January 2025

VBB on Belgian Business Law

Issue Highlights

"Van Bael & Bellis' Belgian competition law practice [...] is a well-established force in high-stakes, reputationally-sensitive antitrust investigations."

Legal 500, 2019

Topics covered in this issue

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COMMERCIAL LAW

Statutory Interest and Default Commercial Interest Decrease

On 3 February 2025, the statutory interest rate applicable to civil matters and commercial relations with private individuals/natural persons was published in the Belgian Official Journal (*Belgisch Staatsblad / Moniteur belge*). As a result, the statutory interest rate in 2025 amounts to 4.5%. This marks a decrease compared to 2024, when it amounted to 5.75% (*See*, this Newsletter, Volume 2024, No. 2).

The bi-annual default interest rate for commercial transactions must still be published in the Belgian Official Journal. However, the Federal Public Service Finance has already announced that this interest rate will be 11.5% during the first semester of 2025. This marks a decrease over the rate of 12.5% which applied in 2024 (*See*, this Newsletter, Volume 2024, No. 2 and this Newsletter, Volume 2024, No. 6-7). Pursuant to the Law of 2 August 2002 on combating late payment in commercial transactions (*Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties / Loi du 2 août 2002 concernant la lutte contre le retard de paiement dans les transactions commerciales*), the default commercial interest rate for commercial transactions applies to compensatory payments in commercial transactions (*handelstransacties / transactions commerciales*), i.e., transactions between companies or between companies and public authorities, but may be deviated from by contract.

Federal Governmental Agreement Defines Commercial Policies for Coming Years

The incoming federal government which became operational on Monday 3 February 2025 has outlined its priorities in the area of commercial law in the governmental agreement of 31 January 2025 (the ***GA***).

The GA sets forth a range of measures impacting businesses carrying out commercial activities in Belgium. The measures reflect a broader vision to modernise the economy, ensure fair competition, and create an attractive entrepreneurial climate.

These are the most notable aspects of the GA from a commercial law perspective (page references are to the Dutch version of the GA):

- *Digital labelling* – To reduce production costs, the government will allow for digital labelling. However, the obligation to publish essential information on the product's packaging will remain in place (p. 57).

- *Sales below cost* – The government will assess, in consultation with the sector, the current prohibition on selling below cost. It will explore possible measures to better achieve the objectives of the prohibition on selling below cost (p. 58).

- *Imbalances in B2B purchase agreements* – The GA identifies imbalanced B2B purchase agreements as a priority concern, particularly in the hotel, restaurant and catering ("horeca") sector. The list of prohibited unfair contract terms in the Code of Economic Law will be complemented with a ban on terminating lease agreements as a penalty for failing to meet contractual obligations that are unrelated to the actual lease obligations, such as an exclusive or minimum purchase obligation (p. 58).

- *Gambling Legislation Reform* – The GA envisages modernising gambling legislation to accommodate emerging forms of gambling. The Gaming Commission (*Kansspelcommissie / Commission des jeux de hazard*) will be reformed, with the Minister of Economy assuming the role of the exclusive representative of the government. Additionally, measures will be adopted to step up enforcement activity against illegal online and offline gaming establishments. In addition, municipalities will obtain a greater say in the granting of permits for gaming establishments on their territory, enabling them to designate specific zones where these establishments should be concentrated (p. 65).

The Dutch version of the GA is available here and the French version of the GA is available here.

COMMERCIAL LAW

Antwerp Enterprise Court Refers Preliminary Questions to Court of Justice of European Union Seeking to Establish Apple's Possible Liability for Offering Games Featuring Loot Boxes

On 16 January 2025, the Antwerp Enterprise Court (the ***Referring Court***) referred two preliminary questions to the Court of Justice of the European Union (the ***CJEU***) regarding whether Apple Distribution Int'l (***Apple***) can be held liable for offering and promoting a game featuring loot boxes in its online application store (the ***App Store***). Loot boxes are featured in video games which may be accessed through gameplay, or purchased with in-game items, virtual currencies, or directly with real-world money.

The dispute pits the claimant (***LS***) who has a history of engaging in gambling activities against Apple, a technology company known for its innovative products, including the iPhone. Between 11 January and 24 November 2021, LS spent 67,813.03 EUR on loot boxes in the game *Top War: Battle Game* which he had accessed on his iPhone, using the in-app payment system. LS asserts that he purchased loot boxes in the game, claiming these loot boxes violate Belgian gambling laws. He also argues that Apple should be held liable for the damages he allegedly suffered due to Apple's violation of Belgian gambling laws. Apple disputes the claims of LS and argues that even if a violation of gambling legislation could be established, it is immune from any liability as a hosting service on the basis of Article 14 of Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (the ***e-Commerce Directive***).

In its judgment, the Referring Court addressed two questions. The first is whether loot boxes constitute a game of chance under Belgian law. The Referring Court established that such a mechanism qualifies as a game of chance under Belgian law and that Apple is therefore acting against Belgian gambling laws by making the loot boxes available in its App Store.

The second question is whether Apple can be held liable to pay compensation. Apple claims that it cannot be held liable as it enjoys immunity as a hosting service based on Article 14 of the e-Commerce Directive (which has been transposed into Article XII.19 of the Code of Economic Law).

The Referring Court decided to suspend the proceedings and refer the following preliminary questions to the CJEU:

1. **a.** *Do Articles 12-15 of the e-Commerce Directive apply to gambling activities, despite the Directive's express provision that it does not apply to information society services consisting of gambling activities involving the wagering of money?*

   b. *If so, should the concept of "gambling activities" be interpreted according to national law, or is it an autonomous concept of Union law?*

2. *Does software offered for sale on an online platform such as the App Store fall under the concept of "information". If so:*

   a. *Can a service provider's diligence and lack of knowledge be assessed based on information about a category of content (like loot boxes) that is hypothetically unlawful as a whole, or must the information concern specific, individual content?*

   b. *Does the app approval process for apps offered in the App Store imply that users purchase these apps under the supervision of the service provider?*

COMPETITION LAW

Belgian Competition Authority to Investigate Wholesale and On-Trade Commercial Conditions of AB InBev

On 16 January 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) announced that it would investigate the commercial conditions which AB InBev applies for the supply of beer to both wholesalers and "horeca" (on-trade) operators in Belgium. The BCA suspects infringements of Article 101, TFEU (which prohibits agreements in restraint of trade) and Article 102, TFEU (which prohibits an abuse of dominant position).

The announcement follows May 2024 press reports of a complaint filed against AB InBev with the BCA by FeBeD, the association of Belgian beverage wholesalers. However, none of the issues which the association reportedly raised on that occasion feature in the press release announcing the BCA's investigation:

- Exclusive supply agreements that are reportedly in breach of an arrangement which the European Commission approved back in 2003.
- A margin squeeze applied to wholesalers which allegedly face competition from AB InBev that supplies specific "horeca" retail outlets directly on better terms that would make it impossible for the wholesalers to furnish the retailers profitably.
- A discount policy that was allegedly foisted on the wholesalers and presents a range of supposedly anticompetitive features, including the mandatory supply of unspecified data and portfolio discounts.

The Belgian business of AB InBev has found itself under competition scrutiny before. For example, on 13 May 2019, the European Commission imposed a fine of more than EUR 200,000,000 on AB InBev because that firm had restricted imports of beer from the Netherlands into Belgium in an attempt to maintain higher prices and achieve larger profits in Belgium (*See*, VBB on Competition Law, Volume 2019, No 5).

Belgian Competition Authority Pursues Below-Threshold Merger on Basis of Article 101 TFEU

On 22 January 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) announced that it would investigate the proposed acquisition of the artisan bakery segment of Ceres by Dossche Mills Group (***Dossche***), even though the transaction is not notifiable under Belgian merger control rules because it does not reach applicable financial thresholds. The BCA specified that it would proceed pursuant to Article 101, Treaty on the Functioning of the European Union (***TFEU***) and Article IV.1, Code of Economic Law (*Wetboek van economisch recht / Code de droit économique* – the ***CEL***). It thus bolstered its budding reputation for being a zealous guardian of competition in the face of corporate acquisitions which it considers as a threat to competition. The zeal is apparent in the BCA's willingness to use non-traditional tools of merger control when the dedicated tools – the merger control rules – do not apply.

Back in March 2023, the BCA opened proceedings against telecommunications operator Proximus to challenge its acquisition of EDPnet under the rules prohibiting abusive conduct by dominant companies (Article 102, TFEU and Article IV.2, CEL). That transaction was also not caught by Belgian merger control rules. The impetus for the BCA's review was a judgment in case C-449/21, *Towercast SASU v. Autorité de la concurrence and others*, in which the Court of Justice of the European Union (***CJEU***) held that a concentration, such as a merger or an acquisition of a business, that does not reach the financial thresholds for review under European Union or national merger control rules may, post-transaction, still be made subject to an abuse of dominance review by a national competition authority pursuant to Article 102 TFEU. The BCA now relies on the same judgment to challenge Dossche's acquisition. However, it does not seek to combat an abuse of dominant position, but rather an agreement that allegedly distorts trade. *Towercast* could arguably be read to sanction both approaches.

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The BCA's concern stems from its understanding that Dossche and Ceres are the two largest producers and suppliers of flour to artisan bakeries in Belgium. The context of the case is peculiar in that Dossche had already tried to acquire all of Ceres in 2019 but had later abandoned the deal, a notifiable transaction, after the BCA had raised serious doubts regarding the transaction's impact on competition on the affected markets (*See*, this Newsletter, Volume 2020, No. 1). Earlier still, in 2013, each of Dossche and Ceres had been fined, along with other parties, on account of collusive behaviour in both Belgium and the Netherlands.

Despite its firm stance against supposedly market-distorting transactions that are not caught by the merger control rules, the BCA is not the first competition authority to deploy Article 101 TFEU against a concentration. It follows in the footsteps of the French competition authority (*Autorité de la Concurrence* - ***FCA***) which investigated under Article 101 TFEU five mergers in the form of asset-swap transactions in the meat-cutting sector. The deals were not notifiable under French merger control rules. While the FCA eventually, in May 2024, closed the case without challenging the transactions, it reminded the business community that *Towercast* has diminished the legal certainty which parties to below-threshold mergers were previously thought to benefit from.

Similarly, neither the FCA, nor the BCA would seem to be in urgent need of "call-in merger review powers" to tackle below-threshold transactions which in their judgment pose a threat to competition. The FCA has just launched public consultations on the subject, while the BCA has signalled that it would seek such statutory powers from Parliament once a new federal government is in operation (*See*, this Newsletter, Volume 2024, No. 10).

Belgian Competition Authority Accepts Commitments and Ends Proceedings Over Potato Price Index

On 29 January 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) announced that it has accepted commitments from Belgapom, the Belgian potato trade and processing industry association, thus ending its inquiry into the organisation's price index.

The weekly price index results from interviews with representatives of both growers and purchasers and is intended to reflect the most common price prevailing on the physical market for specific potato varieties that will serve as input for frozen fries.

The BCA accepted the very existence of the price index, noting that it presents the double benefit of (i) reducing price volatility for growers and purchasers; and (ii) compensating for price information asymmetry on the physical potato market.

Despite its support for the price index, the BCA was concerned that the frequent and systematic meetings among purchasers could result in the coordination of purchase prices at the expense of growers. The BCA also feared that such coordination could have a harmful downstream impact.

Belgapom's commitments seek to alleviate these concerns. They (i) establish what the BCA refers to as an "objective methodology" for establishing the price index; and (ii) create a digital platform which permits a data input that is both anonymous and aggregated. Some of these adjustments are reflected in an adapted set of regulations that can be consulted on Belgapom's website.

The BCA's full decision will offer useful guidance regarding the justifications for creating and maintaining the price index and the precise guardrails established to avert collusive conduct among the competitors feeding the pricing index.

CONSUMER LAW

Federal Governmental Agreement Defines Consumer Law Policies for Coming Years

The incoming federal government which became operational on Monday 3 February 2025 has outlined its priorities in the area of consumer law in the governmental agreement of 31 January 2025 (the ***GA***).

These are the most notable aspects of the GA from a consumer law perspective (page references are to the Dutch version of the GA):

Market oversight and market transparency

- *Strengthening of Economic Inspection Service* – The Economic Inspection Service of the Federal Public Service Economy will be empowered to issue warnings in cases of large-scale unfair or misleading practices to inform as many (potential) victims as possible. In addition, the Economic Inspection Service will be given the means to conduct *ex officio* inspections to detect unfair commercial practices, economic fraud, and distortions of competition harming consumers and businesses (p. 28).

- *Regulatory transparency* – To increase legal certainty and improve the level playing field, regulators will be required to provide, on their websites, clear information regarding the correct application and interpretation of the applicable regulatory framework. Furthermore, it will be made possible for businesses to request a prior opinion or a "comfort letter" from the regulator or the supervisory authority to increase legal certainty (p. 29).

- *Door-to-door sales* – Door-to-door selling will be closely monitored within the boundaries of EU law (p. 29).

- *Influencers* – Given the increased importance of social networks in the development of digital commercial activities, a regulatory framework governing 'influencers' will aim to enforce the consumer protection rules (p. 29).

- *Simplified dispute resolution* – Alternative consumer dispute resolution procedures will be harmonised and simplified, and a shortened judicial procedure for consumer disputes will be introduced (p. 29).

- *Consumer awareness campaigns* – Nationwide campaigns will be launched to educate consumers about their rights and the best purchasing options, with a particular focus on vulnerable groups (p. 29).

Energy

- *Transparent energy invoices* – Energy invoices and tariff sheets will be made easier to compare and more transparent under a regulatory framework to be developed and supervised by the Commission for Electricity and Gas Regulation (***CREG***). The government will assess the feasibility of introducing a standard supply contract (p. 30). To facilitate comparisons, the content of tariff sheets will be standardised (p. 90). Furthermore, the government will work with the Regions to improve the legibility of energy invoices to make it easier for consumers to compare prices and switch suppliers (p. 89).

- *Reduced Energy Invoices* – Energy suppliers will be required to offer to consumers with variable-price energy contracts a reduction in the advance payments when energy prices drop significantly (p. 30 and p. 89). Consumers with digital meters who have opted for annual invoices should be offered the best possible advance payment plan based on their actual consumption data (p. 90).

- *Mystery Switching* – In cases of unauthorised switching by the supplier, i.e., 'mystery switching', the supplier will be required to refund all payments made by the consumer and will be prohibited from invoicing the affected consumer (p. 31).

- *Statute of Limitations* – The statute of limitations for energy invoices will be reduced to two years (p. 31 and p. 90). The maximum invoicing period is to be discussed with the Regions (p. 31).

CONSUMER LAW

Sustainability and consumer rights

- *Combating greenwashing* – Misleading claims on product durability (*greenwashing*) will be classified as a deceptive commercial practice under Book VI of the Code of Economic Law (p. 61).

- *Sustainable consumption* – Consumers will be encouraged to buy more sustainable and locally sourced products (p. 61).

- *Extended warranty periods* – Belgium will advocate at the EU level for extending the minimum legal warranty period for consumer goods to three years. In addition, the government will assess the impact of such an extended warranty period at the EU level for selected products, including electrical and household appliances (p. 61).

Consumer debt collection

- *Evaluation of Consumer Debt Law* – Book XIX of the Code of Economic Law on consumer debt collection will be reviewed by the end of the first legislative year and revised if necessary (p. 61 and p. 79).

- *Fair Debt Collection Practices* – The government intends to introduce strict procedural safeguards to prevent excessive costs resulting from amicable debt collection. Measures will be taken to curb abusive practices by debt collectors, including a review of default judgments in consumer debt cases. Additionally, the simplified procedure for recovering unchallenged debts in B2B relations will be extended to individuals, subject to additional safeguards (p. 79).

The Dutch version of the GA is available here and the French version of the GA is available here.

CORPORATE LAW

Federal Governmental Agreement Also Affects Corporate Law

The incoming federal government which became operational on Monday 3 February 2025 has outlined its priorities in the area of corporate law in the governmental agreement of 31 January 2025 (the ***GA***). These are the most notable aspects:

- While capital gains on shares realised by shareholders-private individuals were historically exempted from taxation, a capital gains tax of up to 10% will now be implemented. A *de minimis* threshold of EUR 10,000 (to be indexed annually) will apply for small investors. Shareholders with a participation of at least 20%, will see their capital gains taxed progressively: capital gains below EUR 1 million will be exempted, while capital gains exceeding EUR 10 million will be taxed at a rate of 10%. Capital gains between EUR 1 million and EUR 10 million will be taxed at 2.5% or 5% according to different thresholds.

- The registration process in the Ultimate Beneficial Owner (***UBO***) Register will be simplified. Relevant information already available from other public sources (e.g. notary public, Belgian Central Commercial Register) will be directly transmitted to the UBO Register without further costs or formalities for the registrar. Financial institutions will gain direct access to the UBO Register.

- Euronext Brussels will become a more attractive stock exchange market, both for companies and investors. Concrete measures are still to be worked out.

- Annual accounts of legal entities will be publicly filed with and accessible through the Just-on-Web platform of the Belgian Official Journal.

- The Government will assess whether the 2019 Companies and Associations' Code can be improved and will focus on non-profit organisations.

DATA PROTECTION

EU General Court Awards Damages for Breach of International Data Transfer Rules

On 8 January 2025, the General Court of the European Union (the ***Court***) delivered its judgment in *Bindl v Commission* (T 354/22) and awarded 400 EUR compensation for non-material damage caused by a breach of international data transfer rules. The judgment provides clarity on the burden of proof for establishing a breach of international personal data transfers and the criteria for non-material damage caused by such breaches.

Background

The case concerned the *Conference on the Future of Europe* website (***CFE*** – the ***Website***), managed by the European Commission (***Commission***) to collect input from the public on the future of the European Union (***EU***). Users had to log in to submit contributions, while third-party services like Amazon CloudFront and Facebook's sign-in feature facilitated access. Mr. Bindl, a German citizen, alleged that the use of these third-party tools resulted in several transfers of his personal data, including his IP address, to recipients in the United States (***US***). He argued that the Commission had breached the rules governing the transfer of personal data and had caused non-material damage, for which he claimed compensation.

Court Judgment

Mr. Bindl's claim referred to three international personal data transfers in the context of the applicant's visit to the Website. The Court stated that the mere risk of personal data being accessed by a third country does not constitute a data transfer. To be considered a transfer, it must be proven that the applicant's personal data was actually transmitted or made available to a recipient in that third country.

The first two transfers related to the services of Amazon CloudFront. Following a detailed analysis, the Court dismissed the claims of Mr. Bindl with regard to these transfers. In one instance, no data had been transferred since the information had been processed on a server located in the EU, and in the other – a transfer did occur, but that was because of a technical adjustment made by Mr. Bindl and implied a choice on his part.

By contrast, regarding the third disputed transfer, which involved the registration for an event on the Website *via* the 'Sign in with Facebook' feature, the Court found that the Commission had created the conditions for transferring the applicant's personal data to a third country. An IP address had been transmitted to Meta Platforms, a firm established in the US which owns and operates Facebook.

At the relevant time, there was no adequacy decision governing transfers to the US. The Court found that the Commission had failed to implement appropriate safeguards to protect personal data (including an IP address) during the transfer. As a result, the Court held that the Commission had breached the data protection rules and had caused non-material damage to the applicant.

The Court added that the transfer of Mr. Bindl's personal data to the US in breach of the applicable data protection rules had placed him in a position of uncertainty. The Court judged that this uncertainty amounted to actual and non-material damage. The Court also established a sufficiently direct causal link between the Commission's infringement of data protection law and the non-material damage suffered by Mr. Bindl.

Based on these findings, the Court assessed the amount of non-material damage on an equitable basis and awarded Mr. Bindl EUR 400 in compensation.

Key Takeaways

While this ruling falls under Regulation 2018/1725, which applies to EU institutions, its implications extend to broader EU data protection law, including the General

DATA PROTECTION

Data Protection Regulation. The key takeaway from this case is the critical need for organisations to implement robust safeguards to prevent breaches of international data transfer rules.

Moreover, the Court's judgment contributes insights to the evolving body of EU case law on international data transfers and compensation for damages arising from breaches of the data protection rules.

For example, the Court clarified that compensation requires evidence of an actual transfer: a mere risk or possibility of a transfer is not sufficient. The Court also showed a willingness to conduct a detailed analysis of technical functionalities.

By contrast, the Court summarily assessed the damage and determined compensation. It held that placing the data subject in a "*position of some uncertainty as regards the processing of his personal data*" was enough to establish actual and certain damage. This stands in contrast with the Court's thorough examination of the facts concerning the international data transfer itself. Additionally, the judgment did not disclose the criteria relied on to quantify the damages and simply *"assessed [these] on an equitable basis at EUR 400"*.

According to Court of Justice of European Union Gender Information Is not Indispensable for Buying Train Tickets

On 9 January 2025, the Court of Justice of the European Union (***CJEU***) held that requiring customers to indicate their gender identity when purchasing train tickets online is not necessary under the General Data Protection Regulation (***GDPR***) (Case-394/23, *Mousse v. Commission nationale de l'informatique et des libertés and SNCF Connect*).

Background

The association Mousse, which defends the rights of the LGBTQ+ community, lodged a complaint with the French data protection authority (***DPA***) against SNCF Connect, arguing that requiring customers to select either "Mr." or "Mrs." when booking a train ticket online violated the GDPR's principle of data minimisation. Mousse contended that this practice could not be justified under Article 6 GDPR, either as "necessary for contractual performance" or as a "legitimate interest" of the controller.

The DPA dismissed the complaint, prompting Mousse to appeal to the French Council of State. The Council of State referred the case to the CJEU, seeking clarification on whether collecting gendered titles for personalised commercial communication is compatible with the GDPR's data minimisation requirements.

CJEU Judgment

The CJEU noted that the data collected must be adequate, relevant, and limited to what is necessary in light of the purposes for which the data is processed and must be processed in a lawful manner. It reaffirmed that the GDPR sets out an exhaustive and restrictive list of the cases in which processing of personal data can be regarded as lawful, which includes:

- If it is necessary for the performance of a contract to which the data subject is a party; or
- If it is necessary for the purposes of the legitimate interests pursued by the controller or by a third party.

Contractual necessity

For data processing to be regarded as necessary for the contractual performance, it must be objectively indispensable to fulfill the contract. The CJEU found that personalising commercial communication based on gender identity is not objectively essential to executing a rail transport contract. Instead, the railway operator could use neutral language, which would achieve the same goal without relying on gender data.

DATA PROTECTION

Legitimate interests

The CJEU stated that processing gender data for personalised communication does not meet the legitimate interest test if: (i) customers were not informed of the legitimate interest pursued when those data were collected; (ii) the processing is not carried out only in so far as is strictly necessary for the attainment of that legitimate interest; or (iii), in the light of all of the relevant circumstances, the fundamental freedoms and rights of those customers can prevail over that legitimate interest, in particular if there is a risk of discrimination on grounds of gender identity.

Key Takeaways

This ruling may have broad practical implications for businesses across sectors. Companies should reassess their data collection practices, ensuring they do not collect unnecessary personal data in online transactions. The CJEU made clear that "common industry practices" cannot justify collecting personal data unless such practices meet the GDPR's strict necessity test. Tellingly, the CJEU repeatedly referred to "strictly necessary," even though the GDPR only requires data to be "necessary." This could signal a stricter interpretation of the GDPR, potentially leading to more restrictive enforcement in the future.

The judgment can be accessed here.

EU General Court Confirms Authority of European Data Protection Board over Lead Supervisory Authority

On 29 January 2025, the General Court of the European Union (the ***GC***) ruled in joined cases T 70/23, T 84/23, and T 111/23 against the Irish Data Protection Commission (***DPC***). The GC confirmed that the binding decisions of the European Data Protection Board (***EDPB***) which directed the DPC to re-evaluate Meta's data processing, conduct a further investigation, and impose stricter penalties did not undermine the DPC's independence.

Background

In 2018, three individuals lodged complaints with their national data protection authorities against Facebook Ireland Ltd and WhatsApp Ireland Ltd, alleging General Data Protection Regulation (***GDPR***) violations. As the companies were based in Ireland, the DPC acted as the lead supervisory authority (***LSA***) under the one-stop-shop mechanism of Article 56 GDPR.

Following investigations, the DPC issued three draft decisions, which several supervisory authorities (***SAs***) contested with reasoned and relevant objections, particularly regarding targeted advertising and the need for user consent under Article 9 GDPR. As no consensus was reached among the SAs, the matter was referred to the EDPB.

On 5 December 2022, the EDPB issued its binding decisions under Article 65(1)(a) GDPR, rejecting the DPC's conclusion that Meta and WhatsApp could rely on contractual necessity as a legal basis for data processing. Endorsing the objections raised by several SAs, which it deemed relevant and reasoned, the EDPB instructed the DPC to revise its findings, establish GDPR infringements, and impose corrective measures. It also ordered the DPC to expand its investigation into Meta's and WhatsApp's processing of special category data. In response, the DPC sought the annulment of the EDPB's binding decisions, arguing that the EDPB had exceeded its powers by requiring the DPC to conduct a further investigation and adopt new draft decisions.

GC Judgment

The DPC contended that the EDPB's authority should be confined to reviewing objections related to the LSA's draft decision and should not extend to mandating a further investigation. The GC rejected this position and affirmed that EDPB decisions must address all relevant and reasoned objections, particularly those highlighting GDPR infringements. It clarified that such objections are not limited to the draft decision's content but can also point out deficiencies or omissions in the LSA's analysis. According to the GC, if gaps are identified, the EDPB may direct the LSA to conduct further inquiries.

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The GC further highlighted the importance of cooperation among SAs under the GDPR. It noted that authorities must jointly agree on decisions in cross-border cases, including defining the scope of investigations. Additionally, it ruled that the LSA cannot unilaterally determine the appropriateness of an investigation's scope and exclude this issue from the cooperation and consistency mechanisms provided for by Article 60 GDPR.

The GC also dismissed the DPC's claim that the GDPR's cooperation procedure precludes the reopening of an investigation. It clarified that the Article 60 process is not a rigid, linear mechanism and allows for returning to earlier stages if necessary. Furthermore, the GC rejected the argument that national courts should resolve disputes over the scope of an investigation, stating that such matters should be handled within the GDPR's cooperation and consistency framework.

Lastly, the GC ruled that requiring the DPC to broaden its investigation did not compromise its independence as enshrined in Articles 16(2) of the Treaty on the Functioning of the European Union and 8(3) of the Charter of Fundamental Rights of the European Union. It emphasised that these provisions do not grant supervisory authorities absolute independence but instead subject them to mutual scrutiny within the GDPR framework.

Key Takeaways

This decision provides important clarification on the enforcement of the GDPR and confirms the necessity of cooperation and consistency mechanisms to ensure harmonised decision-making in cross-border cases. Importantly, this decision explicitly confirms that SAs and the EDPB can challenge an allegedly "selective" investigation approach of the LSA.

The full judgment is accessible here.

INVESTMENT CONTROL

European Union Inches Closer to Outbound Investment Screening: European Commission Issues Recommendation on Reviewing Outbound Investments

On 15 January 2025, the European Commission (***Commission***) issued a recommendation on reviewing certain outbound investments (the ***Recommendation***). In the Recommendation, the Commission invites EU Member States to review outbound investments from the EU towards third countries in specific critical technological areas.

The Recommendation follows the Commission's White Paper on Outbound Investments of 24 January 2024 in which it outlined a step-by-step approach in order to mitigate any identified risks connected to outbound investments. This plan involved (i) a public consultation stage (launched in January 2024 and closed in April 2024); (ii) a monitoring stage; and (iii) a risk assessment stage in which the Commission and the EU Member States would draw their conclusions regarding the risks linked to outbound investments. The results of this final stage would subsequently be set out in a further Communication and potential proposals to mitigate the identified risks. The Recommendation is part of the second stage of this approach.

The Recommendation calls on Member States to review outbound investments into semiconductor technologies, artificial intelligence and quantum technologies, covering new transactions over the next fifteen months, as well as past transactions going back as far as 1 January 2021, or even earlier in cases of particular concern. The targeted transactions include acquisitions, mergers, greenfield investments, asset deals, joint ventures and venture capital investments, but exclude non-controlling financial investments. The purpose of the review is to collect information on those outbound investments and assess any risks.

The Member States should provide the Commission with an update of their progress by 15 July 2025 and a comprehensive report by 30 June 2026. Based on the information collected, the Member States and the Commission will discuss the outcome of this exercise to achieve a shared understanding of risks connected to outbound investments and formulate potential proposals to mitigate such risks.

The Recommendation follows the entry into force on 2 January 2025 of the US outbound investment regime which targets an almost identical set of technologies. Unlike the US regime, the Recommendation covers outbound investments to third countries under a so-called country-neutral approach, without targeting any specific destination. However, the Recommendation suggests that EU Member States should prioritise their review based on the risk profiles of individual countries.

The Recommendation is available here.

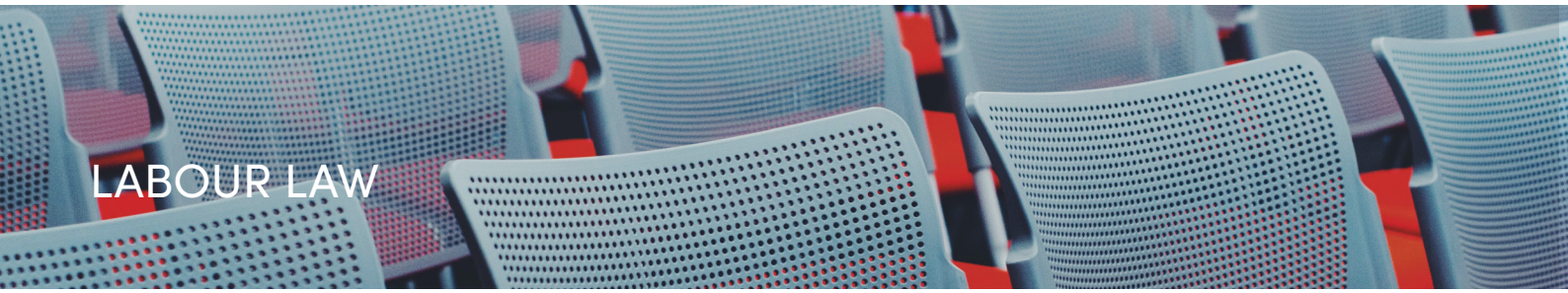
INTELLECTUAL PROPERTY

European Commission Implementing Regulation (EU) 2025/73 amending Community Designs Regulation Published in Official Journal of European Union

On 22 January 2025, Commission implementing Regulation (EU) 2025/73 of 17 January 2025 amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs was published in the *Official Journal of the European Union*.

The reform of the rules govern design protection (*See*, this Newsletter, Volume 2024, No. 11) included the amendment of Regulation (EC) No 6/2002 by Regulation (EU) 2024/2822. Following that amendment, it became necessary to adapt Regulation (EC) No 2245/2002 as well, particularly with regard to terminology and procedural elements such as time limit durations.

Implementing Regulation (EU) 2025/73 can be found here.



LABOUR LAW

Federal Governmental Agreement Strongly Impacts Employment, Pensions and Social Security

The incoming federal government which became operational on Monday 3 February 2025 has outlined its priorities in the areas of employment, pensions, and social security in the governmental agreement of 31 January 2025 (the ***GA***).

While the GA still must be implemented in concrete measures whose full impact cannot yet be assessed, here is an overview of the key measures from a human resources perspective.

Flexible Working Time and Career Reduction Regimes

- Employees will be given more freedom to determine their working schedule in mutual agreement with their employer.

- Night work will become permissible in all industries, as opposed to the current rules which allow night work only in specific industries. To enhance the competitive position of Belgium compared to its neighbours, night work in the distribution sector and related industries (including e-commerce) will start at midnight (12 a.m.) instead of 8 p.m. as is currently the case.

- The obligation for part-time employees to perform at least one-third of a full-time working schedule will be abolished, and all forms of part-time working schedules will become legal.

- By 30 June 2025, and on the basis of talks among the social stakeholders, it will be possible to calculate the employees' working time on a full year and to arrange working schedules based on the intensity of the work (It will be possible to reduce working schedules during less busy periods and increase them during busy periods).

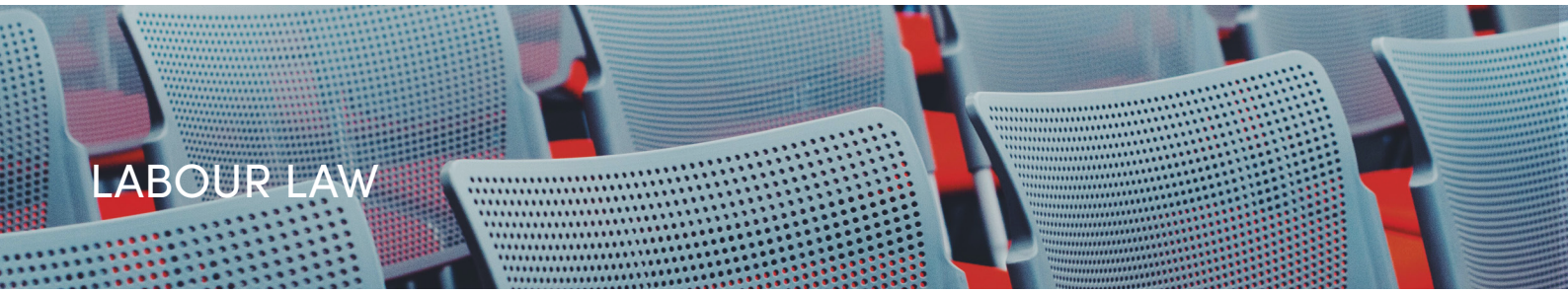
- In the social agreement of 2023-2024, the number of tax-friendly overtime hours was already increased from 130 to 180 until 30 June 2025. This increase will remain in effect, reducing the employers' costs while providing a tax reduction for employees. The existing system of voluntary overtime would be broadened across all industries and reformed, allowing up to 360 voluntary overtime hours without requiring justification or compensatory rest. For 240 of these hours, gross pay will equal net pay (which implies that no social security contributions or income tax will apply).

- A new family credit system will be introduced following talks with the social stakeholders. It will simplify and harmonise the several regimes of rights of leave for child caretakers, including parents and grandparents.

Termination of Employment

- The trial period, abolished by the Law of 26 December 2013 (*Wet van 26 december 2013 betreffende de invoering van een eenheidsstatuut tussen arbeiders en bedienden inzake de opzeggingstermijnen en de carenzdag en begeleidende maatregelen / Loi du 26 décembre 2013 concernant l'introduction d'un statut unique entre ouvriers et employés en ce qui concerne les délais de préavis et le jour de carence ainsi que de mesures d'accompagnement*), will be reintroduced by 31 December 2025. This will allow both the employer and the employee to terminate the employment contract with a one-week notice period during the first six months of employment.

- The notice period or severance pay due by the employer in the event of termination of an employment contract would be capped at 52 weeks for new hires, which corresponds to a maximum seniority of approximately 17 years.



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- The scope of protection of employees against dismissal (e.g., for employees on time-credit, and possible victims of discrimination protection) will be reduced. However, the GA does not spell out whether this concerns the reduction of the different protection measures or the reduction of the cumulation of the different sets of rules.

- The protection against dismissal for elected employee representatives in the Works Council or any other employee representative body remains unchanged. However, for candidates who have not been elected the protection would be reduced to six months, while under current rules such protection may last for four years.

- Unemployment benefits will be transformed into a degressive system, providing higher financial support during the first few months but decreasing over time. They will be capped at two years (subject to exceptions).

- Once in a professional career, an employee who has worked at least ten years can resign whilst being entitled to unemployment benefits for a maximum of six months.

Salary and Fringe Benefits

- Net salaries will be increased. This will be achieved by several measures, including reducing the special social security contributions (*bijzondere bijdrage voor de sociale zekerheid / cotisation spéciale pour la sécurité sociale*) and the reinforcement of the work bonus (*werkbonus / bonus à l'emploi*) for employees with a limited gross salary (implying a reduction of the employee's social security contributions).

- The tax reform should make it more interesting to reward employees in cash instead of through alternative benefits. To this extent, the existing collective bonus systems (such as CBA 90, profit-sharing premiums, etc.) will be simplified, and their scope will be harmonised. This will be done without increasing the administrative and tax burdens for either employers or employees.

- It will be possible to increase the total nominal value of meal vouchers, currently capped at EUR 8, to EUR 12 per voucher, through an increase of the employer's contribution by up to EUR 2, twice during the next five years. Additionally, employees will enjoy greater flexibility, with the ability to use meal vouchers for a wider variety of purchases. Other vouchers, including eco vouchers, will be phased out following talks with the social stakeholders.

- The employer's social security contributions will be capped at the level of the salary of the Prime Minister (approximately EUR 270,000 in 2025).

Administrative Simplification

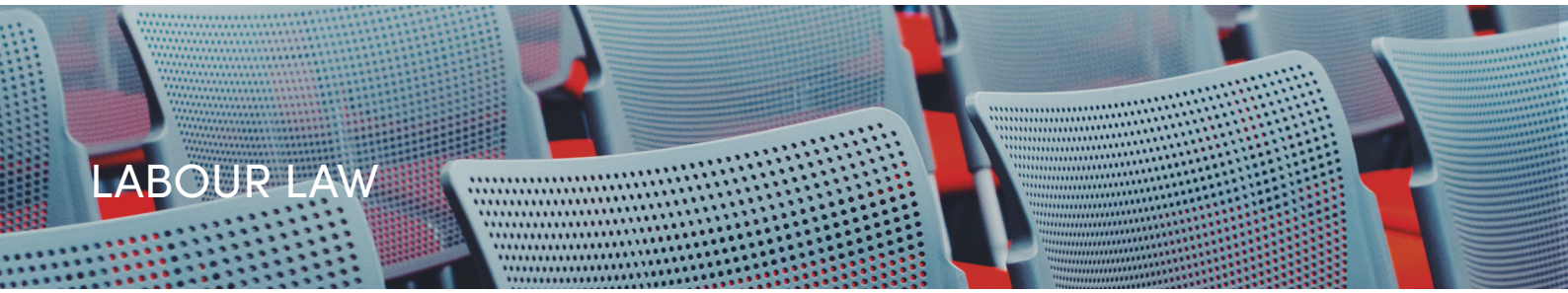
- The Federal Learning Account will be abolished, and an administratively less complicated alternative will be explored (*See*, this Newsletter Volume 2024, No. 11).

- Risk analyses required under the well-being legislation will no longer have to be repeated annually if the working conditions remain unchanged.

- Agreements between employers and employees that must be currently renewed every six months (e.g., for a four-day workweek or voluntary overtime) will be replaced by or at least supplemented with the possibility to conclude an agreement for an indefinite duration with a six-months notice period.

Social Fraud Prevention

- Additional measures to prevent social fraud will be implemented. For instance, audits regarding platform workers will be reinforced (e.g., to prevent identity fraud). Combating false self-employment will also become a priority.



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- Penalties for social fraud and social dumping under the Social Criminal Code (*Sociaal Strafwetboek / Code pénal social*) will be increased. Additionally, the surcharges on fines issued pursuant to the Social Criminal Code will be raised from 70 to 90, which would result in a multiplication factor of 10, compared to the current 8.

Prevention and Reintegration of Long-Term Sick Employees

- Employers are encouraged to implement an active policy to tackle absence on the work floor. This involves creating a working environment that prevents long-term sickness to the maximum extent and ensuring regular contact and follow-up with employees on sick leave.

- A reform of the current reintegration procedure for employees on long-term sick leave will be introduced. There will be measures to encourage employees on long-term sick leave to be reinstated more quickly (e.g., by an assessment of the employee's work potential conducted by the external prevention service after eight weeks of work incapacity).

- Employment contracts may be terminated for medical force majeure following a period of work incapacity of six months instead of the current nine months.

- The obligation for employers to contribute EUR 1,800 to the "Return to Work Fund" (*Terug Naar Werk-fonds / Fonds Retour Au Travail*) in case of a termination of the employment contract of a long-term sick employee due to medical force majeure will be broadened to cover mutual terminations and unilateral terminations of the employment contract of a long-term sick employee.

- Currently, employers must only pay a guaranteed salary to employees on sick leave for the first 30 days of work incapacity. In the future, employers (excluding SMEs) will be required to pay 30% of the allowances paid by the National Institute for Health and Disability Insurance (*Rijksinstituut voor Ziekte- en Invaliditeitsverzekering / Institut national d'assurance maladie-invalidité*) for the first two months of primary incapacity following the 30 days period of guaranteed salary. This will replace the current penalties for companies with significant cases of sick leave.

- If an employee goes on sick leave after a first such period, that employee will be entitled to the 30 days of guaranteed salary only after eight weeks of returning to work instead of the current 14 days.

- Lastly, the number of single-day absences allowed without a medical certificate will be reduced from three to two per year.

Pensions and Early Retirement

- In addition to the reform of the statutory pension, the federal government also plans to offer all employees a solid extra-statutory pension with a minimal employer's contribution of 3% by 2035. In Joint Committees (JCs) that do not provide for an extra-statutory pension at industry level (e.g., the auxiliary JC No. 100 for the blue-collar employees and the auxiliary JC No. 200 for the white-collar employees) or that have a lower employer's contribution, additional efforts will be taken to reach this target.

- The system of unemployment with company allowances (*stelsel van werkloosheid met bedrijfstoeslag / chômage avec complément d'entreprise* - ***UCA***), previously known as "bridge pension", will be abolished retroactively on 31 January 2025. No new beneficiaries will be allowed after that date, subject to limited exceptions. The fate of employees who were dismissed before 31 January 2025 and qualified for UCA at that time but for whom the UCA system has not yet been activated remains unclear.

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