matters also have a significant impact on Belgium's environmental policy.

The federal government and each region have their own environment minister. Each region also has a competent administrative authority responsible for the environment: Flanders Department of Environment and Spatial Planning (supported by nine agencies, including the Flemish Environment Agency and the Flemish Land Agency), Brussels Environment and the Walloon Directorate-General for Agriculture, Natural Resources and the Environment.

The regions delegate significant authority to local authorities, including land-use planning and environmental services (water supply, wastewater and municipal waste management). The provinces are also active in the policy fields of local jurisdiction and facilitate inter-municipal co-ordination. In Flanders, the provinces have limited regulatory responsibilities in the fields of nature protection and spatial planning. Municipalities and provinces also play an important role in issuing environmental and urban planning permits. Local governments in all three regions are associated in unions of cities and communes, which promote sustainable development as a key objective. Intercommunal entities have been created for water and waste services to increase economies of scale. For example, in the Walloon Region almost all municipalities participate in waste management intercommunal organisations.

2.2.2. Co-ordination mechanisms

Belgium has made some progress in implementing the 2007 Environmental Performance Review (EPR) recommendation to strengthen institutional co-operation between departments and between federal and regional governments. The federal government and the regions work closely together within the Co-ordination Committee for International Environmental Policy (CCIEP) managed by the federal administration. The CCIEP has monthly plenary meetings and several sub-groups on various issues. The National Climate Commission draws up the National Climate Plan and fulfils European and international reporting obligations related to climate. Finally, the Inter-ministerial Conference for the Environment is composed of regional and federal ministers whose remits include environment-related issues.

Co-operation agreements between the federal and regional governments address matters of mixed competence derived from Belgium's international commitments. Examples include agreements on implementation, monitoring and reporting under the National Climate Plan (2002), collaboration in the fields of environment and health (2003) and implementation of the REACH regulation on chemicals (2011). Co-operation agreements can include commitments to pool the authorities' scientific, administrative or financial capacities but can also establish harmonised rules on certain matters (such as major industrial accidents). If a co-operation agreement includes legally binding rules or financial obligations, it must be ratified by all parliaments concerned. These agreements are considered to be effective in some domains (EC, 2017). However, co-ordination is insufficient in several policy areas. River basin management plans are separate for each region's part of a common river basin. Climate change mitigation and adaptation plans and efforts are similarly disparate (Chapter 1). Co-operation also needs to be strengthened in waste management and circular economy (Chapter 5). Reaching inter-governmental decisions often takes significant effort and time.

The Inter-ministerial Conference on Sustainable Development was established in 2012 to oversee implementation of Belgium's 2030 Agenda on Sustainable Development and develop the National Sustainable Development Strategy (Chapter 3). It included representatives of all four levels of government but has been inactive since 2018. Sustainable development also provides a platform for horizontal co-ordination within each jurisdiction. At the federal level, the Inter-departmental Commission for Sustainable Development brings together sustainable development units of different ministries.

2.3. Setting of regulatory requirements

Environmental regulatory requirements of all Belgian jurisdictions are dominated by EU directives, but their transposition into subnational legislation differs across regions. For example, the Walloon Region's legislation relevant to the environment is part of the Environment Code and the Territorial Development Code (the latter is not yet completed). Overall, Belgium is in relatively good standing with regard to implementation of EU laws. It had 11 infringements against EU environmental directives in 2018, close to the average among member states (EC, 2019a). The European Commission last referred Belgium to the EU Court of Justice in 2015 for failure to meet air quality standards for particulate matter (Chapter 1).

2.3.1. Regulatory and policy evaluation

Regulatory impact assessment (RIA) is mandatory for all draft federal regulations. Its scope includes 21 themes with particular focus on policy coherence, administrative burden, small and medium-sized enterprises (SMEs) and gender. The Agency for Administrative Simplification (ASA) within the Prime Minister's Office, which is responsible for the federal government's better regulation policy, assesses the administrative burden of new regulations. The ASA is supported by an Impact Assessment Committee that advises on RIA at the request of the proposing ministry. It gives an opinion on the quality of the assessment but not on the policy decision itself. It reports annually on the quality of all federal-level RIAs (OECD, 2018).

Sustainable development impact assessment was introduced at the federal level in 2007. It was made part of RIA in 2014, which substantially enhanced its application. The assessment considers impacts on air quality, biodiversity, climate change mitigation and adaptation, mobility, energy and natural resources (EC, 2017). Still, the process remains largely formalistic, without significant impact on decision making (FPB, 2019).

At the same time, RIA is not conducted at the regional level, creating an important policy gap. RIA was abolished in the Flanders Region in 2019 and replaced by legal assessment of legislative quality. There is no RIA in the BCR either. In the Walloon Region, each regulatory project must indicate its contribution to sustainable development objectives. An Autonomous Unit for Advice on Sustainable Development issued opinions on draft regulations related to agriculture, energy, transport, public works, housing and environmental policies in 2014-18. However, this assessment was not systematic and occurred mostly upon request from regional ministries.

Belgian authorities integrate environmental concerns into sectoral policies through strategic environmental assessment (SEA). This is in line with the recommendation of the 2007 EPR and the OECD Council Recommendation on the Assessment of Projects, Plans and Programmes with Significant Impact on the Environment. Regional governments have been diligently implementing SEA for plans and programmes. Regional regulations mandate submission of draft land-use plans, zoning plans and other normative spatial planning decisions for SEA screening. In the BCR, some plans and programmes are automatically subjected to SEA. Others are examined case-by-case to determine any likely significant environmental impact. SEA has been carried out for many sectoral policies, including the regional Air-Climate-Energy Plan in 2015-16, and the Resources and Waste Management Plan and Sustainable Development Plan in 2017-18. The Flemish Region has separate SEA procedures for land-use planning (spatial implementation plans) and other plans and programmes. Plans and programmes with potential cross-border environmental impact (such as those related to energy grids) undergo SEA at the federal level.

Many SEA regulations also require *ex post* evaluation – an important good practice. The BCR mandates *ex post* evaluation of plans and programmes at least every five years to identify and appropriately address unforeseen adverse effects. *Ex post* evaluation requirements in the Walloon Region are less strict. However, Wallonia has evaluated several plans in recent years such as those focused on pesticide reduction and rural development. In Flanders, SEA reports require monitoring measures in case of potentially significant environmental impacts. The Sustainable Development Task Force of the Federal Planning Bureau also conducts *ex post* evaluations.

2.3.2. Environmental impact assessment and permitting

Since 2014, environmental impact assessment (EIA) in Flanders has been integrated with the environmental permitting procedure, which in turn integrates building, allotment and environmental permits. For complex projects involving spatial planning, EIA and SEA are integrated into a single procedure. In the BCR and the Walloon Region, EIA is closely linked to the environmental and urban permitting system.

The EIA and permitting regime in each region uses a classification system to determine the level of applicable regulatory requirements. Class 1 installations are regulated by regional law that transposes EU directives. They usually require an EIA (only the highest-risk 1A does in the BCR). In the Walloon Region, class 2 installations may be subject to EIA on a case-by-case basis. EIA always considers alternative project options. In the BCR, for example, all project proposals are modified in some way (technological solutions, mitigation measures) as a result of the EIA. There is growing co-operation between federal and regional focal points for cross-border consultation on EIA.

In Flanders, provincial authorities issue environmental permits for Class 1 installations except for large strategic projects, which are handled by the Flemish Environment Agency. In the BCR, Class 1 facilities receive their permits from Brussels Environment; in Wallonia, with some exceptions, local governments

grant them based on an opinion from the regional environmental authority. In all regions, municipal governments issue permits for Class 2 installations. In the Walloon Region and the BCR, Class 3 facilities only need to notify the municipal government and do not require a permit. This reduces the administrative burden significantly. However, the municipal authority may impose additional conditions on the declaring operator if needed.

The Flemish and Walloon governments have adopted general and sector-specific environmental conditions – general binding rules (GBRs) – for all classes of installations to serve as a foundation for environmental permits. Wallonia uses the term “integral conditions” with regard to low-impact (Class 3) facilities. All GBRs are based on best available techniques. This is a good international practice, with an increasing number of OECD member countries (e.g. Latvia, Greece) using GBRs for low-impact installations. At the same time, BCR regulations leave the possibility of setting tailor-made environmental conditions even for installations that do not require a permit – to guarantee the application of best practices.

2.3.3. Land-use planning

Regions have complete autonomy in land-use decisions as a result of the decentralisation of spatial planning in the last two decades of the 20th century. The federal government has no authority to co-ordinate land-use plans.² Regions adopt framework legislation on spatial planning but delegate many tasks to lower levels of government. They develop regional spatial development plans, which provide strategic guidelines for land-use policies (a new one for Flanders is being elaborated). In Flanders, the regional government can also adopt zoning plans for specific areas of development projects. Flanders also has structure plans and implementation plans prepared by provincial governments. Wallonia has no provincial-level land-use planning, although provinces have infrastructure and housing responsibilities. In all of Belgium, local governments prepare municipal structure plans and detailed municipal implementation plans. Local responsibility for land-use decisions has been recently strengthened, particularly in Flanders, although the provincial government can suspend a municipal spatial implementation plan.

Belgium has one of the highest shares of developed land among OECD member countries (Chapter 1). Pressures from urbanisation and land fragmentation have increased. Belgium has made progress in implementing the 2007 EPR recommendation to strengthen the review of municipal land-use plans by regional authorities. These efforts aim to increase the effectiveness of these plans in addressing environmental objectives and to enhance land-use planning co-operation across regions. There is a strong link between urban planning law and environmental law: urban planning permits have environmental conditions attached to them. The BCR actively integrates environmental considerations into land-use plans through integrated management of rainwater, promotion of green mobility and other aspects of sustainable urban planning (Box 2.1). The 2019 Walloon Regional Policy Declaration makes limiting urban sprawl and restoration of biodiversity key priorities of the regional government.

Box 2.1. Developing sustainable neighbourhoods in Brussels

Brussels Environment has developed a platform around tools for sustainable neighbourhoods: www.besustainable.brussels. It includes four tools that help integrate environmental considerations into local land-use planning:

- a charter consistent with the BCR regional sustainable development plan and other regional strategies (for nature, water, noise, mobility, etc.)
- a Quickscan checklist of 50 questions for a rapid assessment of neighbourhood development plans
- a Compass tool for a more in-depth sustainability assessment and monitoring
- a Memento compendium of guidance documents on different sustainability elements (nature, water, resources, energy, stakeholder participation, etc.).

This initiative reflects the BCR government's policy of designing all new large-scale urban development projects from a sustainability perspective.

Source: <https://besustainable.brussels/>.

Planning procedures generally require consultation with other levels of government to ensure vertical co-ordination. Sometimes local governments of neighbouring jurisdictions are also consulted. The BCR consults with the other two regions in the design phase of every spatial plan and follows up after five years of implementation. Still, spatial planning co-ordination across the regions remains insufficient (OECD, 2017).

2.4. Compliance assurance

The Flemish Region has taken the lead in Belgium in integrating compliance assurance into its institutional framework. Until its integration into the new Department of Environment and Spatial Planning in 2020, the Flemish High Council for Spatial Planning and Environment (VHRM) had been responsible for elaborating enforcement policies for the environment (since its creation in 2009) and spatial planning (since 2014). The VHRM organised systematic consultation among all competent Flemish authorities on environmental and land-use enforcement and advised the Flemish government and parliament on environmental enforcement matters. It also developed five-year environmental and land-use enforcement programmes, including priority notes on prosecution policy, and published annual reports for these two work streams. Some of these good practices have been taken up by the inspectorate arm of Brussels Environment.

The Flemish Department of Environment and Spatial Planning has incorporated VHRM's former functions within its remit. It is planning to establish an enforcement forum to promote the exchange of knowledge between all actors in the field. However, the elimination of a separate enforcement entity could lower the political profile and visibility of this important line of work.

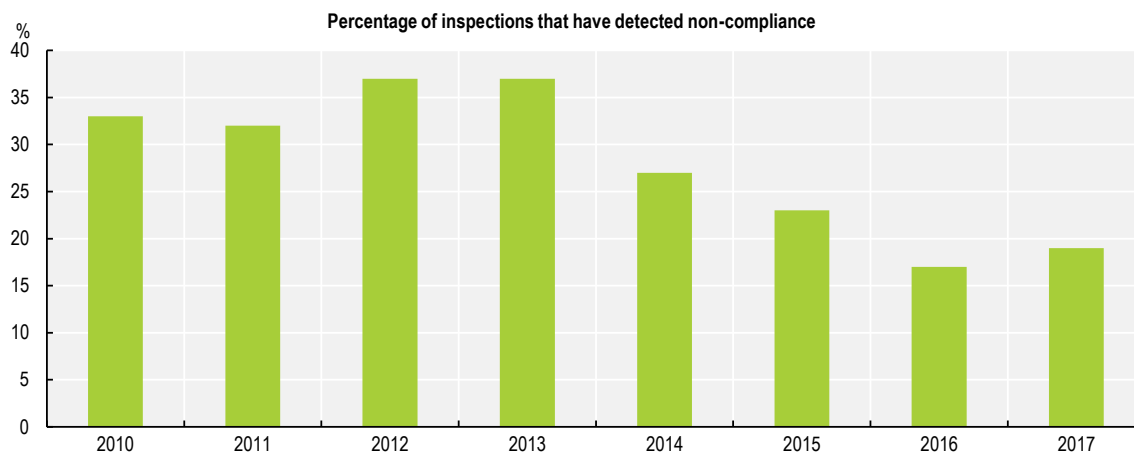
2.4.1. Environmental inspections

Belgium has increased the effectiveness and efficiency of inspections in line with the 2007 EPR recommendation. The number of inspections has been stable in the three regions over recent years. Inspection plans and installation-specific inspection reports are available to the public in all three regions, and the BCR even posts them on line. The frequency of inspections is based on systematic assessment of environmental risk posed by the installation. For Class 1 installations, frequency varies between one and three years. At the same time, the BCR is complementing risk-based inspections with inspection

campaigns of small businesses based on a representative sample. These aim to increase deterrence by influencing through communication the uninspected part of the regulated community. This approach was tested in 2014-18 in a non-domestic waste management campaign. It resulted in a tenfold decrease of offenders' average time of return to compliance but required significant resources. A new campaign is focused on household waste management (e.g. single-use plastic bags).

The Flemish Region has a large number of authorities with compliance monitoring and enforcement powers operating under the same enforcement legislation. These include the Environmental Inspectorate of the Department of Environment and Spatial Development, Environment Agency, Public Waste Agency, Nature and Forest Agency, and Land Agency. Protocols and partnerships ensure co-operation between these authorities. A potential merger of the inspection services is under discussion. In 2017, over 37 000 environment-related inspections were performed at the regional level. Meanwhile, municipal supervisory bodies conducted more than 4 500 similar inspections, 68% of which responded to complaints and accidents. Relatively little attention has been dedicated to enforcement of nature protection laws due to the limited capacity of the Nature and Forest Agency (Paquet, Maréchal and Gerritsen, 2019). The number of inspections that identify non-compliance has been declining: from 37% to 19% over 2013-17 (Figure 2.1).

Figure 2.1. Non-compliance is declining in the Flemish Region



Source: Country submission.

StatLink  <https://doi.org/10.1787/888934230851>

In the BCR, a co-operation agreement on environmental inspections has been drafted and signed by Brussels Environment, the Association of the City and Municipalities of Brussels (Brulocalis) and 8 of the region's 19 municipalities. There is also some degree of collaboration between environmental compliance monitoring entities across Belgium's regions based on a 2010 Memorandum of Understanding.³ In addition, environmental enforcement authorities co-operate with the federal judicial police, which has established a central unit focused on combating serious environmental crime.

Inspections have become more efficient in recent years due to the digitalisation of many procedures and better performance management. The inspectorate arm of Brussels Environment has established performance indicators and implemented a quality assurance system in accordance with the ISO 9001 standard. These indicators focus primarily on outputs, including the efficiency of the agency's administrative processes. Performance measurement is output-oriented in the other two regions as well. Flanders and the BCR have considered introducing intermediate outcome indicators of behaviour of the regulated community. These efforts should be pursued.

2.4.2. Enforcement

Belgian regional environmental enforcement authorities collect, analyse and publish substantial amounts of data on both administrative and criminal enforcement. This puts them among the frontrunners in performance management across OECD member countries. However, they do not yet measure the impact of their enforcement actions on the behaviour of the regulated community.⁴

In the Walloon Region, 35-40% of inspections discover some sort of non-compliance. This is a high non-compliance rate, only partly attributable to risk-based inspection targeting. In 2019, 12% of inspections resulted in a notice of infringement (procès-verbal). In roughly 15% of site visits, inspectors issued a written warning to the operator. They issued a compliance order in another 17% of cases. These ratios have been relatively stable over the last four years. In the BCR, on the other hand, the number of notices of infringement issued by Brussels Environment, municipalities and the police rose sharply from 403 to 1 022 over 2014-19. This was partly a result of waste-related inspection campaigns (Section 2.4.1). Still, most infringements are addressed without a formal notice of infringement or penalties. When competent authorities identify environmental non-compliance, they often grant a grace period to rectify the situation without imposing any sanctions (Box 2.2). This is more likely to happen if the situation does not present any risk for the environment or human health.

Box 2.2. The BCR Inspection Code represents a good tool for proportionate enforcement

The Inspectorate of Brussels Environment operates within the framework of the Inspection Code. The Code, in force since 2015, merged two pieces of legislation on environmental inspections and environmental liability for better consistency. It also strengthened the right of defence against administrative sanctions. Finally, the Code made enforcement more proportionate by linking penalties to execution of compliance orders: fines are imposed if the offender does not return to compliance as prescribed by the Inspectorate.

All environmental offences provided for in the Inspection Code may be subject to an administrative fine as an alternative to criminal penalties. There are plans to modify the Code to allow the offender to pay an administrative fine to avoid criminal prosecution. This would increase the efficiency of enforcement by allowing the administrative penalty to proceed without waiting for the prosecutor's office to decline to pursue a criminal case.

Source: Country submission.

In all three regions, administrative and criminal fines cannot be imposed for the same offence. Competent authorities can impose an "alternative" administrative fine if the public prosecutor has not opened a criminal case within a certain period (usually several months) after receiving the notice of infringement. Public prosecutors generally advise environmental enforcement authorities of their decision to pursue a criminal case or not. This in itself is a good practice rarely seen in other OECD member countries. If the criminal case goes forward and the offender is convicted, criminal fines can amount to several million euros.

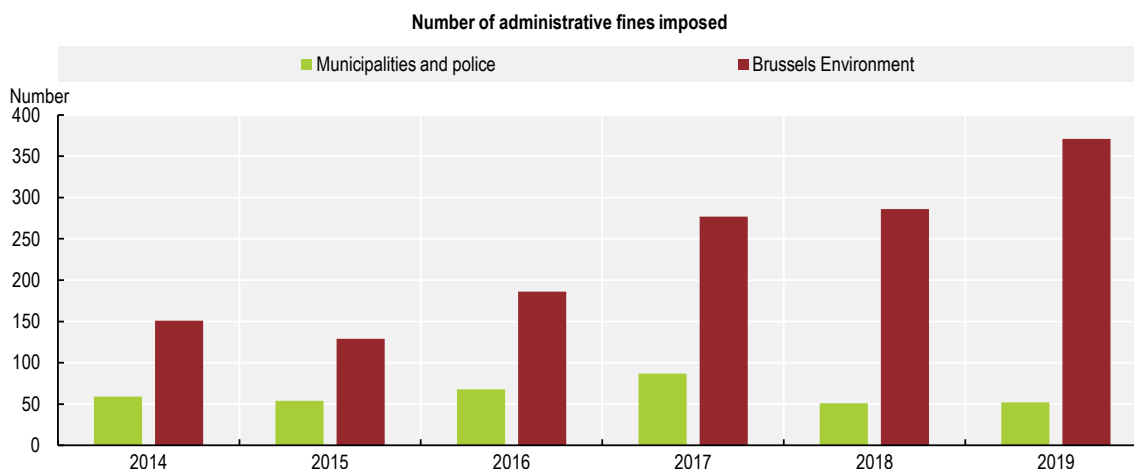
In an interesting example of good practice, an Environmental Expertise Network has been created across the offices of the country's public prosecutors. It aims at co-ordinating criminal enforcement actions with regard to issues of federal jurisdiction (e.g. transit and export of hazardous waste). It also disseminates expertise among public prosecutors' offices and supports prosecutors dealing with environmental cases (Paquet, Maréchal and Gerritsen, 2019).

The vast majority of environmental offences are not prosecuted and are punished by alternative administrative fines. In Wallonia, once an administrative fine has been paid, the breach can no longer be criminally prosecuted. The BCR expected to introduce a suspension mechanism for administrative fines

(a “conditional fine”) in 2020. This would allow Brussels Environment to impose a fine but to suspend and cancel the obligation to pay, subject to further conditions. The Flemish Region also has “exclusive” administrative fines. These are imposed for mild breaches that involve only limited environmental impact that does not warrant criminal prosecution. It could be advisable to define in a regulation which offences are punished by administrative sanctions only, thereby decriminalising less serious violations.

In the BCR, administrative fines can be up to EUR 125 000. Their level depends on the nature, gravity, context, frequency and duration of non-compliance, as well as mitigating and aggravating circumstances. Over 2014-19, the average administrative fine per notices of infringement issued by Brussels Environment was about EUR 9 500, whereas the average fine for breaches reported by municipalities and the police was about EUR 400. Both amounts are high by international standards. The number of administrative fines imposed in the BCR has increased significantly since 2014 (Figure 2.2).

Figure 2.2. The use of administrative fines is rising in the Brussels-Capital Region



Source: Country submission.

StatLink  <https://doi.org/10.1787/888934230870>

In Flanders, the collection rate for administrative fines was less than 75% at the end of 2017. If the offender does not pay the fine after receiving a formal notice, the file is transferred to the tax administration to recover the amount. This is a good practice conducive to higher collection rates and increased effectiveness of monetary penalties.

2.4.3. Environmental liability

All three regions have transposed requirements of the EU Environmental Liability Directive (ELD, 2004/35/EC) and adopted laws regulating liability for soil contamination. The regions demonstrate several effective approaches to remediation. For example, Flemish law requires remediation to achieve limit values for non-contaminated land. If that is not possible with best available technology and at a reasonable cost, then the requirement is to only manage the risks related to the contamination. The Flemish Region distinguishes between “new” and “historic” contamination. The latter pertains to damage occurring before October 1995, i.e. the entry into force of the previous clean-up statute. New contamination must be cleaned up if the established limit values for pollutant concentrations in the soil are exceeded. Remediation of historic damage is required only if it presents a significant public health and environmental risk. Similar provisions exist in Wallonia, with a time threshold of the 2007 transposition of the ELD, and in

the BCR, with reference to a 1993 ordinance. The BCR's remediation standards vary depending on the sensitivity class defined for each cadastral parcel of land in the regional land-use plan.

All three regions make the owner of the contaminated land responsible for remediation (with a few exemptions) even if the land owner has not caused the damage (Payá Pérez and Rodríguez Eugenio, 2018). The land owner can then legally pursue the responsible party to recover the remediation costs. This regime allows the government to readily assign responsibility for remediation. In this way, it avoids dealing with "orphan" contaminated sites where the party that caused the damage cannot be found or is financially insolvent – a challenge many OECD member countries struggle with.

Each region has set a target for remediation of contaminated sites. The deadline for remediating all sites with historic soil contamination is 2029 in the BCR and 2036 in Flanders (Payá Pérez and Rodríguez Eugenio, 2018). In Wallonia, there is a 2022 deadline for cleaning up priority contaminated sites. The Flemish Public Waste Agency (OVAM) has an extensive programme for registration and risk assessment of contaminated sites. It has already investigated about 45% of all sites in the Land Information Register (LIR) with potential risk of contamination. The LIR is fed by municipalities providing information about site locations, risks and investigation results. Of investigated sites, 84% did not require remediation. OVAM has also developed a publicly accessible online map that identifies all locations of soil investigations or remediation projects. OVAM claims to be on track with its remediation plans.

Equally good progress has been achieved in the BCR, where Brussels Environment has developed good practice codes for investigation and remediation experts to raise and standardise the quality of their work. The Brusoil web platform contains all data and information on soil assessment and remediation work. It allows direct interaction with soil contamination experts, notaries, companies and citizens. Like Flanders, the BCR has an online soil condition map based on a comprehensive inventory completed in 2015 and regularly updated.

According to the Flemish government, the private sector will bear about 70% of environmental remediation costs with the remainder borne by the public sector. Flanders has among the lowest shares of public burden of environmental remediation in the European Union (Payá Pérez and Rodríguez Eugenio, 2018). To complement effective enforcement of environmental liability, OVAM has developed an innovative procedure to deal with contaminated sites. Remediation costs can sometimes exceed the value of the land ("black fields"), which would force land owners into bankruptcy. OVAM can buy such a site for the symbolic price of EUR 1, finance and carry out the soil investigation and remediation, and then resell the land. Although the financial balance of these acquisitions is negative, the government recovers at least part of the remediation costs. This approach, applied on about 50 sites, as well as subsidies of up to EUR 200 000 per site for remediation works by land owners, require a significant budget. This expenditure is only partly funded through fees that OVAM charges for issuing "soil certificates",⁵ the rest coming from the general budget.

The other regions use even more public funds to pay for remediation efforts. In Wallonia, the private sector covers less than 40% of remediation costs, with EU funds contributing more than 20% (Payá Pérez and Rodríguez Eugenio, 2018). The BCR uses a different combination of financing tools to deal with soil contamination: grants, public treatment and sectoral funds (Box 2.3).

Box 2.3. Brussels-Capital uses a variety of financial tools to clean-up contaminated sites

The BCR financial assistance system for the study and treatment of soil contamination aims at increasing aid for orphan soil contamination, accelerating clean-up efforts, promoting the conversion of brownfield sites and facilitating property transactions.

Grants

The BCR has been using grants to help SMEs fulfil their soil clean-up obligations since 2007. Since 2014, all soil contamination assessments are eligible for grants, and so are remediation works as long as they concern orphan sites. The total amount of grants increased by 50% over 2015-19 from EUR 1.2 million to EUR 1.8 million.

Public treatment

Brussels Environment uses revenues from administrative fees for soil certificates (legal documents required for land transactions) to fund the full cost of studies and treatment of orphan sites. In 2019, the budget devoted to public treatment was EUR 165 000.

Sectoral funds

Several sectoral funds have been created to deal with specific contamination. A 2004 inter-regional and federal co-operation agreement established the Belgium-wide Bofas Remediation Fund to clean-up the soil of petrol stations. It is financed by a contribution levied on, and included in the price of, petrol and diesel. This fund was supposed to expire in 2019 but has been extended for a few more years.

Promaz is another country-wide fund. The fund, intended to address contamination due to spills from heating oil tanks, was expected to be launched in 2020. It will be financed from the surplus budget of the Bofas fund.

In addition, Brussels Environment is exploring sectoral funds for garages (car repair shops) and dry cleaners to deal with contamination of soil and groundwater by hydrocarbons and chlorinated solvents.

Source: Country submission.

The Walloon Region's 2018 Decree strengthened legal provisions on soil management and remediation. However, the region has an issue with the government's ability to recover remediation costs from private responsible parties. SPAQUE, Wallonia's public company charged with most soil remediation projects, does not attempt to recover such costs, and neither does the regional government (Court of Audit, 2019). This is contrary to the ELD requirements and the polluter pays principle and puts an additional financial burden on taxpayers.

Although no regulation obliges companies to insure activities with high risk to the environment, many buy such insurance voluntarily. Two types of insurance dealing specifically with environmental liability are available in Belgium: pollution liability insurance, which also covers historic contamination; and remediation cost cap insurance, which covers remediation cost overruns. However, these insurance products are less commonly used than regular all-risk insurance.

2.4.4. Promotion of compliance and green practices

Environmental authorities are paying increasing attention to promotion of compliance and green business practices. Environmental authorities, including inspectorates, have published various guidance documents on their websites. For example, online information helps farmers comply with requirements on fertiliser use

and nature protection (EC, 2019b). Wallonia and the BCR also support SMEs with advice and guidance. For example, Wallonia has a network of eco-advisers to help companies in all sectors in environmental matters. Brussels Environment distributes flyers on good waste management practices.

2.4.5. Voluntary business initiatives

The federal government has three sectoral agreements with industry to promote greener products. The first two agreements, signed in 2011, sought to increase the supply of eco-labelled detergents and wood products. The third, signed in 2018, aimed at stopping the use of micro-plastics in cosmetics and oral products. These agreements last a maximum of ten years.

Flanders has been at the forefront of developing voluntary agreements, using the experience of neighbouring Netherlands. Known as “Green Deals”, these agreements are forged between the regional government and other parties, including industry, local governments, non-governmental organisations (NGOs) and universities. The initiative has been running since 2017 and has involved over 1 000 parties (Box 2.4).

Box 2.4. Green Deals promote sustainability and good management in Flanders

As of early 2020, Flanders was implementing seven Green Deals in different economic sectors. They cover, among others:

- Shared mobility – over 100 companies, municipalities and NGOs committed to promoting car-pooling and bike sharing.
- Brewers – 15 breweries, including large multinational companies, engaged in measures to reduce water use in beer production.
- Wood heating – all relevant industrial actors signed up to measures to reduce air pollution by installing and maintaining more performant stoves.
- Biodiversity in business parks – more than 200 companies engaged in redesigning and greening their grounds to promote biodiversity.

Other Green Deals address circular procurement (134 parties), circular buildings (over 200 signatories) and sustainable urban delivery logistics (40 parties). Eight more Green Deals are being elaborated.

Source: Country submission.

Both Flanders and Wallonia have second-generation (2014-20) voluntary agreements with industry on energy efficiency (Chapter 1). The Walloon government and the region’s most energy-intensive industries (represented by their federation) have strengthened their agreement. It now covers renewable energy and includes an accounting system for CO₂ emissions associated with companies’ products and services. Participating industries were also invited to present their strategies to achieve specific targets for energy efficiency and emissions reduction by 2050 (Economidou et al., 2016).

Voluntary agreements are also used in the agricultural sector. As of 2018, over 3 000 farmers joined a management agreement with the Flemish Land Agency to enhance nature conservation and biodiversity protection on farmland. In return, farmers received an annual fee for giving up arable land. Flemish farmers are also part of a covenant to reduce enteric emissions from cattle, which contributes to the implementation of the region’s climate plan. As experience in the Netherlands has shown, voluntary agreements tend to produce mixed results in achieving environmental objectives. They cannot guarantee that agreed-upon goals will be met and lack effective sanctions if they fall short of these goals (OECD, 2015). Therefore, more challenging commitments have to be monitored more closely.

2.4.6. Environmental management system certifications

The annual number of new ISO 14001 certifications in Belgium almost doubled between 2007 and 2014 but has been slightly declining since (ISO, 2019). As of October 2019, Belgium had 74 organisations covering 742 sites certified to the EU Eco-Management and Audit Scheme (EMAS), placing it fifth on this score in the European Union (EC, 2020). There are few regulatory incentives for obtaining an environmental management system (EMS) certification. EMAS certification is considered in deciding on inspection frequency. In Flanders, operators that must perform an environmental audit have this requirement waived if they have a certified EMS. An EMS is also sometimes a factor in public procurement. However, more could be done to encourage EMS adoption.

The Belgian regions have been developing their own environmental certification programmes. For example, the BCR has created an Ecodynamic Company Label. It rewards public and private sector companies, non-profit organisations and institutions that reduce their environmental impact through initiatives in waste prevention and circular economy, rational energy use, staff mobility management and sustainable food.

2.4.7. Greening public procurement

The new federal law on public procurement (2016) emphasised life-cycle analysis of products and the use of labels in procurement procedures. In accordance with this law, the regions have developed their own green public procurement initiatives. The Flemish Region adopted a co-ordinated policy on public procurement in 2016. A central contact point in the government helps buyers make their public contracts more sustainable. In the Walloon Region, 110 public and private organisations signed a Green Deal on Circular Procurement to change their purchasing practices in November 2019. Both Flanders and Wallonia have set a target of 100% sustainable public procurement by 2020. However, this target was purely inspirational and will not be achieved, and progress is not adequately monitored. In Flanders, key government bodies have been reporting on procurement contracts valued at more than EUR 30 000 since January 2018. However, more systematic reporting on its sustainability aspects is not available. Wallonia recently created an Observatory of Public Procurement to obtain quantitative and qualitative reporting on awarded public contracts and set more realistic targets.

The BCR has developed a web platform for all bodies subject to the law on public procurement. It includes information on environment-related specifications for different product categories (office supplies, IT equipment and services, green electricity and vehicles). In addition, it offers newsletters, a helpdesk service on integrating environmental criteria into public procurement contracts, an agenda of relevant training courses, etc. The region has also adopted a Green Food label as part of its sustainable canteen programme for all public institutions.

2.5. Promoting environmental democracy

Belgium ratified the Aarhus Convention in 2003, and its Pollution Release and Transfer Register Protocol in 2009. Its federal and regional authorities implement open government and open data policies, which largely determine the mechanisms for public participation and access to environmental information.

2.5.1. Public participation in environmental decision making

Public participation is a major part of environmental decision making in Belgium. The EIA process includes a 30-day public consultation period and often a public hearing. Permit applications are subject to a public enquiry during which interested citizens can provide written remarks to the competent authorities, which

the latter must consider. The final decision is also made public and can be appealed. SEA of provincial and local land-use plans is also open to public participation.

The Belgian website for implementation of the Aarhus Convention offers a one-stop platform. It provides information on open and past public consultations on draft legislation, plans and programmes at the federal and regional levels. The same is planned for a single Brussels Environment's consultation webpage for the BCR. The Federal Council for Sustainable Development is a civil society forum with an important role in reviewing national environmental and sustainable development policies. Strategic advisory councils in Flanders provide opinions on both draft regulations and policy development documents such as green and white books. All five Flemish provinces and hundreds of municipalities have their own environmental advisory councils. Citizens also have a right to submit policy proposals.

The federal and regional governments provide financial support to NGOs, as well as trade unions in their environmental activities. This practice is in line with the 2007 EPR recommendation to reinforce partnerships between the government and non-governmental stakeholders. For example, the Walloon Trade Union Network for Environmental Awareness (*Réseau intersyndical de sensibilisation à l'environnement*) has been receiving financial support from the regional government since its creation in 1996 to support environmental management in enterprises. The Flemish government issued a 2015 regulation on supporting environmental NGOs (Paquet, Maréchal and Gerritsen, 2019).

2.5.2. Access to environmental information

The 2006 federal law on access to environmental information guarantees the right of access. It also provides for appeals before the Federal Commission of Appeal for access to environmental information against refusal of an information request or an insufficient response. The three regions have regulations similar to this federal act. For instance, the BCR has a regional commission for access to administrative documents, Wallonia – an appeal commission on access to information on environmental matters. All jurisdictions allow commercial confidentiality exemptions but not for information on pollution releases into the environment, which is always open to the public. Inspection reports are generally not published (except for EU-regulated large industrial installations) but are available upon request.

The federal and regional governments have established their own environmental information systems, including geoportals. They publish regular environmental and sustainable development reports. For example, the Flanders Environment Agency publishes regular analytical reports on the state of the environment, scenarios and outlooks, building on about 200 indicators. Belgium has also made significant progress in implementing the EU INSPIRE Directive (2007/2/EC) with regard to data policies, dataset identification and documentation of data and in creating a spatial data collection and dissemination infrastructure (EC, 2019b). The INSPIRE implementation has improved the comparability of environmental information across regions, as recommended by the 2007 EPR. However, insufficient comparability remains a problem in many data sets. The use of environmental data in economic and social policy making could also be improved.

2.5.3. Access to justice

Belgium has continued to improve citizens' access to justice in environmental matters in accordance with the respective 2007 EPR recommendation. Citizens can invoke article 23 of the Belgian Constitution, which provides a right to the protection of a healthy environment, directly in administrative and judicial procedures. NGOs are often involved in legal proceedings as they have the right to challenge any act or decision by the authorities. They can also demand the cessation of activities harmful to the environment. Finally, they can report potentially criminal acts to a public prosecutor who then decides whether to open a criminal case. However, there is no legal or financial assistance available to citizens on environmental

matters, which may complicate access to justice for lower income individuals (Paquet, Maréchal and Gerritsen, 2019).

The highest and most important general administrative court in Belgium is the Council of State. It is the ultimate appeals authority after all other administrative appeals have been exhausted. However, the appeal procedure before the Council of State is quite long.

Flanders has two special administrative courts relevant to environmental management, both operating since 2009. The Environmental Enforcement Court hears appeals against administrative sanctions imposed for violations of environmental law. Its decisions can be appealed before the Council of State. The Flemish Council for Permit Disputes deals with disputes regarding building and environmental permits, which is relevant to land use. The BCR has an Environmental Appeals Board (*Collège de l'environnement*), which has a right to review, overturn or modify permitting decisions of Brussels Environment. Administrative appeals involve much lower costs and shorter processing times than court actions.

It is not necessary to participate in the public consultation phase of an EIA, SEA or permitting procedure and to make comments during that period to have standing before the courts. Several changes to the Flemish legislation in 2017 made it impossible for citizens or NGOs to object to permits unless they filed a complaint during the public consultation period (EC, 2019b). However, the Constitutional Court overturned these changes in 2019.

An ombudsperson can be related to an administrative authority, a sector or a certain public company. There are ombudspersons designated by federal and regional law. The competent federal or regional ombudsperson investigates individual complaints of citizens concerning decisions and behaviour of certain administrative authorities or public companies, mediating between the parties. In general, a citizen can only complain to the ombudsperson after having unsuccessfully complained to the public authority (European e-Justice Portal, 2020).

2.5.4. Environmental education

The communities (responsible for education policies) and the regions (responsible for environmental policies) collaborate closely in the field of environmental education. For example, a 2011 co-operation agreement between the Walloon Region, the BCR and the French Community establishes compulsory environmental education and promotes sustainable development activities. About 85% of French-speaking schools report implementing sustainability practices. Since 2018, all Wallonia schools have free access to the learning platform *Drôle de planète* (Funny Planet). The francophone Academy for Research and Higher Education supports sustainability initiatives in universities and colleges, as recommended by the 2007 EPR. Flanders is implementing similar programmes for schools (Circular Edu-Action) and higher education (Ecocampus).

Regional governments actively support environmental awareness raising. The Walloon Region provides grants of up to EUR 20 000 to NGOs for such activities, for a total of EUR 4.3 million in 2018. Wallonia has 11 regional centres of initiation to the environment, which have engaged over 1.5 million people in the 20 years of their existence. BelExpo in Brussels, inaugurated in 2018, reaches out to 10-14 year-old children on climate change and urban environmental issues. The BCR also holds an annual Environment Festival and a Zero Waste Fair. The public's high environmental awareness manifests itself in volunteer activities. For example, Flanders has 20 000 citizen science volunteers who collect information on air pollution (EC, 2019b).

Recommendations on environmental governance and management

- Increase the effectiveness of co-ordination between the federal government and the regions, as well as among the regions, particularly in the fields of climate change, water resources management, and waste management and circular economy.
- Enhance formal environmental assessment of draft regional laws and regulations by integrating it into other procedures for regulatory quality assurance.
- Continue to reduce non-compliance by expanding the application of administrative fines that can be imposed without first resorting to prosecution and by improving collection of monetary penalties; consider decriminalising less serious offences by making them liable only to administrative sanctions.
- Strengthen performance management by environmental enforcement authorities by introducing outcome indicators of behaviour of the regulated community.
- Reduce the public burden of environmental remediation by ensuring that land owners or other responsible parties either clean-up contaminated sites directly or pay fees to constitute public funds earmarked for remediation.
- Further expand efforts to promote green business practices by creating regulatory incentives (e.g. inspection frequency) for environmental management system certification and scaling up and monitoring implementation of sustainable public procurement.
- Further enhance access to justice by providing legal and financial assistance to citizens on environmental matters.

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Notes

¹ There have been controversial cases where certain products (e.g. glyphosate, single-use plastic bags) were authorised by the federal authority on the basis of the European legal framework but prohibited by one of the regions.

² In line with its jurisdiction over Belgian territorial waters, the federal government adopted a Marine Spatial Plan for the Belgian part of the North Sea in 2014.

³ The Police and Inspections Department of the Directorate-General of Agriculture, Natural Resources and Environment is Wallonia's environmental enforcement authority. The Federal Environmental Inspectorate, part of the Federal Directorate-General for Environment, is responsible for checking compliance with legislation on shipments or release on the market of dangerous products.

⁴ The Flemish Department of Environment and Spatial Development planned a study in 2020 on intermediate outcome measurement for its extensive inspection and enforcement competences.

⁵ Soil certificates are required for land transactions to show that land is not contaminated. The Flemish Region is proposing to double the fee for such certificates (from the current EUR 54) to increase the revenue used to finance remediation activities.



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