



**EUFJE 2008**  
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## **SOIL POLLUTION – BELGIAN REPORT**

### **INTRODUCTION**

*Belgium is a federal state and environmental policy is mainly a regional matter. By consequence, the three regions (Flemish, Walloon and Brussels Capital Region) have their own specific legislation on soil remediation. In the Flemish Region, there is the Decree on Soil Remediation and Soil Protection of 27 October 2006<sup>1</sup>, which replaced the Decree on Soil Remediation of 22 February 1995. In the Walloon Region, the Decree on Remediation of Polluted Soils of 1 April 2004<sup>2</sup> is applicable. The Ordinance on the Management of Polluted Soils of 13 May 2004<sup>3</sup> deals with the situation in the Brussels Capital Region.*

*Especially in the Flemish Region, the environmental practitioner is very familiar with soil remediation, because of the experience of more than ten years in this field and the large impact of the legislation on daily practice.*

*In this questionnaire, the situation in the three regions is discussed. If the situation is the same in the three regions, one answer is given.*

### **I. Information on polluted soils :**

1. Do you have a national inventory (or inventories) of polluted or contaminated soils?

- *Flemish Region (FR): YES*
- *Walloon Region (WR): YES (in the legislation), not yet in practice*
- *Brussels Capital Region (BCR): YES*

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<sup>1</sup> Published in the Belgian Official Journal (Belgisch Staatsblad/Moniteur Belge) on 22 January 2007 (err. 29 February 2007). An English version of this decree can be found on:  
<http://www.ovam.be/jahia/Jahia/pid/976?lang=en>.

<sup>2</sup> B.S. 24 June 2004.

<sup>3</sup> B.S. 7 June 2004.

1. Who is in charge of it: local, central authorities, professional bodies?
  - *FR: there is a 'ground information register', managed by the OVAM, (the public agency for waste and soil in the Flemish Region) and a 'register of risk activities', managed by the municipalities.*
  - *WR: the Walloon decree defines that two registers must be set up:
 
    - *A register of grounds on which activities that require an environmental permit take/took place*
    - *A register of other polluted grounds, grounds on which there is a pollution risk and grounds on which waste has been dumped.*
 However, these registers are not operational (yet).*
  - *BCR: there is the 'inventory of polluted grounds', managed by the BIM, the Brussels Agency for Environmental Management.*
  
2. What are the criteria: soil composition, prior or present use, ownership, depollution in progress, planned use...?
  - *FR: any available information on any ground is incorporated (soil composition, use, ownership, soil investigations, remediation measures, ...).*
  - *WR: the register is not operational (yet).*
  - *BCR: only polluted soils or soil for which there are strong indications for pollution, are incorporated. The register mentions the identification of the grounds, of the owners and users, the present use, the activities on the grounds, the soil investigations and the remediation measures.*
  
3. Who has the access to it? Is it a data base?
  - *FR: database with free access for everyone*
  - *WR: the register is not operational (yet).*
  - *BCR: database with access restricted to:
 
    - *people who have rights on the grounds (f.i. owner);*
    - *people who have an environmental permit with regard to the grounds;*
    - *people who want to buy the grounds and have permission from the owner.**
  
4. What is your view on this source of information? What changes, amendments would you like to be made?
  - *FR: functioning very well. With the new decree, the more neutral term 'soil information register' was introduced instead of the pejorative term 'register of polluted soils'. The only amendment/change we would like to make, is to make the register also accessible via the internet.*
  - *WR: the necessary decisions should be made in order to make the register operational (Decision of the Walloon Government).*

- *BR: make the database accessible via the internet and make the register free accessible to everyone (free access on environmental information)*

2. Are there any particular administrative or legal requirements to provide information?

1. In which cases (sale, change of activity, etc.)?

YES:

- *FR:*
  1. *transfer of grounds (sale, usufruct, ...);*
  2. *shutdown of 'risk' activities (closure);*
  3. *on a periodical basis for some 'risk' activities (every 10 or 20 years);*
  4. *voluntary.*
- *WR:*
  1. *shutdown of 'risk' activities (closure);*
  2. *voluntary;*
  3. *Specific legislation on filling stations.*
- *BCR:*
  1. *transfer of grounds (sale, usufruct, ...);*
  2. *shutdown of 'risk' activities (closure);*
  3. *voluntary*
  4. *Specific legislation on filling stations.*

2. To whom (public authority, private buyer, etc.)?

*To the public authority (FR: OVAM, WR: OWD, BCR: BIM) and to the acquirer (FR/BCR).*

3. What, if any, are the legal sanctions in case of non observation of the requirement to inform? (specific sanctions such as: closure of the site, cancellation of sale, mandatory rehabilitation of the soil or general sanctions pertaining to common liability regulation)

*Annulment of the transfer (FR/BCR) and general sanctions pertaining to common liability regulation (tort, contractual liability, ...).*

4. What is the proportion of claims pertaining to the lack of information? (Please give examples).

*There are more and more cases before Belgian courts with regard to the lack of information on soil remediation. The cases are dealing with the violation of the legal obligation to perform a soil examination or to deliver a soil certificate, with the fact that the acquirer was wrongly informed or with the fact that the pollution seems to be more serious.*

## **II. National legislation on soil pollution and enforcement**

A- Does specific legislation exist on the subject of polluted soils?

YES

1- What kind of legislation: civil, public or criminal law?

*The specific legislation in the three Belgian regions is mentioned above. This legislation has civil (f.i. information with regard to transfer of grounds), public (f.i. authorisations) and criminal (f.i. fines) aspects.*

2- Have the provisions of *directive 2004/35/CE on compensation for damage to soil* (contamination) been implemented in your national law and how?

- *FR: YES, by the Decree on Soil Remediation and Soil Protection of 27 October 2006 and the Decree on Environmental Damage of 21 December 2007 introducing a new title in the Decree on the General Provisions with regard to Environmental Management of 5 April 1995 (although there is discussion in legal doctrine whether the directive has been implemented correctly).*
- *WR: YES, by the Decree on the modification of the Walloon Environmental Code with regard to Environmental Damage.*
- *BCR: NOT YET.*

*Note that there is also some federal legislation that implements the directive (federal competence with regard to the marine environment, the transport and the civil protection).*

B- Is there any specialized personnel to check the degree of respect of the regulations on polluted soil?

YES

*There are the civil servants of the public authorities (OVAM, OWD, BIM), who are competent to control the respect of the legislation.*

*On the other hand, there are recognised soil experts, who carry out the examinations and the soil remediation.*

*Finally, in case of non-respect, a court procedure (mostly civil, sometimes criminal) may be started up. In these cases, the judge will mostly appoint a technical court expert.*

- C- Does the soil pollution fall under any other legal disposition, or other specific sector of environment regulation? (for example: water regulations, waste, industrial facilities, town planning, etc.)

YES

*Apart from the specific soil legislation, the environmental legislation (legislation on environmental permits, town planning and land use, waste, waste water) and the general legislation (civil code, criminal code, ...) are applicable.*

*The specific legislation prevails over the general legislation (lex specialis)*

- D- Generally speaking, do you feel that rules on soil pollution are effectively applied and efficient?

YES

- E- And if not, please explain what are the main reasons in your view? (too complex, few and far between, unknown, unsuited, lack of means, etc.)

N/A

- F- How would you evaluate your country's legislation on the subject?

*The Flemish Region is one of the pioneers with regard to soil legislation.*

*We can generally say that the legislation on soil remediation is currently well-established in the Flemish Region of Belgium and is generally well accepted. Although certain parts of the regulations come in for criticism, the basic principles are no longer really called into question.*

*The initial legislation (decree of 1995) had been reviewed and adapted yet (decree of 2006). The legislation is now more pragmatic and cost efficient. The new Decree, that entered into force on 1 June 2008, took away some of the grounds for criticism.*

*Furthermore, the Flemish Soil Sanitation Legislation produces significant results in terms of the effective remediation of polluted land. The total number of high-risk sites in Flanders is estimated at more than 76,000. By the end of 2002, 22% of these were examined for contamination on the basis of an exploratory soil examination. This yielded 13,305 sites that are known to be contaminated. Of those sites, 25% are polluted with heavy metals, 17% with mineral oil and 16% with PACs. For nearly half of these sites (6,528), the soil remediation procedure has to be continued. For 3,752 or 58% of the sites, the first stage of the soil remediation procedure has been completed with the*

*performance of a descriptive soil examination. Between 1996 and 2002, it turned out that a soil remediation project had to be formulated for 1,795 sites. A certificate of conformity was issued for such a soil remediation project for 1,109 sites at a total cost of 443 million euros. 603 remediation operations were actually started up and 135 remediation operations were completed. These results appear to meet the planned objective of having at least 23% of the remediation operations of sites with historical soil pollution started up by 2007. The total remediation cost is estimated at 7 billion euros.*

*A difficult topic is the financing of soil remediation (although there are some funds for soil remediation ('soil remediation organisations') - BOFAS for filling stations and VLABOTEX for laundries – and the new decree established a system of cofinancing and funding), and the situation in case of bankruptcy or settlement. In certain individual cases the law may have far-reaching (financial) consequences.*

*There is also still a way to go with regard to soil protection (prevention of soil pollution). The first decree was only dealing with soil remediation, the new decree is also dealing with soil protection, but this only a small part of the decree (although some measures with regard to soil protection are already incorporated in other legislation, such as the legislation on the environmental permit).*

*Finally, some remarks can be made with regard to the transposition of the Directive 2004/35/EC.*

*In the other regions, the soil legislation should be refined. In the Walloon region, further measures and decisions are necessary; in the Brussels Capital Region, some topics remain unsolved or unclear.*

*A European framework directive may stimulate further developments in the other regions and in some member states.*

### **III. Soil pollution and liability**

A- What is the proportion of soil pollution claims on environmental law suits pertaining to environmental issues?

*There are a lot of soil pollution claims in Belgium, and these claims form a substantial part of all environmental claims. Most claims are civil claims.*

B- What are the types of liability: subjective liability - polluter pays, establishment fault, or objective liability - mere ownership or occupancy?

- FR:

*The Flemish legislation foresees different kinds of liability and makes an important distinction between new, historical and mixed soil pollution:*

- 1. New soil pollution is pollution that originated after the entry into force of the 1995 Soil Remediation Decree (i.e. after 29 October 1995);*
- 2. Historical soil pollution is pollution that originated before the entry into force of the 1995 Soil Remediation Decree (i.e. before 29 October 1995);*
- 3. Mixed soil pollution is pollution that originated partially before and partially after the entry into force of the Soil Remediation Decree (i.e. partially before and partially after 29 October 1995). In the case of mixed soil pollution, to the extent that it is possible to distinguish between the two types of soil pollution, the respective provisions for each type of soil pollution must be applied. If it is not possible to distinguish between the two types of soil pollution, the (stricter) rules that apply for the new soil pollution must be applied. In the latter case, the 2006 Soil Decree, provides for a different – already criticized – system: if, in the case of mixed soil contamination on a piece of land, no distinction can be made between new soil contamination and historical soil contamination, a division will be made, as accurately as possible, of the soil contamination into a part which in all reasonableness can be considered new soil contamination and a part which in all reasonableness can be considered historical soil contamination. On the basis of a motivated proposal from the soil remediation expert in his soil investigation report, OVAM shall decide on the actual division. The part considered as new soil contamination shall be treated in accordance with the provisions which are applicable for new soil contamination and the part considered as historical soil contamination in accordance with the provisions which are applicable for historical soil contamination. If it proves impossible to carry out a separate descriptive soil investigation or separate soil remediation for each part of the soil contamination by using the best available techniques not entailing excessive costs, only the provisions which apply to the largest part of the soil contamination shall apply.*

*The rules for new soil pollution are stricter than for historical soil pollution.*

*The liability for 'historical' pollution is fault based (civil code) or based on legal objective liability rules in other legislation.*

*The liability for 'new' pollution is objective: strict liability at the expense of whoever caused soil pollution by an emission. Where the emission originates from an establishment for which an environmental licence or notification is required, the operator of this establishment is liable.*

- *WR: no specific liability rules, general liability rules are applicable.*
- *BCR: no specific liability rules, general liability rules are applicable.*

C- Who can be held responsible: the state, user, owner?

- *FR:*

#### *New pollution*

*It is very important to stress that the Flemish soil legislation makes a distinction between the person who is obliged to remediate (see also point IV B) and the person who is liable for the soil remediation. Sometimes, this will be the same person, but the person obliged to remediate (who is responsible for prefinancing the soil remediation) is not necessarily the person who caused the soil pollution. Where this is the case, he may recover the costs incurred from the person who is liable for them. The 1995 Soil Remediation Decree institutes strict liability at the expense of whoever caused soil pollution by an emission. Where the emission originates from an establishment for which an environmental licence or notification is required, the operator of this establishment is liable.*

*This liability is limited to the costs incurred for the soil remediation. The liability of the so-called ‘innocent owner’ is limited to the amount of the costs required to prevent the soil pollution from spreading further or from constituting an immediate hazard.*

*A similar approach is followed in the 2006 Soil Decree. As (pre-) financing the soil remediation is concerned, the Decree introduces a “financial sustainability settlement”. According to Article 14 the person who is obliged to remediate but has insufficient resources to (pre)finance the soil remediation, may submit a motivated application for a financial sustainability settlement to the Flemish Government. The aim of the financial sustainability settlement is to spread the financing burden over time. There is also a possibility of co-financing, under conditions that still have to be specified by the Flemish Government.*

#### *Historical pollution*

*The strict liability under the Soil Remediation Decree does not apply for the costs incurred for the remediation of historical soil pollution. If the person obliged to remediate did not cause the pollution himself, he may try to recover the costs incurred in accordance with the liability rules that applied before the effective date of the 1995 Soil Remediation Decree, i.e. the rules of fault liability or the other legal objective liability rules.*

*In the case of historical soil pollution too, the liability of the so-called 'innocent owner' is limited: the liability he may incur on the basis of rules applicable prior to the Soil Remediation Decree that establish liability on the basis of the mere ownership or control of the land (e.g. Art. 1384, par. 1, Civil Code) is limited to the amount of the costs required to prevent the soil pollution from spreading further or from constituting an immediate hazard.*

1. *WR: anyone who can be hold responsible under the general liability rules (fault – damage – causal link). There is no specific liability rule for soil remediation.*
- *BCR: anyone who can be hold responsible under the general liability rules (fault – damage – causal link). There is also an objective liability rule: the person who does not respect the remediation obligation is responsible for the costs of the soil examination and the consequences of this examination.*

D- Please give practical examples (if any) and specify the situation regarding contaminated sites where the owner or the user disappeared.

*N/A (see points III B, III C, IV A en IV B)*

E- Do you meet difficulties in reconciling special soil regulation and other regulations such as property laws, private contractual provisions?  
Please give examples.

*YES. The soil legislation has a big impact on other legislation, such as contract law, waste law, ...*

*F.i. should one prove a civil interest for the annulment within the framework of the Soil Decree?*

*F.i. is waste law applicable on soil remediation (cfr. Van de Walle/Texaco-case C-1/03 before the European Court of Justice)? The soil legislation has sometimes a different approach then the waste legislation and stipulates different obligations that are not always compatible. In our opinion, the answer is no if there is a specific legislation on soil remediation. If not, the waste legislation is applicable.*

*F.i. relation between Soil Decree and Decree on Environmental Damage*

*F.i. are the terms of the Judicial Code applicable on the administrative appeal procedures in the Soil Decree?*

*In general, most problems can be solved with the principle 'lex specialis derogat generalibus' (specific legislation prevails above general legislation).*

F- Are there penalties? Are they inflicted? If not, why? Please give examples.

*The Flemish decree stipulates: "Shall be punished by imprisonment of between one month and five years and with a fine of between 100 euro and 10 million euro (increased with the legal surcharge: x 5.5), or by only one of these penalties:*

*1° the person who infringes the measures or regulations laid down by or by virtue of this decree;*

*2° the person who does not comply with the obligation to apply for a soil certificate and inform the acquiring party of its content before concluding an agreement concerning the transfer of land;*

*3° the person who does not comply with the obligation to carry out a exploratory soil investigation, a descriptive soil investigation or a water bottom investigation;*

*4° the person who does not comply with the obligation to carry out soil remediation or other measures imposed by virtue of this decree;*

*5° the trustee in bankruptcy and the liquidator who do not comply with the notification obligation mentioned in article 123;*

*6° the person who does not comply with the obligations laid down by virtue of chapter XIII of title III;*

*7° the person who impedes the supervision regulated by or by virtue of this decree;*

*8° the person who does not act upon the compulsory measures imposed."*

*In general, there are not a lot of criminal cases with regard to soil remediation. Most claims are brought before civil courts. Only in very serious cases, a case is brought before criminal court. A public interest is needed to bring the case before the criminal court. There is no active tracing or big enforcement. When it is a matter of damage that is claimed by one party to another party, it is a civil case. There are a lot of civil cases with regard to soil remediation, sometimes with regard to huge amounts (several millions).*

#### **IV. Care and rehabilitation of polluted soils**

A- Is there mandatory care or obligation to rehabilitate polluted soils (civil or public obligation)?

- FR:

*New soil pollution must be remediated if the soil pollution exceeds the soil remediation standards set out in Annex 4 to the VLAREBO. For the moment there are 5 different sets of remediation standards for soils, depending on the land use function of the soil. The remediation standards are the strictest for "green" forms of land use (e.g. nature and*

woodland) and the most tolerant for industrial uses of land (e.g. industrial area, area for waste disposal). However for ground waters there is a uniform remediation standard. The 2006 Soil Decree specifies that these soil remediation standards shall correspond to a level of soil contamination which entails a considerable risk of harmful effects for man or the environment, taking into account the characteristics of the soil and the functions it fulfils. This is an autonomous remediation obligation: the polluter must not wait to remediate the polluted soil until he has been called upon to do so by the OVAM (Court of Ghent, 5 September 2001, T.M.R. 2002, 342-347).

The principle with historical soil pollution is that remediation only needs to be carried out if the soil pollution constitutes a "severe soil contamination". By "severe soil contamination" is meant: "soil contamination which constitutes or may constitute a risk of adversely affecting man or the environment. When evaluating the severity of the soil contamination, the following factors shall be taken into account: a) the characteristics, functions, uses and properties of the soil; b) the nature and concentration of the contaminating factors; c) the possibility of dispersion of the contaminating factors. For the purpose of actually establishing the remediation obligation, the priorities are set on the basis of a list drawn up by the Flemish Government of historically contaminated soils where soil remediation must be carried out. Finally, the remediation obligation is established once the operator, owner or user of land included in the list of historically contaminated soils to be remediated has actually been ordered by the OVAM to carry out the soil remediation.

- **WR:**

For historical pollution (origin before 1 January 2003), there is an obligation to remediate if:

1. The limit values are exceeded for one or more parameters;
2. The background values are lower than these limit values;
3. The competent authority decides that the pollution causes a serious threat.

For new pollution (origin after 1 January 2003):

1. The limit values or the special values are exceeded for one or more parameters;
2. The background values are lower than these limit values.

When waste has been found, a remediation is always necessary, even when the limit values are not exceeded.

- **BCR:**

The evaluation criterion is the BATNEEC.

*If the pollution is caused by the own exploitation or if the pollution was not present before the start of the exploitation, a remediation is always necessary in order to restore the ground in its original state, whether there are risks or not.*

*In the other cases, a risk study is necessary. If the risk study concludes that remediation is needed, a remediation proposition must be drafted and remediation to an acceptable limit is necessary (norms are defined in a decision of the Brussels Capital government).*

B- By whom? (the state, owner, user, etc.)

- *FR:*

#### *New pollution*

*The 1995 Soil Remediation Decree imposes the remediation obligation on the person who is in actual control of the land where the pollution occurred. This person can be designated in a simple manner and would also be in the best position to direct the remediation operation and to limit as much as possible the inconvenience caused by the remediation. The person obliged to remediate prefinances the cost of the soil remediation, but can recover these costs from the polluter, i.e. the person responsible for the pollution, when he is not the polluter.*

*In practice, the remediation obligation lies with:*

- *the operator, if on the land where the pollution originated an establishment is located for which an environmental licence or notification is required;*
- *in the other cases, the owner of the piece of land where the pollution originated, as long as the proprietor has not shown that another person for his own account is in actual control of this piece of land;*
- *if the owner can prove that another person is in actual control of the land for his own account: the person who is in actual control of the land for his own account.*

*However, the 1995 Soil Remediation Decree does provide for an exemption from the remediation obligation for the so-called 'innocent owner', who must furnish proof that he meets all of the following conditions cumulatively:*

- 1. he has not caused the pollution himself;*
- 2. when he became owner or operator or acquired actual control of the land, he was not or could not be assumed to have been aware of the pollution;*
- 3. since 1 January 1993, no 'high-risk establishment or activity' was located on the land or carried out there.*

*The OVAM may proceed to ex-officio soil remediation if the owner or user of the polluted land is not obliged to carry out the remediation. The OVAM may also take action ex officio if the person obliged to remediate*

*fails to carry out the soil remediation or to take other measures, or does not take sufficient action, and fails to act upon demands by the OVAM to fulfil his obligations within a specified period of time.*

*The 2006 Soil Decree provides for a similar “three steps” designation method. In the first place, if on the land where the soil contamination originated installations are present that need an environmental licence or notification, the operator of that installation will be obliged to remediate. In case there is no operator, or if the operator has been released from the obligation because he has not caused the soil contamination himself or the soil contamination originated before the time he became the owner of the land, the user of the land where the soil contamination originated will be obligated to remediate. Finally, in case there is no operator or user, or if the operator and the user have been released from the obligation, the owner of the land where the soil contamination originated shall remediate the soil contamination. The owner shall not be obliged to remediate if he can argue that he complies with the following conditions in a cumulative manner:*

- 1. he has not caused the soil contamination himself;*
- 2. the soil contamination originated before the time he became the owner of the land;*
- 3. he was not aware and was not supposed to be aware of the soil contamination at the moment he became the owner of the land;*
- 4. since 1 January 1993 no high-risk installation has been present on the land.*

#### *Historical pollution*

*The person obliged to remediate is the same as the person designated in the case of new soil pollution. However, exemption from the remediation obligation for the so-called ‘innocent owner’ is broader in the case of historical soil pollution. For historical soil pollution, the person obliged to remediate only has to meet the following two conditions in order to be regarded as ‘innocent owner’:*

- 1. he has not caused the pollution himself;*
- 2. at the time when he became the proprietor or user of the piece of land, he was not or could not be assumed to have been aware of the pollution.*

*Furthermore, the person obliged to remediate who has acquired historically polluted land before 1 January 1993 – although he was aware or should have been aware of the pollution – is not obliged to proceed to remediation if he is able to prove that he has not caused this pollution and that since acquiring the land concerned he has not used it for professional or industrial purposes.*

*Largely the same approach is followed by the 2006 Soil Decree.*

- *WR:*
  - 1. People who remediate voluntary;*

2. The one who caused the pollution;
3. The owner.

*There is an 'innocent owner'-procedure under certain conditions (no pollution from own activities, no serious threat, change of zoning plans, after remediation, owner before 1 January 2003 and not aware of the pollution).*

- *BCR:*

*By the transferor or the operator in case of shutdown/closure of activities. Other people can do it on a voluntary basis.*

*There is no 'innocent owner'-procedure.*

- C- What are the criteria of rehabilitation!: prevention of harm to environment and health, restoration of soil to its previous state, preparation of soil for future use, or taking into account its environmental potential?

- *FR:*

*In the case of new soil pollution, soil remediation shall be aimed at achieving the target values for the soil quality. If, due to the nature of the soil contamination or the characteristics of the contaminated land, it proves impossible to achieve the target values for soil quality by using the best available techniques not entailing excessive costs, the soil remediation shall be at least be aimed at obtaining a better soil quality than that specified by the applicable soil remediation standards. If the land, in the framework of a provisional draft of a land-use plan, is assigned a use to which stricter soil remediation standards apply, the stricter soil remediation standards shall be taken as the remediation objective. If it is not possible to obtain the aforementioned soil quality by using the best available techniques not entailing excessive costs, restrictions with respect to the use of the land may be imposed if necessary. The selection of the best available techniques not entailing excessive costs is independent of the financial capacity of the person who is under the obligation to carry out the remediation.*

*In cases of historical soil pollution, soil remediation shall be aimed at avoiding the soil quality effectively or potentially constituting a risk of adversely affecting man or the environment by using the best available techniques not entailing excessive costs. If the land, in the framework of a provisional draft of a land-use plan, is assigned a different use, soil remediation shall be aimed at avoiding the soil quality effectively or potentially constituting a risk of adversely affecting man or the environment within this future use. If it is not possible to obtain this soil quality by using the best available techniques not entailing excessive costs, land use or town planning restrictions may be imposed if necessary.*

- *WR:*

*The evaluation criterion is the BATNEEC (Best Available Techniques Not Entailing Excessive Costs).*

1. *For historical pollution, a risk for the human health and the environment must be avoided, eventually via restrictions in the use or the destination of the ground.*
2. *For new pollution, there are aim values for the soil quality. The quality of the soil must be better than the soil remediation norms. Any way, a risk for the human health and the environment must be avoided, eventually via restrictions in the use or the destination of the ground.*

- *BCR:*

*The evaluation criterion is the BATNEEC.*

1. *If the pollution is caused by the own exploitation or if the pollution was not present before the start of the exploitation, a remediation is always necessary in order to restore the ground in its original state, whether there are risks or not.*
2. *In the other cases, a risk study is necessary. If the risk study concludes that remediation is needed, a remediation proposition must be drafted and remediation to an acceptable limit is necessary (norms are defined in a decision of the Brussels Capital government).*

#### D- Who implements it and who controls it?

- *FR: the OVAM*
- *WR: the OWD*
- *BCR: the BIM*

## **CONCLUSION**

Please explain your opinion regarding measures which seem appropriate to you in the matter, specifying what you are expecting from the European legislation?

Please explain, if you wish, your opinion regarding the framework directive proposal as well as perspectives of a protection orientated more broadly towards on the soil functions.

*A harmonised legal framework is desirable. All over Europe, there are similar cases. A differentiated approach causes distortion of competition. The soil is*

*an important natural resource, which should be protected, not only against pollution, but also against erosion and loss of organic material. Soil pollution can spread to the groundwater, the air or the surface water. At least, Europe should establish a minimum standard.*