



FEDERAL PUBLIC SERVICE
MOBILITY AND TRANSPORT

Legal study on the introduction of a circular economy for recreational craft



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CONTENTS

EXECUTIVE SUMMARY

I. REMINDER OF THE PURPOSE OF THE MISSIONS TO BE CARRIED OUT

II. INTRODUCTION

III. INTERESTED PARTIES

- III.1 Foreword
- III.2 Decision-making authorities
- III.3 Competent bodies
- III.4 Stakeholders

IV. PART I: ABANDONED VESSELS

IV.1 Current legal framework

IV.1.1. International legal framework: the Nairobi Convention on the Removal of Wrecks

IV.1.2. Federal legal framework

IV.1.2.1. Law of 11 April 1989 approving and implementing various international acts on maritime navigation

IV.1.2.2. Belgian Navigation Code of 8 May 2019

IV.1.3. Legal framework in the Flemish Region

IV.1.3.1. Flemish Navigation Decree of 21 January 2022

IV.1.4. Legal framework in the Walloon Region

IV.1.4.1. Decree of 19 March 2009 on the conservation of regional public roads and waterways

IV.1.4.2. Walloon Government Decree of 15 May 2014 regulating navigation on waterways in the Walloon Region

IV.1.5. Legal framework in the Brussels-Capital Region

IV.1.6. Comparison table

IV.2 Proposals for adapting the legislative and regulatory framework

IV.2.1. Definitions

IV.2.1.1. Harmonisation of the concept of "recreational craft"

IV.2.1.2. Abandoned vessel

IV.2.1.3. Wreck

IV.2.1.4. End-of-life vessel

IV.2.2. The legal framework in the Brussels-Capital Region

IV.2.3. The standardisation of existing systems

IV.2.4. When a recreational vessel can be considered as waste

IV.2.5. Is and can a non-registered vessel be considered as waste?

IV.2.6. Liability for removal under concessions

IV.2.7. The enforcement of legislation by decree

IV.3 Competence distribution rules

IV.3.1. The law of 8 August 1980 on institutional reforms

IV.3.2. Preparatory work and opinions of the Supreme Administrative Court of

Belgium

IV.3.2.1. The Flemish Navigation Decree of 21 January 2022

IV.3.2.2. The Belgian Navigation Code

IV.3.2.3. The Law on recreational navigation

IV.3.3. Conclusion regarding the competence distribution rules

IV.3.4. Opportunities for cooperation between the federal authority and federated

entities

IV.3.4.1. General legislative framework

IV.3.4.2. The cooperation agreement

IV.3.4.3. Consultation

IV.3.4.4. The involvement of other authorities in decision-making

IV.3.4.5. Information

IV.3.4.6. Prior notice

IV.3.4.7. The proposal

IV.3.4.8. Conclusion

V. PART II: INTRODUCING A CIRCULAR ECONOMY FOR RECREATIONAL NAVIGATION

V.1. Foreword

V.2. Interested parties

- V.2.1. Decision-making authorities
- V.2.2. Competent bodies
- V.2.3. Stakeholders

V.3 Competence distribution rules

V.4 Existing legal framework

V.4.1. International legal framework

V.4.1.1. Hong Kong International Convention for the Safe and Ecologically Sound Recycling of Ships

V.4.1.2. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and its relationship with the Hong Kong Convention

V.4.2. European legal framework

V.4.2.1. Regulation (EU) 1257/2013 on ship recycling

V.4.2.2. Regulation (EU) 1013/2006 on shipments of waste

V.4.2.3. Directive 2013/53 on recreational craft

V.4.2.4. Directive 2008/98 on waste

V.4.3. Legal framework in the Flemish Region

V.4.3.1. Decree of 23 December 2011 on the sustainable management of cycles of materials and waste

V.4.3.2. VLAREMA

V.4.4. Legal framework in the Walloon Region

V.4.4.1. Walloon Decree of 9 March 2023 on waste, the circularity of materials and public cleanliness

V.4.4.2. Walloon Government Order of 23 September 2010 establishing a take-back obligation for certain types of waste

V.4.5. Legal framework in the Brussels-Capital Region

V.4.5.1. Ordinance of 14 June 2012 on waste

V.4.5.2. Decree of the Government of the Brussels-Capital Region of 1 December 2016 on waste management

V.4.6. Legal framework in France

V.5. Legal perspectives for the introduction of a circular economy for recreational craft

V.5.1. Adaptation of European rules

V.5.2. At federal level

V.5.3. Adaptation of regional rules

V.5.4. Introduction in legislation on the removal of abandoned vessels

and wrecks from the possibility of recycling
V.5.5. Financing a circular economy for recreational vessels
V.5.6. Information obligation

VI. APPENDICES

EXECUTIVE SUMMARY

Interested parties

The interested parties are subdivided into three categories:

- (i) decision-making authorities, which include the parliaments, governments and ministers competent at the different levels of power in the issues covered by the introduction of a circular economy for recreational craft;*
- (ii) competent bodies, which include bodies that are competent but do not have direct legislative or regulatory powers;*
- (iii) stakeholders, the major players in the sector.*

Distribution of competences

The introduction of a circular economy for recreational craft involves a variety of competences, some exercised by the federal authorities, others by the regions.

With regard to the removal of abandoned vessels and wrecks, the Regions are responsible for their removal from inland waterways.

The federal authority is responsible for removal in the exclusive economic zone and territorial sea, except where these vessels and wrecks affect accessibility to Flemish ports and waterways, in which case the Flemish Region remains responsible.

With regard to the introduction of a circular economy for recreational craft, the Regions must also be involved, as they hold the majority of competencies in waste and environmental matters.

Lastly, there are various possibilities for cooperation between the federal authority and the Regions, starting with consultation mechanisms.

Removal of abandoned vessels and wrecks

The **Nairobi Convention** on the Removal of Wrecks sets out a number of international provisions in this area.

However, it only covers wrecks located in the exclusive economic zone, making its scope limited.

At federal level, Articles 2.7.6.1 et seq. of the **Belgian Navigation Code** provide a legal framework for the removal of wrecks and abandoned vessels in the territorial sea and exclusive economic zone.

At regional level, the **Flemish Decree of 21 January 2022 on recreational boating** and the **Walloon Decree of 19 March 2009 on the conservation of regional public roads and waterways** also provide a legal framework for dealing with wrecks and abandoned vessels on inland waterways.

The analysis of the current legal framework has led to a number of **proposals for adaptations**, including:

- (i) the existing definitions of "abandoned vessels" and "wrecks" need to be clarified to specify which vessels can be removed;
- (ii) the introduction of a definition of "end-of-life vessel" to make a link with the notion of "waste";
- (iii) the introduction of a more developed legal framework in the Brussels-Capital Region;
- (iv) the standardisation of the rules in force in Belgium;
- (v) the provision or enforcement of the current legislation by order.

At the same time, a number of answers are provided to new questions raised in the course of the study, such as the point at which a vessel can be classified as waste, or with regard to concessions.

Introducing a circular economy for recreational navigation

The main aim of the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships is to ensure **at international level** that ships in the marine environment which have reached the end of their useful life are recycled safely and without posing unnecessary risks to human health and the environment.

The rules of this new Convention cover in particular the design, construction, operation and preparation of ships in such a way as to promote safe and environmentally sound ship recycling, without compromising the safety and efficiency of their operation; the operation of ship recycling facilities in a safe and environmentally sound manner; and the establishment of an appropriate enforcement mechanism for ship recycling, which includes certification and reporting requirements.

At European level, Regulation (EU) 1257/2013 on ship recycling has been adopted, notably to facilitate ratification of the Hong Kong Convention.

In particular, Directive 2013/53 on recreational craft and personal watercraft lays down requirements for the design and manufacture of, in particular, recreational craft, partly-completed recreational craft, personal watercraft and partly-completed personal watercraft, as well as craft undergoing a major conversion.

It sets out requirements for manufacturers, importers and distributors.

At Belgian level, competences are essentially in the hands of the Regions.

The Flemish Region has therefore adopted the Decree of 23 December 2011 on the sustainable management of material and waste cycles

The Decree was implemented by the Flemish Government Decree of 17 February 2012 establishing Flemish regulations for the sustainable management of material and waste cycles (VLAREMA).

In the Walloon Region, the Walloon Decree of 9 March 2023 on waste, the circularity of materials and public cleanliness was adopted and implemented by the Walloon Government Decree of 23 September 2010 introducing a take-back obligation for certain waste.

In the Brussels-Capital Region, lastly, the Ordinance of 14 June 2012 on waste acts as the seat of the matter, and was executed by the Decree of the Government of the Brussels-Capital Region of 1 December 2016 on waste management.

*The study also looks at the legal regime in force **in France**, which generally serves as a "model" for the circular economy of recreational craft.*

The ways in which the circular economy has been introduced into French legislation are examined and also serve as a basis for the legal perspectives that can be evoked for Belgium.

*The study concludes with **several proposals for action**:*

(i) adapting European rules, in particular Directive 2013/53;

(ii) recalling the possibilities for action available to the federal authority;

(iii) adapting the regional legal framework and, in particular, introducing a section dedicated to recreational craft in regional waste legislation and regulations, based on the French model;

(iv) implementing, in legislation on the removal of abandoned wrecks and vessels, the possibility of introducing these wrecks and vessels into the circular economy loop;

(v) several general considerations on the financing of a circular economy for recreational vessels.

Appendices

As the analysis of the legal framework focused on the main laws and regulations relevant to the present study, the appendices contain the legal provisions in force reproduced in extenso, as well as a list, by level of authority, of other more ancillary legislation and regulations.

I. REMINDER OF THE PURPOSE OF THE MISSIONS TO BE CARRIED OUT

1. The subject of the present legal study concerns the introduction of a circular economy for recreational craft.

Building on the preliminary study of 2022 *"An inventory of the different possible avenues for achieving a circular economy in the Belgian recreational boating sector, both at sea and on land"*, the Directorate General for Navigation (DGN) wants to continue exploring possible paths to achieving a circular economy in the Belgian recreational boating sector.

To this end, the DGN has decided to commission a legal study that will serve as a complementary input to the development of these avenues.

2. To achieve this, it is essential to:

- examine the various public bodies and stakeholders involved;
- list the existing legislation in Belgium and Europe concerning recreational boating on the one hand, and the related recycling on the other;
- map the distribution of competences associated with the existing legislation.

3. Once the current situation has been mapped out, an examination is required of what is legally necessary at federal, regional and possibly European levels to achieve a circular economy in the Belgian recreational boating sector.

Legal proposals will be put forward to this end.

4. This legal study is therefore divided into two main sections:

- ❖ firstly, the **current problem of abandoned recreational craft**, which is the subject of the first part of the study.
What legislation needs to be adapted to address this issue, and is new legislation needed?
- ❖ secondly, the **introduction of a circular economy for recreational craft in the future**.
What legislation - and at what level of authority - needs to be adapted or added to ensure the implementation of a circular economy in the Belgian recreational boating sector?

5. The various meetings held as part of this study, with stakeholders, IGNEOS and FPS Mobility and Transport, have also enabled the study to be extended to other legal issues and considerations.

These have been incorporated into the present study, in addition to its original purpose.

II. INTRODUCTION

6. In recent years, Belgium has been actively committed to a circular economy at all levels of government.

Raw materials can no longer be used in a linear way, as if they were inexhaustible, and it has become essential to find ways of recycling materials as much as possible.

7. The recreational boating sector, among others, also contributes to this waste.

Belgium has 93,000 registered recreational craft.

It is estimated that around 10,000 craft are no longer in use.

Most date from the 1970s and 1980s and have been on our waters for around 40 years.

Around 75% of these abandoned craft are made of polyester, which represents an additional challenge for recycling.

Recreational craft have been mass-produced from polyester since the second half of the last century. Due to the properties of polyester, the average lifespan of such a vessel is estimated at between 30 and 50 years.

In recent years, many recreational craft have reached the end of their life cycle, making end-of-life craft a hot topic in many European countries.

These end-of-life boats are often abandoned in nature, with repercussions (i) on the safety of waterways, other vessels and their crews, (ii) on the environment and ecosystems, (iii) as well as being a visual nuisance.

8. As also indicated in the latest versions of the Federal Action Plan on Marine Waste and the Federal Action Plan for a Circular Economy, the DGN intends to develop a waste management plan for end-of-life recreational vessels.

To this end, in 2022 the DGN, with the support of a consultant, carried out a preliminary study to list the different possible avenues for achieving a circular economy in the Belgian recreational boating sector, both at sea and on land.

A literature review and benchmarking study have therefore already been carried out, and several bilateral discussions have already taken place.

Lastly, two round-table discussions were held with the different stakeholders to identify possible avenues of action.

9. The preliminary study revealed a number of technical and legal obstacles.

Recycling abandoned recreational craft is a technically complex process.

As a result of the different materials involved, dismantling a recreational craft is a difficult and time-consuming process. For example, paint or oil residues may be found on the hull. The remaining polyester is of poorer quality, which currently limits the possibilities for reuse.

At the legal level also, setting up a circular economy chain for recreational craft is not easy, and many questions require analysis before the relevant legal tools can be proposed.

10. Given Belgium's political landscape, the various competences involved are divided between the different levels of government.

For example, since 2019, recreational craft 2.5 metres and over in length have had to be registered. The register is in the hands of the federal government, more specifically the FPS Mobility and Transport.

However, waste management and waterway management are regional responsibilities.

Consequently, to achieve a circular economy in recreational boating, the various public authorities need to take action and, if necessary, consult each other.

III. INTERESTED PARTIES

III.1. FOREWORD

11. The main parties involved are listed below.

They are subdivided into three categories, according to the degree of decision-making power:

- the actual decision-making authorities;
- the competent bodies;
- the stakeholders.

III.2. THE DECISION-MAKING AUTHORITIES

12. The notion of "decision-making authorities" refers to public authorities with concrete legislative or regulatory powers to introduce a circular economy for recreational craft.

➤ **At European level:**

- ❖ in legislative matters, the European Parliament, together with the Council (Art. 14 of the Treaty on European Union);
- ❖ for legislative proposals, the European Commission (Art. 17 of the Treaty on European Union).

➤ **At federal level:**

- ❖ in legislative matters, the Chamber of Representatives;
- ❖ at the executive level, the Federal Government, and in particular:
 - the Minister of the North Sea;
 - the Minister of Mobility.

➤ **At regional level:**

- ❖ **In the Flemish Region:**
 - the Flemish Parliament;
 - the Flemish Government and, in particular, the Minister of Mobility.
- ❖ **In the Walloon Region:**
 - the Walloon Parliament;
 - the Walloon Government and, in particular, the Minister of Mobility and Infrastructure and the Minister of Agriculture.
- ❖ **In the Brussels-Capital Region:**
 - the Brussels Parliament;
 - the Brussels Government and, in particular, the Minister of Mobility and Brussels Mobility.

III.3. THE COMPETENT BODIES

13. The concept of "competent bodies" covers all international, European, federal and regional bodies which, without having concrete legislative or regulatory powers, are nevertheless competent in matters relating to recreational boating and/or the circular economy and/or waste management and treatment.

➤ INTERNATIONAL BODIES

- ❖ **IMO:** the International Maritime Organization, created under the IMO Convention.

➤ EUROPEAN BODIES

- ❖ **CESNI:** European Committee for drawing up standards in the field of inland navigation¹;
- ❖ The European Maritime Safety Agency.²

➤ FEDERAL BODIES

- ❖ FPS Mobility and Transport³

Belgian Naval Register: the central service of the Directorate General Navigation of the Federal Public Service Mobility and Transport, responsible in particular for registering ships and inland waterway vessels, and for publishing rights on ships;

Maritime Security Unit: the division of the Directorate General Navigation of the Federal Public Service Mobility and Transport responsible for the tasks referred to in Article 4.2.1.44 of the Belgian Navigation Code.

¹ [European Committee for drawing up standards in the field of inland navigation \(CESNI\) - CESNI - European Committee for drawing up standards in the field of inland navigation](#)

² [Regulation - 1406/2002 - EN - EUR-Lex \(europa.eu\)](#)

³ mobilite.belgium.be/fr/navigation/navigation-mer-du-nord-belge/routes-maritimes-mer-du-nord/reglement-de-navigation

- ❖ Federal consultation platform for recreational boating (created by the Royal Decree of 28 June 2019 establishing a federal consultation platform for recreational boating)⁴, often abbreviated to PCN.

The PCN ensures ongoing, structured consultation between the industry, users and the FPS Mobility and Transport.

It aims to:

1. improve service: administrative simplification, e-counters, user communication;
 2. promote safety: discussions on safety campaigns, safety equipment on board recreational craft;
 3. respond to new trends: the implementation of new regulations such as the ICC, new water sports or innovations in safety equipment for recreational boaters.
- ❖ The Recreational Boating Commission referred to in Article 12 of the 2018 Act: evaluates patents that are not issued by the federal government. The Commission then advises the Minister on the recognition of these patents.
 - ❖ The Examining Board: draws up the subject matter and examination questions for obtaining a certificate of competence to operate a ship.
 - ❖ Navigation control: the part of the federal authority responsible in particular for the execution and enforcement tasks laid down in this Code, and designated for this purpose by the King.
 - ❖ Navigation police: the federal police authority responsible for water policing.
 - ❖ MIK: the Maritime Information Hub referred to in Article 3, 7°, of the Coast Guard Cooperation Agreement.
 - ❖ ANSM: the National Maritime Security Authority, as referred to in Article 2.5.2.5 of the Belgian Navigation Code.
 - ❖ ANSM: a Local Maritime Security Committee, as referred to in Article 2.5.2.8 of the Belgian Navigation Code.

⁴ mobiliteit.belgium.be/fr/navigation/navigation-de-plaisance/apercu-des-commissions-de-navigation-de-plaisance/la-plateforme

- ❖ Interregional Packaging Commission (CIE), responsible for Belgian legislation on packaging waste and waste transit.

➤ **WALLOON BODIES**

- ❖ SPW Mobility and Infrastructure;
- ❖ SPW Agriculture, Natural Resources and Environment;

➤ **BRUSSELS BODIES**

- ❖ BIM: Brussels Environment

➤ **FLEMISH BODIES**

- ❖ De Vlaamse Waterweg: the public-law company referred to in Article 3, §1, of the Decree of 2 April 2004 on the external autonomous agency under public law, called "De Vlaamse Waterweg SA", public limited company;
- ❖ The port authorities, referred to in the Decree of 2 March 1999 on the policy and management of seaports;
- ❖ The Maritime and Coastal Services Agency (Agentschap Maritieme Dienstverlening en Kust) (MDK)⁵;
- ❖ The Flemish Public Waste Company (Openbare Vlaamse Afvalmaatschappij (OVAM)), created by the Waste Decree of 2 July 1981;
- ❖ The Flemish Environment Agency (VMM), initially created as a Flemish public institution by the Decree of 12 December 1990 on administrative policy (in particular Title I, Chapter 9) and transformed into an autonomous internal agency with legal personality by the Decree of 7 May 2004.

III.4. THE STAKEHOLDERS

⁵ [Home | Agentschap MDK](#)

14. The concept of stakeholders refers to those parties who have no decision-making power or are not competent bodies, but who are major players in the recreational boating, circular economy and waste management sectors, and as such deserve to be included in the discussions.

The stakeholders include:

- ❖ European Boating Industry (EBI);
- ❖ European Boating Association (EBA)⁶;
- ❖ Port of Brussels (manager);
- ❖ Belgian Motonautical League;
- ❖ Water sports federations;
- ❖ General Tourism Commission (CGT);
- ❖ Wind en Watersport Vlaanderen;
- ❖ Vlaamse Pleziervaartfederatie;
- ❖ Boot Gent;
- ❖ Jachthavens: Jachthaven Nieuwpoort; Yachting Sud; Bruxelles Royal Yacht Club, etc.;
- ❖ Fédération Francophone du Yachting Belge;
- ❖ Fédération des recycleurs;
- ❖ ...

IV. PART I: ABANDONED VESSELS

⁶ Serving the interests of recreational boaters in Europe since 1982 - EBA

15. The question of abandoned recreational craft is the first of the two main parts of this study.

To answer this first question, we analyse the following points in turn:

- the existing legislative and regulatory framework;
- proposals for adapting the legislative and regulatory framework;
- competence distribution rules.

IV.1. CURRENT LEGAL FRAMEWORK

16. The first chapter of Part I examines the current main legislation and regulations relating to recreational boating and, in particular, to the issue of "orphan ships" and their removal.

To this end, the international legal framework will be discussed first.

As the European legal framework does not provide for any specific rules on the removal of abandoned vessels, no section will be devoted to this subject.

The federal and regional (Flemish Region, Walloon Region, Brussels-Capital Region) legal frameworks will complete the picture.

IV.1.1. INTERNATIONAL LEGAL FRAMEWORK: the Nairobi International Convention on the Removal of Wrecks⁷

17. The Nairobi Convention is the main international text laying down specific provisions for the removal of wrecks (see Appendix I).

The federal authority assented to the Nairobi Convention through the Law of 8 January 2017, the Brussels Region through the Brussels Ordinance of 20 November 2015, the Walloon Region through the Walloon Decree of 12 March 2015 and the Flemish Region through the Flemish Decree of 12 July 2013⁸.

18. Benefits of standardising legal regimes for wreck removal

⁷ [136558.pdf \(raadvst-consetat.be\)](#)

⁸ [refLex - Treaties - Nairobi International Convention on the Removal of Wrecks](#)
Annex
done in Nairobi 18 May 2007 (raadvst-consetat.be)

The States Parties to the Nairobi Convention acknowledge and reiterate, in the preamble, that they are aware of the risks posed by wrecks and recognise the value of standardising the legal regimes governing liability and obligations relating to the removal of wrecks.

19. Objectives and general principles

Article 2 of the Convention sets out its objectives and general principles:

"1. A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2. Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.

3. Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned."

20. Scope

The Nairobi Convention applies to wrecks located in "*the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.*"

However, Article 3 of the Nairobi Convention allows a State to extend the scope of the Convention to wrecks located within its territory, including the territorial sea.

21. Definitions

The Nairobi Convention defines a "*wreck, following upon a maritime casualty*" in Articles 1, 4, as:

"a) a sunken or stranded ship; or

b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken."

The Nairobi Convention also defines "Removal" in Article 1, 7, as "any form of prevention, mitigation or elimination of the hazard created by a wreck".

22. Measures to facilitate the removal of wrecks.

Article 9 of the Convention sets out a series of measures to facilitate the removal of wrecks.

If the Affected State determines that a wreck constitutes a hazard, that State shall immediately:

- a) inform the State of the ship's registry and the registered owner;
- b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

The registered owner of the wreck shall remove a wreck determined to constitute a hazard.

To this end, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard.

Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

When the removal has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

For its part, the **Affected State** shall:

- a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard;
- b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense;
- c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

If the registered owner does not remove the wreck within the deadline set by the State, or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

23. Conclusion

The Nairobi Convention provides a rational legal basis for coastal States to remove, or have removed from their coastlines, wrecks that present a hazard to the safety of navigation, to the marine and coastal environment, or both.

It makes the owners of wrecks responsible for their removal and requires them to take out insurance or provide other financial guarantees to cover the cost of wreck removal.

If the owner fails to act, or cannot be contacted, the Convention allows the State to remove the wreck itself.

Although the Nairobi Convention sets an interesting international legal framework, it should be remembered that its scope remains relatively limited and is inadequate to deal with the problem of abandoned vessels in Belgium, since it applies in principle only to wrecks located in the exclusive economic zone.

IV.1.2. FEDERAL LEGAL FRAMEWORK

IV.1.2.1. Law of 11 April 1989 approving and implementing various international acts on maritime navigation

24. The Law of 11 April 1989 on maritime navigation was replaced by the Belgian Navigation Code at federal level (see below), and was repealed by the Flemish Navigation Decree of 21 January 2022 (see below).

The Belgian Navigation Code and the Flemish Navigation Decree of 21 January 2022, however, draw heavily on the 1989 law.

Both the preparatory work for these laws and the opinions of the Supreme Administrative Court of Belgium refer to the provisions of the 1989 law, in particular Articles 13 and 18.

For this reason, Appendix II of this study summarises the main features of the 1989 law for information purposes.

IV.1.2.2. Belgian Navigation Code of 8 May 2019⁹ and its amendments¹⁰

25. The Belgian Navigation Code officially came into force on 1 September 2020 (See Appendix III).

Although its provisions did not originally apply to recreational boating, the Law of 16 June 2021 amending the Belgian Navigation Code filled this gap by inserting a Book 5 devoted specifically to recreational boating¹¹.

In particular, Article 5.5.1.1. of the Belgian Navigation Code now stipulates that the provisions relating to the removal of wrecks and abandoned vessels - Chapter 6 of Title 7 of Book 2 - apply to recreational craft.

Section 1 - in Articles 2.7.6.1. of the Code - concerns the removal of wrecks and abandoned vessels in territorial waters.

Section 2 - in Articles 2.7.6.8. of the Code - concerns the removal of wrecks and abandoned vessels in an exclusive economic zone.

These two sections of the Belgian Navigation Code are analysed in turn below.

(i) Removal of wrecks and abandoned vessels in territorial waters

26. Obligation *in solidum*

The Belgian Navigation Code stipulates that not only the registered owner but also the ship-owner, the ship user and the commanding officer are bound *in solidum* to respect the obligations imposed on the registered owner, including those relating to the removal of wrecks and abandoned vessels.

The authority can then contact any of these people for compensation (see below).

27. Owner's obligation to remove

The owner of a seagoing vessel sunk, wrecked, aground or abandoned in the territorial sea is obliged to refloat and remove the seagoing vessel and take it to the place indicated by the competent authority, including everything that is or was on board.

Wrecks, wreck debris, tackle or objects sunk or abandoned in the territorial sea must also be refloated, removed and taken to the place indicated by the competent authority by their respective owners.

⁹ [LAW - WET \(fgov.be/en\)](http://www.fgov.be/en/law-wet)

¹⁰ [Law of 13/10/2022 amending the Belgian Navigation Code on maritime safety \(openjustice.be\)](http://www.openjustice.be)

¹¹ [LAW - WET \(fgov.be/en\)](http://www.fgov.be/en/law-wet)

The competent authority always has the option of imposing more specific conditions on the owners concerned, particularly in terms of deadlines.

28. Ex officio intervention by the competent authority

If the owner fails to comply sufficiently with their removal obligations, or if the owner is unknown, or in the event of an emergency, the competent authority may, ex officio, at the risk and peril of the owner and the person responsible for the event:

- refloat, remove, destroy, render harmless, dispose of or move a sunken, wrecked, stranded or abandoned seagoing vessel, including everything that is or was on board, together with cargo and everything that fell into the water from the seagoing vessel;
- refloat, remove, destroy, render harmless, dispose of or move wrecks, debris, tackle or objects sunk or abandoned in the territorial sea;
- take any other measures necessary to ensure smooth and safe navigation;
- take any other measure necessary to protect the marine environment.

The competent authority's decision to carry out an ex officio intervention must be adequately published beforehand, except in cases of emergency.

29. Advances and guarantees

Before initiating an ex officio intervention, the competent authority has the right to require the owner or their insurer to advance the sum it deems adequate to cover the costs of the removal measures.

This advance may be replaced by the provision of a guarantee deemed acceptable and adequate by the authority.

The sum advanced or the guarantee may be used to finance the execution of the ex officio measures.

30. Payment of costs incurred by the competent authority

The party responsible for the event which caused the seagoing vessel to sink, wreck, run aground or be abandoned, or, in the absence of such a person, the owner of the vessel, is required to pay the costs incurred by the authority in its ex officio intervention.

In this respect, the Belgian Navigation Code stipulates that under no circumstances are these debtors entitled to limit their liability.

31. Immobilisation, seizure and sale

In the case of an ex officio intervention, the competent authority is empowered to detain and seize the seagoing vessel or wreck and all the goods involved, without judicial authorisation.

Where the competent authority presumes to have suffered damage through the fault of a seagoing vessel, it may detain and seize ex officio any seagoing vessel that may be liable, without judicial authorisation.

The seagoing vessel, wreck or asset seized is released when the advance has been paid or the security has been lodged (see above).

The competent authority which has had a seagoing vessel, wreck or other asset removed or which is a creditor for damage caused due to a seagoing vessel has the right, in the event of non-payment, to sell the seagoing vessel or other assets and to indemnify itself out of the price, in preference to any other creditor.

The balance of the sale proceeds is then paid to the Caisse des Dépôts et Consignations.

If the seagoing vessel, wreck or seized asset is not taken back by its owner, the competent authority may also proceed with its sale, subject to prior publication in the Belgian Official Gazette and the Belgian Naval Register.

The sale proceeds are paid to the Caisse des Dépôts et Consignations.

If no one provides proof of entitlement within the allotted time, the amounts paid to the Caisse des Dépôts et Consignations revert automatically to the competent authority after a period of one year from the date of payment.

(ii) Removal of wrecks and abandoned vessels in the exclusive economic zone

32. A second section sets out provisions for the removal of wrecks and abandoned vessels in the exclusive economic zone.

This section primarily covers the implementation of the Nairobi Convention (known as the "WRC"), whose substantive provisions can be considered directly applicable (see Article 2.7.6.8) and which, as a reminder, also cover the removal of wrecks in the exclusive economic zone.

As a result, the directly applicable provisions of the Nairobi Convention, in particular those concerning the competences of the authority and the obligations of the registered owner and operator of the

seagoing vessel, apply to wrecks in the Belgian exclusive economic zone.

Under no circumstances may the registered owner and operator referred to in paragraph 1 limit their liability.

The competent authority exercises all the powers granted to the State by the Nairobi Convention with regard to wrecks in the Belgian economic zone.

In particular, for the locating and marking of wrecks, the competent authority may impose more specific obligations, including deadlines, on the registered owner, the seagoing vessel operator and all third parties concerned.

33. Intermediate conclusion

The Belgian Navigation Code provides a relatively comprehensive legal regime for the removal of wrecks, abandoned, sunken, wrecked and stranded vessels, both in the territorial sea and in the exclusive economic zone.

This regime is fully applicable to recreational craft.

However, the Belgian Navigation Code does not define the notions of wrecks, abandoned, sunken, wrecked and stranded vessels. This is a source of legal uncertainty.

The owner is responsible for removal.

In the event of inaction on the part of the owner, if the owner is unknown, or in the event of an emergency, the competent authority may intervene ex officio, at the owner's risk, to carry out the removal in particular.

The cost of removal is borne by the owner.

In the event of non-payment, the authority may detain, seize or sell the vessel.

IV.1.3. LEGAL FRAMEWORK IN THE FLEMISH REGION

IV.1.3.1. The Flemish Navigation Decree of 21 January 2022¹²

34. The Flemish Region adopted a decree on navigation, in force since 1 June 2022.

¹² [fr-scheepvaartdecreet.pdf \(itb-in fo.be\)](#) and parliamentary proceedings: [pfile \(vlaamsparlament.be\)](#)

The Decree contains a number of provisions¹³ concerning the removal of abandoned vessels and wrecks from inland waterways¹⁴, as well as from the territorial sea and exclusive economic zone when they constitute an obstacle to the accessibility of Flemish ports and waterways.

In essence, the Flemish Decree provides a legal regime for Flanders that is relatively identical to that established by the Belgian Navigation Code at federal level (see Appendix IV).

35. The Flemish Decree contains an interesting definition of an "unattended vessel", which consists of a vessel *"which, without being moved, is in the waterway or in a port for sixty days or more in the same place, without having obtained the right to stop at that place, either during the whole period, or uninterruptedly from a given moment during that period"*.

After sixty days, the vessel is classified as unattended and falls within the scope of the following provisions.

36. Obligation of the owner, lessee or charterer

With regard to the removal of stranded, sunken or unattended vessels, the Decree stipulates that the owner, lessee or charterer to whom the vessel is made available for their own use, as well as the operator of a stranded or sunken vessel, an unattended vessel, a wreck, or a sunken craft, or any other object that has fallen into the water, must refloat the vessel and remove it to the place designated for this purpose by the competent authority.

The waterway manager or port authority may impose obligations in this respect, such as a time limit within which the vessel must be refloated or removed.

37. Ex officio measures

The party responsible for the event through which the vessel has run aground, sunk or is unmanaged or through which any other object has fallen into the water is liable to the waterway manager or port authority for payment of the costs relating to the ex officio measures and operations ordered under Article 140.

In cases where the owner has not fulfilled their removal obligations, or in cases deemed necessary by the waterway manager or the port authority, or if the owner, lessee or charterer, to whom the vessel was made available for their own use, and the operator of the vessel are unknown, the waterway

¹³ See in particular Articles 16 to 19, 140 and 141.

¹⁴ Defined in Article 2, 4° of the Decree as *"the public waters in the Flemish Region that can be used for navigation, including seaports and coastal waters on the landward side of the baseline from which the width of the territorial sea is measured"*.

manager or the port authority may, ex officio and at the risk of the owner, lessee or charterer, to whom the vessel was made available for their own use, and the operator and the person held liable for the conditions of the stranding, sinking or non-management of the vessel:

- refloat, remove, destroy or render harmless a stranded, sunken or unmanaged vessel, including everything on board;
- remove, destroy or render harmless the ship's cargo;
- remove the vessel or cargo already returned or removed from the waterway or port;
- take any other measures necessary for the safety, freedom of navigation and preservation of the functionality of the waterway or port, or for the preservation of the waterway or port.

Except in emergencies, the decision of the waterways authority or port authority to make use of these ex officio measures is published in advance.

38. Before any ex officio measures or operations are carried out, the waterway manager or port authority may require the owner, lessee or charterer, to whom the vessel was made available for their own use, or the operator of the vessel or any person whose liability may be called into question or, directly, the insurer of their respective liability, to advance the sum which the waterway manager or port authority considers sufficient to cover the costs of these measures or operations.

This advance may be replaced by the provision of an acceptable and sufficient guarantee.

39. Article 88 of the Decree also stipulates that waterway managers or port authorities using ex officio measures may detain and seize the vessel, wreck, gear, any sunken object and cargo.

In the event of non-payment or non-recovery by the owner, the waterway managers or port authorities may sell the vessel and deduct their claim from the sale price, before transferring the remainder of the sale proceeds to the Caisse des Dépôts et Consignations.

40. The preparatory work has shed some light on the provisions of the Decree.

The relevant extracts are included in Appendix II of this study.

41. Intermediate conclusion

The Flemish Decree sets out a relatively comprehensive legal regime for the removal of wrecks, stranded, sunken or unattended vessels, and sunken objects.

These provisions apply to Flemish waterways as well as at sea when the wreck, vessel, craft or object constitutes an obstacle to the accessibility of Flemish ports and waterways.

The owner is responsible for removal.

If the owner fails to act, if the authority deems it necessary, or if the owner is unknown, the authority may take measures ex officio, including removal.

The waterway manager or port authority is responsible for the removal of stranded, sunken and unattended vessels (abandoned vessels) and may recover its costs from the person responsible for the incident or, in the absence of such a person, from the owners of the vessels concerned or the owner, lessee, charterer or operator of the vessel, as well as directly from their insurers.

In the event of non-payment, the authority has the right to detain, seize and sell the vessel.

Contacts with stakeholders revealed that these regulations are not yet well or sufficiently known. Certainly, concessionaires are faced with this issue, and water managers do not seem to be taking active action, even though the legal framework allows them to do so.

IV.1.4. LEGAL FRAMEWORK IN THE WALLOON REGION

IV.1.4.1. Decree of 19 March 2009 on the conservation of regional public roads and waterways¹⁵

42. The aim of the Decree of 19 March 2009 is to preserve the integrity, cleanliness, safety, viability and availability of regional public roads and waterways (see Appendix VI).

For the purposes of the Decree, "regional public roads and waterways" should be understood to mean the regional public domain of roads and waterways.

¹⁵ [LAW - WET \(fgov.be/en\)](http://LAW - WET (fgov.be/en))

This includes not only motorways, regional roads and other public roads but also waterways and major hydraulic structures under the direct or delegated management of the Walloon Region, as well as their appurtenances.

"Appurtenances" means any structure, device, equipment, land or service road located beside, under, on, over or inherent to motorways, roads, public highways, waterways or hydraulic structures, specially built, installed, acquired, developed or made available as part of these infrastructures.

43. Within the meaning of the Decree, the managing authority is either the Walloon Government (SPW Mobility and Infrastructures) or the authority designated by it, which may be a personified public body within the meaning of Article 9 of the special institutional reform law of 8 August 1980.

44. The prior written authorisation of the managing authority is required to occupy or use the regional public domain in a way that exceeds the ordinary right of use that belongs to everyone.

To this end, the Government is empowered to lay down the general conditions governing occupation, use, the carrying out of works or the organisation of events, including the payment of fees, for which it determines the rates and collection methods.

45. The Walloon Decree of 24 November 2016 made various amendments to the Decree of 19 March 2009 on the conservation of regional public roads and waterways.

In particular, Chapter VIb entitled "*Mesures d'office applicables sur le domaine public régional des voies hydrauliques*" has been added, and contains a range of provisions relating to (i) ex officio relocation measures, (ii) abandoned boats and (iii) wrecks.

46. **Firstly, with regard to ex officio removal measures**, the Decree now stipulates that the managing authority (SPW Mobility and Infrastructures) can give formal notice to the owner, and failing that either the driver or occupant of the boat or floating installation, to leave the premises when:

- their docking, in violation of the laws and regulations or an injunction from the managing authority, compromises the conservation, normal use or safety of users of the waterways, or;
- the holder of an authorisation or temporary concession agreement fails to comply with the conditions laid down therein and the agreement or authorisation is terminated.

The managing authority sets the deadline within which the boat or floating installation must be moved, which in principle cannot be less than 24 hours.

On expiry of the deadline, the managing authority may proceed with the ex officio removal of the boat or floating installation.

The owner is responsible for all costs associated with the ex officio removal, mooring and safekeeping of the displaced boat or floating installation.

In addition, manoeuvres during ex officio relocation and mooring are carried out at the owner's own risk, and the owner remains liable for the safekeeping of the boat or floating installation.

47. Secondly, with regard to abandoned boats or floating installations, the Decree applies to any boat or floating installation in a state of buoyancy, that has been abandoned on the regional public domain and presents a danger or prolonged obstruction to navigation.

The managing authority may requisition goods and persons to put an end to the danger or prolonged obstruction.

The managing authority may intervene at the owner's expense and risk when, after formal notice to put an end to the danger or prolonged obstruction, the owner or their representative refuses or fails to take the necessary measures.

In the event of an emergency, the managing authority can immediately take the necessary intervention and safeguarding measures, including guarding and manoeuvring.

The Decree also considers as abandonment of the boat or floating installation by its owner:

- failure to obtain an occupancy permit;
- no owner, driver, occupant or guardian on board;
- the non-existence of guarding or manoeuvring measures.

If no owner, operator, occupier or guardian comes forward or takes the necessary manoeuvring or maintenance measures to put an end to the state of abandonment within six months of notification of the report to the owner, the managing authority may declare the boat or floating installation abandoned and acquire ownership of it.

The transfer of ownership is recorded in the mortgage registry.

The managing authority may, within two months of acquiring the property, either:

- sell the boat or floating installation, subject to the rights of preferential and hypothecary creditors, or;
- destroy it if its market value does not justify putting it up for sale.

48. Thirdly, with regard to wrecks, the Decree applies to wrecks of boats or floating installations located on the regional public domain.

The wrecked state of the vessel or floating installation results from its non-floatability, the absence of an occupant and the non-existence of safekeeping and manoeuvring measures concerning it.

If the owner of the wreck is unknown, or if, after a formal warning, they refuse or neglect to carry out salvage, recovery, removal or destruction operations, either directly or through their representative, or to eliminate the dangers posed by the wreck, the managing authority may intervene ex officio, or proceed with the sale or scrapping of the wreck at the owner's expense and risk.

IV.1.4.2. The Walloon Government Decree of 15 May 2014 regulating navigation on waterways in the Walloon Region¹⁶

49. The Decree of 15 May 2014 applies to waterways included in the regional public domain of waterways (See Appendix VII).

Firstly, the decree states that no boat is allowed to navigate or park if it is in danger of sinking due to a construction defect, obsolescence or lack of maintenance.

50. Under the terms of the decree, boats may only be docked, launched or put ashore, and goods and people may only be loaded or unloaded in ports or at places and under conditions designated for this purpose in the specific regulations.

51. Article 13 on the "obligations of any operator, person in authority or user" also provides a legal basis in the Walloon Region for the removal of stranded boats and wrecks, as well as a system for the manager to put them up for sale.

As a result, any operator or owner of a stranded or sunken boat must:

- inform the manager immediately;
- place the necessary and appropriate markers;
- undertake to refloat the boat, including cargo, without delay;
- remove the wreck from the domain.

¹⁶ [4961 - WALLEX \(wallonie.be/en\)](http://4961-WALLEX.wallonie.be/en)

In the event of failure to comply within a reasonable time, the manager will set a deadline after which ex officio measures will be taken at the expense and risk of the boat operator or owner.

When the operator or owner of a sunken boat is unknown, the boat, its debris and cargo are put up for sale by the manager.

The proceeds of the sale, after deduction of the costs incurred by the manager for the removal, are paid to the Caisse des dépôts et consignations for the beneficiaries.

52. Intermediate conclusion

The Walloon Region also has a relatively well-developed legal framework for the removal of abandoned vessels.

The Decree of 19 March 2009 applies to Walloon waterways and their appurtenances.

It provides legal tools with regard to:

- ex officio removal: the authority may require the owner, operator or occupant of the boat or floating installation to leave the premises when its docking violates the provisions in force and compromises the conservation, normal use or safety of other waterways users. If the owner fails to react, the authority may take action itself;
- abandoned boats and floating installations which, in the event of danger or prolonged obstruction, may be requisitioned by the competent authority, which may acquire ownership of them;
- wrecks, when the owner is unknown or remains inactive, the authority may intervene ex officio to remove the wreck.

The 2014 Decree supplements the provisions of the Decree to offer the Walloon Region a legal framework relatively similar to what exists at federal and Flemish levels.

IV.1.5. LEGAL FRAMEWORK IN THE BRUSSELS-CAPITAL REGION

53. The legal framework in the Brussels-Capital Region remains fairly limited, probably due to the fact that there are only 14 kilometres of navigable waterways; this probably explains the legislator's and government's lack of interest in this area.

54. It should be noted, however, that Article 70 of the Regional Police Regulations for the Canal and Port of Brussels¹⁷ stipulates that the party responsible for a vessel that has sunk or the owner or holder of an object that interferes with navigation must ensure that the vessel or object is raised to the surface and, if necessary, removed from the waterway, within the deadline set by the harbour master and in accordance with the procedures prescribed by the latter.

55. Intermediate conclusion

Insofar as the Brussels-Capital Region does not have the same legal tools for the removal of abandoned boats or wrecks as the federal authority, the Flemish Region and the Walloon Region, it could be suggested that work be carried out on updating and further developing the rules in this area.

IV.1.6. COMPARISON TABLE

The table below summarises the main elements of the above-mentioned legislation.

	NAIROBI CONVENTION	BELGIAN NAVIGATION CODE	FLEMISH DECREE	WALLOON DECREE
Scope	Exclusive economic zone (unless extended by the State Party)	- Territorial sea - Exclusive economic zone	- Inland waterways - At sea, when there is an obstacle to the accessibility of Flemish ports and waterways	- Waterways - Large hydraulic structures - Their appurtenances
Competent authority	Not defined by the Convention	Part of the federal authority competent for matters regulated by or pursuant to this Code and designated for this purpose by the King	The department designated by the Flemish Government (Waterweg or port authority) or the public body dependent on the Flemish Region, responsible for implementing and maintaining the provisions of	The managing authority is the Walloon Government (SPW Mobility and Infrastructures) or the authority it designates

¹⁷ [BHG - Regional Police Regulations for the Canal and Port of Brussels.pdf \(itb-info.be\)](#)

			this decree or parts thereof	
Persons in charge	Registered owner: - Removal obligation	- Owner - Ship-owner - User - Command	- Owner - Hirer - Charterer - Vessel operator	- Owner Driver Occupant
Objects covered by the removal obligation	Wreck	- Wrecks, wreckage debris, sunken or abandoned tackle or objects - Abandoned, sunken, wrecked or stranded vessels	- Stranded, sunken or unattended vessel - Wreck - Sunken equipment or any other object that has fallen into the water	- Boat - Floating installation Abandoned and presenting a danger or prolonged obstruction to navigation; - Wrecks
Definitions	<p><i>"Wreck, following upon a maritime casualty":</i></p> <p>1) Wrecked or stranded ship, or part thereof; 2) Any object lost at sea from a ship and that is stranded, sunken or adrift; 3) A vessel that is about to sink or become stranded or whose sinking or stranding can be expected.</p> <p><i>"Removal":</i> any form of prevention, mitigation or elimination of the hazard created by a wreck.</p>	/	<p>"Unattended" vessel: vessel which, without being moved, is in the waterway or in a port for 60 days or more in the same place, without having obtained the right to stop at that place, either during the whole period, or uninterruptedly from a given moment during that period.</p>	<p>The following are also cases of abandonment:</p> <ul style="list-style-type: none"> - failure to obtain an occupancy permit; - absence of owner/driver/occupant/guardian - non-existence of guarding and manoeuvring measures. <p>A wreck is a boat or floating installation that is not buoyant, is unoccupied and has no safekeeping or manoeuvring facilities.</p>
Obligations of the liable person	Obligation of the registered owner to remove a wreck found to	Obligation of the owner to refloat and remove the vessel or wreck	Refloating and removal obligation	Obligation to refloat and/or evacuate the wreck on the part

	constitute a hazard	and bring it to the place indicated by the competent authority		of any operator or person in authority or any user (AGW 15 May 2014)
Opportunities for the authority to act instead	<ul style="list-style-type: none"> - Take the necessary steps to ensure that the removal process runs smoothly - Set a deadline for wreck removal - Possibility of removing the wreck ex officio if the owner fails to act or cannot be contacted. 	<ul style="list-style-type: none"> - Set more precise conditions, including deadlines - When the owner does not intervene: <ol style="list-style-type: none"> 1) Refloat, remove, destroy, render harmless, dispose of or move a sunken, wrecked, stranded or abandoned vessel; 2) Refloat, remove, destroy, render harmless, dispose of or move wrecks and other abandoned objects; 3) Any measure to ensure smooth and safe navigation and protection of the marine environment. /!\: the authority's decision must be published in advance. 	<ul style="list-style-type: none"> - Set more precise conditions for removal. - In the event of non-compliance, ex officio measures may be taken after nautical publication (except in emergencies): <ol style="list-style-type: none"> 1° refloat, remove, destroy or render harmless a stranded, sunken or unmanaged vessel, including everything on board; 2° remove, destroy or render harmless the ship's cargo; 3° remove the vessel or cargo already returned or removed from the waterway or port; 4° take any other measures necessary for the safety, freedom of navigation and preservation of the functionality of the waterway or port, or for the preservation of the waterway or port. 	<ul style="list-style-type: none"> - Notice to leave the location - Setting a possible deadline On expiry of the deadline (except in emergencies), ex officio measures

Financial	The registered owner is required to pay the costs of locating, marking and removing the wreck.	Advance or guarantee	Advance or guarantee	The owner is responsible for all costs associated with the ex officio removal, mooring and safekeeping
Seizure and sale?	/	Authorisation for the competent authority to immobilise and seize the property, without judicial authorisation. - The property is released when the advance or guarantee has been paid/constituted. - Right to sell the property in the event of non-payment or non-recovery by the owner.	Detention or seizure of the boat. Right of sale in the event of non-payment.	Managing authority becomes the boat owner six months after the declaration if the owner does not come forward. The authority may sell or destroy the boat within two months of acquisition.
Ownership?	/	Amounts paid to the Caisse des Dépôts et Consignations revert automatically to the competent authority after a period of one year from the payment.	The competent authority becomes the owner of sale proceeds if no one claims them within one year	
Liability	With some exceptions, liability rests with the owner	The party liable for the event which caused the vessel to sink, wreck, run aground or be abandoned or, in the absence of such a party, the owner of the	Ex officio measures taken at the risk of the owner, lessee or charterer.	Ex officio manoeuvres carried out at the owner's risk. Owner liable for guardianship.

		vessel is required to pay the costs incurred in the ex officio intervention.		
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IV.2. PROPOSALS FOR ADAPTING THE LEGISLATIVE AND REGULATORY FRAMEWORK

56. In the following section, we analyse the legal avenues for improvement, and review in turn:

- the question of the definitions in existing legal texts;
- the lack of legal framework in the Brussels-Capital Region;
- the standardisation of existing regimes between the regions and the federal authority;
- when a recreational vessel can be considered as waste;
- the question of whether an unregistered recreational craft can be considered as waste;
- liability for removal under concessions.

IV.2.1. DEFINITIONS

57. As can be seen from the comparative table, although similar regimes exist at international, federal and regional level, they are not entirely identical.

While the existing legal framework already provides, at least in part, the necessary tools for the federal authority and each Region to remove abandoned vessels and wrecks, there are discrepancies between these regimes, and some of them remain incomplete, particularly as regards the exact definition of the vessels and objects on which the competent authorities can intervene.

Several texts do not even define the vessels and wrecks covered by the various removal obligations (see the Belgian Navigation Code) and are therefore sources of legal uncertainty. This legal uncertainty was highlighted in practice by stakeholders at the meetings.

58. It should be pointed out at this stage that, unless the scope of the following definitions is expressly limited to recreational boating, any changes to the above-mentioned legislation are likely to affect the entire boating world, not just recreational boating.

59. At this stage of the study, the following definitions can be proposed:

IV.2.1.1. Harmonisation of the concept of "recreational craft"

60. The notion of "recreational vessel" or "recreational craft" is not standardised.

Directive 2016/1629 defines a recreational craft as *"a vessel other than a passenger vessel, intended for sport or pleasure"*.

The Flemish Navigation Decree broadly follows this definition, defining a "recreational vessel" as *"any vessel designed for sporting or recreational purposes, excluding passenger vessels"*.

61. At federal level, the Belgian Navigation Code defines recreational vessels in greater detail.

Under the Code, they are *"any vessel which, whether or not used for professional purposes, is or is intended to be used for recreational boating, excluding vessels used for the transport of more than 12 passengers and vessels intended or normally used for professional fishing purposes"*.

The Law on recreational navigation broadly uses the same definition: *"any vessel which, whether or not used for professional purposes, is or is intended to be used for recreational boating, excluding vessels used for the transport of more than 12 passengers"*.

62. It would be advisable for the federal and regional authorities to agree on a common definition of recreational vessel.

IV.2.1.2. Abandoned vessel

63. The definition of "abandoned vessel" in Walloon legislation appears to be the most complete. It is also virtually identical to the definition used in France.

It has the advantage of being clearly distinguishable from the notion of wreck due to its state of buoyancy and also enables the hypotheses in which a vessel can be presumed abandoned to be listed, allowing new hypotheses to be added to existing ones, if necessary.

The following definition could serve as a working basis:

"Any vessel or floating installation in a state of buoyancy, abandoned in the exclusive economic zone, territorial sea or inland waterways, and presenting a danger or a prolonged obstacle to navigation.

Abandonment of the vessel or floating installation is presumed in the following cases:

- 1° absence of authorisation to occupy or immobilise it at this location;*
- 2° absence of owner, operator, occupant or custodian on board;*
- 3° non-existence of custody or manoeuvring measures.*

64. The Flemish Decree contains a definition of an "unattended vessel", which is *a vessel "which, without being moved, is in the waterway or in a port for sixty days or more in the same place, without having obtained the right to stop at that place, either during the whole period or uninterruptedly from a given moment during that period"*.

The 60-day deadline set by the Decree is interesting insofar as it is an objective criterion that limits the scope for interpretation.

It may therefore be suggested that the hypothesis of exceeding a set deadline be added to the definition of an abandoned vessel.

IV.2.1.3. Wreck

65. As a reminder, the Walloon Decree defines the wrecked state of a vessel or floating installation as follows:

"The wrecked state of the vessel or floating installation results from its non-floatability, the absence of an occupant on board and the non-existence of safekeeping and manoeuvring measures concerning it."

The Nairobi Convention also defines a wreck as:

- "a) a sunken or stranded ship;*
- b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship;*

*c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea;
d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken."*

66. As with the notion of abandoned ship, it might be appropriate to provide a general definition, accompanied by hypotheses in which designation as a wreck is presumed.

The question arises as to whether or not the general definition should stipulate that the vessel or installation must present a danger or prolonged obstacle to navigation.

In the same way, it is important to consider the relevance of "floating" installations, which are considered wrecks as they are "non-floatable".

The hypotheses mentioned in the Nairobi Convention could then be used as they are or with a definition of a shipwrecked or stranded vessel.

The addition of a deadline within which a ship in a state of non-floatability could be qualified as a wreck (an objective criterion) may also be suggested.

IV.2.1.4. End-of-life vessel

67. France is familiar with the concept of an "end-of-life recreational or sports craft", which it defines as *"any vessel that constitutes waste, as defined in Article L. 541-1-1"*.

Article L541-1-1 defines waste as *"any substance or object, or more generally any movable asset, which the holder discards or intends or is obliged to discard"*.

68. Should the Belgian decision-making authorities want to establish a formal and more direct link between the notion of "recreational craft" and that of "waste", the definition of an end-of-life vessel could therefore provide a legal solution.

An end-of-life vessel could therefore be defined, for example, as *"a vessel of which the holder is disposing or intends or is obliged to dispose"*.

The definition could be further clarified if, instead of "vessel", it referred to "any abandoned vessel and wreck".

In addition to this general definition, it may also be advisable to list the hypotheses in which, in a non-exhaustive way, the owner of a vessel would be presumed to have the intention to dispose of the vessel (for example and subject to a more detailed legal analysis, in the absence of custody measures

or manoeuvres; if a deadline is exceeded without authorisation for occupation or immobilisation; in the event of non-registration of the vessel in accordance with the law on recreational boating, etc.).

IV.2.2. The legal framework in the Brussels-Capital Region

69. As mentioned above, the legal framework in the Brussels-Capital Region remains relatively precarious.

From a legal standpoint, and to provide the Region with a legal framework in this area, it may be advisable to adopt an Ordinance which, at the very least and in substance, reproduces the legal regime applicable at federal, Flemish or Walloon level.

IV.2.3. The standardisation of existing systems

70. As part of a reform of the regime for the removal of abandoned vessels and wrecks, it may be advisable to standardise the rules in force within the existing regimes.

In addition to definitions, we can also point to the standardisation of scopes, taking into account the competences of each level of authority, the persons liable and their obligations, the objects covered by the removal obligation, the scope of action of the competent authority and the financial aspects.

71. During meetings with stakeholders, and given the conclusions of the pre-study carried out in 2022, it emerged that the sector is calling for the standardisation of current rules.

IV.2.4. When a recreational vessel can be considered as waste

72. As things stand, there is no clear definition of the conditions that a recreational craft must meet to be considered waste.

In this respect, reference is made in particular (see above) to the advisability of introducing the definition of "end-of-life vessel" into the legislation.

73. However, in all three regions of the country, waste is defined identically as *"any substance or object which the holder discards or intends or is required to discard"*¹⁸.

As soon as the "owner of a recreational craft" disposes of it, or intends or is required to do so, the vessel is likely to be considered as waste within the meaning of regional legislation.

74. As France has done, it is nevertheless possible to propose the definition of "end-of-life vessel", which will not in itself create additional rights and obligations (as the legal mechanism already exists between the notion of recreational craft and waste, even if this link is not expressly mentioned in any provision), but will clarify and explicitly formalise the fact that a recreational craft can be considered as waste when it meets the conditions to be qualified as such.

IV.2.5. Is and can a non-registered vessel be considered as waste?

75. As the legislation currently stands, the only case in which a vessel can be considered as waste is if it actually meets the definition of waste, i.e. if the owner of the vessel disposes of it or intends or is obliged to dispose of it.

At present, the non-registration of a vessel does not automatically mean that it is waste.

76. On the other hand, it would be possible to add (in the law on recreational boating, for example, and in particular in the chapter on registration) that a vessel owner who fails to register their vessel in accordance with the legal provisions will be presumed to have the intention of disposing of it.

Such a link could also be made in regional waste legislation.

Insofar as these are competences that fall within the remit of different levels of government, consultation between the federal authority and the federated entities should be envisaged, subject to further analysis.

IV.2.6. Liability for removal under concessions

¹⁸ In the Walloon Region: see the Decree of 9 March 2023 on waste, material circularity and public cleanliness;
In the Brussels-Capital Region: see the Ordinance of 14 June 2012 on waste;
In the Flemish Region: see Decreet betreffende het duurzaam beheer van materiaalkringlopen en afvalstoffen.

77. During meetings with stakeholders, the consequences of the existence of a concession on removal were raised as a recurring issue, insofar as some competent authorities seem to consider that the removal of wrecks and abandoned vessels is the responsibility of concessionaires.

Concessionaires are faced with the problem of abandoned vessels and have no legal means of taking action.

A few examples of concession contracts granted to marinas have been sent to ATHOS for analysis.

78. None of the concession contracts sent to ATHOS explicitly mention the issue of abandoned vessels.

However, the contracts impose an obligation on the concessionaire to remove all "waste".

79. However, there is no automatic legal mechanism between the concepts of "abandoned vessel" and "waste", so the removal of waste does not correspond to the removal of an abandoned vessel.

On the face of it, concessionaires have no legal, regulatory or contractual (based on concession agreements) power to act, even though they frequently face the issue of abandoned vessels.

The only situation in which concessionaires could legally be required to take action is if the abandoned vessel met the definition of waste, and could therefore also be classified as waste - in which case the concessionaires would also be competent to remove it - although this does not entirely absolve the competent authority, since it is still an abandoned vessel.

80. In principle, as explained above, the legal and regulatory power to act on abandoned vessels lies with waterway managers/port authorities.

81. Furthermore, in the absence of an express legal provision, it seems legally impossible, within the framework of a concession agreement, to delegate the legal and regulatory powers of river/port authorities to concessionaires.

82. In addition, the question - sometimes raised by concessionaires - of whether concessionaires can force the concession-granting authorities to remove orphan boats located within the concession is beyond the scope of this study.

IV.2.7. The enforcement of existing legislation by decree

83. An analysis of the legislative framework currently in force reveals that only Article 9e of the Walloon Decree of 19 March 2009 on the conservation of public roads and waterways stipulates that the Government has a role to play in the execution of decrees - in this case to determine the procedures for requisitioning goods and people.

Neither the Belgian Navigation Code nor the Flemish Navigation Decree of 21 January 2022 assigns any role whatsoever to the Government - federal or Flemish respectively - with regard to procedures for removing wrecks and abandoned vessels.

84. To the best of our knowledge, there is currently no Walloon Government decree implementing Article 9e of the Walloon Decree of 19 March 2009 to define the procedures for requisitioning goods and people.

On the one hand, it may be suggested that the Walloon Government implement Article 9e of the Decree by means of a decree.

85. On the other hand, the suggestion may be made at the federal and Flemish levels, in the context of a potential amendment to their legislation on removal, that more precise regulatory provisions be laid down by decree to provide a framework for the procedure for removing abandoned vessels and wrecks.

This approach guarantees citizens' rights and administrative transparency.

On the other hand, this process will create additional rules for the administration in particular, with the risk of making procedures more cumbersome and creating more sources of errors or omissions.

In this respect, the right balance must be struck between citizens' rights and administrative discretion.

IV.3. COMPETENCE DISTRIBUTION RULES

86. Given Belgium's institutional landscape, the different competences involved in both the specific issue of removing abandoned vessels and the introduction of a circular economy in recreational boating are divided between the different levels of government.

These competence distribution rules must therefore be examined to determine the levels at which the decision-making authorities should act, and how they should cooperate.

IV.3.1. The Law of 8 August 1980 on institutional reform

87. Article 39 of the Belgian Constitution states:

"The law assigns to the regional bodies it creates, which are made up of elected representatives, the power to regulate the matters it determines, with the exception of those referred to in Articles 30 and 127 to 129, within the jurisdiction and in the manner it establishes."

Under this provision, the special law of 8 August 1980 on institutional reforms gave the Regions the power to regulate a number of specific matters¹⁹.

88. Article 6 of the Special Law of 8 August 1980 stipulates that the matters referred to in Article 39 of the Constitution - **regionalised matters** - are, in particular:

- With regard to the environment and water policy:
 - the protection of the environment, in particular soil, subsoil, water and air, against pollution and aggression, and the fight against noise
 - waste policy;
- With regard to rural renewal and nature conservation:
 - nature protection and conservation, with the exception of the import, export and transit of non-native plant species, as well as non-native animal species and their remains;
- With regard to the economy:
 - economic policy;
- With regard to public works and transport:
 - waterways and their appurtenances;

¹⁹ [LAW - WET \(fgov.be/en\)](http://www.fgov.be/en)

- the legal status of land and waterways, regardless of who manages them, with the exception of railways managed by the Société Nationale des Chemins de Fer Belges;
- ports and their appurtenances;
- police rules for navigation on inland waterways, with the exception of regulations governing the transport of animal materials that present a danger to the public, the transport of radioactive materials and the transport of explosive materials;
- inland navigation crew regulations and safety regulations for inland navigation vessels and inland navigation vessels which are also used for non-international sea voyages;
- minimum technical safety standards for the construction and maintenance of roads and their appurtenances, and waterways and their appurtenances;

Jurisdiction over waterways and their appurtenances, and over ports and their appurtenances, includes the right to carry out works and activities, including dredging, in territorial waters and on the continental shelf, that are necessary for the exercise of this jurisdiction.

89. At present, the federal authority²⁰ still has jurisdiction over all residual materials for which the regions have not established jurisdiction.

In particular, the federal authority remains responsible for matters relating to the North Sea, including Maritime Mobility and the Marine Environment.

The federal authority also has general jurisdiction over matters relating to safety.

In environmental and water protection matters, the federal authority is responsible for product standards, in accordance with Article 6, §1, II of the Special Law on Institutional Reform.

90. The **Flemish-** and German-speaking Communities and the Wallonia-Brussels Federation have no specific powers in the areas covered by this study.

Recreational boating - including the circular economy aspect - is not a personalisable matter within the meaning of Article 128 of the Constitution.

Consequently, it does not fall within the competences of the Communities or the Wallonia-Brussels Federation.

²⁰ See Article 35 of the Constitution and its transitional provision.

91. On 1 January 2020, the Walloon Region transferred the exercise of competences in various fields to the German-speaking Community.

The German-speaking Community therefore mainly exercises a range of new powers in the fields of housing, energy and regional planning, as well as in certain related areas.

In this respect, it should be specified that this transfer of powers did not apply to the issues covered by the present legal study.

IV.3.2. Preparatory work and opinions of the Supreme Administrative Court of Belgium

92. As part of its advisory mission, the Legislation Section of the Supreme Administrative Court of Belgium commented on the federal and regional legislation mentioned above in its analysis of the existing legal framework (see above).

These opinions, issued by the Supreme Administrative Court of Belgium's Legislation Section, further define the division of responsibilities for the removal of orphan ships.

The same applies to the preparatory work for these laws, which also shed light on the rules governing the division of powers.

We analyse them below.

IV.3.2.1. The Flemish Navigation Decree of 21 January 2022

93. The Explanatory Memorandum²¹ to the Flemish Navigation Decree of 21 January 2022 contains the following relevant information (see Appendix V).

94. Firstly, insofar as the decree contains "police rules relating to traffic on waterways", these rules must be the subject of consultation between the federal government and the governments of the Communities and Regions, in accordance with Article 6, §3*bis*, 6° of the Special Law on Institutional Reform (LSRI) (p. 19).

For this reason, the draft decree was submitted to the Consultation Committee.

²¹ [pfile \(vlaamsparlement.be\)](https://pfile.vlaamsparlement.be)

95. Secondly, the Explanatory Memorandum points out that, insofar as the removal of wrecks aims to restore the integrity and practicality of maritime routes, it is indeed a regional responsibility.

This jurisdiction extends not only to inland waters, including coastal waters on the landward side of the baseline from which the breadth of the territorial sea is measured, but also to the territorial sea and exclusive economic zone with regard to ships, wrecks, sunken vessels or objects affecting the accessibility of Flemish ports and waterways.

The Explanatory Memorandum also recalls that, when adopting the Belgian Navigation Code, the federal legislator recognised that the removal of wrecks at sea, insofar as this is necessary for the exercise of regional competences in the field of waterways and ports, based on Article 6, §1, LSRI, is considered to fall within regional competences.

Beyond this nuance, the removal of wrecks at sea falls under federal jurisdiction and is now governed by the new Navigation Code (pp. 461-462).

With regard to the removal of wrecks at sea, account must be taken of whether or not removal is necessary in terms of the accessibility of ports and waterways.

96. The inter-federal inter-cabinet working group of Friday 21 May 2021 on the draft navigation decree did not produce any fundamental comments on the division of competences between the Flemish and federal levels.

There therefore seems to be unanimity on how these powers should be distributed (p. 263).

97. In its Opinion no. 69/478/3 of 20 July 2021, the Legislation Section of the Supreme Administrative Court of Belgium pointed out, with regard to the preliminary draft decree, that it "*finds its legal basis in principle in Article 6, § 1, X, in that the Regions, in relation to public works and transport, are competent for police regulations relating to traffic on navigable waterways. In addition, the competence of the regions can also be invoked for waterways and their appurtenances, for the legal regime of waterways, for ports and their appurtenances and for dykes.*"

IV.3.2.2. The Belgian Navigation Code

98. The preparatory work for the Belgian Navigation Code also points out (p. 13)²² that, "*since the Sixth State Reform, not only 'waterways and their appurtenances', 'the legal regime of land and waterways' and 'ports and their appurtenances', but also 'the rules governing the policing of navigation on navigable waterways' come under regional jurisdiction.*

It follows that the removal of wrecks in inland waters is no longer a federal responsibility."

99. Supreme Administrative Court Opinion no. 63.004 of 8 November 2018 on the preliminary draft law introducing the Belgian Navigation Code²³ stated, with regard to competences, that "*in accordance with Article 6, § 4, 3°, paragraph 1, of the Special Law of 8 August 1980 on institutional reforms (hereinafter, LSRI), the preliminary draft had been submitted to the Regional Governments for their opinion*".

With specific reference to Article 1.1.4 of the Belgian Navigation Code, the Supreme Administrative Court of Belgium noted that "*the delimitation between maritime waters and inland waters is, therefore, a fundamental criterion for determining the respective spheres of competence of the federal State and the regions in matters of navigation*".

IV.3.2.3. The law on recreational navigation

100. In its Opinion 63/286/4 of 30 April 2018, the Legislation Section of the Supreme Administrative Court of Belgium noted that the preliminary draft law had been submitted to the association procedure of the Regional Governments, in accordance with Article 6, § 4, 3°, of the Special Law of 8 August 1980 on institutional reforms.

Under this association procedure, the Flemish and Walloon governments have both issued positive opinions, subject to a number of observations being taken into account.²⁴

Article 6, §4, 3° of the special law refers to "*the drafting of general police regulations, with the exception of the navigation police regulations for navigable waterways referred to in §1, X, 10°, <https://www.ejustice.just.fgov.be/eli/loi/1980/08/08/1980080801/justel - t> and regulations relating to communications and transport, as well as technical prescriptions on means of communication and transport*".

In its opinion, the Legislation Section of the Supreme Administrative Court of Belgium had noted that, insofar as the project aimed to extend registration to inland navigation vessels, the matter fell within

²² [V2670t \(toelichting\).indd \(lachambre.be\)](#)

²³ [63004.pdf \(raadvt-consetat.be\)](#)

²⁴ [63286 \(raadvt-consetat.be\)](#)

the competence of the federal authority, but that the Regions should be involved in drawing up these regulations in accordance with Article 6, §4, 3° of the LSRI.²⁵

The same logic applies when the project also aims to maintain navigation safety on the inland waterway network, thus requiring the involvement of governments.

IV.3.3. Conclusion regarding the competence distribution rules

101. In terms of the distribution of competencies, we can already note two points at this stage:

- the Regions are responsible for removal from inland waterways.
The federal authority is responsible for removal in the territorial sea and exclusive economic zone, except in cases where the abandoned vessel or wreck constitutes an obstacle to access to Flemish ports and waterways, in which case the Flemish Region is responsible.
- a consultation process must be put in place when the rules governing navigation on waterways are at stake.
A partnership must be set up between authorities when general police regulations are involved.

The following is a brief analysis of the cooperation methods between the federal authority and the regions, and in particular the consultation and association processes.

IV.3.4. Opportunities for cooperation between the federal authority and federated entities

102. An analysis of the above-mentioned legislation, its preparatory work and the opinions of the Legislation Section of the Supreme Administrative Court of Belgium has shown, on the one hand, that competences are shared and, on the other, that forms of cooperation between the federal authority and the regions are necessary.

Insofar as the competences related to the subject of this legal study fall within the remit of both the federal authority and the federated entities, it is necessary to analyse the possibilities for cooperation - in the broadest sense of the term - between the federal authority and the federated entities.

IV.3.4.1. General legislative framework

²⁵ [18882.pdf \(raadvst-consetat.be\)](#)

103. The Special Law of 8 August 1980 provides for several types of cooperation in the broadest sense:

- the cooperation agreement (1)
- consultation (2)
- association (3)
- information (4)

Below, we analyse (i) the cooperation agreement, which remains a possibility, (ii) consultation (applied within the framework of the Flemish Decree), (iii) association (applied for the Belgian Navigation Code and the law on recreational boating), (iv) information, (v) prior notice and (vi) proposal.

IV.3.4.2. The cooperation agreement

104. Article 92bis, §1, of the Special Law of 8 August 1980 on institutional reforms, inserted by the Special Law of 8 August 1988, provides that the federal authority and the federated entities may conclude cooperation agreements which relate in particular to the joint creation and management of common services and institutions, the joint exercise of individual competences or the development of joint initiatives:

"§ 1. The State, the Communities and the Regions may conclude cooperation agreements which relate in particular to the joint creation and management of common services and institutions, the joint exercise of individual competences or the development of joint initiatives."

It follows from the use of the word "may" in Article 92bis, §1, paragraph 1 of the law that the conclusion of cooperation agreements is not an obligation; these agreements are therefore called **optional cooperation agreements** and are based on the free consent of the parties.

105. The different parties may enter into cooperation agreements on any matter within their competence and are free to determine the terms and conditions of the cooperation.

There is, however, a limit to the autonomy of will of the parties to a cooperation agreement, since *"cooperation agreements may not involve an exchange, relinquishment or restitution of competences as determined by and under the Constitution²⁶".*

²⁶ Parl, doc., Chamber, no. 516/1 (SE 1988), pp. 51 et seq.

The Supreme Administrative Court of Belgium also adds that when it appears that *"in an area where the division of powers is particularly complex, and where the different authorities have expressed a desire to standardise regulations, it would be appropriate to conclude a cooperation agreement"*²⁷.

Apart from these exceptions, this option is understood under the aegis of consensualism, from the point of view of both the desirability of cooperation and the means and methods to be brought together to make it a reality²⁸.

106. Any member of any government may take the initiative to conclude a cooperation agreement for matters for which they are competent, insofar as they have been authorised to do so by their government.

Each draft cooperation agreement must be submitted to the Consultation Committee for approval or acknowledgement (of a previously approved cooperation agreement).

IV.3.4.3. Consultation

107. There are two types of consultation.

Firstly, *"that which must be undertaken by an authority which is and remains exclusively competent, but which must 'consult' other authorities before making a decision"*.

Secondly, *"that between several authorities, each competent in its own field, with the aim of achieving a degree of coordination between their respective policies"*.

Without restricting freedom of action, this consultation mechanism requires an authority with decision-making powers to collect the views of other authorities before taking a decision and to take them into account²⁹, while ultimately retaining the final word.

However, this authority cannot be accused of having exercised its powers even though another authority refused to take part in the consultation³⁰.

For this mechanism to be effective, the authorities required to work together must demonstrate "a minimum of goodwill".

²⁷ *Parl. doc. w. ord. sess. 1997 - 1998, DOC 319/1, Appendix 1, p. 11.*

²⁸ M. Uyttendaele, *Trente leçons de droit constitutionnel*, Limal, Anthémis, 2014, p. 956.

²⁹ C.C., no. 2/1992, 15 January 1992, pt. 2.B.3.

³⁰ With reference to a Supreme Administrative Court of Belgium ruling (E.C., n°133.797, 12 July 2004), M. Uyttendaele, *Trente leçons de droit constitutionnel, op. cit.*, p. 954.

108. Article 6, §3bis, stipulates that a consultation involving the federal authority and the governments concerned will take place for:

*"2° the planning, functionality and compatibility of motorway networks and waterways;
[...]
6° the determination of navigation police rules on navigable waterways."*

It should also be stated that alongside these cooperation procedures in the strict sense of the term, there is a more global concept of consultation in the broad sense, which seeks to lay the foundations for cooperation in a specific area or field of action.

With this in mind, the Supreme Administrative Court of Belgium was quick to point out that *"Belgium is a federal State. Consequently, it is impossible for its legal structure to completely avoid the tensions between constitutional equality and federalism. The legislators concerned can nevertheless try to reduce these tensions by consulting each other and adopting convergent measures (...)"*³¹.

IV.3.4.4. The involvement of other authorities in decision-making

109. In certain situations, the federated entities must unite with the federal authority, or must in turn be associated with certain federal regulations involving *"pooling, joint participation"*.

The Supreme Administrative Court of Belgium has had occasion to refine the notion of association, adding that *"associating a body with the drafting of a regulation implies not only the action of receiving and examining possible suggestions but also that of debating with it, i.e., at least explaining to it, before the decision is taken, the reasons why it is not deemed appropriate to follow them, if this is the case, so that this body can obtain a guarantee that its point of view will not be set aside without admissible grounds"*³².

110. Article 6, §4 of the Special Law of 8 August 1980 stipulates that the governments of the federated entities are involved in the following cases:

³¹ Opinion of the Supreme Administrative Court of Belgium, n° L.27.082/4, 18 November 1997, *Parl. doc.*, parl. w., ord. sess., 1997 -1998, DOC 315/1, p. 14.

³² E.C., no. 31.587, 14 December 1988, *J.L.M.B.*, 1988, p. 551.

"1° in the drafting of federal regulations on product standards as set out in § 1, II, par. 2, 1°;
2° (repealed)
3° in the drafting of general police regulations, with the exception of the navigation police regulations for navigable waterways referred to in §1, X, 10°, and regulations relating to communications and transport, as well as technical prescriptions on means of communication and transport".

IV.3.4.5. information

111. Based on the simple transmission of information, this procedure in no way gives rise to an "exchange of views between the authorities concerned"³³, but represents the mechanism by which data is transmitted either by the Regions or Communities to the federal State, or vice versa³⁴.

IV.3.4.6. Prior notice

112. As a prerequisite for making a decision, obtaining an opinion obliges the authority with decision-making power to receive the opinion of another authority. This procedure, containing the expression of an opinion³⁵, may, depending on the case, only be an option. A distinction is made between a simple opinion (non-binding) and assent (binding on the authority requesting it).

IV.3.4.7. The proposal

113. The proposal is a technique that "*subordinates an authority's decision-making power to the initiative of another or a specific body*"³⁶.

This formality is the expression of an opinion that can be qualified as a "presentation" when its subject relates to a person.

This means that the decision-making authority can only make a decision once the proposal has been issued³⁷.

³³ F. Delpérée, *Le droit constitutionnel de la Belgique*, Brussels, Bruylant, 2000, p. 627.

³⁴ D. Batselé, T. Mortier, M. Scarcez, *Initiation au droit constitutionnel*, 2nd ed., Brussels, Bruylant, 2014, p. 871.

³⁵ D. Renders, *Droit administratif général*, Brussels, Bruylant, 2014, p. 296.

³⁶ D. Batselé, T. Mortier, M. Scarcez, *op. cit.*, p. 878.

³⁷ D. Renders, *Droit administratif général*, *op. cit.*, p. 295.

IV.3.4.8. Conclusion

114. In principle, for matters relating to Article 6, X, 10°, consultation is required insofar as the rules governing navigation on inland waterways are concerned - via, for example, the Consultation Committee and the Interministerial Conference.

As an extension of this, the Consultation Committee may, to promote consultation and cooperation between the Federal Authority and the federated entities, set up specialised committees called "Interministerial Conferences" (CIM), made up of members of the federal government and the governments of the Regions and Communities.

Like thematic commissions, these CIMs work on specific themes, to examine specific issues in advance of the Committee meeting.

They focus on themes as varied as institutional reform, public health, culture and the environment (Interministerial Conference for the Environment).

From a legal point of view, it might therefore be suggested that the Consultation Committee and/or the Interministerial Conference for the Environment should be used to put forward proposals for the removal of derelict vessels and/or the introduction of a circular economy for recreational boating.

115. Although this is only an option, as described above, a cooperation agreement may also be envisaged.

V. PART II: INTRODUCING A CIRCULAR ECONOMY FOR RECREATIONAL NAVIGATION

V.1. FOREWORD

116. As a reminder, the second part of the study aims to identify legislation (at Belgian and European levels) that can be adapted to introduce a circular economy into the Belgian navigation sector.

117. With this in mind, Part II begins with a reminder of the stakeholders who can be involved in setting up a circular economy in the recreational boating sector.

Secondly, the study briefly reviews the competence distribution rules relevant to this second part.

Thirdly, the main relevant international, European and Belgian legislation and regulations are listed. One section is devoted to the legal regime applicable in France, which serves as a "model" in this field.

Lastly, various possible legal avenues are discussed with a view to the future implementation of a circular economy in the recreational boating sector.

118. As things stand, the legal avenues outlined at the end of this chapter are intended to be forward-looking.

It is clearly necessary for the decision-making authorities to provide both the impetus for the introduction of a circular economy in recreational boating and the concrete political and philosophical guidelines for such a system.

By way of illustration, the financing of such a system could be the responsibility of manufacturers/importers, owners, society as a whole or the State.

This financing could come from the private or public sector, or a mix of both.

There are therefore many financing options, and the decision-making authorities must draw up the broad outlines of the system before going any further in the legal analysis.

V.2. INTERESTED PARTIES

119. With specific regard to the issue of introducing a circular economy for recreational craft, the focus is on the following stakeholders.

V.2.1. The decision-making authorities

120. The notion of "decision-making authorities" refers to public authorities with concrete legislative or regulatory powers to introduce a circular economy for recreational craft.

➤ **At European level:**

- ❖ in legislative matters, the European Parliament, together with the Council (Art. 14 of the Treaty on European Union);
- ❖ for legislative proposals, the European Commission (Art. 17 of the Treaty on European Union).

➤ **At federal level:**

- ❖ in legislative matters, the Chamber of Representatives;
- ❖ at the executive level, the Federal Government, and in particular:
 - the Deputy Prime Minister and Minister for Economy and Employment;
 - the Federal Minister of Climate, Environment, Sustainable Development and the Green Deal;
 - the Deputy Prime Minister and Minister of Justice and the North Sea.

➤ **At regional level:**

- ❖ **In the Flemish Region:**
 - the Flemish Parliament;
 - the Flemish Government and, in particular, the Minister for the Economy and the Minister for the Environment;
- ❖ **In the Walloon Region:**
 - the Walloon Parliament;
 - the Walloon Government and, in particular, the Minister for the Economy and the Minister for the Environment;
- ❖ **In the Brussels-Capital Region:**
 - the Brussels Parliament;
 - the Brussels Government and, in particular, the Minister for the Economy and the Minister for the Environment.

V.2.2. The competent bodies

121. The concept of "competent bodies" covers all international, European, federal and regional bodies which, without having concrete legislative or regulatory powers, are nevertheless competent in matters relating to recreational boating and/or the circular economy and/or waste management and treatment.

➤ **At federal level:**

- ❖ FPS Mobility and Transport;
- ❖ FPS Economy;
- ❖ FPS Public Health, Food Chain Safety and Environment;
- ❖ Interregional Packaging Commission (CIE), responsible for Belgian legislation on packaging waste and waste transit.

➤ **At regional level:**

❖ **In the Flemish Region:**

- The Flemish Public Waste Company (Openbare Vlaamse Afvalmaatschappij (OVAM)), created by the Waste Decree of 2 July 1981;
- The Flemish Environment Agency (VMM), initially created as a Flemish public institution by the Decree of 12 December 1990 on administrative policy (in particular Title I, Chapter 9) and transformed into an autonomous internal agency with legal personality by the Decree of 7 May 2004.

❖ **In the Walloon Region:**

- SPW Agriculture, Natural Resources and Environment;
- SPW Economy, Employment and Research.

❖ **In the Brussels-Capital Region:**

- BIM: Brussels Environment;
- Brussels Economy and Employment.

V.2.3. The stakeholders

122. The concept of stakeholders refers to those parties who have no decision-making power or are not competent bodies, but who are major players in the circular economy and waste management sector, and as such deserve to be included in the discussions.

- ❖ European Boating Industry (EBI);
- ❖ European Boating Association (EBA)³⁸;
- ❖ Port of Brussels (manager);
- ❖ Belgian Motonautical League;
- ❖ Water sports federations;
- ❖ General Tourism Commission (CGT);
- ❖ Wind en Watersport Vlaanderen;
- ❖ Vlaamse Pleziervaartfederatie;
- ❖ ...

V.3. COMPETENCE DISTRIBUTION RULES

123. As a reminder, Article 6 of the Special Law of 8 August 1980 stipulates that the matters referred to in Article 39 of the Constitution - **regionalised matters** - are, in particular:

- With regard to the environment and water policy:
 - the protection of the environment, in particular soil, subsoil, water and air, against pollution and aggression, and the fight against noise
 - waste policy;
- With regard to rural renewal and nature conservation:
 - nature protection and conservation, with the exception of the import, export and transit of non-native plant species, as well as non-native animal species and their remains;
- With regard to the economy:
 - economic policy;
- With regard to public works and transport:
 - waterways and their appurtenances;
 - the legal status of land and waterways, regardless of who manages them, with the exception of railways managed by the Société Nationale des Chemins de Fer Belges;
 - ports and their appurtenances;

³⁸ Serving the interests of recreational boaters in Europe since 1982 - EBA

- police rules for navigation on inland waterways, with the exception of regulations governing the transport of animal materials that present a danger to the public, the transport of radioactive materials and the transport of explosive materials;
- inland navigation crew regulations and safety regulations for inland navigation vessels and inland navigation vessels which are also used for non-international sea voyages;
- minimum technical safety standards for the construction and maintenance of roads and their appurtenances, and waterways and their appurtenances;

Jurisdiction over waterways and their appurtenances, and over ports and their appurtenances, includes the right to carry out works and activities, including dredging, in territorial waters and on the continental shelf, that are necessary for the exercise of this jurisdiction.

124. At present, the federal authority still³⁹ has jurisdiction over all residual materials for which the regions have not established jurisdiction.

In environmental and water protection matters, the federal authority is responsible for product standards, in accordance with Article 6, §1, II of the Special Law on Institutional Reform.

125. In terms of competences, and more specifically in terms of the organisational arrangements between decision-making authorities, the pre-study recalled the following points in particular:

"Federal action plan for a circular economy

When defining cooperation, it is important to take into account the federal plan for a circular economy, which sets a number of priorities for the period 2021-2024, and the work of the intra-Belgian circular economy platform set up by the federal and regional administrations.

On this subject, the federal plan for a circular economy states, "The federal ministers for the environment and the economy, within the framework of the Interministerial Conference on the Environment (CIE), extended to the economy, will initiate the transformation of the current intra-Belgian circular economy platform into a structural tool with a political scope to improve the coordination of circular economy policies at national level in Belgium."

It therefore seems appropriate to develop (or at least involve this forum in) a solution for recreational boating in the first instance via this forum or its successor, rather than taking a separate initiative in parallel."

It would therefore be advisable to launch a debate on the introduction of a circular economy for recreational craft at the Interministerial Conference for the Environment (CIE).

³⁹ See Article 35 of the Constitution and its transitional provision.

V.4. EXISTING LEGAL FRAMEWORK

126. This section looks at the main legislation and regulations in force concerning the design and manufacture of recreational craft, and the recycling of recreational craft.

This approach covers the provisions in force for both existing and future vessels.

V.4.1. INTERNATIONAL LEGAL FRAMEWORK

V.4.1.1. Hong Kong International Convention for the Safe and Ecologically Sound Recycling of Ships⁴⁰

127. The Hong Kong Convention was adopted in May 2009, and was drawn up with the help of IMO (International Maritime Organization) Member States, and non-governmental organisations, and in cooperation with the International Labour Organization and the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (see below).

The Hong Kong International Convention will not officially enter into force until 26 June 2025⁴¹, but since Belgium has given its assent and will be bound by the provisions of this Convention from its entry into force, it is relevant to consider it now in the context of this study.

128. The main aim of the Hong Kong International Convention is to ensure that ships in the marine environment which have reached the end of their useful life are recycled safely and without posing unnecessary risks to human health and the environment.

It therefore introduces worldwide mandatory requirements for an efficient and effective solution to hazardous and environmentally damaging ship recycling practices, in the form of the International Convention for the Safe and Ecologically Sound Recycling of Ships.

It aims to address all issues relating to ship recycling, including the fact that ships sold for scrapping may contain environmentally hazardous substances such as asbestos, heavy metals, hydrocarbons or ozone-depleting substances.

⁴⁰ [Law of 02/07/2013 assenting to the Hong Kong International Convention for the Safe and Ecologically Sound Recycling of Ships, done in Hong Kong on 15 May 2009 \(2\)\(3\) \(openjustice.be\)](#)

⁴¹ [Hong Kong ship recycling Convention set to enter into force \(imo.org\)](#)

It seeks to take account of concerns regarding working and environmental conditions at many of the world's ship recycling facilities.

129. The Convention applies to any "ship", which it defines as *"a vessel of any type whatsoever operating or having operated in the marine environment and includes submersibles, floating craft, floating platforms, self elevating platforms, Floating Storage Units (FSUs), and Floating Production Storage and Offloading Units (FPSOs), including a vessel stripped of equipment or being towed"*.

The Convention also defines "ship recycling" as *"the activity of complete or partial dismantling of a ship at a Ship Recycling Facility in order to recover components and materials for reprocessing and re-use, whilst taking care of hazardous and other materials, and includes associated operations such as storage and treatment of components and materials on site, but not their further processing or disposal in separate facilities."*

130. The rules of this new Convention cover: the design, construction, operation and preparation of ships in such a way as to promote safe and environmentally sound ship recycling, without compromising the safety and efficiency of their operation; the operation of ship recycling facilities in a safe and environmentally sound manner; and the establishment of an appropriate enforcement mechanism for ship recycling, which includes certification and reporting requirements.

Vessels destined for recycling will be required to carry an inventory of potentially hazardous materials, which must be specific to each vessel.

An appendix to the Convention lists these potentially hazardous materials, whose installation or use is prohibited or restricted in shipyards, repair yards and on board ships belonging to Parties to the Convention.

Vessels must undergo an initial visit to check the inventory of potentially hazardous materials, repeat visits during the vessel's life, and a final visit before recycling.

Ship recycling yards will have to provide a ship recycling plan to indicate how each ship is to be recycled, taking into account its features and inventory.

Parties to the Convention will be required to take effective measures to ensure that ship recycling facilities operating under their jurisdiction comply with the Convention.

131. Since the adoption of the Hong Kong Convention, the IMO's Marine Environment Protection Committee has drawn up and adopted all the directives required by the Convention. They cover the following aspects:

- drawing up a ship recycling plan;
- drawing up an inventory of potentially hazardous materials;
- safe and ecologically sound recycling of vessels;
- visits and issuing of certificates;
- ship inspection;
- authorisation for ship recycling facilities.

132. It should be noted that EU Regulation 1257/2013 on ship recycling (see below) is closely linked to the Convention, insofar as one of its aims was to facilitate its ratification.

V.4.1.2. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal⁴² and its relationship with the Hong Kong Convention

133. The Basel Convention is not specific to ship recycling. A ship to be recycled is only covered by the Convention if it constitutes waste.

The Basel Convention defines "waste" as "*substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law*".

134. A ship can be considered as waste within the meaning of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal if its owner intends to dispose of it.

All ship exports for dismantling purposes must therefore comply with the Basel Convention, as well as with Regulation 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (see below).

135. The question of the relationship between the Hong Kong and Basel Conventions has arisen, as the Conference of States Parties to the Basel Convention accepted in its 2004 Decision VII/26 that a ship as such could constitute waste within the meaning of the Basel Convention.

Moreover, the Basel Convention is mentioned twice in the text of the Hong Kong Convention, in the Preamble and in Regulation 3 of its Annex.

⁴² [Basel Convention Home Page](#)

Once in force, the Hong Kong Convention will not replace either the Basel Convention or EU Regulation 1013/2006, which transposes its stipulations at European level.

136. These two autonomous agreements do not have exactly the same purpose.

While the Basel Convention deals with transboundary movements of waste (through the "prior informed consent" procedure) and the environmentally sound management of waste, the Hong Kong Convention, while covering the ship from construction to dismantling, expressly excludes from its scope the treatment of hazardous waste, waste residues and non-recoverable waste from dismantling.

This treatment is not considered part of the ship recycling operation. The transfer and disposal of this waste must then comply with the Basel Convention.

On this point, the Hong Kong and Basel Conventions appear to be complementary, as the former provides a framework for the recycling operation, while the latter governs the treatment of the waste resulting from this operation.

In any event, the Basel Convention does not prohibit the conclusion of other international instruments "regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties", provided that such instruments "do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention" and that they set out provisions not less "environmentally sound" than those laid down in the Basel Convention (Article 11§1).

137. Technical guidelines for the environmentally sound management of full and partial ship dismantling.⁴³

These are technical guidelines implemented within the framework of the Basel Convention for the Environmentally Sound Management of the Full and Partial Dismantling of Ships (hereinafter referred to as "the Guidelines"), which have been drawn up to provide guidance to countries which have or will set up ship dismantling facilities.

They contain information and recommendations on the application of procedures, processes and practices to achieve environmentally sound facility management.

Advice on the control and verification of operations from an environmental point of view is also included.

⁴³ [COPYRIGHT ships.doc \(basel.int\)](http://COPYRIGHT ships.doc (basel.int))

138. IMO Resolution A.962(23) on ship recycling⁴⁴.

This Resolution recalls in particular the role of the Basel Convention in this area and some observations on ship abandonment.

The Guidelines contained therein have been developed to provide guidance to flag, port and recycling authorities, States, shipowners, shipbuilders, marine equipment suppliers and recycling facilities on "best practice", which takes into account the ship recycling process throughout the vessel's life cycle.

The Resolution provides for the creation of a "Green Passport".

V.4.2. EUROPEAN LEGAL FRAMEWORK

V.4.2.1. Regulation (EU) 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC⁴⁵

139. This Regulation subjects ships within its scope to controls throughout their life cycle and aims to ensure the environmentally sound recycling of these ships.

It should therefore be made clear that a ship subject to this alternative control regime throughout its life-cycle should not be subject to the provisions of Regulation (EC) No 1013/2006.

140. Objective

The aim of this Regulation is to prevent, limit, minimise and, as far as practically possible, eliminate accidents, injuries and other harmful effects on human health and the environment associated with ship recycling. The purpose of this Regulation is to improve the safety and protection of human health and the marine environment of the Union throughout the life cycle of a ship, and in particular to ensure that hazardous waste from ship recycling is managed in an environmentally sound manner.

This Regulation also lays down rules to ensure the proper management of hazardous materials on board ships.

It also aims to facilitate the ratification of the 2009 Hong Kong Convention by applying proportionate controls to ships and ship recycling facilities on the basis of this Convention.

⁴⁴ [A 962 23 \(imo.org\)](http://imo.org)

⁴⁵ [EUR-Lex - 32013R1257 - EN - EUR-Lex \(europa.eu\)](http://eur-lex.europa.eu)

141. It is interesting to note Recital 19, which states that *"in the interest of protecting human health and the environment and having regard to the 'polluter pays' principle, the Commission should assess the feasibility of establishing a financial mechanism applicable to all ships calling at a port or anchorage of a Member State, irrespective of the flag they are flying, to generate resources that would facilitate the environmentally sound recycling and treatment of ships without creating an incentive to out-flag".*

Recital 22, for its part, recalls the legal interest in taking action at Union level, in compliance with the principles of subsidiarity and proportionality, *"since the objective of this Regulation, namely to prevent, reduce or eliminate adverse effects on human health and the environment caused by the recycling, operation and maintenance of ships flying the flag of a Member State, cannot be sufficiently achieved by the Member States due to the international character of shipping and ship recycling, but can rather by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.*

142. Scope

This Regulation, with the exception of Article 12, applies to vessels flying the flag of a Member State. Article 12 applies to vessels flying the flag of a third country which call at a port or anchorage of a Member State.

These regulations do not apply to:

- warships, auxiliary warships or other vessels owned or operated by a State and used exclusively, at the time in question, for a non-commercial public service;
- vessels with a gross tonnage of less than 500;
- vessels that operate throughout their life only in waters under the sovereignty or jurisdiction of the Member State whose flag they fly.

143. Definitions

For the purposes of this Regulation, the term "recycling" should not have the same meaning as that defined in Directive 2008/98/EC. This Regulation should therefore introduce a specific definition of the term "ship recycling".

In this respect, the Convention defines ship recycling as *"the activity of complete or partial dismantling of a ship at a ship recycling facility in order to recover components and materials for reprocessing, for preparation for re-use or for re-use, whilst ensuring the management of hazardous and other materials, and includes associated operations such as storage and treatment of components and materials on site, but not their further processing or disposal in separate facilities."*

The Regulation also recognises the notion of ship recycling facility, which it defines as *"a defined area that is a yard or facility located in a Member State or in a third country and used for the recycling of ships"*.

The Regulation also defines a "ship recycling plan" as *"a plan developed by the operator of the ship recycling facility for each specific ship to be recycled under its responsibility taking into account the relevant IMO guidelines and resolutions"*.

144. Inventory of hazardous materials

An essential requirement of the Hong Kong Convention and this regulation is that an inventory of hazardous materials be kept on board a ship throughout its life cycle. In accordance with Regulation 8(2) of the Hong Kong Convention, a ship destined for recycling should minimize the amount of waste associated with its operation in the period prior to entering the Ship Recycling Facility.

Each new ship must keep on board an inventory of hazardous materials indicating as a minimum the hazardous materials referred to in Annex II that are present in the ship's structure or equipment, their location and approximate quantities.

Subject to point (b) of Article 32(2), existing vessels shall comply, as far as practicable, with paragraph 1.

In the case of vessels going for recycling, they shall comply, as far as practicable, with paragraph 1 of this Article from the date of the publication of the European List as set out in Article 16(2).

Subject to point (b) of Article 32(2), when the inventory of hazardous materials is developed it shall identify, at least, the hazardous materials listed in Annex I.

145. General obligations for shipowners

The Regulation lays down a whole series of general requirements for shipowners.

In particular, ship owners shall ensure that vessels destined to be recycled:

- are only recycled at ship recycling facilities that are included in the European List;
- conduct operations in the period prior to entering the ship recycling facility in such a way as to minimise the amount of cargo residues, remaining fuel oil, and ship generated waste remaining on board;
- hold a ready for recycling certificate issued by the administration or a recognised organisation authorised by it prior to any recycling of the ship and after the receipt of the ship recycling plan approved in accordance with Article 7(3);
- communicate to the operator of the ship recycling facility all the information concerning the ship needed to develop the recycling plan;
- notify the administration of the intention to recycle the vessel;
- are recycled at facilities that are included in the European List;
- are operated in such a way as to minimise waste;
- hold a ready for recycling certificate;

- liability of the owner for the vessel's compliance with the administration's requirements until the operator of the recycling facility accepts liability for the vessel in question.

A ship-specific recycling plan is developed prior to any ship recycling operation.

146. Ship recycling plan

A ship-specific recycling plan is developed prior to any ship recycling operation. The ship recycling plan covers any ship-specific items that are not covered by the ship recycling facility plan or that require special procedures.

147. Visits and certificates

The Regulation stipulates that various inspections are carried out during the life of a boat: initial (before entry into service), renewal, supplementary and final (before decommissioning). A certificate is issued for the vessel on successful completion of the initial and renewal surveys.

148. Ship recycling facilities

The Regulation imposes a series of obligations on "ship recycling facilities", with a view to their inclusion on a European List.

V.4.2.2. Regulation (EC) No 1013/2006 on shipments of waste⁴⁶

149. To avoid duplication, vessels flying the flag of a Member State and falling within the scope of this Regulation, Regulation (EC) No 1013/2006 and Directive 2008/98/EC of the European Parliament and of the Council (2), respectively, should be excluded.

Regulation (EC) no. 1013/2006 applies to shipments of waste from the EU, subject to the exclusion of certain categories of waste covered by another regime.

150. Recital 15 of the Regulation states that it is "*necessary to ensure the safe and environmentally sound management of ship dismantling in order to protect human health and the environment. Furthermore, it should be noted that a ship may become waste as defined in Article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules. It is important to recall the efforts currently being made, and in particular the inter-agency cooperation between the International Labour Organization (ILO), the International Maritime*

⁴⁶ [CL2006R1013FR0110010.0001.3bi_cp 1..1 \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2006/1013/20060126/oj)

Organization (IMO) and the Basel Convention secretariat, to put in place binding requirements at global level that will enable a concrete and effective response to the problem of ship dismantling."

151. Objective

The main and predominant objective and element of this Regulation is the protection of the environment, its effects on international trade being only marginal.

It is important to organise and regulate the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment and human health and which promotes a more uniform application of the Regulation throughout the Community.

It is also important to bear in mind the requirement laid down in Article 4(2)(d) of the Basel Convention that the movement of hazardous wastes should be reduced to the minimum consistent with the environmentally sound and efficient management of such wastes.

The Regulation also recalls that although the supervision and control of shipments of waste within a Member State is a matter for that Member State, national systems concerning shipments of waste should take account of the need for coherence with the Community system in order to ensure a high level of protection of the environment and human health.

152. Scope

This Regulation establishes the procedures and control regimes applicable to the shipment of wastes, depending on the origin, destination and route of the shipment, the type of wastes shipped and the type of treatment to be applied to the wastes at their destination.

These regulations apply to shipments of wastes:

- a) between Member States, within the Community or with transit through third countries;
- b) imported into the Community from third countries;
- c) exported from the Community to third countries;
- d) in transit through the Community on the way from and to third countries;

153. Vessels which are considered to be waste and are carrying out transboundary movement for their recycling are governed by the Basel Convention of 22 March 1989 on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereinafter referred to as the

"Basel Convention") and by Regulation (EC) N° 1013/2006 of the European Parliament and of the Council.

154. Article 1 of the Regulation also provides for cases of exclusion from the scope:

"The following shall be excluded from the scope of this Regulation:

a) the offloading to shore of waste, including waste water and residues, generated by the normal operation of ships and offshore platforms, provided that such waste is subject to the requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (Marpol 73/78), or other binding international instruments;

b) waste generated on board vehicles, trains, aeroplanes and ships, until such waste is offloaded in order to be recovered or disposed of;

[...]

i) vessels flying the flag of a Member State that fall within the scope of Regulation (EU) No 1257/2013 of the European Parliament and of the Council".

155. Prior written notification and consent

The Regulation lays down various obligations relating to the shipment of wastes, including prior written notification and consent.

V.4.2.3. Directive 2013/53/EU of the Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC⁴⁷

156. The Directive lays down requirements for the design and manufacture of, in particular, recreational craft, partly-completed recreational craft, personal watercraft and partly-completed personal watercraft, as well as craft undergoing a major conversion⁴⁸.

⁴⁷ [Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC](https://eur-lex.europa.eu/eli/dir/2013/53/oj)Text of interest to the EEA (europa.eu)

⁴⁸ Guidelines have also been published to clarify the application of the Directive: [RCD Application Guide - Directive 201353EU - 2nd Edition January 2022.pdf](https://www.europeanboatingindustry.eu/wp-content/uploads/2022/01/RCD_Application_Guide_-_Directive_201353EU_-_2nd_Edition_January_2022.pdf) (europeanboatingindustry.eu)

157. Definition

A recreational craft is defined as *"any vessel of any type, excluding personal watercraft, intended for sports and leisure purposes of hull length from 2.5 m to 24 m, regardless of the means of propulsion"*.

The Directive does not cover boats designed exclusively for competition, canoes, kayaks, surfboards, boats designed for personal use, submersibles, etc.

158. Essential requirements

Under the Directive, recreational craft may only be made available on the market or put into service if they do not endanger the health and safety of persons, property and the environment when properly maintained and used for their intended purpose, and provided they meet the applicable essential requirements set out in Annex I. 2 of the Directive.

Member States must ensure that recreational craft are only made available on the market or put into service if they meet the above criteria.

When placing their recreational craft on the market, manufacturers must ensure that they have been designed and manufactured in compliance with the above requirements.

A "CE marking" has been introduced to certify that products comply with the Directive's requirements.

159. Obligations of importers

Importers must place only compliant products on the EU market.

Before placing a product on the market, importers must check that the manufacturer has completed the conformity assessment procedure.

They must also ensure that the manufacturer has drawn up the technical documentation, the product bears the CE marking referred to in Article 17 and is accompanied by the documents required under Article 15 and Annex I, Part A, point 2.5, Annex I, Part B, point 4 and Annex I, Part C, point 2, and the manufacturer has complied with the requirements set out in Article 7(5) and (6).

Where an importer considers, or has reason to believe, that a product does not comply with the requirements set out in Article 4(1) and Annex I, they must not place the product on the market until it has been brought into conformity.

In addition, the importer must inform the manufacturer and the market surveillance authorities if the product presents a risk.

160. Obligations of distributors

When making a product available on the market, distributors must act with the due diligence required to comply with the requirements of this Directive.

161. Design and construction

For the design and construction of recreational craft, the procedures set out in Annex II to Decision No. 768/2008/EC and in Article 20 of the Directive apply.

V.4.2.4. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives⁴⁹

162. Directive 2008/98 is the European framework that gave rise to the regional waste decrees and ordinance (see below) in Belgium.

The Directive establishes measures to protect the environment and human health by preventing or reducing the harmful effects of waste production and management, reducing the overall impact of resource use and improving the efficiency of that use.

163. Extended producer liability

To improve reuse, prevention, recycling and other waste recovery, Member States may take legislative or non-legislative measures to ensure that the natural or legal person who develops, manufactures, handles, treats, sells or imports products (the product producer) is subject to the extended producer liability scheme.

Such measures may include the acceptance of returned products and the waste remaining after the use of these products, as well as the resulting management and the financial liability for such activities.

The Directive also provides that Member States may take appropriate measures to encourage the design of products to reduce their environmental impact and waste generation during production and subsequent use and to ensure that the recovery and disposal of products that have become waste takes place in a way that safeguards waste hierarchy, human health and the environment.

164. States must take the necessary measures to promote the recovery, reuse and recycling of waste.

The Directive requires waste management plans to be drawn up.

⁴⁹ [EUR-Lex - 32008L0098 - EN - EUR-Lex \(europa.eu\)](#)

V.4.3. LEGAL FRAMEWORK IN THE FLEMISH REGION

V.4.3.1. Decree of 23 December 2011 on the sustainable management of material and waste cycles⁵⁰

165. The Decree on the sustainable management of material and waste cycles constitutes the basic legal framework in Flanders within which a circular economy could be implemented for recreational craft, in particular Chapter 6 "Transition to a circular economy".

166. Article 4 of the Decree defines its general philosophy, which is to contribute to achieving the sustainable development goals as set out in Article 7*bis* of the Constitution.

The Decree also aims to establish measures to promote a circular economy and establish material cycles that protect human health and the environment by preventing or reducing waste production and the negative impacts of waste production and management, and to combat the depletion of renewable and non-renewable resources, the waste of materials and energy in general and the harmful effects on humans and the environment associated with the use and consumption of materials.

167. The Decree provides for various measures to achieve, among other things, waste recycling and the use of materials in closed material cycles.

168. Chapter 5 of the Decree also describes environmental contributions, taxes and fees, and Chapter 6 describes the transition to a circular economy.

V.4.3.2. VLAREMA⁵¹

169. The Decree on the sustainable management of material and waste cycles was implemented by the Flemish Government Decree of 17 February 2012 establishing Flemish regulations for the sustainable management of material and waste cycles (VLAREMA).

⁵⁰ [LAW - WET \(fgov.be/en\)](http://law.fgov.be/en)

⁵¹ [EMIS Navigator \(vito.be\)](http://emis.navigator.vito.be)

170. The management plan for waste from vessels at sea is governed by subsection 5.2.10 of VLAREMA.

In practice, this means that each port draws up its own individual management plan, approved by OVAM.

The management plan for waste from vessels on inland waterways is governed by subsection 5.2.11 of VLAREMA.

Within the framework of waste management plans for vessels at sea or on inland waterways, recreational craft are expressly excluded from these provisions.

V.4.4. LEGAL FRAMEWORK IN THE WALLOON REGION

V.4.4.1. Walloon Decree of 9 March 2023 on waste, material circularity and public cleanliness⁵²

171. The Walloon Decree defines waste as *"any substance or object which the holder discards or intends or is obliged to discard"*.

172. This Decree and its implementing measures aim to protect the environment and human health by preventing or reducing waste production and the harmful effects of waste production and management, and by reducing the overall impact of resource use and improving resource efficiency, which are essential for the transition to a circular economy and the long-term competitiveness of the Walloon Region and the European Union.

173. Planning for waste management and material circularity is governed by Articles 17 et seq. through a Walloon Waste-Resources Plan, which defines waste prevention and management objectives.

174. The Decree also stipulates that for each type or sub-type of waste it determines, the Government may:

- 1° regulate prevention and management methods and techniques;
- 2° regulate their collection;
- 3° regulate their transport;

⁵² [1 - WALLEX \(wallonie.be/en\)](https://www.wallex.be/en)

4° define the prerequisites and obligations inherent in their management operations;
5° adopt special measures on account of their nature, composition, origin, circumstances of production or possession, quantity or management method, in particular by imposing treatment standards.

175. Articles 47 and 48 provide for material and financial liability.

176. The Walloon Decree of 26 June 1996 on waste⁵³ is repealed by this new Decree.

V.4.4.2. Walloon Government Decree of 23 September 2010 establishing a take-back obligation for certain waste⁵⁴

177. This Decree applies in particular to end-of-life vehicles, which are subject to a number of obligations (prevention, collection, dismantling, treatment, etc.).

However, recreational craft do not fall within the scope of this Decree.

V.4.5. LEGAL FRAMEWORK IN THE BRUSSELS-CAPITAL REGION

V.4.5.1. Ordinance of 14 June 2012 on waste⁵⁵

178. The Ordinance defines waste as "*any substance or object which the holder discards or intends or is obliged to discard*".

It establishes a system similar to that in other regions of the country, notably via the regional waste plan.

V.4.5.2. Decree of the Government of the Brussels-Capital Region of 1 December 2016 on waste management⁵⁶

179. This Decree also applies to end-of-life vehicles, which are subject to a number of obligations (prevention, collection, dismantling, treatment, etc.).

⁵³ [1 - WALLEX \(wallonie.be/en\)](http://1.wallex.wallonie.be/en)

⁵⁴ [19521 - WALLEX \(wallonie.be/en\)](http://19521.wallex.wallonie.be/en)

⁵⁵ [LAW - WET \(fgov.be/en\)](http://law-wet.fgov.be/en)

⁵⁶ [LAW - WET \(fgov.be/en\)](http://law-wet.fgov.be/en)

However, recreational craft do not fall within the scope of this Decree.

V.4.6. LEGAL FRAMEWORK IN FRANCE⁵⁷

180. France is a "model" in Europe for the introduction of a circular economy for recreational craft.

As such, it is worth taking a closer look below at the French model.

V.4.6.1. Foreword

181. France has over one million registered recreational craft. As in Belgium, most of these are motorboats (74%), followed by sailboats (19%).

The proportion of boats under 7 metres is 86% (58% for Belgium).

France also has 1,029 ports (exhaustive census: 473 maritime & 556 river (*Observatoire des ports de plaisance, 2015 Report*), averaging 1,000 boats per port⁵⁸.

V.4.6.2. Extended Producer Responsibility (EPR)

182. The French Law of 17 August 2015 on energy transition for green growth has led to the implementation of Extended Producer Responsibility (EPR) for recreational and sports boats in various sectors.

From 1 January 2019, any company that places registered recreational or sports boats on the French market is obliged to contribute to or provide for the treatment of waste from these products (Article L541-10-10 of the French Environment Code).

Article L541-10 of the French Environment Code now stipulates that:

"The following fall under the principle of Extended Producer Responsibility pursuant to the paragraph 1 of I of Article L. 541-10:

[...]

18° recreational or sports boats;

⁵⁷ [The recreational craft dismantling industry \(recyclermonbateau.fr\)](http://recyclermonbateau.fr)

⁵⁸ Pre-study, p. 12.

[...]"

Article L541-10, paragraph I, essentially states that, in application of the principle of extended producer responsibility, any natural or legal person (referred to as a "producer") who develops, manufactures, handles, processes, sells or imports waste-generating products or components and materials used in their manufacture may be required to provide for, or contribute to, the prevention and management of the waste they generate, and to adopt an eco-design approach to products, promoting their lifespan by supporting reuse and repair networks, and developing the recycling of waste from these products.

183. By Decree⁵⁹ no. 2016-1840 of 23 December 2016 on the recycling and treatment of waste from recreational or sports boats and craft, France amended the Environment Code (Art. R543-297 to R543-302) to set up a circular economy channel for recreational craft.

In this respect, the chapter devoted to "Waste" in the French Environment Code has been modified.

184. In particular, the Decree defines the notion of "marketer" as *"any person who manufactures, imports or introduces onto the national market for the first time on a professional basis recreational or sports boats either intended to be sold or transferred free of charge to the end user, whatever the transfer technique, or used directly on national territory. If these boats are transferred under the brand name of a reseller or a principal, the affixing of which results from a contractual document, this reseller or principal is considered to be the marketer"*.

"Marketers", distributors and owners of recreational craft take (each according to their capacities) preventive measures to reduce the quantity and harmfulness of waste and encourage the reuse of components or the reutilisation of waste.

To meet this obligation, "marketers" have two options:

- set up, manage and finance an individual treatment system for their own products, accredited and controlled by the competent Ministry;
- entrust the management of this obligation to an accredited eco-organisation (called "APER"), to which the company subscribes and contributes financially, in proportion to its marketing.

185. Owners of recreational or sports vessels can dispose of their waste free of charge at specially designated treatment centres.

⁵⁹ [Decree no. 2016-1840 of 23 December 2016 on the recycling and treatment of waste from recreational or sports boats and craft - Légifrance \(legifrance.gouv.fr\)](https://www.legifrance.gouv.fr/eli/decree/2016/12/23/20161840)

186. Other decrees have subsequently amended these provisions of the Environment Code.

For example:

- Decree no. 2020-1725 of 29 December 2020 on various adaptation provisions relating to Extended Producer Responsibility⁶⁰, which adapted Extended Producer Responsibility;
- Decree no. 2023-1144 of 6 December 2023 on the management of waste from vessels and recreational or sports boats and the extended responsibility of their producers⁶¹, which amended Articles R543-297, 300 and 302 of the Environment Code;
- Decree No. 2018-766 of 31 August 2018 specifying the provisions of Article R. 543-297 of the Environment Code⁶²

V.4.6.3. APER

187. As mentioned above, to enable marketers to meet their obligations, the French Nautical Industries Federation has created a dedicated eco-organisation: APER (Association for Eco-Responsible Boating).

APER's mission is to treat waste from end-of-life recreational craft: pollution control, deconstruction and recycling.

However, the transport of boats to the dismantling centre does not fall within the scope of competence and action of the eco-organisation.

188. There are currently 26 accredited dismantling centres in France, which are reimbursed by APER when each recreational craft is processed.

Only registered recreational craft of between 2.5 and 24 metres can be processed at the dismantling centres.

189. APER is managed by an 11-member Board of Directors representing the diversity of companies in the sector (manufacturers, importers, large companies, ETIs, VSEs) and all types of recreational craft.

190. APER has been accredited as an eco-organisation by the relevant Ministry (Ministry of the Ecological and Solidarity-based Transition)⁶³.

⁶⁰ [Decree no. 2020-1725 of 29 December 2020 on various adaptation provisions relating to Extended Producer Responsibility - Légifrance \(legifrance.gouv.fr\)](#)

⁶¹ [Decree no. 2023-1144 of 6 December 2023 on the management of waste from recreational or sports boats and vessels and the extended responsibility of their producers - Légifrance \(legifrance.gouv.fr\)](#)

⁶² [Official Journal of the French Republic - No. 201 of 1 September 2018 \(ecologie.gouv.fr\)](#)

⁶³ [Official Journal of the French Republic - No. 52 of 2 March 2018 \(ecologie.gouv.fr\)](#)

191. The legislator has introduced several cumulative measures to deal with marketers who fail to comply with the provisions in force and their obligations in this area:

- 1° the making up of unpaid eco-contribution amounts based on the number of new products placed on the market over the last three years;
- 2° the establishment of an administrative fine by the Ministry of the Ecological and Solidarity-based Transition.

192. The whole system is based on the general principle that dismantling is free of charge for owners.

The only cost to recreational craft owners is transportation to the designated re-use centre.

The cost of recycling is fully covered by APER, which draws its budget from the two sources below:

- *DAFN (annual registration and navigation fee)*

On the one hand, the State transfers part of the DAFN to APER.

This tax on recreational craft is payable annually by any owner of a recreational craft that meets one of the following conditions:

- a boat with a length of 7 metres or more;
- a boat whose hull length is less than 7 metres, but whose engine power is equal to or greater than 22 HP;
- motorised craft (jet skis, etc.) with engine power of 90 kW or more (Secretariat of State in charge of the Sea, 2022).

For boats 7 metres or more in length, the load is calculated based on the length of the vessel's hull and the engine power.

For motorboats, the load is calculated based on engine power.

- *Merchant eco-contribution*

Since 1 January 2019, the cost of dismantling recreational craft has been partly financed by an eco-contribution that producers and importers must pay when each new recreational craft is sold.

This contribution is calculated according to the type and length of the boat. The amount is not affected by the value of the boat.

This means that the contribution for a 7-metre motorboat, for example, will be the same for everyone, regardless of the make and hence the sale price.

V.4.6.4. End-of-life recreational or sports vessels

193. Article R543-297 of the French Environment Code distinguishes between end-of-life boats, abandoned boats and wrecks.

End-of-life boats are defined as "any boat mentioned in 1° which constitutes waste, within the meaning of Article L.541-1-1".

Article L541-1-1 defines waste as "any substance or object, or more generally any movable asset, which the holder discards or intends or is obliged to discard".

In accordance with Article L541-2, any producer or holder of waste is required to manage it or have it managed.

Article L541-3 provides for the following system for abandoned waste:

"1.-When waste is abandoned, deposited or managed in contravention of the provisions of this chapter and the regulations adopted for their application, with the exception of the provisions of I of Article L. 541-21-2-3 and those set out in section 4 of this chapter, the competent police authority shall inform the waste producer or holder of the facts of which they are accused, and the penalties they are liable to incur, within ten days, assisted where appropriate by counsel or represented by an agent of their choice, and may order them to pay a fine of up to €15,000 and give them formal notice to carry out the operations required to comply with these regulations within a specified period.

At the end of this procedure, if the person concerned has not complied with the injunction within the time limit set by the formal notice, the competent police authority may, by a reasoned decision indicating the means and time limits for appeal:

1° oblige the person concerned to deposit with a public accountant a sum corresponding to the amount of the prescribed measures, which is returned as and when the measures are carried out.

This sum has the same priority as that set out in Article 1920 of the French General Tax Code. It is recovered in the same way as government debts not related to taxes or property. The accountant may initiate the procedure for administrative seizure by a third party as provided for in Article L. 262 of the French Tax Procedure Handbook.

Opposition to a statement of enforceability issued in application of a consignment measure ordered by the administrative authority before the administrative judge does not have suspensive effect;

2° take steps to automatically carry out the prescribed measures on behalf and at the expense of the person served with the formal notice. The sums deposited pursuant to 1° may be used to pay the expenses thus incurred.

[...]"

V.5. LEGAL PERSPECTIVES FOR THE INTRODUCTION OF A CIRCULAR ECONOMY FOR RECREATIONAL CRAFT

V.5.1. Adaptation of European rules

194. The analysis of the current legal framework shows that some European texts already exist, but would certainly benefit from being updated and extended to include the issue of recreational craft.

195. On the one hand, Directive 2013/53 on recreational craft and, on the other, Regulation 1257/2013 on ship recycling can be mentioned.

196. Directive 2013/53 imposes obligations on manufacturers, importers and distributors. It also already includes provisions for product conformity.

These provisions could be further developed, in particular to incorporate stricter manufacturing, import and compliance standards, in order to define a framework for the circular economy for future recreational craft.

Tougher environmental standards could be incorporated to bring the marine industry into line with the Union's ecological ambitions and encourage manufacturers to innovate, notably through the use of cleaner materials.

197. Moreover, as the pre-study shows that recreational craft are clearly no longer manufactured in Belgium, it seems all the more important to take action at European level and also ensure that appropriate rules are in place for importers.

198. Regulation 1257/2013 on ship recycling excludes from its scope ships that operate throughout their life only in waters under the sovereignty or jurisdiction of the Member State whose flag they fly, as well as ships with a gross tonnage of less than 500. It only applies to ships at sea.

To this extent, the scope of the Regulation is relatively limited and does not cover all Belgian recreational craft.

The provisions contained in the Regulation could nevertheless serve as a source of inspiration for recreational craft and be extended to them.

199. In all cases, legislative change at European level requires the political will to give impetus to such adaptations.

V.5.2. At federal level

200. The federal authority remains responsible for setting product standards.

In addition, market surveillance of European harmonisation legislation is also a federal responsibility⁶⁴. It is therefore the federal authority (FPS Mobility and Transport) that will be responsible, in particular, for monitoring CE marking (see Directive 2013/53) for recreational craft.

The federal authority therefore retains the ability to act in these respects.

V.5.3. Adaptation of regional rules

201. Additional legislative or regulatory changes could be implemented through regional waste decrees and ordinances, and their respective implementing decrees, to include the issue of recreational vessels.

202. As a reminder, the Regions are responsible for waste management. The regional legal framework already exists in the country's three Regions, through the Flemish and Walloon Decrees and the Brussels Ordinance.

Implementing orders for these laws also exist in these three Regions, setting out general obligations as well as specific obligations for certain types of waste (waste batteries and accumulators, used tyres, used oils, end-of-life vehicles, waste electrical and electronic equipment, etc.), but do not currently cover recreational craft.

⁶⁴ [L 2019169FR.01000101.xml \(europa.eu\)](#)

One potential legal avenue could be to add a section specifically devoted to recreational craft to these regional decrees.

This could, for example, take the form of a separate section devoted to recreational craft, or it could involve broadening the notion of "end-of-life vehicles" to include recreational craft (see, in this respect, the proposed definition of "end-of-life vessel" at the end of Part I of this study).

This approach has also been adopted in France, with the addition of a specific section to the Environmental Code setting out provisions for recreational craft.

V.5.4. Introduction of the possibility of recycling in legislation on the removal of abandoned vessels and wrecks

203. In line with Part I on the removal of abandoned vessels, consideration could also be given to adapting the provisions of the Belgian Navigation Code, the Flemish Decree of 21 January 2022 on navigation and the Walloon Decree of 19 March 2009 on the conservation of regional public roads and waterways to include the possibility for the competent authority, in addition to selling the vessel, to bring any abandoned vessel/wreck/end-of-life vessel removed into the circular economy loop.

V.5.5. Proposed guidelines for a circular economy for recreational craft

204. The competences of the Regions also include the power to adopt other provisions necessary for the exercise of their powers.

To this extent, the Regions may be authorised to introduce a fee, tax, eco-contribution, etc., necessary for the exercise of their powers - particularly in the area of waste.

205. Principle

In line with the "polluter pays" principle set out in the above-mentioned regional legislation, the costs of waste management, including those associated with the necessary infrastructure and its operation, are borne by the original waste producer or the current or previous waste holder.

206. Financing

The cost of recycling can be charged to the initial producer, marketer, successive owners, and final owner, but also to society (subsidies, taxes paid by the entire population).

Several financing models can be designed, including an eco-contribution, an annual fee or a property transfer tax (or a mix of these different models).

Incentive schemes could also be devised to encourage owners to have their vessels dismantled, and to cover part of these costs if they are wholly or partly responsible for them.

207. The creation of a financing fund could also be envisaged, with an individualised breakdown and monitoring for each boat.

This fund could be financed through an eco-contribution and/or an annual fee paid by the owner. The last owner of the vessel could bear the negative discrepancy (if any) at the end of the vessel's life to supplement the cost of recycling it.

Such a fund could also be used to finance the recycling of abandoned vessels and salvaged wrecks whose owners remain unknown.

208. It is also necessary to define the activities to be covered by the funding, for example, does it only cover dismantling or does it also cover ship transport and collection?

209. Consultation between the Regions and the federal authority can always be suggested to establish a harmonised and efficient funding model.

V.5.6. Information obligation

210. The pre-study and meetings with stakeholders revealed a cross-cutting information issue.

On the one hand, there is a lack of information on the legislation in force concerning the removal of abandoned vessels and wrecks, as well as its scope and responsibilities.

On the other hand, in the second part of the study, an information problem also arose in the context of inheritance, with heirs not always informed of the possibilities concerning recreational craft or the services they could use.

211. Particular attention should therefore be paid to providing clear, accessible information on the channels and operators responsible for dismantling end-of-life vessels.

In the case of inheritances, a duty of information on the part of notaries could be envisaged.

APPENDICES

APPENDIX I

Relevant extracts from the Nairobi Convention

"Article 1 - Definitions

1 "Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2 "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

[...]

4 "Wreck, following upon a maritime casualty, means:

- a) a sunken or stranded ship; or*
- b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or*
- c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or*
- d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.*

[...]

Art. 5. Reporting wrecks

1 A State Party shall require the captain and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been fulfilled either by the captain or the operator of the ship, the other shall not be obliged to report.

[...]

Art. 9. Measures to facilitate the removal of wrecks

- 1 *If the Affected State determines that a wreck constitutes a hazard, that State shall immediately:
 - a) inform the State of the ship's registry and the registered owner; and
 - b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.*
- 2 *The registered owner shall remove a wreck determined to constitute a hazard.*
- 3 *When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.*
- 4 *The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.*
- 5 *When the removal referred to in paragraphs 2 and 4 has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.*
- 6 *The Affected State shall: a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 6; b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.*
- 7 *If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.*
- 8 *In circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.*
- 9 *States Parties shall take appropriate measures under their national law to ensure that their registered owners comply with paragraphs 2 and 3.*
- 10 *States Parties give their consent to the Affected State to act under paragraphs 4 to 8, where required.*
- 11 *The information referred to in this article shall be provided by the Affected State to the registered owner identified in the reports referred to in article 5, paragraph 2*

Art. 10. Liability of the owner

- 1 *Subject to article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:
 - a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
 - b) was wholly caused by an act or omission done with intent to cause damage by a third party;
 - or
 - c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.*

2 Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

[...]".

APPENDIX II

Relevant extracts from the Law of 11 April 1989

"Article 12

For the purposes of this chapter, the following definitions apply:

- 1° vessel owner: the owner, charterer, shipowner or manager of a vessel;*
- 2° navigable waterway: the waterway habitually used for navigation;*
- 3° authority: the public authority or its delegate designated in the police or navigation regulations for the waterway, port or territorial sea.*

In the territorial sea and exclusive economic zone, this Chapter does not apply to equipment, wrecks, wreck debris, sunken objects or objects which do not affect the accessibility of Belgian ports and waterways. The provisions of this Chapter are without prejudice to the provisions of the Belgian Navigation Code.

Article 13

The owner, master or boatsperson of a stranded or sunken vessel must refloat the vessel, including everything that is or was on board, in particular the cargo, and bring it to the place indicated by the authority.

The cargo must be removed and disposed of in accordance with the measures imposed by laws and regulations, particularly those relating to the disposal of hazardous or noxious materials.

To this end, the authority may impose conditions, including a deadline.

The preceding paragraphs also apply to anything that falls into the water from a vessel.

Wrecks, wreck debris, tackle or sunken objects must be removed from the public domain, under the same conditions, by their respective owners.

Where the safety of navigation in the territorial sea or exclusive economic zone is endangered, the owner of the stranded or sunken vessel is obliged to refloat and remove the wreck, wreck debris, rigging, cargo and hazardous substances or objects originally on board that have sunk.

The performance of the above obligations may not be prevented by seizure or constraint of any kind.

Article 14

If Article 13 is not complied with, or in cases of urgency deemed such by the authority, or if the owner, captain or boatperson are unknown, the authority may, ex officio and at the risk and peril of the owner and the person responsible for the event which caused the vessel to sink or become stranded:

- a) refloat, remove, destroy or render harmless a sunken, shipwrecked, stranded or abandoned vessel, including everything on board,*
- b) remove, destroy or render harmless the vessel's cargo,*
- c) remove from the territorial sea or public domain the vessel, wreck or cargo already salvaged or removed,*
- d) take any other measures necessary to ensure safety, the free passage of navigation, and the safeguarding or conservation of the waterway system.*

The exercise of the powers conferred on the authority by this article may not be prevented by seizure or constraint of any kind.

The authority's decision to make use of the prerogatives provided for in paragraph 1 in respect of a vessel is published in accordance with the police regulations on the waterway, port or territorial sea. This publication may be omitted in urgent cases deemed as such by the authorities.

As soon as the authority's decision has been made public, it is forbidden to remove the vessel, objects or goods without the authority's authorisation. This authorisation is not refused for the ship's papers and the personal effects of the captain, crew and passengers.

Article 15

Before commencing the execution of the measures or operations provided for in Article 14, the competent authority may require the owner or any person whose liability may be called into question or, directly, the insurer of their respective liability, to advance the sum it deems adequate to cover the costs of these measures or operations.

For the owner of the stranded or sunken vessel and the owner of the vessel whose liability may be called into question, as well as for their respective insurers, this sum may not exceed that to which the owner concerned may limit their liability under Article 18.

This advance may, without incurring costs for the authority, be replaced by a guarantee deemed acceptable and adequate by the authority.

The guarantee is acceptable if the amount covered is effectively available and freely transferable as soon as it is provided.

The guarantee is adequate if its amount corresponds to the sum provided for in the first or second paragraph.

The sum advanced or the guarantee provided by one of the persons whose liability may be engaged or by their insurer is deemed to be advanced or provided by all such persons.

The sums advanced and, where applicable, the guarantee, may be used by the authority to finance the implementation of the measures and operations referred to in Article 14.

The sum advanced and the guarantee are exclusively intended to satisfy the authority's claims to cover the costs referred to in Article 16. These amounts cannot be seized at the request of other creditors.

A judgment which, subsequent to the advance or the provision of the guarantee, declares the bankruptcy, ¹[approves the reorganisation plan or orders the transfer under judicial authority,]¹ of the person who advanced the sum or provided the guarantee, has no effect on that sum or guarantee.

Article 16

The party responsible for the event which caused the vessel to sink or become stranded and - in the absence of such a party - the owner referred to in Article 13, is required to pay the authority the costs resulting for the latter from the ex officio execution of the measures ordered and the operations carried out pursuant to Article 14.

The costs referred to in the preceding paragraph are preferential to any amounts owed to the authority by insurers of damages or personal liability pursuant to Article 15 or this Article, as a result of the loss of the vessel or the event which caused the vessel to be stranded or sink.

The authority can contact these insurers directly.

No payment by these insurers will be considered a discharge until the authority's claims have been paid.

Article 17

§ 1 *The authority using one or more of the powers conferred on it by Article 14 may detain and seize the vessel, wreck, wreck debris, equipment or sunken objects as well as the cargo.*

An authority which presumes to have suffered damage through the fault of a vessel may detain and seize any vessel for which it may be liable.

The officials empowered to detain or seize are designated in the police or navigation regulations referred to in Article 12, 3°.

The seized vessel or asset is released:

1° if, for the claims referred to in Article 16, the sum has been paid or the guarantee has been set up in accordance with Article 15;

2° if, in the case of claims against the authority for which a limitation of liability could be legally invoked, the limitation fund from which the claims may be recovered is constituted:

3° if a guarantee complying with the relevant provisions of Article 15 has been provided for the remaining claims.

The authorities which have had a vessel, wreck or other asset removed or which are creditors for damage caused due to a vessel have the right, in the event of non-payment, to sell the vessel, wreck or other assets, including cargo, and to indemnify themselves out of the price, in preference to any other creditor.

The balance of the sale proceeds is paid to the Caisse des Dépôts et Consignations in the name of the owners, if known, or a party that can justify their rights.

The following in particular are considered as damage suffered by the authority:

1° damage to engineering structures or to ports, basins, waterways and navigational aids - even on the high seas - for which an authority is responsible;

2° the costs of the measures taken to prevent or reduce damage, as well as those resulting from damage subsequently caused by these measures;

3° damage caused during the execution of Articles 13 and 14;

4° the costs referred to in Article 16.

§ 2 *If the salvaged vessel or the wrecks, cargo, tackle or objects removed are not taken back by their respective owners, the authority may sell them.*

To this end, and without prejudice to § 4, the authority publishes, prior to the sale, in two local newspapers and at fortnightly intervals, two notices of the salvage operation, indicating the characteristics and distinctive features of the objects and inviting anyone claiming ownership to assert their rights and pay the salvage costs within 30 days of the date of publication of the last notice.

Once this period has elapsed, the authority sells the salvaged vessel or the wrecks, cargo, gear or objects removed.

The sale proceeds are paid to the Caisse des Dépôts et Consignations, to the party who can justify their rights, after deduction of the costs agreed by the authority.

§ 3 *If no one provides proof of entitlement within the allotted time, the amounts paid to the Caisse des Dépôts et Consignations in application of the preceding paragraphs revert automatically to the competent authority after a period of one year from the date of payment.*

§ 4 *If, in the opinion of the authority concerned, the salvaged cargo is perishable or already damaged, or if a sale by mutual agreement of the salvaged goods proves more profitable, a sale by mutual agreement may be carried out in whole or in part without it being necessary to comply with the publicity and time conditions referred to in § 2.*

§ 5 *Is punishable by imprisonment of fifteen days to one year and a fine of five hundred euros to two million euros, or one of these penalties only, anyone who:*

1° has contravened Articles 13 to 16 of this Law;

2° has contravened the implementing decrees of Articles 13 to 16 of this Law.

Article 18

The owner of a seagoing vessel, who - pursuant to Article 16 - is liable for payment of costs, may limit their liability for such payment to the following amounts:

1° for their vessel with a tonnage not exceeding 500 tons: EUR 370,000;

2° for their vessel whose tonnage exceeds 500 tons: the amount indicated in 1° increased by:

- EUR 445 per ton for each additional ton from 501 to 6,000 tons;

- EUR 175 per ton for each additional ton from 6,001 to 70,000 tons;

- EUR 125 per ton for each additional ton over 70,000 tons;

The aforementioned owner's insurer may invoke the same limitation.

The King may adjust the above amounts at any time to take account of the economic situation.

The responsible owner is not entitled to limit their liability if it is proved that the damage resulted from their personal act or omission, committed with the intention of causing such damage, or committed recklessly and with the knowledge that such damage would probably result.

For the purposes of this Article, for seagoing vessels subject to the 1969 International Convention on Tonnage Measurement of Ships, gross tonnage means the tonnage calculated in accordance with the measurement rules set out in Annex I to that Convention.

For other seagoing vessels, the King determines the limits of liability as well as the criteria and basis for their calculation."

APPENDIX III

Relevant extracts from the Belgian Navigation Code

"CHAPTER 6. - Wreck removal

Section 1.- Territorial sea

Art. 2.7.6.1. Scope

This section applies to wrecks in the territorial sea.

Art. 2.7.6.2. Obligation in solidum

Wherever this chapter imposes obligations on the shipowner, including the removal obligation and financial obligations, the owner, shipowner, ship user and captain are bound in solidum to comply with these obligations, and the competent authority may apply to each of these persons for full compensation, without prejudice to any right of recourse available to the person addressed.

Art. 2.7.6.3. Removal obligation

§ 1. The owner of a seagoing vessel sunk, wrecked, stranded or abandoned in the territorial sea must refloat, remove and bring the seagoing vessel to the place indicated by the competent authority, including everything that is or was on board, in particular the cargo, and everything that fell into the water from the seagoing vessel.

§ 2. Wrecks, wreck debris, tackle or objects sunk or abandoned in the territorial sea must be refloated, removed and brought to the place indicated by the competent authority by their respective owners.

§ 3. The obligations referred to in paragraphs 1 and 2 must be respected taking into account the measures imposed by the laws and regulations, in particular those relating to the removal of hazardous or noxious materials.

The competent authority may impose more specific conditions on the owners concerned, including deadlines.

The performance of the above obligations may not be prevented by seizure or constraint of any kind. The preceding paragraphs apply without prejudice to the notification obligations set out in the present code.

Art. 2.7.6.4. Ex officio intervention by the competent authority

§ 1. If the obligations referred to in Article 2.7.6.3 are not or not sufficiently observed, or in cases of emergency deemed as such by the competent authority, or if the owner is unknown, the competent authority may ex officio and at the risk of the owner and of the person liable for the event which caused the tackle or object to fall into the water:

1° refloat, remove, destroy, render harmless, dispose of or move a sunken, wrecked, stranded or abandoned seagoing vessel, including anything on board, particularly cargo, and anything that has fallen into the water from the seagoing vessel;

2° refloat, remove, destroy, render harmless, dispose of or move wrecks, debris, tackle or objects sunk or abandoned in the territorial sea;

3° take any other measure necessary to ensure the smooth and safe navigation of the vessel;

4° take any other measure necessary to protect the marine environment.

The exercise of the powers referred to in the preceding paragraph may not be prevented by seizure or constraint of any kind, and is without prejudice to the owner's primary removal obligation as described in Article 2.7.6.3.

§ 2. The decision of the competent authority to make use of the powers referred to in paragraph 1 in respect of a seagoing vessel or a wreck must be published in an appropriate manner.

Publication may be omitted in urgent cases deemed such by the competent authorities.

As soon as the authority's decision has been made public, it is forbidden to remove objects without the authority's authorisation.

Art. 2.7.6.5. Advances and guarantees

§ 1 Before commencing the execution of the measures set out in Article 2.7.6.4, the competent authority may require the owner or any person whose liability may be called into question or, directly, the insurer of their respective liability, to advance the sum it deems adequate to cover the costs of these measures.

§ 2. The advance mentioned in paragraph 1 may, without incurring costs for the competent authority, be replaced by the creation of a guarantee deemed acceptable and adequate by the authority. The guarantee is acceptable if it can be reasonably assumed that the amount covered will be effectively available and freely transferable as soon as the guarantee is set up.

The guarantee is adequate if its amount corresponds to the sum provided for in paragraph 1, plus statutory interest for a period deemed adequate.

§ 3. The sum advanced or the guarantee provided by one of the persons whose liability may be incurred, or by their insurer, is deemed to be provided by all such persons.

§ 4. The sum advanced and the guarantee may be used by the competent authority to finance the execution of the measures referred to in Article 2.7.6.4.

The sum advanced and the guarantee are exclusively intended to satisfy the competent authority's claims and cannot be seized at the request of other creditors.

§ 5. A judgment which, subsequent to the advance or the provision of the guarantee, declares the bankruptcy, approves the reorganisation plan or orders the transfer under judicial authority of the person who advanced the sum or provided the guarantee, has no effect on that sum or guarantee.

Art. 2.7.6.6. Payment of costs incurred by the competent authority

§ 1 The party responsible for the event which caused the seagoing vessel to sink, wreck, run aground or be abandoned, or, in the absence of such a person, the owner of the vessel, is required to pay the costs incurred by the authority in the ex officio intervention of the measures taken under Article 2.7.6.4.

Under no circumstances will the debtors referred to in paragraph 1 have the right to limit their liability.

§ 2 The claim referred to in paragraph 1 will be privileged over the amounts which, as a result of the loss of the seagoing vessel or due to the event which caused the seagoing vessel to sink, be wrecked, stranded or abandoned or caused the property involved to fall into the water, are owed by the insurers of damage or personal liability, debtors of the competent authority by virtue of this chapter. The competent authority can contact these insurers directly.

No payment by these insurers will be considered a discharge until the authority's claims have been paid.

Art. 2.7.6.7. Immobilisation, seizure and sale

§ 1. In the case of an ex officio intervention, the competent authority is empowered to detain and seize the seagoing vessel or wreck and all the goods involved, without judicial authorisation.

Where the competent authority presumes to have suffered damage through the fault of a seagoing vessel, it may detain and seize ex officio any seagoing vessel that may be liable, without judicial authorisation.

The members of the authority's staff responsible for immobilisation or seizure are designated by the King.

§ 2. The seagoing vessel, wreck or property seized in accordance with paragraph 1 is released when

the advance has been paid or the guarantee has been lodged in accordance with Article 2.7.6.5.
§ 3. The competent authority which has had a seagoing vessel, wreck or other asset removed or which is a creditor for damage caused by a seagoing vessel has the right, in the event of non-payment, to sell the seagoing vessel or other assets and to indemnify itself out of the price, in preference to any other creditor.

The balance of the sale proceeds is paid to the Caisse des Dépôts et Consignations in the name of the owners, if known, or of the person who can justify their rights.

§4. If the seagoing vessel, the wreck or the property seized in accordance with paragraph 1 is not taken back by its respective owner, the competent authority may proceed with its sale.

To this end, and without prejudice to paragraph 6, the authority publishes, prior to the sale, at fortnightly intervals, two notices of the refloating operation, indicating the characteristics and distinctive features of the goods and inviting any entitled parties to assert their rights and pay the costs of removal, disposal or any other measure within 30 days of the date of publication of the last notice. Notices are published:

1°) in the Belgian Official Gazette;

2°) on the website of the Belgian Naval Register;

3°) where applicable, by the additional electronic means prescribed by the King.

The authority sells the wrecks, equipment or goods once this period has elapsed.

The sale proceeds are paid to the Caisse des Dépôts et Consignations, to the person who proves their rights, after deduction of the amount of the costs incurred by the competent authority.

§ 5 If no one proves their rights within the allotted time, the amounts paid in application of paragraphs 3 and 4 to the Caisse des Dépôts et Consignations revert automatically to the competent authority after a period of one year from the date of payment.

§ 6 When, in the opinion of the competent authority, the recovered cargo is perishable or already damaged, or when a sale by mutual agreement of the goods removed or dismantled proves more profitable, a sale by mutual agreement may take place in whole or in part without it being necessary to comply with the publicity and time requirements referred to in paragraph 4.

§ 7 For the application of this article, the following in particular are considered as damage suffered by the competent authority:

1° damage caused to structures, even on the high seas, for which this authority is responsible;

2° the costs of measures taken to prevent or reduce damage as well as those of measures taken to prevent or reduce damage subsequently caused by these measures;

3° damage caused during compliance with the obligations referred to in Article 2.7.6.3;

4° damage caused in the exercise of the powers referred to in Article 2.7.6.4;

5° the costs referred to in Article 2.7.6.6;

6° damage within the meaning of the Law of 11 December 2022 on the protection of the marine environment and the organisation of the management of Belgian marine areas.

Section 2. - Exclusive economic zone

Art. 2.7.6.8. WRC

The directly applicable provisions of the WRC, in particular those concerning the competences of the authority and the obligations of the registered owner and operator of the seagoing vessel, apply to wrecks in the Belgian exclusive economic zone.

Under no circumstances may the registered owner and operator referred to in paragraph 1 limit their liability.

[...]

Art. 2.7.6.10. Powers of the competent authority

§ 1. *The competent authority exercises all the powers that the WRC grants to the State regarding wrecks in the Belgian economic zone.*

§ 2. *In particular, for the locating and marking of wrecks, the competent authority may impose more specific obligations, including deadlines, on the registered owner, the seagoing vessel operator and all third parties concerned.*

Art. 2.7.6.11. Seizure and coercion measures

No seizure or coercion will prevent the registered owner and the operator from fulfilling their respective obligations or the competent authority from exercising its powers.

Art. 2.7.6.12. Reporting wrecks

§ 1. *The captain and operator of a seagoing vessel flying the Belgian flag which has been involved in a maritime accident causing a wreck must inform the competent authority of the Affected State without delay. Once the captain or operator of the seagoing vessel has complied with the notification obligation under this article, the other party is not obliged to do so.*

§ 2. *The obligation referred to in paragraph 1 applies in all maritime zones and any other part of the territory of the Parties to the WRC to which the regime of said Convention applies.*

§ 3. *The notifications referred to in paragraph 1 must indicate the name and principal place of business of the registered owner, together with all relevant information necessary to enable the Affected State to establish whether the wreck presents a danger within the meaning of Article 6 of the WRC, including:*

1° the precise location of the wreck;

2° the type, dimensions and construction of the wreck;

3° the nature of the damage to the wreck and its condition;

4° the nature and quantity of the cargo, in particular any noxious and potentially dangerous substances; and

5° the quantity and types of oil on board, including bunker oil and lubricating oil.

Art. 2.7.6.13. Direct action

§ 1. *Any claim for reimbursement of expenses arising from the present chapter may be made directly against the insurer or other person from whom the financial guarantee covering the registered owner's liability under Article 12.1 of the WRC or Article 2.3.2.9, § 3, or 2.3.2.15, § 3, of the present Code was issued. In such cases, the defendant may use the defences that the registered owner would be entitled to invoke, including the limitation of liability under an applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit their liability, the defendant may limit their liability to an amount equal to the value of the insurance or other financial guarantee which they are required to take out in accordance with Article 12.1 of the WRC or Article 2.3.2.9, § 3, or 2.3.2.17, § 3, of the present Code. In addition, the defendant may rely on the fact that the marine accident resulted from the registered owner's intentional fault; however, they cannot use any of the other defences they might have been entitled to raise in an action brought against them by the registered owner. The defendant may, in any event, compel the registered owner to be a party to the proceedings.*

Art. 2.7.6.14. Removal of goods other than wrecks

The removal from the exclusive economic zone of goods, other than the wrecks referred to in Article

1.4 of the WRC, which constitute a direct or indirect danger to the marine environment, is subject to the application by analogy of Articles 2.7.6.1 to 2.7.6.7".

APPENDIX IV

Relevant extracts of the Flemish Navigation Decree of 21 January 2022

Art. 2. Insofar as different definitions do not appear in certain chapters or sections of this Decree, the following definitions apply for the purposes of this Decree: 1° competent authority: the department designated by the Flemish Government or the public body dependent on the Flemish Region, responsible for implementing and maintaining the provisions of this Decree or parts thereof;
[...]

16° unattended vessel: a vessel which, without being moved, is in the waterway or in a port for 60 days or more in the same place, without having obtained the right to stop at that place, either during the whole period, or uninterruptedly from a given moment during that period;

[...]

20° recreational craft: any vessel designed for sporting or recreational purposes, excluding passenger vessels;

[...]

Section 2 - Clearance of stranded, sunken and unmanaged vessels and other obstacles

Art. 16. This section, as well as Article 88, Article 120 and Section 2 of Chapter 4 of Title 6, apply to inland waterways. The above provisions apply *mutatis mutandis* to the territorial sea and exclusive economic zone with regard to ships, wrecks, sunken vessels or objects that constitute an obstacle to the accessibility of Flemish ports and waterways. The Flemish Government is responsible in the case referred to in paragraph 2.

Art. 17. The owner, lessee or charterer to whom the vessel is made available for their own use, as well as the operator of a stranded or sunken vessel or an unattended vessel must refloat the vessel, including anything found on board, in particular cargo, and remove it to the location designated for this purpose by the competent authority. Wrecks, sunken gear and any other objects that have fallen into the water from a ship, as well as any other objects that have fallen into the water, must also be raised and removed by their respective owners. The waterway manager or port authority may impose obligations in this respect, such as a time limit within which the vessel must be refloated or removed. The performance of the above obligations may not be prevented by any seizure or coercive measure.

Art. 18. The party responsible for the event through which the vessel has run aground, sunk or is unmanaged or through which any other object has fallen into the water and, if not this responsible party, the person mentioned in Article 17, paragraph 1 or 2, is liable to the waterway manager or port authority for payment of the costs resulting for this waterway manager or port authority for the *ex officio* measures and operations ordered under Article 140. Sums owed by insurers of damages or

liability, including mutual insurers, due to the loss of the vessel or any other object or due to the event by which the vessel ran aground, sank or was unmanaged or by which any other object was immersed in water, to persons who, by virtue of Article 141 or by virtue of this article, are debtors to the waterway manager or the port authority, will be paid by the insurers concerned directly to the waterway manager or the port authority in settlement of the costs referred to in the first paragraph. The waterway manager or port authority has its own claim against insurers. No payment from these insurers releases the insured party until the claims of the waterway manager or port authority have been settled in full.

Art. 19.

§ 1 Insofar as the Strasbourg Convention on Limitation of Liability in Inland Navigation 2012 (CLNI 2012), signed in Strasbourg on 27 September 2012, is not applicable, the owner of a ship who is liable for the payment of costs under Article 18 may thus limit their liability. The same applies to the lessee or charterer to whom the vessel was made available for their own use, as well as to the operator of a vessel who is responsible for the payment of charges under Article 18.

§ 2 For ships subject to the International Convention on Tonnage Measurement of Ships of 23 June 1969, liability may be limited to the following amounts:

1° for a vessel not exceeding 500 tons: 370,000 euros;

2° for a vessel exceeding 500 tons, the amount referred to in 1° is increased by:

a) 445 euros per ton for each one-ton increase in tonnage from 501 to 6,000 tons;

a) 175 euros per ton for each one-ton increase in tonnage from 6,001 to 70,000 tons;

c) 125 euros per one-ton increase in tonnage above 70,000 tonnes.

For other vessels, liability may be limited to the value of the vessel at the time of the measures and operations ordered and carried out ex officio in accordance with Article 140, subject to a minimum of 375,000 euros. For the purposes of this paragraph, tonnage means gross tonnage calculated in accordance with the tonnage measurement requirements contained in Annex I to the International Convention on Tonnage Measurement of Ships of 23 June 1969. The Flemish Government is authorised to adjust the above amounts, taking into account the economic situation.

§ 3 The insurer of the person referred to in paragraph 1 may invoke the same restriction.

§ 4. The person mentioned in paragraph 1 is not entitled to limit their liability if it is proved that the damage resulted from their personal actions or omissions, committed either with the intention of causing such damage or recklessly and with the knowledge that such damage would probably result.

[...]

Art. 88.

§ 1. Waterway managers or port authorities exercising one or more of the powers assigned to them by Article 140 may detain and seize the vessel, wreck, gear, sunken objects and cargo. Waterway managers or port authorities who suspect that they have suffered damage due to a vessel may detain and seize any boat whose liability is in question. The members of staff of the waterway manager or port authority responsible for immobilisation or seizure are appointed by the Flemish Government on the proposal of the waterway manager or port authority. The seized vessel or merchandise is released if:

1° for the claims referred to in Article 18, the sum has been advanced or the guarantee provided as stipulated in Article 141;

2° for the claims of the waterway manager or port authority for which the limitation of liability could be invoked in law, the limitation fund from which these claims could be recovered has been set up;

3° for other claims, a guarantee has been provided that meets the requirements of Article 141.

In the event of non-payment, waterway managers or port authorities who have had a vessel or other property removed, or who are creditors for damage caused due to a vessel, have the right to sell the vessel or other property, including cargo, and deduct their claim from the amount of the sale as a priority over any other creditor.

The remainder of the sale proceeds is paid to the Caisse des Dépôts et Consignations in the name of the owners, if known, or a person who can assert their rights.

§ 2 If the vessels, cargoes, wrecks, gear or objects which are the subject of a measure referred to in Article 140 are not taken back by their respective owners, the waterway manager or port authority may sell them. To this end, the waterway manager or port authority, without prejudice to the application of paragraph 4 of this article, will publish, prior to the sale, in two local newspapers, and at fortnightly intervals, two announcements of the salvage or removal operations carried out, specifying the marks and distinctive signs on the objects and inviting each entitled party to declare their rights and to pay the salvage or removal costs within 30 days of the date of publication of the last announcement. After the expiry of this period, the waterway manager or port authority sells the vessel, cargo, wreck, gear or objects. The sale proceeds are paid to the Caisse des Dépôts et Consignations in the name of the person asserting their rights, after deduction of the costs incurred by the waterway manager or port authority.

§ 3 The amounts deposited with the Caisse des Dépôts et Consignations in application of the preceding paragraphs revert to the waterway manager or port authority concerned one year from the date of payment if no one has exercised their rights within this period.

§ 4 If the salvaged or removed cargo is perishable or already damaged, or if greater net proceeds can be expected from the salvaged or removed cargo when sold by mutual agreement, at the discretion of the waterway manager or port authority concerned, all or part of the sale may take place by mutual agreement without compliance with the publicity and periodicity conditions referred to in paragraph 2.

[...]

Section 2 - Clearance of stranded, sunken and unmanaged vessels and other obstacles

Art. 140. *In the event of non-compliance with Article 17 or in cases judged by the waterway manager or the port authority, or if the owner, lessee or charterer, to whom the vessel was made available for their own use, and the operator of the vessel are unknown, the waterway manager or the port authority may, ex officio and at the risk of the owner, lessee or charterer, to whom the vessel was made available for their own use, and the operator and the person held liable for the conditions of the stranding, sinking or non-management of the vessel:*

1° refloat, remove, destroy or render harmless a stranded, sunken or unmanaged vessel, including everything on board;

2° remove, destroy or render harmless the ship's cargo;

3° remove the vessel or cargo already returned or removed from the waterway or port;

4° take any other measures necessary for the safety, freedom of navigation and preservation of the functionality of the waterway or port, or for the preservation of the waterway or port.

The exercise by the waterway manager or port authority of the powers conferred by this article may not be hindered by any seizure or measure of constraint. The decision of the waterway manager or port authority to make use of the powers referred to in paragraph 1 in respect of a vessel is announced in a nautical publication. This publication may be omitted in urgent cases, at the

discretion of the waterway manager or port authority. As soon as the decision of the waterway manager or port authority has been published, it is forbidden to remove the vessel, objects or goods to be brought in or taken out without the authorisation of the waterway manager or port authority. This authorisation cannot be refused for the ship's documents and the personal effects of the captain, crew and passengers. Assistance and rescue include the operations and measures referred to in paragraph 1.

Art. 141. *Before the measures or operations referred to in Article 140 are carried out, the waterway manager or port authority may require the owner, lessee or charterer, to whom the vessel was made available for their own use, or the operator of the vessel or any person whose liability may be called into question or, directly, the insurer of their respective liability to advance the sum which the waterway manager or port authority considers sufficient to cover the costs of these measures or operations. For the owner, the lessee, the charterer, to whom the vessel is made available for their own use, and the operator of the stranded, sunk or non-operated vessel and for those of the vessel whose liability may be called into question, as well as for their respective insurers, this sum may not exceed that to which the owner, the lessee, the charterer to whom the vessel is made available for their own use, and the operator may limit their liability under Article 18 or the Strasbourg Convention on Limitation of Liability in Inland Navigation 2012 (CLNI 2012), signed in Strasbourg on 27 September 2012. The advance may be replaced, without burdening the waterway manager or port authority, by the provision of a guarantee that the waterway manager or port authority deems acceptable and sufficient. The guarantee is acceptable if its amount is effectively available and freely transferable once it is created. The guarantee is sufficient if its amount corresponds to the sum mentioned in the first or second paragraph. The sum advanced or the guarantee given by one of the persons whose liability may be engaged or by their insurer is deemed to have been advanced or given by all such persons. The sum advanced and any guarantee may be used by the waterway manager or port authority to finance the measures and operations referred to in Article 140. The sum advanced and the guarantee are intended exclusively to satisfy claims by the waterway manager or port authority concerning the costs referred to in Article 18. They cannot be seized at the request of other creditors. A judgment which, after the advance of the sum or the granting of the guarantee, declares bankruptcy, decides on the approval request for the reorganisation plan or orders the transfer under judicial authority, of the person who advanced the sum or created the guarantee, has no effect on that sum or guarantee.*

APPENDIX V

Relevant extracts from the preparatory work for the Flemish Decree

x. Volgende elementen uit de Voorbereidende Werken bij de totstandkoming van het Scheepvaartdecreet zijn relevant in de **Memorie van toelichting**:

- **“Pagina 12 – 13:** *‘De MORA vroeg zich voorts af hoe de bepalingen van het ontwerp van decreet, waarbij de waterwegbeheerders en havenbedrijven die ambtshalve*

maatregelen inzake gestrande, gezonken en onbeheerde schepen, lading of andere voorwerpen hebben genomen, of die vermoeden schade te hebben geleden door de schuld van een schip, schepen en andere voorwerpen kunnen vasthouden, in beslag nemen, desnoods laten verkopen en zich bij voorrang laten betalen uit de opbrengst van de verkoop, in verhouding staan tot de federale scheepsvoorrangsrechten.

De scheepsvoorrangsrechten die worden toegekend door het federale Scheepvaartwetboek hebben uitsluitend betrekking op het geval van een uitvoerend beslag op een zee- of binnenschip (zie artikel 2.2.5.11 en 3.2.3.11 van het Belgisch Scheepvaartwetboek (BSW)). Zoals in de memorie van toelichting wordt uiteengezet, betreffen de voornoemde bepalingen in het ontwerp van decreet daarentegen een bijzondere publiekrechtelijke dwangmaatregel, die niet te verwarren is met de privaatrechtelijke regels inzake beslag. De bepalingen zijn derhalve op onderscheiden situaties van toepassing'.

- Pagina 28: *'Uit deze definities volgt dat allerhande categorieën van schepen, zoals pleziervaartuigen of passagiersschepen steeds ofwel binnenschepen, ofwel zeeschepen zijn. Geen enkel schip valt onder geen van beide categorieën. Deze indeling is onder meer van belang voor het bepalen van het toepasselijke regime van beperking van aansprakelijkheid voor wrakkenruiming.*

De definitie van 'binnenwateren'(4°) is geïnspireerd door de wet van 5 juni 1972 op de veiligheid van de vaartuigen. De afbakening ten aanzien van de zeewateren is de basislijn van waar de breedte van de territoriale zee wordt gemeten. De definitie van de binnenwateren is dus afgestemd op het verdrag van de Verenigde Naties van 10 december 1982 inzake het recht van de zee. De toevoeging dat de zeehavens en de kustwateren aan de landzijde van de basislijn in de binnenwateren worden inbegrepen, dient louter ter verduidelijking. De vermelding dat het de wateren betreft die voor de scheepvaart kunnen worden gebruikt, sluit de onbevaarbare waterlopen uit'.

- Pagina 28 -29: *Een 'onbeheerd schip'(16°) wordt gedefinieerd als een schip dat zich zonder te zijn verplaatst zestig dagen of meer op dezelfde plaats in de waterweg of in een haven bevindt, zonder door de waterwegbeheerder of het havenbedrijf gerechtigd te zijn om hetzij gedurende de gehele periode, hetzij ononderbroken vanaf een bepaald ogenblik binnen die periode op die plaats te mogen stilliggen. Een schip kan bijvoorbeeld tot stilliggen gerechtigd zijn bij vergunning of concessie, of omdat het aan de waterwegbeheerder zelf toebehoort of door hem wordt gebruikt. De bevoegdheid om, indien nodig, maatregelen te nemen ten aanzien van onbeheerde schepen komt overigens toe aan de waterwegbeheerder of het havenbedrijf zelf. Het bewijs dat een schip zich meer dan zestig dagen op dezelfde plaats bevindt, kan worden geleverd aan de hand van de vaststellingen van de met het toezicht op de naleving van het Scheepvaartdecreet belaste personen.*

Het begrip 'pleziervaartuig'(20°) wordt in het decreet gebruikt om aan te geven dat de erin vervatte voorschriften met betrekking tot veiligheid en bemanning van binnenschepen op pleziervaartuigen niet van toepassing zijn. Voor die aangelegenheden wordt immers de federale overheid bevoegd geacht. Dit is het geval voor alle pleziervaartuigen, ongeacht hun afmetingen, en inzonderheid ongeacht of zij aan de Europese regels inzake technische voorschriften voor binnenschepen onderworpen zijn. In plaats van te bepalen dat een pleziervaartuig een vaartuig is dat aan pleziervaart doet, wat weinig verduidelijking zou brengen, wordt ervoor geopteerd om in de definitie te bepalen dat het gaat om schepen die bestemd zijn voor sportieve of recreatieve doeleinden. Deze definitie werd geïnspireerd door de definitie van pleziervaartuig in de richtlijn (EU) 2016/1629 van het Europees Parlement en de Raad van 14 september 2016 tot vaststelling van de technische voorschriften voor binnenschepen, tot wijziging van Richtlijn 2009/100/EG en tot intrekking van Richtlijn 2006/87/EG.'

- Pagina 30 (artikel 3): *'Titel 2 en 3 van het decreet zijn in principe, tenzij anders bepaald in een onderdeel van het decreet, van toepassing op de binnenwateren. Het betreft alle binnenwateren in het Vlaamse Gewest, daarin begrepen de zeehavens en de kustwateren aan de landzijde van de basislijn van waar de breedte van de territoriale zee wordt gemeten. In principe vindt het decreet dus ook toepassing met betrekking tot zeeschepen die zich op de binnenwateren bevinden. Ook op dat beginsel worden in bepaalde onderdelen echter uitzonderingen gemaakt (in het bijzonder de onderdelen met de veiligheidsvoorschriften en bemanningsvoorschriften voor binnenschepen, inzake het vervoer van gevaarlijke goederen over de binnenwateren en inzake het laden en lossen van bulkschepen). Zoals blijkt uit de definitie in artikel 2, 4°, omvatten de binnenwateren ook de wateren in de havens. Zowel de handelshavens als de industriële havens en de jachthavens zijn gevat. Al deze wateren zijn immers bestemd of gebruikt voor de scheepvaart. Voor de duidelijkheid kan worden opgemerkt dat ook de kusthavens, overeenkomstig de in het decreet opgenomen definities, tot het ruimtelijke toepassingsgebied van titel 2 en 3 van het decreet behoren. De getijdenzone, bijvoorbeeld ter hoogte van de vaargeulen van de havens van Nieuwpoort en Blankenberge, valt onder het toepassingsgebied omdat deze laatste voor de scheepvaart worden gebruikt.'*

- Pagina 38 - 39:

'Afdeling 2. Ruiming van wrakken, gezonken en onbeheerde schepen en andere obstakels

16 tot en met 19

In deze bepalingen worden de principes van hoofdstuk V van de wet van 11 april 1989 houdende goedkeuring en uitvoering van diverse internationale akten inzake de zeevaart (de zogenaamde Wrakkenwet) overgenomen. Ter wille van de duidelijkheid is op diverse plaatsen uitdrukkelijk toegevoegd dat de regeling niet enkel geldt voor gezonken of gestrande schepen, maar ook voor onbeheerde schepen.

De bepalingen inzake maatregelen van ambtswege, die in de huidige Wrakkenwet zijn opgenomen, worden niet hier opgenomen, maar in afdeling 2 van hoofdstuk 4 van titel 6.

De bepalingen inzake het vasthouden en in beslag nemen van het schip, de wrakstukken, gezonken tuigen of voorwerpen evenals de lading, de verkoop ervan en het voorrangrecht van de overheid op de verkoopprijs worden overgenomen in titel 4.

Deze bepalingen zijn - net als in het huidige recht - mede van toepassing in de havengebieden beheerd door de havenbedrijven, bedoeld in het decreet van 2 maart 1999 houdende het beleid en het beheer van de zeehavens. Voor zover de wrakkenruiming de integriteit en de bruikbaarheid van de scheepvaartwegen beoogt te herstellen, betreft het een gewestmaterie. Het gaat daarbij niet uitsluitend om de binnenwateren, inclusief de kustwateren aan de landzijde van de basislijn van waar de breedte van de territoriale zee wordt gemeten, maar evenzeer om de territoriale zee en de exclusieve economische zone wat betreft de schepen, wrakstukken, gezonken tuigen of voorwerpen die een aantasting van de bereikbaarheid van de Vlaamse havens en waterwegen vormen. Bij het aannemen van het federale Scheepvaartwetboek erkende ook de federale wetgever dat de wrakkenverwijdering op zee, in de mate dat zij noodzakelijk is voor de uitoefening van de gewestbevoegdheden inzake waterwegen en havens, op grond van artikel 6, §1, X, tweede lid, BWHI wordt geacht tot de gewestelijke bevoegdheden te behoren.

Binnen de perken van de gewestelijke materies valt de gehele (publiek- en privaatrechtelijke) regeling van de rechten en plichten van de vaarweg- en havenbesturen en de vaarweg- en havengebruikers onder de bevoegdheid van de gewestelijke wetgevers. Het vaststellen van algemene regels in verband met de aansprakelijkheid behoort in beginsel tot de residuaire bevoegdheid van de federale overheid. De gewesten zijn evenwel bevoegd om specifieke aansprakelijkheidsregels vast te stellen, voor zover die regels beschouwd kunnen worden als eigen aan de aangelegenheid waarvoor zij bevoegd zijn en in het kader waarvan zij die regels vaststellen. Dit geldt in het bijzonder ook voor het vaststellen van aansprakelijkheidsregels en contractuele regels die - al dan niet in afwijking van het gemeen recht - verband houden met de gewestbevoegdheden inzake de waterwegen en hun aanhorigheden, de havens en hun aanhorigheden, de dijken en de

loodsdiensten en de bebakeningsdiensten van en naar de havens, evenals de reddings- en sleepdiensten op zee en de minimale technische veiligheidsnormen inzake het bouwen en onderhouden van waterwegen en hun aanhorigheden (artikel 6, §1, X, eerste lid, 2°, 3°, 5°, 9° en 12°, BWHI). In het advies 51.715/1/V van 2 augustus 2012 stelde de Raad van State in die zin bijvoorbeeld dat een beperking van de aansprakelijkheid inherent is aan een regeling inzake verkeersbegeleiding of het optreden bij scheepvaartincidenten.

Dat bij decreet bijzondere aansprakelijkheidsregelingen kunnen worden ingevoerd, wordt vandaag niet langer betwist.

De regeling doet geen afbreuk aan volkenrechtelijke rechten en verplichtingen die de ruiming van obstakels in de vaarweg rechtstreeks of onrechtstreeks betreffen.

Artikel 17 bevat een verwijderingsplicht met betrekking tot schepen die aan de grond gelopen, gezonken of onbeheerd zijn, met inbegrip van alles wat zich aan boord bevindt of heeft bevonden, wrakstukken, gezonken tuigen en alles wat vanop een schip in het water is terechtgekomen. Het kan trouwens ook vloeistoffen betreffen.

De verwijderingsplicht rust op de eigenaars van de zaken die in het water zijn terechtgekomen - al dan niet samen met de eigenaar, huurder, bevrachter of exploitant van een schip. In sommige gevallen komen goederen van zeer diverse eigenaars in het water terecht. Men denke maar aan de situatie waarin een aantal containers van een containerschip zouden vallen. In dat geval is de toepassing van de alhier voorgestelde bepalingen niet evident, omdat de respectievelijke eigenaars van de goederen niet spoedig genoeg kunnen worden gevonden of zich niet tijdig kunnen organiseren om een bergingsoperatie op te zetten. Allicht zal er dan vaak aanleiding zijn tot ambtshalve maatregelen op basis van artikel 140, maar die beoordeling kan slechts geval per geval worden gemaakt.

De waterwegbeheerder of het havenbedrijf kan de plaats aanwijzen waarheen de betrokken zaken moeten worden gebracht. Hij kan eveneens opleggen dat de genoemde zaken moeten worden verwijderd. Veelal zal de waterwegbeheerder of het havenbedrijf op de hoogte zijn van de aanwezigheid van de zaken ingevolge een of meer meldingen, verricht op basis van artikel 15, 27, 46 of 50. Hoe de waterwegbeheerder of het havenbedrijf kennis van de feiten krijgt, heeft echter in principe geen invloed op de gelding en tenuitvoerlegging van de hier voorgestelde bepalingen.

Artikel 18 bepaalt dat de waterwegbeheerder of het havenbedrijf zijn kosten kan verhalen op degene die aansprakelijk is voor het incident of, bij gebreke van zulke aansprakelijke, op de eigenaars van de betrokken zaken of de eigenaar, huurder,

bevrachter of exploitant van het betrokken schip, en tevens rechtstreeks op hun verzekeraars. Indien de schuldenaars niet gekend zijn, zal de waterwegbeheerder of het havenbedrijf zijn kosten niet op hen kunnen verhalen. Dan bestaat echter nog steeds de mogelijkheid om de zaken te verkopen en zich te betalen uit de prijs, op basis van artikel 88.

Wanneer het Verdrag van Straatsburg van 2012 inzake de beperking van aansprakelijkheid in de binnenvaart (CLNI 2012) van toepassing is (d.i. hoofdzakelijk voor bedrijfsmatig gebruikte binnenschepen), zal de eigenaar, huurder, bevrachter of exploitant van het schip zijn aansprakelijkheid kunnen beperken op basis van de directe werking van het verdrag. Het gaat om een regime van algemene aansprakelijkheidsbeperking, waarbij de vordering van de waterwegbeheerder of het havenbedrijf in samenloop kan komen met andere vorderingen die voortkomen uit dezelfde gebeurtenis. De nadere regelingen van het Belgisch Scheepvaartwetboek, die onder meer de procedurele aspecten betreffen, zullen erop van toepassing zijn.

Artikel 19 regelt de aansprakelijkheidsbeperking in hoofde van de eigenaars, huurders, bevrachters of exploitanten van schepen, voor zover het Verdrag van Straatsburg van 2012 inzake de beperking van aansprakelijkheid in de binnenvaart (CLNI 2012) niet van toepassing is. Voor de betrokken schepen geldt een bijzondere beperkingsregeling. Dat is ook in het huidige recht het geval voor de zeeschepen.

De "vorderingen met betrekking tot het vlotbrengen, verwijderen, vernietigen of het onschadelijk maken van een gezonken, vergaan, gestrand of onbeheerd schip, daarbij inbegrepen alles wat zich aan boord bevindt of heeft bevonden" en de "vorderingen met betrekking tot het verwijderen, vernietigen of het onschadelijk maken van de lading van het schip" werden door de Belgische wetgever in 1989 immers uitgesloten van de toepassing van de aansprakelijkheidsbeperkingsregeling van het verdrag inzake beperking van aansprakelijkheid voor maritieme vorderingen, opgemaakt te Londen op 19 november 1976 (LLMC-Verdrag). Toch werd destijds geoordeeld dat een onbeperkte aansprakelijkheid voor dergelijke vorderingen de commerciële aantrekkelijkheid van de Belgische zeehavens zou kunnen schaden. Die overweging lijkt ook heden ten dage haar relevantie te behouden. De bijzondere beperkingsregeling wordt in dit decreet niet alleen toepasselijk gemaakt op zeeschepen, maar op alle gevallen waarop het CLNI 2012 niet van toepassing is, teneinde ongewenste lacunes en rechtsonzekerheid te vermijden¹.

- **Pagina 80:**

Artikel 140 en 141

Deze artikelen hernemen, met kleine aanpassingen, de bepalingen van artikel 14 en 15 van de wet van 11 april 1989 houdende goedkeuring en uitvoering van diverse internationale akten inzake de zeevaart (de zogenaamde Wrakkenwet). Zij zijn mede van toepassing op de havenbedrijven zoals bedoeld in het decreet van 2 maart 1999 houdende het beleid en het beheer van de zeehavens. Overeenkomstig artikel 16 zijn zij van overeenkomstige toepassing op de territoriale zee en de exclusieve economische zone wat betreft de schepen, wrakstukken, gezonken tuigen of voorwerpen die een aantasting van de bereikbaarheid van de Vlaamse havens en waterwegen vormen. Omdat deze bepalingen bestuurlijke maatregelen van ambtswege betreffen, is het wenselijk dat de modaliteiten van deze maatregelen bij decreet worden omschreven.

Ter wille van de duidelijkheid is op diverse plaatsen uitdrukkelijk toegevoegd dat de regeling niet enkel geldt voor gezonken of gestrande schepen, maar eveneens voor onbeheerde schepen.

De bevoegdheid zou, naargelang de omstandigheden, tevens kunnen worden aangewend om bijvoorbeeld woonboten die zonder recht of titel op een hinderlijke plaats aangemeerd liggen, te verwijderen - ofschoon een dergelijke maatregel allicht ook op artikel 138 zou kunnen worden gesteund.

Het besluit van de waterwegbeheerder of het havenbedrijf, om van de in artikel 140 vermelde ambtshalve maatregelen gebruik te maken, dient, behalve in spoedeisende gevallen, te worden bekendgemaakt in een nautische publicatie."

APPENDIX VI

Relevant extracts of the Walloon Decree of 19 March 2009 on the conservation of regional public roads and waterways

Chapter VI ter

Ex officio measures applicable to the regional public domain of waterways

Section 1 *Ex officio replacement*

Art. 9b

§1. The managing authority gives formal notice to the owner, and failing that, either the operator or the occupant of the boat or floating installation, to leave the premises when either:

- 1° their docking, in violation of the laws and regulations or an injunction from the managing authority, compromises the conservation, normal use or safety of users of the waterways;*
- 2° the holder of an authorisation or temporary concession agreement fails to comply with the conditions laid down therein and the agreement or authorisation is terminated.*

When applying 1°, the managing authority indicates a new docking area to the owner, operator or occupant.

§2. The managing authority sets the deadline within which the boat or floating installation must be moved, which cannot be less than 24 hours. On expiry of the deadline, the managing authority proceeds with the removal of the boat or floating installation.

If the vessel or floating installation is used as a domicile or residence, the formal notice referred to in paragraph 1 sets a time limit for compliance of not less than seven days from the date of notification. The automatic removal of the boat or floating installation is carried out in such a way as to allow access to the owner, operator or occupant.

Except in emergencies, formal notice can only be given after the owner, operator or occupier has had the opportunity to present their written or oral observations. This formal notice informs them that they may be assisted by counsel.

In the event of imminent danger, boats or floating installations may be removed ex officio without prior notice. The managing authority then notifies the owner of the new docking location.

Art. 9c

The owner is responsible for all costs associated with the ex officio removal, mooring and safekeeping of the displaced boat or floating installation.

Manoeuvres are carried out at the owner's own risk during ex officio moving and mooring.

The owner remains responsible for the safekeeping of the boat or floating installation.

Section 2

Abandoned boats and wrecks

Subsection 1 Abandoned boats or floating installations

Art. 9d

This sub-section applies to any boat or floating installation in a state of buoyancy, abandoned on the regional public domain and presenting a danger or prolonged obstruction to navigation.

Art. 9e

The managing authority may requisition goods and persons to put an end to the danger or prolonged obstruction.

The Government determines the terms and conditions for requisitioning goods and people.

In the event of requisition as referred to in paragraph 1, the courts and tribunals determine the compensation.

Art. 9f

§1. The managing authority may intervene at the owner's expense and risk when, after formal notice, within the deadline stipulated in Article 9b §2, to put an end to the danger or prolonged obstruction, the owner or their representative refuses or fails to take the necessary measures.

In the event of an emergency, the managing authority can immediately take the necessary intervention and safeguarding measures, including guarding and manoeuvring.

§2 The abandonment of the vessel or floating installation by its owner also results from either:

- 1° failure to obtain an occupancy permit;*
- 2° no owner, driver, occupant or guardian on board;*
- 3° the non-existence of guarding or manoeuvring measures.*

The agents referred to in Article 6 will note the abandonment of the boat or floating installation.

The official report is sent by registered mail within fifteen days of being prepared. The official report serves as formal notice to the owner of the boat or floating installation to remedy the state of abandonment within two months of its notification.

If no owner, operator, occupier or guardian comes forward or takes the necessary manoeuvring or maintenance measures to put an end to the state of abandonment within six months of notification of the report to the owner, the managing authority may declare the boat or floating installation abandoned and acquire ownership of it.

The transfer of ownership is recorded in the mortgage registry.

The managing authority may, within two months of acquiring the property, either:

- 1° sell the boat or floating installation, subject to the rights of preferential and hypothecary creditors;*
- 2° destroy it if its market value does not justify putting it up for sale.*

Subsection 2

Wrecks

Art. 9g

This sub-section applies to wrecks of boats or floating installations located on the regional public domain.

The wrecked state of the vessel or floating installation results from its non-floatability, the absence of an occupant and the non-existence of safekeeping and manoeuvring measures concerning it.

Art. 9h

If the owner of the wreck is unknown, or if, after a formal warning, they refuse or neglect to carry out salvage, recovery, removal or destruction operations, either directly or through their representative, or to eliminate the dangers posed by the wreck, the managing authority may intervene ex officio, or proceed with the sale or scrapping of the wreck at the owner's expense and risk.

The salvors' claim and that arising from the salvage work are secured by a lien on the value of the wreck, ranking pari passu with the lien on the costs of preserving the item.

Section 3

Seizures and enforcement of long-term docking permits

Art. 9i

In the event of non-payment of fees as set out in the temporary concession agreement, the boat or floating installation may be subject to seizure and execution.

The seizure of movable property is carried out according to the forms and procedure prescribed by Articles 1545 to 1559 of the French Judicial Code".

APPENDIX VII

Relevant extracts of the Walloon Government Decree of 15 May 2014 regulating navigation on waterways in the Walloon Region.

"Art. 13. Obligations of all operators, persons in authority and users

§1. Any operator, person in authority or user who causes damage to the domain must notify the manager immediately.

§2 Any operator, person in authority or user who loses an object on the domain that could represent an obstacle to navigation or the domain, informs the manager without delay and indicates the place where the object was lost as accurately as possible. If possible, they also indicate the spot with a marker.

§3. Any operator or owner of a stranded or sunken boat:

- 1° informs the manager immediately;*
- 2° places the necessary and appropriate markers;*
- 3° undertakes to refloat the boat, including cargo, without delay;*
- 4° removes the wreck from the domain.*

In the event of failure to comply within a reasonable time, the manager will set a deadline beyond which ex officio measures will be taken at the expense and risk of the boat operator or owner.

When the operator or owner of a sunken boat is unknown, the boat, its debris and cargo are put up for sale by the manager.

The proceeds of the sale, after deduction of the costs incurred by the manager for the removal, are paid to the Caisse des dépôts et consignations for the beneficiaries.

§4 Any operator or person in authority must inform the manager without delay if they:

- 1° observe a situation likely to represent an obstacle or a danger for navigation or the domain, such as the presence of a foreign object, damaged or defective signalling, a fire, a collision or environmental damage;
- 2° hear a distress or caution signal;
- 3° are forced to dock their boat in a prohibited area.

They also inform the manager, as precisely as possible, of the location where one of the situations described in the previous paragraph has occurred.

§5 Any operator, person in authority or user who considers that they have suffered damage for which the manager could be held liable must inform the manager immediately to enable a joint report to be drawn up as soon as possible.

If the operator nevertheless decides to continue, they must inform the operator no later than the first crossing they encounter. To this end, they file their complaint in the register made available as provided for in Article 8, §3, paragraph 9 of the present Decree."

APPENDIX VIII

Ancillary legislation and regulations

I. INTERNATIONAL

- ❖ European Code for Inland Waterways (CEVNI)⁶⁵ and, in particular, Article 1.17.
- ❖ 1976 Convention on Limitation of Liability for Maritime Claims⁶⁶
- ❖ 2012 Strasbourg Convention on Limitation of Liability in Inland Navigation⁶⁷
- ❖ London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter⁶⁸
- ❖ Strasbourg Convention on the Collection, Deposit and Reception of Waste occurring in the Course of Navigation Inland and on the Rhine⁶⁹
- ❖ International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL)⁷⁰

⁶⁵ [Untitled-2 \(unece.org\)](#)

⁶⁶ [RS 0.747.331.53 \(admin.ch/gov/en/start.html\)](#)

⁶⁷ [clni_2012_fr.pdf \(ccr-zkr.org\)](#)

⁶⁸ [RS 0.814.287 \(admin.ch/gov/en/start.html\)](#)

⁶⁹ [cdni-2021fr.pdf \(itb-info.be\)](#)

⁷⁰ [MARPOL version 2.1 \(ispm.ac.ma\)](#)

II. EUROPEAN

- ❖ Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC⁷¹
- ❖ Directive (EU) 2018/849 of 30 May 2018 amending Directive 2000/53/EC on end-of-life vehicles, Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and Directive 2012/19/EU on waste electrical and electronic equipment⁷², which covers wheeled vehicles.
- ❖ Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles - Commission Statements⁷³
- ❖ Directive (EU) 2018/850 of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste⁷⁴
- ❖ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, as last amended by Directive (EU) 2018/850 of the European Parliament and of the Council of 30 May 2018
- ❖ Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste⁷⁵

One of the main thrusts of this directive concerns by-products and the end-of-waste status.

The end-of-waste status implies that waste "ceases to be waste" and becomes a waste-resource or secondary material. By-products are defined as "a substance or object resulting from a production process whose primary purpose is not to produce said substance or object", subject to certain conditions.

As far as extended producer responsibility is concerned, Member States must ensure that systems are in place to monitor producers' compliance with their obligations.

- ❖ Directive (EU) 2018/852 of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste⁷⁶

⁷¹ [Directive \(EU\) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC](#)

⁷² [EUR-Lex - 32018L0849 - EN - EUR-Lex \(europa.eu\)](#)

⁷³ [EUR-Lex - 32000L0053 - EN - EUR-Lex \(europa.eu\)](#)

⁷⁴ [EUR-Lex - 32018L0850 - EN - EUR-Lex \(europa.eu\)](#)

⁷⁵ [Directive \(EU\) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste \(europa.eu\)](#)

⁷⁶ [Directive \(EU\) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste \(europa.eu\)](#)

- ❖ Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste, as last amended by Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018
- ❖ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures;
- ❖ Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste, last amended by Directive (EU) 2018/852 of 30 May 2018, in particular its Article 1.

II. FEDERAL

- ❖ Law of 5 July 2018 on recreational navigation⁷⁷
- ❖ Royal Decree of 28 June 2019 on recreational boating⁷⁸
- ❖ Royal Decree of 15 July 2020 on environmentally-friendly navigation⁷⁹, and in particular Articles 2.3.1 to 2.3.9, which implement EU Regulation 1257/2013 on ship recycling
- ❖
- ❖ General regulations for the Kingdom's navigable waterways - Royal Decree of 15 October 1935⁸⁰
- ❖ Law of 5 May 1936 on river chartering⁸¹
- ❖ Special regulations for certain waterways - Royal Decree of 7 September 1950, supplemented and amended by the Royal Decrees referred to in each special regulation⁸²
- ❖ Law of 5 June 1972 on the safety of shipping vessels⁸³
- ❖ Royal Decree of 18 August 1975 stipulating police and navigation regulations for the Brussels-Rupel canal and the Port of Brussels.
- ❖ Police and navigation regulations for the Belgian territorial sea, ports and beaches of the Belgian coast - Royal Decree of 4 August 1981⁸⁴
- ❖ Navigation regulations for the Lower Maritime Scheldt - Royal Decree of 23 September 1992⁸⁵
- ❖ Police regulations for the Lower Maritime Scheldt - Royal Decree of 23 September 1992⁸⁶
- ❖ Navigation regulations for the Ghent-Terneuzen Canal - Royal Decree of 23 September 1992⁸⁷

⁷⁷ [139057.pdf \(raadvst-consetat.be\)](#); nevertheless offers a definition of "recreational craft", provides for a registration system and specifies that recreational craft must be in "safe condition".

⁷⁸ [142179.pdf \(raadvst-consetat.be\)](#)

⁷⁹ [LAW - WET \(fgov.be/en\)](#)

⁸⁰ [LAW - WET \(fgov.be/en\)](#)

⁸¹ [\(Microsoft Word - Loi du 5 mai 1936 sur l'affranchissement fluvial\) \(itb-info.be\)](#); consolidated: [geconsolideerde-versie-wet-5-mei-1936-en.pdf \(itb-info.be\)](#)

⁸² [Microsoft Word - FR REGL BIJZONDERE 06-06-1988 \(itb-info.be\)](#)

⁸³ [bel27084.doc \(fao.org\)](#) and modified by [bel201604.pdf \(fao.org\)](#)

⁸⁴ [LAW - WET \(fgov.be/en\)](#)

⁸⁵ [LAW - WET \(fgov.be/en\)](#)

⁸⁶ [LAW - WET \(fgov.be/en\)](#)

⁸⁷ [LAW - WET \(fgov.be/en\)](#)

- ❖ Royal Decree of 2 June 1993 on the certificate of competency required for navigation on the Kingdom's navigable waterways with regard to certain categories of recreational craft
- ❖ Royal Decree of 4 June 1999: 1° on the registration of recreational craft; 2° amending the Royal Decree of 4 April 1996 on the registration of ships; 3° amending the Royal Decree of 4 August 1981 on police and navigation regulations for the Belgian territorial sea, ports and beaches (cited as: Decree on the registration of recreational craft)⁸⁸
- ❖ Regulations for navigation on the shared Meuse Mitoyenne - Law of 15 March 2002⁸⁹
- ❖ Royal Decree of 23 February 2005 laying down essential safety requirements and essential exhaust and noise emission requirements for recreational craft⁹⁰
- ❖ General police regulations for navigation on inland waterways - Royal Decree of 24 September 2006⁹¹
- ❖ Royal Decree of 9 March 2007 on crew requirements on the Kingdom's waterways⁹²
- ❖ Royal Decree of 19 March 2009 on technical requirements for inland navigation vessels⁹³
- ❖ Royal Decree of 28 June 2009 establishing a federal consultation platform for recreational boating⁹⁴
- ❖ Royal Decree of 30 May 2011 on the international certificate for recreational craft operators and amending the Royal Decree of 2 June 1993 on the certificate of competency required for navigation on the Kingdom's navigable waterways with regard to certain categories of recreational craft⁹⁵
- ❖ Royal Decree of 4 December 2012 designating the agents responsible for the execution and control of legal and regulatory provisions concerning navigation and amending the Royal Decree of 4 June 2003 establishing the model for the legitimation card justifying the status of agents responsible for the control of navigation⁹⁶
- ❖ Royal Decree of 22 June 2016 on wave sports⁹⁷
- ❖ Royal Decree of 12 March 2017 laying down market surveillance requirements for building equipment for recreational activities⁹⁸

⁸⁸ [inschrijving en registratie pleziervaartuigen.pdf \(kustwacht.be\)](#)

⁸⁹ [Microsoft Word - FR_REGL_MAAS_06-01-1993_\(itb-info.be\)](#)

[LAW - WET \(fgov.be/en\)](#)

[LAW - WET \(fgov.be/en\)](#)

⁹⁰ [Legislation/AIR/Essential safety and exhaust emission requirements \(recreational craft\) \(wallonie.be\)](#)

⁹¹ [LOI - WET \(fgov.be\) or NL_REGL_APSB \(17-12-2018\) \(visuris.be\)](#)

⁹² [\(Microsoft Word - Arr\352t\351 royal du 9 mars 2007 portant les prescriptions d\) \(itb-info.be\)](#)

⁹³ [Staatsblad Moniteur \(fgov.be\)](#)

⁹⁴ [002a FOP KB 28-6-2009 oprichting Fed Platf.pdf \(wsklum.be\)](#)

⁹⁵ [Belgian Official Gazette - Belgisch Staatsblad \(fgov.be\)](#)

⁹⁶ [Royal Decree of 4/12/2012 designating the agents responsible for the execution and control of legal and regulatory provisions concerning navigation and amending the Royal Decree of 4 June 2003 establishing the model for the legitimation card justifying the status of agents responsible for the control of navigation \(openjustice.be\)](#)

⁹⁷ [Arrete Royal du 22/06/2016 on wave sports \(openjustice.be\)](#)

⁹⁸ [Royal Decree of 12/032017 laying down market surveillance requirements for building equipment for recreational activities \(openjustice.be\)](#)

- ❖ Royal Decree of 7 October 2018 concerning the composition and functioning of the Commission for Recreational Boating⁹⁹
- ❖ Royal Decree of 21 September 2020 setting navigation fees¹⁰⁰
- ❖ Ministerial Decree of 20 September 2016 amending the Ministerial Decree of 13 March 2000 on flag letters¹⁰¹
- ❖ Ministerial Decree of 12 November 2020 on mandatory and recommended equipment for recreational boating¹⁰²
- ❖ Ministerial Decree of 20 May 2021 on the certificates of competency for the operation of a recreational craft or for professional purposes which give rise to an ICC¹⁰³
- ❖ Federal action plan on marine waste¹⁰⁴
- ❖ Federal action plan for a circular economy¹⁰⁵

III. FLEMISH REGION

- ❖ Decreet van 2 maart 1999, houdende het beleid en het beheer van de zeehavens
- ❖ Decreet 23 december 2011 betreffende het duurzaam beheer van materiaalkringlopen en afvalstoffen
- ❖ Besluit van 17 februari 2012 van de Vlaamse regering tot vaststelling van het Vlaams reglement betreffende het duurzaam beheer van materiaalkringlopen en afvalstoffen
- ❖ Flemish Government Decree of July 2, 2021 amending the Flemish Government Decree of December 12, 2008 implementing Title XVI of the Decree of April 5, 1995 containing general provisions on environmental policy

IV. WALLOON REGION

- ❖ Walloon Government Decree of 2 June 2022 amending the Walloon Government Decree of 15 May 2014 regulating navigation on waterways in the Walloon Region and repealing for the

⁹⁹ [Royal Decree of 7/10/2018 concerning the composition and functioning of the Commission for Recreational Boating](#)

¹⁰⁰ [LAW - WET \(fgov.be/en\)](#)

¹⁰¹ [Ministerial Decree of 20/09/2016 amending the Ministerial Decree of 13 March 2000 on flag letters\(openjustice.be\)](#)

¹⁰² [Belgian Official Gazette - Belgisch Staatsblad \(fgov.be\)](#)

¹⁰³ [mb-beroeps--of-pleziervaartvaarbevoegdheidsbewijzen-icc.pdf \(itb-info.be\)](#)

¹⁰⁴ [plan_daction_federal_sur_les_dechets_marins_2022-2027_0.pdf \(belgium.be/en\)](#)

¹⁰⁵ [Microsoft Word - PAF FACE sept 2022 FR M 26 31ok.docx \(fgov.be\)](#), in particular p. 18.

Walloon Region certain provisions of the Royal Decree of 15 October 1935 regulating the Kingdom's navigable waterways in general¹⁰⁶

- ❖ Ministerial Decree of 3 October 2022 amending the Ministerial Decree of 4 April 2019 partially implementing the circular economy¹⁰⁷
- ❖ Ministerial Decree partially implementing, with regard to the circular economy, the Walloon Government Decree of 23 February 2017 implementing chapters 1e, 3 and 4 of the Decree of 21 December 2016 granting aid, by means of an integrated portfolio of aid in the Walloon Region, to project leaders and small and medium-sized enterprises to remunerate services promoting entrepreneurship or growth, and constituting a database of authentic sources linked to this integrated portfolio¹⁰⁸
- ❖ Ministerial Decree of 5 June 2019 establishing the special regulations applicable to waterways and major structures as defined in Annexes I and II of the Walloon Government Decree of 15 May 2014 regulating navigation on waterways in the Walloon Region¹⁰⁹
- ❖ In the Walloon Region, the European take-back obligation is determined by the Walloon Government Decree of 23 September 2010 establishing a take-back obligation for certain waste¹¹⁰
- ❖ The Walloon Waste-Resources Plan, adopted on 22 March 2018 by the Walloon Government and on 23 May 2018 by Parliament, aims in particular to transpose Directive (EU) 2018/851 of 30 May 2018 by introducing concrete actions to develop the circular economy¹¹¹

V. **BRUSSELS-CAPITAL REGION**

- ❖ Ordinance of 3 December 1992 on the operation and development of the canal, port, outer harbour and their appurtenances in the Brussels-Capital Region
- ❖ Decree of the Government of the Brussels Capital Region of 13 July 2006 amending the Decree of the Government of the Brussels Capital Region of 30 April 2003 on port reception facilities for ship-generated waste and cargo residues
- ❖ Decree of the Government of the Brussels Capital Region of 4 April 2019 on recruitment aid for economic growth or circular economy projects

¹⁰⁶ [68209 - WALLEX \(wallonie.be/en\)](#)

¹⁰⁷ [74366 - WALLEX \(wallonie.be/en\)](#)

¹⁰⁸ [Ministerial Decree of 4/4/2019 partially implementing, with regard to the circular economy, the Walloon Government Decree of 23 February 2017 implementing chapters 1e, 3 and 4 of the Decree of 21 December 2016 granting aid, by means of an integrated portfolio of aid in the Walloon Region, to project leaders and small and medium-sized enterprises to remunerate services promoting entrepreneurship or growth, and constituting a database of authentic sources linked to this integrated portfolio \(openjustice.be\)](#)

¹⁰⁹ [Ministerial Decree establishing the special regulations applicable to waterways and major structures as defined in Annexes I and II of the Walloon Government Decree of 15 May 2014 regulating navigation on waterways in the Walloon Region.](#)

¹¹⁰ [19521 - WALLEX \(wallonie.be/en\)](#)

¹¹¹ [Walloon Waste Plan \(wallonie.be/en\)](#)

- ❖ Decree of the Executive of the Brussels-Capital Region of 19 September 1991 regulating the disposal of hazardous waste, amended by the Decrees of the Government of the Brussels-Capital Region of 30 January 1997, 16 September 1999 and 6 September 2001
- ❖ Decree of the Government of the Brussels-Capital Region of 25 April 2002 establishing the list of waste and hazardous waste
- ❖ Ministerial Decree of 3 May 2019 on thresholds and values for circular economy projects
- ❖ The Regional Circular Economy Programme (PREC), which sets three main objectives and around 100 measures divided into four strategic parts: cross-cutting measures, sector-specific measures, territorial measures and governance measures.



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