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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.”

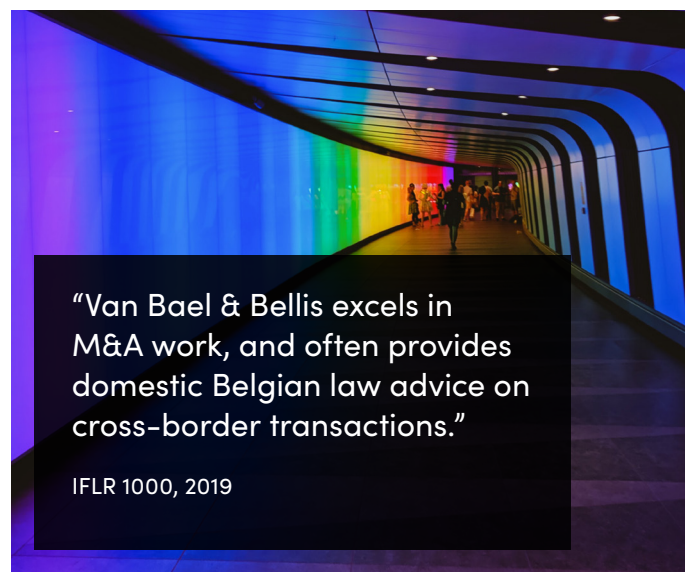
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COMMERCIAL LAW

Supreme Court Clarifies Powers of Injunction Judge with regard to Practices that Become Legal During Proceedings

In a judgment of 17 April 2026, the Supreme Court (*Hof van Cassatie / Cour de cassation*) clarified the powers of the injunction judge as provided for in old Article XVII.1 of the Code of Economic Law (**CEL**) (currently Article XVII.1/4 CEL), in situations where the legality of the challenged practices evolves during the proceedings (Supreme Court, 17 April 2026, *Uber B.V. v. Fédération Belge des Taxis and others*, C.25.0044.F, available [here](#)).

Background

The case concerns a dispute between Uber B.V., a Dutch company of the Uber Group (**Uber**), and several chauffeured car companies (collectively, the **claimants**), and the Belgian Taxi Federation (*Belgische Taxifederatie / Fédération belge des taxis*), as well as various taxi associations active in Brussels (collectively, the **defendants**).

The defendants argued that the chauffeured car companies had committed acts contrary to fair market practices by operating, *de facto*, as taxis in breach of the regulatory frameworks applicable in the Brussels-Capital and Walloon Regions, and that Uber was complicit in enabling this through the UberX platform.

In June 2018, the defendants initiated cease-and-desist proceedings before the President of the French-language Brussels Enterprise Court (*Ondernemingsrechtbank / Tribunal de l'entreprise*) seeking, *inter alia*,

1. a declaration that the claimants had infringed the (now repealed) Brussels Ordinance of 27 April 1995 on taxi and chauffeured car services (the **Ordinance**), as well as the rules on unfair market practices; and
2. a cease-and-desist order requiring the chauffeured car companies to stop offering rides on any Uber platform and in any other manner contrary to the Ordinance.

In a judgment of 16 January 2019, the President of the Brussels Enterprise Court dismissed the claims, save with respect to one chauffeured car company which was held liable for an infringement unrelated to the core issue. On appeal, the Brussels Court of Appeal (*Hof van Beroep / Cour d'appel*) declared on 15 January 2021 the appeal admissible and referred questions to the Constitutional Court.

However, in the meantime, the applicable regulatory framework had evolved significantly: a new Ordinance introduced a transitional regulatory framework allowing licensed chauffeured car companies to use platforms such as UberX under specific conditions. This Ordinance was followed by a broader reform that largely replaced the previous framework and caused the challenged practices to become lawful. In light of these developments, the Court of Appeal held on 23 February 2024 that it could no longer order the cessation of the challenged practices, as these had become lawful under the new regulatory framework. Nevertheless, it reformed the first-instance judgment and declared the practices unlawful for the period prior to the legislative changes.

Uber then lodged an appeal on points of law before the Supreme Court. It relied on case law according to which the injunction judge cannot, as a rule, find an infringement without ordering its cessation.

Supreme Court Judgment

In a brief and straightforward judgment, the Supreme Court reiterated the established general rule that the injunction judge must not declare conduct unlawful without also ordering its cessation.

Importantly however, the Supreme Court went on to create an exception to this general rule. It held that, if the act in question constituted an unlawful practice at the time the proceedings were brought, but became lawful in the course of the proceedings following a change in the law, the injunction judge cannot order

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the cessation of that practice as it has become lawful, but may nevertheless declare it to be unlawful.

Accordingly, the Supreme Court dismissed the appeal.

CJEU Clarifies Date of Expiry of Commercial Agency Agreements

On 23 April 2026, the Court of Justice of the European Union (the **CJEU**) ruled on a request for a preliminary ruling from the Belgian Supreme Court (*Hof van Cassatie / Cour de cassation*). In this ruling, the CJEU clarified when commercial agency agreements can be regarded as having expired under Council Directive 86/653/EEC of 18 December 1986 on self-employed commercial agents (the **Directive**) (CJEU, 23 April 2026, C-204/25, *Kempen Advies Beerse BV and Others*, ECLI:EU:C:2026:338, available [here](#)).

Background

The case concerns three commercial agency agreements concluded between Bank Nagelmackers NV and three of its commercial agents (the **claimants**), which were terminated in 2016 with varying notice periods, and, in some cases, an indemnity in lieu of notice. During the notice periods, the parties entered into a general settlement agreement covering the termination-related indemnity.

The claimants subsequently challenged the validity of that settlement agreement, arguing that it had been concluded under pressure and infringed mandatory provisions of, *inter alia*, Book X of the Belgian Code of Economic Law (**CEL**), which cannot be waived before the end of the contractual relationship. The courts at the first instance and appellate levels dismissed the claim, holding that the claimants had regained their contractual freedom once they were informed of the termination, even if the notice period was still running.

On further appeal to the Supreme Court, the claimants argued that protections arising from mandatory provisions, such as those at issue, cannot be legitimately waived or diminished before the end of

the contract which, they further argued, only occurs upon expiry of the notice period set by the principal.

The Supreme Court decided to stay the proceedings and send questions to the CJEU on when a commercial agency agreement can be considered to have “expired” under the Directive: on the date of *expiry of the notice period* or, instead, on the date on which the *agent becomes aware or could have reasonably become aware* of the termination.

Judgment of CJEU

The CJEU held that a commercial agency agreement can only be regarded as having expired once the agent is no longer economically dependent on the principal and the inequality between the parties has ceased. According to the CJEU, these conditions are satisfied only upon expiry of the notice period, and not at the time the agent becomes aware of the termination.

Accordingly, the protection afforded to commercial agents under the Directive extends throughout the entire notice period.



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Belgian Competition Authority Publishes Guidelines on Sustainability Agreements

On 2 April 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the **BCA**) published its guidelines on sustainability agreements (the **Guidelines**).

Sustainability agreements had already been the subject of public consultations in October and November 2025 (see, [this Newsletter, Volume 2025, No. 10, p. 5](#)). The **Guidelines** follow closely the guidance which the European Commission offered on the subject in its “horizontal cooperation agreement guidelines” and build on 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. Additionally, the **Guidelines** also draw inspiration from work undertaken by the Dutch competition authority in 2023 and by the French competition authority in 2024.

The **Guidelines** define sustainability agreements as arrangements that pursue one or more objectives of sustainable development which is the ability of a community to use the resources available today to satisfy the needs of current generations without compromising the ability of future generations to meet their needs. While drafting the **Guidelines**, the BCA has had occasion to review specific cases, most recently a joint commitment by suppliers of roasted coffee to commercialise only industrially compostable coffee pods (see, [this Newsletter, Volume 2025, No. 11-12, p. 5](#)).

Interestingly, *Autoriteit Consument & Markt*, the Dutch competition authority (**ACM**), which has amassed years of experience on sustainability, submitted its comments on the BCA’s draft **Guidelines** during the public consultation. It made three suggestions regarding (i) compliance agreements; (ii) agreements that counter environmental harm; and (iii) the possible ex post intervention by the BCA against cooperation agreements for sustainability in agriculture. Regarding compliance agreements, the BCA followed the recommendation of the ACM to specify that such agreements will not only be allowed to ensure the

observance of international rules, but also to guarantee compliance with European Union or national rules, provided such rules are not entirely implemented or enforced in the EU or Belgium. The proviso did not feature in the BCA’s draft **Guidelines**.

The BCA expressly encourages the business community to avail itself of the statutory possibility to seek an informal point of view from the President of the BCA (*Voorzitter / Président*) or to obtain informal guidance from the office of the chief competition prosecutor (*auditoraat / auditorat*).

Report Calls for Strengthening of Rules Governing Abuse of Economic Dependence

On 3 April 2026, the Belgian Federal Public Service Economy issued a report (the **Report**) assessing the Law of 4 April 2019 amending the Code of Economic Law with regard to abuses of economic dependence, unfair terms, and unfair market practices between undertakings (the **B2B Law**).

The B2B Law entered into force almost six years ago and established the prohibition of abuse of economic dependence, laid down in Article IV.2/1 of the Code of Economic Law (*Wetboek van Economisch Recht / Code de droit économique* – the CEL).

The **Report** considers the B2B Law to be an “indispensable instrument” to rebalance relationships between firms that find themselves with unequal bargaining power and claims that this instrument has proven its value in practice. At the same time, it makes eight recommendations – grouped into five clusters – with a view to strengthening the effectiveness of the rules on abuse of economic dependence.

To that end, the Federal Public Service Economy submits these recommendations to the Chamber of Representatives (*Kamer van volksvertegenwoordigers / Chambre des représentants*) of the federal Parliament and proposes targeted legislative amendments, complemented by the adoption of official guidelines



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and the development of practical guidance tools (such as FAQs).

Background

The concept of economic dependence was introduced by Parliament to address the high evidentiary burden supposedly associated with proving a dominant position under Article 102 of the Treaty on the Functioning of the European Union and Article IV.2 CEL, while also capturing abusive conduct by firms that do not hold a dominant position but nevertheless exploit the dependence of another firm.

The prohibition of abuse of economic dependence is subject to three cumulative conditions: (i) the existence of a position of economic dependence; (ii) an abusive practice; and (iii) an actual or potential restriction of competition on the Belgian market or a substantial part of that market.

Report Recommendations

1. Position of economic dependence

Article I.7, 17° CEL sets out two cumulative conditions to establish a position of economic dependence: (i) the absence of a reasonably equivalent alternative available within a reasonable time, on reasonable terms and at reasonable cost; and (ii) the ability of one firm to impose performance or conditions on the other that could not be obtained under normal market circumstances.

First, the Report proposes to remove the second condition, so that the definition of economic dependence would rest solely on the absence of a reasonably equivalent alternative. This approach is supported by the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the **BCA**), which is of the view that the second condition reflects circular reasoning, as it does not involve economic dependence but relates to the assessment of abusive conduct which, as noted, is the second condition for a finding of abuse of economic dependence.

Second, the Report recommends clarifying the concept of economic dependence by:

- i. elaborating on the factors pointing to its existence such as:
 - the significant contribution of one firm to the turnover of another firm – for example when this contribution should be determined (at the conclusion of the contract and/or during the commercial relationship);
 - access to technology or essential resources, with concrete examples of situations in which such access may give rise to economic dependence;
 - whether the firm has knowingly placed itself in a position of economic dependence;
- ii. pointing to the need of considering contextual elements (such as the timing of order cancellations or refusals to supply, the specific needs of the supposedly dependent firm, and the sector concerned); and
- iii. providing concrete examples of different forms of economic dependence.

Third, the Report recommends clarifying the scope of application of the concept of abuse of economic dependence by codifying the case law of the Supreme Court (*Hof van Cassatie / Cour de cassation*). For example, that court held that abuse of economic dependence may also be invoked outside a contractual relationship (see, [this Newsletter, Volume 2025, No. 4, p. 4](#)).

2. Abuse

First, the Report calls for the development of an indicative list of concrete examples of abusive practices. That list should be updated in light of case law and the decision-making practice of the BCA.



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Second, it recommends examining whether guidance can be provided on how to assess the abusive nature of conduct, taking into account (i) the framework applicable to abuse of dominance; (ii) the doctrine of abuse of rights; and (iii) the principles governing unfair market practices.

This recommendation is intended to overcome the divergence between the approach of the BCA which is of the view that the abuse of economic dependence should be assessed in line with the requirements applicable to abuse of dominance and that of specific courts which analyse such conduct instead through the lens of abuse of rights or unfair market practices.

3. Facilitating proof of impact on competition

The Report proposes to ease the burden of proving an actual or potential restriction of competition on the Belgian market (or a substantial part) by:

- clarifying the scope of this condition in consultation with the BCA; and
- exploring the development of a standardised analytical framework based on objective criteria, such as market shares, barriers to entry, and market structure.

4. Strengthening deterrent effect of sanctions

Sanctions for abuse of economic dependence are currently capped at 2% of national turnover. This contrasts sharply with the regime applicable to other competition law infringements, according to which fines may reach 10% of worldwide turnover and periodic penalty payments may amount to 5%. In light of this discrepancy, the Report wonders whether the current level of sanctions is adequate.

5. Assessing whether abuse of economic dependence should qualify as an unfair market practice

Finally, the Report recommends assessing the desirability of incorporating the regime on abuse of economic dependence into Book VI of the CEL, which governs market practices.

This proposal stems from interpretative difficulties regarding the requirement that abusive conduct should have an impact on competition. Reclassifying abuse of economic dependence as an unfair market practice could shift the focus towards the protection of individual firms, regardless of the effect of the targeted conduct on competition.

However, the BCA has expressed opposition to this view. It argues that abuse of economic dependence is inherently part of competition law, and that a possible reclassification as an unfair market practice would create legal uncertainty by subjecting the same conduct to different legal regimes based on distinct conditions.

Assessment

The Report is premised on the idea that the rules governing abuse of economic dependence are desirable, will increase competition, and thus will stimulate growth and innovation for the benefit of consumers. However, that assumption is not a given and the Report made no attempt to analyse it. Instead, the Report argues that the rules at issue pursue what it refers to as a “necessary compromise between the freedom of enterprise and the need for norms to prevent and penalise abuses” (Report, at p. 5). The question arises whether pursuing this objective is not another step towards a dirigiste economy and emblematic of what ails European economies that suffer from a lack of entrepreneurial liberty. It is hoped that Parliament will ask itself that question when reviewing the Report.



DATA PROTECTION

European Data Protection Board Adopts Single Template for Data Protection Impact Assessments Across EU

On 14 April 2026, the European Data Protection Board (EDPB) took a notable step towards harmonising data protection practices across the EU by publishing a standardised template for Data Protection Impact Assessments (DPIAs). The template is now open for public consultation until 9 June 2026, giving stakeholders an opportunity to shape what is set to become the EU-wide standard for DPIAs.

Background

Pursuant to Article 35 of the GDPR, a DPIA is a process designed to describe personal data processing activities, assess their necessity and proportionality, and identify and manage risks to the rights and freedoms of individuals. It involves evaluating those risks and determining appropriate measures to address them. A DPIA must be carried out when a project involving processing operations is likely to result in a high risk to the rights and freedoms of individuals.

To date, the DPIA approach has varied across Member States, which has created uncertainty for organisations and, consequently, higher overhead costs. Against this backdrop, the EDPB has now published a harmonised template intended to address this fragmentation. The initiative aligns with the Digital Omnibus, a yet-to-be-adopted Regulation meant to streamline existing digital rules, which proposes an amendment to Article 35 tasking the EDPB with devising a common template and a common methodology for DPIAs.

Template

The document itself spans 18 pages, organised in fillable tables and accompanied by an [explainer](#). The template is structured into seven sections, which together walk the controller through the full DPIA reasoning process:

- **Set the scene:** who the controller(s) and processor(s) are, when the processing will run, and who is conducting the DPIA (team, methodological tools, scope, reasons);

- **Map the processing:** what data are processed, how the processing functions, the means used to carry it out, and the supporting assets and underlying architecture on which it relies;
- **Test the legal foundations:** the legal basis for the processing, how data minimisation, retention, and data quality are ensured, and which compliance measures are in place;
- **Justify the choice:** why the processing is necessary and proportionate, in light of the impacts on rights and freedoms that flow from the processing itself;
- **Anticipate what could go wrong:** which risks may arise, how they are managed, what measures should be included in the action plan, and what residual risks remain;
- **Bring others in:** input beyond the core team, including the Data Protection Officer's involvement and input from data subjects (or their representatives);
- **Decide:** which of four outcomes the controller adopts: (a) abandoning the processing, (b) consulting with the supervisory authority (SA), (c) proceeding with the processing as planned, or (d) conditionally proceeding with the processing.

The EDPB has opted for a broad and pragmatic approach, designed to accommodate the diversity of processing operations and to preserve existing methodologies already widely used by organisations. For example, with regard to the risk analysis in Section 4, the EDPB makes clear that “*controllers can conduct their risk analysis and management processes as they prefer, using the DPIA methodology of their choice*”.



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Practical Implications

After 9 June 2026, and once the template is finalised, all Supervisory Authorities (**SAs**) will take the necessary steps to adopt it as their template, or to use it as a meta-template with which existing national templates must align. Should the Digital Omnibus be adopted in its current form, this de facto alignment could become a legal obligation, as the proposal empowers the Commission to adopt the EDPB-devised template by means of an implementing act.

Once adopted, a common DPIA template should prove positive for organisations: it should reduce back-and-forths with SAs by clarifying expectations from the outset and ease the burden of adapting DPIAs to diverging national approaches.

The template can be found [here](#) (in English).

European Data Protection Board Publishes Guidelines on Processing of Personal Data for Scientific Purposes

On 15 April 2026, the European Data Protection Board (**EDPB**) published its long-awaited guidelines on the processing of personal data for scientific research purposes (the **Guidelines**) under the General Data Protection Regulation (**GDPR**). The Guidelines aim to clarify how the GDPR applies to research activities involving personal data, while ensuring that the fundamental rights and freedoms of data subjects remain adequately protected.

Background

Almost ten years after the GDPR's adoption, significant uncertainty remained around the concept of "scientific research". Although Recital 159 GDPR calls for a broad interpretation of the term, divergent approaches across Member States have continued to create legal uncertainty for researchers, universities, companies and other organisations involved in research activities.

The Guidelines seek to reduce this divergence by providing a structured framework for assessing when

processing can be regarded as being carried out for scientific research purposes.

Notion of 'Scientific Research'

Whether an activity qualifies as "scientific research" depends on a number of factors. In particular, controllers should consider whether:

- the research is conducted in a methodical and systematic manner, for example on the basis of a comprehensive research plan;
- the research complies with recognised ethical standards;
- the methods and outcomes are verifiable and transparent;
- the research is conducted with sufficient autonomy and independence, free from undue external pressure;
- the research aims to contribute to general knowledge or to the well-being of society, without excluding the possibility that it may also pursue commercial interests; and
- the research has the potential to contribute to existing scientific knowledge or to apply existing knowledge in novel ways.

When all these factors are satisfied, the activity will be presumed to constitute scientific research. If only some of the factors are present, the controller must be able to justify and demonstrate why the activity should nevertheless qualify as scientific research. The more factors exist, the stronger that justification will be.

These criteria are broadly in line with, but more detailed than, the definition of "scientific research" proposed by the Commission in the Digital Omnibus proposal. The Guidelines also provide useful clarification on several core GDPR requirements that are particularly relevant in a research context.



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Further Processing and Presumption of Purpose Compatibility

The Guidelines note that, under Article 5(1)(b) GDPR, further processing of personal data for scientific research purposes is presumed to be compatible with the initial purposes for which the data were collected.

However, the EDPB stresses that compatibility of purposes should not be confused with the lawfulness of processing. Controllers must still identify a valid legal basis for the further processing. In some cases, this may require a new legal basis, for example when the initial processing was based on consent or on a legal obligation.

The same reasoning applies to special categories of personal data. Controllers may rely on the presumption of compatibility when further processing such data for scientific research purposes, but they must still identify an applicable derogation under Article 9 GDPR allowing the processing of special categories of data.

Storage Limitation

The Guidelines confirm that personal data may be retained for future research projects. However, this is only permitted when the future research is reasonably foreseeable and falls within a sufficiently defined area of research. In other words, retaining personal data for generic “scientific research” purposes, without further specification, will not satisfy the storage limitation principle under Article 5(1)(e) GDPR.

Consent

The Guidelines confirm that broad consent may be used where specific research purposes cannot be fully identified at the time of data collection. However, this is only possible if the relevant research area is sufficiently defined, data subjects are properly informed, and additional safeguards are put in place to compensate for the lack of specificity. Such safeguards may include independent oversight, time-limited consent, and layered information notices.

Dynamic consent may also be used to complement broad consent. For example, renewed consent may be requested for individual research projects or processing operations that fall outside the original scope of consent or the data subject’s reasonable expectations.

The EDPB also draws a clear distinction between GDPR consent as a legal basis for processing and ethical or regulatory consent to participate in research, such as consent required under the Clinical Trials Regulation. Even when ethical consent has been obtained, controllers relying on Article 6(1)(a) GDPR must separately ensure that all GDPR conditions for valid consent are satisfied.

Transparency Obligations

The Guidelines set a high standard for transparency, particularly when personal data are not collected directly from data subjects.

If a controller intends or anticipates that personal data will be processed for scientific research purposes over a longer period, the EDPB recommends giving data subjects the opportunity to voluntarily provide contact details. This may be appropriate even if the research purposes themselves do not require the processing of contact details.

Controllers must provide the information required under Articles 13 or 14 GDPR, depending on whether the data are collected directly from the data subject or from another source. They must also update data subjects when material changes occur, for example changes to research purposes, legal bases, research partners, transfers outside the EEA, or retention periods.

In addition, the EDPB asserts that the information obligation pursuant to Article 13 may apply even when the controller does not itself directly process or access the personal data or has no direct contact with the data subject. This may be the case when processing is carried out by a processor or joint controller on the controller’s behalf. In such situations, another party



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may provide the information or respond to information requests on the controller's behalf, but ultimate responsibility remains with the controller.

By contrast, when personal data have not been collected directly from the data subject, a controller may, in limited circumstances, rely on an exemption under Article 14(5) GDPR. This may apply, for example, when the data subject already has the relevant information, when providing the information is impossible despite reasonable efforts to obtain contact details, when it would require disproportionate effort, or when individual notification would render the research objectives impossible or seriously impair them.

Appropriate Safeguards

The Guidelines confirm that the starting point for safeguards under Article 89(1) GDPR is a risk analysis and, if required, a data protection impact assessment.

Controllers must consider not only data protection risks, but also the broader impact on other fundamental rights and freedoms. This is particularly relevant in areas such as medical research, when the processing of personal data may directly or indirectly affect the provision of healthcare to a data subject.

On data minimisation, the EDPB is clear that personal data should be anonymised whenever the research purposes can be achieved without identifying individuals. The anonymisation process itself constitutes processing under the GDPR and must therefore comply with the GDPR principles, including the requirement to rely on a valid legal basis. Once data have been effectively anonymised, subsequent processing falls outside the scope of the GDPR.

When anonymisation is not feasible, for example when researchers have to monitor developments relating to an individual over time, personal data should be pseudonymised using state-of-the-art techniques. The Guidelines emphasise that pseudonymisation is not a one-off exercise. Controllers must continuously assess whether the techniques used remain effective,

particularly when datasets are combined or retained for long periods, as this may increase the risk of re-identification.

Attribution of Responsibility

The Guidelines also bring welcome clarity to a frequent source of confusion in research collaborations: who is the controller, processor, or joint controller? The EDPB emphasises a functional approach, meaning that roles must reflect actual involvement, regardless of how the parties have labelled themselves. In multi-actor settings, such as research consortia or public-private partnerships, parties should carefully assess and document how responsibilities are allocated.

For example, an entity that is actively involved in drafting a research protocol and determining the purposes and essential elements of the research will typically qualify as a controller or joint controller. By contrast, merely funding research or being consulted during the drafting process will not, in itself, make an entity a controller. The EDPB also confirms that an entity does not need to process personal data directly or extensively in order to qualify as a controller. For instance, a clinical trial sponsor may be a controller even when it mainly handles pseudonymised data.

The Guidelines are available [here](#) and are open for public consultation until 25 June 2026.

INTELLECTUAL PROPERTY

Court of Justice of European Union Defines Scope of Pastiche Exception for Music Sampling

On 14 April 2026, the Court of Justice of the European Union (the **CJEU**) delivered its preliminary ruling in *CG and YN v Pelham GmbH and Others* (C-590/23, **Pelham II**). The judgment follows a second request for a preliminary ruling by the German Federal Constitutional Court (*Bundesgerichtshof*, the **BGH**) and addresses the meaning and scope of the “pastiche” exception under Article 5(3)(k) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (the **InfoSoc Directive**).

Background

In 1997, music producer Moses Pelham released a track incorporating a two-second rhythmic sample taken from Kraftwerk’s 1977 recording *Metall auf Metall* without the group’s authorisation. Following infringement proceedings before the Hamburg courts, and a request by the BGH, the CJEU delivered its first judgment on 29 July 2019 (C-476/17, **Pelham I**), in which it held that even a very short audio sample falls within the phonogram producer’s exclusive reproduction right under Article 2(c) InfoSoc Directive, unless the sample appears in a modified form unrecognisable to the ear. This is the so-called “pastiche exception.” In essence, the pastiche exception allows the use of protected works without prior authorisation when the new use constitutes an imitation, stylistic borrowing, or incorporation of elements of an existing work for purposes such as creative re-use, collage, remix, mash-up, meme culture, or other forms of artistic dialogue.

Applying *Pelham I*, the Higher Regional Court of Hamburg held that Moses Pelham’s sample infringed the copyright of Kraftwerk’s band members. However, this ruling did not address the pastiche exception as it had not yet been transposed into German law. Following Germany’s transposition of the pastiche exception into national law, required by Article 17(7)

of Directive 2019/790 on copyright in the Digital Single Market (**DSM Directive**), Pelham sought to rely on that exception as a defence. Following Pelham’s appeal of the decision of the Higher Regional Court of Hamburg, the BGH stayed the proceedings and referred questions to the CJEU, asking in substance: (i) whether the pastiche exception constitutes a broad catch-all clause covering any form of artistic reuse of copyright-protected material; and (ii) whether the exception requires a subjective intention on the part of the user, or whether objective recognisability by an informed audience is sufficient.

CJEU Judgment

The CJEU confirmed that “pastiche” is an autonomous concept of EU law and must be interpreted uniformly across Member States. While the CJEU acknowledged that pastiche, parody, and caricature share specific features, including the requirement of a noticeable difference between the alleged pastiche and the source work, it held that they remain conceptually distinct.

On the scope of the exception, the CJEU rejected any interpretation of pastiche as a general licence for creative reuse of copyright-protected material. It found that pastiche refers to works that evoke one or more existing works while being noticeably different from them, using characteristic protected elements in order to create an artistic or creative dialogue with the original work. This dialogue must be recognisable as such and may take different forms, including stylistic imitation, homage or tribute, or humorous or critical engagement. Importantly, the CJEU stressed that pastiche requires an overt and recognisable use of existing material. Concealed imitation, plagiarism, or deceptive copying cannot qualify as pastiche. The CJEU added that the exception can apply to sampling, including the reproduction of recognisable parts of a song, provided the sample is used to create a new work satisfying the above requirements.

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As regards the second question, the CJEU ruled that a user's subjective intention is not decisive. To determine whether a use is "for the purpose of pastiche", it is sufficient that the pastiche nature of the new work is objectively recognisable to a person familiar with the original work and capable of understanding the artistic reference. In other words, what matters is not what the creator claims to have intended, but whether the work can reasonably be perceived as a recognisable artistic dialogue with the original.

Critical Assessment

This judgment is significant as it provides an EU-law definition of "pastiche", a concept that had previously received limited attention in both legislative materials and national case law. The CJEU's ruling charts a careful middle course: it avoids treating pastiche as a near-unlimited safe harbour for creative reuse while preserving meaningful room for forms of artistic expression, such as music sampling, which involve genuine dialogue with pre-existing works. Practitioners should note that the objective recognisability standard adopted by the CJEU, rather than a subjective intent test, is likely to be the key battleground in future disputes. The practical implications of this standard for other forms of reuse, including AI-generated content that draws on protected material, remains to be seen.

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

Brussels Court of Appeal Defines Limits of Trade Mark and Copyright Protection in Cosmetic Device Dispute while Stressing Importance of Observing Rules Governing Unfair Market Practices

On 9 March 2026, the Court of Appeal of Brussels delivered an important judgment in a dispute between Pollogen Ltd (**Pollogen**) and LA Poppe BV (**LA Poppe**), providing valuable guidance on the distinctiveness of a trademark and the conditions for infringement under Article 9(2) of the EU Trade Mark Regulation (**EUTMR**).

Background

Pollogen is a supplier of non-invasive aesthetic treatment devices and related products, notably

marketing a professional skin treatment device known as 'Geneo'. The device displays the sign 'geneo+' on its user interface and uses the EU trade marks 'Oxygeneo' and 'Tripollar' to designate its treatment technologies. It also markets consumables (capsules and gels) under the EU trade marks 'Pollogen' and 'Capsugen'. In 2019, Pollogen became aware that LA Poppe, a Belgian wholesaler of beauty products operating an online shop and training academy, was offering a competing device under the name 'Oxygen+'. Following test purchases, Pollogen alleged that

- the design and user interface of the Oxygen+ device were similar to its Geneo device;
- references to its signs (including 'Oxygeneo' and 'Tripollar') appeared on specific versions of the device; and
- consumables were marketed by LA Poppe in packaging allegedly imitating its products.


Pollogen brought an action before the Dutch-language Enterprise Court of Brussels (the **First Court**), alleging copyright infringement, trade mark infringement and unfair competition, and sought injunctive relief and ancillary measures, including a descriptive seizure. LA Poppe brought counterclaims, including an action seeking the annulment of the EU trade marks 'Tripollar' and 'Oxygeneo'. By judgment of 5 May 2023, the First Court dismissed Pollogen's actions and declared the marks 'Tripollar' and 'Oxygeneo' invalid. Pollogen appealed this judgment to the Court of Appeal of Brussels (the **Court of Appeal**).

Court of Appeal's Judgment

The Court of Appeal partially overturned the judgment of the First Court.

(i) Trade Marks

The Court of Appeal confirmed the invalidity of "Tripollar", holding that it is descriptive and devoid of distinctive character. Relying on the evidence submitted, the Court of Appeal found that terms such as 'tripolar' are commonly used in the field of



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radiofrequency skin treatments to describe devices using multiple electrodes. The relevant public, particularly professionals in the aesthetic sector, would therefore understand ‘Tripollar’ as referring to a technical characteristic of the goods, namely the use of tripolar radiofrequency. The Court of Appeal also found that Pollogen had not demonstrated any acquired distinctiveness through use.

In relation to the sign ‘Oxygeneo’, the Court of Appeal held that it would be perceived by the relevant public as a neologism without a clear or established meaning, rather than as a descriptive term. While the Court of appeal accepted that the relevant consumer may recognise the word “oxygen”, it held that this alone is insufficient to conclude that the sign ‘Oxygeneo’ describes a characteristic of the goods. In the absence of a sufficiently direct and concrete link between the sign and the relevant products, namely medical or aesthetic devices, the Court of Appeal concluded that the sign was not perceived as describing the characteristics of the products. Finally, the Court of Appeal emphasised that only a minimal degree of distinctiveness is required and concluded that the mark is capable of fulfilling its essential function of indicating origin, namely by enabling consumers to identify goods or services as originating from a single undertaking responsible for their quality.

Although the Court of Appeal upheld the validity of the trade mark ‘Oxygeneo’, it nevertheless rejected the infringement claim. The Court of Appeal found that while the sign ‘Oxygeneo’ was registered for medical devices, the products marketed by LA Poppe were considered purely cosmetic devices. As a result, the goods were neither identical nor similar. The Court of Appeal also found that Pollogen failed to demonstrate that the mark ‘Oxygeneo’ enjoyed a sufficient reputation in the relevant market.

The Court of Appeal also rejected the alleged infringement of the ‘Pollogen’ and ‘Capsugen’ trade marks on the basis that the requirement of use in the course of trade was not met. The Court of Appeal found that the signs ‘Pollogen’ and ‘Capsugen’ were covered by stickers at the time of marketing and therefore not

visible to the relevant public. The Court further held that there was no use “as a trade mark”, as required by CJEU case law. Since the signs were not perceptible to consumers, they could not fulfil, or affect, the essential function of a trade mark, namely indicating the commercial origin of the goods. As a result, they were incapable of influencing consumer behaviour or creating any likelihood of confusion within the meaning of Article 9(2)(b) EUTMR.

(ii) Copyright

The Court of Appeal also rejected Pollogen’s copyright claims, noting that the design and interface of the Geneo device were largely functional and lacking sufficient originality. The Court of Appeal concluded that Pollogen had failed to demonstrate the existence of protectable originality, and therefore no copyright subsisted in the claimed elements.

(iii) Unfair Market Practices

Finally, the Court of Appeal found that LA Poppe’s commercialisation of first and second versions of the Oxygen+ device, taking into account the external appearance, interface, and similar packaging of consumables, constituted an imitation creating confusion and a misleading market practice contrary to Articles VI.104 and VI.105 WER and Article 10bis Paris Convention. The Court of Appeal therefore ordered LA Poppe to cease the commercialisation of these products in Belgium under penalty of EUR 5,000 per infringement, capped at EUR 500,000.

Critical Assessment

The judgment shows the importance and autonomous role of the rules governing unfair market practices in the context of IP infringement proceedings. Even though the Court of Appeal did not find any infringement of IP rights, it still concluded that LA Poppe acted in violation of the rules on unfair market practices by slavishly imitating the appearance and packaging of the products in question, thereby creating confusion and misleading consumers. Overall, the case is a strong illustration of the Belgian courts’ willingness to use the



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rules on unfair market practices as a safety net against imitation strategies, while maintaining the application of established principles in copyright and trademark law. For practitioners, the lesson is simple: in lookalike disputes, do not put all your eggs in the IP basket.

LABOUR LAW

Energy Agreement Provides for Temporary Social Measures

In response to continued energy price pressures, the federal Government reached on 21 April 2026 an agreement on a package of temporary support measures (the **Energy Agreement**). These measures will apply for a limited period of three months (*i.e.*, May, June and July 2026). Rather than imposing obligations, the Energy Agreement relies on voluntary employer action.

Temporary Tax Credit for Commuting Allowances

Employers choosing to introduce or to increase their existing commuting allowance (*i.e.*, an allowance for employees who use their private cars to commute), may benefit from a temporary tax credit which ensures that the additional cost of the introduction or increase is fully tax-deductible for the employer while remaining tax-free for the employee. However, the tax credit is limited both in scope and amount: it applies only to increases of up to 20% and is capped at EUR 0.10 per kilometre.

The practical implementation of this scheme will depend heavily on the applicable legal framework, as commuting allowances are often governed by sectoral or company collective bargaining agreements. As a result, employers should first review their existing obligations before deciding whether changes are possible and, if so, how best to implement them.

For example: within Joint Committee No. 100 (*i.e.*, auxiliary Joint Committee for blue-collar employees) there is no mandatory commuting allowance. Employers may grant a voluntary allowance of at least EUR 0.10 per kilometre for May, June, and July 2026, with a tax advantage of 20% calculated on the basis of a maximum of EUR 0.10 per kilometre. If an employer already provides a voluntary contribution at company level, this amount must first be calculated per kilometre, after which up to an additional 20% may be granted, capped at EUR 0.10 per kilometre in total.

Temporary Increase of Mileage Allowances

In addition to commuting allowances, the Energy Agreement also addresses the tax-free lump sum mileage allowances (*i.e.*, professional travel performed by employees with their private cars). The calculation method of these allowances will be adapted to better reflect the current (increased) fuel prices. The exact rate of increase still has to be determined.

Currently, the Energy Agreement provides for the following mechanisms regarding the calculation and tax treatment of such allowances:

- if the employer decides to increase an existing mileage allowance, this increase will be fully compensated from a tax perspective;
- this principle applies up to a maximum increase of 20%, with an absolute cap of EUR 0.10 per kilometre;
- the compensation will take the form of a tax credit; and
- the additional allowance will be non-taxable for the employee and will therefore directly increase the net benefit (via a tax exemption).

Furthermore, a new mileage allowance may be introduced for employers who do not currently grant such an allowance, subject to similar conditions as mentioned above.

The measures have yet to be enacted into law, and practical details still have to be determined. However, it is certain that the measure will be a temporary and one-off intervention which is entirely voluntary for employers and will not affect the mandatory salary margin.

LABOUR LAW

Target Group Reductions for First Hires

Under the Programme Law of 23 February 2026 (*Programmawet van 23 februari 2026 / Loi-programme du 23 février 2026* - the **Programme Law**), employers have benefitted from a simplified system of target group reductions for first hires since 1 April 2026. The reduction in social security contributions granted for the first, second, and third employees will be harmonised and set at EUR 2,000 per quarter in total.

(See, the [Programme Law](#))



LITIGATION

Federal Chamber of Representatives Takes Legislative Steps to Transpose EU SLAPP Directive

On 9 April 2026, the Chamber of Representatives (*Kamer van volksvertegenwoordigers / Chambre des représentants*) published governmental bill 56K1464 (the **Bill**) to transpose Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (the Strategic Lawsuits Against Public Participation Directive, the **SLAPP Directive**) (*strategische rechtzaken tegen publieke participatie / poursuites stratégiques altérant le débat public*).

SLAPPs are said to contribute to the paralysis of public debate by silencing individuals who seek to exercise their fundamental rights to freedom of expression and freedom of the press, including journalists, human rights activists, academics, and others who play a crucial role in ensuring the public's access to independent and unbiased information. While the EU Directive is limited to cross-border civil and commercial disputes, the bill deliberately extends its scope to purely domestic cases, thereby ensuring equal protection for all SLAPP targets before Belgian courts. At the same time SLAPPs only concern civil and commercial matters and exclude, inter alia, criminal proceedings, administrative and fiscal matters, customs matters, arbitration proceedings and actions relating to State liability.

Content of Bill

The Bill creates a dedicated procedural framework in the Judicial Code (*Gerechtigd Wetboek / Code judiciaire*, the **Jud. C.**) to address abusive litigation targeting public participation. Defendants involved in a public debate may request the early dismissal of claims that are manifestly unfounded through an accelerated procedure. When such a request is made, the burden of proof shifts to the claimant, who must demonstrate that the action is not manifestly unfounded. Importantly, a refusal to grant early dismissal does not prevent the court from qualifying the proceedings as abusive at a later stage.

The Bill also provides for procedural safeguards to reduce the financial burden of SLAPPs. Courts may order the claimant to provide a security (*zekerheid / sûreté*) for costs and damages if there are indications of abuse or if there is a risk that the defendant may not be reimbursed. This security may be requested by the defendant or imposed by the court on its own initiative.

The Bill also reinforces the role of third parties and representative organisations. Building on Articles 15 and 17 of the Jud. C., it expressly allows legal entities and organisations defending collective interests – such as press freedom or human rights – to submit written observations to the court.

With regard to sanctions, the Bill confers corrective powers on the courts. Article 1022 Jud. C. is amended to allow for the full reimbursement of costs of legal representation for SLAPP victims. Such costs may exceed the statutory caps in justified cases. In addition, Article 780bis Jud. C. is amended to allow courts to impose a civil fine up to 25,000 EUR on abusive claimants. Crucially, the courts may still impose sanctions even if the claimant withdraws or modifies the claim, thereby preventing tactical withdrawals designed to evade liability.

Finally, the Bill introduces targeted amendments to the Code of Private International Law to address cross-border SLAPP risks. Belgian courts will be required to refuse the recognition and enforcement of third-country judgments arising from proceedings that qualify as manifestly unfounded or abusive under Belgian law. Moreover, Belgian defendants targeted by SLAPPs in third countries will be granted a specific jurisdictional basis to seek compensation before Belgian courts, subject to procedural coordination with the foreign proceedings. These measures aim to curb forum shopping and ensure effective judicial protection against transnational abuse.



LITIGATION

Takeaways

This bill fundamentally reduces the scope for abusive litigation strategies in Belgium. Individuals and (civil) organisations alike should be aware that aggressive claims linked to public debate may now trigger accelerated dismissal, adverse cost consequences and financial sanctions—both domestically and across borders.

The full text of the bill can be consulted [here](#). The Chamber of Representatives approved the Bill in plenary session on 21 May 2026.

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