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VBB on Belgian Business Law

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

Legal 500, 2019

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ARTIFICIAL INTELLIGENCE

European Commission Publishes General-Purpose Artificial Intelligence Code of Practice

On 10 July 2025, the European Commission (the **Commission**) published the [General-Purpose AI Code of Practice](#) (the **Code**), a voluntary tool designed to support compliance with the obligations which the AI Act (Regulation 2024/1689) imposes on providers of general-purpose AI models. The Code aims to ensure that general-purpose AI models, including the most powerful instruments that are placed on the European market, are safe and transparent.

Independent experts developed the Code on the basis of an extensive multi-stakeholder process launched in July 2024. The process involved over 1,400 participants from industry, academia, civil society, rightsholders, and EU Member States represented in the AI Board. The Code is complemented by the [Commission guidelines](#) on key concepts related to general-purpose AI models (See, this Newsletter, [below](#)).

Participation in the Code is voluntary. Signatories agree to be monitored specifically for their adherence to the commitments provided in the Code. Enforcement of the Code is handled by the European AI Office. The Commission maintains that structured oversight of the Code offers a more predictable and potentially less burdensome compliance path.

Structure and Scope

The Code consists of three separately authored chapters. The [transparency](#) and [copyright](#) chapters apply to all providers of general-purpose AI models under Article 53 of the AI Act. By contrast, the [safety and security](#) chapter is only applicable to providers of the most advanced models that are subject to the AI Act's obligations for providers of general-purpose AI models with systemic risk under Article 55.

Article 3(65) of the AI Act defines a systemic risk as “a risk that is specific to the high-impact capabilities of general-purpose AI models, having a significant impact on the Union market due to their reach, or due to actual

or reasonably foreseeable negative effects on public health, safety, public security, fundamental rights, or the society as a whole, that can be propagated at scale across the value chain”. The AI Act creates a presumption that models with a high level of computing power (“a cumulative amount of compute greater than 10^{25} floating-point operations (FLOPs)”) have high-impact capabilities (Article 51(2) of the AI Act).

Transparency Chapter

The chapter on transparency discusses how organisations can ensure trust and accountability in AI development and deployment. It requires organisations to be open about their use of AI systems, the data these systems are trained on, and the logic behind their decisions. This information should be made available in a manner that is accessible and understandable to a range of stakeholders, from consumers to regulators.

The transparency chapter comes with a [model documentation form](#) to document the information necessary to comply with the AI Act obligation to ensure sufficient transparency. This enables AI developers to integrate these models into their products more effectively.

Copyright Chapter

The Copyright chapter offers providers practical solutions to meet the AI Act's obligation to put in place a policy to comply with EU copyright law and a complaint mechanism to handle intellectual property issues. Signatories also commit to respecting and operationalising machine-readable “opt-outs,” a provision that could create new technical and logistical challenges for data acquisition.

Safety and Security Chapter

The Safety and Security chapter outlines concrete state-of-the-art practices for managing systemic risks



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from the most advanced models. These risks include risks to fundamental rights and safety, lowering barriers for the development of chemical or biological weapons, or risks related to loss of control over the model.

Timeline and AI Act Obligations

Once Member States and the Commission assess the Code as adequate, providers of general-purpose AI models can demonstrate compliance with the AI Act by adhering to the Code.

The Code should facilitate compliance with the AI Act for providers placing general-purpose AI models on the market. The relevant provisions of the AI Act have entered into force on 2 August 2025. Under the AI Act, providers must – without delay – notify the AI Office of general-purpose AI models with systemic risk to be placed on the EU market. The AI Office will collaborate closely with providers who adhere to the Code over the year following 2 August 2025 to ensure that models can continue to be placed on the EU market.

The Commission will enforce full compliance with all obligations under the AI Act for providers of general-purpose AI models from 2 August 2026 onwards. Models placed on the market before 2 August 2025 must comply with the AI Act obligations by 2 August 2027.

Current Signatories

Major technology companies, including Amazon, Anthropic, Google, IBM, Microsoft, and OpenAI, have already signed the Code. Additionally, xAI signed up to the Safety and Security Chapter only, meaning it must demonstrate compliance with the AI Act's obligations concerning transparency and copyright via adequate alternative means.

Updates

The Code will be updated in response to technological developments, changes in the risk landscape, or experience with the application of the AI Act rules. The

AI Office will review the Code at least every two years and may propose a streamlined process for reviews and updates as needed.

The Code can be consulted [here](#). The Commission's Q&A regarding the Code can be found [here](#).

European Commission Publishes Guidelines for Providers of General-Purpose Artificial Intelligence Models

Following the publication of the [General-Purpose AI Code of Practice](#), the European Commission released comprehensive [guidelines](#) to assist providers of general-purpose AI models in understanding and meeting their obligations under the AI Act. These guidelines, published on 18 July 2025, aim to increase legal certainty for actors across the AI value chain, as the AI Act's obligations for general-purpose AI model providers enter into force on 2 August 2025.

Complementary Framework

The guidelines complement the General-Purpose AI Code of Practice by clarifying key concepts in the AI Act and providing an interpretative framework for understanding provider obligations. While the Code offers specific measures that providers can implement to demonstrate compliance, the guidelines explain the scope of obligations and to whom they apply, helping actors determine whether their model qualifies as a general-purpose AI model and whether they qualify for exemptions.

Defining General-Purpose AI Models

The guidelines establish an indicative criterion for identifying general-purpose AI models. The Commission considers a model to be a general-purpose AI model if its training compute exceeds 10^{23} floating point operations and it can generate language (whether in text or audio form), text-to-image or text-to-video content. This threshold corresponds to the approximate amount of compute typically used to train a model with one billion parameters on large amounts of data.



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The Commission chose these modalities based on the fact that models trained to generate language can use language to communicate, store knowledge, and reason, conferring a wide range of capabilities. Although text-to-image and text-to-video models typically exhibit a narrower range of capabilities compared to language models, such models may nevertheless be considered general-purpose AI models due to their ability to generate a wide range of visual outputs.

Provider Identification and Market Placement

The guidelines clarify when an actor becomes a “provider” of a general-purpose AI model under the AI Act. A provider is defined as a natural or legal person, public authority, agency or other body that develops a general-purpose AI model or has one developed and places it on the market under its own name or trademark, whether for payment or free of charge.

“Placing on the market” refers to the first making available of a general-purpose AI model on the Union market. The guidelines offer numerous examples of market placement, including making models available via software libraries, application programming interfaces, public catalogues for direct download, cloud computing services, integration into chatbots or mobile applications, and use for internal processes essential for providing products or services to third parties.

Open-Source Exemptions

The guidelines outline exemptions from specific obligations for providers of general-purpose AI models released under free and open-source licences. These exemptions apply only if the model satisfies specific conditions: it must be released under a licence that allows access, use, modification, and distribution without monetisation, and the model’s parameters, including weights, architecture, and usage information must be made publicly available.

Exempt providers are not required to maintain technical documentation for authorities, provide documentation to downstream AI system providers, or appoint an EU

representative for non-EU providers. However, the exemptions do not apply to general-purpose AI models with systemic risk, and all providers must still comply with copyright policy obligations and publish training data summaries.

Systemic Risk Classification

The guidelines clarify when a general-purpose AI model becomes classified as having systemic risk. Models trained with cumulative computational resources exceeding 10^{25} floating point operations are presumed to have high-impact capabilities and therefore systemic risk. The Commission may also designate models as having systemic risk based on criteria set out in Annex XIII of the AI Act.

When a model meets the compute threshold, providers must notify the Commission without delay, maximum within two weeks after meeting the threshold. Providers may present arguments to demonstrate that their model does not present systemic risks despite meeting the threshold, but the Commission will assess these arguments and decide whether to accept or reject them.

Downstream Modifications

The guidelines address the question of when downstream actors modifying general-purpose AI models become providers themselves. The Commission establishes that downstream modifiers become providers only when modifications result in significant changes in the model’s generality, capabilities, or systemic risk. The indicative criterion is that the training compute used for modification exceeds one-third of the original model’s training compute.

This approach aims to balance innovation and regulation by ensuring that most fine-tuning, adaptations, and minor modifications will not subject developers to provider obligations. When downstream modifiers do become providers, their obligations are limited to documenting the modification itself rather than the entire model.



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Enforcement

The guidelines clarify the Commission's enforcement approach. From 2 August 2025, providers placing general-purpose AI models on the market must comply with their AI Act obligations. In the first year, the AI Office will collaborate closely with providers, particularly those adhering to the Code of Practice, to facilitate compliance.

Providers adhering to a code of practice assessed as adequate will benefit from enforcement activities focused on monitoring their adherence to the code. Those not adhering to such codes must demonstrate compliance through alternative adequate means and may face more extensive information requests from the AI Office.

The Commission's enforcement powers, including the ability to impose fines of up to 3% of global annual turnover or EUR 15 million (whichever is higher), enter into application on 2 August 2026. Providers of models placed on the market before 2 August 2025 will have to comply with AI Act obligations by 2 August 2027.

Future Adaptability

The Commission acknowledges that the guidelines may need updating as technology and markets evolve. The guidelines will be reviewed as soon as this becomes necessary in light of practical experience, technological developments, and enforcement actions. The Commission encourages ongoing input from providers, national authorities, and other stakeholders by responding to future calls for public consultation, workshops, or other opportunities to ensure the guidelines remain relevant and effective.

The guidelines can be consulted [here](#). The Commission's Q&A on the guidelines is available [here](#).

COMMERCIAL LAW

Supreme Court Clarifies Calculation of Indemnities Due Upon Termination of Commercial Agency Contracts

In a judgment of 13 June 2025, the Supreme Court (*Hof van Cassatie / Cour de cassation*) clarified key aspects of the calculation of the indemnities which commercial agents may be entitled to under Belgian law if their commercial agency agreement is terminated unilaterally by the principal (Supreme Court, 13 June 2025, *D.V. v. Axa Bank Belgium NV*, C.23.0204.N, available [here](#)).

Background

D.V. (the **Agent**) had served as a banking agent for AXA Bank Belgium NV (**AXA**) since 1991. On 25 October 2018, AXA terminated the Agent's agency contract, granting a six-month notice period that ended on 30 April 2019. Upon termination, AXA paid the Agent two indemnities: (i) a termination indemnity (*opzeggingsvergoeding / indemnité de rupture*) of EUR 80,545.14 pursuant to Article X.16, §4 of the Code of Economic Law (**CEL**); and (ii) a goodwill indemnity (*uitwinningsvergoeding / indemnité d'éviction*) of EUR 44,197.20 pursuant to Article X.18 CEL as compensation for the client portfolio developed by the Agent from which AXA could continue to derive substantial benefits after the Agent's departure.

The Agent disputed the calculation of both indemnities before the Antwerp Enterprise Court, Division Antwerp, which partially upheld the Agent's claim.

The Agent appealed the first instance judgment to the Antwerp Court of Appeal (**Court of Appeal**). The Court of Appeal held that (i) the reference period for calculating the termination indemnity ends on the effective termination date of the agreement (30 April 2019) and not on the date on which the termination notice was issued by AXA (25 October 2018), and (ii) the goodwill indemnity could be evaluated, *ex aequo et bono*, at 85% of the statutory maximum of EUR 60,544.11. Article X.18 CEL provides that the goodwill indemnity must not exceed the agent's remuneration of

one year, calculated on the basis of the agent's average annual remuneration over the five years preceding the termination of the agreement or, if the agency agreement lasted less than five years, on the basis of the average remuneration for that shorter period.

Disagreeing with the calculation methods applied by the Court of Appeal, the Agent decided to appeal the judgment to the Supreme Court. In his appeal, the Agent submitted that the Court of Appeal had erred in awarding, *ex aequo et bono*, a goodwill indemnity corresponding to 85% of the statutory ceiling. According to the Agent, the Court of Appeal should have (i) quantified the benefits which AXA can continue to derive from transactions with customers brought in by the Agent; (ii) applied a correction for fairness, if any; and (iii) checked whether the resulting amount exceeded the statutory maximum.

The Agent further contended that the reference period for calculating the termination indemnity should have ended on the date of the termination notice (25 October 2018) rather than on the effective termination date of the contract (30 April 2019).

Supreme Court Judgment

As regards the Agent's first plea, the Supreme Court upheld the Agent's reasoning, holding that the amount of the goodwill indemnity cannot be determined by applying an *ex aequo et bono* percentage to the statutory maximum. The Supreme Court noted that the statutory ceiling becomes relevant only when the goodwill indemnity, as calculated in accordance with the legal criteria, exceeds that ceiling. In the case at hand, this ceiling was not exceeded as the Agent had from the outset claimed an indemnity corresponding to the statutory maximum. Therefore, the Supreme Court accepted the first plea and held that the Court of Appeal had breached Article X.18 CEL by not quantifying AXA's actual benefit before applying the statutory cap.

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Conversely, the Supreme Court dismissed the Agent's arguments regarding the relevant reference period for calculating the termination indemnity, affirming that the reference period for calculating the indemnity runs until the contract's effective termination date.

The case was remitted to the Ghent Court of Appeal for reconsideration of the amount of goodwill indemnity to which the Agent is entitled.

CJEU Condemns Belgium for Failing to Fully Implement Late Payment Directive

On 5 June 2025, the Court of Justice of the European Union (**CJEU**) held that Belgium had failed to implement Article 4(3)(a) of [Directive 2011/7 of 16 February 2011 on combating late payment in commercial transactions](#) (recast) (the **Directive**) (CJEU, 5 June 2025, *European Commission v. Kingdom of Belgium*, ECLI:EU:C:2025:404, available [here](#)).

Article 4(3)(a) of the Directive requires EU Member States to ensure that the payment period in commercial transactions in which the debtor is a public authority does not exceed 30 calendar days.

The CJEU considered that the Belgian State had failed to ensure in various periods between 2020 and 2025 that the Federal Government, the Walloon Region, and the Brussels-Capital Region, respectively, met the payment deadline of Article 4(3)(a) of the Directive.

In its action for failure to fulfil obligations pursuant to Article 258 of the Treaty on the Functioning of the European Union, the European Commission (the **Commission**) had contended that the Belgian State had also failed to ensure that (i) the municipalities of the Brussels-Capital Region comply with the payment period set out in Article 4(3)(a) of the Directive; and (ii) the Federal State, Brussels-Capital Region, Flemish Region and the Flemish municipalities comply with the obligation in Article 6(1) of the Directive to automatically pay a lump sum of EUR 40 for compensation of recovery costs in the event of late payment. However, the CJEU declined to consider these contentions as

the Commission had failed to include them in its prior letter of formal notice to Belgium. Settled case-law provides that the Commission's letter of formal notice and reasoned opinion determine the subject-matter of the subsequent dispute before the CJEU.

Default Commercial Interest Decreases Again

The Federal Public Service Finance has published an [information note](#) announcing that the bi-annual default interest rate for commercial transactions will amount to 10.5% in the second semester of 2025.

This marks a decrease from the rate of 11.5% applicable during the first semester of 2025 (See, [this Newsletter, Volume 2025, No. 1](#)). The new rate must still be published in the Belgian Official Journal. 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.

Title 1 of Book IX of Civil Code Governing Personal Security Interests Is Published

On 11 July 2025, the Belgian Official Journal (*Belgisch Staatsblad / Moniteur belge*) published the Law of 5 June 2025 containing Title 1 "personal security interests" of book 9 "Securities" of the Civil code (*Wet van 5 juni 2025 houdende titel 1 "Persoonlijke zekerheden" van boek 9 "Zekerheden" van het Burgerlijk Wetboek / Loi du 5 juin 2025 portant le titre 1er "les sûretés personnelles" du livre 9 "Les sûretés" du Code civil – Title 1*).

For a discussion of Title 1, see, this Newsletter, [Volume 2024, No. 3](#) and [Volume 2024, No. 10](#).



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Title 1 will enter into force on 1 January 2026 and apply to all personal security interests constituted on 1 January 2026 or later. Unless otherwise agreed by the parties, Title 1 does not apply, and the previous rules remain applicable, to the future effects of personal security interests constituted before its entry into force (See, Articles 18 and 19 of Title 1).



COMPETITION LAW

Belgian Competition Authority Rejects Interim Measures Directed Against U23 Club Quota in Challenger Pro League

On 1 August 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence – BCA*) rejected an application for interim measures against new rules adopted by the Royal Belgian Football Association (*RBFA*).

The Challenger Pro League includes both regular football clubs and teams of young players (the **U23 Teams**) that belong to professional clubs playing in the top professional league, the Jupiler Pro League (**D1A**). The challenged new rules created a quota providing for at least four U23 Teams in the Challenger Pro League and made it more difficult for the U23 Teams to be relegated to an amateur league in case of poor performance (the **Quota**).

Three clubs of the Challenger Pro League (**D1B**), Royal Francs Borains, Koninklijke Sporting Club Lokeren, and Royal Football Club Seraing (the **Clubs**), considered the Quota to discriminate against the regular teams competing with the U23 Teams in the Challenger Pro League and filed a complaint, which triggered the opening of an investigation. The Clubs also sought the suspension of the Quota for the new season of D1B.

In its preliminary assessment of 1 August 2025, the Competition College found that the Quota is discriminatory and likely to affect competition on sporting grounds as it is liable to reduce the incentives for U23 Teams to field strong teams for matches with lower stakes. According to the Competition College, this form of discrimination could unlawfully distort competition in the market for the sale of football entertainment. Additionally, the Competition College found that the possibility offered to the Jupiler Pro League clubs which own the U23 Teams to switch players between their D1A team, and their U23 Team could infringe the competition rules.

Despite these findings, the Competition College did not grant the suspension sought by the Clubs because it was of the opinion that the harm would only materialise at the end of the season based on their ranking and thus was not sufficiently imminent and certain.

The investigation on the merits of the complaint is still ongoing.

Belgian Competition Authority Decides to Investigate Proposed Cooperation Agreement for Roll-out of Fiber Networks in Wallonia

On 31 July 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence – BCA*) announced the opening of an *ex officio* investigation into the memorandum of understanding (**MoU**) concluded on 24 July 2025 between telecommunications operators Orange Belgium (**Orange**) and Proximus for the roll-out of fiber networks in Wallonia. The BCA seeks to determine “*whether, and to what extent, the envisaged cooperation is likely to reserve a fair share of the cost-savings and other efficiency gains for the users of the networks*”. The BCA indicates that, given the scale of investment required to build fibre infrastructure, its investigation will take a long-term perspective.

The BCA’s interest in this MoU is not surprising. Already in October 2023, the BCA had announced that it would review any form of cooperation between telecommunications operators for the roll-out of fiber infrastructure in Belgium. It said it would do so in close cooperation with the Belgian Institute for Postal Services and Telecommunications (*Belgisch Instituut voor Postdiensten en Telecommunicatie / Institut belge des services postaux et des télécommunications – BIPT*). For its part, the BIPT signalled that it would review such agreements to balance the operators’ wish to share the financial burden of rolling out expensive infrastructure with the need to safeguard and promote infrastructure-based competition.



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The BCA's review of the proposed deal between Orange and Proximus may benefit from its findings in the protracted and still ongoing investigation of a similar transaction in Flanders involving Fiberklaar (a joint venture company between Swedish investment firm EQT and Proximus), again Proximus, Telenet, and Wyre (a joint venture company between utilities firm Fluvius and Telenet) (See, [this Newsletter, Volume 2024, Nos 6-7](#)).

Belgian Competition Authority Approves Ghent Renewables as Full-Function Joint Venture

On 22 July 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence –BCA*) approved the expansion of the activities of Ghent Renewables, a company active in the storage and pretreatment of oils and fats that are used in the production of biodiesel.

Following the transaction, Ghent Renewables, which is under the joint control of Cargill and Ghent Transport & Storage, will transform into a full-function joint venture and offer pretreatment services of waste oils for use in biodiesel production to third parties.

While this concentration was cleared under the simplified procedure, it is noteworthy as the BCA rarely has the opportunity to review the transformation of a cooperative joint venture into a full-function joint venture.

Belgian Competition Authority Takes Expansive View of Power to Review Mergers and Acquisitions

The Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence – BCA*) published its decision of 16 June 2025 (the **Decision**) in which it terminated its investigation of the proposed acquisition of the artisan bakery segment of Ceres by Dossche Mills Group (**Dossche**). Back in March 2025, the parties had advised the BCA that they would abandon the transaction (See, [this Newsletter Volume 2025, No. 3](#)).

The BCA had started its inquiry in January 2025 based on Article 101 of the Treaty on the Functioning of the European Union (**TFEU**), and Article IV.1 of the Code of Economic Law (**CEL**) (See, [this Newsletter, Volume 2025, No. 1](#)). It could not rely on the merger control rules because the transaction failed to reach the financial thresholds for notification.

Two aspects of the Decision stand out.

First, the analysis of the proposed transaction is not based on Article 101 of the TFEU or Article IV.1 of the CEL but is a straightforward application of the merger control rules, including the European Commission's administrative practice under the European Merger Regulation to deal with horizontal mergers (Decision, §46). The BCA's approach seems to imply that mergers and acquisitions will always be assessed under the same analytical framework, regardless of whether the transaction satisfies the financial thresholds for merger review. This approach is highly debatable and, contrary to what the BCA indicates, does not serve legal certainty (Decision, § 6). On the contrary, the BCA appears to have given itself the possibility to review any merger or acquisition, regardless of whether that transaction reaches the thresholds for notification under applicable Belgian merger control rules.

By contrast, when examining five mergers in the form of asset-swap transactions in the meat-cutting sector under Article 101 TFEU, the French Competition Authority (**FCA**) first concluded that the merger agreement was not anticompetitive by object, and secondly, that it lacked sufficient evidence to establish anticompetitive effects (Decision 24-D-05 of 2 May 2024).

Against this backdrop, creating a regulatory framework that defines the conditions under which the BCA is allowed to exercise "call-in powers" for sub-threshold concentrations would seem to be preferable (See, [this Newsletter, Volume 2025, No. 4](#)). The ball is now in the court of the federal parliament.



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Second, the BCA attributed considerable weight to the fact that, if implemented, the transaction would have been one of several which Dossche has carried out over the last few years in relevant markets (Decision, §93 and following). According to the BCA, which echoes a concern expressed [in other cases](#) by the Dutch competition authority, this series of “roll-up” acquisitions (referred to as “stringing beads” or “*kralen rijgen*”) showed Dossche’s desire to gradually reduce the competitive pressure on the relevant market at the expense of customers and consumers (Decision, §106).

Belgian Competition Authority Conditionally Approves Creation of Waterunie Operator by De Watergroep and Farys

On 15 July 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence – BCA*) approved the creation of Waterunie Operator, a joint venture between De Watergroep and Farys. Both companies are integrated water utilities, active in the production and distribution of drinking water and the management of sewage networks in Flanders. From 1 January 2026, Waterunie Operator will carry out all operational activities of both companies, while the ownership of infrastructure and customer relationships will remain with the parent companies.

First, the BCA noted that since De Watergroep and Farys each hold a natural monopoly in the distribution of drinking water and for wastewater management in their municipalities, there is no geographic overlap between their activities. The merger was therefore assessed primarily from the perspective of potential competition during the renewal of concessions for water distribution and wastewater management. In this regard, the BCA found that changes of concession holders are very rare, and that competition is already highly constrained by the strict regulatory framework and by ongoing supervision from the Flemish Environment Agency and, from 1 January 2026, the Flemish Utility Regulator. Accordingly, the BCA concluded that the merger is unlikely to significantly impede effective competition in the Belgian markets for drinking water distribution and wastewater management.

Second, the BCA reviewed the parties’ activities in industrial water services, where De Watergroep (via its subsidiary Azulatis) and Farys both provide “*water as a service*” solutions to large industrial users. These services include optimising internal water flows, supplying process water, and reusing wastewater within the production process. In particular, industrial customers using these facilities may also rely on tap water from water utilities as supply or backup water. For this reason, the management of drinking water and that of industrial water are closely linked activities. Here, the BCA identified a risk of conglomerate effects, particularly through the potential exchange of commercially sensitive information between the entities responsible for drinking water distribution and those responsible for industrial water activities.

To address these concerns, De Watergroep and Farys offered commitments. They agreed to prevent the exchange of commercially sensitive information between them and offered to take measures regarding governance, contract management, and the management of commercial referral processes in order to ensure effective implementation. The commitments will apply for ten years and are subject to monitoring by an independent trustee and to annual reporting to the BCA. Six months before the expiry of the ten-year period, the BCA will decide whether an extension is required.

The BCA accepted the commitments and conditionally authorised the merger, allowing the parties to proceed on 1 January 2026.

Belgian Competition Authority Closes Investigation into Scolares following Interoperability Guarantees

On 3 July 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence – BCA*) closed its investigation into possible anticompetitive practices in the school management software sector in French-speaking Belgium. The BCA had opened an *ex officio* investigation into a possible violation by Scolares of the rules prohibiting the abuse of a dominant position



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(Article IV.2 of the Code of Economic Law (**CEL**) and Article 102 of the Treaty on the Functioning of the European Union (**TFEU**)). This investigation followed a report by B-School, a competitor of Scolares, via the BCA's reporting system.

Scolares provides administrative and regulatory management software to schools via its platform ProEco, which allows schools to manage students, teaching staff, and academic curricula in accordance with regulatory standards. In January 2023, Scolares acquired software publisher Fast App, the developer of the Cabanga application. Cabanga is a "school-life" management software that facilitates pedagogical supervision and communication between parents and teachers. B-School also provides "school-life" management software.

The BCA noted that "school-life" management software such as Cabanga and B-School is highly complementary to administrative and regulatory management software, including ProEco, which it relies on for accessing student identification data. The investigation revealed that interoperability between these two types of software is essential for the proper functioning of school-life software.

Following the merger with Fast App, Scolares began developing an integrated offering between ProEco and Cabanga, enhancing interoperability between the two. While ProEco had initially negotiated similar enhanced interoperability with B-School, Scolares terminated those discussions to focus on integration between ProEco and Cabanga.

Following discussions with the BCA, Scolares communicated to its client schools assuring them that equivalent interoperability would be guaranteed in future between its own software and that of third-party publishers. In light of the guarantees offered to the schools by Scolares, the BCA decided to end the investigation.

Belgian Competition Authority Penalises Market-Sharing Arrangement in Intraday Electricity Sector

On 26 June 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – **BCA**) announced that Norwegian electricity company Nord Pool AS, its subsidiary Nord Pool Finland Oy, Dutch company APX Holding BV and the Belgian subsidiary of APX Belpex SA, had restricted competition from March 2009 to December 2015 by agreeing not to enter into each other's geographical areas.

Nord Pool AS, APX and Belpex operated a platform and services related to the trading of electricity within short timeframes (intraday trading) in several European markets. Nord Pool Finland Oy operated the licence for the use of a cross-border intraday electricity capacity management tool called "Elbas". They agreed not to enter the geographical areas of the other parties, at a time of "*developing interconnection of European electricity markets*". According to the BCA, the parties reinforced their agreement by granting APX and Belpex an exclusive licence to use Elbas to couple the Belgian and Dutch markets.

The Nord Pool group was fined EUR 79,810. The BCA specified that this low amount "*is not due to mitigating circumstances*" but is explained by the application of former Belgian fining rules (which provided for a much lower cap on the fine defined by Belgian turnover – according to the BCA, Nord Pool had "*little presence in Belgium, notably because of the market sharing arrangement in question*"). Since EPEX SPOT uncovered and reported the arrangement when it acquired APX and Belpex in 2015, it benefited from the BCA's leniency programme and did not receive any fine.

For many years, energy has been one of the BCA's priority areas for competition enforcement.



COMPETITION LAW

Belgian Competition Authority Publishes New Guidelines for On-Premise Inspections

On 20 June 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence – BCA*) published new guidelines regarding on-premise inspections (the **Guidelines**) which reflect the BCA's current practice and replace older guidelines of December 2013. The Guidelines are not controversial and do not contain surprising novelties. They offer a useful description of the principal rights and obligations of the parties that are made subject to a “dawn raid”.

Businesses, including corporations, natural persons, and associations, are required to submit to on-premise inspections by the BCA that were authorised by an investigating judge. These are carried out by an investigative team of the BCA (the **Team**) led by a competition prosecutor and seconded by IT specialists. At the start of the inspection, businesses will be presented with (i) an assignment in which the competition prosecutor describes the subject and the purpose of the inspection; (ii) the designation of experts by the chief competition prosecutor; (iii) the authorisation by the investigating judge; and (iv) the Guidelines.

The Guidelines indicate that the Team will have immediate access to each location where the business is operating, including offices, storage facilities, workplaces, and vehicles and do not have to wait for outside counsel to arrive. The Team will observe the EU's General Data Protection Regulation and its statutory professional secrecy obligation. The Team also has the authority to visit the private homes of business executives and the professional addresses of outside consultants such as accountants and payroll managers.

During the inspection, the Team will focus on IT systems and will require the inside help of the staff member in charge of IT to explain and give access to the IT architecture of the “entire business” (this term is not defined). Cooperation in this area and other areas

is key and extends to the duty not to communicate internally or externally regarding the inspection without the consent of the Team.

The document search involves all storage media and devices, including smartphones used for both private and professional purposes.

At the end of the inspection, the Team will remove from the selected files the documents that are considered to fall outside the scope of the inspection or that are covered by the Legal Professional Privilege (**LPP**) which concerns all communications, including annexes, between outside counsel who are a member of a bar of the European Union and their client. LPP also protects communications with members of the Belgian Institute of Company Lawyers (*Instituut voor bedrijfsjuristen / Institut des juristes d'entreprise*). This is a form of protection not recognised by the European Commission under EU law. The Guidelines contain instructions on how to deal with (i) disputes regarding protected or out-of-scope documents; and (ii) confidential information in the hands of the BCA.

The report of the inspection will contain detailed information regarding the various steps taken during the proceedings and will also allow for the recording of possible objections by the inspected business.

Belgian Competition Authority Carries Out On-Premise Inspections in Personal Care and Retail Sectors

On 24 June 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence – BCA*) announced that it conducted inspections at the premises of retailers and firms active in personal care. The BCA suspects possible violations of the rules prohibiting anticompetitive arrangements (Article 101 of the Treaty on the Functioning of the European Union and Article IV.1 of the Code of Economic Law).



COMPETITION LAW

Earlier this year, the European Commission (**Commission**) had already sent a request for information (**RFI**) to a firm active in the personal care sector, which Bloomberg later identified as Procter & Gamble. The Commission itself made a link between that RFI and dawn raids which it carried out in the non-alcoholic beverages sector.



DATA PROTECTION

Belgian Data Protection Authority Publishes 2024 Annual Report

On 19 June 2025, the Belgian Data Protection Authority (*Gegevensbeschermingsautoriteit / Autorité de protection des données* - the **DPA**) published its annual report for 2024 (the **Report**). 2024 was marked by internal reorganisation following amendments to the DPA's organic law and the adoption of new internal rules of procedure. The year also saw intensified outreach, with conferences, events and awareness campaigns targeting both professionals and the wider public.

Handling Data Breaches

Ransomware again defined 2024. Major incidents included the attack on [Limburg.net](#), the website of a municipal waste management company, disclosed in December 2023 which had its effects felt in 2024. The DPA used its newsletters to issue guidance on prevention and response. It also clarified the scope of the exceptions under Article 34 of the GDPR concerning individual notice to data subjects when a high risk arises. Key points include:

- When describing the likely consequences of a breach, controllers should also specify the categories of personal data affected to help data subjects protect themselves;
- If contact details are available, controllers must notify each data subject individually. In that case, a general public announcement will not be sufficient;
- Controllers may only rely on the exception of Article 34(3)(b) GDPR if measures are capable of removing the likely high risks arising from the breach. Preventive measures against future incidents cannot be taken into account.

Direct Marketing

Direct marketing remained a core focus in 2024. The DPA likened the practice to an iceberg; the visible aspects often appear limited, but hidden practices

such as profiling and sourcing for prospecting require close scrutiny. The Inspection Service stressed that these less transparent activities require ongoing monitoring. Particular attention went to data brokers. The DPA emphasised that organisations must ensure a valid legal basis and full transparency, including a clear explanation in privacy policies.

To provide updated guidance on that aspect, the DPA revised Recommendation 01/2020 on direct marketing. The update reflects new case law of the Court of Justice of the European Union, the Brussels Court of Appeal and the DPA's own Litigation Chamber. The updated recommendation comes with a checklist of key concepts (See, our [Client Alert](#), "Belgian Data Protection Authority Publishes Draft Recommendation on Direct Marketing", 27 March 2025).

Rise of Use of Artificial Intelligence

The Inspection Service reported an increase in cases involving artificial intelligence (**AI**). These ranged from traditional applications using personal data to predict outcomes to Large Language Models (LLMs) processing data through chat interactions. The Inspection Service examined compliance with the fundamental principles of the GDPR, focusing on transparency, data minimisation, purpose limitation and respect for data subject rights. Given the reliance of AI systems on large datasets, data minimisation received particular scrutiny. The Inspection Service therefore monitors this aspect very closely.

The Inspection Service also verified whether controllers implemented appropriate technical and organisational measures to ensure availability, integrity and confidentiality of personal data, in line with the GDPR and European Data Protection Board guidelines. The DPA stressed that the effective assessment of AI requires a multidisciplinary approach combining legal, technical and compliance expertise (See, our [Client Alert](#), "Belgian DPA Guidelines on AI Systems and GDPR", 4 October 2024).



DATA PROTECTION

In Decision 46/2024, the Litigation Chamber ruled on a complaint concerning the use of bank customers' transaction data to train AI models for personalised discounts. The Chamber held that training the models constituted a distinct purpose requiring a separate legal basis. It accepted legitimate interest as a valid ground, since the purpose was legitimate, the processing was essential, the data were largely anonymised, no transfer to third parties occurred, and customers could opt out. The Chamber therefore dismissed the complaint, clarifying the conditions under which personal data may be reused to train AI models.

Year in Numbers

The DPA reported a rise in activity in 2024. The number of complaints increased from 694 to 837, mainly concerning direct marketing, image processing and information security. Data breach notifications also remained high, with 1,455 cases reported. Human errors accounted for 40% of these breaches, while hacking and phishing represented 35%.

The DPA issued 310 opinions (118 specific and 192 standard), one recommendation, and its first authorisation for access to electronic communications metadata. The Inspection Service conducted 157 investigations (against 86 in 2023). The Litigation Chamber issued 173 decisions (171 in 2023) and imposed fines totalling EUR 708,371 (against EUR 80,000 in 2023).

The Report is available here (in [Dutch](#)) and here (in [French](#)).

Data Act: Applicable from September 2025

[Regulation \(EU\) 2023/2854](#) of 13 December 2023 on harmonised rules on fair access to and use of data (the **Data Act**, or the **Regulation**) entered into force on 11 January 2024. An 18-month transition period was provided to allow stakeholders to make the necessary technical and organisational arrangements. This period will end on 11 September 2025, with most obligations becoming applicable the following day.

Despite this, specific provisions will take effect later: the access-by-design (indirect access) obligation for manufacturers of connected products and providers of related services will apply from 12 September 2026; the prohibition on switching charges will take effect from 12 January 2027; and the rules on unfair contract terms (Chapter IV) will enter into force gradually, depending on the duration and date of conclusion of the contract.

Background

The Data Act is a cornerstone of the EU's data strategy, designed to strengthen the European data economy and foster a competitive internal market. It does so by making data, particularly industrial data, more accessible and usable, encouraging data-driven innovation and increasing overall data availability. To achieve these objectives, the Regulation seeks to ensure a fair allocation of the value generated from data among the different actors in the data economy, while at the same time clarifying who may access and use data and under which conditions (See, [this Newsletter, Volume 2024, No. 1](#)).

Deadline Approaching

With the Data Act entering into force, organisations must act without delay to ensure that their data governance frameworks, contractual arrangements, and technical infrastructure are in line with the new requirements.

The first step is to assess whether the organisation falls within the scope of the Regulation. For some, the Data Act represents a strategic opportunity to access valuable datasets and develop new services. For others, it triggers urgent compliance obligations, the elimination of unfair contractual terms, and the revision of existing data-sharing practices.

Practically, contracts must be updated to reflect the Regulation's pre-contractual information obligations, define clear and fair access rights, and exclude clauses deemed to be unfair in B2B relationships. As with other recent EU legal instruments in this area, transparency is



DATA PROTECTION

key: users must be informed about the nature, format, and retention of data, as well as how to access, retrieve and share it. Internally, organisations must set up procedures for handling data requests from users, third parties, and public sector bodies, while ensuring appropriate documentation of compliance measures and trade secret protection.

From a technical perspective, connected products and related services must be designed for access by default. Any contractual or technical barriers to switching must be removed. Providers of data processing services must also ensure interoperability with the relevant harmonised standards and common specifications, once published in the Commission's online repository.

For more information, see the (updated) FAQ on the Data Act by the European Commission, available [here](#).

INTELLECTUAL PROPERTY

Court of Justice of European Union Clarifies Interaction Between Absolute Grounds for Refusal of Trade Mark and Bad Faith Registrations

On 19 June 2025, the Court of Justice of the European Union (the **CJEU**) issued a judgment in case C-17/24 *CeramTec GmbH v Coorstek Bioceramic LLC* in which it clarified the relationship between the absolute grounds for the refusal of a trade mark registration and the concept of bad faith.

Background

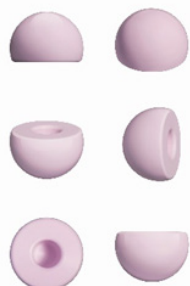
The dispute arose between CeramTec GmbH (**CeramTec**) and Coorstek Bioceramic LLC (**Coorstek**), two main actors of the medical prosthetics industry. CeramTec was the proprietor of European patent EP 0 542 815, designating France and relating to a composite ceramic material. That patent expired on 5 August 2011.

On 23 August 2011, CeramTec filed the following three applications for EU trade marks (the **Contested Trade Marks**):

- the colour Pantone 677C, edition 2010;
- the figurative mark consisting of a graphic representation of a pink coloured ball, with colour Pantone 677C:



- the three-dimensional mark which claims the colour pink, Pantone 677C:



On 13 December 2013, CeramTec brought an action for infringement and parasitic competition against Coorstek, claiming that Coorstek marketed a product which copied the colour pink, *i.e.*, a characteristic of its own goods. In a counterclaim action before the Court of Appeal of Paris, Coorstek challenged the validity of the Contested Trade Marks arguing that the application had been filed in bad faith and with the sole intent of extending the CeramTec patent after it had expired. The Paris Court of Appeal agreed with Coorstek and cancelled the Contested Trade Marks.

CeramTec appealed this decision to the French Supreme Court (the **Referring Court**) which decided to stay the case and ask the CJEU for a preliminary ruling regarding the relationship between the absolute grounds for refusal set out in Article 7 of Regulation No 207/2009 of 26 February 2009 on the Community trade mark (the **2009 TM Regulation**) and the concept of bad faith which constitutes an absolute ground for invalidity, laid down in Article 52(1)(b) of that regulation. The request for a preliminary ruling was examined under the 2009 TM Regulation because of the date of the application for registration of the Contested Trade Marks. The following questions were referred to the CJEU:

1. Are the invalidity grounds in Article 7 j. Article 52(1) (a) of the 2009 TM Regulation independent from, and non-overlapping with, the bad faith ground of Article 52(1)(b) 2009 TM Regulation?
2. If not, may bad faith be assessed by reference solely to Article 7(1)(e)(ii) of the 2009 TM Regulation when no finding was made that the sign for which registration as a trade mark had been sought consists exclusively of the shape of the product which is necessary to obtain a technical result?
3. Is bad faith excluded if, after filing, it turns out that there was no link between the technical solution which the applicant intended to protect and the trade mark applied for?



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Judgment

In response to the first question, the CJEU held that bad faith, as an absolute ground of invalidity, and the absolute grounds for refusal of registration of a trade mark, are (i) independent; and (ii) not mutually exclusive nor hierarchically ranked.

As regards point (i), the CJEU noted that “bad faith” as an absolute ground for invalidity aims to ensure that economic operators intending to use the EU trade mark system compete fairly. Its purpose is therefore to penalise an inherent defect in the application for registration and not in the trade mark itself. The CJEU thus concluded that the two absolute grounds for invalidity set out in Article 52(1) of the 2009 TM Regulation are independent, in the sense that, in order to declare the mark at issue invalid on the ground of bad faith on the part of the applicant on the basis of Article 52(1)(b) of the 2009 TM Regulation, it is not necessary first to verify the existence of one of the absolute grounds for refusal of registration laid down in Article 7 of that Regulation, to which Article 52(1)(a) refers.

As regards point (ii), the CJEU noted that nothing in the wording of Article 52(1) of the 2009 TM Regulation suggests that the grounds for invalidity mentioned in those paragraphs are mutually exclusive.

In response to the second question, the CJEU stated that nothing in Article 52(1)(b) of the 2009 TM Regulation requires ignoring facts that may also be relevant to the absolute ground for invalidity under Article 52(1)(a) of the 2009 TM Regulation. As a result, the CJEU concluded that the fact that the applicant attempted to prolong the monopoly on a technical solution previously protected by a patent may be taken into consideration in order to assess whether there was bad faith on the part of the applicant. The CJEU added that in order to assess an allegation of bad faith, it is important to establish the actual intention of the applicant on the basis of all the relevant factual circumstances, including the nature of the contested mark, the origin and use of the sign since its creation, the scope of the expired patent, the commercial rationale for filing, and the chronology of events characterising that filing.

Finally, answering the third question, the CJEU noted that the Referring Court was essentially asking whether Article 52(1)(b) of the 2009 TM Regulation allows an assessment of bad faith based on circumstances arising after the trade mark application was filed. The CJEU recalled that the relevant moment for determining bad faith is the date on which the application for registration was submitted.

The CJEU judgment brings useful clarifications regarding the relationship between the absolute grounds for refusal of an application for a trade mark registration and the absolute grounds for invalidity of a registered trade mark, which includes the situation in which the applicant was acting in bad faith when filing the application for the trade mark. It further confirms the established principle that competition in the EU should not be distorted.

Court of Justice of European Union Clarifies Concept of Equitable Remuneration for Producers

On 10 July 2025, the Court of Justice of the European Union (the **CJEU**) delivered a judgment related to a remuneration agreement for broadcasting commercial phonograms, clarifying the concepts of ‘equitable remuneration’ and ‘appropriate remuneration’.

The preliminary ruling arises from a dispute between the Union of Phonogram Producers of Romania (**UPFR**), and DADA Music SRL (**DADA Music**). UPFR had entered into a non-exclusive licence agreement with DADA Music, granting it the right to broadcast commercial phonograms on its radio station. The contract included a clause requiring DADA Music to pay UPFR a fee that could not be lower than a specified minimum flat-rate amount.

In March 2018, Romanian Law No. 74/2018 (the **Law**) went into effect and repealed provisions that enforced a minimum remuneration in phonogram broadcasting contracts. DADA Music then refused to continue paying UPFR the contractually agreed minimum flat-rate remuneration, claiming that the Law only required remuneration based on actual revenue received. UPFR argued that the minimum flat-rate remuneration had to continue applying until the parties agreed on a new

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methodology and then brought an action against DADA Music for the contractually agreed minimum flat-rate remuneration. UPFR argued that if the relevant provisions of the Law No.74/2018 had to be interpreted as directly applicable to the present case, they would be contrary to Article 8(2) of Directive 2006/115 of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (**Directive 2006/115**) and Article 16(2) of Directive 2014/26 of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (**Directive 2014/26**). The case ended up before the Court of Appeal in Romania (the **Referring Court**) which decided to stay the proceedings and seek a preliminary ruling from the CJEU.

The CJEU noted that the purpose of both Article 8(2) of Directive 2006/115 and Article 16(2) of Directive 2014/26, which refer to “equitable remuneration” and “appropriate remuneration” respectively, is to ensure that remuneration is equitable and appropriate in the context of the economic value of the service provided. These provisions seek to strike a balance between the phonogram producers’ interests in gaining remuneration and the interests of third parties in broadcasting the phonograms on reasonable terms. The CJEU added that it is more reasonable for remuneration to reflect the economic value of the remunerated service, rather than to be based on an unrelated flat-rate minimum. The CJEU therefore concluded that there is no obligation to set a minimum flat-rate. Member States have discretion but must ensure remuneration is equitable and proportionate.

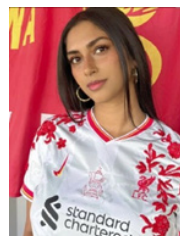
The CJEU went on to observe that while Article 17(2) of the Charter of Fundamental Rights of the European Union (the **Charter**) protects intellectual property, this right is not absolute. Under Article 52(1) of the Charter, limitations are permissible if they are provided for by law, respect the essence of the right, are proportionate, and pursue a legitimate objective. However, it will be for the national court to assess whether this measure was necessary and whether less restrictive means could have achieved the same aim.

The CJEU then clarified that it is also for the national court to assess whether remuneration paid to rightholders ensures a fair balance between their interests and those of phonogram users. The national court should factor in the economic value of the rights’ use in trade, the nature and scope of that use, and the value of the services provided by the collective management organisation.

Finally, the CJEU recalled the primacy of EU law and the duty of national courts to interpret their law, as far as possible, in conformity with EU Directives. However, it emphasised that this obligation has its limits. National law cannot be interpreted *contra legem*, and Directives cannot, by themselves, impose obligations on private parties. Consequently, if national law cannot be read in line with EU requirements, and the Directive’s provisions lack direct effect, the court cannot set aside the conflicting national provision solely on the basis of EU law, unless domestic law itself allows for this approach.

From Stitch to Snitch: Designer Claims Beerschot Copied its Football Shirt Design

On her Instagram account British designer Diana Al Shammari accused Belgian football club K Beerschot VA (**Beerschot**) of plagiarism contending that the floral embroidery on Beerschot’s new limited-edition shirt are a “*bad, lazy and uncreative*” copy of her signature design.




(Shirt designed by Al Shammari)

vs.



(Beerschot limited-edition shirt)



INTELLECTUAL PROPERTY

Al Shammari, who spent the past eight years making a name for herself at the crossroads of fashion and football, decorated kits for Bayern Munich, Manchester City and the Belgian national team with her floral embroidery and also collaborated with the Adidas sports brand. With such a track record, she regards the Beerschot shirt design as more than a coincidence – in her opinion, it is a copy presented without credit or collaboration. The Beerschot shirt was produced by Belgian company Nova. In a response to Al Shammari on Instagram, Beerschot’s CEO Arthur Heeren acknowledged that the design team had been inspired by Al Shammari’s earlier work but added that no single designer can monopolise a decorative style on football shirts. For its part, Nova insisted that it had attempted to contact Al Shammari to explore a collaboration but, having received no reply, then decided to proceed independently.

The dispute sheds light on a familiar intellectual property dilemma: where lies the distinction between a work inspired by an existing style and a work unlawfully imitating a protected work?

In *Cofemel v. G-Star Raw* (Case C-683/17), the Court of Justice of the European Union (**CJEU**) held that the copyright protection of designs, such as clothing designs, depends on originality as the expression of the personality of their author and that author’s free and creative choices. As a result, the CJEU rejected any requirement of “artistic value” while stressing that copyright cannot extend to elements that are too general, functional, or lacking genuine intellectual creation. Under copyright law, protection covers not styles or ideas as such, but original expressions of ideas. However, copyright infringement is not limited to situations where an exact copy is made of a protected work. Copyright infringement can thus exist when only part of a work is reproduced. The CJEU developed this approach in the famous *Infopaq* case (Case C-5/08).

Al Shammari contends that the Beerschot embroidery reproduces her distinctive expression, while Nova maintains it merely reflects a broader decorative trend. Al Shammari has signalled openness to a settlement but is prepared to escalate the matter if no agreement

is reached. The stakes are high: if a court sides with the designer, Beerschot and Nova could face damages for copyright infringement; if Nova prevails, other football (and other sports) shirt producers could decide to “take inspiration” from this style.

LABOUR LAW

Supreme Court Delivers Judgment Regarding Daily Management of Non-profit Association Through Management Company

On 19 May 2025, the Supreme Court (*Hof van Cassatie / Cour de Cassation*) held that private individuals who perform the daily management of a non-profit association (*vereniging zonder winstoogmerk / association sans but lucratif*) through a management company qualify as employees for social security purposes.

Background

The case concerned an appeal against a judgment of the Labour Court of Appeal of Brussels (the **Labour Court of Appeal**) of 13 October 2022.

A payroll agency, incorporated as a non-profit organisation, had entered into a management agreement with a management company for the performance of the daily management of the payroll agency. The daily management was performed by the permanent representative of the management company on behalf of the latter.

The National Social Security Office (*Rijksdienst voor Sociale Zekerheid / Office National de Sécurité Sociale* – the **NSSO**) regarded the permanent representative as an employee for social security purposes and claimed arrears of employee and employer's social security contributions on the management fees, increased with surcharges and legal interests.

The NSSO based its claim on Article 3, 1° of the Royal Decree of 28 November 1969 (*Koninklijk besluit van 28 november 1969 tot uitvoering van de wet van 27 juni 1969 tot herziening van de besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders / Arrêté royal du 28 novembre 1969 pris en exécution de la loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs* – the **Royal Decree**). According to this provision, any individual who devotes his/her

main professional activity to the daily management of a non-profit association or organisation against remuneration should be considered as an employee for social security purposes. As a result, from a social security perspective such an individual cannot perform such activities on a self-employed basis.

Judgment of Labour Court of Appeal

The Labour Court of Appeal ruled that Article 3, 1° of the Royal Decree only applies to private individuals, and not to management companies, unless the structure was set up to avoid the application of the social security scheme for employees. Confirming the judgment delivered in first instance, the Labour Court of Appeal held that the use of a management company is a legitimate and commonly accepted practice and found that the NSSO had failed to demonstrate an intention to circumvent the social security regime applicable to employees.

Judgment of Supreme Court

The Supreme Court overturned the judgment of the Labour Court of Appeal.

It held that the application of Article 3, 1° of the Royal Decree does not require a direct contractual relationship between the mandate holder and the organisation or association considered as the employer. For the rule to apply it is sufficient that a private individual effectively performs the daily management of a non-profit association or organisation in return for remuneration. Article 3, 1° of the Royal Decree causes the relationship with the private individual to be treated as an employment relationship for social security purposes, even if the activities are performed through a management company. The NSSO is not required to show that the aim of relying on a management company was to avoid paying social security contributions.



LABOUR LAW

Relevance of Judgment

The daily management of non-profit associations or organisations is in practice often carried out by private individuals on a self-employed basis through a management company, as is the case in the private sector.

The judgment confirms that the legal fiction which Article 3, 1° of the Royal Decree provides for also applies to private individuals who perform the daily management of a non-profit association through a management company, even in the absence of a direct contractual relationship between the non-profit association and the private individual.

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