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VBB on Belgian Business Law

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Competition Law

Belgian Competition Authority Closes Live Nation / Pukkelpop Investigation on Commitments

On 11 September 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit – Autorité belge de la Concurrence – **BCA***) indicated that it had closed its investigation into Live Nation's acquisition of the Pukkelpop music festival, following commitments offered by Live Nation to preserve Pukkelpop's operational independence.

The BCA had opened its investigation on 12 November 2025 at the instruction of the Minister for Economic Affairs (see, [this Newsletter, Volume 2025, No 11-12, p. 6](#)).

As the transaction fell below Belgium's merger notification thresholds, it was not subject to standard merger control review. In the absence of a notifiable concentration, the BCA instead relied on the prohibition of abuse of a dominant position under Article IV.2 of the Code of Economic Law (*Wetboek van Economisch Recht / Code de droit économique – the **CEL***) and Article 102 of the Treaty on the Functioning of the European Union. It thus applied the *Towercast* case law of the Court of Justice of the European Union, under which competition authorities may scrutinise non-reportable concentrations on the basis of the abuse of dominance provisions.

Key Competition Concerns

The BCA's inquiry focused on three areas of potential concern arising from further consolidation of large-scale music festival ownership in Belgium:

- i. the impact on quality and pricing of adding Pukkelpop to Live Nation's existing festival portfolio, which already includes Rock Werchter and Graspop Metal Meeting;
- ii. whether Live Nation's position in artist booking services could give it the ability and incentive to restrict (a) the access of competing festivals to artists, or (b) the access of competing artist booking providers to Live Nation's own festivals; and
- iii. the broader effect of the transaction on the live music entertainment value chain in Belgium, given Live Nation's large footprint across adjacent activities.

In assessing these issues, the BCA gathered input from a broad range of industry stakeholders during the investigation.

Commitments

Once informed of the BCA's preliminary findings, Live Nation offered commitments to structurally separate Pukkelpop's operations from its other Belgian activities, allowing the case to close without a prolonged procedure.

The commitments provide for the following:

- i. Live Nation will retain formal ownership of Pukkelpop, but the festival's operations and related assets will be transferred to an entity controlled by festival founder Chokri Mahassine, who may in turn pass the operating rights on to an independent third party.
- ii. This operator will have full autonomous decision-making authority over all artistic, commercial, and operational matters, including artist and booking agent selection, programming, pricing, suppliers, staffing, venue, dates, capacity, and staging.
- iii. Live Nation may continue to supply standalone services to the festival, but only on market terms and on a non-exclusive basis.

The commitments have a duration of ten years, with the possibility of an extension of up to five additional years if market conditions so warrant. An independent monitoring trustee will oversee their implementation.

Having tested the commitments with selected market participants, the BCA considered them sufficient to address its concerns and made them binding, closing the file without a finding of infringement or an admission of liability by Live Nation or its affiliates. Significantly, the BCA has indicated that it “will nonetheless continue monitoring closely the developments in the Belgian live music and entertainment sector”.

Comments

While the BCA did not initiate the case of its own motion, the outcome illustrates once more the authority's readiness to draw on its expanding toolbox to address perceived market failures and secure concrete results without resorting to a full-fledged procedure. The approach is reminiscent of that in the Tiense Suikerraffinaderij/Raffinerie Tirlemontoise (TS/RT) case (also discussed in this Newsletter), which was similarly closed without a finding of infringement after TS/RT offered commitments to address the BCA's concerns. That case rested on a different legal basis, namely the prohibition of abuse of economic dependence under Article IV.2/1 CEL, and was notable as the BCA's first decision on abuse of economic dependence.

The BCA's decision comes against the backdrop of mounting antitrust pressure on Live Nation in the United States. On 15 April 2026, a federal jury in Manhattan found that Live Nation and its Ticketmaster subsidiary had unlawfully monopolised several live entertainment markets, concluding that the group had exploited its combined strength in concert promotion, venue ownership, and ticketing to shut out competitors. The action was initiated by 33 US states and the District of Columbia. The Department of Justice subsequently reached a separate settlement during the trial. The plaintiff states contended that the behavioural remedies contemplated by that settlement would be insufficient to restore competition, given the structural advantages flowing from Live Nation's vertically integrated business model. Live Nation has challenged the verdict through post-trial motions and has indicated that it intends to appeal any unfavourable rulings.

Belgian Competition Authority Issues Historic First Decision on Abuse of Economic Dependence

On 7 September 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit* – *Autorité belge de la Concurrence* – **BCA**) announced its very first decision in a case of abuse of economic dependence.

Case and Commitments

In February 2026, the BCA sent a Statement of Objections to Tiense Suikerraffinaderij/Raffinerie Tirlemontoise (**RT**) and its parent company Südzucker (see, [this Newsletter, Volume 2026, No 2, p. 8](#)). The BCA found that sugar beet growers are economically dependent on RT and it took issue with contractual provisions governing the prices of sugar beet and beet pulp which RT had imposed on these growers. According to the BCA, these provisions gave rise to uncertainty regarding the growers' income prospects and placed a "disproportionate share" of the sugar value chain's commercial risks on them.

In response, RT offered commitments which addressed the BCA's concerns and thus secured the closure of the case without a finding of infringement. While the decision is not yet public, the BCA's press release described these commitments as follows:

- RT will amend several contractual provisions governing the purchase price of sugar beet and beet pulp and the exceptional adjustment of planned procurement volumes;
- RT will remove several contractual clauses making payment of part of the price of the beet subject to obligations pertaining to the following harvest year and transferring specific costs to the growers; and
- On this new basis, RT will annually negotiate with the growers specific procurement terms, "with a view to achieving a contractual balance following consultations characterised by dialogue, transparency, and the effective consideration of the interests of the growers".

These commitments will apply from the 2027 harvest year for "a minimum period" of five years (which suggests that the commitments may be extended or renewed).

Comments

While the BCA's choice for commitments instead of an infringement decision may result from the specific facts of the case, it may also reflect the specific difficulties associated with the rules on abuse of economic dependence. The concept is vague and requires the demanding proof that the alleged abuse of the economic dependence affects the Belgian market as a whole (or in substantial part). While the law creating the abuse of economic dependence prohibition sought to bridge a perceived gap between competition law and fair market practice rules, it is sitting awkwardly between the two sets of rules. From this angle, a negotiated solution between the BCA and the party under investigation makes complete sense.

It remains to be seen whether the BCA will seek to develop a fully-fledged decisional practice on abuse of economic dependence, or whether it will instead focus on the existing and well-

established antitrust tools at its disposal. Indeed, the cases of abuse of economic dependence most likely to satisfy the condition of affecting the Belgian market are those involving a dominant company. It may therefore prove more efficient for the BCA to rely on Article 102 of the Treaty on the Functioning of the European Union (TFEU) (and its Belgian-law equivalent, Article IV.2 of the Code of Economic Law (CEL)) to tackle such cases.

Article 101 TFEU (and its Belgian-law equivalent, Article IV.1 CEL) could be applied if the company suspected of abusing economic dependence is not dominant, provided there is some form of contractual link between the allegedly abusive company and the firm being abused (the BCA does not necessarily impose fines on all parties to an anticompetitive agreement as the resale price maintenance cases show). From this perspective, the rules on abuse of economic dependence will remain relevant only in cases in which the allegedly abusive company is neither dominant nor contractually linked to its victim.

Territorial Supply Constraints - Mid-sized Competition Authorities Favour New Legislative Instrument

As part of a group of competition authorities that represent six mid-sized EU economies (Austria, Belgium, Czechia, Greece, the Netherlands, and Portugal), the Belgian Competition Authority (*Belgische Mededingingsautoriteit – Autorité belge de la Concurrence – **BCA***) co-authored a letter dated 15 July 2026 and addressed to Kerstin Jorna and Anthony Whelan, both Director-General of the European Commission (**Commission**) with responsibility for respectively the internal market and competition policy (**Letter**). The Letter urges the Commission to tackle Territorial Supply Constraints (**TSCs**) by taking legislative action.

TSCs may have different meanings for different stakeholders, but the Commission has described them as non-regulatory barriers imposed by some suppliers of consumer goods that fragment the Single Market by making it very difficult or impossible for buyers, including retailers, to source products in one Member State and resell them in another. The Letter cites direct measures (such as obligations to sell only in a given Member State) and indirect measures (notably packaging requirements that make products unsuitable for sale across every Member State).

Referring to a 2020 Commission study, the Letter notes that TSCs are most prevalent in smaller markets (such as Austria, Belgium, and Luxembourg) neighbouring larger, lower-price markets, and that eliminating TSCs was estimated to reduce retailer purchase prices by an average of 8.8% and consumer prices by an average of 7.6%, for total estimated consumer savings of EUR 14.1 billion.

In a public consultation concluded on 29 September 2026, the Commission suggested four possible policy options:

- Asking relevant industry associations to self-regulate and craft codes of conduct.
- Creating guidance for national competition authorities.
- Adopting legislation based on the concept of economic dependence or relative market power.

- Adopting legislation that specifically identifies and defines prohibited practices.

The six competition authorities expressed their “strong support” for the fourth option, which is the legislative path that defines prohibited practices. According to these authorities, none of the other options is adequate and that applies also to the competition rules which are capable of catching a series of practices but not unilateral conduct of non-dominant firms. The competition authorities advocate for rules that expand on the principles underlying “geo-blocking” Regulation EU 2018/302 which addresses unjustified online sales discrimination based on customers’ nationality, place of residence or place of establishment within the internal market. However, unlike the geo-blocking Regulation, the new rules would also apply to business-to-business relationships.

After Extensive Review Belgian Competition Authority Clears Broad Cooperation between Telecommunications Network Operators for Roll-out of Fibre Networks in Flanders

On 23 July 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit – Autorité belge de la Concurrence – BCA*) authorised the cooperation between Proximus/Fiberklaar and Telenet/Wyre for the roll-out of fibre telecommunications networks in Flanders.

This concluded a two-year investigation (see, [this Newsletter, Volume 2024, Nos 6-7, p. 5](#)) that included a market test in the autumn of 2025 (see, [this Newsletter, Volume 2025, No 10, p. 4](#)) and was conducted in tandem with the sector regulator, the Belgian Institute for Postal Services and Telecommunications (*BIPT*).

Under the terms of the cooperation, the parties will build complementary Fibre-to-the-Home (*FTTH*) networks and provide reciprocal wholesale access for their partners in medium-density population areas (covering more than 2 million homes). In sparsely populated areas (covering 0.7 million homes), Proximus will offer service via the Hybrid Fibre Coax (HFC) network of Wyre. In large cities and densely populated zones, network competition will operate to the fullest extent, with both groups rolling out their own separate infrastructure.

In the course of the investigation, the regulators focused on the reduction of infrastructure competition between network operators and the possible negative effects on competition for third parties. These concerns gave rise to an extensive set of binding commitments.

The BCA highlighted its efforts to strengthen the position of third parties by requiring: (i) access to the passive fibre networks of Fiberklaar and Wyre in suburban areas on fair, reasonable, and non-discriminatory (FRAND) terms; (ii) access to Wyre’s HFC network on FRAND terms; (iii) access to Wyre’s fibre network in urban areas; (iv) access to the fibre and digital subscriber line (DSL) networks of Proximus; (v) access to the ducts of Proximus in urban areas on FRAND terms; and (vi) access to the fibre drop cables of Fiberklaar and Wyre. The BCA also announced that it had secured an expansion of fibre coverage to more than 2 million homes in medium-density population areas, with 75% of the additional coverage to be achieved by June 2029.

Separately, the BCA and the BIPT are continuing their review of a comparable joint venture between Orange and Proximus for the roll-out of fibre networks in Wallonia (see, [this Newsletter, Volume 2025, Nos 6-7, p. 10](#)).

In Landmark Decision for Media Pluralism in Belgium Belgian Competition Authority Clears Acquisition of IPM Presse by Rossel

On 3 July 2026, the Belgian Competition Authority (*Belgische Mededingingsautoriteit – Autorité belge de la Concurrence – BCA*) conditionally cleared Rossel's proposed acquisition of the press activities of IPM Presse (*IPM*), resulting in a single group holding all French language printed daily newspaper titles in Belgium (see, [this Newsletter, Volume 2025, No 10, p. 4](#)).

Several aspects are noteworthy. The BCA applied what it referred to as a dynamic counterfactual adapted to a structurally declining industry, and conducted a competitive assessment spanning multiple product and labour markets. It identified in particular risks of content harmonisation, declining editorial diversity, weakening editorial independence, and, uniquely in the annals of Belgian merger control, anticompetitive harm in the journalistic labour market. The remedy package combines indefinite title-preservation obligations, a quantitative content-sharing cap, and extended protective measures for journalists, including binding AI-use safeguards.

Dynamic Counterfactual in Structurally Declining Sector

In merger control, assessing the competitive effects of a transaction requires comparing the post-merger situation against the most appropriate “no-merger” scenario – the counterfactual, which is typically the competitive situation at the date of the transaction. However, both the office of the chief competition prosecutor (*auditoraat / auditorat*) and the Competition College (*Mededingingscollege / Collège de la concurrence*) were of the opinion that the structural decline of the French-language press – falling readership, declining advertising revenues, asymmetric competitive pressure from large digital platforms, and uncertainty over public support mechanisms – warranted a dynamic approach rather than a purely static comparison with the status quo.

On that basis, it was considered plausible that, absent the merger, IPM would continue its operations but with a progressive deterioration of its competitive position and a concomitant weakening constraint on Rossel. At the same time, the BCA thought that IPM did not qualify for a failing-firm scenario. The Competition College added that, in the counterfactual, IPM would likely reduce costs, cut journalist headcount, and raise print prices as economies of scale weakened.

Competitive Analysis: Editorial Pluralism and Novel Labour Market Dimension

The BCA assessed the transaction across a wide range of product and input markets, including the markets for French-language daily newspapers, online general news, non-specialised magazines, press advertising, press distribution services, and the procurement of journalistic services. While the transaction raised concerns in several of these markets, the analysis focused primarily on its impact on the daily press markets and the merged entity's position in procuring journalistic services.

Daily press markets. The BCA found that the transaction would confer on the merged entity a particularly strong position across the French-language daily press markets regardless of the market definition adopted. As a result of the transaction, the new entity would in all cases hold a combined market share well in excess of 50% and, under the strictest market definition for printed French-language daily newspapers, a share of 100%.

Whilst the Competition College found that it had not been demonstrated that the merged entity would have the incentive and ability to increase prices significantly – particularly when assessed against a counterfactual in which IPM's competitive position was already deteriorating – it did conclude that the planned post-transaction pooling of resources and content would create a genuine risk of reduced diversity and quality in the daily press, because of a progressive content harmonisation and a weakening of editorial competition between titles.

French-language journalistic services. The BCA assessed the transaction's effects on the buy-side market for French-language journalistic services. With a combined share of approximately 30-40% by headcount and full-time equivalent, the merged entity would become the dominant employer of French-language journalists and the sole significant buyer for journalists specifically seeking to work in the daily written press.

The office of the chief competition prosecutor found that the elimination of direct competitive pressure between Rossel and IPM for the recruitment and retention of journalists risked reinforcing the merged entity's buying power, to the particular detriment of freelance journalists whose bargaining position is structurally weaker. The Competition College confirmed this concern but qualified it, noting limited cross-title mobility in practice, the deteriorating counterfactual, and the merged entity's own economic incentive to maintain journalist quality. It therefore concluded that this risk, whilst real, would be largely mitigated by the editorial commitments requiring three independent editorial entities each making autonomous hiring decisions, as set out below.

Remedies: Borrowing Blueprint of Dutch “Autoriteit Consument en Markt”

To address the concerns identified across both the editorial and the labour dimensions of the proposed transaction, the BCA imposed a remedy package which closely mirrors the approach taken by the Dutch Authority for Consumers and Markets (**ACM**) in its conditional clearance of DPG Media's acquisition of RTL Nederland in June 2025. The BCA's package includes:

- *Title preservation* (indefinite): Rossel must maintain all major French-language daily titles, guaranteeing each the resources to operate and develop independently, with its own identity and editorial charter, distributed across three autonomous publishing entities (Le Soir, Sudmedia, and IPM Presse) each with their own general management and budgets.
- *Content sharing* (indefinite): Content synergies between titles belonging to different publishing entities are capped at 25% of published editorial content, with sports content (national and international) not subject to that cap.
- *Divestiture safeguard* (indefinite): Rossel may discontinue a title only if it demonstrates to the BCA that continuation is no longer economically reasonable, in which case the title must be offered for sale under conditions designed to maximise the chances of acquisition by a BCA-approved purchaser.
- *Journalist protection* (seven years): Working conditions must comply with existing agreements, including safeguards on editorial independence and AI-use limitations embedded in the group-level Charte Rossel: AI must not replace journalists' research, writing or editorial work or serve as an information source; all AI-generated content must be verified by a journalist before publication; no journalist must be compelled to produce

content solely using AI; and AI use must respect copyright and neighbouring rights. A separate code of conduct for freelance journalists will ensure transparent and fair contractual relationships.

- **Oversight:** Compliance will be monitored by an independent monitoring trustee, and there will be a five-member dispute resolution body comprising two publisher representatives and two journalist representatives, with a casting-vote president. The trustee will operate in cooperation with the Association for the Self-Regulation of Journalistic Ethics (AADJ).

The Competition College did not accept the full package of commitments offered by Rossel: it expressly excluded the price-control commitments for both printed and digital press offerings, and specific conditions governing the payment of journalists. It labelled those measures as unnecessary, liable to distort market functioning, and disproportionately complex to monitor.

The ACM's package in DPG Media/RTL Nederland had already established the structural template: independent foundations with veto rights over editorial decisions, a ban on content sharing between news brands, tightened editorial independence charters with binding dispute procedures, and ongoing oversight by the Dutch Media Authority – all on an indefinite basis. The BCA has replicated that logic – independent monitoring, indefinite title-preservation obligations, a quantitative content-sharing cap, and editorial independence charters – whilst extending it with a multifaceted labour dimension that did not form part of the ACM's package. The BCA thus imposed the AI-use safeguards embedded in the group-level charter and a binding code of conduct governing contractual relationships with freelance journalists.

In Competition Report Belgian Competition Authority Chronicles its Activities in 2025

In its annual competition report for 2025, the BCA not only described its operations and governance but also discussed the cases which it handled and its current enforcement priorities (see, [this Newsletter, Volume 2026, No 2, p. 10](#)).

Operations

In 2025, the BCA opened 10 new formal investigations (compared to just 3 in 2024), adopted 3 decisions imposing interim measures, and also took 3 decisions carrying fines worth approximately EUR 62.3 million. Merger notifications fell considerably to 27 (from 42 in 2024).

Staff grew significantly, from 47 in 2021 to 86 by the end of 2025, while the budget remained stable at approximately EUR 11.4 million.

Cases

The cases which the BCA concluded in 2025 were diverse in both procedural outcome and industry. Procedurally, the BCA took full-fledged infringement decisions but was also active on the interim measures front. In 4 cases, the BCA accepted binding commitments. The economic sectors covered ranged from energy and telecommunications over life sciences and food to financial technology and sports.

On several occasions the BCA also offered guidance in both individual cases and at sectoral level. For example, it published guidance regarding the exchange of information by pharmaceutical firms that seek the reimbursement of two medicines which together form a combination therapy (see, [this Newsletter, Volume 2025, No 9, p. 10](#)).

Economic Impact

The BCA noted that direct consumer savings from its formal enforcement activities in 2025 fall in a range between approximately EUR 395.9 million (according to OECD methodology) and EUR 630.6 million (in accordance with the upper limits of the EU methodology). It pointed out that these figures are far in excess of its annual budget.

Consumer Law

European Commission Opens Infringement Proceedings over Right to Repair Rules While Belgian Government Submits Transposition Bill to Federal Parliament

On 25 September 2026, the European Commission (**Commission**) announced that it had opened infringement proceedings against Belgium and 17 other EU Member States for failing to confirm the complete transposition of Directive (EU) 2024/1799 of 13 June 2024 on common rules promoting the repair of goods (**Directive**). Two days earlier, on 23 September 2026, the Belgian federal government had submitted a Bill to the Chamber of Representatives to transpose most of the Directive. The deadline for EU Member States to transpose and apply the Directive expired on 31 July 2026.

As previously discussed in this Newsletter, the Directive promotes the repair of defective consumer goods, even if the statutory guarantee does not apply. It imposes a repair obligation on manufacturers of goods covered by EU repairability requirements, and provides for measures facilitating access to repair services (See, [this Newsletter, Volume 2024, No. 1, p. 8](#) and [Volume 2024, No. 6-7, p. 12](#)).

Infringement Proceedings

The Commission sent letters of formal notice concerning the Directive to 18 EU Member States, including Belgium.

It also opened infringement proceedings against 18 EU Member States, again including Belgium, for failing to confirm the complete transposition of Commission Delegated Directive (EU) 2026/74, which extends the scope of the repair obligation to domestic local space heaters.

The EU Member States concerned have two months to respond and address the shortcomings identified by the Commission. In the absence of a satisfactory response, the Commission may issue a reasoned opinion, which is the next step in the infringement proceedings.

Belgian Transposition Bill

Meanwhile, on 23 September 2026, the federal government submitted Bill 56K1750 to the federal Chamber of Representatives to restore Book XIV, entitled “Rules Promoting the Repair of Goods”, in the Code of Economic Law (*Wetsontwerp tot herstel van boek XIV “Regels ter bevordering van de reparatie van goederen” in het Wetboek van Economisch Recht / Projet de loi rétablissant le livre XIV “Règles visant à promouvoir la réparation des biens” dans le Code de droit économique*; the **Bill**, available [here](#)).

The Bill transposes most of the Directive in Book XIV of the Code of Economic Law. Amendments to the statutory guarantee rules will be transposed separately in Book 7 of the Civil Code.

In particular, the Bill:

- requires manufacturers to repair covered goods, such as washing machines, tumble dryers, refrigerators and smartphones, at the consumer’s request, free of charge or for a reasonable price and within a reasonable timeframe, unless repair is impossible;

- requires manufacturers to publish indicative prices for typical types of repair on a freely accessible website and, if applicable, make spare parts available at reasonable prices; and
- introduces a voluntary European Repair Information Form enabling consumers to compare repair offers.

Separately, the Commission is developing a European online platform enabling consumers to find repairers.

The proposed repair rules complement the Belgian repairability index regime (See, [this Newsletter, Volume 2025, No. 4, p. 9](#)). They are also distinct from the consumer-information and greenwashing rules introduced by Directive (EU) 2024/825, whose Belgian transposition was also previously discussed in this Newsletter (See, [this Newsletter, Volume 2026, No. 6, p. 4](#)).

The submission of the Bill marks a step in the Belgian transposition process but does not itself complete transposition or resolve the infringement proceedings.

Court of Justice Clarifies Scope of Off-Premises Contracts

On 24 September 2026, the Court of Justice of the European Union (**CJEU**) held that a contract qualifies as an off-premises contract if a consumer accepts an offer in the trader's physical presence and away from its business premises, even if the offer was sent in advance (Judgment of 24 September 2026 in case C-381/25, *PL and GQ v Gexx aeroSol GmbH*, available [here](#)).

Background

The dispute concerned consumers who had signed an offer for the supply and installation of a photovoltaic system at their home in the presence of the trader's representative, several weeks after receiving that offer. They subsequently sought to withdraw from the contract and recover their advance payment. The trader had not provided information on the right of withdrawal.

CJEU Judgment

The CJEU explained that Article 2(8)(a) of Directive 2011/83/EU on consumer rights requires the contract to be concluded off-premises in the simultaneous physical presence of the parties. By contrast, it does not require the offer to have been made in those circumstances. Although receiving an offer beforehand may remove the element of surprise, consumers may still face psychological pressure when accepting it in the trader's presence at home.

Implications

The judgment confirms that sending an offer in advance does not remove the ensuing contract from the scope of the off-premises rules. Subject to exceptions, these rules provide for a 14-day withdrawal period, extended by 12 months if the mandatory withdrawal information is omitted.

Data Protection

KIDS Act: European Commission Proposes to Protect Children Online

On 17 September 2026, the European Commission (the **Commission**) published its draft ‘EU Keeping Internet Digital Spaces Accountable and Trustworthy’ Act (the **KIDS Act** or the **Proposal**). The aim of the Act is to protect children online. The Proposal responds to calls for equal protection for children across the European Union. Its provisions are without prejudice to the Digital Services Act (the **DSA**) as well as the AI Act (the **AIA**) and builds on the safeguards established under those frameworks.

Scope

The KIDS Act applies to providers of online social networking services, video-sharing platform services, software application stores, online games, operating systems (which are subject to a specific obligation only; see “Age assurance” below), AI companions, and general conversational chatbots (**social media+**), when these are accessible to minors.

Small and micro enterprises are not exempt from the scope: the Commission takes the view that businesses of any size can pose risks to minors online, and that excluding smaller providers would undermine the Proposal’s objectives. Nevertheless, a carve-out applies to services unlikely to harm minors given their non-commercial, educational, scientific, or public-interest nature.

Main Features

Delayed Access to Social Media

Under the Proposal, access to online social networking services and video-sharing platform services that pose a risk to the privacy, safety, or security of children under 15 is calibrated by age and follows a staircase approach. In particular:

- i. children under 13 cannot access online social networking services and video-sharing platform services, but can still use child-friendly video-sharing platform services through their guardian’s account;
- ii. children aged 13 and 14 can access online social networking services and video-sharing platform services through their guardian’s account, provided that limited features and a time restriction of one hour per day are ensured;
- iii. children aged 15 and above can create and manage their own accounts on social networking services and video-sharing platform services.

Safety by Design

The Proposal sets out safety-by-design requirements for social media+. These include prohibiting addictive design features (such as infinite scroll and autoplay), requiring recommender systems to prioritise minors’ safety and mental health over engagement, mandating safe default settings (geolocation, microphone, camera, contact recommendation and synchronisation, push notifications off by default), and imposing tailored safeguards on AI companions and general

conversational chatbots, including a prohibition on features simulating interpersonal relationships in ways likely to create emotional dependency.

Age Assurance

Given the Proposal's specific objectives, self-declared age will no longer suffice. Providers must verify a user's age when an account is created and estimate the age of existing account-holders, unless they have already been able to establish with a high degree of confidence that the user is above 15 (in the case of account creation with online social networking services and video-sharing platform services) or an adult (in the case of the general safety-by-design obligations).

The age assurance solutions employed must provide a high level of accuracy, reliability, security, robustness, non-intrusiveness, privacy, and data protection. Additionally, they must not discriminate against any particular group. For the purposes of the safety-by-design and other general obligations, providers may rely on their own compliant age assurance solutions or on certified EU age verification solutions. By contrast, for the age checks required under Article 6 on online social networking services and video-sharing platform services (delayed creation and use of accounts), reliance on certified EU age verification solutions is mandatory. This is where the providers of operating systems' sole obligation comes into play: they must enable, with the user's consent, the sharing with other in-scope providers of an age signal obtained. Throughout the entire process, data processing must comply with the General Data Protection Regulation (**GDPR**). In particular, age data is subject to strict data minimisation requirements and cannot be combined with other personal data held by the provider.

Enforcement

Rather than creating a parallel enforcement system, the KIDS Act relies on existing systems: those of the DSA for online social networking services, video-sharing platform services, online games that are video gaming platforms, and software application stores and those of the AIA for AI companions, and general conversational chatbots. Online games that are video games (rather than platforms) fall outside this dual structure: a dedicated competent authority in the provider's Member State of main establishment will hold exclusive supervision and enforcement powers over them.

With respect to data processing, oversight of age assurance solutions will be in the hands of data protection authorities, which are also empowered to impose fines in accordance with Article 83(5) GDPR.

Very Large Online Platforms (VLOPs) designated under the DSA must, within set deadlines tied to that designation, submit a compliance plan to the Commission covering their obligations under the KIDS Act and have it independently audited at their own expense.

The Commission also proposes to include the KIDS Act in Annex I of the Representative Actions Directive and thus enable qualified entities to pursue collective injunctive and redress measures on behalf of consumers affected by infringements.

The full text of the Proposal is available [here](#) (in English) and will now be reviewed by the European Parliament and the Council under the ordinary legislative procedure.

Foreign Direct Investment

Belgium Publishes Third Annual Report Regarding Screening of Foreign Direct Investment

The Belgian Federal Public Service for Economic Affairs published its third annual report (the [Report](#)) regarding the screening of foreign direct investment (**FDI**) by parties based outside the European Union (see, attachments). The Report covers the period 1 July 2025 – 30 June 2026 (the **Period under Review**) and signals a marked increase in notifications to the Interfederal Screening Committee (**ISC**) compared to previous years (191 notifications versus 68 in 2023-2024 and 100 in 2024-2025).

During the Period under Review, a second-stage screening procedure was initiated in a small number of cases (4% of the 191 notifications, corresponding to 8 cases). Of the files that were made subject to close scrutiny, 3 were authorised without conditions and 2 gave rise to mitigating measures. At the end of the Period under Review, 3 of these files were still pending. The first prohibition of an FDI occurred after the Period under Review in early August 2026 (see, this Newsletter).

By far the most notified foreign investments (41.55%) were made by US-based investors. Other major investing countries were the United Kingdom (21%), Canada and Switzerland (each 5.48%), and China (3.65%). The five most targeted sectors or product groups involved sensitive information and personal data (29.05%), energy (18.92%), digital infrastructure and health (each 8.78%), and dual use goods (8.11%).

The Report highlights the increased resources deployed to detect non-notified transactions and reports the issuing of 27 requests for information.

The Report also indicates that the work to bring the Belgian rules in line with Regulation 2026/1386 on the screening of foreign investments in the European Union has already started, specifically through the initiation of the procedure to amend the Cooperation Agreement of 30 November 2022, mainly to align its procedural time limits with the new Regulation.

Belgium's Interfederal Screening Committee Issues First-Ever Prohibition of Foreign Direct Investment

In early August 2026, Belgium's Interfederal Screening Committee (*Interfederaale Screeningscommissie / Comité de filtrage interfédéral – ISC*) issued its first-ever prohibition of a foreign direct investment (**FDI**), marking a milestone in the application of Belgium's FDI screening regime.

The proposed transaction would have seen GD Helicopter Finance (**GDHF**), a company based in Dublin, Ireland, acquire a controlling stake in NHV Group (**NHV**), a leading provider of business-to-business helicopter services with operations focused on offshore renewable energy, oil and gas, and helicopter maintenance. NHV is headquartered in Ostend, Belgium, and is currently controlled by the French private equity firm Ardian. GDHF is itself controlled by GDAT Group

(**GDAT**), a company headquartered in Shanghai, China, and engaged in general aviation services.

The ISC's decision has not been made publicly available. In a terse statement issued on 5 August 2026, NHV confirmed that it had been the subject of an ISC decision and that, as a result, the proposed acquisition would not proceed.

According to press reports, the transaction was considered problematic on two distinct grounds. First, a substantial portion of NHV's activities involves transporting personnel to offshore wind farms and oil and gas platforms in the North Sea — facilities that constitute critical energy infrastructure. Concerns arose that control over NHV could afford GDAT access to sensitive information relating to that infrastructure. Second, and even more delicate, was the prospect of NHV participating as a subcontractor in the maintenance of Airbus H145M helicopters ordered by Belgium for its armed forces and federal police. The indirect involvement of a Chinese entity in such activities was deemed unacceptable from a national security perspective.

Belgium's military intelligence service, ADIV/SGRS, is understood to have played a decisive role in the review procedure and, ultimately, in bringing about the prohibition of the transaction.

Prior to this case, Belgium's FDI screening mechanism had given rise to remedial action on only the rarest of occasions. As the ISC's most recent activity report makes clear, no transaction had previously been blocked, and the few transactions considered to raise concerns resulted in only limited corrective measures (*see*, this Newsletter for the latest report).

Intellectual Property

European Union Intellectual Property Office Publishes First Design Registrations Represented by Video and 3D Under the EU Design Reform

On 28 July 2026, the European Union Intellectual Property Office (the **EUIPO**) announced the registration of the first EU designs represented by a video file and a 3D view, marking the first practical application of the technical filing options introduced by the EU Design Reform. These designs were registered under Regulation (EU) 2026/715 on European Union designs (the **EUDR**), Commission Delegated Regulation (EU) 2026/137 of 15 January 2026 (the **EUDDR**), and Commission Implementing Regulation (EU) 2026/138 of 15 January 2026 (the **EUDIR**). All three instruments entered into force on 1 July 2026, completing the legislative framework of the EU Design Reform.

Background

The EU Design Reform introduces a coherent, technology-oriented and user-friendly legal framework, offering clearer rules, streamlined procedures and greater legal certainty, and further harmonises EU and national design protection by requiring Member States to transpose Directive (EU) 2024/2823 of 23 October 2024 on the legal protection of designs (the **Recast Directive**) by 9 December 2027.

One of the most significant changes under the new legal framework is the expansion of the definition of a ‘design’ under Article 4(1) EUDR to cover animation, movement and transition, extending protection to non-physical and digital designs such as graphical user interfaces (**GUIs**). The definition of a ‘product’ under Article 4(2) EUDR has likewise been broadened to encompass non-physical items. As a result, it is now possible to apply for design protection for videos, computer imaging or computer modelling.

First Registrations Using Video and 3D

The first video-represented EU design is an animated GUI for the mobile phone game “Arrow – Puzzle Escape”, developed by the German company Lessmore GmbH. The three-second video representation captures the movement of the arrows across the interface as part of the claimed design. The first 3D-represented EU design, owned by the Belgian company Arranged BV, protects a dice tray with a mobile phone holder, with the 3D representation allowing the product to be viewed from multiple angles. According to the EUIPO, video representation is particularly relevant for designs involving animation or visual transitions, while 3D representation helps convey a product's overall appearance, giving designers greater flexibility to present their creations as actually experienced by users.

Implications

In the first half of July 2026, the EUIPO received 37 EU design filings using video and 20 using 3D representations, out of 4,386 total design filings in that period, indicating a positive reception among designers. Nevertheless, the practical application of these new representation formats remains to be tested, particularly regarding the scope of protection afforded to designs represented by video or 3D views, and how courts will approach infringement analysis when the

claimed design is defined by a moving image or rotatable model rather than static views. This reform allows businesses with animated, digital or multi-angle products (e.g. GUIs, packaging, or devices with moving parts) to consider whether video or 3D filing better captures the design's protectable features than static views, and should seek advice early given the untested scope of protection under these new formats. Practitioners should also pay close attention to the technical filing requirements, which are now set out [here](#).

Court of Justice of European Union Set to Rule on Geo-Blocking and Trade Mark Territoriality

On 1 June 2026, the Austrian Supreme Court (the **Referring Court**) requested a preliminary ruling from the Court of Justice of the European Union (the **CJEU**) in case C-584/26 (*PA FASSBINDEREI GmbH v Fassbinderei Klaus Pauscha GmbH*) on the territoriality principle in trade mark law, following a trade mark dispute between two competing Austrian companies.

Fassbinderei Klaus Pauscha GmbH (the **Claimant**) owns the Austrian trade marks “PAUSCHA” and “KLAUS PAUSCHA” for wooden barrels. PA. FASSBINDEREI GmbH (the **Defendant**) used the identical sign ‘Pauscha’ and the domain name “pauscha.at” to market competing products, without supplying customers in Austria. Following an injunction obtained by the Claimant, the Defendant geo-blocked Austrian IP addresses and added a disclaimer that its offer did not target Austria, while continuing to use “@pauscha.at” email addresses for its Austrian-based staff. The Claimant argued that this still amounted to use of the sign in relation to Austria and sought to extend the cease-and-desist order accordingly.

In essence, the Referring Court asked the CJEU whether the territoriality principle and Article 10(2) and (3) of Directive (EU) 2015/2436 preclude a cease-and-desist order against use of a national trade mark as a domain name and on a website, when the website is geo-blocked from and disclaims targeting the country of protection.

The ruling will clarify whether geo-blocking and a disclaimer can justify use of a sign identical to a protected national trade mark, shaping the boundary between free movement of online services and the territorial scope of national trade mark rights in the EU.

The request for a preliminary ruling can be found [here](#).

Court of Justice Rules on Copyright Protection of Social Media Post and Reporting Exception

On 3 September 2026, the Court of Justice of the European Union (**CJEU**) delivered its judgment in C-598/24 (*Gândul Media Network*) on (i) the interpretation of the concept of “work” under Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (the **Infosoc Directive**) and (ii) the discretion of Member States in implementing the reporting exception under Article 5(3)(c) of the Infosoc Directive. The case, referred by the Romanian High Court of Cassation and Justice (**ICCJ**), confirms that online content is assessed under the same copyright criteria as any other work.

Background

On 8 September 2021, a teacher, CY, posted a 22-line text on her Facebook page discouraging parents from giving her gifts. Six days later, a journalist reproduced the entire text without her prior consent in the online daily newspaper *Gândul*. CY sued the journalist and the newspaper for copyright infringement before the Romanian national courts, which dismissed her claim at first instance and on appeal on the grounds that the 22-line text posted was not eligible for copyright protection. On further appeal, the ICCJ referred the matter to the CJEU for a preliminary ruling.

CJEU judgment

On the first question, the CJEU confirmed that a “work” under Article 2(a) Infosoc Directive is an autonomous concept of EU law requiring that the subject matter be (i) original, reflecting the personality of its author through free and creative choices, and (ii) identifiable with sufficient precision and objectivity. Relying on Article 2(1) of the Berne Convention, which protects literary, scientific and artistic works whatever their form of expression, the CJEU held that factors such as length, online publication or belonging to a predetermined literary genre are irrelevant to that assessment, unless they stem from constraints that leave the author no room for creative freedom. While leaving the final assessment to the national court, the CJEU held that a social media post expressing an opinion is capable of constituting a “work” within the meaning of Article 2(a) Infosoc Directive and may therefore benefit from copyright protection.

On the second question, the CJEU considered whether national legislation restricting the reporting exception to (a) short extracts and (b) uses generating no direct or indirect commercial or financial benefit is compatible with Article 5(3)(c) Infosoc Directive. The CJEU held that Member States may validly limit the exception to short extracts, provided the restriction is proportionate and preserves the exception's effectiveness, but that Article 5(3)(c) Infosoc Directive precludes a blanket prohibition on deriving a commercial or financial benefit from the use, since that condition has no basis in the wording of the provision and upsets the balance between copyright and freedom of expression and of the press.

Critical Assessment

The ruling confirms, in line with earlier case-law (*Infopaq*, *Levola Hengelo* and *Cofemel*), that social media posts are assessed under the same originality and identifiability test as any other work, with no bespoke test for online content. Its practical significance lies in the Article 5(3)(c) Infosoc Directive guidance: proportionate, length-based limits on the reporting exception remain valid, but Member States must not condition the exception on the absence of commercial or financial benefit, a distinction that matters directly for press and media defendants relying on it.

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

Advocate General Proposes Stay of Trade Mark Infringement Proceedings Pending Definitive Decision of European Union Intellectual Property Office on Invalidity Claims

On 3 September 2026, Advocate General Biondi (**Advocate General**) delivered his opinion in C-392/25 (*Bodegas Sanviver, SL v. Bodegas Vega Sicilia, SA*) on the interplay between national EU trade mark courts and the European Union Intellectual Property Office (the **EUIPO**), following a request for a preliminary ruling from the Audiencia Provincial de Alicante (the **Referring Court**).

Background

Bodegas Vega Sicilia (the **Claimant**) owns the EU word mark 'UNICO', registered on 25 August 2013 for wine. On 17 July 2018, the Claimant brought an EU trade mark infringement action in Spain against Bodegas Sanviver (the **Defendant**) over the Defendant's use of the sign 'ÚNICO' on vermouth bottles. Rather than filing a counterclaim before the Spanish court, the Defendant applied to the EUIPO to have the UNICO mark declared invalid. The EUIPO sided with the Defendant and declared the mark invalid on absolute grounds (the decision is not yet final).

The appellate court made a finding of infringement noting that the EUIPO decision was not final. The Spanish Supreme Court then held that the national court should have stayed the infringement proceedings once the invalidity action had been filed before the EUIPO and until the EUIPO's decision became final, and referred the case back to the Referring Court.

Doubting whether this approach was consistent with EU trade mark law, the Referring Court asked the CJEU, in substance: (i) whether a defendant may bring EUIPO invalidity proceedings after a claimant has started an infringement action before a national court; and (ii) under what conditions the national court must stay its proceedings pending the EUIPO's ruling.

Opinion

On the first question, the Advocate General proposed that Article 132(1) of the EU Trade Mark Regulation (**EUTMR**) be interpreted as allowing a defendant to file an invalidity or revocation application before the EUIPO even if it could have brought, or had already brought, a counterclaim with the same object before the national court under Articles 124(d) and 128 EUTMR.

On the second question, the Advocate General proposed that when the EUIPO application is filed after the infringement action but before or instead of a counterclaim, Article 132(1) EUTMR requires the national court to stay its proceedings until the EUIPO's decision becomes final, unless special reasons justify continuing. In assessing special reasons, the court may consider the timing of the EUIPO application, its prospects of success, and any indication that it was brought solely to delay the infringement proceedings.

According to the Advocate General, this approach preserves the national court's discretion, since a stay is not automatic and can be reviewed and lifted, and it best reconciles the EUTMR's goals of avoiding conflicting decisions and curbing procedural abuse. Notably, the Advocate General went further still, suggesting the same stay obligation could also apply even when the EUIPO action had been brought before the infringement action begins.

Critical Assessment

This Opinion is significant because it directly addresses the so-called "Alicante torpedo": a tactic whereby a defendant sued for trade mark infringement files a parallel EUIPO invalidity action before the EUIPO to force the national court to stay the infringement proceedings. The Advocate General's construction of Article 132(1) EUTMR would extend this tactic's reach, since it does not have to be raised as a counterclaim and, on the broader reading discussed above, may apply regardless of which action came first.

The proposed interpretation carries risks for claimants: defendants could routinely file EUIPO invalidity applications, shifting the burden to claimants to show "special reasons" against a stay. Critics also note that the broader reading could apply regardless of who filed the EUIPO application, and could symmetrically require the EUIPO to stay its own proceedings whenever a counterclaim is later brought elsewhere in the EU. The Court of Justice is not bound by the Opinion, and it remains to be seen whether it will follow this approach in its forthcoming judgment.

The opinion of the Advocate General can be found [here](#) (in French).

Grand Chamber Rules on Due Cause Defence Against Trade Mark Infringement Claim

On 8 September 2026, the Grand Chamber of the Court of Justice of the European Union (the **CJEU**) delivered its judgment in C-298/23 (*Inter IKEA Systems BV v Algemeen Vlaams Belang and Others*), on whether freedom of expression under Article 11 of the Charter of Fundamental Rights of the European Union (the **Charter**) can constitute 'due cause' for using a trade mark with a reputation under Article 9(2)(c) of the EU Trade Mark Regulation (**EUTMR**) and Article 10(2)(c) and (6) of the EU Trade Mark Directive (**EUTMD**). The case had been referred by the Dutch-language Enterprise Court of Brussels (the **Referring Court**).

Background

Inter IKEA Systems BV (the **Claimant**) owns several Benelux and EU word and figurative trade marks containing the word "IKEA", registered for a broad range of goods and services including furniture, lighting, textiles and carpets, and enjoying a reputation in Belgium and the EU. On 14 November 2022, the Belgian far-right political party Vlaams Belang presented a political plan titled "IKEA-PLAN – Immigratie Kan Echt Anders" ("*IKEA-Plan – Immigration Really Can Be Different*") for reforming Belgian asylum and immigration policy. Although the speaker stated that the plan did not refer to the Claimant, the accompanying illustrations used signs corresponding to the IKEA trade marks and characters resembling those in IKEA's assembly instructions.

The Claimant brought infringement proceedings against Vlaams Belang, its representatives, and Vrijheidsfonds VZW (the **Defendant**), a not-for-profit association that ran the campaign on behalf of Vlaams Belang. The Referring Court held the claim admissible only against the Defendant. The Defendant argued that using the Claimant's reputation to reinforce and disseminate its message constituted 'due cause' under Article 9(2)(c) EUTMR and Article 10(2)(c) and (6) EUTMD. The Referring Court framed the case as a conflict between two fundamental rights of equal rank: the trade mark proprietor's right to property under Article 17(2) of the Charter, which is not absolute and is limited to situations in which a third party's use adversely affects one of the trade mark's functions (origin, investment, or advertising), and (ii) a third party's right to freedom of expression

under Article 10 ECHR and Article 11 of the Charter, which is also not absolute but may only be restricted when necessary in a democratic society. The Referring Court also noted that these rights must be balanced against each other and that one right should not automatically outweigh the other.

Grand Chamber Judgment

(i) Threshold issue: use in the course of trade for goods or services

Articles 9(2)(c) EUTMR and 10(2)(c) EUTMD apply only when the sign is used 'in the course of trade' 'in relation to goods or services', whereas Article 10(6) EUTMD, an optional provision implemented in Belgian law, requires neither. Since the referring decision did not establish whether the Defendant's conduct met that threshold, the CJEU clarified, without deciding the point itself, that a not-for-profit association does not pursue an economic activity merely by virtue of its status but can act in the course of trade if it operates as an economic operator, and that a political programme is not itself a good or service, although promotional items or online promotional content may be.

(ii) Due cause under Article 10(2)(c) EUTMD

The CJEU noted that "due cause" is not limited to objectively overriding reasons, but may also reflect the defendant's subjective interests. Recital 21 EUTMR and Recital 27 EUTMD require these instruments to be applied consistently with fundamental rights, including freedom of expression. The CJEU further held that the trade mark owner's property right under Article 17(2) of the Charter may be limited by a third party's freedom of expression under Article 11 of the Charter, which can in principle constitute due cause. That freedom extends to legal persons and covers ideas that offend, shock or disturb.

However, according to the CJEU, mere reliance on freedom of expression is not enough: the defendant must set out the specific grounds for its use and show that they take precedence over the trade mark owner's rights and interests. Drawing on the case law of the European Court of Human Rights (*ECTHR*), the CJEU held that national courts must weigh the comparative importance of each right, the need to restrict or protect them, and the proportionality of the means used to the aim pursued, considering in particular:

- i. the defendant's intention, which must not be to infringe the mark or ride on its coat-tails, and which favours due cause when the sign conveys an idea or opinion relating to the mark, its owner or its goods and services, fuels a public interest debate, or is otherwise necessary (for example, because the term has become a cultural reference);
- ii. whether the use contributes to a public interest debate rather than a purely commercial one, since political speech and matters of public interest leave little room for restricting freedom of expression, with the form and any satirical nature of the expression, including political parody, deserving particular care; and
- iii. the consequences for the trade mark owner, including the intensity, extent and methods of use, the degree of similarity between the sign and the mark, the scale of the mark's reputation, and whether the use creates the impression that the owner endorses the

message conveyed, bearing in mind that an owner need not tolerate disproportionate detriment or harm to the substance of its trade mark right.

Applying these factors, the CJEU observed that “IKEA” has no semantic meaning or cultural resonance justifying third-party use; that the Defendant's use did not feed any debate concerning the Claimant itself; that the asylum and immigration debate had no genuine connection with the IKEA marks; and that the Defendant repeatedly reproduced the Claimant's distinctive font, colours and style online, which could create the impression that it had endorsed the political message despite its stated neutrality. On this basis, the CJEU considered that the Defendant's use did not appear to be justified by ‘due cause’, since its interest did not outweigh the Claimant's, though the final assessment remains for the Referring Court.

(iii) Due cause under Article 10(6) EUTMD

Should the Referring Court find that the Defendant did not use the marks in the course of trade for goods or services, the same balancing framework applies under Article 10(6) EUTMD, with one caveat: freedom of expression outside the commercial sphere benefits from broader protection than strictly commercial expression, so the outcome of the balancing exercise will not necessarily be the same as under Article 10(2)(c).

Critical Assessment

The ruling carries practical implications. Litigation against political uses of famous marks may prove counterproductive: the proceedings themselves generated significant publicity for the Defendant's message, so rights holders should weigh whether court action is the most effective response to isolated appropriations of their marks, and should consider alternatives, such as a criminal complaint for trade mark infringement against the individuals involved. The judgment also exposes the uneven reach of trade mark protection against non-commercial uses unrelated to goods or services, since enforcement under Article 10(6) EUTMD depends on whether the relevant Member State has implemented that optional provision, although specific jurisdictions, including Germany, may offer comparable remedies through personality rights.

More broadly, by endorsing the use of ECtHR case law to resolve conflicts between trade mark protection and freedom of expression under the Charter, the CJEU has supplied a structured balancing framework that may reduce the need for further preliminary references on similar facts. The judgment also illustrates the CJEU's tendency to give practical rather than academic answers: it does not merely define ‘due cause’ in the abstract but sets out concrete guidance on good faith, whether the expression actually concerns the mark or its proprietor, contribution to a public-interest debate, the intensity and manner of use, and the risk of suggesting a political association.

To conclude: Vlaams Belang was free to express its views on immigration, but those views had nothing to do with IKEA; using IKEA's reputation merely to amplify an unrelated message does not appear to outweigh IKEA's rights and interests. Formally, the national court still has to decide on the merits of the case.

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

Labour Law

Social Criminal Code Creates New Sanction Levels and Alternative Sanctions

Background

On 1 September 2026, the amendments made to the Social Criminal Code (*Sociaal Strafwetboek* / *Code pénal social* – the **Code**) by the Law of 16 March 2026 amending the Law of 5 March 1952 on the statutory multiplier on criminal fines, the Social Criminal Code and various provisions of Social Criminal Law (*Wet van 16 maart 2026 tot wijziging van de wet van 5 maart 1952 betreffende de opdecimes op de strafrechtelijke geldboeten, van het Sociaal Strafwetboek en van verscheidene bepalingen van het sociaal strafrecht* / *Loi du 16 mars 2026 modifiant la loi du 5 mars 1952 relative aux décimes additionnels sur les amendes pénales, le Code pénal social et diverses dispositions de droit pénal social* – the **Law**) entered into force.

These amendments were primarily introduced to align the Code with the new Criminal Code (*Strafwetboek* / *Code pénal*). They revise the penalties available under the existing 4 sanction levels for employment and social security law related violations, as well as the multiplying coefficient applied to the statutory multiplier on criminal fines.

Fine Amounts

The Code provides for infringements to be punishable under 4 sanction levels, with the corresponding fine amounts subject to a multiplying coefficient to account for indexation. The basic fine amounts corresponding to these levels have been multiplied by eight, in order to align the Code with the new Criminal Code.

To offset this increase, the multiplying coefficient applied to criminal and administrative fines has been reduced from 10 to 1.25. so that the final amounts actually applicable remain unchanged compared to those applicable to facts committed prior to the entry into force of the Law.

The applicable amounts (including the multiplying coefficient) are as follows:

Sanction level	Imprisonment	Criminal fine	Administrative fine
Level 1	N/A	N/A	EUR 100 to 1,000
Level 2	N/A	EUR 500 to 5,000	EUR 250 to 2,500
Level 3	N/A	EUR 2,000 to 20,000	EUR 1,000 to 10,000
Level 4	6 months to 3 years	EUR 6,000 to 70,000	EUR 3,000 to 35,000

Alternative Sanctions

In addition to the above sanctions, alternative sanctions may also be imposed for infringements falling under sanction levels 2, 3 and 4. These consist of:

1. a probation sentence, requiring compliance with certain conditions for a specified period (6 months to 12 months for level 2 and 3 infringements, and 12 months up to two years for level 4 infringements);
2. a community service sentence, requiring the performance of unpaid work (20 to 120 hours for level 2 and 3 infringements, and 120 to 300 for level 4 infringements);
3. a financial penalty, consisting of the payment of an amount determined on the basis of the advantage expected or obtained from the infringement; and
4. for level 4 infringements only, an electronic monitoring sentence, requiring the person concerned to remain at a specified address for a duration of one month up to one year.

When a probation or community service sentence of level 2 or 3 is not carried out, the Court must impose a substitute penalty consisting of a fine of EUR 200 to EUR 20,000 or a term of imprisonment of 1 month to 6 months; when the probation sentence or community service sentence is of level 4, the substitute penalty consists of a fine of EUR 200 to EUR 20,000 or a term of imprisonment of one month to one year.

Special Sanctions

Special sanctions also exist, such as a ban on operating a business, a professional ban, a closure of business, and the exclusion from public procurement contracts or concessions. These remain unchanged and are discretionary.

The full scale of sanctions (including the multiplying coefficient when applicable) can be summarised as follows:

Sanction level	Imprisonment	Criminal fine	Administrative fine	Alternative sanctions	Special sanctions
Level 1	N/A	N/A	EUR 100 to 1,000	N/A	N/A
Level 2	N/A	EUR 500 to 5,000	EUR 250 to 2,500	• Probation sentence from 6 to 12 months • Community service sentence of 20 to 120 hours • Financial penalty determined on the basis of the expected or actual gain derived from the offence	N/A
Level 3	N/A	EUR 2,000 to 20,000	EUR 1,000 to 10,000	• Probation sentence from 6 to 12 months • Community service sentence of 20 to 120 hours • Financial penalty determined on the basis of the expected or actual gain derived from the offence	• Prohibition on operating a business from 1 month to 3 years • Professional ban or a closure of business from 1 month to 3 years • Exclusion from public procurement contracts or concessions from 3 years up to 5 years
Level 4	6 months to 3 years	EUR 6,000 to 70,000	EUR 3,000 to 35,000	• Imprisonment from 6 months to 3 years • Electronic monitoring sentence from 1 month to 1 year • Probation sentence of more than 12 months and up to 2 years • Community service sentence of more than 120 hours and up to 300 hours	• Prohibition on operating a business from 1 month to 3 years • Professional ban, a closure of business from 1 month to 3 years • Exclusion from public procurement contracts or concessions from 3 years up to 5 years

Combination of Sanctions

As a general rule, an administrative fine, a criminal fine and an alternative sanction cannot be combined. However, for level 4 infringements, a criminal fine may be coupled with an alternative sanction.

As regards the special sanctions referred to above, these may be imposed in addition to a criminal fine or a prison sentence. However, this combination is only possible when the specific provision of the Code punishing the infringement at issue expressly provides for it, and these special sanctions are reserved for the most serious infringements, namely those punished by a level 3 or a level 4 sanction. When imposed, these special sanctions are discretionary and temporary, and the judge must specifically give reasons for the combined sanction. They may only be imposed when necessary to stop an infringement or prevent its repetition, and must be proportionate to the socio-economic interests at stake and must not infringe the rights of third parties.



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