

National Report on Recent Developments in Environmental Law – Belgium

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Major recent developments in Environmental Law

During the past two years, in Belgium some interesting pieces of environmental legislation have been adopted. While the past years, especially 2025, have seen a general trend towards more relaxation and outright downgrading of environmental rules, several important laws and decrees have been adopted which could enhance environmental protection in Belgium.

Flemish Nitrogen Decree (2024)

In the wake of a string of landmark ruling of Flemish administrative courts, it became clear that the Flemish policy regarding atmospheric nitrogen emissions was flawed in light of Article 6 of the Habitats Directive. After years of political turmoil and the near ‘collapse’ of the Flemish government on this topic, the Flemish Nitrogen Decree (*Stikstofdecreet*) was finally adopted in January 2024.¹ The Decree sets out a policy framework designed to reduce nitrogen pollution in Flanders and protect vulnerable natural areas (Natura 2000 areas). Nitrogen emissions mainly come from ammonia released by livestock farming and nitrogen oxides from transport and industry. Excess nitrogen deposition damages biodiversity by altering soil and ecosystem conditions. It is one of the main obstacles against the achievement of the favourable conservation status for many natural habitats in Flanders.

The decree is built upon a so-called ‘programmatic approach to nitrogen’ (*programmatische aanpak stikstof – PAS*), whose aim it is to address the general environmental problems caused by atmospheric nitrogen pollution in a generic, integral matter. Rather than focussing on the individual permits, the Decree seeks to put forward binding emission reductions, that have to be met by the respective economic sectors. For instance, it sets reduction targets up to 2030, with the goal of cutting ammonia emissions by around 40%. Agriculture carries a large part of the burden because livestock farming is a major source of ammonia emissions. Under the provisions of the decree, farmers may need to reduce animal numbers, apply emission-reducing technologies, or adopt management measures such as improved stable systems and air scrubbers. Different livestock sectors have specific targets and intermediate milestones. These are binding targets, that need to be fully implemented in the applicable environmental permits by 2030.

The decree also affects industrial activities and permit applications, which are now assessed in light of the applicable programmatic approach. Certain limited nitrogen emissions, that stay well below the thresholds, no longer require a fully-fledged appropriate assessment. Support measures and compensation schemes exist for affected sectors. The overall aim is to balance

¹ Decreet over de programmatische aanpak stikstof, 24 january 2024.

environmental protection, economic activity, and legal certainty while helping Flanders meet EU nature conservation obligations.

Several organisations have challenged this decree before the Constitutional Court. From the farmers' side, the argument is raised that the legislation is discriminatory, since the standards for nitrogen emissions caused by the agricultural sector appear to be more strict than 'industrial' nitrogen emissions. From the side of the environmental NGOs, it is claimed that the Decree is too much based on uncertain predictions about future measures, which might be at odds with the precautionary principle, as laid down in Article 6(3) of the EU Habitats Directive. A ruling is expected by the end of 2026.

Groundwater regulations – Groundwater-train (2023)

The 2024 Flemish groundwater reform (“grondwatertrein”) encompasses a package of regulatory measures aimed at strengthening groundwater management in response to recurring droughts and increasing pressure on water resources.² In relation to drainage, the reform introduces a broader hydrological perspective by treating drainage not merely as a local technical intervention, but as an activity that can affect the wider groundwater system and biodiversity. Greater emphasis is placed on the impacts of structural drainage and dewatering practices, particularly where these may lower groundwater levels, reduce groundwater recharge, or affect surrounding ecosystems. Where previously, drainage activities often did not require a prior permit or authorisation (in some instance only a declaratory notification was required), the new regulations tighten the rules. Increasingly, both the construction of new drainage and, importantly, also the continuation of drainage activities, will require a prior environmental permit. This will especially be the case when the drainage activities take place nearby Natura 2000-sites. The assessment of permit applications will increasingly considers cumulative effects, meaning that attention is given not only to the impact on the project site itself but also to potential effects on adjacent areas and downstream environments. The reform forms part of a wider Flemish water management strategy based on the principle of retaining, infiltrating and buffering water before discharging it, with the overall objective of improving water resilience and reducing vulnerability to drought. Likewise, new rules on water management in polder areas have been adopted, which will now require the competent authorities to establish water level management plans, based upon prior participation and EIA and/or appropriate assessment (*Peilbesluiten*).³

Ecocide (2024)

Belgium became one of the first European countries to formally criminalize ecocide through reforms to its new Criminal Code adopted in February 2024.⁴ Ecocide was introduced as a distinct criminal offence intended to target the most severe forms of environmental destruction.

Under the law, ecocide is defined as the deliberate commission (by action or omission) of an unlawful act causing serious, widespread and long-term environmental damage, while knowing that such damage would occur. All three elements are cumulative: the damage must be serious, widespread, *and* long-term.

² Besluit tot wijziging van titel II van het VLAREM, het VLAREL en het Omgevingsvergunningsbesluit, wat betreft de waterregelgeving, 2 June

³ Besluit van de Vlaamse Regering over het peilbeheer op onbevaarbare waterlopen en grachten, 5 May 2023.

⁴ Wet tot invoering van Boek I en Boek II van het Strafwetboek, 22 February 2025.

The law further clarifies these terms:

- *Serious damage*: highly harmful effects on ecosystems, biodiversity, human health, or natural resources.
- *Widespread damage*: impacts extending beyond a limited area, crossing borders, or affecting entire ecosystems or species.
- *Long-term damage*: irreversible damage or damage that cannot reasonably recover through natural regeneration.

However, the devil is in the detail. An important legal nuance is that many headlines presented Belgium as broadly criminalizing all large-scale environmental destruction. In practice, the scope is narrower because Belgium is a federal state. The ecocide offence mainly applies where the matter falls under federal competences or international obligations. Federal competences in environmental matters are largely limited to marine protection, nuclear law and pesticides approval. Areas such as much environmental permitting, air pollution, land use, and parts of nature management are largely regional competences (Flanders, Wallonia, Brussels). This seems to suggest the practical impact of the new legislation might be limited.

Recently the text has been amended by an Act of 16 March to comply with the new Eco Crime Directive.

For projects in a Flemish environmental context (nitrogen policy, drainage, permits, groundwater, agriculture), this means that ordinary environmental infringements generally do not automatically become ecocide cases. A permit breach or environmental impact would still usually be dealt with through existing environmental and administrative law.

No subsidies for environmental litigation costs

In Flanders, political mainstream seems to accept that subsidising environmental NGOs that sue the Flemish authorities is a no go-zone. In the past years, several pieces of legislation and decisions have been taken implementing this rationale. The debate concerns whether Flemish environmental and nature organizations that receive public subsidies should be allowed to use these funds to cover legal proceedings, including cases brought against government decisions. Environmental organizations receive operating subsidies through a recognition and funding system, and proposals have been made to clarify or restrict the purposes for which these public funds may be used, including legal costs. Supporters of such restrictions argue that taxpayer money should not finance litigation against the government, while critics argue that environmental organizations play an important role in environmental oversight and enforcement and that limiting the use of funds for legal actions could weaken access to justice. Importantly, restricting the use of subsidies for legal costs would not necessarily prevent organizations from initiating legal proceedings, as access to justice is protected by broader legal principles, including obligations under the Aarhus Convention. The Belgian Council of State has repeatedly underlined that this rationale clashed with, amongst other things, Article 3(5) of the Aarhus Convention.⁵

⁵ See: RAAD VAN STATE afdeling Wetgeving advies 78.299/1-3-16 van 13 oktober 2025.

New permitting rules – Gemengde Vergunningscommissie (GVC)(2025)

In Flanders, several attempts have been undertaken to streamline environmental permitting procedures. Whereas the number of annulments of environmental permits remains relatively limited, several economic organisations voiced concerns over the increased legal obstacles they encounter during the permitting processes. The 2025 final report of the Flemish Mixed (Expert) Permitting Commission contains around 45 recommendations aimed at making the Flemish permitting system more legally certain, efficient, and coherent.⁶ The commission concludes that the current system is overly complex, slow, and unpredictable, creating uncertainty for applicants, authorities, and courts. Its recommendations focus on five main themes: improving upfront clarity before applications through stronger pre-consultation and clearer rules; streamlining permitting procedures by reducing inconsistencies between authorities and standardising advisory practices; reforming appeal and litigation processes to make them faster and more solution-oriented, including a reassessment of standing and participation requirements; improving the clarity and binding nature of environmental and spatial planning rules by reducing reliance on non-binding guidance; and ensuring that permitting decisions better balance legal compliance with broader societal, economic, and strategic considerations. Overall, the report calls for a more integrated and predictable permitting framework that reduces fragmentation across administrations and supports faster, more legally robust decision-making in Flanders. Several environmental NGOs have criticised the advice for being too one-sided and pro-businesses, whilst also going against the well-established Aarhus-principles in the context of environmental litigation. The report, amongst other things, also recommended a revision of Article 23 of the Constitution.

Climate change litigation

Constitutional law – article 23 (right to a healthy environment)

The past years, the Belgian Constitutional Court released some interesting decisions in which it touched upon the link between Article 23 of the Belgian Constitution, which included a right to a healthy environment, and climate change. For instance, in December 2024, the Constitutional Court, clarified that the Flemish legislator, when laying out its compensation schemes in the context of urban planning, is not required to motivate to what extent the new legislation is in line with the climate objectives, as set out by EU climate law. Also, Article 23 of the Constitution does not lead to that conclusion.⁷ No specific motivation duty can be inferred from the EU legislation, nor from Article 23 of the Constitution.⁸

Interestingly, however, the Constitutional Court has also used the right to a healthy environment in Article 23 of the Constitution, in combination with the principle of sustainability, as included in Article 7bis, to balance measures, aimed at reducing CO₂-emissions, with the right to property, as mentioned in Article 1 to the Additional Protocol to the European Convention on Human Rights (ECHR). For instance, in a ruling of 10 November 2022, the Court had to assess the constitutionality of a Flemish regional decree of 22 October 2021 that amended the Energy Decree of 8 May 2009 by imposing a ban on the installation and replacement of fuel oil boilers in the Flemish Region. This was part of environmental and climate policy aimed at reducing reliance on fuel oil and promoting cleaner heating systems. The claimant, amongst others, argued that the ban exceeded the competences of the Flemish Region and interfered with federal

⁶ <https://omgeving.vlaanderen.be/sites/default/files/2025-10/20251006-Eindrapport-GC-DEF.pdf>

⁷ Constitutional Court (2024) ECLI:BE:GHCC:2024:ARR.158.

⁸ Ibid, B.28.3-B.32.

powers, violated free trade and freedom of enterprise and the free movement of goods, as put forward by EU law, by discriminating against fuel oil boiler suppliers and owners and discriminated based on whether owners could access a natural gas network. In assessing the second claim, the Court referred to Article 7bis of the Constitution, which obliges the Belgian authorities to pursue the objectives of sustainable development and intergenerational solidarity when executing their respective powers. The Court held that, taking into account this provision, the Flemish legislator could prioritize the phasing out of the most polluting source of fuel boilers on its territory.⁹ The Constitutional Court also referenced the right to a healthy environment, as laid down in Article 23 of the Constitution, when balancing the restriction with the right to property.¹⁰ This rationale was recently reiterated in the Court's case law on air quality; it used a similar approach when rejecting the legal claims against the introduction of the Low Emission Zone in the Brussels Region, to improve air quality by restricting the most polluting vehicles, in 2019.¹¹ On 11 September 2025, the Constitutional Court issued a decision (Case No. 115/2025) that suspended and later annulled the Brussels regional ordinance of 21 March 2025 which had *postponed* the LEZ tightening from 2025 to 2027. The Court ruled that the postponement violated the constitutional 'standstill principle' derived from Article 23 of the Belgian Constitution, which protects the right to health and to a healthy environment.¹²

Criminal law – climate activism and civil disobedience

However, in relation to climate activism, civil disobedience and criminal offences, reference can be made to a potentially influential ruling of the Constitutional Court regarding a criminal case in which three individuals are being prosecuted for having stolen two advertising posters with the intention of writing a slogan on them and using them in the context of a demonstration against the current policy promoting electric vehicles. This constituted 'theft', as defined in Article 461 of the Belgian Criminal Code, namely the unlawful appropriation of property that wholly or partially belongs to another, with the intent to appropriate it for oneself or a third party. In a judgment of 14 December 2023, the Court of First Instance of Liège, Liège division, declared those charges proven but acknowledged the existence of a ground for exemption from punishment derived from the right to freedom of expression. Both the defendants and the Public Prosecutor lodged appeals against the aforementioned judgment. In a judgment of 9 January 2025, the Court of Appeal of Liège held that it could not follow the reasoning of the Court of First Instance, which had constructed a ground for exemption from punishment whose scope could potentially have enormous consequences. Article 78 of the Criminal Code shows that grounds for exemption from punishment are determined by law, even though they may be interpreted broadly by the courts insofar as such interpretation is favourable to the defendant. The Court of Appeal of Liège noted that the Court of Cassation, in an extremely specific case, had applied a ground for exemption to certain facts directly derived from Article 8 of the European Convention on Human Rights. In the present case, the defendants seek to situate their actions within the precise context of denouncing a climate policy deemed insufficiently ambitious and endangering human rights. In particular they rely on the exercise of freedom of expression through non-violent ecological civil disobedience. In the context outlined above, the Court of Appeal of Liège notes that Article 78 of the Penal Code does not allow the criminal judge to conduct a proportionality assessment to evaluate offences committed by environmental activists who rely on the exercise of their freedom of expression, even in cases where their actions respond to an overriding societal need. Consequently, before ruling on the merits of the

⁹ Constitutional Court (2022), ECLI:BE:GHCC:2022:ARR.147, B.19.2.

¹⁰ Ibid, B.32.2.

¹¹ Constitutional Court (2019), nr. 37/2019.

¹² Constitutional Court (2025), ECLI:BE:GHCC:2025:ARR.115, B.11.2-B.11.3.

appeals, the Court of Appeal raises a preliminary question, which was referred to the Constitutional Court.

In its ruling of 11 December 2025, the latter refers to the jurisprudence of the European Court of Human Rights (regarding Article 10 ECHR) and the Climate Change Advisory Opinion of the International Court of Justice of July 2025.¹³ It follows that national authorities enjoy a particularly narrow margin of appreciation in this area and must exercise restraint when initiating criminal proceedings in the context of the exercise of freedom of expression, which in this case is related to actions aimed at addressing climate change. Where criminal proceedings are initiated in such a context, the criminal court is required to conduct a proportionality review of any interference with the right to freedom of expression. This review may be carried out within the framework of the application of other criminal provisions. First, the judge must generally respect the principle of proportionality of sentences and ensure that the sanction imposed corresponds appropriately to the seriousness of the offense. The judge is also obligated to provide a reasoned explanation for the chosen sentence.

In this regard, depending on the specific circumstances of the case, the judge may select a penalty from a sufficiently broad range of sanctions. Article 463, paragraph 1, of the Criminal Code provides that the offense of theft is punishable by imprisonment ranging from one month to five years, and a fine of twenty-six to five hundred euros. Moreover, the prescribed penalties may be reduced in the presence of mitigating circumstances, which, unlike excusable grounds, are not exhaustively listed by law but are left to the judge's discretion. In such cases, the judge may reduce the duration of imprisonment, the amount of the fine, or impose only one of the two penalties. Depending on the circumstances, the judge may also choose to suspend the pronouncement of the sentence or grant a stay of execution. Finally, a mitigating circumstance may arise from the rights and freedoms guaranteed by the ECHR.¹⁴

Planning law & climate adaptation - We Are Nature-decision (2025)

In the first ever climate adaptation ruling of Belgium, the Brussels Court of First Instance of Brussels held the Brussels-Capital Region liable for insufficiently regulating the climate impact of urban development projects in a ruling of October 29, 2025.¹⁵ In the *We Are Nature*-case, the court noted, among other things, that the Region had failed to pursue a climate policy capable of withstanding scrutiny under Articles 2 and 8 ECHR, partly building on the judgment of the Brussels Court of Appeal in *Klimaatzaak* (in which the Region was also a party). It was further established that the Region currently lacks up-to-date data necessary to assess the extent to which existing green spaces absorb carbon in their role as carbon sinks — a requirement stemming, inter alia, from international and EU legislation on land use, land-use change and forestry (LULUCF). In this light, the Court held that it was clear that the current spatial planning instruments, such as the Regional Land Use Plan (in French: *Plan Régional d'Affectation du Sol* – PRAS) and the Regional Urban Planning Regulation (in French: *Règlement Régional d'Urbanisme* – RRU), dating from 2001 and 2006, are manifestly outdated, as they insufficiently integrate the challenges of climate change - both in terms of mitigation and adaptation. As a remedial measure, the court imposed a temporary moratorium on the development of vacant plots larger than 0.5 hectares, until the revision of the PRAS or, at the latest, until 31 December 2026. The moratorium was criticized as being contrary to the

¹³ Constitutional Court (2025) ECLI:BE:GHCC:2025:ARR.172.

¹⁴ Ibid, B.8.2 and B.8.3.

¹⁵ Brussels Court of First Instance (2025) no 24/885/A.

separation of power, although some voices qualify the injunction as ‘moderate’, since it will already expire at the end of 2026.¹⁶

Tort Law - Belgian farmer case (2025-2026)

In March 2024, Belgian farmer Hugues Falys filed Belgium’s first national climate lawsuit against the French oil and gas giant TotalEnergies before the Enterprise Court in Tournai. He is supported by three NGOs (FIAN, Greenpeace Belgium and the Ligue des droits humains) arguing that TotalEnergies’ role as a major emitter of greenhouse gases has materially contributed to climate change and therefore harmed his farm through extreme weather events such as droughts, heatwaves, and storms.¹⁷ The claim is based on Belgian civil liability law (Articles 1382 and 1383 of the old Civil Code), under which anyone whose fault causes damage must repair it, and seeks both compensation for climate-related losses and a court order requiring TotalEnergies to phase out fossil fuels, cut emissions, and adopt a transition plan aligned with the Paris Agreement. Although the Belgian farmer case is grounded in civil liability rather than statutory human rights instruments, the involvement of human rights NGOs and its demands for corporate accountability link it to broader arguments that major emitters have responsibilities not to harm people through foreseeable climate impacts.¹⁸ The case sits within a global trend of climate litigation that often invokes human rights principles to argue that both states and corporations must do their fair share to prevent climate harms. In particular, the claimants in the case also submitted that, in assessing the behaviour expected from a normally prudent and diligent company, account must also be taken of the human rights enshrined in a number of international and national instruments.

In an interlocutory ruling of 18 March 2026 the Tournai Commercial Court recognized the admissibility of the lawsuit. However, it paused proceedings on the merits of the case, pending the outcome of a similar climate case against TotalEnergies in a Paris court.¹⁹ Importantly, the Tournai Commercial Court confirmed that, in matters of tort and quasi-tort, Article 7(2) of the Brussels I Regulation provides plaintiffs with an alternative jurisdictional basis to the defendant’s domicile (in casu: France). Plaintiffs may therefore bring proceedings either before the courts of the place where the harmful event occurred or before those of the place where the damage materialised. The defendant argued that the diffuse nature of greenhouse gas emissions rendered it impossible to identify a single place where the causal event occurred. The Court, however, rejected this argument, holding that where damage is alleged to have occurred within the territory of the forum State, the plaintiff may rely on that connecting factor irrespective of whether the place of the causal event can be geographically identified.²⁰

The Court also accepted the standing of the plaintiff, Hugues Falys, in light of Article 17 of the Belgian Procedural Code. In doing so, it made reference to Article 9(3) of the Aarhus Convention, whose goal is to facilitate access to courts in environmental cases.²¹ The fact that the plaintiff had acknowledged during an interview that the real goal of his court cases was not to obtain compensation of his personal damages but rather see the defendant forced to limit his

¹⁶ See for instance: Geert Bourgeois, ‘Tijd om artikel 23 van de Grondwet te herschrijven’, De Standaard, 19 November 2025.

¹⁷ For more information about the case, see: <https://www.thefarmercase.be/en/the-court-case/>.

¹⁸ We draw on the written summons of the claimant in the Belgian Farmer Case, to be consulted (in English) here: https://cdn.climatepolicyradar.org/navigator/XAA/2024/hugues-falys-fian-greenpeace-ligue-des-droits-humains-v-totalenergies-the-farmer-case_4348c2b644e89092bebe641026e5649e.pdf.

¹⁹ Tournai Commercial Court (2026) no. 2026/462, p.

²⁰ Ibid, p. 9-10.

²¹ Ibid, p. 12-13

greenhouse gas emissions, does not compromise his standing in the present case. The Court held that, the fact that the plaintiff was able to quantify the personal damages suffered by climate change, implies that he has a personal interest in the case. As a result, the court case does not amount to a (under Belgian law) ‘forbidden’ *actio popularis*. The fact that other international courts, such as the European of Human Rights (cf. KlimaSeniorinnen) apply stricter standing rules, does not have any bearing on the assessment of the standing of the plaintiff in the present case, which is to be assessed in light of Belgian procedural law. Also the intervention of several NGOs, was declared admissible, since they sought compensation of alleged moral damage, in light of their specific statutory objectives.²²

With respect to the stay of proceedings, the Tournai Commercial Court applied Article 30(1) of the Brussels I Regulation, according to which a court second seised may stay proceedings where related actions are pending before courts of different Member States, provided that the actions are so closely connected that hearing them separately would create a risk of irreconcilable judgments. The Court found such a connection to exist with parallel proceedings pending in Paris against the defendant, TotalEnergies, since both actions ultimately seek to compel the company to reduce its greenhouse gas emissions and fossil fuel production on a global scale. As both proceedings pursue substantially similar objectives, the Court considered there to be a genuine risk of inconsistent outcomes.²³

Importantly, the Court emphasised that its decision to stay proceedings did not constitute a waiver of jurisdiction, a delegation of judicial authority, or a form of subordination to the French court. This suggests that the Tournai Commercial Court considered itself to remain fully seized and intended to exercise its jurisdiction independently once the proceedings resumed.

Planning law, EIA and climate change – (2021-2026)

Until recently, relatively limited attention was paid to the integration of climate considerations, as substantive benchmark, into planning or environmental permit procedures in Belgium. Implicitly, one assumed that global impacts cannot serve as concrete baseline in the context of project review, where most of the attention goes to avoiding local nuisance.

That well-entrenched view on the substantive and material scope of the environmental permitting policy was about to drastically change in 2021, especially in Flanders, with the culmination of a legal dispute regarding a planning and environmental permit (*omgevingsvergunning*) for a petrol station in the Flemish municipality of Boechout. Initially, the permit application was declined by the local municipality based on its climate pledges, among other things. To be more precise, the municipality of Boechout had signed the Covenant of Mayors (*Burgemeesterconvenant*), which included the ambition to reduce the carbon footprint of European towns and cities towards and beyond the EU climate commitments²⁴, and argued that authorising a new petrol station, which moreover did not offer any options for charging electric cars, would run counter to these pledges. This decision was overturned on appeal by the Provincial authority of Antwerp (*Deputatie*), which stated that global climate-related considerations had no role to play in assessing the compatibility of a permit application with the applicable environmental and spatial planning rules. In particular, the provincial

²² Ibid, pp. 12-13.

²³ Ibid, pp. 15-18.

²⁴ See more on the Covenant of Mayors: Hendrik Schoukens, ‘Project review, Fossil infrastructure and Climate Change: The Flemish Petrol Station Case as an Unexpected Breakthrough’ in Ivano Alogna et al. (eds), *Climate Change Litigation in Europe* (Intersentia 2023), p. 287 et seq.

authority held that the climate-related considerations raised by the local municipality did not qualify as environment-related considerations and could thus not be used as an argument to reject the permit application. The municipality of Boechout decided to challenge the legality of this rationale before the Flemish Council for Permit Disputes in 2020.

In a first decision of 21 April 2021, the Council sided with the municipality and suspended the permit with reference to Article 4.3.4 of the Flemish Spatial Planning Code.²⁵ This provision allows permitting authorities to decline permit applications which clash with the sectoral objectives and due diligence obligations that are applicable in other environmental policies. International, EU environmental or other sectoral obligations which, although they lack direct effect, force competent authorities to implement certain environmental objectives fall within the scope of the said provision. The municipality of Boechout had put forward that this provision provides a legal ground to take into account the climate pledges that were included in the Covenant of Mayors. The Council agreed, stating that ‘care for climate’ can be included in the material scope of Article 4.3.4 of the Flemish Spatial Planning Code (*Vlaamse Codex Ruimtelijke Ordening*). Whereas the Council acknowledged that the binding force of the climate targets embedded in the Paris Agreement remained rather ambivalent, the signing of the Covenant of Mayors reasserted a duty of care (*zorgplicht*) for climate incumbent on the local authorities.

In its subsequent decision of 9 December 2021, the Council reaffirmed its position by annulling the permit. However, it added two additional lines of argumentation to endorse its earlier decision in the preliminary proceedings.²⁶ First, it recalled Article 1.1.4 of the Flemish Spatial Planning Code, which stipulated that the rights of future generations are to be taken into account when executing the Flemish spatial planning policy. This provision indeed puts forward the principle of sustainable spatial planning (*duurzame ruimtelijke ordening*), which ought to be at the heart of the Flemish spatial planning policy and, according to the Court, can be used as lever to integrate climate considerations into permitting procedures. Second, the Council again repeated that the climate commitments of the municipality under the Covenant are not merely voluntary. It cannot be ruled out, the Council stated, that citizens will over time also hold local municipalities accountable for not meeting their climate targets. It is the first time that climate liability was also invoked in the context of local authorities. Third, the Council indicated that achieving the climate pledges does not only require additional efforts on the part of the municipality, but also on the part of the inhabitants and companies present on the territory of the municipality. This was used as an additional argument for a more straightforward integration of climate considerations into the permitting procedures. At least, it leaves open the possibility for municipalities to do so.

That position met with considerable criticism. Nevertheless, the Council repeated this rather revolutionary stance in more recent case law: in January 2023 in a case concerning the installation of wind turbines in the municipality of Ternat²⁷, in August 2023 even in a ‘petrol station bis’ ruling, this time in the Antwerp municipality of Essen²⁸, and in March 2025 in a dispute regarding a refusal to permit the installation of wind turbines near a war cemetery.²⁹

²⁵ Flemish Council of Permit Disputes (2021), no. RvVb-S-2021-0923.

²⁶ Flemish Council of Permit Disputes (2021) no. RvVb-A-2122-0276.

²⁷ Flemish Council of Permit Disputes (2023) no. RvB-A-2223-0408

²⁸ Flemish Council of Permit Disputes (2023) no. RvVb-A-2223-1185.

²⁹ Flemish Council of Permit Disputes (2025) no. RvVb-A-2425-0634.

In the meantime, also EIA-legislation was increasingly used as a benchmark to check authorisations for private, fossil-based projects. Interestingly, the leverage of the EIA (Environmental Impact Assessment) legislation in the context of climate cases - aimed at specific projects - has only been discovered relatively recently. In recent years, most attention has gone to lawsuits filed against permits for new gas-fired power plants. The ruling of the Flemish Council for Permit Disputes of 8 June 2023 concerning the gas plant in Wondelgem contains a hint of a more conservative approach. In that case, it was argued that the project EIA for a gas plant permit should also take into account the scope 3 emissions related to gas extraction.³⁰ The Council appears not to accept this argument. In doing so, the Council relies on the definition of the term ‘project’ in Article 4.1.1., §1, 5° of the Decree on General Principles Environmental Policy (*Decreet Algemene Bepalingen Milieubeleid*). The Council assumes that this definition, even when interpreted broadly, does not allow the activity of natural gas extraction and transport to be considered part of an existing project, such as a gas-fired power plant. The reference in the definition of ‘project’ to the ‘extraction of natural resources’ does not change this.³¹ This reference merely clarifies that interventions for the extraction of natural resources must be regarded as a (separate) intervention in the natural environment. However, one cannot infer from this that such interventions, when indirectly linked to another type of project, such as a gas-fired power installation, should also be treated as part of that project. A similar line of reasoning is found in a more recent ruling of 8 August 2024 regarding a newly permitted gas plant in Tessenderlo.³² Here too, the Council appears reluctant to consider scope 3 emissions within the project EIA.³³ As of today, the available case-law seems not prepared to opt for a more broad inclusion of indirect emissions (scope 3-emissions) into EIA. However, there currently is a pending court case, regarding the review of a permit for an ethane cracker, in which this argument is raised. In light of recent developments in European and international case law, the margins for leaving scope 3-emissions completely outside the scope of an EIA remain more limited.³⁴

Importantly, however, this more recent case law on gas plants implicitly shows that climate-related aspects, including at least the direct emissions (scope 1), must indeed be addressed in the environmental impact assessment of fossil fuel project developments. In the contested permits, there was always a justification regarding the compatibility of the gas plants with climate objectives, partly also applying the ETS-rules. It was also argued that net-zero CO₂ emissions by 2050 would be guaranteed, in line with the Flemish Climate Strategy 2050. This implicit approach was also explicitly confirmed in more recent rulings concerning a permit for the further operation of a regional airport³⁵, a permit for the renewal and modification of a livestock farm³⁶, a permit for the construction of a new natural gas pipeline³⁷, and a permit for the construction of a business complex.³⁸

In the other two regions, Wallonia and Brussels-Capital, similar litigation is scarce. In one case concerning the airport of Bierset, several NGOs have argued that the EIA for the renewed permit did not address scope 3-emissions, an argument that was accepted by the advocate-

³⁰ Flemish Council of Permit Disputes (2023) no. RvVb-A-2223-0941.

³¹ Ibid.

³² Flemish Council for Permit Disputes (2024) no. RvVb-A-2324-0979.

³³ Ibid.

³⁴ See: EFTA Court (2025) no. E-18/24.

³⁵ Flemish Council for Permit Disputes (2024) no. RvVb-A-2425-0115.

³⁶ Flemish Council for Permit Disputes (2024) no. RvVb-A-2425-0518.

³⁷ Flemish Council for Permit Disputes (2024) no. RvVb-UDN-2425-0595

³⁸ Flemish Council for Permit Disputes (2025) no. RvVb-A-2526-0347.

general ('auditeur') in his (non-binding) opinion.³⁹ However, in order to avoid an annulation, a new permit was granted.

³⁹ <https://www.canopea.be/liege-airport-ou-est-le-gouvernement-du-climat/>.