

‘New Liability Rules : How to Protect Yourself When Acting on Behalf of Your Association ’

by **MARIJKE ROELANTS**



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Background Marijke Roelants

- Master and Bachelor Germanic languages KU Leuven
- Postgraduate European Studies UCL and intern European Parliament
- Law studies KUB and VUB (know-how assistant Allen & Overy, Paralegal at Bogaert & Vandemeulebroeke PwC)
- Lawyer since 2004 (International law firms NautaDutilh, Dechert, ...)
- Managing Partner BoldLAW since 2018 and BoldM&A network (tax law FB-tax) since 2025
- Member Editorial Board TRV-RPS (Legal Magazine on company law, association law, financial law and tax law) since 2009
- President Belgian National Committee of the International Association of Lawyers/ Union Internationale des avocats since 2023
- Author of articles on legal topics such as association law, partnerships and director liability and seminars on legal governance for the Belgian Institute for tax advisors and accountants



SCHEDULE OF THE WORKSHOP

1. **Session 2**: 13.45 p.m. to 14.45 p.m.
2. **Session 4**: 16.15 p.m. to 17.15 p.m.

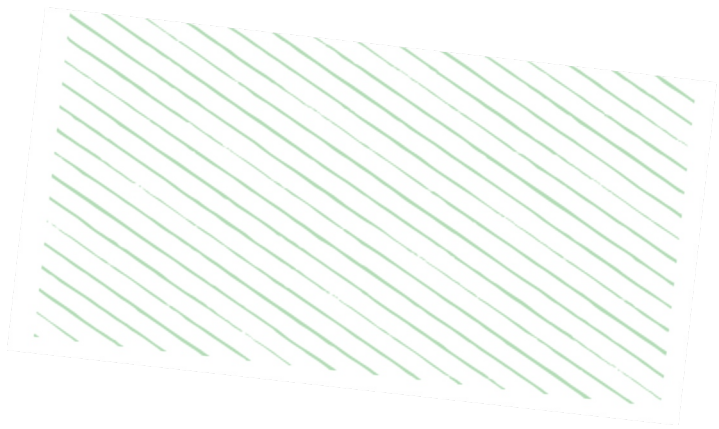
Questions?

- Feel free to ask on the spot.
- Last 15 minutes of the workshop are reserved for your questions.





ROLES in an International Association



Staff

- Employees
- Self-employed persons

Volunteers

Subcontractors

Directors (= members of the Board of Directors
– *conseil d'administration/ raad van bestuur*)

“Appointees” and “auxiliary agents”

Appointee

- there is a link of a **subordinate nature between the organisation and the appointee**

Auxiliary agent:

- someone who helps the organisation to **perform the contract**

Link of subordination : how is the relationship organised

- Not determining factors:
 - Remuneration.
 - Existence of a contract.
- Determining factor:
 - Is the organisation able to exercise authority and to supervise?

Link of subordination

Employee : mostly yes

Volunteer : depends on the way the volunteer work is organized

Self-employed person: depends on the organisation of the work

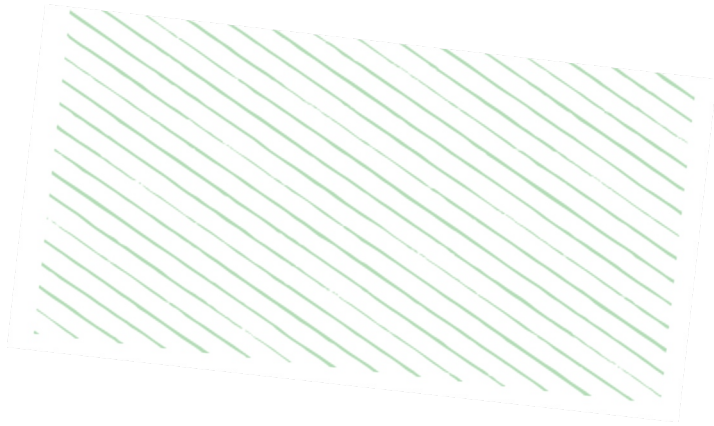
Subcontractor : sometimes yes

Auxiliary agent

- Who helps the association while performing its contracts.
- = Appointees + those who are not appointees (subcontractors, Directors, self-employed persons)



The association is liable ...



If you are an **appointee**, the association is liable as the one having appointed you



- The association is liable for the **damage** caused by the wrongful act (or another fact leading to damage) from its appointees to **third parties** during and following from the performance of their role.

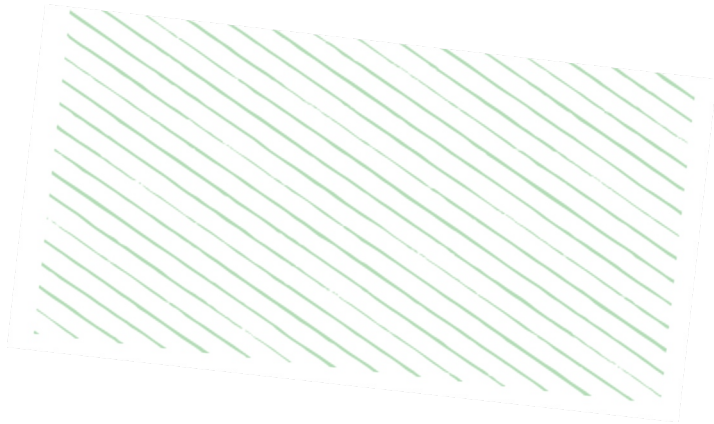
If you are an **auxiliary agent**, the association is liable if through your act the association breaches its contract



- The association is liable for the **damage** caused by the the breach of the contract to the contracting party **during the performance of the contract.**



The association is liable, but the question is: can you be held liable as well ?



Two scenarios

- The association wants to take recourse against you
- The third party or the contracting party of the association want to claim damages directly from you



Scenario 1 : Recourse by the association

Employee : Partly protected by Belgian Act of 3 July 1978 on employment contracts



Volunteer : Partly protected by the Belgian Act on the Rights of Volunteers of 3 July 2005



Self-employed person: Unprotected (contract with the association!)



Subcontractor: Unprotected (contract with the association!)



Director : limitations in Belgian Companies and Associations Code

Scenario 2: Claim against the appointee by the prejudiced third party

Employee : Partly protected by the Belgian Act of 3 July 1978 on employment contracts



Volunteer : Partly protected by the Belgian Act on the Rights of Volunteers of 3 July 2005



Self-employed person: Unprotected (contract with association)



Subcontractor: Unprotected (contract with association)



Director : Limitations in Belgian Companies and Associations Code

Scenario 2: Claim against the auxiliary agent by a contracting party

Before 1 January 2025

- Almost impossible
- Immunity of the auxiliary agent

After 1 January 2025

- Permitted

Is the auxiliary agent an appointee?

Yes

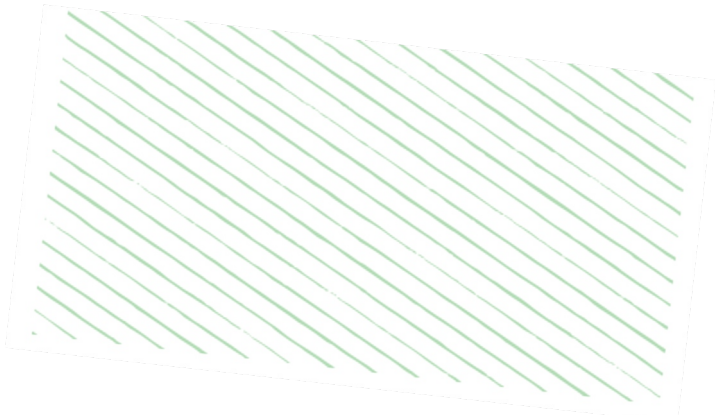
- Employee and volunteer
- Protected against contracting parties of the association by law

No

- Self-employed person and subcontract
- Unprotected : contract between association and contracting party !

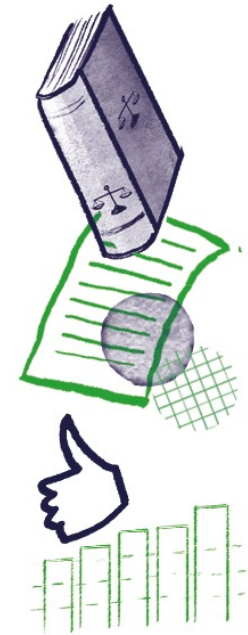


How to protect yourself and your association



Three guidelines

1. Be diligent.
2. Adapt the association's contracts.
3. Take out insurance.



1. Be diligent

Treat the association's matters with
as much care as you would treat
your own affairs

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CONTRACT

Illustration: Markus Winkler (Unsplash)

2. Insert protective terms in contracts

- The association may shield you from liability
- Contract between the association and third parties:
 - Make sure that contracting parties are only allowed to claim from the association.
 - Exclude extracontractual liability.
- Contracts between the association and its appointees/ auxiliary agents:
 - Provide a waiver of recourse from the association
 - Provide a hold harmless clause for claims from third parties.

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3. Insurance

- Take out insurance for the business activities of the association + check:
 - which roles are covered by it
 - If the insurance company is allowed to take recourse.
- Take out your own personal insurance for your business activities if you are a self-employed person on (sub)contractor

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Brussels, Belgium

