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Real Security Rights over Movable Property: The Belgian Model, Its Strengths and Its Limits

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Abstract: This article examines the Belgian reform of real security rights over movable property, which entered into force on 1 January 2018. It analyses the regime set out in Title XVII of Book III of the old Civil Code, with particular emphasis on the pledge, while also examining two other security mechanisms: retention of title and the right of retention. It then turns to the National Pledge Register and its role within the system of publicity governing such security rights. While the reform has significantly enhanced the coherence and efficiency of secured transactions by unifying previously fragmented mechanisms and introducing a modern system of publicity, it also retains important exceptions. The continued possibility of constituting a pledge by dispossession, as well as the exclusion of pledges over claims from registration, limits the transparency of the system and may undermine legal certainty for third parties. The article further explores the legal framework governing the operation of the Pledge Register and the debates surrounding its scope and effectiveness, including its interaction with financial collateral arrangements and European law. It concludes by critically assessing the strengths and limitations of the Belgian model, highlighting the tensions between flexibility and transparency in the law of secured transactions.

Keywords: Belgian law; real security rights; movable property; pledge; non-possessory pledge; retention of title; right of retention; secured transactions; Pledge Register; publicity.

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Dingliche Sicherheiten auf bewegliche Güter: das belgische Modell, seine Stärken und seine Grenzen

Abstract: Der vorliegende Artikel untersucht die belgische Reform der dinglichen Sicherheiten auf bewegliche Güter, die am 1. Januar 2018 in Kraft getreten ist. Gegenstand der Analyse sind die Bestimmungen des Titels XVII von Buch III des alten Zivilgesetzbuches, insbesondere jene zum Pfandrecht. Zugleich werden zwei weitere Sicherheitsmechanismen behandelt: der Eigentumsvorbehalt und das Zurückbehaltungsrecht. Anschließend befasst sich der Beitrag mit dem Nationalen Pfandregister und dessen Rolle innerhalb des Publizitätssystems für diese Sicherheiten. Obwohl die Reform die Kohärenz und Effizienz gesicherter Transaktionen erheblich gestärkt hat, indem zuvor zersplitterte Mechanismen vereinheitlicht und ein modernes Publizitätssystem eingeführt wurden, bestehen weiterhin bedeutende Ausnahmen. Die Beibehaltung der Möglichkeit ein Pfandrecht mit Eigentumsvorbehalt zu erstellen, ebenso wie der Ausschluss von Pfandrechten auf Forderungen vom Registrierungssystem, begrenzen die Transparenz des Systems und können die Rechtssicherheit gegenüber Dritten beeinträchtigen. Der Beitrag untersucht ferner den rechtlichen Rahmen für die Funktionsweise des Pfandregisters sowie die Diskussionen über dessen Tragweite und Effizienz, insbesondere im Hinblick auf Finanzsicherheiten und das europäische Recht. Abschließend erfolgt eine kritische Würdigung der Stärken und Grenzen des belgischen Modells, wobei die Spannungen zwischen Flexibilität und Transparenz im Sicherheitenrecht hervorgehoben werden.

Keywords: Belgisches Recht; dingliche Sicherheiten; bewegliche Güter; Pfandrecht; Pfandrecht mit Besitzverlust; Eigentumsvorbehalt; Zurückbehaltungsrecht; Sicherheitenrecht; Pfandregister; Publizität.

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1. Introduction

As is well known, real security rights consist in conferring upon certain creditors a right of preference over the realisation value of one or more assets, in contrast to the position of the ordinary, unsecured (so-called *chirographaire*) creditor.¹ By their very nature, they constitute a derogation from the principle of equality of creditors, also known as the *pari passu* principle, which in Belgian law is enshrined in Article 3.36, paragraph 2, of the Civil Code: “*In the event of a concurrence of creditors, the proceeds of realisation shall be distributed among them in proportion to their claims, unless there exist lawful grounds of preference between creditors.*”² This derogation explains why real security rights exist only in a limited number and are, moreover, subject to publicity formalities, which at times – and somewhat surprisingly – prove to be purely fictitious.

In Belgian law, real rights, including real security rights, are subject to a *numerus clausus*, in the sense that only the legislature is empowered to create them, pursuant to Article 3.3, paragraph 1, of the Civil Code.³ This provision sets out, in a limitative manner⁴ in paragraph 2, that real rights are ownership, co-ownership, real rights of use, and real security rights, and further provides in paragraph 3 that real security rights, within the meaning of this Book, are special privileges, pledge, mortgage, and the right of retention. The requirements governing opposability are, moreover, of considerable importance in this field. Real security rights are in practice less frequently invoked against the debtor than against the debtor’s other creditors, which raises the question of their publicity as against the latter.

Among real security rights, those relating to movable property have undergone substantial reform through two Laws of 24 June and 11 July 2013 published in the *Moniteur belge*⁵ on 2 August 2013. This far-reaching reform replaced the heading of Title XVII of Book III of the old Civil Code,⁶ dedicated to *nantissements*,⁷ with “*Real Security Rights over Movable Property*” (“*Des sûretés réelles mobilières*”), introducing three chapters: “*Pledge*” (“*Du gage*”), “*Retention of Title*” (“*Réserve de propriété*”),

¹ This contribution draws on, and further develops, certain themes addressed in earlier work by Frédéric Georges, in particular ‘Opposabilité des sûretés réelles mobilières et conflits de rang’ in *Les sûretés réelles mobilières* (Anthemis 2017) 94.

² Free translation of Article 3.36, para. 2. Original text: “*En cas de concours entre les créanciers, le produit de réalisation sera distribué entre ceux-ci en proportion de leurs créances, à moins qu'il n'y ait entre les créanciers des causes légitimes de préférence*”.

³ See Pascale Lecocq and Raluca Popa, ‘Dispositions générales’ in Pascale Lecocq and others (eds), *Le nouveau droit des biens* (Larcier 2020) 17–21.

⁴ However, retention of title, which, as will be shown below, does indeed constitute a real security right, is absent from this enumeration, both surprisingly and unjustifiably (Yves Godefroid, ‘Partie Ire : incidences du Livre 3 du Code civil sur le droit des sûretés : le privilège spécial est-il une sûreté réelle’ in *Privilèges et hypothèques* (Wolters Kluwer 2023) 67).

⁵ The Belgian Official Gazette

⁶ Hereinafter, unless otherwise indicated, references to article numbers are to be understood as referring to Title XVII of Book III of the old Civil Code.

⁷ On the notion of *nantissement*, see the developments below.

and “*Right of Retention*” (“*Droit de rétention*”). It also amended real security rights available to subcontractors, namely the special privilege and the direct claim, as well as certain provisions of the Mortgage Law of 16 December 1851 (*loi hypothécaire*), by repealing several – albeit limited – special privileges over movable property.

To summarise the objectives of this reform, without dwelling on its genesis and development, it should be noted that it seeks to rationalise and simplify the regime of real security rights over movable property, while ensuring a system of publicity formalities that is both coherent and effective, capable of guaranteeing their opposability and transparency towards third parties. Accordingly, the reform is notably characterised by the general recognition of a non-possessory pledge granted by the security provider, the opposability of which is contingent upon registration in the National Pledge Register (*Registre national des Gages*), maintained by the General Administration of Patrimonial Documentation (GAPD) of the Federal Public Service Finance (FPS Finance). The preparatory works emphasise that the Pledge Register is designed in line with international standards, in which both the security of the information and its ease of access play a central role, as evidenced by the recent successful implementation of similar systems in numerous countries worldwide, from the United States to New Zealand.⁸ The reform nevertheless preserves the alternative possibility of relying on dispossession of the security provider.

The entry into force of this reform, initially set for 1 December 2014 at the latest, was postponed at the last minute to 1 January 2017, in view of the Belgian State’s inability at that time to ensure the operation of the Pledge Register.⁹ A year and a half later, the Council of Ministers of 15 July 2016 approved a preliminary draft law amending the reform. This “reform of the reform” was subsequently enacted, in a rather expedited manner,¹⁰ through the Law of 25 December 2016 amending various provisions relating to real security rights over movable property.¹¹ It entered into force on 1 January 2018.

In this contribution, we shall first present the regime of real security rights over movable property as laid down in Title XVII of Book III of the old Civil Code (2). In doing so, we shall specify which security rights are subject, as a condition of their opposability, to registration in the National Pledge

⁸ *Documents parlementaires, Chambre des représentants*, Doc 54-2138/003, session 2016–17, 13.

⁹ Law of 26 November 2014 amending the date of entry into force of the Law of 11 July 2013 modifying the Civil Code with regard to real security rights over movable property and repealing various provisions in this matter (*Moniteur belge*, 1 December 2014).

¹⁰ The bill was tabled on 4 November 2016 (*Documents parlementaires, Chambre des représentants*, Doc 54-2138/001, session 2016–17); the opinion of the Council of State had been requested within a period of thirty days; finally, the report drawn up on behalf of the Justice Committee (*Documents parlementaires, Chambre des représentants*, Doc 54-2138/003, session 2016–17) comprises no more than eleven pages for seventy technical provisions.

¹¹ *Moniteur belge*, 30 December 2016.

Register. We shall then, building on this analysis, examine the operation and legal framework of that register (3).

2. Overview of the Real Security Rights over Movable Property under Title XVII of Book III of the Old Civil Code

Title XVII of Book III of the old Civil Code provides for three real security rights over movable property: pledge, retention of title, and the right of retention. This tripartite classification will in all likelihood be maintained within the Civil Code, which is gradually replacing the old Civil Code of 21 March 1804. Indeed, in future, it is envisaged that Book 9 of the Civil Code, dedicated to security rights, will be divided into five titles, of which Title 2 will be devoted to pledge, Title 3 to retention of title, and Title 4 to the right of retention.

2.1 Pledge

2.1.1 Progressive Erosion of the Requirement of Dispossession

Article 2071 of the old Civil Code provided, until 31 December 2017, that *nantissement* is a contract by which a debtor delivers a thing to his creditor as security for the debt. Article 2072 of that Code went on to state that *nantissement* of a movable is called pledge, that of an immovable is called antichresis. More specifically, legal scholarship defined pledge as “*a contract by which a person (either the debtor or a third party) delivers a thing to another person (either the creditor or a third party agreed upon between the parties) in order to secure the proper performance of one or more obligations*”.¹² The validity of the pledge agreement was therefore conditional upon dispossession of the security provider in favour of the creditor.

It may be questioned why the legislature required dispossession of the debtor as a constitutive element of pledge. Such dispossession presented certain advantages: the delivery of the asset to the creditor protected the latter against fraudulent conduct on the part of the debtor in respect of the pledged asset (removal or successive pledges). It also served to ensure a degree of publicity of the security, with a view to protecting third parties. This rationale is, however, no longer convincing in the present day, where mechanisms allowing individuals or economic operators to enjoy assets that do not belong to them are widespread. Moreover, the requirement of dispossession gave rise to significant disadvantages. The preservation of the asset may entail substantial costs for the creditor, even though such preservation does not fall within the scope of his professional activity.

¹² Michèle Grégoire, *Publicité foncière, sûretés réelles et privilèges* (Bruylant 2006) 419. Free translation. Original text: “*un contrat par lequel une personne (soit le débiteur, soit un tiers) remet une chose à une autre personne (soit le créancier, soit un tiers convenu entre les parties) pour garantir la bonne exécution d’une ou plusieurs obligations*”.

Dispossession also resulted in a loss of the utility of the pledged asset, save in the case of pledges over claims.

In these circumstances, it is unsurprising that other forms of *nantissement* were progressively recognised by statute, sometimes with a view to mitigating, and at other times to entirely dispensing with, the requirement of dispossession.

Historically, the warrant constitutes the first manifestation of this relaxation. Article 1 of the Law of 18 November 1862¹³ defined this security as a commercial instrument issued in duplicate by a third party to a person who proves that he has free disposal of the goods to which the instrument relates.¹⁴ This type of *nantissement* was intended to cover goods capable of being stored and consisted in a document representing goods deposited in a warehouse under the custody and responsibility of a third party, enabling the depositor, as holder of the document, to transfer and pledge them without physical handling. The warrant remained a form of *nantissement* involving dispossession, but it offered two advantages over the traditional pledge: the avoidance of physical handling through the representation of the goods by the instrument, and the involvement of a managing third party or, at the very least, a custodian.

The erosion of the requirement of dispossession subsequently manifested itself through the agricultural privilege (*privilege agricole*). This form of security was governed by the Law of 15 April 1884 on agricultural loans,¹⁵ as amended by the Law of 7 March 1929.¹⁶ That law created a non-possessory pledge in favour of the agricultural lender. As a piece of crisis legislation, akin to that of 1919 concerning the business assets (*fonds de commerce*), it in turn inspired the latter. The secured claim encompassed any form of loan granted to farmers, irrespective of the status of the creditor. In order to preserve the privilege, the lender was required to ensure its publicity through registration in a special register maintained by the registration officer.

Finally, mention should be made of the pledge over business assets. In the context of the crisis following the First World War, the Law of 25 October 1919 on the pledging of business assets, the discounting and pledging of invoices, as well as the approval and appraisal of supplies made directly for consumption established, inter alia, a non-possessory pledge with a fluctuating scope.¹⁷ The

¹³ *Moniteur belge*, 20 November 1862.

¹⁴ On this mechanism, see Martin Vrancken, 'Actualités et perspectives du warrant' (2013) *Revue de la Faculté de droit de l'Université de Liège* 185.

¹⁵ *Moniteur belge*, 2 May 1884.

¹⁶ *Moniteur belge*, 20 March 1929.

¹⁷ *Moniteur belge*, 14 November 1919. Free translation of the title of the Law of 25 October 1919. Original text: "sur la mise en gage du fonds de commerce, l'escompte et le gage de la facture, ainsi que l'agrégation et l'expertise des fournitures faites directement à la consommation".

security was created in response to the needs of the commercial sector. Intended for the “*petite bourgeoisie commerçante et industrielle*”,¹⁸ it was primarily aimed at merchants who did not possess immovable property that could be offered as security.

The reform of real security rights over movable property resulted in the repeal of antichresis, the warrant, the agricultural privilege, and the pledge over business assets, in favour of a non-possessory pledge granted by the security provider. In reality, the general law of pledge, as shaped by this reform, has to some extent absorbed the regimes governing the pledge over business assets and the agricultural privilege,¹⁹ these now-defunct securities are even referred to in Article 7, paragraphs 3 and 4, which will be examined below in the context of the scope of the pledge.

As already noted in the introduction, the possibility of creating a pledge with dispossession of the security provider has been maintained as an alternative. Dispossession has also been retained as a sanction. Article 22, paragraphs 2 and 3, provides that, where the security provider seriously fails to comply with his obligations, the court may, at the request of the pledgee, order that the pledged assets be delivered to the latter or placed under judicial sequestration, and that any fraudulent disposal or removal of the encumbered assets is punishable under Article 491 of the Criminal Code. By contrast, pursuant to paragraph 1 of Article 22, any clause allowing the pledgee to obtain delivery of all or part of the pledged assets upon mere demand is deemed unwritten.

2.1.2 Definition and Main Characteristics

Since 1 January 2018, Article 1, paragraph 1, provides that the pledge confers upon the pledgee the right to be paid out of the assets subject to it, in priority to other creditors. This provision defines the pledge by reference to its ultimate purpose. In accordance with paragraph 2 of Article 1, that right of preference has the value of a privilege within the meaning of Article 12 of the Mortgage Law of 22 December 1851. The latter provision states that a privilege is a right which, by reason of the nature of the claim, entitles a creditor to be preferred to other creditors, including mortgage creditors.

A pledge is a real security right over movable property. Articles 7 and 8 determine the subject matter of the contract by which it is created. These provisions display a certain degree of modernity and reflect, to some extent, the recommendations of the United Nations Commission on International Trade Law (UNCITRAL). Under Article 7, paragraph 1, a pledge may relate to a tangible or intangible movable asset, a movable by nature that has become immovable by

¹⁸ This designation was reflected in the title of the Law until 1936 (Jean Cattaruzza, *Le gage sur fonds de commerce* (Kluwer 1997) 6).

¹⁹ Jean Cattaruzza, ‘Les grands axes de la réforme des sûretés mobilières’ (2013) *Droit bancaire et financier* 184

destination, or a specified set of such assets, with the exception of ships, vessels, and registered craft within the meaning of the Belgian Code of Navigation. Aircraft are, however, in no way excluded from the scope of the law.²⁰ Article 8 expressly provides that a pledge may extend to future assets, whether tangible or intangible.

The potentially fluctuating nature of the scope of the pledge is also taken into account by the legislature on numerous occasions. The law thus provides for subrogation (Article 9), immobilisation (Article 19), confusion (Article 20) and the transfer of the pledged asset (Article 23). Vestiges of the aforementioned agricultural privilege and the pledge over business assets, paragraphs 2 and 3 of Article 7 further provide, respectively, that, unless otherwise stipulated in the pledge agreement, a pledge relating to a business as a going concern comprises all the assets constituting that business, and that, unless otherwise stipulated in the pledge agreement, a pledge relating to an agricultural undertaking comprises all the assets used for that undertaking. It may be regretted that the legislature resorts to a degree of tautology in describing the business or agricultural undertaking given as security, but the Laws of 15 April 1884 and 25 October 1919 fared no better in this respect.

Finally, it should be noted that, in principle, a pledge constitutes a consensual contract. As provided by Article 2, a pledge is created by the agreement concluded between the security provider and the pledgee. It follows that the creation of a pledge does not, as a rule, require any particular formality. An important exception is, however, provided where the security provider is a consumer. In such a case, the validity of the agreement is subject, pursuant to Article 4, paragraph 2, to the requirement that it be concluded in writing.

2.1.3 Publicity Requirements

2.1.3.1 *Principle: Registration in the National Pledge Register*

According to Article 15, a pledge is effective against third parties by registration in the Pledge Register. The rank of the pledge is determined by the chronological order of its registration. This illustrates, if need be, the close connection between the opposability of a real security right and its rank. The preparatory works confirm, in this respect, that the time of registration governs conflicts of priority that may arise between pledgees: registration alone is decisive, and any knowledge of the existence of the pledge is of no relevance.²¹ We shall examine the operation of this register at a later stage.

²⁰ *Documents parlementaires, Chambre des représentants*, Doc 54-2138/001, session 2016–17, 8.

²¹ *Documents parlementaires, Chambre des représentants*, Docs 53-2463/001 and 53-2464/001, session 2012–13, 23.

2.1.3.2 *Exceptions*

While Title XVII of Book III establishes the principle of a non-possessory pledge granted by the security provider, the opposability of which is subject to its registration in the Pledge Register, the law nevertheless provides for two exceptions to this system of publicity formalities: the first remains subject to a certain form of opposability requirement, whereas the second constitutes a hidden security, escaping any requirement of publicity.

2.1.3.2.1 *Pledge with Dispossession of the Security Provider*

In accordance with the recommendations of the expert group that drafted the reform of Belgian law on real security rights over movable property, and in line with French law and other comparative law references, the legislature decided to retain the pledge with dispossession of the security provider as an alternative to the non-possessory pledge.²² This is the purpose of Section 3 of the chapter, entitled “*Opposability by Dispossession of Tangible Assets*”, the first provision of which, Article 39, provides that a pledge over a tangible asset is also effective against third parties where that asset is placed in the material possession of the creditor or of an agreed third party. The dispossession of the security provider thus unquestionably contributes to the opposability of the security as regards third parties. It should be noted that this section sets out only those rules that derogate from the regime of the register-based pledge. Accordingly, the rules governing the register-based pledge apply by analogy, save where expressly derogated from.²³

Article 57, paragraph 2, provides that, where there are several pledgees, their order of priority is determined according to the date of registration or of taking possession. In practice, it may prove difficult for the holder of a pledge with dispossession of the security provider to establish the exact date on which possession was taken. The Section of Legislation of the Council of State highlighted this difficulty in its opinion, noting that it questioned the appropriateness of abandoning the system previously in force under the Civil Code, which distinguished between the creation of the pledge between the parties through dispossession, on the one hand, and the opposability of the pledge’s privilege towards third parties, on the other hand, through registration governed by Article 2074 of the Civil Code, which the draft law abolishes. The Section of Legislation added that, since dispossession renders the pledge opposable and determines its rank, the legislature must regulate the evidentiary regime governing the date of dispossession as against third parties, in relation to

²² *Ibid.* 54.

²³ *Ibid.*

the date of registration which determines the rank of non-possessory pledges.²⁴ The legislature was, however, not persuaded by these observations, and no specific evidentiary regime was put in place.

2.1.3.2.2 *Pledge over Claims*

Article 15, paragraph 2, specifies that registration in the Pledge Register is excluded in the case of a pledge over claims. Article 60, paragraph 1, further provides that the pledgee is deemed to be placed in possession of a pledged claim upon the conclusion of the pledge agreement, provided that it has the power to notify the pledge to the debtor of the pledged claim. Paragraph 2 states that the pledge is opposable to the debtor of the pledged claim only from the moment it has been notified to him or has been acknowledged by him. The pledge over claims therefore constitutes a hidden security, in that it is effective against third parties by the mere conclusion of the pledge agreement between the pledgee and the security provider. Part of Belgian doctrine has expressed regret in this regard.²⁵

The exclusion of pledges over claims calls for two clarifications. First, in accordance with Article 7, paragraph 2, referred to above in relation to the pledge over business assets, it remains possible for a portfolio of claims to be encumbered by a register-based pledge, provided that such a portfolio forms part of a broader set of assets. It is the *ut singuli* pledge of claims that escapes registration in the Pledge Register.²⁶ Secondly, among the third parties to the pledge agreement, the debtor of the pledged claim benefits from a specific protection: in order for the pledge to be opposable to him, its existence must be notified to him or acknowledged by him.

An important judgment of the Court of Cassation of 21 June 2018²⁷ illustrates this rule. In that case, the Court was called upon to determine the opposability of a pledge over claims where a third-party attachment had subsequently been levied over the same asset. According to the Court, the conclusion of the pledge agreement renders it opposable to third parties other than the assigned debtor, including the attaching creditor. Consequently, a prior pledge is opposable to a subsequent third-party attachment levied over the same claim. Payment made by the debtor of the pledged claim to the attaching creditor after notification or acknowledgment of the pledge is therefore not opposable to the pledgee, even if the attaching creditor acted in good faith.

²⁴ *Ibid.* 121.

²⁵ Alice Boulvain, 'Le gage sur créances' in Michèle Grégoire and Alice Boulvain (eds), *Les sûretés et privilèges – Volume 2: Sûretés réelles mobilières et privilèges mobiliers* (Bruylant 2023) 197.

²⁶ *Documents parlementaires, Chambre des représentants*, Doc 54-2138/001, session 2016–17, 9–10.

²⁷ Cour de cassation (1^{re} ch), 21 June 2018, www.juportal.be; for a more detailed commentary on this judgment, see Jean Boileau, Frédéric Georges, Marine Moreaux and Mathilda Passanisi, 'Développements jurisprudentiels récents en matière de garanties de paiement' in Frédéric Georges and Florence George (eds), *Varia en droit de l'insolvabilité* (Anthemis 2022) 315.

2.2 Retention of Title

2.2.1 Notion and Main Characteristics

In Belgian law, Article 1583 of the old Civil Code provides that a sale is perfected as soon as the parties have agreed on the object and the price. Ownership is transferred *solo consensu* between the parties. The parties may, however, agree, by inserting a retention of title clause into the contract, that the buyer will become the owner of the goods sold only upon full payment of the price.²⁸ The transfer of ownership is thus subject to a suspensive term.²⁹ Accordingly, the seller remains the owner of the goods until payment of the price by the buyer, who is regarded as a mere holder thereof.³⁰ As the risk passes, in principle and absent agreement to the contrary, with ownership, it is borne by the seller.³¹ The asset over which ownership has been retained forms part of the seller's estate, so that his creditors may proceed to its attachment. Although the seller retains the *abusus* over the asset, he may not exercise his right of disposal without incurring contractual liability towards the buyer. Likewise, the buyer, as a mere holder, cannot resell the asset to a third party, since he is not its owner.³²

Although originally a mechanism of the law of obligations, the retention of title clause may be analysed as a genuine real security right. By virtue of this clause, the parties grant the seller a safeguard against non-payment of the price by the buyer. Should the debtor fail to perform, the seller-creditor may bring an action for recovery to reclaim the asset over which ownership has been retained. The reform has confirmed this classification as a security right, notwithstanding the absence of retention of title from the purportedly exhaustive list set out in Article 3.3, paragraph 3, of the Civil Code referred to above. Retention of title is indeed specifically governed by Articles 69 to 72 of Title XVII of Book III of the old Civil Code, which are dedicated to it.

²⁸ On the retention of title clause and the difficulties it gives rise to, see Michèle Grégoire, 'Questions liées à l'invocation d'une clause de réserve de propriété' in *Mélanges offerts à Pierre van Ommeslaghe* (Bruylant 2000) 465; Bertrand De Coninck, 'La clause de réserve de propriété et son opposabilité en cas de concours' (2005) *Revue générale de droit civil belge* 241; Anne-Sophie Gigot, 'L'opposabilité de la clause de réserve de propriété en cas de procédures collectives d'insolvabilité' (2011) *Revue de droit commercial – Tijdschrift voor Belgisch handelsrecht* 511.

²⁹ Florence George, *Le droit des contrats à l'épreuve de la faillite – Essor ou déclin de l'égalité des créanciers ?* (Larcier 2018) 1017.

³⁰ Eric Dirix, 'Commentaire art 101 L faill' in *Privileges et hypothèques: Commentaire avec aperçu de jurisprudence et de doctrine* (Kluwer 2011) 11.

³¹ *Cour de cassation* (1^{re} ch), 21 November 2024, (2025) *Recueil général de l'enregistrement et du notariat* 201.

³² For certain developments in the case law relating to third-party complicity and retention of title, see Boileau and others, 'Développements jurisprudentiels récents en matière de garanties de paiement' 326. On the contractual liability of the buyer, see Gigot, 'L'opposabilité de la clause de réserve de propriété en cas de procédures collectives d'insolvabilité' 513.

2.2.2 Opposability

Since 1 January 2018, Article 58 grants priority to the seller under a retention of title clause over the pledgee in the event of a conflict. While the retention of title clause may now, subject to certain conditions, be effective against other creditors in situations of concurrence and enables the seller to be paid in priority upon the realisation of the asset over which ownership has been retained, the question of its opposability has not always been settled.

Prior to the reform, the opposability of retention of title clauses in situations of concurrence was contested. Initially, in accordance with well-established case law of the Court of Cassation, following two leading judgments of 9 February 1933,³³ such clauses could not be relied upon against the buyer's other creditors once a situation of concurrence had arisen in respect of the asset sold. In 1997, the legislature sought to depart from this case law. Under Article 101 of the Bankruptcy Law (*loi sur les faillites*)³⁴, the retention of title clause became effective against the debtor's other creditors in insolvency proceedings, subject to compliance with certain conditions.

This legislative development gave rise to several questions and controversies. One of these concerned the opposability of the retention of title clause in situations of concurrence other than bankruptcy, particularly in the context of collective debt settlement proceedings. Article 101 of the Bankruptcy Law did not refer to such other situations. Some authors considered that the solution provided by that provision could and should be transposed *mutatis mutandis* to all situations of concurrence. Others maintained that the prior case law of the Court of Cassation continued to apply to such situations. A third line of doctrine argued that the solution of Article 101 ought to be generalised to all situations of concurrence, while the conditions laid down therein would apply only in the event of bankruptcy.³⁵

In the course of the reform of real security rights over movable property, Articles 69 to 72 ultimately extended the effectiveness of the retention of title clause to all situations of concurrence.

2.2.3 Optional Publicity Requirement

The retention of title clause is often described as a hidden security, in that it is not subject to any publicity requirement. This legislative choice is explained, according to the preparatory works, by the fact that no such obligation exists in neighbouring countries,³⁶ as well as by the desire not to

³³ *Cour de cassation* (1re ch), 9 February 1933, (1933) *Pasicrisie belge* 103; see also George, *Le droit des contrats à l'épreuve de la faillite* 1021.

³⁴ *Moniteur belge*, 28 October 1997.

³⁵ On this controversy and the various strands of doctrine, see Fabry, 'La propriété réservée, la reine des sûretés ? De quelques conflits de rang impliquant le créancier réservataire' 38–39.

³⁶ *Documents parlementaires, Chambre des représentants*, Doc 53-2463/005, session 2012–13, 7.

overburden small businesses with formalities.³⁷ This absence of mandatory publicity nonetheless raises concerns in terms of legal certainty, particularly from the perspective of the insolvency practitioner, who may be required to sell assets swiftly without being able to verify whether they are subject to a retention of title clause, thereby exposing himself to liability towards the *versus dominus*.³⁸

However, under Article 71, where the goods sold have become immovable by incorporation, the retention of title is maintained subject to registration in the Pledge Register. In other words, although the opposability of the retention of title clause is, in principle, not contingent upon compliance with any publicity requirement, the registration of such a clause remains possible – and indeed advisable – In the event of a conflict with a mortgage creditor where the sale concerns assets immobilised by incorporation.³⁹

2.3 Right of Retention

The right of retention is the right of a creditor to withhold the return of an asset, whether or not it belongs to the debtor, until payment has been made, provided that there exists a sufficient connection (*lien de connexité*) between the asset held and the claim. The claim of the person seeking to rely on a right of retention must be certain, due and payable, and liquid, or at least, as regards this latter requirement, capable of being readily assessed.⁴⁰ In its judgment of 7 July 2015, the Brussels Court of Appeal, for instance, held that a right of retention could not be exercised over a towed vehicle where the claim relating to the retained asset was neither certain nor due, but disputed.⁴¹

Possession of a tangible asset is essential to the right of retention. Article 74 provides that it is lost upon voluntary relinquishment of possession, unless such possession is subsequently regained within the same legal relationship. Possession must be exercised in good faith. According to the Court of Cassation, a creditor acts in good faith where, at the time of receipt of the goods, he could believe that his debtor was the owner of those goods or, at the very least, was authorised to

³⁷ Eric Dirix, *La réforme des sûretés réelles mobilières* (Kluwer 2013) 43.

³⁸ George, *Le droit des contrats à l'épreuve de la faillite* 1051.

³⁹ *Documents parlementaires, Chambre des représentants*, Docs 53-2463/001 and 53-2464/001, session 2012–13, 18, 30; for further discussion, reference is made to the specific considerations set out in the explanatory memorandum concerning the possibility of immobilisation by economic destination of the asset over which ownership has been retained (ibid 31).

⁴⁰ Eric Dirix and Roger De Corte, *Zekerheidsrechten* (5th edn, Kluwer 2006) 372.

⁴¹ *Cour d'appel de Bruxelles*, 7 July 2015, (2017) *Rechtspraak Antwerpen Brussel Gent* 71.

conclude, in respect of those goods, agreements capable of giving rise to the exercise of a right of retention over them.⁴²

Finally, a *lien de connexité* is required between the retained asset and the claim; failing this, the right of retention would quickly become subversive. It is customary to distinguish between two types of *liens de connexité*: it may be objective or material, on the one hand, or subjective or legal, on the other.⁴³

It is accepted that the right of retention may be relied upon in situations of concurrence affecting the entirety of a patrimony, as well as in the context of attachment measures relating to a specific asset. The retentor may therefore rely on his possession of the asset until payment of his claim has been made. In practice, such a prerogative is often highly effective. Under Article 76, the right of retention gives rise to a right of preference equivalent to that of a pledgee within the meaning of Article 1. The retentor even benefits from a “super-priority” under Article 58 in the event of a conflict of rank with a pledgee: a pledge based on a right of retention securing a claim for the preservation of the asset takes precedence over all pledgees.⁴⁴

The right of retention is not subject to any registration in the Pledge Register. Article 75 provides that, where it relates to a tangible movable asset, the right of retention is opposable to other creditors of the debtor and to third parties who have acquired rights over the asset after the creditor obtained possession of it. It further provides that the right of retention may also be relied upon against third parties holding prior rights, provided that, at the time the asset was received, the creditor could reasonably assume that the debtor had the authority to subject the asset to such a right.

3. The National Pledge Register

Section 2 of the chapter of the old Civil Code dedicated to pledge sets out, in Articles 26 to 34, the main features of the system of publicity established by the legislature. Article 26 provides for the creation of the National Pledge Register, referred to as the “Pledge Register”. Its contours were further specified by Article 8 of the Law of 25 December 2016. The register is defined as a computerised system⁴⁵ intended for the registration and consultation of pledges and retention of

⁴² *Cour de cassation* (1^{re} ch), 27 April 2006, (2007–08) *Rechtskundig Weekblad* 1542; *Cour de cassation* (1^{re} ch), 15 September 2011, www.juportal.be.

⁴³ Pierre Van Ommeslaghe, ‘Observations sur les effets et l’étendue du droit de rétention et de l’« *exceptio non adimpleti contractus* »’ (1963) *Revue critique de jurisprudence belge* 61, 73.

⁴⁴ On the opposability of the right of retention to privileged and mortgage creditors, see Frédéric Georges, ‘Les moyens de se prémunir contre la défaillance de ses cocontractants’ (1997) *Actualités du droit* 591–592.

⁴⁵ The Pledge Register can be accessed at the following URL: <https://finances.belgium.be/fr/E-services/registre-des-gages>.

title clauses, for the modification, renewal, transfer or deletion of the registration of pledges or retention of title clauses, and for the transfer of rank of a registered pledge.

Among the real security rights over movable property discussed above, two are subject, for their opposability to third parties, to registration in this register: the non-possessory pledge and the retention of title clause in cases where the movable asset becomes immovable by incorporation. By the Law of 25 December 2016, the legislature amended several provisions relating to the Pledge Register in order to ensure symmetrical treatment, within the register, of the publicity of pledges and that of retention of title. For reasons of concision, we shall therefore confine our analysis below to the regime governing the registration of pledges.

3.1 The Pledge Register and its Organisation

The organisation of the Pledge Register, which is largely dematerialised, is based on a clear allocation of roles between the GAPD of the FPS Finance, entrusted with an essentially technical and passive function, and the King, i.e. the Federal Government, which is responsible for determining the detailed rules governing its operation.

3.1.1 The General Administration of Patrimonial Documentation

The Pledge Register is maintained by the GAPD of the FPS Finance. The GAPD, however, performs a purely passive role. According to the Government's stated intention, a key feature of a modern pledge register is that it must be capable of operating without active intervention by the GAPD. The latter may under no circumstances act as a judge in a dispute between the parties. Any disputes must be brought exclusively before the courts⁴⁶. The GAPD is also designated as the controller within the meaning of the Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data, now replaced by the Law of 30 July 2018 implementing the GDPR.

3.1.2 The King

The King is expressly entrusted with determining the rules governing the operation of the Pledge Register. The modalities for authenticating users of the register, as well as the determination of any fees relating to the registration, consultation, modification, renewal and deletion of data, are likewise delegated to him. A Royal Decree of 14 September 2017 implementing the provisions of Title XVII of Book III of the old Civil Code concerning the use of the National Pledge Register was therefore published in the *Moniteur belge* on 26 September 2017. It was subsequently amended

⁴⁶ *Documents parlementaires, Chambre des représentants*, Doc 54-2138/001, session 2016–17, 12.

on certain minor points by a Royal Decree of 16 July 2019. The following provides an overview of its main features.

Article 2 of the aforementioned Royal Decree governs the procedures for identification and authentication in relation to the register, as well as the conditions governing its use; this provision gives concrete effect to the distinction, announced in the definitions set out in Article 1, between a “user” and a “registered user”, the latter being a person who has concluded an agreement with the keeper of the Pledge Register concerning the use of the register. By contrast, for a “simple” user, identification and authentication require the use of an electronic identity card (Article 2, paragraph 1). Where, as will often be the case, the user is a legal person, this necessitates recourse to a natural person acting as an organ of, or otherwise involved in, its activities.

Articles 3 and 4 are devoted respectively to the registration of a pledge and of a retention of title clause; little needs to be said in this regard, as the reference to Article 30 of the Law is explicit. Articles 5 and 6 govern the processes for modification, renewal or deletion, whether in whole or in part, of a registration, as well as the transfer of rank and the assignment of a pledge or retention of title. As will be seen below, the initiative in this respect lies exclusively with the pledgee and the holder of the retention of title.

Articles 7 to 12 determine the modalities for consulting the register, distinguishing according to whether the security provider and the buyer under a retention of title clause are natural persons or legal persons. Article 10, in particular, specifies the information disclosed where a search proves successful. Article 11 authorises the security provider and the buyer under a retention of title clause to verify the persons who have consulted their data over the preceding six months. Finally, Article 12 addresses the abusive and commercial use of data extracted from the register, a matter to which we shall return below.

Any interaction with the register, following payment of the fee determined in accordance with Articles 14 to 17, results in the issuance of a document the integrity of which is guaranteed by an electronic signature pursuant to Article 13.

The amount of the fee is generally determined on a progressive basis, depending on the maximum amount up to which the claims are secured; considering only the cost of registration, it ranges from 20 to 500 euros. As regards the provision of information to third parties, a fee of 5 euros is charged per “exploratory” search, this amount including the issuance of an electronically signed document recording either a negative result or the existence of a pledge or retention of title, as well as for each additional search result for which the issuance of such a document is requested.

By way of exception, consultation by the security provider and by the buyer under a retention of title clause is free of charge for the registration concerning them in the Pledge Register (Article 14, paragraph 7); moreover, Article 14, paragraph 9, of the Royal Decree exempts the departments of the FPS Finance from any fee.

3.2 Registration and Modification of Data

Under Article 29, paragraph 1, the pledgee is authorised, by virtue of the pledge agreement, to register the pledge by entering in the Pledge Register the data referred to in Article 30, as set out in the written instrument referred to in Article 4, in accordance with the modalities determined by the King. The pledgee is required to inform the security provider in writing of the registration. The pledgee is also liable for any damage resulting from the registration of incorrect data.

Article 30, paragraph 1, specifies the data to be included upon registration: the identity of the pledgee or its representative, the identity of the security provider, where applicable the identity of the pledgee's agent or representative, a description of the encumbered assets, a description of the secured claims, the maximum amount up to which the claims are secured, and a declaration by the secured creditor that it is liable for any damage resulting from the registration of incorrect data.

Article 32 governs the modification of data. It provides that, in the event of a modification of the pledge agreement or of incorrect data, the pledgee is authorised to amend the registered data in accordance with the agreement and with the modalities determined by the King. It further provides that both the original registration and the modification are recorded in the register, and that the pledgee must inform the security provider in writing of any such modification.

3.3 Assignment of Claims and Transfer of Rank

Articles 37 and 38 govern the publicity given to the assignment of the secured claim and to the transfer of rank. Article 37 requires the assignor to register the transfer of the pledge in the event of an assignment of the secured claim. According to paragraph 2 of that provision, until such registration takes place, the registration continues to produce its effects in accordance with the assignor's registration. In the case of a partial assignment of the secured claim, the pledge is transferred proportionally to the extent of the assignment.⁴⁷ As regards the transfer of rank, Article 38, paragraph 1, provides that it is effective against third parties only upon its registration in the Pledge Register.

⁴⁷ Boulvain, 'Opposabilité du gage' in Grégoire and Boulvain (eds), *Les sûretés et privilèges – Volume 2* 145.

3.4 Duration of Registration

Article 35 sets the duration of the registration of a pledge at ten years. Upon expiry of that period, the pledge ceases to be accessible in the Pledge Register. The same provision nevertheless allows for the renewal of the registration for successive ten-year periods, subject to a renewal being recorded in the register prior to the expiry of the initial period, in accordance with the modalities determined by the King. The provision further distinguishes between full and partial renewals. The pledgee is required to inform the security provider in writing of the renewal of the registration.

3.5 Consultation of Data

The system of publicity established by the reform necessarily raises questions as to access to the register and the conditions under which the data it contains may be consulted and processed. These issues are of particular importance, as they directly affect both the effectiveness of the publicity mechanism and the protection of personal data. The legal framework governing access to, and use of, the information recorded in the Pledge Register thus reflects an attempt to strike a balance between transparency in secured transactions and respect for privacy requirements.

3.5.1 Access to the Register and Available Data

Article 34, entitled “*Access to the Register*”, provides, following its amendment by Article 16 of the Law of 25 December 2016, that any person has access to the Pledge Register in accordance with the modalities determined by the King. Article 31, paragraph 1, specifies the data that may be consulted in relation to a registered pledge: the registration number, the identity of the pledgee or of the representative referred to in Article 3, the identity of the security provider, where applicable the identity of the pledgee’s agent or of the representative referred to in Article 3, a description of the encumbered assets, a description of the secured claims, the maximum amount up to which the claims are secured, the declaration by the secured creditor (or its representative) that it is liable for any damage resulting from the registration of incorrect data and, last but not least, the date of registration.

The preparatory works stress that access by third parties must be subject only to minimal formal requirements, namely the proper submission of the request and the payment of the prescribed fee. Imposing additional conditions – such as the need to state and assess a legitimate interest – would fundamentally undermine the efficiency of the system, which is designed as an open, notice-based registry. As highlighted in the UNCITRAL Guide on the Implementation of a Security Rights

Registry, such restrictions would reintroduce a form of discretionary control incompatible with the very rationale of modern publicity mechanisms.⁴⁸

3.5.2 Processing of Data

The initial opinion of the Section of Legislation of the Council of State examined at length the system of publicity introduced by the reform. That high authority criticised certain passages of the explanatory memorandum to the draft law as being ambiguous with regard to the purpose of the data processing, noting that the purpose of the system was to constitute an alternative form of publicity to that previously ensured by dispossession of the pledged asset, namely to alert persons who, in a professional capacity, might acquire the pledged asset, as well as those who might take a second pledge over it. It emphasised that the author of the draft law should ensure strict compliance with that purpose, which was not always the case.⁴⁹ The legislature appears to have taken this criticism into account, as the passages criticised by the Council of State no longer appear in the explanatory memorandum.

In this regard, certain aspects of the opinion of the Council of State were somewhat surprising. It was suggested that, under the system of the Law of 8 December 1992 and the directive which it transposes, the data recorded and, *a fortiori*, consulted, should be “*adequate, relevant and not excessive*” in relation to the purpose of the processing. While data relating to the identity of the security provider, the identification of the pledged asset, the date of registration (which determines rank), and the amount of the secured claim could be regarded as such, doubts were expressed as to the relevance, and thus the non-excessive nature, of additional data such as the identity of the pledgee and the description of the secured claims.⁵⁰

These concerns are somewhat puzzling. Admittedly, the fact that such information had long been disclosed in other areas – such as mortgages, pledges over business assets, or the agricultural privilege – did not in itself guarantee compliance with a subsequent directive; however, no such concerns had previously been raised. More importantly, it is difficult to see how such data, which are intrinsically linked to the operation of the security, could be regarded as excessive. It is therefore rightly stated in the commentary on the provisions that such data are necessary in order to enable interested third parties to ascertain, with sufficient precision and completeness, the exact scope of the pledge made opposable through its registration in the register.⁵¹

⁴⁸ *Documents parlementaires, Chambre des représentants*, Doc 54-2138/001, session 2016–17, 13.

⁴⁹ *Documents parlementaires, Chambre des représentants*, Docs 53-2463/001 and 53-2464/001, session 2012–13, 107.

⁵⁰ *Ibid.* 113.

⁵¹ *Ibid.* 50.

The legislature addressed this issue quite decisively in the amending Law of 25 December 2016. This is evident from the wording of the revised Article 34, which, as already noted, provides that any person has access to the Pledge Register in accordance with the modalities determined by the King. The commentary on this amendment is equally clear: the Pledge Register constitutes the cornerstone of the new system designed to render real security rights opposable through registration, and, since such rights are by nature intended to be effective against all third parties, publicity must be accessible to all.⁵²

It should nevertheless be specified that the provisions of Title XVII of Book III of the old Civil Code, which delegate to the King the task of determining the modalities of use and access to the Pledge Register, subjected the Royal Decree of 14 September 2017 to prior review by the Privacy Commission. That Commission, as well as the Council of State, formulated several observations in this regard, to which the Report to the King preceding the Royal Decree seeks to respond.

Against that background, and in order to mitigate the risks associated with the misuse of data extracted from the Pledge Register, Article 12 of the Royal Decree of 14 September 2017 provides that any abusive or commercial use of such data constitutes a violation of the Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data and gives rise to the user's liability for any resulting damage. It further prohibits any use of the register for commercial prospecting purposes or for the marketing of lists relating to the financial situation of persons.

3.6 Full or Partial Deletion of Registration

Article 36, as amended by Article 18 of the Law of 25 December 2016, provides for the partial or full deletion of a registration. Under paragraph 1, the pledgee is required, upon payment of the secured debt, to ensure that the registration of the pledge is fully deleted. If the pledgee fails to do so, deletion may be sought before the courts, without prejudice to any claim for damages. In such a case, reference is made to judicial deletion. A partial deletion is required, for instance, where the maximum amount up to which the claims are secured has decreased or where part of the assets subject to the pledge is released.⁵³ Under Article 36, paragraph 2, in the case of partial deletion, the register indicates, upon consultation, both the initial registration and the entry relating to the partial deletion.

⁵² *Ibid.* 12–14.

⁵³ Boulvain, 'Opposabilité du gage' 148.

4. Conclusion

The reform of real security rights over movable property has profoundly reshaped the landscape of secured transactions in Belgian law. Beyond the reform of the law of pledge itself, the new regime reflects a broader transformation of Belgian secured transactions law. First, it reorganises within a single framework several mechanisms governing security rights over movable property, thereby clarifying a body of law previously characterised by fragmented forms of pledge and by significant uncertainties surrounding mechanisms such as retention of title and the right of retention. Secondly, it places the issue of publicity and the circulation of information at the centre of the system, notably through the introduction of the non-possessory pledge combined with the creation of a centralised and dematerialised register. Thirdly, it illustrates the growing influence of functional and economic considerations in the structuring of modern security rights, through the establishment of a more coherent and practice-oriented legal framework integrating previously fragmented mechanisms.

It may nevertheless be regretted that consultation of the Pledge Register does not provide third parties with a comprehensive view of the encumbrances affecting the assets of a potential debtor. Dispossession of the security provider remains an alternative to registration as a means of rendering the pledge effective against third parties. Moreover, as noted above, pledges over claims are expressly excluded from the register.

During the discussion of the draft legislation in the Senate, Senator Alain Courtois, then Chair of the Justice Committee, highlighted this lack of completeness of the register in light of the continued possibility of creating a pledge by dispossession, observing that the project provides for dispossession as an alternative condition of opposability, with the consequence that consultation of the register cannot guarantee that a given asset is free from encumbrance, since the pledge may have been rendered effective by mere dispossession. He therefore questioned whether opposability by dispossession ought not to be abolished in order to avoid confusion.⁵⁴

He further observed that the introduction of such an obligation would raise difficulties in light of the Law of 15 December 2004 on financial collateral arrangements, which incorporates the Financial Collateral Directive (Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements). In particular, he noted that, as regards bank accounts used as security, the directive precludes any form of publicity in that context.

⁵⁴ *Documents parlementaires, Sénat*, Doc 5-1922/004, session 2012–13, 13.

While the reference to comparative law is respectable and carries significant persuasive weight in terms of the competitiveness of the Belgian legal system, it must nevertheless be observed – without prejudice to the great respect due to Mr Dirix and to the remarkable work accomplished in the context of this reform – that the reference to financial collateral and to the European directive is not entirely convincing. The European Union has never required Member States to transpose the Collateral Directive in the manner adopted in Belgium, that is, beyond the specific context of interbank relations. Moreover, the Constitutional Court annulled certain provisions of the Law of 15 December 2004 on financial collateral arrangements that extended its scope of application beyond that context, in particular those which made the regime applicable even where the security provider was a consumer.⁵⁵ It is therefore inaccurate to assert that the directive prohibits any form of publicity in respect of bank accounts used as security: such a prohibition exists only within that specific context.

During the “reform of the reform”, the issue once again became the subject of debate between the government and the Council of State. The latter observed that the coexistence of two mechanisms for rendering a pledge over claims effective – registration (Article 15) and “control” through notification or acknowledgment (Article 60) – was presented as problematic in the preparatory works, even though those provisions do not pursue the same objective. While Article 15 establishes a system of registration intended to render the pledge effective against third parties generally, Article 60 governs only the relationship with the assigned debtor, towards whom the pledge is effective only upon notification or acknowledgment. Such notification or acknowledgment does not enable other third parties to become aware of the pledge. The Council of State therefore suggested that the possibility of registering pledges over claims be maintained, in order to enhance the coherence of the system and ensure effective protection of third-party rights.⁵⁶

In response, the government argued, in substance, that it would be inappropriate to increase the formal requirements for opposability beyond those currently applicable, that the coexistence of two systems of opposability would itself be problematic, and that such an approach would create difficulties in coordinating with the fiduciary assignment of claims⁵⁷, which remains free from any

⁵⁵ Cour constitutionnelle, No 42/2024, 11 April 2024, www.const-court.be; (2024) *Jurisprudence de Liège, Mons et Bruxelles* 790; (2024) *Droit des affaires / bet Ondernemingsrecht* 41, with note by Clément Standaert, ‘Inconstitutionnalité partielle du régime de réalisation du gage régi par la loi sur les sûretés financières’; Cour constitutionnelle, No 167/2008, 27 November 2008, www.const-court.be; (2009) *Jurisprudence de Liège, Mons et Bruxelles* 816, with note by Frédéric Georges.

⁵⁶ *Documents parlementaires, Chambre des représentants*, Doc 54-2138/001, session 2016–17, 66.

⁵⁷ Article 62 provides that an assignment of a claim by way of security confers on the assignee only a pledge over the assigned claim, whether or not that assignment complies with the requirements of Article 61, except where the assignor is a consumer within the meaning of Article I.1, 2°, of Book I of the Code of Economic Law.¹ In so doing, the legislature gives statutory expression to the judgment of the Court of Cassation of 3 December 2010, which, in light of the principle of equality of creditors, limited the opposability of assignments of claims in situations of concurrence (Cour de cassation (1re ch), 3 December 2010, (2010–11) *Rechtskundig Weekblad* 1177).

publicity requirement. For our part, we would submit, respectively, that online registration in the Pledge Register does not constitute an unduly burdensome requirement, that the objective should precisely be to retain a single system of opposability – namely the register-based pledge – and that the fiduciary assignment of claims merely represents a workaround that has developed in response to the shortcomings of the legislative framework.

It remains to be seen whether the future codification of security rights within Book 9 of the Civil Code will maintain these compromises or, on the contrary, further complete the modernisation initiated by the 2013 and 2016 reforms through a more comprehensive and coherent system of publicity and opposability.