




FAIB

be international... in Belgium



Year in Review & Bird & Bird

14 December 2017



What were the legal developments relevant for the non-profit sector in 2017?

2017

[YEAR IN REVIEW]

AGENDA

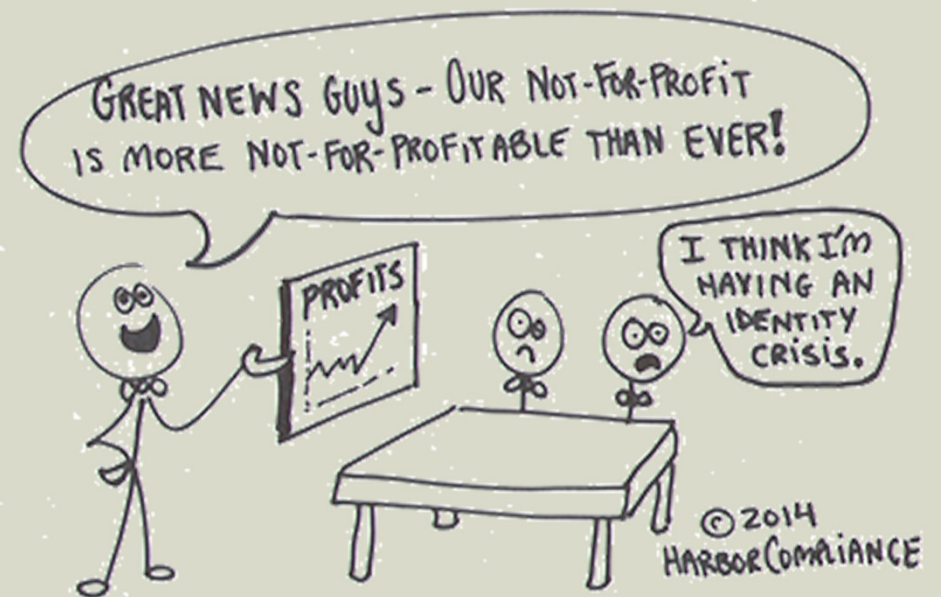
- **Tax** 4
- **Employment** 12
- **Corporate** 23
- **Competition** 38
- **IP** 44
- **GDPR** 52





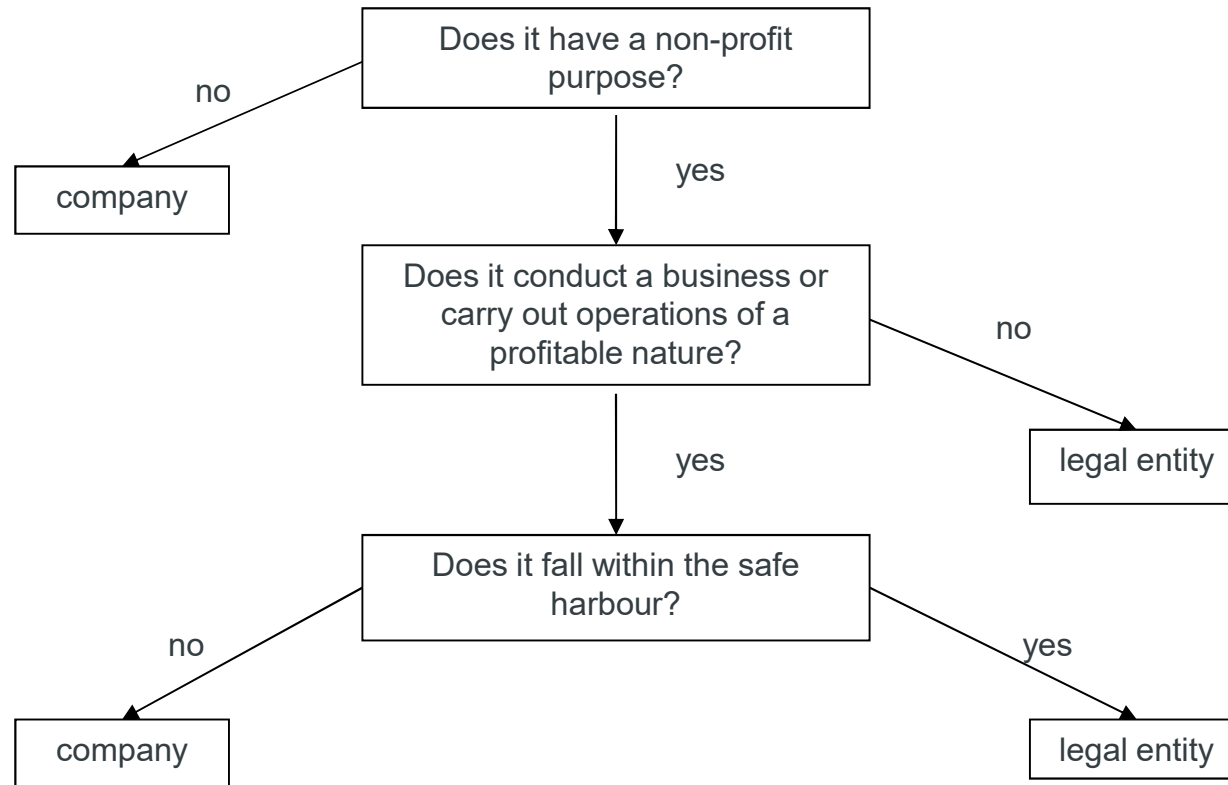
TOPICS

1. Corporate Income Tax vs. Legal Entities Tax
2. Miscellaneous

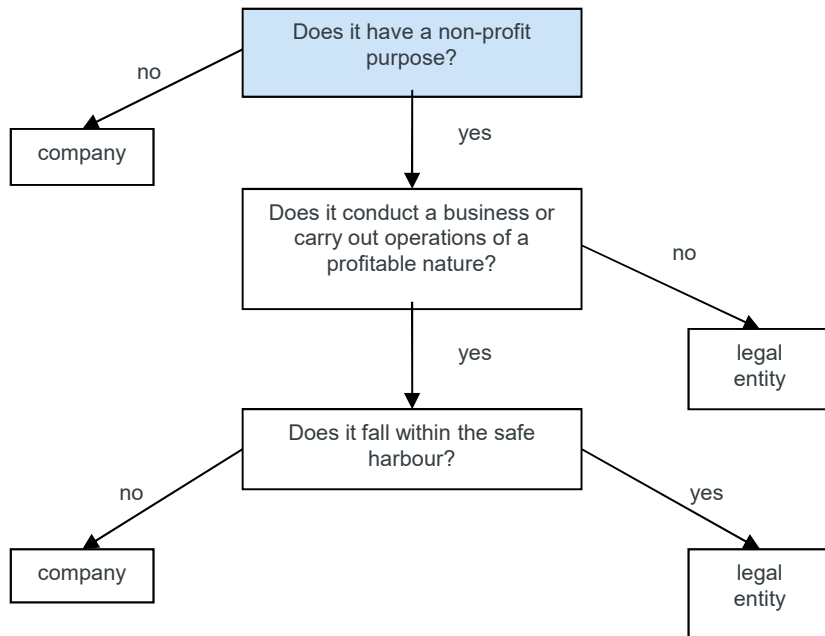


CORPORATE INCOME TAX vs. LEGAL ENTITIES TAX

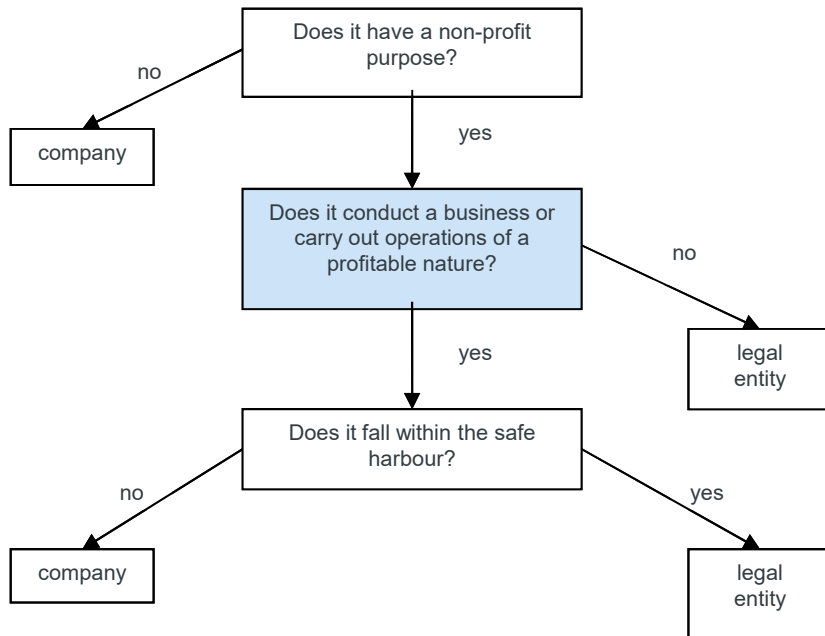
The qualification of an entity as a company or legal entity for Belgian income tax purposes, can be determined on the basis of the following decision tree:



CORPORATE INCOME TAX vs. LEGAL ENTITIES TAX



CORPORATE INCOME TAX vs. LEGAL ENTITIES TAX



"conducting a commercial business":

- autonomy vs. restricted framework (with supervision) of the NPA while performing its activities;
- the allocation of the profits the NPA generates

(Leuven, 21 April 2017; Bergen, 16 March 2016; Bergen, 13 November 2015, Parl. Q. no. 1648, 12 May 2017)

"operations of profitable nature"

- Case law generally defines these operations by failing the "safe harbour" rules (see next step)

CORPORATE INCOME TAX vs. LEGAL ENTITIES TAX



"isolated operations"

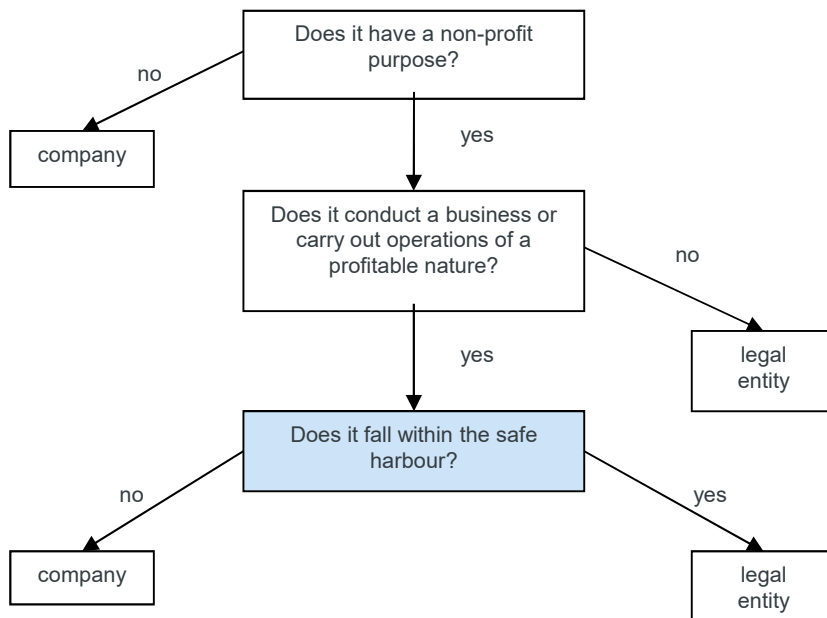
- NOT a commercial event that takes place during a few days a year but whereof the organisation entails activities of the NPA during a whole (or substantial part of) the year

(Antwerp, 12 May 2017; Leuven, 3 March 2017)

"ancillary"

- Ancillary nature is determined based on the relative importance of the assets and personnel used for the commercial activities on the one hand and the non-profit activities on the other hand.
- The profit activity cannot be considered ancillary if it entails the main or essential activity of the NPA.

(Antwerp, 12 May 2017; Bergen, 13 November 2015; Bergen, 16 March 2016; Leuven, 3 March 2017)



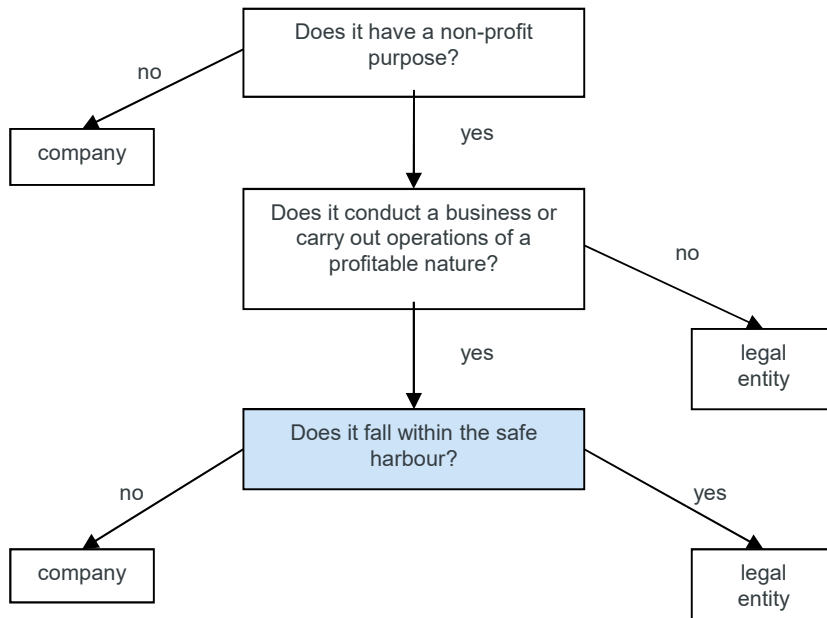
Certain operations of a profitable nature are, by law, not effectively treated as such pursuant to certain "**safe harbour**" rules:

- isolated / exceptional activities
- investment of resources
- ancillary, or do not require implementation of commercial / industrial methods

CORPORATE INCOME TAX vs. LEGAL ENTITIES TAX



"implementation of industrial / commercial methods"



- compared to commercial companies on the market performing similar activities as the NPA (ruling: also – even if compared to companies – the benefit is for the general public);
- awareness-raising campaigns vs. promotional activities;
- relying on commercial companies only to pursue the non-profit purpose vs. specifically choosing to rely on such commercial companies;
- (high) commercial price setting (e.g. entrance fees) for the activities rendered by the NPA

Certain operations of a profitable nature are, by law, not effectively treated as such pursuant to certain "**safe harbour**" rules:

- isolated / exceptional activities
- investment of resources
- ancillary, or do not require implementation of commercial / industrial methods

(Leuven, 3 March 2017; Leuven, 21 April 2017; Antwerp 12 January 2017; Ruling, no. 2017.263 dd. 08 August 2017)

MISCELLANEOUS

- **Commission for accounting standards – 2017 Advices**
 - 2017/06 – Consolidation obligation of horizontal groups
 - non-profit organisations excluded from the scope of consolidation
 - 2017/14 – Accounting of (long term) lease in respect of a NPA
 - elaboration of method of accounting
- **VAT – conversion in NV/SA – Ruling no. 2017/033, 21 February 2017**
 - Direct conversion into NV/SA is not allowed under company law
 - Intermediary step by conversion in NV/SA with social purpose, followed by conversion in NV/SA
 - None of the conversions is subject to VAT
- **Expenses proper to the "employer" - Parl. Q. no. 16364 & 16365, 8 February 2017**
 - In principle, reimbursed expenses should be reported as "expenses proper to employer"
 - However, in the event of non-remunerated volunteers (or directors) of an NPA, no reporting is required (NPA must only be able to present a list of reimbursed expenses upon request of the tax authorities)

Employment



TOPICS

1. Teleworking Regulations Update
2. Terrorism and radicalisation at the workplace



Casual Friday for the
Telecommuter

1. Teleworking Regulations Update (1)

- **"Structural teleworking"**: CBA no. 85 of 9 November 2005 on Teleworking

*"a method of organising and/or carrying out work under an employment contract using information technology, in which activities, which could also be carried out in the premises of the employer, are carried out, **on regular basis**, outside these premises, either in the worker's home or any other location chosen by the worker"* (free translation)

- **"Occasional teleworking"**: Belgian 'feasible and agile work' Act of 5 March 2017

*"a method of organising and/or carrying out work under an employment contract using information technology, in which activities, which could also be carried out in the premises of the employer, are carried out, **on an occasional and non-regular basis**, outside these premises, either in the worker's home or any other location chosen by the worker"* (free translation)

1. Teleworking Regulations Update (2)

- **Occasional Teleworking**

- teleworking at an **occasional** basis as a result of force majeure or personal reasons

→ Ex. of cases of **force majeure**:

An unexpected train strike, an unexpected car breakdown beyond the worker's control, etc.

→ Ex. of **personal reasons**:

A consultation with a doctor or dentist that would be difficult to organise outside work hours; a visit by a technician; carrying out mandatory administrative formalities that require the presence of the worker.

1. Teleworking Regulations Update (3)

- **Occasional Teleworking**

- When?

- When it is **impossible** for the employee to perform his work at the employer's premises due to force majeure or personal reasons
- To the extent his function and/or activities are "**compatible with occasional teleworking**"
- Upon **request** of the employee :
 - Filed within a "reasonable delay"
 - Containing the reason why occasional teleworking is applied for
 - No (expected) duration required
 - No other formalities (in writing, verbal, phone, email, etc.)
- Any **refusal** from the employer must be in writing and motivated

1. Teleworking Regulations Update (4)

- **Occasional Teleworking**
 - And in practice?
 - Implementation remains an open question...
 - Parties must agree on certain aspects of the occasional teleworking:
 - Necessary equipment and technical support
 - Employee's availability
 - Reimbursement of costs linked to telework
 - ➔ From of this agreement?
 - ➔ Delay to come to such an agreement (short notice)
 - Possibility to settle certain issues at sectoral level

1. Teleworking Regulations Update (5)

- **Occasional Teleworking**

- Rights and duties of the occasional teleworker:

- Same employment conditions, workload and performance requirements as the ones applicable to an employee performing similar work at the employer's premises
 - Free organisation of his working time?
 - Entitled to choose himself the place where the work is performed

2. Terrorism and radicalisation at the workplace (1)

- **Forms of terrorism, religion and privacy**
 - Forms of terrorism that the company faces:
 - For example: attacks at work, cyberterrorism, inciting terrorism through social media, threats against an employee or the company, increase in the level of terrorist threat by the Antiterrorist Mixed Group (AGG)
 - Article 8 ECHR: Right to respect for private and family life
 - Treatment of personal data: Act of 8 December 1992, GDPR
 - Secret of communication: Act of 30 June 1994
 - Camera surveillance: CBA n°68, Act of 21 March 2007
 - Control of internet use and emails: CBA n°81
 - However, limits to privacy provided by these laws:
 - Legality
 - Predictability
 - Finality
 - Proportionality

2. Terrorism and radicalisation at the workplace (2)

- **Obligation of the company to prevent risks for the employees and to ensure their safety**
 - Act of 4 August 1996 on the well-being of employees during the performance of their work
 - Develop a security and safety plan
 - Precautionary actions/ curative measures
 - Additional extralegal measures
 - Business Continuity Plan with a crisis plan

2. Terrorism and radicalisation at the workplace (3)

- **Tracing elements of radicalization in the course of recruitment and during the employment**
 - In the course of recruitment
 - Screening?
 - Online check?
 - Requesting references and contacting the previous employer?
 - CBA n°38 regarding recruitment and selection
 - Permitted questions: only those that are useful for the function
 - How to ask other questions?
 - Reject a candidate and the risk of discrimination
 - During the employment
 - Means of control
 - Monitoring of telecommunication, bodysearch, whistleblowing
 - Reaction in case of suspicion/discovery
 - Psychological assistance?
 - Disciplinary sanctions?
 - Dismissal? Serious cause? Motivation? Risks?

2. Terrorism and radicalisation at the workplace (4)

- **Terrorist attacks or terrorist threats**
 - Prevention and reaction in the event of terrorist threats
 - Compliance with the applicable safety instructions
 - Telework
 - Closure of the company
 - Limited use of certain means of transport (TEC, STIB,...)
 - Civil liability?
 - Responsibility of an employer if an attack was suspected and the employer did nothing?
 - Predictability?
 - Force Majeure?
- **Participation by the employer in the fight against terrorism**
 - Is reporting compulsory in case of (suspicion of) radicalization?
 - Obligation to reply to questions (about personal data) from the government?

Corporate Law



TOPICS

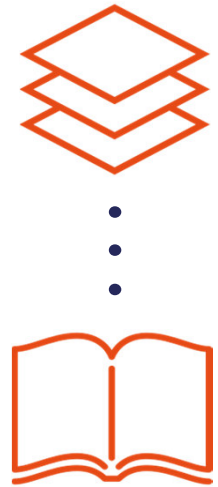
1. Companies Code Reform – Impact NPAs
2. Brexit
3.  Transparency Register



Companies Code Reform – Impact NPAs

General overview

- ❖ New Code of Companies and Associations
- ❖ 20 July 2017: Preliminary draft voted in the Council of Ministers
- ❖ Integration Act of 27 June 2017 concerning NPAs, INPAs and Foundations
- ❖ Entry into force expected during 1st half of 2018



Companies Code Reform – Impact NPAs

New definition

"An association is established by an agreement between two or more persons, called members. It pursues a disinterested purpose in the context of one or more specific activities which it has as a subject. It may not, directly or indirectly, grant or confer any benefit to the founders, members, directors or any other person, except for the disinterested purpose specified in the articles of association. Any operation contrary to this prohibition is null and void."

Companies Code Reform – Impact NPAs

New definition

- ❖ *"Established by two or more persons"*
 - ❖ Plurality remains
 - ❖ Rule abolished at least one member more than the number of directors

- ❖ *"Disinterested purpose"*
 - ❖ Minister of Justice: "generous nature"

- ❖ *"One or more specific activities which it has as a subject"*
 - ❖ No restrictions with respect to the activities anymore

- ❖ *"Indirect benefit"*
 - ❖ Transaction which reduces the assets or increases the liabilities of the NPA; and
 - ❖ for which the NPA receives:
 - ❖ no consideration; or
 - ❖ a consideration that is manifestly too low compared to the value of the performance received

- ❖ No reference to capital

Companies Code Reform – Impact NPAs

New *summa divisio*

❖ "Corporations"

- ❖ Definition Code of Economic Law
- ❖ Catch-all: companies, associations and foundations
- ❖ Can undertake any activity
- ❖ Can generate profits ("*direct or indirect benefits*")

Nature of the activities

NPA

"No industrial or commercial activities"

Profit distribution objective

NPA

"Prohibition to distribute profits (directly or indirectly) to founders/members/ directors or any other person"



Companies Code Reform – Impact NPAs

New *summa divisio* "Profit distribution objective"

❖ Motives of the change

- ❖ Unclear concept "intention to make profit"
- ❖ Difficult to judge intentions
- ❖ Facilitation better monitoring
- ❖ Better match with altruistic character of NPA

❖ Implications NPA

- ❖ No restrictions on (economic) activities
 - ❖ Condition: activities specified in articles of association
- ❖ Prohibition direct and indirect profit distribution
 - ❖ To founders, members, director or any other person
 - ❖ Exception distribution for disinterested purposes specified in articles of association
 - ❖ Restriction excessive payments to directors (indirect distribution)

samusocial
.brussels

Companies Code Reform – Impact NPAs

Consequences NPA qualified as a corporation

Hypothesis: NPA expands its activities in its articles of association and undertakes economic activities

❖ Tax

- ❖ Tax legislation will not change
- ❖ Shift income tax on legal entities to corporate tax possible



❖ Insolvency

- ❖ New insolvency law will enter into force 1 May 2018
- ❖ Shift application "merchant" to "corporation"
- ❖ New insolvency law applicable on NPAs?



Companies Code Reform – Impact NPAs

Entry into force

❖ New NPAs

- ❖ Expected: 1st half of 2018

❖ Existing NPAs

- ❖ Expected: 1 January 2020
- ❖ Possibility to "opt-in"
- ❖ Binding legislation immediately applicable
 - ❖ Conflicting statutory provisions shall be assumed to be unwritten
 - ❖ Complementary legislation shall apply provided that it is not excluded
- ❖ Mandatory to make the necessary amendments to the articles of associations together with the first amendment after the entry into force or at the latest on 1 January 2020
 - ❖ Sanction: liability of the directors
- ❖ As long as NPAs have not adapted their subject in the articles of association, they may only carry out activities within the scope of article 1 of the Act of 27 June 1921



Brexit – general culture

23 June 2016: Brexit referendum

14 July 2016: DExEU creation

29 March 2017: article 50 notice

19 June 2017: start of negotiations

13 July 2017: Great Repeal Bill introduced

8 December 2017: Breakthrough?

14-15 December 2017: Brexit summit

Brexit – general culture

Main issues:

- International trade
- Irish border
- Immigration
- Free circulation
- Regulations
- ... and the final invoice!

Brexit – legal implications

Main legal implications:

- EU law repealed
- Future evolutions
- Impact on exchanges
- Examples: sector regulations, financial services, litigation, IP, tax, customs, employment, corporate...

Brexit – legal implications

Main legal implications for international associations:

- membership
- governance
- activities (monitoring, lobbying, representation, coordination, awareness, setting standards, operations)
- employment and immigration
- EU funding
- competition law

EU Transparency Register

Taking a look at who is lobbying the EU institutions

❖ Proposal for an Interinstitutional Agreement on a **mandatory** Transparency Register

"No registration, no meeting"

- Clearer definition of lobbying
- Exemption for local and regional governments
- Data disclosure requirements
- Effective enforcement
- Stronger management functions

❖ Interinstitutional meeting last Tuesday 12 December 2017:

"EP, Council and Commission will start negotiations early 2018"

EU Transparency Register

Taking a look at who is lobbying the EU institutions

- ❖ FAIB Task Force 2017 - coordinated by A. Douette
 - Task Force meeting 9 June 2017
 - Recommendations sent to Council, Commission and EP
 - Meeting with Martin Kröger (Head of SG Transparency Unit) on 18 Dec 2017

- ❖ FAIB position:
 - FAIB welcomes new initiative (clarity, inclusion of Council, enforcement, etc.)
 - Questions/issues in respect of disclosure requirements
 - Quid moral responsibility of association?

Competition Law



TOPICS

1. The basics of competition law – Anti-competitive agreements
2. Associations of undertakings – Recent cases
3. Meeting of competitors: a few do's and don'ts
4. Exchange of information: basic rules

Give me
one good reason
we shouldn't
promote
teamwork.

The
government
calls it
"antitrust".



1. The basics of competition law – Anti-competitive agreements

- **General rule:** competition law prohibits agreements between competitors that restrict competition, such as:-
 - Price fixing cartels
 - Market sharing – customer / territory allocation agreements
 - Agreement to reduce output or limit capacity
 - Bid rigging in the participation in tenders
 - Exchange of commercially sensitive information
- This prohibition covers "***...decisions by associations of undertakings***"
 - Associations of undertakings can infringe competition law
 - Associations of undertakings can be found liable together with their members
- Competition law applies to undertakings regardless of whether or not they are intended to earn profits.
- Competition rules apply at EU level and at national level.

2. Associations of undertakings - Recent cases

- **8 December 2017: The European Commission** concluded that the **International Skating Union (ISU)** rules imposing severe penalties on athletes participating in speed skating competitions that are not authorised by the ISU were in breach of EU competition law (Article 101 TFEU).
 - The ISU must change these rules.
- **14 November 2017: The EU Court of Justice** considered that cooperation between different recognised producer organisations (POs) and their associations (APOs) could fall within the scope of Article 101(1) TFEU (Case C-671/15). The same applies in the context of cooperation of associations not officially recognised as POs or APOs or cooperation which goes beyond what is strictly necessary to achieve the objectives of a PO or APO.
 - The agricultural exception is not applicable to the French endives cartel.
- **18 October 2017: The French Competition Authority** found that three flooring manufacturers and a trade association engaged in cartel activities in the PVC and linoleum floor sector.
 - Fine for the association: EUR 300,000 (out of a total of EUR 302 million).
- **20 January 2017: The Irish competition authority** concluded its investigation into an association of landlords which had issued a statement about proposed Government legislation introducing rent controls.
 - The association had to retract the press statement and to introduce a competition law compliance training programme to its members.

3. Meeting of competitors: a few do's and don'ts

- Before the meeting:
 - Request an agenda ahead of the meeting – Do not attend if the meeting has not clear legal purpose or if you do not receive an agenda
 - If any agenda item is of concern, speak to the Legal Department
- At the meeting:
 - Start of the meeting: have a brief reminder of the key competition rules
 - Make sure someone takes minutes
 - Make sure only the topics on the agenda are discussed
 - Object to any inappropriate statement /discussion **and** make sure your objection is recorded in the minutes - If the discussions persists, leave the meeting and have your departure noted in the minutes

4. Exchange of Information: Basic rules

- The exchange of **competitively sensitive** information between competitors is illegal
 - The exchange of such information typically weakens competition. For instance, increasing prices is easier if you know that your competitors are planning to do the same.

Permitted:

- Information that is truly public (e.g. reported in a newspaper)
- General market trends
- Statements that are too vague to disclose any sensitive information about the competitor(s)

Not permitted:

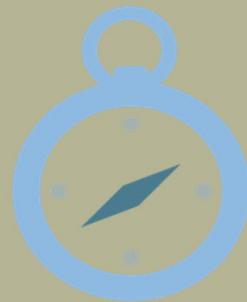
- Past, present or future prices or pricing policies/strategies
- Terms of sales
- The identity of the customers and distributors to whom the competitor is selling, and on what terms
- Distribution strategy in a particular country
- Available production capacity



IP

TOPICS

1. Recoverable costs (Antwerp, 8 May 2017)
2. Design rights: novelty (CJEU, 21 September 2017, C-361/15 P and C-405/15 P)
3. Reprography: VAT exempted (CJEU, 18 January 2017, C-37/16)
4. Trademark: Wendy's (Rb. Zeeland – West Brabant, 15 February 2017)
5. Data ownership



1. Recoverable costs

Antwerp, 8 May 2017

I. Costs for assistance by a lawyer

Belgian flat fees remain applicable, until further notice

- IP Enforcement Directive has no horizontal effect: Telenet cannot rely on art. 14 of the Directive to deviate from the flat rates
- Belgian judge cannot rule contra legem
- Distinction between valuable and non-valuable disputes remains in force

II. Costs for technical assistance

- No caps: costs for technical assistance are not subject to the caps in the Royal Decree
- On 1 December 2017, the Council of Ministers in Belgium has approved a preliminary draft of law on status of patent attorneys, aiming to instore:
 - Institute for patent attorneys
 - own deontology, professional secrecy
 - representation of clients in court (?)



Royal Decree of 26 October 2007 – recoverable fees

Value of the proceedings	Ceiling for recoverable costs		
	Basic amount	Min. amount	Max. amount
Up and to including 250 €	180 €	90 €	360 €
250 – 750 €	240 €	150 €	600 €
750 – 2.500 €	480 €	240 €	1.200 €
2.500 – 5.000 €	780 €	450 €	1.800 €
5.000 – 10.000 €	1.080 €	600 €	2.400 €
10.000 – 20.000 €	1.320 €	750 €	3.000 €
20.000 – 40.000 €	2.400 €	1.200 €	4.800 €
40.000 – 60.000 €	3.000 €	1.200 €	6.000 €
60.000 – 100.000 €	3.600 €	1.200 €	7.200 €
100.000 – 250.000 €	6.000 €	1.200 €	12.000 €
250.000 – 500.000 €	8.400 €	1.200 €	16.800 €
500.000 – 1.000.000 €	12.000 €	1.200 €	24.000 €
More than 1.000.000 €	18.000 €	1.200 €	36.000 €
Not valuable in money	1.440 €	90 €	12.000 €

2. Design rights

CJEU, 21 September 2017, ESS, C-361/15 P and C-405/15 P

Novelty requirement of designs

Art. 7 reg. 6/2002:

For the purpose of applying Articles 5 and 6, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date referred to in Articles 5(1)(a) and 6(1)(a) or in Articles 5(1)(b) and 6(1)(b), as the case may be, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.'

- **a design is considered new if no identical design has been made available to the public**
- **does not mean that the novelty of a design is dependent on the products in which it is capable of being incorporated or to which it is capable of being applied.**
- **If design is publicly available, even in different sector: novelty destroying**
- **Specialty criterion disappears**

3. Copyright

CJEU, 18 January 2017, C-37/16

Reprography levies : not subjected to VAT?

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as meaning that holders of reproduction rights do not make a supply of services, within the meaning of that directive, to producers and importers of blank media and of recording and reproduction devices on whom organisations collectively managing copyright and related rights levy on behalf of those right

holders, but in their own name, fees in respect of the sale of those devices and media.

→ **compensation, no service**

→ **No VAT due**

4. Trademarks

Rb. Zeeland – West Brabant, 15 February 2017

Snackbar in Goes (The Netherlands) called "Wendy's"

- Registered as Benelux TM
 - The Wendy's Cie (USA) : EUTM applications
 - Opposition by owner of the Benelux TM
 - US Cie invoked lapse of trademark due to insufficient use
 - Lapse for cl. 29 & 30
 - No lapse for cl. 43 : one snackbar is enough to prove use
- **Impossible for US Cie to register EUTM**
- Would not have been possible with a mere trade name
 - protection is locally limited



5. Data Issues

The EU data-driven strategy

- July 2014: Communication – "Towards a thriving data-driven economy"
- May 2015: Digital Single Market Strategy (EU Commission)
- January 2017: "Building a European Data Economy" package
 - Communication "Building a European Data Economy": Suggests that Europe is not tapping into the potential of data for business, research and innovation purposes
 - Staff Working Document on the free flow of data and emerging issues of the European data economy
 - Public consultation on Building the European data economy
- September 2017: Proposal for a Regulation on a framework for the free flow of non-personal data in the EU

"Data Ownership"

- No civil law ownership over intangible assets such as data
- Complex EU Legal Framework not fit for purpose
 - IP rights
 - Competition law
 - Consumer rights
 - Privacy
 - Data sharing obligations (industry-drive)
- Contractual arrangements not sufficient:
 - Multitude of actors, data sources, analyses, etc.
 - Complexity of data flows
 - Unenforceability vis-à-vis 3rd parties
- Need for a new "data ownership" right?
 - See Bird & Bird White Paper and Supplementary Paper with a proposal of a non-exclusive, flexible and extensible "ownership" right in data(sets)



EU GDPR

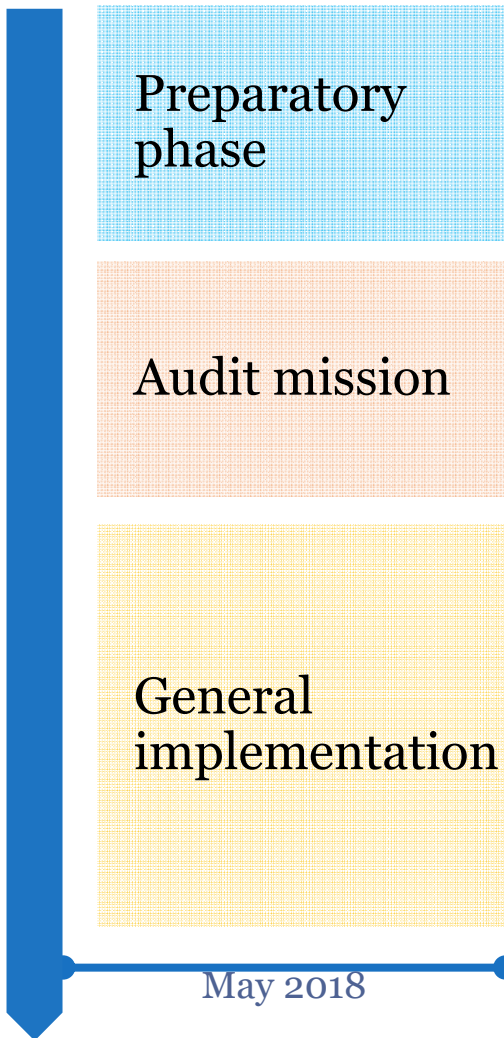


Some key elements of the GDPR

<p>General Overview</p>	<ul style="list-style-type: none"> • New European legislation ("GDPR") directly applicable as from <u>25 May 2018</u> • Broad territorial scope • Strengthening of the obligations concerning the processing of personal data 	<p>Reinforcement of individuals' rights</p>	<ul style="list-style-type: none"> • Development of existing rights and creation of new rights for individuals • Strengthening of information requirements • Your organisation will need to be able to respond to individuals' requests for access to their personal data • Your organisation will have to erase processed data in certain circumstances • Your organisation will have to implement measures to respond to individuals exercising their rights
<p>Scope of application Sanctions</p>	<ul style="list-style-type: none"> • All GDPR obligations will apply to your organisation • Significant strengthening of sanctions 	<p>Security obligations Breach notifications</p>	<ul style="list-style-type: none"> • Your organisation will have to implement technical and organisational measures to ensure the security of personal data • Your organisation will have to notify data breaches within short deadlines, notably to the supervisory authority
<p>Clarification strengthening of core privacy principles</p>	<ul style="list-style-type: none"> • Strengthening of core privacy principles • Strengthened consent requirements • Your organisation will have to be able to demonstrate its compliance with the GDPR 	<p>How to get ready for the GDPR?</p>	<ul style="list-style-type: none"> • The compliance programme requires deploying adequate resources • It is recommended to initiate the compliance process as soon as possible in order to be sufficiently ready by 25 May 2018 and avoid sanctions • A compliance programme usually takes place in several phases: <ol style="list-style-type: none"> 1. Awareness 2. Inventory and assessment of personal data processing 3. Identification of remedial actions 4. Prioritisation of remedial actions and implementation of measures 5. Control of compliance
<p>Risk analysis Accountability principle</p>	<p>Your organisation will have to:</p> <ul style="list-style-type: none"> • assess risks for the rights and freedoms of individuals • implement measures that enable demonstrating that it anticipated its compliance with the GDPR • keep updated internal records of all personal data processing activities • perform Privacy Impact Assessments in certain cases • appoint an independent Data Protection Officer (subject to more in depth analysis) • identify all sub-contractors and situations where it acts as sub-contractor and review the contractual relationships 		

Setting priorities

Methodology



- Kick-off meeting
- Preliminary awareness training
- Preparatory task to inventory

- Inventory of data processing and data mapping
 - Questionnaires, interviews, documents analysis
- Gap analysis, risks mapping and audit report
 - Identification and prioritisation of remedial actions

- Drafting remedial documents (register, policies, standard clauses, notices, etc.)
- Appointment of a DPO
- Security and data breach readiness package
- Legal review of new IT and disruptive products and services
- Data Protection Impact Assessment (where needed)
- International data transfers definition and formalisation
- Notification with authorities (if needed)
- Training of employees involved in processing of personal data

The screenshot shows a detailed Gantt chart for GDPR compliance tasks. The tasks are organized into four phases:

- Phase A: Preparatory phase**
 - Task A.1: Kick-off meeting
 - Task A.2: Preliminary awareness training
 - Task A.3: Preparatory task to inventory
 - Task A.3.1: Creation of Primary Data Form
 - Task A.3.2: Background documentation and basic questionnaire to Primary Task Form
 - Task A.3.3: Kick-off meeting with Primary Task Form
 - Task A.3.4: Response to basic questionnaire by Primary Task Form
 - Task A.3.5: Preliminary analysis of personal data processing based on initial response by Primary Task Form
 - Task A.3.6: Interim report to management on the compliance programme progress
- Phase B: Audit mission**
 - Task B.1: Inventory of data processing and data mapping
 - Task B.1.1: Background documentation and questionnaire forms to interviewees (see business line)
 - Task B.1.2: Interviews
 - Task B.1.3: Analysis of responses to questionnaires
 - Task B.1.4: Planning risk assessment (if needed)
 - Task B.1.5: Data mapping report
 - Task B.1.6: Joint steering meeting
 - Task B.1.7: Interim report to management on the compliance programme progress
 - Task B.2: Gap analysis, risks mapping and audit report
 - Task B.2.1: Audit report and data mapping
 - Task B.2.2: Identification of remedial actions to be taken
 - Task B.2.3: Prioritisation and action based on risks
 - Task B.2.4: Setting up a joint report on conformity to the GDPR (to implement remedial actions)
 - Task B.2.5: Joint steering meeting
- Phase C: General implementation**
 - Task C.1: Drafting remedial documents (register, policies, standard clauses, notices, etc.)
 - Task C.2: Appointment of a DPO
 - Task C.3: Security and data breach readiness package
 - Task C.4: Legal review of new IT and disruptive products and services
 - Task C.5: International data transfers definition and formalisation
 - Task C.6: Notification with authorities (if needed)
 - Task C.7: Training of employees involved in processing of personal data
 - Task C.8: Final de-briefing meeting
 - Task C.9: Interim report to management on the compliance programme progress
- Phase D: Control of compliance**
 - Task D.1: Compliance maintenance contract
 - Task D.2: Compliance audit

TAX

Brent Springael

Tel : +32 (0)2 282 60 42

brent.springael@twobirds.com



CORPORATE

Paul Hermant

Tel : +32 (0)2 282 60 35

paul.hermant@twobirds.com



EMPLOYMENT

Christophe Delmarcelle

Tel : +32 (0)2 282 60 86

christophe.delmarcelle@twobirds.com



COMPETITION

Efthymios Bourzalas

Tel : +32 (0)2 282 60 76

makis@twobirds.com



IP

Bruno Vandermeulen

Tel : +32 (0)2 282 60 41

bruno.vandermeulen@twobirds.com



GDPR

Benoit Van Asbroeck

Tel : +32 (0)2 282 60 67

benoit.van.asbroeck@twobirds.com



Thank you & Bird & Bird