October 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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# COMPETITION LAW

***Belgian Competition Authority Publishes First Edition of Merger Insights***

On 24 October 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – ***BCA***) released the first issue of its Merger Insights, a new periodic publication focusing on the BCA's merger control enforcement policy and practice. This inaugural issue provides a description of the institutional framework governing the BCA's merger control activities, particularly since the creation of a dedicated Merger Task Force (***MTF***) in 2022 and includes statistics and insights on recent developments and procedural trends.

*Merger Task Force*

Following an internal reorganisation and resource reinforcement, the BCA established several specialised task forces, including the MTF, which is responsible for overseeing merger control. The MTF consists of around 20 staff members, led by a coordinator and three case auditors. The MTF's activities are structured across three levels of coordination: (i) weekly case allocation by the coordinator and auditors; (ii) weekly strategic meetings between case managers and the Chief Economist Team; and (iii) weekly policy discussions between the coordinator and the Auditor General.

*Cooperation with Merging Parties*

The MTF has increasingly adopted a proactive and transparent approach when assessing transactions. It aims to provide early clarity on the analytical framework applied and to keep merging parties informed throughout the review process, particularly when competition concerns arise. Regular "state-of-play" meetings with the parties have become a standard practice.

The BCA also emphasises that the efficiency of merger proceedings depends on timely responses to requests for information. Requests for extensions during the pre-notification phase are considered with flexibility and have been granted in recent cases.

Furthermore, the BCA encourages parties to provide comprehensive economic data at the start of the pre-notification phase. This includes the raw data used to calculate market shares, clear methodological explanations of assumptions and calculations, and internal documents relating to the transaction's rationale and market dynamics. Direct contact with individuals involved in the actual management of the companies concerned is also seen as highly valuable for the review process.

*Duration of Merger Control Proceedings*

The BCA recorded a record number of 42 merger notifications in 2024 and issued 43 clearance decisions that year. Simplified procedures, which account for approximately 80% of all merger cases, had a pre-notification phase lasting between 1.5 and 2.5 months on average over the past three years. Most of these simplified decisions were adopted well within the statutory period of 15 working days, with an average turnaround time of around eight working days.

For complete procedures, representing around 20% of all merger cases, the pre-notification phase generally lasted between two and five months. The BCA attributes the longer duration of some pre-notification phases to several factors: the complexity of the analysis, the need to process extensive data, reluctance of third parties (customers, competitors, or suppliers) to share confidential data, and delays in cooperation by the notifying parties.

All decisions under complete procedures, including those involving commitments, were adopted within an average of two months. The "stop-the-clock" mechanism, which suspends statutory deadlines when information is not provided within the required timeframe, was used only once in the past three years. The BCA also noted that the duration of both the pre-notification and decision-making phases remains broadly comparable to that observed among other European national competition authorities.

# COMPETITION LAW

***Belgian Competition Authority Starts Market Test Regarding Telecommunications Infrastructure Joint Venture in Flanders***

On 15 October 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – ***BCA***) started a market test to gauge stakeholder views on proposed commitments offered by joint venture (***JV***) partners Proximus, Fiberklaar, Telenet, and Wyre to secure the approval of both the BCA and the Belgian Institute for Postal Services and Telecommunications (*Belgisch Instituut voor Postdiensten en Telecommunicatie / Institut belge des services postaux et des télécommunications* – ***BIPT***) for their agreement on the rolling out of fibre telecommunications networks in Flanders. The BCA and the BIPT had opened their investigation in July 2024 (*see*, this Newsletter, Volume 2024, Nos. 6-7).

Pursuant to the JV terms, the parties would build complementary Fiber-to-the-Home (***FTTH***) networks and organise reciprocal wholesale access for their partners in medium density population areas (which cover 2 million homes). In sparsely populated areas (which concern 0.7 million homes), Proximus would offer services via the Hybrid Fiber Coax network of Wyre. Elsewhere (in large cities and densely populated zones) network competition would play out to the fullest extent, and both groups would roll out their own separate infrastructure.

In their inquiry, the regulators focused on the reduction of infrastructure competition between the network operators and the possible negative effects on competition between telecommunications service providers. In response, the parties offered several sets of commitments which have been made subject to the market test until 21 November 2025. Some of the commitments will bind all of the involved parties, while others will only apply to either Proximus or the Telenet – Wyre duo. Broadly, the commitments are designed to (i) accelerate the deployment of fibre networks in medium-density areas of Flanders; (ii) extend the coverage of these networks; and (iii) cause Proximus/Fiberklaar and Telenet/Wyre to grant long-term access to all their networks on fair, reasonable and non-discriminatory (FRAND) terms.

Separately, the BCA and the BIPT are also reviewing a JV between Orange and Proximus for the roll-out of fibre networks in Wallonia (*see*, this Newsletter, Volume 2025, Nos. 6-7).

***Long Arm of Belgian Competition Authority Requires International Cyclists' Union to Disapply New Technical Standard in Chinese Race***

On 9 October 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – ***BCA***) ordered the International Cyclists' Union (***UCI***) to suspend the implementation of its maximum gear ratio (***Maximum Gearing***) in professional road cycling events. UCI tentatively adopted a new Maximum Gearing standard that reflected the equivalent of a 54-tooth chainring with an 11-tooth sprocket (54x11) (*see*, this Newsletter, Volume 2025, Nos. 6-7). Subsequently, UCI was required to temporarily abandon the standard no later than 13 October 2025 at the eve of the last race of the UCI World Tour which started on 14 October 2025 in Guangxi, China.

BCA adopted the measures at the request of SRAM, one of the few major suppliers of transmission systems. US-based SRAM currently provides equipment to four major men's professional teams. It challenged the Maximum Gearing protocol, arguing that it would compel the firm to make major adjustments, while several competing suppliers already rely on 54x11 gearing. SRAM claimed that the new standard caused it to suffer serious harm that is difficult to repair and therefore sought interim measures with the BCA.

The BCA observed that the procedure for developing the Maximum Gearing suffered from serious shortcomings in terms of access (due to a lack of participation of manufacturers in the development of the standard, if applicable, only in the form of consultation) and transparency. The BCA noted that the criteria on which key decisions were based in the adoption of the Maximum Gearing were not documented and that UCI's explanations showed that its decision found support "solely on vague justifications with no objective basis".

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The BCA also identified discrimination issues, in that the Maximum Gearing specifically targets SRAM technology. Additionally, the BCA questioned the relevance of the information that could be obtained during the test phase, observing that the existing data on the frequency and severity of accidents in an environment where both transmission systems are available (Shimano and SRAM) should be much more useful.

The BCA concluded that the Maximum Gearing is prima facie a decision by an association of undertakings that restricts competition in breach of Article 101(1) TFEU and/or Article IV.1 CEL, without specifying whether this is an infringement by object or by effect. The BCA also found that the adoption of the Maximum Gearing without sufficient procedural safeguards constitutes, prima facie, an abuse of UCI's dominant position contrary to Article 102 TFEU and/or Article IV.2 CEL.

As regards the existence of a serious, imminent and nearly irreparable harm that would justify imposing interim measures, the BCA observed that Article IV.71 CEL allows it to take into account not only SRAM's harm but also that of the teams that source from SRAM, some of which had intervened in the procedure. The BCA found SRAM's harm to be manifest, as the restriction applies de facto only to SRAM (as acknowledged by UCI). With regard to teams using SRAM equipment, the BCA found that they were harmed due to the uncertainty as to the transmission mechanism they will be allowed to use, the risk of penalties resulting from the use of SRAM transmission, the risk of failures due to the timescale in which they had to restrict their SRAM transmission to comply with the standard without prior testing, the risk of sporting and financial damage in view of the obligation to use restricted equipment, and the risk of riders leaving teams equipped with SRAM transmission systems. Both the harm inflicted on SRAM and that inflicted on teams using SRAM equipment was found to be serious, imminent and difficult to repair. Therefore, the BCA required UCI to adopt a new standard based on a transparent, objective, and non-discriminatory procedure.

The BCA's measure is remarkable for several reasons: its effects span the globe and protect the economic interests of economic operators (SRAM and SRAM's customers) that outweigh the safety reasons claimed to be at the root of the UCI's decision. Additionally, the interim measures are predicated on the existence of serious and nearly irreparable harm on the part of SRAM even though the standard was intended to apply only provisionally by way of a test.

### *Belgian Competition Authority Starts Public Consultation on Sustainability Agreements*

On 6 October 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – ***BCA***) started a public consultation regarding draft Guidelines for Sustainability Agreements (the ***Draft Guidelines***). Stakeholders were invited to submit their comments by 20 November 2025.

The Draft Guidelines did not arise in a vacuum: they build on both the assessment of sustainability agreements contained in the "horizontal cooperation agreement guidelines" of the European Commission (***Commission***) and the exclusion from the application of Article 101 of the Treaty on the Functioning of the European Union that applies to specific sustainability agreements of agricultural producers. They also benefit from similar efforts by the Dutch and French competition authorities.

The Draft Guidelines include two major sections that discuss the general principles applying to sustainability agreements and address the specific use of sustainability agreements in the agricultural sector. In the process, they draw on the BCA's own expertise in this area, as is, for example, apparent from the BCA's 2023 review of a project to guarantee fair wages in the banana sector.

Significantly, the Draft Guidelines encourage the business community to seek informal advice from the BCA.

# FOREIGN DIRECT INVESTMENT

***European Commission Publishes Fifth Annual Report on Foreign Direct Investment Screening***

On 14 October 2025, the European Commission (the ***Commission***) published its fifth annual report (the ***Report***) on the screening of foreign direct investments (***FDI***) into the European Union (the ***EU***). It covers developments in 2024. Similar to previous editions, the Report offers information on the functioning of the FDI screening activities of the Member States and of the EU cooperation mechanism on FDI screening (the ***Cooperation Mechanism***) introduced by the FDI Screening Regulation (the ***Regulation***). In addition, the Report addresses legislative developments at EU and Member State level. The Report shows that FDI screening has continued to evolve and remains a key instrument to protect security and public order across the EU, while ensuring the openness of the EU market to foreign investment.

*FDI Screening Now in Place in All Member States*

In 2024, a new FDI screening mechanism entered into force in two Member States, namely Bulgaria and Ireland. In Belgium, the FDI screening mechanism had already entered into force on 1 July 2023 (*see*, this Newsletter, Volume 2023, No. 5). Since the drafting and publication of the Report, the last Member States which did not yet have an FDI screening mechanism finally established one. That applies to Greece which adopted its FDI review system in May 2025 and Croatia and Cyprus which adopted a screening mechanism in October 2025. As a result, all Member States have now adopted an FDI screening mechanism. However, not all Member States have already started to implement their new regime.

The Report further observes that Member States continue expanding their national screening mechanisms and that national authorities continue refining their internal processes, reflecting growing expertise. The Report also mentions Member States actively engaging in the exchange of information, for instance at Expert Group Meetings.

*Surge in Notifications*

The Report indicates that the FDI screening authorities of the Member States handled a total of 3,136 notifications and *ex officio* investigations in 2024, representing a substantial increase from the 1,808 cases in 2023 and 1,444 in 2022.

This increase can be explained in part by the decision of specific Member States to adopt new FDI screening mechanisms or expand the scope of existing mechanisms. This group of Member States also includes Belgium, whose FDI screening mechanism had its first full operational calendar year and 88 notifications in 2024. However, Sweden in particular seems to have a strong influence on the data as it reported "*a very high number of cases in its first full year of operation of its FDI screening mechanism, surpassing by far the annual number of cases reported by any other Member State*".

The increase is also partly attributable to the increased number of FDI into the EU. The Report shows a 10% increase of M&A transactions and a 6% rise of greenfield investments, resulting in a 7.5% overall increase of FDI. While the number of FDI projects has increased, total FDI value inflows have continued to decrease, with declines of 23% in 2023 and 8.4% in 2024. The latter figure suggests that the decline has slowed down in 2024, whereby the 2024 decline was mainly driven by a decline in greenfield investments outpacing a slight increase in M&A transactions. In the Report, this downward trend is explained by ongoing uncertainties affecting the EU economy and investors' risk perception, namely Russia's war of aggression against Ukraine, "the Middle East conflict", and the threat of global trade tensions.

*Stable Trend of Low Overall National Intervention Rate*

The Report shows that 41% of notifications were formally screened, while 59% were deemed ineligible or did not require formal screening. However, when excluding Sweden from the data, the share of cases

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formally screened increases to 67%, while only 33% of cases did not require formal screening. These data suggest that there are strong differences between Member States as to the share of notified investments subject to formal screening, and that investors are notifying, and possibly over notifying, in case of doubt.

Out of the FDI that were formally screened in 2024, the overwhelming majority (86%) was cleared without conditions (representing a slight increase from 85% in 2023). In 9% of cases the FDI was approved subject to mitigating measures (representing a slight decrease from 10% in 2023). As was the case in previous years, national screening authorities blocked only approximately 1% of cases, with 4% of notifications being withdrawn.

According to the Report, these numbers point to a stable trend confirming the EU's openness to foreign investment. FDI screening enforcement action would only be taken with respect to FDI that pose serious threats to national security or public order.

The data from the second annual report on FDI screening in Belgium (the ***Belgian Report***; *see*, this Newsletter, Volume 2025, No. 9) suggests that Belgium is even less interventionist compared to the EU average: 89% of notifications are cleared without conditions; 3% are made subject to mitigating measures; there are no blocking decisions; and there were only two withdrawals (one reportedly concerned a Chinese investor in a sensitive sector). Enforcement action nonetheless increased under the Belgian FDI screening mechanism in its second year of operations and is showing signs of a further increase in the third year of operations.

*Stable Number of Notifications Shared in Cooperation Mechanism*

Despite the surge in FDI notifications and additional screening Member States, the number of notifications shared in the Cooperation Mechanism has remained stable, even showing a 2% decline in cases notified to the Commission from 488 in 2023 to 477 in 2024. In addition, while more Member States now screen FDI, the vast majority of cases shared within the Cooperation Mechanism originate from select Member States (whereby Austria, France, Italy and Spain account for 76% of notifications to the Commission and this figure climbs to 84% of cases when Germany, Lithuania and the Netherlands are added).

The Commission closed the vast majority (92%) of cases in Phase 1 (within 15 calendar days), while only 8% of cases proceeded to Phase 2 with additional questions being asked from the notifying Member State (same as in 2023). The Commission issued an opinion in less than 2% of the notified transactions (same as in 2023), maintaining a measured approach to intervention and underscoring the trust placed in Member States' screening mechanisms. Similarly, Member States issued comments in approximately only 3% of cases (reflecting a significant decrease from the 6% in 2023).

According to the Report, these data confirm the EU's strong commitment to an open investment environment. But the Report also maintains that the Cooperation Mechanism remains indispensable and continues to operate as a limited and targeted tool for exceptional cases.

*Geographic and Sectoral Trends at Cooperation Mechanism Level*

Of the notified FDI shared within the Cooperation Mechanism, the vast majority originated from the U.S. (40%), followed by the UK (11%), China/Hong Kong (9%), Japan (4%), Canada (3%) and the UAE (3%). This is largely consistent with the 2024 overall FDI trends. However, compared to their overall number of FDI into the EU, investments from the U.S. (30% of all acquisitions and 37% of greenfield investments) seem to reach the Cooperation Mechanism more frequently than, for instance, FDI originating from the UK (which accounts for 23% of all acquisitions and 24% of greenfield investments into the EU). Similarly, while the overall number of M&A deals originating in China and Hong Kong increased by 23% in 2024, the Report

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shows a 50% rise in cases shared within the Cooperation Mechanism originating from China (from 6% in 2023 up to 9% in 2024).

This is largely consistent with Belgian FDI notifications, the majority of which originates from the United States (45%), followed by the UK (22%), Japan (8%), Canada (7%) and China (5%); *see*, this Newsletter, Volume 2025, No. 9).

The transactions most often shared in the Cooperation Mechanism concerned manufacturing (25%, up from 23% in 2023), ICT (22%), wholesale and retail (14%), financial activities (10%) and professional activities (9%). This is again largely consistent with the sectors involved in overall M&A activity in 2024 according to the Report. The increased importance of manufacturing is also reflected in its share of notifications advancing to a Phase 2 under the Cooperation Mechanism. In 2024, manufacturing represented 50% of cases advancing to a Phase 2, up from 39% in 2023. The next largest sectors were ICT (19%, down from 24% in 2023) and financial activities (8%, unchanged compared to 2023), with energy, professional activities, wholesale and retail, and construction accounting for 5% each.

Under the Report, manufacturing encompasses the transformation of materials into new products (ranging from the manufacturing of electrical equipment, motors, industrial machinery and equipment to weapons and pharmaceuticals).

Within the manufacturing sector, 49% of cases were considered critical because the transaction involved critical technologies, 26% because of critical infrastructure, 20% because of critical inputs and 5% because of access to sensitive information. From the cases that involved critical technologies, 37% of cases related to defence (up from 26% in 2023), followed by semiconductors (21%) and aerospace (16%). These sectors being subjected to increased scrutiny within the Cooperation Mechanism is consistent with the EU's increased focus on specific strategic sectors to advance its economic security agenda.

Due to differences in separating the sectors concerned between the Report and the Belgian Report, it is not always as clear how the above statistics correspond to the sectors most often targeted by notifications in Belgium, namely sensitive information / personal data (21%), digital infrastructure (14%), energy (13%), healthcare (12%), and dual use (9%).

The Report is available in English.

# INTELLECTUAL PROPERTY

## *Court of Justice of European Union Confirms Protection of Wine Names Over Earlier Well-Known Trade Marks*

On 11 September 2025, the Court of Justice of the European Union (the ***CJEU***) delivered a judgment in case C-341/24 *Duca di Salaparuta SpA v Ministero dell'Agricoltura, della Sovranità alimentare e delle Foreste and Others*. In its judgment, the CJEU clarified the relationship between wine names protected as designations of origin (***DOs***) and earlier trade marks.

*Background of Case*

The dispute concerns the conflict between Duca di Salaparuta SpA (***Duca***), an Italian winery owning several well-known national and EU trade marks containing the word "Salaparuta", and the Italian Ministry of Agriculture as well as the consortium and producers of DOC Salaparuta wine. Duca's trade marks have been in use since at least 1989 and cover wines, even though neither it nor its wines have ties to the Salaparuta region in Sicily.

In 2006, the Italian authorities granted the designation of origin "Salaparuta" (***Denominazione di Origine Controllata - DOC Salaparuta***) to wines made from grapes grown within Salaparuta. Subsequently, this designation was also recognised as a DO at the EU level. In 2016, Duca brought an action in Italy seeking the annulment of that DOC and DO protection, arguing that it conflicted with its earlier well-known trade mark "Salaparuta" and would mislead consumers about the origin and identity of the wines. The claim was dismissed by the Italian courts in first instance and on appeal. They emphasised the primacy of the DO over the trade mark but allowed the continued use of the trade mark under specific conditions.

Ulitmately, the Italian Supreme Court (*Corte Suprema di Cassazione*) asked the CJEU to clarify whether later EU wine protection rules – which provide that a designation should not mislead consumers in light of earlier trade marks – applied to this dispute, or whether the dispute was only governed by the older regime which recognised the designation.

*Reasoning of CJEU*

The CJEU noted that Article 54(1) of Regulation No 1493/1999 on the common organisation of the market in wine defines quality wines produced in specified regions (***quality wines psr***) as wines complying with the provisions of Title VI of that Regulation and the EU and national provisions adopted in that connection.

The CJEU then confirmed that the DOC Salaparuta, recognised under Regulation No 1493/1999 and subsequently listed at the EU level, enjoys automatic and uninterrupted protection at EU level without undergoing a new EU registration process. This transitional regime was designed for legal certainty – existing national designations were automatically extended at EU level, and any withdrawal of this type of protection was limited to the specific circumstances set forth by law.

Accordingly, the CJEU held that the conflict should be resolved under the rules of Regulation No 1493/1999, specifically the primacy and coexistence regime in Section F(2), Annex VII. According to this regime, the protected name prevails, while the trade mark holder may continue using the mark if specific and strict long-standing and continuous-use conditions are satisfied. The CJEU explicitly excluded the applicability of the newer EU Regulations (Regulations No 479/2008, 1234/2007, and 1308/2013) from this type of conflict, explaining that their provisions on consumer confusion and trade mark reputation only apply to designations undergoing the new registration regime, not to those automatically extended from the national level.

By deciding that the DOC Salaparuta remains protected despite the existence of an earlier trade mark, the CJEU reaffirmed that conflicts between such DOs and earlier trade marks must be resolved solely on the basis of the older automatic protection and coexistence rules, not under the later regime preventing consumer confusion.

# INTELLECTUAL PROPERTY

***Brussels Court of Appeal Confirms Distinctive Character of Yellow Stitching of Dr. Martens Shoes***

On 30 September 2025, the Brussels Court of Appeal (the ***Court***) delivered a judgment in *Airwair International Ltd v. Retail Distribution Concepts BV* (2023/AR/266), in favour of the manufacturer of Dr. Martens footwear, Airwair International Ltd (***Airwair***), confirming the validity of several of Airwair's trade marks.

*Background*

Airwair, the producer and distributor of the well-known Dr. Martens footwear, holds several trade marks registered in the Benelux and the EU. These trade marks protect the distinctive visual features of its shoes, including stitching, sole patterns and logos. In particular, Airwair relied on the following registered trade marks:

- Benelux trade mark 0588724, consisting of yellow stitching applied on the welt of a shoe, applied for on 6 February 1996 and registered on 1 December 1996 in Class 25 ("footwear, their parts and accessories not included in other classes"). The trade mark is a shape mark and covers the yellow stitch positioned between the upper and the sole of the shoe (***Yellow Stitching Shape Mark***);

- Benelux trade mark 1417807, consisting of yellow stitching on a black welt, applied for on 27 May 2020 and registered on 28 May 2020 in Class 25 for lace-up boots. The trade mark is a position mark combining a black welt with a yellow stitch running along the outer edge of the boot's sole (***Yellow Stitching Position Mark***);

- Benelux trade mark 0588726 (the ***Sole Pattern Shape Mark***), applied for on 6 February 1996 and registered on 1 December 1996 in Class 25. The mark is a shape mark showing the distinctive sole pattern used on Dr. Martens footwear; and

- EU trade mark 000059089, which is a figurative mark, depicting a rectangle with the words "OIL FAT ACID PETROL ALKALI RESISTANT" (the ***Resistance Rectangle Mark***), applied for on 1 April 1996 and registered on 21 April 1998 in Classes 16, 18 and 25.


Belgian retailer Retail Distribution Concepts BV (***Redisco***), the company behind the Belgian shoe-store chains Mano and Pronti, distributed various shoe models bearing elements similar to the signs covered by the above Airwair trade marks. In 2022, Airwair initiated infringement proceedings before the President of the Dutch-language Enterprise Court of Brussels, claiming that the imitation of these features is likely to mislead consumers as to the origin of the goods.

*Court Judgment*

The Court overturned the first instance judgment and found that the Sole Pattern Shape Mark possesses inherent distinctiveness, the Yellow Stitching Shape Mark and Yellow Stitching Position Mark have acquired distinctiveness through long-standing use, and the Resistance Rectangle Mark is valid. It held that Redisco had infringed these trade marks by marketing confusingly similar shoes, except for models with white stitching, which created a different overall impression.

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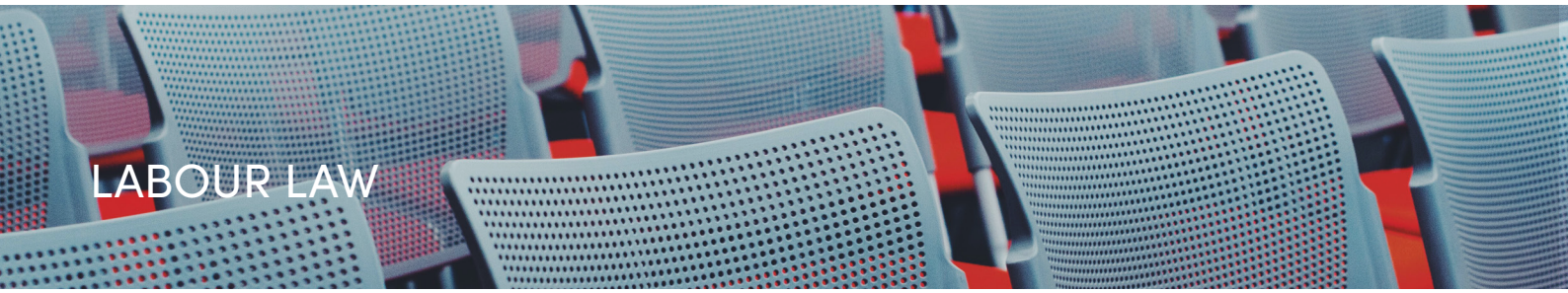
The Court held that Airwair's Sole Pattern Shape Mark markedly differs from common designs on the market. Historical materials from the 1990s showed a wide variety among competitors' soles, while Airwair's pattern stood out as unique. The Court found that the average shoe consumer, being normally informed and reasonably observant, would perceive this Sole Pattern Shape Mark as indicating the commercial origin of the product. According to the Court, it therefore qualifies as inherently distinctive under Article 2.2bis (1) of the Benelux Convention on Intellectual Property (***BCIP***).

The Yellow Stitching Shape Mark and Yellow Stitching Position Mark were found not to be inherently distinctive, since decorative stitching whereby the stitching and the leather have contrasting colours is common in footwear. However, Airwair provided extensive evidence demonstrating decades of use across the Benelux, with over one hundred official resellers, nearly half a million pairs sold annually, and continuous marketing featuring the yellow stitch as the iconic hallmark of Dr. Martens shoes. Press coverage and advertising materials described the yellow stitching as "*typical*" and "*characteristic*". The Court concluded that the public now recognises the stitching as an indication of origin. As a result the Court dismissed Redisco's argument that the stitch represented a functional element, confirming that the yellow colour has no technical function and serves purely as a brand identifier.

The Court found that Redisco's shoes bore signs visually similar to Airwair's registered marks and were used for identical goods. Consumers of such footwear were deemed to have a low level of attention, which increased the likelihood of confusion. As such, shoes with an orange stitch were found to infringe, as the orange tone closely approximated yellow and reproduced the same visual impression. Shoes with a white stitch, by contrast, created a distinct overall impression due to their lighter colour, thinner thread and different spacing, and therefore were not found to infringe.

As regards the Resistance Rectangle Mark, the Court observed that Redisco used the same sequence of words – "OIL FAT ACID PETROL ALKALI RESISTANT" – arranged identically within a rectangle on translucent, honey-coloured soles. This led to average visual and aural similarity and a likelihood of confusion within the meaning of Article 2.20(2)(b) BCIP.

The judgment illustrates that consistent use and coherent branding can cause even functional design elements, such as stitching, to become distinctive as trade marks. This finding should be contrasted with the conclusion which the Benelux Court of Justice reached in *Van Haren Schoenen v AirWair International Limited* on 6 February 2024. In that case, the Benelux Court of Justice found a similar yellow-stitch trade mark to be invalid because there was insufficient evidence that the mark had acquired distinctiveness for all types of lace-up boots. In contrast, the Court in the present case reached the opposite conclusion, recognising that AirWair's marks had acquired distinctiveness through their long-standing market presence and strong brand recognition. The judgment largely overturns an earlier judgment of the President of the Dutch-language Enterprise Court of Brussels, declaring one of Airwair's marks invalid due to lack of distinctiveness.



# LABOUR LAW

***Royal Decree of 6 October 2025 Determines Cap on Employer's Social Security Contributions***

*Background*

On 29 July 2025, the Programme Law of 18 July 2025 (*Programmawet van 18 juli 2025 / Loi-programme du 18 juillet 2025* – the ***Programme Law***) was published in the Belgian Official Journal. The Programme Law provides for an exemption as from 1 July 2025 from the employer's obligation to pay social security contributions on the portion of an employee's quarterly gross base salary that exceeds a specific threshold (*see*, this Newsletter, Volume 2025, No. 8 for a comprehensive overview).

This cap on employer's social security contributions was announced as one of the key social security measures of the current federal government in the Federal Governmental Agreement of 31 January 2025 (*see*, this Newsletter, Volume 2025, No. 1) and the more recent "Summer Agreement" of 21 July 2025.

However, the specific applicable threshold for the exemption still had to be determined by Royal Decree.

*Salary Cap of EUR 85,000 per Quarter*

To this end, on 10 October 2025, the Royal Decree of 6 October 2025 harmonising and simplifying social security contributions reduction schemes was published in the Belgian Official Journal (*Koninklijk Besluit van 6 oktober 2025 tot uitvoering van artikel 38, § 1, tweede lid, van de wet van 29 juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers en tot wijziging van artikel 3 van het koninklijk besluit van 16 mei 2003 tot uitvoering van het Hoofdstuk 7 van Titel IV van de programmawet van 24 december 2002 (I), betreffende de harmonisering en vereenvoudiging van de regelingen inzake verminderingen van de sociale zekerheidsbijdragen / Arrêté royal du 6 octobre 2025 portant exécution de l'article 38, § 1er, alinéa 2, de la loi du 29 juin 1981 établissant les principes généraux de la sécurité sociale des travailleurs salariés et modifiant l'article 3 de l'arrêté royal du 16 mai 2003 pris en exécution du Chapitre 7 du Titre IV de la loi-programme du 24 décembre 2002 (I), visant à harmoniser et à simplifier les régimes de réductions de cotisations de sécurité sociale* – the ***Royal Decree***).

The Royal Decree establishes that no employer's social security contributions are due on the portion of an employee's quarterly gross base salary that exceeds EUR 85,000 (subject to annual indexation).

The exemption applies exclusively to the basic employer's social security contributions (24.92% for the private sector). The special employer's social security contributions, such as contributions to the Closure Fund for Enterprises, the sectoral funds, and the Asbestos Fund, as well as the employee contributions (13.07%), remain due on the entire gross salary, including the portion that exceeds the threshold.

*Definition of Base Salary*

The base salary considered for the exemption consists of all salary components that are proportional to the work performed during the quarter. For the private sector, the Belgian National Social Security Office clarified in its administrative instructions that this concerns the salary reported under salary code 1 in the electronic platform, which includes, inter alia, the normal salary, overtime pay, guaranteed salary, single holiday pay, and benefits in kind.

Conversely, other salary components, such as variable remuneration, end-of-year premiums, double holiday pay, and severance pay, should not be considered for determining the quarterly threshold.

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