May 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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ARTIFICIAL INTELLIGENCE

European Commission Publishes Comprehensive AI Literacy Q&A

The European Commission has released extensive guidance on AI literacy obligations through a detailed questions and answers document (***Q&A***). The guidance deals with Article 4 of the AI Act, which became applicable on 2 February 2025 and requires providers and deployers of AI systems to ensure sufficient AI literacy of staff and other persons handling AI systems on their behalf.

As detailed in our February 2025 newsletter, Article 4 of the AI Act represents the first AI Act obligation to create immediate compliance requirements for AI providers and deployers.

The AI Act defines AI literacy in Article 3(56) as:

> *"skills, knowledge and understanding that allow providers, deployers and affected persons - taking into account their respective rights and obligations in the context of [the AI Act] - to make an informed deployment of AI systems, as well as to gain awareness about the opportunities and risks of AI and possible harm it can cause."*

Key obligations and compliance requirements

Article 4 requires organisations to ensure sufficient AI literacy levels considering individuals' technical knowledge, experience, education and training. The provision extends beyond employees to include contractors, service providers, and clients operating under organisational remit.

The AI Office outlines four minimum compliance elements: organisations must (i) ensure general understanding of AI within their organisation; (ii) consider their role as AI system providers or deployers; (iii) assess AI system risks and required employee knowledge; and (iv) build literacy programmes based on staff analysis and the deployment context.

The guidance adopts a risk-based approach requiring organisations to adapt programmes based on their role and AI system risks. High-risk systems may require additional measures ensuring that employees understand proper handling and risk mitigation.

Training and documentation

The AI Office confirms that training constitutes one acceptable approach but does not mandate specific formats. Conversely, simply providing AI system instructions will typically be insufficient. Organisations need not obtain certificates for compliance - internal documentation of training initiatives suffice.

The guidance addresses practical scenarios, confirming that companies whose employees use tools like ChatGPT for writing or translation must comply with Article 4 requirements, particularly regarding risks such as hallucination.

Enforcement and international application

While Article 4 has applied since 2 February 2025, the supervision and enforcement rules will not apply until 3 August 2026. National market surveillance authorities (to be designated within each Member State) will be responsible for enforcing compliance.

The AI Act framework applies to public and private actors inside and outside of the EU when AI systems are placed on the Union market, used within the Union, or impact persons located in the EU.

Support resources

The Commission provides further information to support organisations including a living repository gathering best practices from organisations across sectors (provided by organisations that participate

in the so-called AI Pact). Small and medium-sized enterprises can obtain support through the European Digital Innovation Hubs network, comprising 251 one-stop shops across Europe.

Practical implications

The Q&A gives some guidance on how to meet AI literacy requirements under the AI Act. At the same time, it makes clear that the AI literacy measures must be tailored to the specific needs of the organisation which must conduct thorough assessments of its AI ecosystem, employee knowledge levels, and risk profiles to develop appropriate programmes. The emphasis on context-specific implementation suggests that one-size-fits-all approaches will prove insufficient to meet Article 4 requirements.

European Commission Announces "AI Continent Action Plan" to Boost EU's AI Capabilities

On 9 April 2025, the European Commission (the ***Commission***) unveiled its "AI Continent Action Plan", a strategic initiative aimed at strengthening the European Union's artificial intelligence (***AI***) capabilities and positioning the EU as a global leader in the field. The plan aligns with Commission President von der Leyen's commitment, announced at the February 2025 AI Action Summit in Paris, to mobilise EUR 200 billion for AI investment.

The AI Continent Action Plan provides for multiple actions and policies structured around five key pillars, in which both the private and the public sectors have a role to play.

Commission strengthens AI computing infrastructure

The first pillar focuses on scaling up AI computing infrastructure across Europe. The Commission plans to enhance the network of AI Factories and establish new AI Gigafactories. These initiatives will receive EUR 30 billion in public-private investments, supported by the European Innovation Council Fund, the planned TechEU Scale-up Fund, the European Investment Bank Group's European Tech Champions Initiative, and the InvestEU guarantee.

To address the EU's dependence on non-EU cloud and AI infrastructure, the Commission proposes a Cloud and AI Development Act which will incentivise large private investments to triple the EU's data centre capacity within five to seven years.

Commission improves access to high-quality data for AI

The second pillar promises improved access to large, high-quality datasets. The Commission will establish Data Labs as integral components of the AI Factory network. Additionally, the Commission plans to launch a comprehensive Data Union Strategy in the second half of 2025 to create a genuine internal market for data to scale AI solutions.

Commission accelerates AI adoption in strategic EU sectors

The third pillar seeks to foster AI adoption across strategic EU industries and the public sector. The Commission's forthcoming "Apply AI Strategy" will support this goal, with a particular focus on small and medium-sized enterprises (***SMEs***). Key sectors include aerospace, agri-food, automotive, biotechnology, communications, creative and cultural industries, defence, energy, pharmaceuticals, and robotics. Additionally, the pillar seeks the development of "Made in Europe" AI algorithms.

Commission enhances AI skills

The fourth pillar targets improved AI skills throughout the EU. The Commission plans to address existing gaps and further develop AI education, training, and research, for example, by supporting EU bachelor's, master's, and PhD programmes focused on AI.

Commission facilitates compliance with AI Act

The fifth pillar concentrates on facilitating compliance with the AI Act (*See*, VBB Client Alert of 24 September 2024), particularly for smaller innovators. The Commission will launch an AI Act Service Desk to serve as a central information hub, enabling stakeholders to seek assistance and receive tailored guidance on regulatory compliance.

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The AI Continent Action Plan marks a bold step to propel the EU to the forefront of global AI development. Through its five-pillar approach, the plan seeks to build a thriving and robust ecosystem for AI innovation across the EU. However, the true test will lie in its implementation and the EU's ability to adapt to the rapidly evolving AI landscape. The EU will have to balance its AI ambitions with its commitment to privacy, fairness, and human-centric technology while ensuring the plan benefits businesses of all sizes.

The Commission Communication can be consulted here.

European Commission Launches Public Consultation on Implementation of High-Risk AI Systems

The European Commission started a public consultation to gather stakeholder input on implementing the EU Artificial Intelligence Act's provisions regarding high-risk AI systems. The consultation aims to collect practical examples and clarify issues relating to the classification and regulation of these systems under the AI Act.

Scope and objectives of consultation

The six-week consultation, which runs until 18 July 2025, seeks feedback that the Commission will incorporate into forthcoming guidelines on classifying high-risk AI systems and their associated requirements and obligations. The consultation also addresses responsibilities along the AI value chain, providing clarity for the stakeholders operating under the regulatory framework.

The AI Act establishes a risk-based approach to AI regulation, with high-risk systems subject to stringent compliance requirements. Article 6 of the AI Act identifies two categories of high-risk AI systems that trigger enhanced regulatory obligations.

Classification framework for high-risk AI systems

The first category encompasses AI systems functioning as safety components of products or constituting products themselves under Union harmonisation legislation listed in Annex I of the AI Act. These systems qualify as high-risk when they undergo third-party conformity assessment procedures pursuant to relevant Union product safety legislation.

The second category covers AI systems listed in Annex III of the AI Act, which includes eight specific areas in which the deployment of AI is liable to impact significantly health, safety, or fundamental rights. These areas span biometrics, critical infrastructure, education, employment, essential services, law enforcement, migration and border control, and justice and democratic processes.

Limited exceptions to high-risk classification

Article 6(3) of the AI Act provides for a narrow derogation from the high-risk classification for specific Annex III systems that pose no significant risk to health, safety, or fundamental rights. This exception applies when AI systems perform narrow procedural tasks, improve previously completed human activities, detect decision-making patterns without replacing human assessment, or perform preparatory tasks for assessments.

However, the AI Act specifies that systems performing profiling of natural persons always qualify as high-risk, regardless of other considerations. Providers claiming that their Annex III systems are not high-risk must document their assessment before their placement on the market and must register with authorities under Article 49(2) of the AI Act.

The Commission invites broad stakeholder participation, including providers and developers of high-risk AI systems, businesses and public authorities deploying such systems, academia, research institutions, civil society organisations, governments, supervisory authorities, and citizens generally.

The consultation feeds into the Commission's obligation under Article 6(5) of the AI Act to provide guidelines by 2 February 2026 specifying the practical implementation of high-risk system classification rules.

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These guidelines will include comprehensive lists of practical examples distinguishing high-risk from non-high-risk AI systems, following consultation with the European Artificial Intelligence Board.

The Commission was given the power by Article 6(6) and (7) of the AI Act to adopt delegated acts amending the conditions for high-risk classification, ensuring the regulatory framework adapts to technological developments while maintaining protection levels for health, safety, and fundamental rights.

This consultation represents an important step in operationalising the AI Act's high-risk system framework, enabling stakeholders to shape future guidelines for one of the most significant aspects of EU AI regulation. The outcome becomes particularly important as Executive Vice President Henna Virkkunen has indicated that the implementation of specific AI Act provisions may be postponed if the necessary standards and guidelines are not in place by the implementation deadlines, following the industry advocacy for a "stop-the-clock" mechanism amid intense lobbying efforts in various quarters, including the US administration.

The consultation can be completed here.

Court of Justice of European Union Receives First Referral on Artificial Intelligence and Copyright Protection

See, this Newsletter, section Intellectual Property.

COMMERCIAL LAW

Federal Chamber of Representatives Adopts Bill Governing Personal Security Interests (Book 9 of New Civil Code)

On 15 May 2025, the federal Chamber of Representatives adopted the Private Members' Bill modifying and updating the statutory provisions governing personal security interests (*Wetsvoorstel houdende titel 1 "Persoonlijke zekerheden" van boek 9 "Zekerheden" van het Burgerlijk Wetboek / Proposition de loi portant le titre 1er "Les sûretés personnelles" du livre 9 "Les sûretés" du Code civil* - the ***Bill***). The Bill forms part of the broader reform of the Civil Code and constitutes the first part of Book 9 regarding "Securities". It was submitted to the Chamber of Representative on 24 September 2024 (See, this Newsletter, Volume 2024, No. 10) and aims to clarify and secure guarantee commitments, both for professionals and consumers.

The Bill defines a personal security as an undertaking by a third party to guarantee to a creditor the payment of an obligation owed by the principal debtor to the creditor. It also provides for a clear definition and a strengthened legal framework for the two main types of guarantees: (i) suretyship (*borgtocht / cautionnement*) and (ii) independent guarantee (*autonome garantie / garantie autonome*).

The Bill also strengthens the rights of third-party guarantors by requiring the creditor to provide mandatory information to the guarantor and by facilitating recourse against the debtor. Additionally, the Bill offers specific protection to consumers acting as guarantors, *e.g.*, by requiring that personal guarantees be proportionate to the guarantor's financial situation. If there is a clear disproportion between the guarantee and the guarantor's financial situation at the time the guarantee obligation is undertaken, the guarantor's liability will be reduced to the amount (s)he is able to pay at the time of granting the guarantee.

The Bill was published in the *Belgian Official Journal* on 11 July 2025 and will enter into force on 1 January 2026.

The Bill, as adopted, is available here.

COMPETITION LAW

Restrictions on Active Sales in Territory Exclusively Allocated to Buyer Only Block-Exempted if Other Buyers of Same Supplier Have Demonstrably Accepted this Restriction

The Court of Justice of the EU (***CJEU***) held on 8 May 2025 that restrictions on active sales in a territory exclusively allocated by a supplier to a buyer can benefit from a block exemption under Article 4 (b) (i) of EU Regulation 330/2010 of 20 April 2010 (the ***2010 VBER***) only if (i) the supplier asked its other buyers not to engage in such sales in the territory exclusively allocated to that buyer; and, (ii) these other buyers accepted or at least acquiesced to that request (the ***Judgment***). The CJEU specified that the mere circumstance that most buyers refrained from actively selling into the exclusively allocated territory is not sufficient to establish the existence of this arrangement.

Context – Belgian Proceedings

The dispute concerns a 1993 exclusive distribution agreement between Dutch Beemster cheese producer Cono and its exclusive distributor for Belgium and Luxembourg, Beevers Kaas. Beevers Kaas claimed that its exclusive distribution rights entailed a ban on the active sale of Beemster cheese in its exclusive territory by other companies and accused Ahold Delhaize, which had started actively selling Beemster cheese in Belgium, of engaging in unfair trade practices contrary to Article VI.104 of the Code of Economic Law (*Wetboek van Economisch recht / Code de droit économique* – ***CEL***). Ahold Delhaize responded that the exclusive distribution agreement did not require Cono to protect Beevers Kaas from active sales into the latter's exclusive territory.

The President of the Antwerp Commercial Court dismissed the action of Beevers Kaas, observing that the agreement only prevented Cono from selling Beemster cheese to Belgian producers.

Beevers Kaas appealed this judgment to the Court of Appeal of Antwerp (the ***Court of Appeal***). In an interlocutory judgment of 27 April 2022, the Court of Appeal held that the exclusive agreement between Cono and Beevers Kaas was intended to protect the latter against active sales in Belgium and Luxembourg and that Cono had applied the prohibition of active sales in Belgium and Luxembourg to its other customers. However, the Court of Appeal decided to stay the proceedings to seek the *amicus curiae* opinion of the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) on the compatibility of this agreement with the competition rules.

In its *amicus curiae* opinion, the BCA interpreted the controlling provision, Article 4 (b)(i) of the 2010 VBER, as subjecting the validity of restrictions on active sales in a territory to three cumulative conditions:

1. the supplier appointed an exclusive distributor to a given territory;

2. the sales of the customers of the distributor on whom the active sales restriction has been imposed are not hindered; and

3. the exclusive distributor must be protected by the supplier against active sales into its territory by the supplier's other buyers in the European Economic Area ("parallel imposition" condition).

Regarding the third condition, the BCA maintained that an explicit or implicit agreement of the other buyers is required which can be provided for in their contract with the supplier or inferred from their behaviour.

COMPETITION LAW

Questions Referred to the CJEU and Preliminary Ruling

The Court of Appeal decided to refer two questions to the CJEU seeking a preliminary ruling on the interpretation of the parallel imposition condition (*See*, this Newsletter, Volume 2023, No. 10).

The CJEU has now held that the allocation by a supplier of territorial exclusivity to one of its buyers under Article 4(b)(i) of the 2010 VBER should necessarily go in tandem with a parallel imposition on that supplier to protect the buyer from active sales by other buyers into the first buyer's territory. The existence of such an arrangement to restrict active sales into an exclusive territory may be established not only by means of direct evidence (such as a contractual clause) but also by objective and consistent indicia that the supplier asked its buyers not to make active sales into the exclusive territory of the other buyer and that these buyers accepted or acquiesced to that request.

In this case, the CJEU observed that the distribution agreements concluded between Cono and its buyers did not contain any clause prohibiting active sales into the exclusive territory of Beevers Kaas.

Turning to possible indicia, the CJEU held that the circumstance that, except for the Albert Heijn companies, none of Cono's other buyers engaged in active sales in Beevers Kaas' exclusive territory "*is not sufficient in itself*" to establish the existence of an agreement not to actively sell in that territory. The CJEU referred to the absence of a communication requiring those other buyers to respect the exclusive territory.

According to the CJEU, the conduct of Cono's other buyers, while relevant, does not establish with sufficient certainty their acquiescence to Cono's request not to actively sell into the exclusive territory of Beevers Kaas. A different conclusion could be reached, if there had been "*an explicit invitation from the supplier to comply with the ban on active sales in the exclusive territory*" and if the supplier had the means to implement this ban (*e.g.*, by running a monitoring and penalties system).

Therefore, a ban on active sales can benefit from a block exemption under Article 4(b)(i) of the 2010 VBER if (i) the supplier has asked its buyers not to engage in such sales in the exclusive territory allocated to another buyer and; (ii) the buyers concerned have acquiesced to that invitation.

Observations

The Judgment shows the importance of having active sales restrictions expressly included in the agreements of the entire distribution system.

Should existing agreements not contain such a restriction, the supplier and its buyers would be well-advised to exchange communications expressing unambiguously their consent to the active sales restrictions.

In the same vein, buyers who have been granted an exclusive territory (or an exclusive customer group) should not presume that they are protected from active sales if this is not clear from their distribution agreement and the agreements which the supplier enters into with its other buyers. In such a situation, they should seek confirmation from the supplier that it explicitly agreed with its other buyers on a restriction of active sales in the buyer's exclusive territory or customer group.

Finally, while the Judgment concerns the 2010 VBER, the VBER that replaced it in 2022 should probably be interpreted in the same manner, as the Judgment appears consistent with paragraph 124 of the 2022 European Commission Guidelines on Vertical restraints: "[f]*or the exclusive distribution system to benefit from the exemption provided by Article 2(1) of Regulation (EU) 2022/720, the appointed distributors must be protected from active sales into the exclusive territory or to the exclusive customer group by all the supplier's other buyers*". The Judgment is therefore relevant for new exclusive distribution agreements as well.

COMPETITION LAW

European Union and United Kingdom Will Conclude Competition Cooperation Agreement that also Involves National Competition Authorities

On 19 May 2025, the European Union and the United Kingdom published a Joint Statement, a Common Understanding containing a renewed agenda for EU – UK cooperation, and the outline of an EU-UK security and defence partnership.

The expanded cooperation builds on the existing arrangements between the parties, including the EU-UK Trade and Cooperation Agreement, but seeks to establish what is referred to as a new strategic partnership.

Significantly, paragraph 47 of the Common Understanding indicates that the parties concluded the negotiations for a draft EU – UK Competition Cooperation Agreement (the ***Competition Agreement*** or ***CA***). The European Commission has now published the draft CA which, when ratified by both parties, is intended to "*enhance the effective enforcement of the competition laws of the Union and of the United Kingdom*" (Article 1, CA).

The CA covers, broadly, the rules governing anticompetitive agreements, abuse of dominant position, and merger control of both territories, albeit not the individual Member States. By contrast, the CA involves not only the cooperation of the European Commission and the Competition and Markets Authority, but also that of the competition authorities of the Member States, including the Belgian Competition Authority.

The CA deals with (i) required mutual notifications of enforcement activities; (ii) the possible coordination of enforcement activities; (iii) the consideration of the other side's important interests ("negative comity"); (iv) the sharing and use of information; and (v) the confidentiality of shared information.

Sharing of information is never compulsory (Article 6(5), CA) and competition authorities can select the information which they wish to share (Id.). Article 6(2), CA provides a mechanism for seeking consent from persons whose information will be shared. However, the same provision adds that seeking such consent will not be necessary if the "*sharing of* (...) *information without consent is permitted by applicable domestic law*".

CONSUMER LAW

Supreme Court Affirms National Courts Must Safeguard EU Consumer Rights When Allocating Procedural Costs

On 2 May 2025, the Belgian Supreme Court (*Hof van Cassatie / Cour de Cassation* - the ***Supreme Court***) held that national courts must safeguard the consumers' recourse to the legal protection conferred by Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (***Unfair Terms Directive***) when determining the allocation of legal costs relating to the proceedings. When a consumer has achieved even partial success in a case, national courts must ensure that the awarded reimbursement of costs is sufficiently high to avoid any deterrent effect on the consumer's ability to enforce their rights under EU law.

Background

This case stems from a lease agreement (***agreement***) entered into by two consumers and a lessor, which ultimately did not take effect, as the consumers withdrew before the agreement's starting date. The lessor subsequently brought a claim before the Court of First Instance of Antwerp, seeking payment of a re-letting fee. This claim was initially granted, but the judgment was overturned by the Court of Appeal on the ground that the agreement contained unfair contract terms.

The case was then referred to the court of first instance of Limburg, which upheld the reasoning of the Court of Appeal, and rejected the lessor's claim for the re-letting fee. In the same judgment, the Court of First Instance of Limburg decided to divide the legal costs of the proceedings equally. Pursuant to Article 1017 *in fine* of the Belgian Judicial Code, the costs may be apportioned as the court deems appropriate when each party has been partially unsuccessful on one or more points in the dispute. Since both sides were partially unsuccessful in the dispute on the merits, the court reasoned that a shared allocation of costs was therefore appropriate.

The consumers filed a further appeal to the Supreme Court, limited to the issue relating to the allocation of the legal costs.

Supreme Court Judgment

The Supreme Court observed that, under the principle of the primacy of EU law, national courts are required to interpret national law, as far as possible, in conformity with EU Directives, *i.e.*, in light of both their wording and purpose.

In this case, the Unfair Terms Directive, which aims to protect consumers against unfair provisions in contracts with businesses, also requires EU Member States to ensure that this protection is effective. According to established case law of the Court of Justice of the European Union (***CJEU***), this requirement extends to national rules on legal costs. The CJEU has held that consumers must not be discouraged from initiating legal proceedings out of fear of excessive costs, even if their claims are only partially upheld. (*See*, CJEU, judgment of 7 April 2022, *El and TP v. Caisabank SA*, C 385/20, EU:C:2022:278, paragraph 55 and CJEU, judgment of 22 September 2022, *Vicente v. Delia*, C 335/21, EU:C:2022:720, paragraph 56).

In line with this case law, the Supreme Court held that, when exercising its discretion under the final paragraph of Article 1017 of the Belgian Judicial Code to apportion legal costs equally, the Court of First Instance of Limburg had failed to assess whether the consumers would be reimbursed at a sufficiently high level so as not to deter them from seeking the legal protection conferred by the Unfair Terms Directive. As a result, the Supreme Court annulled the judgment of the lower court on the allocation of legal costs.

CONSUMER LAW

Key Takeaways

This judgment confirms that EU national courts, when determining the allocation of legal costs, are required to assess (i) the relationship between the total costs of the proceedings and the (partial) success of the consumer; and (ii) the potential deterrent effect which such costs may have on the consumer's ability to access justice under the Unfair Terms Directive. This assessment is not a matter of judicial discretion but a legal obligation derived from EU law.

While the equal apportionment of costs is a common practice in Belgian proceedings where both parties are partially unsuccessful, this approach may not be compatible with EU consumer protection law, particularly if it risks undermining the effectiveness of rights conferred by EU law. Furthermore, this ruling implies that judges must now explicitly acknowledge and justify their reasoning when allocating legal costs in consumer proceedings involving unfair contract terms.

Ultimately, the judgment also serves as a warning to businesses: once a contractual term is found to be unfair, the consumer is deemed to have achieved at least partial success in the proceedings. This may entitle them to a substantial – if not full – reimbursement of legal costs, reinforcing the importance of proactive compliance with EU law, and in particular with the Unfair Terms Directive.

The judgment of the Supreme Court is available here (in Dutch).

DATA PROTECTION

General Court Declares Meta's Action against European Data Protection Board Opinion on 'Pay or OK' Model Inadmissible

On 29 April 2025, the General Court of the European Union (the ***GC***) dismissed as inadmissible an action for annulment brought by Meta Platforms Ireland Limited (***Meta***) against an opinion of the European Data Protection Board (the ***EDPB***). The action challenged the EDPB's opinion on the compatibility of Meta's 'Pay or OK' model with General Data Protection Regulation 2016/679 (the ***GDPR***) and sought compensation for the damage allegedly caused.

Background

Meta introduced its 'Pay or OK' model in November 2023, offering users a binary choice: accept the processing of personal data for targeted advertising ('OK') or pay a monthly subscription fee ('Pay'). National data protection authorities (***DPAs***) questioned the compatibility of this model with the GDPR and, under Article 64(2) GDPR, requested an opinion from the EDPB (the ***Opinion***).

Formally, the Opinion offers guidance on Pay or OK models in general, and is not limited to Meta's implementation of this model. The Opinion explains that, under such a model:

- Controllers must ensure the validity of the data subject's consent;
- Controllers must offer an equivalent alternative to data subjects; and
- Fees must be appropriate and justified (*See*, this Newsletter, Volume 2024, No. 4).

The EDPB is composed of the DPAs of the Member States and its Opinion, although not binding, offers a clear indication of how these authorities will assess the 'Pay or OK' models employed by major online platforms.

GC

Meta argued that the Opinion had produced binding legal effects and adversely impacted its business model, justifying both an action for annulment and a claim for damages. It contended that the Opinion limited the discretion of its lead supervisory authority, the Data Protection Commission (the ***DPC***), and created legal uncertainty. Meta also invoked Article 47 of the Charter of Fundamental Rights of the European Union, claiming a breach of its right to effective judicial protection if the action for annulment was declared inadmissible.

The EDPB responded that the action was inadmissible as the Opinion was not a challengeable act pursuant to Article 263 of the Treaty on the Functioning of the European Union (***TFEU***). It argued that opinions under Article 64 GDPR do not produce binding legal effects and do not directly or individually concern Meta.

Judgment of GC

The GC sided with the EDPB and held that actions for annulment under Article 263 TFEU may only be brought against acts intended to produce binding legal effects and of direct concern to the applicant. The GC found that the Opinion did not produce any binding legal effects. Supervisory authorities remain free to disregard such opinions, unless they are followed by a binding decision under Article 65(1)(a) GDPR.

The GC also rejected Meta's arguments regarding effective judicial protection, noting that Meta could challenge any future binding decision incorporating the opinion.

Regarding compensation, the GC held that Meta had not demonstrated either actual and certain damage or a causal link between the damage and the Opinion.

DATA PROTECTION

Accordingly, the GC dismissed Meta's action in its entirety holding that the Opinion on the 'Pay or OK' model was not subject to judicial review under Article 263 TFEU.

Conclusion

This decision is in line with the opinion delivered a month earlier by Advocate General (***AG***) Ćapeta in *WhatsApp Ireland Ltd v European Data Protection Board* (*See*, this Newsletter, Volume 2025, No. 4) . In that case, the AG suggested that only binding decisions adopted under Article 65(1) GDPR are challengeable acts under Article 263 TFEU. The GC's judgment in that case had followed the same reasoning. While dismissing the action against the general opinion adopted under Article 64(2) GDPR, the GC acknowledged that binding decisions may be subject to annulment proceedings.

The judgment can be found here (in English).

European Commission Proposes Simplification of General Data Protection Regulation for Small Mid-Caps

On 21 May 2025, the European Commission (the ***Commission***) published a proposal to amend General Data Protection Regulation 2016/679 (the ***GDPR***) to simplify compliance requirements for a new category of enterprises designated as small mid-caps (***SMCs***).

Under the proposal, SMCs are defined as companies with fewer than 750 employees and either an annual net turnover of up to EUR 150 million or a total balance sheet not exceeding EUR 129 million. Currently, only small and medium-sized enterprises (***SMEs***), defined as having fewer than 250 employees, benefit from specific exemptions under the GDPR. The Commission intends to extend some of these exemptions to SMCs to ease the regulatory transition for growing businesses and promote competitiveness within the European Union.

Some reduction of administrative burden…

At present, Article 30 of the GDPR establishes that when enterprises control and process data, they must maintain a record of processing activities in accordance with a list of data. However, Article 30(5) of the GDPR provides an exemption for SMEs unless their processing activities are likely to pose a "risk" to the rights and freedoms of data subjects.

With its proposal, the Commission aims to extend this exemption provided for by Article 30(5) of the GDPR to SMCs, but also to narrow its scope by requiring record-keeping only when processing presents a "high risk" to data subjects, rather than any risk. On that latter point, the Commission clarified that the mere processing of special categories of personal data necessary for the purposes of carrying out obligations in the field of employment, social security and social protection law does not necessarily result in a "high risk".

The proposal also requires that Member States, supervisory authorities, the European Data Protection Board and the Commission should consider the specific needs of SMCs when developing codes of conduct to facilitate the correct application of the GDPR or granting certifications intended to demonstrate GDPR compliance.

… at least on paper

The proposal is part of the Commission's broader simplification agenda and is projected to reduce administrative costs for businesses by approximately EUR 400 million per year. However, the scope of the proposed amendments remains narrow. Even for SMEs and SMCs, the actual impact may be modest, given that the nature of their processing activities may still trigger the obligation to maintain data processing records. This proposal is still subject to changes and requires the consent of the European Parliament and the Council.

The proposal can be found here (in English).

DIGITAL TECHNOLOGY

European Commission Publishes New Implementing Rules for Digital Wallets

By the end of 2026, European Member States (***Member States***) will be required to offer at least one European Digital Identity (***eID***) Wallet to European citizens enabling them to identify themselves, authenticate themselves, and share electronic documents throughout the EU. However, the use of eID Wallets is not mandatory. The digital eID wallets aim to facilitate access to online services for EU citizens and businesses and to guarantee the protection of their personal data. On 6 May 2025, the European Commission (***Commission***) published four implementing Regulations detailing the rules regarding the eID Wallets. These are Implementing Regulations 2025/846, 2025/847, 2025/848 and 2025/849 and can be summarised as follows.

Cross-border identity matching of natural persons

Member States are required to implement a system that enables *unequivocal identity matching* in a cross-border context, for instance when a user from one Member State seeks to access online services provided by another. This implies that *entities*, referred to as ***Wallet Relying Parties***, should be able to compare information of the user with other user accounts or registers, for instance information from the population register. The Wallet Relying Parties will use a minimal dataset containing information such as the name, date of birth and address to verify the identity of the user. If the match is unsuccessful, the user should be notified and provided with guidance on how to achieve a successful match (e.g. providing additional information, using a different wallet). The Wallet Relying Parties are required to keep logs of the identity matching process and its outcomes for a period of 6 to 12 months.

Security infringements on eID wallets

The implementing rules define the procedure for Member States to respond to security breaches and establish clear criteria for what constitutes such a breach (*e.g.* unauthorised system access, risk of compromise of personal data integrity). Following a breach, the provision and use of eID wallets are suspended. If the suspension lasts for more than three months, the eID wallet is withdrawn. In that scenario, Member States must provide clear, comprehensive and easily accessible information to the Commission, affected users and Wallet Relying Parties. The withdrawal should not preclude users from exercising their right to data portability.

Registration of parties that rely on wallets

Each Member State is required to establish rules for national registers of Wallet Relying Parties that use digital e-ID wallets to access digital services. National registers play a crucial role, as the registration of the eID wallets is intended to foster public trust in the use of digital wallets. To this end, an automated and user-friendly registration process must be set up. Furthermore, the registers must be accessible through human- and machine-readable interfaces. Wallet Relying Parties consequently have to submit registration data (such as their intended use of electronic identification) and authenticate themselves using standardised access certificates. These certifications help ensure that users can verify whether the requested data matches the registered data. In order to achieve transparency and guarantee data protection, Member States must adopt a secure registration process, adhere to data minimisation principles, and make sure that supervisory entities can suspend or revoke registrations in case of non-compliance.

List of certified eID wallets

Finally, Member States have to provide information to the Commission regarding the digital eID wallets (such as a description of the wallet solution, the electronic identification system, etc.) in order to promote trust and transparency. The Commission will make this information publicly available.

The basis for the implementing Regulations is Regulation (EU) 2024/1183 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework and can be found here.

FOREIGN DIRECT INVESTMENT

Member States Adopt Common Negotiating Position on Revisions to the EU's Foreign Direct Investment Screening Regulation

On 11 June 2025, the Council of the European Union (the ***Council***) adopted a mandate for negotiations (the ***Mandate***) with the European Parliament (the ***Parliament***) and the European Commission (the ***Commission***) regarding the proposal for a revised Regulation on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 (the ***Proposed Revised FDI Regulation***). The Mandate, which was adopted approximately one month after the Parliament adopted its amendments to the Commission's Proposed Revised FDI Regulation on 8 May 2025, serves as the EU Member States' position in the inter-institutional negotiations to arrive at a final text for the Proposed Revised FDI Regulation.

In their negotiations the institutions will have to overcome significant differences between their positions. In particular, the Mandate differs in the following key aspects from the amendments proposed by the Parliament:

- **Scope**. The Commission, Council and Parliament agree that there should be a mandatory minimum scope of investments subject to screening in all Member States but disagree on which sectors and activities that should fall within the minimum scope. It is not surprising that the Council has taken the narrowest approach among the three institutions – it proposes to limit the minimum scope to businesses that develop, produce or commercialise goods and technology listed in the EU Common Military List and dual-use items subject to export control. In contrast, the Commission's proposed minimum scope also includes targets that are part of, or participate in, projects or programmes of Union interest, or are active in sensitive technology sectors. The minimum scope proposed by the Parliament is much broader than what was initially proposed by the Commission.

  The Council would also exclude greenfield investments from the minimum scope, while the Parliament proposes expanding the minimum scope to cover specific greenfield investments exceeding a transaction value of EUR 250 million.

  These differences between the institutions concern only the minimum scope of the Revised FDI Regulation. Individual Member States will be able to establish a wider scope, and significant differences between Member State FDI screening mechanisms will therefore continue to exist even when the Revised FDI Regulation comes into force.

- **Cooperation**. The Council has a different approach to the cooperation mechanism. Although it accepts specific initiatives suggested by the Commission to increase cooperation between Member States and reduce risks to Member States when a foreign direct investment may raise concerns but is not notifiable, it narrows the type of notifications that should be shared within the mechanism. Predictably, the Council does not follow proposed amendments by the Parliament, which, for example, would authorise the Commission to override Member State decisions in particular cases.

- **Reducing administrative burden**. The proposals by the Commission, Council and Parliament include initiatives to alleviate the administrative impact of FDI screening. For example, all proposals include limitations on the statutory terms for acknowledging the completeness of a filing and/or the initial review period.

  The Commission, Council and Parliament also agree that, in the case of multi-jurisdictional investments, the screening processes in the different Member States should, to some extent, be aligned. However, the Council proposes a lighter coordination procedure for multi-jurisdictional notifications compared to the Parliament's proposal.

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It remains to be seen how fast the institutions can reach agreement, and what the final text of the Proposed Revised FDI Regulation will look like. Significant differences between the positions remain, although the current geopolitical situation should create the impetus to reach agreement. In any case, it will be a while before the Proposed Revised FDI Regulation will come into effect. Under the most ambitious timeline, proposed by the Parliament, the Proposed Revised FDI Regulation would become applicable 12 months after publication of the final text, while the Council is proposing a 24month transition period.

The Proposed Revised FDI Regulation is part of five legislative initiatives, published by the Commission on 24 January 2024, which together form the "European Economic Security Package" (the ***ESP***). The ESP as a whole aims to enhance EU economic security and preserve the EU's competitiveness, whereby the Proposed Revised FDI Regulation aims to strengthen and further harmonise the EU's current FDI screening framework. The other EPS initiatives concern export controls, outbound investment, as well as research and development (*See*, Client Alert of 14 February 2024 and this Newsletter, Volume 2024, No. 1).

European Commission Publishes Updated Questions and Answers on EU Foreign Direct Investment Screening Regulation

On 14 May 2025, the European Commission (the ***Commission***) published an updated version of its answers to frequently asked questions (the ***Updated FAQ***) regarding Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments (***FDI***) into the Union (the Regulation). In the Updated FAQ, the Commission discusses developments since the last version of its FAQ published in 2021 and clarifies diverse aspects of the Regulation.

The Updated FAQ includes:

- a discussion of the Commission's Communication providing guidance on FDI from Russia and Belarus on 6 April 2022 and its relevance for assessing FDI originating from Belarussian or Russian investors;
- a reference to the *Xella* judgment of the Court of Justice of the European Union (the ***CJEU***) of 13 July 2023 and its importance for the understanding of specific concepts under the Regulation (*See*, VBB on Competition Law, Volume 2023, Nos. 7 & 8). For instance, based on that judgment, the FAQ explains what constitutes an FDI. In the *Xella* judgment, the CJEU held that investments involving an EU entity as direct investor and a non-EU entity as indirect investor do not qualify as FDI under the Regulation, provided there is no deliberate circumvention of the Regulation. However, EU Member States remain free to determine the personal scope of application of their national FDI screening mechanisms and many of them, including Belgium, cover FDI in which a non-EU entity carries out the investment through an EU entity;
- the adoption of the Directive on the resilience of critical entities of 14 December 2022 and its significance for the concept of critical infrastructure under the Regulation; and
- the 2024 publication of the Commission Communication on European Economic Security, including its evaluation of the functioning and effectiveness of the Regulation. The Communication was accompanied by the Commission's proposal for a revised Regulation on the screening of foreign investments in the Union and repealing the Regulation (the Proposed Revised Regulation) (*See*, Client Alert of 14 February 2024 and this Newsletter, Volume 2024, No. 1).

In addition, the Updated FAQ clarifies the Regulation as follows:

- The Updated FAQ indicates that a private individual may qualify as a foreign investor under the Regulation if he/she is not a citizen of an EU Member State, even when that person is a long-term resident of an EU Member State. This stands in contrast with the approach adopted by several EU Member States, including Belgium, where the status of private individuals is determined on the basis of their residence in or outside of the EU.

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- In addition to the existing position that the Regulation does not discriminate against specific foreign investors (implying that no third countries are "targeted" or "blacklisted"), the Updated FAQ adds that, similarly, no third countries are automatically exempted (or "whitelisted") under the Regulation.

- The Updated FAQ states that EU Member States screening greenfield investments (involving the creation of a new business) under their FDI screening mechanisms are required to notify these under the cooperation mechanism of the Regulation, as is the case for brownfield FDI (involving the acquisition of an existing business) undergoing screening. However, most EU Member States, including Belgium, currently do not screen greenfield FDI.

- Further, the Updated FAQ mentions that both FDIs undergoing national general screening and FDIs subject to sectoral screening mechanisms should be notified under the cooperation mechanism. Conversely, FDIs only undergoing informal (pre-screening) assessments do not have to be notified under the cooperation mechanism (at least not at the informal stage).

- The Updated FAQ also explains the impact of the cooperation mechanism on the duration of reviews under national FDI screening mechanisms of the EU Member States.

Finally, the Updated FAQ indicates that in the course of 2025 the Commission is likely to adopt a new Delegated Regulation governing the list of projects and programmes of Union interest under the Regulation.

The Updated FAQ is available here.

INTELLECTUAL PROPERTY

Court of Justice of European Union Receives First Referral on Artificial Intelligence and Copyright Protection

On 3 April 2025, the Budapest District Court (the ***Referring Court***) submitted a referral for a preliminary ruling to the Court of Justice of the European Union (***CJEU***) with regard to the relationship between artificial intelligence (***AI***), embodied in a chatbot based on a large language model (***LLM***), and EU copyright rules, a first in this area. The Referring Court asked the CJEU to clarify how the rights of reproduction and communication to the public apply in relation to AI's reproduction and display of information, specifically for chatbots.

This request for a preliminary ruling arises from a dispute between Like Company, a Hungarian press publisher, and Google Ireland Limited, a subsidiary of Alphabet Inc (***Google***). Like Company claims that Gemini (***Bard***), Google's generative AI chatbot, reproduced and summarised one of its news articles without authorisation, thereby infringing EU copyright law. Google argues that the response generated by the chatbot does not amount to making content available to the public or reproducing such content.

To asses the situation, the Referring Court determined whether, under the Directive 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC (***DSM Directive***), Google's chatbot reproduces content from the publisher's websites and communicates it to the public. Article 15 of the DSM Directive provides publishers with a new form of protection for related rights and requires the consent of the publisher of the press publication for any use on an online platform. However, Article 4 of the DSM Directive provides an exception for text and data mining (***TDM***) purposes which allows, in some circumstances, extractions and reproductions of content from publisher websites to take place.

On this basis the Referring Court requested the CJEU to answer the following questions:

1. Does an AI chatbot displaying content identical to that of a publisher's website amount to reproduction and communication to the public? If so, does it matter that the chatbot's output is generated through word prediction based on patterns?

2. Does training an AI chatbot on patterns and observations constitute reproduction? If yes, does the TDM exception apply?

3. If a user prompts a chatbot with text identical to, or referring to, content from a publisher's website, and the chatbot produces similar content, is that output a reproduction by the chatbot service provider?

This referral has significant implications as it is the first time that a referral on issues between AI and copyright has been submitted to the CJEU. Determining whether the publisher's content is protected under Article 15 of the DSM Directive and whether it can be proven that the chatbot derived the information from the source are essential to understanding whether the publisher's rights are infringed by the chatbot service provider. The latter task becomes especially difficult given the lack of transparency on AI programming. If copyright protection and derivation are demonstrated, it is likely that the CJEU will establish that the chat performed acts of reproduction and making available to the public.

INTELLECTUAL PROPERTY

EU Design Reform Enters Into Force

Phase I of the European Union's design law reforms took effect. Regulation 2024/2822 of 23 October 2024 amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (***EU Design Regulation***) entered into force on 1 May 2025.

The EU Design Regulation forms part of the broader EU Design Legislative Reform Package, published on 18 November 2024. The key amendments introduce substantial updates to definitions, procedures, and the scope of design protection, with the aim of making the system simpler and adapted to the digital era (*See*, this Newsletter, Volume 2024, No. 11).

Phase II will follow with the adoption of secondary legislation, expected to enter into force by 1 July 2026, and will bring further refinements to the legal and procedural framework.

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