

Consumer market study on the functioning of the real estate services for consumers in the European Union

Country fiche – BELGIUM

General information

Country	Belgium
Researcher name	Prof. dr. Vincent Sagaert Drs. Benjamin Verheye
Researcher contact details (email)	vincent.sagaert@kuleuven.be benjamin.verheye@kuleuven.be
Main Sources Used	The authors are grateful to Mr. Robin Frissyn for the help in the writing of this contribution concerning the notarial aspects. Sincere gratitude also goes to Prof. Luc Weyts, who responded to the previous version of this questionnaire and whose responses provided a source of inspiration to the authors.

1. Regulatory background

1.1 Level of regulation in the country

Table 1: Level of regulation			
	Level of regulation	Source of relevant legislation	Ongoing discussion on regulation/deregulation (if applicable): current state of affairs and main arguments in the debate
Real estate transactions ¹	Strictly regulated	Civil Code of 1804 Mortgage Act of 1851 Various specific Acts and Royal Decrees	N/A
Notary system (or lawyer/conveyancer system) ²	Strictly regulated	Notary Act of Ventôse 1803	N/A
Profession of estate agents	Strictly regulated	Act of 11 February 2013 organising the profession of real estate agent	N/A

1.2 National legislation

Table 2: List of national legislation		
List of national legislation	Classification of national legislation	Content of the national legislation
Civil Code of 1804 ³	Applicable to real estate transactions in genera	General rules on transfer of ownership of real estate (consensual, monistic and causal system)
Mortgage Act of 1851 ⁴	Applicable to real estate transactions in general	<ul style="list-style-type: none"> • General rules on the Belgian real estate publicity system (Mortgage Register, publicity required for opposability) • Rules on general and specific privileges • Rules on mortgages

¹ E.g. limitations or prohibitions of certain transactions; specific formality requirements etc.

² Only in countries where notaries do not exist or do not have a monopoly on conveyancing.

³ See: http://www.ejustice.just.fgov.be/cgi_loi/loi_l1.pl?language=nl&la=n&fromtab=wet&tri=dd+as+rank&sql=dd+ += +date'1804-03-21'

⁴ See: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la =N&table_name=wet&cn=1851121601

Table 2: List of national legislation

Notary Act of Ventôse 1803 ⁵	Applicable to notaries	<ul style="list-style-type: none"> • Organisation of the notarial profession • Conditions on market entry, rules on conduct of business, rights and duties
Act of 11 February 2013 organising the profession of real estate agent ⁶	Applicable to real estate agents	<ul style="list-style-type: none"> • Organisation of the real estate agent profession • Conditions on market entry, rules on conduct of business, rights and duties
Book VII of the Economic Law Code ⁷	Applicable to credit transactions related to immovables, with or without constitution of a mortgage. Applicable to mortgage creditor institutions. Applicable to consumers	<ul style="list-style-type: none"> • Implementation of EU Mortgage Credit Directive • Rules on mortgage credits • Consumer protection: advertisement rules, ESIS, advice, etc. • Responsible lending principles: scrutiny of possibilities of future debtors, debt to income, etc.
Long lease ('emphyteusis') Act of 1824 ⁸	Applicable to real estate transactions establishing a long lease	<ul style="list-style-type: none"> • A long lease must have a duration of at least 27 years and maximum 99 years • The lessee cannot undertake any action that decreases the value of the plot of land • A lot of contractual freedom
Building right ('superficies') Act of 1824 ⁹	Applicable to real estate transactions establishing a building right, explicitly or implicitly	<ul style="list-style-type: none"> • A building right must have a duration of maximum 50 years • The titular of the building right can build and own buildings on a plot of land or volumes on an existing building • Contractual freedom
Act of 9 July 1971 on the construction of residential real estate and the sale of future residences or real estate that is being built (the 'Breyne-Act') ¹⁰	Applicable on B2C transactions concerning residential real estate that has not been built yet or that is being built.	<ul style="list-style-type: none"> • Consumer protection • Ownership of the plot of land and the existing buildings are immediately transferred to the buyer, ownership of the buildings being built is gradually transferred • Specific conditions for contracts that fall within the scope of the Act: compulsory clauses, exhaustive descriptions, no buy-back clause, etc.

⁵ See: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=nl&la=N&cn=1803031630&table_name=wet&&caller=list&fromtab=wet&tri=dd+AS+RANK

⁶ See: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2013021151&table_name=wet

⁷ See: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2013022819&table_name=wet

⁸ See: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1824011030&table_name=wet

⁹ See: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=nl&la=N&cn=1824011031&table_name=wet&&caller=list&fromtab=wet&tri=dd+AS+RANK

¹⁰ See: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=nl&la=N&cn=1971070930&table_name=wet&&caller=list&fromtab=wet&tri=dd+AS+RANK

Table 2: List of national legislation

Residential Rent Act (federal) ¹¹ Brussels Capital Region Residential Rent Ordonnance (not yet into force) ¹²	<i>Cf. infra</i>	<i>Cf. infra</i>
Commercial Rent Act ¹³	<i>Cf. infra</i>	<i>Cf. infra</i>

1.3 Implementation of relevant EU legislation

Table 3: Implementation of relevant EU legislation

EU legislation	Implementation achieved?	Implementation of EU legislation at the national level (e.g. the name of the law)	Source of the national implementation legislation: all Belgian legislation can be consulted on www.juridat.be	Content of the national legislation in keywords	Which parts of the EU legislation have <u>not</u> been transposed?
Directive 2005/29/EC on unfair commercial practices (UCPD)	Yes	Act of 6 April 2010 on commercial practices and consumer protection.	Integrated in the Economic Law Code.	Unfair commercial practices Consumer protection	None
Directive 93/13/EEC on unfair terms in consumer contracts	Yes	Act of 2 June 1991 on consumer credit Act of 14 July 1991 on commercial practices and consumer information and protection Act of 4 August 1992 on mortgage credit.	Integrated in the Economic Law Code.	Unfair terms and conditions in contracts with consumers Consumer protection	None

¹¹ See: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=nl&la=N&cn=1991022032&table_name=wet&&caller=list&fromtab=wet&tri=dd+AS+RANK

¹² See: http://www.etaamb.be/nl/beschikking-van-27-juli-2017_n2017040697.html

¹³ See: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1951043030&table_name=wet

Table 3: Implementation of relevant EU legislation

Directive 2008/122/EC on the protection of consumers, in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts	Yes	Act of 28 August 2011 on the protection of consumers regarding contracts of timeshare, long-term holiday product, resale and exchange contracts Act of 13 August 2011 amending the Act of 11 April 1999 on injunctions for violations of the act on contracts of acquisition of timeshare.	Act of 28 August 2011 Act of 11 April 1999 on injunctions for violations of the act on the protection of consumers regarding contracts of timeshare, long-term holiday product, resale and exchange contracts	Precontractual information Advertising rules Revocation right for the consumer Establishment of an injunction Implemented in art. 589 of the Procedural Law Code	
Directive 2010/31/EU of Energy Performance of Buildings Directive	Yes	Flemish Energy Decree of 8 May 2009 Decree of 14 March 2014 amending the Flemish Energy Decree of 8 May 2009 Decision of the Flemish Government of 19 November 2010 on general provisions of energy policy Decision of the Flemish Government of 28 December 2012 amending the Energy Decision of 19 November 2010 Ordonnance of 7 June 2007 of the Brussels Capital Region on energy performance and interior climate of buildings Ordonnance of 2 May 2013 of the Brussels Capital Region containing the Brussels Code of Air, Climate and Energy Decision of 19 June 2008 of the Government of the Brussels Capital Region determining the	Flemish Energy Decree of 8 May 2009 Flemish Energy Decision of 19 November 2010 Brussels Ordonnance of 7 June 2007 Brussels Code of Air, Climate and Energy Brussels Decision of 19 June 2008 Brussels Decision of 27 May 2010 Brussels Decision of 6 October 2016	Introduction of Energy Performance Requirements for Buildings Introduction of the Energy Performance Certificate (EPC), Green Power Certificates, Thermal Power Certificates Encouragement of green power initiatives (government support for individuals and companies for green power businesses) Introduction of Energy	None

Table 3: Implementation of relevant EU legislation

		<p>content of the energy performance requirements. Decision of 27 May 2010 of the Government of the Brussels Capital Region on the Energy Performance Certificate Decision of 6 October 2016 of the Government of the Brussels Capital Region modifying various decisions executing the Ordonnance of 2 May 2013 containing the Brussels Code of Air, Climate and Energy. Decree of 19 April 2007 of the Walloon Region on energy performance of buildings Decree of 28 November 2013 of the Walloon Region on energy performance of buildings. Decision of 17 April 2008 of the Walloon Government on the energy performance requirements. Decision of 12 December 2013 of the Walloon Government amending the Walloon Code of Territorial, Urban, Patrimonial and Energy Management, as far as provisions on the energy performance of buildings are concerned. Decisions of 15 May 2014, 18 December 2014, 19 November 2015, 28 January 2016 and 15 December 2016 executing the Decree of 28 November 2013.</p>	<p>Implemented in the Walloon Code of Territorial, Urban, Patrimonial and Energy Management Walloon Decree of 28 November 2013 Walloon Decision of 17 April 2008 Walloon Decision of 12 December 2013 Walloon Decisions of 15 May 2014, 18 December 2014, 19 November 2015, 28 January 2016 and 15 December 2016</p>	<p>Performance Requirements for Buildings Introduction of the Energy Performance Certificate</p>	
--	--	--	---	--	--

Table 3: Implementation of relevant EU legislation

<p>Directive 2005/36/EC on Recognition of Professional Qualifications, as last amended by Directive 2013/55/EU</p>	<p>Yes</p>	<p>Act of 13 December 2007 establishing a new general framework for the recognition of professional qualifications Act of 21 November 2008 implementing the Directives 2005/36/EC and 2006/100/EC and amending the acts of 20 February 1939 on the protection of the title and profession of architect and of 26 June 1963 establishing an Order of Architects.</p>	<p>Framework Act of 13 December 2007 Architect Act of 21 November 2008</p>	<p>Recognition of professional qualifications obtained in other EU Member States: conditions, equivalences, additional aptitude tests, etc. Specific provisions concerning architects.</p>	<p>None</p>
<p>Mortgage Credit Directive, 2014/17/EC</p>	<p>Yes</p>	<p>Act of 19 April 2014 introducing Book VII “Payment and credit services” in the Economic Law Code, inserting definitions proper to Book VII and sanctions for violations on Book VII in the Books I and XV of the Economic Law Code and concerning various other regulations. Act of 19 April 2014 organising recourse means against some decisions of the FSMA taken in application of Book VII or Book XV of the Economic Law Code, and adjusting the act of 2 August 2002 concerning the supervision on the financial sector and the financial services, <i>Belgian Official Gazette</i> 28 May 2015; Act of 26 October 2015 adjusting the Economic Law Code and</p>	<p>Economic Law Code</p>	<p>Consumer protection: advertisement rules, ESIS, advice, etc. Responsible lending principles: scrutiny of possibilities of future debtors, debt to income, etc. Organisation of Mortgage Credit Agencies: permanent education, staff requirements, etc.</p>	<p>None</p>

Table 3: Implementation of relevant EU legislation

		concerning various other adjustment regulations Act of 22 April 2016 with regard to the adjustment and inclusion of rules concerning consumer credit and mortgage credit in the various Books of the Economic Law Code.			
--	--	--	--	--	--

1.4 Communications and strategy papers

Table 4: Communications and strategy papers

Communication or strategy paper	Have the following communications and strategy papers been referred to in national documents?	Name of document	Source	Content	Differences with respect to communications and strategy papers listed in the first column
COM(2015) 550 final Communication of the Commission Upgrading the Single Market: more opportunities for people and business	No				
COM(2013)676 Communication from the Commission on evaluating national regulations on access to professions	No				
COM(2016)820 Communication from the Commission on reform recommendations for regulation in professional services	No				
European Consumer Agenda	No				
Consumer Programme 2014-2020	No				

2. General market information

2.1 Key market data

Table 5: Key market data	
General market situation (e.g. trends in the market, recent developments in the market, price fluctuations, etc.)	<p>There is a clear indication of the Belgian tendency to acquire bare ground with the intention to build their own house on it. According to data of the National Bank of Belgium for 2014, 70,3% of the Belgian households have full ownership of their own residential home.</p> <p>The average price for real estate in Belgium has risen over the last couple of years (cf. infra).</p> <p>An interesting recent evolution is the fact that real estate is ever more seen as an interesting investment by people who own already a residential house. They consider real estate as a safe alternative for the classic investments on the stock market and a better renting alternative for saving accounts. Evidence for this trend is the fact that in the first months of 2017, the amount of real estate transactions and the prices thereof have risen, whereas the number of mortgage credits has decreased.</p> <p>30% of the Belgian people rent real estate. This real estate is rented to them by 4% of the population. On average, tenants spend 47% of their income to the rented real estate. More real estate is rented in urban areas than on the countryside.</p>
Total value of residential transactions for buying for the year 2015 (2014 or 2013 depending on the latest available data) expressed in EUR	<p>In 2016, the following number of buying transactions took place:</p> <p>Residential houses: 59.786, for a value of EUR 12.700.983.286.</p> <p>Villas, bungalows and manors (> 500 sqm): 17.510 for a value of EUR 6.125.397.360;</p> <p>Apartments, flats and studios: 37.574 for a value of EUR 8.313.363.284;</p> <p>Plots of land (average of 2014): 16.903 for a value of EUR 2.362.959.938,6.</p> <p>In 2015, the following number of buying transactions took place:</p> <p>Residential houses: 52.992, for a value of EUR 10.830.178.523.</p> <p>Villas, bungalows and manors (> 500 sqm): 15.722 for a value of EUR 5.381.638.865;</p> <p>Apartments, flats and studios: 37.308 for a value of EUR 8.224.544.760.</p>
Ratio house owners – tenants (i.e. the percentage of households that are owners resp. tenants of dwelling units)	<p>According to data of the National Bank of Belgium for 2014, 70,3% of the Belgian households have full ownership of their own residential home, with a median¹⁴ value of EUR 249,700.¹⁵ Moreover, 18,5% of the Belgian families own additional real estate.¹⁶</p> <p>30% of the Belgian population rent real estate.</p>

¹⁴ 50% of the residence-owning households' residence is worth less, 50% is worth more. See P. DE CAJU, "De vermogensverdeling in België: eerste resultaten van de tweede golf van de Household Finance and Consumption Survey (HFCS)", *NBB Economisch Tijdschrift* 2016, vol. september, (27) 28.

¹⁵ P. DE CAJU, "De vermogensverdeling in België: eerste resultaten van de tweede golf van de Household Finance and Consumption Survey (HFCS)", *NBB Economisch Tijdschrift* 2016, vol. september, (27) 29.

¹⁶ P. DE CAJU, "De vermogensverdeling in België: eerste resultaten van de tweede golf van de Household Finance and Consumption Survey (HFCS)", *NBB Economisch Tijdschrift* 2016, vol. september, (27) 29.

Table 5: Key market data

Usage of land (Quotas for built land, agricultural land, “wild land” (forests, lakes etc.))	Usage of land in Belgium in 2016: Agricultural land: 1.350.077 ha Forest: 702.408 ha Built: 630.635 ha	
Average prices of residential property	<i>According to the type of property</i> Average flat of ca. 70 sqm Terrace house of ca. 100 sqm Detached (one family house) of ca. 150 sqm	The average prices for residential real estate in Belgium in 2016 were ¹⁷ : Residential houses (Terrace house of ca. 100sqm): EUR 212,441; Villas, bungalows and manors (> 500 sqm): EUR 349,823; Apartments, flats and studios (Average flat of ca. 70sqm): EUR 221,412; Plots of land (average price of 2014): EUR 119/sqm.
	<i>According to the type of location</i> • Capital city • Urban areas • Rural areas	There are large divergences of prices, dependent on the region and location (city, suburban, rural) ¹⁸ . Generally speaking, in Brussels, real estate is most expensive, followed by Flanders. In the Flemish Region, the average prices in 2016 are the following: - Residential houses: EUR 228,480; - Villas, bungalows and manors (> 500 sqm): EUR 374.705; - Apartments, flats and studios: EUR 227.855; In the Brussels Capital Region, the average prices in 2016 are the following: - Residential houses: EUR 412.843; - Villas, bungalows and manors (> 500 sqm): EUR 1.008.176; - Apartments, flats and studios: EUR 235.228; In the Walloon Region, the average prices in 2016 are the following: - Residential houses: EUR 157.306; - Villas, bungalows and manors (> 500 sqm): EUR 272.085; - Apartments, flats and studios: EUR 173.542.
Price development of residential property	<i>According to the type of property</i> Average flat of ca. 70 sqm Terrace house of ca. 100 sqm Detached (one family house) of ca. 150 sqm	The average prices of real estate in Belgium have been gradually increasing during the last decades, with almost 30% over the last decade. In 2016, these increases were the following: - Residential houses: 4%; - Villas, bungalows and manors (> 500 sqm): 2,2%; - Apartments, flats and studios: 0,4%.
	<i>According to the type of location</i>	In the Flemish Region, the development in 2016 was the following: - Residential houses: 2,9%; - Villas, bungalows and manors: -0,1%;

¹⁷ No figures are available in Belgium in relation to the type of property listed in the second column.¹⁸ The distinction according to the type of location listed in the second column is not generally upheld in Belgium, where the focus is put on the differences between the three regions.

Table 5: Key market data

		<ul style="list-style-type: none"> - Apartments, flats and studios: -1,3%. <p>In the Brussels Capital Region, the development in 2016 was the following:</p> <ul style="list-style-type: none"> - Residential houses: 2,1%; - Villas, bungalows and manors: 10,4%; - Apartments, flats and studios: 2,2%. <p>In the Walloon Region, the development in 2016 was the following:</p> <ul style="list-style-type: none"> - Residential houses: 1,4%: - Villas, bungalows and manors: 0,7%; - Apartments, flats and studios: 1,9%.
<p>Development of price index (Housing price index if existing, otherwise Consumer price index)</p>	<p>For 2016:</p> <ul style="list-style-type: none"> - Q1: 3,09% - Q2: 2,48% - Q3: 2,46% - Q4: 2,54% 	

2.2 Service providers

Table 6: Service providers						
	Total number of firms (end 2016)	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm (expressed in EUR)
Estate agents	N/A	9887: - 7839 titulars - 2009 interns - 39 agents from another EU Member State	N/A	N/A	N/A	N/A
Lawyer/ Advocates/ Solicitor	N/A	15 lawyers per 10.000 inhabitants (in 2012-2013)	N/A	N/A	N/A	N/A
Notary	1150	1550	8000	N/A	N/A	N/A
Licenced conveyancers	The profession does not exist in Belgium.					
Architects	N/A	7714 (end 2014)	N/A	N/A	N/A	N/A
Surveyor	Approximately 1650 surveyors ¹⁹	N/A	N/A	N/A	N/A	N/A
Engineers	N/A	N/A	N/A	N/A	N/A	N/A

¹⁹ See: [http://economie.fgov.be/nl/ondernemingen/leven_onderneming/oprichting/toegang_beroep/vrije_intellectuele_beroepen/landmeters_experten/volledige_lijst/](http://economie.fgov.be/nl/ondernemingen/leven_onderneming/oprichting/toegang beroep/vrije_intellectuele_beroepen/landmeters_experten/volledige_lijst/)

3. Roles of professionals and services in the real estate market

Table 7: Role of professionals in the real estate market

	Notary	Lawyer	Real estate agent	Technical services
Main function: does the professional typically work independently or as part of a firm or another organisation?	Notary associations/corporations are allowed.	Lawyer associations/corporations are allowed.	Real estate agent associations/ corporations are allowed.	/
Extent of engagement (at which point(s) does each professional intervene in the process?)	<p>Firstly, the preliminary sales agreement is, in some cases, drafted by the notary. Secondly, a transaction transferring real estate property rights (with constitutive or retroactive effects) is only effective against third parties as from the date on which the agreement has been registered with the competent Mortgage Registry Office and as only authentic deeds and court decisions may be registered with this Office, the notary's intervention is required in this respect. Thus, the notary must pass the deed of transfer of property ('conveyance'). Before passing the authentic deed of transfer of property, the notary has to comply with</p>	<p>In the Belgium real estate market, the intervention of a lawyer is not required and remains an exception in transactions of conveyance between private parties. In transactions between professional parties, however, advocates often play an important role, sometimes being the main actor that constructs a certain scheme of various real estate transactions. When advocates intervene, they mostly play an important role in the drafting of the preliminary agreement between the parties and the credit and security agreements with the financial institutions. In this respect, they often act as escrow agent for the financial transaction. In addition,</p>	<p>The intervention of a real estate agent is not mandatory. However, nowadays, most real estate transactions, especially with private parties, involve one or more real estate agents. Not only real estate agents constitute the first address for private parties wishing to buy and/or sell real estate, reducing their research cost, but they also guide these parties through the transaction. They organise publicity, conduct guided visits of the real estate, they draft purchase options or sales options and often draft the preliminary agreement between parties. It is also possible that they receive the down payment (usually 10 or 15% of the sale price) upon the signing of the preliminary</p>	<p>The intervention of various technical services is sometimes obligatory in Belgium during the acquisition of real estate. There exists differences between the various regions, as most of the decisive powers on these issues have been transferred to the Regions. In all Belgian Regions, firstly, on the basis of the Act of 1971 concerning the sale of building 'on plan'²⁰, the intervention of an architect is required (1) if (part of the) building is sold to a private party prior to its completion and (2) that party is obliged to make a down payment before the building is built. The architect must control and sign the plans for the building and these plans must be added to the agreement. Outside the scope of application of this Act, all parties can, on a</p>

²⁰ Act of 9 Juli 1971 regulating residence building and the sale of residences that will be built or are being built, *Belgian Official Gazette* 11 September 1971, 10442.

Table 7: Role of professionals in the real estate market

	<p>a large number of formal requirements, such as: Verifying the identity of the seller and that of the purchaser and their respective marital status; If the seller/purchaser is married and has a marriage contract, verifying the contents of this contract; Verifying the legal capacity of the seller and the purchaser; Checking the ownership title of the seller; Verifying whether a speculation tax is due; Verifying whether any of the parties will be represented by a proxy holder for the passing of the deed (in which case the proxy must also be in authentic form); In case the purchaser or the seller is a legal person, verifying the articles of association of this entity and the powers of representation; In case the purchaser is a province, a municipality, a public social aid centre or a local church body ("kerkfabriek"/"fabrique d'église"), verifying whether the decision to sell or buy has been taken by the competent body and whether the appropriate administrative</p>	<p>advocates can also play a role in the drafting of the authentic deed by the civil notary, making suggestions and requiring certain guarantees to be included in the deed. In complex or difficult transactions, the lawyers involved often play the role of escrow agent: the financial institution only transfers the loan to the debtor, if the advocates have received all necessary documents proving that possible suspending conditions have been fulfilled and give their fiat to the financial institution.</p>	<p>agreement, which they have to pass through to the seller (after deduction of their commission).</p>	<p>non-mandatory basis, decide to ask for the expertise of an architect before entering into the agreement. Secondly, in all Belgian Regions, the seller must obtain a certificate that declares that the oil tank of the building – in case there is one – is safe. This can also be recognised by a mark – a coloured sticker – on the tank. Oil tanks under a certain volume must, however, only be mentioned in the sales agreement. Thirdly, in all three Regions, it is compulsory to provide the purchaser with an Electricity Certificate at the moment that the authentic deed is passed. This certificate can only be drafted by a licensed expert organisation who controls the electricity system of the building. If the last Electricity Certificate predates 1 October 1981, a new control must take place. In addition, in the Flemish Region, the seller of real estate must obtain a soil certificate from the Public Flemish Waste Company (OVAM), before entering into a preliminary agreement. Complying with these obligations is a validity requirement for the private</p>
--	--	---	--	---

Table 7: Role of professionals in the real estate market

	<p>procedure has been complied with; Verifying whether there are any servitudes on the object of the conveyance; Verifying whether the property to be sold may have been, in the previous thirty years, transferred in a way which allows the original transferor to recall the transfer or which requests authorisation of the original transferor to make the sale possible (e.g. donation, sale of a social housing, ...); Verifying whether the building has been insured; Verifying whether the building/plot of land is not let and, if so, verifying the conditions of the lease; If the good is part of a condominium (i.e., generally, an apartment building), verifying the by-laws of the condominium; Obtaining a land register ('cadastre') certificate (<i>cf. infra</i>); Obtaining a mortgage register certificate (<i>cf. infra</i>); Obtaining a town planning certificate with the concerned municipality;</p>			<p>sales agreement. This is requested by the Soil Decree²¹ in order to make sure that the soil is not polluted. If the seller does not sell a so-called 'risk plot of land', indicating that risk activities have taken place in the past, and no previous investigation has taken place, the seller obtains a blanco certificate, which is sufficient to transfer the plot of land, if all cadastral information is correct. If that certificate mentions that there is pollution exceeding the normal limits or if a risk plot of land is being sold, then the buyer has to request an additional exploratory soil investigation by a licensed expert, unless this has already been undertaken and no risk activity has been going on the plot of land ever since. If the outcome of this investigation is that the soil is polluted, then the buyer needs a descriptive soil investigation. If sanitation is required, then it must be sanitised by a licensed expert and the buyer must provide a financial security. In the Brussels Capital Region and Walloon Region, a similar soil certificate must be obtained,</p>
--	---	--	--	--

²¹ Decree of 27 October 2006 concerning soil sanitation and soil protection, *Belgian Official Gazette* 22 January 2007, 2579.

Table 7: Role of professionals in the real estate market

	<p>Obtaining a soil certificate if required (not applicable for all Regions, <i>cf. infra</i>) Notifying the relevant tax authorities (e.g. the direct tax collector and the VAT – collector if the company is subjected to VAT) at least 12 days before the passing of the deed conveying the property; Verifying the registered property titles of the real estate in order to check whether they contain any transfer restrictions, e.g. a pre-emption right in favour of a tenant in the event of a sale that implies that the latter should have the possibility to buy first, a pre-emption right in favour of a public authority, etc. Checking whether the property is object of a statutory right of pre-emption.</p> <p>In general, the notary checks, to the extent his/her office allows to do so, the legal validity and lawfulness of the contractual agreement, makes sure both parties are protected, and has to refuse his/her professional obligation if the agreement underlying the conveyance is void. In all</p>			<p>although the procedure differs from the procedure applicable in the Flemish Region. Finally, in all three regions, the purchase of real estate must be provided with the so-called ‘Energy Performance Certificate’ (EPC) if the real estate is or contains a building. This certificate must be drafted by a licensed expert. It contains information about the energy efficiency of the building, with a coloured graph. The EPC is a key factor for determining the value of the house and possible renovations.</p>
--	---	--	--	---

Table 7: Role of professionals in the real estate market

	<p>transactions in which the notary intervenes, s/he provides an independent and impartial legal advice and information to the parties. By the intervention of the notary, the agreement gets enforced probatory value and is enforceable without intervention of a court ('executory title').</p> <p>Thirdly, the notary also intervenes in the performance pursuant to the notarial deed. S/he has the role of an escrow agent: s/he receives the payment from the purchaser (mostly on his/her escrow account) and hands it over to the seller. The notary guarantees that all debts on the sold goods with mortgages or statutory property security rights, as they have been registers, are in priority paid. The notary has the legal obligation to notify the tax administration in order to check if there are any fiscal or social debts towards the tax authorities. Generally, cash payments are prohibited in the purchase of real estate. The notary also collects the taxes that are due on the transaction and</p>			
--	---	--	--	--

Table 7: Role of professionals in the real estate market

	transfers them to the competent authorities (<i>cf. infra</i>).			
Mandatory involvement	<i>Cf. supra.</i>	No.	No.	<i>Cf. supra.</i>
How are their fees/charges structured	The legal basis is the Royal Decree of December 16, 1950 on notary fees. A cost calculator is accessible through the Belgian notaries' website www.notaire.be , in order to guarantee full transparency on the total amount of fees and taxes related to a real estate transaction. <i>Cf. infra</i> for examples, 4.2 Sale contract and transfer of ownership.	Freely determinable.	Freely determinable.	Freely determinable, unless a legal provision stipulates differently for a specific service.

4. Land registration

Table 8: Land registration

Responsible authority(ies) dealing with land registration	<p>Belgium has a rather decentralised system of land registration. In order to obtain all necessary information, one must consult three different instances: the Land Register ('Cadaastre') Office, the Registration Office and the Mortgage Register Office. In most cases, the notary deals with these three registers.</p> <p>Since recent restructuring and reorganisation projects, the three instances have been brought closer together from an operational point of view. Strictly legally speaking, however, they remain three separate instances, which are all three part of the Department of Finance.</p>
Actors involved in the registration procedure and their main functions	<p>1. Land Register ('Cadaastre') Office</p> <p>The Land Register ('Cadaastre') Office is situated at the municipality level of the Belgian State. It is organised as a so-called <i>Realfolium</i>: all information is ranked on the basis of the plot of land. This information includes: the location, a unique description number of the land and the buildings thereon, the identity of the owners, possible limited real rights and their titulars, etc. It still operates partly on a non-digitalised basis.</p> <p>The main goal of the Land Register ('Cadaastre') Office is to determine the so-called 'Cadastral Income' of all real estate. This allows the State to levy various taxes on real estate (immovable income tax, regional immovable withholding tax, etc.). The Cadastral Income also receives the registration rights (<i>cf. infra</i>). Nevertheless, the information of the Cadaastre Office is commonly also used to identify the property at stake. This has, however, no legal value: it cannot be used as a proof for a claim to real estate or any other legal claim.</p> <p>2. Registration Office</p> <p>The Registration Office is part of the tax authorities of the Belgian State. It is responsible for levying the transfer tax on real estate, the so-called 'registration right'. Every transfer of real estate must be registered within 4 months after signing the preliminary sales agreement (or after the realisation of the conditions precedent) or at the moment that the authentic deed is being passed.</p> <p>Upon registration, the registration right must be paid, and payment is determined as a fixed percentage of the sales price. These percentages differ between the three Regions: 10% in the Flemish Region, 12,5% up to 15% in the Brussels and Walloon Region. A discount applies if the Cadastral Income is below EUR 745 (houses; increased in case of at least three children) or EUR 323 per month (plots of land), insofar (1) the purchaser(s) acquires full ownership of the entire real estate, (2) the purchaser has not bought other real estate before and (3) fulfils the obligation to have his/her main residence in the real estate for a period of at least three years, within three years after acquisition of the real estate. The acquirer must be a natural person having his/her legal residence within the EEA.</p> <p>Registration has an important civil effect: it grants to the deed a so-called 'certain date', <i>i.e.</i> its date can be proven against third parties.</p> <p>3. Mortgage Register Office</p> <p>The Mortgage Register Office exists in Belgium since the Act of 1851, making it one of the oldest of its kind in Europe. Although it is part of the Finance Department, it serves private interests, contrary to the Cadaastre Office and the Registration Office, that both serve state interests.</p>

Table 8: Land registration

	<p>Contrary to what its name might suggest, the Mortgage Register requires the publicity of all deeds <i>inter vivos</i> resulting in the transfer, establishment, abdication or declaration of ownership or other property rights, such as usufruct, building rights ('superficies') or long lease ('emphyteusis'). In addition, also real estate lease agreements for a period exceeding 9 years, despite lease not being a property right in Belgium, and court actions and decisions affecting the proprietary status real estate must be registered. Only if this publicity requirement is fulfilled, the transaction is effective against <i>bona fide</i> third parties with competing interest on the property at stake. For instance, the date of registration in the mortgage register decides the priority of <i>de bona fide</i> acquirers that have acquired concurring real rights. In this respect, it must be mentioned that Belgium has a negative immovable publicity system, as opposed to positive systems (e.g. the German <i>Grundbuch</i>): it is only guaranteed towards third parties that all information that is not registered, despite it being required to be published, cannot be effective against them. No guarantees whatsoever are given, however, as far as the correctness of the registered information is concerned. The Belgian land registrar has therefore only a passive role in the registration process: it must only control whether the deeds that are offered to him fulfil all formal requirements in order to be published and not whether they are internally correct.</p> <p>The Mortgage Register is personally organised, contrary to the so-called <i>Realfolia</i> (e.g. the German <i>Grundbuch</i>): all information is ranked on the basis of the titulars of the real rights. However, thanks to the ongoing digitalisation of the Mortgage Register, it would in fact be possible to undertake research on a real level as well, albeit for more recently registered information.</p>
Intermediate steps of the registration procedure, if applicable	<i>Cf. supra.</i>

5. The process to buy or sell a property

5.1 Main steps in the transaction process to buy or sell a property

Table 9: Main steps of the process to buy or sell a property			
Main steps	Main function	Applicable	National specificities/additional functions/main actors
Estate agent services	Matching the parties	Yes	<i>Cf. supra</i> , 3. Roles of professionals and services in the real estate market
Alternative matching devices	Matching the parties	Yes	Online overviews of all real estate for sale/for rent.
Preliminary contract	Securing the transaction before the final contract is concluded	Yes	<p>Most frequently, before going to the notary, the parties will sign a private sales agreement agreeing upon the essential rights and obligations determining the conveyance. As a matter of principle, the property transfer takes place at this same moment: Belgium has a consensual system of transfer of real rights. However, in many cases, parties will postpone the actual transfer of the real right until the moment of the passing of the authentic agreement or until the moment the price is paid (most frequently coinciding with the authentic deed). Such reservation of real estate title is valid. However, parties are obliged by the binding force of the agreement from the moment of its conclusion. It is to be noted that an exception exists to this extent for mortgages: a mortgage is only validly established when the authentic agreement has been passed. However, nothing opposes against the fact that parties would enter into their sales contract immediately in authentic form. Mostly, they enter into a private sales agreement as this authentic deed requires some time delay, given the formal requirements (<i>cf. supra</i>).</p> <p>In many cases, especially with private parties, the private sales agreement contains a condition precedent stipulating that the agreement only takes effect if the purchaser obtains a loan, mostly a mortgage loan, from a financial institution, within a limited period of time. This is, however, not mandatory.</p> <p>The private sales agreement can be drafted by anybody. In most cases, the real estate agent or an advocate (for professional parties) drafts the private sales agreement. It is unusual that a notary is already engaged at this stage of the process, although it is possible and in fact recommended. This recommendation stems from the fact that a notary is, in most cases, in a better position to assess the content of the agreement and that parties can already benefit, in case something goes wrong, from the notary's insurance. In principle, it is not required that the preliminary agreement be in written</p>

Table 9: Main steps of the process to buy or sell a property

			<p>form in order to be valid. However, in non-commercial, a transfer with a value exceeding 375 EUR must be in writing in order to be proven.</p> <p>It is common that at the signing of the preliminary agreement, a down payment will be made. In this respect, the real estate agent or the notary will act as escrow agent for the parties. The down payment can also take the form of a financial security.</p>
Preliminary checks (land register, Mortgage Register, administrative permits)	Conducting all necessary checks, in order for the buyer to know what s/he buys, including all possible encumbrances.	Yes	<p>Notary</p> <p><i>Cf. supra</i>, 3. Roles of professionals and services in the real estate market</p>
Drafting the sales contract and/or deed of conveyance	Formalising the agreement of the parties.	Yes	<p>The authentic deed is in most cases passed before a notary. The notary is, however, not the only official that can grant authenticity to a deed: a judge and other officials, for instance the governor of a province or authenticated diplomat in a foreign embassy, can also authenticate an agreement. Authenticity is required, for only authentic deeds can be registered by the Registration Office and published by the Land Registry Office.</p> <p>The notary is obliged to control a series of formalities before the authentic deed can be signed. S/he will consult, <i>inter alia</i>, the Registration Office, the Cadastre Office and the Mortgage Registry Office. Thus, s/he will ascertain the title of the seller and all previous titles, going back for a period of time of at least 30 years, which is the term for the standard acquisitive prescription of real estate. S/he will also check whether all public law requirements, such as the acquisition of the Soil Certificate, are fulfilled. In addition, s/he will control the identity of the parties, their marital status, etc. As mentioned above, it is recommended that a notary is already engaged in the previous step of the conveyancing process, as parts of this control can already be undertaken then, which is also of importance for the preliminary agreement.</p> <p>The authentic deed itself contains a lot of information, mostly aiming at protecting the parties: the identity, place and date of birth, marital status, etc., of private persons, and the name, company form, official publicity measures, some statutory information, etc., of legal persons, the identification of the real estate that is conveyed, possible conditions precedent or termination clauses, various compulsory clauses concerning prevention of money laundering, the sensibility of the real estate for flooding, the possible protected status (e.g. UNESCO World Heritage, which is very relevant as (parts of) some Belgian cities are entirely protected by it, e.g. Bruges) of the real estate, etc. Moreover, the authentic deed contains, at the end, a tax declaration (“<i>declaration pro fisco</i>”). The authentic deed is also the ideal instrument for the purchasers to moderate obligations</p>

Table 9: Main steps of the process to buy or sell a property

			with regard to family estate planning, such as an accretion clause, a declaration of reinvestment of own capital, etc.
Legal advice or counselling	Ensuring that the transaction is valid and that the parties know about their rights and duties.	Yes	In all transactions in which the notary intervenes, s/he provides an independent and impartial legal advice and information to the parties. Parties are also free to consult a lawyer.
Certification of signatures	Ensuring the validity of the agreement.	No	The notary does not perform a mere certification of signature, but proceeds to the authentication of the contract (legal validity and lawfulness of the date and content of the contract, and the identity of the signing parties).
Contract execution (transfer of payment)	Executing the contract and securing that both parties perform their obligations.	Yes	The notary plays the role of an escrow agent: s/he receives the payment from the purchaser (mostly on his/her escrow account) and hands it over to the seller.
Contract execution (transfer of property)	Executing the contract and securing that both parties perform their obligations.	Yes	In the Belgian consensual transfer of property system, the property is transferred from the seller to the buyer as from the preliminary agreement. However, many parties decide to postpone the transfer of property until the signing of the authentic deed. This is perfectly possible. No additional conditions need to be fulfilled.
Registration	Making the transaction visible to third parties and the public.	Yes	The main publicity measure is the registration of the authentic deed in the Mortgage Register. ²² Since 2001, it is possible to send a scanned version of the deed via the so-called 'e-notariate' – the software program of the Royal Federation of Belgian Notaries – to the Mortgage Registry Office, who will also keep it in a digital form. The registrar will only control the formal validity of the deed, <i>i.e.</i> whether all formal requirements are fulfilled in order to be published and whether the underlying agreement is registrable. If the deed is accepted for registration, the registrar sends a certified copy back to the notary with the number and date of publication.

²² As mentioned above, registration at the Registration Office must take place within 4 months after the signing of the private sales agreement or at the moment of signing the authentic agreement. Usually, it is the notary who takes the necessary steps to do this. The registration right is levied upon this registration. Although, legally, both parties are liable for this tax, in most cases the purchaser pays the registration right. It is paid to the notary, who is liable of transferring it to the Registration Office. However, this is not an element of publicity, as these tax registers are not open to public.

Table 9: Main steps of the process to buy or sell a property

Taxation (esp. transfer tax)	Creating revenue for the state.	Yes	The notary has an important task in the tax aspect: s/he acts as a collector of taxes for the State. <i>Cf. infra, 9.3 Taxes in the process of buying and selling a property.</i>
Post-transaction controls (if applicable)	Securing that the contract is duly executed.	Yes	<i>Cf. supra, 3. Roles of professionals and services in the real estate market.</i>

5.2 Sale contract and transfer of ownership

Table 10: Contract of sale and transfer of ownership

Main steps	Actors involved per intermediate step	Payment details ²³		Typical risks associated to these steps, if relevant
		Payments expressed : • In EUR as % of total purchase price <u>and</u> • As a fixed amount if available (add if VAT applies)	When is the payment made	
Estate agent services or alternative matching devices	Real estate agents	The real estate agent includes these costs in the fee s/he receives from the seller: <i>cf. infra, 9.1 Transaction costs for sample transactions.</i> The websites receive a fee for the publicity.	The real estate agent mostly receives the fee after the transaction. Many real estate agents apply a 'no sale, no pay'-system: in that case, only some publicity costs have to be paid by the seller.	Fraud: risk of dealing with a seller that does not exist

²³ Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

Table 10: Contract of sale and transfer of ownership

Preliminary contract (usual)	Real estate agent Notary	The real estate agent includes these costs in the fee he receives from the seller: <i>cf. infra</i> The notary fees are a lump sum covering all expenses for the procedures mentioned in this table for which the notary intervenes. The legal basis is the Royal Decree of December 16, 1950 on notary fees. A cost calculator is accessible through the Belgian notaries' website www.notaire.be , in order to guarantee full transparency on the total amount of fees and taxes related to a real estate transaction.	The notarial fees are due at the time of signature of the authentic deed by the parties and the notary.	Legal certainty: buyer and seller both want to be sure that the contract is valid and that no problems will arise afterwards that could endanger the contract.
Preliminary checks (Mortgage Register, administrative permits)	Notary	<i>Cf. supra</i> , 3. Roles of professionals and services in the real estate market A fixed retribution is due for the consultation of the mortgage register, depending on the question whether the notary only asks for an overview (EUR 85; EUR 45 if only an overview going back 6 months) or an entire copy of the previous deed (EUR 50). In case of urgency, in which delivery of the requested information within 8 days is requested, these prices are increased to EUR 140 and EUR 85, respectively. It must be noted, however, that an informal system of exchange of deeds exists between notaries.	<i>Cf. supra</i> , 4.2 Sale contract and transfer of ownership	Legal certainty

Table 10: Contract of sale and transfer of ownership

Drafting the sales contract and/or deed of conveyance	Notary	The notary fees are a lump sum covering all expenses for the procedures mentioned in this table for which the notary intervenes. The legal basis is the Royal Decree of December 16, 1950 on notary fees. A cost calculator is accessible through the Belgian notaries' website www.notaire.be , in order to guarantee full transparency on the total amount of fees and taxes related to a real estate transaction. <u>Example: sale of a property of EUR 500.000.</u> Notary fee: EUR 2.591,65 Administrative costs: EUR 800-1100 VAT: EUR 712,25-775,25 <u>Example: sale of a property of EUR 250.000.</u> Notary fee: EUR 2.448,66 Administrative costs: EUR 800-1100 VAT: EUR 682,22-745,22.	<i>Cf. supra</i> , 4.2 Sale contract and transfer of ownership	Legal certainty
Legal advice or counselling	Notary Lawyer	<i>Cf. supra</i> , 3. Roles of professionals and services in the real estate market; 4.2 Sale contract and transfer of ownership Freely determinable.	<i>Cf. supra</i> , 4.2 Sale contract and transfer of ownership	Legal certainty Help with the legal aspects of the transaction, especially for businesses.
Certification of signatures	Notary	<i>Cf. supra</i> , 3. Roles of professionals and services in the real estate market.	<i>Cf. supra</i> , 4.2 Sale contract and transfer of ownership	Legal certainty
Contract execution (transfer of payment and registration; transfer of property)	Notary	<i>Cf. supra</i> , 3. Roles of professionals and services in the real estate market; 4.2 Sale contract and transfer of ownership.	<i>Cf. supra</i> , 4.2 Sale contract and transfer of ownership	Legal certainty
Registration in Mortgage Register or similar device	Notary Registrar	<i>Cf. supra</i> , 3. Roles of professionals and services in the real estate market.	<i>Cf. supra</i> , 4.2 Sale contract and transfer of ownership	Legal certainty

Table 10: Contract of sale and transfer of ownership

		Fixed registration fee: EUR 220 (<i>cf. infra</i> , 9.3 Taxes in the process of buying and selling a property).		
Taxation (esp. transfer tax)	Notary as collector of Registration Office	<i>Cf. infra</i> , 9.3 Taxes in the process of buying and selling a property.	<i>Cf. supra</i> , 4.2 Sale contract and transfer of ownership	Legal certainty

▲ **Information on the legal position of a tenant occupying the dwelling to be sold. In particular: Does the rule *emptio non tollit locatum* apply?** If the rent is opposable to the buyer of the rented real estate, following publicity of the rent contract *or* bad faith of the buyer, then the buyer must respect the rent. Thus, *emptio non tollit locatum* applies in Belgium, but under specific conditions.

5.3 Professional services performed in the real estate market related to buying and selling a property

Table 11: Professional services performed in the real estate market related to buying and selling a property

Services in the real estate market	Minimum standards for information provided by law, if applicable	Service providers involved	Quality of involvement	Fees expressed: <ul style="list-style-type: none"> • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)
Estate agent services or alternative matching devices	The obligation to provide parties with sincere information concerning a planned transaction.	Real estate agents	Optional	Freely determinable. Common: 3% of the sales price, with costs added.
Provision of mandatory information before the start of the transaction, if applicable	N/A	N/A	N/A	N/A
Preliminary contract (usual)	Obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences.	Real estate agents Notary	Optional: usual Optional: recommended	<i>Cf. infra</i> , 9.1 Transaction costs of sample transactions

Table 11: Professional services performed in the real estate market related to buying and selling a property

Preliminary checks (Mortgage Register, administrative permits)	/	Notary	Optional: usual and recommended (the notary will do this automatically, when asked to draft the authentic deed).	<i>Cf. infra</i> , 9.1 Transaction costs of sample transactions
Drafting the sales contract and/or deed of conveyance	Obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences.	Notary	Mandatory (with the exception of 'buying committees' – comités d'achats/aankoopcomités).	<i>Cf. infra</i> , 9.1 Transaction costs of sample transactions
Legal advice or counselling	Obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences.	All actors involved in the transaction	Optional	<i>Cf. infra</i> , 9.1 Transaction costs of sample transactions.
Certification of signatures	/	Notary	Mandatory for the notary. S/he does not perform a mere certification of signatures, but proceeds to the authentication of the contract (legal validity and lawfulness of the date and content of the contract, and the identity of the signing parties).	<i>Cf. infra</i> , 9.1 Transaction costs of sample transactions.
Contract execution (transfer of payment; transfer of property)	/	Notary	Mandatory for the notary	<i>Cf. infra</i> , 9.1 Transaction costs of sample transactions.
Registration in Mortgage Register or similar device	Duty to respect the terms, sanctioned by personal liability of the notary.	Notary	Mandatory	<i>Cf. infra</i> , 9.1 Transaction costs of sample transactions.
Taxation (esp. transfer tax)	Obligation to make sure that parties understand how much taxes will be levied on the transaction.	Notary	Mandatory	<i>Cf. infra</i> , 9.1 Transaction costs of sample transactions and 9.3 Taxes in the process of buying and selling a property.

5.4 Creating a Mortgage

Table 12: Mortgage requirements

Main steps to create a mortgage	Actors/institutions involved	Minimum standards for information	Fees expressed: • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)	Typical risks associated to these steps, if relevant
Conclusion of credit and mortgage agreement with lender (bank)	Mortgage agreement: notary mandatorily involved The mortgage agreement constitutes a separate agreement from the sale agreement, although in most cases, both will be signed on the same day.	Legal obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences. Such an agreement is only opposable towards third parties as from the date on which the agreement has been registered with the competent Mortgage Register (and only authentic deeds and court decisions may be registered with this Register).	The legal basis is the Royal Decree of December 16, 1950 on notary fees. A cost calculator is accessible through the Belgian notaries' website www.notaire.be , in order to guarantee full transparency on the total amount of fees and taxes related to a real estate transaction. See below for examples: 9.1 Transaction costs of sample transactions.	Legal security
Insertion of mortgage in the Mortgage Register, usually at first rank	Notary	Legal obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences. Such an agreement is only opposable towards third parties as from the date on which the agreement has been registered with the competent Mortgage Register (and only authentic deeds and court decisions may be registered with this Register).	The legal basis is the Royal Decree of December 16, 1950 on notary fees. A cost calculator is accessible through the Belgian notaries' website www.notaire.be , in order to guarantee full transparency on the total amount of fees and taxes related to a real estate transaction. A fixed retribution must be paid to the Mortgage Register for the inscription of the mortgage: Mortgage up to EUR 300.000: EUR 210 Mortgage higher than EUR 300.000: EUR 900.	Legal security

Table 12: Mortgage requirements

<p>Credit sum paid to mortgagor (buyer) or seller</p>	<p>In practice, the bank will pay the money to the notary, who plays the role of an escrow agent. The notary will refuse to sign the deed, if s/he has not received all the funds to cover the transaction, unless parties agree to sign before any payment has been made.</p>	<p>If the payment has not been made at the moment of the signature of the deed and this is mentioned in the deed itself, the registrar will register a privilege in favour of the unpaid seller in the Mortgage Register (art. 27, 1° Mortgage Act). Such privilege is mostly treated as a mortgage. If the price has been paid, the notary will discharge the registrar of his/her obligation to register this privilege.</p>	<p>This cost will be included in the general fee of the notary.</p>	<p>Legal security. Security of payment.</p>
---	--	--	---	---

6. The process to rent or let a property

6.1 Main steps in the transaction process to rent and let a property

Table 13: Main steps of the process to rent and let a property

Main steps	Process involved
Finding and matching landlords and tenants	This preliminary part is often conducted by the parties themselves. However, landlords and tenants increasingly consult real estate agencies to help them in this part of the renting process.
Information search by landlords or tenants (e.g. about salary, outstanding debts)	The parties are free to choose whether they conduct an information search themselves or whether they involve a real estate agent. Privacy rules must be obeyed at all time.
Inspection of the property by tenants (in some cases with the help of professionals)	It is quite common that the landlord or the real estate agent accompany the possible future tenant on an inspection of the house. Parties are free to define the concept of 'inspection', ranging from a mere visit to a thorough check-up of the real estate. The inspection of the property may be of specific importance, as it gives the interested tenant the opportunity to detect possible defects in the real estate and signal these to the landlord. When the rent contract is concluded, the landlord remains responsible for latent defects (art. 1721 Civil Code).
Delivery of mandatory information to tenants prior to the conclusion of the contract (if relevant)	N/A
Delivery of energy performance certificate to tenant	The energy performance certificate is communicated to the interested tenants.
Provision of additional guarantees to landlord, if relevant	The tenant can be requested to provide a warranty to the landlord. The regulation of this warranty depends on the applicable regime. In common rent, contractual freedom applies. In residential rent, a strict set of rules has been elaborated as to the warranty (art. 10 residential Rent Act). This warranty must take one of the following forms: an individual account on the name of the tenant for maximum two months of rent (to be increased to three months in the Flemish Region, a new rule that depends upon the establishment of a social guarantee lending scheme), a bank warranty that enables the tenant to compose the warranty progressively (max. three months of rent), or a bank warranty that follows a standard contract between a Public Social Welfare Centre ('OCMW'/'CPAS').

Table 13: Main steps of the process to rent and let a property

Conclusion of the contract in the usual form (e.g. oral, written, preformulated)	Residential rent must be in a written form (art. 1bis Residential Rent Act): this article adds an enumeration of information that must be contained in the contract and article 11 of the Residential Rent Act adds a series of addenda to this. Commercial rent must be in a written form. For common rent, article 1714 of the Belgian Civil Code stipulates that a rent that has not been executed yet can only be proven in a written form, even below EUR 375, contrary to article 1341 of the Civil Code.
Rent payment and deposit (e.g. bank account)	Parties are free to determine how they wish to pay their rent. <i>Cf. supra</i> as to bank deposit/guarantee.
Registration of the contract in the Mortgage Register (e.g. excluded, optional or mandatory)	Common rent of real estate must be registered at the Registration Office within 4 months of the conclusion of the contract. Residential rent must be registered within two months. No authentic deed is required for this registration. Registration renders the rent opposable to third parties (art. 1743 Civil Code). Under the common rent regime, it is possible to stipulate an eviction clause in the contract, which makes it possible to evict the tenant, even in case of registration of the contract, if the premise is sold (art. 1748 Civil Code), in which case the tenant is entitled to compensation. Under the commercial rent regime too, it is possible to stipulate an eviction clause in the rent contract, that makes eviction possible in case the premise is sold (art. 1748 Civil Code), but the rules of art. 12.1 Commercial Rent Act must be followed and the tenant is entitled to compensation (arts. 25 and 27 Commercial Rent Act). Under residential act, such clause is impossible. Even if the contract has not been registered, the Residential Rent Act stipulates minimally protecting rules in favour of the tenant as to eviction. In the end, however, eviction is even possible under the residential rent regime, if the contract has not been registered. This is also the case under the commercial rent regime (art. 12.2 Commercial Rent Act). If the rent has a duration exceeding 9 years, it must be published in the Mortgage Register to gain opposability towards third parties <i>de bona fide</i> (art. 1 of the Mortgage Act). This requires an authentic deed and the intervention of a notary. The same is true for contracts containing a discharge of at least three years of rent payments. If no publicity in the Mortgage Register has taken place, but the rent has been registered at the Registration Office, it is only opposable for a period of 9 years.
Other steps	It is compulsory in all regimes that an inventory of the real estate is made (art. 1730 Civil Code). This inventory must be detailed and it is possible that photos are added. It is important for the landlord that this inventory is made, as, when no inventory is made, a presumption applies that the tenant has received the real estate in the state of affairs as they are at the end of the rent.

Belgian law distinguishes between different kinds of rent. Each type of rent comes with a specific set of rules. Before renting or letting real estate, parties must assess really well, which type of rent is applicable on their situation.

- Residential rent: residential rent is applicable on rent of real estate by natural persons who will have their main residence in that real estate. A lot of specific rules and conditions exist in this respect, in order to protect the right to a residence that every person enjoys (Residential Rent Act). In principle, a residential act is concluded for 9 years. Parties may, however, conclude a rent for a longer fixed duration (art. 3, §7 Residential Rent Act), but not for a shorter duration (cf. infra for one exception). This term is prolonged by periods of 3 years, if parties do not explicitly repudiate the contract. Parties cannot end the contract earlier, unless a resignation clause has been included in favour of the tenant. However, it is possible to conclude a contract for three years, which may not be prolonged more than once by other three years (art. 3, §6 Residential Rent Act). Indexation of the rent is always possible, even if the contract does not provide this, unless the contract explicitly prohibits it (art. 6 Residential Rent Act) and follows the strict rules of art. 1728bis Civil Code. The monthly rent can be revised every three years (art. 7 Residential Rent Act).
- Within short time, the Brussels Capital Region will have its own residential rent regime. The Ordonnance establishing it has been published in the Belgian Official Gazette on 30th October 2017 and the Brussels Government will determine its entry into force in due time. However, most of the provisions of the Ordonnance are very similar to those existing in the federal regime. However, contrary to what is the case under the Flemish regime, the Brussels regime does not increase the guarantee due by the tenant from 2 months to 3 months.
- Contrary to residential rent, parties can end the commercial rent by mutual agreement at all time. The tenant can repudiate the rent at the end of every 3 years, by a written notification within the 6 months prior to the end of those 3 years (art. 3.3 Commercial Rent Act). The landlord can only repudiate the rent in exceptional circumstances (art. 3.5 Commercial Rent Act). Indexation of the monthly rent can be stipulated in the contract and the rules of art. 1278bis Civil Code apply. The monthly rent can also be revised every 3 years (art. 6 Commercial Rent Act). The tenant has a lot of freedom to renovate the rented premise (arts. 7-9 Commercial Rent Act). At the end of the duration of the contract, the tenant has the right to ask renovation of the rent, by privilege, to continue his/her business and this for 4 times (art. 13 Commercial Rent Act).
- Social rent: a specific regime applies to people that do not have the financial means to obtain a rent on the common rent market. This regime does not receive additional attention in this questionnaire.
- Agricultural rent: a specific regime applies for the rent of agricultural land and premises. This regime does not receive additional attention in this questionnaire, either.
- Common rent: if none of the other regimes applies, the regime of the common rent is applicable. This is the regime from the original Civil Code (arts. 1714 ff.) and it is the most liberal regime of all, in which parties enjoy most contractual freedom.

Above and below, it is specifically stated to which regime a certain rule applies. If nothing is specified, the rule is applicable in all four regimes.

6.2 Rent contract

Table 14: Rent contract				
Main steps	Actors involved per intermediate step	Payment details ²⁴		Typical risks associated to these steps, if relevant
		Payments expressed: • In EUR as % of total purchase price <u>and</u> • As a fixed amount if available (add if VAT applies)	When is the payment made	
Finding and matching the parties	Real estate agent	Freely determinable	Freely determinable, usual after the transaction was closed	N/A
Information search by landlord on tenant (e.g. about salary, outstanding debts)	Real estate agent	Idem	Idem	False information must be avoided at all time. In addition, it is important to have correct information on the nature of the tenant, as this nature determines the applicable regime.
Inspection of the property by tenant (in some cases with the help of professionals)	Private parties Real estate agent	N/A	N/A	It must be ensured that an interested tenant gets all relevant and correct information concerning the premise s/he is interested in. After all, the landlord is responsible for latent defects (art. 1721 Civil Code).
Delivery of mandatory information to tenant prior to the conclusion of the contract (if relevant)	N/A	N/A	N/A	N/A
Delivery of energy performance certificate to tenant	Real estate agent	Freely determinable.	N/A	A future tenant must have the opportunity to know the Energy Performance of the real estate, in order to calculate his/her own future energy costs.

²⁴ Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

Table 14: Rent contract

<p>Conclusion of the contract in the usual form (e.g. oral, written; if written)</p>	<p>Written Real estate agent Lawyer Notary (mandatory if authentic deed required for publicity in the Mortgage Register)</p>	<p>Freely determinable. However, a notarial fee applies as stipulated by law.</p>	<p>N/A</p>	
<p>Rent payment and deposit (e.g. bank account)</p>	<p>Private parties Real estate agent</p>	<p>The rent can be freely determined. The same is true for the rent deposit under common rent. However, under residential rent, the rent deposit is subject to a very strict set of rules (<i>cf. supra</i>, Provision of additional guarantees to landlord, if relevant).</p>	<p>Parties can freely determine when the rent is to be paid. In most cases, this is at the end of a fixed period of time, often monthly. The rent deposit is to be paid in the beginning of the contract.</p>	<p>Obviously, the most typical risk in this respect is the non-payment of the rent. In the case the tenant persists in not paying the due rent, the landlord can start a legal procedure (<i>cf. infra</i>, 10.2 Consumer complaints).</p>
<p>Registration of the contract in the Mortgage Register or other device (excluded, optional or mandatory)</p>	<p>Registration at the Registration Office: parties themselves, lawyer, notary. Registration in the Mortgage Register: notary.</p>	<p>Registration at the Registration Office duty: 0.20% (<i>cf. infra</i>, 9.4 Taxes during the renting and letting a property). Registration in the Mortgage Register duty: EUR 220.</p>	<p>After the transaction</p>	<p>All terms need to be respected. Registration is very important as to the opposability of the rent contract to third parties: this is quintessential in the case of a sale of the rented real estate (<i>cf. supra</i>, 3. Roles of professionals and services in the real estate market).</p>

6.3 Professional services performed in the real estate market related to renting and letting a property

Table 15: Professional services performed in the real estate market related to renting and letting a property

Services in the real estate market	Minimum standards for information provided by law, if applicable	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees expressed: <ul style="list-style-type: none"> • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)
Finding and matching landlords and tenants	Legal obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences.	Real estate agents	Optional	Freely determinable
Information search by landlords or tenants (e.g. about salary, outstanding debts)	Legal obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences.	Real estate agents	Optional	Freely determinable
Inspection of the property by tenants (in some cases with the help of professionals)	Legal obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences. Specific advice as far as defects are concerned.	Real estate agents	Optional	Freely determinable
Delivery of mandatory information to tenants prior to the conclusion of the contract (if relevant)	N/A	N/A	N/A	N/A
Conclusion of the contract in the usual form (e.g. oral, written, preformulated)	Legal obligation to provide comprehensive advice and information on the content of the agreement and its legal consequences.	Real estate agents Notaries Lawyers	Optional	Freely determinable The notarial fees, however, are subject to the same rules as mentioned above.
Rent payment and deposit (e.g. bank account)	It is possible that the real estate agents play the role of an intermediate party for the landlord to receive the rent.	Real estate agents	Optional	Freely determinable
Registration of the contract in the Mortgage Register (e.g. excluded, optional or mandatory)	Respects the terms of registration at both the Registration Office and the Mortgage Register.	Real estate agents Notaries	Notaries have the exclusive right to establish an authentic deed that can be published at the Mortgage Register.	Freely determinable The notarial fees, however, are subject to the same rules as mentioned above.

7. Professional services regulation: notaries

7.1 Market entry and structure regulation

Table 16: Market entry and structure regulation

	Regulation	
Subjective requirements	<i>Qualifications (diplomas, exams, concours) required to become a notary in your country:</i>	In order to qualify as a notary, one must fulfil the following educational conditions: University notarial studies, requiring a master degree in law and an additional advanced master degree in notarial studies; Professional training with a notary for, in principle, three years; State reviewed comparative exam.
Objective requirements	<i>Do numerus clauses and other objective requirements exist?</i>	In Belgium, a strict numerus clausus exists as to the number of notaries that are allowed and their place of establishment. This is regulated by the State in order to ensure a minimal presence of notaries on Belgian territory (<i>justice de proximité</i>). This means that a candidate-notary – the title one obtains after fulfilling the educational conditions – must be appointed by the Minister of Justice and the appointment is published in the Belgian Official Gazette.
Citizenship requirements	<i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>	EU citizenship
Inter-professional cooperation	<i>Are forms of collaboration between notaries and other professionals allowed and usual?</i>	Inter-professional cooperation is permitted under the form of nominal partnerships (middelvennootschap/sociétés de moyens).
Business structure	<i>Are notary associations/corporations allowed?</i>	Notary associations/corporations are allowed, the only restriction being that the partnership may not take the form of a company with share capital ("kapitaalvennootschap"/"société de capitaux") (article 50, § 3 Notary Act).
Geographical limitations	<i>Are there limitations with respect to the area in which the notary can exercise his/her activities (e.g. at the regional or municipal level)?</i>	As a public officer, the notary is competent for all transactions from Belgium or abroad, but s/he may only establish authentic deeds within the administrative area ("arrondissement") in which his/her office is located.
	<i>Are these limitation restricted to specific tasks?</i>	Establishing authentic deeds.

7.2 Market conduct regulation

Table 17: Market conduct regulation

	Regulation	
Exclusive rights	<i>Specify for which transactions or parts of them only notaries may act against payment.</i>	There is no mandatory intervention of a professional for the drafting of the preliminary sales contract. However, the intervention of a notary is required to draft an authentic deed, which is necessary to make the transfer opposable to third parties through registration with the Mortgage registry office.
Duty to provide services	<i>Are notaries allowed to refuse a request to act?</i>	The notary is under legal duty to provide his/her services to all requesting parties complying with the conditions. S/he may only refuse to render service on specific grounds, e.g. in case of illegal requests, clauses in the deed that violate third parties' rights, legal non-competence, etc.
Professional standards	<i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Notaries) in this context?</i>	The notaries must obey a strict deontological code. The competent provincial Chamber of notaries has a duty to check the standards on quality management in the notarial offices (and to intervene when necessary), and to start up complaint proceedings against notaries. Complaints about notaries are dealt with in the notarial Chambers and the competent Courts. Since 2015, and following the EU directive on ADR, an independent structure (Ombudsman) was approved and recognised by the Department of Economic Affairs (www.ombudsnotaire.be).
Mandatory intervention	<i>The intervention of a notary is required for the registration procedure</i>	<i>Cf. supra</i> , 3. Roles of professionals and services in the real estate market.
Compulsory indemnity insurance	<i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>	There is a compulsory professional indemnity insurance, with a minimum coverage of 5,000,000 EUR (imposed by law).
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>	Yes, this is mandatory. Every year, the notary must obtain a certain number of credits awarded by the Royal Federation of the Belgian Notariat, by following legal conferences, for instance organised by a university.
Advertising restrictions	<i>Are there limitations on advertising?</i>	There are no general advertising restrictions. However, there is a Royal decree of July 1, 2006 on advertisement and communication.
Fee regulation	<i>Notary fee system</i>	The legal basis is the Royal decree of December 16, 1950 on notary fees. A cost calculator is accessible through the Belgian notaries' website www.notaire.be , in order to guarantee full transparency on the total amount of fees and taxes related to a real estate transaction.

8. Professional services regulation: lawyers or other licensed conveyancers (only relevant if legally admitted to perform real estate transactions and/or to assist the conclusion of tenancy agreements)

8.1 Market entry and structure regulation

Table 18: Market entry and structure regulation		
	Regulation	
Subjective requirements	<i>Conditions (diplomas, exams, concours) required to become a lawyer in your country.</i>	Obtain a Master Degree in Law. Enrol at a Belgian bar. Three years of professional training with a lawyer. During this training, you are already a lawyer, but you cannot perform the profession independently. During the training, the trainee must: fulfil <i>pro deo</i> -duties, follow advanced courses organised by the bar and pass an annual exam organised by the bar.
Objective requirements	<i>Do numerus clauses and other objective requirements exist?</i>	No numerus clausus applies: the number of lawyers is completely free in Belgium. However, at the Court of Cassation, a numerus clausus of 20 lawyers exist in civil matters.
Citizenship requirements	<i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>	EU citizenship
Inter-professional cooperation	<i>Are forms of collaboration between lawyers and other professionals allowed and usual?</i>	Yes, these are perfectly possible and very usual.
Business structure	<i>Are lawyer associations/corporations allowed?</i>	Yes, lawyers associations are allowed and very common.
Geographical limitations	<i>Are there limitations with respect to the area in which the lawyer can exercise his/her activities (e.g. at the regional or municipal level)?</i>	No
	<i>Are these limitation restricted to specific tasks?</i>	/

8.2 Market conduct regulation

Table 19: Market conduct regulation

	Regulation	
Exclusive rights	<i>For which transactions or parts of them only lawyers may act against payment</i>	Only lawyers can defend a person in court, when that person does not want to defend him/herself.
Neutrality	<i>Is the lawyer allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees apply and which party has to bear them?</i>	The lawyer works independently for one party, the client. S/he must be aware that no conflicts of interest arise.
Duty to provide services	<i>Are lawyers allowed to refuse a request to act?</i>	Yes. In some cases, they are even obliged to do this, for instance in case of conflicts of interests.
Professional standards	<i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Lawyers/Advocates) in this context?</i>	The advocates are subject to general deontological and legal duties. These duties are not different in real estate transactions from any other of their activities. Complaints are dealt with by the Deontological Commission of the Order of Lawyers and by the courts. Since 2016, an independent structure (Ombudsdienst, named Ligecca) was created in order to mediate between lawyers and consumers in case of a conflict.
Compulsory indemnity insurance	<i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>	All lawyers must be a member of the Bar and that membership also covers a basic indemnity insurance (with a coverage of EUR 1.250.000). Non-Belgian EU-citizens must have a similar insurance or prove that they have one in their Member State of origin (art. 61 of the Deontological Code).
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>	Yes, this is obligatory. Every year, the lawyer must obtain a certain number of credits awarded by the Bar, by following legal conferences, for instance organised by a university.

Table 19: Market conduct regulation

<p>Advertising restrictions</p>	<p><i>Are there limitations on advertising?</i></p>	<p>In principle, advertising is allowed. However, lawyers must respect certain specific rules: the publicity must be clear, no success rates may be mentioned, the publicity may not specifically aim at luring away other lawyers' clients, etc. (arts. 82 ff Deontological Code)</p>
<p>Fee regulation</p>	<p><i>Lawyer fee system</i></p>	<p>In principle, lawyers are free to determine their fee. However, they have the deontological duty to do this in a reasonable way. In addition, following European rules, the clients must be aware of the applied fees (per hour/per task) anterior to the concluding of the agreement. Parties pay their own lawyers and success fees are forbidden. However, the Belgian legislator has introduced a scheme according to which the winning party can claim a flat-rate amount of money (<i>'rechtsplegingsvergoeding'</i>/<i>'indemnité de procédure'</i>), depending on the worth of the claims, that is supposed to cover the fees the client has paid to the lawyer. These flat-rate amounts, however, do not necessarily reflect the actual fees that have been paid.</p>

9. Professional services regulation: estate agents

9.1 Market entry and structure regulation

Table 20: Market entry and structure regulation

	Regulation	
Subjective requirements	<i>Qualifications (level and duration of education and training, diplomas, exams, traineeships or professional experience requirements, concours) required to become an estate agent in your country.</i>	In order to qualify as a real estate agent, one must fulfil certain conditions ²⁵ : A degree in real estate or an equivalent degree; Succeeding in the expertise test organised by the Professional Institute of Real Estate Agents ²⁶ ; One year of professional training as a trainee with a licensed real estate agent; Passing a second competence test organised by the Professional Institute of Real Estate Agents; A license of the Professional Institute of Real Estate Agents; The activity can also be undertaken in the form of a legal person, provided that the natural persons engaged in this legal person fulfil all the aforementioned conditions. Equivalent requirements exist for nationals of another Member State of the European Union who wish to be active as a real estate agent in Belgium.
Objective requirements	<i>Do numerous clauses and other objective requirements exist?</i>	No numerous clauses exist.
Licence requirements	<i>Are estate agents licenced or do they work as employees?</i>	A license must be obtained from the Professional Institute of Real Estate Agents.
Citizenship requirements	<i>Is unlimited access to the profession granted to foreign professionals de iure and de facto?</i>	EU citizenship
Inter-professional cooperation	<i>Are estate agents allowed to exercise another profession or business activity? Is inter-professional cooperation regulated?</i>	Yes, this is allowed. Examples are known of real estate agents also running a bank office, for instance. Interprofessional cooperation is perfectly possible and happens regularly.
Geographical limitations	<i>Are there limitations with respect to the area in which the estate agent can exercise his/her activities (e.g. at the regional or municipal level)?</i>	No
	<i>Are these limitation restricted to specific tasks?</i>	/

²⁵ See for these conditions: the Act of 11 February 2013 organising the profession of real estate agent, *Belgian Official Gazette* 22 August 2013.

²⁶ www.biv.be.

9.2 Market conduct regulation

Table 21: Market conduct regulation

	Regulation	
Neutrality	<i>Is neutrality regulated? Is the agent allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees applies and which party bears these?</i>	It is possible and quite common for real estate agents to work for both (all) parties involved in the transaction, as they also match the parties.
Professional standards	<i>How are professional standards regulated? Are entities or associations ensuring the professional representation and respect of rules of good practice (e.g. association of real estate professionals)?</i>	Real estate agents operate within a stringent legal framework, meant to protect the mostly private parties that engage them. They must respect the Deontological Code, approved by Royal Decree, of the Professional Institute of Real Estate Agents, non-observance of which can be disciplinary sanctioned by the Institute, in addition to possible civil and criminal legal sanctions.
Compulsory indemnity insurance	<i>Is indemnity insurance compulsory for estate agents? If yes, what is the indicative amount of the insurance?</i>	An indemnity insurance that covers a fixed minimum of risks for a fixed minimum amount is compulsory. The following minimum coverage is required: EUR 1.250.000 for physical damage and immaterial consequential damage, EUR 250.000 for material damage and immaterial consequential damage, EUR 250.000 for purely immaterial damage, EUR 30.000 for theft by personnel or third parties, EUR 250.000 for the guarantee insurance. In addition, real estate agents must provide a financial security for the funds the real estate agents hold as escrow, the minimum of which is EUR 250,000. Finally, they must open a specific escrow account.
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory? What are the requirements related to the content and duration of continuing education? What are the consequences of non-compliance?</i>	Most real estate agents voluntarily follow permanent education on the various aspects of their profession, as recommended by the Deontological Code, although this is not strictly required.

Table 21: Market conduct regulation

Advertising restrictions	<i>Are there limitations on advertising?</i>	No
Fee regulation	<i>Estate agents' fee system</i>	<p>Real estate agents are free to determine their own fee. A fee of 3% to 5 % of the sales price is common. In smaller transactions, however, this can be replaced by a fixed price.</p> <p>In addition to this fee, many real estate agents will reimburse certain costs made for the sale of the good from the buyer, for instance advertisement costs.</p>
Compulsory membership in professional bodies/compulsory registration	<p><i>Is membership in professional bodies compulsory? If so, what are the membership conditions and the membership fees? Does the professional body have a supervisory or another important regulatory role?</i></p>	Yes, membership of the Professional Institute of Real Estate Agents is compulsory.

10. The real estate market

10.1 Transaction costs for sample transactions

Table 22: Transaction costs VAT excluded

	Estate agent ²⁷	Technical services (if usual)	Legal services	Mortgage Register fee	Transfer tax/stamp duty	Total usual transfer costs
€100,000 sales price (no mortgage)	Freely determinable (usually 3-5% of the sale price). On average: EUR 3.000 – 5.000	/	Notarial fee: 1.593,66 EUR	Fixed fee: EUR 220	Flemish Region (10%): EUR 10,000 Brussels Capital Region and Walloon Region (12,5%): EUR 12,500	Depends on the number of pages of the deed.
€100,000 sales price + 100.000€ mortgage	Freely determinable. On average: EUR 3.000 – 5.000	/	Notarial fee: 1.593,66 EUR + 674,52 EUR	EUR 220 + additional fixed fee: EUR 210	Flemish Region (10%): EUR 10,000 Brussels Capital Region and Walloon Region (12,5%): EUR 12,500 + 1%: EUR 1,000	Depends on the number of pages of the deed.
€250,000 sales price (no mortgage)	Freely determinable. On average: EUR 7.500 – 12.500	/	Notarial fee: 2.448,66 EUR	Fixed fee EUR 220	Flemish Region (10%): EUR 25,000 Brussels Capital Region and Walloon Region (12,5%): EUR 31,250	Depends on the number of pages of the deed.

²⁷ An agent usually receives a percentage of the transaction value.

Table 22: Transaction costs VAT excluded						
€250,000 sales price + 250,000€ mortgage	Freely determinable. On average: EUR 7.500 – 12.500	/	Notarial fee: 2.448,66 EUR + 1.005,29 EUR	EUR 220 + additional fixed fee: EUR 210	Flemish Region (10%): EUR 25,000 Brussels Capital Region and Walloon Region (12,5%): EUR 31,250 + 1%: EUR 2,500	Depends on the number of pages of the deed.
€500,000 sales price (no mortgage)	Freely determinable. On average: EUR 15.000 – 25.000	/	Notarial fee: 2.591,65 EUR	Fixed fee: EUR 220	Flemish Region (10%): EUR 50,000 Brussels Capital Region and Walloon Region (12,5%): EUR 62,500	Depends on the number of pages of the deed.
€500,000 sales price + €500,000 mortgage	Freely determinable. On average: EUR 15.000 – 25.000	/	Notarial fee: 2.591,65 EUR + 1.130,69 EUR	EUR 220 + additional fixed fee: EUR 900	Flemish Region (10%): EUR 50,000 Brussels Capital Region and Walloon Region (12,5%): EUR 62,500 + 1%: EUR 5,000	Depends on the number of pages of the deed.
%VAT applicable	21 %	/	21 %	/	/	21 %, but only on legal services

10.2 Transaction features

Table 23: Transaction features			
Transaction / service	Party bearing the costs of intermediation service (buyers or sellers, landlords or tenants) Costs expressed: • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)	Fees as expressed in the contract: • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)	Possible hidden costs faced by buyers or tenants, if applicable
Estate agents	Sellers Landlords	Freely determinable.	N/A
Technical services	Sellers Landlords	The fees for the various technical services mentioned above depend upon the nature of the service and are highly variable.	N/A
Legal services	The party that involves the legal counsel	Freely determinable.	N/A
Mortgage Register fees	Buyer/Tenant	Fixed retribution: EUR 220 for transfer of ownership and limited real rights, except mortgage EUR 210 for mortgage up to EUR 300.000 EUR 900 for mortgage higher than EUR 300.000.	N/A
Transfer taxes (registration tax)	Buyer Tenant	<i>Cf. infra</i> , 9.3 Taxes during the process of buying and selling a property <i>Cf. infra</i> , 9.4 Taxes during the process of renting and letting a property.	N/A

10.3 Taxes during the process of buying and selling a property

Table 24: Taxes related to buying and selling a property			
	Relevance of the tax	When to pay the tax as part of the process of buying or selling	Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)
Registration tax ²⁸	Yes	The tax is levied upon the registration of the authentic deed at the Registration Office.	Flemish Region: 10% Brussels Capital Region and Walloon Region: 12,5% Lower registration rights apply for the granting of specific real rights, such as a mortgage (1% of the guaranteed amount) or a long lease ('emphyteusis') or building right ('superficies') (2%). Many exceptions exist as to the exact amount of registration right levied. The registration right is calculated on the basis of the sales price or, in case, these are not the same, the real value of the real estate. Thus, the authorities prevent fraudulent behaviour.
Mortgage tax	Yes	Only if a mortgage is constituted.	1% of the guaranteed amount
Cadastral tax	No	N/A However, every person who owns real estate in Belgium has to pay tax on it. For this purpose, the concept of Cadastral Income has been developed: the 'CI' is the esteemed average annual income a person is supposed to obtain by the fact of having the possibility to use the real estate. The CI is, independent from any real estate transaction, added to the taxable income of private and professional parties; insofar they use the real estate themselves. However, if this is the first residence of private parties, no tax is due on this income. The Cadastral Income is also applied to calculate the fixed tax deduction on real estate income.	N/A

²⁸ Registration taxes are public levies associated with the registration act. They are not to be confused with registration fees, i.e. the payment required by the registration office to carry out the registration. Registration fees are contained in Table 10.

Table 24: Taxes related to buying and selling a property

Stamp tax	Yes	A stamp tax is levied every time the notary drafts an authentic deed.	In principle: EUR 50.
Capital gains tax	Yes	Private parties are only obliged to pay a capital gains tax on the excess value of their real estate, if they sell it within 5 years (buildings) or 8 years (plots of land) after the acquisition. In addition, however, a tax is levied if the real estate operation is considered to be purely speculative, <i>i.e.</i> outside the framework of operation a normal household would undertake. Professional parties are due tax on the excess value of their real estate in all cases, as this plus-value is considered to be part of their profit. However, a series of exceptional procedures exists to this extent, for instance in case of reinvestment (the so-called 'roll-over-relief').	33% or 16,5% In principle 33%, but many exceptions exist to this tariff.

10.4 Taxes during the process of renting and letting a property

Table 25: Taxes related to renting or letting a property			
	Relevance of the tax	When to pay the tax in the process of renting or letting	Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)
Registration tax	Yes	The registration tax is levied upon the registration of the rent agreement.	In principle: 0,20% of: Rent of fixed duration: all the future rent and other duties of the tenant; Rent of open duration: 10 times the annual rent and other duties of the tenant, except if the minimal duration of the rent is longer (in that case all the future rent and other duties during that minimum duration).
Stamp tax	Yes	A stamp tax is levied every time the notary drafts an authentic deed.	In principle: EUR 50
Other taxes concerning the use of the property, if applicable	Yes	An income tax is levied on the rent the landlord receives, if s/he is a private party who rents real estate out to a professional party. This is not the case if they rent it out to another private party, in which case only the Cadastral Income is added to the landlord's personal income tax base. If professional parties rent their real estate out, the Cadastral Income is replaced by the real rent income.	This depends on the tariff of the income tax of the landlord: in Belgium, a progressive income tax is applied for natural persons. This income tax is (for income year 2016): 0% (EUR 0-11.070), 30% (EUR 11.070,01-12.720), 40% (EUR 12.720,01-21.190), 45% (EUR 21.190,01-38.830) and 50% (from EUR 38.830,01). The previous paragraph is applicable on professional parties-natural persons. For legal persons, the income tax tariff is (in principle) 33,99%.

A variety of taxes is applicable on real estate and real estate transfers in Belgium.

The Cadastral Income as part of the income tax, firstly, has already been mentioned. This is, independent from any real estate transaction, added to the taxable income of private and professional parties; insofar they use the real estate themselves. However, if this is the first residence of private parties, no tax is due on this income. The Cadastral Income is also applied to calculate the fixed tax deduction on real estate income. If private parties rent their real estate out to a professional party, the Cadastral Income is replaced by the real rent income. This is not the case if they rent it out to another private party. If professional parties rent their real estate out, the Cadastral Income is replaced by the real rent income. In addition, the Cadastral Income is used to calculate the immovable withholding tax levied by the Region. The provinces can levy an additional tax, calculated on the basis of the immovable withholding tax.

The registration right, too, secondly, has already been mentioned above. This registration right is due on every transfer of real estate, be it via sale, contribution to a society, donation, etc. The exact registration rights vary per Region: for the sale of real estate, Flanders levies 10%, Brussels and Wallony 12,5%. Lower registration rights apply for the granting of specific real rights, such as a mortgage (1% of the guaranteed amount) or a long lease ('emphyteusis') or building right ('superficies') (2%). Many exceptions exist as to the exact amount of registration right levied. The registration right is calculated on the basis of the sales price or, in case these are not the same, the real value of the real estate. Thus, the authorities prevent fraudulent behaviour.

Thirdly, capital gains taxes may apply. Private parties are only obliged to pay a capital gains tax on the excess value of their real estate, if they sell it within 5 years (buildings) or 8 years (plots of land) after the acquisition. In addition, however, a tax is levied if the real estate operation is considered to be purely speculative, *i.e.* outside the framework of operation a normal household would undertake. Professional parties are due tax on the excess value of their real estate in all cases, as this plus-value is considered to be part of their profit. However, a series of exceptional procedures exists to this extent, for instance in case of reinvestment (the so-called 'roll-over-relief').

Finally, the municipalities too, can levy taxes on real estate. Examples of these are the second residence tax, levied by Flemish coast cities on holiday residences, or the sewer tax, which is paid because of the connection of the real estate to the sewer network.

Additionally, it must be noted that the Belgian government has created specific corporate vehicles for real estate. The most recent initiative in this respect is the Specialised Real Estate Investment Fund ('*GVBV*'/'*FIIS*'), which is currently being created: this will be a real estate fund for institutional investors that offers a lot of flexibility and possibilities, also – especially – from an international perspective. These vehicles are (will be) subject to an exceptional, more beneficial tax regime.

11. Consumer situation in the market

11.1 Consumer rights

Table 26: Consumer rights

<p>Are there specific consumer rights in the context of real estate transactions and residential tenancies in your country? In particular: are residential tenants treated as consumers?</p>	<i>With respect to buyers</i>	Buyers are in some cases regarded as consumers, that are granted additional protection: e.g. the 'Breyne-Act' (<i>cf. supra</i> , 1.2 National legislation)
	<i>With respect to sellers</i>	N/A
	<i>With respect to tenants</i>	The specific residential rent regime can be considered as a consumer rent regime that specifically protects the consumer.
	<i>With respect to landlords</i>	N/A
<p>If relevant, which existing marketing practices are non-compliant with national consumer legislation?</p>	<p>The Professional Institute for Real Estate Agents conducts very strict control on who bears the name of real estate agent. Every year, they identify various practitioners that use this name illegally, which constitutes a danger for the consumer. In the first three semesters of 2017 alone, the Institute obtained 27 judicial decisions removing such illegal practitioners from the market.</p> <p>In some cases, landlords try to obtain a larger rent guarantee than is permitted under residential rent (<i>cf. supra</i>, 5.1 Main steps in the transaction process to rent and let property). Such practices are strictly forbidden, although it must be admitted that landlords sometimes attempt to make use of a loophole in the rules.</p> <p>In general, the rules concerning the EPC are well obeyed in Belgium. In 2016, 98% of the controlled transactions mentioned the EPC, which is obligatory for both selling and letting transactions.</p>	
<p>If relevant, which existing marketing practices are non-compliant with EU consumer legislation?</p>	N/A	
<p>Are there existing marketing practices detrimental to consumers, even if not necessarily illegal, in both domestic and cross-border transactions?</p>	N/A	

11.2 Consumer complaints

Table 27: Consumer complaints	
<p>How often do buyers and sellers complain due to arising legal issues (e.g. invalid contract, missing information, hidden defects, missing building permit, delay in payment)?</p>	<p>It happens regularly that a legal conflict arises between buyers and sellers. Such matters are judged by the regular courts and tribunals. Various issues can lie at the basis of this conflict: Many disputes between buyers and sellers concern hidden defects of the real estate (arts. 1641 ff of the Belgian Civil Code). It is up to the judge to solve such disputes. A delay in payment or even non-payment happens regularly. However, in most cases, this problem is solved by the fact that the sale agreement is concluded under the suspensive condition of the acquisition of a credit by a bank. If the bank does not provide the credit and the buyer cannot pay the price, then the agreement will be deemed not concluded. Moreover, notaries will, in most cases, refuse to pass the authentic deed of the sale agreement, as long as they have not received the price on their escrow account. Every now and then, a case comes before the judge in which a seller refuses to appear before the notary in order to pass the authentic deed. The reason for this is often the fact that s/he has found a buyer willing to pay a higher price. However, the first agreement is binding upon the seller. In this case, the buyer can obtain a judgment obliging the seller to go to the notary and make the authentic deed pass.</p>
<p>How often do tenants and landlords complain due to arising legal issues (e.g. invalid contract, missing information, increase of rent, termination of the contract without proper notice)?</p>	<p>This happens quite often. It is the Justice of Peace who is competent for conflicts between tenants and landlords. Most conflicts concern:</p> <ul style="list-style-type: none"> - A delay in payment or non-payment of the rent; - Former tenants refusing to leave the real estate; - Landlords refusing to make the necessary reparations and/or modernisations to the real estate; - Tenants damaging the real estate and not fulfilling their duty of care; - Landlords or tenants terminating the rent agreement too early without the legal justification for this termination or without respecting the notification requirements; - Tenants subrenting the real estate, whereas this is forbidden; - Tenants not respecting the purposes of the rented real estate (e.g. conducting a business in residential real estate).
<p>Are consumer complaints against a professional service provider frequent, in particular as regards the fees and quality or service?</p>	<p>N/A</p>
<p>To whom can consumers complain (e.g. local or national administration, consumer protection agencies)? And through which means (e.g. formal letter, online form)? Is the procedure effective (in particular: average time needed for reply, solutions available for redress)?</p>	<p>Complaints about real estate agents: Professional Institute of Real Estate Agents. Complaints about notaries are handled by the notarial Chambers and the competent Courts. In addition, an ADR organisation has been created (<i>cf. supra</i>). Since 2015 and following the EU Directive on ADR, an independent structure (Ombudsman) was approved and recognised by the Ministry of economy (www.ombudsnotaire.be).</p>