June 2026

# VBB on Belgian Business Law

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# ARTIFICIAL INTELLIGENCE

## *European Commission Publishes Guidelines on Transparency Obligations for Certain Artificial Intelligence Systems*

On 20 July 2026, the European Commission (the ***Commission***) published guidelines on the implementation of the transparency obligations for certain AI systems under Article 50 of Regulation (EU) 2024/1689 of 13 June 2024 laying down harmonised rules on artificial intelligence (the ***AI Act***). The guidelines help providers and deployers meet obligations that start to apply on 2 August 2026, and aim to help people recognise when they interact with AI or when AI has generated or altered content, thereby reducing the risks of deception and manipulation.

### *Four Transparency Obligations under Article 50*

Article 50 of the AI Act sets out four transparency obligations, each addressing a different type of AI system or output. First, providers must design AI systems that interact directly with natural persons, such as chatbots, so that those persons know they are dealing with an AI system. Second, providers must mark AI-generated or manipulated audio, image, video or text content in a machine-readable format and ensure that recipients can detect its artificial origin. Third, deployers must inform natural persons exposed to emotion, recognition, or biometric categorisation systems that such systems operate. Fourth, deployers must disclose deep fakes and AI-generated or manipulated text published to inform the public on matters of public interest.

The guidelines clarify the central concepts behind each obligation and illustrate them with examples. They explain what qualifies as a directly interactive system, what counts as synthetic content and a deep fake, and when text addresses a matter of public interest. They also delimit the exceptions, including the exception for standard editing, such as spelling and grammar correction, and the exception for AI systems that the law authorises for law enforcement purposes. If a single AI system causes more than one obligation to apply, the guidelines confirm that the obligations apply cumulatively and may bind both the provider and the deployer.

### *Demonstrating Compliance through Code of Practice*

The guidelines explain how providers and deployers may demonstrate compliance with the marking, detection and labelling obligations. Adherence to a code of practice assessed as adequate under Article 50(7) of the AI Act offers a straightforward and legally certain route. The Commission presents such a code as the only Union-wide framework that providers and deployers of generative AI systems can rely on, irrespective of their place of establishment or their competent market surveillance authority. Operators may also show compliance through other adequate means, but those that do not adhere to a code should expect closer scrutiny and more detailed requests for information. Alongside the guidelines and the code, the Commission points to the AI Act Service Desk as a further source of practical support.

### *Enforcement and Application Timeline*

Market surveillance authorities designated by the EU Member States, the AI Office and the European Data Protection Supervisor supervise and enforce Article 50 of the AI Act. Providers and deployers that breach the transparency obligations face fines of up to EUR 15,000,000 or, for an undertaking, up to 3% of total worldwide annual turnover for the preceding financial year, whichever is higher. EU institutions, bodies and agencies face fines of up to EUR 750,000, and SMEs face the lower of the applicable percentage or amount.

Article 50 of the AI Act will start to apply on 2 August 2026. The AI Omnibus, which entered into force on 27 July 2026, grants a targeted transitional period for the marking and detection obligation under Article 50(2) of the AI Act: providers of generative AI systems placed on the market or put into service before 2 August 2026 will have until 2 December 2026 to make those systems compliant.

The guidelines can be found here.

# COMMERCIAL LAW

## *Default Commercial Interest Remains Unchanged*

The bi-annual default interest rate for commercial transactions for the second semester of 2026 has yet to be published in the Belgian Official Journal. However, the Federal Public Service Finance has already announced that it will amount to 10.5% and will therefore remain unchanged (*See*, this Newsletter, Volume 2026, No. 1). Pursuant to the Law of 2 August 2002 on combating late payment in commercial transactions (*Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties / Loi du 2 août 2002 concernant la lutte contre le retard de paiement dans les transactions commerciales* – the ***Law***), the default commercial interest rate for commercial transactions applies to compensatory payments in commercial transactions (*handelstransacties / transactions commerciales*), *i.e.*, transactions between companies or between companies and public authorities, but may be deviated from by contract. The Law implements in Belgian law Directive 2011/7/EU of 16 February 2011 on combating late payment in commercial transactions.

The statutory interest rate applicable to civil matters and to commercial relations involving natural persons is determined on an annual basis. For 2026, this rate amounts to 4.5% (*See*, this Newsletter, Volume 2026, No. 1).

## *Chamber of Representatives Adopts Book 7 of New Civil Code on "Special Contracts"*

On 16 July 2026, the federal Chamber of Representatives adopted bill 56K0743 inserting Book 7 "Special Contracts" (*Bijzondere contracten / Contrats spéciaux*) into the Civil Code (the ***Bill***). The Bill forms part of the ongoing modernisation of Belgian civil law, this time updating the rules governing special contracts.

The Bill provides a framework for the following special contracts: (i) sale and exchange (*koop en ruil / vente et échange*); (ii) lease and loan for use (*huur en bruikleen / bail et prêt à usage*); (iii) service agreements (*dienstencontracten / contrats de service*), including mandate, deposit and construction-related service agreements; (iv) certain aleatory contracts (*kanscontracten / contrats aléatoires*); and (v) sequestration and settlement (*sekwester en dading / séquestre et transaction*). Provisions on loan agreements (*leningsovereenkomsten / contrats de prêt*) are the subject of a separate draft text currently under public consultation; they are expected to be inserted into Book 7 under Title 5 at a later stage.

The Bill will enter into force twelve months after its publication in the Belgian Official Journal (*Belgisch Staatsblad / Moniteur belge*). Subject to a limited number of exceptions, the Bill will apply to all legal acts and legal facts occurring after its entry into force (Articles 49 and 50 of the Bill).

The Bill, as adopted, is available here.

For background on the Bill, see, this Newsletter, Volume 2025, No. 2.

# CONSUMER LAW

## *Chamber of Representatives Adopts Bill on Consumer Information concerning Product Durability, Repairability and Green Claims*

On 9 July 2026, the federal Chamber of Representatives adopted bill 56K1552 transposing Directive (EU) 2024/825 of 28 February 2024 "amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information" in Belgian Law (*Wetsontwerp tot omzetting van Richtlijn (EU) 2024/825 van 28 februari 2024 tot wijziging van de Richtlijnen 2005/29/EG en 2011/83/EU wat betreft het versterken van de positie van de consument voor de groene transitie door middel van betere informatie en door middel van bescherming tegen oneerlijke praktijken / Projet de loi transposant la directive (UE) 2024/825 du 28 février 2024 modifiant les directives 2005/29/CE et 2011/83/UE pour donner aux consommateurs les moyens d'agir en faveur de la transition verte grâce à une meilleure protection contre les pratiques déloyales et grâce à une meilleure information*; the ***Bill***, available here). The Bill introduces new precontractual consumer-information requirements concerning the durability and repairability of products and strengthens the rules on misleading and unfair commercial practices in Book VI of the Code of Economic Law (***CEL***).

For more information on Directive (EU) 2024/825, *see,* this Newsletter, Volume 2024, No. 2.

***New Consumer Information Requirements***

Under the Bill, traders will be required to provide consumers with additional pre-contractual information concerning the durability and repairability of goods. Depending on the product and the information made available by the producer or provider, such information will include:

- the minimum period for which software updates will be provided for goods featuring digital elements, digital content, and digital services, and the period during which those updates will be available free of charge;
- any repairability score established on the basis of harmonised EU requirements, *i.e.,* the EU repairability score (*repareerbaarheidsscore / indice de réparabilité*);
- when no EU repairability score has been established, other relevant repair information, such as the availability and estimated cost of spare parts, the procedure for ordering them, access to repair and maintenance instructions and any restrictions on repairs;
- information on qualifying commercial guarantees of durability;
- the existence and conditions of after-sales services, including repair services; and
- for distance and off-premises contracts, information on available environmentally-friendly delivery options.

Several of these obligations apply only if the producer or provider made the relevant information available to the trader.

The EU repairability score referred to in the Bill should be distinguished from the Belgian repairability index (*herstelbaarheidsindex* / *indice de réparabilité*) established by the Law of 17 March 2024 on promoting the repairability and longevity of goods (*See*, this Newsletter, Volume 2025, No. 4). The Bill concerns only repairability scores based on harmonised requirements at EU level.

Under the Bill, traders will also be required to display a harmonised notice informing consumers of the existence and principal features of the legal guarantee of conformity, including its two-year duration. If a producer offers, at no additional cost, a commercial guarantee of durability covering the entire good for a period exceeding two years, the trader must use a separate harmonised label to inform consumers of that guarantee. The form and content of the harmonised notice and label are laid down in Commission Implementing Regulation (EU) 2025/1960.

***Stricter Rules on Environmental Claims***

The Bill strengthens the existing rules on misleading commercial practices. In particular, environmental claims concerning future performance, such as a commitment to achieve climate neutrality by a particular date, will be considered misleading unless they are supported by clear, objective, publicly available, and verifiable commitments set out in a detailed and realistic implementation plan containing measurable and time-bound targets. At regular intervals, the plan must also be verified by an independent external expert.

Traders offering product-comparison services will be required to disclose the comparison method used, the products and suppliers included in the comparison and the measures taken to keep the information up to date, when the comparison concerns environmental or social characteristics or circularity aspects such as durability, repairability, and recyclability.

Moreover, the Bill adds twelve practices to the CEL's blacklist of commercial practices that are prohibited in all circumstances, including:

- displaying a sustainability label that is not based on an appropriate certification scheme or established by a public authority;
- making a generic environmental claim, such as “green” or “environmentally friendly”, without being able to demonstrate recognised excellent environmental performance relevant to the claim;
- presenting an environmental claim as applying to the entire product or all of a trader's activities when it concerns only a particular aspect of the product or a limited, non-representative activity;
- claiming, on the basis of greenhouse-gas offsetting, that a product has a neutral, reduced or positive impact in relation to greenhouse-gas emissions;
- withholding information concerning the negative effects of a software update or presenting an update as necessary when it merely provides functional improvements;
- falsely claiming that a product possesses particular durability characteristics or is repairable;

- encouraging consumers to replace consumables earlier than technically necessary; and
- withholding or misrepresenting information about the effects of using spare parts, consumables or accessories supplied by a third party.

***Entry into Force and Treatment of Existing Stock***

The Bill's new rules will enter into force on 27 September 2026.

In June 2026, the national consumer protection authorities participating in the Consumer Protection Cooperation Network adopted a Common Understanding on old stock situations under Directive (EU) 2024/825 (***Common Understanding***). For these purposes, "old stock" refers to products or packaging bearing environmental claims or sustainability labels that were manufactured, ordered, distributed or placed on retailers' shelves before 27 September 2026.

Under the Common Understanding, traders are expected to take timely and good-faith steps to comply with the new rules. However, when genuine and specific transitional difficulties arise, national authorities may adopt a phased and proportionate enforcement approach, particularly during the initial period of application. In assessing individual cases, authorities may take into account factors such as packaging cycles, existing stock volumes, prior production orders, supply-chain dependencies, product shelf life and the feasibility of corrective measures. Still, the Common Understanding does not create a general exemption for existing stock or postpone the application of the substantive rules beyond 27 September 2026.

Separately, the Bill provides for a temporary Belgian enforcement regime concerning existing stock. In respect of certain infringements relating to environmental claims and the newly blacklisted practices, the Economic Inspectorate (*Economische Inspectie / Inspection économique*) must not take administrative enforcement action against goods qualifying as old stock during the first six months following the Bill's entry into force. This temporary regime does not postpone the substantive requirements; businesses must comply with the new rules as from 27 September 2026.

Businesses should therefore review their environmental and durability claims, sustainability labels, product packaging, online product pages and pre-contractual information before 27 September 2026. Particular attention should be paid to existing stock, environmental commitments concerning future performance, information flows within the distribution chain and claims relating to product lifespan, software updates and repairability.

# CORPORATE LAW

## *Royal Decree of 12 June 2026 Grants Regulated Entities Direct Access to UBO Register Supporting Documents*

On 23 June 2026, the Royal Decree (*Koninklijk Besluit / Arrêté Royal*) of 12 June 2026 amending the Royal Decree of 30 July 2018 on the operating procedures of the Ultimate Beneficial Owner (***UBO***) register (the ***Royal Decree***) was published in the Belgian Official Journal (*Belgisch Staatsblad / Moniteur Belge*). The amendment introduces a single but significant change to the framework governing access to the UBO register in order to reduce the administrative burden on regulated entities and strengthen the anti-money laundering regime.

***Background***

The Royal Decree of 30 July 2018 sets out the detailed rules for the operation of Belgium's UBO register which was established pursuant to the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash (*Wet van 18 september 2017 tot voorkoming van het witwassen van geld en de financiering van terrorisme en tot beperking van het gebruik van contanten / Loi du 18 septembre 2017 relative à la prévention du blanchiment de capitaux et du financement du terrorisme et à la limitation de l'utilisation des espèces*) (the ***AML Law***). The Royal Decree of 30 July 2018 expressly excluded regulated entities from accessing the supporting documents held in the UBO register. These documents which evidence the veracity of the information submitted to comply with UBO obligations, including the name, date of birth, address, nationality, category of UBO, and the stakes held by the UBO in the relevant entity, could therefore not be consulted directly by regulated entities.

***Amendment***

The Royal Decree eliminates the restriction that barred regulated entities from accessing the UBO supporting documents referred to in the Royal Decree of 30 July 2018.

***Practical Impact for Regulated Entities***

The amendment introduced by the Royal Decree has several immediate practical consequences for regulated entities subject to the AML Act:

- <u>Direct access to supporting documents</u>: Regulated entities may now consult the supporting documents in the UBO register directly, without having to request those documents repeatedly from their clients as part of their customer due diligence processes.

- <u>Access to updated information</u>: Regulated entities will be able to obtain updated versions of the supporting documents immediately, facilitating more timely and accurate due diligence.

- <u>Easier comparison and discrepancy detection</u>: The change allows regulated entities to compare the information in their possession with that recorded in the UBO register more easily. When discrepancies are identified, regulated entities will be better placed to report them promptly to the General Treasury Administration (*Algemene Thesaurie / Trésorerie Générale*), in accordance with their obligation under the AML Act.

# DATA PROTECTION

## *European Data Protection Board Publishes Draft Guidelines on Anonymisation of Personal Data*

On 7 July 2026, the European Data Protection Board published its draft Guidelines 02/2026 on Anonymisation (the ***Guidelines***). The Guidelines set out what qualifies as anonymous data and offer a practical framework for assessing whether anonymisation has been carried out successfully. The Guidelines update the Article 29 Working Party Opinion 05/2014 on anonymisation techniques. They reflect significant developments in the case law of the Court of Justice of the European Union (***CJEU***), in particular the judgment in *EDPS v SRB* (C-413/23P – see Client Alert, CJEU Clarifies Concepts of Personal and Pseudonymised Data, 11 September 2025). They also take account of artificial intelligence and the emergence of EU-wide data spaces.

***Legal Analysis - Core Questions***

The assessment of whether information is anonymous involves two questions: (i) *does the information "relate" to a natural person* and, if so, (ii) *is that person "identified or identifiable"*. If the answer to either of these questions is "no", then the data should be considered anonymous. Importantly, the outcome of this test is entity-specific: data may be anonymous for one entity but not for another.

Person

Whether information "relates" to a person depends on three elements.

First, the *content,* which concerns information that is about the person *per se*, describing one or more characteristics or actions (e.g., an employee record, a patient's medical record, etc.).

Second, the *purpose,* which covers information that, while not necessarily about that person *per se*, is used (or likely to be used) to evaluate, treat or influence that person's status or behaviour. This may include information about an object (e.g. a car), an organisational entity (e.g. an association), or a relative (e.g. a friend or a family member).

Third, the *effect,* which relates to information whose processing is liable to have an impact on the person's rights and interests, creating a concrete possibility that the person can be treated differently from others (e.g., location data of taxis that is collected for the purpose of optimising itineraries, but which also allows for the monitoring of the taxi drivers' performance).

Identified - identifiable

The second question asks whether the person can be singled out within a given context, whether through direct identifiers or a combination of attributes. Identification may be direct (an entity can identify a person using its own means) or indirect, when the entity could identify the person through *means reasonably likely to be used*, such as (i) by obtaining additional information, (ii) by applying methods controlled by other parties such as decryption; and/or (iii) by making the data available to other entities that have themselves means reasonably likely to be used to identify that person.

The Guidelines clarify that information does not have to carry a zero risk of identification to qualify as anonymous. Instead, the likelihood of successful re-identification must be insignificant. This may be the case when identification is impossible, would require disproportionate time, cost or effort, or is prevented by a legal prohibition. Importantly, a contractual prohibition, even if binding upon the parties, does not carry the same weight.

***Technical Analysis – Three Criteria Assessment***

When the answer to the identifiability question is not straightforward, the Guidelines recommend a technical assessment informed by current re-identification techniques. This assessment may follow one of two approaches.

First, the *contextual approach*, based on the legal analysis and taking into account the means of each relevant entity and the likelihood that those means would in practice be used to re-identify individuals.

Second, the *simplified approach*, which disregards differences between entities and applies a uniform standard. In that case, it can lead the anonymising controller to treat the data as though it is not anonymous even if it would actually be so for the relevant entities.

Under both approaches, the technical analysis is structured around three criteria:

(i) *No Record Isolation*, meaning the data does not contain any combination of attribute values that uniquely points to a single person. The more attributes a record contains, the higher the risk of uniqueness. Example: a company shares an anonymised HR dataset from which names and employee numbers have been removed, with each record showing department, seniority level, contract type, and salary band. If only one individual in the dataset is a part-time Director in the Legal department within a given salary band, that combination of attributes is unique and points to that person alone. In that case, this criterion is not satisfied.

(ii) *No Linkage*, meaning it must not be possible to connect a record in the dataset to other records about the same person held in separate datasets. Example: a retailer removes customer names and email addresses from a purchase dataset but retains postcode, product category, and purchase date. A loyalty programme database held by a partner contains the same combination of attributes linked to named individuals. Because records in the two datasets can be matched on those shared attributes, this criterion is also not satisfied.

(iii) *No Inference*, meaning the data must not allow any specific and meaningful inference to be drawn from the given data whether on the basis of the dataset alone or in combination with external sources. Example: a company reports that its six engineers earn EUR 550,000 in total and that the five engineers on the Product Engineering team (which does not include any other employee) account for EUR 480,000. Although both figures are aggregated, they allow the salary of the remaining engineer to be determined as EUR 70,000.

If all three criteria are satisfied, the data may be regarded as anonymous. However, failing one or more of the criteria does not automatically cause the data to be personal but triggers a more detailed assessment of whether the failure in question creates a genuine risk of identification.

***Practical Implications***

The Guidelines provide welcome clarity for organisations seeking to use anonymised data outside the full scope of the GDPR. However, anonymisation is itself processing and must therefore have a valid legal basis under Article 6 GDPR or, for special category data, under Article 9(2). Controllers must also inform data subjects that their data will be used to produce anonymous information and must avoid labels such as “anonymous”, “de-identified” or “de-personalised” when individuals remain identifiable.

Robust documentation of the anonymisation process is essential, both to demonstrate GDPR compliance and to assess the effectiveness and resilience of the measures applied. In addition, anonymisation should not be treated as a one-off exercise. As artificial intelligence and re-identification techniques continue to develop, the risk of re-identification may increase over time. Periodic reassessment of anonymised datasets is therefore recommended.

The Guidelines are available here (in English).

# FOREIGN DIRECT INVESTMENT

## *Belgium Launches Public Consultation on Screening Mechanism of Foreign Direct Investment*

On 18 June 2026, Belgium launched a public consultation regarding its screening mechanism of foreign direct investment (***FDI***) in Belgium.

The public consultation was considered necessary because the rules have been in operation for three years (they started to apply on 1 July 2023). Additionally, a new European Regulation, Regulation 2026/1386, was adopted on 17 June 2026 and published on 26 June 2026.

The Minister of Economic Affairs is looking for two types of information: (i) an assessment of the existing screening mechanism; and (ii) views on changes to that regime. There is no questionnaire. Respondents enjoy complete freedom in choosing the form and contents of their reply. The responses to the consultation will not be made publicly available even though it is questionable that such an approach is compatible with access to government information principles. Submissions should be sent to the following address: fdis-belgium@economic.fgov.be.

The public consultation will run until 31 August 2026.

## *Regulation 2026/1386 Creates New Foreign Direct Investment Screening Challenges for Venture Capital Funds*

### *Background*

Regulation 2026/1386 on the screening of foreign investments in the Union (the ***Regulation***), which repeals Regulation 2019/452, will become fully applicable on 17 January 2028. It establishes a more harmonised framework for the screening of foreign direct investments (***FDI***) across the European Union (the ***EU***).

Regulation (EU) 2019/452, which entered into force on 19 March 2019, created a cooperation mechanism between Member States and the European Commission (the ***Commission***) for the screening of foreign direct investments. The new Regulation significantly expands this framework by introducing broader screening obligations and more harmonisation across the EU. These changes are expected to have a particular impact on venture capital funds investing in strategic sectors such as artificial intelligence, cybersecurity, semiconductors and dual-use technologies.

### *Key Changes Brought About by Regulation*

The Regulation establishes a minimum list of sectors and activities that Member States must include within their FDI screening mechanisms. These cover military equipment, dual-use items, and critical technologies. The Regulation also addresses the limitation identified by the Court of Justice of the European Union in the *Xella* judgment by extending the scope of screening to investments made by EU-based investors that are controlled by non-EU investors. This modification aims to prevent foreign investors from circumventing the screening regime through EU-based investment structures.

In addition, the Regulation further harmonises national screening procedures by setting a maximum period of 45 days for the initial review phase, thereby increasing predictability for investors. It also exempts specific internal restructurings from screening when the ultimate beneficial owner remains unchanged and no new third-country entity is introduced into the ownership chain of the EU target.

The Regulation also expands the "*call-in*" powers of Member State authorities. Competent authorities may review investments that were not subject to prior authorisation, including transactions that were not notified or were completed before notification. When appropriate, such reviews may result in the imposition of mitigating measures. Depending on the circumstances, these powers may be exercised within limitation periods ranging from 15 months to five years.

Finally, the Regulation strengthens cooperation between Member States and the Commission. Investments affecting multiple Member States must be notified simultaneously, while a central database will enable national authorities to take previous screening decisions into account.

***Venture Capital Structure***

A venture capital fund typically involves three principal parties: the limited partners (**LPs**), the general partner (**GP**) and the portfolio companies. LPs provide capital to the fund and generally act as passive investors seeking financial returns. The GP is responsible for managing the fund, making investment decisions and overseeing the portfolio companies. Portfolio companies are often start-up companies or high-growth businesses that receive funding in exchange for equity and aim to scale before an eventual exit.

The traditional venture capital model is characterised by a separation between economic ownership and managerial control. While LPs contribute capital, investment discretion rests with the GP, which manages the fund and exercises control over investment decisions and the relationship with portfolio companies. This distinction is particularly relevant for FDI screening, as the presence of foreign capital does not, in itself, imply that a foreign investor exercises control or decisive influence over an investment. Rather, the relevant question is whether the foreign investor is able to influence decisions concerning the management of the fund or the underlying portfolio investment.

***Impact On Venture Capital Funds***

The Regulation broadens the assessment of ownership structures and ultimate beneficial ownership for FDI screening purposes. Under the current framework, an EU-established venture capital fund is generally unlikely to fall within the scope of FDI screening solely because it has non-EU investors. By contrast, under the new Regulation, a fund may become subject to screening when it is controlled by, or its ultimate beneficial owner is, a third-country investor.

The mere presence of non-EU LPs does not automatically cause the screening rules to apply. In a traditional venture capital structure, LPs are passive investors, while investment decisions remain within the discretion of the GP. The analysis becomes more complex when a third-country LP holds governance rights, veto rights or other contractual powers that enable it to exercise control or decisive influence over the management of the fund or its investment decisions.

The broader scope of the Regulation is likely to increase compliance obligations for fund managers. In particular, they may need to undertake enhanced due diligence on the identity of LPs, ownership structures and governance arrangements to determine whether a fund falls within the scope of national FDI screening regimes. This may require additional assessments during fundraising and before investments are completed, increasing transaction costs and potentially extending deal timelines.

The Regulation's expanded call-in powers may also create greater regulatory uncertainty. Investments that were not subject to prior notification may still be reviewed after completion, exposing transactions to post-closing scrutiny. This is particularly significant in the venture capital context, where investments are often made within compressed timelines and competitive financing rounds. Delays or uncertainty may therefore affect a fund's ability to secure investments in high-growth companies.

The practical impact is expected to be most pronounced for venture capital funds investing in strategic sectors, including artificial intelligence, cybersecurity, semiconductors and dual-use technologies. As these sectors are increasingly regarded as critical to the Union's economic security and strategic autonomy, investments involving third-country investors with control or decisive influence are more likely to attract regulatory scrutiny. The principal consequences for venture capital funds are therefore likely to arise from enhanced disclosure requirements, greater uncertainty regarding the scope of the Regulation and the potential for longer transaction timelines.

The effectiveness of the new framework will ultimately depend on its application by Member States. A proportionate approach that distinguishes between passive financial investment and genuine foreign control or decisive influence will be important to safeguard the Union's strategic interests without unnecessarily restricting access to capital for innovative European businesses.

# INTELLECTUAL PROPERTY

## *Court of Justice Ruling Opens Door To Direct Platform Liability For Intellectual Property Infringement*

On 16 June 2026, the Grand Chamber of the Court of Justice of the European Union (***CJEU***) delivered its judgment in Joined Cases C-188/24 and C-190/24 (*WebGroup/Coyote*) on the interpretation of Directive 2000/31/EC on electronic commerce (the ***E-Commerce Directive***) and the Charter of Fundamental Rights of the European Union (***CFR***). The case, referred by the French Council of State (*Conseil d'État)*, is most significant for IP right holders because of its findings on when a hosting provider loses the safe harbour under Article 14(1) of the E-Commerce Directive and the related shield against general monitoring obligations.

***Background***

Case C-188/24 concerned two operators of pornographic websites established in the Czech Republic. The French audiovisual regulator, ARCOM, had served formal notices on them for breach of French rules prohibiting the broadcast of pornographic content accessible to minors. The operators argued that France had failed to notify the measures, as required under Article 3 of the E-Commerce Directive, and that the underlying legislation was incompatible with the country-of-origin principle.

Case C-190/24 concerned Coyote System, a French provider of a geolocation and driving-assistance service, which was prohibited from rebroadcasting user messages revealing the location of certain police operations. Coyote argued that this amounted to an unlawful general monitoring obligation under Article 15 of the E-Commerce Directive. The two cases were joined in February 2025.

***CJEU Judgment***

The CJEU held that the "coordinated field" under Article 2(h) of the E-Commerce Directive covers all Member State requirements relating to information society services, save those expressly excluded. A measure's general, abstract, criminal-law, or public-policy character does not remove it from that field. Within the coordinated field, providers are in principle regulated only by their Member State of establishment. The CJEU held that a general, category-wide prohibition, such as Article 227-24 of the French Criminal Code, cannot satisfy the requirement under Article 3(4)(a) of the E-Commerce Directive that derogating measures target a given provider. France could not apply that general prohibition to providers established in other Member States.

By contrast, the individualised ARCOM notice mechanism, targeting a specific identified provider, is capable of satisfying the conditions for valid derogation. A requirement that a given provider implement age verification is proportionate when it has not yet adopted adequate protective measures.

The most significant part of the judgment for IP practitioners concerns the hosting safe harbour, and extends well beyond geolocation services to any platform hosting user-generated content. Building on prior case law, including *YouTube/Cyando*, the CJEU confirmed that the safe harbour under Article 14(1) of the E-Commerce Directive is unavailable to a provider that plays an "active role" giving it knowledge of or control over third-party content.

The CJEU went further, holding that a provider that controls stored information is excluded from Article 14(1) E-Commerce Directive even if it does not become aware of that information due to the automation of its processing, and that such control can be exercised through the algorithm used, regardless of whether the provider also carries out manual interventions. Mere categorisation or indexing carried out to improve content accessibility is not, by itself, sufficient to remove the safe harbour. However, when an algorithm goes further and determines, in the interest of the operator or its service, the conditions, manner, and order of priority under which information is or is not broadcast, the operator exercises control over that content and cannot rely on the safe harbour.

As a corollary, the prohibition on general monitoring obligations under Article 15(1) E-Commerce Directive benefits only providers that qualify for the safe harbours under Articles 12 to 14 E-Commerce Directive. A provider disqualified under Article 14(1) because of algorithmic control therefore also loses the protection of Article 15(1). The CJEU further held, in relation to Coyote, that even a hosting provider may lawfully be prohibited from rebroadcasting sufficiently circumscribed information, such as the location of roadside checks, since this does not require an independent assessment of all stored content and so does not amount to a form of prohibited general monitoring.

***Conclusion***

This judgment figures among the most significant EU intermediary liability rulings of the CJEU in recent years. On country of origin, it closes off reliance on criminal law or public order characterisation to bypass the procedural requirements of Article 3(4) E-Commerce Directive. This is because Member States must use individualised, targeted measures to impose obligations on foreign-established providers.

The safe harbour findings are potentially significant for IP enforcement, though their reach should not be overstated: the CJEU expressly maintained that mere categorisation and indexation of content by algorithms does not, by itself, remove hosting-provider status. By contrast, when an algorithm goes further and determines, in the operator's own interest, the conditions, manner, and order of priority of broadcast, the operator loses safe harbour protection.

This raises a real question as to whether some of today's user-generated content platforms, including specific social media services with recommendation or ranking algorithms, can still rely on the hosting safe harbour. If they cannot, they lose both the immunity under Article 14(1) (now Article 6 of the Digital Services Act (***DSA***)) and the shield against monitoring obligations under Article 15(1) (now Article 8 DSA). For IP right holders, this could open the door to platform liability without having to establish actual knowledge in cases involving such algorithms, a shift from the more cautious approach in cases such as *L'Oréal*.

The judgment of the CJEU can be found here.

## *General Court Invalidates Tetra Laval's Octagonal Carton Trade Mark*

On 3 June 2026, the General Court of the European Union (the ***General Court***) delivered a judgment in *Lami Packaging (Kunshan) Co. Ltd v EUIPO*, T-104/25, annulled a decision of the EUIPO's Fourth Board of Appeal and confirmed the invalidity of the three-dimensional EU trade mark for an octagonal carton shape of Tetra Laval Holdings & Finance SA (***Tetra Laval***).

***Background***

In 2000 Tetra Laval had registered the mark for packaging containers and material in Class 16, consisting of an octagonal/prismatic carton shape with four wall panels, four truncated concave angles and a sealing fin. In 2022, Lami Packaging (Kunshan) Co. Ltd (***Lami Packaging***) sought a declaration of invalidity, arguing the shape consisted exclusively of features necessary to achieve a technical result, and alternatively that the registration was an abuse of the trade mark system to protect a patentable shape. The Cancellation Division upheld the invalidity claim, but the Board of Appeal reversed that decision, finding that the mark's essential features related only to the manufacturing process and did not affect the product's function during use. Lami Packaging appealed to the General Court.

***General Court Judgment***

The General Court confirmed the two-step test under Article 7(1)(e)(ii) of Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (***TMR***): the competent authority must (i) identify the essential characteristics of the mark; and (ii) assess whether all of them are necessary to obtain a technical result. It was undisputed that the mark's four essential characteristics were the octagonal structure, the truncated concave angles, the narrowing wall panels, and the sealing fin.

The General Court agreed with the Board of Appeal, consistent with the judgment of the Court of Justice in *Société des Produits Nestlé* (C-215/14), that Article 7(1)(e)(ii) TMR applies only to technical results arising from a product's use, not its manufacture. However, it found that the Board had misapplied this principle: the mark's essential features enable the carton to fulfil its basic function of containing liquids and foodstuffs while ensuring the packaging's stability and ease of handling, which are technical results occurring during use, not merely manufacture.

The prismatic shape also improves the ratio between the container's volume and the quantity of packaging material needed, producing lighter, less bulky packaging that is easier to store and transport for food industry intermediaries, a benefit confirmed by Tetra Laval's own patent filings and marketing materials.

The General Court further found that the shape gives end consumers a more comfortable, ergonomic grip, again evidenced by those same filings and materials, and held that this benefit to end users remained relevant even though the immediate customers targeted by the mark are professional intermediaries. The General Court also held that Article 7(1)(e)(ii) TMR is not limited to innovative or improved technical results but covers any shape necessary to achieve a technical result, whether or not it improves on existing shapes and regardless of a specific or quantified economic benefit.

As the ground based on Article 7(1)(e)(ii) TMR alone was sufficient to invalidate the mark, the General Court annulled the Board of Appeal's decision and altered it to dismiss the appeal which Tetra Laval had brought before the Board of Appeal, thereby restoring the Cancellation Division's original decision that the mark is invalid.

***Conclusion***

The judgment indicates that the manufacture/use distinction of *Nestlé* must not be read so narrowly as to shield shapes that, though optimised for manufacturing, deliver real technical benefits across the supply chain. It is also a reminder that a proprietor's own patent filings and marketing materials can be used as evidence of technical functionality, and may undermine the mark's validity.

The judgment is available here.

## *Benelux Court Of Justice Confirms Invalidity Of Reckitt's Red Ball Trade Mark*

On 2 June 2026, the Benelux Court of Justice (the ***Court***) dismissed the appeal of Reckitt Benckiser Finish B.V. (***Reckitt***) in *Reckitt Benckiser Finish B.V. v Henkel AG & CO KGaA* (C 2024/27), confirming the decision of the Benelux Office for Intellectual Property's (the ***BOIP***) that Reckitt's red ball trade mark lacks distinctive character.

***Background***

In April 2023, Reckitt registered a figurative sign consisting of a red circle or ball with shading effects as a Benelux trade mark (N°1482557) for dishwasher detergents and other cleaning products. On 16 October 2023, Henkel AG & CO KGaA (***Henkel***) requested a declaration of invalidity before the BOIP, arguing that the mark lacked distinctive character and was descriptive of the "Powerball" active ingredient in Reckitt's dishwasher tablets. On 12 July 2024, the BOIP upheld Henkel's request and invalidated the mark, finding that consumers would perceive the sign as decorative rather than as an indicator of commercial origin. Reckitt appealed on 12 September 2024, arguing that: (i) the sign was a distinctive glossy, vivid red ball rather than a simple red circle; (ii) the BOIP had failed to consider its extensive use of the sign; and (iii) Henkel's evidence of third-party use was irrelevant as it concerned other cleaning products, not dishwasher detergents.

***Court Judgment***

The Court upheld the finding of invalidity. It first noted that an invalidity claim on absolute grounds starts from a presumption of validity, so it fell to Henkel to raise concrete circumstances casting doubt on the mark's validity. Applying CJEU case law, the Court held that a simple geometric shape, even in a specific colour and with shading effects, is generally incapable of indicating commercial origin to the average consumer of the relevant goods. Reckitt's description of the sign as vivid, three-dimensional and having a glossy, mirror-like effect with an illusion of depth did not change this: it remained, in essence, a red circle or ball with shading. The relevant date for assessing distinctive character was the filing date, 18 April 2023.

The Court rejected Reckitt's reliance on its scale of use, explaining that inherent distinctive character depends on how a sign would be used on goods or packaging, not the scale of actual use. Evidence of use is only relevant when a party invokes acquired distinctiveness, which Reckitt did not. Having confirmed invalidity on this ground, the Court did not need to address Henkel’s alternative descriptiveness argument.

The Court also rejected Reckitt's argument that Henkel's third-party evidence was irrelevant. The mark covered cleaning products generally, not only dishwasher detergents, so packaging practices across that broader sector were relevant, and consumer perception in the dishwasher detergent market is in any event shaped by the wider cleaning products market. The evidence showed that glossy dots, circles, balls and similar shapes, predominantly in red but also in other bright colours, are commonly used as decorative packaging elements across cleaning products, including dishwasher and textile washing detergents.

***Conclusion***

This judgment confirms that simple geometric shapes face a high threshold for inherent distinctive character under Benelux trade mark law, even when rendered in a specific colour or with visual effects. The Court's willingness to look beyond the narrow dishwasher detergent market to the broader cleaning products sector shows that protection cannot be secured merely by pointing to a narrower category when the sign appears less common. Notably, the Court did not consider Reckitt's evidence of extensive, since Reckitt had not invoked acquired distinctiveness, a choice that may have affected the outcome given the long-standing, prominent use of the red ball on Finish-branded products.

The judgment is available here in Dutch and French.

# LABOUR LAW

## *New Regime of Voluntary Overtime Now Applies*

On 1 June 2026, the Law of 18 May 2026 amending the rules on voluntary overtime and the Social Criminal Code (*Wet van 18 mei 2026 houdende wijzigingen met betrekking tot de regeling van de vrijwillige overuren en van het Sociaal Strafwetboek / Loi du 18 mai 2026 portant modifications relatives au régime des heures supplémentaires volontaires et du Code pénal social*) was published in the Belgian Official Journal. It has applied retroactively since 1 April 2026.

Under this new regime, employees may perform up to 360 voluntary overtime hours per calendar year, without the need for legal justification or the obligation for the employer to grant compensatory rest. For the first 240 of these hours, no overtime pay is due. However, the remuneration for these hours is exempt from social security contributions and personal income tax. By contrast, the remaining 120 overtime hours are remunerated at the applicable overtime rate and are subject to both social security contributions and personal income tax.

Employees may only perform voluntary overtime if they have entered into a voluntary overtime agreement which is concluded for a fixed term of one year and, unless terminated, is tacitly renewed for successive one-year periods. Either party may terminate the agreement at any time by giving written notice, subject to one month's notice running from the day following notification. Employers must not compel employees to agree to work voluntary overtime and employers are prohibited from subjecting employees to unfavourable treatment on the grounds of refusing to do so.

While the new regime is readily accessible to full-time employees, its application to part-time employees is subject to additional conditions. Part-time employees may only perform voluntary overtime when there is a temporary increase in workload and provided that they have been employed on a part-time basis for at least three years. A transitional arrangement applies to part-time employees who are already performing voluntary overtime, as they will be exempt from these new conditions. Employees working part-time in the context of a career break, time credit, or thematic leave (e.g. parental leave) are excluded from the voluntary overtime regime altogether.

Finally, the transitional provisions clarify the treatment of existing voluntary overtime agreements. When an agreement was concluded before 1 April 2026, and the validity period of that agreement extends beyond that date, the existing agreement will remain valid under the new regime until its original expiry date. Once the agreement expires, a new agreement must be concluded in accordance with the new regime.

## *Update on Transposition of EU Pay Transparency Directive in Belgium*

The deadline for Member States to transpose into national law Directive 2023/970 of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (the ***Pay Transparency Directive***) was 7 June 2026. The Pay Transparency Directive establishes four core requirements:

(i) Pay transparency prior to and during recruitment: applicants for employment have the right to receive information about the initial pay or its range, based on objective and gender-neutral criteria, provided in a manner ensuring informed and transparent negotiation, whether in a published job vacancy notice, prior to the interview, or otherwise.

(ii) Individual pay information rights: employees have the right to request and receive in writing information on their individual pay level and the average pay levels, broken down by sex, for categories of employees performing the same work or work of equal value. Employers must also make easily accessible the criteria used to determine pay, pay levels and pay progression, and those criteria must be objective and gender-neutral.

(iii) Gender pay gap reporting and assessment: depending on the number of employees, a timeframe is imposed on employers to submit gender pay gap reports. When reporting reveals an unjustified pay gap of at least 5% within a given category of employees, the employer may be required to conduct a joint pay assessment in cooperation with employee representatives.

(iv) Enforcement: a range of procedural safeguards is introduced designed to facilitate the effective enforcement of employees' rights. These include a reversal of the burden of proof, the availability of lump-sum compensation (so that employees are not required to prove the actual extent of their loss), a range of judicial remedies (e.g. injunctive relief), and sanctions for employers that fail to comply with their obligations.

Belgium did not meet the transposition deadline for the private sector. In fact, Belgium requested the European Commission to refrain from initiating infringement proceedings for a period of six months following 7 June 2026 due to the delayed transposition. As a result, it is unlikely that the Pay Transparency Directive will be implemented before the end of this year. Belgium is one of many Member States that have yet to fully transpose the Pay Transparency Directive into national law.

Despite the delayed transposition, companies should act now. The first mandatory pay gap report, which is due by 7 June 2027 for companies with 150 or more employees, must report on remuneration data from the 2026 reference year. A company that waits for the transposition before reviewing its pay structure will find that year effectively over, with no meaningful opportunity to address structural inequalities before they are locked into its first statutory disclosure. It is therefore advisable to review remuneration policies proactively and to identify any pay differentials that will have to be objectively justified.

## *Supreme Court Holds that Restricted Stock Units Granted by Foreign Parent Company May Constitute Salary*

### ***Background***

In multinational group structures, it is common that a foreign parent company grants equity-based incentives to employees of its local subsidiaries.

A recurring question under Belgian employment and social security law is whether such benefits, granted by the parent company, qualify as salary under Belgian law and are therefore subject to social security contributions.

The Law of 29 June 1981 establishing the general principles of social security for employees (*Wet van 29 juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers / Loi du 29 juin 1981 établissant les principes généraux de la sécurité sociale des travailleurs salaries* - the ***Law on Social Security***) refers to the concept of salary as determined by the Law of 12 April 1965 on the protection of the remuneration of employees (*Wet van 12 april 1965 betreffende de bescherming van het loon der werknemers / Loi du 12 avril 1965 concernant la protection de la rémunération des travailleurs* - the ***Wage Protection Law***). Under the Wage Protection Law, salary is defined as all benefits (i) having a monetary value; (ii) to which employees are entitled (under or by virtue of their employment agreement); and (iii) borne by the employer.

However, this definition is broader than the employment law concept of salary, which refers solely to a counterpart for work performed pursuant to an employment agreement. According to the established case law of the Supreme Court, if benefits are granted as counterpart for the work performed, they are considered salary, even if granted by a third party such as a foreign parent company, without the need to establish whether these benefits are granted at the charge of the employer.

However, when equity-related compensation is not granted as counterpart for the work performed, it can still constitute salary subject to social security if it falls under the definition of the Wage Protection Law.

***Earlier Judgments***

This two-stage analysis arose in proceedings between the National Social Security Office (*Rijksdienst voor Sociale Zekerheid / Office national de la sécurité sociale*) (the ***NSSO***) and two Belgian subsidiaries of a U.S. parent company, whose board of directors had approved a plan to grant Restricted Stock Units (*i.e.,* shares whose grant is conditional on continued employment at a specified vesting date - ***RSUs***) to specific employees across the group, with the purpose of binding the beneficiaries to the group over the longer term.

In its judgment of 20 April 2020, the Ghent Labour Court of Appeal gave a very broad interpretation of the "at the charge of the employer" notion, holding that RSUs constitute salary even (i) if the cost is borne by a third party; and (ii) in the absence of a direct contractual relationship with the employer.

The Supreme Court rejected this broad interpretation in its judgment of 5 September 2022, holding that RSUs granted by a foreign parent company, for which it has not been established that they constitute the counterpart for work performed, are only covered by the broadened salary concept under the Wage Protection Law if that benefit is borne by the employer. This is the case when the employer made the legal commitment to grant the benefit, and the benefit has thus been granted by the employer to the employee. A benefit granted by a third party who is not the employer, such as a foreign parent company, is only considered salary when this benefit is granted as counterpart for the performance of work under the employment agreement. This means that the cause of the grant is the decisive factor.

The Supreme Court thus referred the case back to the Antwerp Labour Court of Appeal. In its judgment of 20 November 2023, the Antwerp Labour Court of Appeal, applying these principles, held that no social security contributions were due on the RSUs, considering that:

1. the Belgian subsidiaries made no legal commitment to grant RSUs (*e.g.,* in the employment agreements or the incentive plan);

2. the Belgian subsidiaries bore no financial cost or responsibility in connection with the grant; and

3. the parent company executed its own autonomous commitment based on its own remuneration policy to allow specific group employees to participate financially in the group's capital and bind them to the group over the longer term. Although the subsidiaries had put forward names and recommendations during the selection process, they had no decision-making power over the final grant.

On that basis, the Antwerp Labour Court of Appeal concluded that the RSUs were neither a counterpart for work performed pursuant to an employment agreement *(i.e.*, the narrower employment law concept of salary), nor a benefit borne by the employer (*i.e.*, the broader concept of salary under the Wage Protection Law) contrary to the Ghent Labour Court of Appeal). Therefore, the RSUs did not constitute salary.

***Supreme Court Judgment of 29 June 2026***

The NSSO in turn appealed this judgment to the Supreme Court which held that benefits granted to bind employees to the employer, to encourage their continued commitment or to foster diligent work, qualify as salary as they constitute a counterpart for work performed under the employment agreement (*i.e.*, the narrower employment law concept of salary).

The Supreme Court held that the Antwerp Labour Court of Appeal had not legally justified its finding that the RSUs, granted by the parent company with the purpose to bind employees to the employer over the longer term, following a selection process in which the Belgian subsidiaries had put forward names to the parent company together with the reasons and justifications for their recommendations, did not constitute a counterpart for work performed pursuant to the employment agreement and therefore did not qualify as salary.

The judgment of the Antwerp Labour Court of Appeal was accordingly overturned and the case referred to the Brussels Labour Court of Appeal.

***Practical Implications for Employers***

The judgment of the Antwerp Labour Court of Appeal judgment represented at best a narrow and highly uncertain window of opportunity for foreign parent companies seeking to structure RSU grants free from Belgian social security contributions.

Following the Supreme Court's judgment, multinational groups with equity plans covering Belgian employees should consider whether their current social security treatment of RSU grants remains defensible. The reasoning of the Supreme Court suggests that the mere fact that a benefit is granted and funded exclusively by a foreign parent company does not, on its own, suffice to exclude that benefit from the Belgian social security contribution base.

What appears to be decisive is the functional purpose of the benefit: benefits granted to employees in order to bind them to the company, to encourage their continued commitment, or to foster diligent work are to be considered as a counterpart for the work performed and therefore constitute salary within the meaning of employment law and subject to social security contributions, notwithstanding the absence of any formal legal commitment on the part of the Belgian employer. The Supreme Court attached particular weight to the combination of the plan's stated retention purpose and the subsidiaries' active involvement in putting forward names and supporting recommendations. Multinational groups should carefully assess the degree to which their Belgian subsidiaries are involved in identifying and recommending beneficiaries, and consider whether that involvement is consistent with the position they take for social security purposes.

# LITIGATION

## CJEU Clarifies Jurisdictional Rules for Personality Rights Breaches Arising from Cross-Border Audiovisual Broadcasts

On 18 June 2026, the Court of Justice of the European Union (***CJEU***) delivered its judgment in Case C-232/25, providing guidance on the interpretation of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the ***Brussels I Regulation***)[1] in the context of alleged breaches of personality rights in cross-border media broadcasts.

### *Background*

The case arose from a television series co-produced by two German entities, set against the backdrop of the Second World War. A Polish national who was a former soldier of a clandestine Polish military unit and a Polish association of former members of that unit claimed that the series unlawfully depicted those soldiers as anti-Semitic and complicit in the Holocaust and breached their personality rights. They brought proceedings before the Polish courts seeking, *inter alia*, an order requiring the producers to issue a public apology on the relevant television channels and websites, as well as compensation for non-material damage. The German producers contested the jurisdiction of the Polish courts, ultimately prompting the Polish Supreme Court to seek a preliminary ruling from the Court of Justice.

### *Reasoning of the CJEU*

The CJEU addressed several jurisdictional questions under Article 5(3) of the Brussels I Regulation.

#### *Television broadcasts and centre of interests criterion*

The CJEU held that, in the case of an alleged breach of personality rights resulting from content broadcast on television in several Member States, the courts of the Member State in which the applicant's centre of interests is located do not have jurisdiction to hear an action directed at the entirety of the alleged damage. Instead, the courts of each Member State in which the content was broadcast and where the victim claims his or her reputation has been harmed have jurisdiction. However, that jurisdiction will be confined to damage caused within their own territory. The Court drew a clear distinction between television broadcasting, which is regionalised and limited to the geographical area in which the signal is received, and the dissemination of content on the internet, which is intended to ensure ubiquity and accessibility on a worldwide basis. With regard to compensation of the damage, it must be sought before the courts of the Member State in which the defendant is domiciled or in which the producers in the series are established.

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[1] Article 5(3) of the Brussels I Regulation is equivalent to Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (the ***Brussels Ibis Regulation***).

***Internet broadcasts and the individual identification requirement***

As regards content broadcast on the internet, the CJEU confirmed that the courts of the Member State in which the applicant's centre of interests is located may hear an action for the entirety of the alleged damage only when the content contains objective and verifiable elements making it possible to identify, directly or indirectly, that person as an individual. The mere fact that the content refers to a limited, defined group of persons to which the natural person applicant could be linked is not sufficient for that purpose, as the identification must be certain and based on attributes specific to the individual that distinguish him or her from all others. By contrast, if the content directly and unequivocally identifies the group, a legal person whose principal purpose is to defend the interests of that group may rely on the centre of interests criterion and bring an action for the entirety of the alleged damage before the courts of its Member State of establishment.

***Scope of territorial jurisdiction***

The CJEU further held that courts with jurisdiction limited to damage caused in their own Member State may hear only divisible applications, meaning actions that seek to remedy or prevent damage confined to the territory of that Member State.

As regards damage resulting from a television broadcast, those courts may hear both a non-pecuniary remedy aimed at eliminating and precluding the effects of such a breach and a pecuniary remedy aimed at securing compensation for non-material damage, provided the action is confined in its effects to the territory of that Member State.

For damage resulting from the dissemination of content on the internet, those courts may only hear an action seeking a pecuniary remedy aimed at securing compensation for non-material damage. However, they do not have jurisdiction to hear an action seeking a non-pecuniary remedy aimed at securing the rectification of the information in that series placed online, since such a remedy is indivisible by nature and can only be granted by a court with full jurisdiction over the entirety of the damage.

***Takeaways***

- For television broadcasts, there is no single forum covering all damage. Claimants must sue in each country of broadcast, limited to damage caused there. Only the courts of the defendant's domicile or the place of the causal event offer full jurisdiction.

- For online content, the centre of interests forum is available only when the content permits individual identification of the claimant. Membership of a depicted group does not suffice, even though a representative association may benefit from broader jurisdiction when the group itself is directly identifiable.

- Courts with limited territorial jurisdiction may award compensation for both television and internet-related damage and may impose local non-pecuniary remedies in respect of television broadcasts. For internet broadcasts, however, those courts may not order the rectification of online content, as such relief is inherently indivisible.

The judgment of the CJEU can be found here.