

Looking back, looking forward.

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Belgium Law Year in Review 2015 and Year to Come 2016

January 2016

Looking back.

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Year in Review – [Belgian Law in 2015](#)

The European Union in 2015: Building on the priorities set at the start of the mandate of the new European Commission (EC) in 2014, the EC set its vision and put forward concrete legislative proposals to create a Capital Markets Union, an Energy Union and a Digital Single Market, with the overall aim of completing the EU single market. Moreover, to complete the Banking Union, the Commission presented a proposal on the European Deposit Insurance Scheme. Also, the reform of the corporate tax framework in the EU is a new priority. The €315 billion Investment Plan for Europe, with the new European Fund for Strategic Investments, is now operational, and some of the first projects are already taking off.

Bank resolution: As part of the transposition of the Bank Recovery and Resolution Directive (BRRD) into Belgian law, the National Bank of Belgium (NBB) was appointed as Resolution Authority. A Resolution College was created within the NBB to execute its tasks as Resolution Authority. As the final step to complete the BRRD transposition, a new omnibus law and two Royal Decrees were adopted and published at the end of 2015. They focus on the transposition of the group dimension of the BRRD and the further implementation of bail-in provisions, and entered into force on 1 January 2016.

Transversal regulation of marketing of financial products to retail clients: The new Belgian requirements regarding the content and form of publicity relating to financial products marketed to retail investors, laid down in the marketing royal decree, came into force in June 2015. The legal framework was complemented by a circular of the Financial Services and Markets Authority published in October 2015 providing further detail on the publicity rules, including on general content requirements (e.g., fair and not misleading content), minimum content requirements (including in relation to costs), the presentation of past, simulated and future performance information, information on award and rankings and comparisons between financial products.

MiFID II: Work continued on implementing MiFID II and MiFIR at the EU levels. ESMA published final draft technical standards, which now need to be adopted by the Commission. [Read more...](#)

Accounting Directive Implemented: The Accounting Directive that, among other things, relaxes the accounting rules for smaller companies and introduces country-by-country reporting of payments to governments by large companies active in extractive industries or in the logging of primary forests was transposed into Belgian law in December. Most of the rules apply to financial years commencing on or after 1 January 2016.

Increase of regulatory investigations: Due to an increasingly complex framework of established and evolving legislation in many areas, Belgian companies face more and more civil, criminal and regulatory risks. The regulatory investigations led by the various Belgian regulators (depending on the area concerned), have significantly increased. The regulators focus not only on the companies, but also on their (senior) officers, directors and outside advisors. In the coming years, we expect these regulatory investigations to increase even more.

Class action: Since September 2014, collective indemnification claims may be introduced before the Brussels courts by recognised consumer protection associations on behalf of a group of consumers. The very first class actions were filed in late 2015, in the context of air transport (against Thomas Cook) and railway transport (against SNCB/NMBS).

Civil procedure reform: In the autumn, the legislator adopted the first of a series of acts to rationalise and simplify proceedings, the so-called “Potpourri” acts. The Potpourri I Act reforms civil procedure significantly. For example, cases are handled by a single judge as a matter of principle, and judgments are enforceable despite appeal proceedings. Other important changes include the adoption of a B2B small claims procedure, rules about appeal against interim judgments, investigating measures and procedural irregularities. The changes are applicable to pending proceedings. Most of them entered into force on 1 November 2015.

Jurisdiction: On 10 January, the recast Brussels I Regulation became applicable, bringing in significant reforms to the EU rules on jurisdiction in civil and commercial matters. [Read more...](#)

Tax: The G20, OECD and the EU have continued their battle against aggressive international tax planning schemes. At OECD level, the final reports of the Action Plan on Base Erosion and Profit Shifting (BEPS) have been published. At EU level, the Parent-Subsidiary Directive has been amended as a general anti-abuse provision has been included. Furthermore, an EU Directive on the automatic exchange of tax rulings between Member States has been adopted. The Belgian legislator has adopted the so-called “Cayman tax” for private individuals (and legal entities subject to the legal entities tax) which enables the Belgian Tax Administration to “look through” certain “legal arrangements”. Finally, a Flemish Tax Code has been introduced and the Flemish Tax Administration has already taken some severe positions.

State Aid Challenges to Tax Rulings: In October, the European Commission ordered Luxembourg and The Netherlands to recover €20 to €30 million from Fiat and Starbucks respectively as unlawful state aid resulting from certain tax rulings given by the tax authorities in those jurisdictions.

First cartel settlement fines imposed in Belgium: In June 2015, the Belgian Competition Authority imposed fines totalling €174 million on 18 Belgian distributors and suppliers of personal hygiene products. This marks the first time that the Authority applied the cartel settlement procedure introduced into Belgian law in 2013.

Construction joint liability: As from August 2015, there is a joint liability for the project manager and the general contractor that make use of the services of a contractor or sub-contractor having social security or tax debts.

Social Housing: Private housing actors and developers no longer have to build social housing while developing large housing projects in Flanders.

Belgian Nuclear and Climate Deal: On 30 November 2015, the Belgian federal Government reached an agreement with Electrabel and Engie on an extension of the life duration of the nuclear units Doel 1 and 2 by 10 years (until 2025). [Read more ...](#)

Sleepers: On 16 December 2014, the board of directors of the Belgian Pension Regulator (the Financial Services and Markets Authority) decided that the clause in a pension plan that reduces the contractual guaranteed return on investment if one becomes a deferred member or so-called “sleeper” is non-compliant with Belgian Pension Law. [Read more ...](#)

Manifestly unfair dismissal: As of 1 April 2014, the employer must justify a dismissal further to the employee’s written request, and the employer will be liable for a dismissal which is deemed “manifestly unfair”. A manifestly unfair dismissal is defined as the dismissal of an employee with an employment contract of indefinite duration, based on reasons unrelated to the employee’s aptitude or behaviour or to the operational needs of the company, institution or service; and which would never have been carried out by a normal and reasonable employer. Given the recent introduction of the concept of “manifestly unfair dismissal”, it was unclear how a court would interpret this. In a judgment of 8 October 2015, one of the first on this topic, the Labour Court of Leuven examined the case where an employee was frequently absent due to illness. The court held that the dismissal of the employee was not manifestly unfair, as the frequent absences were a structural problem and had a negative impact on the economic efficiency and the profitability of the company. As the dismissal was linked to the needs of the company, the judge ruled that there was no manifestly unfair dismissal.

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Year to Come – Belgian Law in 2016

Security over movable assets: The Belgian Security Law is set to enter into force by 1 January 2017 at the latest. It makes important reforms to the regime governing security over movable assets, including an electronic national security register allowing perfection without dispossession, a simplified enforcement regime and the possibility to use a security agent. Prior to its entry into force, it is also expected that some amendments will be made to improve the new Security Law's user-friendliness and cohesion with other laws.

Insurance law - Solvency II: In view of the transposition of the Solvency II Directive, a new law on the status and supervision of (re)insurance undertakings is expected to be adopted together with a series of Royal Decrees that will further detail the new prudential regime applicable to insurance undertakings (annual accounts, life insurance, profit sharing, etc.).

Market Abuse Regulation: MAR will introduce a new harmonised framework across the EU for market abuse, investment recommendations, disclosure of inside information, insider lists and dealings by senior managers from 3 July 2016.

Crowdfunding: Alternative funding mechanisms, such as crowdfunding, are increasingly used by start-ups, SMEs and large corporates and are under the scrutiny of authorities and regulators, at both EU and national level. The Belgian government is currently working on a draft law to provide a regulatory framework for platforms offering alternative financing services. It is understood to provide for a mandatory authorisation for each platform from the regulator and rules of conduct relating to the provision of alternative financing services. The draft law is expected to become law during 2016.

Prospectus Regime Review: In November 2015 the Commission released a proposal for a new Prospectus Regulation to replace the existing one. It proposes a number of changes, including a lighter-touch disclosure regime for secondary issues, changes to the presentation of risk factors, a proposal for a universal registration document and the abolition of the public offer exemption for securities with a denomination of at least EUR 100,000. The process to reach a final text has begun and is expected to conclude in late 2016 or early 2017.

Reform of Economic State Enterprises: Significant changes to the Law of 1991 on economic state enterprises were adopted in December 2015 and were published in January 2016. The aim is to improve the competitive position of these entities on the private market by adopting rules (such as on corporate governance) that are more aligned with rules for listed companies in general. In addition, the reform provides for a framework allowing the State to reduce its majority participation to less than '50% plus one share'. The changes currently only affect bpost and Proximus but can easily be extended to other state enterprises.

Pay: The revised Shareholders' Rights Directive, with 'say on pay' rules on shareholder voting rights and greater disclosure for all EU companies similar to those for Belgian listed companies, is due to be finalised in early 2016.

Auditor Controls: As part of extensive reforms to statutory audit processes, EU Member States must adopt measures by 17 June 2016 to comply with an EU Directive prohibiting contractual clauses which restrict or limit an entity's choice of statutory auditor. The restriction applies to all statutory audits required by EU law. Any restrictions on choice of auditor in existing contracts will be void when the new measures take effect.

Tax: Following the release of the final BEPS reports, we expect Belgium to implement in 2016 certain BEPS Action Points, e.g. introduction of the nexus approach to the patent income deduction regime and country-by-country reporting. At EU level, a general anti-abuse provision is expected to be introduced to the Interest and Royalty Directive. A recent decision was announced by the European Commission in a pending state aid file (regarding the Belgian excess profit rulings) and rumour has it new tax state-aid investigations might be opened. The general dividend and interest withholding tax rate has been increased from 25% to 27% and a speculation tax has been introduced (to tax short-term capital gains on listed shares and other listed instruments). Legislation has been adopted to implement the OECD and EU Common Reporting Standards. The Minister of Finance is also proposing to strengthen and widen the tax administration's investigation powers, which may lead to more severe tax audits and an increase in tax litigation.

New Leniency Guidelines for Belgium: The Belgian Competition Authority is set to adopt new leniency guidelines in 2016. The main purpose is to provide guidance regarding the application of the leniency programme to natural persons following the introduction of sanctions for individuals involved in hardcore competition law infringements in 2013.

Specialised Real Estate Investment Funds (FIIS): The Belgian government plans to establish an FIIS regime in 2016, which is expected to be the most flexible in Europe. FIIS are non-listed investment vehicles of a more limited duration than a SIR (former SICAFI), dedicated to institutional and professional investors in highly specific segments.

Single Permit: The Flemish government has enacted the implementing decree concerning the Single Permit. Starting from early 2017, on expiry of the one-year transitional period, the permit procedure in Belgium will change drastically. The new environmental permit will integrate the existing building and environmental permit and notifications, as well as the allotment permit, into a single permit for an indefinite period of time.

Public Procurement: The European Directives modifying the regime applicable to public procurements have to be transposed in Belgium by April 2016. The transposition will lead to less cumbersome procedures, easier access to public procurements for small and medium-sized enterprises and to a greater focus on social and environmental aspects.

Digital Single Market: The European Commission has committed to deliver a set of targeted actions, as part of its Digital Single Market Strategy, by the end of 2016. This wide-ranging initiative, which represents a big political priority for the current Commission, aims to break down existing barriers to online trade across national borders within the EU. Among other developments, we could see legislative proposals to reform the EU's copyright regime and to tackle unjustified 'geo-blocking', as well as publication of the Commission's preliminary findings in its e-commerce sector inquiry (the final report is expected in the first quarter of 2017). *Read more...*

Unitary patent: The European Commission will continue to work with the participating countries to set up the European Patent Court (UPC), an essential element in making the Unitary Patent operational. It will come into effect when 13 countries have ratified the Unified Patent Court agreement. So far only 8, including Belgium, have done so. The aim is for all remaining participating EU countries to ratify it as soon as possible so that it may come into force by the end of 2016.

Data Protection Reform: Further to the recent political agreement reached on the EU Data Protection Regulation, the final adoption of this major piece of legislation is expected soon and its application in all EU Member States will follow after a transition period of two years. Until then, all relevant stakeholders will have to prepare and work on its implementation.

Network & Information Security Directive: The Network & Information Security (NIS) Directive seeks to achieve a high level of security for critical infrastructure in the EU. It requires each EU Member State to develop a national NIS strategy; to establish a national NIS competent authority; and to set up a well-functioning Computer Emergency Response Team. Private companies operating critical infrastructures will need to assess risks, take necessary measures and report to competent authorities incidents with a significant impact on core services. In December 2015, a political agreement was reached between the Council and the Parliament on the text of the NIS Directive, which should be adopted in Q2 2016.

Social elections: Social elections are due to take place between 9 and 22 May 2016. An employer is obliged to organise these elections of the employees' representatives on the committee for prevention and protection at work and at the works council. The procedure an employer must follow in this regard is strict and lengthy, and the first preparations should have started between 11 and 24 December 2015. *Read more ...*

Statutory return on pension benefits: Currently, the Belgian pension legislation imposes a minimum return guarantee on defined contribution (DC) and cash balance (CB) plans of 3.25% on employer contributions and 3.75% on employee contributions. As of 1 January 2016, the level of minimum return will be the same on both employee and employer contributions, and will be variable and based upon the following formula: 65% of the average return on OLOs over 10 years considering a period of 24 months ranging from 1.75% to 3.75%. For 2016, the minimum return will be 1.75%. *Read more ...*

Non-financial disclosure: The directive amending the Accounting Directive to introduce obligations of disclosure of non-financial and diversity information by certain large companies and groups is due to be transposed into Belgian law by December 2016. The new disclosure provisions will apply for financial years commencing on or after 1 January 2017. *Read more...*

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