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VBB on Belgian Business Law

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

Legal 500, 2019

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COMMERCIAL LAW

Supreme Court Opens Door for Right of Subagent to Receive Goodwill Indemnity for Customers Brought to Principal

On 26 January 2023, the Belgian Supreme Court (the ***Supreme Court***) quashed a judgment of the Liège Court of Appeal (the ***Court of Appeal***) finding that a subagent was not entitled to a goodwill indemnity from the main agent on the ground that the goodwill indemnity obtained by the latter from the principal was not a "substantial benefit" within the meaning of Article X.18, first subparagraph, of the Code of Economic Law (***CEL***). That provision transposes into Belgian law Article 17(2)(a) of Council Directive 86/653 of 18 December 1986 on the coordination of the law of the Member States relating to self-employed commercial agents (the ***Directive***), which provides that:

> "[t]*he commercial agent shall be entitled to an indemnity if and to the extent that:*
>
> - *he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers, and*
>
> - *the payment of this indemnity is equitable having regard to all the circumstances […]" (emphasis added).*

The Court of Appeal had reached its conclusion based on two grounds: (i) the goodwill indemnity received by the main agent is not a future benefit but an indemnity payable by operation of law; and (ii) the subagent concerned will continue to work with, and benefit from, the customer base established with the former principal.

In the case at hand, a German company (the ***principal***) had entered into a commercial agency contract with a French company (the ***agent***). The agent had subsequently subcontracted its contractual obligations to a subagent (the ***subagent***). After some time, the agent and the principal had talks regarding the subagent taking over the main agency agreement, but the talks were not successful. Following the cessation of the agent's business activities, the agent's agreement with the principal was terminated, which gave rise to the payment of a goodwill indemnity to the agent. As a consequence of this termination, the sub-agency agreement was terminated as well. The subagent claimed a goodwill indemnity from the agent, which the latter refused to pay. In the meantime, the subagent had become the (direct) commercial agent of the principal.

Following the agent's refusal to pay a goodwill indemnity to the subagent, the latter initiated legal proceedings. The first instance court granted him the requested goodwill indemnity. After the Court of Appeal overturned that judgment, the subagent lodged an appeal before the Supreme Court.

The Supreme Court decided to stay the proceedings and request the Court of Justice of the European Union (***CJEU***) to clarify, by preliminary ruling, whether the goodwill indemnity which the agent received from the principal thanks to the efforts of the subagent constituted a "substantial benefit" within the meaning of Article 17(2)(a) of the Directive, entitling the subagent to a goodwill indemnity.

In a judgment of 13 October 2022, the CJEU confirmed that the goodwill indemnity paid to the agent for the increase in customers thanks to the efforts of the subagent qualifies as a "substantial benefit" within the meaning of the Directive. In reaching this conclusion, the CJEU considered the purpose of Article 17(2)(a) of the Directive, which is to protect the agent. A restrictive interpretation of the phrase "substantial benefit" would deprive the subagent of compensation relating to the added value that he or she brought to the agent (and the principal).

COMMERCIAL LAW

However, the CJEU continued that it should be assessed, in light of the factual circumstances of the case, whether the payment of this indemnity is equitable, which might not be the case if the subagent continues the commercial agency business with the same clients and for the same products with the same principal (CJEU, judgment of 13 October 2022 in case C-593/21, *NY v Herios SARL*, ECLI:EU:C:2022:784, available here).

Applying the principles set forth by the CJEU, the Supreme Court decided to quash the judgment of the Court of Appeal, which had considered that a goodwill indemnity can never constitute a substantial benefit, and to return the case for reconsideration to a differently composed chamber of the Court of Appeal. The Supreme Court did not take a stance on whether the fact that the subagent had himself become the agent of the main principal affected his right to receive a goodwill indemnity. Therefore, the Court of Appeal will have to decide on whether it is fair to grant the subagent a goodwill indemnity (despite the fact that, contrary to Article 17(2)(a) of the Directive, Article X.18, first subparagraph CEL does not include an equity-related requirement).

The judgment of the Supreme Court is available here (in French).

Markets Court Partially Reforms Decision of Belgian Competition Authority to Fine Tobacco Manufacturers for Anticompetitive Collusion

On 15 February 2023, the Markets Court of the Brussels Court of Appeal (*Marktenhof / Cour des Marchés* – the ***Markets Court***) partially annulled the decision by which the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) had fined four tobacco manufacturers on account of anticompetitive concerted practices that consisted of repeated exchanges of commercially sensitive information through wholesalers (the ***BCA Decision***) (*See*, this Newsletter, Volume 2022, N° 4).

The four companies concerned by the BCA Decision are British American Tobacco Belgium NV (a subsidiary of British American Tobacco PLC) (***BAT***), Établissements L. Lacroix Fils NV (a subsidiary of Imperial Brands PLC) (***ITB***), JT International Company Netherlands BV (a subsidiary of Japan Tobacco Inc) (***JTI***) and Philip Morris Benelux BVBA (a subsidiary of Philip Morris International Inc) (***PMB***). These four companies had filed an appeal against the BCA Decision.

The Markets Court first rejected the BCA's argument that the appeals of JTI and BAT were inadmissible because the applications for annulment did not refer explicitly to the body within the BCA that is authorised to act in court, namely the President of the BCA, and that the BCA itself lacks the capacity to act as a defendant. The Markets Court held that the BCA's argument conflates the issues of admissibility, legal representation and formalities to be included in the application for annulment. As far as admissibility is concerned, what matters is that the appeal is directed towards the right legal entity, not its organ.

The Markets Court then turned to the merits of the case. The Markets Court found that, while the appellants contend that the BCA wrongly decided that there was a systematic and generally accepted practice of disseminating information through wholesalers, they do not challenge the description of the markets made by the BCA nor the existence of the information exchanges.

Furthermore, the Markets Court referred to the judgment of the Court of Justice of the European Union in case C-542/14, *VM Remonts*, to hold that, when the information is shared between competitors through a third party, a concerted practice contrary to Article 101 TFEU may arise in three cases:

- When a company intended to disclose its commercially sensitive information to its competitors through the third party;
- When a company expressly or tacitly approved the sharing of commercially sensitive information by the third party with competitors; or
- When a company could reasonably foresee that the third party would share its commercially sensitive information with its competitors and was willing to accept the risk, without it being necessary that the third party actually informed the company of the sharing of information with a competitor.

In this case, the Markets Court held that the BCA correctly found that the tobacco manufacturers had exchanged strategic, confidential, prospective and adjustable pricing information through their wholesalers and had not taken action to prevent the transmission of pricing information. The Markets Court added that, in line with the EU case law, undertakings that take part in a form of concertation and remain active on the market are, barring proof to the contrary, presumed to consider the information exchanged to adapt their conduct on the market. In this case, the Markets Court held that the tobacco manufacturers had failed to rebut that presumption. The Markets Court also confirmed the qualification of the conduct as a restriction of competition by object.

COMPETITION LAW

However, the Markets Court also considered that the BCA had provided insufficient reasons to conclude that the conduct formed a single and continuous infringement. In this regard, the Markets Court noted that the BCA Decision devoted only one paragraph to this notion and failed to distinguish between the two practices at hand, namely the concerted practice involving ITB, JTI and PMB and the other concerted practice between PMB and BAT. According to the Markets Court, the BCA should have established the existence of a single and continuous infringement for each of these two agreements individually. The BCA should have shown, in concrete terms, that there was an overall plan to restrict competition to which the manufacturers had each contributed through two concerted practices and that at the same time the parties had been aware of the illegality of each other's conduct, which in this case consisted of receiving and processing price lists.

The Markets Court also noted other flaws in the reasoning of the BCA, such as the fact that, based on the duration of the infringement decided by the BCA for each of the parties, BAT found itself to be alone in the anticompetitive agreement for part of its duration, which is impossible.

The Markets Court therefore annulled the BCA Decision, except for the finding that the tobacco manufacturers infringed Article IV. 1 CEL and Article 101 of the TFEU. It sent the case back to a differently constituted BCA College for a new assessment. The Markets Court also ordered that the fines be refunded to the companies concerned pending the adoption of a new decision.

Federal Parliament Clarifies Rules Governing Legal Professional Privilege of Inhouse Counsel

On 9 March 2023, the federal Parliament adopted a law modifying the rules applicable to inhouse counsel (*Wet tot wijziging van de wet van 1 maart 2000 tot oprichting van een Instituut voor bedrijfsjuristen / Loi modifiant la loi du 1er mars 2000 créant un Institut des juristes d'entreprise* – the ***New Law***). The New Law amends the framework governing the profession of inhouse counsel who are a member of the Institute of inhouse counsel (*Instituut voor bedrijfsjuristen / Institut des juristes d'entreprise* – the ***Institute***) and expands its tasks, regulates important aspects of the profession of inhouse counsel and amends the disciplinary rules for the profession.

Importantly, the New Law codifies the case law on the legal professional privilege (***LPP***) bestowed on the advice provided by inhouse counsel. The scope of LPP is extended to include not only advice given by inhouse counsel to their employer but also internal correspondence containing requests for opinion, draft opinions and internal documents drawn up in preparation for an opinion. Inhouse counsel may invoke LPP to refuse to disclose the content of his or her legal advice when providing evidence as a witness in judicial proceedings.

The explanatory statement (*memorie van toelichting / exposé des motifs*) of the New Law indicates that the extension of the scope of LPP is based on the Belgacom judgment of the Brussels Court of Appeal (*Hof van Beroep / Cour d'appel*) of 5 March 2013 which dealt with documents copied by the Belgian Competition Authority during on premise inspections. The explanatory statement also clarifies that already existing documents emanating from persons other than inhouse counsel or prepared for purposes other than for establishing legal advice are not privileged. In addition, if an opinion of inhouse counsel is included in the minutes of a board of directors' meeting, the advice of inhouse counsel no longer benefits from LPP. Inhouse counsel acting as a director will therefore have to ensure that his or her legal advice does not feature in the minutes of a board meeting on penalty of losing its LPP.

Furthermore, if the advice is shared outside the group to which the company belongs, it will also lose its LPP, although it may retain other forms of protection such as, for example, the privilege attributed to the correspondence between an external lawyer and his or her client.

COMPETITION LAW

In any event, LPP cannot be used as a cloak to shield documents from investigating authorities if they do not originate from inhouse counsel. Nor can LPP be relied on if inhouse counsel is taking part in a criminal offence.

CORPORATE LAW

Public at Large is Denied Access to Belgian Ultimate Beneficial Owner Register

On 8 February 2023, the federal Parliament adopted the Law amending the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on limiting the use of cash (*Wet van 8 februari 2023 tot wijziging van de 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 8 février 2023 portant modification de la 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*). For its part, the federal government adopted the Royal Decree of 8 February 2023 amending the Royal Decree of 30 July 2018 on the operating procedures of the Ultimate Beneficial Owner register (*Koninklijk Besluit van 8 februari 2023 tot wijziging van het Koninklijk Besluit van 30 juli 2018 betreffende de werkingsmodaliteiten van het UBO-register / Arrêté royal du 8 février 2023 modifiant l'arrêté royal du 30 juillet 2018 relatif aux modalités de fonctionnement du registre UBO*). These texts adapt the regulatory framework governing the Belgian register of ultimate beneficial owners (the ***UBO Register***) to bring it into line with recent changes in European law, including the General Data Protection Regulation (***GDPR***) and the judgment of the Court of Justice of the European Union (***CJEU***) as regards access to Luxembourg's UBO Register (Judgment of 22 November 2022 in cases C-37/20, *WM v Luxembourg Business Registers*, and C-601/20, *Sovim SA v Luxembourg Business Registers*, ECLI:EU:C:2022:912).

The CJEU held that granting unrestricted access to the UBO Register to any member of the public at large is contrary to the Charter of Fundamental Rights of the EU (the ***Charter***). This judgment came in response to the prejudicial questions asked by the Luxembourg District Court in a case in which beneficial owners of different companies had requested that access to their information published in the UBO Register be limited to specific entities. Their position was that granting access to this information to the public at large was a security risk and would infringe their rights. Their arguments were followed by the CJEU which held that allowing for broad access constituted a disproportional violation of the right to one's private life (Article 7 of the Charter) and the right to the protection of one's personal data (Article 8 of the Charter).

As a consequence, access to the Belgian UBO Register had to be restricted as well, as the previous regime allowed for access for any person requesting it. Following the regulatory changes, the public at large will only have access to the data made available in the UBO Register if they can demonstrate a legitimate interest, defined as:

1. the pursuit of a purpose or the carrying out of activities related to the fight against money laundering, terrorist financing and related underlying criminal activities;

2. the existence of a court case in the context of the objective or activities mentioned above, with a view to defending an interest related to this objective or these activities; or

3. the establishment of an economic relationship or transactions with a party responsible for providing information while the applicant is involved in activities relevant to the prevention or combating of money laundering, terrorist financing and related underlying criminal activities.

A request for access to the UBO Register will now have to include relevant documents and information demonstrating the legitimate interest. These still have to be specified.

The change to the regulatory framework does not impede access by other categories of persons, such as public authorities and persons subject to reporting obligations.

CORPORATE LAW

Finally, the notion of persons responsible to provide information has been broadened to include the legal representative of the reporting entities.

The Law was published here in Dutch and here in French. The Royal Decree can be found here in Dutch and here in French.

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DATA PROTECTION

European Data Protection Board Publishes Final Guidelines on International Transfers and Territorial Application of General Data Protection Regulation

On 14 February 2023, the European Data Protection Board (***EDPB***) published the final version of its Guidelines 05/2021 on the interaction between the territorial application of the General Data Protection Regulation (***GDPR***) and the rules on international transfers pursuant to Chapter V of the GDPR (***Guidelines***). The Guidelines provide a much-welcomed clarification regarding the concept of an international transfer under the GDPR and the requirements for non-EU entities that process personal data within the GDPR's territorial scope under Article 3 GDPR.

Background

Article 3 GDPR defines the territorial scope of the GDPR as applying to all processing activities of an establishment of a controller or processor in the EU, regardless of whether the processing takes place within the EU (Article 3(1) GDPR), or of a non-EU entity which targets or monitors data subjects in the EU (Article 3(2) GDPR).

On the other hand, Chapter V GDPR requires that an equivalent level of protection to the GDPR be offered when personal data are transferred to third-country jurisdictions. The provisions in Chapter V GDPR therefore aim to ensure that data subjects' rights are not harmed by such transfers. Chapter V thus complements Article 3 GDPR.

The first version of the Guidelines was published in December 2021. The updated Guidelines, as published on 14 February 2023, follow the same structure as their predecessor, while fleshing out in detail the requirements for such transfers.

When is Controller or Processor Subject to Article 3 GDPR?

The Guidelines begin by noting that the GDPR does not provide for a precise definition of "transfers of personal data to a third country or to an international organisation." This is why the EDPB sets out three cumulative criteria to identify when a processing operation constitutes an international transfer that falls in the scope of Article 3(2) GDPR:

1. A controller or a processor ("exporter") is subject to the GDPR for the given processing.

2. The exporter discloses by transmission or otherwise makes personal data, subject to this processing, available to another controller, joint controller or processor ("importer").

3. The importer is in a third country, irrespective of whether this importer is subject to the GDPR for the given processing in accordance with Article 3(2) GDPR, or is an international organisation.

If the three criteria are satisfied, any affected entities will have to comply with the provisions of Chapter V GDPR.

Exporter Discloses or Makes Data Available to Importer

The second requirement of the Guidelines is that an "exporter" discloses or makes available personal data, via transmission, to another controller, joint controller or processor, who is deemed to be the "importer." How exactly these terms are allocated, the EDPB notes, will be contextual and will require a case-by-case assessment. The notion of "making data available" seems to be interpreted broadly, extending to the remote access of, or access to, the data from third countries. This is to be distinguished from purely "internal transfers." An exporter may be either a controller or processor, with the caveat that controllers must still ensure that all appropriate standards are met, even when a processor undertakes the transfer on its behalf. Furthermore, intra-group transfers may also qualify as international transfers, depending on whether entities within the the same corporate group constitute separate controllers and processors.

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DATA PROTECTION

When Importer Is in Third Country

According to the third requirement, the importer must be geographically located outside of the EEA (in a third country). The EDPB indicates that efforts to ensure an adequate level of data protection for subjects under the GDPR may be undermined by laws and practices in third countries, such as difficulties in obtaining redress or disproportionate government access requests. In light of Article 28(1) GDPR and Recital 81 GDPR on the selection of processors, this may therefore raise doubts as to the reliability of the processor if it is subject to this foreign jurisdiction, and therefore, the actions of the controller will likely be assessed in light of the principles of integrity and confidentially contained in Article 5(2) GDPR.

Consequences of Transfer

If the above criteria are met, the Guidelines state that it is then "implied" that personal data processed in this manner are subject to Article 3 GDPR, regardless of whether the importer is subject to the GDPR. This triggers the application of the obligations of Chapter V to the exporter which imply an adequacy decision regarding the level of protection afforded to private data in a given third country (Article 45 GDPR) or the use of an instrument that creates appropriate safeguards (Article 46 GDPR), including Standard Contractual Clauses (SCCs), Binding Corporate Rules (BCRs), Codes of Conduct, certificate mechanisms, ad hoc contractual clauses, and international or administrative agreements.

Safeguards Needed if Personal Data are Processed Outside of EEA but No Transfer Occurs

If a processor or controller is processing data outside of the EU without disclosing the data to another controller or processor, this will fall outside the scope of Chapter V GDPR, even though the general obligations under the GDPR will continue to apply to the controller. In that case, the EDPB recommends a risk assessment to determine whether national law could undermine data subjects' rights. If there is such a risk, the transfer may have to be suspended.

The Guidelines contain many examples illustrating their application. Example 12 of the Guidelines is particularly instructive: for European controllers utilising the services of another EU-based processor whose parent company is located in a third country, processing activities within this relationship may constitute international transfers if the processor is subject to access requests from third-country organisations. This may result in a violation of Article 28 GDPR (which stipulates that processors may only process personal data as instructed by the controller), and in such scenarios, controllers should ensure that processors implement appropriate technical safeguards to protect the personal data.

The final version of the Guidelines can be found here.

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DATA PROTECTION

European Data Protection Board Updates Guidelines on "Dark Patterns"

On 14 February 2023 and following public consultation, the European Data Protection Board (***EDPB***) published the final version of Guidelines 3/2022 on deceptive design patterns (previously known as "dark patterns") in social media platform interfaces (the ***Guidelines***). As the Guidelines remain substantially the same as their previous version, we refer to our earlier article for a more detailed analysis (*See*, this Newsletter, Volume 2022, No. 3).

In the new version, the EDPB mainly added a second Annex which offers an overview of best practices, such as including shortcuts to the relevant parts of the privacy policy, the use of a privacy overview with a collapsible table of contents, verifying consistent wording and terminology, setting up a data protection onboarding process after the creation of an account and using examples to illustrate the purposes of processing.

The Guidelines also offer clarification on several subjects, including the conditions for permanently deleting an account on social media. They indicate that the social media platform must avoid any unnecessary hurdle to the data subject's right to delete all of his or her personal data, such as a disproportionately long "grace period" between the account deletion request and the actual deletion, the mandatory use of a "cooling-off" period before the account is deleted and other ploys to incite users to reconsider. The Guidelines also recommend using "bulk options" which entail combining options with the same processing purpose, so that users can change them more easily and take a more granular approach.

Finally, the EDPB adds references to new pieces of legislation and case law, especially the Digital Services Act (***DSA***) adopted on 13 December 2022 (*See*, this Newsletter, Volume 2022, No. 12). Article 25 DSA contains a general prohibition of deceptive patterns on online platforms and several other relevant provisions, including the prohibition on targeted advertising based on profiling of personal data of children or special categories of personal data (ethnicity, political views, sexual orientation, etc.). Unfortunately, the Guidelines do not clarify the interplay between the rules in the DSA and the General Data Protection Regulation.

The Guidelines can be found here.

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INTELLECTUAL PROPERTY

Court of Justice of European Union Clarifies Requirements for Obtaining Design Protection for Component Parts of Complex Products

On 16 February 2023, the Court of Justice of the European Union (***CJEU***) handed down a judgment in case C-472/21 *Monz Handelsgesellschaft International v. Büchel* in which it clarified the conditions for obtaining design protection for a component part of a complex product pursuant to Article 3(3) and (4) of Directive 98/7 on the legal protection of designs (***EU Designs Directive***).

The case stemmed from a German dispute concerning a design registration for the underside of a saddle for cycles or motorbikes. The claimant argued that the design registration did not satisfy the requirements of novelty and individual character since it was a component part of a complex product and not visible during normal use. The defendant (*i.e.*, the rightholder) argued that normal use covers 'the disassembly and reassembly of the saddle for purposes other than maintenance, servicing or repair work', activities during which the underside of the saddle is visible. The German Federal Court of Justice (*Bundesgerichtshof*) decided to refer the question to the CJEU.

First, the CJEU noted that appearance is an essential feature of design protection and that a design, once incorporated into a complex product as a component part, must be visible and not completely lost in the product.

The CJEU then made the following clarifications regarding the requirements of "visibility" and "normal use":

- the requirement of visibility should be assessed both from the perspective of the end-user and that of an external observer during the course of "normal use" of the product; and
- the assessment of what constitutes "normal use" cannot be based solely on the intention of the manufacturer but should also consider the customary use by end-users.

In a final step, the CJEU observed what "normal use" is and opted for a broad interpretation which covers all acts relating to the customary use of a product as well as acts which are carried out before, during or after the product has fulfilled its principal function. That would, for example, include storage and transportation and indeed all acts, except those that are expressly excluded by Article 3(4) (*i.e.*, maintenance, servicing, and repair work).

Businesses that have not applied for design protection for component parts, or have applied unsuccessfully, could be well advised to reassess whether there is a case to be made that the design is visible for the end-user or an observer during the course of non-principal use of the product (such as storage or customary disassembly). As it currently stands, the European Commission's proposal for a new Directive on the protection of designs (COM/2022/667 final) does not appear to amend substantially Article 3(3) and (4) of the EU designs Directive. As a result, the *Monz Handelsgesellschaft International v. Büchel* case law will likely remain relevant even after the EU Designs Directive is replaced by its successor.

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INTELLECTUAL PROPERTY

Unitary Patent Court and Unitary Patent Due to Launch on 1 June 2023

On 17 February 2023, Germany finally ratified the Agreement on a Unified Patent Court (***UPC Agreement***). The UPC Agreement was signed in 2013 by 25 Member states and Germany's ratification was the missing step for the launch of the Unified Patent Court (***UPC***) and the European Patent with Unitary Effect (***Unitary Patent***). According to its Article 89, the UPC Agreement will enter into force on 1 June 2023 which implies that both the UPC and the Unitary Patent will come into effect on that date.

The UPC will eventually have jurisdiction over 25 countries and will allow for the grant of a Unitary Patent. The Unitary Patent provides a single supra-national patent right covering all the participating Member States. Up until now 17 countries, including Belgium, have ratified the UPC Agreement. This means that patent protection can be obtained in these 17 countries with a single application. The UPC will also have jurisdiction over European patent applications pending at the date of entry into force of the UPC Agreement and over European patents that had not expired at that date.

Following Germany's ratification, a three-month sunrise period began on 1 March 2023. During this period European patent owners can remove their European patents from the jurisdiction of the UPC for an initial period of seven years. This can be relevant for patent owners who wish to avoid that their patent becomes centrally contestable.

For more information on the Bill implementing the Unitary Patent and the UPC in Belgium, *see*, this Newsletter, Volume 2019, No. 11.

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LABOUR LAW

Changes to Right to Allowances under Time Credit, Thematic Leave or Career Breaks

The Royal Decree of 26 January 2023 amending various Royal Decrees on time credit (*tijdskrediet / crédit-temps*), thematic leave (*thematisch verlof / congé thématique*) and career break (*loopbaanonderbreking / interruption de carrière*) (the ***Royal Decree***) alters the rules governing allowances (*onderbrekingsuitkeringen / allocations d'interruption*) for time credit, thematic leave or career break. Most of these rules entered into force on 1 February 2023 and apply to applications submitted to the employer from that date onwards, except if indicated otherwise.

Discontinuation of Increased Allowances

The Royal Decree abolished the increased allowances (paid by the National Employment Office) based on seniority that were previously granted to employees who had taken full-time or part-time time credit. In addition, the Royal Decree also eliminated the increased age allowances that were granted to employees over the age of 50 who had opted for part-time, 1/5th or 1/10th reductions in their working hours as part of a thematic leave.

Restrictions on Entitlement to Allowances

Time Credit for Childcare

For time credit applications submitted to the employer from 1 June 2023 onwards, employees must prove 36 months' seniority with the employer prior to the written application in order to be entitled to allowances (paid by the National Employment Office). This was previously 24 months.

The entitlement to allowances is now also only provided in the event that time credit is claimed to care for children up to five years (save for part-time or 1/5th time credit), while this was previously possible for children up to the age of eight.

Finally, the maximum period during which an employee is entitled to allowances was shortened by three months to 48 months. These modifications apply to current time credits, provided that the employee had taken less than 30 months of time credit by 1 February 2023. In that case, the employee can choose to shorten the duration of the time credit to the period that offers an entitlement to an allowance. If the employee had already taken at least 30 months of time credit on 1 February 2023, the original duration of 51 months will continue to apply.

Time Credit for All Reasons

An employment condition is now introduced for all types of time credit (while this was previously only the case for specific forms of time credit).

To be eligible for full-time time credit, the employee should have been employed on a full-time basis for the twelve months prior to the application or on a part-time basis for a minimum of 24 months.

To obtain half-time time credit, the employee must be working full-time during the twelve months preceding the application.

The Royal Decree can be consulted in Dutch and French.

LITIGATION

Federal Parliament Adopts Bill on Taking of Evidence and Service of Documents in Civil or Commercial Matters

On 21 February 2023, the federal Parliament adopted a bill implementing and complementing Regulation (EU) 2020/1783 of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (the ***Evidence Regulation***) and Regulation (EU) 2020/1784 of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (the ***Service of Documents Regulation***) (the ***Bill***) (*See*, this Newsletter, Volume 2022, No. 11).

The Bill introduces three main changes. First, pursuant to Article 4 of the Evidence Regulation, it designates the Federal Public Service Justice (*FOD Justitie / SPF Justice* - the ***FPS***) as the central body responsible for:

1. supplying information to the courts;
2. seeking solutions to any difficulties that may arise in respect of a request for the taking of evidence;
3. forwarding, in exceptional cases, a request for the taking of evidence to the competent court; and
4. deciding upon applications for the direct taking of evidence made in accordance with Article 19 of the Evidence Regulation.

Second, the Bill amends Article 519, first paragraph, second indent of the Judicial Code to grant a new task to bailiffs, namely, to help with address inquiries. In accordance with Article 7 of the Service of Documents Regulation, if the address of the person to be served with the judicial or extrajudicial document in another Member State is unknown, Belgian bailiffs can now be requested to determine the address of the person who must be served. To do so, bailiffs may access databases such as the National Register.

Third, pursuant to Article 4 of the Service of Documents Regulation, the Bill amends Article 555/1 of the Judicial Code to designate the National Chamber of Bailiffs (*Nationale Kamer van Gerechtsdeurwaarders / Chambre nationale des huissiers de justice*) as the central body responsible for:

1. supplying information to the transmitting agencies (*i.e.*, bailiffs or clerk offices responsible for the transmission of documents to be served in another Member State);
2. seeking solutions to any difficulties that may arise during the transmission of documents for service; and
3. forwarding, in exceptional cases, a request for service from a transmitting agency to the competent receiving agency (*i.e.*, bailiffs or clerk offices responsible for the receipt of documents from another Member State).

The full text of the Bill is available here.

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