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WORKS

**LAW**

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INDUSTRIAL

INTANGIBLE

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# Intellectual Property Office

## Annual report 2017

The mission of the Federal Public Service Economy, SMEs, Self-employed and Energy consists in creating competitive, durable and well-balanced working conditions for a goods and services market in Belgium. In this context, the Directorate-General for Economic Regulation published a report with a view to inform the public of the activities of the FPS Economy concerning intellectual property in the course of 2017.

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Internet version

“Creating the conditions for a competitive, sustainable and balanced operation of the goods and services market in Belgium.”

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## Foreword

The BE-IPO's<sup>1</sup> annual activity report is the occasion to provide the interested parties with a summary of the BE-IPO's projects and activities in 2017, with facts and figures, charts and texts.

Regarding the production, 2017's highlights are in particular:

- The constant growth in the number of Belgian patent applications (+4 %) compared to 2016;
- The almost complete catch up on the backlog in the granting of Belgian patents. In 2017, 91.9 % of the patents granted proceeded from applications filed between 2015 and 2017, and in 2015 only 68 % of the patents granted proceeded from applications filed between 2013 and 2015;
- The 4.63 % growth of the receipts collected by the BE-IPO (20.7 million euro in 2017 instead of 19.8 million euro);
- 2017 is the first year of the London Agreement's implementation in Belgium. The effect of such implementation is not measurable yet because the decision to leave in force the European patents designating Belgium is made when the annual fee, due for the first time in Belgium, is paid and because that decision may be made until June 2019 for the European patents granted until 31 December 2017, given the 6-month-long period of grace;
- The release of an adapted modernised online filing tool (eOLF) taking into account particularly the London Agreement's implementation and featuring new functionalities with regard to filing online for change and restoration requests;
- The strengthened ties with the Belgian patent system users (patent attorneys, payment agencies, paralegal agents, federation of enterprises) by
  - o setting up frequent meetings and arranging a structured dialogue with the users which relate to enforcement and interpretation issues regarding the administrative processes regulations the BE-IPO deals, and
  - o the BE-IPO organised workshops dedicated to the new functionalities of the online filing tool (eOLF).

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<sup>1</sup> Belgian Intellectual Property Office.

At normative level, the major developments are in particular about:

- the adoption of the Act of 19 December 2017 to complete the implementation of the Unitary Patent and the Unified Patent court;
- the adoption by the Council of ministers on the 1st of December 2017 of the bill on the protection of the title of patent attorney;
- the finalisation of the Bill to transpose the “Trade Secrets” Directive, following the consultation of the Council for intellectual property and interministerial coordination.
- the adoption of the Act of 8 June 2017 to transpose the Directive on “collective management” into Belgian law;
- the adoption of the implementing decrees of 5 March and 31 July 2017 to lay down the remuneration rights’ rates to compensate for the reprography exception as well as the exception for education and scientific research.
- the adoption on 17 December 2017 of the Royal Decree on fair remuneration. This wide Royal Decree replaces all the decisions made previously since 1996 by the ex-Joint Committee tasked with laying down the fair remuneration rates.
- intense consultations with the stakeholders in the audiovisual sector (authors, actors, producers, broadcasters, distributors, consumers) relating to legal, economic and social complex issues with regard to the direct injection, the broadcasting and the contractual protection.

As you can see, 2017 was a very rich and diversified year and shows an undoubted will to improve the BE-IPO’s product and service quality as well as its processes, but also a desire to develop and update constantly the regulatory framework relating to intellectual property in force in Belgium.

Séverine Waterbley

Director-general

Directorate-General for Economic Regulation

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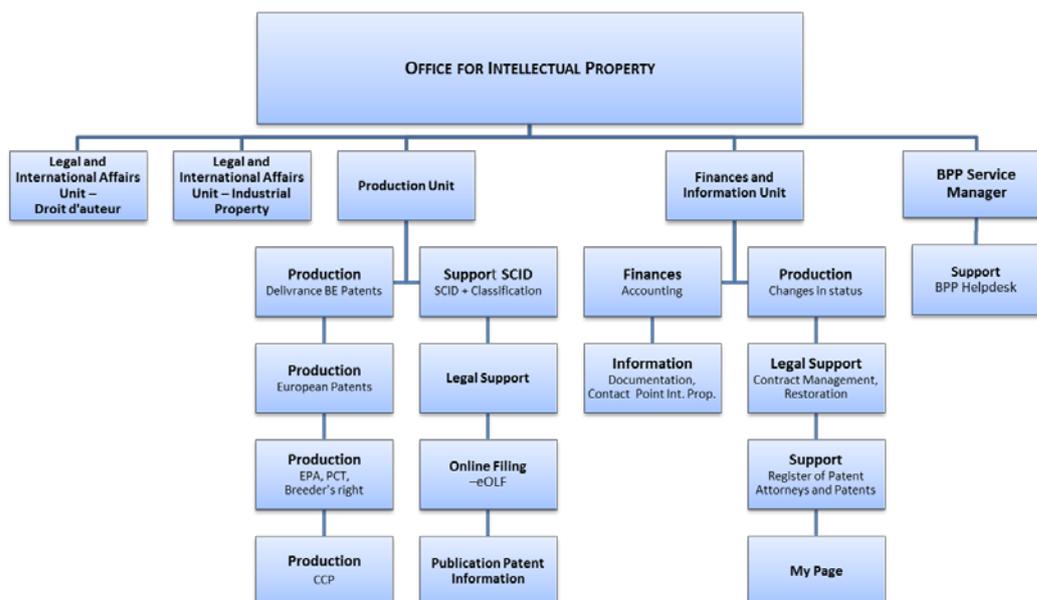
## 1. The Intellectual Property Office in a glance

The Belgian Intellectual Property Office (BE-IPO) is part of the Federal Public Service (hereafter FPS) Economy, SMEs, Self-employed and Energy. More particularly, it is the Directorate-General for Economic Regulation’s Intellectual Property Division.

The BE-IPO carries out mainly two kinds of activities :

- The “production, finance and information” activities. Those activities bear upon, among other things, the registration and processing of (applications for) titles of industrial property, and the public information;
- the “legal and international” activities. Those activities relate particularly to drafting laws and implementing decrees and to representing Belgium to the European and international institutions (the Council of the European Union, the World Intellectual Property Organisation, the European Patent Organisation, the European Union Intellectual Property Office ...)

BE-IPO organisation chart on 31 December 2017



### BE-IPO staff figures

(situation as of 31.12.2017, in full-time equivalents)

Staff members' origin	Number (FTE)	Division per level	Number (FTE)
Legal and international affairs sections	6.00	Level A, advisers and attachés	17.80
Production, Accountancy and Information sections	31.30	Level B, administrative experts	9.10
Management and administrative support (General advisor and advisers)	5.00	Level C, administrative assistants	9.40
Total	42.30	Level D, administrative collaborators	6.00

Source: FPS Economy, Intellectual Property Office.

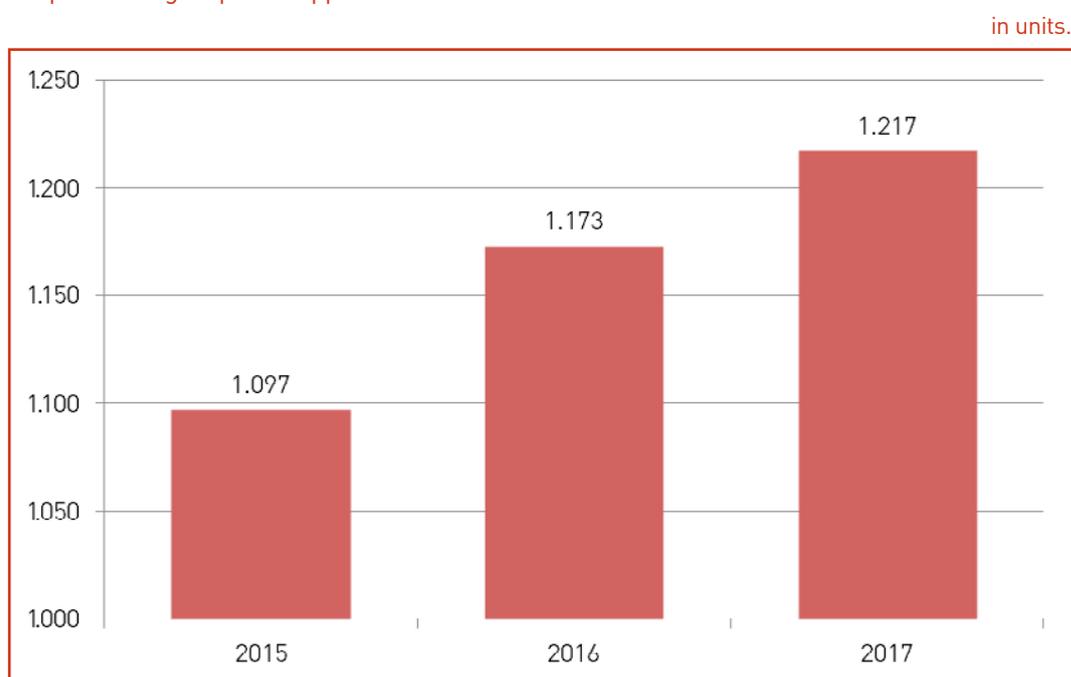
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## 2. 2017's highlights

### 2.1. Patents and supplementary protection certificates

#### 2.1.1. Belgian patent

Graph 1. Belgian patent applications



Source: FPS Economy, Intellectual Property Office.

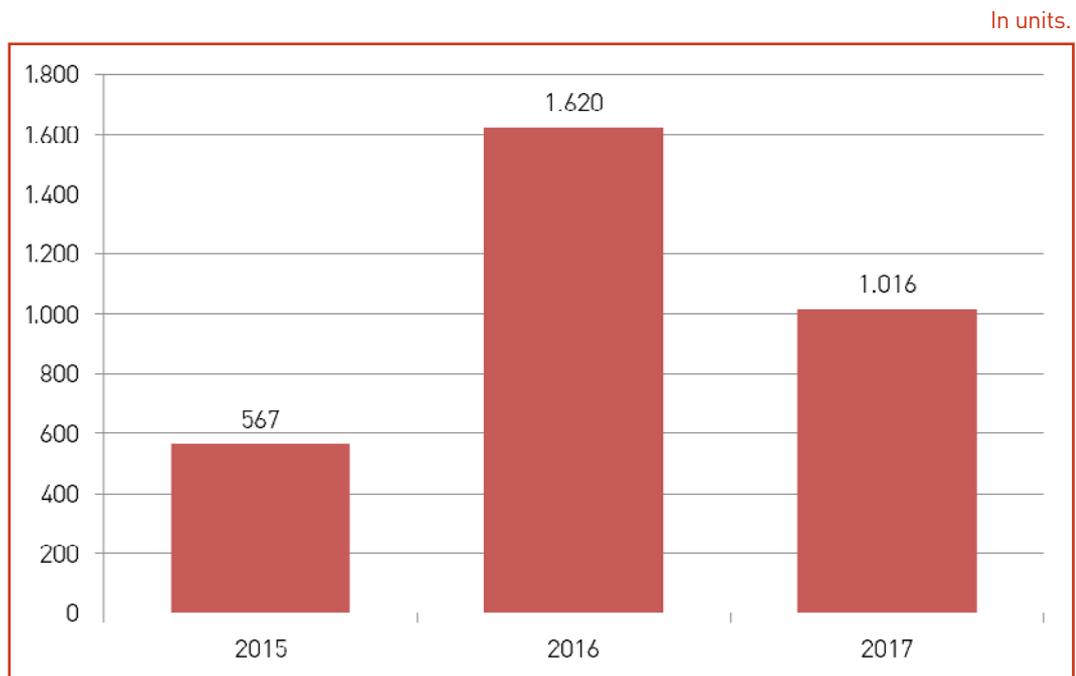
In 2017, the number of Belgian patent applications increased by 4 % compared to the number of Belgian patent applications filed in 2016. That upward trend began in 2011 and then continued in 2017.

From the 1,217 Belgian patent applications which were filed in 2017:

- 1,007 were filed by applicants established in Belgium;
- 936 were filed without priority right, from which 837 by applicants established in Belgium;
- 281 were filed with priority, from which 170 by applicants established in Belgium;
- 358 were filed in French, from which 284 by applicants established in Belgium;

- 759 were filed in Dutch, from which 718 by applicants established in Belgium;
- 100 were filed in German, from which 5 by applicants established in Belgium;
- 1,041 were filed online using the “electronic online filing module”.

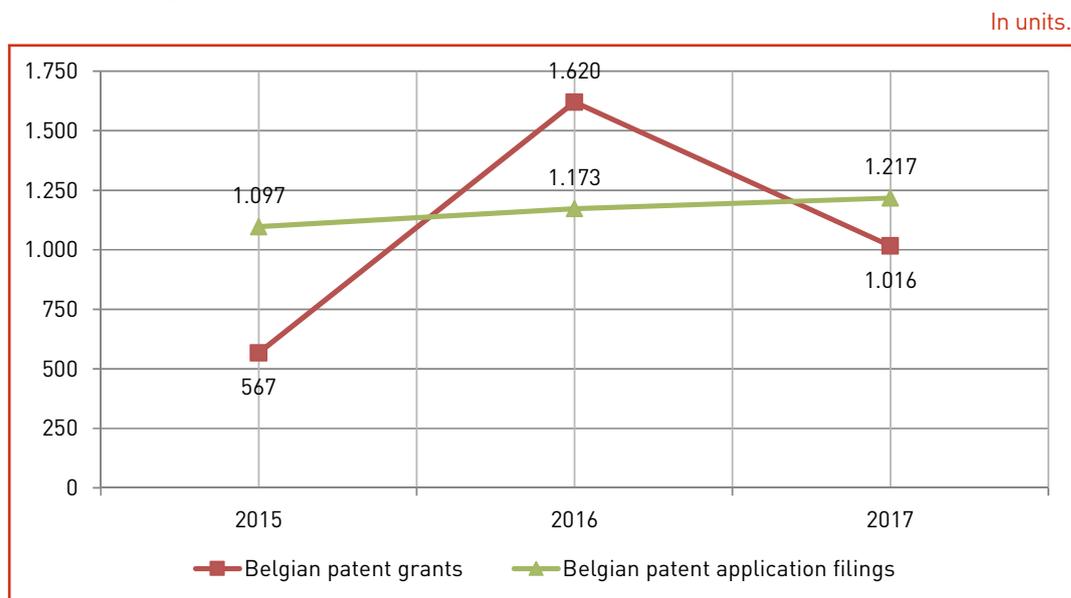
Graph 2. Granted Belgian patents



Source: FPS Economy, Intellectual Property Office.

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Graph 3. Belgian patents vs. applications



Source: FPS Economy, Intellectual Property Office.

Belgian patents can be granted at the earliest 18 months after the filing date (or priority date if the priority of an earlier patent application is claimed), unless the applicant asked for an accelerated grant.

The very variable figures during the last three years show a high increase of Belgian patent grants in 2016 which allowed to eliminate the backlog.

The number of grants in 2017 corresponds to a normal volume in view of the number of filings within the preceding 18 months.

### 2.1.2. Protection of the title of patent attorney

In 2017, the Intellectual Property Office worked on a bill to introduce a regulatory framework for the protection of the title of patent attorney. Such a framework relates to different aspects of exercising the profession of a patent attorney in Belgium and offers several advantages not only at internal level but also at external level.

As such, the framework offers a better guarantee for top-quality patent attorney services to the users of the Belgian patent system. Besides, the framework's objective is to provide for a stronger communication protection between the patent attorney and his client against disclosure. To conclude, it provides for a more precise framework for access to the patent attorney profession in Belgium for patent attorneys established in another Member State of the European Economic Area and who exercise temporarily that profession in Belgium, in accordance with the freedom to provide services.

In order to guarantee top-quality patent attorney services, the bill provides in concrete terms in the creation of a Belgian Institute for Patent attorneys. It will provide for the permanent training of its members and for the enforcement of the deontological rules. Thanks to the Institute, the professional group of patent attorneys will also be able to represent itself more structurally before the public services or other public or private organisations.

The council of ministers approved the bill on 1 December 2017 and it should be adopted by the Parliament in the course of 2018.

### **2.1.3. Modification of the regulations relating to the Patent Agent Accreditation Commission's functioning**

The commission takes care of the candidates' registration in the register of accredited attorneys who are authorised to represent third parties in patent-related matters before the Intellectual Property Office.

As of 1 January 2018, the [Royal Decree of 24 October 1988](#) with regard to the composition and functioning of the patent attorney accreditation commission and the deletion from the register of accredited patent attorneys, has been modified.

Two kinds of modifications have been introduced. First, some improvements have been brought on several levels of the Commission's functioning, which benefits the candidates who apply for an inscription in the register of accredited attorneys as well as the Commission itself. For instance, when applying for an inscription in the register of accredited attorneys, the candidates must choose right away in which field (mechanics or chemistry) they like to take the exam.

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Second, several points of the Royal Decree have been modified in order to vertically transpose [Directive 2013/55/EU<sup>2</sup>](#) in Belgium with regard to the patent attorney profession. In fact, this Directive modifies Directive 2005/36/EC which provides in a general EU system for the recognition of professional qualifications acquired in another Member State of the Economic European Area, in order to gain access to certain regulated professions.

## 2.2. European and international patent applications (PCT)

### 2.2.1. European patent applications filed with the BE-IPO

Table 1. European patent applications filed with the BE-IPO

Year	Number
2013	19
2014	11
2015	11
2016	3
2017	5

Source: FPS Economy, Intellectual Property Office.

European patent applications can be filed directly with the European Patent Organisation (EPO) or with the Belgian Intellectual Property Office, which then forwards them to the EPO. The applicants having the Belgian nationality or having a registered place of business in Belgium are subject to compulsory filing with the BE-IPO when submitting a European patent application which could be of interest to the defence of the Belgian territory or the State’s security. In the period 2013-2017, the number of European patent applications filed with the Intellectual Property Office decreased by 75 %.

2 Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (“the IMI Regulation”).

### 2.2.2. International (PCT) patent applications filed with the BE-IPO as receiving office

Table 2. International (PCT) patent applications with the BE-IPO

Year	Number
2013	68
2014	71
2015	71
2016	55
2017	50

Source: FPS Economy, Intellectual Property Office.

International (PCT) patent applications can be filed directly with the World Intellectual Property Organisation (WIPO), with the European Patent Organisation (EPO) or with the Intellectual Property Office. The applicants having Belgian nationality or having a registered place of business in Belgium must file their international patent applications (PCT) for inventions with the BE-IPO when these inventions could be of interest to the defence of the Belgian territory or the State's security. In the period 2013-2017, the number of international patent applications (PCT) filed with the Belgian Intellectual Property Office decreased by 26 %.

### 2.2.3. BE-IPO's role as receiving office ended

Up to 31 March 2018 it was possible to file Belgian, European and international patent applications with the Intellectual Property Office. Besides, the European patent applications may also be filed with the European Patent Organisation while international patent applications may be filed with the European Patent Organisation as well as the International Bureau of PCT of the World Intellectual Property Organisation (WIPO).

However, the legislator has introduced a modification regarding the possibility to file European and international patent applications in Belgium. That modification entered into force as from 1 April 2018. This means that, in concrete terms,

- all the European patent applications must be filed with the European Patent Office;
- it will only be possible to file international patent applications with the European Patent Organisation and the International Bureau of PCT of WIPO;

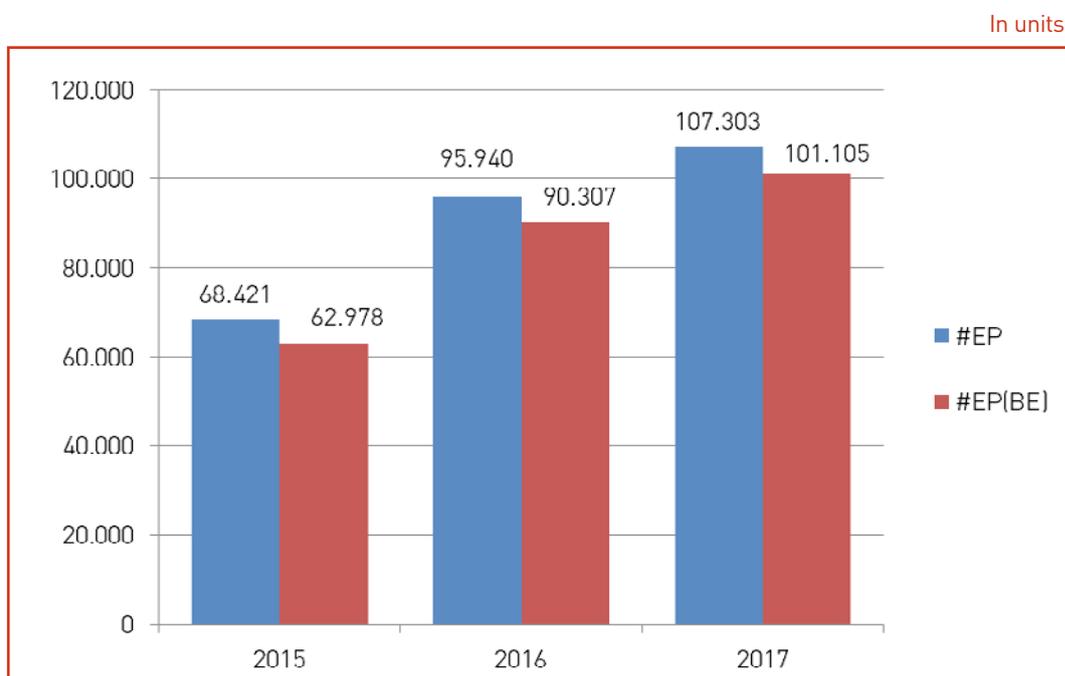
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- the exception that already exists regarding European and international patent applications for inventions which can be of interest for Belgium’s national security and defence still remains. Such applications filed by applicants having the Belgian nationality or their place of residence or their office in Belgium will still have to be filed with the Intellectual Property Office.

The modification fits in with an evolution in the past few years, during which the European Patent Organisation and WIPO developed possibilities for submitting patent applications online. The number of European and international patent applications filed with the Intellectual Property Office has consequently decreased. In fact, the number of European patent applications yearly filed with the Intellectual Property Office dropped over a ten-year period from more than 30 to about 5. Besides, more than 80 % of the Belgian applicants file their international patent application with the European Patent Office.

#### 2.2.4. European patents designating Belgium

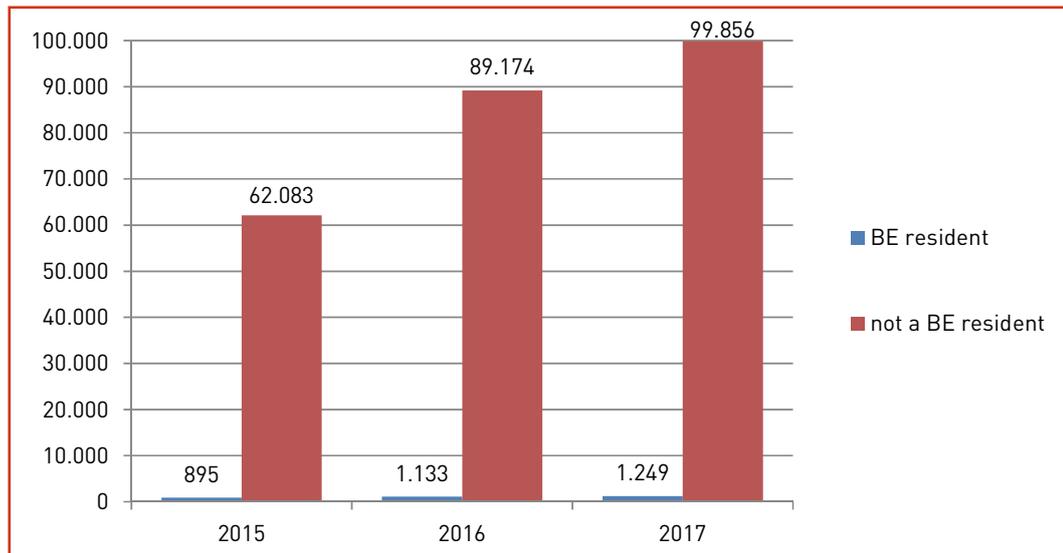
Graph 4. Granted European patents (EP) and granted European patents designating Belgium (EP(BE))



Source: FPS Economy, Intellectual Property Office.

Belgium is designated in more than 90 % of the European patents (EP) granted in 2015, 2016 or 2017.

Graph 5. Origin of the owners of the granted European patents designating Belgium (EP(BE))  
In units.

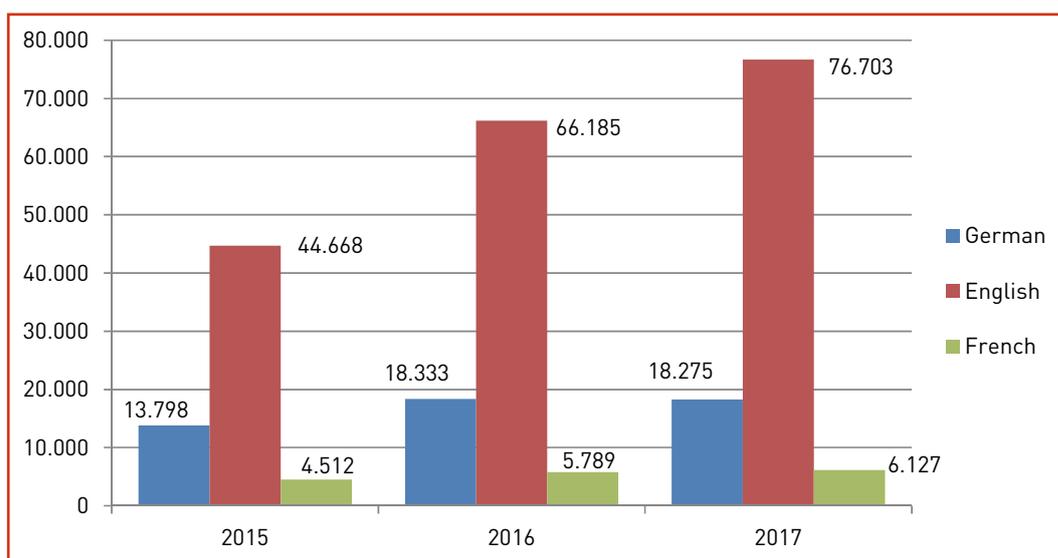


Source: FPS Economy, Intellectual Property Office.

In more than 98 % of the European patents designating Belgium granted in 2015, 2016 or 2017, the owner is not established in Belgium.

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Graph 6. Publication language of the granted European patents designating Belgium (EP(BE))  
In units.



Source: FPS Economy, Intellectual Property Office.

In 2015, 2016 and 2017, more than 70 % of the granted European patents designating Belgium was published in English, more than 18 % in German and more than 6 % in French.

### 2.2.5. London Agreement implemented as from 1 January 2017

In order to be valid in Belgium, a European patent granted in English before 2017 needed to be translated into Dutch, French or German. That was not necessary for the European patents granted in German or in French, since they are both Belgian national languages.

As of 1 January 2017, Belgium has implemented the London Agreement. This agreement was drafted by several Member States of the European Patent Organisation and signed in October 2000 in order to simplify the validation of European patents in the Member States.

Given the London Agreement's implementation, Belgium does not require since 1 January 2017 translations anymore of European patents which have been granted, modified or limited in English. Those patents have automatically effect in Belgium, just like the European patents that have been granted, modified or limited in French or German.

Thanks to the implementation in Belgium of the London Agreement, the users' administrative obligations have been simplified and their costs decreased. The implementation actually fits in with the European patent system reform and its Unitary Patent. That kind of patent has after all simplified language regulations where English, French and German are the work languages.

#### **2.2.6. Implementation of the European patent system reform (UPP/UPC)**

The European patent system reform, which comprehends the European patent with unitary effect and the centralisation of patent litigation before the Unified Patent Court, remains a priority project, given the need to deal with the current fragmentation of the innovation market in Europe and to provide the economic operators – particularly the small and medium size enterprises – with an affordable harmonised and simplified European framework, which is accessible and offers the necessary legal certainty in order for them to operate optimally.

The EU regulations relating to the European patent with unitary effect entered into force on 20 January 2013. However, their implementation depends on the UPC Agreement's entry into force. On 31 December 2017, fourteen contracting States, including Belgium, had already ratified the UPC agreement while the ratification procedures were still in progress in the other countries, in particular the United Kingdom. In Germany, the ratification process has been temporarily suspended, while awaiting the Constitutional Court's decision regarding an appeal pending before it. The Preparatory Committee's work is suspended, while awaiting the outcome of this procedure.

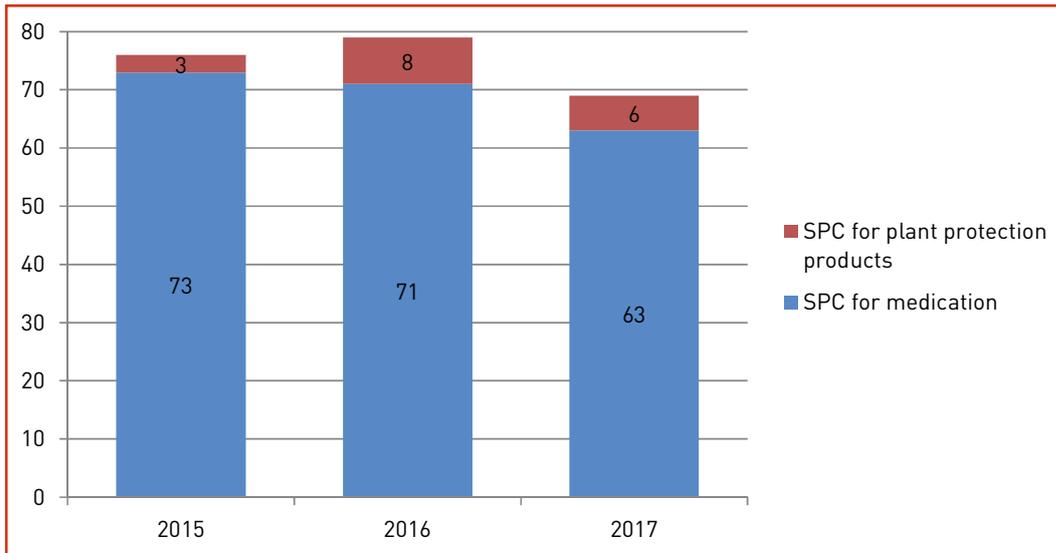
In Belgium, the Act of 19 December 2017 modifying various provisions with regard to patents and regarding the implementation of the unitary patent and the Unified Patent Court, completes the existing legal framework. This Act mainly aims at bringing into line the scope of the provisions, relating to the patent rights and exceptions and limitations, with the UPC provisions on the same matter. Those modifications will come into force when the UPC Agreement comes into force as regards to Belgium. Besides, the Act introduces a "safety net" provision in order to make it possible for a European patent holder whose application for unitary effect has been rejected, to validate his patent in Belgium as a classic European patent and to have the deadline reset for paying the due annual fee.

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## 2.3. Supplementary protection certificates

Graph 7. Applications for a Belgian supplementary protection certificate (SPC)

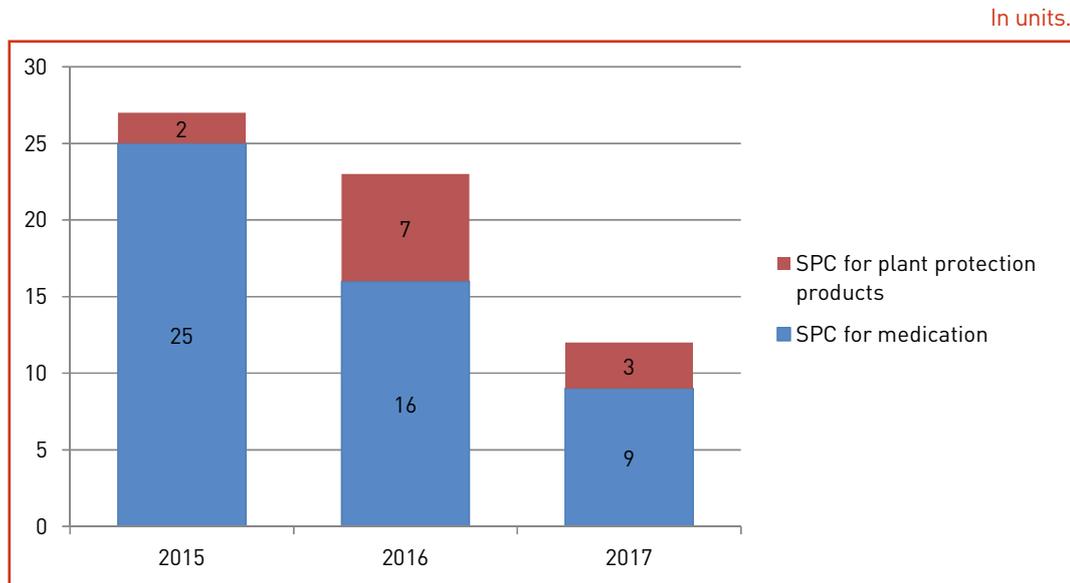
In units.



Source: FPS Economy, Intellectual Property Office.

The number of applications for a Belgian supplementary protection certificate for pharmaceutical products has decreased in 2017 by 11 % compared to 2016. The number of applications for Belgian supplementary protection certificates for plant protection products filed in 2017 has decreased by 25 % compared to 2016.

Graph 8. Granted Belgian supplementary protection certificates (SPC)



Source: FPS Economy, Intellectual Property Office.

Between 2015 - 2017 the number of granted supplementary protection certificates for pharmaceutical products decreased significantly: approximately by 40 % per year.

The same tendency was observed between 2016-2017 as far as supplementary protection certificates for plant protection products are concerned.

The decrease in granted certificates in 2017 can be explained by the fact that several preliminary rulings were pending before the European Court of Justice during that period. Insofar those questions could have an impact on the decision whether or not to grant certain certificates, their treatment has been suspended while awaiting a decision from the Court.

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### 2.3.1. Extension of supplementary protection certificates (SPC) for medicinal products for paediatric use

Table 3. Number of applications for a supplementary paediatric SPC

Year	Units
2015	8
2016	8
2017	9

Source: FPS Economy, Intellectual Property Office.

Compared to the last two years, a slight increase is observed in 2017 concerning applications to extend a supplementary protection certificate for a medicinal product for paediatric use.

Table 4. Number of grants for a supplementary paediatric SPC

Year	Units
2015	2
2016	3
2017	8

Source: FPS Economy, Intellectual Property Office.

The grant of extensions of supplementary protection certificates for medicines for paediatric use has increased in 2017 by 167 % compared to 2016.

## 2.4. Breeders' rights

Table 5. Applications for a Belgian breeder's certificate

Year	Applications for a plant breeders' right
2014	3
2015	1
2016	4
2017	3

Source: FPS Economy, Intellectual Property Office.

Table 6. Granted Belgian breeder's certificates

Year	Granted plant breeders' rights
2014	3
2015	0
2016	1
2017	1

Source: FPS Economy, Intellectual Property Office.

Applications for a Belgian breeder's certificate are submitted to scientific tests which may take one or several years depending on the plant variety. Consequently the average number of applications for a breeder's certificate within a certain period is not always in synchrony with the average number of breeder's certificate grants within that same period.

## 2.5. Online electronic filing (eOLF)

### 2.5.1. The use of the eOLF 'plugins' in 2017

On the occasion of the launch of the Belgian version of the Benelux Patent Platform (BPP) in 2014, the BE-IPO provided patent applicants as well as patent attorneys with a client-server information application "eOLF" in view of the electronic, online filing of documents for several BE-IPO patent procedures.

In 2017 the following eOLF "plugins" were in use:

- BEEPVL with respect to European patents designating Belgium (until 01.04.2017): filing translations and appointment of a patent attorney
- BEEPNP with respect to European patents designating Belgium (under the London Protocol, starting from 01.01.2017): filing patent attorney appointments
- BEPAT1 with respect to Belgian patent applications
- BEPOST with respect to Belgian patent (applications) after they were filed: filing of additional documents
- BECHANGE with respect to filing registration requests of patrimonial data mutations for a patent or a supplementary protection certificate

The table below shows the number of documents that have been submitted in 2017 by using the different eOLF plugins.

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Table 7. Number of documents submitted by using eOLF plugins

	2017
BEEPVL	3,991
BEEPNP	8,519
BEPAT1	1,041
BEPOST	1,318
BECHANGE	646
<b>Total of “plugins”</b>	<b>14,869</b>

Source: FPS Economy, Intellectual Property Office.

In 2017, 86 % of the Belgian patent applications has been filed by using the eOLF plugin BEPAT1. In the first quarter of 2017 the last translations of European patents designating Belgium that had been granted in English by the European Patent Organisation before 01.01.2017 have been filed electronically by using the plugin BEEPVL. In 2017, the plugin BEEPNP has been introduced in view of the electronic filing of appointments of patent attorneys designating Belgium. In 2017, also the plugin BECHANGE has been introduced in view of filing applications for registration of mutations of patrimonial patent data or supplementary protection certificates.

## 2.6. Registration section's activities

### 2.6.1. Restoration requests

In case of non-compliance with some of the applying time limits to accomplish a proceedings act before the office, a restoration procedure exists in order to restore the holder in his rights. The statistics in the following tables relate to the restoration applications and decisions filed or issued between 1 January 2015 and 31 December 2017.

Table 8. Restoration requests

In units or %.

	2015		2016		2017	
		In %		In %		In %
Requests	41	100	50	100	22	100
Annual fees	27	66	41	82	12	55
European patents validation	10	24	7	14	8	36
Priorities	4	10	0	0	0	0
Other	0	0	2	4	2	9

Source: FPS Economy, Intellectual Property Office.

Table 9. Restoration decisions

In units or %.

	2015		2016		2017	
		In %		In %		In %
Definitive decisions	17	100	53	100	37	100
Restoration	13	77	45	85	33	89
Rejection	4	23	8	15	4	11

Source: FPS Economy, Intellectual Property Office.

Regarding the requests' results, the statistical table shows that a great number of requests have a positive result in 2017 (33 positive decisions vs. only 4 refusals).

### 2.6.2. Registry inscription requests

The next table lists the inscription request numbers by category over the last three years. The three most frequent inscription request types deal with property changes, address changes and attorney changes, as shown in the table hereafter.

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Table 10. Registry inscription requests

In units or %.

	2015		2016		2017	
		In %		In %		In %
Owner change	1,004	68	874	67	1,007	60
Address change	315	21	286	22	378	23
Attorney change	119	8	110	8	259	15
Licence	23	2	27	2	23	1.3
Security	11	1	16	1	11	0.7
<b>Total</b>	<b>1,472</b>	<b>100</b>	<b>1,313</b>	<b>100</b>	<b>1,678</b>	<b>100</b>

Source: FPS Economy, Intellectual Property Office.

## 2.7. BE-IPO's finances

### 2.7.1. Patents and supplementary protection certificates ("SPC")

The three following tables show the receipts collected by the BE-IPO during the budgetary years 2015 to 2017.

Table 11. Annual fee receipts (Belgian patents, European patents, SPC)

	2015 in euros	2016 in euros	2017 in euros	2016/2015 in %	2017/2016 in %
Annual fees BE	603,965.00	614,830.00	680,585.00	↗ 1.7	↗ 9.66
Annual fees EP	8,933,547.50	9,434,982.50	9,928,737.50	↗ 5.31	↗ 4.97
Contribution EPO	8,607,977.00	9,112,647.50	9,584,937.50	↗ 5.54	↗ 4.93
<b>Annual fees</b>	<b>18,145,489.50</b>	<b>19,162,460.00</b>	<b>20,194,260.00</b>	<b>↗ 5.31</b>	<b>↗ 5.11</b>

Source: FPS Economy, Intellectual Property Office.

### Processing fees receipts (Belgian patents)

We will see that unlike the annual fees the receipts from processing fees decreased significantly between 2015 and 2017. That reduction can be explained by the tax reform that went into force on 01.01.2016, cancelling certain processing fees (particularly the cancelled registration fee for status modification or the cancelled priority fee when it is claimed when filing the patent application).

Table 12. Processing fees receipts for Belgian patents

	2015 in euros	2016 in euros	2017 in euros	2016/2015 in %	2017/2016 in %
Application fees	84,425	77,975	71,075	⌋ 7.64	⌋ 8.85
Priority fees	4,368	974	412	⌋ 77.70	⌋ 57.70
Search fees	335,088	333,378	304,800	⌋ 0.51	⌋ 8.57
Special fees (regularisation + rectification)	27,348	7,386	4,296	⌋ 73.00	⌋ 41.84
<b>Total proceedings fees</b>	<b>451,229</b>	<b>419,713</b>	<b>380,583</b>	<b>⌋ 6.98</b>	<b>⌋ 9.32</b>

Source: FPS Economy, Intellectual Property Office.

### PCT fees receipts (international patent applications):

We see that the PCT fee receipts are constantly decreasing. This can be explained by a significantly decreasing amount of international patent applications.

Table 13. Receipts relative of international patent applications

	2015 in euros	2016 in euros	2017 in euros	2016/2015 in %	2017/2016 in %
PCT fees BE	8,564	6,600	5,640	⌋ 22.93	⌋ 14.55
PCT fees WIPO	89,478	77,975	62,124	⌋ 12.85	⌋ 20.33
PCT fees EPO	116,250	103,125	86,250	⌋ 11.29	⌋ 16.36
<b>Total PCT fees</b>	<b>214,292</b>	<b>187,700</b>	<b>154,014</b>	<b>⌋ 12.41</b>	<b>⌋ 17.95</b>

Source: FPS Economy, Intellectual Property Office.

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Table 14. Total receipts by the Intellectual Property Office

	2015 in euros	2016 in euros	2017 in euros	2016/2015 in %	2017/2016 in %
<b>Total receipts</b>	18,811,010.50	19,769,873.00	20,728,857.00	↗ 4.85	↗ 4.63

Source: FPS Economy, Intellectual Property Office.

We can witness a receipts increase between 2015 and 2017. The increasing receipts can partially be explained by the tax reform that came into force on 01.01.2016, causing the increase of a certain amount fees (in particular the average 10 % increase of the annual fees).

## 2.7.2. Breeders' rights

Receipts:

The following table summarizes the breeders' rights related receipts (breeder's right) over the budgetary years 2015 to 2017. We can see that the receipts drop between 2015 and 2017. That can partially be explained by the attractiveness of the protection given by the community protection compared to the national protection.

Table 15. Breeders' rights related receipts

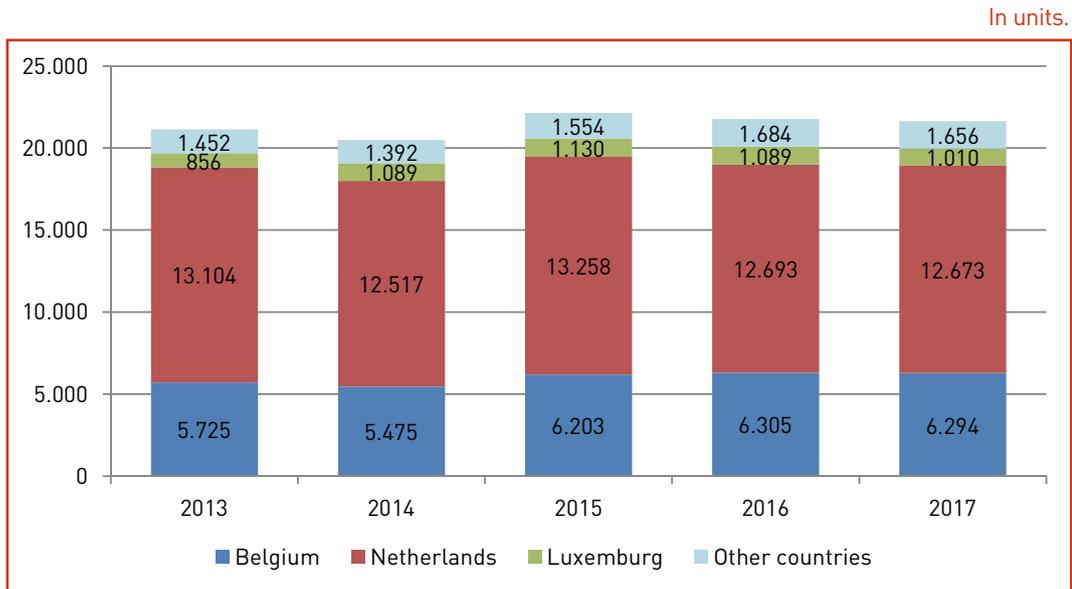
Receipts	2015 in euros	2016 in euros	2017 in euros	2016/2015 in %	2017/2016 in %
Annual fees, filing fees, priority fees	16,225	14,410	11,495	↘ 11.19	↘ 20.23
Search report DHS	250	1,380	0	↗ 81.88	0
<b>Total receipts</b>	<b>16,475</b>	<b>15,790</b>	<b>11,495</b>	<b>↘ 4.16</b>	<b>↘ 27.20</b>

Source: Benelux Office for Intellectual Property.

## 2.8. Trademarks and designs

### 2.8.1. Origin of the Benelux-trademark applications

Graph 9. Origin of demands for Benelux trademarks



Source: Benelux Office for Intellectual Property.

Other data related to Benelux trademarks and Benelux designs can be found in the annual report of the Benelux Office for Intellectual Property: <https://www.boip.int/en/entrepreneurs/about-boip/annual-reports>.

### 2.8.2. Benelux activities: “Trademarks” directive transposition

As part of a thorough revision of the trademark system in Europe, [Directive 2015/2436](#) to approximate the laws of the Member States relating to trade marks was adopted on 16 December 2015. This trademark directive must be transposed by the member states within three years. As for the Benelux countries, the transposition of the directive through a Protocol amending the Benelux Convention on Intellectual Property (trademarks and designs).

In 2017, the transposition activities which started in 2016 have been continued in a working group led by the Benelux General Secretariat. In this working group, the amending protocol has been drafted. The protocol has then been signed by

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the three member states on 11 December 2017. It still needs to be ratified by the three member states before the amendments will enter into force. The ratification should take place before the transposition deadline, which is on 14 January 2019. As regards content, all the obligatory amendments contained in the trademarks directive have been incorporated. In addition, one optional provision has been adopted, concerning collective marks and certification marks. At the same time, the opportunity has also been seized to make some formal improvements to the Benelux convention, such as a better structure of the absolute and relative grounds for invalidity.

## 2.9. Copyright and related rights

At the national level, 2017 was a year rich in developments concerning copyright, particularly in the following fields:

### 2.9.1. Reprography, education and scientific research

Firstly, the legal provisions with regard to the reprography exception and to the exceptions for education and scientific research were adapted as a result of the Court of Justice of the European Union’s judgment on 12 November 2015. The new [Act of 22 December 2016](#) brought a number of adaptations and clarifications to the legal framework, in particular by cancelling the fixed remuneration for reprography (remuneration pertaining to devices for reproduction) and by introducing a right for editors of printed publications to have their own remuneration concerning reproductions. Two Royal Decrees were adopted on 5 March 2017 to set the new tariffs of the remuneration pertaining to reprography for authors and publishers of printed publications, as well as the remuneration collection procedures.

A study was also initiated by the FPS Economy on the prejudice the right holders suffer due to the reprography exception and the private copying exception. The results of this study are expected in 2018.

Furthermore, the new legislation of 22 December 2016 has merged all the exceptions concerning education and scientific research into one article in the Code of Economic Law, covering copy right, databases and related rights. Subsequently, an implementing decree has been drawn up on 31 July 2017 providing for a single amount of remuneration per pupil/student/researcher for all acts of exploitation (reproduction, communication, analogous, digital) for the purpose of illustration for teaching or scientific research, per type of education or per level.

The Royal Decrees of [19 September 2017](#) and [28 September 2017](#) have appointed the collecting society Reprobel to collect and distribute the remuneration for authors and publishers for reproductions on paper and to collect and distribute the remuneration for the use of works, databases and performances for the purpose of illustration for teaching or scientific research.

### 2.9.2. Collective management

Secondly, the process regarding the transposition of [Directive 2014/26](#) on collective management of copyright and related rights which was initiated in 2016, was continued and finished in 2017. The directive aims to implement a legal framework to guarantee more transparency of the collecting societies, reinforcing their obligations concerning the provision of information and the level of monitoring and facilitating the granting of multi-territorial licensing of rights for the online use of music.

The directive was transposed into Belgian law through the [Act of 8 June 2017<sup>3</sup>](#) that entered into force on 1 January 2018. The act brings many changes to the Code of Economic Law, in particular in the chapter dedicated to collecting societies (chapter 9, title 5, book XI CEL).

A detailed analysis of the impact of this legislation on the existing regulatory framework is currently ongoing and will continue throughout 2018, in order to adapt the existing framework to the new requirements with regard to collective management and multi-territorial licensing.

### 2.9.3. Audiovisual sector

2017 was also a year in which many developments took place in the audiovisual field. Such a development is related to a [Royal Decree of 29 September 2016](#) that extends the tasks of the consultation committee with the consultation on the application of the provisions of copyright and related rights concerning audiovisual works. This consultation committee has, in view of the audiovisual part, been es-

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<sup>3</sup> Loi transposant en droit belge la directive 2014/26/UE du Parlement européen et du Conseil du 26 février 2014 concernant la gestion collective du droit d'auteur et des droits voisins et l'octroi de licences multiterritoriales de droits sur des œuvres musicales en vue de leur utilisation en ligne dans le marché intérieur.

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established by the Ministerial Decree of 23 November 2017. The consultation is held between the stakeholders of the audiovisual sector and includes also the possibility to conclude collective agreements on the exploitation of audiovisual works.

On behalf of the FPS Economy researchers of the Université Saint Louis Bruxelles and the Vrije Universiteit Brussel have carried out a [study](#)<sup>4</sup> on the application of the provisions of copyright and related rights on audiovisual works. This study consists of three parts:

- a legal part (describing and analysing the difficulties concerning audiovisual works and performances)
- an economic part (analysing the value net and the stakeholder consultation) and
- a synthetic part proposing some ideas to reconsider the exploitation of audiovisual works and performances.

This study has been finalized in 2017, published on the website of the FPS Economy and discussed in the consultation committee on 15 December 2017.

Another development in the audiovisual sector concerns the recent discussions about the implications of direct injection on copyright and related rights. On 30 March 2017, the Intellectual Property Board examined this complex broadcasting technique and its implications on copyright and related rights. It resulted in the [recommendation](#) of 30 March 2017 of the Intellectual Property Board on the implications on copyright and related rights of the technique of direct injection of programme-carrying signals in cable networks, which was published on the website of the FPS Economy.

In the months that followed the adoption and publication of the recommendation, a bill was drafted with a view to reduce the legal insecurity in the context of direct injection. The Intellectual Property Board discussed a first draft of a bill on 20 October 2017. The bill was subsequently adapted and submitted to the Consultation Committee on 15 December 2017. Consequently, at the moment of preparing this annual report, it is continuously being amended and discussed.

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4 Etude sur l'application des dispositions de droit d'auteur et des droits voisins sur les œuvres audiovisuelles.

#### 2.9.4. Fair remuneration

Finally, after an intense consultation with the sectors concerned throughout 2017, a Royal Decree concerning the equitable remuneration for performers and producers for the public performance of phonograms or the broadcasting of phonograms was adopted on 17 December 2017. Equitable remuneration is remuneration which, in addition to the remuneration of authors, collected in Belgium by SABAM, must be paid to musicians, singers (Playright) and music producers (SIMIM) for playing music by broadcasting or playing music in public.

The new decree of 17 December 2017 did not change the basic tariffs for the different sectors, with the exception of indexation. A number of new tariffs are however provided for in the decree, such as a tariff for itinerant Horeca establishments and a tariff for the use of music in the workplace. The new decree also introduced a reporting requirement, as was already the case for copyright, and provides for a more reasonable sanctioning mechanism. This new equitable remuneration regulation has also been adapted to the new landscape of broadcasters, as the Communities have recently amended the legislation concerning the recognition and the broadcasting license of broadcasters.

At the European level, several files were also finished and others are still being discussed in the Council of the European Union.

#### 2.9.5. Portability

Firstly, on 14 June 2017, [Regulation No. 2017/1128](#) was adopted, which was published on 30 June 2017. This Regulation ensures that subscribers to portable online content services which are lawfully provided in their Member State of residence can access and use those services when they are temporarily present in a Member State other than their Member State of residence. Specifically, it concerns online content services which are provided against payment of money, which are portable and which are audiovisual media services or services the main feature of which is the provision of access to, and the use of, works, other protected subject-matter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner.

Subscribers' access to online content services throughout the Union is guaranteed by the Regulation through an obligation of the provider of such a service to enable a subscriber who is temporarily present in a Member State to access and

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use the online content service in the same manner as in the Member State of residence. Such subscribers must be able, within certain limits, to have access in this Member State to the same content, on the same range and number of devices, for the same number of users and with the same range of functionalities, without additional charges.

#### **2.9.6. Facilitated access for blinds and visually impaired persons**

Secondly, two European instruments have been adopted in order to implement the obligations arising from the [Marrakesh Treaty](#), which was adopted on 27 June 2013. The main objective of this treaty is to facilitate access for persons who are blind, visually impaired and persons with print disabilities, to published works in a format that is accessible to them. To this end, the treaty aims to create a set of mandatory limitations and exceptions to copyright for the benefit of these persons, in order to allow the making and cross-border exchange of accessible format copies.

In order to comply with the obligations arising from the Marrakesh Treaty, the European Commission introduced two legislative proposals in September 2016, namely: a proposal for a directive implementing the Marrakesh Treaty and a proposal for a regulation on the exchange of accessible format copies between the Union and third countries that are parties to the Marrakesh Treaty. These proposals for instruments were the subject of technical discussions within the Council of the European Union in 2017, before being formally adopted by the European Parliament and the Council on 13 September 2017. These instruments entered into force at the beginning of October 2017, but will only be applicable from 12 October 2018, the date on which the Member States must have transposed the Directive into national law.

#### **2.9.7. Copyright in the Digital Single Market**

Then, on 14 September 2016, the European Commission also approved a Communication and 3 legislative initiatives, including the proposal for a Directive of the European Parliament and the Council on Copyright in the Digital Single Market. This proposal addresses a wide variety of topics, such as exceptions for text and data mining, exceptions for teaching in a cross-border context, a regime for the exploitation of so-called out-of-commerce works by cultural institutions, a proposal for a related right for press publishers, measures related to certain uses of protected content by online services, and proposals on copyright contract law.

In 2017, intense discussions on this proposal took place within the Council of the European Union's copyright working group. The Intellectual Property Office followed these discussions and represented the Belgian point of view within this working group.

Throughout 2017, the proposal for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes was also discussed within of the copyright working group of the Council of the European Union. This proposal aims to apply some principles of Directive 93/83/EEC to certain transmission and retransmission services that have emerged or have become more widely used since the Directive.

The original proposal tried to establish, on the one hand, the country of origin principle for online services ancillary to broadcasts, which means that the acts of communication to the public, of reproduction and of making available that take place during the provision of an ancillary online service, by or under the control and responsibility of a broadcasting organisation, are deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment. On the other hand, the proposal sought to extend the collective management of Directive 93/83/EEC to cross-border retransmissions other than cable retransmissions, but which are essentially similar to cable retransmissions (excluding the open internet), such as IPTV retransmissions.

The Presidency of the Council of the European Union has submitted a number of compromise proposals over the course of 2017 which mainly limit the scope of application of the country of origin principle. As far as retransmissions are concerned, retransmissions over the open internet, within certain limits, included in the scope. On 15 December 2017, the Council of the European Union gave a mandate to the Presidency to launch trilogues.

## **2.10. Trade secrets**

### **2.10.1. Transposition of the Directive on the protection of trade secrets**

Trade secrets include a company's know-how, manufacturing or business secrets or certain other information. It is not always possible or desirable to protect such trade secrets by a patent or another intellectual property right. They are, however, of great economic value and are just as important for innovation and competitive-

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ness of companies as intellectual property rights. A number of factors such as globalisation, increased outsourcing, longer supply chains and the use of ICT, result in an increase of the unlawful use of trade secrets. This, combined with the great economic importance of trade secrets, results in a greater need for a proper legal protection. However, both at national and at European level, the legal protection of trade secrets against their unlawful use is lacking, in particular due to the highly fragmented nature of this protection.

In this context, on 8 June 2016, the European Parliament and the Council adopted the [Directive on the protection of undisclosed know-how and business information \(trade secrets\) against their unlawful acquisition, use and disclosure](#). The deadline for transposition of this directive is 2 years, so that it must be transposed into Belgian law by 9 June 2018 at the latest. Work on this topic began at the end of 2016 with the creation of an interdepartmental working group, since the directive also relates to legal areas which do not come within the competence of the Intellectual Property Office. In 2017, this working group met several times in order to help the Intellectual Property Office to draw up a draft bill. At the same time, an ad hoc working group of the Intellectual Property Council, Section “Industrial Property”, also examined this draft bill. On this basis, the Intellectual Property Council issued an advice on the draft bill on 13 June 2017. The draft bill, together with the explanatory memorandum, was finalized in the autumn of 2017, taking into account the advice of the Intellectual Property Council, with a view to the transposition deadline. The draft bill will be submitted to Parliament in 2018.

## 2.11. Communication and awareness

For the general public, the BE-IPO is above all the office where you can file patent requests, supplementary protection certificates for medicines and phytopharmaceutical products and plant variety right certificates.

In addition to its administrative tasks, the BE-IPO has an important role of providing information. On the website of the FPS Economy, under the theme “[Intellectual Property](#)”, the general public can access a large collection of patent documents and patent variety right certificates.

All Belgian patents are mentioned in an official register, available from the BE-IPO. The full patent, which includes the description of the invention as well as its issuance file, are also available after the patent is issued.

The Patent Information Service of the BE-IPO also has all the tools necessary to answer your questions and requests for patent information.

### 2.11.1. Requests for “certified copies”

The number of certified copies of issued patents and sometimes patent applications is:

- 674 copies in 2015;
- 817 copies in 2016;
- 934 copies in 2017.

Between 2015 and 2017, the number of certified copies has increased by more than 30 %.

### 2.11.2. Requests for “EPOQUE searches”

These searches, carried out by the BE-IPO, are purely informal and initiated following a request from clients (mainly representatives). They are carried out via the “EPOQUE Net” system (which gives access to the Epoque and Derwent databases) used by the examiners of the European Patent Office.

Number of searches:

- 336 searches in 2015;
- 255 searches in 2016;
- 281 searches in 2017.

It can be observed that even though the number of searches carried out increased from 2016 to 2017 by approximately 10 %, the number of searches has decreased compared to 2015. This is due, not only to the possibility for the “public” to carry out directly searches in the patent publication databases (Esp@cenet for example) or have these searches done by other service providers (PATLIB centers or private companies), but also to the quality of the public databases which are constantly growing and becoming more and more efficient.

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Searches have been requested in two main technical areas:

- A classification: Human Necessities which includes:
  - o rural activities (including agriculture; hunting; trapping; ...)
  - o foodstuffs; tobacco
  - o personal or domestic articles;
  - o health; amusement;
- B classification: Performing operations ; transporting, including:
  - o separating, mixing;
  - o shaping;
  - o printing;
  - o transporting;
  - o micro-structural technology; nanotechnology.

### 2.11.3. “Customer” Services

The BE-IPO Contact Point brings together all BE-IPO’s “customer” services and provides access to all information relating to intellectual property.

Below, you will find the statistics on the number of visitors and the number of questions (by phones and e-mails) dealt with by the BE-IPO contact point in the various intellectual property matters.

#### Visitors and number of questions dealt with by the BE-IPO contact point

VISITORS	2015	2016	2017
Patents	434	228	183
Trademarks and models	234	58	110
I-Depot	71	28	18
Copyright	8	2	0
<b>Total</b>	<b>747</b>	<b>316</b>	<b>311</b>

This table shows that most of the appointments concern patents. It should also be noted that the number of trademarks & models meetings has practically doubled in 2017 compared to 2016.

### Repartition of questions dealt with by the BE-IPO contact point

TELEPHONES AND MAILS	2015	2016	2017
Patents	1,771	1,509	2,546
Trademarks and models	1,358	1,235	876
I-Depot	362	356	268
Copyright	182	165	268
<b>Total</b>	<b>3,673</b>	<b>3,265</b>	<b>3,958</b>

This table shows that most of the contacts concern patent law and trademarks & models.

For the sake of completeness on IP issues dealt with by the FPS Economy, the following data shows the number of questions (e-mails and telephones) received on the one hand by the two Legal Services of BE-IPO and on the other hand by the Contact Center of the FPS Economy in 2017.

### Repartition of questions dealt with by the BE-IPO legal services and the Contact Center

	Patents	M&M	Copyright	TOTAL questions
Intellectual Property Office	64	34	371	98
Copyright Office			371	371
Contact Center	756	296	376	1,428

In summary, in view of the 3 entry points (BE-IPO Contact Point, Legal Services and Contact Center), we can estimate the number of (individual) IP questions dealt with in 2017, all subjects combined, to 6166 individual questions.

#### 2.11.4. Consultation days

In addition to its point of contact, the BE-IPO also organises and/or participates in consultation days across Belgium in the field of intellectual property, mainly for SMEs that are present in order to ask questions.

The number of these days were:

- 17 for the year 2015;
- 17 for the year 2016;
- 16 for the year 2017.

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### **2.11.5. Events**

In 2017, the BE-IPO organised 3 events:

- A workshop for online e-filing (eOLF) users in order to optimize the eOLF tool;
- A consultation meeting with patent attorneys on the application of Belgian patent law;
- A copyright seminar aimed at informing the public (citizens and legal practitioners) about the new copyright legislation and getting feedback from the people concerned on the European proposals.

### 3. How to communicate with us

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Internet: <https://economie.fgov.be/en/themes/intellectual-property>

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## List of abbreviations

BE-IPO	Belgian Intellectual Property Office
BOIP	Benelux Office for Intellectual Property
CEL	Code of Economic Law
eOLF	electronic Online Filing
EP	European patent application
EPO	European Patent Organisation
EU	European Union
EUIPO	European Union Intellectual Property Office
FPS	Federal Public Service
FTE	Full time equivalents
IPO	Intellectual Property Office
M&M	Trademarks and models
PATLIB	Patent Library
PCT	Patent Cooperation Treaty
SABAM	Belgian Association of Authors, Composers and Publishers
SIMIM	Society of the Belgian Music Industry
SPC	Supplementary protection certificate
UPC	Unified Patent Court
UPP	Unitary patent Package
WIPO	World Intellectual Property Organisation



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