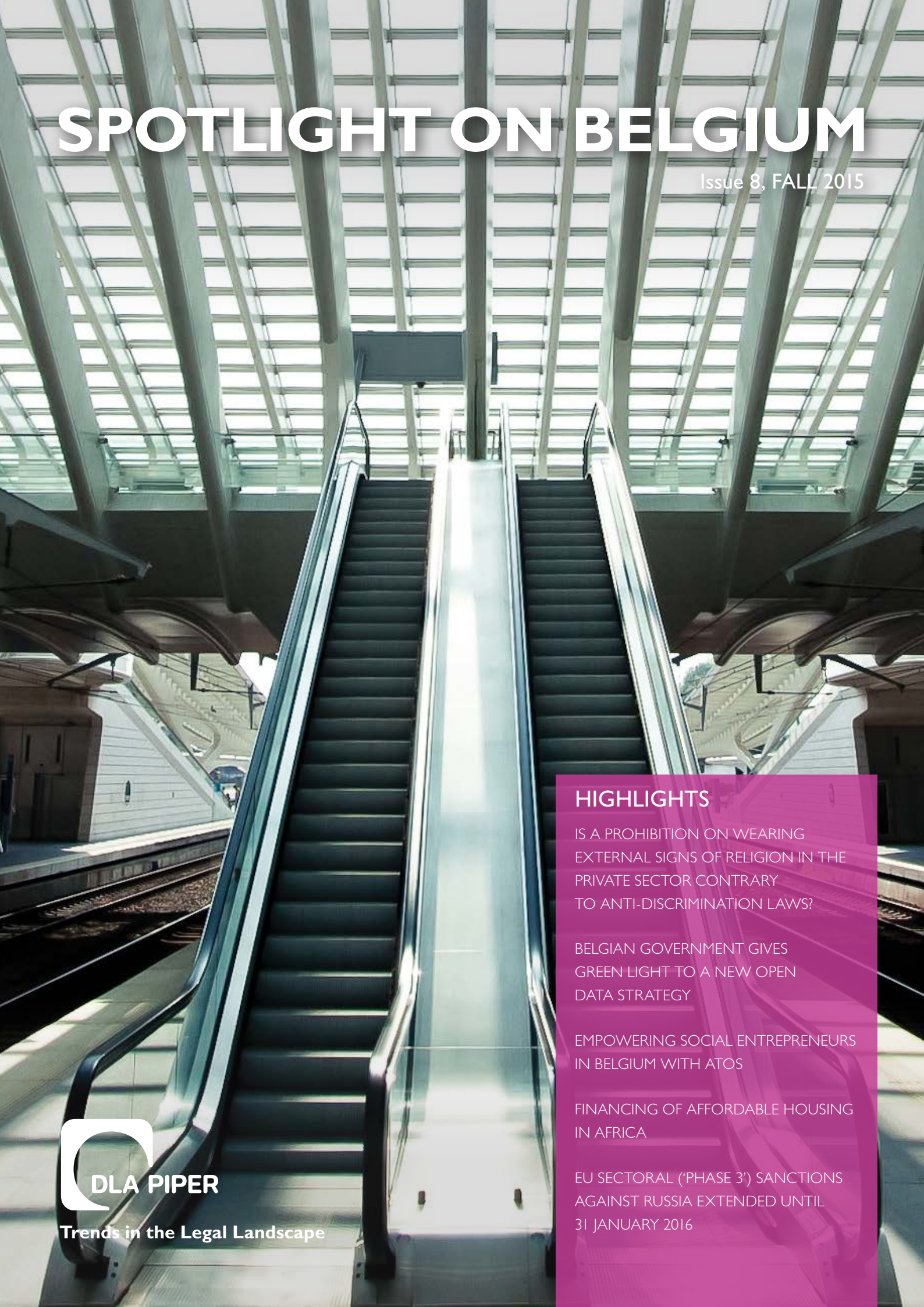


SPOTLIGHT ON BELGIUM

Issue 8, FALL 2015

HIGHLIGHTS

DLA PIPER

Trends in the Legal Landscape

Contents

Introduction

Loosely translated, an oft-quoted line goes: "Between dream and deed are laws, and practical objections". This casts the law as an obstructive force, an impassable border.

As this issue of Spotlight on Belgium shows, this is sometimes a correct perception. Ongoing **economic sanctions against Russia**, as described by Jeroen Jansen and Valerijus Ostrovskis, demonstrate that legislation can add to physical, geopolitical borders. Conversely, in an environment where such borders are non-existent, such as the Internet, the law can reintroduce borders to ensure the protection of consumers. The European Union has a lead role to play here, as Patrick Van Eecke and Julie De Bruyn illustrate in their article on **3D printing**, or Jeroen Jansen, Ana-Laura Blanco and Federica Boledi show in their discussion of the **European Digital Single Market Strategy**.

In other ways, the law seeks to transcend borders, especially when they take the form of divisions between persons. If people are treated differently, it is up to the legal system to ensure those delineations have a clear motivation. In this issue, our Employment team takes a look at discrimination of employees wearing **external signs of religion**, and the distinction based on **civil status** in pension plans.

One of the things that sets DLA Piper apart is perhaps our ability to look beyond borders, both literal and figurative. It is what allows us to offer seamless legal services, across sectors, in over 30 countries. Reaching out to our community, both immediate and distant, is an important part of our culture. That is why we contribute to the financing of **affordable housing in Africa**, as described in this issue by Yves Brosens, or dedicate pro bono work to **social entrepreneurs** in Belgium.

As this issue of Spotlight on Belgium shows, we know the lay of the land – what happened, how does it impact you and your business, and how should you respond. We hope that you find it an interesting read, and that you think of us your next trip across the border.

Annelies Verlinden
Country Managing Partner
annelies.verlinden@dlapiper.com

Kristof De Vulder
Country Managing Partner
kristof.devulder@dlapiper.com

IS A PROHIBITION ON WEARING EXTERNAL SIGNS OF RELIGION IN THE PRIVATE SECTOR CONTRARY TO ANTI-DISCRIMINATION LAWS?

By Pierre Dion

The Belgian Supreme Court ("*Hof van Cassatie*", "*Cour de Cassation*") assessed this question in its recent judgment of 9 March 2015 (Cass. 9 March 2015, S.12.0062.N/1, http://www.cass.be).

The case brought before the court concerned an employee of the Islamic faith working for a security company, who, after three years of service, informed her employer of her intent to wear an Islamic headscarf at work.

However, in light of a policy of neutrality, the employer had imposed a prohibition on wearing any external signs of political, philosophical or religious beliefs. Despite several warnings from her employer that wearing an Islamic headscarf at work would not be tolerated, the employee reaffirmed her intent to wear an Islamic headscarf at work. Later on, she refused to perform any work without wearing an Islamic headscarf.

Subsequently, the employee was dismissed on grounds of violating this policy.

The employee contested her dismissal before the Labour Tribunal of Antwerp and in appeal before the Labour Court of Antwerp on grounds of infringement of discrimination laws and on grounds of abuse of the employer's right to dismissal.

The discrimination claims were rejected by the Labour Court of Antwerp on grounds that the prohibition in question concerned visible signs of religion or ideology, hence treating all employees equally.

Further, the Labour Court of Antwerp doubted whether said prohibition created a situation of indirect discrimination on grounds of a "*seemingly neutral criterion*", as the difference in treatment was based on an objective and reasonable justification, i.e. the obligation of neutrality at work enforced by the employer.

The Labour Court also considered that there was no abuse of the employer's right to dismissal, as the employee was not dismissed due to her religious beliefs, but due to her refusal to comply with the prohibition on wearing external signs of religion at work.

The employee filed an appeal to the Supreme Court against the aforementioned judgment of the Labour Court of Antwerp.

The Supreme Court determined that the aforementioned judgment was not in line with the Belgian and European anti-discrimination regulations, as it did not consider that under the Belgian and European anti-discrimination laws, religion is a "*protected and not a neutral distinction criterion, hence any difference in treatment on grounds of religion is to be considered as a direct discrimination*". The court also stressed that the fact that a prohibition targets all faiths, and not just a specific one, does not turn religion into a neutral distinction criterion, on which grounds a difference in treatment would be justified.

Further, the Supreme Court stated that the legal definition of discrimination was disregarded by the Labour Court of Antwerp, as the latter's judgment failed to determine whether the prohibition on wearing external signs of religion at work would create a situation of unequal treatment between those employees wearing an Islamic headscarf and those not wearing any.

However, the Supreme Court omitted to decide whether this difference in treatment is to be considered an unlawful form of direct discrimination on grounds of religion. Instead, it decided to pass the parcel on to the European Court of Justice by requesting a preliminary ruling from the latter on the case in question.

Consequently, it will ultimately be up to the European Court of Justice to decide whether or not a prohibition on wearing external signs of religion at work is a prohibited form of discrimination on grounds of religion or ideology, or if the difference in treatment between employees can be objectively and reasonably justified in light of a legitimate purpose.

In reply to the aforementioned question, and in anticipation of the decision of the European Court of Justice, an assessment on a case-by-case basis will be required to determine whether a difference in treatment, created by such a prohibition on wearing external signs of religion at work, can be reasonably and objectively justified in light of a legitimate purpose.

This will never be a simple task, however, as Belgian courts have adopted a very critical approach to differences in treatment based on grounds of religious belief.

SALARY RESTRAINTS IN 2015-2016

By Soetkin Lateur

The Act of 26 July 1996 aiming to improve employment and preserve competitive power (hereinafter: the Salary Restraint Act) seeks to limit the growth of labour costs in Belgium.

Within the framework of this Act, the maximum margin for the growth of labour costs in 2015 and 2016 has been determined by the Act of 28 April 2015.

As one might expect, the maximum margin for 2015 is fixed at 0%, as in 2013 and 2014.

For 2016 the margin is determined as follows:

- 0.5% of the gross mass salary, i.e. the total cost for the employer, all charges included;
- increased by 0.3% of the net mass salary, without additional costs or charges for the employer.

Outside these margins, the labour cost in principle may not be increased. However, exceptions are provided for in the Salary Restraint Act.

Indexations and the application of existing remuneration scales fall outside the scope of the salary restraint. Hence, an increase in labour costs due to the application of the automatic indexation or the existing remuneration scales is therefore allowed.

An increase resulting from the application of a profit sharing plan, as defined by the Act of 22 May 2002 *concerning employee participation in the capital and the profits of companies*, resulting from employer contributions in social pension schemes or resulting from one-off innovation premiums, also falls outside the scope of the legislation on salary restraint.

Moreover, an increase in the labour costs due to an increase in the number of staff members will not be taken into consideration.

It has been asserted that the Salary Restraint Act applies only to salary increases provided for under collective or individual agreements, based on Article 9 of the Salary Restraint Act that provides that "*the margin referred to in articles and 7 applicable to the growth of labour costs may not be exceeded by agreements at the intersectoral, sectoral, company or individual level*". On the basis of a literal interpretation, it could be held that unilaterally granted salary increases fall outside the scope of the Salary Restraint Act.

However, such an interpretation may be contested:

- the interpretation that unilateral salary increases fall outside the scope of the legislation is not explicitly confirmed by the Salary Restraint Act;
- the preparatory works of the aforementioned Act provide that the reference to intersectoral, sectoral, company or individual levels aims to include all levels of labour costs. The legislator wanted to prevent the Salary Restraint Act from containing disincentives to concluding collective bargaining agreements. The interpretation that unilateral salary increases fall outside the scope of the Act is contradictory to this aim of the legislator;
- in practice, it is difficult to distinguish a unilateral grant and an oral agreement. It could be argued that as soon as an employee accepts a unilateral increase of the remuneration by the employer, an agreement is concluded.

As a consequence, a strict salary restraint has to be taken in account in 2015 and 2016.

As a consequence, a strict salary restraint has to be taken in account in 2015 and 2016.

THE NEXT SOCIAL ELECTIONS WILL TAKE PLACE BETWEEN 9 & 22 MAY 2016

By Frédérique Gillet

In Belgium, worker representation occurs at the level of the business through the trade union delegation, the works council, and the committee for prevention and protection at work. Social elections must be held for the election of the works council and for the committee for prevention and protection at work. The next social elections will take place between 9 and 22 May 2016.

In principle, every undertaking (understood as "technical operating unit") habitually employing an average of at least 100 employees (for the election of the works council) or 50 employees (for the election of the committee for prevention and protection at work) (20 employees for mining, quarrying and underground quarrying companies) during the year preceding the elections is responsible for starting the procedure for the social elections.

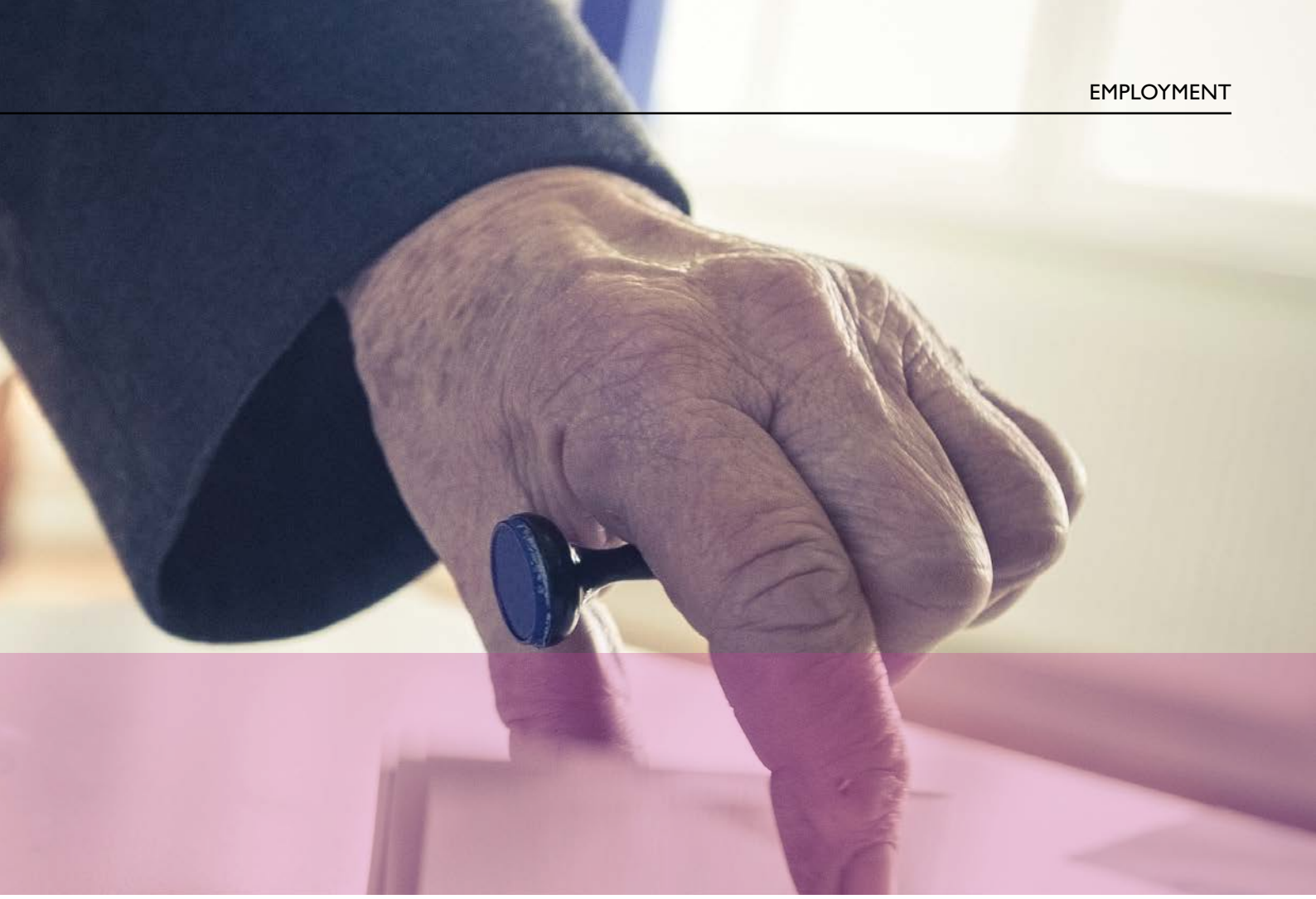
THE NOTION OF "TECHNICAL OPERATING UNIT" (TOU)

The social elections are organised at the level of "the technical operating unit".

This is a specific notion which applies for the social elections and which is defined on the basis of economic and social criteria. In case of doubt, social criteria prevail over economic criteria.

As an example, the following economic criteria are taken into consideration: Autonomy to make daily management decisions, different directors, different shareholders, separate accounts, separate legal/HR/finance etc. departments, separate production, different economic activities (as opposed to similar or complementary activities), existence of competition (the absence of cooperation agreements, the absence of agreements on price lists, the absence of exchange of goods), its own clientele, its own budget, etc.

Examples of social criteria are: An independence in human resources management, different policies in terms of recruitment/dismissal/training, disciplinary sanctions; different compensation & benefits structure; distance between units; specific employment terms and conditions/policies/ employment contracts/work regulation; belonging to different joint committees; working with different payroll agencies/ external service for prevention and protection at work/ insurers etc.; different IT/telephone/fax systems, etc.



LAUNCH OF THE PRE-ELECTION PROCEDURE BETWEEN 11 & 24 DECEMBER 2015

Depending on the date of the social elections, the launch of the pre-election procedure should take place between 11 and 24 December 2015 (on X-60).

The pre-election procedure is launched by a written communication drafted by the employer for the attention of the employee consultative bodies (the works council and/or the committee for prevention and protection at work, and in the absence of these, the trade union delegation).

The following information will have to be provided by the employer:

- The determination of the notion of technical operating unit(s) (TOU);
- The number of employees employed per category within the TOU on X-60;
- A list of functions of middle management staff (cadres/kaderledden) and, for information, a list of the people who exercise these functions;
- A list of functions of senior management staff (personnel de direction/leidinggevend personeel) and, for information, a list of the people who exercise these functions;
- The data of day Y (i.e. the date chosen for the elections, between 9 & 22 May 2016) and the date X (i.e. the date of posting up of the notice announcing the date of the elections).

To comply with this obligation, the employer is obliged to use the form which is available on the web site of the Belgian Federal Public Service Employment, Labour and Social Dialogue (http://www.emploi.belgique.be/defaultTab.aspx?id=42283).

Once completed, this form is:

- To be provided to the members of the works council and/or the committee for prevention and protection at work, and in the absence of these, to the member of the trade union delegation;
- To be posted in the undertaking. This posting can be replaced by the digital circulation of this document if all the workers have access to this document during their normal working hours;
- To be downloaded onto the website of the Belgian Federal Public Service Employment, Labour and Social Dialogue or directly sent out to the national seats of the trade unions.

3D PRINTING 101, ATYPICAL LEGAL CHALLENGES

By Patrick Van Eecke and Julie De Bruyn

The concept of 3D printing no longer needs an introduction. The sky is the limit when it comes to the possibilities 3D printing (often referred to as additive manufacturing) has to offer, both to consumers and businesses. The added value for and influence in the fashion and retail sector is undeniable, and many organizations consider welcoming 3D printing into their business model – whether acting as a 3D print shop, software provider, 3D printer or ink manufacturer, template developer, intermediary offering 3D printed products, product user or rights holder. As with any technological development however, there are legal considerations.

Of course, intellectual property rights, in particular patents, copyright, models and design rights, and trademark rights, immediately come to mind. For a discussion on the intersection between 3D printing and trademarks, we refer to a previous Law à la Mode article, "3D Printing – A new dimension for trademarks" which can be found in the special INTA 2014 Issue.

This article introduces some atypical legal challenges – apart from intellectual property rights – under the EU legal framework, which may not be immediately apparent when discussing 3D printing.

PRODUCT SAFETY AND LIABILITY

Particular categories of products are subject to legal rules regulating the safety and proper use of such products, and should not to be overlooked in the context of 3D printing. Relevant legal instruments on the EU level include, for example, the European General Product Safety Directive (2001/95/EC) and the European Directive on Toy Safety (2009/48/EC). Product safety also comes into play with respect to the raw materials (or "ink") used in the 3D printing process, as these may not always be subject to prior quality controls.

Under the principle of product liability, a product manufacturer can be held liable for harm caused by a defective product. Directive 85/374/EEC establishes a liability without fault for producers; this means that a product will be deemed defective if it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including the presentation of the product, the reasonable use of the product and the moment the product is put into circulation. In a 3D printing context, product liability is relevant for manufacturers of 3D printers as well as to manufacturers of 3D printed objects, to the extent they are commercialized and sold to the public. Product liability may not apply, however,

to a supplier that makes 3D templates and sells them directly to consumers for 3D printing at home, because of the law's exemption applicable to products not put into circulation by the manufacturer himself.

IMPORT RESTRICTIONS AND TAXATION

Certain products may be subject to import restrictions imposed by a particular country. Typical examples are weaponry, medication and currency. By selling 3D templates of a product to individuals located in countries where an import restriction applies to that product, both the template seller as well as the buyer who prints the object may be inadvertently violating the import restriction. In addition, 3D printing shortens traditional supply chains by allowing for domestic manufacturing, resulting in the transaction potentially bypassing border controls on the importation of goods, as well as any associated import taxes. Many jurisdictions are currently reviewing their existing customs legislation to determine whether it is necessary to change the current rules in light of this rapidly evolving technology.

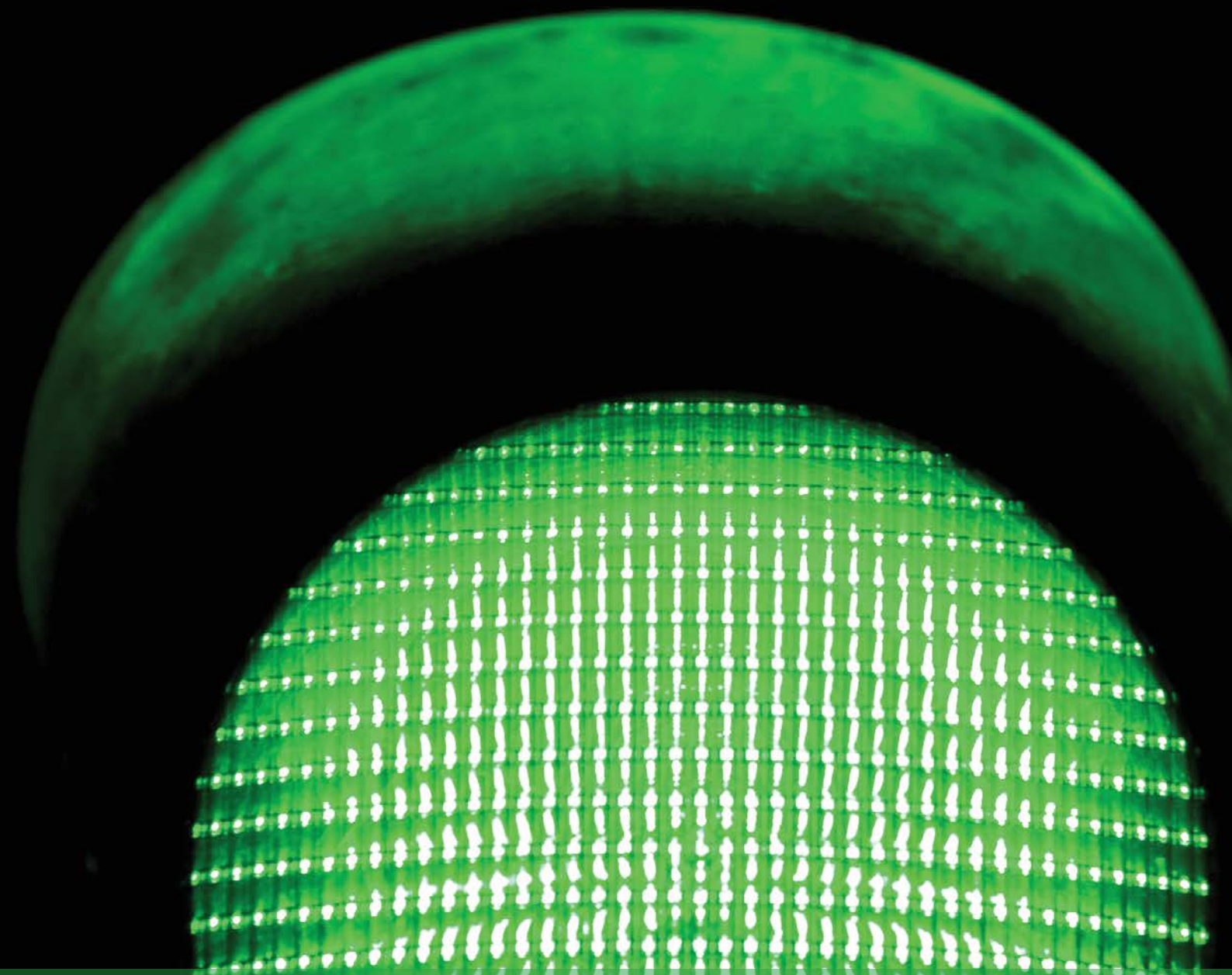
COUNTERFEIT

3D printer and 3D template providers are particularly at risk of being considered an accomplice to counterfeit where an individual prints counterfeit money (coins or bank notes) using a 3D printer. Anti-counterfeit software, similar to that applied to paper photocopiers, is an example of a way to mitigate the risk of unlawful use of the printer or template.

PRODUCT LABELLING

Within the EU, the labelling of certain categories of product is governed by dedicated rules, notably by Regulation 1169/2011 for foodstuff and a separate legal framework for non-foodstuff such as cosmetics, footwear and textile products. The primary purpose of labelling is to inform and to guarantee safe use of the product by the consumer.

It can be concluded from the non-exhaustive overview above that – as in other fields of technological development, such as the Internet of Things – the current framework seems to leave unanswered the question as to who is responsible for complying with the applicable requirements.



BELGIAN GOVERNMENT GIVES GREEN LIGHT TO A NEW OPEN DATA STRATEGY

By Alexis Fierens and Joséphine De Ruyck

On 24 July 2015, the Belgian Council of Ministers approved an ambitious federal Open Data Strategy to unlock the full potential of reusing public sector information ("PSI"). The strategy includes both a set of fifteen concrete guidelines as well as a legislative proposal, which would implement the latest PSI Directive 2013/37/EC.

PUBLIC SECTOR INFORMATION

PSI is generally defined as any information, which is generated or owned by public authorities and services and which can be freely used, re-used, redistributed and exploited by anyone – either for free or at a marginal cost.

In the US, open and unrestricted access to PSI is a long-term tradition, which has resulted in the rapid growth of information intensive industries, particularly in the geographic information sector.

In this context, the adaptation of the first PSI Directive 2003/98/EC marked a major step forward. It provided a common legislative framework to a previously unregulated European market aimed at making open public data the standard in all members states. Three years later, this Directive was implemented into the then twenty-seven national laws.

More recently, the above mentioned PSI Directive 2013/37/EC broadened the scope of re-use of PSI and laid down a clear obligation for member states to make all content of PSI re-usable for commercial and non-commercial purposes.

The federal Open Data Strategy together with its fifteen guidelines and legislative proposal intends to bring Belgium a step further in this European process towards a true open data ecosystem.

BELGIAN LEGISLATIVE PROPOSAL

As part of the Open Data Strategy and in compliance with the Directive 2013/37/EC, the legislative proposal adopted the principle of open public data by default. No derogation will be allowed unless for privacy or security reasons. In stating so, this proposal reverses the actual Belgian approach whereby open government data is rather an exception than the rule.

Furthermore, PSI from all public sector bodies are concerned, including public data and documents from state owned companies. As a result, an unprecedented flow of diverse information ranging from the timetables of the Belgian railway company to the weather forecast of the meteorological institute will be released soon. Alexander De Croo, the Belgian Minister responsible for the Digital Agenda, emphasizes the businesses opportunities in turning such raw data into useful materials, in particular for use in smartphone web apps.

Following the approval by the Council of Ministers of the legislative proposal at first reading, it will now be submitted to the State Council and the Belgian Privacy Commission for comments.

A PACKAGE OF CONCRETE ACTIONS

Granting access to PSI to non-public entities could obviously unlock significant economic benefits across a variety of sectors. According to the Belgian federation for the technology industry (Agoria), a profit of around €900 million could be generated. To seize such economic opportunities, the Open Data Strategy includes a set of fifteen practical guidelines. The key points are:

- A free use of PSI without any reference to the public authority where the PSI originated in order to facilitate the combination of content data for the creation and development of new innovative applications;
- Public data and documents should be provided in a machine-readable format, meaning that software application can easily identify, recognise and extract specific data;
- By 2020, the federal government will not only have to provide PSI on request, but will have to do so proactively. In fact, the myriad of data processed today by public sector bodies remains vague in the eyes of companies. Business possibilities appear only when PSI are fully made available on the market;
- A federal web portal providing continuous access to all available and usable PSI will be set up;
- Each public service will set out its own open data strategy and appoint an open data champion, playing the role of contact point within that organisation.

PROTECTION TO PRIVACY

In order to avoid any potential privacy issues in such an open data environment, the legislative proposal made it clear that public data and documents can only be exploited as long as they have been entirely anonymised. Among the practical measures adopted to protect the privacy of citizens to the maximum extent, a committee of experts from the Belgian Privacy Commission will be established to advise public service companies on their open data approach as well as anonymization techniques. As the remaining potential for re-use of PSI is undoubtedly tremendous, we truly look forward to the further roll-out of this federal Open Data Strategy.

UPCOMING EU COPYRIGHT REFORM

By Jeroen Jansen, Ana-Laura Blanco and Federica Boledi

It does not happen often to see European Institutions agreeing on a common strategy. Yet, the strong political will around the need to create a single market for digital content moved this item to the top of the agenda of the European Union since the start of the mandate of the new European Commission at the beginning of 2015. This was reflected in the recent launch of the Digital Single Market Strategy, a series of initiatives aimed at removing barriers and providing citizens and companies with the appropriate online environment to profit fully from Europe's Internal Market.

A key element of the Digital Single Market Strategy is the modernisation of the European copyright law. The entertainment and media industry is among the sectors most affected by the digital revolution. With 7 million people working in copyright-intensive industries and a contribution to the EU's GDP in 2013 of 509 billion euros, the sector has the potential to fully flourish in a harmonised digital market. The Commission aims at ensuring that European businesses benefit from the expected 12.1% increase in spending in this sector around the world in the next five years.

Things are moving fast on the copyright front. While the Commission is working on a legislative proposal, which is expected to be published in autumn 2015, the European Parliament has already started the debate by recently adopting a non-binding report suggesting guidelines on the envisaged binding provisions in the Commission proposal. What is more, the Commission recently launched an antitrust investigation against Sky UK and six major US movie studios for banning broadcasters from showing content outside their country. This development is seen as a first step challenging the principle of territoriality, which until now has been an element deeply rooted in European copyright law.

Those directly affected by the reform are already actively contributing in the discussion and making their voice heard by the Institutions. Are you taking part in the EU decision-making process, shaping the debate on some of the most controversial issues?

GEO-BLOCKING: THE TERRITORIALITY OF COPYRIGHT

Geo-blocking is a barrier affecting cross border e-commerce in the EU by limiting the access or purchasing of products and services from websites based in other Member States. In the creative industries, geo-blocking is mostly the result of the territorial feature of copyright licences and of commercial agreements between broadcasters and producers.

It is seen as one of the main obstacles to the creation of a single digital market in Europe. However, it seems that there is currently a clear political will to tackle this issue. Commission's President Jean Claude Juncker together with Commissioners Günter Oettinger (Digital Economy) and Andrus Ansip (Digital Single Market) clearly stated their commitment to address geo-blocking practices. Likewise, in its non-binding report on

the harmonisation of copyright, the European Parliament calls for the Commission to "propose adequate solutions for better cross-border accessibility of services and copyright content for consumers".

One of the challenges will be to differentiate justified from unjustified geo-blocking and to avoid a negative impact on Europe's cultural diversity. It remains to be seen, however, to what extent the Commission's proposal will move away from the principle of territoriality. Envisaged solutions include maintaining territoriality while ensuring portability of content, and facilitating access to multi-territorial licensing.

LIMITATIONS AND EXCEPTIONS

The Commission's proposal will aim at harmonising exceptions to copyright for essential activities such as research, education, text and data mining. Member of European Parliament Julia Reda, the rapporteur of the Parliament's report, highlighted that exceptions "provide creators with the space to create new works [...] and access to culture and knowledge for everyone". In this regard, new rules are important to boost innovation and help the work of researchers and educational institutions.

The Commission intends to reduce differences between national copyright rules by means of harmonised exceptions. In this respect, it is considering whether to make mandatory the current optional exceptions under the InfoSoc Directive.

Current copyright rules provide an exhaustive catalogue of exceptions to copyright. It is largely left up to Member States to decide whether they would like to implement an exception into their national copyright laws. In the digital age where copyright-protected works are easily made available cross-border, particularly through the Internet, different exception rules stand as an obstacle in cross-border situations. As a result, the cost of obtaining authorisations in certain Member States which have not introduced a certain exception could prevent companies from offering certain services in these Member States. Moreover, assessing which exceptions apply in another Member State may result in a costly process for the company and ultimately prevent it from offering its products and services in other Member States even if it would be legal.

It is most likely that the European Commission proposal will follow the Parliament's report and ask for mandatory minimum standards for user rights in copyright. Since not all exceptions are bound to be made mandatory, it will be important for companies and stakeholders to ensure a fair level playing field, balancing the rights and business opportunities for creators, intermediaries and end users.

THIRD-PARTY LIABILITY: FURTHER REGULATION FOR ONLINE PLATFORMS?

It is no secret that the European Commission is looking into the e-commerce sector, not only to identify possible competition concerns, but also to collect information on the role of online platforms, including search engines, social media, app stores and price-comparison websites. The data collected through the EU antitrust sector inquiry on e-commerce might be used to justify the need for more regulation.

Among the possible scenarios for further regulation of online platforms, such as Internet giants Google and Amazon, there is the possibility of including a "duty of care" provision for players acting as online intermediaries. This clause would hold platforms liable for third parties' violations of copyright laws, significantly altering the status quo under which intermediaries are not responsible for the content posted by users. Businesses would thus face added costs and obligations.

There has been a push from some decision-makers to regulate digital platforms. Already in April 2015, the governments of France and Germany wrote to Commissioner Andrus Ansip (Digital Single Market) calling for "an appropriate general regulatory framework for 'essential digital platforms'". Moreover, the report adopted by the European Parliament claims that platforms capture a substantial share of the value generated by creative works to the detriment of right owners.

On the other hand, start-ups and other stakeholders fear that further regulation will put a stronger burden on European platforms more than on non-European platforms, hindering innovation generated in Europe. They also claim that excessive regulation could give rise to unintended consequences (e.g. excessive economic burdens, barriers to innovation,...), considering that the term "online platform" does not have a clear legal definition and could include many business activities of different nature.

The Commission is expected to launch an online consultation open to all stakeholders on the role of Internet platforms in autumn 2015, which will investigate – among other things – issues related to access, portability and illegal content.

TERM OF PROTECTION AND THE PUBLIC DOMAIN

Another proposal which will be discussed within the copyright reform will address whether the duration of protection of a copyrighted work should be shortened, thus reinforcing works in the public domain.

In principle, the EU Term Directive sets a standard term of protection across EU Member States for works of copyright at 70 years after the death of the author. However, this rule is

accompanied by a set of exceptions for specific categories of works. Therefore, in practice the desired harmonising effect was not achieved by the Directive, imposing an extra level of complexity when calculating the term of protection in certain Member States. Ultimately this means that a work which is protected in one Member State may be freely available in another, thus creating legal uncertainty for businesses and right-owners. As a consequence, the composition of the public domain differs from one Member State to another, since works fall out of copyright protection on different dates in different EU Member States.

In view of the opportunities that the digital age offers for the online distribution and reuse of out-of-copyright works, the European Parliament's report calls on the Commission to "further harmonise the term of protection of copyright, while refraining from any further extension of the term of protection" and "to effectively safeguard public domain works". Should the Commission in its proposal follow the Parliament's recommendation, this would provide cultural heritage institutions and the average user with more legal certainty in assuring that they are not infringing creators' copyright.

The results of the copyright consultation report issued by the European Commission in 2014 showed that the majority of end users, institutional users, intermediaries and service providers believe that the current term of copyright protection should be shortened. It remains to be seen whether the Commission's proposal will make the identification of works in the public domain easier and less resource-intensive, and thus unlock the cultural, educational and economic potential of the public domain.

EMPOWERING SOCIAL ENTREPRENEURS IN BELGIUM WITH ATOS

By Dr. Ozgur Kahale

Social enterprises are defined as organizations that apply commercial strategies to maximize improvements in human and environmental wellbeing rather than maximize profits for external stakeholders. In Europe, social economy enterprises represent 2 million enterprises (i.e. 10% of all European businesses) and employ over 11 million paid employees (the equivalent of 6% of the working population of the EU): out of these, 70% are employed in non-profit associations, 26% in cooperatives and 3% in mutual. The social economy is amongst the fastest growing sectors in the world.

DLA Piper has established a signature pro bono project entitled "Empowering Social Entrepreneurs". Over the last two years lawyers from DLA Piper and Atos have developed a series of bespoke "Legal Helpsheets" for social entrepreneurs in the UK in collaboration with UnLtd, an NGO that supports social entrepreneurs. The Helpsheets cover a wide range of subjects, from legal structures for social enterprises to contracts of employment. They are designed to assist entrepreneurs to identify and understand the various legal issues that need to be considered when starting or growing a social venture.

Please click here to see the UK helpsheets.

In Belgium we will partner with UnLtd's Belgium partner Oxigen to produce the same legal helpsheets for Belgium.

PROJECT

We are putting a team together from finance, corporate, IPT and employment departments to work on the helpsheets. The team will work collaboratively to produce the helpsheets. The deadline is end September.

FOR MORE INFORMATION

You can read about our pro bono work here and our work on legal education and diversity at BIL.

Our pro bono clients are individuals who cannot afford representation, and also include many of the world's largest NGOs, UN agencies and a number of developing countries.

Around nine in ten current CEOs and future business leaders believe businesses should have a social purpose. At DLA Piper our social purpose is to improve access to justice for the most vulnerable in the society. Thank you very much for making all this happen.

OUR ONGOING PRO BONO PROJECTS:

- ECPAT Internationalefugee Action
- Thomson Reuters Foundation
- Anne-Sophie Parent, Secretary General AGE Platform Europe
- University of Leuven
- University of Hasselt
- University of Antwerp
- Round Table Belgium VZW
- Children's Rehabilitation Center Pulderbos
- Municipal Planning Commission of the Municipality of Rijkevorsel
- Sociale InnovatieFabriek
- American Chamber of Commerce to the European Union
- The World Bank t/a Investing Across Borders
- European Council on Refugees and Exiles (ECRE) Aisbl
- Alterfin Investing in microfinance & fair trade

WILL OFFICE LEASES REMAIN A FEDERAL COMPETENCE?

By Michael Bollen

The sixth reform of the Belgian State leads to an important modification in the competences concerning leases. The lease of principal residences, the commercial lease and the agricultural lease become a regional competence. The «rest» remains a federal competence. It looks easier than it is…

The special law of 6 January 2014 concerning the Sixth State Reform, which modifies among others article 6, § 1st, of the special law of the 8 August 1980 on institutional reforms, transfers to the Regions the competence concerning (among others) the lease of goods and parts of goods intended for habitation (leases of principal residence), concerning the agricultural lease and commercial lease. Common lease law is the fourth classical pillar of tenancy law and is currently still governed in its entirety at the federal level by the Civil code, i.e. it remains a federal competence.

Common lease law, which for real estate is substantially contained in the articles 1714 to 1762***bis*** of the Civil code, regulates in the first place the lease of real estate for which no specific legislation applies. Concretely, it concerns all offices, warehouses, industrial buildings and liberal professionals.

For certain kinds of leases of goods (real estate or other goods) intended for habitation, which were previously not covered by the law on principal residence but by common lease law, the Regions become competent too. In particular, second residences, student rooms and holiday houses are covered. As a result, the transfer of competences does not exactly coincide with the scope of the current law on principal residence lease.

Despite the special law of 6 January 2014 approaching only the «commercial lease», the transfer of competences regarding such a lease does not follow the boundaries of the scope of the current law on the commercial leases, since the Regions have become competent for the lease of real estate intended for a commercial activity, in the widest meaning of the term.

In that case, the Regions would also become competent for certain kinds of office leases which were previously governed by common lease law, namely whenever commercial operations («daden van koophandel»/»actes de commerce») are exercised in leased premises. The lease of real estate destined for professional activities that do not include commercial operations (for instance leases to liberal professions), remains a federal competence.

Furthermore, common lease law is currently applicable to the aspects of the lease of principal residences, commercial leases and agricultural leases, which are not expressly regulated by the law on principal residences, the law on commercial leases and the law on agricultural leases respectively, such as among others the rent indexation and the obligation of drafting an inventory of fixtures. If the Regions plan a derogatory regime concerning those questions for the lease of principal residences, the commercial leases and the agricultural leases, this derogatory regime will then have priority over the general federal regime.

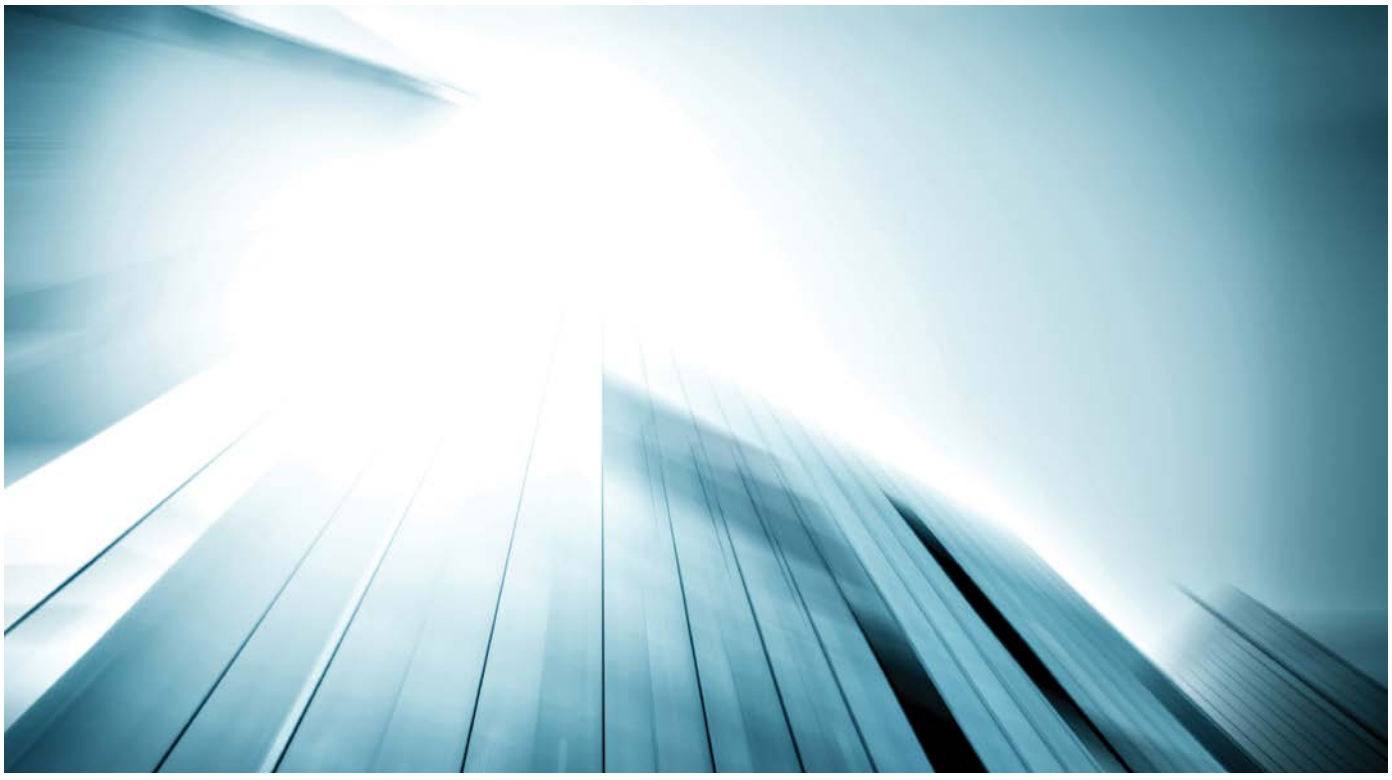
Questions remain about the competence of the federal legislator, regardless of the kind of lease. The federal authority remains thus competent for the registration fees applicable to lease agreements. Likewise the common law of obligations or contracts, among others regarding the valid conclusion of leases (capacity, defects of consent), remains a federal matter. The same applies to the rules concerning the opposability of lease agreements to third parties and the obligation of recording leases at the mortgage office.

The Regions on their turn can impose regulations on prices in their fields of competence and are also competent to enact the necessary procedural rules.

The location of the real estate leased determines the applicable regional regulation; a choice of law applicable in another region is not possible.

The transfer of competences took place on 1st July 2014, and since this date the Regions are competent concerning the principal residence lease, the commercial lease and the agricultural lease, such as aforementioned and can adopt new regulations in each of these matters. However, until the adoption of a specific regional regulation in one of those fields occurs, current federal regulation continues to apply. When a new regional regulation will be adopted, it will be necessary to verify to which extent it will apply to lease agreements concluded previously.

We can wonder why the law of lease did not become a regional competence in its entirety and in particular why the commercial lease has become federal and not the other forms of lease agreement for professional purposes. In any case, the situation will not become easier.



FINANCING OF AFFORDABLE HOUSING IN AFRICA

By Yves Brosens

Purchasing one's own home with the aid of a mortgage is so much a part of life in the West that many are surprised to learn that mortgages are not available or are very limited in a market that has been much in the news in the last two years: Africa. In this article, we consider the ways in which housing is financed in Sub-Saharan Africa.

In addition to the development finance institutions (DFIs) actively looking at the mortgage market in Africa, a large number of African banks themselves have seen the investment potential in this area. The growing upper and middle class populations in Africa are generating a more stable flow of income, have more savings and are no longer moving funds to foreign accounts. Instead, they are keen to make property investments in their own countries.

People in Africa generally are coming to appreciate the importance of property ownership and the role of banks in helping individuals to own their own homes. Until very recently, the construction of a house was mainly the joint effort of family and friends, with work progressing only when funds and time allowed. The large number of unfinished houses that can be seen when travelling through Africa gives the impression that these have been abandoned, but in fact, they are simply still under construction. Building a home in this way can often take between five and 10 years. There is increasing recognition, however, that home ownership is an essential human need which can be met more swiftly with the aid of a mortgage.

The mortgage market looks set to grow in Africa, but there are still many challenges to be overcome. Some of these are discussed below.

- In the West, we have grown comfortable with, or at least resigned to, the idea of a 25-year debt to the banks, but in general, people in Africa have not been keen on the idea of owing someone money for such a long time. This is a mindset which needs to be changed, and there should be greater awareness of the benefits of a mortgage – it is not purely a financial debt, it is also a form of saving, of obtaining ownership of a valuable asset, of having an asset that can serve as security in old age and that makes people more independent from their extended family.

- A long term mortgage loan also requires that the asset financed at least maintains its value over time, and preferably increases in value, in order to provide appropriate security to the banks. The often poor quality of building work in Africa means that houses do not last for more than a century. However, many European development companies are becoming more active in Africa. Whilst they meet the same challenges as their African counterparts (since they have to call upon the same local contractors), nevertheless they have the resources and know-how to improve the construction process over time.
- The relative scarcity of construction materials and the need to import many elements that are used in housing (cabling, windows, etc.) makes the construction of high quality houses quite expensive. This creates a distortion between the price of the property itself, the mortgage and the repayment capacity of an individual with a moderate level of income.
- The large number of land ownership disputes and related legal uncertainties make it a challenge for a bank to be sure that the property it is financing is effectively owned by the borrower. This in turn creates uncertainty as to the enforcement of the mortgage.
- The banks providing mortgage products must themselves have access to long term funding in order to back their mortgage portfolio. Such long term funding is often not available at all or is very limited.
- The mismatch between supply and demand of good quality housing leads to some houses being overpriced in many African countries. This brings with it the risk that prices will tumble when there is an increase in the construction of similar houses in the future. This would clearly result in a gap between the level of the mortgage loan and the property value.

In addition to the many challenges listed above, the regulatory framework in most African countries is still in its early stages, with the old laws now unfit to regulate this type of product.

However, despite all these difficulties, construction companies remain keen to become more active in Africa, and to co-operate with local government and local banks to help to develop this promising market. Not only will such activity benefit the housing companies and the banks, it will also help people in Africa to meet an essential human need: owning their own home.

EU SECTORAL ('PHASE 3') SANCTIONS AGAINST RUSSIA EXTENDED UNTIL 31 JANUARY 2016

By Jeroen Jansen and Valerijus Ostrovskis

On 22 June 2015, the EU Council (the Foreign Ministers of the 28 EU Member States) adopted a decision (Council Decision 2015/971/CFSP) to extend the validity of the so-called 'sectoral' or 'phase three' sanctions, imposed by the EU against Russia over its role in the Ukrainian crisis, until 31 January 2016. The decision was published in the EU Official Journal and entered into force on 23 June 2015.

The sanctions in question were originally imposed by the Council Decision 2014/512/CFSP and implemented by Council Regulation 833/2014 of 31 July 2014 (in force as of 1 August 2014), and subsequently amended (expanding the scope of the sanctions) by Council Decision 2014/659/CFSP and Council Regulation 960/2014 of September 2014 (in force as of 12 September 2014).

'Phase three' sanctions in force

The phase three sanctions target Russia's financial, oil and defence industries and include the following prohibitions and restrictions:

- Restriction on financing of certain Russian government-controlled banks, oil and defence industry companies;
- Restrictions on exports to Russia of oil and gas-related goods and technologies, and especially for the Arctic oil exploration and production, deep water oil exploration and production and shale oil projects;
- Restrictions on the provision of certain 'associated services' necessary for Arctic oil exploration and production, deep water oil exploration and production and shale oil projects (such as drilling, well testing, logging and completion services, supply of specialised floating vessels);
- Prohibition of the supply/sale/export/transfer of arms and military equipment to Russia or for use in Russia, as well as of dual-use equipment and technologies, if such equipment or technologies are intended for military end-use or for certain persons, entities or bodies listed in Regulation 833/2014 (as amended);
- Prohibition of technical and financial assistance related to the above restricted activities.

The Council Decision of 22 June 2015 did not amend the content or the scope of the existing sanctions, but only extended the period of their validity by 6 months (they were due to expire on 31 July 2015).

Next steps

As stated the preamble to the Council Decision extending the validity of sanctions, the duration of the phase three sanctions is linked to the complete implementation of the Minsk ceasefire agreement signed by the leaders of Ukraine, Russia, Germany and France in February 2015. The deadline for the implementation of the Minsk agreement is 31 December 2015, following which the EU will once again assess the need to withdraw or extend the sanctions.

DLA Piper comment

The extension of the sectoral sanctions follows the extension of two previous set of sanctions against Russia – asset freezes and travel bans for certain 'blacklisted' individuals (including high level politicians and government officials, businessmen and participants in military organisations), companies entities and bodies (extended until 15 September 2015 by Council Decision 2015/432/CFSP of 13 March 2015) and sanctions targeting trade with and investments in Crimea and Sevastopol (extended until 16 June 2016 by Council decision 2015/959/CFSP of 19 June 2015).

The sanctions are binding for EU-incorporated companies and EU citizens and individuals, regardless the territory of their activities, as well as for third-country companies and citizens with respect to their activities in the EU. Therefore, the extension of the EU sanctions against Russia means that at least for the next few months European businesses will need to continue exercising an enhanced level of due diligence in their transactions in Russia or with Russian partners.

Similarly, Russian companies and individuals listed in the EU sanctions regulations or active in the sectors targeted by the EU sanctions will continue facing certain restrictions in concluding business transactions with European counterparts and attracting financing for such transactions, and will need to undertake careful legal checks to ensure the compliance of their business activities involving EU persons (both internally and as business partners) with EU sanctions regulations.

Future developments in the EU sanctions against Russia will largely depend on the situation on the ground in Eastern Ukraine and the progress of related political negotiations between the leadership of Russia, Ukraine, and the EU (and especially Germany and France).

RESOURCES

DLA Piper is always at the forefront of legal thought, bringing you know-how and legal updates. Below is a selection of legal handbooks and insights you may find useful.

GUIDE TO GOING GLOBAL

Employment – June 2015

The Guide to Going Global series is designed to help companies meet the challenges of global expansion. For companies striving to expand into new countries, these complimentary guides cover the business legal basics. The first releases in the Guide to Going Global series review business-relevant intellectual property and technology, employment and equity laws in key jurisdictions around the world.

EMPLOYMENT

Be Global – May 2015

Be Global – June 2015

The latest issues of DLA Piper's snapshot into key global employment law developments.

Whistleblowing laws: Employers' Guide to Global Compliance

DLA Piper's Employment group's latest thought leadership report, Whistleblowing: an employer's guide to global compliance, which is based on a unique multi-jurisdictional research project on the highly topical subject of whistleblowing.

SAFETY, HEALTH & ENVIRONMENT

SHE Matters – July 2015

SHE Matters looks into topical issues surrounding safety, health and environment regulations.

Carbon Matters – July 2015

The summer edition of Carbon Matters, the climate change supplement of SHE Matters, looks into topical regulatory issues relating to climate change.

FINANCE

Global Financial Markets Insight – August 2015

The Global Financial Markets Insight magazine is the quarterly publication put together by the Financial Markets team and reflects the continuing pace of change in the global capital markets.

Banking and Finance Litigation Update – Q2, 2015

This update is produced by our Banking and Finance Litigation team and contains a summary of news and legal developments that have affected the banking and finance industry.

Exchange International: Financial Services Regulation Newsletter, Issue 26, June 2015

This update is produced by our Financial Services International Regulatory team and contains a summary of news and legal developments that have recently affected the industry.

INTELLECTUAL PROPERTY AND TECHNOLOGY

Start-Up Pack

This Start-up Pack has been designed and prepared by our Technology Sector initiative, which includes lawyers with experience in intellectual property, corporate, employment and tax matters.

Intellectual Property and Technology News (United States), Issue 26 – Q2, 2015

Our Intellectual Property and Technology News reports on worldwide developments in IP and technology law, offering perspectives, analysis and visionary ideas. Mirroring our global focus in many ways, we also highlight activities in the local and global communities where we live and work.

Sports, Media and Entertainment Intelligence – May 2015

Sports, Media and Entertainment Intelligence – June 2015

Sports, Media and Entertainment Intelligence – July 2015

Sports, Media and Entertainment Intelligence – August 2015

Sports, Media and Entertainment Intelligence is the global monthly publication from DLA Piper's Sports, Media and Entertainment group.

Law à la Mode, Edition 16 – June 2015

The quarterly e-magazine from our Fashion, Retail and Design group. Law à la Mode brings together the latest industry news, commentary and legal updates.

LITIGATION & REGULATORY

International Arbitration Newsletter – July 2015

Our look at international arbitration news from around the world.

REAL ESTATE

Real Estate Gazette, Issue 20 – June 2015

Real Estate Gazette, Issue 21 – September 2015

The Real Estate Gazette contains articles and comments on recent legislation and case law affecting every aspect of real estate around the globe.

The Gazette deals with the whole real estate sector including investment, finance, tax and corporate/funds issues, as well as planning/zoning, construction and dispute resolution.

RESTRUCTURING

Global Insight, Issue 14 – Q2 2015

Global Insight, Issue 15 – Q3, 2015

DLA Piper's Global Insight is a digital publication bringing you news, views and analysis from our Global Restructuring Group.

TAX

Global Tax News – May 2015

Global Tax News – July 2015

Our look at tax news from around the world.

UPCOMING **EVENTS**

HOSTED BY DLA PIPER

- 1 December 2015, **Patrick Van Eecke, Partner – IPT** and **Kristof De Vulder, Partner – IPT**, will speak on **Cybersecurity** during a seminar organised in our Brussels office.

HOSTED BY OTHER PARTIES

- **Eddy Lievens, Partner – Employment** and **Frédérique Gillet, Senior Lead Lawyer – Employment,** will host various workshops devoted to **'Social elections 2016'** and organised in collaboration with Kluwer.

In respect of pre-electoral issues on:

- 17 November 2015 in Antwerp (Dutch session)
- 17 November 2015 in Namur (French session)
- 19 November 2015 in Brussels (Dutch session)
- 1 December 2015 in Antwerp (Dutch session)
- 10 December 2015 in Gent (Dutch session)

In respect of the electoral procedure on:

- 13 January 2016 in Antwerp (Dutch session)
- 15 January 2016 in Namur (French session)
- 15 January 2016 in Brussels (Dutch session)
- 27 January 2016 in Antwerp (Dutch session)
- 29 January 2016 in Liège (French session)

- 23-24 November 2015, Amsterdam, **Johan Mouraux, Partner – Finance & Projects**, will speak on **Funding competitions – Pro's and Con's and best practices** at the SMI Benelux Infrastructure Forum – Mövenpick Hotel Amsterdam.
- 2 December 2015, Diegem?, **Elisabeth Verbrugge, Lead Lawyer – IPT**, will speak on **Data management and privacy: how to prepare for the new European Regulation** at Confocus' seminar on new responsibilities and challenges for the financial sector.
- 17 December 2015, Brussels, **Kristof De Vulder, Partner – IPT**, spoke on **Damage and Liability** during a seminar on Cybersecurity organised by AEDBF/EVBFR in Brussels.

PAST **EVENTS**

- 4 May 2015, **Patrick Van Eecke, Partner – IPT** and **Antoon Dierick, Lead Lawyer – IPT**, spoke on *Big data – Hoe verzekert u "legal compliance" voor uw project?* during an online seminar organised by Lexalert.
- 19 May 2015, **Antoon Dierick, Lead Lawyer – IPT**, spoke on *eMarketing: juridische en ethische beschouwingen* during at ECHO Leuven.
- 22 mai 2015, **Renaud Thüngen, Lawyer – Litigation & Regulatory**, colloque de la Commission Université-Palais à Charleroi consacré au *Droit de la responsabilité*, rapport sur « L'alternative légitime dans l'appréciation du lien causal ».
- 28 mai 2015, **Renaud Thüngen, Lawyer – Litigation & Regulatory**, colloque organisé dans le cadre des Entretiens Patrimoines et fiscalités et intitulé *Apparences, simulations, abus et fraudes – Aspects civiles et fiscaux*, rapports sur « L'apparence en droit civil » et « La simulation en droit civil ».
- 2 June 2015, Leuven, **Dirk Caestecker, Partner – Real Estate** and **Kevin De Greef, Lead Lawyer – Real Estate**, spoke on *Juridisch beheer* during a seminar on Property Management organised by the Postuniversitair Centrum Vastgoedkunde – Katholiek Universiteit Leuven.
- 10 June 2015, Brussels, **Elisabeth Verbrugge** and **Antoon Dierick, Lead Lawyers – IPT**, spoke on *Security & Compliance – A lawyer's view* at Sogeti SMACS conference.
- 25 June 2015, **Antoon Dierick, Lead Lawyer – IPT**, **Richard Van Schaik, Lawyer – IPT** (Amsterdam) and **Gregory Tulquois, Lawyer – IPT** (Paris) gave a client presentation on *Presentation on legal issues regarding customer activation* in Paris.
- 3 September 2015 and 1 October, **Kristof De Vulder, Partner – IPT**, spoke on *ICT in hospitals*.
- 6 October 2015, **Kristof De Vulder, Partner – IPT**, spoke on *Managing legal and operational risks through a best practice infrastructure sourcing contract* during a seminar on IT-infrastructure organised at the Park Plaza Amsterdam Airport Hotel.
- October 2015, Kortrijk, **Antoon Dierick, Lead Lawyer – IPT,** spoke on **eMarkteting: juridische aspecten** at Innovatieacademie.

www.dlapiper.com