



# **Belgian report on the legal aspects of BIM**

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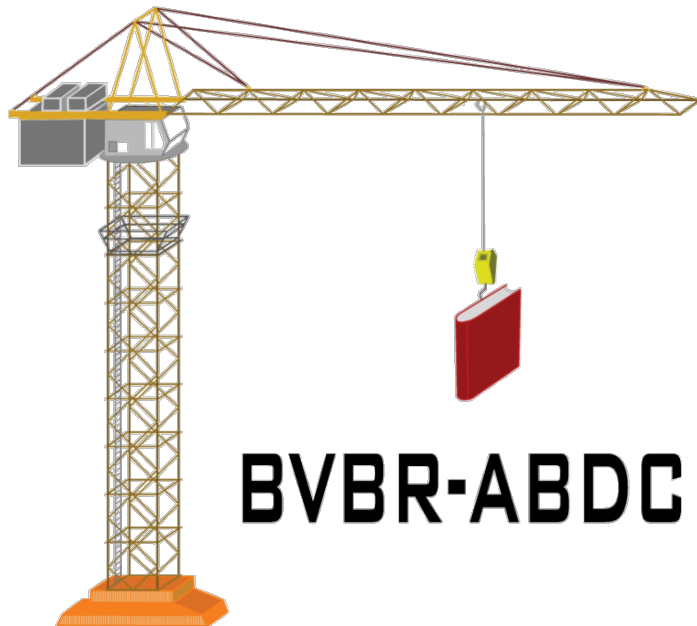
**Belgian Society of Construction  
Law (BSCL)**

# Belgian report on the legal aspects of BIM

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Building Contractors (NFBBC)**



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# OUTLINE OF THE PRESENTATION

1. Introduction
2. How to regulate legal aspects ?
3. Approach of the NFBBC
4. Specific issue: the independence of the architect
5. The public procurement regulation
6. Concrete: the elaboration of the legal “contractual” framework
7. Other points of attention

# 1. Introduction

- Belgium is behind, but will catch up!
- The surplus values of BIM, more specifically better results (improving the quality), time gains and the reduction of failure costs (facilitating the execution), the efficiency of facility management,...make BIM interesting for all stakeholders, who become aware of it and explains the actual push forward of BIM
- The high level of interaction between the different disciplines and the interoperability between the project partners justifies taking some legal precautions, related to:

# 1. Introduction

- the responsibilities of each project partner, including the duty of information and alert
- the intellectual property rights (copyrights and datarights)
- the exchange of data (confidentiality, responsibility, accessibility (including protection of personal data), traceability)

## 2. How to regulate legal aspects ?

- Initiatives are mainly taken by the private sector, with the support of the public sector.
- The Belgian Building Research Institute (BBRI) is a private research institute founded under impulse of the NFBBC and has 3 main tasks:
  - to perform scientific and technical researches for the benefit of its members;
  - to supply technical information, assistance and advise to its members;
  - to contribute to the general innovation and development in the construction sector, more specifically by performing contractual research upon the request of the industry and authorities.

## 2. How to regulate legal aspects ?

➤ On a national level, a Technical Committee BIM & ICT was formed within the BBRI:

- 5 working groups around 5 priority themes:
  - WG 1: Classifications
  - WG 2: Exchange protocols
  - WG 3: E-products
  - WG 4: Legal aspects (managed by the NFBBC)
  - WG 5: Competency profiles and training

→ synergy between WG 2 and WG 4

## 2. How to regulate legal aspects ?

- The WG 2 & 4 targets:
  - BIM - protocol, including terms & definitions, legal aspects and guidelines (to be finished the beginning of 2018)
  - BIM - performance plan
  - guidelines related to modelling
  - a proper “LOD” (in the meantime, reference to LOD specifications of Bim Forum 2016)



### 3. Approach of the NFBBC

We support fully the application of BIM however, working with BIM has to be accessible to every stake holder: taking into account the fact that 95% of the Belgian Building contractors are companies which have less than 20 people under their charge, BIM has to be implemented with an ample and equal playing field

→ interest of creating a large support

## 4. Specific issue: the independence of the architect

- The statute of the architect:
  - The Belgian architect has a monopoly on two levels (art. 2 of the Law of 20<sup>th</sup> of February 1939)
    - the concept of the work (elaboration of design plans) being subject to an obligatory building permit;
    - the checking of the performance of the work.
  - According to the jurisprudence of the supreme court of appeals (judgment of the “Cour de Cassation” of 19<sup>th</sup> of May 2016) the monopoly can be limited to the aspect of stability of the project.

## 4. Specific issue: the independence of the architect

- The independence of the architect:
  - Art 6 of the Law of 20<sup>th</sup> of February 1939 provides that the profession of architect is incompatible with the profession of the building contractor in public and private works.
    - the architect has to remain independent;
    - this rule can impede the success of BIM, when the project is realized by an integrated contract form.
  - Solution:  
adaption of the law to make derogation from art. 6 possible

## 5. The public procurement regulation

- Art. 22.4 of the Directive 2014/24 of 26<sup>th</sup> of February 2014 states that *“For public works contracts and design contests, Member States may require the use of specific electronic tools, such as of building information electronic modelling tools or similar...”*.
- Belgium didn't transpose art. 22.4 in the Belgian legislation on public procurement.
  - this doesn't impede the possibility for Belgian contracting authorities to provide in the public procurement documents the use of BIM as a requirement linked to the subject of the public work contract
  - legal texts will be adapted in proper time to the use of this new tool

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

### ➤ Preliminary

- *The protocol*: the essential contractual agreements and expectations related to BIM collaboration.
- *The performance plan*: an evolving document of practical agreements of how the BIM collaboration work (complementary to the protocol), that can be adapted and evaluated as may be required.

→ the protocol prioritizes between the different contractual documents and the model has priority to extract

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

### ➤ Protocol content

- Tasks and responsibilities, including the duty of information and alert
  - **Main obligations** of the different project partners:
    - *The employer:*
      - ascertains the BIM-vision (i.e. expectations and requirements)
      - validates the protocol and performance plan
      - appoints a BIM adviser, if needed

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

- *The project team partners:*
  - appoint a BIM process manager (regardless of the manager for the disciplines)
  - respect the protocol and the performance plan (including the deliverables in an operable (minimum quality) model)
  - are responsible for their own model (no modification right to others' models)

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

- *The BIM process manager:*
  - manages and coaches the collaboration within BIM
  - sets up the protocol, in consultation with the project members
  - updates the performance plan
  - checks the adherence to protocol and performance plan
  - leads coordination and review meetings
  - checks and report on the quality and efficiency of the BIM process
  - organizes the platforms within the Common Data Environment
  - coordinates the different models



## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

- *The BIM process manager:*
  - manages and coaches the collaboration within BIM
  - ensures that clash detection has been carried out and any issues arising will be resolved
- **General obligation:** Special attention must be paid to the general duty of information and alert

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

- Intellectual Property rights – use of models
  - **Public Procurement Regulation:** articles 19-23 of the Royal Decree of 14 January 2013 related to the intellectual property rights:
    - Unless otherwise provided in the public procurement documents, the public authority does not acquire the intellectual property rights developed during the performance of the contract, but has a license and can grant sub-licenses.

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

- the public authority has to enumerate in the public procurement documents its intentions related to the exploitation
- the economic operator has to take the necessary steps to safeguard the public authority from third parties
- If the subject of the project consists of creating or developing drawings and models, the public authority acquires the intellectual property rights, unless otherwise provided.

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### ○ The Protocol:

- In principle, no transfer of property rights, only (sub)licences (to the employer and the projectpartners)
- Right to export a model out with the project partners, unless an express agreement by the entitled parties (save the provided rules related to the subcontractors)
- Within the (sub)licences, each safeguards third party rights

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

- The exchange of data

- Confidentiality:

The data are confidential and can, in principle, only be used for the purpose of the project.

- Responsibility (Exporting/importing aspects)

- The partner exporting information within the agreed format is entirely responsible for the process of exportation;
    - Therefore, the importing partner has the same level of responsibility

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

- Accessibility - easily exportable character of data exchange
  - Accessibility has to be determined for each stage of the project for each partner;
  - Concerning personal data, specific provisions are necessary regarding the General Data Protection Regulation, that member states shall apply from 25th May 2018
- Traceability: each partner shall have access to the Common Data Environment (CDE) until the final delivery of the project; thereafter, each partner has sole responsibility to back-up their own work

## 6. Concrete: the elaboration of the legal “contractual” framework within TC BIM & ICT

Yet, think about:

A project partner who doesn't respect the agreement; what's the best resolving “procedure” to avoid that the advantages of BIM are not compromised?

## 7. Other points of attention

Other items to discuss in 2018 ...

- the insurance aspects, more specifically linked to the tasks of the BIM Process manager, the risks of inter-agency-working by the project partners and the cover of the liability of the software editors and IT service providers
- the financial aspects from an insurance point a view: companies working with BIM have a lower risk of sinistrality; therefore these companies should obtain better conditions for their subscribed insurance policies



# QUESTIONS ?

## THANK YOU FOR YOUR ATTENTION