April 2025

VBB on Belgian Business Law

Issue Highlights

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

Legal 500, 2019

Topics covered in this issue

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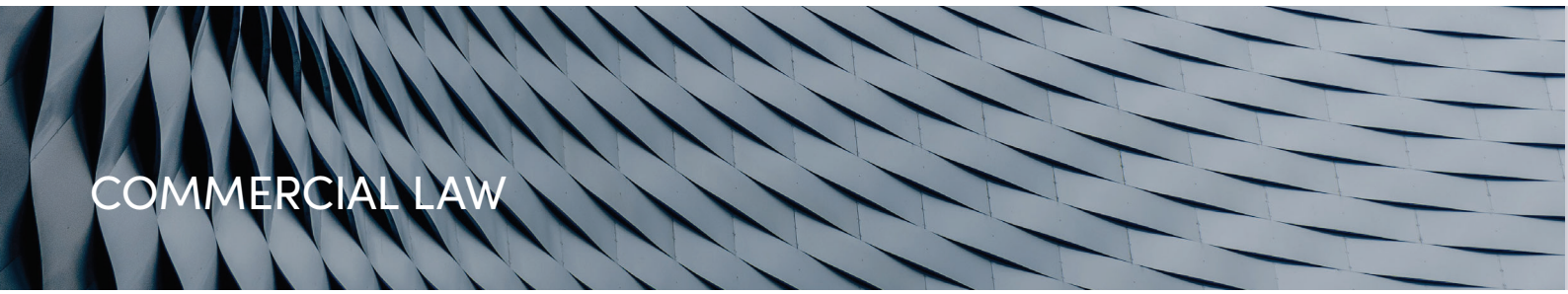

COMMERCIAL LAW

Default Commercial Interest Published

On 5 April 2025, the default interest rate for commercial transactions was published in the Belgian Official Journal (*Belgisch Staatsblad / Moniteur belge*).

As noted in the January edition of this Newsletter (*See*, this Newsletter, Volume 2025, No. 1), the bi-annual default interest rate for commercial transactions amounts to 11.5% in the first semester of 2025. This marks a decrease of the 12.5% rate which applied in the second semester of 2024.

COMPETITION LAW

Supreme Court Holds That Contractual Relationship is Not Precondition for Establishing Abuse of Economic Dependence

On 10 January 2025, the Supreme Court (*Hof van Cassatie / Cour de cassation*) quashed a judgment of the Brussels Court of Appeal (the ***Court of Appeal***) which had found that a position of economic dependence within the meaning of Article IV.2/1 of the Code of Economic Law (***CEL***) requires a contractual relationship prior to the alleged abuse.

Background

This case stems from a dispute between Tunstall SA, Tunstall Group Holdings Ltd, and Tunstall Group Ltd (***Tunstall***), competitor Victrix Socsan SL (***Victrix***) and customer Télé-Secours ASBL (***Télé-Secours***). Tunstall provides reception units and telecare software (referred to as a "platform") to organisations running call centres. It owns a patent on a protocol that allows reception units to communicate with the platform. Télé-Secours is a call centre that provides teleassistance to elderly or vulnerable people wishing to live autonomously at home. Télé-Secours used Tunstall's equipment and software but decided to switch to Victrix. However, Tunstall refused to grant Victrix a licence in the patent protecting its communication protocol, which prevented Victrix from connecting its platform to the reception units used by the clients of Télé-Secours.

Télé-Secours and Victrix claimed before the French-language Enterprise Court of Brussels (*Tribunal de l'entreprise francophone de Bruxelles* – the ***Lower Court***) that Tunstall had infringed (i) Article IV.2 of the Belgian Code of Economic Law (*Wetboek van Economisch Recht / Code de droit économique* – ***CEL***) and Article 102 of the Treaty on the Functioning of the European Union (***TFEU***), which both prohibit companies in a dominant position from abusing that dominance, and/or (ii) Article IV.2/1 CEL, which prohibits abuses of economic dependence.

As the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) has competence to investigate and prosecute both types of infringements, the Lower Court requested it to offer its views as an *amicus curiae*, pursuant to Article IV.88 CEL.

The BCA found that economic dependence normally requires a contract between the economically dependent company and the firm on which it depends, which was not the case between Tunstall and Victrix. The BCA also considered that the behaviour at stake – Tunstall's refusal to offer a licence for its patented technology – concerns Victrix, not TéléSecours, and that Télé-Secours was only indirectly affected, which was not sufficient to trigger a finding of abuse of economic dependence vis-à-vis Télé-Secours. However, the Lower Court disagreed and held that Tunstall had abused the economic dependence of both Télé-Secours and Victrix. The Lower Court observed that the absence of a contract between Tunstall and Victrix does not prevent a finding of economic dependence (*See*, this Newsletter, Volume 2023, No. 3).

However, the Court of Appeal overturned the Lower Court's judgment on 8 June 2024. It held that neither Télé-Secours nor Victrix were economically dependent on Tunstall. The Court of Appeal specified that the position of economic dependence is distinct from, and precedes, the alleged abuse, and thus requires the companies concerned to be commercial partners. Therefore, it was not possible for Victrix to be in a position of economic dependence given the absence of a contractual relationship between Victrix and Tunstall. The Court of Appeal also found that Télé-Secours was not economically dependent on Tunstall as the company had other options available to it.

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Supreme Court Judgment

The parties filed a further appeal to the Supreme Court, limited to issues of law. The Supreme Court held that Article IV.2/1 CEL does not subject a finding of economic dependence to the condition that there should be a contractual relationship between the companies prior to the alleged abusive conduct.

Consequently, the Supreme Court quashed the judgment and referred the case the Court of Appeal of Mons, which must now give a final ruling.

Comments

This judgment confirms that, just like abuses of dominance (Article 102 TFEU / Article IV.2 CEL), an abuse of economic dependence is not a contractual breach (even though it can occur in the framework of a business relationship), but rather a type of tort. As a result, the refusal to conclude an agreement – such as, in this case, the refusal to grant a licence – can amount to an abuse of economic dependence.

However, a refusal to contract is normally the legitimate expression of the commercial freedom of a business; only in very specific circumstances will such a refusal be regarded as abusive. It is for the Court of Appeal of Mons to decide on the presence or absence of such circumstances.

Belgian Competition Authority Concludes Inquiry into Batopin Network of Cash Dispensers and Secures Binding Commitments from Banks

As previously reported (*See*, this Newsletter, Volume 2025, No. 3), the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) announced on 25 March 2024 that it has accepted commitments from Belfius, BNP Paribas Fortis, ING, and KBC to expand their network of cash dispensers run by their joint venture company Batopin and maintain adequate service levels. The BCA thus closed the investigation which it had started in April 2022.

Batopin Cooperation and Anticompetitive Effects

First, the BCA was concerned that the Batopin cooperation would (i) reduce the number of ATM sites, thereby limiting accessibility ("accessibility assessment"), and (ii) lower the quality of services provided by the four banks to consumers ("quality assessment"). To evaluate these concerns, the BCA conducted a counterfactual analysis, comparing the expected outcomes under the cooperation with those that would prevail in its absence.

Regarding the accessibility assessment, the BCA concluded that the Batopin cooperation would increase the distance which consumers must travel to reach the nearest Batopin ATM. As for the quality assessment, the BCA found that the cooperation: (i) would lead to greater variation in ATM usage intensity, potentially degrading service quality; (ii) would have no clear impact on the availability of banknote denominations; (iii) would reduce the quality of a broader range of banking services; and (iv) would not clearly affect the cleanliness and safety of ATM sites.

Second, the BCA took issue with the possible exchange of commercially sensitive information. An analysis of Batopin's founding documents indicated that, although the implemented framework was likely to limit such exchanges, the risk could not be ruled out.

Commitments Accepted by BCA

To address the identified anti-competitive concerns, the banks offered and the BCA accepted a set of commitments.

Regarding accessibility, the banks committed to installing 70 additional cash dispenser sites by the end of 2027, bringing the total to 1040. They also guaranteed the continued presence of cash dispensers in municipalities covered by the current location plan until 2030. Furthermore, the banks pledged to ensure that 95% of Belgian residents would be able to withdraw cash and 85% would be able to deposit cash within a 5 km driving distance from their residence.

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In terms of quality of service, Batopin will monitor withdrawal transaction volumes at each site to assess usage intensity, ensure a minimum network availability of 95%, provide information about the nearest operational site in cases of unavailability, and, subject to limited exceptions, maintain 24/7 access to cash dispensers.

Finally, to address the concerns regarding the exchange of commercially sensitive information, Batopin will implement safeguards regarding the relationships between the four banks and other market participants.

European Commission finds that Ladbrokes did not Benefit from Illegal Belgian State Aid

On 11 April 2025, European Commission (the ***Commission***) found that Ladbrokes did not receive state aid from Belgium that would breach the EU State aid rules.

This decision closes an investigation which the Commission started in September 2020 following a complaint from businesses active in the games of chance sector. The Commission examined whether Ladbrokes had been granted exclusive rights to carry out virtual betting activities as a result of informal emails sent by the Belgian Gaming Commission. The Commission found that these emails did not grant such rights and that the Belgian State did not give up any resources that Ladbrokes would normally have to pay because of its virtual betting operations.

The Commission's decision has not yet been made public but should be published here.

President of Belgian Competition Authority Again Advocates for "Call-in" Merger Control Powers

On 17 April 2025, Axel Desmedt, the President of the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***), repeated his call from last year for his agency to be given "call-in" merger control powers rules (*See*, this Newsletter, Volume 2024, No. 10).

Mr. Desmedt is joining a growing chorus of competition authorities worldwide expressing the concern that specific transactions not caught by the regular merger control rules have to be reviewed because of the threat which they may pose to competition in particular markets. In Europe, this trend was prompted by the judgment which the Court of Justice of the European Union (***CJEU***) delivered on 3 September 2024 in *Illumina Grail*. In that case, the CJEU held that Article 22 of the EU Merger Control Regulation does not offer the statutory basis for mergers over which Member States have no jurisdiction to be referred for review to the European Commission (the ***Commission***). The call-in powers, which already exist in several Member States, would remedy what Mr. Desmedt considers an enforcement gap and enable the BCA to examine such mergers itself or ask the Commission to carry out such a review.

Mr. Desmedt singled out the traditional forms of potentially problematic transactions, namely "roll-up" acquisitions and "killer" acquisitions. "Roll-up" acquisitions refer to a series of transactions involving small targets in a given, usually local, market to create a position of strength in a gradual and at first inconspicuous fashion. "Killer" acquisitions denote transactions that focus on innovative start-ups with little turnover but great potential (sometimes translating in a significant purchase price) that have to be "taken out" before they become a competitive threat to established market players. Mr. Desmedt pointed out that the recent trend, spearheaded by the BCA, to tackle such deals with the traditional but ill-suited enforcement tools which address restrictive agreements (such as Article 101 Treaty on the Functioning of the European Union (TFEU)) or abuses of a dominant position (such as Article 102, TFEU) is not desirable (*See e.g.*, VBB Belgian Antitrust Watch. News and Insights of 23 March 2025).

Since the incoming federal government is already contemplating several changes to the competition rules (*See*, this Newsletter, Volume 2025, No. 2), the BCA's new "call-in" merger control powers are likely to become a reality soon.

COMPETITION LAW

Belgian Competition Authority and EU Peers Express Belief in Strong Competition Policy for Europe

On 22 April 2025, the Belgian Competition Authority and fellow competition authorities of medium-sized EU Member States (Austria, the Czech Republic, Ireland, the Netherlands, and Portugal) published a statement expressing their firm belief that a strong competition policy is necessary to preserve Europe's competitiveness and the "*sustainability of its social market economy model*".

The six competition authorities (the ***Six***) specifically challenge what they regard as a false tension between the role of competition and the realisation of economies of scale. This apparent contradiction was thrown in sharp relief by the Draghi report on European competitiveness which favours cross-border mergers and the creation of EU-wide players in the telecommunications sector by defining relevant markets at the EU level (and not at national level) and focusing on behavioural remedies rather than compulsory divestments. Large telecommunications firms around Europe relied on the Draghi report as authority to advocate for transnational economies of scale.

The Six dispute that view and maintain that in "*the electronic communication*[s] *sector, competition in most relevant markets still takes place at a national level and across multiple layers, at the infrastructure level (roll-out, wholesale access, coverage, drop-rates, etc.) as well as in the services market*". They add that "*service competition cannot offset potential disadvantages arising from a reduced number of competing infrastructure providers*". This is because, according to the Six, a "*reduced number of infrastructure providers can also weaken incentives to improve service quality, network coverage, density, and innovation" and may even "undermine resilience and supply security*".

This is why the Six will continue to scrutinise carefully far-reaching and structural consolidation that takes place within a single Member State. However, this does not necessarily contradict the findings of the Draghi report. As a matter of fact, the Six say, presumably to the extent that larger transactions do not fall outside their merger review powers, that they will take a favourable look at cross-border mergers, provided these are expected to benefit European businesses and consumers.

The Six add that their approach will apply across the whole economy, not just the telecommunications industry.

Significantly, the BCA takes this stance while still reviewing a large, proposed local telecommunications infrastructure deal between Fiberklaar, Proximus, Telenet, and Wyre for the roll-out of fibre networks in Flanders (*See*, VBB Belgian Antitrust Watch. News and Insights of 30 July 2024). The length of the review procedure in that case, which is subject to the regular antitrust rules and not the merger control provisions, suggests that the notifying parties have not yet convinced the BCA that the loss in infrastructure competition will be offset by thriving downstream service markets.

Belgian Competition Authority Publishes Policy and Enforcement Priorities for 2025

The Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) published on 29 April 2025 its set of policy and enforcement priorities for 2025 (the ***Priorities Paper***). The Priorities Paper reflects the mindset of an institution which, over the years, has gained in stature and grown in confidence, helped by an increased budget, larger staffing, and astute hirings. The BCA successfully concluded several high-profile cases and has begun to articulate a direction of travel, not only in the Priorities Paper, but also on other occasions. For example, the BCA joined five fellow competition authorities of medium-sized EU Member States to speak out in favour of a strong competition policy (*See*, preceding article).

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The BCA says it will focus on what it calls "*essential goods and services*" in agriculture and food; construction; healthcare (including pharmaceuticals); "*basic*" services in energy, finance, transport, and regulated professions; digital infrastructure and services; and telecommunications.

Additionally, in keeping with an approach adopted over the past few years, the BCA will pursue a comprehensive enforcement strategy against bid rigging. The BCA believes that in Belgium alone public procurement markets are worth more than EUR 80 billion in sectors as diverse as healthcare and defence. It will not only focus on collusion between bidding companies but also on inappropriate private interference with the design of tender specifications. In 2024, the BCA took important enforcement decisions in this area regarding private security and fire protection services (*See*, this Newsletter, Volume 2024, No. 6-7).

The BCA will also try and convince the federal government to seek a change to the applicable statutory competition rules in Parliament. Its efforts will focus on:

- merger control: revised merger control form; adaptation of the conditions for applying the simplified procedure; and the creation of "call-in" merger review powers.

- New Competition Tool: comparable to its Dutch counterpart, the BCA would like the powers to review an industry and impose measures that rectify market distortions even if no violation of competition rules took place.

CONSUMER LAW

Repairability Index for Consumer Products Enters into Force

On 2 May 2025, the regulatory framework governing the repairability index for consumer products entered into force. From that date, manufacturers and importers of the targeted consumer products had to ensure that the repairability index is calculated and displayed next to their products. The applicable regulatory framework consists of the following instruments:

- The Law of 17 March 2024 on promoting the repairability and longevity of goods (*Wet van 17 maart 2024 ter bevordering van de herstelbaarheid en de levensduur van goederen / Loi du 17 mars 2024 sur la promotion de la réparabilité et de la durabilité des biens* - the ***Law of 17 March 2024*** – available in Dutch here and in French here);

- The Royal Decree of 25 May 2024 defining the goods covered by the repairability index, the technical standards for determining the scores for each of the criteria and the calculation method for the repairability index (*Koninklijk Besluit van 25 mei 2024 tot vaststelling van de goederen waarop de herstelbaarheidsindex betrekking heeft, de technische normen voor de vaststelling van de scores voor elk van de criteria en de berekeningsmethode voor de herstelbaarheidsindex / Arrêté royal du 25 mai 2024 visant à déterminer les biens visés par l'indice de réparabilité, les normes techniques permettant d'établir les scores pour chacun des critères et la méthode de calcul de l'indice de réparabilité* - the ***Royal Decree of 25 May 2024*** – available in Dutch here and in French here);

- The Royal Decree of 3 June 2024 establishing communication terms, the format of the repairability index and the accessibility of technical standards (*Koninklijk Besluit van 3 juni 2024 tot vaststelling van de communicatiemodaliteiten, het formaat van de herstelbaarheidsindex en de toegankelijkheid van de technische normen / Arrêté royal du 3 juin 2024 visant à déterminer les modalités de communication, de format de l'indice de réparabilité et d'accessibilité aux normes techniques* - the ***Royal Decree of 3 June 2024*** – available in Dutch here and in French here); and

- The Ministerial Decree of 12 July 2024 establishing the method of display of the repairability index (*Ministerieel Besluit van 12 juli 2024 tot vaststelling van de wijze van affichering van de herstelbaarheidsindex / Arrêté ministériel du 12 juillet 2024 déterminant les modalités concernant l'affichage de l'indice de réparabilité* - the ***Ministerial Decree of 12 July 2024*** – available in Dutch here and in French here).

Key Products Affected

The repairability index applies to the following categories of consumer products placed on the Belgian market:

- household dishwashers;
- household vacuum cleaners;
- pressure washers;
- lawn mowers;
- portable computers (excluding tablets/slate computers);
- electric and non-electric bicycles; and
- electric scooters.

How the Index Works

Manufacturers and importers should calculate the repairability index for their products and communicate their repairability scores to sellers (*i.e.*, natural or legal persons offering goods for sale to consumers, including online sales) and distributors (*i.e.*, those parties in the supply chain whose activities do not affect the product's safety features).

CONSUMER LAW

In order to calculate the score, the product is to be assessed according to five criteria, each worth 2 points, contributing to an overall score out of 10. These criteria are as follows: (i) duration of availability of technical documentation and advice on use and maintenance; (ii) ease of disassembly and the required tools; (iii) availability of spare parts and delivery times; (iv) the ratio between the costs of spare parts and the price of the new product; and (v) product-specific criteria. The Annexes to the Royal Decree of 25 May 2024 contain further details on the methodology and technical standards for calculating the repairability index for each of the products affected.

The Royal Decree of 3 June 2024 and the Ministerial Decree of 12 July 2024 describe the manner in which sellers and distributors should communicate the repairability index to consumers. This includes, in particular, the requirement to display the score and a colour code indicating whether a product is easy to repair (green) or difficult or impossible to repair (red), as well as a link or QR code that leads the consumer to a website that provides more detailed information on how the score is calculated.

Enforcement and Sanctions

Non-compliance with the new repairability index requirements may result in administrative fines. The provisions regarding enforcement and sanctions will generally take effect on 2 November 2025 but only on 2 May 2026 for natural persons and SMEs.

For sellers and distributors, the enforcement and sanction provisions will take effect on 2 November 2026.

For additional details on the Law of 17 March 2024, we refer to the January 2024 and April 2024 editions of this Newsletter (*See*, this Newsletter, Volume 2024, No. 1 and Volume 2024, No. 4).

The reliability of the repairability index scores has been questioned by some stakeholders due to the fact that they are calculated by the producers themselves and not by a neutral third party. However, enforcement actions may lead to revisions in the scores calculated by manufacturers and importers.

CORPORATE LAW

Supreme Court Specifies Conditions for Special Bankruptcy Liability of Company Directors for Social Security Contributions

On 6 March 2025, the Supreme Court (*Hof van Cassatie / Cour de Cassation* - the ***Court***) delivered a judgment on the application of Article XX.226 of the Code of Economic Law (*Wetboek van Economisch Recht / Code de droit economique* - ***CEL***), which governs the special bankruptcy liability of company directors for social security contributions. Under this regime, a director of a bankrupt company who, within five years prior to the bankruptcy, has been involved in a least two other bankruptcies or liquidations in which debts remained unpaid, may be declared jointly liable for any outstanding social security contributions.

In its ruling, the Court examined whether Article XX.226 CEL requires directors to still hold their position within the company at the time of the bankruptcy, or whether it is sufficient for them to have held office at any point, even prior to the bankruptcy. The Court declared that directors can be held liable even if they were no longer directors at the time of bankruptcy. This should stop directors from trying to circumvent liability by stepping down shortly before bankruptcy.

The judgment raises constitutional concerns, particularly regarding the presumption of liability as a sanction without a time limitation, which may not satisfy the proportionality test.

Publication of "Stop-the-Clock" Directive for Application of EU Sustainability Legislation

On 16 April 2025, Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 (the Corporate Sustainability Reporting Directive (***CSRD***) and (EU) 2024/1760 (the Corporate Sustainability Due Diligence Directive (***CSDDD***) as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements was published in the EU Official Journal (the ***"Stop-the-Clock" Directive***).

In February 2025, the European Commission published "Omnibus packages" to simplify European Union environmental, social, and governance (***ESG***) legislation, in particular the CSRD and the CSDDD. While the CSRD implements sustainability reporting requirements for large companies, the CSDDD establishes a corporate due diligence duty and reporting obligations for large companies to ensure the prevention of (potential) adverse impacts on human rights and the environment, including the obligation to adopt a transition plan to make their business model compatible with the global warming limit of 1.5°C in the Paris Agreement.

As a first step under the "Omnibus packages", the Stop-the-Clock Directive postpones:

- the application of the CSRD for two years for companies that have not yet started reporting (*i.e.*, all entities not qualifying as large public-interest entities). The reporting obligations for these entities are now set for financial years 2027 and 2028 respectively, depending on the type of entity within scope;
- the transposition deadline of the CSDDD for one year (*i.e.*, to 26 July 2027); and
- the compliance date for the largest in-scope companies of the CSDDD to 26 July 2028. The compliance date for the other in-scope companies remains unchanged, *i.e* the 26th July 2029.

The Stop-the-Clock Directive entered into force on 15 April 2025 and must be transposed by Member States into their national legislation by 31 December 2025.

While the Stop-the-Clock Directive postpones specific reporting and due diligence obligations, the next step for the European Council and the European Parliament under the "Omnibus packages" is to adopt formal positions on the proposed simplifications of the CSRD and the CSDDD. The European Union's objective is to reduce the administrative burden of both instruments by at least 25% - for example, by narrowing the scope and reporting obligations under the CSRD and limiting the due diligence requirements under the CSDDD. The earliest expected adoption of the amended CSRD and CSDDD is at the end of 2025.

DATA PROTECTION

According to Advocate General Capeta, Binding Decisions of European Data Protection Board Are Challengeable Acts

On 27 March 2025, Advocate General (***AG***) Ćapeta delivered her opinion in *WhatsApp Ireland Ltd v European Data Protection Board* (Case C-97/23 P). According to AG Ćapeta companies should be able to challenge binding decisions of the European Data Protection Board (the ***EDPB***) before EU courts, even if such decisions are not formally addressed to them.

Background

In 2018, the Irish Data Protection Commission (***DPC***), acting as lead supervisory authority (***LSA***), initiated an investigation into WhatsApp's data processing activities, focusing on potential infringements of Articles 12 through 14 of the General Data Protection Regulation 2016/679 (the ***GDPR***) relating to transparency obligations. Under the GDPR's consistency mechanism, the DPC circulated its draft decision to other concerned supervisory authorities (***CSAs***) across the European Union. CSAs from France, Germany, Italy and other Member States raised objections. As no consensus was reached, the matter was referred to the EDPB pursuant to Article 65 of the GDPR

On 28 July 2021, the EDPB issued its binding decision, requiring the DPC to significantly amend its draft findings. The EDPB considered that "lossy hashed data" constituted personal data, which led to additional infringements under Articles 5, 13 and 14 of the GDPR and an increased fine. The DPC issued its final decision on 20 August 2021 and imposed a fine of EUR 225 million on WhatsApp.

WhatsApp brought an action before the General Court (***GC***) seeking annulment of the EDPB's binding decision. The GC dismissed the action as inadmissible, ruling that the binding decision did not constitute a challengeable act within the meaning of Article 263 (1) Treaty of Functioning of the European Union (***TFEU***) and additionally, the decision did not directly concern WhatsApp under Article 263 (4) TFEU.

WhatsApp subsequently appealed the GC's order to the Court of Justice of the European Union (***CJEU***).

AG's Opinion

AG Ćapeta advised the CJEU to set aside the GC's order and declare WhatsApp's action admissible, based on two main grounds:

- According to AG Ćapeta, the relevant test under Article 263 (1) TFEU to assess whether an act is challengeable is whether the act expresses the final position of the institution and produces binding legal effects on third parties. The AG found that the EDPB's decision satisfies this test. The fact that the decision forms part of a composite administrative procedure does not remove its challengeable nature.

- To challenge an act, a party must be directly concerned. This requires 2 criteria to be met: (i) "*the contested measure must directly affect the legal situation of that person*"; (ii) "*it must leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules*" (§128 of the Opinion). AG Ćapeta found that the EDPB's decision directly affected WhatsApp's legal situation and left the DPC with no discretion in its implementation. She criticised the GC for considering parts of the DPC's final decision that were not governed by the EDPB decision, which she argued was irrelevant to the question of discretion.

On this basis, AG Ćapeta recommended that the CJEU annul the GC's decision, declare WhatsApp's action for annulment admissible, and refer the case back to the GC for a ruling on the merits.

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Comment

If the CJEU follows AG Ćapeta's reasoning, companies could directly challenge binding decisions of the EDPB, in addition to appealing the final decision of the national supervisory authority (Such an appeal is usually brought before national courts). This more direct route allows faster access to EU courts which will enhance the uniform interpretation of the GDPR. Additionally, the AG's analysis of the distinction between a "challengeable act" (Article 263(1)) and "direct concern" (Article 263(4)) provides valuable guidance for navigating multi-stage administrative procedures under EU law. This is particularly relevant at a time in which recent EU rules have conferred enforcement powers on national authorities. These authorities will benefit from central guidance and other forms of cooperation.

The AG's opinion can be found here.

Belgian Data Protection Authority Reprimands Company for Inadequate Vehicle Geolocation Transparency

On 25 March 2025, the Litigation Chamber of the Belgian Data Protection Authority (*Gegevensbeschermingsautoriteit/Autorité de protection des données* - the ***DPA***) examined the use of geolocation trackers in staff company vehicles by an employer and issued a reprimand for several breaches of the General Data Protection Regulation 2016/679 (the ***GDPR***).

Background

The complainant (the ***Employee***), objected to the installation of a geolocation system by his employer (the ***Employer***) in his company vehicle. The Employee argued that the system had been fitted without his consent, had not been mentioned in his employment contract, and could not be deactivated outside working hours or vacation periods. The Employer argued that the system was necessary to improve operational efficiency and had been communicated internally during a company meeting and through an internal policy.

The DPA assessed whether the geolocation system complied with GDPR, particularly the principles under Articles 5 (general principles, including purpose limitation and data minimisation), 6 (legal basis) and 12 to14 (transparency).

Decision

- **Legal basis**: The DPA noted that any processing of personal data requires a legal basis. The Employer relied on Article 6(1)(f) GDPR, which provides that data processing must serve a legitimate interest, be necessary, and not override the fundamental rights of the data subject. The DPA accepted that the Company had a legitimate interest in managing employee travel for purposes such as time registration, route optimisation, and client invoicing.

- **On purpose limitation**: to be legitimate, the purpose of the processing must be specified and the processing must be limited to that purpose. The DPA determined that the Company had used geolocation data to track working hours without having previously specified this purpose. As a result, the data was processed for an undisclosed objective, breaching the purpose limitation principle set out in Article 5(1)(b) of the GDPR.

- **On data minimisation**: While the data processed (including trip times and distances) was not deemed excessive for the stated purposes, the DPA expressed concern over the system's inability to be turned off during non-working hours and the continuous recording of location data by the processor, even if not accessed by the Company. The DPA did not establish a breach on this point but noted that best practice requires employees to be able to deactivate tracking systems outside working hours, especially in cases of flexible work.

DATA PROTECTION

- **On transparency**: The DPA identified significant deficiencies in the Company's transparency obligations under Articles 12(1), 13 and 14 GDPR. The geolocation policy lacked clarity about the system's intended purpose, failed to specify the legal basis for processing, did not list data categories comprehensively, and omitted information on retention periods and the criteria for their determination. The DPA emphasised that data subjects must be able to assess the scope and consequences of the processing in advance. The DPA held that data controllers should either enter into a separate agreement with employees or append an annex to employment contracts outlining GDPR transparency requirements to ensure compliance with Article 12(1) GDPR.

The decision is available here, currently only in Dutch.

Belgian Data Protection Authority Holds that Changes in Notices Must Be Communicated to Data Subjects

On 13 March 2025, the litigation chamber of the Belgian Data Protection Authority (*Gegevensbeschermingsautoriteit / Autorité de protection des données* – the ***DPA***) issued a reprimand to an unnamed company (the ***Platform***) for providing incomplete and unclear information in its general terms and conditions and privacy notice.

Background

On 16 June 2021, a father (the ***Claimant***) attempted to enrol his son in a music academy via an online portal, which required acceptance of the general terms and conditions. The Claimant objected, asserting that he intended to deal directly with the academy and not with a third-party platform. Upon learning that the Platform, rather than the academy, had processed his personal data, the Claimant requested the deletion of his data, arguing that he had no direct relationship with the Platform.

The Platform responded that it acts as a data controller during the initial account creation. The academy then becomes the data controller once the account is linked to it. At that point, the Platform becomes the processor and acts on behalf of the academy.

Despite this clarification, the Claimant filed a complaint with the DPA, alleging GDPR violations. He argued that he had been obliged to accept the general terms and conditions to create an account and that his personal data had been processed even though he only intended to register his son. This prompted the Inspection Service of the DPA to initiate an investigation into the Platform's data processing practices.

Findings DPA

First, the DPA accepted that the Platform's requirement to accept its general terms and conditions to create an account was lawful under Article 6(1)(b) GDPR (performance of a contract). The DPA noted that creating an account was essential to access the Platform's services, provided that users were adequately informed and alternative methods of enrolment existed. Moreover, as the Claimant's son was presumed to be a minor, the Platform was justified in processing the Claimant's personal data as the parent.

Second, the DPA agreed with the Platform's rejection of the Claimant's erasure request. As,at the relevant time, the Platform was acting as a processor for the academy, it had redirected the erasure request to the academy, the data controller. The DPA endorsed this approach and confirmed the Platform's dual-role rationale.

Despite accepting the Platform's position on both the lawfulness of processing and the erasure request, the DPA identified multiple transparency violations under the GDPR:

- **Inadequate notification of policy updates**: The DPA observed that changes to the privacy notice must be clearly and effectively communicated. Simply instructing users to check the document regularly was insufficient. To comply with Article 12(1) GDPR, the Platform should have implemented proactive notification mechanisms - such as emails or website pop-ups - to alert users to significant modifications and allow them to exercise their rights.

DATA PROTECTION

- **Insufficient information provided to data subjects**: The DPA found that the Platform had infringed Article 13(2)(e) of the GDPR by failing to inform data subjects whether the provision of personal data was mandatory and the potential consequences of such non-provision. In addition tobreaches of Articles 13(1)(e) and 14(1)(e) of the GDPR by failing to provide the data subjects with information regarding the recipients or categories of recipients of personal data.

The DPA decided to issue a reprimand to the Platform. It explained its decision to not impose a more severe sanction by acknowledging that the infringements dated back some time and pertained to a privacy notice which had since been amended to comply with the requirements of the GDPR.

Takeaways

This decision underscores the importance of proactive communication of privacy policy changes. Businesses must implement clear mechanisms, such as email alerts or website banners, to ensure that data subjects are promptly informed of any modifications to data processing practices. Relying solely on passive notices within the privacy policy, without clear communication to affected data subjects, constitutes a transparency breach under the GDPR.

A copy of the decision can be found here (in Dutch).

INTELLECTUAL PROPERTY

Advocate General Szpunar Delivers Opinion on Scope of Copyright Law Protection of Works of Applied Arts

On 8 May 2025, Advocate General (***AG***) M. Szpunar delivered his Opinion in relation to pending requests for a preliminary ruling on the copyright protection of works of applied arts in Joined Cases C-580/23 (*Mio*) and C-795/23 (*konektra*) before the European Court of Justice of the European Union (***CJEU***). In his Opinion, AG Szpunar analysed three issues: (i) the relationship between the protection of copyright and that of designs; (ii) the criteria that should be taken into account for the assessment of the originality of a work; and (iii) the factors that should be considered to establish a copyright infringement.

Copyright Protection v. Design Protection

To assess whether works of applied art require a higher threshold for copyright protection than other types of work, the AG compares the requirements for copyright and those for design protection. He notes that the criterion of "originality" required for copyright protection to exist is not equivalent to the "novelty and individual character" requirement under design law. Accordingly, the AG maintains that only the subject matter that reflects the author's personality can be protected under copyright law, as the shape is determined at least in part by creative choices of the author. By contrast, design law protection only applies when the design is novel and presents an individual character, regardless of any requirement of creativity. Hence, the CJEU did not introduce a higher threshold of originality for works of applied art compared to other types of work. In conclusion, there is no relationship of rule and exception between the design law protection and copyright protection for applying the originality criterion to works of applied art.

Criteria for Assessing Originality of Work

The issue at hand concerned whether the author's intention, the state of the art, the post-creation events and the author's creative process are factors to take into account when assessing the originality of a work. First, the AG notes that the concept of "originality" is intentionally broad and is designed to apply to subject matters of different kinds. Second, the AG focuses on the criterion that the author's choices must be free and creative (and thus original). By contrast, choices that are dictated by specific constraints and bind the author during the creation of the subject matter, do not qualify as creative or free. However, the AG notes that the possibility to make free choices does not establish a presumption that the choices made are creative. Consequently, the author's intentions, creative thought process, sources of inspiration and post-creation events, may all be taken into account to assess the originality of the subject-matter. At the same time, these elements are not decisive in themselves. The AG concludes that the subject-matter may qualify as an original work if it reflects the personality of its author, which is an expression of his or her free and creative choices.

Criteria for Assessing Copyright Violation

As regards copyright infringements, the AG notes that once a work is regarded as "original", it will be protected against any reproduction of that particular work. In fact, the court must verify whether "*creative elements of the protected work have been reproduced in a recognisable manner in the alleged infringing subject matter*". Moreover, even when part of an original work is reproduced, only the recognisable reproduction of the original work will constitute a copyright violation. Although creating a similar work independently does not qualify as a copyright violation, the mere possibility of that independent creation is not sufficient to deny copyright protection if it is clear that creative elements of the protected work were reproduced.

Conclusion

According to AG Szpunar, an assessment of the copyright protection of a work of applied art does not require a stricter analysis in comparison to other

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categories of works. AG Szpunar highlights the centrality of originality in this form of assessment and emphasises that originality is not the same as novel or individual character but instead relates to free and creative choices made by the author. The AG understands originality to be an intentionally broad concept which is not easily reconciled with rigorous and systematic definition. The Opinion also shows that the possibility to make free choices at the time of creation does not establish a presumption that these choices were actually creative.

As regards the assessment of copyright infringement, the AG notes that once originality is established the "intensity" of creative freedom is irrelevant to the scope of protection provided. Notwithstanding, the AG cautions that in the case of partial reproduction (i) only the recognisable reproduction of creative elements constitutes an infringement; and (ii) the fact that alterations were made to non-creative elements does not rule out the existence of an infringement.

Advocate General Spielmann Clarifies Territorial Scope of National Trade Mark Rights

On 27 March 2025, Advocate General (***AG***) Spielmann delivered his opinion (the ***Opinion***) in Case C-76/24, Tradeinn Retail Services S.L. v PH, currently pending before the Court of Justice of the European Union (the ***CJEU***). The Opinion addresses a reference for a preliminary ruling made by the German Federal Court of Justice (the ***Referring Court***) concerning the territorial scope of trade mark protection under Directive (EU) 2015/2436 of 16 December 2015 to approximate the laws of the Member States relating to trade marks (the Trade Mark Directive).

PH, a proprietor of two German figurative trade marks for diving accessories, alleged that Tradeinn Retail Services S.L. (***TRS***) infringed its trade mark rights by stocking goods bearing the protected signs in Spain for the purpose of sale and distribution in Germany. The Referring Court stayed the proceedings and referred two questions to the CJEU. These questions related to whether in the light of Article 10(2)(a) and (3)(b) and (e) of the Trade Mark Directive:

1. the proprietor of a national trade mark may prohibit a third party from stocking in another country goods that infringe his or her trade mark for the purpose of offering them or putting them on the market in the country in which the trade mark is protected; and

2. the concept of stocking within the meaning of Article 10(3)(b) of the Trade Mark Directive depends on the possibility of actually accessing goods while infringing the trade mark.

In this Opinion, the AG seems to be in favour of a broad interpretation of Article 10(3)(b) of the Trade Mark Directive. On the first question, the AG analysed previous case law to reach the conclusion that trade mark rights may apply to acts abroad if they target consumers in the protected territory. These acts include selling, offering for sale, or marketing goods. In the present case, the AG clarified that if the goods are stocked abroad with the intention to offer or market them in the Member State where the trade mark is protected, this constitutes a sufficient territorial link for Article 10(3)(b) of the Trade Mark Directive to apply.

On the second question, the AG considered the meaning of "stocking" and whether it implies actual possession and noted that the German concept of Besitz (possession) includes both direct and indirect possession. Thus, a party instructing or controlling another party to hold the goods may still be considered to be "stocking" them. As such the AG concluded that "stocking" "*includes being able to exercise decisive influence over the person having actual access to the goods in order to decide, even indirectly, on the destination of the goods*".

The AG thus opted to reject an overly restrictive interpretation that would require physical possession, which would allow a third party indirectly exercising control via another person to avoid the legal consequences of Article 10(3)(b) of the Trade Mark Directive. It appears from the Opinion that the purpose of the stocking and the commercial link to the territory where the trade mark is registered are key elements.

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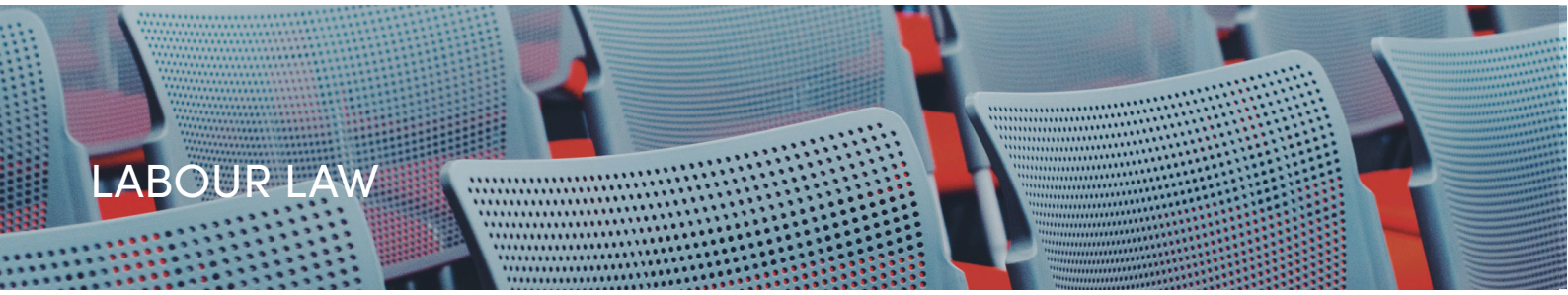
The CJEU is expected to deliver its judgment later this year. If the Court adopts the approach espoused by the AG, it will reinforce the ability of national trade mark proprietors to tackle foreign-based infringers targeting their domestic markets through cross-border stocking and online sales.

The AG's Opinion can be found here.



LABOUR LAW

Court of Justice of the European Union Clarifies Conditions for Application of Insolvency Exception for which Employee Protection Does not Apply

On 3 April 2025, the Court of Justice of the European Union (the ***CJEU***) delivered its judgment in Case C-431/23, Wibra België concerning the interpretation of Article 5(1) of Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, available here (the ***Directive***).

In the event of a transfer of undertaking, employees are automatically transferred to the transferee whilst maintaining their employment conditions. Article 5(1) of the Directive provides an exception to this principle offering the possibility to the transferee to cherry-pick employees when the transferor is the subject of bankruptcy proceedings or analogous insolvency proceedings which have been initiated with a view to liquidating the assets of the transferor.

This judgment forms the latest development in the CJEU's case-law regarding the exception provided for by Article 5(1) of the Directive (*i.e.* 22 June 2017, Case C-126/16, *Smallsteps*; 16 May 2019, Case C-509/17, *Plessers*,; 28 April 2022, Case C-237/20, *Heiploeg*). (*See*, this Newsletter, Volume 2019, No. 5 and this Newsletter, Volume 2022, No. 4).

Background

Wibra België NV, the Belgian subsidiary of Dutch discount retailer Wibra Nederland BV, faced financial difficulties following the COVID-19 pandemic. On 30 July 2020, the company initiated judicial reorganisation proceedings under Belgian law before the Commercial Court of Ghent. Three court-appointed administrators were tasked with organising and transferring the activities of Wibra België NV.

On 21 September 2020, the administrators accepted a takeover offer from Wibra Nederland BV, and a new Belgian entity, Wibra België BV, was incorporated to continue part of the activities of Wibra België NV.

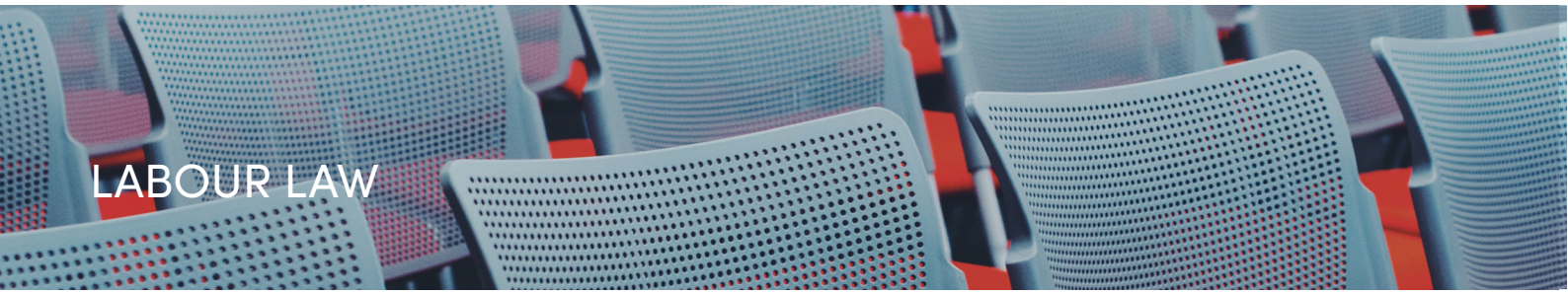
However, the Commercial Court of Ghent refused to approve the transfer on 8 October 2020, citing non-compliance with mandatory provisions. Later that day, the Commercial Court of Ghent declared Wibra België NV bankrupt and terminated the employment contracts.

The following day, a press release was published indicating that 36 shops would soon be reopened and that 183 of the 439 employees would be retained. The court-appointed administrators who had been designated as bankruptcy trustees transferred on the same day as part of the movable and immovable assets from Wibra België NV to Wibra België BV, whilst rehiring 183 employees.

Preliminary Question

A total of 60 dismissed employees brought an action for damages before the Labour Court of Liège, maintaining that Wibra België NV had failed to comply with the legal information and consultation obligations that apply to collective dismissals. However, the obligations associated with a collective dismissal do not apply to bankruptcy. Notwithstanding, the former employees contended that Wibra België BV should be declared jointly and severally liable for the damages as well, considering it to be the transferee of the rights and obligations of Wibra België NV in the context of a transfer of undertaking.

The Labour Court of Liège therefore referred a question for a preliminary ruling to the CJEU inquiring whether the exception of Article 5(1) of the Directive applies when a transferor prepares a business transfer prior to the opening of insolvency / bankruptcy proceedings with a view to the liquidation of the assets of the transferor – in the present case in the context of judicial reorganisation proceedings – but which is immediately followed by a bankruptcy as a result of the refusal of the competent court to approve the transfer agreement.



LABOUR LAW

CJEU Judgment

The CJEU noted that the exception of Article 5(1) of the Directive only applies if three cumulative conditions are satisfied:

1. the transferor must be the subject of bankruptcy proceedings or analogous insolvency proceedings;

2. those proceedings must have been instituted with a view to the liquidation of the transferor's assets; and

3. those proceedings must be conducted under the supervision of a competent public authority.

Regarding the first condition, the CJEU did not consider the proceedings at hand to be bankruptcy proceedings or analogous insolvency proceedings, as the preparation took place during the judicial reorganisation proceedings which do not necessarily amount to insolvency proceedings. However, the CJEU left it to the referring court to determine whether the set-up should be considered as a single insolvency procedure which in turn would meet the first condition.

Regarding the second condition, the CJEU reaffirmed the principle of the *Heiploeg* case, namely that there is a difference between procedures aimed at the continuation of a company and those aimed at its liquidation. To qualify as bankruptcy proceedings or analogous insolvency proceedings, the procedure must primarily seek to maximise creditor satisfaction, instead of business continuity, and must be capable of achieving that aim. The CJEU therefore held that the referring court would have to assess whether the proceedings – considered individually or as a whole – were primarily aimed at liquidation or continuation. In doing so, the referring court would have the possibility to consider factual indicators, such as the immediate succession of bankruptcy by a press release and asset transfer in the case at hand.

Regarding the third condition, the CJEU held that the referring court must assess whether the insolvency procedure was properly organised, considering that the three bankruptcy trustees had previously been appointed as administrators in the judicial reorganisation procedure.

Additionally, the referring court would also have to determine whether there had not been any misuse of insolvency proceedings in such a way as to deprive the employees of their rights arising from the Directive.

On that basis, the CJEU concluded that Article 5(1) of the Directive applies if the bankruptcy followed a failed judicial reorganisation, provided it was genuinely intended for liquidation, under public authority control, and was not abused to deny employee rights.

Takeaways

The CJEU's judgment shows that preparatory activities can form part of bankruptcy proceedings, benefiting from the exception of Article 5(1) of the Directive if the relevant conditions are satisfied. Whether this is factually the case at hand is for the referring court to decide.

This judgment involves the Belgian regulatory framework prior to the Law implementing EU Directive 2019/1023 on preventive restructuring, insolvency, and discharge of debt of 7 June 2023 (the ***Law of 7 June 2023***) which introduced significant reforms to the Belgian insolvency rules. These now reflect the case-law of the CJEU in *Smallsteps, Plessers* and *Heiploeg*, and also created the Belgian "silent bankruptcy" or "pre-pack". As a result, Belgian companies in similar circumstances are now more likely to opt for the "pre-pack" route rather than the structure relied on by *Wibra* in the case at hand.

The judgment can be found here.

LITIGATION

OECD Publishes Damning Report on Belgian Efforts to Combat Bribery of Foreign Public Officials

In 1999, Belgium adhered to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the ***Convention***) which is administered by the Organisation for Economic Co-operation and Development (the ***OECD***). Since then, the Working Group on Bribery in International Business Transactions (the ***Working Group***), has assessed Belgium's implementation of the Convention in four different phases. The most recent report entitled "Phase 4 Report", was published on 25 March 2025 (the ***Report***).

The Report offers recommendations to Belgium regarding its anti-bribery efforts and identifies areas of non-compliance with the Convention. The Report acknowledges a number of important legislative and institutional reforms since Belgium's Phase 3 assessment in 2013, such as the removal of the dual criminality criterion, which had prevented Belgium from prosecuting foreign bribery if this was not a criminal offence in the country in which it was committed. The Report also notes the reinforcement of Belgium's regulatory framework for anti-money laundering. However, the Report expresses concerns over persistent shortcomings in the investigation and prosecution of foreign bribery cases.

The Convention defines ***foreign bribery*** as "*a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business*".

Detection of Foreign Bribery

The detection of foreign bribery cases faces significant challenges due to the lack of initiative of law enforcement authorities which fail to gather information from available sources, such as journalists and investigative authorities, and do not use such information to start an investigation or prosecution. Furthermore, the legislative and institutional framework to combat money laundering and bribery is inadequate. The Report posits that a stronger role of the Financial Intelligence Unit (*Cel voor Financiële informatieverwerking/ Cellule de Traitement des Informations Financières* - the ***CTIF***) is necessary.

In the private sector, businesses have not used the voluntary disclosure mechanism (or self-reporting mechanism) because of the scarcity of investigations and prosecutions. According to the Report, the private sector requires guidelines on what constitutes self-reporting and a stronger knowledge of the offence of bribery. The whistleblower protection regime mustbe enhanced to ensure anonymous reporting mechanisms and to create equal remedies (such as financial compensation) for whistleblowers in both private and public sectors. Additionally, external auditors and accountants are not obliged to report on suspected bribery and are not sufficiently protected against reprisals. Furthermore, law enforcement authorities fail to use information received from foreign authorities through international cooperation because they do not wish to interfere with foreign investigations.

Overall, the Report recommends that Belgium should raise awareness among diplomats, public officials, tax authorities, reporting professionals, accountants, auditors, and prosecutors about their role in detecting and reporting foreign bribery allegations.

Enforcement of Foreign Bribery Offence

With regard to enforcement, the Working Group is primarily concerned about the lack of human and other resources at the Central Office for the Repression of Corruption (*Centrale Dienst voor de Bestrijding van Corruptie / Office Central pour la*

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Répression de la Corruption), a division of the Federal Police, which has seen no increase in personnel over the past ten years. The shortage in staff hinders investigations. Furthermore, the number of investigative magistrates and judges qualified to process foreign bribery cases is inadequate. Hence, the Working Group recommends further investment in human, material, and financial resources.

Additionally, the Report stresses a lack of strategy to combat foreign bribery cases, as the offence of bribery is not considered as a priority. However, following the Law of 9 April 2024 regarding criminal procedure (*Wet Strafprocesrecht I / Loi droit de la procédure pénale I* - the ***Law of 9 April 2024***), the trial court may, if justified, order the termination of public prosecution in cases in which there has been a serious breach of the reasonable time limit. Moreover, the judge may impose additional sanctions when the reasonable time limit is violated. The statute of limitations has created a significant obstacle to the successful pursuit of foreign bribery cases. The Law of 9 April 2024 resolved this issue by interrupting the limitation periods once the case is referred to the trial court.

The Report also points to insufficient transparency in the settlement procedure (*strafrechtelijke minnelijke schikking / transaction pénale*). This procedure, provided for by Article 216bis Code of Criminal Instruction (*Wetboek van strafvordering / Code d'Instruction Criminelle*), allows prosecutors to propose a settlement at any time before the final judgment. The settlement has to be reviewed by the competent court. However, according to the Report, Belgium failed to provide statistics regarding the use of this procedure. Finally, since settlements are confidential and unpublished, the conditions under which they apply remain vague. Therefore, the Working Group encourages Belgium to collect and share anonymised data regarding these procedures.

Liability of Legal Persons

First, the Report welcomes the abolishment of mutual exclusive liability, which now allows both natural and legal persons who commit the same offence to be held liable simultaneously and subject to sanctions. However, specific concepts such as "concrete facts" required to trigger a legal person's liability or the relationship between parent and subsidiary companies, remain unclear. For example, the Report underlines the need to ensure that legal entities cannot escape liability through mergers and acquisitions.

Finally, the Working Group is concerned about the significant reduction in fines for legal persons involved in such offences. Worse still, the Working Group is alarmed about the fact that no foreign bribery cases have been concluded against legal persons since Phase 3 (2013).

Other Prosecutions Related to Foreign Bribery – Money Laundering; accounting offences; tax offences; and public procurement

Belgium did not pursue money laundering activities in cases in which the underlying offence of bribery took place in a foreign jurisdiction where the offence of bribery is not illegal. The Report emphasises the importance of making sure that money laundering activities can be prosecuted regardless of where the bribery took place. To date, only one conviction for money laundering and foreign bribery was issued. Prosecutions with regard to accounting violations have also been scarce, as public prosecutors did not actively investigate such offences.

Similarly, the enforcement of non-deductibility of bribes must be reinforced, meaning that tax authorities must be informed of all foreign bribery resolutions. Finally, Belgian agencies that grant public advantages (such as the award of a public procurement contract) lack access to the criminal records which are crucial to improve verification procedures. Currently, relevant agencies have to rely on sworn declarations from the applicants themselves. In order to increase efficiency, direct access to these criminal records should be made available.

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Conclusion

Belgium has made significant legislative changes during the past few years but despite these changes, the number of investigations and prosecutions for foreign bribery offences remains low. Belgium's ineffectiveness in combatting foreign bribery stems from a structural shortage of personnel, such as judges and investigators, a deficiency of resources and technological support, and even more fundamentally, the absence of a clearly defined strategy to investigate and prosecute foreign bribery cases and related offences.

The Working Group has requested Belgium to submit a written follow-up report by March 2027 addressing its implementation of the recommendations and any significant developments in its enforcement of the foreign bribery offence.

The Report can be found here.

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