May 2026

# VBB on Belgian Business Law

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"Van Bael & Bellis' Belgian competition law practice [...] is a well-established force in high-stakes, reputationally-sensitive antitrust investigations."
Legal 500, 2019

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# Artificial Intelligence

### *European Commission Opens Consultation on Draft Guidelines for Classification of High-Risk Artificial Intelligence Systems*

On 19 May 2026, the European Commission (the ) opened a targeted consultation on draft guidelines for classifying high-risk artificial intelligence systems under Regulation 2024/1689 (the ). The consultation runs until 23 July 2026 and seeks feedback regarding the clarity of the guidelines and the usefulness of the practical examples that accompany them.

*1. Scope and Purpose of Draft Guidelines*

The guidelines help providers, deployers and competent market surveillance authorities decide whether an AI system qualifies as high-risk under Article 6 of the AI Act. The Commission will issue the guidelines pursuant to Article 6(5) of the AI Act. They explain how the Commission interprets the concepts that matter for classification and offer practical examples of systems that do, and that do not, fall within the high-risk category. The Commission indicates that the examples are illustrative rather than exhaustive and that it may update them over time. The guidelines do not bind their addressees. They reflect the Commission's reading of the AI Act and will inform enforcement, while only the Court of Justice of the European Union can provide an authoritative interpretation.

*2. Two Routes to High-Risk Classification*

The guidelines follow the structure of Article 6 of the AI Act, which sets out two routes to high-risk status. Under the first route, pursuant to Article 6(1), an AI system qualifies as high-risk if it serves as a safety component of a product, or is itself a product, covered by the Union harmonisation legislation listed in Annex I, and if that product must undergo a third-party conformity assessment. Under the second route, contained in Article 6(2), an AI system qualifies as high-risk if it falls within one of the use cases in the areas listed in Annex III.

*3. Revised Application Timeline*

Following the political agreement on the "AI Omnibus", the Commission has set out a revised timeline for the obligations attaching to high-risk systems. Rules for systems used in specific high-risk areas, including biometrics, critical infrastructure, education, employment, migration, asylum and border control, will apply from 2 December 2027. Rules for systems integrated into products such as robotics and industrial machinery will apply from 2 August 2028. These dates postpone the original deadlines of 2 August 2026 and 2 August 2027 that Article 113 of the AI Act had laid down.

*4. Participation in Consultation*

Stakeholders may submit their input in response to an online questionnaire until 23 July 2026. The Commission will consider only the responses which it receives via that questionnaire, and it will take the feedback into account in the final version of the guidelines before adoption.

The draft guidelines can be found here.

# Artificial Intelligence

***AI Office Publishes FAQ on General-purpose AI Models***

The European Commission's AI Office released a dedicated FAQ on general-purpose AI (***GPAI***) models, compiled from questions raised during the AI Pact webinars and from stakeholder submissions. The page will be updated on a rolling basis and consolidates the Commission's position on a number of issues of practical importance to providers and downstream deployers.

*1. Classification and Thresholds*

A model qualifies as a GPAI model on an indicative criterion: training compute exceeding 10^23 FLOP combined with the ability to generate language, text-to-image or text-to-video content. The criterion is not absolute - a model below the threshold may still qualify if it displays significant generality, while a model that exceeds the threshold may exceptionally fall outside the definition if it does not exhibit such generality. Systemic risk is presumed when cumulative training compute exceeds 10^25 FLOP (Article 51(2)), though the Commission may also designate a model as presenting systemic risk on its own initiative or following a qualified alert from the scientific panel. Once the 10^25 FLOP threshold is met, or expected to be met, the provider has two weeks to notify the Commission (Article 52).

*2. What Counts As "New Model"*

The FAQ confirms that every version descended from the same pre-training run by the same provider is treated as the same model. Accordingly, not every release branded as new by a provider is a new model for the purposes related to the AI Act, and non-public technical details about the training process may be needed to assess this. The FAQ also notes that AI agents are not a separate category: they fall within the existing definitions of an AI system and a GPAI model.

*3. Obligations*

From 2 August 2025, providers must maintain technical documentation for the AI Office, supply information to downstream providers, implement a copyright-compliance policy and publish a sufficiently detailed summary of training content. Non-EU providers must appoint an authorised representative. Providers of models with systemic risk face additional obligations under Article 55, including model evaluation and adversarial testing, systemic-risk assessment and mitigation, serious-incident reporting without undue delay, and adequate cybersecurity. Compliance may be demonstrated through the General-Purpose AI Code of Practice - structured in Transparency, Copyright and Safety and Security chapters - or by alternative adequate means.

*4. Open Source*

Open-source models benefit from specific documentation exemptions, but these do not extend to the copyright-policy and training-data-summary obligations, and do not apply at all to models with systemic risk, which remain subject to the full set of obligations, regardless of how they are released.

*5. Enforcement Posture*

The Commission will adopt a good-faith, cooperation-first approach for the first year, treating technical exchanges at working level as the primary tool, ahead of the entry into application of its GPAI enforcement powers on 2 August 2026.

# Commercial Law

### *Supreme Court Holds That Related-Actions Rules Under Brussels Ibis Regulation Cannot Override Contractual Forum Selection Clauses*

On 23 April 2026, the Supreme Court (*Hof van Cassatie / Cour de cassation* – the ***Court***) annulled a judgment of the Antwerp Court of Appeal which had accepted jurisdiction over a non-consumer defendant's claim on the sole basis that it was related to a consumer claim already pending before a Belgian court (Supreme Court, 23 April 2026, *TWIN PROMOTION SAS and Others v. DR S. A. BV and Others*, C.25.0056.N, available here(in Dutch) – the ***Judgment***).

*Background*

The case involved two French property developers, Twin Promotion SAS and Vence Resort SCCV, which were developing a residential real estate project in Vence, France. Two Belgian individuals, who were friends (the ***Defendants***), each wished to invest in separate apartments in the project. To that end, at the end of 2016 and 2017, each of the Defendants concluded a reservation agreement and a long-lease agreement with the property developers in respect of a flat under construction. Each agreement contained a forum selection clause conferring exclusive jurisdiction on the courts of the place where the property was located (*i.e.*, the French courts) for any dispute resulting from the interpretation or performance of the agreements. In addition, the management company of one of the Defendants (A.S.) acceded to the reservation and long-lease agreement concluded by A.S. and agreed to purchase the usufruct of that same apartment, with A.S. acquiring the bare ownership, subject to the same forum selection clause designating the French courts. To finance this acquisition of the usufruct, the management company obtained a loan.

Ultimately, the proposed sales did not proceed, as the Defendants considered that they had been misinformed regarding the floor area of the apartments and the final purchase price. In January 2020, the Defendants brought proceedings before the Belgian courts, claiming damages for the loss caused by the cancellation of the agreements as a result of the developers' contractual default. Although the forum selection clauses contained in the agreements designated the French courts as the competent forum, the Defendants, who qualified as consumers, were entitled under Article 18 of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the ***Brussels Ibis Regulation***) to bring proceedings before the Belgian courts. Article 18(1) of the Brussels Ibis Regulation provides that "[a] *consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled* ***or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled***" (emphasis added).

The management company, which does not qualify as a consumer and could not, therefore, rely on Article 18(1) of the Brussels I*bis* Regulation, joined in the Belgian proceedings, claiming the costs associated with the loan that had been taken out, on the basis that its claim was connected to that of A.S. It argued that its claim was sufficiently connected to that of A.S. to be heard by the same court pursuant to Article 30(3) of the Brussels I*bis* Regulation, which provides that "*actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings*".

Importantly, no proceedings had yet been initiated before the French courts. The management company invoked Article 30 of the Brussels I*bis* Regulation, not for the purpose of coordinating parallel proceedings already pending in different Member States, but as a free-standing basis for extending the Belgian courts' jurisdiction over its own claim notwithstanding the forum selection clause.

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The Antwerp Court of First Instance accepted jurisdiction and declared all three claims admissible. On appeal, the Antwerp Court of Appeal confirmed this approach, holding that the claims were related within the meaning of Article 30(3) of the Brussels I*bis* Regulation and that the forum clause did not affect that conclusion.

*Judgment*

The Court annulled the judgment of the Antwerp Court of Appeal. Article 30 of the Brussels I*bis* Regulation governs situations in which related actions are pending before the courts of different Member States. It allows the court last seised to stay its proceedings (Article 30(1)), or, when the court first seised is hearing the matter at first instance, to refer the case to that court at a party's request (Article 30(2)).

Crucially, the Court held that these rules only apply if the court first seised already has jurisdiction over each of the actions in question. Accordingly, the Antwerp Court of Appeal could not rely on the related-actions rules of Article 30 to assert jurisdiction over the action of the management company for which the French courts had jurisdiction under the forum selection clause in the reservation and long-lease agreements. Actions concerning separate and independent obligations may only be brought before the same court if that court independently has jurisdiction over each of those actions.

The Court accordingly annulled the contested judgment insofar as it held that the Belgian courts had jurisdiction to assess the management company's claim. It referred the case, on that limited point, to the Brussels Court of Appeal.

*Comments*

The judgment reconfirms that Article 30 of the Brussels I*bis* Regulation is a tool for coordinating proceedings already lawfully pending in different Member States. It is not a jurisdiction-conferring provision and cannot displace a validly agreed forum selection clause. This distinguishes Article 30 of the Brussels I*bis* Regulation from Article 9 of the Belgian Code of Private International Law (*Wetboek van internationaal privaatrecht / Code de droit international privé*), which establishes a forum for related actions. This Article 9 provides that "[i]*f the Belgian courts have jurisdiction to hear a claim, they also have jurisdiction to hear any claim so closely connected to it that it is desirable to hear and determine them together, in order to prevent the decisions from being inconsistent should the claims be heard separately*".

The case illustrates a recurring risk in multi-party disputes when consumer and non-consumer claimants have related interests in the same transaction. Even when a consumer can validly invoke the protective jurisdiction rules of the Brussels I*bis* Regulation to bring proceedings before the courts of his/her domicile, those rules do not automatically extend to a corporate entity associated with him/her. The factual connection between the respective claims does not change that analysis.

# Competition Law

### *Belgian Competition Authority Continues Review of Roll-out of High-Speed Fibre Telecommunications Networks in Flanders*

On 30 April 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) published a press release to indicate that it would continue its review of the proposed cooperation between Proximus/Fiberklaar and Telenet/ Wyre to roll out high-speed fibre telecommunications networks in Flanders.

The press release follows announcements by the parties that they concluded a final and binding agreement that defines the terms of their cooperation. They reached a comprehensive deal despite earlier press reports that their venture might collapse and despite their failure to secure the blessing of the BCA and the Belgian Institute for Postal Services and Telecommunications for that venture.

The BCA started its investigation in July 2024 following the conclusion by the joint venture parties of a Memorandum of Understanding (***MoU***) setting forth the basic principles for their cooperation (*See*, this Newsletter, Volume 2024, Nos 6-7). In medium density population areas (which cover 2 million homes) Wyre and Fiberklaar would build complementary Fiber-to-the-Home networks and organise reciprocal wholesale access for their respective partners, Proximus and Telenet. In areas that are sparsely populated and concern 0.7 million homes, Proximus would offer services via the Hybrid Fiber Coax network of Wyre. Elsewhere (in large cities and densely populated zones) network competition would play out to the fullest extent, and both groups would roll out their own separate infrastructure.

The proposed cooperation is proving a tough nut to crack for the regulators which organised a market test in October and November 2025 (*See*, this Newsletter, Volume 2025, No. 10). Their principal concerns are making sure that end-users share in the project's benefits and that third-party operators are given access to the parties' infrastructure to offer their own services. The commitments which the joint venture partners have offered so far ostensibly do not satisfy these requirements.

The parties were able to transition from an MoU to a binding agreement in the midst of the competition review because they are not subject to a "standstill" obligation that characterises a merger control procedure. The procedural framework for the BCA's inquiry in this case is that of a regular antitrust case which is distinct from merger control proceedings. However, in their press releases, the parties made it clear that they would wait for regulatory approval before implementing their agreement.

### *Belgian Competition Authority Orders AutoScout24 to Restore Data Portability to Competing Platform Subject to Penalty Payments*

On 30 April 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) ordered AutoScout24 Belgium (***AutoScout24***) to restore the automated transfer of data to a competing platform subject to a penalty payment of EUR 20,000 per day, up to a maximum of EUR 7,000,000.

On 13 March 2026, the BCA opened an investigation into AutoScout24, which operates an online platform and an app connecting sellers and buyers of used vehicles (*See*, this Newsletter, Volume 2026, No. 3). This investigation was prompted by a complaint by TCS Mobility (***TCS***), a new market entrant operating a competing platform. TCS alleged that AutoScout24 abused its dominant position by discouraging sellers of used vehicles from "multi-homing", *i.e.*, relying simultaneously on competing platforms to realise sales. More specifically, TCS argued that AutoScout24 had suddenly blocked the automated transfer of data from its platform to TCS's platform, thereby forcing sellers which were intent on listing a vehicle on TCS's

# Competition Law

platform as well to re-enter manually the extensive data required to sell a vehicle. TCS therefore sought interim measures to restore the automated transfers of data to its platform.

Following a *prima facie* review, the BCA concluded that the conditions to grant interim measures were satisfied:

- *Dominant position*. the BCA first found that AutoScout24 can be considered to hold a dominant position and appears to be an unavoidable trading partner for professional car dealers due to network effects. This is because the decision to publish a paid advertisement is in large part driven by the significant number of visitors on the platform, which in turn is explained by the many advertisements on that platform.

- *Abuse*. AutoScout24 normally allows transfers of data from its platform to competing platforms. However, this changed when TCS added a new pricing model pursuant to which TCS charges for the contacts initiated by prospective buyers following the publication of the advertisement ("pay-per-lead" model) rather than for the publication of the advertisement as such ("pay-per-list" model). This suggests that AutoScout24 took issue with the competitive pressure exerted by TCS in applying the new pricing model.

- *Urgent and difficult-to-remedy harm*. The BCA found that the sellers' reluctance to manually encode the data required to sell a vehicle twice meant that the practice was likely to prevent TCS from retaining and acquiring customers, thus preventing it from reaching the critical mass necessary to remain active on the market. The harm was in other words urgent and, according to the BCA, would also be difficult to remedy after the fact.

The BCA therefore ordered AutoScout24 to restore the automated transfer of data encoded on its platform to TCS's platform, subject to penalty payments. AutoScout24 also had to send a notice to all its professional clients and publish it for 90 days on the professional section of its website, explaining that it would allow the transfer of data from its platform to TCS's platform and would permit these data to be updated in real time.

The interim measures are likely to apply until the BCA adopts a decision on the existence of an infringement or until the proceedings on the merits are otherwise concluded, for instance by a settlement decision or behavioural commitments made binding by the BCA.

### ***Belgian Competition Authority Suspends Discriminatory Rules in Second Division Professional Football***

On 8 May 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) suspended rules applying to the second division of professional football (***Challenger Pro League***) that favoured the teams composed of players under the age of 23 (***U23 Teams***) owned by specific teams of the first division (***Jupiler Pro League***) over the regular professional clubs in the second division.

This decision stems from a complaint filed in June 2025 by three football clubs: Royal Francs Borains (***RFB***), RFC Seraing (***Seraing***) and KSC Lokeren (***Lokeren***). These clubs, later joined by Racing White Daring Molenbeek (***RWDM***), argued that new rules adopted by the Royal Belgian Football Association (the ***RBFA***) favoured teams of young players owned by major football clubs active in the first division, as the new rules (i) imposed a minimum number of U23 Teams in the second division, and (ii) prevented these U23 Teams from being relegated to the amateur league, barring exceptional circumstances (the ***Quota***). As a result of the Quota, a club could be relegated to the amateur league at the end of the season despite being better ranked than a U23 Team.

This situation materialised. Pursuant to the Quota, RWDM was at risk of being relegated to the amateur league despite being ranked 13 out of 17, because (i) two clubs must be relegated at the end of the season and, (ii) except for Olympic Charleroi (ranked last), all the other clubs below RWDM were U23 Teams.

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The four clubs therefore sought interim measures seeking a suspension of the Quota. In its decision, the BCA granted their request, confirming its August 2025 assessment that the Quota is prima facie anticompetitive and finding that there was urgency to act in order to prevent serious, imminent and irreparable harm. The BCA therefore suspended the Quota until the completion of the investigation on the merits of the case.

*Jean-François Bellis and Valérie Lefever of this firm acted as counsel to the successful plaintiffs.*

***Markets Court Confirms Belgian Competition Authority Decision to Suspend International Cycling Union Maximum Gear Ratio Standard***

On 20 May 2026, the Markets Court (*Marktenhof / Cour des marchés*) of the Brussels Court of Appeal (*Hof van Beroep te Brussel / Cour d'appel de Bruxelles* - the ***Court***) dismissed the appeal filed by the International Cycling Union (***UCI***).

UCI was contesting the decision adopted by the BCA on 9 October 2025 (the ***Contested Decision***). The BCA suspended the implementation of UCI's maximum gear ratio (***Maximum Gearing***) in professional road cycling events, at the request of SRAM, one of the few major suppliers of transmission systems, which claimed that the new standard caused it to suffer serious harm that is difficult to repair. The BCA found that the procedure that led to the adoption of the Maximum Gearing and the associated tests did not satisfy essential conditions of proportionality, objectivity, transparency, and non-discrimination (*See*, this Newsletter, Volume 2025, No. 10).

The Court upheld the Contested Decision in its entirety.

*The BCA had jurisdiction to adopt the Contested Decision*

The Court found that the BCA had jurisdiction to suspend the Maximum Gearing, even though the Maximum Gearing was not a final rule and the only competition in which the Maximum Gearing had to be tested took place in China. The Court relied on the BCA's reasoning that (i) other tests could take place in Belgium; (ii) the uncertainty caused by the Maximum Gearing posed a real risk of foreclosure of SRAM products even before the rule is permanently adopted; (iii) one of the professional cycling teams using SRAM products is located in Belgium and other teams that might use them are also in Belgium; and (iv) Belgian distributors, consumers and race organisers whose events count toward the UCI World Ranking and Europe Tour Ranking, as well as SRAM's direct and indirect Belgian clients, were likely to be affected.

*No breach of UCI's rights of defence*

The Court dismissed UCI's claims that it had not been given enough time to defend itself properly; that it should have been allowed to bring witnesses; and that it had been required to face a biased Prosecution Service of the BCA (*auditoraat / auditorat*).

The Court held that this plea could lead to the annulment of the Contested Decision only if there had been a violation of the rights of the defence and if such violation is of an irreparable nature, notwithstanding the Court's power of full jurisdiction. However, none of UCI's arguments satisfied these conditions and could be remedied by the appeal procedure.

*Prima facie infringement*

The Court held that its task was to verify whether the BCA committed errors of law or manifest errors of fact and observed that the BCA enjoys a wide margin of appreciation to decide whether to grant interim measures.

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On this basis, the Court confirmed that UCI restricted competition *prima facie* by failing to apply transparent, objective and non-discriminatory criteria when developing the Maximum Gearing standard. Remarkably, the Court held that UCI had failed to show that the Maximum Gearing was necessary and proportionate to improve safety.

*Serious, imminent and irreparable harm*

The Court held that the BCA correctly found that SRAM and the cycling teams equipped with its systems would have suffered serious, imminent and irreparable harm if the Maximum Gearing standard had been maintained.

- *Serious harm*. The Maximum Gearing posed a risk of undermining confidence in SRAM's equipment, as reported in the press. This was all the more serious given the "showcase effect," whereby products used in professional settings significantly influence consumer choices. Furthermore, the Maximum Gearing could apply to any event chosen by UCI; this uncertainty caused serious harm to teams accustomed to the SRAM system. Additionally, adapting SRAM's equipment entailed a risk of failure as the modified system had never been tested.

- *Imminent harm*. The Guangxi competition in which the Maximum Gearing had to be used was imminent.

- *Irreparable harm*. The Court found that the impact on athletic performance, the departure of athletes, the damage to SRAM's reputation and the need to modify equipment could not be remedied by the decision on the merits.

The Court therefore dismissed UCI's appeal. As a result, the Maximum Gearing standard remains suspended.

# Consumer Law

## *Laws Strengthening Consumer Protection and Enforcement under Code of Economic Law Are Published*

Belgium strengthened its consumer law framework in the Code of Economic Law (*Wetboek van Economisch Recht / Code de droit économique* - ***CEL***) by adding two new Laws to its legislative arsenal that have now been published in the Belgian Official Journal (*Belgisch Staatsblad / Moniteur belge*):

- the Law of 20 April 2026 containing various provisions in economic matters (I) (*Wet van 20 april 2026 houdende diverse bepalingen inzake economie (I) / Loi du 20 avril 2026 portant dispositions diverses en matière d'économie (I)* - ***Law I***), published on 7 May 2026 (available in Dutch and in French); and

- the Law of 7 May 2026 containing various provisions in economic matters (II) (*Wet van 7 mei 2026 houdende diverse bepalingen inzake economie / Loi du 7 mai 2026 portant dispositions diverses en matière d'économie (II)* - ***Law II***), published on 19 May 2026 (available in Dutch and in French).

The most significant amendments to the CEL – covering price reduction announcements, automatic renewal clauses, online enforcement powers and nominative publication of administrative fines – were discussed when they were still in draft form in the February 2026 edition of this Newsletter (*See*, this Newsletter, Volume 2026, No. 2), and have been adopted in substantially the same terms.

Law I entered into force on 17 May 2026, with the exception of Article 5 inserting a new Article VI.91, §1/1 CEL imposing an information duty for automatic renewal clauses in fixed-term business-to-consumer contracts. The new information duty will only enter into force on 1 May 2027. Renewal notices must be sent on a durable medium (*duurzame gegevensdrager / support durable*) no later than 15 days before the deadline by which the consumer can object to the renewal.

Law II entered into force on 29 May 2026.

## *Council of State Declares Sales Period Restriction to Be Incompatible with EU Law*

On 20 May 2026, the Council of State (*Raad van State / Conseil d'État*) annulled three decisions of the Federal Public Service Economy, SMEs, Self-Employed and Energy (*FOD Economie, KMO, Middenstand en Energie / SPF Économie, PME, Classes moyennes et Énergie* - the ***FPS Economy***) which had imposed administrative fines on three clothing chains active in multi-brand retail, both online and in physical stores. The fines had been imposed for alleged infringements of Article VI.25 of the Belgian Code of Economic Law (*Wetboek van Economisch Recht / Code de droit économique* - the ***CEL***).

### *Statutory Sales Periods under Article VI.25 CEL*

Article VI.25 CEL permits the use of the term "sales" (*solden / soldes*) only for the offering and sale of goods at reduced prices during the designated sales periods, namely from 3 January to 31 January (or from 2 January if 3 January falls on a Sunday) and from 1 July to 31 July (or from 30 June if 1 July falls on a Sunday).

### *Reasoning of Council of State*

The Council of State held that, having regard to the legislative history, the general context of the legislation and the relevant case law, Article VI.25 CEL falls within the scope of Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (the ***UCP Directive***). The provision does not solely protect the interests of competitors but also pursues a consumer protection objective.

As the UCP Directive seeks full harmonisation and contains no prohibition equivalent to Article VI.25 CEL, the Council of State found that Article VI.25 CEL is incompatible with EU law and must therefore be disapplied. The decisions imposing the administrative fines accordingly rested on an unlawful legal basis and were annulled.

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Practical Implications

These judgments are significant as they finally put an end to a longstanding debate as to whether the statutory sales periods in Belgium, imposed by Article VI.25 CEL, are compatible with EU law. Legal scholars and practitioners had long held the view that this is not the case.

In a public statement immediately following the judgments of the Council of State, the Minister for Consumer Protection, Rob Beenders, indicated that the FPS Economy will no longer impose fines for alleged infringements of Article VI.25 CEL. As a result, retail companies are *de facto* allowed to use the word "sales" or similar terms throughout the year. This will have a significant impact on the Belgian retail market and may favour larger retail players.

On 2 June 2026, the implications of the judgments were discussed in the Federal Chamber of Representatives' Committee for Economy, Consumer Protection and Digitalisation (the ***Committee***). The Minister of Labour and Economy, David Clarinval, declared that the judgments concern only Article VI.25 CEL on the use of the term "sales". The judgments would therefore not affect Article VI.29 CEL, which requires retailers in the fashion sector to observe a one-month waiting period before the start of the sales period, or Article VI.117 CEL, which allows retailers to sell at a loss during the sales period. However, several members of the Committee questioned the compatibility of these provisions with EU law, with reference to the *Wamo* (2011) and *Euronics* (2013) judgments of the Court of Justice of the European Union.

The Minister of Labour and Economy stressed that traders must continue to comply with EU law obligations on commercial practices, in particular the prohibition on unfair commercial practices and the 30-day "prior price" rule under Article VI.18 CEL.

In the meantime, the Minister of Labour and Economy and the Minister for Small Businesses, the Self-Employed and SMEs, Eléonore Simonet, have already made contact with the relevant sectoral federations to discuss making Belgian sales legislation compatible with EU law while preserving the legislator's original objective of ensuring fair competition between traders. The federal government is expected to submit a proposed text to Parliament in the near future.

The three judgments (with numbers 266.735, 266.736, and 266.737) are available in Dutch and in French.

# Corporate Law

### *New Criminal Code Enters into Force on 1 September 2026 and Amends Offence of Misuse of Corporate Assets*

The Laws of 29 February 2024 which introduce Book 1 and Book 2 of the new Criminal Code will enter into force on 1 September 2026. Book 2 will bring about significant changes to corporate criminal law, including to the offence of misuse of corporate assets (*misbruik van vennootschapsgoederen / abus de biens sociaux* - the ***Offence***).

*Constitutive Elements of Offence*

Book 2 defines the Offence as consisting of three cumulative elements: (i) the use of the company's assets and credit by one of its *de jure* or *de facto* directors, the concept of assets being understood in a broad sense, encompassing movable and immovable as well as tangible and intangible assets; (ii) a use that is significantly detrimental to the financial interests of the legal person and those of its creditors or partners, with any resulting damage having to be concrete, actual, proven and current; and (iii) a use with a fraudulent intent and for personal purposes, whether directly or indirectly.

*Extended Scope of Offence*

Under the current regime, only directors of "commercial or civil companies" as well as of non-profit associations may commit the Offence, leaving international non-profit associations, foundations and European economic interest groups outside its scope of protection. Book 2 remedies this gap by extending the scope to all private law legal persons. However, entities without legal personality, such as partnerships and *de facto* associations, remain, controversially, excluded from the protection. In addition, the term "private law legal persons" is likely to create confusion as it remains unclear whether it refers to the legal form or the corporate purpose of the entity concerned.

*Changes to Applicable Penalties*

Under the current regime, the Offence carries a penalty that can range from one to five years of imprisonment and a fine from EUR 100 to EUR 500,000 for natural persons, which, based on the applicable multiplication factor, may reach EUR 4,000,000 for offences committed before 1 February 2026 and EUR 5,000,000 for offences committed after that date. For legal persons, the maximum fine reaches EUR 8,000,000. Article 476 of Book 2 introduces a level 3 penalty instead (three to five years of imprisonment and a fine from EUR 200 to EUR 10,000 for natural persons, and up to EUR 600,000 for legal persons), which appears significantly lower than the penalty applicable under the current regime. However, Book 2 provides courts with a range of additional penalties, including the option of imposing a financial penalty of up to three times the profit expected or obtained by the offender. By aligning the penalty level of the Offence with that of breach of trust (which, in many cases, greatly overlaps with the Offence and carries a lower burden of proof), Book 2 may discourage public prosecutors from bringing charges based on the Offence.

*Attempted misuse of corporate assets now criminalised*

The current regime does not allow prosecutions for an attempted Offence. Book 2 introduces this possibility by not explicitly excluding attempt in the definition of the Offence. Directors who attempt to misuse their company's assets will face a level 2 penalty.

# Corporate Law

**_European Union Adopts Directive Partially Harmonising National Insolvency Laws_**

*Background*

On 30 March 2026, the Council of the European Union formally adopted Directive (EU) 2026/799 harmonising certain aspects of insolvency law (the ***Insolvency Directive***), following approval by the European Parliament on 10 March 2026. The Insolvency Directive was published in the *Official Journal of the European Union* on 1 April 2026 and entered into force on 21 April 2026. Member States must transpose it into national law by 22 January 2029.

*Objective*

The Insolvency Directive forms part of the EU's broader efforts to strengthen the internal market and deepen the Capital Markets Union. It addresses the significant differences between national insolvency regimes, which have historically created legal uncertainty, increased transaction costs and discouraged cross-border investment, by introducing minimum harmonisation rules in targeted areas that directly affect efficiency, recovery value and the duration of proceedings across the EU.

*Scope of Harmonisation*

The Insolvency Directive does not harmonise insolvency law in its entirety. Instead, it establishes common rules in six specific areas:

1. *Avoidance Actions (Title II)*: The Insolvency Directive (i) introduces minimum standards enabling insolvency practitioners to challenge specific legal acts detrimental to creditors and completed prior to the opening of insolvency proceedings, (ii) clarifies key concepts such as the notion of "legal acts" and the relevant look-back periods (reduced from three to two years), and (iii) introduces safeguards, including rebuttable presumptions in cases involving closely related parties, to facilitate the recovery of assets.

2. *Asset Tracing and Access to Information (Title III)*: At the request of insolvency practitioners, designated courts and administrative authorities may access national registers and databases, including bank account registers and UBO registers, to identify and locate assets belonging to insolvency estates or subject to avoidance actions. This is particularly relevant in cross-border insolvency cases.

3. *Pre-pack Proceedings and Rescue Financing (Title IV)*: The Insolvency Directive establishes minimum standards for pre-pack proceedings, structured in two phases: (i) a confidential preparation phase, during which a buyer is identified and the terms of the sale are agreed, and (ii) a liquidation or implementation phase, following the opening of formal insolvency proceedings, during which the sale is approved and completed. The Insolvency Directive provides for the appointment of an independent monitor to supervise the sale process, with particular safeguards when the acquirer is a related party. To support these proceedings, the Insolvency Directive also protects interim financing granted during the preparatory phase against subsequent avoidance actions and allows Member States to grant priority rights or security protections to providers of such financing.

4. *Directors' Duty to File for Insolvency (Title V)*: The Insolvency Directive establishes a harmonised obligation for directors to file for the opening of insolvency proceedings within three months after they became aware, or should reasonably have become aware, that insolvency conditions are satisfied. Failure to comply may result in civil liability for damages caused to creditors.

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5. *Creditors' Committees (Title VI)*: Member States must establish a framework for creditors' committees enabling creditors, including cross-border creditors, to request the establishment of a committee, participate in and be appointed to such a committee, be heard on major decisions, such as asset sales, request information from the insolvency practitioner, and monitor the conduct of proceedings. Committee members acting in good faith benefit from limited personal liability, to encourage active participation.

6. *Transparency of National Insolvency Laws (Title VII)*: Member States must publish key information factsheets on their insolvency regimes through the EU e-Justice Portal by 22 July 2029. Such factsheets must cover: the conditions for opening insolvency proceedings; the rules governing the lodging, verification, and admission of claims; the rules governing the ranking of creditors' claims and the distribution of proceeds; and the average reported length of insolvency proceedings.

*Emergency Derogation Mechanism*

Member States may under exceptional circumstances temporarily derogate from specific insolvency rules, such as when applying ordinary insolvency provisions could contribute to widespread insolvencies affecting otherwise viable undertakings. Any derogation must remain proportionate, temporary, and justified by a serious economic disturbance or comparable crisis.

*Impact on Belgian Law*

The Insolvency Directive is expected to have a significant impact on Belgian insolvency law, as Belgium currently lacks developed mechanisms for several of the concepts which the Insolvency Directive introduces. This applies to:

- the requirement to establish creditor committees which will necessitate new mechanisms for creditor participation;

- the implementation process which will require clarification of the interaction between the new harmonised directors' duties and existing Belgian rules on directors' liability; and

- the enhanced asset tracing tools and cross-border access to information which are expected to improve the effectiveness of insolvency proceedings, particularly in complex or international cases.

*Next Steps*

Member States have until 22 January 2029 to transpose the Insolvency Directive. As a minimum harmonisation instrument, Member States may maintain or introduce more protective national rules, meaning that a degree of divergence between national insolvency regimes will remain. The practical impact of the Insolvency Directive will ultimately depend on how consistently it is implemented across EU Member States.

The Insolvency Directive can be found here.

# Corporate Law

### *Supreme Court Holds that Assessment of Damage Caused by Pre-Bankruptcy Selective Payments Must Account for Corresponding Reduction in Liabilities*

On 2 April 2026, the Belgian Supreme Court (*Hof van Cassatie / Cour de Cassation*) delivered a judgment, annulling a judgment of the Ghent Court of Appeal (*Hof van Beroep Gent / Cour d'appel de Gand*) concerning director liability for selective payments made on the eve of bankruptcy. The Supreme Court held that, in assessing the damage caused to a bankruptcy estate by such payments, courts must take into account not only the assets lost by the estate but also the corresponding benefit in the form of reduced liabilities and that the Court of Appeal's failure to do so caused its damages assessment to be legally defective.

*Background*

The directors of domein Vossenberg BV, a company operating a banqueting and events complex, took various measures to address mounting financial difficulties the COVID-19 crisis in 2020, including contracting a COVID loan and, between 10 and 16 September 2020, repaying customer advances totaling more than EUR 200,000 to over 140 customers because of cancelled or postponed events. On 11 September 2020, the directors filed for bankruptcy, and on 17 September 2020 the Ghent Enterprise Court, Kortrijk division (*Ondernemingsrechtbank Gent, afdeling Kortrijk / Tribunal de l'entreprise de Gand, division Courtrai*), declared the company bankrupt and appointed two attorneys as trustees.

In April 2022, the trustees brought a director liability claim before the Ghent Enterprise Court (Kortrijk division). At first instance, the court found managerial errors and ordered the directors jointly and severally liable to pay EUR 305,000 on a provisional basis. On appeal, the Ghent Court of Appeal upheld the finding of liability in part and ordered the directors to pay a definitive amount of EUR 284,483. The directors challenged that judgment before the Supreme Court.

*Court of Appeal Reasoning and Point of Law*

The Ghent Court of Appeal found that the directors had acted wrongfully by repaying customer deposits just before the bankruptcy filing, at a time when they knew that the company would cease operations and was not able to pay all of its creditors. The Court of Appeal noted that the directors proceeded, on 10 September 2020, to a systematic repayment of all deposits, and even made eight additional repayments after the bankruptcy filing.

The Court of Appeal found that this fault damaged the estate, not in its net value, but because it impaired the recovery rights of several creditors. It assessed the proven damage at EUR 284,483, corresponding to the total amount of the repayments made in the period from 1 September 2020 until the bankruptcy declaration. However, the Court of Appeal expressly acknowledged that the estate had suffered no impact on its net value, since the loss in liquid assets corresponded to an equal reduction in outstanding customer liabilities.

*Supreme Court Ruling*

The Supreme Court affirmed the principle under Articles 1382 and 1383 of the Old Civil Code (*oud Burgerlijk Wetboek / ancien Code Civil*) that every act causing harm to another obliges the person at fault to make good such harm, which requires restoring the injured party to the position which that party would have occupied had the fault not been committed. It further noted that, in circumstances in which a fault also generates a benefit for the injured party (including a saving) that benefit must, as a rule, be set off against the compensation owed, provided the injured party would not have enjoyed it without the fault.

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Applying these principles to director liability in insolvency, the Supreme Court held that, in assessing damage suffered by a bankrupt estate due to a director's unlawful payment of company debts, courts must consider not only the loss to the estate (liquid assets paid out) but also the corresponding benefit (the proportional reduction in liabilities). By assessing the damage at EUR 284,483 (i.e., the full amount of the repayments) without accounting for the benefit which those repayments had generated for the estate, the Court of Appeal placed the estate in a better position than it would have occupied had no fault been committed and failed to justify its decision in law.

The Supreme Court referred the case to the Antwerp Court of Appeal.

*Key Takeaways*

This judgment provides important guidance for trustees and directors involved in pre-bankruptcy liability disputes:

- Courts must apply the benefit set-off principle (*voordeel toerekening / imputation des avantages*) in calculating the damage caused by selective pre-bankruptcy payments: any reduction in liabilities resulting from those payments must reduce the assessed quantum of damage.

- A damages award that ignores this net assessment would enrich the estate beyond the position it would have occupied had no fault occurred, an outcome incompatible with the compensatory function of extra-contractual liability.

- The ruling does not disturb the underlying finding of liability: directors who make systematic selective payments to specific creditors on the eve of bankruptcy, in the knowledge that the company cannot pay all its creditors, act wrongfully.

# Foreign Direct Investment

***Revised EU Foreign Investment Screening Regulation is Adopted and Published***

On 19 May and 8 June 2026, the European Parliament and Council of the European Union adopted the revision of the EU Foreign Investment Screening Regulation (the ***Revised FISR***). The Revised FISR harmonises various aspects of foreign direct investment (***FDI***) screening in the Union (*See*, this Newsletter, Volume 2026, No. 2).

On 26 June 2026, the Revised FISR was published as Regulation 2026/1386 on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 (here) and will apply from 17 January 2028. Until that date, Regulation (EU) 2019/452 on the screening of foreign investments in the Union will continue to be the instrument governing FDI.

# Intellectual Property

***European Union Intellectual Property Office Receives First Sound Mark Application for Personal Attributes***

On 23 April 2026, Italian singer Giusy Ferreri filed an application with the European Union Intellectual Property Office (***EUIPO***) for a sound mark consisting of the phrase 'SONO GIUSY FERRERI'. Published on 8 May 2026, the registration will proceed if no party files an opposition by 10 August 2026. While there have been applications for personal attributes, such as faces and phrases, as well as sound mark applications in the United States and national trademark offices, this is the first application presented as covering a personal attribute in a sound mark before the EUIPO.

Under Article 4 of the European Trade Mark Regulation (***EUTMR***), a trademark may consist of any sign, including sounds, provided it distinguishes the goods or services of one undertaking from others and clearly and precisely identifies the subject matter of the protection. Sound marks under Article 3(3)(g) of the European Union Trade Mark Implementing Regulation (***EUTMIR***) consist solely of a sound or combination of sounds. Applicants must submit an audio file or an accurate representation in musical notation with all the elements necessary to determine the desired object of protection, though tempo and the instrument are optional. The Court of Justice of the European Union (***CJEU***) held in *Shield Mark* (C-283/01) that musical notation must be reliable, clear, precise, complete, easily accessible, intelligible, durable, and objective, and that a verbal description or sequence of notes alone does not suffice. Under the reformed EUTMR, graphic representability is no longer required. Instead, the sign must be represented in a manner enabling the competent authorities and the public to determine the clear and precise subject matter of the protection.

There is no specific distinctiveness standard for sound marks. Article 4 of the EUTMR applies the same rule as for traditional marks. The mark must be distinctive and non-descriptive in relation to the goods or services applied for. It must enable the target audience to perceive it as a brand identifier. Consumers are more likely to perceive a sound as an indicator of commercial origin when no link can be drawn between the sound and the characteristics of the relevant goods or services. Phonetic comparison is the decisive factor, though conceptual comparison may be relevant when the consumer can identify a concept. EUIPO guidelines identify several categories unlikely to satisfy the distinctiveness requirement without evidence, including very simple musical pieces, common domain sounds, and sounds too lengthy to indicate origin. Public policy objections may arise on the basis that such registrations expand trademark protection beyond its underlying objectives.

The Ferreri application marks a notable development in European trade mark law, because it is the first attempt to protect a personal attribute through a sound mark before the EUIPO. Whether the application ultimately succeeds will turn on whether 'SONO GIUSY FERRERI' possesses sufficient distinctiveness to function as a brand identifier for the relevant goods or services. The outcome will be closely watched, as it may clarify the extent to which sound marks can serve as vehicles for protecting personal attributes and could influence both EUIPO practice and the strategies of right holders.

# Labour Law

***More Flexible Employment Takes Centre Stage with New Employment Measures***

On 1 June 2026, the Law on various employment provisions of 18 May 2026 (*Wet van 18 mei 2026 houdende diverse arbeidsbepalingen / Loi du 18 mai 2026 portant des dispositions diverses relatives au travail* - the ***Law of 18 May 2026***) was published in the Belgian Official Journal. Here are the most important measures for employers which applied from 1 June 2026 onwards.

*More Flexible Work Rules*

The Law of 18 May 2026 provides for more flexibility as regards the mandatory elements regarding working time that form part of the work rules.

Previously, all full-time working schedules applied within an organisation had to be included separately in the work rules. That also applied to fixed part-time working schedules that could not be fully fitted within an existing full-time working schedule. As an alternative to providing for fixed working schedules, employers may now choose to include a framework for normal working time in their work rules, consisting of:

- the days of the week on which work may be performed;
- the daily time slot within which work may be performed;
- the minimum and maximum daily working time; and
- the normal and maximum weekly working time.

The introduction of such a framework into an existing set of work rules requires an amendment of the work rules. This implies that the framework must be incorporated into the work rules through the consultation procedure for amending the work rules, and that the employer must subsequently submit the amended work rules to the Social Inspectorate.

*Reduction of Minimum Weekly Working Time for Part-Time Work*

The Law of 18 May 2026 reduces the minimum weekly working time for part-time employees to 1/10th of the normal average weekly working time of a full-time employee. This was previously 1/3rd.

*Night Work in Distribution and Related Sectors*

Under the previous regime, night work (*i.e.*, work between 8.00 pm and 6.00 am) was generally prohibited unless a specific statutory exception applied. The Law of 18 May 2026 abolishes this general prohibition across all sectors.

Employers may now implement night work through a simplified procedure. This can be done either by updating the organisation's work rules or by concluding a company-level collective bargaining agreement. There is no longer a need to rely on a specific statutory exception.

However, for the distribution sector and related sectors, including e-commerce, a narrower definition of night work applies. Organisations fall within the scope of this narrower definition if they (i) are covered by one of the Joint Committees (*paritaire comites / commissions paritaires*) specifically listed in the Law of 18 May 2026[1], and (ii) carry out retail trade, wholesale trade, third-party logistics activities or e-commerce.

For such organisations, night work covers work performed between 11.00 pm and 6.00 am. For employees entering into service as from 1 June 2026, premiums and benefits linked to work performed between 20:00 and 6:00 under collective bargaining agreements, regulatory provisions or work rules will

1 This concerns the following Joint Committees: JC No. 100, JC No. 119, JC No. 125.03, JC No. 127, JC No. 140.03, JC No. 149.01, JC No. 149.04, JC No. 200, JC No. 201, JC No. 202, JC No. 202.01, JC No. 226, JC No. 311, and JC No. 312.

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apply exclusively to work performed between 23:00 and 6:00. However, employees already in service before 1 June 2026 retain in full the premiums and benefits applicable to work performed between 8.00 pm and 6.00 am, as established by the collective bargaining agreements, regulatory provisions or the work rules in force on 1 June 2026.

*Cap on Notice Periods*

For employment agreements commencing on or after 1 June 2026, the notice period for employees with 17 years' seniority or more is capped at 52 weeks (or one year) and does not increase further. Previously, notice periods increased without limitation based on seniority.

***Trial Period Makes Comeback***

On 15 June 2026, the Law of 3 June 2026 amending Article 37/2 of the Law of 3 July 1978 on employment contracts concerning notice periods when the employee has less than six months of seniority was published (*Wet van 3 juni 2026 tot wijziging van artikel 37/2 van de wet van 3 juli 1978 betreffende de arbeidsovereenkomsten, wat de opzeggingstermijnen betreft wanneer de werknemer niet meer dan zes maanden anciënniteit telt / Loi du 3 juin 2026 modifiant l'article 37/2 de la loi du 3 juillet 1978 relative aux contrats de travail, concernant les délais de préavis lorsque le travailleur compte moins de six mois d'ancienneté* - the ***Law***).

Under Article 37/2 of the Law of 3 July 1978 on employment contracts (*Wet van 3 juli 1978 betreffende de arbeidsovereenkomsten / Loi du 3 juillet 1978 relative aux contrats de travail* - the ***Law of 3 July 1978***), notice periods are determined on the basis of the employee's seniority, with different notice periods applying depending on whether notice is given by the employer or the employee.

The Law now reduces the notice period for employees with less than six months of seniority to one week, irrespective of whether notice is given by the employer or the employee. The notice periods for employees with six months of seniority or more remain unchanged. The Law thus reintroduces the trial period as the federal government provided for in the [coalition agreement of 31 January 2025]. The amended notice periods apply only to employment agreements commencing on 1 August 2026. Employment agreements already in force on that date remain subject to the notice periods that previously applied.

***Temporary Partial Cap on Salary Indexation Is Established***

*Background*

On 1 June 2026, the [Programme Law of 30 May 2026] (*Programmawet van 30 mei 2026 / Loi-programme du 30 mai 2026* - the ***Programme Law***) was published in the Belgian Official Journal. The most important employment measure of the Programme Law is the implementation of a temporary partial cap on the automatic indexation of salaries, commonly referred to as the "cent index" (*centenindex / l'indexation en centimes*).

*Indexation Mechanism*

The new indexation measure introduces a partial cap on the indexation of gross salaries for the private and public sectors. Its application depends on the employee's gross base salary:

- employees earning EUR 4,000 or less gross per month remain entitled to the full standard indexation, without any restriction;
- employees earning more than EUR 4,000 gross per month are subject to a cap: indexation will only take effect up to 2% of the reference salary of EUR 4,000 gross (pro-rated for part-time employees).

By way of example, an employee earning EUR 5,000 gross per month will not receive the full indexation on the entirety of that salary. Instead, the indexation will be capped at 2% of the reference salary of EUR 4,000,

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*i.e.* EUR 80 gross per month. The employee's salary will therefore increase to EUR 5,080 gross per month, rather than the EUR 5,100 gross per month that would have resulted from a full 2% indexation applied to the entire salary.

Two moderation periods apply:

- first period: from 1 June 2026, continuing until the cumulative 2% moderation effect has been reached in the relevant sector;
- second period: once all sectors have applied a cumulative 2% moderation, the mechanism is applied a second time on 1 January 2028, or on a date set by Royal Decree if the 2% moderation effect from the first period has not yet been achieved by that date for all salaries subject to an indexation mechanism. For the second period, the EUR 4,000 threshold is linked to the pivot index (*spilindex / indice-pivot*) in force on 1 June 2026 and indexed accordingly at the start of the second period, after which it remains fixed for the duration of the second period.

The cap on the indexation applies as soon as an indexation takes place in the relevant sector and ceases to apply once the cumulative 2% cap has been reached. Given that each sector operates under its own indexation mechanism, the new indexation measure does not apply simultaneously across all sectors.

*Reference Salary*

The Programme Law stipulates that only the fixed gross monthly salary must be taken into account to determine whether or not an employee earns more than EUR 4,000. Benefits (*e.g.*, meal vouchers, benefits in kind), bonuses or premiums (*e.g.*, end-of-year premium, night premiums or shift premiums) must therefore not be included.

*Salary Moderation Contribution*

As the cap on the indexation reduces salary indexation costs for higher-earning employees, employers benefit from a corresponding reduction in labour costs. However, the Programme Law requires employers to transfer 50% of the savings resulting from the partial salary cap to the National Social Security Office (*Rijksdienst voor Sociale Zekerheid / Office National de Sécurité Sociale*) in the form of a salary moderation contribution.

This salary moderation contribution (*loonmatigingsbijdrage / cotisation de modération salariale*) operates in three successive phases:

1. **Phase 1**: a special salary moderation contribution, applicable during the first and second moderation periods, with the first period starting on 1 June 2026 and the second period on 1 January 2028 (or a later date set by Royal Decree);
2. **Phase 2**: a provisional consolidated salary moderation contribution, which replaces the special contribution once the cumulative 2% moderation effect is reached for the first time; and
3. **Phase 3**: a definitive consolidated salary moderation contribution, which replaces the provisional consolidated contribution once the cumulative 2% moderation effect is reached for the second time. The precise terms and conditions of this third phase will be determined by Royal Decree.

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