November-December 2025

VBB on Belgian Business Law

Issue Highlights

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

Legal 500, 2019

Topics covered in this issue

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ARTIFICIAL INTELLIGENCE

European Commission Publishes First Draft Code of Practice on Transparency of AI-Generated Content

On 17 December 2025, the European Commission (the ***Commission***) published the first draft of the Code of Practice on the marking and labelling of AI-generated content for transparency purposes (the ***Code***). The document aims to assist providers and deployers of Artificial Intelligence (***AI***) systems in complying with the transparency obligations set out in Article 50 of Regulation 2024/1689 (the ***AI Act***). The text was drafted by two working groups, representing industry, academia, civil society and Member States.

Providers Must Implement Multi-Layered Marking Techniques

Section 1 of the Code targets providers of generative AI systems under Article 50(2) and (5) of the AI Act. Given the current state of the art, no single marking technique suffices to ensure effectiveness, robustness, and reliability. Consequently, providers must implement a multi-layered approach to marking content.

This approach requires combining different technical solutions. Providers must use machine-readable marking techniques, which include embedding metadata containing a digital signature and information regarding the type of AI operation performed (e.g., prompting or editing). Additionally, providers must interweave imperceptible watermarks directly within the content. These watermarks must remain detectable even after the content undergoes typical processing steps or common alterations.

To enable verification, providers must offer free detection interfaces, such as an Application Programming Interface (API) or a publicly available detector. These tools must allow users to verify whether content originated from or was manipulated by an AI system. Furthermore, providers of generative AI models must implement forensic detection mechanisms and ensure that they do not remove existing marks when their systems process input content.

Deployers Must Apply Common Taxonomy and Labelling Icon

Section 2 of the Code focuses on deployers who generate deepfakes or publish AI-generated text to inform the public on matters of public interest, pursuant to Article 50(4) and (5) of the AI Act. To ensure consistent disclosure, the Code introduces a common taxonomy for classifying content. This taxonomy distinguishes between "Fully AI-generated content", which the system generates autonomously, and "AI-assisted content", when the AI system substantially impacts the output despite human involvement.

Deployers must disclose such content using a common icon. Until the European Union finalises a common interactive icon, the Code proposes an interim solution. Deployers should use a clearly visible icon consisting of a two-letter acronym referring to Artificial Intelligence (e.g., "AI", "KI" or "IA").

Specific Disclosure Measures for Deepfakes and Text

The Code outlines specific measures for different content modalities. For real-time video deepfakes, deployers must display the icon consistently in a non-intrusive manner and provide a disclaimer at the start of exposure. For audio-only content, deployers must include an audible disclaimer regarding the artificial origin of the content.

In terms of text published to inform the public on matters of public interest, deployers must clearly disclose the artificial origin of the text. However, the Code clarifies that this obligation does not apply if the content underwent a process of human review and a natural or legal person holds editorial responsibility. In such cases, deployers must document the review process and the identity of the person holding editorial responsibility.

ARTIFICIAL INTELLIGENCE

Stakeholders Invited to Submit Feedback

This first draft constitutes a foundation for further refinement. The Commission invites participants to review the document and provide feedback by 23 January 2026. The working groups will use this input to shape the second version of the Code, which they intend to publish in mid-March 2026. The Commission expects the publication of the final Code in June 2026.

The draft Code can be found here.

COMPETITION LAW

Belgian Competition Authority Informally Authorises Sustainability Agreement to Commercialise Only Compostable Coffee Pods

On 19 December 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – ***BCA***) gave its informal blessing to a joint commitment by suppliers of roasted coffee to commercialise only industrially compostable coffee pods starting on 12 August 2026. The suppliers represent 90% of the market, while the agreement pushes forward a statutory deadline provided for by the Packaging and Packaging Waste Regulation (Regulation (EU) 2025/40) (***PPWR***).

Applying the principles contained in the Guidelines on Horizontal Cooperation Agreements of the European Commission (the ***Commission***) and the draft Guidelines for Sustainability Agreements of the BCA (*See*, this Newsletter, Volume 2025, No. 10), the President of the BCA approved the joint commitment on the following grounds:

- The joint commitment is a sustainability agreement that reduces waste, decreases the contamination of the waste streams that are not supposed to contain coffee pods, and boosts recycling efforts.
- The joint commitment allows waste management companies to adapt their systems to the new make-up of waste from coffee.
- The joint commitment does not restrict competition among roasted coffee suppliers because (i) it only moves forward by a year and a half a requirement already provided for by the PPWR; (ii) it will not substantially reduce the choice of coffee pods because suppliers compete on a range of factors unaffected by the agreement, including price and quality of the coffee; (iii) it will decrease the cost of waste treatment; (iv) it does not require the exchange of sensitive business information; and (v) it has a limited scope which does not affect other competitive aspects of sustainability, such as the method employed to produce the coffee.

The BCA should be commended for its ability to offer guidance quickly in an area of concern to both business and competition authorities around the world.

Belgian Competition Authority Accuses IQVIA of Abusive Behaviour Involving Pharmaceutical Data

On 9 December 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – ***BCA***) announced that it would start a thorough investigation of the commercial practices of IQVIA, a company which the BCA describes as "*active in the supply* (...) *of technological solutions and data analysis to support pharmaceutical, biotechnology, and medical device companies in the development and commercialisation of their products*". IQVIA is accused of unspecified abusive behaviour in the sector of pharmaceutical data collection and processing. According to the BCA, this sector is highly concentrated in Belgium.

The investigation was prompted by a complaint and backed by an initial inquiry that pointed to allegedly "*serious indications*" of a possible infringement of Article 102 of the Treaty on the Functioning of the European Union and Article IV.2 of the Code of Economic Law.

It remains to be seen whether the BCA investigation will bear any resemblance to the procedure which the European Commission (the ***Commission***) conducted more than 20 years ago against IMS Health which, after its merger with Quintiles, became IQVIA. The Commission's case ended up before the Court of Justice of the European Union (the ***ECJ***) which established a first set of principles, later adapted and refined, regarding the application of the "essential facilities doctrine" in EU competition law. The case concerned the refusal of IMS Health to license its "brick structure" – a method of organising regional sales data for pharmaceutical products through pharmacies – to competitors. The ECJ held that a refusal to license could give rise to an abuse of dominant position if the refusal is preventing the emergence of a new product for which there is potential demand from consumers.

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The ECJ added that the refusal should not be unjustified and exclude any competition on a secondary market (case C-418/01, *IMS Health*, EU:C:2004:257, para. 38).

As the BCA points out, the pharmaceutical and broader healthcare sectors have been a priority area of competition enforcement for several years (*See*, this Newsletter, Volume 2025, No. 4). For their part, pharmaceutical data draw antitrust scrutiny for various reasons and in several jurisdictions. This includes, most recently, Spain, where the Spanish competition authority opened an investigation against Sandoz, Alliance Healthcare, and Bluetab Solutions, which are suspected of having exchanged sensitive commercial information of pharmacies, unbeknownst to the pharmacies concerned.

Belgian Competition Authority Tackles Again Merger Not Caught by Merger Control Rules in Live Nation – Pukkelpop Transaction

On 12 November 2025, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – ***BCA***) indicated that it would start to investigate the acquisition of the Pukkelpop music festival by Live Nation. The BCA opened its inquiry after it received express instructions to that effect by the Minister for Economic Affairs (the ***Minister***) pursuant to Article IV.39, section 1, 3° of the Code of Economic Law (***CEL***). Whilst a rare occurrence, this development does not come as a surprise. On 9 October 2025, the Minister had already declared in a plenary session of the federal Chamber of Representatives that he would *"personally involve the BCA in this file"*. The transaction prompted concerns due to the multiple roles which Live Nation is assuming in Belgium, more specifically, replicating its worldwide activities as the organiser of large-scale music events, artist management company, provider of artist booking services, manager of large concert venues, and the operator of ticket sales.

As the transaction was not notifiable under Belgian or European merger control rules because it did not meet the requisite financial thresholds, the BCA will apply Articles 101 and/or 102 of the Treaty on the Functioning of the European Union (***TFEU***) and the equivalent provisions under Belgian law, Article IV.1 and Article IV.2 of the CEL.

The BCA has proved to be an eager proponent of these enforcement tools which are deployed after the transactions take place and tend to throw the transactions concerned into disarray. Relying on the *Towercast* judgment of the Court of Justice of the European Union delivered on 16 March 2023, the BCA scuppered the acquisition of EDPnet by Proximus in 2023 (*See*, this Newsletter, Volume 2023, No. 12) and, earlier this year, the proposed acquisition of the artisan bakery segment of Ceres by Dossche Mills Group (*See*, this Newsletter, Volume 2025, No. 3)

If, as expected, the aggressive reliance on Articles 101 and 102 of the TFEU is complemented by new statutory powers for the BCA to "call in" mergers not caught by the merger control rules (*See*, this Newsletter, Volume 2024, No. 10), concluding a below-merger threshold transaction will prove hazardous and will require an early dialogue with the BCA as a precautionary measure.

The BCA is not alone in having ambitious designs for its merger control powers. It shares this vision with other competition authorities around Europe. On 6 November 2025, days before the launch of the investigation into Pukkelpop's acquisition by Live Nation in Belgium, the French competition authority (***FCA***) imposed a EUR 4.6 million fine on telemedicine firm Doctolib on account of a non-notifiable acquisition of a competitor (*See*, Van Bael & Bellis Life Sciences News & Insights of 6 November 2025). Following this decision, Benoît Coeuré, the head of the FCA, expressed the hope to the PaRR news service to secure "call in" powers from the French Parliament in 2026. Doctolib appealed this decision to the Paris Court of Appeals.

CONSUMER LAW

Publication of Updates to Alternative Dispute Resolution for Consumer Disputes Directive

See Litigation section.

DATA PROTECTION

Court of Justice of European Union Reinforces Online Marketplaces' Liability in Relation to User-Generated Content that Includes Personal Data

In its landmark judgment of 2 December 2025 in X v. Russmedia Digital and Inform Media Press (C-492/23, the Court of Justice of the European Union (***ECJ***) reshaped the responsibility of online marketplaces. The ECJ considered them as controllers of the personal data contained in user-uploaded advertisements. It further held that such platforms cannot shelter behind the hosting liability exemptions of the e-Commerce Directive (now the Digital Services Act) when faced with violations of the General Data Protection Regulation (***GDPR***).

Background

Russmedia Digital (***Russmedia***) operates https://www.publi24.ro/ (the ***Website***), an online marketplace for goods and services. In 2018, an anonymous user (***User***) uploaded a false advertisement on the Website claiming that a woman (***Ms. X***) was offering sexual services. The post included her photograph and telephone number, without her consent. The content was later reproduced on several other websites. Upon Ms. X's request, Russmedia removed the advertisement within an hour. However, the same advertisement remained accessible on the other third-party websites.

Ms. X sued Russmedia for infringing her image rights, honour and privacy. A lower court rejected her claim, qualifying Russmedia as a hosting provider benefitting from the safe harbour of the e-Commerce Directive. On appeal, a preliminary question was directed to the ECJ, asking whether Russmedia could rely on the liability exemption and whether it could be considered as a controller under the GDPR.

Online Marketplaces Can Be (Joint) Controllers

The ECJ first observed that joint controllership under the GDPR does not require a common decision or equal responsibility on the determination of purposes and means of data processing. In this case, while the User initiated the processing, Russmedia enabled and framed the publication of the personal data in pursuit of its own commercial purposes. The ECJ referred in particular to Russmedia's terms and conditions, which allowed it to use, copy, distribute, transmit, publish, reproduce, modify, translate and remove any uploaded content without justification. The ECJ concluded that Russmedia was a joint controller as it influenced the dissemination of personal data and took part in defining the *purposes* of the processing. It also set the technical parameters for the publication and thus, participated in the determination of the *means*.

The ECJ also considered that Russmedia's lack of involvement in the User's specific intent behind the unlawful advertisement did not exempt it from liability as Russmedia had participated in the data processing by enabling its publication - even allowing the User to stay anonymous - and by shaping how that data was disseminated, Russmedia "*facilitated*" the publication of such data without the data subject's consent.

Obligations of Online Marketplaces under the GDPR

The ECJ then clarified the obligations of online marketplaces under the GDPR, covering both the initial uploading of advertisements and the prevention of subsequent unlawful dissemination. It noted that controllers should implement appropriate technical and organisational measures and be able to demonstrate that processing activities comply with the GDPR. The ECJ underlined that online marketplace operators *know or should know* that users may upload advertisements containing sensitive personal data, which obliges them to implement proactive measures to identify such content before publication, verify whether the advertiser is the data subject concerned and, if not, refuse to publish the advertisement unless the advertiser can demonstrate that the data subject has given explicit consent.

DATA PROTECTION

In relation to the further dissemination of such content, operators must implement measures to limit third-party reproduction or redistribution, especially of sensitive personal data. The ECJ further encouraged the use of technical tools to prevent automated copying.

No Exemption for Liability for Controllers

Lastly, the ECJ held that the liability exemption provided for by the e-Commerce Directive does not apply when the operator qualifies as a controller and the information at stake contains personal data. In other words, the obligations laid down in the GDPR cannot be overridden by the safe harbour which exists for the benefit of hosting service providers.

Conclusion

This judgment is going to impact online marketplaces and, possibly, any platforms hosting user-generated content. While the ECJ expressly stated that GDPR-related obligations cannot require a "general monitoring obligation", a broad reading of the judgment could lead to such an obligation in practice. Further to the ECJ judgment, the Berlin and Hamburg data protection authorities published a joint press release stressing the wide application of the ruling. In practice, this is likely to create tensions with existing platform practices.

In the wake of this judgment, platforms should consider implementing strong data protection measures by design and by default, especially when sensitive data is processed, so as to demonstrate compliance with the GDPR in accordance with the accountability principle.

FOREIGN DIRECT INVESTMENT

Council of European Union and European Parliament Reach Political Agreement on Revisions to EU's Foreign Direct Investment Screening Regulation

On 11 December 2025, the Council of the European Union (the ***Council***) and the European Parliament (the ***Parliament***) reached a provisional political agreement (the ***Agreement***) regarding the proposal for a revised Regulation on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 (the ***Proposed Revised FDI Regulation***). The Agreement was reached exactly six months after the Council adopted its common negotiating position on the Proposed Revised FDI Regulation, which followed approximately one month after the Parliament adopted its amendments to the Proposed Revised FDI Regulation (*See*, Client Alert of 18 June 2025 and this Newsletter, Volume 2025, No. 5).

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

The Agreement in particular aims to strengthen the EU's existing FDI screening framework by establishing a common minimum scope, enhancing consistency across national systems, and reducing administrative burdens.

Mandatory FDI Screening Mechanisms

The Agreement provides that all 27 Member States will be required to establish a national FDI screening mechanism.

While under the existing framework Member States were not required to introduce a national FDI screening mechanism, they were encouraged to do so. Since then, many Member States have established their own screening mechanisms, with all Member States having adopted one and only a few (i.e., Croatia and Cyprus) being in the process of implementing their new mechanisms after adopting the supporting legislation over the past few months.

Common Minimum Scope

The Proposed Revised FDI Regulation will provide for a common minimum scope to address inconsistencies between national screening mechanisms and seal potential gaps. The exact extent of this common minimum scope was a point of contention between the Council and the Parliament. The Agreement now provides for a common minimum scope covering clearly defined sensitive areas, including:

- dual-use items and military equipment;
- hyper-critical technologies, such as artificial intelligence (AI; aligned with the EU AI Act and focused on general-purpose AI with relevance to space or defence), quantum technologies and semiconductors;
- critical raw materials;
- critical entities in energy, transport and digital infrastructure, based on a risk-based assessment by the Member State where it is established;
- electoral infrastructure; and
- specific financial system entities.

FOREIGN DIRECT INVESTMENT

While FDI screening will remain at the level of the Member States which will retain some flexibility in determining the scope of their national FDI screening mechanisms, each Member State will now have to screen FDI that falls under the common minimum scope.

For Belgium, this new common minimum scope will unlikely result in the expansion of the existing FDI screening mechanism because it arguably already covers these sectors. The exact impact of the new common minimum scope at the national level of each Member State will become clearer once the new draft Proposed Revised FDI Regulation is available.

Enhanced Cooperation and Accountability

While screening decisions remain the exclusive responsibility of the host Member State, the Agreement aims to enhance transparency and coordination between national authorities and the Commission. For this reason, the Agreement provides that when other Member States raise comments or the Commission issues an opinion, the screening authority of the host Member State will have to explain how these were considered or provide their reasons for disagreement. In addition, the Commission will be enabled to assist with information gathering if needed.

Operational Improvements and Interoperability

The Agreement aims to clarify and streamline operational aspects of the FDI screening framework, including:

- the creation of a shared database to prevent circumvention and facilitate the exchange of relevant experience between screening authorities;
- clarification of risk factors for assessing FDI; and
- an optional central portal for electronic filings (to be established upon the request of at least nine Member States).

Next Steps

The Agreement will now be formalised into a new draft Proposed Revised FDI Regulation which in turn will require formal approval by the Council and Parliament before its adoption. Once adopted, the new rules will apply 18 months after the entry into force of the new regulation.

The press release on the Agreement is available here in Dutch, English and French.

INTELLECTUAL PROPERTY

Court of Justice of European Union Clarifies Scope of Copyright Protection for Works of Applied Art

On 4 December 2025, the Court of Justice of the European Union (***ECJ***) delivered its judgment in the joined cases C-580/23 (*Mio v Asplund*) and C-795/23 (*USM v Konektra*), following requests for a preliminary ruling from the Court of Appeal of Sweden and the German Federal Court of Justice. The judgment addresses two questions: (i) whether works of applied art are subject to stricter originality requirements than other works; and (ii) how courts should assess infringements when functional objects incorporate creative elements.

Background

The judgment arose from two disputes concerning the copyright protection of applied art objects. In Sweden, the furniture retailer Mio was accused of infringing Asplund's copyright in its "Palais Royal" dining tables by marketing similar designs. The Swedish courts expressed uncertainty as to how originality should be assessed for works of applied art. They questioned whether the assessment should focus on elements relating to the designer's creative process or rather on the characteristics of the final object as reflected in its artistic appearance.

In Germany, USM, the creator of the modular USM Haller furniture system, brought an action against Konektra for offering identical components and providing assembly services enabling customers to reconstruct the system. The German courts questioned whether applied art objects are subject to a higher threshold of originality compared to other works, and whether factors such as the creator's intentions, the creative process, or subsequent artistic or professional recognition should play a role in determining whether the design qualifies as a copyright-protected "work."

ECJ's Judgment

As regards the relationship between copyright and design protection, the ECJ noted that there is no rule–exception relationship between the two regimes. A design or model may qualify as a "work" if it satisfies the requirement of originality, and the originality of applied art objects must be assessed according to the same criteria as for any other type of work. Higher standards of originality may therefore not be imposed on works of applied art.

Regarding the originality criterion, the ECJ observed that the creative character of the author's choices cannot be presumed. Even in the absence of technical constraints, it must be shown that these choices bear the imprint of the author's personality. Thus, the fact that a model produces an aesthetic effect is not sufficient on its own – the courts must identify creative choices expressed in the form of the object which must be identifiable with sufficient precision and objectivity. The ECJ nevertheless accepted that the judge may take into account the creative process and the author's intentions, provided that these elements are reflected in the expression of the object, without being decisive or necessary to establish originality. Elements such as the author's sources of inspiration, the use of pre-existing forms, the possibility of an independent similar creation, or the recognition of the object by specialised circles may also be considered, but do not play a decisive role in this assessment.

Finally, the ECJ spelled out the conditions for establishing copyright infringement: it must be determined whether the creative elements of the protected work have been reproduced in a recognisable manner in the allegedly infringing object. The overall visual impression created by the two objects in conflict, as well as the degree of originality of the work, are not relevant. Moreover, the possibility of an independent similar creation cannot justify refusing protection. In other words, what matters is the recognisable incorporation of creative elements, not an assessment based on the overall impression produced by the objects.

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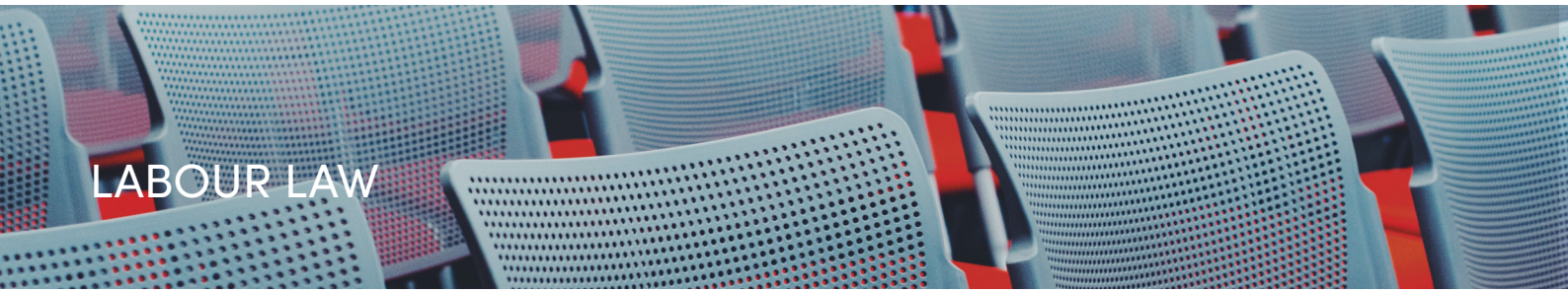
Conclusion

The ECJ confirmed that copyright protection and design protection can coexist and that one does not exclude the other. It also held that originality is not presumed and that it implies that the personality of the author is reflected in the work in order for that work to be eligible for copyright protection. A mere aesthetic effect is not sufficient.

The most important take-away from the ECJ's judgment is that for the assessment of copyright infringement the overall impression created by the two objects and the degree of originality of the work are not relevant.

Particularly, the ECJ's finding that the "overall impression" test is only relevant in relation to design law and is not applicable to copyright infringement assessments will likely have a significant impact on Belgian courts which will have to determine whether creative elements have been copied in a recognisable manner. Visual similarity between two objects is irrelevant if no specific expressive feature has been taken. Consequently, two works may look strikingly similar, yet no infringement will be found when the protected creative elements have not been reproduced.

The judgment can be accessed here.



LABOUR LAW

New Measures to Reintegrate Employees on Sick Leave Sooner

On 30 December 2025, the Law of 19 December 2025 amending the rules on return to work in the event of sick leave (*Wet tot uitvoering van een versterkt terug naar werkbeleid in geval van arbeidsongeschikt/ Loi exécutant une politique renforcée de retour au travail en cas d'incapacité de travail*) as well as a Royal Decree of 17 December 2025 amending the Code on Well-being at Work with regard to the reintegration of employees on sick leave and the prevention of long-term absences (*Koninklijk Besluit tot wijziging van de codex over het welzijn op het werk wat de re-integratie van arbeidsongeschikte werknemers en de preventie van langdurige afwezigheid betreft/ Arrêté royal modifiant le code du bien-être au travail en ce qui concerne la réintégration des travailleurs en incapacité de travail et la prévention des absences de longue durée*) entered into force on 1 January 2026.

Stricter Rules Governing Absence

- Sick leave without medical certificate: Employees will now be entitled to a maximum of two days of sick leave per calendar year without a medical certificate instead of previously three. Nevertheless, employers with less than 50 employees can stipulate in their work rules that a medical certificate is required for every absence from work (including one-day absences).

- Extension of the relapse period for guaranteed salary: Employees are normally entitled to 30 days of guaranteed salary at the employer's expense in the event of incapacity for work. Under the new rules, the relapse period following a return to work will be extended from 14 days to eight weeks. This means that if an employee returns to work and falls ill again within eight weeks (due to the same illness or accident), he/she is again entitled to 30 days of guaranteed salary at the employer's expense.

- No new guaranteed salary during partial return to work: During a period of partial return to work, any new entitlement to guaranteed salary is excluded in the event of a new full incapacity for work. In that case, the employee immediately falls back on the health insurance fund, without any new entitlement to guaranteed salary arising. Under the previous rules, such entitlement would arise again after incapacity for work following 20 weeks of partial return to work.

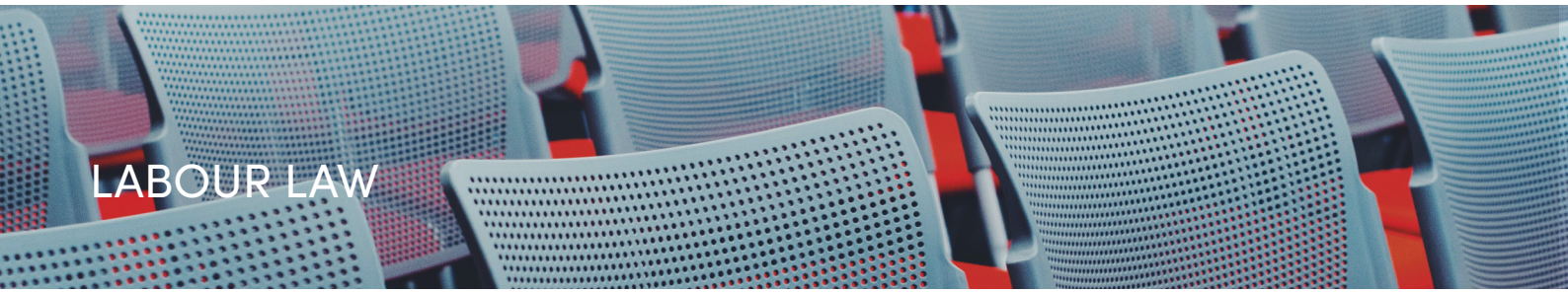
Accelerated Reintegration Procedure and Increased Responsibility

- Pre-return-to-work visit: Employers may now request a medical visit before an employee returns to work with a view to facilitate the return to work and to assess whether alternative workplace adjustments are required. Previously, only employees could request such a visit.

- Preventive measures: Employees who are not yet on sick leave but are at risk of becoming so (for example, in the event of stress related symptoms) may request a preventive reintegration procedure. However, the employer is not obliged to cooperate.

- Mandatory contact during the incapacity for work: Employers are now required to maintain contact with employees who are incapacitated for work. Although the new rules do not specify as from which period of absence it is exactly required to maintain contact, employers must provide for a procedure in their work rules.

- Earlier start of formal reintegration procedures: Subject to the employee's consent, employers may now start a formal reintegration procedure from the first day of incapacity for work, while previously, this was only possible after three months of uninterrupted incapacity for work.



LABOUR LAW

- Assessment of remaining work capacity: After eight weeks of incapacity for work, the external service for prevention and protection at work must assess the remaining work potential. If the assessment is positive, employers with more than 20 employees are required to start a formal reintegration procedure no later than six months after the start of the incapacity for work.

- Non-compliance with the above measures may result in sanctions:

    - Employee: in case of insufficient cooperation (e.g. failing to respond to the occupational physician's invitation), the health insurance benefits may be entirely or partially suspended.

    - Employer: organisations with more than 20 employees that, without a valid reason, do not start a reintegration procedure or do not do so in time, risk level 2 sanctions under the Social Criminal Code (administrative fines of up to EUR 2,000 or criminal fines of up to EUR 4,000 per employee, including surcharges). These sanctions may also be imposed on directors or representatives, such as the HR manager.

Employer's Financial Contribution

- Large organisations with more than 50 employees are now required to pay a solidarity contribution equal to 30% of the health insurance benefits paid by the health insurance fund, during the first two months following the period of guaranteed salary. However, small and medium-sized organisations with a maximum of 50 employees are exempt.

Reduced Period for Initiating Medical Force Majeure Procedure

- The required period of continuous incapacity for work before an employer may be able to initiate the procedure to terminate the employment agreement for medical force majeure reasons is reduced from nine to six months, provided that no reintegration procedure is ongoing.

- Based on the wording of the new rules, this reduced period would also seem to apply to ongoing cases of work incapacity that began prior to 1 January 2026. If this interpretation is correct, the procedure can be initiated as soon as the six months threshold is reached following periods of sick leave prior to 1 January 2026. However, this may be clarified by the authorities in the coming weeks.

LITIGATION

Publication of Updates to Alternative Dispute Resolution for Consumer Disputes Directive

On 30 December 2025, the *Official Journal of the EU* published Directive (EU) 2025/2647 of 16 December 2025 "*amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828 following the discontinuation of the European Online Dispute Resolution Platform*" (the ***Modifying Directive***). The Modifying Directive revises Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution (***ADR***) for consumer disputes (the ***ADR Directive***). ADR refers to out-of-court methods for resolving disputes between consumers and traders (i.e., businesses), typically with the assistance of a neutral third party, such as a mediator or an ombudsman.

Background

On 17 October 2023, the European Commission (the ***Commission***) proposed a package of measures to modernise and simplify the ADR rules. The package included the draft Modifying Directive and a Regulation discontinuing the European Online Dispute Resolution Platform, which had been used less frequently than anticipated.

The Modifying Directive, which was approved by the Council of the European Union on 17 November 2024, aims to make ADR more accessible and attractive to resolve disputes arising from contractual B2C relationships, including matters related to pre-contractual obligations. It adapts the ADR framework to the realities of digital markets, promotes its use in cross-border disputes, and simplifies procedures for the benefit of all stakeholders. In addition, the Modifying Directive streamlines reporting requirements and reduces administrative burdens (Recitals 3 and 23 of the Modifying Directive).

What Changed?

The material scope of the ADR Directive is limited to disputes arising from contractual obligations for the sale of goods or services. However, the updated ADR Directive now specifies that it also applies to disputes relating to situations stemming from the pre-contractual phase (such as advertising) and those following the termination of a contract (Article 1(1) Modifying Directive).

The Modifying Directive also significantly reshapes the ADR framework to reflect the realities of today's digital and cross-border markets. It broadens the scope to include both domestic and cross-border consumer disputes as well as disputes between EU-based consumers and traders from third countries. Member States must enable consumers residing in their territories to access ADR procedures for disputes with third-country traders covered by the ADR Directive, provided both parties jointly request it. Such access may be subject to conditions, including agreement to apply the law of the EU Member State where the ADR entity and the consumer are located, and the trader's commitment to comply with ADR procedural rules and any applicable fees. Additional conditions may be imposed to safeguard the effective functioning of ADR entities. Importantly, any agreement on applicable law cannot deprive consumers of mandatory protections under the law of their habitual residence (Article 1(4)(a) Modifying Directive). This change aims to render ADR more accessible and appealing in an increasingly digital economy.

As the European Online Dispute Resolution Platform was discontinued, the Modifying Directive creates a deadline for the Commission to develop a new digital interactive tool within three months of its entry into force (i.e., by 20 April 2026) (Article 1(10)(c) Modifying Directive). This IT tool should provide information on consumer redress, including information on using ADR in cross-border contexts, as well as links to information on consumer rights. The tool should assist consumers in identifying appropriate redress solutions for their specific case and taking the appropriate action. It should contain ADR contact points, direct links to the complaint

forms of ADR entities (if available) and a machine-translation function for ADR entities and ADR contact points. The Commission should promote the new interactive tool and ensure its technical maintenance.

To strengthen participation by both consumers and businesses, EU Member States should promote the use of ADR. Moreover, they should facilitate access by consumers residing in their respective territories to ADR procedures for disputes with third-country traders and ensure that they can bring their disputes before an ADR entity (Article 1(4)(a) Modifying Directive). In addition to sector-specific legislation mandating ADR participation, EU Member States can introduce national legislation to make traders' participation in ADR compulsory in specific sectors if they consider this appropriate (Recital 24 Modifying Directive). Furthermore, traders are required to respond within, at most, 20 working days to requests from ADR entities to participate in ADR procedures (Article 1(4)(d)(9) Modifying Directive). This obligation aims to involve businesses early and ensure that they are fully informed about the ADR process.

Consumer awareness is another priority. Businesses must provide ADR information in a clear, understandable, and easily accessible manner, by publishing it on their websites and in their general terms and conditions (Article 1(7)(a) Modifying Directive). EU Member States must ensure that, if ADR entities permit consumers to initiate and pursue ADR procedures by means of digital tools, including but not limited to online interfaces and electronic complaint forms, such tools are designed and implemented in a manner that guarantees accessibility for all consumers, including vulnerable consumers and those with differing levels of digital competence (Recital 18 Modifying Directive).

EU Member States should implement the Modifying Directive by 20 March 2028 and apply those measures from 20 September 2028.

The Modifying Directive can be consulted here. Further information can be retrieved from the October 2024 edition of this Newsletter (*See*, this Newsletter, Volume 2024, No. 10).

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