De vordering voor Belgische vennootschappen om hun activiteiten aande Kruispuntbank van Ondernemingen aan te geven: het nieuwe artikel III 26 van het Economisch Wetboek

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Article III 26 of the new Belgian Code of Economic Law, as part of book III thereof, entered into force on 9 May 2014. This provision clearly stipulates that a lawsuit filed by a company will be dismissed if such lawsuit is based on an activity that was not properly registered with the Crossroads Bank for Enterprises at the time of the filing.

By royal decree dated 26 March 2013, book III of the new Belgian “Code of Economic Law” entered into force on 9 May 2014. Book III deals with the freedom of establishment of companies and their general obligations, including those related to their registration with the Belgian Crossroads Bank for Enterprises (the “CBE”).

The entry into force of book III is a good opportunity to be reminded of one obligation in particular that any Belgian company should be particularly aware of, i.e. the obligation to properly register all its activities with the CBE. This duty is contained in article III 26 of the Code of Economic Law, which replaces article 14 of the CBE law.

Although the obligation set out in article III 26 seems rather innocuous, the consequences for a company of not registering all its activities with the appropriate so-called “Nace-BEL” number may be quite serious in the event of litigation.

Indeed, article III 26 provides, among other things, that the legal action of a company will be dismissed when such action is lodged based on an activity for which that company was not registered with the CBE on the date of the submission of the claim.

The provision, although not new, has been modified in order to integrate two rulings of the Belgian constitutional court which each addressed important interpretation issues as to the scope of the registration obligation. Such issues were mainly due to the ambiguous wording of article 14.
of the CBE law.

First, based on the language of article 14, some authors defended the idea that the whole article was applicable only in the event of a legal action launched by a writ served by a court bailiff. Thus, the applicability of the registration obligation to legal actions lodged by unilateral or adversarial application was challenged. The constitutional court was requested to clarify that point and ruled that article 14 was applicable regardless of how the legal action was lodged.

Second, article 14 was drafted in such a way that made the Dutch and French versions contradictory. Indeed, the French version seemed to provide that the motion to dismiss based on the inappropriate registration of a company’s activities with the CBE could only be raised if coupled with other motions. The Dutch version, on the other hand, provided that the motion to dismiss based on such argument should be raised in limine, i.e. before any other motions, and did not have to be coupled with other motions for dismissal of the legal action. The constitutional court decided in favour of the Dutch version.

As a consequence and in order to put the law in line with the constitutional court rulings, the new article III 26 clearly integrates all legal actions (claims, counterclaims and cross-claims) regardless of how they are lodged by the company, whether it is by way of application, exchange of conclusions or a writ served by a court bailiff. Moreover, article III 26 now expressly provides that the motion to dismiss based on an inappropriate registration of the activity of a company must be made in limine, i.e. before any other motions.

Thus, the law makes it clearly easier to dismiss a legal action lodged by a company based on that company’s failure to properly register all its activities with the appropriate Nace-BEL numbers at the CBE. Considering the possible serious consequences thereof, it is important that companies list all their activities with the relevant Nace-BEL number at the CBE, and keep that registration up to date.

If the company realizes that its registration is not up to date after having already filed the lawsuit, as a plaintiff a possible option for avoiding a dismissal is to properly register the activity based on which the action is lodged. Then, the company may resubmit a claim on the same issue, with the consequence that it will have to withdraw from the first claim that was introduced based on the activity not yet registered. If the defendant has not yet filed its answer, the company, as a plaintiff, may withdraw at will. However, such withdrawal will be impossible without the consent of the other party (which may prove difficult in the context of a litigation) in the event that the defendant’s answer has already been filed.

Taking into account the fact that it is both difficult and time-consuming to mitigate the consequences of a failure to do so, Belgian companies should bear in mind their duty to register all their activities with the CBE under the appropriate Nace-BEL number.