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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.”

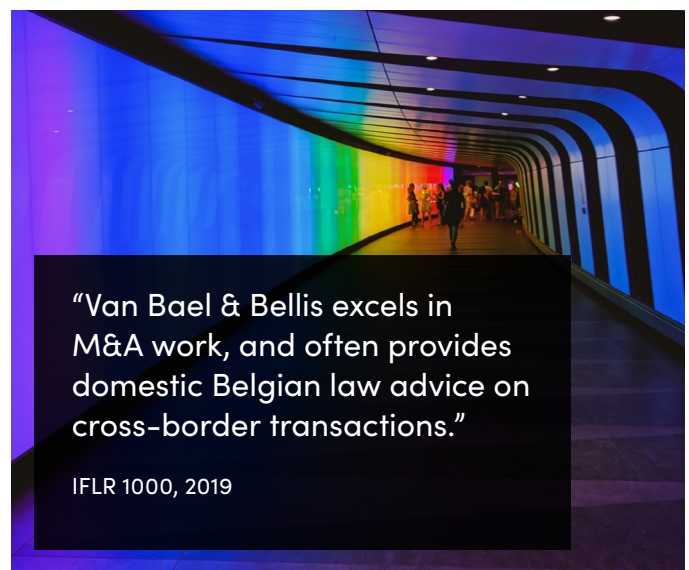
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COMMERCIAL LAW

Statutory Interest and Default Commercial Interest Published

On 30 January 2026, the statutory interest rate applicable to civil matters and commercial relations with private individuals/natural persons was published in the Belgian Official Journal (*Belgisch Staatsblad / Moniteur belge*). For 2026, the statutory interest rate amounts to 4.5%, remaining unchanged from 2025 (See, [this Newsletter, Volume 2025, No. 1](#)).

Additionally, the Federal Public Service Finance announced that the bi-annual default interest rate applicable to commercial transactions will also not change during the first semester of 2026 remaining at 10.5%. 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 applicable to 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.



COMPETITION LAW

Belgian Competition Authority Seeks Views on Draft Guidance Regarding Application of Competition Rules to Public Procurement

On 6 January 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the **BCA**) started a public consultation regarding draft guidance on the application of the competition rules to public procurement (See, attachments). The draft guidance is designed to help public procurement managers prevent anticompetitive conduct from happening and identify any such behaviour if the preventive measures fail. Once finalised, the guidance will update a version which the BCA published in 2017 (See, [this Newsletter, Volume 2017, No. 1](#)).

According to the BCA, the economic stakes are high: in 2024, more than 20,000 public tenders worth in excess of EUR 85 billion were published in Belgium. The sector has long been a competition enforcement priority (See, [this Newsletter, Volume 2025, No. 4](#)) and recently gave rise to significant enforcement decisions regarding private security and fire protection services (See, [this Newsletter, Volume 2024, Nos. 6-7](#)). In healthcare, the public procurement rules have been paired with sector-specific regulation to bolster the competitive position of biosimilar medicines for biological molecules that are no longer protected by patent rights.

The draft guidance focuses on bid rigging, the abuse of dominance, and specific conduct of the public procurement manager.

- *Bid rigging* – This is the most common form of anticompetitive behaviour in public tender procedures. It manifests itself in a variety of practices such as the allocation of customers, territories, allotments or types of assignments and the submission of cover bids to create a false impression of competition. Significantly, this is a rare type of competition law infringement which in Belgium also carries criminal penalties.

- *Abuse of dominance* – This conduct occurs even more rarely, is often difficult to prove, and may take the form of both predatory and excessive pricing.
- *Conduct of the public procurement manager* – The public procurement manager has the responsibility to ensure the equal treatment of all the bidders, avoid conflicts of interest, and stay away from corruption.

The draft guidance extensively details best practices for public procurement managers to reinforce competition and innovation across the entire procedure from the planning phase, the conceptualisation and description of the assignment and the choice of tendering procedure, to its implementation, including the review and assessment of the bids. Public procurement managers are also encouraged to be vigilant for specific red flags that may point to anticompetitive behaviour.

The draft guidance contains the interesting recommendation for public procurement managers to maintain an adequate balance between transparency and confidentiality. For example, transparency is key in the preparatory phase of a public tender to ensure maximum interest in the procedure and create a level playing field among potential participants. Conversely, it is crucial for public procurement managers to protect business secrets at all times and to exercise restraint in divulging pricing information at the end of the procedure, for example by relying on price ranges or other proxies rather than exact prices.

The draft guidance concludes by explaining what should be done if there are suspicions of anticompetitive behaviour and how damages can be obtained to compensate for established competition law violations.

Stakeholders are requested to submit their comments by 28 February 2026.



COMPETITION LAW

Supreme Court Rules that Finding Concerted Practice Necessarily Implies Determining its Duration and Annuls Markets Court Judgment in Tobacco Case

On 31 October 2025, the Supreme Court (*Hof van Cassatie / Cour de cassation*) overturned a judgment of the Markets Court of the Brussels Court of Appeal (*Marktenhof / Cour des Marchés* – the **Markets Court**) of 15 February 2023 (the Challenged Judgment). The Challenged Judgment partially annulled a decision by which the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the **BCA**) had fined four tobacco manufacturers on account of two concerted practices involving the exchange of commercially sensitive information through wholesalers (See, [this Newsletter, Volume 2022, No. 4](#)).

In the Challenged Judgment, the Markets Court confirmed the BCA's finding that the tobacco manufacturers committed an infringement by object of Article IV.1 of the Code of Economic Law (*Wetboek van Economisch Recht / Code de droit économique* – the **CEL**) and Article 101 of the Treaty on the Functioning of the European Union (**TFEU**). However, the Markets Court also held that the BCA had insufficient reasons to conclude to the existence of two single and continuous infringements. This is because the BCA failed to show, in concrete terms, that (i) there was an overall plan to restrict competition to which the manufacturers had each contributed; and (ii) the parties were aware of the illegality of each other's conduct (*i.e.*, receiving and processing price lists). The Markets Court also discovered other flaws in the reasoning of the BCA, such as the fact that, based on the duration of the infringement determined by the BCA for each of the parties, one of the tobacco manufacturers found itself to be the only party to an anticompetitive agreement for part of its duration, which is logically impossible. The Markets Court had thus annulled the BCA Decision, except for the finding of an infringement of Article IV.1 CEL and Article 101 TFEU (See, [this Newsletter, Volume 2023, No. 2](#)).

The tobacco manufacturers filed a further appeal to the Supreme Court against the Challenged Judgment. The Supreme Court held that, for an anticompetitive concerted practice to exist, it is necessary to establish the period during which the practice took place, as “*the determination of this period is inseparable from the very existence of the concerted practice*”.

The Supreme Court noted that it was impossible for the Markets Court to confirm a BCA decision finding an anticompetitive concerted practice while at the same time annulling that very decision because of flaws in the definition of the beginning and end of the infringement. The Supreme Court therefore annulled the Challenged Judgment and referred the case back to the Markets Court which will have to reconsider the case in a different composition.

INTELLECTUAL PROPERTY

European Commission Publishes New Study on Application of Directive on Enforcement of Intellectual Property Rights

On 27 January 2026, the European Commission (the **Commission**) published its follow-up [study](#) “on the application of the Directive on the Enforcement of Intellectual Property Rights” (**IPRED**). The IPRED was adopted in 2004 and a first assessment was published in 2017. The new study, which was carried out by EY and Technopolis Group, covers five specific but disparate areas:

- the proportionality principle;
- patent assertion entities (**PAEs**);
- dynamic blocking injunctions (**DBIs**);
- sharing of information and data protection; and
- costs for storage and destruction of infringing goods.

Proportionality – Proportionality is expressed in Article 3 of IPRED along with the other objectives of effectiveness and dissuasiveness. The juxtaposition of these three principles is supposed to achieve a balance between the competing interests of right holders and infringers. However, the study reveals that while the courts frequently consider the proportionality principle in copyright infringement cases, this is less frequent in patent cases. According to the study, injunctions in patent cases are often granted automatically once the patent is found to be valid and infringed, while case-specific factors such as economic impact, third-party effects, and the technical value of the patent are not considered. While the views on these findings will obviously diverge among different categories of stakeholders, the study favours Commission guidelines that would define factors which the courts should assess when applying the proportionality principle.

PAEs - PAE's or non-practising entities (**NPEs**) are entities that own one or more patents but do not manufacture, use, or sell any of the inventions claimed in the patents. They are regarded as a source of

unnecessary litigation. According to the study, their presence in Europe is limited, with the exception of Germany. The study suggests waiting for the first judgments of the Unified Patent Court before considering steps such as guidelines for the courts or amendments to IPRED.

DBIs – DBIs allow for injunctive relief against intermediaries, ensuring that both current and future repeated identical or similar infringement acts are addressed without the need for IPR holders to start new judicial procedures to obtain additional injunctions. The study calls for (i) the use of DBIs for a wider range of intellectual property rights, rather than just copyright; (ii) the increased use of less expensive and burdensome voluntary procedures and out of court settlements; and (iii) further harmonisation of the process giving rise to DBIs to enhance their effectiveness.

Sharing of information and data protection – The study observes varying interpretations and inconsistent application across Member States of court orders requiring infringers to provide information on the origin and distribution networks of infringing goods and services. A key challenge is finding the balance between the right to information and conflicting rights, such as data protection, privacy, and confidentiality. The study suggests increasing the scope and quality of available data; promoting voluntary cooperation mechanisms; and offering guidance regarding the implementation of Article 8 of IPRED which governs the right of information.

Costs for storage and destruction of infringing goods – The study makes a series of practical recommendations, including increased coordination among customs authorities; more cross-border cooperation among police forces (with an enhanced role for Europol and Eurojust); guidance regarding alternative approaches such as reuse and recycling of infringing goods; and greater involvement of right holders in decision-making with respect to the handling of infringing goods.



LITIGATION

Court of Justice of European Union Rules on Law Applicable to Damages Caused by Online Games of Chance

On 15 January 2026, the Court of Justice of the European Union (the **CJEU**) delivered its judgment in case C-77/24 *Wunner*. The CJEU held that a player of *online* games of chance may rely on the law of his or her country of residence when bringing an action to establish liability in tort on the part of the directors of a foreign provider that does not hold the required licence.

Background

An Austrian resident sought restitution for losses incurred playing in a Maltese *online* casino game which operated without an Austrian licence. The player took action against the two directors of the *online* casino before courts in Austria on grounds of tortious conduct for violation of protective gambling provisions.

On appeal, the Austrian Supreme Court (**referring court**) referred questions for a preliminary ruling to the CJEU and asked whether the action fell outside the scope of the Rome II Regulation, as a company law matter under Article 1(2)(d). In the case it did not, the referring court asked if the damage could be considered to have occurred in the player's Member State in which he or she is habitually resident pursuant to Article 4(1).

Rome II Regulation

Article 1(2)(d) of the Rome II Regulation excludes all non-contractual obligations that concern company law matters from its scope. This excluded category includes obligations regarding the creation of the company or the appointment of directors and linked to the management, operation or organisation of the company.

By contrast, the CJEU held that the liability of a director of a company arising out of an obligation that is external to the company's affairs falls within the scope of non-contractual liability under the Rome II Regulation.

According to the CJEU, such an obligation concerns the general duty of care *erga omnes*. It added that the directors' liability for breach of a general licensing requirement falls into that category and therefore does not qualify for the company law exception.

The CJEU thus sided with Advocate General Emiliou who had indicated that violations of online gambling licences amounted to general non-contractual obligations that are covered by the Rome II Regulation.

Wunner General Rule Regarding Applicable Law

The CJEU observed that, under Article 4(1) of the Rome II Regulation, the law applicable to a non-contractual obligation arising out of a tort or delict is, as a general rule, the law of the country in which the damage occurs.

In the context of *online* games of chance, the Court clarified that the damage sustained by the player must be regarded as occurring in the Member State in which the player is habitually resident. This is because the harm actually manifests itself in that State, where the player participates in the games and where the protected interests under national gambling legislation are affected. The Court noted that *online* games of chance cannot easily be linked to a specific physical location, which reinforces the conclusion that the damage must be localised in the Member State of the player's habitual residence.

Nevertheless, the Rome II Regulation still permits courts to depart from this general rule and apply the law of the other country. This may happen when the circumstances of the case demonstrate that the tort is manifestly more connected with another country. The CJEU emphasised that this is a strict and exceptional derogation, intended to preserve predictability and legal certainty.



LITIGATION

Impact

The practical implication of this consumer-protective judgment is that the location of the operator, the servers or the licensing authority of the *online* games of chance is no longer relevant for the determination of where the loss occurred. The operator's location is considered to be the place of the event giving rise to the damage, but not the place where the damage occurs.

The judgment can be found [here](#).

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