

Recent developments in Belgian Environmental Law (January – July 2009)

Federal

- Further restrictions on night flights to and from Brussels Airport: no weekend flights between 00 – 06 h and max. 16.000 night slots, of which 5.000 for outgoing flights (MB 21 January 2009 and MB 6 April 2009)
- New version of ADR (transport of dangerous substances by road)
- Ratification of PRTR-protocol to the Aarhus Convention
- Tax reduction for dust filters on existing diesel cars

Regional

Flemish Region

- Entry into effect on 1 June 2009 (after modification and broadening of scope – nature conservation and natural resources) of Title XVI of the Decree on general provisions concerning environmental policy dealing with Enforcement Policy, Supervision, Sanctions and Safety Measures
 - o High Council on Environmental Policy (enforcement actors and stakeholders) – giving shape to a comprehensive environmental enforcement policy
 - o Environmental Enforcement Program (yearly)
 - o Environmental Enforcement Report (yearly)
 - o Uniform rules for supervision
 - o Distinction between 2 types of infringements (penal – non-penal); soft depenalisation
 - o Exclusive administrative fines (max. 275.000 EUR) / Alternative administrative fines (max. 1.375.000 EUR)
 - o Other administrative sanctions/measures (incl. forfeiture of illegal benefits)
 - o Environmental Administrative Tribunal: Environmental Enforcement Board (appeal to Council of State)
- Entry into effect on 1 September 2009 of the new Code on Town and Country Planning – relaxation of some of the rules – Administrative Tribunal = Council for Building Permits Contestation – Annulment procedure against some of the provisions before the Constitutional Court

- Update of Environmental Permitting System
 - o No full integration of building and environmental permits, but stronger coordination on the local level
 - o Reclassification of installations: extending competence of local government, more installations under the notification regime (general and sectoral conditions, no environmental permit)
 - o Update of general and sectoral operating conditions
- Approval of most of the local zoning plans (waste water treatment)
- New executive order on protected species (former legislation not in line with EC requirements)
- Premium for installation of dust filters on existing diesel cars

Walloon region

- Entry into force of the Decree of 5 June 2008 concerning supervision, sanctioning and restoration of violations of Environmental law (Update of Part VII of the First Book of the Environmental Code)
- Update of several general, sectoral and integral operating conditions under the Environmental Permitting System
- Regional allocation plan ETS
- Decree of 5 December 2008 concerning soil management
- Decree of 18 December 2008 concerning waste of extraction industries
- Updates of Water Code (Book II of the Environmental Code)

Brussels Capital Region

- Approval of plan to combat flooding
- Certification of electricity producing installations that qualify for green certificates
- New regulations on green procurement
- Further implementation of the ELD

- Update of environmental permitting system
- New regulation of bathing water quality

Jurisprudence

Constitutional Court

- 2/2009 – regional competence to apply strict standards for GSM-antennas – precautionary principle

Council of State:

- Relaxation of standing requirements for NGO's (not stabilized yet) (e.g. Council of State, N° 187.998, 17 November 2008; N° 192.085, 31 March 2009)
- Restrictive interpretation of possibility to refuse to disclose information in the nuclear field (N° 192.371, 14 April 2009)
- References for preliminary rulings to both the ECJ (Aarhus Directives) and the Constitutional Court (Art. 10, 11, 23 Constitution and Aarhus Convention) concerning the Walloon Building Permits of Regional Interest (that are ratified by the Parliament)