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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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COMPETITION LAW

Belgian Competition Authority Sends Statement of Objections to Ladbrokes and French PMU for Alleged Anticompetitive Agreement in Belgian Horse Races Betting Sector

On 3 July 2023, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) sent a Statement of Objections to Pari-Mutuel Urbain (***PMU***), Derby and Tiercé Ladbroke. The BCA suspects these firms of having entered into anticompetitive agreements for the distribution in Belgium of betting products related to French horse races.

Derby and Tiercé Ladbroke, which are now both part of the Entain group, operate under the trade name "Ladbrokes" in the horse and sports betting sector in Belgium. PMU holds a statutory monopoly in France for organising and collecting bets on horse races in physical locations and owns the Belgian company Eurotiercé. According to the BCA, the parties' agreements (which are no longer in force) by which Ladbrokes sold PMU's betting products on French races to Belgian customers restricted competition between them in the Belgian market.

The parties can respond to these charges before the decision-making body of the BCA, the Competition College (*Mededingingscollege / Collège de la Concurrence*), will adopt a final decision. The press release of the BCA can be found here.

Belgian Competition Authority Sends Statement of Objections to G4S, Securitas and Seris for Bid Rigging and Other Offences in Private Security Sector

On 6 July 2023, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) sent a Statement of Objections to the three main market players in the private security sector, namely G4S, Securitas and Seris. This is a significant step in an investigation that started three years ago (*See*, this Newsletter Volume 2020, No. 6).

The BCA suspects these companies of having formed a cartel that lasted for several years. According to the BCA, the three competitors agreed on minimum prices through a trade association, exchanged commercially sensitive information, engaged in bid rigging in important tender procedures, and agreed to refrain from soliciting each other's employees ("no-poaching" agreements).

The suspected price-fixing and bid rigging practices concerned several contracts, including agreements to provide security services to the US Department of Defense and the North Atlantic Treaty Organisation. As a result, the US Department of Justice (***DOJ***) also started an investigation. In 2021, one company and three individuals were indicted: Seris, its former CEO, its former director of guarding and monitoring, and the former CEO of G4S (*See*, this page of website of the DOJ). The indictment covers a period from "*at least as early as Spring 2019 and continuing until at least Summer 2020*" and describes meetings and encrypted messages aiming at allocating tenders and making sure that the participants that were not allocated a tender would offer artificially high prices. For its part, G4S agreed to plead guilty and pay a fine of 15 million dollars (*See*, this page of the website of the DOJ). In this plea agreement, G4S acknowledged that it "*participated in a conspiracy among major Belgian security services providers, the primary purpose of which was to suppress and eliminate competition by allocating customers, rigging bids, and fixing prices for certain contracts for the provision of security services in Belgium*". The plea agreement also mentions that the largest US contract affected by these practices was valued at EUR 70 million.

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The three firms prosecuted by the BCA can respond to the charges raised against them before the decision-making body of the BCA, the Competition College (*Mededingingscollege / Collège de la Concurrence*), will adopt a final decision. The press release of the BCA can be found here.

Belgian Competition Authority Confirms Jurisdiction to Review Mergers between Hospitals and Grants Partial Derogation from Standstill Obligation

On 14 July 2023, the Belgian Competition Authority (*Belgische Mededingingsautoriteit / Autorité belge de la Concurrence* – the ***BCA***) published a note confirming that it was competent to review mergers and acquisitions between hospitals under the Belgian merger control regime (the ***Note***).

In a Law of 29 March 2021, the federal parliament had excluded from the application of the Belgian merger control rules the constitution of local hospital networks and any subsequent change in their composition (*Wet tot wijziging van de gecoördineerde wet van 10 juli 2008 op de ziekenhuizen en andere verzorgingsinrichtingen, wat de toepassing van de voorafgaande controle op concentraties van de klinische netwerking tussen ziekenhuizen betreft / Loi modifiant la loi coordonnée du 10 juillet 2008 sur les hôpitaux et autres établissements de soins, en ce qui concerne l'application du contrôle préalable des concentrations pour le réseautage clinique entre hôpitaux*). This Law was a response to the BCA which, on 22 July 2020, had expressed the view that the creation of such networks – made compulsory by a Law of 28 February 2019 – would have to be notified under the Belgian merger control rules if the network brought about a lasting change of control over at least some of the hospitals concerned (*See*, this Newsletter, Volume 2021, No. 2).

In the Note, the BCA took the view that the exemption created by the Law of 29 March 2021 "*does not extend to mergers and acquisitions between hospitals that are independent of the creation of a hospital network or a change in the composition thereof, even if the hospitals concerned are already part of the same hospital network*". This is because such mergers and acquisitions lead to a lasting change in the management of the supply of hospital services.

The Note also referred to a decision of 28 June 2023 whose publication had coincided with the publication of the Note. In that decision, the BCA granted a partial derogation from the obligation to wait for merger control clearance before implementing a merger (standstill obligation) in a merger between two hospitals (Pôle hospitalier Jolimont ASBL and Centre hospitalier universitaire et psychiatrique Mons Borinage, also called Hôpital Ambroise Paré). In its decision, the BCA explained that the parties' "*legitimate belief that the merger control regime was not applicable to* [their] *merger*" had led them to implement their transaction and carry out a series of steps without considering the standstill obligation. The derogation was granted for specific steps which the BCA agreed could not be postponed without jeopardising the merger.

The press release of the BCA is available here.

Belgian Competition Authority Publishes 2022 Annual Report and Enforcement Priorities for 2023

On 20 July 2023, the Belgian Competition Authority published its annual report for 2022 and enforcement priorities for 2023. The following points are noteworthy:

- The BCA reorganised itself in 2022, with the creation of two separate practices (one for merger control and the other to prosecute anticompetitive practices and agreements), six task forces (cartels and bid rigging, abuse of economic dependence, food and retail, health and pharmaceuticals, network industries, digital and the EU's Digital Markets Act (***DMA***)), and two support units (intelligence & enforcement resources and case management support / registry). The BCA aims to reach a headcount of 80.

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- The BCA's budget benefits from an increase of EUR 1.4 million per year. The additional funds are earmarked for additional staff, IT, knowledge management and enforcement tools, including a digital whistleblowers' platform.

- The BCA reinforced its cooperation with other regulators in the telecommunications and energy sectors and with public bodies having economic data and statistics, including the Belgian National Bank.

- The BCA handled a record number of 50 merger cases. The BCA adopted one infringement decision (in the *Tobacco* case) and settled another case (with pharmaceutical wholesalers Febelco and Pharma Belgium-Belmedis). Three further cases were still pending at the end of 2022 and a Statement of Objections had been issued in another two cases. The BCA also adopted an interim measures decision, closed four cases and produced two *amicus curiae* opinions.

The BCA's priorities for 2023 are to (i) continue developing its competences following the implementation of the ECN+ Directive and its budget increase; (ii) continue monitoring the application of competition policy to the green economy and the transition to a circular economy; and (iii) develop an "*active enforcement policy in the digital sector*", following the start of application of the DMA on 2 May 2023.

The economic sectors which the BCA will target in 2023 by way of enforcement priority are the following:

1. **Food**: this sector, which was the BCA's number two priority of last year, is now listed at the top of the BCA's enforcement list. The BCA will "*ensure that anti-competitive practices do not further fuel* [...] *price increases, or that anti-competitive acquisitions in the sector that simply have the effect, or even the purpose, of facilitating the passing on of costs throughout the chain are not permitted*". According to the BCA, the Belgian food chain "*has already shown itself to be vulnerable at various levels in the past in terms of maintaining a healthy competitive environment*". It noted that "*contracts between the retail sector and its suppliers can in some cases lead to anti-competitive effects between chains or between suppliers, for example when they restrict the freedom of retailers to set their prices, or even the possibility of offering their services online*". The BCA plans to pay "*particular attention to price formation mechanisms, territorial supply constraints and competitive dynamics in the agricultural sector*".

2. **Services to businesses and consumers**: this sector was the BCA's top priority last year. Just like in 2022, this sector encompasses "*for example financial services, including banking and insurance, legal services, accounting services, security services and quality control providers*".

3. **Energy**: this sector was already the BCA's third priority in 2022 and keeps that position this year. The BCA intends to focus on "*both the wholesale energy trade, in which producers, traders, energy companies and wholesale customers operate, and the retail supply to consumers and business customers*".

4. **Health and pharmaceuticals**: this sector keeps the same level of priority as last year. In the coming months, the BCA will "*devote additional attention and resources to further consolidation in the hospital sector*".

5. **Digitalisation of economy**: this sector maintains the same fifth position which it had already occupied in the list of priorities of last year.

6. **Telecommunications**: this sector is, like last year, the BCA's sixth enforcement priority. The BCA refers to Orange's recent acquisition of VOO to note that three major national players are now active in Belgium and that "*the degree of concentration is*

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increasing, at least at national level". The BCA will "*closely monitor*" the new dynamics created by this transaction, as well as "*any further consolidation*" in the telecommunications sector. The BCA also noted that a smooth roll-out of the 5G network would be very important for various industries, "but for the same reasons it is also very vulnerable to possible competitive abuse".

7. **Public tenders**: this is a new enforcement priority for the BCA. It replaces "*competition in the sports world*" mentioned in the 2022 enforcement priorities. The BCA indicated that this sector represented more than EUR 70 billion in Belgium in 2022. The BCA also referred to its 2017 guide for public authority purchasers in which the BCA had noted that "*the dissuasive effect of such a guide is only really effective if tough measures are also taken against companies which - despite these warnings - are still guilty of breaches of competition law*". The BCA will focus on the construction sector, which has been identified by the Price Observatory as "*one of the sectors with a high risk of distortions of competition*".

The BCA's annual report and the enforcement priorities annexed to it are available on its website in Dutch and in French.

CORPORATE LAW

Obligation to Update Companies' Articles of Association by 2024 Remains Point of Focus

The revised Companies and Associations' Code (the ***BCAC***) entered into force on 1 May 2019. Pursuant to the BCAC, companies that were incorporated prior to this date are required to amend their articles of association to bring them in line with the BCAC by 31 December 2023 (*See*, this Newsletter, Volume 2019, No. 2).

For cooperative (un)limited liability companies that do not fulfil the cooperative criteria and partnerships limited by shares (*commanditaire vennootschap op aandelen / société en commandite par actions*) there is a simultaneous obligation to convert into a corporate legal form designated by the BCAC by 31 December 2023 at the latest.

Companies and their management may benefit from updating the articles of association by simultaneously implementing the increased flexibility offered under the BCAC, for example with respect to their decision-making process.

DATA PROTECTION

Brussels Markets Court Suspends Data Protection Authority's Decision regarding Belgium-US Tax Information Transfer Agreement

Pursuant to a treaty between Belgium and the United States (***US***), financial information collected by Belgian financial institutions on clients possessing the US nationality would be automatically transferred to US tax authorities by Belgian tax authorities (the ***FATCA Agreement***). On 24 May 2023, the Litigation Chamber of the Belgian Data Protection Authority (*Gegevensbeschermingsautoriteit / Autorité de protection des données* – the ***DPA***) prohibited such transfers of personal data. The DPA held that the FATCA Agreement is in breach of several provisions of the General Data Protection Regulation (***GDPR***) because it does not contain appropriate safeguards for the transfer of personal data to the US and fails to observe the principles of purpose limitation, necessity and data minimisation (*See*, this Newsletter, Volume 2023, No. 5 for more details about the DPA's decision).

The Belgian State appealed the DPA's decision to the Markets Court of the Brussels Court of Appeal (*Marktenhof / Cour des marchés* – the ***Markets Court***) and also requested the suspension of the DPA's decision.

On 28 June 2023, the Markets Court granted that request and suspended the DPA's decision. The first ground for suspension concerned Article 96 GDPR which provides that international agreements concluded prior to 24 May 2016 continue to apply after the entry into force of the GDPR.

The Markets Court observed that the FATCA Agreement was concluded on 23 April 2014 while Article 96 GDPR does not provide any explicit time limit for the continued application of such agreements. The Markets Court therefore held that at first sight the FATCA Agreement was not subject to the GDPR, including the provisions governing the transfer of personal data outside the European Union.

In examining the balance of the various interests at play, the Markets Court noted that the failure to comply with the obligations resulting from the FATCA Agreement could harm Belgium's relations with the US. Additionally, it observed that Belgium could lose substantial tax revenues if the US tax authorities were to retaliate and no longer transfer information regarding Belgian citizens residing in the US.

The Markets Court still must examine the substance of the case before taking a final decision.

The Markets Court's judgment is available here (in French).

FOREIGN DIRECT INVESTMENT

Belgian Interfederal Investment Screening Committee Publishes Additional Proposed Guidelines on Interpretation Belgian FDI Screening Mechanism

On 1 July 2023, the Belgian mechanism for the screening of foreign direct investment (the ***Mechanism***) entered into force (*See*, this Newsletter, Volume 2023, No. 5). After publishing a first set of proposed guidelines (*See*, this Newsletter, Volume 2023, No. 5), the Interfederal Investment Screening Committee (*Interfederale Screeningscommissie / Comité de Filtrage Interfédéral* – the ***ISC***), which is responsible for coordinating the application of the Mechanism, published on 30 June 2023 an additional set of proposed guidelines for the interpretation of the Mechanism (the ***Additional Guidelines***). The Additional Guidelines offer further insight into the functioning of the Mechanism and were incorporated into the existing proposed guidelines which now encompass 51 questions and answers.

Novelties include the indication that:

- turnover thresholds determining whether a Belgian target entity falls under the scope of the Mechanism will be calculated on the level of the Belgian entity rather than at that of the target group and will take into account total turnover irrespective of whether the turnover is generated by a sensitive activity;

- foreign investors should notify their investments if they had a participation exceeding the 10% or 25% notifiable participation threshold prior to the entry into force of the Mechanism and now further increase their participation following the entry into force of the Mechanism (*e.g.*, if a foreign investor had a participation of 30% of voting rights in a Belgian entity whose activities include a sensitive sector subject to the 25% notification threshold prior to 1 July 2023 and increases this participation to 40% following 1 July 2023, that investment is notifiable);

- foreign investors should notify their investments again if they had previously acquired a participation exceeding the 10% or 25% notifiable participation threshold without acquiring control (and notified the investment at that time) and subsequently acquire control over the target through an additional investment;

- the ISC will for now not clarify the scope of the sensitive activities and sectors subject to the notification obligation but will rather test acquisitions on a case by case basis. Additional clarifications may follow after experience has been built up; and

- administrative fines for breaching the Mechanism will be calculated on the basis of the investment into the Belgian target entity, even if that acquisition forms part of a larger transaction involving target entities in other countries.

The ISC also published questionnaires listing the information that should be submitted when notifying a transaction. The notification itself can be made on an online platform which was made accessible on 30 June 2023.

The full set of guidelines, including the Additional Guidelines, can be found here (in Dutch and French).

INTELLECTUAL PROPERTY

European Commission Presents Strategy for Web 4.0 and Virtual Worlds, including Toolbox Against Counterfeiting

On 11 July 2023, the European Commission (the ***Commission***) presented the EU's strategy on Web 4.0 and virtual worlds (the ***Strategy***). Web 4.0 is the expected fourth generation of the World Wide Web, featuring an unprecedented level of interaction between the digital and the real world and enhanced human to machine interfaces. The Strategy aims to manage the opportunities and risks associated with this further technological development and ensure an open, secure, trustworthy, fair and inclusive digital environment for EU citizens, businesses and public administrations.

As part of this effort, the Strategy also tackles intellectual property rights and proposes a toolkit containing accurate information regarding the different aspects of virtual worlds. This is because the unauthorised reproduction and distribution of virtual assets are liable to pose a significant threat to intellectual property owners and erode the integrity of virtual platforms. More details can be found in the Commission's Staff Working Document which envisages the strengthening of existing intellectual property rights.

The Strategy complements the AI Act (*See*, this Newsletter, Volume 2023, No. 6) in an attempt to ensure that intellectual property rights keep up with technological developments.

General Court Provides Guidance on Conceptual Comparison and Name Neutralisation in Similarity Assessments regarding Trade Marks

On 21 June 2023, the General Court of the European Union (***GC***) annulled two decisions of the European Union Intellectual Property Office (***EUIPO***) in relation to the use of a name as part of a trade mark.

On 23 September 2019, Ioulia and Irene Tseti Pharmaceutical Laboratories (***Tseti***) filed an application for a trade mark registration with the EUIPO for a figurative sign which included the words "eva intima".

On the same day, Tseti filed a second trade mark application with the EUIPO for the figurative sign "eva intima" accompanied by a graphic element regarded as a stylised female belly. On 8 January 2020, Arbora & Ausonia filed a notice of opposition against both trade mark applications. The opposition was based on the EU word mark "EVAX" and the Spanish word mark "EVAX" and relied on Article 8(1)(b) of the European Union Trademark Regulation (***EUTMR***). The Opposition Division of the EUIPO partially upheld the opposition, leading to the rejection of the application for registration of the trade marks. Tseti appealed to the EUIPO's Boards of Appeal (***BoA***), which partially upheld the opposition, and then appealed to the GC.

In its assessment of whether the new signs and the earlier marks are conceptually similar, the GC considered the first name 'EVA' and confirmed that, unlike trade marks that consist of a first and a family name, signs consisting only of a first name convey a concept. On that basis, the GC observed that the new signs were conceptually different from the earlier signs involving 'EVAX'. On the other hand, the GC dismissed Tseti's claim that the meaning of the word 'EVA' in the disputed applications nullified the visual and phonetic resemblances to the earlier marks. The GC referred to earlier case-law in which it had found that if at least one sign has a clear and specific meaning understood by the public, the overall impression of the signs is different, regardless of certain visual or phonetics similarities.

However, the GC then noted that in the case at hand the marks containing the word 'EVA' did not have a clear and specific meaning that can be grasped immediately by the public. The GC added that while some may perceive 'EVA' as a common female first name, others may associate it with the first woman on earth according to the Bible. As a result, the GC concluded that the only conceptual difference between the signs did not produce a different overall impression between the signs.

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Finally, the GC found that the BoA had erred by basing its global assessment on the 'most distinctive elements' of the marks at issue rather than on the results of the analysis of the visual, phonetic and conceptual similarities. As a result, the BoA failed to consider the marks as a whole, as required by established case-law. The GC concluded that the second mark applied for was not similar to the earlier marks to such a degree as to give rise to confusion. By contrast, as regards the first application, the GC found a likelihood of confusion to exist.

This judgment shows that the GC is ambiguous in tackling the question whether names convey a concept for the purpose of conceptual comparison. However, if EU courts accept neutralisation for names of public figures such as Picasso or Messi, should the same principle not apply to all names understood by the relevant public? The notion of trade mark neutralisation refers to the principle that any conceptual differences between two signs may "neutralise" any visual and phonetic similarities between them.

The GC's judgment can be found here.

Court of Justice of European Union Clarifies Notion of "Communication to Public" as Applied to Supply of IPTV Hardware and Software to Commercial Customers

On 13 July 2023, the Court of Justice of the European Union (***CJEU***) delivered its judgment in case C-426/21 Ocilion IPTV Technologies v. Seven.One Entertainment Group (***Ocilion***). It held that the making available and maintenance of a cloud-hosting solution or on-premise hardware and software providing commercial customers with online video recording giving access to protected content through Internet Protocol Television (***IPTV***) does not constitute a "communication to the public" within the meaning of Article 3(1) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (the ***InfoSoc Directive***).

Facts

Ocilion, an Austrian company specialised in IPTV services, provides a cloud-hosting solution and on-premise hardware and software – including maintenance – to commercial customers (such as network operators or hotels). Ocilion's service not only allows for the simultaneous retransmission of television programmes, but also offers the possibility of replaying those programmes via an online video recorder. Whether it is the on-premise solution or the cloud-hosting solution, each recording is initiated, in practice, by the end user (i.e., the customer of Ocilion's commercial customers) who activates the online recording function and selects the content to be recorded. Once a programme has been selected by a first user, the recorded material is made available to any other user who wishes to view the recorded content via a 'de-duplication' process which avoids several copies being made for customers who programme the same recordings.

Seven.One Entertainment Group GmbH and Puls 4 TV GmbH & Co (***Seven.One and Other***), two rightsholders of the protected content, claimed that they had not consented to the communication to the public of their television programmes by means of the service offered by Ocilion. The case landed before the *Oberster Gerichtshof* (Supreme Court of Austria – the ***Referring Court***) which referred questions to the CJEU, asking whether the InfoSoc Directive must be interpreted as meaning that (i) the exception to the exclusive right of authors and broadcasting organisations to authorise or prohibit the reproduction of protected works covers the service offered by Ocilion; and (ii) Ocilion's IPTV service constitutes a communication to the public.

First question

As regards the first question, the CJEU referred to its VCAST judgment of 29 November 2017 (C-265/16) in which it had held that Article 5(2)(b) InfoSoc Directive must be interpreted as precluding national legislation

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which permits a commercial undertaking to provide private individuals with a cloud service for the remote recording of private copies of works protected by copyright, by means of a computer system, by actively involving itself in the recording, without the rightsholder's consent. The CJEU held that the de-duplication of television broadcasts generated by the service provided by Ocilion is not capable of being covered by the 'private use' exception because the service allows access to a reproduction of a protected work to an indeterminate number of recipients for commercial purposes.

Second question

As regards the second question, the CJEU referred to established case-law concerning the concept of 'communication to the public', including its judgment of 20 April 2023 in the *Blue Air Aviation* case (C-775/21 and C-826/21) (*See*, this Newsletter, Volume 2023, No. 4).The notion of 'communication to the public' is subject to two cumulative criteria: (i) an act of communication of a work; and (ii) the communication of that work to a public.

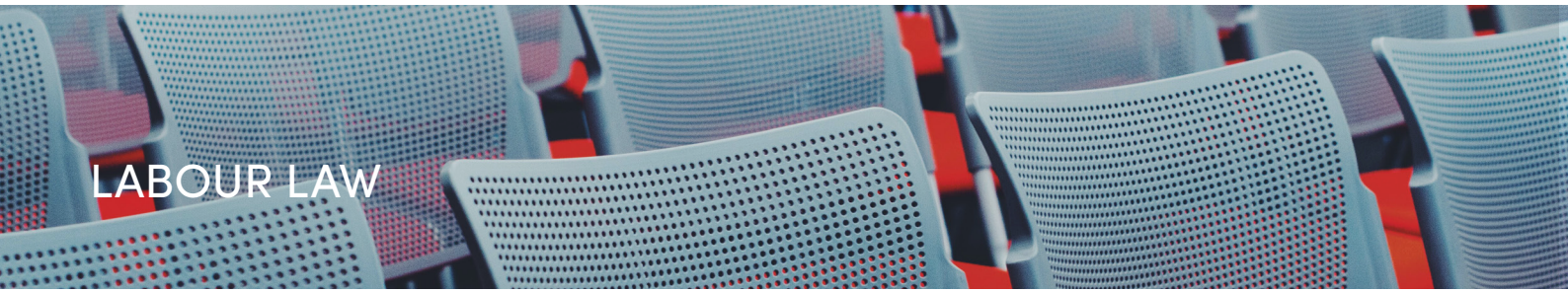
First, the CJEU observed that Ocilion did not give access to protected work. In practice, such access could only be granted to end-users by Ocilion's commercial customers. The CJEU based its finding on the fact that Ocilion had concluded framework agreements with its commercial customers which stated that the latter must ensure, by their own means, that they and their clients have sufficient rights for the content which they make available. Therefore, the CJEU found that by only supplying 'necessary' hardware and software to its customers, giving them and their clients access to protected content, Ocilion did not play an 'indispensable role' as established in *Blue Air Aviation*. The CJEU concluded that the supply of this service to commercial customers did not constitute a 'communication to the public' within the meaning of the InfoSoc Directive, even if Ocilion was aware that its service may be used to access protected content without the consent of the authors.

Conclusion

The answer to the first question seems to be perfectly in line with the VCAST case, considering that the 'de-duplication' system of the service at hand still means, in practice, that multiple users can access protected content without the rightsholders' consent.

The answer to the second question is more interesting. It would seem to offer a departure from a series of judgments in which the CJEU had held that broadcasts of copyright protected content in different places (hotel rooms, spas, rehabilitation centres, dentist's waiting rooms, rental cars and airplanes) constituted communications to the public. The Ocilion case provides a perfect example of a situation in which "*the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of* [the InfoSoc] *Directive*", pursuant to the very letter of recital 27. It is apparent from the facts of the case that Ocilion only provided and maintained the physical facility, while Ocilion's commercial customers did the rest. The framework agreements between Oncilion and its commercial customers cemented this distribution of roles and liability between them. Ocilion's framework contracts stipulating that its customers "*must ensure, by their own means, that they and their clients have sufficient rights for all the content that they make available*" should be considered by any service provider looking to observe the "right of communication to the public" of rightsholders.

The judgment can be found here.



LABOUR LAW

Expanded Anti-Discrimination Legislation Now Expressly Prohibits Multiple, Associative and Presumed Discrimination

On 31 July 2023, the Law of 28 June 2023 amending the Law of 30 June 1981 punishing certain acts inspired by racism or xenophobia, the Law of 10 May 2007 combating certain forms of discrimination, and the Law of 10 May 2007 combating discrimination between women and men (the ***Law***) came into effect. The Law extends the scope of the anti-discrimination rules and provides for both substantive and procedural changes.

Scope of Application

The Law creates three new forms of discrimination and modifies the existing protected criteria.

First, the Law introduces the concept of discrimination by association (*discriminatie door associatie / discrimination par association*), which entails the discriminatory treatment of an individual based on their association with another person possessing a protected characteristic, even if the individual himself or herself does not possess that characteristic (*e.g.*, discrimination of an individual who is married with a disabled person). This provision broadens the scope of protection by addressing discrimination that arises from affiliations with individuals who have protected attributes.

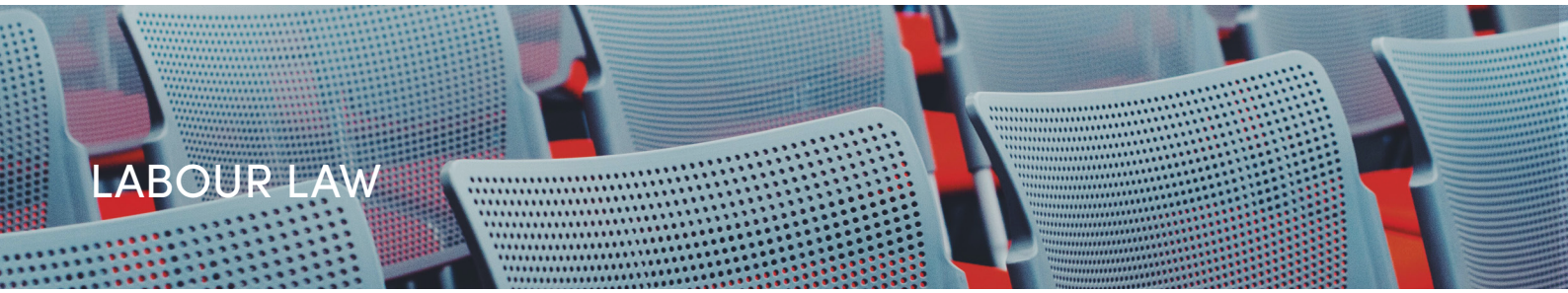
Furthermore, the Law establishes the notion of presumed discrimination (*discriminatie op grond van een vermeend kenmerk / discrimination fondée sur un critère supposé*). On this basis, discrimination may occur on the presumption that the victim possesses a protected characteristic which can lead to discrimination. Discrimination can arise not only from explicit characteristics but also from perceived characteristics (*e.g.*, when one suspects that a person of a certain skin colour automatically follows a specific religion and is discriminated against based on that religion).

Moreover, the Law incorporates the concept of multiple discrimination (*meervoudige discriminatie / discrimination multiple*), which can be divided into two distinct categories: cumulative discrimination (*cumulatieve discriminatie / discrimination cumulée*) and intersectional discrimination (*intersectionele discriminatie / discrimination intersectionnelle*). Cumulative discrimination arises from the accumulation of multiple protected criteria, each considered separately, leading to compounded discriminatory effects. In contrast, intersectional discrimination occurs in a situation in which a person is discriminated against because of two or more characteristics that coincide, while such discrimination solely occurs because these multiple characteristics are present simultaneously.

At last, three existing grounds of discrimination have been revised. Discrimination based on sexual preference (*seksuele geaardheid / orientation sexuelle*) undergoes a revision in the Dutch text and becomes sexual orientation (*seksuele oriëntatie*). The new word is considered to be in line with the equivalent French version (*orientation sexuelle*). Additionally, the concept of discrimination based on social origin (*sociale afkomst / origine sociale*) is expanded to incorporate social condition (*sociale toestand / condition sociale*). Finally, the concept of gender reassignment (*geslachtsverandering / changement de sexe*) is replaced by the more comprehensive terminology of medical or social transition (*medische of sociale transitie / transition médicale ou sociale*).

Sanctions

In instances of multiple discrimination, the Law allows for the accumulation of lump-sum damages. Therefore, a court will have the power to award lump-sum damages in the event of discrimination in the workplace, equivalent to six months' gross salary, multiple times based on the number of violated protected criteria.



LABOUR LAW

The Law also extends the scope of the injunction (*bevel tot staking / ordonnance de cessation*). As a result, a judge is now also able to impose other measures as part of an injunction (*e.g.*, conducting an audit of the internal practices of the company, having staff undergo anti-discrimination training or amending internal policies).

The Law can be found here (Dutch) and here (French).

LITIGATION

Federal Parliament Reforms Council of State with Amended Suspension Procedures and Remedial Decisions

The Law of 11 July 2023 amending the Coordinated Laws on the Council of State of 12 January 1973 was published in the Belgian Official Journal on 24 July 2023 (the ***Law***). The Law reforms the Council of State, Belgium's highest administrative court (*Raad van State / Conseil d'État*) by introducing a statutory basis to amend the procedure applicable to the Council of State (the ***Reform***). The Law will, for the most part, enter into force on 1 September 2023.

Background of Reform

The 2020 Policy Statement and the 2022 General Policy Note of the Minister of the Interior indicated that she would reduce the time required to dispose of administrative disputes. The Law created the statutory basis for improving the procedure applicable to both the Administrative Litigation Section (*afdeling bestuursrechtspraak / section du contentieux* - the ***Administrative Section***) and the Legislative Section (*afdeling wetgeving / section de legislation* - the ***Legislative Section***) of the Council of State.

Administrative Section

The Reform primarily (i) optimises the suspension procedure (*schorsingsprocedure / procédure de suspension*), in particular in case of urgency; and (ii) introduces remedial decisions (*beslissingen tot herstel / décisions réparatrices*) for actions for annulment in disputes involving strategic projects of regional importance.

Suspension procedure

The Law introduces procedural timetables to standardise the existing "ordinary" (*gewone / ordinaire*) and "extreme urgency" (*bij uiterst dringende noodzakelijkheid / en extrême urgence*) suspension procedures, ensuring that the latter remains exceptional (*e.g.*, in the context of environmental or planning permits). Accordingly, applicants will still be able to request the urgent examination of their action for annulment at any time of the procedure (even before their application for annulment is lodged) based on a reasoned statement. The Council of State will accordingly create a procedural timetable which will be adapted to the degree of urgency of a specific matter. The Council of State is expected to manage the procedure more actively and ensure that urgent situations are addressed as quickly as possible.

Remedial decisions

The Law introduces a new mechanism to dispose of actions for annulment in a swifter manner in disputes relating to strategic projects of regional importance. Actions for annulment can be brought against administrative acts on grounds of (i) infringement of essential procedural requirements; (ii) infringement of requirements whose failure to comply with results in nullity; and (iii) abuse or misuse of powers. Currently, when administrative decisions are tainted by illegalities, the challenged authorities usually adopt new decisions to tackle these illegalities. Yet, these decisions may contain other illegalities, which may result in new actions for annulment. This results in lengthy proceedings, which the Reform aims to tackle by allowing the Council of State, at the request of the authority which issued the challenged decision, to grant the issuing authority the possibility to adopt a "remedial decision". This novelty is expected to save substantial time and create efficiency for both parties.

The Royal Decree of 21 July 2023 amending various decrees relating to the procedure before the Administrative Litigation Section of the Council of State (the ***RD***) specifies that these remedial decisions will only apply to disputes of particular importance to strategic projects of regional importance (involving matters such as energy, climate-transition and important infrastructure projects).

In addition, the Law establishes the possibility to declare an appeal in cassation (*cassatieberoep / recours en cassation*) partially admissible if specific grounds are manifestly inadmissible or unfounded, while others are not.

Finally, the Council of State will now be able to hold videoconference hearings in limited cases.

Legislative Section

The Law clarifies the "*laissez-passer*" procedure according to which the Legislative Section can decide not to issue an opinion on a draft decree. In addition, several authorities will be able to submit a joint request for an opinion in specific cases (*e.g.*, preliminary draft texts giving assent to treaties).

Entry into Force

Subject to exceptions, the Law and the RD will enter into force on 1 September 2023. However, all current proceedings and applications made before that date will remain subject to the old rules.

The Law is available here (in Dutch) and here (in French). The RD is available here (in Dutch) and here (in French).

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