Chapter 2

The Flemish Draft Decree on Environmental Policy:
An Outline

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GENERAL

The general objective of the Commission was a comprehensive revision of environmental law, in order to render it more effective and less complex and to give full implementation to EC law.

The following are among the main features of the draft. It states the basic objectives and principles of the environmental policy which should be pursued, as well as general rules on the instruments to be used for its implementation. Much attention is paid to the elaboration of a decision-making process which is to be effective and consistent with the objectives and principles of the environmental policy, and at the same time offers sufficient guarantees of due process of law. It further provides more effective means for the enforcement of environmental law and for the
compensation for damages to personal interests and to the environment caused by pollution. In view of the general applicability of the provisions on the foregoing subjects, the sectoral rules relating to specific types of pollution are limited. The general rules, in the Commission's view, are sufficient to deal with air pollution. Additional sectoral rules are deemed necessary for water and soil, and to a limited extent for noise.

Since it is to give a systematic and comprehensive statement of the whole law of the subject matter covered, the draft can be considered to constitute a draft Code of Environmental Law, the redaction of which is warranted by the specificity of the subject. The comprehensive character of the decree however does by no means mean that it is self-sufficient. It is necessarily to be complemented by general rules from civil, criminal and public law. Further, most of its provisions are not of direct application but require implementing regulations. In many cases, however, the existing regulations can continue to be applied.

PART 1: INTRODUCTORY PROVISIONS

SCOPE

The scope of the draft is to a large extent determined by the fact that Belgium has, through a series of consecutive amendments to the constitution, become a federal state. Since it was commissioned by the government of the Flemish region, the draft could only deal with subject matters which are of the competence of the regions. This is expressed by art. 1.1.1. which states that the draft concerns a matter covered by Article 39 of the Constitution. The repartition of the competencies between the state and regions in Belgium is such that the majority of environmental concerns comes within the powers of the regions. However, matters such as product policy, protection against ionising radiations and protection against environmental hazards in the workplace have remained federal. These subjects, although they should ideally be dealt with in an integral environmental legislation, are thus not covered by the draft.

As indicated by its title, the draft intends to deal with environmental policy in general. In the view of the Commission, this covers the management of the environment, the protection of man and environment against pollution, the conservation of nature and of landscapes (art. 1.2.1). The main part of the draft relates particularly to the protection of man and the environment against pollution. The Commission was originally given the assignment to draft a decree on environmental protection. A limitation of protection against pollution however proved inadequate in view of the
inter-relationship between the different sectors of environmental policy. For that reason, considerable parts of the draft concern all aspects of environmental policy. This is particularly the case for the introductory provisions and those relating to access to environmental information, environmental planning and environmental impact assessment. In addition, the provisions on enforcement and compensation for damages as well as the sectoral rules on water and soil, have been worded in such a way that they can serve as a basis for an integral approach which goes beyond the area of protection against pollution. The present draft can easily be complemented by additional sectoral parts concerning the management of natural resources nature and landscape conservation.

DEFINITIONS

A number of concepts which are used throughout the draft are defined in art. 1.1.2. These definitions are of a functional nature and are to be understood in the light of the objectives of the draft. Thus, for example, although the decree is intended to protect both man and the environment, the term "environment" does not include man. Hereby, the Commission is not denying that man forms a key element in the operation of the biosphere and the various ecosystems. Nor does the Commission neglect the intrinsic value of the environment by only paying attention to its practical value for humanity. The Commission’s choice reflects the fact that the law is a system of human organisation. Rights and obligations can only effectively be granted to or imposed on humans. In a number of instances they cannot be given adequate expression if humans are placed on the same level as other living organisms.

The attention can at this point also be drawn at the definitions of BAT and BATNEEC which are used throughout the draft. The Commission is of the opinion that there is an urgent need for a more precise definition of these terms, the use of which gives rise to widely diverging interpretations. The distinction between BATNEEC and BAT may be uncommon in the light of present international terminology, but corresponds to the idea that there are—rather exceptional—situations where environmental measures are to be taken, irrespective of their economic impact (BAT), although environmental standards should normally correspond to what is economically feasible (BATNEEC).

OBJECTIVES AND PRINCIPLES OF ENVIRONMENTAL POLICY

Title 2 states the objectives and fundamental principles of the environmental policy which the Commission would like to see implemented.
Reference is made to the concept of "sustainable development", this being the general objective (art. 1.2.1(1)). A high level of environmental protection is to be achieved, without losing sight of the social and economic implications of environmental policies.

Environmental policy is more particularly based on the principles enshrined in the Treaty on European Union: the precautionary principle, the principle of preventative action, the principle of the preference for source-orientated measures and the "polluter-pays" principle. To these, the draft adds the stand-still principle. Art. 1.2.1(3), further formulates the integration principle: environmental concerns should play an essential role in all policies, at all levels of government.

PART 2: AUTHORITIES AND ADVISORY BODIES

Part 2 deals with the authorities and advisory bodies which are involved in formulating and implementing environmental policy. This part of the draft has a different status from the rest. The Commission has refrained from proposing the administrative structures which it considers to be desirable, as it does not have the necessary expertise to do so and as the subject-matter is of a highly political nature. The Commission has confined itself at this point to restating, in a manner consistent with the other parts of the decree, the powers of the authorities that are defined in the existing legislation which would be replaced by the Draft.

Only quasi-autonomous institutions are mentioned at this stage, as the rules governing the latter must be laid down in a decree of the Flemish Parliament. The Ministry of the Flemish Community, which obviously has an important part to play in environmental policy, is not mentioned at this stage for the reason that, in constitutional terms, this institution, as well as its structures, is to be regulated exclusively by the government.

If a truly comprehensive code of environmental law were to be enacted, Part 2 would also be the place to accommodate the rules on advisory bodies, such as the MINA Council, and on research institutions which specifically concern themselves with environmental policy, such as the Institute for Nature Conservation.

PART 3: FREEDOM OF ACCESS TO ENVIRONMENTAL INFORMATION

Access to official documents is in principle warranted by the Belgian constitution. This constitutional principle has been implemented, insofar
as federal matters are concerned, by federal legislation. With respect to matters of regional competence, the Flemish Parliament adopted the Decree of October 23, 1991, on the public nature of the administrative documents in the departments and institutions of the Flemish Government. However, this decree, which is of general application, does not satisfy the requirements of the EC Directive 90/313 of June 7, 1990. The purpose of Part 3 thus is to fully implement the Directive, while at the same time departing as little as possible from the Decree of October 23, 1991.

The draft pays much attention to potential conflicts between its provisions and other legislation on access to information. The demarcation with federal matters and federal legislation is carefully drawn in order to avoid any overlap. As far as other legislation of the Flemish region which deals with secrecy of disclosure of information regarding public documents is concerned, the draft’s provisions are to take precedence, except insofar as the other legislation provides a broader disclosure.

The right of access to environmental information implies the right to consult documents and obtain a copy thereof. The draft makes use of the opportunity provided by the Directive to impose certain limitations on the right of access to information. However in the General Decree the list of cases in which a request for information can be denied has been kept as consistent with the Directive as possible. The Draft contains the necessary procedural rules for the handling of the request for information. Applications have to be made to the administration to be designated for this purpose by the government. The Commission’s intention is that this be the same administration as has been designated under the General Decree of October 23, 1991. An appeal procedure is provided for, and there is also a right to have documents rectified which contain incorrect personal data or business information.

**PART 4: THE DECISION-MAKING PROCESS**

Part 4, which develops a generally applicable system of decision-making in environmental matters, is one of the essential features of the draft. One of the basic ideas is that environmental policy should systematically use planning techniques (title 1) and proceed from environmental quality standards (title 2). The draft also defines the various types of environmental protection standards which can be used (title 3). These standards can be given more or less general application under the form of general, sectoral and integral conditions (title 4). Title 6 deals with permits and notification certificates, which allow for the individual assessment of the
environmental hazards relating to projects and activities. The draft clarifies the legal status of agreements between the government and industrial organisations (title 7). Finally, the title on environmental impact assessment and safety reporting aims to integrate both techniques into one single procedure and to expand its application to programmes, plans and policies (title 5).

**TITLE 1: ENVIRONMENTAL PLANNING**

One of the basic aims of the Commission is that the environmental policy of the Flemish Government should systematically make use of planning techniques. Environmental planning, at the level of the Flemish Region, consists of drawing up the environmental report, the environmental policy plan and the annual environmental programme. The environmental report, which is prepared every two years by the VMM, provides the scientific basis for the environmental policy. It consists of a description, analysis and assessment of the state of the environment and of the policy which has been applied up to that point as well as future projections based on a number of relevant scenarios.

The regional environmental policy plan is a strategic plan, drawn up on the basis of, *inter alia*, the environmental reports. It covers a period of five years and provides the framework for the environmental policy of the Flemish region itself and of the provinces when acting on behalf of the region. The crux of the regional environmental policy plan is the action plan, which may consist of both binding and non-binding provisions. The plan is drawn up by the Flemish Government after a comprehensive procedure. A draft is prepared using an open planning method by a planning team under the direction of the VMM. Once the draft version has been completed, it is sent for comments first to the Flemish Parliament and the Flemish Government, and subsequently to the MINA Council and the SERV. In addition, there is a public inquiry. The VMM draws up the final proposal which is submitted to the Flemish Government for decision. In principle, the plan should be drawn up for the period 1997–2001. In the meantime, it will be possible to acquire some experience in this field by drawing up a series of sub-plans, which may or may not be interconnected.

The plan is made operational by means of the regional annual environmental programmes. Every year, an assessment is made of the manner in which the regional environmental policy plan has been carried out, and the working programme for the coming year is laid down, including its budgetary implications. The annual programme is drawn up by the Flemish Government, and is linked to the relevant budget.
Environmental planning may also take place at the provincial and municipal level. The draft presents this as a possibility but does not make it compulsory. Provincial and municipal environmental planning consists of the environmental policy plan and the annual environmental programme. However, the municipalities and the provinces may also, depending on their resources, restrict planning to the drawing up of an annual environmental programme, the relevant procedures for which run parallel to those which apply to regional environmental planning. The Flemish Government may give financial support to provincial and municipal environmental planning and may, after having made a suitable assessment, make planning compulsory.

**TITLE 2: ENVIRONMENTAL QUALITY STANDARDS**

Title 2 concerns environmental quality standards, which define the environmental requirements which must be met, either immediately, or after a certain period of time. These quality standards, throughout the draft, are to play an essential role in the formulation of environmental policy. The Flemish Government has been given the responsibility for establishing environmental quality standards for air, water and soil.

A distinction is made between basic environmental quality standards, which apply throughout the Flemish region, and special environmental quality standards, which apply to areas which require special protection. A further distinction is made between limit values, guide values and target values. The quality of the environment is regularly monitored. When limit or guide values are exceeded, an inquiry must be held and a remediation programme must, where appropriate, be drawn up and carried out.

**TITLE 3: ENVIRONMENTAL PROTECTION STANDARDS**

Whereas environmental quality standards form part of an “effect-orientated” environmental policy, and are addressed by the authorities, environmental protection standards are “source-orientated” and addressed by the polluters.

The draft defines various types of standards which can be used to control pollution and specifies how they are to be formulated. It distinguishes between emission standards, immission standards, design and construction standards, operational standards, and location and safety distance standards. These may be imposed by means of general, sectoral or integral conditions, or may be laid down in licences.
TITLE 4: GENERAL, SECTORAL AND INTEGRAL CONDITIONS

Title 4 concerns the area of application and the procedure for the adoption of regulations by which environmental protection standards are set. A distinction is drawn between three types of conditions.

The most well-known are general and sectoral conditions. General conditions in principle apply to all installations and activities. Sectoral conditions apply to a certain category of installations and activities, in most cases constituting a sector or sub-sector of business activity. For classified installations, general and sectoral conditions are supplemented by individual licences which may under certain circumstances depart from them.

The concept of integral conditions is a new one for Belgium, and has been derived from Dutch environmental legislation. Integral conditions lay down a comprehensive set of conditions for the protection of the environment for categories of installations or activities which are likely to cause little damage to the environment. When integral conditions apply, an individual assessment of the dangers presented by the installations concerned is no longer necessary; a notification of the installations' operation is sufficient.

As to the content of the general, sectoral or integral environmental protection standards, the draft expresses a preference for measures specifying objectives rather than specific methods. The standards should also, as a rule, correspond to the BATNEEC concept.

Environmental protection standards can be differentiated according to the area where they are to be applied (e.g. in specially protected areas) and according to whether they are aimed at new or existing establishments or activities. Prior to their adoption, a draft of the general, sectoral or integral conditions must be made public and submitted to comments of the public and of the SERV and the MINA Council.

TITLE 5: ENVIRONMENTAL IMPACT ASSESSMENT AND SAFETY REPORTING

Among the techniques to ensure informed decision-making on the part of the authorities, environmental impact assessment and safety reporting take a pre-eminent place. Both are applied in present Flemish environmental law, with respect to projects.

The draft intends to rationalise decision-making by integrating the two procedures. It also aims to increase the quality of the assessment and reporting by having it take place at as early a stage of the decision-making process as possible and by providing guidelines from and quality control by a monitoring committee.
As is already the case under present law, environmental impact assessment and safety reporting are compulsory for projects which are subject to environmental licensing or planning permission and which may have a major impact on the environment or carry major accident hazards. A list is to be established of the projects which will automatically be subject to assessment and reporting. For projects on a second list, a decision as to whether or not it is necessary to draw up an environmental impact assessment or safety report must be made by the appropriate administration on a case-by-case basis. In order to guarantee the quality of the process, reference is made to a monitoring committee. After a preliminary public inquiry, this committee draws up guidelines regarding the required contents of the report and the methodology to be used in drawing it up. The environmental impact assessment and safety report is prepared by a recognised expert, under the responsibility and at the expense of the initiator of the project. The quality of the report is to be approved by the monitoring committee before it is considered final. Where the project may produce cross-frontier effects and hazards, cross-frontier consultation must take place in accordance with the Treaties of Espoo and Helsinki. Following its completion, the report is made public. It is added to the application for the permit for the project.

In anticipation of developments expected at European level, impact assessment and safety reporting is also provided for policy proposals, plans and programmes which may have a major environmental impact or present major safety hazards. For certain types of plans (such as land use and development plans), the impact assessment and safety reporting must be carried out by force of the decree itself. In order not to overburden the decision-making, the government is given rather broad discretionary powers to subject other types of plans to the procedure or to exempt some of them. The impact assessment and safety report must be prepared by a recognised expert, under the direction of the responsible administration. The process is checked by a monitoring committee, from which an approval is required before the assessment is subjected, together with the proposal, plan or programme, to a public inquiry.

**Title 6: Licences and Notification Certificates**

**General**

Licences and notification certificates are used as key instruments in the draft for the control of individual installations and activities. A licence allows the licence holder, for a certain period and subject to certain conditions, to operate or change certain classified installations or activities.
The notification certificate certifies that the duty to notify has been complied with (art. 4.6.1(1) and (2)).

However important they may be, licences and notification certificates are, in the draft, not used as self-sufficient and autonomous instruments of pollution control. They are systematically used in conjunction with the other policy instruments, and more particularly with planning, environmental quality and protection standards.

Permits

As is generally the case, the draft, wherever possible and appropriate, tries to ensure continuity with the present law, in this instance the Flemish Decree on Environmental Permits of June 28, 1985, and its recent implementing regulations.

Thus, for example, the installations subject to permit are grouped into two classes, according to the potential hazards they present. The authority which is to deliver the permits (province or municipality) and the complexity of the procedure varies according to the class.

The rules with respect to the permits for modification of a classified installation, on the other hand, are considerably changed. For unimportant modifications, registration and a yearly notification is sufficient. Other modifications require a modification permit and, if they substantially affect the environmental impact of the installation, the authorisation of the modification implies a full revision of the permit. A simplified procedure applies to temporary installations.

The procedural rules for the examination of the application are elaborated in detail. The result is a fairly lengthy text which should establish the obligations both of the applicant and of the authorities more clearly than is presently the case. One of the points to which particular attention was given is the determination of the beginning, the duration and the end of the time limits within which the different phases of the procedure have to be handled, as well as the consequences of exceeding these limits. The intention is to provide sufficient time for the administrative procedure and the public participation process to be handled properly while at the same time protecting the applicant against undue delay from the side of the authorities. The time limits are made binding rather than indicative. As is already the case under present law, if no final decision is reached within the time limit provided for an appeal, the applicant is, by law, considered to have obtained a permit (art. 4.6.97), without specific conditions attached to it, but which does not relieve him of the duty of abiding by the general and sectoral environmental protection standards.
Also quite important is the attention paid to the substantive criteria which govern the delivery of the permits and limit the discretion of the authorities (art. 4.6.136ff). At this point, a link is made between the permit and the other environmental policy instruments, in particular environmental planning, environmental quality standards and environmental protection standards. As a rule, the conditions imposed should correspond to the BATNEEC concept.

Another innovation in this context is the concept of the environmentally relevant technical complex (milieutechnische eenheid) introduced in art. 4.6.11. If a classified installation is part of a larger complex, the acceptability of the individual installation or of a modification thereof should be assessed on the basis of the environmental impact of the complex after the installation has been added to it or modified.

The draft is also intended to devise an integral permit, based on an assessment of all environmentally relevant aspects of the project. When examining the permit application, the competent authority must indeed take into account, to the maximum extent possible, all the factors through which the installation or activity may influence man and the environment (arts. 4.6.7 and 4.6.138). The draft deviates fundamentally from present law, which requires a separate building permit, by providing that an environmental permit shall also serve as building permit, where this is required (art. 4.6.7 (1)). This implies that questions relating to land use and to town planning are also to be taken into consideration in the assessment of the permit application.

**Notification certificates**

As in the Flemish Decree on Environmental Permits of June 28, 1985, notification of the operation of an installation or activity of minor importance is used by the draft as a complement to the permit system. Its area of application is, however, limited to those categories of installations and activities for which integral conditions exist and which, it is proposed, render the imposition of individual conditions unnecessary. On the other hand, the draft's provisions on notifications are also more elaborate than is the case in present law. The authority to whom the notification is made, for example, is to do more than merely make an entry in a register. A notification certificate is only delivered after an examination of whether the installation in question belongs indeed to a category for which a notification certificate is sufficient and a permit is not required.
TITLE 7: ENVIRONMENTAL COVENANTS

Rules concerning the prevention or restriction of environmental impairment can not only be imposed by regulation, but may also be agreed upon in contracts between the government and private parties. The binding character and the legal status of such agreements however is under present law often unclear. The draft elaborates a binding legal framework for environmental agreements between the Flemish region and organisations of enterprises only; other environmental agreements are not affected.

Generally speaking, the draft tends to protect public interests when private agreements are used to replace or to complement the regulatory process. As far as their content is concerned, such contracts cannot set aside existing legislation or regulations, nor enact rules which are less strict. When the region enters into an environmental contract within the meaning of the draft, it simultaneously undertakes to refrain, for the duration of the contract, from issuing stricter rules in relation to the items which are governed by the contract, except in circumstances of urgent necessity or in order to meet requirements of international or European law.

At procedural level, an element of public participation (which, according to the draft should normally be present when regulations are adopted) is introduced in the contractual process. Indeed, a summary of the draft of the contract is to be published for public comment. The full draft is to be submitted to the SERV and MINA Council. The final version of the contract is published in the Official Gazette. The parties report to the Flemish Parliament on the way actual application is made of the contract.

The draft makes clear that the agreements to which it applies constitute binding contracts. In principle, the general rules of contract law apply. However, a number of exceptions from this principle are provided for, for example, in respect of the binding nature for the private partners' members, the duration and the termination of the agreements. In theory, damages and specific performances can be claimed in the event of breach of the contract. In fact, the unilateral termination (which requires six months' notice) by one of the parties may be the only effective sanction which more particularly the government can avail itself of, thus regaining its liberty to issue regulation on the subject matter covered by the contract.
PART 6: ENVIRONMENTAL MANAGEMENT WITHIN COMPANIES

Part 6 deals with a number of topics which relate to environmental management at company level, a subject which is new to Belgian environmental law. First, operators of classified installations and activities are required to appoint an environmental co-ordinator who is responsible for contributing towards the development and introduction of environmentally-friendly production methods and products, supervising compliance by the company with environmental legislation, and ensuring that more specific action is taken as regards measurement, registration and waste accounting. He also advised on any planned investment which has implications for the environment, and reports on his activities to the company management, the works council and the committee for health and safety. The Flemish Government may impose requirements regarding the qualifications and qualities which the environmental co-ordinator must possess. He is protected under social law (Chapter 1).

Chapter 2 concerns the implementation of the European EMAS Regulation, and authorises the Flemish Government to subject certain categories of classified establishments and activities to a single or regular audit. Chapter 3 provides the statutory basis which enables the Flemish Government to impose, by means of general or sectoral conditions, measurement and registration requirements on certain categories of installation or activity. Under the provisions of Chapter 4, it is possible to impose on certain companies the obligation to draw up an annual environmental report and to submit it to the authorities. The annual environmental report concerns emissions and immissions of the installation, the production of waste, and, where appropriate, particulars of energy and raw material consumption. Chapter 5 concerns the rules and procedures for the prevention of serious accidents which must be followed by those establishments which fall within the scope of the Seveso Directive.

Finally, Part 6 imposes reporting and warning requirements in case of accidental emissions and immissions.

PART 7: ENFORCEMENT

In the decision of the Flemish Government establishing the Commission, special emphasis was placed on the need to improve the effectiveness of criminal law remedies and of other methods of environmental law enforcement. In order to achieve this objective, the draft makes available a
broad range of enforcement instruments, the choice of which may depend on the actual circumstances of the case. At the same time, the preventive and corrective effect of the enforcement measures is enhanced as much as possible. The range of criminal sanctions is broadened beyond penalties and imprisonment in order to include measures allowing the actual cessation of polluting activities. For offences of less importance, administrative penalties are possible. If preventive action is essential, injunctive relief can be sought at the initiative of certain officials and associations through an action before the private courts and handled in the same way as summary proceedings. To complement other sanctions, the remediation project can be used to take, under the supervision of the environmental authorities, corrective measures to remove the conditions which brought about the illegal pollution.

In order to achieve these objectives, the Commission considered it a matter of priority to ensure that the mechanisms for monitoring the compliance with environmental law be made subject to sound organisation. Without monitoring, supervision and enquiry there can be no adequate enforcement.

**TITLE 1: SUPERVISION**

Supervision will be carried out by officials belonging to the Flemish environmental inspection services. In addition, supervisory officials are appointed—subject to the conditions laid down by the Flemish Government—and the Mayor of the municipality.

It was also decided to adopt a system under which the officers of the judicial police force do not have the capacity of supervisory official, without, however, detracting from the general powers to record offences. As regards the powers of the supervisory officials, an attempt has been made to reconcile the requirements of efficient action with the protection of the rights of the individual. In order to allow supervision to be carried out in an effective manner, the supervisory officials must be able to exercise certain powers, such as access to premises, the right to consult documents, the taking of samples, etc., even if the supervised person does not comply. If these powers are not provided for, even the most perfect system of enforcement and penalties will run the risk of becoming a dead letter.

Efficient supervision also demands that, where the supervisory officials are faced with resistance on the part of the person being supervised, they have the option of arranging for the supervision to take place without the latter's permission, even if this involves the use of force. This is why the existing provisions allowing the supervisory officials to ask for police
assistance are not only maintained, but also extended.

With a view to protecting the rights of the individual, the Commission has however abandoned any general clauses on the use of powers which involve the use of force; instead an exhaustive list of this type of supervisory powers is laid down.

The same concern has entailed that those protective measures which can be adopted with a view to protecting the evidence of an offence, and which could even take the form of a business being temporarily removed from its owner, must remain limited in time. Measures of this type will also require the intervention of the judicial authorities. The objective is to avoid protective measures being adopted either as a means of pressurising people, or as an actual punishment.

A further important policy choice of the Commission is that supervisory officials should not have the power of not passing to the Public Prosecutor details of an offence they have recorded and thus of effectively deciding that it should not give rise to prosecution. This option is related both to the fact that environmental offences cannot be described as being of minor importance, and to the negative consequences of systems in other areas where the supervisory official can dispose of cases, such as the criminal law of social security and industrial relations.

This does not mean that every environmental offence must give rise to criminal proceedings. The Commission is of the opinion that it is possible to deal with less serious offences by means of administrative penalties, and that this method of settling cases, which is the responsibility of publicly authorised officials, provides better legal guarantees than conferring the power of case disposal on supervisory officials. In the opinion of the Commission, it is however the Public Prosecutor who must decide whether or not criminal prosecution must follow.

**Title 2: Administrative Penalties**

Administrative fines may be imposed for all types of offence, except where unlawful emissions constitute an actual danger to human health, and the offender knew, or should have known this. The main objective of the Commission regarding administrative penalties has been to design a pragmatic system of sanctioning less important offences which at the same time is consistent with the case law of the European Court of Human Rights.

As has been said, the Public Prosecutor has ultimate control on whether an administrative penalty rather than criminal prosecution should follow. The interplay between the Public Prosecutor and the official authorised to impose administrative penalties takes place in a different way, according to
whether the offence has been recorded by an environmental supervisory official or by an officer of judicial police. If the offence has been recorded by a supervisory official, his report is passed to the Public Prosecutor and a copy thereof to the official authorised to impose administrative penalties. In such cases, the authorised official will inform the Public Prosecutor whether or not he intends to impose an administrative fine. The Public Prosecutor can respond in two ways: either he will bring criminal proceedings, and the authorised official is no longer empowered to impose an administrative fine, or he agrees with the intended action of the authorised official, and the opportunity to bring criminal proceedings is suspended. This opportunity can only be revisited if the administrative fine is not paid.

If the offence is recorded by an officer of the judicial police, he passes his report to the Public Prosecutor only. The latter then informs the authorised official whether he will bring criminal proceedings or prefers to have the matter dealt with by the administrative procedure. If the latter is the case, criminal proceedings are suspended. Where the authorised official informs the Public Prosecutor that he does not wish to impose an administrative fine, the opportunity to bring criminal proceedings will arise again. Where the administrative procedure is opted for, legal protection will be given by allowing the interested party to consult the file and to make his views known. At the same time, he will have the right to appeal to a leading official, and his appeal will have the effect of staying proceedings.

This type of enforcement mechanism naturally assumes the existence of effective communication and consultation between the authorities and the Public Prosecutor's department. Successive Flemish ministers have taken various initiatives in order to enable a structured form of co-operation between these bodies.

**Title 3: Criminal Penalties**

The draft includes an important set of provisions relating to criminal penalties. These criminal law provisions are characterised by the following principles.

In the first place, the conditions for pollution being punishable are worded in a different way than is traditionally the case in Belgian law. Indeed, the system whereby the criminal law provisions merely forms an appendix to administrative law statutes, and under which the criminal law merely served the purpose of enforcing administrative law is complemented by provisions directly sanctioning certain forms of pollution. In the Commission's proposal, any emission of polluting substances or
organisms, contrary to the applicable provisions, is penalised directly. Further, where such emissions represent an actual health hazard, an increase in the sentence is provided for, and, in addition, the permit is denied any justifying effect.

A second important principle of the Commission’s proposal on criminal law is the introduction of the criminal liability of legal persons. Because environmental pollution essentially constitutes criminal business law, and past experience has shown that it is impossible to enforce environmental legislation properly without the criminal liability of corporations, the Commission proposed that legal persons should become criminally liable. This does however not take away the potential criminal liability of the legal persons’ representatives where the latter are personally guilty. Both types of criminal liability thus coexist. As is generally known, the Federal Minister of Justice has announced that he would also propose a law inserting the general principle of the criminal liability of legal persons into the Penal Code. Should this objective be realised, separate provisions relating to environmental offences may be superfluous.

A third fundamental characteristic of the draft’s provisions on criminal law is a drastic adjustment of the range of penalties. In the opinion of the Commission, the traditional penalties, imprisonment and fines, are clearly inadequate. Especially in the light of the possible introduction of the criminal liability of legal person, it is necessary also to be able to apply penalties which halt the pollution and prevent any further environmental damage from being caused. At the same time, penalties are needed which are specifically aimed at legal persons. This is why the Commission proposes new types of penalty such as the publication of the court decision, the prohibition of exercising certain professional activities, and the closure of an enterprise. A great deal of attention has also been given to such measures as a ban on the use of certain installations, the appointment of a special trustee, and restoration of the site to its previous condition.

**TITLE 4: PRIVATE LAW INJUNCTION**

However important they may be, criminal prosecution and administrative penalties very often come too late in order to prevent unlawful damage to the environment. This preventive effect is the main objective of the Commission’s proposal of a private action for injunctive relief to be brought in the public interest by certain officials and associations.

The Commission’s proposals on this subject are broadly similar to the federal legislation concerning the cause of action attributed to environmental organisations which was adopted last year and which it has influenced. The idea is that the President of the Court of First Instance is
to order, in summary proceedings, the discontinuation of activities which present a violation or a serious threat thereof of the applicable environmental legislation. The action can be brought by the Public Prosecutor, specially authorised officials and environmental administration or associations whose objective is to protect the environment. The normal rules of standing do not apply. The claimants act in the public interest and do not have to show damages or a personal interest. Failure to comply with the court's decision is punishable and may give rise to the payment of a civil penalty determined in the injunction. It is clear that the action for injunctive relief is essential to ensure the preventive effect of the enforcement system of the draft.

TITLE 5: REMEDIATION PROJECTS

The Commission is of the opinion that enforcement measures should not only have a repressive function but should simultaneously, where possible, improve the quality of the environment by finding a concrete solution to the environmental problem in question. One way of achieving this, which can be used in conjunction with administrative penalties, criminal sanctions and private injunctions, is the remediation project. It requires the offender to determine and take, under the supervision of the environmental authorities, the corrective measures which can eliminate the illegal pollution.

The remediation project is drawn up by, or on the initiative of, the offender, and at the latter's expense, and submitted to the supervisory authority for approval. The offender signs the approved remediation project, which he must implement on his initiative and at his expense, unless the court, or the authority which approved the remediation project determines that the project should be carried out by, or under the supervision of, recognised experts. Compliance with the remediation project is an element to be taken into account in the determination of the sanction imposed for the offence. In this respect, the remediation is not without precedents in present criminal law where sometimes sentences are suspended under the condition that the defendant takes a number of corrective measures. The remediation project, however, is more formalised and applicable to whatever type of sanction. It makes available to the courts the technical expertise of both the defendant and the supervisory authorities. For the defendant it has the additional advantage of associating him closely with the determination and the implementation of the corrective measures which are imposed.
PART 8: SAFETY MEASURES

The draft also provides for the possibility of safety measures being taken which aim to restrict emissions, which could, for example, consist of the removal of certain substances, the obligation to refrain from a certain course of action, or the sealing of certain apparatus. These safety measures are possible, not only where an infringement of the environmental legislation has occurred but also where, independently of any offence, a serious threat to man or to the environment is caused. In such cases, the competent authority may take the initiative to carry out, or arrange to carry out, safety measures. The safety measures can be aimed at a single polluter or can be rendered more generally applicable. In principle, the safety measures apply for an indefinite period, unless provision to the contrary is made in the decision. It is possible for any interested party to apply subsequently for an amendment or the repeal of the measure in question.

The safety measures can be taken by specially designated officials. At the same time the power to take safety measures remains, as is generally the case in existing environmental law, with the local authorities, especially the mayor of the municipality where the event occurs. In the absence of action by the mayor, or where the danger transcends municipality frontiers, the power to take safety measures is conferred on the provincial governor, in which case the mayor shall no longer have the relevant powers. An administrative appeal against the safety measures is provided for.

PART 9: COMPENSATION FOR DAMAGE CAUSED BY POLLUTION

Liability for environmental damage in Belgium is presently mainly governed by federal law. The basic provisions on the subject are to be found in the Civil Code: art. 1382 CC (fault liability), art. 1384 CC (liability for defective items), art. 544 CC (neighbourhood law). In addition, there is a fairly large number of specific statutes providing generally for strict liability for the consequences of different pollution incidents.

The present law is not satisfactory. Fault is often difficult to prove. The normative element in neighbourhood law includes a tolerance for the conditions prevailing in a certain neighbourhood. The liability for defective items and other strict liability statutes is in certain cases important but their area of application remains limited; in any event, they lack internal consistency.
Although the theoretical concept of causation is very large, establishing causation is a major obstacle for the victim. There is no adequate system of financial guarantees. Ecological damages are not compensable. The Commission tries to address most of these problems in its draft and has devised a comprehensive system of compensation for environmental damages, through a system of strict liability complemented by financial guarantees and the intervention of a fund for a number of damages which fall out of the reach of a liability system.

The draft introduces a general rule of strict liability for damage caused by an emission of pollutants in air, soil or water. If the emission results from an installation or activity which is subject to licence, liability is canalised to the licencee or the operator in fact. The causes of exoneration of liability are limited. The liability, however, does not apply to pollution which is acceptable in view of local circumstances and which results from emissions which are consistent with the neighbourhood practice and not illegal.

There is a limitation period of three years, combined with a period of extinction of 30 years from the emission. The draft applies only with respect to emissions which have taken place after the coming into effect of the decree.

In respect of compensation for damage to individual interests, the draft does not deviate fundamentally from the present law. It recognises as compensatable damages resulting from death or physical injury, destruction or loss of property, nuisance, and economic loss, as well as the cost of preventive measures and the damage caused by these measures (art. 9.1.1). The victim is entitled to such remedies as are provided under normal tort law (art. 9.1.7(1)). The draft constitutes a major innovation for Belgium where it recognises ecological damages as falling within the scope of tort law. It draws a distinction (inspired by the modified draft EC Directive on Damage Caused by Waste) between damage to individual interests ("damage") and harm to elements of the environment which remain unappropriated ("impairment of the environment"). If damage has been caused to individual interests, the plaintiff, as has been said before, may institute all such claims as the ordinary tort law confers on him. In the event of impairment of the environment, however, the only remedy is to claim that measures of restoration of the environment be taken or to recover the cost thereof. A monetary compensation based exclusively on an assessment of the value in money of the damaged natural resources is excluded. In order to be recoverable, the cost of the measures taken should not be unreasonable in the light of the results to be achieved for the protection of man and the environment (art. 9.1.8(1)).

According to the draft, the action for restoration of the impaired
environment can only be brought by the Flemish Government, either at its own initiative or at the request of the city government of the place where the impairment took place. If the government fails to act, the city may step in and bring the action itself (art. 9.1.8(2)). In order to provide as scientific a basis as possible for the action, the government or the city shall, before bringing the action, request an expert opinion from the Institute for Nature Conservation with respect to the nature and extent of the environmental impairment, the measures which could lead to its restoration, the cost involved, and the likely developments should no measures be adopted (art. 9.1.8(3)).

Operators of installations and activities presenting substantial risks are under an obligation to provide financial guarantees in proportion with the risk they create. Liability insurance can be used but is not compulsory: bank guarantees and other financial guarantees can be used as well. In order to remediate the limited availability of commercial financial guarantees, the draft provides for the establishment of the environmental guarantee account (EGA) (Title 4 of Part 9). This new financial institution would manage deposits made by potentially liable parties on individual accounts in order to guarantee certain of their obligations. The deposits are tax deductible; the interest is added to the individual accounts. A deposit with the EGA, rather than other forms of financial guarantees, is required in a limited number of cases, for example where there in fact is no risk involved as clean-up costs or after-care expenses are clearly foreseeable. In other cases, the potentially liable party has the choice between providing a traditional guarantee or of making a deposit with the EGA. The individual financial and taxation situation will determine which is the most appropriate solution. Studies by financial institutions have shown the EGA to be in many cases an attractive alternative to insurance and bank guarantees.

Liability is, in principle, unlimited. The draft however provides for an optional mechanism which allows operators to limit their liability to the level at which they have to be covered by financial guarantees. They can achieve this limitation by showing that compensation for the damages is guaranteed, up to a second, much higher amount, by a compensation fund which they have established or adhered to. The proposed system is comparable to that applied in the area of marine oil pollution where the strict liability of the tanker owner which is to be covered by financial guarantees, is complemented by the intervention of the IOPCF for damages exceeding the limit of individual liability. A major difference, however, is that the coverage by the proposed guarantee fund and the ensuing limitation of liability is optional. It is indeed not deemed possible at present to oblige the operators of the most diverse economic sectors and
financial standing mutually to guarantee their solvency by contributing to a single fund. It is more likely that risk-spreading initiatives are taken on industry basis.

The draft also addresses the problem of the compensation of a number of damages which fall out of the reach of any form of individual liability. If the source of pollution is unidentified, if there is no liability because the defendant can invoke a cause of exonerartion, or if the liable party is insolvent and the financial guarantees insufficient, individual liability is of no avail to the victim. Here the only possible solution is recourse to a fund or other collective compensation mechanism. In this respect the draft does propose to make use of an existing fund financed by environmental taxes on waste and waste water. Part of this fund, which was created to finance government investments in pollution infrastructure and soil clean-up, is set aside for the compensation of victims who cannot obtain compensation for one of the reasons mentioned.

PART 10: WATER

Part 10 of the draft deals with surface waters within the Flemish region, be they stagnant or flowing, freshwater, brackish or salty. Ground water falls only partly under this chapter: inasmuch the planning of integral water management is concerned as is regulation of collection and the artificial supplementation of ground water. The protection of ground water against pollution is dealt with in Part II which concerns soil.

Water policy in the Flemish region is currently formulated in a highly disparate manner, rests on a large number of laws, and is the responsibility of a wide range of authorities. In Part 10, the Commission seeks to lay the basis for integral water management, the purpose of which is to strike a balance between the various uses of the surface waters and the ground water in such a way that the water quality objectives are met. Operating a system of integral water quality management implies taking into account the quality and the quantity of the surface water and the ground water as well as the need for conservation of nature and landscapes.

Water quality standards

The starting point of the water policy is the determination of water quality standards. As indicated in the general part of the draft, environmental quality standards not only relate to the chemical and physical characteristics of water, but may also establish which biotic or other components must be present in the environment. General water quality standards are to
be set for all surface water. In addition, special quality standards are to be formulated for the surface waters which the draft lists as requiring special protection, in view of their ecological value or of the purpose which they serve. The Flemish Government shall designate, *inter alia*, the vulnerable surface waters on the basis of the criteria which are laid down in Directive 91/271/EEC of May 21, 1991. Because the quality of the protected surface waters depends very much on the situation of the upstream surface waters, the draft empowers the government to adopt special quality standards for the latter also.

**Protection of the surface waters against pollution**

The first step in achieving the water quality objective is, of course, the protection of the water against pollution. The draft in this respect contains a number of general interdictions. It is generally prohibited to throw objects or release other substances into the surface waters which can cause the pollution thereof, except for the discharge of waste water, which is more extensively regulated by the draft. In addition, it is prohibited to store or abandon substances under circumstances in which they are capable of landing, directly or indirectly, on the surface waters as a result of natural forces. The draft makes it possible to establish rules with respect to the run of precipitation from built-up or hardened surfaces, in permits or in general regulations.

Special attention is paid to regulating the release of waste water from point sources, which, no doubt, constitute a major source of pollution of the surface water. In the first place, general, sectoral or integral environmental protection standards are to be established for the release of waste water. They may be differentiated according to whether the release comes from classified installations or from other sources. They should further distinguish according to whether the receiving water is surface water, a public waste water purification system or a public sewer which does not form part of any public waste water purification system. Further, the discharge of waste water from classified installations is only accepted within the limits of a permit or integral conditions, which again should take into account the nature of the water in which the discharge takes place. The draft also empowers the government to establish environmental protection standards for the release of waste water from vessels. The obligation of the government in setting up a public waste water purification system for the areas which it designates is confirmed. This designation shall take place at the same time as the designation of the surface waters requiring special protection.

The draft also addressed the difficult problem of controlling water
pollution from non-point sources (agriculture, atmospheric fall-out, etc.). The nature of these sources of water pollution is extremely varied and of increasing importance.

Here, constitutional limitations play an important role. Product norms being the domain of the federation, the regional government can only be authorised to subject to regulate the use (and not the characteristics) of products, objects and substances which are discharged into surface water or into public sewage systems, and are capable of polluting the surface water or of harming the operation of the public water purification systems. At the same time, the proposed draft decree requires programmes to be drawn up for the reduction and possibly the discontinuation of the pollution by the said substances.

In the implementation of EC directives and international legislation, the subject-matter of pollution by dangerous substances is dealt with extensively. The notion of "dangerous substances" is not defined in a detailed manner. The Flemish Government will base its selection of dangerous substances on existing directives and international legislation.

The draft imposes on the government the obligation to draw up lists of dangerous substances for which concrete measures are to be taken in order to reduce and, where possible, discontinue the pollution of the surface water by these dangerous substances. In so doing the government shall make a distinction between, on the one hand, those dangerous substances for which the pollution of the surface water is to be discontinued in the long term by applying the best available techniques, and, on the other hand, those dangerous substances for which application is to be made of the BATNEEC concept.

In addition, the proposed draft decree also requires the Flemish Government to designate those dangerous substances for which priority reduction programmes are to be drawn up. The draft confirms that the release of waste water containing dangerous substances is only allowed within the limits of integral conditions or of a permit.

Planning

Water policy planning has an important place in the EC directives and in the international treaties and declarations on the protection of water against pollution. The draft deals with it in Chapter 8 of Title 10. To a large extent it continues the policies which underlie the present administrative practice. The water planning however is to be directed not only at water quality but at an integral water management.

The procedural provisions on water planning must be related to the more general planning provisions of Part 4 of the draft, to which frequent
reference is made. The water planning has its own characteristics, which
tie into the fact that it, as is presently accepted, is to be developed on the
basis of individual river-basins. For each basin, basin reports and basin
policy plans will be established. Per water basin management, a basin
committee is created. As from 1990, a number of experimental basin
committees have been set up, which up until the time of writing have
mainly been cast in the role of a forum for negotiation. The draft does not
go into detail on their legal status and composition but makes the
government responsible for regulating these points. In doing so, it shall
take account of the need to achieve close co-operation between all those
authorities which are, directly or indirectly, involved in water policy. An
important role will be assigned to the river users.

Basin committees shall play a role in the development of basin reports
and basin policy plans and they will co-operate during the preparatory
work for these. They will also be called upon for comments when the
draft basin reports and basin plans have been completed and before they
are submitted to the government for approval. In addition to playing an
advisory role, the committees must constitute forums for negotiations for
the large number of appropriate public authorities which are responsible
for the various aspects of water policy, and the various users of the rivers
involved. Finally, the basin committees must also play an informative and
educational role.

PART 11: SOIL

TITLE 1: SOIL PROTECTION

General

In art. 1.1.2(2)(2) of the draft, soil is defined as to include the ground
water. The main reason for this is the fact that the topsoil, the subsoil and
the ground water are closely linked to each other. Any pollution of the
topsoil also threatens the subsoil and the ground water. Therefore
measures aimed at preventing pollution of the topsoil also serve to protect
the subsoil and the ground water. This does not take away the fact that the
ground water is to be looked at separately when it comes to its quantitative
management. A separate title deals in effect with the extraction of the
ground water, its artificial supplementation, and the liability for the
damage which it causes. There is also no doubt that the relationship
between surface water and ground water is to be taken into account in
integral water management. This is provided for in Part 10.
The general parts of the draft deal with many important questions relating to soil. Nevertheless, a number of specific provisions on soil are required. As is the case for water, part of these provisions is required to give full implementation to EC directives on the protection of soil against pollution. Further, the soil requires protection against forms of impairment other than pollution.

As already indicated, the quantitative aspects of ground water and liability questions related to it need to be dealt with separately, as is the case in present law. Part 11 of the draft also contains a major innovation for Belgium in that it deals extensively with decontamination of polluted soils. Contrary to the case for water, soil does not require specific planning provisions, other than those contained in the general parts of the draft and that in land use law.

**Quality standards**

As is the case for water, the draft formulates a specific objective for the soil policy. It is to render or maintain the soil suitable for as many functions as possible, more particularly by realising the soil quality standards.

The general rules on quality standards allow the government to draw up basic environmental quality standards for the soil in the Flemish region. In compliance with EC directives, Part 11 instructs the government to also determine which soils require special protection in view of the functions they have to fulfil or the use which is made of them. This list is to be updated regularly. For the soils which require special protection or for certain categories thereof, special quality standards can be formulated. The government may also establish zones where special protection measures for the soil have to be taken. This will allow the continuation of the policy of establishing special protection zones around the points for collection of ground water, but may also be the basis for measures of another nature.

**Protection of the soil against pollution**

For the protection of the soil against pollution, one can to a large extent, rely on the general rules of the draft. A special problem, however, is the direct release of waste water on or in the soil. This type of discharge is prohibited where a sewer system is available. If this is not the case, it can only take place within the limits of the environmental protection standards established by the government and, if a classified establishment or activity is concerned, of a permit.

In respect of the soil pollution which is the result of atmospheric fallout and of various activities such as agriculture, the draft uses similar
instruments as in the case of water. The government can regulate the use of products, objects and substances which, after having been used, are capable of polluting or otherwise impairing the soil.

Special attention is also given to dangerous substances, as provided for by EC directives. There should be a blacklist of substances prohibited from being introduced to the soil, or which can only be introduced to it within the limits of a permit or of integral conditions. Certain activities which can lead to the soil being polluted with these substances, can only be carried out within the limits of a permit or of integral conditions. In addition, these permits or conditions should provide for the necessary measures to protect the quality of the ground water.

Protection of the soil against other forms of impairment

An important innovation in the draft is that the government is authorised to adopt regulatory measures in order to protect the soil against forms of impairment other than pollution, more particularly erosion and compression. These measures could, for example, relate to the choice of crop, crop rotation, methods of working the soil, or the resting of the soil.

Ground water: quantitative management and liability for collection

A separate chapter is devoted to the quantitative management of ground water. To a large extent it confirms present policies. The collection of ground water is made subject to permit. Special precautions are to be taken where the ground water is extracted or supplemented in ecologically valuable or otherwise vulnerable areas. The same will shortly be the case for the artificial supplementation of ground water. As is presently the case, protected areas are established around collection points. Here, certain potentially polluting activities can be prohibited.

Finally, the draft provides for special liability rules for damage and environmental impairment by the collection or the supplementation of ground water. This type of damage being almost unavoidable, the fault liability is of little avail to the victims. In accordance with present law, the draft adopts a strict liability rule imposing liability on the collection operator and refers further to causation. Indeed, it is extremely difficult for the victim to prove the causal link between a certain collection of ground water and a damage at the surface. This particular problem is sought to be solved by a non-rebuttable presumption according to which major ground water collection operations carried out on a certain ground water table are deemed to be at the origin of the damage of which it is proved that it was caused by a lowering of the said ground water table.
The draft proposes a systematic and co-ordinated approach of soil clean-up, which is an innovation for Belgium. First, it organises the identification and registration of polluted soils. OVAM (the Flemish Public Waste Company) is empowered to conduct soil investigations whenever it deems necessary. An investigation is compulsory in the event of transfer of land where installations are established which present an increased risk for soil pollution and which are listed by the Flemish Government, as well as in the event of the closure of such installations. The information on soil pollution is contained in a register of polluted soils administered by OVAM. The authorities have the power to impose restrictions with respect to the use of seriously polluted soils awaiting clean-up. These restrictions are also made public in the register of polluted soils.

The draft decree elaborates an administrative procedure according to which decisions are to be taken with respect to when (remediation criteria) and to what extent (remediation objectives) the soil is to be cleaned.

Here the distinction between new and historic pollution is essential. In the case of new pollution, a clean-up is required whenever the soil remediation criteria have been exceeded. With respect to historical pollution, however, soil remediation must take place whenever the pollution constitutes a "serious threat", as further defined in the draft. At the suggestion of OVAM, the Flemish Government will draw up a priority list of the historically polluted soils that need to be remediated.

The objectives of the soil remediation are to achieve a soil quality where no adverse effects are observed and to reach the background levels in comparable, unpolluted soils. However, no theoretical choice is made in favour of a specific treatment method. Any clean-up should be carried out by using the best available technology which is not unreasonably expensive in comparison with the expected results for man and environment.

The draft carries an autonomous obligation to carry out and finance the clean-up on the operator of the land if an establishment requiring a licence is operated on the land. In other cases, the obligation rests with the owner of the land unless the latter can demonstrate that a third party has actual control over the site, in which case that third party is to carry out the clean-up. The situation is, however, different where historic pollution is concerned. Here, the obligation to carry out the clean-up comes only into existence after OVAM has given the operator or the owner the injunction
to carry out the clean-up. The draft decree provides a more favourable regime for the narrowly defined innocent owner/possessor who acquired contaminated land without knowing it was polluted. If certain conditions are met, it is not the innocent possessor but OVAM who is to carry out the clean-up.

The person who is obliged to carry out the clean-up must also pre-finance it, but is not necessarily to carry the ultimate financial burden. He can try to recover the expenses from anyone having caused the pollution. In the event of new pollution, the party causing the pollution will be strictly liable for investigation, clean-up and associated expenses. In the case of historic pollution, however, liability will be established in accordance with the liability rules applicable before the coming into effect of the new decree on soil remediation.

The draft decree regulates in detail the procedure for taking the decision on how to carry out the remediation. Before the clean-up is actually carried out, an inventory of the pollution as well as a remediation investigation are to be carried out by or under the control of certified experts. OVAM supervises the preparatory work as well as the clean-up operations.

The draft decree furthermore contains an ample set of rules aimed at informing potential buyers of (possibly polluted) land of the situation of the soil. Prior to any transfer, the seller is to provide the potential buyer a certificate delivered by OVAM showing what information is contained in the soil registry with respect to the particular plot of land. Furthermore, a systematic examination and an obligation to clean-up, is imposed when installations of a type likely to cause soil pollution and listed by the Flemish Government are closed, and land on which these installations are located is transferred. Prior to the closure or the transfer, a preliminary soil examination is to be carried out. If the soil is polluted to a degree exceeding the remediation criteria, the transfer or closure cannot take place unless remediation takes place or unless financial guarantees are provided to cover the costs thereof.

PART 12: WASTE

The provisions concerning the management of waste are contained in Part 12. These are mainly aimed at implementing the re-enacted EC Directive on Waste. The objectives of policy on waste are fixed in accordance with this directive. The priority objective is the prevention of waste or a reduction in its quantity and degree of harmfulness. In the second place, it is intended to promote the recovery of waste, and finally, to ensure the removal of such waste matter as cannot be put to recovery.
As regards the prevention and recovery of waste, the object is primarily to integrate this issue into the prevailing economic, industrial and technological policy. These objectives may also be pursued by using the instrument of environmental policy agreements. The all-important factor here is the statutory basis created to impose a duty to accept and to take back, which seeks to make the producers of products which cause problems regarding their waste at the end of their life jointly responsible for ensuring their recovery or removal. An attempt has also been made to formulate legislation governing the use of waste by way of secondary raw materials; this legislation should enable the recovery of waste to be promoted without causing any damage to the environment.

This is followed by rules concerning the control and removal of waste, in relation to which a distinction is drawn between household waste, industrial waste, dangerous waste and special waste, accompanied by provisions which are suitable for each of the categories involved. Chapter 5 concerns the implementation, in relation to the import and export of waste in the Flemish region, of the Treaty of Basel and the relevant EC Regulation. Finally, the Flemish Government may, on a proposal from OVAM, draw up sectoral plans in the implementation of any future environmental policy plan.

PART 13: NOISE

The draft contains a very short part concerning noise. Noise pollution is a problem encountered particularly in densely populated areas. There is a close link between legislation on noise pollution and town and land use planning. The draft stresses that in the latter process, noise should be sufficiently taken into account.

Further, the draft confirms the authority of the government to establish quality criteria and environmental protection standards for noise and gives a number of indications on how these are to be formulated in order to take into account the specificity of noise pollution. As is the case for water and soil, the government is authorised to regulate the use of products or objects which cause noise pollution. In view of constitutional limitations, product standards, in the proper sense of the word, can be established only by the federal government.

It was possible to keep the Part dealing with noise very concise because it was not necessary to adopt any specific planning provisions, and it was possible to apply the general provisions concerning environmental impact reporting, economic measures and liability rules.