

Webinar 01/06/2017

## Aspects of Belgian Law that are Relevant in Horizon 2020 Grant Agreements and DESCA Consortium Agreements

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NCP Academy – Partner



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NCP Academy helps NCPs...

- Through **integrated high quality training courses** of Horizon 2020, including on cross-cutting aspects  
Both on-site and **webinars**
- By bringing together **NCP Coordinators and NCPs for Legal & Financial aspects** of H2020 to share knowledge and best practices
- Therefore contributing to further professionalisation of NCP services across Europe and a **simplified access to H2020 calls**

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## How we contribute to this webinar



Joint expertise in H2020 rules for participation and Belgian law



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## Our organisation



Impulse.brussels = help entrepreneurs to do business

Funded by the Ministry of Economy of Brussels-Capital Region  
 Key player on guidance (2 other poles: infrastructure & finance)

**Free-of-charge services to Brussels-based organisations**

- Inform, raise awareness of (future) entrepreneurs in Brussels (BE)
- Provide collective and individual guidance  
 Including BE legal/fiscal aspects, EU R&I support to (future) projects



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## What will we achieve today



- Understand the **context**
- Learn about **basic elements and key resources of Belgian law**
- In the light of Belgian law, examine aspects of
  - **Contractual liability**
  - **Intellectual property rights**
  - The **validity of some documents**
  - **Handling difficulties** during project execution



## The context



## Why bother n°1



- H2020 **Grant Agreements** are governed by the applicable EU law, supplemented if necessary by the law of Belgium
- See Art 57.1 of the model Grant Agreement

→ **applicable to all Beneficiaries and Linked Third Parties**  
(Parties)

1 possible exception: international organisations



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## Why bother n°2



- **Consortium Agreement** mentions Belgian law as example
- Parties are free to choose the law of another Member State, and to use another model than DESCA  
→ **freely negotiable**
- But IF Parties use DESCA without changes, reference is made to Belgian law



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## Why bother n°3



- In Belgium, **“ignorance of the law is no excuse”**
- Even for people / legal entities not living / established in Belgium
- Everyone is supposed to know and understand all references made to Belgian law



## Basic elements and key resources



## Categories of legal rules



- Local districts, provinces, communities, regions
- Belgian federal level
- International and supranational organisations (UN, EU, NATO, etc.)

→ **hierarchy of norms**



## Sources of law



- **Mandatory sources of law**
  1. Legislation ([Moniteur Belge / Belgisch Staatsblad](#))
  2. Customary law (good faith, equity and reasonable conduct)
  3. General principles of law
- **‘Persuasive’ sources of law**
  1. [Case-law](#)
  2. Academic writings



## Key resources



Consult relevant subpages to find more information on:

- The law of the [European Union](#),
- The law of its [Belgium](#), and
- [International law](#)

## Suggestions of law seminars



Want to know more?

Renown enterprises organise interesting law seminars on Belgian law in Brussels. Non-limitative list:

- [Vanham](#)
- [VBO-FEB](#)
- [Wolters Kluwer](#)

# Contractual liability

## Limitation of contractual liability

- Freely negotiable:
  - Exclusion of liability for “wilful intent”? NO
  - Exclusion of liability for gross negligence? YES
  - Exclusion of liability for an employee? YES



## Excluding liability for “gross negligence”?



- Spell out clearly in the contract what will be considered as “gross negligence”
- Not allowed to completely undermine the essence of the underlying essential contractual obligation



## Intellectual property rights



## Jointly owned results



- The Annotated Model Grant Agreement:
  - Joint ownership agreement
  - Non-exclusive licences to third parties:
    1. Allowed by the joint ownership agreement
    2. 45 days advance notice
    3. Fair and reasonable compensation
- Conform Belgian law
- Consortium agreement conform to the joint ownership agreement



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## Copyright protection of software



- The [Software Act of 30 June 1994](#) (the Council Directive of 14 May 1991 on the Legal Protection of computer programs (91/250/EEC))
- Protection of original computer programs (including preparatory material)
- Ideas and principles are excluded
- No need to apply for a copyright: protection arises automatically upon the creation



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## Protection of design and models



- A Benelux design right
- The [Benelux Office for Intellectual Property \(BOIP\)](#)
- Source: [Benelux Convention of 25 February 2005 on intellectual property](#)



## Access rights



- No restrictions in Belgian Law
- Advise: reasonable and fair compensation in the agreement



## Fair and reasonable compensation



- No formal definition in Belgian law
- Article 25.3 of the Grant Agreement:

*“Fair and reasonable conditions” means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the results or background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.*



## Research contracts and IP rights



- Belgian contract law is governed by the Civil Code
- No specific rules for research contracts
- The ownership and transfer of IPR is always regulated in the Grant Agreement as well as in the Consortium Agreement



## IP rights in Belgium



[The Belgian Office for Intellectual Property \(OPRI\)](#) is a public service of the federal government. It handles all questions on intellectual property in Belgium.



## The validity of some documents



## Legal capacity to sign documents



- The power to enter into binding agreements
  - The law
  - The articles of incorporation of a company
  - A power of attorney
  
- H2020 Participant Portal
  - Legal signatory for a Project “PLSIGN” is authorised to e-sign legal commitments on behalf of the organisation



## Letter of intent



- A preliminary agreement
- Basic terms of a future final agreement
- Not binding, except: exclusivity, confidentiality, applicable law...
- Agreement on the price & the objet of the sale? Binding sales agreement



## Non-disclosure of information



- [The Pre-contractual Information in the Framework of Commercial Cooperation Agreements Act 2005](#)
- Protects the economically weaker party
- Before an agreement is signed
- Any commercial cooperation agreement



## Signature of documents



- Each party to the contract receives an original signed document
- Only one original for parties having a common interest
- Source: [Article 1325 Civil Code](#)



## Tacit approval

- Often used in contracts in Belgium
- Even when omitted it can apply



## Handling difficulties during project execution





## Settlement of disputes



- Litigation is generally to avoid
- Alternative dispute resolutions:
  - Arbitration: an arbitrator hears evidence and makes a decision
  - Mediation: a negotiation with the assistance of neutral third party



## Types of damages



A party to the contract can only be held liable for:

- „foreseeable damages“ („dommages prévisibles“)
- damages resulting „directly“ from the performance of the agreement (“qui est une suite immédiate et directe de l'inexécution de la convention”)
- clearly spell out what qualifies as direct or indirect damages



## Take home messages

### 3 reasons to be interested in Belgian Law

- All H2020 Beneficiaries have to comply with **H2020 rules** which include compliance with Belgian Law
- Be aware of **specific features of Belgian Law** (tacit approval, liability, copyright to software, settlement of disputes...)
- So that you can **help your clients** to manage risks