

Critical comments about commercial companies is tricky business: does the Anti-SLAPP Act offer a way out?

That the conduct and activities of private companies in a free-market economy are subject to critical scrutiny, is self-evident. Yet companies that do not appreciate critical attention from journalists or civil-society organisations (CSOs) more than once resort to a particularly powerful legal remedy to silence them. In a few recent cases they rely on Article VI.104 of the Belgian Code of Economic Law (CEL) that prohibits any act contrary to fair market practices by which a commercial enterprise harms or may harm the professional interests of one or more other commercial enterprises. On the basis of this provision and Article VI.105 CEL, “denigration” of a business, company or enterprise, and also misleading information about such corporate organization or commercial actor is prohibited, even where that information is factually correct but may potentially damage a company’s reputation.

In several recent cases, commercial enterprises have succeeded in persuading the commercial court to apply those provisions also to critical media and CSOs. In accordance with the CEL, this even resulted in orders to remove information and preventive publication bans.

This practice sits uneasily with the freedom of information and commentary, which also applies to socially relevant economic and business matters. It also formally conflicts with constitutional safeguards, such as the prohibition of censorship or prior restraint. Recent case law based on the CEL also fails to give sufficient consideration to Article 10 of the European Convention on Human Rights (ECHR), which robustly guarantees freedom of expression and information on matters of public interest.

Commercial courts should systematically dismiss claims based on the CEL that seek to suppress critical reporting or commentary. Ideally, this should henceforth also take place in the context of the Belgian Anti-SLAPP Act of 30 May 2026.

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The main principles of communication law are sufficiently well known. Freedom is the starting point and the basic principle, but it must always be weighed against other fundamental values such as privacy or the protection of one’s reputation. Those limitations have been formalised in the duty-of-care rules of the Civil Code or, more specifically, in criminal-law prohibitions such as those relating to libel, insult, defamation or harassment. While proactive censorship of information is not permitted under the Belgian Constitution, retroactive sanctions are possible.

The Code of Economic Law (CEL) now adds various additional rules concerning communication about commercial enterprises. Thus, Articles VI.104 and VI.105 CEL prohibit the “denigration” of a commercial enterprise: derogatory or critical communication concerning it, even where it is factually correct, is not allowed. As regards procedure, the CEL expressly provides for the possibility for the president of a commercial court to prohibit or order the cessation of an unlawful market practice preventively. There is no doubt that these provisions apply to economic actors or commercial companies in their mutual relations. But whether, and to what extent, they can also simply be applied to (news) media companies and their journalistic output, or to interest groups or CSOs seeking to make a point, is less self-evident.

Three recent judicial decisions provide relevant case law on this matter. In each case, a private company summoned a news medium or an CSO before the commercial court on account of allegedly unlawful reporting in the context of the CEL. And in each case, the commercial court or its president had to rule on a twofold question. Do the economic communication rules of the CEL also apply to those entities, and is the commercial court therefore competent? And secondly: if they do apply, has the news medium or interest organisation actually infringed the CEL?

Ecole de Clerheid v RTBF

At the beginning of 2026, an RTBF team was working on a report about Ecole de Clerheid, a residential centre for young people in Erezée, Wallonia. According to various testimonies, its founder and operator had been guilty of sexual assault of minors, and a criminal investigation was also underway in that regard. The RTBF announced that it would broadcast the report on 8 April 2026 as part of the programme *#Investigation*.

Ecole de Clerheid had other plans. It relied on various provisions of the CEL to ask the president of the French-speaking commercial court in Brussels to postpone the broadcast until after the judicial investigation had been completed. Pending that decision, the RTBF should also to be prohibited from disseminating any other information about the operator of the residential centre, the alleged victims or about the staff of the centre.

The RTBF argued that the statutory provisions relied upon concerning misleading market practices and denigration — in this case Articles VI.93 and VI.104 CEL — did not apply to journalistic work. A media company cannot simply be regarded as an ordinary commercial actor with regard to its journalistic products. Consequently, the president of the commercial court lacked jurisdiction to hear claims in that regard.

In a judgment of 8 April 2026, however, the judge rejected that argument. The RTBF is indeed an enterprise with commercial activities, he held, as the broadcaster itself confirmed in its submissions. Consequently, it is subject to Book VI of the CEL, including in respect of its journalistic products. The commercial court therefore had jurisdiction.

The judge did not, however, follow the youth centre and its operator any further. It could not be established whether the provisions of the CEL relied upon had actually been infringed, the judgment stated. There was simply no sufficiently certain and precise information

available as to what would be broadcast in the report. The application to prohibit the broadcast was therefore dismissed.

Earlier, in another case against the RTBF, the French-speaking commercial court of Brussels had already reached a similar conclusion. At that time, it was a bailiff who sought to prevent the broadcast of an episode of *#Investigation* concerning bailiffs. On that occasion too, the vice-president of the court held that it had jurisdiction, but did not grant the application for cessation due to a lack of evidence of the alleged denigration.

Nomige v Test-Aankoop

On 3 June 2025, the consumer magazine *Test-Aankoop* published the test results for a new sunscreen produced by cosmetics company Nomige and marketed, among others, by well-known Flemish personality Astrid Coppens. According to the consumer organisation, the product did not meet the claimed sun protection factor 50, as had emerged from various tests.

The producer, BV Nomige, took a different view and, on 6 June 2025, obtained an order from the president of the Brussels commercial court, following an *ex parte* application, prohibiting further publication. Consumer organisation Test-Aankoop, the publisher of the magazine, lodged third-party opposition against that order, and those proceedings were joined to Nomige's action on the merits. Nomige now also asked the commercial court not only to confirm the publication ban, but also to order an extensive correction by the magazine, in both cases subject to substantial penalty payments.

In the proceedings on the merits, Test-Aankoop primarily asked the commercial court to declare that it lacked jurisdiction. According to the consumer organisation, the publication at issue was not a market practice falling within the scope of the CEL. At the very least, the court could refer a preliminary question to the Constitutional Court on this issue. In the alternative, Test-Aankoop argued that Articles VI.104, VI.105 and VI.105/1 had not been infringed. As an ultimate alternative, the magazine argued that the measures sought were excessive.

Nevertheless, on 2 April 2026, the president of the Dutch-speaking Brussels commercial court declared that the court had jurisdiction and that the CEL was applicable. "Even if the content at issue is editorial in nature, this does not preclude it from being assessed against the general duty-of-care standard and, insofar as relevant, against the provisions of the Code of Economic Law relied upon by the claimant," the judgment states. According to the judge, this was so clear that there was no need to refer a preliminary question to the Constitutional Court.

The judgment then analysed the tests carried out by Test-Aankoop on the sunscreen, and on that point as well the judge sided with Nomige. The cosmetics company convinced the judge that the consumer magazine had not sufficiently calibrated its various tests to make reliable claims regarding a sun protection factor of 50. Consequently, the judgment held, the product information was indeed negligent and misleading.

The judge also took particular issue with Test-Aankoop presenting itself as a careful expert. Moreover, it was aware of Nomige's defence and failed to mention it fairly. On top of that, its

communication concerning the sunscreen and Astrid Coppens as its promoter was rather sharp. Conclusion: Nomige's claims were upheld, albeit with the penalty payments and the period for publishing the correction being mitigated.

This was not a first for Test-Aankoop either. In 1996, the Brussels Court of Appeal had already held that the organisation was de facto a consumer association and not merely a publishing house. As a members' association, it sells products and services and therefore falls within the scope of the legislation on market practices. Its magazine *Test-Aankoop* is also part of that activity, which, according to the court, implies that the constitutional safeguards relating to freedom of the press do not apply to it.

Bakai Bank v Open Dialogue Foundation

Open Dialogue Foundation (ODF) is not a news media company, but an international foundation, based in Brussels. ODF advocates democracy and human rights, with a focus on the countries of the former Eastern Bloc. Among other things, ODF advocates stricter sanctions against Russia following the invasion of Ukraine and raised criticism about the role of countries helping Russia circumvent those sanctions. In that context, the foundation has published several articles on Kyrgyz bank Bakai Bank on its website in recent years. At the same time, ODF has lobbied the European authorities to impose sanctions on the bank for its support for Russia.

At the end of 2024, Bakai Bank brought urgent proceedings before the Brussels commercial court, seeking an order requiring ODF to remove its name from the publications immediately. That urgent application was dismissed, as the court considered that a thorough examination was necessary. Bakai Bank then used that opportunity to seek, in addition to a prohibition on further publication, an extensive correction. On top of that, the bank claimed damages of more than €1 million, to be paid on the account of the King Baudouin Foundation with the reference "BE for Ukraine".

Bakai Bank primarily based its claim on the prohibition of misleading communication and denigration contained in Articles VI.104 and VI.105, 10° CEL. ODF, for its part, disputed their applicability to the dispute. On 30 March 2026, the court sided with the bank. A foundation or CSO may also engage in economic activities, the judgment states, and must in that case be classified as an enterprise in the sense of the CEL. ODF publishes reports, engages in lobbying and, as such, produces services. Consequently, Book VI of the CEL does indeed apply to it.

According to the court, the provisions of the CEL relied upon had also been infringed. The judges found that ODF had not conducted an "exhaustive audit" of Bakai Bank that would have made it possible to substantiate objectively the allegations made. According to the judgment, the organisation had only certain statistics or journalistic sources at its disposal. ODF itself admitted that it did not have information originating from Bakai Bank itself.

The court further observed that denigration may exist as soon as derogatory information concerning another undertaking is communicated, even if the information proves to be factually correct. The enterprises concerned also need not be competitors, and bad faith is not a requirement either. Finally, according to the judges, the assessment of possible

denigration must be made from the perspective of the person to whom the communication is addressed, rather than from that of the person disseminating the derogatory communication.

In convicting ODF, the Brussels commercial court finally stated that it remained within the framework of Article 10 ECHR and Article 19 of the Constitution. It is true, the judgment states, that those provisions also grant CSOs or activists broad freedom of expression, but that does not prevent them from having to verify the accuracy of their information.

The sanction included publication of the full judgment at the top of ODF's website homepage for a period of 30 days. Without any comment by ODF itself, moreover. Initially, the judges left the original publication itself untouched, but this was changed in a corrective judgment of 26 May 2026. The court then ruled that ODF had to cease any further publication of the information found to be unlawful. The penalty remained set at €10,000 per day of delay, but a maximum of €100,000 was now imposed.

ODF had itself brought a counterclaim alleging SLAPP proceedings by Bakai Bank, but in line with its decision on the merits, the court dismissed that claim. The foundation did, however, appeal the judgment.

Fundamental questions

The increasing grip of commercial courts and the CEL on reporting about private companies or commercial enterprises raises considerable questions. To begin with: no one disputes that (news) media and CSOs are also, to some extent, enterprises within the meaning of economic law. This is particularly the case when such companies sell subscriptions, offer memberships, trade advertising space or enter into other commercial deals. As regards those market practices, the responsibility defined in the CEL and enforced by commercial courts applies in full.

But media companies and CSOs also comprise a substantial substantive component. For a news medium, this is its journalistic output; for an interest organisation, its political or social message. The question arises whether the dissemination of such content can likewise be regarded as a "market practice" within the meaning of the CEL. And whether commercial courts can subsequently assess such information according to the same standards as those applicable in a purely business-economic context.

Articles VI.104 and VI.105 CEL on "denigration" hit the nail on the head. Broadly speaking, they prohibit "denigrating" another commercial enterprise with "misleading information". Both the Dutch-speaking and French-speaking commercial courts of Brussels set a very high bar for critics in this regard. In effect, Test-Aankoop and the CSO Open Dialogue Foundation are required to provide complete and conclusive truths, without any margin for appreciation or opinion. But even absolute accuracy does not guarantee that one will escape the prohibition on denigration, the judges continued. According to Article VI.105, denigration may exist "even if the information is factually correct".

The contrast with the ordinary civil regime of liability for fault is considerable. There, the concept of fault precisely presupposes a certain degree of factual inaccuracy in the information, together with a causal link to material and/or moral damage that must be

demonstrated. Under Article 1382 of the former Civil Code / Article 6.5-6.6 of the new Civil Code, reputational damage in itself is by no means sufficient to establish liability.

There are also difficult procedural questions. The CEL expressly authorises the presidents of commercial courts to order the cessation of infringements of the Code (Article XVII.1/4). It even authorises them to “prohibit market practices that are unlawful where they have not yet begun but are imminent” (Article XVII.9 CEL). In the *Nomige/Test-Aankoop* case, the president issued an order to cease the practice. The same occurred in the *Bakai Bank/ODF* case, where the court moreover prohibited commentary on the judgment to be published. All of this sits uneasily with the constitutional prohibition of prior censorship. Although the Court of Cassation ruled in 2000 that a judicial order to cease may be issued as soon as a publication has already been disseminated to a minimal extent, this remains a delicate matter in the light of the constitutional prohibition of censorship or prior restraint.

Of course, judges in a commercial court must also take the Constitution and the ECHR into account when assessing cases concerning communication and the media. Yet, as the three recent judgments demonstrate, they do so only to a limited extent. In any event, they do so much less extensively compared to the case law by the civil courts. The case law of the civil courts indeed reflects the importance of the constitutional safeguards concerning freedom of the press and freedom of expression and also applies, with appropriate reasoning, the criteria developed by the European Court of Human Rights (ECtHR) for assessing interferences with freedom of information and expression. In the recent case law applying Article VI.104-105 CEL the impact of Article 10 ECHR is insufficiently addressed. It is now for commercial courts on appeal to correct this, at least insofar as they consider themselves competent to do so.

It can also be done — or almost

There are, incidentally, good examples as well. At the beginning of 2026, the civil court of Mechelen had to rule on reporting in the newspaper *De Tijd* and the magazine *Knack* concerning technology company EANAN. The company, based in Dubai and linked to Russia, turned out to be involved in the production of Russian drones and was led by a Belgian CEO.

Drone manufacturer EANAN and its CEO Ulrik Weckx summoned the journalist from *De Tijd* and publishers Mediafin and Roularta over “false insinuations” and reputational damage. None of them, however, was held liable by the Mechelen judge. The reporting, including the picture and association with Russian President Putin, was “truthful” and “well substantiated”, even though it was unfavourable to the company and its CEO.

In addition to Article 1382 of the former Civil Code, the Code of the Council for Journalism, the criminal offence of libel and the European General Data Protection Regulation (GDPR), EANAN and Weckx had relied on the prohibition of denigration in Article VI.104 CEL. The judge also rejected that legal basis on 24 February 2026. “The present dispute and the alleged faults do not concern unlawful competition between two enterprises,” the judgment states. “An infringement of Article VI.104 CEL cannot, in the present case, be invoked as a legal basis for their claims against the defendants.”

The defendant journalist and the two media companies, for their part, concluded their defence with a counterclaim. That counterclaim was based on the European Anti-SLAPP Directive of 11 April 2024, in the absence of a Belgian law that had not yet been adopted at the time. The court pointed out that an EU directive does not have direct effect, but it nevertheless assessed the counterclaim in the light of possible vexatious and reckless proceedings and took into account the criteria contained in the Anti-SLAPP Directive 2024/1069. Nevertheless, the conclusion was negative: according to the judge, the claimants were indeed seeking to “assert a right”. “The mere fact that their claim is dismissed does not mean that this should lead to the conclusion that there was an abuse of procedural law with the principal aim of silencing a member of the public.” (*personal translation*)

In conclusion: this overview does not purport to be exhaustive. The final word has not yet been said on the impact of the CEL on the freedom of information of the media, journalists and NGOs. The judicial decisions discussed do, however, illustrate that the application of Articles VI.104–105 CEL, in conjunction with the powers of the commercial courts or their presidents, carries the risk of new SLAPPs and abuse of process against participants in public debate. The Anti-SLAPP Act of 30 May 2026 is specifically intended to curb the increasing number of SLAPPs. Commercial courts should therefore dismiss claims based on the CEL that seek to thwart critical reporting or commentary by media, journalists, NGOs or other public watchdogs. At the very least, they should assess claims alleging the denigration of a commercial enterprise more thoroughly, with greater regard for the constitutional guarantees concerning freedom of the press and freedom of expression, and with pertinent application of the case law of the European Court of Human Rights applying Article 10 of the ECHR. Ideally, this should henceforth also take place in the context of the Anti-SLAPP Act of 30 May 2026.

Judicial references

Tribunal de l’entreprise francophone de Bruxelles, Chambre des actions en cessation, *Ecole de Clerheid v RTBF*, judgment of 8 April 2026

Dutch-speaking Brussels commercial court, President sitting as in summary proceedings, *Nomige v Test-Aankoop*, judgment of 2 April 2026

Tribunal de l’entreprise francophone de Bruxelles, 14th Chamber, *Bakai Bank v Open Dialogue Foundation*, judgment of 30 March 2026 + corrective judgment of 26 May 2026

Civil court of First Instance of Antwerp, Mechelen Division, *EANAN and Weckx v Bové, Mediafin and Roularta*, judgment of 24 February 2026

Relevant statutory provisions of the CEL

Article VI.93

A commercial practice is unfair where it:

a) is contrary to the requirements of professional diligence

and

b) materially distorts or is likely to materially distort the economic behaviour, with regard to the underlying product, of the average consumer whom it reaches or to whom it is addressed, or, where it is directed at a particular group of consumers, of the average member of that group. [...]

Article VI.104

Any act contrary to fair market practices by which an enterprise harms or may harm the professional interests of one or more other enterprises is prohibited.

Article VI.104/1

In particular, the following market practices of enterprises towards other commercial enterprises are unfair within the meaning of Article VI.104:

1° misleading within the meaning of Articles VI.105 to VI.109;

2° aggressive within the meaning of Articles VI.109/1 to VI.109/3;

[...].

Article VI.105

A market practice shall be regarded as misleading if it contains false information and is therefore untruthful or, even if the information is factually correct, in any way, including through its overall presentation, deceives or is likely to deceive an enterprise with regard to one or more of the following elements, and in either case causes or is likely to cause it to take a transactional decision that it would not have taken otherwise:

1° the existence or nature of the product;

[...]

10° the communication of disparaging information concerning another enterprise, its goods, services or activity.

Article VI.105/1

A market practice shall be regarded as a misleading omission if, in its factual context, taking account of all its characteristics and circumstances and the limitations of the communication medium, it omits material information which the other enterprise needs, depending on the context, in order to take an informed transactional decision, and thereby causes or is likely to cause it to take a transactional decision that it would not have taken otherwise. [...]

Article XVII.1/4

The president of the commercial court shall establish the existence and order the cessation of an act, even if punishable under criminal law, which constitutes an infringement of the provisions of this Code [...].

Article XVII.9

The president of the commercial court may prohibit the market practices referred to in Articles VI.92 to VI.109 of this Code where they have not yet begun but are imminent.