REGULATORY OVERVIEW

1. What is the regulatory framework for the authorisation, pricing and reimbursement of drugs, biologicals and devices (as they are termed in your jurisdiction)?

Legislation
The main legislative acts regulating medicinal products are the:
- Royal Decree of 14 December 2006 on Medicines for Human Use and Veterinary Use.

The main legislation regarding reimbursement of medicines is the:
- Royal Decree of 21 December 2001 Concerning the Procedures, Terms and Conditions for Contribution by Mandatory Insurance for Health Care and Benefits towards Costs of Pharmaceutical Specialties.

Regulatory authorities
The Federal Agency for Medicines and Health Products (FAMHP) (Federaal Agentschap voor geneesmiddelen en gezondheidsproducten (FAGG) or Agence fédérale des médicaments et des produits de santé (AFMPS)) (see box, The regulatory authorities) is the regulatory authority responsible for these matters. FAMHP is a public service institute with legal personality.

The most important body for reimbursement of medicines is the Commission for Reimbursement of Medicines (Commissie Tegemoetkoming Geneesmiddelen or Commission de Remboursement des Médicaments) (see box, The regulatory authorities) of the National Institute of Health and Disability Insurance (Rijksinstituut voor ziekte- en invaliditeitsverzekering (RIZIV) or Institut National d’Assurance Maladie Invalidité (INAMI)).

The main authority for price regulation is the Federal Public Service Economy, SMEs, Self-employed and Energy; Directorate General Regulation and Organisation of Markets; Section Prices (see box, The regulatory authorities).

Biotechnology and combination products
Biotechnology products are not separately regulated. For products that consist of a combination of medical devices and medicinal substances, specific rules determine what regulatory scheme applies.

PRICING AND STATE FUNDING

2. What is the structure of the national healthcare system, and how is it funded?

Structure
Belgium has an established and efficient healthcare system. It combines private and official healthcare providers, and is funded as part of the general social security system. Funding comes from withholdings on salaries (and similar official funding for civil servants) and social security contributions by self-employed persons, and is supplemented by other funds. Healthcare rules allow patients a wide choice in selecting healthcare providers and define the benefits they can claim. Patients often have to make a co-payment, which is at least partly intended to help prevent over-consumption. Coverage provided by the official system can be supplemented by optional additional private insurance.

Funding
The system has been facing challenges from increasing costs, which have not been offset by increases in funding. This has increased pressure on healthcare providers, particularly the pharmaceutical industry. The system is regularly revised to meet these challenges. However, efforts have been successful. In 2009 and 2010, the budget for medicines was under control.

3. How are the prices of medicinal products regulated?

Belgium operates strict controls on pricing and reimbursement of medicines for human use. Rules on reimbursement of medicines are becoming increasingly complex as new mechanisms and policies are implemented to safeguard the healthcare budget and promote cheaper medicines. The main procedures for determining prices are set out in two Ministerial Decrees dated 29 December 1989, dealing with:
- Medicinal products that are reimbursed under the national health insurance system.
- Other medicinal products, of which at least one pharmaceutical form is subject to prescription.

After a medicinal product has received a marketing authorisation, the maximum price is fixed by the Minister of Economic Affairs. The Minister takes the decision on the advice of the Price Commission for Pharmaceutical Specialties (for reimbursed medicines) or the Commission for Regulation of Prices (for non-reimbursed medicines).
A price application is generally only possible when the product has a marketing authorisation. However, the price application can be submitted as soon as the Committee for Medicinal Products for Human Use (CHMP) issues a positive opinion, if both:

- The medicine is designated as an orphan medicine or if the company requests reimbursement status as a Class 1 product (see Question 4).
- The product is going through the centralised approval procedure under Regulation (EC) 726/2004 on the authorisation and supervision of medicinal products and establishing a European Medicines Agency (EMA Regulation).

In these cases, the reimbursement application can also be filed before a marketing authorisation is obtained.

There is a separate procedure for establishing prices for generic medicines and medicines approved based on a bibliographic application (Ministerial Decree, 5 May 2006) (see Question 9). This decree also contains rules on maximum prices and on maximum profit margins for wholesalers and pharmacies.

Other medicinal products are regulated by the:

- Ministerial Decree of 20 April 1993, which contains a general price control mechanism not limited to medicinal products.
- Ministerial Decree of 2 April 1996, concerning the maximum sales price and the maximum margins for wholesale and dispensing.

4. When is the cost of a medicinal product funded by the state or reimbursed to the patient? How is the pharmacist compensated for his dispensing services?

The Minister of Social Affairs generally decides, based on a proposal by the Commission for Reimbursement of Medicines, whether to add a medicine to the list of reimbursed medicines. A company that places medicines on the market must ask the Commission for Reimbursement of Medicines to formulate a proposal for reimbursement. In specific circumstances the Commission for Reimbursement of Medicines can itself propose adding a medicine to the list. The application must be concurrent with the separate application for price (see Question 3). In practice, the public price is an important factor in the reimbursement procedure.

The main criterion for a reimbursement decision is the therapeutic value of the medicinal product, which is expressed in three classes (each class has a different reimbursement procedure) (Article 35 bis, Law on the Mandatory Health Insurance):

- Class 1: medicinal products with a significant therapeutic improvement compared with existing alternatives.
- Class 2: medicinal products without a significant therapeutic improvement compared with existing alternatives and that do not belong to Class 3.
- Class 3: generic medicines and medicines approved on the basis of a bibliographic application.

Classes 2 and 3 are further divided into subclasses (Royal Decree, 21 December 2001), based on:

- Price and proposed reimbursement basis.
- Importance of the product in medical practice in relation to therapeutic and social needs.
- Budgetary implications for the health insurance system.
- Relationship between the costs for the health insurance system and the therapeutic value.

The procedure sets specific deadlines for review of applications and must take no more than 180 days. However, this deadline can be suspended in certain circumstances. There is a simplified administrative reimbursement procedure for certain generic medicines, medicines approved based on a bibliographic application, and parallel imported medicines (Royal Decree of 21 December 2001). Under this procedure, a decision must be taken within 60 days (subject to suspension) and without the involvement of the Commission for Reimbursement of Medicines.

Other important aspects of the reimbursement system include the following:

- A reference reimbursement system (which reduces the reimbursement level of innovative medicines when a generic becomes available) applies to all products containing the same active substance, even when this is in a different dose or pharmaceutical form, subject to possible exemptions.
- Generic prescription, also called International Non-Proprietary Name (INN) prescription, is possible in Belgium. Physicians can still prescribe a specific branded medicine, but must meet certain targets of generic prescription to avoid penalties. For generic prescriptions, pharmacists must generally dispense the cheapest product. On 20 November 2009, FAMHP approved a note setting out the principles for defining groups of medicines that can be grouped under a single INN prescription and any mandatory or optional specifications of this prescription. The groups that have been defined are listed on the website of the Belgian Centre for Pharmacotherapeutic Information (BCFI).
- The reimbursement of medicinal products used in hospitals in principle occurs on a fixed basis. The Minister for Social Affairs is responsible for determining the exceptions.
- It is possible to revise groups of medicinal products (that is, instead of revising the reimbursement conditions of an individual product, the reimbursement conditions of a whole group of products can be revised at the same time).
- There is a tender concept (referred to as consulting the market, and in practice as the “kiwi model”), inspired by the system in New Zealand. This system allows for ad hoc reimbursement categories or overall reimbursement reductions. A tender can currently only cover products that are off patent. To date only a couple of tender procedures have been successfully finalised. For example, prices for simvastatin (Zocor), low-dose aspirin (Asaflow) and the human papilloma virus (HPV) vaccine (Gardasil) have been decreased drastically.
- Agreements with pharmaceutical companies are now already possible in specific circumstances. In the future, the government may start negotiating price-volume agreements with pharmaceutical companies.
MANUFACTURING

5. What is the authorisation process for manufacturing medicinal products?

Application
A manufacturing authorisation is required for the manufacture of medicines or intermediary products in Belgium (Articles 12b and 12c, Medicines Law). Companies or individuals wishing to manufacture medicinal products in Belgium must file a dossier with FAMHP. Authorisation is also required if the medicinal products are only manufactured for export purposes.

Conditions
The following information must generally be included in the application:

- A list of the products and preparations used in the manufacturing process.
- The activities to be performed (manufacture and import, wholesale and export).
- Details of the manufacturing process and the address where it will be undertaken.
- Evidence of adequate staff, premises, and scientific and industrial equipment, as required to comply with the principles of good manufacturing practice (GMP).

More specific information must be provided depending on the type of product the applicant intends to manufacture. In addition, the applicant must commit itself to several obligations, such as performing appropriate batch releases. Applicants (except in the case of contract manufacturing) must also commit to supplying wholesaler-distributors to allow them to comply with their public service obligations, which include guaranteeing appropriate and continued supplies of medicinal products for the needs of patients in a particular geographical area. The precise interpretation of this supply obligation remains unclear for the moment.

There are special rules for investigational medicinal products (Royal Decree of 30 June 2004 concerning Experiments on Humans).

Restrictions on foreign applicants
There are no restrictions on foreign applicants.

Key stages and timing
A FAMHP official reviews the application to see whether all requirements are met and whether the application dossier is complete. The final decision is normally issued within 90 days of filing, but if further information is requested from the applicant this term is suspended until additional information is received.

If FAMHP intends to reject the authorisation, the applicant receives a draft of the decision within the 90-day deadline, and can request the dossier to be submitted to the Advisory Committee (of the FAMHP) within 15 days after having received the draft decision. If:

- No request is filed in time, the decision becomes final.
- A request is filed in time, FAMHP must take into account the Advisory Committee’s opinion, and take a final decision within 90 days after the request.

Fee
Fees are listed on FAMHP’s website. In 2011, the fee is EUR1,366.29 for a new licence application. (As at 1 November 2011, US$1 was about EUR0.7.)

Period of authorisation and renewals
Authorisation is valid for an indefinite term, but the holder of the authorisation must ensure it is always fully up-to-date.

6. What powers does the regulator have in relation to manufacturing authorisations?

Monitoring compliance
FAMHP inspectors have broad powers to monitor compliance with the manufacturing authorisation and the rules on manufacturing of medicines. For example, the inspectors can enter premises where medicines are being manufactured and/or interview all persons they believe can provide useful information. Inspections are frequently performed. In 2009 there were 248 inspections in the pharmaceutical industry, of which 100 focused on GMP and 148 on good distribution practices (GDP).

Imposing penalties
If the licence holder breaches the applicable requirements, the FAMHP can suspend or revoke the licence. The licence holder is informed of the intention to suspend or revoke and can request that the dossier be submitted to the Advisory Committee within 15 days. If no request is filed in time, the decision becomes final. If a request is filed, the FAMHP must take into account the opinion of the Advisory Committee and make a final decision within 90 days after the request. Emergency measures are possible.

Criminal sanctions or administrative measures are available for specific violations.

CLINICAL TRIALS

7. Outline the regulation of clinical trials.

Legislation and regulatory authorities
The Law concerning Experiments on Humans of 7 May 2004 regulates experiments on humans, including clinical trials with medicines, and implemented Directive 2001/20/EC on the conduct of clinical trials (Clinical Trials Directive). The Law concerning Experiments on Humans has been further implemented by, among others, the Royal Decree of 30 June 2004. The FAMHP regulates clinical trials in Belgium.
Authorisations
An experiment with humans can generally only be undertaken if both:

- The experiment has received a positive opinion from an ethics committee.
- For an interventional trial, the Minister of Health has not raised objections or, in specific circumstances, has given his explicit approval.

Before issuing an opinion, the competent ethics committee reviews the information in the clinical trial application, including:

- The protocol and the investigator's brochure.
- Whether the trial and the trial design are relevant, and whether the assessment of anticipated benefits and risks is positive.
- Recruitment methods, and whether the written information given to patients is appropriate and thorough.
- Whether the provisions for compensation and/or indemnification in case of injury or death of patients are appropriate, and whether insurance and other coverage for the investigator's and the sponsor's liability are compliant.
- The financial arrangements for compensation of investigators and trial subjects and the relevant aspects of contracts between the sponsor and the trial site.
- The quality and adequacy of the facilities.

Consent
A person can generally only participate in an experiment if he has given free and informed written consent, after being informed of the:

- Nature, significance, objectives, implications, and anticipated benefits and risks of the trial.
- Circumstances under which the experiment will take place.
- Identity and opinion of the ethics committee.

The trial subject must also be informed of the right to revoke his consent and to withdraw from the experiment at any time and without negative consequences. The information must be given in writing in advance, in a clear and comprehensible manner. The trial subject must have an opportunity to discuss this information with a member of the investigation team before he gives his consent. There are specific rules for minors, persons incapable of giving informed consent and emergency situations.

Trial pre-conditions
The Law concerning Experiments on Humans imposes strict liability on the sponsor for all damage to study subjects (or their heirs) that results directly or indirectly from the experiment. The sponsor must take out insurance (before the experiment starts) that covers this liability, and the liability of any other person intervening in the experiment, regardless of that person's relationship with the sponsor. If the sponsor is located outside the EU or EEA, a legal representative in the EU or EEA must be appointed.

Procedural requirements
The procedural requirements are in line with the Clinical Trials Directive and include:

- Compliance with Good Clinical Practices.
- Specific safety reporting requirements.
- Specific requirements on the manufacturing, importation and distribution of investigational medicinal products.
- Specific procedures for amendments to the protocol.
- Procedural requirements at the end of the trial.

The Law concerning Experiments on Humans does not apply to purely retrospective studies based on data contained in the medical or patient dossiers, if those studies do not require collection of new data from the subjects in question (Law on Various Provisions regarding Healthcare 2008).

MARKETING
Authorisation and abridged procedure

8. What is the authorisation process for marketing medicinal products?

The procedure and conditions to obtain a marketing authorisation are set out in the Medicines Law and the Royal Decree of 14 December 2006 on Medicines for Human Use and Veterinary Use.

Application
A company wishing to place a medicinal product on the market must obtain either:

- A marketing authorisation from the Minister of Health.
- A Union marketing authorisation under the centralised procedure (see EMA Regulation). Marketing authorisations obtained from the European Medicines Agency (EMA) under this centralised system are valid in all EU member states.

Authorisation conditions
To obtain a marketing authorisation, the applicant must file an application with the FAMHP, including:

- Chemical and pharmaceutical data.
- Results of pharmacological and toxicological tests.
- Results of clinical trials.

Marketing authorisation can be granted under special circumstances, for example, subject to the performance of additional research.

A marketing authorisation is refused if the:

- Risk-benefit balance is not considered favourable.
- Therapeutic efficacy is insufficiently substantiated by the applicant.
- Qualitative and quantitative composition is not as declared.

Authorisation is also refused if the particulars and documents submitted in support of the application do not comply with the relevant legal requirements.

In exceptional circumstances, medicines that have not yet received a marketing authorisation can be made available to specific patients under compassionate use and medical need programmes (see EMA Regulation, Law of 1 May 2006 modifying
the Medicines Law and Royal Decree of 14 December 2006 regarding Medicines for Human Use).

Other conditions
If a medicinal product is not placed on the market within three years of authorisation or is not on the market for three consecutive years (without interruption), the authorisation ceases to be valid. The launch date of the product and the date when marketing is potentially suspended or stopped must be notified to the Minister of Health.

The authorisation holder must comply with the content and terms of the authorisation (for example, specific conditions or commitments). Any changes to the original marketing authorisation dossier must be authorised by the FAMHP.

The authorisation holder must provide information concerning sales volume and the amount of prescriptions at the request of the Minister of Health. The authorisation holder can be required at any time to provide data showing that the risk-benefit ratio remains positive.

The Minister of Health can suspend supply of the medicinal product in urgent circumstances, for example if the medicine is harmful or lacks therapeutic efficiency, the risk-benefit ratio is no longer positive or the medicine has a different composition than the authorised product. In similar circumstances, the Minister can also suspend, repeal or amend the marketing authorisation.

Only retail pharmacists can usually dispense medicines (with only specific exemptions, for example samples dispensed by physicians). Medicinal products must in principle be ordered or dispensed in person in the pharmacy (see Question 14).

Key stages and timing
Authorisation can be granted by Belgian authorities on their own, or based on a marketing authorisation granted by another EU member state under the mutual recognition procedure or the decentralised procedure (see Question 10).

The completed application is filed with the FAMHP and passed to the Commission for Medicines for Human Use, which then arranges a scientific review and prepares an assessment report. During the review, the applicant can be required to submit additional information. A decision on the application must be issued within 210 days of the initial filing of the application, subject to suspension if additional information is required. Specific procedures apply where the mutual recognition or decentralised procedure applies.

Fee
Fees are listed on the FAMHP’s website. For example, the fee for a complete application for a new active substance is EUR8,524.93.

Period of authorisation and renewals
Authorisation is valid for five years and can be renewed for an unlimited time based on a re-evaluation of the risk-benefit balance. However, FAMHP can renew the authorisation for just one additional five-year period, based on justified pharmacovigilance grounds.

Post-marketing commitments and pharmacovigilance obligations
Marketing authorisation holders must:

- Maintain detailed records of suspected adverse events and inform the Belgian Pharmacovigilance Centre for Medicines for Human Use of reported suspected serious adverse reactions, within 15 days of receiving notice of them.
- Regularly submit Periodic Safety Update Reports (PSURs). A PSUR must cover all new information relating to the risks of products for which it holds marketing authorisation, including:
  - all serious and non-serious adverse reactions, reported worldwide;
  - all adverse events as reported in literature (for example, clinical and pharmaco-epidemiological studies).
- Submit risk management plan (RMP) progress reports, ideally with the PSURs.
- Supply any new information that may involve a variation or influence the evaluation of the risks and benefits of the product, in light of its ongoing obligation to monitor the product’s safety.

In general, the authorisation holder must keep the marketing authorisation up-to-date and, if applicable, apply for an update of the product information in between authorisations.

The marketing authorisation holder must nominate a qualified person in charge of handling these pharmacovigilance obligations (Royal Decree, 2006).

9. Which medicinal products can benefit from the abridged procedure for marketing authorisation and what conditions and procedure apply? What information can the applicant rely on?


An abridged application is possible if the applicant can show that his product is generic to a product that was authorised for at least eight years in Belgium or another EU/EEA member state (the typical abridged application). In this case, the applicant is not required to provide results of non-clinical tests and clinical trials. However, the generic product can only be marketed after a period of ten years from the grant of a marketing authorisation for the reference product. An extra year of market protection is obtained in case of approval during the first eight years of a new therapeutic indication that is of significant clinical benefit compared to existing therapies. (For some older originator products, the data exclusivity period is ten years and an abridged application can only be submitted thereafter.)

In addition:

- These rules continue to allow authorities to accept applications that refer to a reference product but contain data that bridge differences between the reference product and the new product. In that case, appropriate non-clinical and/or clinical data must be submitted.
A new indication for a well-established substance (usually a substance approved for at least ten years) or a change in classification of a medicinal product triggers a one-year data exclusivity period, if significant pre-clinical or clinical studies are conducted. The exclusivity only relates to the new therapeutic indication, respectively the new test data.

If the active substance of the medicinal product has been used for at least ten years in medical practice, has a recognised efficacy and an acceptable level of safety, pharmacological, toxicological and clinical data can be based on scientific literature (bibliographic application).

The holder of a marketing authorisation can permit third parties to refer to the dossier of its product (informed consent).

If a biological medicinal product is similar to a reference medicinal product, but does not meet all the conditions to be a generic, the results of appropriate tests must be provided covering safety and/or efficacy (according to relevant criteria in Annex I to the Code for Human Medicines Directive and related guidelines). This is usually the case, particularly due to differences related to raw materials or in manufacturing processes.

There is a concept of a global marketing authorisation, according to which approvals of new strengths, pharmaceutical forms, routes of administration and presentation (as well as other variations or extensions) must be considered as belonging to the same global marketing authorisation for the purposes of the abridged application rules (Royal Decree 14 December 2006 on Medicines for Human Use and Veterinary Use).

10. Are foreign marketing authorisations recognised in your jurisdiction?

EU and EEA member states
The mutual recognition procedure and the decentralised procedure in the Code for Human Medicines Directive apply in the EU and EEA.

Decentralised procedure. This applies when an applicant applies for marketing authorisations for a medicinal product in more than one EU/EEA member state. The applicant must submit applications based on identical dossiers in all these member states. The reference member state must prepare drafts of the following, and forward them to the other member states:

- Assessment report.
- Summary of product characteristics.
- Labelling.
- Package leaflet.

Mutual recognition procedure. This applies if the medicinal product has already received a marketing authorisation in an EU/EEA member state at the time of application in other member states. The marketing authorisation holder must ask the reference member state to prepare an assessment report on the medicinal product, or if necessary to update any existing assessment report. The assessment report together with the approved summary of product characteristics, labelling and package leaflet must be sent to the concerned member states and the applicant.

If Belgium is not the reference member state, the Minister of Health normally approves the assessment report, the summary of product characteristics, and the labelling and package leaflet within 90 days after receiving the assessment report. If the Minister of Health believes that the medicinal product may present a risk to human health, it immediately informs the applicant and other member states. If not all concerned member states have approved the assessment report, the summary of product characteristics, and the labelling and package leaflet, the points of disagreement are forwarded to the co-ordination group for discussion. In case of an unresolved disagreement, the matter is referred to the Committee for Medicinal Products for Human Use (CHMP) for arbitration.

Non-EU states
Marketing authorisations from non-EU/EEA states are not recognised in Belgium.

11. What powers does the regulator have in relation to marketing authorisations?

Monitoring compliance
FAMHP inspectors have broad powers to verify compliance with marketing authorisations. These are similar to the powers to monitor compliance with manufacturing authorisations (see Question 6).

Imposing penalties
In case of a breach, the Minister of Health can suspend or revoke the marketing authorisation. In addition, the inspectors can, among others, seize medicines that do not comply with terms of the marketing authorisation. Criminal sanctions or administrative measures can also apply in specific circumstances.

Parallel imports

12. Are parallel imports of medicinal products into your jurisdiction allowed?

Parallel imports from other member states of the EU and EEA are possible under specific conditions. Notification of parallel distribution of centrally approved medicines and a simplified authorisation procedure for parallel imports of nationally approved products are available (Parallel Import Royal Decree, 19 April 2001).

A parallel import authorisation is generally granted if all of the following apply (Royal Decree, 19 April 2001):

- There is a reference product with a valid marketing authorisation in Belgium.
- The parallel imported product is the same as the Belgian product in terms of:
  - qualitative and quantitative composition in relation to the active ingredient;
  - pharmaceutical form;
  - therapeutic effect.
- The products are manufactured by the same producer or linked producers (common origin requirement).
The Court of Justice of the European Union (ECJ) has held that the common origin can be a relevant element in deciding a parallel import application, but is not a separate requirement (Kohlpharma case (Case C-112/02 (2004))). The authorisation can also be granted in certain specific circumstances, reflecting rulings of the ECJ.

However, the relevant conditions are not consistently set out.

If a product is marketed by, or with the consent of, the holder of intellectual property rights on the product in any EU or EEA member state, these rights are exhausted and the holder cannot invoke them against parallel imports into other member states. However, the intellectual property rights of a reference product have been safeguarded against imports from (most) new eastern EU member states, where the same intellectual property rights could not have been obtained at the time they were obtained in Belgium (specific mechanism) (Royal Decree, 19 April 2001, as amended on 4 May 2004).

Restrictions

13. What are the restrictions on marketing practices such as gifts, sponsoring, consultancy agreements or incentive schemes for healthcare establishments or individual medical practitioners?

There is a broad prohibition on referring to, offering or giving, during the course of the supply, prescription, delivery or administration of medicines, directly or indirectly, benefits or advantages (in money or in kind) to any of the following (Article 10, Medicines Law):

- Wholesalers.
- Persons who can prescribe, dispense or administer medicines.
- Institutions where prescribing, dispensing or administering takes place.

All exceptions to this general prohibition are intended to be set out in the law itself. However, in practice the exact scope of the prohibition is not always clear. The prohibition does not apply to (Article 10, Medicines Law):

- Benefits or advantages with very limited value, and relating to the medical profession. The concept of “very limited value” can be further described by royal decree.
- An invitation to, or payment for, participation in, a scientific conference (including hospitality), subject to four specific conditions, one of which is that the conference must have a strictly scientific nature. In addition, for every scientific conference with at least one overnight stay, an authorisation in the form of a “visa” must be obtained. Visas are issued by the private institution Mdeon (www.mdeon.be). Mdeon was set up by several healthcare partners, including the Belgian pharmaceutical industry association pharma.be, the medical devices industry association Unamec, and the ethics organisations of healthcare professionals.
- Reasonable compensation for legitimate services of a scientific nature, in particular in the framework of clinical trials.

Persons can ask for an opinion on whether a specific benefit falls within the prohibition (except where a visa is required) (Article 10, Medicines Law).

Specific rules also apply to bribery and co-liability for breaching internal rules of healthcare establishments or other contracts between physicians and institutions. These rules are, for example, relevant when a pharmaceutical company enters into a collaboration agreement with physicians who are active in a university or other hospitals.

14. What are the restrictions on marketing medicinal products on the internet, by e-mail and by mail order?

Internet

In Europe, there is no prohibition of internet sales of medicines as such. However, member states can prohibit the online sales of medicines (Article 14, Directive 97/7/EC on distance selling (Distance Selling Directive)). There are general rules on dispensing medicines that severely restrict possibilities for internet sales. In Belgium, only retail pharmacists can usually dispense medicines (with only specific exemptions, for example, samples dispensed by physicians). Medicinal products must also be ordered or dispensed in the pharmacy.

E-mail

Advertising medicinal products by e-mail is prohibited (Article 5(3), Royal Decree on Advertising of Medicinal Products for Human Use, 7 April 1995).

Mail order

Mail order of over-the-counter (OTC) medicines registered in Belgium is allowed. Belgian rules were amended to allow mail order of OTC medicines, taking into account the ECJ decision in Deutscher Apothekerverband eV v DocMorris NV and Jacques Waterval (Case C-322/01 (2003)). In this case, the ECJ ruled that the principles of free movement of goods prevent an absolute prohibition of sales of (authorised) OTC medicines by mail order. Further government rules are provided for in the Medicines Law (Article 3(4), Medicines Law):

- Every medicine must be personally dispensed by the pharmacist to the patient or his representative, except under conditions to be determined by the King.
- Mail order of prescription-only medicines is prohibited.

Article 29 of the Law of 21 January 2009 regarding Instructions to Pharmacists sets out the conditions and minimum information that must appear on websites that sell OTC medicines.

Pharmacies that provide mail order services must notify their websites to the FAMHP. The list of notified internet pharmacies is published on the FAMHP website.

ADVERTISING

15. What are the restrictions on advertising medicinal products?

Legislation and regulatory authority

The basic principles of medicinal product advertising are set out in the Medicines Law, and are in line with the Code for Human Medicines Directive. They are further implemented by the Royal Decree on Advertising of Medicinal Products for Human Use of 7 April 1995.
The provision of samples is regulated by the Royal Decree of 11 January 1993, as amended by the Royal Decree of 26 April 2007. This imposes more restrictive conditions, for example that samples can only be provided if at least one package is already marketed. The legal provisions on advertising are supplemented by a code of conduct of the Belgian pharmaceutical industry association, and by the Mdeon code of conduct.

The FAMHP regulates the advertising of medicines.

Restrictions
The promotion of unapproved medicines, and of medicinal products subject to suspension or revocation measures, is prohibited.

Advertising of prescription-only medicines to the public is prohibited. There is an exemption to the prohibition on advertising to the public for government approved vaccination campaigns.

Where medicine advertising is allowed, it must comply with numerous specific conditions set out in the Royal Decree of 7 April 1995. These include that:

- Advertising cannot be misleading.
- “Not satisfied, money back” schemes cannot be used.

Some means of communication, such as billboards or text messages, are prohibited. Advertising through television or radio requires prior authorisation from the Minister of Health. Other advertising to the public must be notified in advance to the Minister of Health.

Following criticism of some disease awareness campaigns, new requirements have been set out for campaigns that contain a direct or indirect reference to a medicine or a group of medicines. Most importantly, these campaigns now also require prior authorisation from the Minister of Health unless they concern government-approved campaigns.

Internet advertising
Internet advertising is subject to the same rules.

PACKAGING AND LABELLING

16. Outline the regulation of the packaging and labelling of medicinal products.

Legislation and regulatory authority
The rules on labelling are implemented in the Medicinal Law and the Royal Decree of 14 December 2006 on Medicines for Human Use and Veterinary Use. The FAMHP enforces these rules.

Information requirements
The requirements are in line with the Code for Human Medicines Directive. The information must be:

- Easily legible.
- Comprehensible.
- Indelibly printed in at least the three official languages used in Belgium (Dutch, French and German). If additional languages are used, the information provided must be exactly the same as that provided in the official languages.

The main items of information required to be put on the labelling are:

- The name of the medicinal product followed by its strength and pharmaceutical form.
- A statement of the active substances expressed qualitatively and quantitatively per dosage unit or according to the form of administration for a given volume or weight, using their common names.
- The pharmaceutical form and the contents by weight, by volume or by number of doses of the product.
- The method of administration and, if necessary, the route of administration.
- The expiry date in clear terms (month/year).
- The name and address of the marketing authorisation holder or his representative.
- The number of the marketing authorisation.
- The manufacturer's batch number.
- Some required special warnings and precautions (for example, storage, disposal).
- For non-prescription medicines, instructions for use.

Other conditions
Belgium requires that other information is also provided, such as, in principle, information on price and reimbursement status on the packaging (European Commission Notice to Applicants, Volume 2A, Chapter 7).

TRADITIONAL MEDICINES

17. Outline the regulation of the manufacture and marketing of alternative or complementary medicinal products.

All medicinal products, including traditional herbal medicines, are subject to the requirements for medicinal products.

In line with the revised Code for Human Medicines Directive, the Medicines Law provides for a simplified registration procedure (traditional use registration) for herbal medicinal products that meet certain conditions. This procedure has been further implemented in the Royal Decree of 14 December 2006 on Medicines for Human Use and Veterinary Use.

PATENTS

18. What are the legal conditions to obtain a patent and which legislation applies? Which products, substances and processes can be protected by patents and what types cannot be patent protected?

Conditions and legislation
To qualify for patent protection, an invention must be all of the following (Article 2, Patent Act 1984):

- New (novelty).
The result of an inventive step.
- Capable of industrial application.
- Not constituting a violation of the public order or good morals.

The Law of 28 April 2005 implemented Directive 98/44/EC on the legal protection of biotechnological inventions (Biotech Directive). It provides that, to protect public health interests, the King can grant among other things, compulsory licences for medicinal products.

An administrative review of the novelty and industrial application requirements is available at the courts’ discretion (when a patent is challenged by a third party). This is to verify whether the invention satisfied the requirements and was therefore eligible for protection.

Scope of protection
Medicines can generally be protected by the following:
- Product patent claims.
- Formulation patent claims.
- Method-of-use patent claims.
- Manufacturing process patent claims.

19. How is a patent obtained?

Different procedures apply depending on whether the applicant is seeking patent protection only in Belgium (national procedure) or also in other countries (EU and international procedures).

Application and guidance
An application for patent protection (in Belgium) must be made to the Service for Intellectual Property (SIP) (a division of the Federal Public Service Economy, SMEs, Self-employed and Energy).

Fees are listed on the SIP website. The website provides guidance on the application procedure. The application form (in Dutch, French, or German) must be submitted in person, by regular mail or fax to the SIP. The required information is listed on the website (for example, identity of the applicant, description, claims and abstract). Patents are subject to a submission tax and a maintenance tax.

Process and timing
The SIP reviews the application concerning content and form. The national procedure is relatively straightforward, as the SIP does not review the criteria for patentability. For 20-year patents, a novelty search is required, which is performed by the European Patent Office (EPO). After receipt of the results of the novelty search, the claims, description and drawings can be amended, provided they remain within the scope of the original application. The applicant can also ask for non-binding advice (written opinion) from the EPO concerning the patentability of the invention.

A patent is officially granted by ministerial decree and published in the Register of Patents, at least 18 months after the application is filed. At this stage, the file becomes public. Although the patent is protected from the filing date, the patent owner cannot enforce its rights until publication, subject to a right to reasonable compensation in certain circumstances.

Deposit system
There is generally no deposit requirement to obtain patent protection in Belgium. However, there is a deposit system for biotechnological inventions, since the general requirement that an applicant must describe the invention so that a person skilled in the art can reproduce it can be problematic for biotechnological inventions (Article 17§1(1), Patent Act).

20. How long does patent protection typically last? Can monopoly rights be extended by other means?

Duration and renewal
Protection lasts for 20 years from the filing of the application, provided the necessary fees are paid. In general, patents cannot be renewed or extended.

Extending protection
Under EU law, it is possible to obtain a supplementary protection certificate (SPC) for medicinal products, to extend national patent protection by up to five years, under certain conditions. An application for an SPC must be lodged within six months of obtaining the marketing authorisation for the medicinal product.

Under Regulation (EC) 1901/2006 on medicinal products for paediatric use (Paediatric Medicinal Products Regulation), a six-month extension of an SPC is available under certain conditions. An application for a paediatric extension must be submitted two years before SPC expiry.

21. How can a patent be revoked?

A patent can be annulled by the courts in the following circumstances:
- The criteria for patentability are not met.
- Disclosure of the claimed invention was insufficient.
- Disclosure of the claimed invention exceeds the patent application.
- The patent holder was not entitled to the patent.

A patent can also be revoked if the fees are not paid.

22. How is a patent infringed? How is a claim for patent infringement made and what remedies are available?

Conditions for infringement
The holder of a valid patent can generally object to the following acts by third parties who did not obtain his permission:
- Making, offering, putting on the market or using the product that is the subject matter of the patent, or importing or stocking the product for these purposes.
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- Using the process which is the subject matter of the patent, or offering the process for use within Belgium (when the third party knows, or it is obvious in the circumstances, that using the process is prohibited without the patent proprietor’s consent).
- Offering, putting on the market or using a product obtained directly by a process which is the subject matter of the patent, or importing or stocking the product for these purposes.

Claim and remedies
The patent holder can bring a claim based on the above conditions (see above, Conditions for infringement).

Other specific protection exists, including for biotechnological inventions. The principles of exhaustion of patent rights in the EU must be taken into account (see Question 12).

For medicinal products specifically, the Bolar-type exemption for generic medicinal products introduced by Directive 2004/27/EC on the Community code relating to medicinal products for human use (Code for Human Medicines Second Amendment Directive) (implemented in Article 6 bis of the Medicines Law) is also important. The Bolar-exemption means that the necessary studies, tests, and trials conducted on patented medicines by generic applicants for the purposes of a marketing authorisation application do not amount to patent infringement.

There are several ways to enforce patents. A patent owner can file:
- A petition for interim measures, in urgent cases, to protect its interests.
- A petition for descriptive measures and/or seizure measures.
- Injunction proceedings on the merits.
- An action on the merits and request for various measures, such as:
  - a cease order ending the infringement;
  - confiscation of the counterfeited goods and production assets;
  - damages.

23. Are there non-patent barriers to competition to protect medicinal products?

Generally under EU law, the following protection periods are granted to the holder of a marketing authorisation for an innovative medicinal product:
- An eight year period of “data exclusivity” from initial authorisation of the reference product, after which valid applications for generic products can be submitted and lead to a marketing authorisation.
- An additional two year period of “market exclusivity”, after which generic products authorised in this way can be placed on the market.

Therefore, a generic product cannot be marketed in the EU within ten years of the marketing authorisation of the innovative (reference) product. This ten-year period of marketing protection can be extended by one year, due to authorisation of new therapeutic indications representing a significant clinical benefit compared to existing therapies, provided that the new indication was approved during the first eight years from the initial marketing authorisation.

There are specific rules for:
- Orphan medicinal products: a ten year period of market exclusivity (Article 8, Regulation (EC) 141/2000 on orphan medicinal products (Orphan Medicinal Products Regulation)).
- Paediatric orphan medicinal products: a 12 year period of market exclusivity (Article 37, Paediatric Medicinal Products Regulation).

TRADE MARKS

24. What are the legal conditions to obtain a trade mark and which legislation applies? What cannot be registered as a trade mark and can a medicinal brand be registered as a trade mark?

Conditions and legislation
To obtain trade mark protection, a mark must be:
- Distinctive.
- Capable of graphic representation.

Distinctiveness is the main criterion. It must be interpreted in light of extensive ECJ case law on trade marks.

It is possible to obtain trade mark protection through any of the following:
- A Benelux registration (that is, valid in Belgium, The Netherlands and Luxembourg).
- A Union registration.
- An international registration.

A Benelux registration is governed by the Benelux Treaty on Intellectual Property (Trade Marks and Designs or Models) 2005 (Benelux Treaty on Intellectual Property), which combines the existing Benelux rules on trade marks, designs and models.

Scope of protection
It is possible to obtain trade mark protection for a medicinal product. However, this does not guarantee that the name can be used for a specific medicine. There may be public health reasons preventing this.

25. How is a trade mark registered?

This section only discusses the Benelux trade mark.

Application and guidance
Applications for a Benelux trade mark can be filed with the Benelux Office for Intellectual Property (BOIP) (Benelux-Bureau voor de Intellectuele Eigendom - Office Benelux de la Propriété
26. How long does trade mark protection typically last?

Duration and renewal
A Benelux registration is effective for ten years, and can be renewed for further ten-year periods on payment of the prescribed fees.

Extending protection
There are no other ways to extend a trade mark.

27. How can a trade mark be revoked?

A Benelux trade mark can generally be revoked if:
- The fees are not paid.
- Protection of a foreign trade mark in the country of origin is cancelled.
- The trade mark is not effectively used for a certain period.
- The trade mark becomes generic.
- The trade mark is invalid because it does not meet the conditions of protection.

28. How is a trade mark infringed? How is a claim for trade mark infringement made and what remedies are available?

Conditions
A trade mark holder can oppose any commercial use of:
- An identical trade mark for identical goods for which the trade mark is registered.
- The trade mark or a similar sign for the goods for which the trade mark is registered or similar goods, if there is a risk that the public may associate the trade mark and the sign.
- A trade mark without valid reason that is well known in Benelux, or of a similar sign for goods other than the goods for which the trade mark is registered, where the use can provide the user with an unjustified advantage, or can be detrimental to the distinctiveness or reputation of the trade mark.
- A trade mark without valid reason or a similar sign for a reason other than to distinguish goods, where the use can provide the user with an unjustified advantage, or can be detrimental to the distinctiveness or reputation of the trade mark.

However, the above rules must be interpreted in light of extensive ECJ case law on trade marks.

Claim and remedies
A trade mark holder can bring a claim based on the above conditions (see above, Conditions). Benelux trade marks can generally be enforced through:
- Summary proceedings (interim measures).
- A petition for descriptive measures and/or seizure measures.
- Injunction proceedings on the merits.
- An action on the merits.

In addition, an opposition procedure is available for trade mark holders when another person applies for a Benelux trade mark (see Question 25, Process and timing).

29. Does a patent or trade mark licence agreement and payment of royalties under it to a foreign licensor have to be approved or accepted by a government or regulatory body?

A patent or trade mark licence and payment of royalties under it to a foreign licensor do not need to be formally approved by a government or regulatory body. However, the licence must be registered with the competent authorities to be enforceable against third parties.

30. Is your jurisdiction party to international conventions on patent and trade mark protection?

Belgium is a party to the following:
- WIPO Madrid Agreement Concerning the International Registration of Marks 1891 (Madrid Agreement).
- WIPO Paris Convention for the Protection of Industrial Property 1883.
31. Outline the scope of medicinal product liability law.

Legal provisions
There are no specific provisions on product liability for pharmaceutical products. Liability can arise:

- Contractually, where the claimant is the buyer of the product.
- Under tort liability, where the claimant can be any person suffering damages.

Substantive test
Product liability for a medicinal product can arise when the product is inherently unsafe or, more frequently, when there is a production defect in a specific batch. Damage can also be caused or increased by an act or omission of a treating physician or by incorrect administration of the product. Most cases of product liability are settled out of court.

Liability
Claims can generally be brought against producers, manufacturers, importers, retailers and pharmacists. Theoretically, contract based claims for defective medicinal products can also be brought against the government. Product liability claims are often combined with professional liability claims against the treating physician.

32. How can a product liability claim be brought?

Limitation periods
Claims based on the Product Liability Law must be brought both:

- Up to three years after the claimant became aware, or should reasonably have become aware, of the damage, the defect and the identity of the manufacturer.
- Within ten years from the date on which the producer put into circulation the actual product that caused the damage.

Contractual claims must generally be brought within ten years from when the claim arises. However, claims for hidden defects must be brought within a short period of time. In practice, courts have a wide discretion in deciding what a short period of time is.

Claims based on tort liability must be brought both:

- Within five years from when the victim becomes aware of the damage and the identity of the responsible person.
- Within 20 years following the day on which the fact that caused the damage occurred.

In all cases, suspension or interruption of the limitation period are possible.

Class actions
Belgian law does not explicitly allow class actions for product liability claims. In principle, every claimant must have a personal interest to sue on an individual basis. However, in recent years some joint or collective actions have been introduced by consumer interest groups (such as Deminor and Gaia), based on creative interpretations of the interdependence of claims rules under the Judicial Code.

Several legislative initiatives (such as a proposed law concerning collective damage claims) have tried to provide a legal basis in this respect, but have not yet entered into force. Other initiatives (for example, the Regulation of 18 May 2009 of the Dutch-speaking section of the Brussels Bar) seek to remove specific obstacles under the ethical rules regulating Belgian lawyers, to fully allow class actions once they are made possible by a legislative change. None of these proposals seems to be high priority for the Belgian legislator. Therefore, the time frame for introduction of this legislation is unclear.
Foreign claimants
Any claimant can bring a product liability claim in the Belgian courts if the harmful event (which resulted in injury) occurred in Belgium (see Article 96, Private International Law Code and Article 5, Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation)).

33. What defences are available to product liability claims?

The Product Liability Law provides for the same defences as the Product Liability Directive. These include that:

- It is probable that the defect did not exist at the time of placing the product on the market.
- The defect is due to compliance with mandatory provisions.
- The state of scientific and technical knowledge at the time of marketing did not allow the defect to be discovered (state of the art defence).

However, these defences are not necessarily available when liability actions are based on a contract or tort.

34. What remedies are available to the claimant? Are punitive damages allowed for product liability claims?

The scope of strict product liability is limited to damages to the person and to personal goods. The scope of contractual or tort liability is broader but specific limitations may apply.

Punitive damages are not allowed for product liability claims.

REFORM

35. Are there proposals for reform and when are they likely to come into force?

Rules affecting the marketing of medicines, except European rules, are often amended or reformed. Many changes are introduced to promote a more rational use of medicines and to control the healthcare budget. Measures are also introduced to stimulate a positive investment environment for the pharmaceutical industry.

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