Annex I

Belgium

Improving financial security in the context of the Environmental Liability Directive
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Prepared by:
Valerie Fogleman, Stevens & Bolton LLP,
Cardiff University School of Law and Politics
Kristel De Smedt, Maastricht University Faculty of Law
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1. **INTRODUCTION**

Financial security for the prevention and remediation of environmental damage under the ELD in the form of stand-alone environmental insurance policies is widely available in Belgium. Extensions to general liability policies that provide cover for the remediation of sudden and accidental off-site pollution from an operator’s activities at its own site are also widely available.

Environmental extensions to property policies are available but only to a limited extent. Belgium is a federal state and has two types of federated entities: regions; and communities. The regions (the Walloon Region, the Flemish Region and the Brussels-Capital Region) have competence for the majority of environmental matters. Therefore, the ELD is transposed mainly at regional level. Specific competence on elements relating to the territorial sea and the market for genetically modified organisms is reserved for the Federal Government.

The Federal Government transposed the ELD by:

- Royal Order of 3 August 2007 published in the Belgian Monitor of 20 September 2007, with regard to the prevention and remediing of environmental damage when placing on the market genetically modified organisms or products containing genetically modified organisms *(Koninklijk besluit betreffende de preventie en het herstel van milieuschade bij het inde handel brengen van genetisch gomodificeerde organismen or van producten die er bevatten);*²
- Royal Order of 25 October 2007 published in the Belgian Monitor of 9 November 2007, on remedial measures following significant impairment of the marine environment and recovery of the costs of preventive, confinement and remedial measures *(Koninklijk besluit betreffende herstelmaatregelen ingevolge de aanmerkelijke aantasting van het mariene milieu en de terugvordering van de kosten voor de preventieve maatregelen, inperkingsmaatregelen en herstelmaatregelen);*³ and
- Royal Order of 8 November 2007 published in the Belgian Monitor of 9 November 2007, on the prevention and remediing of environmental damage resulting from road, rail, water or air transportation: alien plant species and alien animal species, and their carcasses following their import, export and transit; as well as wastes during their transit *(Koninklijk besluit betreffende de preventie en het herstel van milieuschade tengevolge van het vervoer over de weg, per spoor, over de binnenwateren of in de...

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² Koninklijk besluit betreffende de preventie en het herstel van milieuschade bij het inde handel brengen van genetisch gomodificeerde organismen or van producten die er bevatten; [http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007080357&table_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007080357&table_name=wet) (in Dutch)

³ Koninklijk besluit betreffende herstelmaatregelen ingevolge de aanmerkelijke aantasting van het mariene milieu en de terugvordering van de kosten voor de preventieve maatregelen, inperkingsmaatregelen en herstelmaatregelen; [http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl](http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl) (in Dutch)
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The regions transposed the ELD through different decrees and ordinances, with a similar structure to that of the ELD.

The Flemish Region mainly transposed the ELD through the Decree of 21 December 2007 supplementing the Decree of 5 April 1995 with a title XVI “Supervision, enforcement and safety measures” (Decreet tot aanvulling van het decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid met een titel XV Milieuschade, tot omzetting van de Richtlijn 2004/35/EG van het Europees Parlement en de Raad van 21 april 2004 betreffende de milieuaansprakelijkheid met betrekking tot het voorkomen en herstellen van milieuschade).5

The main transposing legislation for the Walloon Region is the Decree of 22 November 2007 amending Book I of the Environment Code (Décret modifiant le Livre Ier du Code de l’Environnement en ce qui concerne la prévention et la réparation des dommages environnementaux).6

The Brussels-Capital Region transposed the ELD through the Code of 25 March 1999 on inspections, prevention, reporting and sanctioning of environmental offences and on environmental liability (Code du 25 mars 1999 de l’inspection, la prévention, la constatation et la répression des infractions en matière d’environnement et de la responsabilité environnementale).7

Neither the Federal Government nor any of the regions in Belgium have imposed mandatory financial security for ELD liabilities.

The regions have imposed mandatory financial security for various businesses, mainly businesses that carry out operations involving waste and the remediation of oil pollution (see section 13.3 below).

2. ENVIRONMENTAL INSURANCE MARKET

The environmental insurance market in Belgium is well developed. Stand-alone environmental insurance policies that provide cover for all liabilities under the ELD including other types of


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Environmental damage in addition to pollution are widely available. The policies are offered by multinational insurers as well as insurers based in, or with branches in, Belgium. All the insurers offer stand-alone environmental insurance policies to small and medium sized businesses and large businesses with sites and/or operations only in Belgium as well as businesses with sites and/or operations in Belgium and other States. Demand for them is good.

Environmental extensions to general liability policies are also widely available. Cover under the extensions is limited to the remediation of off-site pollution from a sudden and accidental incident on an insured’s site. The extensions do not provide cover for ELD liabilities and most have very low sub-limits. They tend to be limited to pollution and do not cover other types of environmental damage. Demand for them is good.

Environmental extensions to property policies are available but only to a very limited extent. Demand for them is low.

2.1. Commercial insurers

2.1.1. Number of insurers

Approximately 11 insurers including multinational insurers as well as those based in, or with branches in, Belgium offer stand-alone environmental insurance policies. In comparison, 27 insurers offer general liability insurance policies in Belgium.

2.1.2. New insurers entering the market since 2009

Five insurers have entered the Belgium environmental insurance market since 2009, of which three are based in, or have branches in, Belgium.

2.1.3. Existing insurers that introduced environmental insurance policies since 2009

Some insurers that conducted insurance business in Belgium before 2009 introduced stand-alone environmental insurance policies after 2009. The precise number was not available.

2.2. Re/insurance pools

There are no re/insurance pools that provide policies for ELD or other environmental liabilities in Belgium.

2.2.1. Date of establishment

Not applicable

2.2.2. Descriptions of policies issued

Not applicable

2.3. Mutuals

No mutuals in Belgium offer stand-alone environmental insurance policies.

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2.3.1.  Date of establishment
Not applicable

2.3.2.  Descriptions of policies issued
Not applicable

2.4.  Other
There are no captives, underwriting agencies, or other types of providers of stand-alone environmental insurance policies in Belgium.

3.  VOLUNTARY INSURANCE POLICIES FOR ELD AND OTHER ENVIRONMENTAL LIABILITIES

3.1.  Environmental insurance policies
Stand-alone environmental insurance policies are widely available.

3.2.  Cover for ELD preventive costs
Stand-alone environmental insurance policies in Belgium provide cover for the costs of preventive measures under the ELD.

3.3.  Cover for ELD primary, complementary and compensatory costs
Stand-alone environmental insurance policies in Belgium provide cover for primary, complementary and compensatory remediation under the ELD.

3.4.  Cover for non-ELD liabilities
Stand-alone environmental insurance policies in Belgium provide cover for non-ELD liabilities such as third-party claims for bodily injury and property damage from pollution, business interruption, and legal fees.

3.5.  Nature of policies (liability only or liability and on-site remediation)
Stand-alone environmental insurance policies in Belgium provide cover for the costs of remediating environmental damage caused by an insured to third-party sites as well as the costs of remediating such damage on an insured’s own site.

The policies do not provide cover for damage to on-site property in the form of buildings, other structures and equipment unless, under some policies, the damage results from carrying out remediation measures themselves.

3.6.  Description of policies

3.6.1.  Format
Stand-alone environmental insurance policies offered by multinationals as well as insurers based in, or with branches in, Belgium have a menu format so that an insured may select the insuring agreements it requires. There is a wide range of such policies (see section 3.6.3 below).

3.6.2.  Claims made or occurrence based
Stand-alone environmental insurance policies are underwritten on a claims made basis rather than an occurrence basis. That is, a claim must be made during the policy period or an
extended reporting period, with the environmental damage from which the claim arose having to occur during the policy period.

Extensions to general liability policies are occurrence based, that is, the risks that are covered by the policy must occur during the policy period; claims may be brought after the policy period.

3.6.3. Policies for operators

Insurers based in, or with branches in, Belgium as well as multinationals offer a wide range of stand-alone environmental insurance policies to businesses with sites and/or operations in Belgium as well as businesses with sites and/or operations in Belgium and other States. The policies are available to small to medium sized businesses as well as large businesses.

Depending on the insurer, the policies include insuring agreements for the following:

- the remediation of on-site and off-site environmental damage under the ELD caused by operations, including transportation, carried out by the insured operator;
- the remediation of pollution under other environmental legislation caused by operations, including transportation, carried out by the insured operator;
- emergency costs and costs of preventive measures under the ELD under the two above bullet points;
- third-party claims for bodily injury and property damage;
- third-party business interruption;
- the insured’s business interruption costs and extra expense caused by environmental damage including pollution; and
- related legal costs.

Only the first and part of the third items are liabilities under the ELD. The policies are thus designed to include, not only protection under the ELD but also protection under other public law as well as civil law and non-liability requirements.

In addition to specimen wordings for each type of policy, multinational insurers have libraries of standard endorsements for each type. They also draft manuscript endorsements to supplement the endorsements in their libraries to meet the needs of individual insureds, as necessary.

All stand-alone environmental insurance policies offered by multinational insurers to operators with sites and/or operations only in Belgium as well as sites and/or operations in Belgium and other States are not necessarily designed for Belgian operators. Some policies are specifically designed to reflect – and provide cover for – the legal and licensing situation in Belgium; others are not.

3.6.4. Policies for contractors and others

Stand-alone environmental insurance policies are available for contractors including contractors in dredging, remediation works, sewerage, earthworks, road construction, asbestos removal and/or construction of pipelines for hazardous products.

Policies are also available to real estate management companies, that is, companies that have a portfolio of sites that they manage. Further, policies are available specifically for real estate development.

An example of the latter is the environmental insurance policy for real estate development, developed by Immobilite (Immobilite NV acts as insured for the benefit of contractors and was created by the Flemish Construction Federation) and an insurance broker in August 2019.
The policy specifically provides cover for environmental risks for real estate development as well as pollution caused by asbestos.

The policy provides cover for:

- transactional environmental risks when buying a piece of land (for example, the risk that unknown contamination is discovered on or next to the piece of land);
- risks of causing contamination during the development (for example, contamination when demolishing buildings, spreading contamination when painting a building's external surface, and negative impacts on biodiversity); and
- transactional environmental risks of the final purchaser/user, who acquires the final rights of use of the project (for example, unexpected additional clean-up costs on a remediated piece of land as a result of a change in legislation or the discovery of unknown contamination, or bodily harm being caused).9

Another example is the collective policy offered by Grondbank VZW (a recognised soil management organisation).

3.7. Model terms and conditions

3.7.1. Organisation issuing model terms and conditions

There are no model terms and conditions for insurance policies for ELD or other environmental liabilities in Belgium.

3.7.2. Description of model terms and conditions

Not applicable

3.7.3. Relationship between policies with model terms and conditions and environmental insurance policies

Not applicable

3.8. Date of general availability of environmental insurance policies

Stand-alone environmental insurance policies have been available in Belgium since about 1998. They were extended to provide cover under the ELD when it was transposed into Belgian law in 2007 and 2008.

3.9. Environmental assessments and audits

Insurers that offer stand-alone environmental insurance policies for sites and/or operations in Belgium may require prospective insureds to carry out environmental assessments and audits for their operations depending on the types of risks and the exposure.

If a policy provides cover for pre-existing conditions, a complete Phase II soil survey report (including intrusive works such as soil and groundwater sampling) must be provided to insurers unless the insured can show, due to recent construction, that the site is a greenfield site (that is, a site that has not previously been developed).

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3.10. **Average premium**

The average premium for a stand-alone environmental insurance policy varies depending on factors such as whether the insured is a large business or a small or medium sized business. Other factors include the number and type of facilities operated by the insured.

3.11. **Average policy limit**

The average policy limit for a stand-alone environmental insurance policy also varies depending on factors such as whether the insured is a large business or a small or medium sized business. Other factors include the number and type of facilities operated by the insured.

One ELD stakeholder in the insurance industry stated that the average policy limit is EUR 10,000,000 per claim and in the aggregate, but can increase to EUR 25,000,000 per claim and in the aggregate.

3.12. **Average deductible or self-insured retention**

The amount of a deductible/self-insured retention depends on the risk appetite of the company taking out the policy and the amount they are prepared to bear as their own risk.

One ELD stakeholder in the insurance industry stated that an average deductible/self-insured retention is EUR 100,000. Another ELD stakeholder, also in the insurance industry, stated that an average deductible/self-insured retention tends to be at least EUR 25,000 and over EUR 100,000 to EUR 1,000,000 for very large risks.

3.13. **Average policy period**

One ELD stakeholder in the insurance industry stated that the average policy period is one year. Another ELD stakeholder, also in the insurance industry, stated that a policy period may extend from one to three years.

Contractors’ pollution liability policies may have a policy period for an entire project, which can be up to six years or sometimes longer, as well as being purchased on an annual or other basis.

3.14. **Sizes of typical insured businesses**

Typical businesses in Belgium that purchase stand-alone environmental insurance policies are large businesses.

3.15. **Industrial and commercial sectors that typically purchase policies**

Industrial and commercial sectors that typically purchase stand-alone environmental insurance policies are businesses in the chemical, retail, food, port companies (tank storage), and laboratories sectors.

3.16. **Industrial and commercial sectors with limited or no accessibility to policies**

For small and medium sized businesses it may be difficult to get access to financial security in the form of stand-alone environmental insurance policies. Therefore, the development of collective policies (affinity programmes) provides a solution for small and medium sized businesses, as for example the collective insurance policy by Immoterrae (see section 3.6.4 above).
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3.17. **Number and amount of claims**

One ELD stakeholder in the insurance industry reported that the number of claims made against stand-alone environmental insurance policies was increasing, with the average amount of a claim being between EUR 500 to EUR 2,000,000, but also including higher amounts.

3.18. **Coverage litigation**

There had not been any reported coverage litigation involving environmental insurance policies in Belgium when this report was published.

3.19. **Cover for ELD liabilities in general liability policies**

Cover for ELD liabilities is not available in environmental extensions to general liability policies. The extensions provide cover for remediating off-site pollution from a sudden and accidental incident on an insured’s site. The extensions do not provide cover for the prevention or remediation of gradual pollution or environmental damage other than pollution. They usually have a low sub-limit of liability.

Compulsory motor insurance policies provide cover for remediating environmental damage from pollution depending on the use of the vehicle. The reason is that a significant proportion of environmental damage arises as a result of the transportation of hazardous products and accidents. The policies do not provide cover for ELD liabilities.

3.20. **Cover for ELD liabilities in property policies**

Environmental extensions to property policies are available but only to a limit extent.

4. **OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS**

4.1. **Type(s)**

Voluntary financial security instruments such as bank guarantees, bonds, etc. are not generally available for liabilities under the ELD or other environmental legislation. There is no demand for them because they are geared towards mandatory financial security requirements for known responsibilities such as closure and post closure (aftercare) of a landfill, not voluntary financial security for liabilities under the ELD.

4.2. **Availability**

Not applicable

5. **MANDATORY FINANCIAL SECURITY FOR ELD LIABILITIES (ARTICLE 14(1))**

There are no legislative provisions for mandatory financial security for ELD liabilities in Belgium.

5.1. **Competent authority(ies)**

Not applicable

5.2. **Legislative provisions**

Not applicable
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5.3.1. Stand-alone requirement or hybrid
5.3.2. Revisions to licensing requirements
5.3.3. ELD liabilities covered by mandatory financial security
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5.4. Date of introduction
Not applicable

5.5. Effective date
Not applicable

5.6. Key reasons for introduction
Not applicable

5.7. Withdrawal of mandatory financial security
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5.8. Guidance
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5.10. Amounts and limits of mandatory financial security
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5.11. Growth of mandatory financial security
Not applicable

6. REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS

6.1. Review of financial security instruments or mechanisms
Not applicable

6.2. Financial security instruments and mechanisms accepted
Not applicable

6.2.1. Templates

6.2.2. Requirements for environmental insurance policies

6.2.3. Form of mandatory environmental insurance policy

6.3. Financial security instruments and mechanisms not acceptable
Not applicable

6.4. Time of review
Not applicable

6.5. Regulatory costs of review
Not applicable

6.6. Requirements for operator to review
Not applicable

7. ENFORCEMENT OF FINANCIAL SECURITY REQUIREMENTS
Not applicable

8. EX POST ENVIRONMENTAL DAMAGE MANDATORY FINANCIAL SECURITY (ARTICLE 8(2))
All transposing legislation (Federal State, Flemish Region, Walloon Region and Brussels-Capital Region) imposes mandatory financial security under article 8(2) of the ELD as follows.

Federal State: when submitting a work plan proposal, the ship owner or operator must include evidence of an appropriate bank guarantee granted by a bank established in Belgium or an appropriate guarantee declared admissible by the authorities and signed by a Protection and Indemnity Club.

Walloon Region: if a competent authority decides to take necessary preventive or remedial measures itself, it may require the operator to provide a guarantee (caution) or any other appropriate security as listed in the Decree of 22 November 2007 (an irrevocable guarantee provided by a financial institution, a sum deposited with the Caisse de dépôt et de consignation, a deposit (cautionnement) or a mortgage).

Flemish Region: the Flemish Region may recover costs incurred by it in remediating environmental damage through a contrainte or dwangbevel endorsed by a competent
authority and declared enforceable. The *contrainte* is notified to the operator, which then has 30 days from the day it receives it to lodge an objection. If the operator does so, the objection has suspensive effect. On the basis of the enforceable *contrainte*, the Flemish Region has the benefit of a general lien or other security over property on the operator’s real estate and may also burden the operator’s property (located in the Flemish Region) with a legal mortgage. The Decree of 5 April 1995 provides that the Flemish Government may also accept other forms of financial security.

**Brussels-Capital Region:** the Code of 25 March 1999 refers to ‘security over property or other appropriate guarantees’, which tracks the language in the ELD. The Ordinance further provides that the Government shall determine the financial guarantees that are considered to be appropriate.

Only the Federal State requires an operator to have financial security for *ex post* environmental damage when an operator carries out remedial measures itself. The reference to Protection and Indemnity Clubs may limit such requirements to marine operations.

### 8.1. Date legislation or policy for mandatory financial security introduced

The date for mandatory financial security under article 8(2) of the ELD is the same date as the date of the legislation that transposed the ELD in Belgium as follows.

**Federal State:** the Genetic Modified Order entered into force on 20 September 2007, the Marine Order entered into force on 19 November 2007, and the Transport Order entered into force on 9 November 2007. The Transport Order applies retroactively to an imminent threat of, or actual, environmental damage that occurred on or after 1 November 2007 except when it derives from a specific activity that took place and finished before that date.

**Walloon Region:** the Walloon Decree entered into force on 29 December 2007, with liability applying retrospectively to 30 April 2007.

**Flemish Region:** the Flemish Decree entered into force on 30 April 2007.

**Brussels-Capital Region:** the amendments by the Ordinance of 8 May 2014 to the Code of 25 March 1999 formally entered into force on 1 January 2015.

### 8.2. Effective date for *ex post* mandatory financial security

See section 8.1 above.

### 8.3. Financial security instruments and mechanisms accepted

See section 8 above.

### 8.4. Financial security instruments and mechanisms not acceptable

The legislation that transposed article 8(2) of the ELD in the Federal State and various regions in Belgium does not specify any financial security instruments or mechanisms that are not acceptable.

### 9. Providers of mandatory financial security instruments

As indicated in section 5 above, there are no requirements for mandatory financial security under section 14(1) of the ELD. (For *ex post* mandatory financial security, various financial instruments are acceptable (see section 8 above).)
9.1. **Insurers**
Not applicable

9.2. **Banks and other financial institutions**
Not applicable

9.3. **Sureties**
Not applicable

9.4. **Providers outside Member State**
Not applicable

10. **Measures taken by Member State to develop financial security markets**

No information on measures taken by the Federal Government or any of the regions in Belgium to develop financial security markets, including environmental insurance markets, was available or provided.

11. **EU environmental legislation with mandatory financial security provisions**

11.1. **Landfill Directive**

11.1.1. **Competent authority(ies)**

The competent authorities and legislation that implement the Landfill Directive (1999/31/EC) in the regions of Belgium are as follows.

**Flemish Region**: the competent authorities for the Order of the Flemish Government of 1 June 1995 concerning General and Sectoral Provisions relating to Environmental Safety (Besluit van de Vlaamse Regering tot wijziging van het besluit van de Vlaamse Regering van 6 februari 1991 houdende vaststelling van het Vlaams reglement betreffende de milieuvergunning, van het besluit van de Vlaamse Regering van 1 juni 1995 houdende algemene en sectorale bepalingen inzake milieuhygiëne en van het besluit van de Vlaamse Regering van 14 december 2007 houdende vaststelling van het Vlaams reglement betreffende de bodemsanering ter doorvoering van technische actualisering, VLAREM II), which implements the Landfill Directive in the Flemish Region are:

- the Environment Inspectorate (Milieuispectie), part of the Flemish Department for the Environment, Nature and Energy (Departement Omgeving), which is the supervisory authority; and
- the Public Waste Agency of Flanders (Openbare Afvalstoffenmaatschappij voor het Vlaamse Gewest; OVAM), which is the authority for the benefit of which financial guarantees must be provided.

**Walloon Region**: the competent authority for the Decree of the Walloon Government laying down the sectoral conditions for the operation of landfill sites (Arrêté du Gouvernement wallon fixant les conditions sectorielles d'exploitation des centres d'enfouissement technique),\(^\text{10}\) which implements the Landfill Directive in the Walloon Region is the Public

Service Agriculture, Natural Resources and Environment (Service Public de Wallonie Agriculture, Ressources Naturelles et Environnement).

**Brussels-Capital Region**: the competent authority for the Decision of the Government of the Brussels-Capital Region on the dumping of waste (Besluit van de Brusselse Hoofdstedelijke Regeringbetreffende het storten van afvalstoffen),\(^\text{11}\) which implements the Landfill Directive in the Brussels-Capital Region is the Inspection and Surveillance Division of the Brussels Institute of Environmental Management (l’Institut Bruxellois pour la Gestion de l’Environnement).

### 11.1.2. Financial security provisions

**Flemish Region**: before commencement of activities, the operator of a landfill must provide a financial guarantee to the OVAM as beneficiary. The financial security provisions are set out in the VLAREM II, subsection 5.2.4.7 and also subsection 5.2.5.7.\(^\text{12}\)

**Walloon Region**: section 1 of the Decree of the Walloon Government laying down the sectoral conditions for the operation of landfill sites refers to article 55 of the Decree of 11 March 1999 on environmental permits for financial security requirements, both for restoration of the site and also for post closure (aftercare). Section 3 of the Decree requires the operator to provide evidence of the financial security and its revisions, as indicated above, to the technical officer and the supervisory officer before operations at the landfill begin unless the competent authority agrees to divide it into tranches. If the financial security is in the form of one or more independent bank guarantees for the benefit of the competent authority, it must be a first demand guarantee for which the guarantor undertakes to release the amount within one month of the date on which the authority requests its release or within one month of the date on which the debtor’s bankruptcy judgment is declared. Further, the guarantor must expressly declare that it specifically waives the benefit of discussion, division and benefits under articles 2036, 2037 and 2039 of the Civil Code and, in general, the benefit of any advantage and exception that is legally provided in favour of the guarantor against both the debtor and the competent authority.

The section of the financial security that is reserved for aftercare of the landfill is released when the technical official determines that the landfill is no longer likely to pose a danger to the environment.

**Brussels-Capital Region**: article 8(4) of the Decision of the Government of the Brussels-Capital Region on the dumping of waste states that an applicant for a landfill permit (except for a landfill for inert waste) must provide financial security or an equivalent before operations at the landfill begin. The financial security must be kept in force throughout the maintenance and aftercare of the landfill.

### 11.1.3. Financial security instruments and mechanisms accepted

**Flemish Region**: financial security may take the form of insurance, a financial institution’s guarantee, another personal or business security or a combination of them. The calculation and the procedure for obtaining, releasing and using financial security is set out in subsection 5.2.4.7 of the VLAREM II.


\(^{12}\) The current consolidated version of VLAREM II is available at [https://navigator.emis.vito.be/mijn-navigator](https://navigator.emis.vito.be/mijn-navigator) (in Dutch)
**Walloon Region**: article 55(2) of the Decree of the Walloon Government laying down the sectoral conditions for the operation of landfill sites states that any of the following are acceptable financial security instruments: a deposit at the *Caisse des dépôts et consignements*; an independent bank guarantee issued by a credit institution approved either by the Banking and Financial Commission or by an authority of a Member State that has the power to control credit institutions; any other form of security that the Government determines, up to the amount specified in the permit; and a cash payment. If the financial security is a cash payment, the operator of the facility is required to increase the security annually to the level of interest generated during the previous year.

**Brussels-Capital Region**: the Decision of the Government of the Brussels-Capital Region on the dumping of waste simply refers to financial security or an equivalent.

11.1.4. **Templates**

There are no templates for acceptable financial security instruments or mechanisms in any of the regions in Belgium.

11.1.5. **Financial security instruments and mechanisms not acceptable**

There are no lists of financial security instruments or mechanisms that are not acceptable in any of the regions.

11.2. **Extractive Waste Directive**

11.2.1. **Competent authority(ies)**

**Flemish Region**: the competent authorities for VLAREM II, which implements the Extractive Waste Directive (2006/21/EC) in the Flemish Region are as follows. The Environment Inspectorate is the supervisory authority for the Flemish Region. OVAM is the authority for the benefit of whom the financial guarantee must be provided.

**Walloon Region**: the competent authority for the Extractive Waste Directive, which is implemented in the Walloon Region by the Decree of the Walloon Government on sectoral and integral conditions for extraction waste management facilities and on after-closure monitoring and amending the Decree of the Walloon Government of 27 February 2003 laying down sectoral conditions for the operation of landfill sites *Arrêté du Gouvernement wallon portant conditions sectorielles et intégrales des installations de gestion de déchets d’extraction et relatif au suivi après fermeture et modifiant l’arrêté du Gouvernement wallon du 27 février 2003 fixant les conditions sectorielles d’exploitation des centres d’enfouissement technique)*, is the Walloon Public Service Agriculture, Natural Resources and Environment.

**Brussels-Capital Region**: the competent authority for the Extractive Waste Directive, which is implemented in the Brussels-Capital Region by the Decision of the Government of the Brussels-Capital Region on the management of waste from extractive industries *(Besluit van de Brusselse Hoofdstedelijke Regering betreffende het beheer van afval van...)*

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11.2.2. Financial security provisions

**Flemish Region**: the provisions on financial security are set out in section 5.2.6 concerning waste of extractive industries of the VLAREM II. Article 5.2.6.8.1 of VLAREM II sets out the obligations to establish financial security. They are the same as those of the Walloon Region (see directly below).

**Walloon Region**: article 26 of the Decree of the Walloon Government of 27 February 2003 laying down sectoral conditions for the operation of landfill sites states that financial security must be submitted to the competent authority before any operations at the extractive waste facility commence except for those that are exclusively for inert or non-hazardous waste. The amount of financial security must be sufficient to meet all obligations in the permit including post closure measures and rehabilitation of the area affected by the extractive waste facility as specified in the waste management plan including the amount that the Government would incur if it was to have the rehabilitation carried out. Article 27 states that the amount of financial security is calculated on the following basis: the potential environmental effects of the extractive waste facility taking into account the category of the facility, the characteristics of the waste and the future use of the land after rehabilitation; and the assumption that independent and qualified third parties will evaluate and carry out the restoration work if necessary. The amount of the financial security is periodically adjusted in an appropriate manner according to the rehabilitation works.

**Brussels-Capital Region**: article 13 of the Decree of the Government of the Brussels-Capital Region of 28 May 2008 on the management of waste from extractive industries sets the requirements for financial security (Besluit van de Brusselse Hoofdstedelijke Regering betreffende het beheer van afval van winningsindustrieën). They are the same as those of the Walloon Region (see directly above).

11.2.3. Financial security instruments and mechanisms accepted

**Flemish Region**: article 5.2.6.8.1. of the VLAREM II refers to article 5.2.4.7.1 of the VLAREM II (which requires financial security for landfills). Hence, financial security may take the form of insurance, a financial institution’s guarantee, another personal or business security or a combination of them.

**Walloon Region**: acceptable financial security instruments are a deposit at the Caisse des dépôts et consignments, an independent bank guarantee or any other form of security that the Government determines, up to the amount specified in the permit. If the financial security consists of a cash payment, the operator of the facility must increase the security annually to the level of interest generated during the previous year. If the financial security consists of an independent bank guarantee, it must be issued by a credit institution approved either by the Banking and Financial Commission or by an authority of a Member State that has the power to control credit institutions. The environmental permit may stipulate that the security is split into tranches as long as they correspond to the phases of operation provided for in that permit.


**Brussels-Capital Region:** article 13 of the Decree of the Government of the Brussels-Capital Region of 28 May 2008 on the management of waste from extractive industries states that acceptable financial security is a deposit, a mutual guarantee fund (that is, an industry-supported guarantee deposit) or an equivalent.

11.2.4. **Templates**

There are no templates for acceptable financial security instruments or mechanisms in any of the regions in Belgium.

11.2.5. **Financial security instruments not acceptable**

None of the regions state any financial security instruments that are not acceptable.

11.3. **Carbon Capture and Storage Directive**

11.3.1. **Status of implementation**

There are no facilities for the storage of carbon dioxide in Belgium. The Flemish Region and the Walloon Region are carrying out research into possible sites, whilst Ghent and Antwerp are carrying out pilot projects.\(^{16}\)

Article 2 of the Decision of the Government of the Brussels-Capital Region on the capture and transport of carbon dioxide for geological storage (*Besluit van de Brusselse Hoofdstedelijke Regering betreffende de afvang en het vervoer van kooldioxide voor geologische opslag*) prohibits the storage of carbon dioxide in the Brussels-Capital Region.\(^{17}\)

11.3.2. **Competent authority(ies)**

The competent authorities that implement the Directive on the geological storage of carbon dioxide (2009/31/EC) in Belgium and the implementing legislation are as follows.

**Flemish Region:**

- the Flemish Government (*De Vlaamse Regering*) under the Decision of the Flemish Government of 15 July 2011 implementing the Decree of 8 May 2009 on the deep sub-soil (*Besluit van de Vlaamse Regering van 15 juli 2011 tot uitvoering van het decreet van 8 mei 2009 betreffende de diepe ondergrond*);\(^{18}\) and
- Justice of the Peace under Decree of 8 May 2009 on the deep sub-soil (*Decreet van 8 mei 2009 betreffende de diepe ondergrond*).\(^{19}\)

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\(^{19}\) Decreet van 8 mei 2009 betreffende de diepe ondergrond; [https://navigator.emis.vito.be/mijn-navigator?woId=40089](https://navigator.emis.vito.be/mijn-navigator?woId=40089) (in Dutch)
Articles 14 to 16 of section 1 of the Decision of the Flemish Government of 15 July 2011 states that the Flemish Government determines the amount of financial security in the storage permit.

The Flemish Minister responsible for natural resources is the competent authority if it concerns the detection or extraction of hydrocarbons or geothermal energy, or the structural vision on the deep subsoil. The Flemish Minister responsible for the environment and water policy is the competent authority if it is to pre-match the geological storage of carbon dioxide with the form in which the financial security or equivalent is set.

**Walloon Region:** the Walloon Government is the competent authority. The implementing legislation is the Decree on the geological storage of carbon dioxide (Décret relatif au stockage géologique du dioxyde de carbone).²⁰

**Brussels-Capital Region:** not applicable

### 11.3.3. Financial security provisions

**Flemish Region:** the provisions on financial security are set out in both the Decree on the deep subsoil of 8 May 2009 (e.g. article 57, more specifically chapter 2/1, and in section 5 of the Decision on the deep subsoil). The operator of a storage facility must provide adequate financial guarantee for the restoration of the site of the facility until the operator is released from responsibility and responsibility is transferred. Part of the financial security will then be reimbursed to the operator, following the provisions of section 6 of the Decision.

**Walloon Region:** the financial security provisions are set out in chapter VIII of the Decree on the geological storage of carbon dioxide. Article 30(1) states that the operator of a storage facility for carbon dioxide must provide, as part of its application for a storage permit, adequate financial guarantee for the restoration of the site of the facility until the operator is released from its responsibility and responsibility is transferred.

**Brussels-Capital Region:** not applicable

### 11.3.4. Financial security instruments and mechanisms accepted

**Flemish Region:** the Flemish Minister responsible for natural resources if it concerns the detection or extraction of hydrocarbons or geothermal energy, or the structural vision on the deep subsoil, or the Flemish Minister responsible for the environment and water policy if it concerns the geological storage of carbon dioxide, pre-agree the form in which financial security or its equivalent is provided.

**Walloon Region:** the type of financial security is decided by the Walloon Government according to article 30 of the Decree on geological storage of carbon dioxide.

**Brussels-Capital Region:** not applicable

### 11.3.5. Templates

Neither the Flemish Region nor the Walloon Region have any templates for acceptable financial security instruments or mechanisms.

**Brussels-Capital Region:** not applicable

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11.3.6. **Financial security instruments and mechanisms not acceptable**

There are no lists of financial security instruments or mechanisms in the Flemish Region or the Walloon Region that are not acceptable.

**Brussels-Capital Region**: not applicable

12. **EU RECOMMENDATION ON HYDRAULIC FRACTURING**

12.1. **Status**

Belgium had a moratorium on hydraulic fracturing (fracking) when this report was published. Therefore, there is no specific regulatory framework that allows fracking in Belgium.

12.2. **Competent authority(ies)**

Not applicable

12.3. **Financial security provisions**

Not applicable

12.4. **Financial security instruments and mechanisms accepted**

Not applicable

12.5. **Templates**

Not applicable

12.6. **Financial security instruments and mechanisms not acceptable**

Not applicable

13. **EU ENVIRONMENTAL LEGISLATION WITH NO MANDATORY FINANCIAL SECURITY PROVISIONS**

13.1. **Industrial Emissions Directive**

13.1.1. **Competent authority(ies)**

The competent authorities and implementing legislation for the Industrial Emissions Directive (2010/75/EU) are as follows.

**Flemish Region**: the Environment Inspectorate is the competent authority. The implementing legislation is:

- the Decree of 5 April 1995 laying down general provisions on environmental policy *(Decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid)*,\(^{21}\) and
- Flemish Regulations on the Environmental Licence III *(Besluit van de Vlaamse Regering houdende bijkomende algemene en sectorale milieuvoorwaarden voor GPBV-installaties; VLAREM III)*.\(^{22}\)


\(^{22}\) Besluit van de Vlaamse Regering houdende bijkomende algemene en sectorale milieuvoorwaarden voor GPBV-installaties of 16th May 2014; VLAREM III, [https://navigator.emis.vito.be/mijn-navigator?woId=61192](https://navigator.emis.vito.be/mijn-navigator?woId=61192) (in Dutch)
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**Walloon Region**: the competent authority varies according to the scope of the permit; it is generally the commune but can also be the regional authority.

The implementing legislation is:

- the Decree of the Walloon Government determining the sectoral conditions relating to certain activities generating significant consequences for the environment and amending various provisions, in particular with regard to industrial emissions (Arrêté du Gouvernement wallon déterminant les conditions sectorielles relatives à certaines activités générant des conséquences importantes pour l’environnement et modifiant diverses dispositions en ce qui concerne notamment les émissions industrielles);\(^23\) and

- the permit Decree of 11 March 1999, as amended (Décret relatif au permis d’environnement).\(^24\)

**Brussels-Capital Region**: the competent authority is the Brussels Institute of Environmental Management. The implementing legislation is the Decision of the Government of the Brussels-Capital Region on integrated prevention and control of pollution from industrial emissions (Besluit van de Brusselse Hoofdstedelijke Regering inzake geïntegreerde preventie en bestrijding van verontreiniging door industriële emissies).\(^25\)

13.1.2. **Financial security provisions**

**Flemish Region**: article 82 of the Decree of 27 October 2006 on soil remediation and soil protection (Decreet van 27 oktober 2006 betreffende de bodemsanering en de bodembescherming)\(^26\) states that any person that incurs costs in remediating soil in compliance with the Decree may recover them from the liable person in accordance with the Decree and may require that person to make an advance payment or to provide a financial guarantee. Article 132 reiterates the above language.

**Walloon Region**: article 5 in conjunction with annex I provides for a guarantee in the framework of the internal monitoring plan. Annex I sets out the precise requirements for the design of the internal monitoring plan.

Article 55 of the Permit Decree of 11 March 1999 sets out the financial security provisions as follows. The competent authority, on the proposal of the technical official included in the summary report, requires the operator to provide, before the environmental permit takes effect, financial security for the benefit of the Government to ensure the execution of its restoration obligations, the amount of which is equivalent to the costs that the government would incur if it were to have the restoration carried out.

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\(^{23}\) Arrêté du Gouvernement wallon déterminant les conditions sectorielles relatives à certaines activités générant des conséquences importantes pour l’environnement et modifiant diverses dispositions en ce qui concerne notamment les émissions industrielles; [http://environnement.wallonie.be/legis/pe/pesect073.htm](http://environnement.wallonie.be/legis/pe/pesect073.htm) (in French)


Brussels-Capital Region: the Decision of the Government of the Brussels-Capital Region on integrated prevention and control of pollution from industrial emissions, which was issued pursuant to the Ordinance of 5 June 1997, does not indicate any specific requirements for financial security. Further, the Ordinance does not indicate any specific financial security requirements either. However, the competent authority that grants the permits may require businesses to which it grants them to have financial security for their operations.

13.1.3. Financial security instruments and mechanisms accepted

Flemish Region: OVAM accepts a pledged account, a bank guarantee and an insurance guarantee. It also accepts other financial security instruments if it agrees that they provide sufficient financial security. OVAM also accepts a reserve in accounts from a governmental authority.

Walloon Region: financial security consists, at the applicant's choice, of a deposit at the Caisse des dépôts et consignments, an independent bank guarantee or any other form of security that the Government determines, up to the amount specified in the permit. If the financial security consists of a cash payment, the operator of the facility must increase its amount annually to the level of interest generated during the previous year. If the financial security consists of an independent bank guarantee, it must be issued by a credit institution approved either by the Banking and Financial Commission or by an authority of a Member State that has the power to control credit institutions. The environmental permit may stipulate that the security is split into tranches as long as they correspond to the phases of operation provided for in that permit (see section 13.1.2 above concerning article 55 of the permit Decree of 11 March 1999).

Brussels-Capital Region: suretyship is the acceptable financial security.

13.1.4. Templates

Flemish Region: OVAM has templates for a pledged account, a bank guarantee and an insurance guarantee.27

Walloon Region and Brussels-Capital Region: there are no templates for acceptable financial security instruments or mechanisms in the Walloon Region or the Brussels-Capital Region.

13.1.5. Financial security instruments and mechanisms not acceptable

There is no list of financial security instruments or mechanisms that are not acceptable.

13.2. Seveso III Directive

13.2.1. Competent authority(ies)

The Seveso III Directive (2012/18/EU) was transposed into Belgian law by a co-operation agreement (samenwerkingsakkoord) entitled Decision of the Government of the Brussels-Capital Region on integrated prevention and control of pollution from industrial emissions (Besluit van de Brusselse Hoofdstedelijke Regering inzake geïntegreerde preventie en

27 OVAM, Welke financiële zekerheden hanteert de OVAM?; https://www.ovam.be/welke-financiele-zekerheden-hanteert-de-ovam (in Dutch)
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bestrijding van verontreiniging door industriële emissies),\(^{28}\) between the Federal Government, the Flemish Region, the Walloon Region and the Brussels-Capital Region.

The competent authorities are as follows.

**Flemish Region**: the Environment Inspectorate

**Walloon Region**: the Walloon Public Service Agriculture, Natural resources and Environment

**Brussels-Capital Region**: the Brussels Institute of Environmental Management

13.2.2. **Financial security provisions**

There are no financial security requirements under the Co-operation Agreement in the Flemish Region or the Brussels-Capital Region.

**Walloon Region**: for Seveso III companies, the same permit requirements hold as mentioned above (see sections 11.1.2 and 13.1.2 concerning article 55 of the permit Decree of 11 March 1999).

13.2.3. **Financial security instruments and mechanisms accepted**

Not applicable for the Flemish Region and the Brussels-Capital Region. See section 13.2.2 for the Walloon Region.

13.2.4. **Templates**

There are no templates for the Walloon Region.

**Flemish Region and the Brussels-Capital Region**: not applicable

13.2.5. **Financial security instruments and mechanisms not acceptable**

There is no list of financial security instruments or mechanisms that are not acceptable for the Walloon Region.

**Flemish Region and the Brussels-Capital Region**: not applicable

13.3. **Other legislation**

The regions require mandatory financial security as follows.

**Flemish Region**

Article 16 of the Decree of 27 October 2006 on soil remediation and soil protection requires a person that caused damage to soil to pay the costs of its remediation. OVAM accepts a pledged account, a bank guarantee or an insurance guarantee as evidence of financial security (see section 13.1.3 above in respect of article 82 of the Decree).

Article 104 (chapter 8 on the transfer of soils) of the same Decree requires persons that own contaminated land to have an insurance policy or another financial guarantee for the costs of remediating the contamination when the land is transferred.

Article 8 of the Decision of the Flemish Government on the Decree on soil remediation and soil protection (*Besluit van de Vlaamse Regering houdende vaststelling van het Vlaams*...)}

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Reglement betreffende de bodemsanering en de bodembescherming van 14 December 2007; VLAREBO 2008) clarifies the financial guarantees that are acceptable.29

In summary, the provisions concerning the transfer of land are in chapter 8 of the 2006 Decree. Article 8 of the VLAREBO clarifies the guarantees that are acceptable to OVAM.30

Article 5.2.1.8., s 2 of part 5 of Vlarem II31 requires operators of waste products to have insurance for civil liabilities.

Article 5.2.4.7.1., s 2 of part 5 of Vlarem II requires operators of landfills to have insurance for civil liabilities.

Brussels-Capital Region

The Ordinance of 14 June 2012 on waste (Ordonnante betreffende afvalstoffen- Ordonance relative aux déchets) covers an extended producer responsibility including financial security (article 24 and following of the Ordinance).32 In addition, the Decision of the Government of the Brussels Region with respect to waste of 1 December 2016 (Besluit van de Regering van het Brussels Hoofdstedelijk Gewest betreffende het beheer van afvalstoffen/ Arrêté du Gouvernement de la Région de Bruxelles-Capitale relatif à la gestion des déchets)33 provides information on financial securities.

Article 3.2.8 of the Decision of the Government of the Brussels Region with respect to waste requires operators, collectors and transporters of waste to have insurance policies. The policies must provide cover for claims for bodily injury, property damage, loss of income and costs of restoration, including amounts of the same.

Article 21 of the Ordinance of 5 March 2009 on the management of contaminated soils (Ordonnantie 5 maart 2009 betreffende het beheer en de sanering van verontreinigde bodems)34 authorises the Brussels Institute for Environment to require persons that remediate contaminated soil to provide bank guarantees or insurance policies to ensure that they carry out the necessary remediation measures.


30 The relevant legislation is available at https://navigator.emis.vito.be/ (in Dutch)


34 Ordonnante 5 maart 2009 betreffende het beheer en de sanering van verontreinigde bodems; http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2009030530&table_name=wet (in Dutch)
Walloon Region

Article 33 of Decree of 1 April 2004 on the remediation of contaminated soil (Decreet 1 april 2004 tot sanering van verontreinigde bodems)\(^{35}\) authorises the competent authority to require the person who must remediate the soil to have financial security for the costs.

14. MANDATORY FINANCIAL SECURITY FOR OFFSHORE OIL AND GAS OPERATIONS

14.1. Competent authority(ies)

Not applicable

14.2. Status of offshore oil and gas operations

Belgium does not have any commercial production of offshore (or onshore) oil and gas.

14.3. Requirements for financial security

Not applicable

14.4. Requirement for financial security for ELD liabilities

Not applicable

15. FAILURE OF FINANCIAL SECURITY

15.1. Inadequate level of financial security instrument or mechanism to pay claims

No cases of inadequate levels of financial security instruments or mechanisms to pay to prevent or remediate environmental damage had been reported when this report was published.

15.2. Insolvency of operator leading to failure of financial security instrument or mechanism

No cases involving the insolvency of an operator that led to the failure of financial security instruments or mechanisms were reported when this report was published.

15.3. Other

No reports of any other types of failures of financial security were available or provided.

16. FUNDS

In the Walloon Region, costs recovered by the competent authority are directed to the Fund for the Protection of the Environment.\(^{36}\) This Fund has a larger scope than the ELD, but one of its missions is to fund compensation for lost natural resources and rehabilitation measures.\(^{37}\)

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\(^{35}\) Decreet 1 april 2004 tot sanering van verontreinigde bodems; https://wallex.wallonie.be/contents/acts/6/6031/2.html (in French)


\(^{37}\) Ibid art D.170
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No fund has been established by other Belgian authorities to cover the costs of preventing and remediating environmental damage under the ELD in the event of the liable operator becoming insolvent/bankrupt or otherwise being financially unable to cover the costs.

Specific funds also exist. PREMAZ (in all regions) aims to ensure the remediation of pollution from fuel tanks and residual pollutions of fuel stations. In the Flemish Region, TERSANA has been established to provide funding for the garage, agricultural and machinery sector. The fund assists companies and individuals who are required to remediate contaminated soil. VLABOTEX has been established to assist companies and individuals in the dry cleaning sector to fund the remediation of soil. In the Walloon Region, other sections of the Fund for the protection of the Environment are dedicated to handling water and soil protection.

16.1. **Name(s)**
Not applicable

16.2. **Extension of existing fund to cover remedial costs under the ELD**
Not applicable

16.3. **Purpose**
Not applicable

16.4. **Type**
Not applicable

16.5. **Source(s) of funding**
Not applicable

16.6. **Number and amount of claims**
Not applicable
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Decree of 27 October 2006 on soil remediation and soil protection (Decreet van 27 oktober 2006 betreffende de bodemsanering en de bodembescherming);

Decree of 5 April 1995 laying down general provisions on environmental policy (Decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid);
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