

Bird & Bird



Year in Review 2022

Lunch Debate with FAIB

15 December 2022



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Employment law

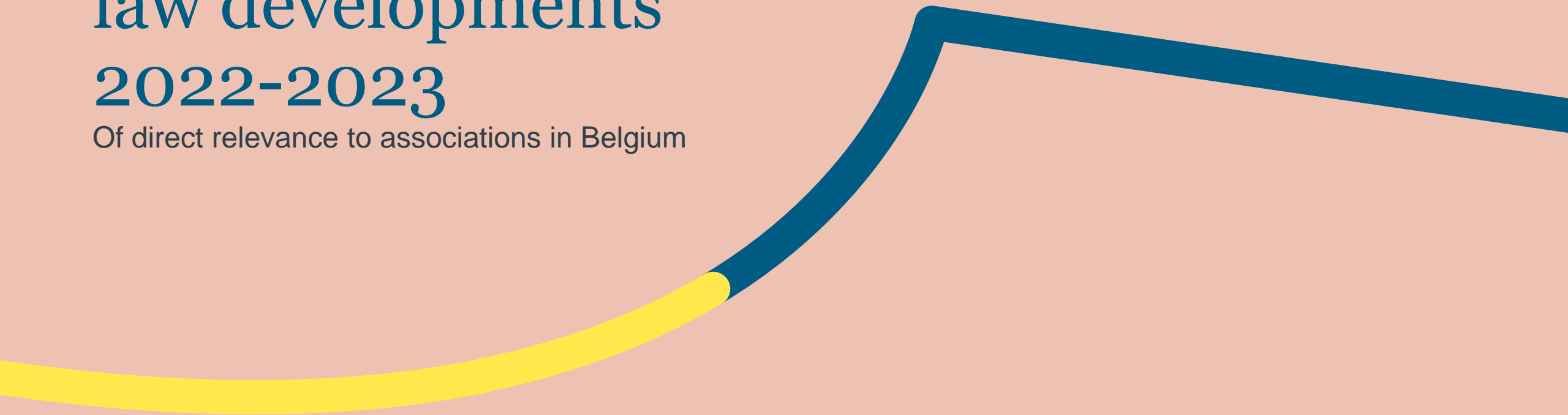
Recent developments

15 December 2022

01

Belgian employment law developments 2022-2023

Of direct relevance to associations in Belgium



1.1. The Labour deal

Underlying principles of the labour deal

- The '**labour deal 2022**' is the result of a political compromise reached in June 2022, with the stated objective to improve the employability rate in Belgium from 70% to 80%. To achieve this, it purports to
 - enhance the work-life balance for employees,
 - guarantee more substantive vocational training rights,
 - attempt to reinvigorate the labour market, and
 - respond to the challenges of the digital labour market (platform work)
- The 'labour deal' is now reflected in an **Act of 7 October 2022 with 'various labour measures'**.

Employability
enhancing
measures

Enhance work-life
balance

Reinvigorate
employment
market

Answer to
challenges of
digital labour
market

Working time
flexibility

Active dismissal
management

1.2. EU TPWC Directive 2019/1152

Act of 29 September 2022 and CBA n° 161 on right to request a form of work with more predictable and secure working conditions

- **right to information** in individual employment contracts, incl upon secondment abroad
- **minimum requirements** of employment conditions:
 - Prohibition of exclusivity (so multiple jobs always allowed)
 - Minimum predictability of working conditions
- **Vocational training to perform job** must be free of charge
- **Individual right** to request change of work + protection against dismissal

More transparent and
predictable working
conditions

CBA:

- Right to request more predictable and secure working conditions
- Protection against adverse treatment

1.3. Work Life Balance Directive 2019/1158

CBA n° 162 on right to request a flexible working arrangement

- Belgian implementation of the work-life balance Directive 2019/1158:
 - introduction of paternity leave (already in BE), parental leave (already in BE), time off for 'force majeure' (already in BE), flexible working arrangements and carers leave
 - CBA n° 162 gives effect to the latter two, incl. rules on enforcement and protection
- Modification of certain aspects regarding the reintegration of employees on long-term sick leave

Work-life balance

Gender equality for labour market opportunities and treatment at work

Employability enhancing measures

Transparency at the workplace via whistleblowing channels

1.4. And also ...

Long term sickness and whistleblowers

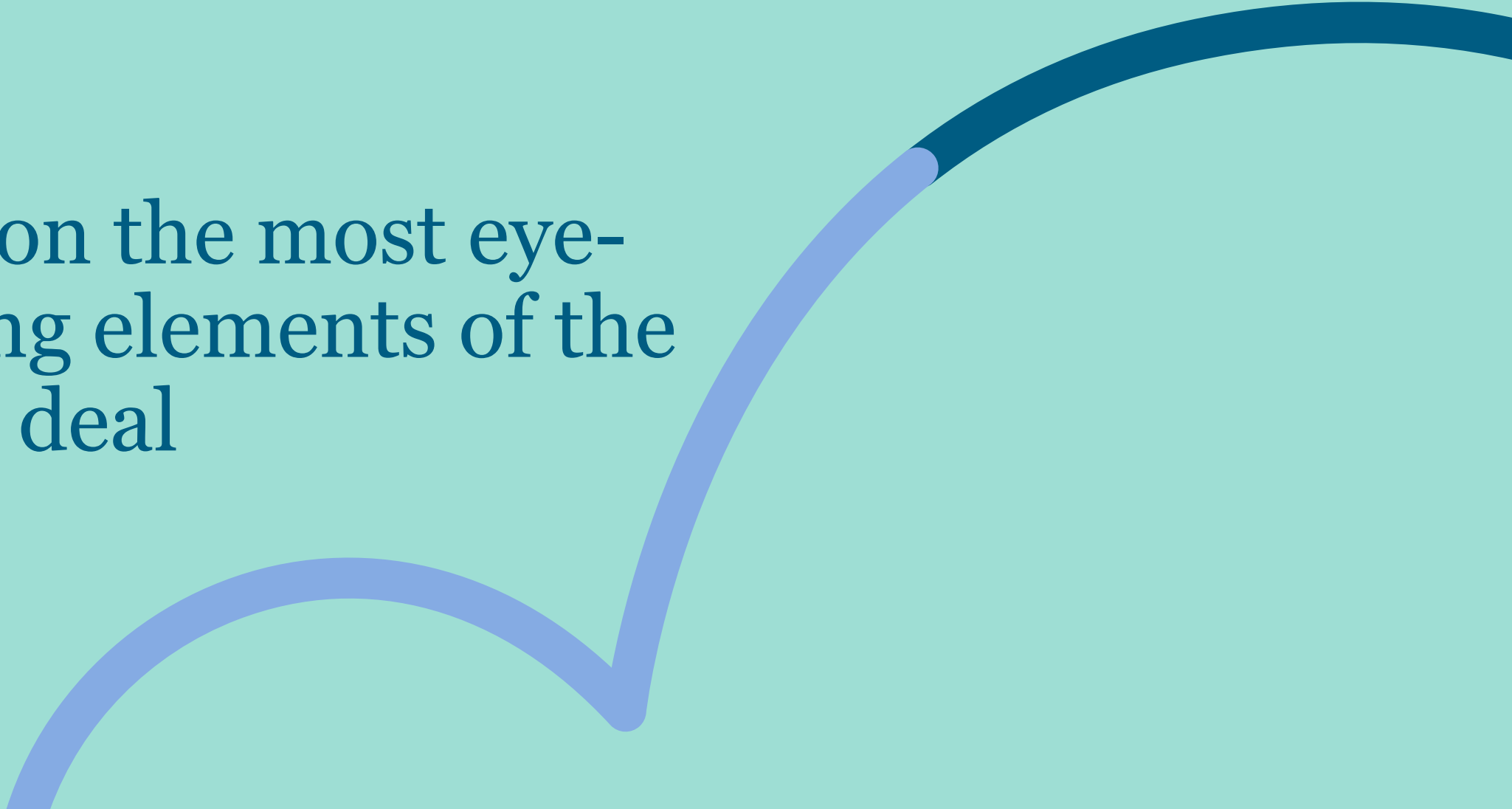
- Royal Decree of 11 September 2022 amending the codex on well-being at work as regards the reintegration process for incapacitated workers)
 - new deadlines
 - limits the number of decisions the prevention advisor-employee doctor can take.
 - the termination of the employment contract on grounds of medical force majeure is separated from the reintegration procedure
- Act of 30 October 2022 regarding various provisions on incapacity for work
 - Employee is not obliged to issue medical certificate for the 1st day of incapacity for work max. 3x/calendar year;
 - Revised procedure regarding determination of end of employment contract due to force majeure in case of permanent disability

On 24 November 2022 the Belgian Chamber of Representatives approved the draft act implementing the **Whistleblowing Directive 2019/1937**.

The legislation will enter into force two months after its publication in the Belgian Official Gazette (expected in January 2022)

02

Focus on the most eye-catching elements of the labour deal



2.1. The 4-day working week

- Possibility for employees to request to perform the same working time in 4 days per week (instead of 5 or 6 days)
- Specific terms and conditions for implementation
- Two major points that limit its practical impact
 - (1) Some employees (arguably) excluded:
 - Sales representatives
 - Employees with a management function or position of trust
 - Regular teleworkers
 - Part-time employees
 - (2) if the social dialogue was unsuccessful (e.g. employer refuses to implement the 4-day working week because of operational reasons) no 4-day working week can be implemented.

2.2. Variable working week

- The employee may submit a written request to work more during one week and less during the next one while respecting the weekly working hours over a cycle of 2 consecutive weeks.
- The daily maximum working hours can be increased to 9.5 hours and weekly maximum working hours to 45 for "peak weeks"
- Exception during summer months + in case of unforeseen events for the employee
- Following employees are arguably out of scope
 - sales reps';
 - management and trust roles; and
 - Structural teleworkers

2.3. Variable weekly work schedule

The notification deadline for part-time variable work schedules is currently 5 working days, a sector CBA declared universally binding could reduce it to at least 1 working day. The labour deal increases those notification deadlines to respectively 7 and (subject to sectoral CBAs) 3 working days.

2.4. Training rights

- There are two types of training rights:
 - (1) the annual training plan
 - Each company with more than 19 employees must establish an annual vocational training plan which must a.o. list all formal (external professional training, outside of the premises) and informal (on site, on the job training) vocational training offered.
 - ➔ Consult with works council or union delegation
 - (2) individual training entitlement
 - In each company with more than 9 employees, there is an individual training entitlement for each employee :
 - these employees will be entitled to 5 full days of training/year, from 2024 onwards and 4 in 2023,
 - these days will be prorated for part-time employees and in case of new hires during the year
- Critical comments
 - alignment of these new training rights with other training obligations is very unclear
 - the burden (cost, time, admin etc) lies with business community

2.5. Right to disconnect

By 1 April 2023, employers with at least 20 employees must enter into

- a company CBA (or amend their work regulations) on the right to deconnect.

This includes

- the modalities of the right not to be reachable outside the hours of work,
- and training and awareness-raising on the smart use of digital tools.

The applicable joint industry committee can also conclude a CBA on this.

01

Tax procedure: extension of deadlines



Extension of assessment periods

Income tax and VAT

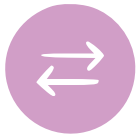
- Law of November 20, 2022 - Belgian State Gazette of November 30, 2022
- Substantial extensions of assessment/investigation periods
- Tax administration may assess tax/investigate taxpayer during a longer time



Income tax



- Taxpayers subject to Legal Entities Tax (tax on NPO's – "Rechtspersonenbelasting" – "Impôt des personnes morales")



- Extension not very spectacular ...



- Late tax return or no tax return : assessment/investigation period extended from 3 to 4 years



- Entry into force : assessment year (tax year) 2023

Income tax

Example

Tax return to be filed in 2023 for the income received during year 2022:

- Tax return filed in time:
 - subject to audit/adjustment until end of 2025 (no change)
- No tax return or late tax return:
 - subject to audit/adjustment until end of 2026



VAT

- Extension similar to income tax
- Here: extension of statute of limitation ("*verjaring*" – "*prescription*")
- **Late** VAT return or **no** VAT return : statute of limitation extended from 3 to 4 years
- Entry into force : taxes becoming due as of 1.1.2023

VAT

Example

VAT return for taxes becoming due as of 1.1.2023 :

Filed in time

- VAT time-barred 3 years after the year during which VATable event happened: 2025 (no change)

No VAT return or late VAT return VAT :

- VAT time-barred 4 years after the year during which VATable event happened: 2026

Conservation of documents

- Extended from 7 to 10 years
- Entry into force:
 - Income tax: assessment year 2023
 - VAT: documents re VAT becoming payable as of 1.1.2023



Extension of protest deadline



- Deadline is doubled
- Now : 6 months (as from 3rd working day following expedition of assessment notice)
- As of 1.1.2023 : one year (as from 3rd working day following expedition of assessment notice)

Impatriate regime



Impatriate regime

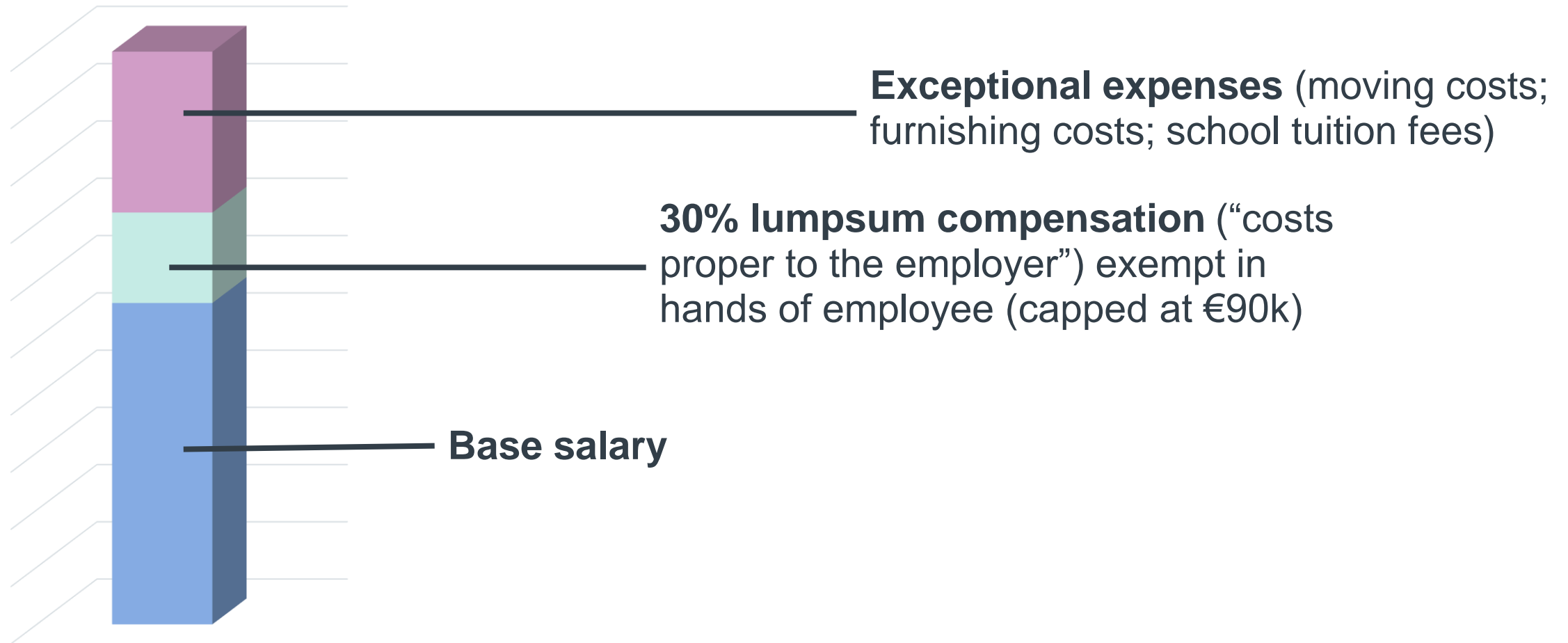
Extension to non-profit associations

- As of 1 January 2022 – “special tax regime for impatriate taxpayers and researchers” recruited abroad – now also by non-profit associations ! – to temporarily come to work in Belgium

(Omnibus Law of 27 December 2021)

Impatriate regime

What does it entail?



Impatriate regime

Who is eligible?



EXECUTIVES



RESEARCHERS



- **Recruitment from outside** Belgium (e.g. by NPA); or
- **Secondment** (e.g. by a foreign NPA)



In 5 years prior to recruitment – **no link with Belgium**: (i) no Belgian tax residence; (ii) not lived within 150km from Belgian border; (iii) not subject to Belgian non-resident income tax



Formal **approval** from the Belgian Tax Administration



Gross annual **salary of at least €75.000**, including benefits in kind and bonuses (but excluding severance pay, compensation for temporary loss of earnings or the 30% lumpsum amount)



R&D

80% of working time must be devoted to R&D activities of a scientific, fundamental, industrial or technical nature carried out in a **laboratory** or company which run one or more R&D programmes



Qualifying (doctor/master) diploma or 10 year relevant professional experience

Impatriate regime

Residence certificate

- Under the general residence principles, executives and researchers will in most cases qualify as Belgian residents for Belgian tax purposes, which implies taxation of the person's worldwide income
- Should the executive or researcher nevertheless claim to qualify as a non-resident for Belgian tax purposes (e.g. because the centre of his vital interests still lay in his home country), he will have to demonstrate his foreign residence by annually filing a residence certificate issued by the tax administration of his home country

Impatriate regime

How to apply for / maintain this regime?



Electronic application (employer) within 3 months of starting employment + certificate signed “for approval” by employee



Decision in writing (to employer and employee) within 3 months



Annual nominative list containing the details of the employees who benefited from the impatriate regime during the year



Maximum term is 5 years (possibility for extension for 3 years)



Change of employer does not end impatriate status

Impatriate regime

Grandfathering?



Former “expat” rulings remain valid until 31 December 2024



Roll-over into “new” regime is no longer possible (expats that were less than 5 years in Belgium could request a roll-over until the end of September 2022)

Looking into ...

2023



**Copyright
Remuneration
Reform**



**VAT
Deduction
Right**



BEPS 2.0
**Digital Services
Tax &
Minimum
Tax for MNE**

Copyright remuneration reform



Copyright remuneration reform

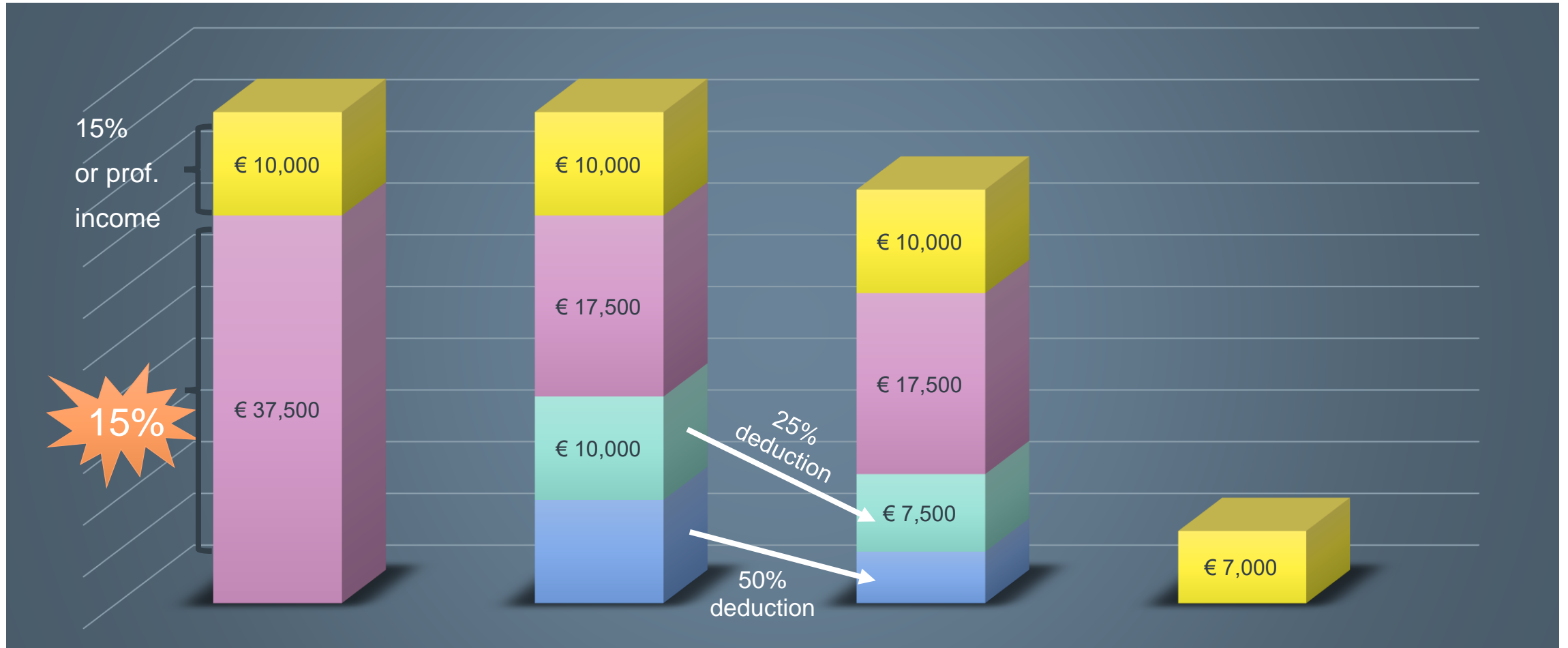
Limitation in scope & amount

- As of 1 January 2023 – Favourable tax regime for the remuneration resulting from the transfer of copyrights is intended to be limited in scope (*i.e.* exclusion of copyright on software and databases) and with an additional limitation on the ‘safe harbour’ amount

(Draft Omnibus Law of December 2022)

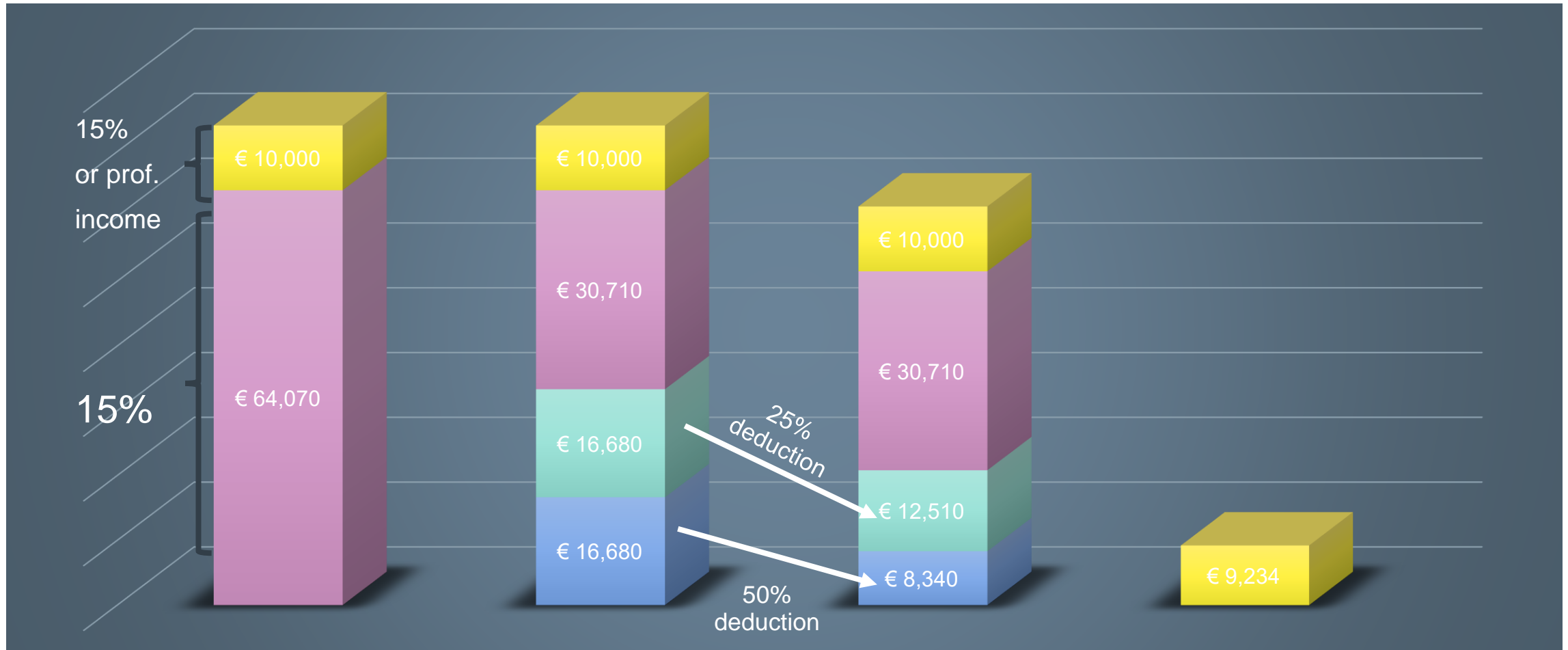
Copyright remuneration reform

Current regime



Copyright remuneration reform

Current regime (indexed amounts FY 2022)



Copyright remuneration reform

Current regime

- 15% on income from copyright, neighbouring rights and statutory licences:
 - Absolute threshold: tax regime guaranteed up to EUR 37.500 (to be indexed)
 - Above this threshold: possibly requalified into professional income
- Lumpsum deductions:
 - 50% on first tranche of EUR 10.000 (to be indexed)
 - 25% on second tranche of EUR 10.000
- **Widely applied in many areas** (medicine, IT, marketing, architecture, ...) and has become a “standard” component in salary packages

Copyright remuneration reform

New regime – adjusted definition

- Global reference to copyright in (entire) Book XI of the Code of Economic Law (including software & databases) replaced by reference to Title 5 (copyright ‘*sensu strictu*’) only
- Additional conditions (inter alia):
 - ✓ Intention of exploitation by the recipient
 - ✓ ‘author’ must hold a “work of art certificate” or
 - ✓ ‘author’ must assign his rights in view of “communication to the public”, “public performance” or “reproduction”



Copyright remuneration reform

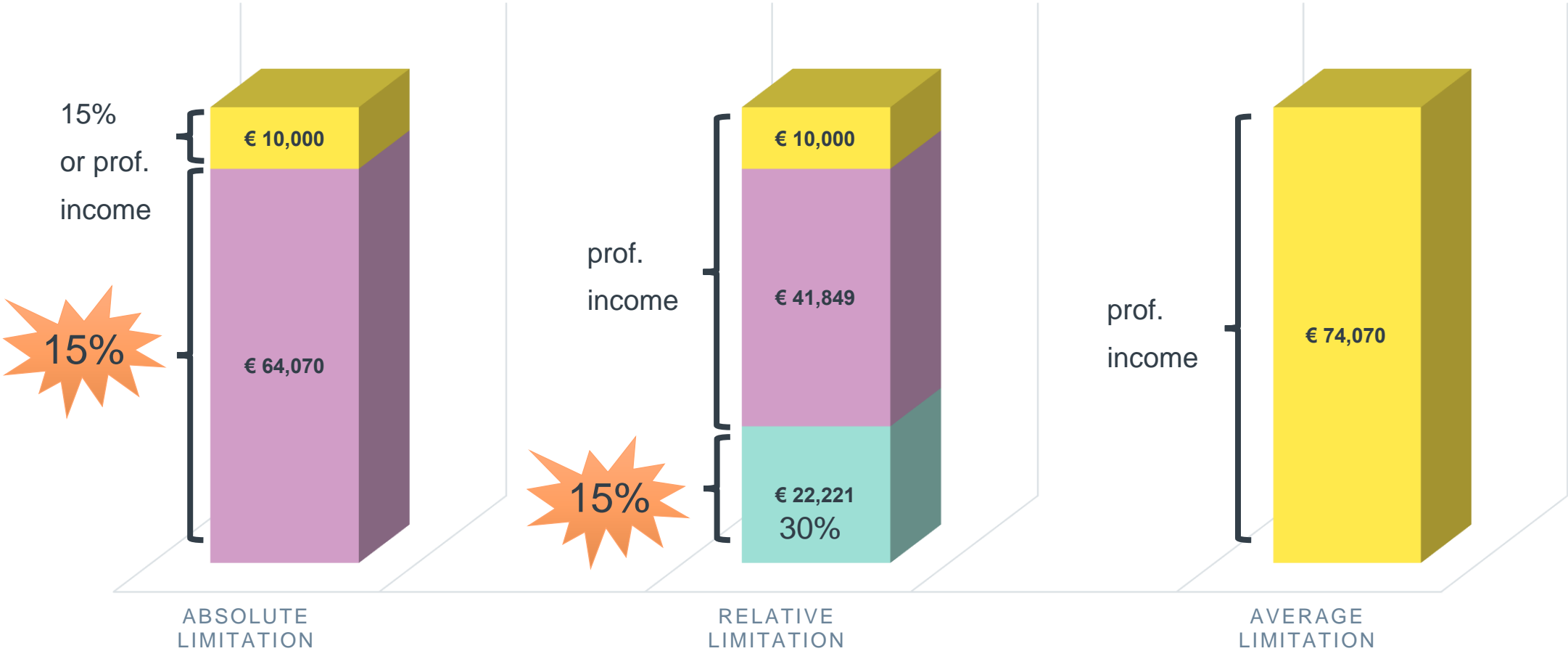
New regime – adjusted thresholds

- Absolute limitation: 37.500€ (unchanged)
- Relative limitation: 30% (if part of a service)
- Average limitation: average income from the previous 4 taxable periods does not exceed the maximum of EUR 37.500 (non-indexed)

=> in case of professional use (only), the excessive part above these thresholds will be requalified in professional income

Copyright remuneration reform

Adjusted thresholds illustrated (indexed amounts FY 2022)



Copyright remuneration reform

Grandfathering

- (new) 30%-ratio will only apply as income year 2025 (50% for the income year 2023, 40% for the income year 2024)
- Taxpayers who can no longer apply the reduced rate under the new rules can still apply the old rules until 31 December 2023, BUT:
 - ✓ Absolute limitation is reduced to EUR 18.750 (to be indexed)
 - ✓ Lumpsum deduction is computed on the first tranches of EUR 5.000 (instead of EUR 10.000) (to be indexed)

Copyright remuneration reform

New social security rules



- Income that qualifies as remuneration for the transfer of copyrights will not be considered as salary for social security contribution purposes
- Conditions:
 - ✓ Total amount of remunerations in a calendar year may **not exceed 30%** of the aggregate of: (i) the salary subject to social security and (ii) the remuneration for the transfer of the copyrights
 - ✓ Both salary and copyright remuneration are determined **at arm's length**
 - ✓ The copyright remuneration is **declared to the Social Security Service** in the declaration for the quarter in which the remuneration has been paid

VAT Deduction Right



VAT Deduction Right

“Actual use” method notification

- As of 1 January 2023 – mixed or partial VAT taxpayers must notify the VAT Administration in advance about the application of the “actual use”-method to identify the VAT deductible amounts

(Law 27 December 2021 – Royal Decree 22 October 2022)

VAT Deduction Right

“Actual use” vs “general ratio” method



Actual use:

- Lobby expenses = non-deductible
- Seminar expenses = deductible

=> VAT recovery = 20

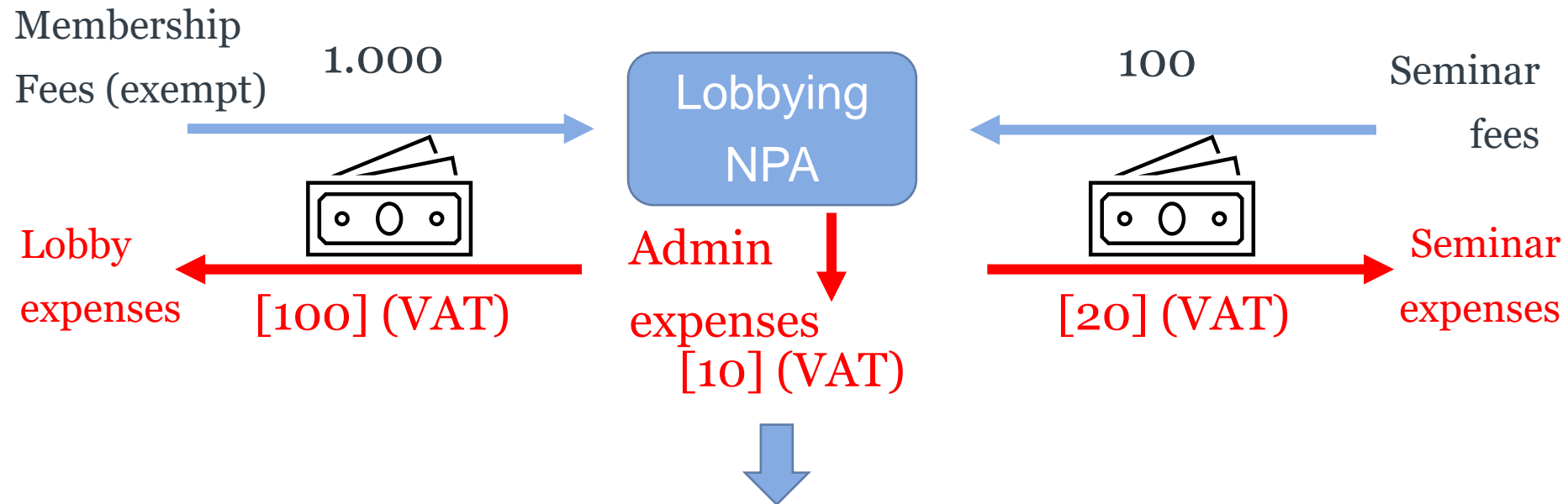
General Ratio:

- $(1.000 / 1.100) =$ non-deductible
- $(100 / 1.100) =$ deductible

=> VAT recovery = $120 * (100 / 1.100) = 10,8$

VAT Deduction Right

“Special ratio” for mixed expenses



Actual use:

- Lobby expenses = non-deductible
 - Seminar expenses = deductible
- => VAT recovery = 20

Special ratio:

Division on the basis of most appropriate factor (turn-over, personnel, time-investment, ...)

General Ratio:

- $(1.000 / 1.100) =$ non-deductible
 - $(100 / 1.100) =$ deductible
- => VAT recovery = $120 * (100 / 1.100) = \mathbf{10,8}$

VAT Deduction Right

“Actual use” method - Practicalities



- **Electronic notification** (via form E604A or E604B) before the end of (i) the first tax reporting period of a given calendar year
 - i.e. before 31 January or 31 March for monthly or quarterly reporters) or (ii) the first tax reporting period at the start or change of activity
 - Exception for current users of the “actual use”-method, who have time until 31 June 2023
 - timely notification allows its use as of 1 January or as of the start/change of activity (late notifications only apply as of 1 January the next year), *i.e.* no longer retroactive effect
- Notification must include detailed information, including:
 - General ratio used in prior calendar year;
 - Percentages of VAT to be allocated to the various activities (exempt, taxable, mixed);
 - Special ratios
- VAT administration will only send a **confirmation of receipt** but can audit and refuse the actual use method until 31 December of the year following the year in which the use has been notified (also with retroactive effect!)

BEPS 2.0 – Major International Tax Reform



BEPS 2.0 – Major International Tax Reform

Background

- Following the financial crisis in 2009, the G20 countries, together with the OECD, tackled tax base erosion and profit shifting (BEPS). This resulted in 15 BEPS reports (published in 2015) setting out action points and minimum standards to tackle cross-border taxation
- BEPS has led to many changes in international tax rules to limit profit shifting, however, the rapid and extensive digital transformation created additional challenges. Many countries started imposing unilateral tax measures, such as digital service taxes on companies operating in a jurisdiction through online platforms, online sales or through targeted online advertisements
- In response, the OECD has worked on a new BEPS plan, “BEPS 2.0”, with the aim of consolidating unilateral tax regimes and creating a general consensus among the various BEPS participants to avoid double taxation or inconsistent tax treatment. Another goal is to ensure that multinational companies pay their fair share of taxes, regardless of where they operate. These goals are reflected in two “pillars”



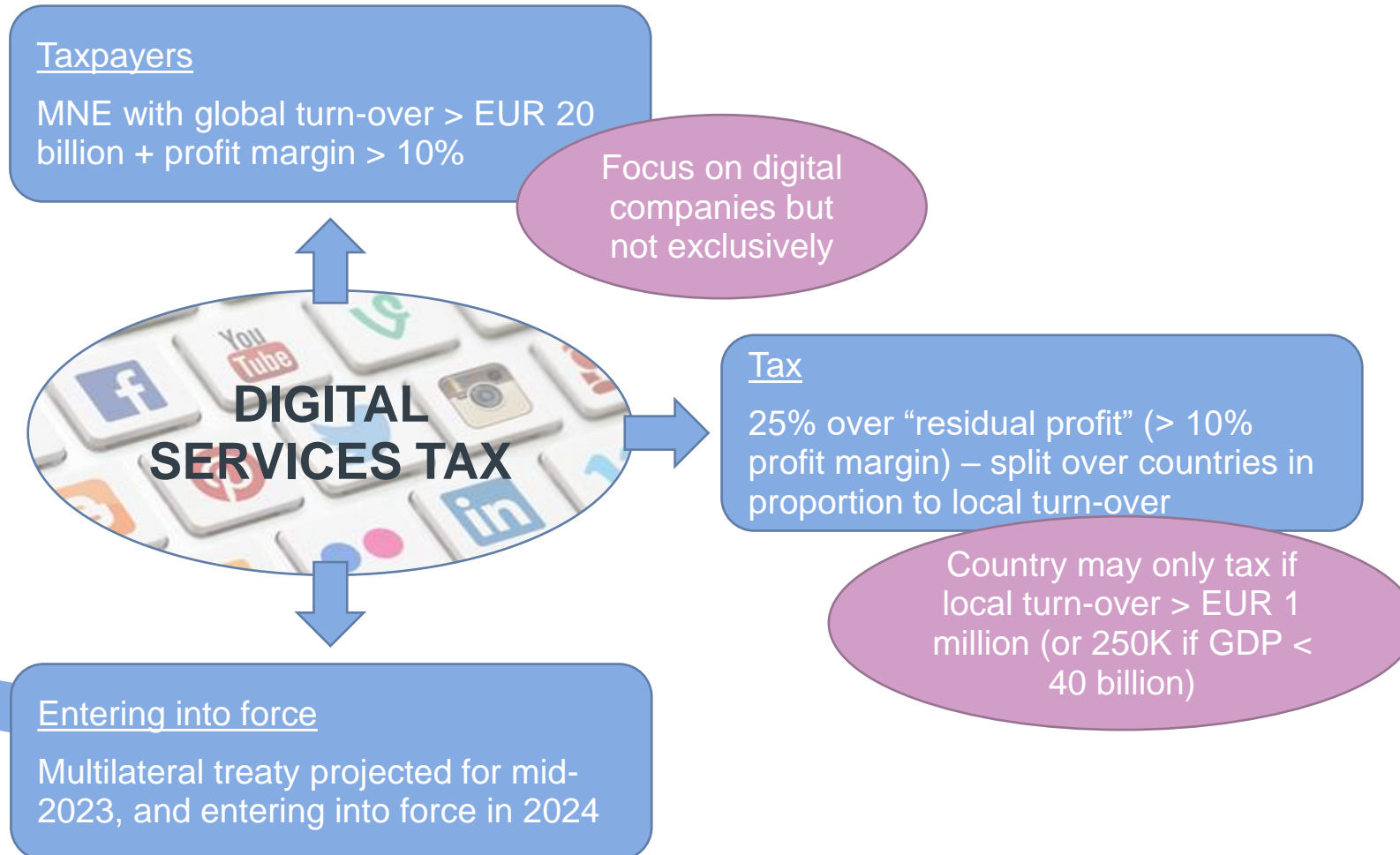
BEPS 2.0 : Major Int'l Tax Reform

Pillar 1 – Digital Services Tax

Pillar 1 introduces a new tax methodology targeting digitised businesses and consumer organisations that trade or communicate with customers through a digital platform. Under this tax methodology, income generated by consumers or through consumer data from a particular country is subject to tax, regardless of whether the organisation has a physical presence in that jurisdiction. An example is companies such as Google and Facebook that collect their users' personal data to then start selling it to companies that use it to personalise online ads.

BEPS 2.0 – Major International Tax Reform

Pillar 1 – Digital Services Tax





BEPS 2.0 : Major Int'l Tax Reform

Pillar 2 – MNE Global Minimum Tax

The proposed rules are designed to ensure that multinationals with a turnover of €750 million must pay a minimum of 15 per cent effective tax in each jurisdiction in which they trade. Countries may apply additional tax rates when a multinational is taxed below the minimum threshold in their jurisdiction.

BEPS 2.0 – Major International Tax Reform

Pillar 2 – MNE Global Minimum Tax

Taxpayers
MNE with global turn-over > EUR 750 million

- Exclusions for:
- Government agencies, non-profit organisations, ...
 - Countries where MNE has turnover < 10 million and profit of < 1 million
 - MNE in international expansion (< 50M tangible assets & present in max 5 countries)



Tax
15% which can be levied via various mechanisms *

- Withholding tax on intragroup payments to lowly taxed recipient (qualified domestic top-up tax)
- Taxation of parent company when payments stem from lowly taxed group entity (income inclusion rule)
- Non-deductibility or additional tax on payments to parent company that should have levied a minimum tax (undertaxed payment rule)

Entering into force
EU Council reached an agreement on 13 December 2022 (Directive must be implemented by end of 2023)

Bird & Bird

Recent developments in competition law of relevance for trade associations

Anne Federle, Partner Competition & EU Law, Bird & Bird LLP

15 December 2022

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1

Trade associations continue to be on the radar of competition authorities

A few recent cases



Belgium



Royale Fédération
Colombophile Belge

Koninklijke Belgische
Duivenliefhebbersbond

- Several suppliers of electronic timing systems (ETS) used during pigeon races file **complaint** against **new standard** adopted by KBDB-RFCB
- New standard, which foresees cloud-based solution, was introduced at short notice → Favoured one supplier and excluded complainants from the market
- **Belgian Competition Authority** (BCA) finds that, *prima facie*, new standard was **not set in transparent and non-discriminatory manner** and thus violates prohibition of anti-competitive agreements and abuse of dominant position
- BCA **imposes provisional measures** that require association to:
 - Carry out a new consultation of all ETS manufacturers and organise tests, in order to allow for the type approval of all ETS meeting the new standard
 - Inform all members that all ETS with a type approval for the seasons 2020, 2021 or 2022 may continue to be used up to one year after entry into force of any new standard
 - Publish the BCA's decision on its website

Germany

- On 23 March 2022 German Federal Cartel Office (FCO) initiates proceedings against several **associations of health care supply stores and orthopaedic workshops** for **coordinated price increases**
- COVID-19 pandemic had increased the freight, delivery, and raw material costs of the associations' members
- Cooperating under the "ARGE" umbrella, the associations **pressured health insurance companies to accept price increases** in order to compensate them for these cost increases
 - Associations threatened to terminate contracts with health insurers and in some cases actually terminated them
- FCO is examining whether coordinated conduct violates **prohibition of anti-competitive agreements and abuse of dominant position**



France

- In October 2021 French Competition Authority (FCA) sends statement of objections (SO) to **14 trade associations** and 101 companies
 - SO alleges that parties **agreed not to communicate on the presence of Bisphenol A in food packaging**
- **New** type of cartel conduct
- Involves one of (if not the) **largest cartels** ever investigated by the FCA





2

Competition law risks of sustainability initiatives

EU guidelines on sustainability agreements

- **Draft of revised "Horizontal Guidelines"** contains a new 18-page chapter on assessment of sustainability agreements between competitors
 - *Also national regulators have published guidance on such agreements (NL, Greece, Hungary ...)*

- **Generally not a problem:**

- Agreements that concern **internal corporate conduct rather than economic activity**, e.g. agreement to eliminate single-use plastics or to reduce ambient temperature in business premises
- Agreements on **creation of databases** of companies making/using sustainable products/processes
- Agreements on joint **awareness campaigns**



- **BUT:** ***"Agreements that restrict competition cannot escape the prohibition of Article 101(1) for the sole reason that they are necessary for the pursuit of a sustainability objective"***

Sustainability standardisation agreements

- **Examples:**
 - Withdraw / replace non-sustainable products or processes
 - Purchase only sustainable production inputs
 - Harmonize packaging to facilitate recycling
 - Establish green logo / label / brand for products meeting sustainability requirements
- **Potential concerns**
 - Price coordination (adhering to sustainability standard can increase costs and prices significantly),
 - Foreclosure of alternative standards,
 - Exclusion of, or discrimination against certain competitors



Safe harbour & exemption

- Draft Horizontal Guidelines state that sustainability standardisation agreements are **unlikely to restrict competition** if :
 1. **unlimited participation** in and **transparency of process** leading to selection of standard
 2. **no obligation** to participate in /comply with standard
 3. participating companies **can adopt a higher sustainability standard**
 4. no exchange of **commercially sensitive information** beyond what is necessary
 5. effective and **non-discriminatory access** to outcome of standardisation process
 6. **no** appreciable **increase in price** / **reduction in choice** of products
 7. mechanism or **monitoring** system in place ensuring compliance
- **If agreement restricts competition**, it can still benefit from **exemption** under Article 101(3) TFEU
 - Commission says it will take "**broad view**" of sustainability benefits
 - But: Benefits must **concrete** and **verifiable**
 - Restrictions of competition must be **indispensable** and **proportionate**



Example: "Green tree" label

Draft Guidelines discuss several hypothetical cases, **including "green tree" label** scenario:



- Major furniture producers with **joint market share of 85%** agree to introduce "green tree" label for furniture that contain at least 30% sustainably grown wood
- Law currently does not impose sustainability standards for wood
- Parties **agreed to comply** with the new standard within 3 years
- Parties **remain free** to produce furniture that respects **higher standards** under other labels
- Standard slows down but does not stop reduction of forested and is **criticised** by NGOs for 'being too little, too late'
- Compliance with standard expected to **increase cost** of furniture **by 20%** and **prices by 12%**
- According to study, **consumers are willing to pay 5% more** for furniture with "green tree" label

"Green tree" label: the Commission's analysis

- **Does the agreement restrict competition and fall under Article 101(1) TFEU? - YES**
 - High joint market share of parties
 - Significant impact on prices
- **Is it exempted under Article 101(3) TFEU? - NO**
 - Benefits for consumers don't outweigh expected price increase
 - ➔ Consumers value improved sustainability less (at 5% of final price) than expected price increase (12%)
 - Some furniture producers already use higher standards and labels
 - ➔ Agreement is not indispensable to raise sustainability standards





3

Seeking informal guidance from
competition authorities



Informal guidance

- **European Commission** adopted revised **Informal Guidance Notice** in October 2022
 - Signifies **greater willingness** of Commission to offer informal guidance and provides a **more flexible** approach
 - Commission will consider providing informal guidance when question: i) presents a **novel** or **unresolved issue** and ii) guidance will provide **added value** with respect to legal uncertainty
- **National Competition Authorities** have already been proactive in issuing (formal and informal) guidance on sustainability agreements (Germany, Netherlands, Greece ...)
 - **ACM** has repeatedly stated that undertakings can ask questions or submit agreements to identify and discuss risks with ACM – recently approving two sustainability initiatives in the energy sector

"The rules shouldn't discourage companies from working together to make their products more sustainable. There is huge scope to set up these agreements in line with the antitrust rules... we want to encourage companies to ask us for our assessment of specific agreements. And in the right cases, we're ready to give individual guidance"

Margrethe Vestager, VP and Commissioner for Competition

Thank you

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Our Competition Compliance Toolkit



Interactive competition **compliance elearning** (4 courses):



- 1) Dealing with competitors
- 2) Supply & distribution
- 3) Abuse of dominance
- 4) Dawn Raid investigations course



A free **Dawn Raid App** with checklists and contact details for use in the event of a dawn raid (available in several languages)



A free **online Dawn Raid Game** to prepare in-house counsel for what to expect in the event of a dawn raid (available in several languages)



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Corporate & Commercial

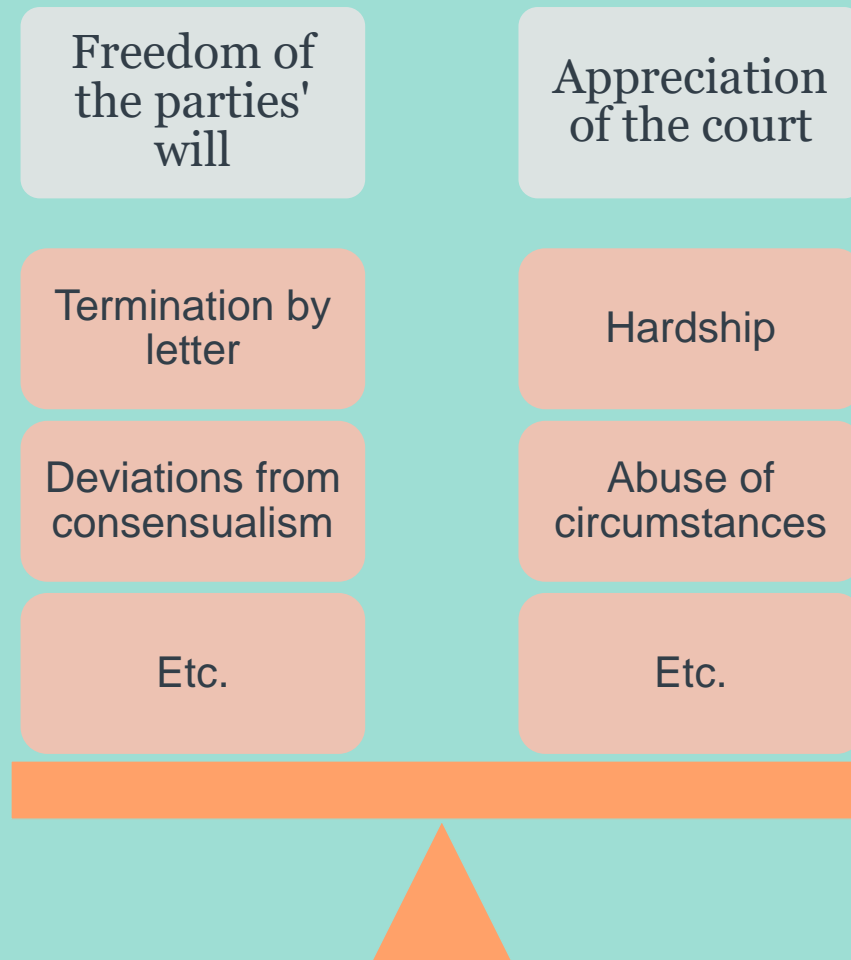
15 December 2022

01

New Belgian contract law

New Book 5 of the Belgian Civil Code

New balance



Conclusion of the
contract



Conclusion of a contract

Structuring the contract: the revised regime of standard terms

Fairness test for standard terms

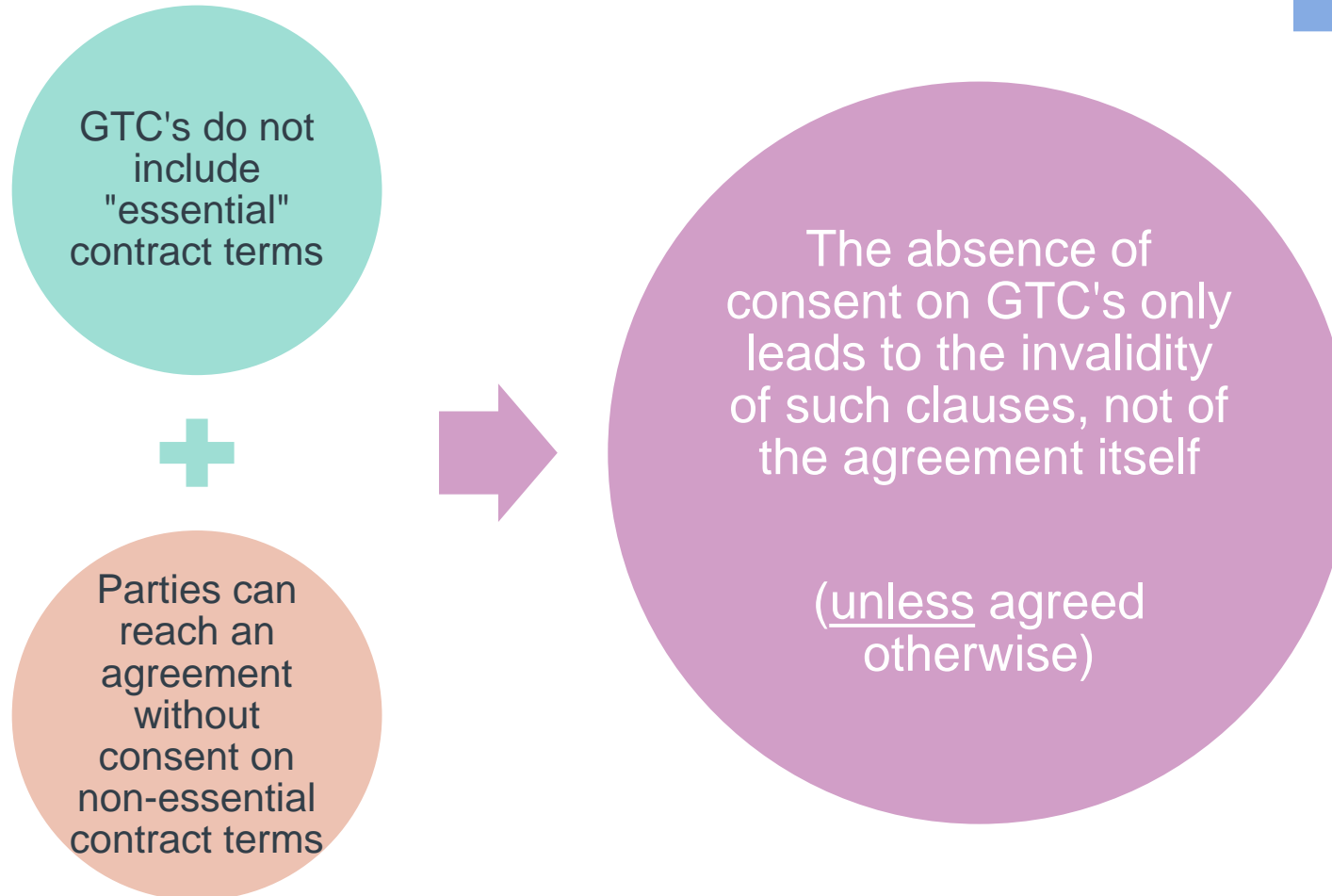
1. any clause which cannot be negotiated;
2. which creates a significant imbalance between the parties' rights and obligations; and
3. which does not relate to the parties' main obligations.

Criterion of "significant imbalance":

- Comparing parties' rights/obligations with and without such clause
- Considering circumstances in relation to contract performance
(i.e. nature of products/services, other clauses, general contract economy, etc.)
- No application of list of unfair clauses

Conclusion of a contract

Knock-out rule in battle of forms



During the contract

Tailoring hardship

Hardship under the new Book 5

An unforeseen change of circumstances after the conclusion of the contract, not imputable to the party, making performance excessively onerous (but not necessarily impossible)

Obligation to renegotiate contract terms

Possible termination or revision of contract terms by court

Anticipate the outcome

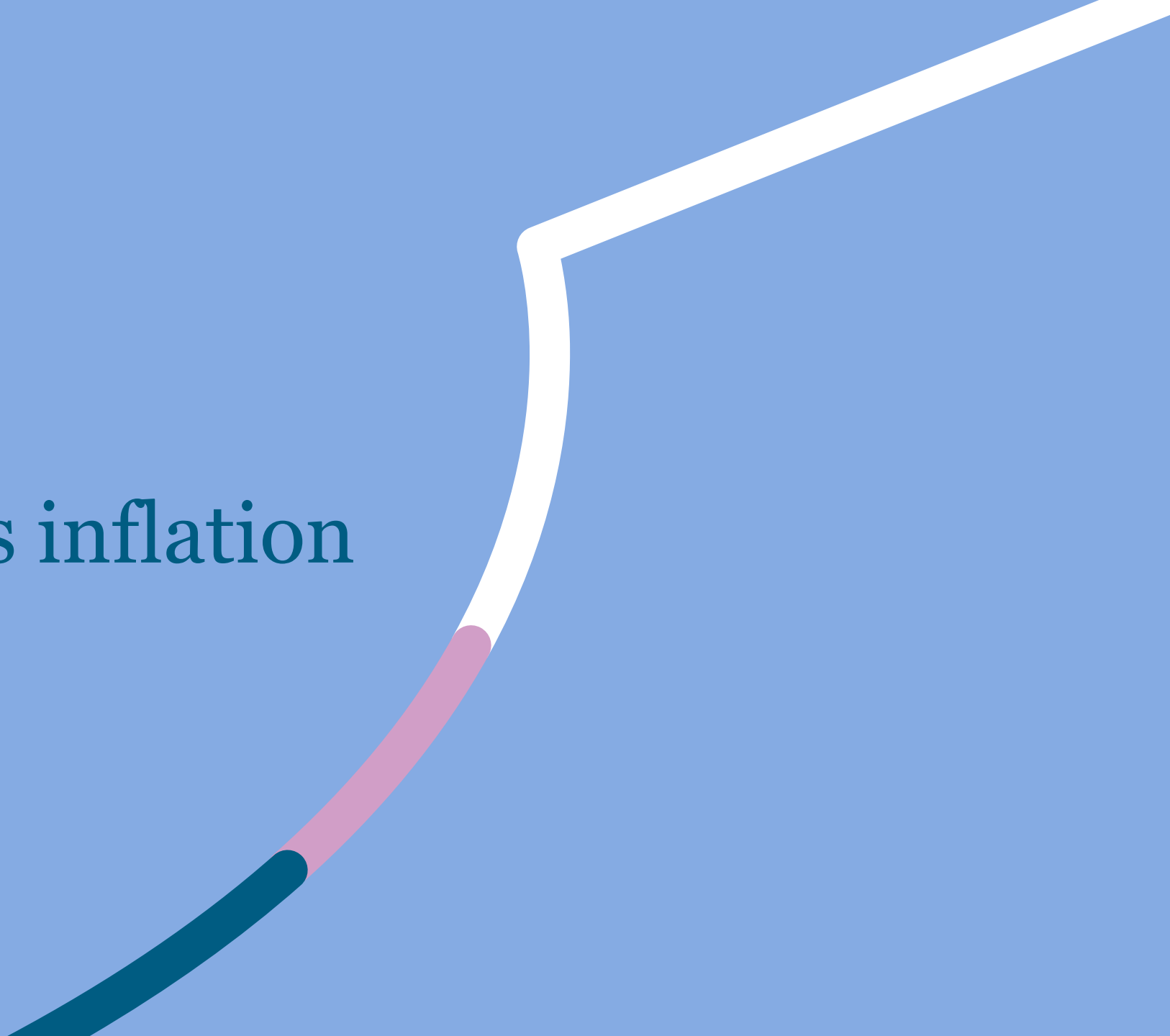
Include references to qualitative (e.g. labour costs, raw materials shortages, energy prices) and quantitative (e.g. mathematical thresholds) criteria for triggering hardship

Define framework for renegotiations (process, term, involvement of third-party mediator?)

Exclusion of court revision to avoid undesirable contract terms?

02

How to address inflation



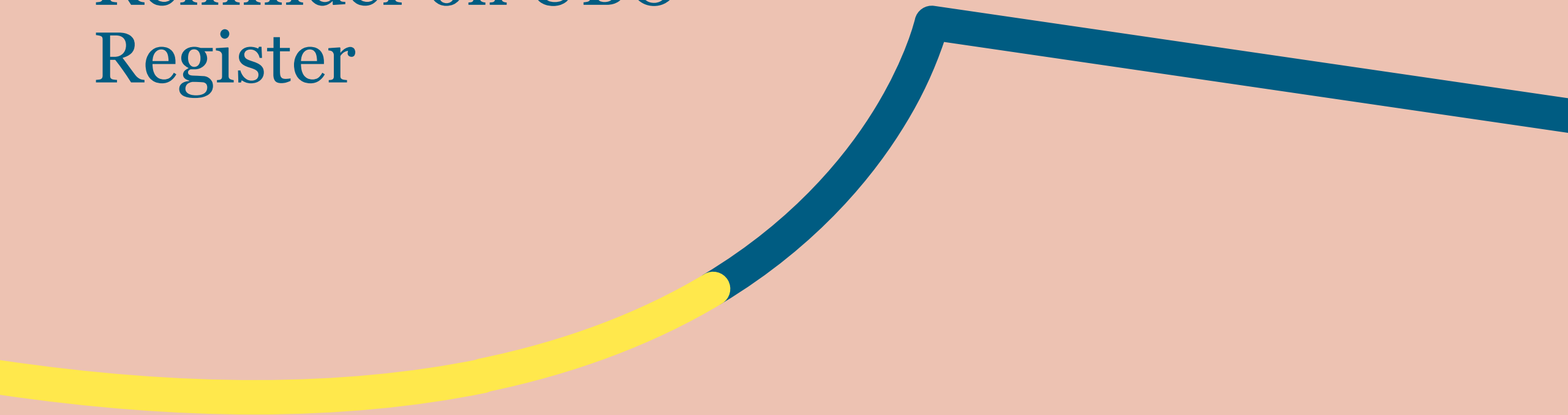
How to address inflation?

- **Starting point:** inflation (and its consequences) is hardly addressed by law
- **Main exception:** salary indexation for employees
- **False exception:** indexation in rental agreements (but needs to be provided for)
- All the rest needs to be organized contractually:
 - On the costs side: by trying to insert stabilization clauses
 - On the revenue side: by trying to insert automatic adjustment clauses
 - Within the limits of article 57 of the Act of 30 March 1976
- Without forgetting the indirect impact through (financial or late payment) interest rates



03

Reminder on UBO Register



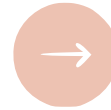
UBO Register



Obligation to communicate information regarding ultimate beneficial owners ("UBO")



Beneficial owners of an NPA: directors, daily managers, founders, persons in whose main interest the association was formed or any other person exercising control of the association by other means



Continuous obligation:

- Yearly confirmation (after receipt of auto-reminder)!
- Registration of changes within one month!



Failure by NPAs and their directors to comply is punishable by criminal and/or administrative fines

EU sanctions

And non-profit organisations

15 December 2022



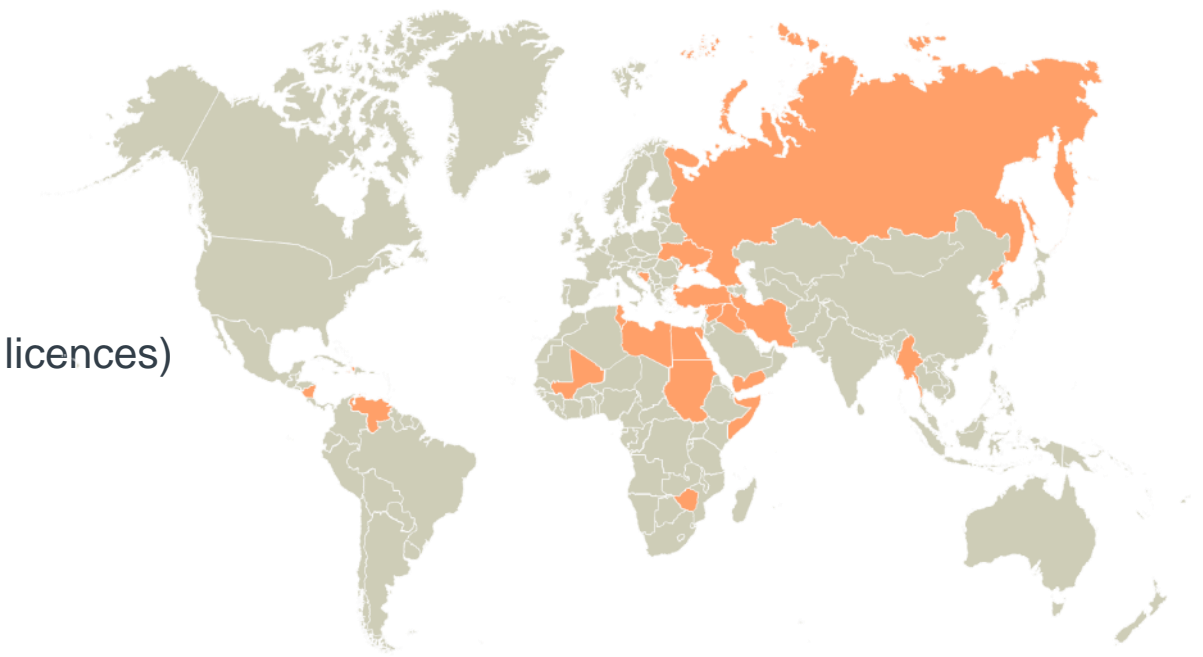
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Challenges – general

- Prohibitions
 - Designated ("sanctioned") parties
 - Trade-related prohibitions
- Sanctions screening
 - Sanctioned parties
 - Parties owned or controlled by sanctioned parties
- Exceptions
 - Exemptions (prohibition is not applicable)
 - Derogations (licensing)

Challenges – non-profit organisations

- Work in "high-risk" jurisdictions
 - Payments made to paramilitary forces for access to locations
 - Potentially "working" with sanctioned parties
 - No official government control in certain areas
- Derogations (licensing)
 - Humanitarian licences
 - Evidence humanitarian organisation
 - Operations in several EU Member States (multiple licences)
 - Lead-times
 - Pro-active approach to NCAs recommended



Example

- EU-Russia sanctions
- Licence re sanctioned parties
- humanitarian purposes in Ukraine
- Short lead-time (5 days) possible!
- Humanitarian work in Russia not covered
- Article 2a of Regulation 269/2014:

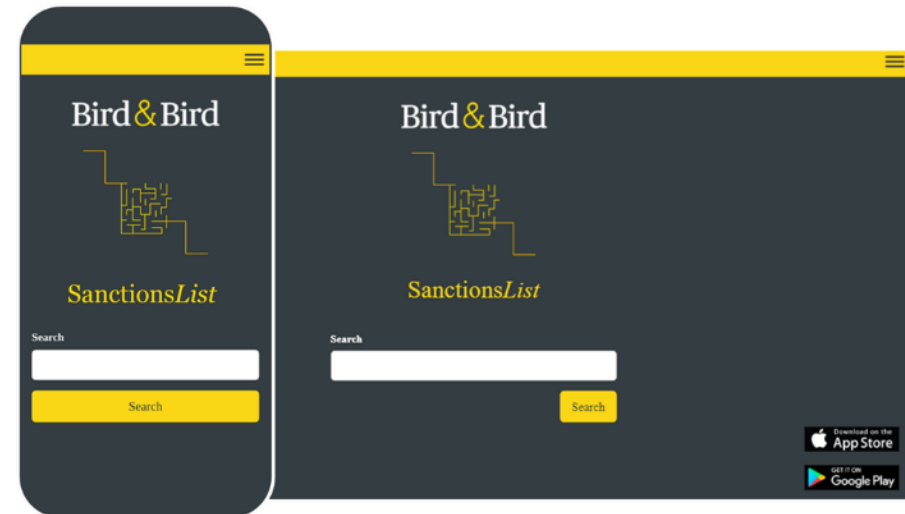
1. [...]

2. *In cases not covered by paragraph 1 of this Article, and by way of derogation from Article 2, the competent authorities may grant specific or general authorisations, under such general or specific conditions as they deem appropriate, to release certain frozen funds or economic resources or to make available certain funds or economic resources, provided that the provision of such funds or economic resources is necessary for exclusively humanitarian purposes in Ukraine.*

3. *In the absence of a negative decision, a request for information or a notification for additional time from the competent authority within 5 working days of the date of receipt of a request for authorisation under paragraph 2, the authorisation shall be considered granted.*

Sanctions*List* – sanctions screening app

- What is the SanctionsList?
- Includes UN/EU/UK/U.S./AU/CA/CH sanctions lists
- Availability:
 - Web-based app: <https://apps.fliplet.com/bird-bird-sanctions-app/sanctions-search-home-c5o5>
 - Apple App store: <https://apps.apple.com/nl/app/sanctionslist/id1571868891>
 - Google Play Store: <https://play.google.com/store/apps/details?id=com.birdbird.sanctionslist&hl=en>



Questions?



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Thank you

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