Linklaters

Our public and environment insights

2024–2025

linklaters.com



Table of contents

Reform of the Code of Territorial Development 02

CoDT 03

Constitutional Court Judgment of 14 November 2024 04

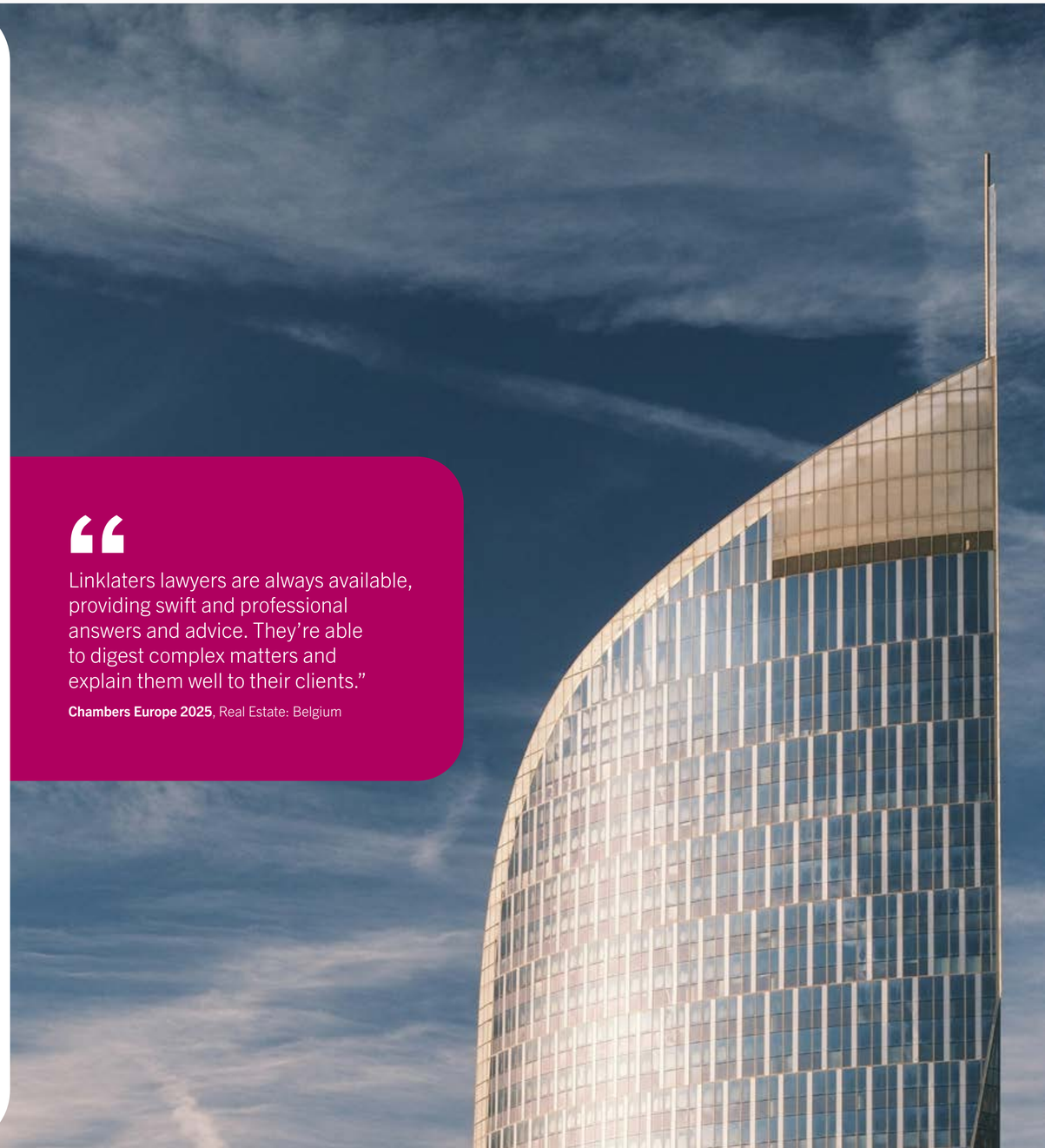
Flemish region – New developments concerning PFAS soil contamination 05

Changes from 1 January 2025 in Brussels and Flanders 06

PFAS contamination in the Flemish Region 07

Specialised Environmental Courts 08

Brussels-Capital Region ordered to suspend urbanisation of sites larger than 0.5 hectares 10



“Linklaters lawyers are always available, providing swift and professional answers and advice. They’re able to digest complex matters and explain them well to their clients.”

Chambers Europe 2025, Real Estate: Belgium

Reform of the Code of Territorial Development



Laura Vervier
Associate, Brussels

Ségolène Michel
Associate, Brussels

On 13 December 2023, the Walloon Parliament adopted the reform (the **Reform**) of the Territorial Development Code (Code du Développement Territorial – Territoriale Ontwikkelingscode, the **CoDT**). It is scheduled to come into force on 1 April 2024.

The Reform has five major areas of focus: (i) spatial optimisation to reduce urban sprawl, (ii) repeal of the decree of 5 February 2015 on commercial establishments (décret du 5 février 2015 relatif aux implantations commerciales), (iii) harmonisation of procedures for issuing permits and flexibility in planning charges (charges d'urbanisme), (iv) integration of the post-flood recommendations of 2021, and (v) dematerialisation of administrative tasks as a result of the pandemic.

The purpose of this article is to highlight the new features of the CoDT relating to commercial establishments and planning charges.

Repeal of the decree of 5 February 2015 on commercial establishments

In 2014, upon regionalisation of competence, the Walloon Region had decided to maintain specific legislation for commercial establishments, both in terms of planning and authorisation, distinct from the regulations of building and environmental permits.

This distinction, whose relevance had been questioned, is now eliminated. From now on, **the building permit will act as a commercial establishment permit**.

As far as the competent authority goes, a distinction should now be made between:

- A project covering **less than 1,500 m²**, in which case a municipal decision will suffice.
- A project covering **more than 1,500 m²**, in which case the project will fall within the remit of the delegated officer.

An exception was inserted for municipalities with a Municipal Development Scheme (Schéma de Développement Communal), in which case the threshold for intervention by the delegated officer will remain set at **2,500 m² within municipal centres**.

In addition to this main distinction, there are a number of other new features:

- introduction of a requirement to obtain the opinion of neighbouring municipalities where the project has a net retail floor area of 1,000 m² or more;
- the opinion of the "Observatoire du Commerce" is replaced by an opinion from the "Direction des implantations commerciales" and the new section of the "Aménagement" division, which is also responsible for opinions on planning matters;
- a public enquiry must be held for a duration of 15 days.

New flexibility regarding planning charges

In addition to a general harmonisation of building permit procedures, greater flexibility has been introduced into planning charges. The purpose of planning charges is to compensate for the impact of a project on the local community, in accordance with the principle of proportionality. In other words, they represent the assumption, by the party responsible, of the social cost of a project.

The following changes are highlighted:

- **cash charges** (charges en numéraire) are permitted under the Reform (a developer will therefore be able to pay an amount equivalent to the charge requested) (cfr. article D.IV.54/3 CoDT). This charge will have to be paid before execution of the works covered by the permit subject to the charge;
- the performance of **charges in kind** (charges en nature) may be permitted in an authorisation separate from the permit charged (cfr. article D.IV.54/4 CoDT). In this case, the authority shall impose the provision of guarantees and determine the timeline of execution of the charge and whether works covered by the permit can be carried out before the charge is executed; and
- for any project to create at least 30 new homes, the impact of such a project on the local community shall be compensated by 40% through the imposition of a charge that will consist in building, transferring or granting a right of use for a minimum of 15 years on social housing.

Conclusion

In conclusion, the Reform can be seen as mainly aligning the Walloon regime with the existing frameworks of the Brussels and Flemish Regions. Regarding the legal framework of commercial establishments, the Reform mainly aims to eliminate a differentiation of regime whose relevance had been questioned and to centralise existing authorisation procedures.

As for planning charges, the new regulation takes advantage of the experience acquired since the entry into force of the CoDT and aims to solve the difficulties that the old regime presented.

It remains to be seen how the practical application of these new rules will concretely impact Walloon urban planning law.

CoDT

The possibility of placing wind turbines in agricultural zones does not violate the Belgian Constitution

Atdhe Krasniqi
Managing Associate, Brussels

Corentin Burton
Junior Associate, Brussels



The placement of wind turbines within agricultural zones has been a topic of considerable debate in Belgium (for project developers as well as for citizens and municipalities).

On 24 October 2024, the Belgian Constitutional Court provided clarity on this matter, addressing the compatibility of the planning regulations with constitutional environmental protections. The core question was whether Article D.II.36, §2, subparagraph 2 of the CoDT (*Code du Développement Territorial*) violates: (i) Article 23, subparagraph 3, 4° of the Belgian Constitution, which enshrines the right to a healthy environment; and (ii) the standstill obligation, which prohibits the legislator from adopting measures that significantly reduce the right to environmental protection without reasonable justification.

Previous rules

Historically, the placement of wind turbines in agricultural zones was primarily prohibited unless a derogation from the Walloon Regional zoning plan (plan de secteur) was obtained. Under the CWATUP (*Code Wallon de l'Aménagement du Territoire, de l'Urbanisme et du Patrimoine*), Article 127, §3 outlined that such derogations could only be granted for public utility works, provided they complemented or restructured the landscape's main features.

These regulations aimed to balance developmental needs with environmental and aesthetic considerations.

Current rules

The legal landscape shifted with the introduction of the CoDT. Article D.II.36, §2, subparagraph 2 of the CoDT now allows for the placement of wind turbines in agricultural zones without requiring a derogation from the Walloon Regional zoning plan, subject to two key conditions:

- that the wind turbines be in close proximity to major communication infrastructures or economic activity zones, i.e. within 1,500 metres from these points; and
- that there is an assurance that the intended use of the zone is not irreversibly compromised.

This regulatory framework reflects a shift towards facilitating renewable energy projects, aligning with broader sustainable development objectives. In that same context, readers should also note that the Walloon government adopted, on 25 January 2024, a circular relating to the new "Wind Turbines Reference Framework" (*Cadre de référence éolien*). This circular entered into force on 26 April 2024 and it has an indicative force. It is mainly directed at the competent authorities in the context of wind turbine permit applications and will offer them relevant guidelines in that regard.

Decision from the Constitutional Court

In its decision of 24 October 2024, the Belgian Constitutional Court upheld the provisions of the CoDT, determining that they do not violate the constitutional right to a healthy environment. The Court acknowledged that, while there is a perceived reduction in environmental protection, the changes are not significant enough to breach Article 23, subparagraph 3, 4° of the Belgian Constitution due to the conditions imposed for wind turbine placement. Importantly, the Court recognised the State's duty to pursue renewable energy targets as part of its sustainable development objectives. The Court emphasised that legislative flexibility is in place to ensure these rights are optimally safeguarded.

Conclusion

This decision confirms that the regulatory approach under the CoDT regarding wind turbines in agricultural zones is constitutionally sound. By balancing the need for renewable energy with environmental protections, the decision underscores the commitment to sustainable development within Belgium's legal framework. This precedent not only confirms the Walloon government's policies relating to renewable energy infrastructure, but also reaffirms the nuanced interplay between development and constitutional environmental rights.

This analysis should serve as a valuable reference for real estate professionals contemplating the implications of these legal standards on urban planning and environmental policies.

Constitutional Court Judgment of 14 November 2024

The right of objectors to receive a notification of a building permit decision



Atdhe Krasniqi
Managing Associate, Brussels

Debusscher Corneel
Junior Associate, Brussels

On 14 November 2024, the Constitutional Court issued a judgment on the much debated question concerning the right of objectors in the Walloon Region to be notified of the decision taken by authorities on the granting of a building permit.

Legal background

Under Article 343 of the CWATUP (*"Code Wallon de l'Aménagement du Territoire, de l'Urbanisme et du Patrimoine"*), the municipality was obliged to notify its building permit decision, i.e. the decision to grant or refuse a building permit, to the objectors against said permit within 20 days of the decision. With the entry into force of the CoDT (*"Code du Développement Territorial"*), which replaced the CWATUP, this obligation was no longer included in the relevant provisions on the notification of building permit decisions (Articles D.VIII.22-D.VIII.27 of the CoDT). As a result, some considered the ability to file an appeal against a building permit decision as an objector to be diminished when compared to the previous legal framework. This change of the law led the Council of State to raise a preliminary question to the Constitutional Court on the legality of the amendment in light of the Constitution and the relevant international Conventions.

Arguments leading to the preliminary question

One of the central arguments leading to the preliminary question is the alleged violation of the new Articles of the CoDT, which no longer require the municipality to notify its building permit decision to the objectors, with Article 23, subparagraph 3, 4° of the Constitution, and the standstill obligation attached to it. In particular, the Constitutional Court had to assess whether by abolishing such a notification, the legislator (significantly) diminished the protection to a healthy environment that had been guaranteed by the CWATUP, without reasonable justification.

In combination with the foregoing, the Constitutional Court also had to assess whether such a measure would constitute an alleged violation of the principles of equality and non-discrimination (Articles 10 and 11 of the Constitution), the right to a fair trial (Article 6 of the European Convention on Human Rights), and the obligation to inform the public of environmental decisions (Article 9 of the Aarhus Convention).

Reasoning of the Constitutional Court

In its judgment of 14 November 2024, the Constitutional Court provided a clear answer to this preliminary question: the new Articles D.VIII.22-D.VIII.27 of the CoDT do not violate the constitutional and international rights of objectors.

To reach that conclusion, the Constitutional Court considered – in substance – the following:

- the abolition of the obligation to notify objectors of such a decision is justified by an objective of administrative simplification (i.e. public interest objective pursued by the Walloon legislator), which significantly reduces the administrative burden on the authorities;
- in absence of said notification, the objectors still have the possibility to launch an appeal with the Council of State within a period of 60 days, from the moment they have acquired sufficient knowledge of the content of the building permit to prepare their appeal;
- in that sense, it is considered that the objectors have a sufficient knowledge of the content of the decision once the competent authority voluntarily notifies it to them or at their request; and
- in addition, the judgment states that (i) the length of the appeal period allows objectors to look up the relevant information related to such an appeal (including the existence of an appeal, and conditions to launch it), and (ii) the objectors would have a sufficient period of time to prepare their appeal diligently.

As a result, the absence of a rule – in the relevant provisions of the CoDT – requiring the competent authority to notify objectors of its decision does not have disproportionate consequences in the light of the public interest objective pursued by the Walloon legislator.

Conclusion

This decision upholds the legality of the legislative actions taken by the Walloon legislator to simplify administrative procedures, namely concerning building permit processes. By confirming the legality of removing the requirement for municipalities to notify objectors of permit decisions, municipalities will be better equipped to handle the sharp increase in appeals against the granting of building permits, which have significantly hampered property development in Belgium in recent years.

Flemish region – New developments concerning PFAS soil contamination



Melissa Verplancke
Managing Associate, Brussels

Atdhe Krasniqi
Managing Associate, Brussels

There have been new developments in the Flemish Region regarding PFAS soil contamination. On 26 November 2024, the OVAM updated its guidelines on PFAS soil contamination by revising (i) the list of PFAS-suspected activities, (ii) the directive for PFAS investigations, (iii) the protocol for preliminary soil investigations, and (iv) the Code of good practice for descriptive soil investigations.

More information thereabout (incl. relevant documents) can be found on the OVAM's website (https://ovam.vlaanderen.be/pfas).

New list of PFAS-suspected activities

Due to the continuous evolution of knowledge about the use of PFAS, the OVAM has updated its list of PFAS-suspected activities. The new report compiles the most up-to-date information on PFAS and is more extensive than the previous one.

In particular, the new report describes the processes in which PFAS were used, aiming to assist experts in determining the necessity to investigate PFAS in a soil study (whilst taking into account location-specific conditions). It also translates the PFAS-suspected activities, where possible, to their corresponding VLAREM and VLAREBO categories.

New directive for PFAS investigations

The OVAM has updated its PFAS investigation guidelines dated 4 April 2022. In substance, these guidelines are used to determine whether PFAS should be considered a suspect substance during statutory soil investigations and remediations ("*decretale bodemonderzoeken en-saneringen*"), or in the context of soil movement ("*grondverzet*").

These guidelines are applicable as of 1 February 2025. The assessment values from Chapter 5 will be applied for the decision-making of surveys that are prepared as of 1 February 2025. Until 31 January 2025, soil surveys can still be submitted based on the PFAS investigation guidelines from 4 April 2022.

In addition, the OVAM mentions that the obligation to investigate at least one PFAS analysis per technical survey (where the fieldwork is conducted after 19 April 2022) remains applicable.

New protocol for preliminary soil investigations

The goal of this protocol is to establish a standard approach for a preliminary soil investigation ("verkennende bodemonderzoek") with indicative numbers of drillings/monitoring wells and sampling depth/filter locations, the selection of sites on these premises, and decision-making at risk locations where PFAS is a suspected substance.

In particular, the OVAM notes that:

- the strategy outlined in this new protocol is a minimum strategy, and it is the responsibility of the expert to evaluate if additional research is necessary; and
- such a preliminary soil investigation is not intended to be an exploratory or descriptive investigation ("oriënterend bodemonderzoek" or "beschrijvend bodemonderzoek"). However, if investigation is conducted within the framework of a statutory exploratory soil investigation ("decretaal oriënterend bodemonderzoek"), the investigation strategy in accordance with the standard procedure for exploratory soil investigation is always applicable. The OVAM emphasises that if you detect contamination with PFAS during an exploratory soil investigation, you must also implement the "DAEB" methodology as included in the new protocol.

This protocol is applicable as of 1 February 2025. Until 31 January 2025, preliminary soil investigations should be submitted according to the prescriptions of the investigation protocol in effect since 15 April 2024.

New Code of good practice for descriptivesoil investigations

The OVAM updated its Code of good practice as it was necessary to consider specific points of attention when conducting descriptive soil investigations for PFAS-contaminated soil.

Although the general principles for conducting a descriptive soil investigation for soil contaminations with PFAS do not differ from those for the already known "classic" contaminants (e.g. BTEX, PAHs, VOCs, heavy metals, etc.), the OVAM indicates that this Code of good practice must be used as a supplement to existing guidelines, such as the standard procedure for descriptive soil investigation, and the Code of good practice "*DAEB Methodology, risk evaluation, and risk-based decontamination values*" ("*Methodologie DAEB, risico-evaluatie en risicogebaseerde terugsaneerwaarden*").

This Code of good practice is applicable as of 1 February 2025. Until 31 January 2025, descriptive soil investigations should be submitted according to the prescriptions of the Code of good practice in effect since 15 April 2024.

Changes from 1 January 2025 in Brussels and Flanders

Charging points in parking zones and EPC NR



Melissa Verplancke
Managing Associate, Brussels

Atdhe Krasniqi
Managing Associate, Brussels

From 1 January 2025, both the Brussels-Capital Region and the Flemish Region have experienced changes concerning, respectively, charging points in parking zones and energy performance certificates for non-residential buildings (EPC NR).

Brussels-Capital Region

From 1 January 2025, environmental permit holders for parking zones in the Brussels-Capital Region must comply with the new ratios of charging points (i.e. electric vehicle charging stations), as foreseen by the Government Decree of the Brussels-Capital Region, dated 29 September 2022.

Here is an overview of the key changes:

- Office parking zones: The number of charging points must represent 10% of the parking spaces, with a compulsory minimum of two charging points. This ratio will gradually increase to 20% by 1 January 2030 and to 30% by 1 January 2035.
- Residential parking zones: There is an obligation to install one charging point per parking space for residents who have access to the parking and own an electric vehicle, within a reasonable timeframe after the resident has informed of their electric vehicle ownership. This charging point will be located where the resident parks their vehicle.
- Public parking zones: A minimum requirement of 5% charging points is mandated, with at least two charging points. This ratio will gradually increase to 10% by 1 January 2030 (with a minimum of two charging points) and to 20% by 1 January 2035.

When calculating the ratio, a charging point with a power equal to or greater than 50 kW counts as five charging points, and one with a power equal to or greater than 150 kW counts as 10 charging points.

If more than half of the area within a 500-metre radius around the parking zone is not a predominantly residential area, a residential area, or a mixed or administrative zone as defined by the Regional Zoning Plan (the “Plan Régional d’Affectation du Sol/Gewestelijk Bestemmingsplan”), then the parking zone only needs to comply with the rules applicable on 1 January 2025 from that date onwards.

Special rules also apply to new parking zones, which must immediately conform to the criteria set for 1 January 2035. “New parking zones” refers to those parking zones not yet authorised by an environmental permit or not covered by an environmental permit that expired less than two years ago, or whose permit application was submitted after the Decree’s entry into force and that do not undergo significant renovation after its entry into force.

The Decree nonetheless mentions that exemptions may be considered for the aforementioned obligations in cases of technical impossibility or exorbitant costs.

Finally, the Decree also provides certain safety rules to be observed for the installation of charging points in parking zones. For more details on this subject, we refer to the text of the Decree.

Flemish Region

From 1 January 2025, every large non-residential building unit with a usable floor area of 1,000 m^2 or more must have an energy performance certificate for non-residential buildings (EPC NR) as stipulated by the Flemish Government Decree of19 November 2010 on general provisions regarding energy policy. Prior to 1 January 2025, for private buildings, the obligation to obtain an EPC NR primarily applied in cases of sale (or other transfers) or the conclusion of a lease.

For information:

- The EPC NR provides an overview of the energy efficiency of a building unit used as an office, school, shop, hospital, etc., and also indicates how these performances can be improved to achieve the long-term goal of carbon neutrality.
- Non-residential building units are all building units with a primary designation that is “non-residential”, which mean (in substance) all building units except residential, industrial and agricultural buildings.
- The validity of an EPC NR lasts for a maximum of five years and becomes void if (i) the designation of the building unit changes, for example, from non-residential to residential or industrial, or (ii) if a new EPC NR is issued.).

In addition to the above, please note that these EPC NR obligations will become gradually stricter in the coming years. In particular, all large non-residential building units with a usable floor area of less than or equal to 1,000 m^2 must have an EPC NR, regardless of sale (or other transfers) or the conclusion of a lease. By 1 January 2030, all large non-residential building units must have an EPC NR with a minimum “E” score.

PFAS contamination in the Flemish Region

Subsidies for descriptive soil investigations



Atdhe Krasniqi
Managing Associate, Brussels

Melissa Verplancke
Managing Associate, Brussels

Since 1 February 2025, in the Flemish Region, it is possible to apply for co-financing for costs related to a descriptive soil investigation (« beschrijvend bodemonderzoek ») for PFAS contamination resulting from firefighting and fire extinguishing exercises.

General overview

under certain conditions – assistance with the costs for carrying out a descriptive soil investigation for PFAS contamination resulting from firefighting and fire extinguishing exercises.

Individuals, enterprises, and public authorities can apply for co-financing from OVAM to conduct such investigations. The co-financing percentage is as follows:

- 35% for enterprises;
- 50% for non-enterprises other than natural persons; and
- 95% for non-enterprises that are natural persons, with a maximum personal contribution of €500.

On 6 December 2024, the Flemish Government added the co-financing conditions to the VLAREBO. Since 1 February 2025, the persons meeting these conditions can apply for co-financing for the costs related to these investigations by sending a completed, dated, and signed application form to confinancering@ovam.be. For more information on the formalities related to said application, we refer to the OVAM website.

Personal scope

Current owners, users, or operators of a land on which PFAS soil contamination resulting from firefighting and fire extinguishing exercises has occurred are eligible for co-financing.

In particular, for enterprises: (i) the current owner, user, or operator must justify their request with an injunction to carry out a descriptive soil investigation, (ii) they must be responsible for the decontamination, and (iii) co-financing is only granted if they actually bear and pre-finance the costs of the investigation.

Similarly, the request must include legal documents proving that the applicant has become the current owner of the land or that the operator or user has signed a contract with the owner for the use of the land.

However, co-financing is excluded for certain categories of persons (e.g. in case of exemption from the obligation to remediate, in case of environmental infringements, and if the relevant person does not meet the conditions for the granting of the « de minimis » aid).

Material scope

The co-financing is subject to the following conditions:

- the costs must be directly related to conducting the descriptive soil investigation for PFAS contaminations resulting from firefighting and fire extinguishing exercises;
- the investigation must be carried out according to the standard procedure provided for descriptive soil investigations; and
- the costs must be borne by the current owner, user, or operator of the land.

Note that only the costs of a descriptive soil investigation ordered after 21 September 2021 and for which the invoices date back no more than four years before the date of receipt of the co-financing application are eligible.

However, co-financing is excluded in certain cases (e.g. for costs related to conducting an orientation soil investigation (« oriënterend bodemonderzoek »), VAT, insurance, PFAS related to other activities, descriptive soil investigations resulting from activities for which a soil remediation organisation is recognised (« bodemsaneringsorganisatie »), and investigations that have already been subject to co-financing).

Amount of co-financing

Currently, the co-financing percentage is (i) 35% for enterprises, (ii) 50% for non-enterprises other than natural persons, and (iii) 95% for non-enterprises natural persons, with a maximum personal contribution of €500.

However, we note that the OVAM grants a maximum of €300,000 per co-financing application. While it is possible to submit applications for several contamination cases, the total cumulative amount of co-financing cannot exceed €300,000 over a three-calendar-year period.

Specialised Environmental Courts

Belgium's Judicial Reform Proposal



Atdhe Krasniqi
Managing Associate, Brussels

Noor Spapen
Junior Associate, Brussels

General overview

The Belgian federal Parliament has received a legislative proposal to establish environmental courts, which was the subject of an opinion issued by the High Council of Justice and approved by its general assembly on 1 October 2025. This was followed by the Council of State's opinion, published on 28 October 2025.

This legislative proposal builds on the Law of 18 January 2024, which aims to make justice more humane, faster, and firmer. Its objective is to create specialised environmental courts across the country, capable of handling both civil and criminal aspects of environmental-related cases, through the courts of first instance and the courts of appeal.

In particular, the legislator considers that the establishment of such specialised environmental courts is essential for the following reasons:

- Environmental law is a complex field and requires specific expertise, as (i) its sources span international, European, federal, and regional regulations, (ii) it intersectswith criminal, civil, and administrative law, and (iii) it is highly technical considering its scientific nature;
- Environmental disputes are expected to increase significantly in the coming years, which requires our judicial system to be prepared to respond to this growing challenge; and
- In practice, environmental offences are frequently closed by the public prosecutor without further action, which would be a result of the lack of an appropriate structure preventing the implementation of a suitable prosecution policy for environmental matters.

We also wish to emphasise from the outset that this legislative proposal does not aim to change the existing structure available with respect to proceedings against administrative decisions relating to the granting or refusal of (environmental and/or building) permits.

Further is a concise overview of the legislative proposal and the opinion of the High Council of Justice.

What is being proposed

The legislative proposal generally creates the position of a judge sitting within the environmental court, holding a specific mandate. It also introduces the establishment of environmental chambers within the courts of first instance and courts of appeal, responsible for both civil and criminal disputes. In addition, the legislator proposes – in particular and in substance – the following measures:

- Mandatory environmental law training for judges;
- Specialisation in environmental matters for public prosecutors, who will be responsible for such criminal prosecutions;
- Investigating judges will treat cases concerning violations of environmental regulations as a priority;
- Possibility for the environmental court to intervene on an urgent (interim) basis (référé/kort geding) in matters within its jurisdiction;
- Measures for information sharing between the public prosecutor and competent public authorities in environmental matters; and
- Definition of the environmental courts' scope of jurisdiction (i.e., urban and spatial planning, environment, water policy, housing, agriculture, energy policy, animal welfare, and compensation claims for damage resulting from violations in these fields).

We also note that similar initiatives had been taken in the past to address environmental issues, for example the Law of 18 January 2024, but this law has not been implemented yet through actual appointments. Therefore, this legislative proposal is a true turning point to crystallise more effective and accessible environmental justice in the long-term.

High Council of Justice's opinion

In its opinion issued on 1 October, the High Council of Justice largely supports the proposal and reinforces the arguments reflected in the parliamentary works. However, it also introduces some suggestions.

The High Council of Justice is a proponent of the proposal for the following main reasons:

- Belgium's international commitments and recommendations require the establishment of specialised courts;
- The Belgian Constitution invites such initiatives under its Article 23, which namely enshrines the fundamental rights to the protection of a healthy environment;
- Legal doctrine urges the establishment of specialised courts in the matter; and
- The practice of national courts has been ahead of this legislative proposal for several years.

In that context, the High Council of Justice prefers a leaner model with environmental chambers in each court of appeal and proposes to limit territorial jurisdiction at first instance to the courts of first instance established at the seat of a court of appeal (i.e., territorial jurisdiction in favour of the courts of Brussels, Ghent, Antwerp, Liège and Mons). In addition, the High Council of Justice flags that the definition of "environmental law" must be revised, noting it is (i) too broad by exceeding environmental law to include urban planning, housing, agriculture, energy and animal welfare, and (ii) too limited by missing some essential matters integral to environmental justice (e.g., it does not cover the residual competences of the federal government in that area, nor does it clarify whether the ecocide crime would be covered).

The High Council of Justice also notes that a legislative anchoring is essential to make these specialised environmental chambers permanent. In doing so, the new legislation should in substance provide for (i) specific instruments, (ii) absolute jurisdiction, (iii) specialisation of all judges (criminal and civil branches), (iv) making available to the judges and public prosecutor's office the necessary scientific and technical expertise to handle such complex cases, and (v) more resources and means.

Council of State

In its opinion published on 28 October 2025, the Council of State recommends that the legislator clarifies certain points in the legislative proposal, including:

- Making the necessary adjustments to ensure a consistent and unambiguous conceptual framework;
- Clarifying how the different environmental law training programmes relate to one another; and
- Modifying certain wording to guarantee consistency with the legislator's intent.

However, the Council of State did not raise any substantial concerns. For further details, we refer to the opinion.

What to watch out for

Given the potential impact on companies operating in sectors subject to environmental law and compliance requirements, we recommend closely monitoring the progress and outcome of this legislative proposal to anticipate changes it may introduce in risk management and/or the approach to litigation.



Brussels-Capital Region ordered to suspend urbanisation of sites larger than 0.5 hectares

Decision of 29 October 2025

Atdhe Krasniqi
Managing Associate, Brussels

Noor Spapen
Junior Associate, Brussels



Introduction

Following a claim brought mainly by the non-profit associations WE ARE NATURE.BRUSSELS and BRUXELLES NATURE against the Brussels-Capital Region, the French-speaking First Instance Court of Brussels (civil section) (the "**Court**") issued a landmark decision on 29 October 2025 ordering the Brussels-Capital Region to take the necessary measures to suspend urbanisation and the impermeability of undeveloped sites and land of more than 0.5 hectares within its territory.

This measure will apply until the adoption of the Regional Land Use Plan ("*Plan Régional d'Affectation du Sol/Gewestelijk Bestemmingsplan*"), the revision of which was initiated by a governmental decree dated 23 December 2021 and, in any case, no later than 31 December 2026.

The Court emphasises that this decision takes place in a specific context, in particular because:

- there is both scientific and political consensus (at international and European level) as to the existence and seriousness of the ongoing threat of climate change, its harmful effects on urban areas, and the climate objectives imposed on Member States in this respect;
- the climate policy of the Brussels-Capital Region had already been found to be contrary to the European Convention on Human Rights by (i) the French-speaking First Instance Court of Brussels (civil section) on 17 June 2021 and (ii) the Brussels Court of Appeal on 30 November 2023 (the so called "*Affaire Climat/Klimaatzaak*");
- the need and urgency to strengthen greenhouse gas ("**GHG**") absorption capacities to limit global warming is well established; and
- the Brussels-Capital Region has for over ten years been fully aware of this context in which its land use and urban planning policy is conducted.

This claim was brought on the basis of Articles 1382 and 1383 of the old Belgian Civil Code, under which the claimants essentially sought compensation for the damage caused by the wrongful conduct of the Brussels-Capital Region in its management of the GHG sinks located on its territory, as well as the prevention of future damage resulting from such conduct (in particular, in terms of land use and urban planning policy).

Legal grounds and arguments

FThe claimants based their application on Articles 1382 and 1383 of the old Belgian Civil Code, which form the legal base for the general duty of care. They demanded compensation for the damage caused by the unlawful conduct of the Brussels-Capital Region, as well as the prevention of future damage resulting from this conduct.

In particular, they argued that the Brussels-Capital Region:

- failed to adequately maintain and strengthen GHG storage capacity of the carbon sinks present on its territory;
- failed to take measures to adapt to the effects of climate change;
- continued, or at least did not prevent, the urbanisation of areas larger than 0.5 hectares, which will cause even greater damage in the future; and
- was aware of the seriousness of the threat of climate change, including its harmful effects on urban areas (on that point, see previous section).

Findings of the Court

The Court found that the Brussels-Capital Region was at fault, that damage was caused, and that there was a causal link between the two.

Fault. The Court concluded that the Brussels-Capital Region failed to meet its general duty of care through a combination of factors:

- insufficient targets and results regarding the reduction of GHG emissions. The Court refers to the decisions in the "Affaire Climat/Klimaatzaak" mentioned above, in which the regional authority was ordered to take appropriate measures to ensure that Belgium achieves by 2030 a 55% reduction in GHG emissions from its territory compared to 1990;
- the lack of an up-to-date estimate of the region's carbon sink capacity to absorb GHG emissions. In this respect, the regional authority admits there is no accounting in this area and, therefore, it is unable to contribute to the Belgian State's estimate of emission absorption by carbon sinks, as required by international and European law. The Region has also failed to consider the minimum necessary increase in its regional absorption capacity for such gases;
- the ongoing increase in urbanisation and soil impermeability. The Brussels-Capital Region has recognised the link between soil impermeability and the impact of floods and droughts on residents' quality of life, as well as the urgent need to expand and strengthen green coverage across the territory. However, despite this awareness, urbanisation and soil impermeability have continued to grow. In a 2024 report, the Brussels Climate Expert Committee underlined the importance of reversing the trend of urbanisation and soil impermeability in open spaces in the Region; and

> the inadequacy of current regulatory tools. Urbanisation and spatial planning in the Region are governed by a precise regulatory framework applicable to public and private urban development projects. Although it was decided to integrate climate objectives into the modification of the Regional Land Use Plan, the Court considered that, on the date of the decision, urban planning and development in the Brussels-Capital Region were still being conducted under the Regional Land Use Plan from 2001 and the Regional Urban Planning Regulation ("Règlement Régional d'Urbanisme/Gewestelijke Stedenbouwkundige Verordening") from 2006 (i.e., regulations that are no longer suited to the challenges posed by climate change).

In addition to the above, the Court finds that the Brussels-Capital Region was aware of the clear risk of dangerous climate change to its population and of the urgent need to prevent the harmful effects of such climate change establishing that the authority did not act with due care.

Damage. The Court considers in substance that (i) none of the individual claimants (that filed the claim alongside the non-profit associations) can escape the negative effects of climate change, which is affecting the entire Brussels territory, (ii) the harmful effects of climate change will continue to increase and worsen, and (iii) the individual claimants' damage results from the loss of an opportunity to avoid suffering the effects of climate change to a lesser extent.

Causal link. The Court considers that the negligence of the Brussels-Capital Region increased the risk of suffering said effects of climate change and recognises the link between the authority's fault and the alleged damage.

Requested remedial and preventive measures

Firstly, the Court acknowledged the general principle that, whilst it can prescribe measures to stop or prevent an unlawful infringement and remedy its effects, the Brussels-Capital Region has a margin of appreciation to choose the means of implementation.

Secondly, the Court evaluated one of the requested measure by the claimants, which was to impose a moratorium on the urbanisation of living soils, fallow and abandoned lands or any undeveloped space with an area of more than 0.5 hectares. The Court granted this request for the following reasons:

> the Brussels government itself emphasised the urgency of preserving biodiversity and living soils, and admitted that urbanisation and the impermeability of the regional soil jeopardise the objective of adapting and strengthening the absorption capacity of GHG by carbon sinks; and

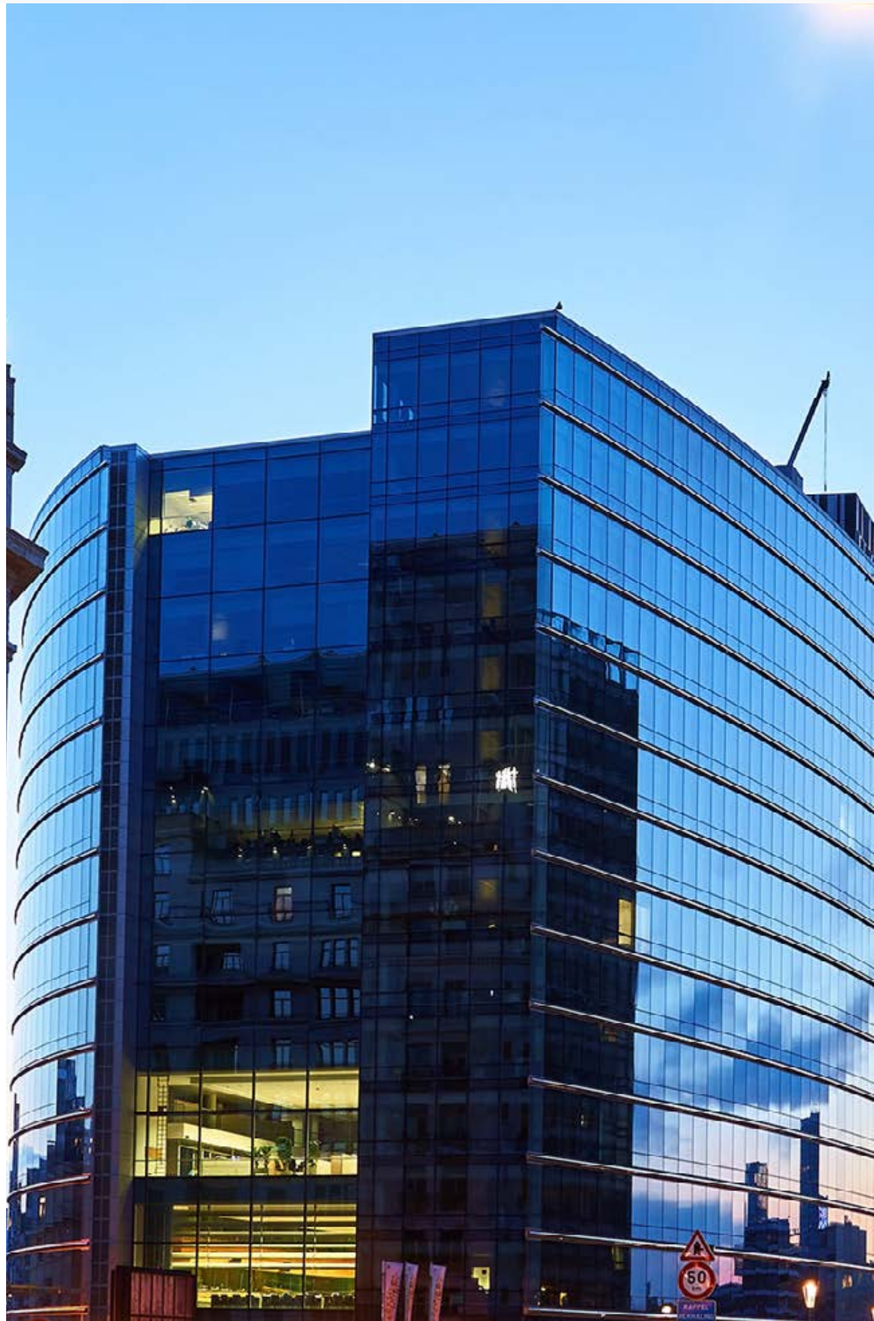
> consequently, suspending the urbanisation and impermeability of undeveloped sites and land with an area of more than 0.5 hectares could reduce the risk of exacerbating the damage caused by the harmful effects of climate change in the Brussels-Capital Region.

The claimants also requested other measures, such as to include certain requirements into the Regional Land Use Plan and to incorporate the ruling into regulatory instruments, but these were rejected by the Court on the ground that – in substance – they were too vague.

Decision of the Court

To conclude, the Court ordered the Brussels-Capital Region to take the necessary measures to suspend the urbanisation and impermeability of undeveloped sites and land of more than 0.5 hectares on its territory, until approval of the Regional Land Use Plan, and no later than 31 December 2026.

This decision sends out a clear signal that Belgian Courts will take decisions towards GHG emissions reduction that will have direct impact on e.g. urban development. In the case at hand, the Court has taken concrete measures that will impact the real estate sector. As the 31 December 2026 deadline approaches, the Brussels-Capital Region will face challenges of finding the right balance between climate change efforts and the market's need for project development.



Key contacts



Yves Moreau
Partner, Real Estate
Tel: +32 2 501 95 47
yves.moreau@linklaters.com



Bénédicte Deboeck
Counsel, Real Estate
Tel: +32 2 501 9367
benedicte.deboeck@linklaters.co



Melissa Verplancke
Managing Associate, Real Estate
Tel: +32 2 501 9174
melissa.verplancke@linklaters.com



Laura Vervier
Managing Associate, Real Estate
Tel: +32 2 501 9216
laura.vervier@linklaters.com



Atdhe Krasniqi
Managing Associate, Real Estate
Tel: +32 2 501 9203
atdhe.krasniqi@linklaters.com



Corneel Debusscher
Associate, Real Estate
Tel: +32 2 501 9153
corneel.debusscher@linklaters.com



Ségolène Michel
Associate, Real Estate
Tel: +32 2 501 9409
segolene.michel@linklaters.com



Caroline Bontinck
Junior Associate, Real Estate
Tel: +32 2 501 9273
caroline.bontinck@linklaters.com



Noor Spapen
Junior Associate, Real Estate
Tel: +32 2 501 9175
noor.spapen@linklaters.com

For more information do not hesitate to reach out to the Belgian Real Estate team or visit our Navigate Belgium Real Estate Sector dedicated page for more insights.



linklaters.com

This content is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here, please get in touch. © 2026 Linklaters.
Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of the LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, 20 Ropemaker Street, London, EC2Y 9AR, England or on www.linklaters.com and such persons are either solicitors or registered foreign lawyers. Please refer to www.linklaters.com/regulatory for important information on our regulatory position.

GC34828B_F/02.26