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UNIVERSITÀ DEGLI STUDI DI MILANO
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Collection of Belgian implementing rules

A. Belgium

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I. General implementation strategy

The **Brussels I bis Regulation** is directly applicable in Belgium, as every EU Regulation.
No adaptation of internal Belgian legal system was introduced for the implementation of The **European Enforcement Order**. It was only adopted through a "circulaire" on 22 June 2005 by the Ministry of Justice ('Circulaire relative au Règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées')[1], but its usefulness is very controversial.
The ***European Order for Payment Regulation*** is applicable in Belgium since the direct applicability of EU Regulations, since no supplementing law has been enacted.
Regarding the ***European Small Claims Procedure Regulation***, the Belgian legislator has not embedded this instrument into the legal order of the country. Therefore, the Regulation is directly applicable in Belgium.
The ***European Account Preservation Order Regulation*** has been embedded in the Belgian legal order by the Act of 18 June 2018, *Belgian Official Journal* 16.07.2018 ('Loi portant dispositions diverses en matière de droit civil et des dispositions en vue de promouvoir des formes alternatives de résolution des litiges').[2]

II. Brussels I bis Regulation

[1] For more information see Part B. Annex: Implementation Rules and Translations in this report at page 30.
[2] Ibid, 46.

1. Competent court or authority and procedure for issuance of certificates (outgoing)

cf. Art. 53 and 60

Art. 53 of the EU Regulation 1215/2012 concerns the jurisdiction, recognition, and enforcement of judgements in civil and commercial matter. According to this Article, the court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I to the regulation. The 'court of origin' in this context, is defined in Art. 2 (f) as the court which has given the judgement the recognition of which is invoked or the enforcement of which is sought. Further, Art. 60 states that the competent authority or court of the Member State of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex II containing a summary of the enforceable obligation recorded in the authentic instrument or of the agreement between the parties recorded in the court settlement. In Belgium, the clerk of the Court that has rendered the decision is the competent authority.[3] A written request to the clerk of the jurisdiction is sufficient. This request can be made directly during the procedure. The respective judge may accept to issue the certificate when making its decision. Either way, there is no time limit for such an application. Consequently, this request for issuance of certificate can be made even after the decision has been issued.

2. Competent court or authority and procedure for the enforcement of foreign titles (incoming)

cf. Art. 44 (2), 45 (4), 47 (1), 54 (2)

In Belgium, the competent authority to implement the enforcement of foreign titles is bailiff[4] (in cases where the enforcing title is uncontested).[5] Nonetheless, where the debtor oppose the actual enforcement of the judgement – according to Art. 23 of the Belgian Code of Private International Law (BCPL), excluding the cases which fall under article 121 (viz. foreign insolvency judgements) – the court of first instance[6] has jurisdiction to hear actions

[3] Stefaan Voet and Piater Gillaerts: *Cross Border Enforcement of Monetary Claims – Interplay of Brussels IA regulation and national rules* (University of Maribor Press 2018) 4.
[4] In French *huissier de justice*, in Dutch *gerechtsdeurwaarde*r, and in German *Gerichtsvollzieher*.
[5] The full list of competences of bailiffs has been stipulated within Article 519 (§ 1) of the Belgian Judicial Code.
[6] Of the district where the debtor is domiciled or has his/her residence or the place where enforcement will be sought.

for enforcement of this foreign judgement, in accordance with Art. 569 (5°) of the Belgian Judicial Code (BJC).[7] In Belgium, the Court of First Instance is called as, *tribunal de première instance* (French)/*rechtbank van eerste aanleg* (Dutch)/ *Gericht erster Instanz* (German). Under the provisions of Article 23(3) of the BCPL, the action for enforcement of a foreign judgement is introduced and treated in accordance with the procedure referred to in Art. 1025 to 1034 of the BJC .[8] Further, if a foreign judgement meets the conditions required for the authenticity of judgements as per the law of the state where it was rendered, it is regarded as evidence in Belgium of the findings of fact made by the judge. The only case where findings of fact made by the foreign judge cannot be considered is when they produce an effect which is incompatible with the public policy. Under Art. 26 of BCPL, the evidence to the contrary relating to facts established by a foreign judge can be brought by any legal means. Under Art. 29 of BCPL, a foreign judgement or authentic instrument is considered without confirmation of the conditions required for recognition, enforcement, or its value as evidence.[9]

3. Other implementation rules:

cf. preliminary remarks
According to the enforcement rules, included in the Regulation, enforcement procedures are governed by the law of the Member State of enforcement. Any judgement or judicial statement accompanied by the decision of enforceability will be enforced under the same conditions in any Member State.
No security, bond, or deposit, however described, is required of a party who in one Member State applies for enforcement of a judgement given in another Member State on the ground that s/he is a foreign national or that s/he is not domiciled or resident in the State in which enforcement is sought.

4. Critical assessment

In Belgium, the simplification and the speediness of the enforcement procedures carried out, according to Brussels Ibis Regulation, depend on the specific attitude of the designated court[10]. Occasionally, the process can advance very swiftly, especially in some of the commercial courts, while in other cases the process may get pending for more than one year. Experts are convinced that the speed of the enforcement procedures could be considered

[7] Voet and Gillaerts (n 1).
[8] ibid.
[9] ibid.
[10] ibid.

generally adequate but also internal Belgium procedures can be quick: it mainly depends on the behavior and on the time that every involved judge will take for each case.

III. European Enforcement Order Regulation (EEOR)

1. Competent authority for (re-)issuance and suspension of the EEO (outgoing)

issuing: cf. Art. 6 (1), 9 (1), 24 (1), 25 (1); suspending: cf. Art. 6 (2); reissuing: cf. Art. 6 (3); specialization or concentration?

In Belgium, the competent authority for the purpose of (re-) issuing and/or suspending the European Enforcement Order certificate varies depending on the material upon which the certificate is sought. In this sense:

- If the applicant requests the EEO certificate based on a judgement or a court-approved settlement, in accordance with Art. 5.1 of the Ministerial Circular of 22 June 2005[11], the competent authority to issue or certify the EEO certificate is the Chief Clerk of the court who has delivered the judgement or approved the settlement. In some Belgian courts, this task may be also carried out by the judge.

- If the certificate is sought because of an authentic instrument[12]), therefore, the competent authority to (re-) issue and/or suspend such certificate is the notary who drew up the instrument.

2. Procedural rules on (re-)issuance and suspension of the EEO

e.g. hearing of the debtor, service to the debtor, remedies for the creditor in case of refusal

[11] See for more information, Circulaire relative au Règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées (Journal officiel n° L 143 du 30 avril 2004, p. 0015-0039). Available at: <http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&tri=dd%20AS%20RANK&value=&table_name=loi&cn=2005062237&caller=image_a1&fromtab=loi&la=F> accessed 20 April 2021.

[12] Art. 4(3) of EEO Regulation refers to an 'authentic instrument' as: *"(a) a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;.."*. See for a detailed research on the concept of 'authentic instruments' in the EU, Fitchen J, 'Authentic Instruments and European Private International Law in Civil and Commercial Matters: Is Now the Time to Break New Ground?' (2011) 7 Journal of private international law 33. See also Council of the Notaries of the European Union, Comparative Study on Authentic Instruments - National Provisions of Private Law, Circulation, Mutual Recognition and Enforcement, Possible Legislative Initiative by the European Union [United Kingdom, France, Germany, Poland, Romania, Sweden] (2018) The EU Parliament.

According to the EEOR, once a debtor has filed an appeal, a request for review (Art. 19), or a request for correction or withdrawal (Art. 10), the competent court may, at the debtor's request, limit enforcement proceedings to provisional measures (Art. 23(2)(a), request the creation of a security right (Art. 23(2)(b))) or suspend enforcement proceedings (Art. 23(2)(c)).[13] The execution of a foreign judgement in Belgium can also be opposed by the debtor. Such opposition proceedings are same as those filed in the framework of domestic judgements: The opposition must be lodged before the judge of the court of first instance. The grounds for such opposition are procedural irregularities in the execution of the judgement or the legal validity of the judgement, e.g.:

- Improper service of the judgement.
- In case of money claims when the judgement does not have an order that is, certain, of a fixed amount, and is due.
- The judgement is not effective anymore (in cases the debt is time-barred or where the debt has been paid or the parties have agreed on a specific payment schedule).

3. Procedural rules on rectification or withdrawal of the EEO

cf. Art. 10 (2)

To either rectify or withdraw an EEO certificate in Belgium, the applicant must lodge his/her request before the Chief Clerk of the court that has issued the EEO certificate. Regarding the certificate issued based on an authentic instrument, this request must be submitted to the notary who has issued such certificate. By analogy, Art. 795 of the Belgian Judicial Code provides that requests for interpretation or rectification of a judgement are brought before the judge who has rendered this judgement. It is noteworthy that the Chief Clerk or notary are both competent to deal with rectification or withdrawal since it is a matter of verifying an objective and already-established subject matter which does not require a judicial assessment by a judge.

In the event of a request for rectification, the Chief Clerk of the judicial body or the notary – in assessing the existence of any disparity between the judgement and the EEO certificate – must find a material error in order to invalidate the issued certificate. If such error is found, it will be corrected, and a new certificate will be issued to the applicant. In case of withdrawal, as soon as the Chief Clerk of the court or the notary concludes that the certificate does not comply with all the necessary requirements of the EEOR and it has not been properly issued,

[13] Voet and Gillaerts (n 1).

such certificate will be replaced by a new one. In both cases, the previous certificate loses its legal effect.
The decision of rectification or withdrawal is then communicated to the requesting party also to the defendant in accordance with Art. 32 to 47 of the BJC on the service of documents and/or notifications.[14]

4. Rules on service

cf. Art. 13, 14, 15, e.g., standard forms, competent service person, exclusion of national forms of service (cf. Art. 14(2), CJEU, C-292/10)

As regards the rules on service of documents or/and notifications for issuing an EEO certificate or any related document to it, the Belgian civil procedural rules – without prejudice to the minimum standards as set in Art. 13, 14 and 15 of the EEOR – are applicable. On this account, the Chief Clerk verifies that conditions of Art. 13 (on the service with proof of recipe by the debtor) or Art. 14 (service without proof of recipe by the debtor) of the EEOR have been properly followed. If any of the indicated requirements is missing, the Chief Clerk cannot issue an EEO certificate to the applicant]. It is to be noted that the actual service or notification is conducted through the bailiffs in Belgium. Concerning the necessary details to be provided in order to have an effective service of document, Art. 43 of the BJC refers to a set of information that are necessary to be considered for serving the document upon the party.[15] Art. 13 and 14 of the EEOR, have specified a more comprehensive list of information to be provided to the debtor within the service of document and/or notification. Although, the Chief Clerk monitors that the proper information about the debtor has been

[14] It should be noted that in Belgium, there exists a distinction between service and notification of a judgement and/or other supporting documents during the judicial proceeding. In this context, the service refers to delivering a judgement or/and other judicial documents to the party by writ through an official judicial authority (namely the bailiffs). On the other hand, notification applies to situations in which the court registry serves the judgement or/and any other documents using judicial mail, registered mail, or ordinary mail services. See for more information, Voet and Gillaerts, (n 1).
[15] Under Art. 43 of the BJC, '*The writ of service must be signed by the officiating judicial officer and contain the indication:*
1) of the days, months and years and the place of the service;
2) [of the name, first name [...], domicile and, if applicable, e-mail judicial address or electronic home election address, quality and registration at the Bank-Carrefour of the companies of the person at the request of whom the exploit is served;]
3) [name, first name, residence or, in the absence of residence, residence and, if applicable, e-mail judicial address or electronic home election address and quality of the recipient of the exploit;]
4) (name, first name and, if applicable, quality of the person to whom the copy was given or the filing of the copy in the case of Art. 38 (1), or the filing of the exploit in the mail, in cases provided for in Art. 40) and
5) of the name and surname of the judicial officer and the indication of the address of his study;
(6) the detailed cost of the deed...."

provided; nevertheless, it remains the sole responsibility of the applicant to ensure that the provided data is in accordance with the rules of Regulation.

In a circumstance that the minimum requirements for the service of documents and/or notifications are not met – in accordance with national procedural rules – such non-compliance will be remedied under Art. 18 of the EEOR. If it is proved for the Chief Clerk that – despite the failure to meet the rules on service of documents and/or notification – the debtor has personally received the documents in a way that s/he had sufficient time to prepare for the defence; therefore, the EEO certificate can be issued.

5. Possibilities for review under Art. 19 (1) and (2)

Under Belgian law, there are several courses of actions – depending on the circumstances of each case – available to a party who wishes to request for a review of a judgement.
Firstly, by virtue of Art. 1051 of the BJC, an appeal may be lodged against a judgement within one month of service of the judgement, or within one month of notice of the judgement given under provisions of Art. 792 of the BJC (regardless of the parties' participation in the proceedings).[16]
Secondly, in accordance with Art. 1048 BJC, where a judgement is given in default of appearance of one of the parties, an objection is allowed within one months from the date of the service of the judgement or within one month of notice of the judgement given under provisions of Art. 792 of the BJC.
In cases where none of the above-mentioned alternatives are applicable and there is no possible remedy available to a judgement, a party may – under specific circumstances – make a request in order to seek an extraordinary review request under provisions of Art. 1133 of

[16] Under Art. 792 of the BJC, " *Within five days of the pronouncement of the decision, in both civil and criminal cases, the court clerk shall notify each of the parties or, where applicable, their lawyers, of an unsigned copy of the decision. This notification does not start the time limit for appeal. It shall be sent electronically to the professional e-mail address of the lawyer or, in the case of a party who has appeared without a lawyer, to the electronic judicial address of that party or, failing that, to the last e-mail address provided by that party in the proceedings. If no electronic address is known to the Registrar, or if notification to the electronic address has manifestly failed, notification shall be made by simple letter]*
(By way of derogation from the preceding paragraph, in the matters listed in Art. 704 (§ 2), (as well as in matters of adoption,) the registrar shall notify the parties of the judgment by judicial envelope sent within eight days. On pain of nullity, such notification shall mention the means of appeal, the time limit within which such appeal or appeals must be lodged and the name and address of the court competent to hear them. In the cases referred to in the second paragraph, the registrar shall, where appropriate, send an unsigned copy of the judgment to the parties' lawyers or to the delegates referred to in Art. 728, § 3."

the BJC[17]. This application must be lodged before the court within six months from the date of being notified of the judgement with a view to revoke this court decision.[18]
This six-month time-limit for an appeal, objection, or application in extraordinary circumstances for review is not effective if there exists:

- another time-limits as laid down in mandatory provisions in supranational and international law context, or;
- the provision of Art. 50 of the BJC[19] that allows extending a time-limit under certain conditions as laid down by law, or;
- the possibility of applying the general principle of law – that has been repeatedly confirmed and emphasized by the Belgian Court of Cassation – according to which the time-limit to perform an act is extended in favour of a party who has been prevented from performing the act due to *force majeure*.

6. Competent authority and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 21, 23, e.g. remedies and hearings, specialization or concentration?

The competent authority for refusal, stay or limitation of enforcement in Belgium, is always the Court of First Instance sitting in each city of Belgium, e.g., in Brussels the *Nederlandstalige rechtbank van eerste aanleg Brussel* (Dutch)/ *Tribunal de première instance francophone de Bruxelles* (French), and similarly, for instance, in Ghent the *Rechtbank eerste aanleg oost-vlanderen afdeling Gent* (Court of First Instance East Flanders, Ghent Department). The enforcement procedures of EU judgements are governed by the law of the Member State of enforcement.

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[17] Under Art. 1133 of the BJC: *"The civil claim is open for the following reasons:*
1° if there has been personal fraud;
2° if, since the decision, decisive documents have been recovered which had been withheld by the act of the party;
3° if, between the same parties, acting in the same capacity, there is an incompatibility of decisions rendered on the same subject and on the same cause;
4° if the judgment was based on documents, testimonies, expert reports or oaths that have been recognised or declared false since the decision;
5° if the decision is based on a judgement or ruling made in a criminal matter which has subsequently been annulled;
6° if the decision is based on a procedural act carried out in the name of a person, without that person having either given an express or tacit mandate to that end, or having ratified or confirmed what was done."

[18] It is to be noted that, in practice, these applications are accepted in extremely rare cases.

[19] Art. 50, of the BJC stipulates that, *"Time limits established on pain of forfeiture may not be shortened or extended, even with the agreement of the parties, unless such forfeiture has been covered under the conditions laid down by law. (Nevertheless, if the time limit for appeal or opposition provided for (in Articles 1048 and 1051 and 1253quater, c) and d)) runs and expires during the judicial holidays, it shall be extended until the fifteenth day of the new judicial year)."*

A judgement that is certified as a European enforcement order is therefore enforced under the same conditions as a judgement given by a Belgian court (Art. 20(1) of the EEOR). Similarly, it applies for the court settlements and the authentic instruments under Art. 24(2) and 25(2) of the same Regulation respectively. However, the creditor is obliged to provide the Belgian enforcement authorities with a copy of the EEO certificate, the judgement and, if necessary, a transcription of the EEO certificate or a translation of it into one of the official languages of Belgium (namely French, Dutch, or German) where enforcement is sought (see Art. 20 (2) of the EEOR). The Regulation provides that the translation must be certified by a qualified person[20] in one of the Member States (see Art. 20, paragraph 2, c). As per the conditions laid down in Art. 21(1) of this Regulation, enforcement may be refused if the judgement certified as a European enforcement order certificate is found incompatible – by the Court of First Instance in reviewing the EEO certificate – with an earlier judgement given in any Member State or in a third country.

7. Costs for the issuance of an EEO

if any, please provide the relation to comparable costs of national enforcement orders

Estimating the costs of issuing an EEO certificate in Belgium is difficult without having the specific information about e.g. the value of the claim, the number of pages of the judgements, and whether the judgement needs to be translated. In general, the judiciary costs in Belgium are subject of the Art. 1017 et seq. of the BJC. Art. 1018 of the BJC sets out the costs classed as legal costs, including the issuance of certificates. In the context of the EEO certificate, the typical costs include several fixed fees to obtain such document. These costs include:

- the court registry fees – according to Art. 268 et seq. of the *Belgian Code of Registration, Mortgage and Court Registry Fees* – that covers registration and other fees. These costs include listing fees (between 30 € and 100 €, depending on the court), drafting fees and certified copy fees (35 €) Articles).
- the contribution of 20 € to the budgetary fund for judicial assistance

[20] In Belgium, judicial officers are the competent authority to certify the translations of judgements and authentic instruments. In addition, bailiffs can also certify the translation, where they are issued by a sworn translator. See for more information *comparative study on the application of European Regulation Brussels I bis, Conclusions of the final report of the project*. (2017). The European Bailiffs' Foundation (EUBF): 3. Available at <https://eubf.eu/projects/#studies> accessed 20 April 2021.

- the costs for obtaining an authenticated copy of the judgement (this is calculated based on the number of pages of the judgement). Depending on the language of the judgement, there some translation costs may be applicable.

8. Other implementation rules

cf. preliminary remarks

The EEOR is applicable in Belgium exclusively based on the EU Regulations: no supplementing law has been enacted, nor did the Belgian legislator amend any aspect of the Belgian Judicial Code.[21] The Minister of Justice issued on 22 June 2005 an appropriate 'circulaire'; however, this was not very helpful in embedding the Regulation in the Belgian legal system, having created many controversial positions. In effect, Belgian procedural system conflicts strongly with EEOR. Firstly, in Belgium it does not exist a review mechanism, as required by the Regulation. Secondly, the notion and the interpretation of an 'uncontested claim' in default cases is very controversial.

9. Critical assessment

The findings of this study about the implementation of the EEOR in Belgium revealed that the use of the Regulation has been considerably low. While the major reason for the modest popularity lies on the unawareness about this instrument among citizens and many practitioners. Some technical problems also arise in relation to the procedural rules at national level that have been an obstacle to the effective implementation of the EEOR.

The most serious procedural issue refers to the uncertainty about the review procedure in accordance with the minimum standards as set out in Art. 19 of the EEOR. By virtue of this Article, an EEO certificate can only be issued, if the debtor is entitled to apply for a review of the judgement under the law of the Member State of origin. In this context, the Belgian jurists have expressed two different opinions about the possibility of review under the Regulation. According to some scholars, the Belgian law does not meet the minimum standards as set forth within Art. 19 to review the judgement – upon which the EEO

[21]See extensively L. Samyn, De uitdagingen van het Europees (international) procesrecht voor het Belgisch procesrecht, University of Antwerp, Antwerp 2012: 235–377; M. Pertegás, 'De Europese executoriale titel in perspectief ' in A. Van Oevelen, R. de Corte, J. Meeusen, S. Rutten and M. Pertegás (eds.), Hulde aan Prof. Dr. Jean Laenens, Intersentia, Antwerp 2008: 211–220; S. Brijs and J.-F. van Drooghenbroeck, Un titre exécutoire européen, Larcier, Brussels 2006: 1–360.

certificate has been requested – in exceptional cases.[22] As a result, the EEO Regulation is not enforceable in Belgium. This view has been followed by some courts in dealing with the issuance of the EEO certificates.[23]

Contrary to this view, some other scholars believe that the Belgian law allows for such a review, but in exceptional cases.[24] They argue that where, in accordance with Art. 19 (§ 1) (a) of the EEOR, the debtor can prove that s/he has not been – without his/her fault – served or notified in a timely manner and therefore was unable to prepare his/her defence. Under these conditions, Belgian law entitles the debtor to file an opposition or request an appeal. Furthermore, Art. 19 (§ 1) (b) EEOR takes into account the debtor prevented from challenging the claim due to extraordinary circumstances as *force majeure* (e.g. without any fault of his/her own). The assessment of *force majeure* is left to the national courts. In Belgium, it can be seen from the case law of the Court of Cassation that the proven *force majeure*[25] allows the extension of the appeal deadlines. The scholars argue that the concept of *force majeure*[26] given by the Court of Cassation fits into the notion of extraordinary circumstances as set out in Art. 19 of the EEOR. On this account, the review of a judgement – in the context of issuing an EEO certificate – due to proven extraordinary circumstances is possible under the Belgian procedural rules.[27] This opinion has been followed by some courts in Belgium: they issued an EEO certificate considering the allowed review under the Belgian law.

It should be, however, noted that the lack of a unified practice on the review remains as a serious obstacle to the EEOR enforcement in Belgium.

IV. European Payment Order Regulation (EPOR)

[22] Charles Vanheukelen, 'The European Enforceable Title - Approach to a Practitioner of Law' in Valérie Chantry et al. *The Changing Judicial Law - In Tribute to Alphonse Kohl* (Liège, Anthemis) 13-18.

[23] See e.g. Court of Appeal of Antwerp (4th Ch.), 17.12.2015, C-300/14; Commercial Court of Hasselt (1st Ch.), 10.05.2006, R.G. 06/1068; Commercial Court of Leuven (1st Ch.), 30.05.2006, R.G. No. A/06/788; Civil Court of First Instance in Brussels (2nd Ch.), 13.07.2006, R.G. No. 2006/5949/A; Commercial Court of Mechelen, 15.11.2006, R.G. No. A/06/1534; Commercial Court of Brussels, 24.01.2007, R.G. 186/2007, 187/2007 and 189/2007.

[24] See e.g. Stan Brijs and Jean-François van Drooghenbroek, *A European Enforceable Title* (Brussels, Larcier 2006) 163; See also Stan Brijs and Van Jean-François van Drooghenbroek, "Judicial practice in defiance of the European enforceable title" in M. Candela Soriano and G. De Level (ed.), *European Judicial Area. Acquired and future civil issues* (Brussels, Larcier, 2007) 246-61.

[25] The conceptual basis for "*force majeure"* has been mentioned within Art. 1147 and 1148 of the Belgian Civil Code.

[26] *Force majeure* is the result of an event beyond human will and this event could neither be foreseen nor avoided.

[27] See Stan Brijs and Jean-François van Drooghenbroek, "De afschaffing van het exequatur" in Marta Pertegas et al. (eds.) *Betekenen en uitvoeren over de grenzen heen, Antwerpen* (Intersentia 2008) 168-69.

1. National distribution of competences under Art. 6

specialization or concentration?

Specialization: in accordance with the respective jurisdiction under the Belgian Judicial Code, the courts are:

- The justice of peace (*Vrederechter/Juge de paix/Friedensrichter*)[28]
- The Court of First Instance (*Rechtbank van Eerste Aanleg/Tribunal de première istance/Gericht Erster Instanz*)[29]
- The police court (*Politierechtbank/Tribunal de police/Polizeigericht*)[30]
- The Commercial Court (*Ondernemingsrechtbank/Tribunal de l'entreprise/Unternehmensgericht*)[31]
- The Employment Tribunal (*Arbeidsrechtbank/Tribunal du travail/Arbeitsgerichtshof*)[32]

2. Sanctions under Art. 7 (3)

The submission of false information may give rise to penalties under II Book, III Title, IV Chapter, I Section of the Belgian Criminal Code.

3. Means of communication

cf. Art. 7 (5), (6) and Art. 16 (4), (5); please refer to the Report on the digitalization of enforcement procedures (D3.17)

In Belgium, the means of communication, accepted for an European Payment Order, available to the courts are (i) the model form A in Annex I, delivering an application directly to the registry of the court which has jurisdiction or (ii) the same form A, sending the application by registered letter to the court which has jurisdiction. Other means of communications (including electronic) may be used if they are available to the court of origin.

[28] Art. 590 – 601 BJC.
[29] Art. 568 – 583 BJC.
[30] Art. 601bis - 601ter BJC.
[31] Art. 573 – 576 BJC.
[32] Art. 602 – 607 BJC.

The application is signed by the claimant or, where allowed, by his representative. The application submitted in electronic form should be signed in accordance with Art. 2(2) of Directive 1999/93/EC of 13 December 1999 on a Community framework for electronic signatures. This signature is recognized in Belgium, as the Regulation provides that it is not possible to introduce additional requirements. However, such electronic signature is not required if and to the extent that an alternative electronic communications system exists in the Belgian courts and which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner.
In Belgium, the statement of opposition must be lodged with the clerk's office of the court which issued the European order for payment. Alternative means of communications and signatures of the opposition form are ruled in the same way of described above (see number 2). The statement of opposition can be delivered directly to the clerk's office or sent by registered letter to the clerk's office.

4. Rules on service and verification by courts pursuant to Art. 12 (5)

cf. Art. 13, 14, 15, e.g., standard forms, competent service person, exclusion of national forms of service (cf. Art. 14(2), CJEU, C-292/10)

The service of documents requires the clerk or the bailiff sending a registered letter to the defendant domiciled in Belgium. In order to serve the defendant domiciled in another Member State, the clerk transmits the document to be served to the competent agency in the Member State of the defendant, in accordance with Regulation (EC) no 1393/2007. The service of documents can be done through bailiff: the applicant (and not the court) has to select and appoint a bailiff for the purpose. Service by bailiff is made in accordance with Belgian law, if the defendant is in Belgium. If the defendant is in another Member State, the bailiff transmits documents to be served again to the agency provided under Regulation (EC) no 1393/2007. The choice between these two options belongs to the court This choice will obviously have consequences regarding legal certainty: the service of the forms through a bailiff guarantees that procedure complies with minimal standards required by the European regulation (Art. 13, 14 and 15). The cost of the bailiff service depends on the value of the case and some aspects connected to the subject-matter of the case. In cross border service of documents, the addressee may refuse the served document on the ground of unintelligibility because it is not written in, or accompanied by a translation into, either a language which the addressee understands, or the official language of the Member State addressed. So, documents must be translated if necessary. But only the entries made by the

applicant in the Form A and by the judge in the Form E are to be translated because the forms are available in the different languages of the European Union on the website of the European Judicial Atlas. In accordance with the Regulation 1393/2007, translation does not need to be certified by a qualified person.
However, in practice, it is advisable to provide a translation by a qualified person. In Belgium, each court of first instance keeps a list of translators under oath.

5. Rules on opposition to and review of the EPO (outgoing)

cf. Art. 16, 17, 20 (cf. CJEU, C-324/12)

The defendant must send to the court of origin the statement of opposition within 30 days of service of the application (see Article 16 of the EPOR), using the form 'F' received with the European order for payment; this time-limit may be extended as necessary to allow the statement to arrive, even if Belgian law, for internal cases, provides no additional time to this extent. Where a statement of opposition is lodged by the defendants, the proceedings continue "before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the be terminated in that event".
So, if the claimant has explicitly stated, in the application form, that s/he opposes the transfer to ordinary civil proceedings, the procedure ends. In the absence of such a statement in the application form, the procedure continues following the internal civil procedural rules provided for ordinary proceedings.
In Belgium, the transition to the internal ordinary civil proceedings has not been specifically ruled. In any case, in accordance with Art. 17 (3) of the Regulation, the clerk sends a registered letter to the parties to inform them about the statement of opposition and summon the parties to a hearing. The judge rules upon the initial claim and any incidental claims. At the end of the proceedings, the judge issues his decision, which replaces the European order for payment. Legal representation is not compulsory but strongly recommended when proceedings are conducted before the Court of First Instance, the Commercial Court or the Employment Tribunal. In Belgium, no supplementary conditions have been introduced to apply Art. 20 of the Regulation.

6. Competent authority and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 22, 23, e.g., remedies and hearings, specialization, or concentration?

On certain conditions the defendant may obtain a stay, limitation, or refusal of enforcement of the "European order for payment" by the "competent court in the Member State of enforcement" (Art. 22(1)). The limitation or stay can be obtained only if an application for review has been made to the original court. The competent court or authority in the Member State of enforcement may either limit the enforcement proceedings to protective measures or make enforcement conditional on the provision of such security as it may determine or, under exceptional circumstances, stay the enforcement proceedings. The attachments judge (*juge des saisies/ beslagrechter*) is competent for ruling a stay, limitation, or refusal of enforcement. An application must be submitted to the judge in accordance with Art. 1395, al 2. of the Belgian judicial code. The applicant must pay a court registry fee which is 82 € and a pleading fee of 2.50 € (in case of intervention of a lawyer).

7. Remedies under national law in cases such as CJEU, C-119/13 and C-120/13

cf. also Art. 19 (2) EEOR

The cases dealt by the European Court of Justice concern the German system and not the Belgian one. However, with respect to a Belgian case, CJEU, C-300/14 has stated: " Article 19(1) of Regulation No 805/2004 must be interpreted as meaning that, in order to certify a judgment delivered *in absentia* as a European Enforcement Order, the court ruling on such an application must satisfy itself that its national law effectively and without exception allows for a full review, in law and in fact, of such a judgement in the two situations referred to in that provision and that it allows the periods for challenging a judgement on an uncontested claim to be extended, not only in the event of *force majeure*, but also where other extraordinary circumstances beyond the debtor's control prevented him from contesting the claim in question". The relevant rule of the Belgian Judicial Code is:

Article 55:
"When the law provides that, regarding the party which has no domicile, place of residence or address for service in Belgium, the time-limits prescribed should be extended, that extension shall be:
(1) fifteen days, when the party resides in a country bordering Belgium or in the United Kingdom of Great Britain [and Northern Ireland];
(2) thirty days, when the party resides in another European country;
(3) eighty days, when the party resides in another part of the world."

8. Costs for the issuance of the EPO

if any, please provide the relation to comparable costs in the national legal order

In Belgium, the application for a European payment order is subject to legal costs. Before the justice of the peace, the applicant must pay a court registry fee (35 € - Art. 269 of the Code of registration fees, mortgage, and clerk's office fees). Before the Court of First Instance, the Commercial Court or the Employment Tribunal, he must pay a court registry fee which is 82 € and a pleading fee of 2.50 € (in case of intervention of a lawyer). In addition, the statement of opposition is subject to legal costs. Before the justice of the peace, the defendant must pay a court registry fee (35 €). Before the Court of First Instance, the Commercial Court or the Employment Tribunal, he must pay a court registry fee which is 82 € and a pleading of 2.50 € (in case of intervention of a lawyer).

9. Other implementation rules

cf. preliminary remarks

For Art. 18 and Art. 13(3) of the EPOR, in Belgium, the enforceable European order for payment is served by the clerk. The clerk sends a registered letter to the claimant.[33] If the claimant lives in a different Member State, the clerk transmits the document to be served to the receiving agency in the Member State of the defendant, in accordance with Regulation (EC) no 1393/2007.
About the Enforcement of the Order for Payment (Art. 21), it must be underlined that in Belgium:

a) the enforceable European order for payment must have been served (through a bailiff) to the party against which it has been issued (Art. 1495 of the BJC).

[33] See for a practical EU conform interpretation of all the provisions of this EOP Regulation, Lotte Vanfraechem, 'Verord. Nr. 805/2004 Executoriale Titel' in Thalia Kruger et al. (eds) *Internationaal Privaatrecht* (Brugge, die Keure 2014) 283–96; See for an extensive PhD study on the EOP Regulation, Aude Berthe, 'L'injonction de payer' (DPhil thesis, Université de Liège 2016); See also Liselot Samyn, 'Betalingsbevelprocedure en Vorderingen Geringe Vorderingen' in Benoît Allemeersch and Thalia Kruger (eds), *Handboek Europees Burgerlijk Procesrecht* (Intersentia, Antwerp 2015) 295–327; Liselot Samyn and Fieke van Overbeeke, *Europees procesrecht* (Cahiers Antwerpen, Brussel/Gent 2016) 5–93.

b) At the request of the creditor, the bailiff is competent to enforce the European payment order which is enforceable.

10. Critical assessment

The EOP Regulation is applicable in Belgium because of the direct applicability since no specific supplementing law has been enacted. The lack of implementation influences the smooth functioning and effectiveness of the Regulation. On various aspects of the EOP Regulation the views and practices at the courts in Belgium may be different because the application of the Regulation is not centralized in a specialized court but spread among various courts. In fact, the large variety of competent judges does not help in creating a uniform approach. The absence of guidance leading to a common approach in supplementing law is not sufficiently clear for the judges. The uncertainty of the proceedings enables the lawyers to clarify the expected costs and duration of the procedure for their clients. Many lawyers claimed that the EPO procedure was being "sabotaged" by Belgian judges.

V. European Small Claims Procedure Regulation (ESCPR)

1. Competent court

cf. Art. 4 (1) and Art. 20 (2): local jurisdiction, jurisdiction ratione materiae, specialization or concentration?

In Belgium, there is no specialised or centralised system designed to deal with the European Small Claims cases. The ESCP cases are subject to the jurisdiction of the justice of the peace. According to Art. 590 of the BJC, the justices of the peace have general jurisdiction over all civil and commercial matters, where their value do not exceed 5,000 €.[34] As of April 2021, there are 162 justices of the peace across the country.[35] Each of these justices of the peace has competence to deal with cases referred under the ESCP because of their territorial jurisdiction by virtue of Art. 624 of the BJC.
In order to begin with the ESCP proceeding, the claimant shall lodge the Claim Form A and

[34] Stefaan Voet, 'Relief in Small and Simple Matters in Belgium' (2015) Erasmus Law Review <http://www.erasmuslawreview.nl/tijdschrift/ELR/2015/4/ELR-D-15-00017> accessed 20 April 2021.
[35] For more information see <https://www.tribunaux-rechtbanken.be/fr/tribunaux-et-cours/justice-de-paix> accessed 20 April 2021.

any other supporting documents – e.g. evidence – to the competent justice of the peace in accordance with the rules indicated within Art. 622 to 638*bis* of the BJC. The documents must be in one of the official languages of the country, namely French, Dutch, or German[36] and be submitted physically, via registered mail. For documents that are not in any of the accepted languages, the claimant must provide their translation prior to lodge them before the court. It is noteworthy that if the claimant wins the case, the incurred necessary procedural costs can be reimbursed through the bailiff from the losing party at the enforcement stage. On the contrary, if the claimant loses in the small claims proceedings, these costs all remain the sole responsibility of the claimant, without any further right to reimbursement.[37]

Regarding the appeal against an ESCP judgement under the Belgian national civil procedural rules, Art. 617 of the BJC provides that where the value of the claim exceeds 2,000 €, the appeal is generally allowed. The appeal request must be submitted to the Court of First Instance within one month from the service of the judgement (Art. 1051 of the BJC) or of its notification (Art. 792 of the BJC). The filing of an appeal application needs a payment of 165 € fees. For judgements with value below the threshold of 2,000 € – where the appeal is not heard– an opposition[38] to the ruling can be lodged before the same court that issued the ESCP judgement.[39]

2. Means of communication

cf. Art. 4 (1), 8, 13; please bear in mind the Report on the digitalization of enforcement procedures (D3.17)

One of the objectives of the ESCP Regulation is to encourage the use of technology by courts to provide more efficient access to justice for claimants also to overcome the long

[36] Art. 6 of the ESCP Regulation stipulates that all the documents must be rendered in the official language of the court seized.

[37] Voet (n 32).

[38] As indicated in Art. 1047 of the BJC: "*Any default judgment rendered at last instance may be opposed, except as provided by law. The opposition is served by a writ of summons by a bailiff to appear before the judge who rendered the default judgment. With the agreement of the parties, their voluntary appearance may replace the completion of these formalities. The notice of opposition shall contain, under penalty of nullity, the grounds of the opponent. (The opposition may be entered by the party, his counsel or the judicial officer who acts on the party's behalf, in a register kept for this purpose at the registry of the court which handed down the decision. The entry shall state the names of the parties, their counsel and the dates of the decision and the opposition).*" See for a detailed explanation of the 'opposition' procedure in Belgium, Voet and Gillaerts (n 1) 37-40.

[39] In practice, this request has been very rarely accepted by the courts as it requires spending a considerable amount of time – specifically, compared to the very low-threshold of the claim – to review the judgement.

delays and travel costs that existed in dealing with small cross-border claims.[40] In the face of the ESCP Regulation provisions, there is no transparent official record about the use of digital facilities for cross-border small claims proceedings amongst Belgian justices of the peace. With the COVID-19 outbreak, the judiciary of Belgium has encouraged – in an issued Guideline[41] – the use of videoconference by courts in the conduct of hearings. The referred Guideline has also emphasized that the Ministry of Justice should provide additional technical resources – e.g. microphones, webcams, and screens – for the courtrooms enabling them to hold virtual oral hearings. As regards the service of documents in civil proceedings, Belgium has established a new alternative for submitting a claim and other supporting documents to the justices of the peace through the 'e-Deposit' system.[42] The use of e-filing in Belgium for general procedural purposes has been – limitedly – in force since July 2016 via the 'e-Deposit'. The main objective of this system is to promote digital justice by enabling individuals to submit their documents to courts electronically. Since 2020, this service can be also used to submit documents to justices of the peace.

As provided by Art. 9 (1) of the ESCP Regulation, the courts shall facilitate the taking of evidence through technological means of communications. It is important to note however, that the admission of digital evidence is subject to availability of technological facilities in courts as indicated within Art. 9 of the ESCPR. In terms of admissibility of an e-evidence in civil proceedings in Belgium since 1st November 2020 new rules have been entered in force. Accordingly, where the law does not require the production of a signed writing between the parties, evidence may be given by digital means (e.g. e-mails or/and text messages). In this sense, the Belgian legislator by the Act of 13 April 2019 that establishes new rules on evidence within the Belgian Civil Code, Book 8 (Chapter 2, Sections 1 and 2, Art. 8.8, 8.9 (§ 1), and 8.11 (§ 1)) [43] allows the admission of digital evidence if it is submitted in a claim[44]:

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[40]See Rafael Mańko, Europeanisation of Civil Procedure: Towards Common Minimum Standards?, European Parliamentary Research Service in-depth analysis", (2015) European Parliamentary Research Service in-depth analysis.

[41]See Guideline of the College of Courts and Tribunals under Communication Coronavirus XXI, November 1, 2020, available at <https://www.rechtbanken-tribunaux.be/fr/nouvelles/corona-update-1-novembre-2020> accessed 20 April 2021.

[42]For more information on this electronic system visit <https://access.eservices.just.fgov.be/edeposit/fr/;jsessionid=Y-uROFASXOMJFPuGAikPVFsOMVWxXYKVUBXWGmWnP_N_gruwB1S0!464500959> accessed 20 April 2021.

[42] Act of 13 April 2019 introducing Civil Code, Book 8 'Evidence' (Art. 1 –75), Belgian Official Gazette, 14 May 2019. For more information visit <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2019041328&table_name=wet> accessed 20 April 2021.

[43] Act of 13 April 2019 introducing Civil Code, Book 8 'Evidence' (Art. 1 –75), Belgian Official Gazette, 14 May 2019. For more information visit <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2019041328&table_name=wet> accessed 2021.

[44] Article 8.8 provides that *"Free Evidence Except in cases where the law provides otherwise, evidence may be provided by any means."*

- in relation to a party who is not a trader, and the cause of action does not have to be proved by a written document signed by the parties, provided that the value of the claims does not exceed 3,500 €[45], or;
- between companies, or against a company, regardless of the value of the claim.[46]

Therefore, digital evidence is admitted at courts, for the claims whose value is under the threshold of 3,500 €.[47] As a result, in the capacity of the ESCP proceedings, parties are allowed to present their means of proof in written or electronic (e.g. e-mail, text messages, etc.) format.[48]

3. Procedure for claims outside the scope of the ESCPR

cf. Art. 4 (3)

In circumstances where the claim is not eligible under the ESCPR and the claimant wishes to carry on the case, the national ordinary civil procedural rules are applicable. The competent court to deal with the civil and commercial claims that fall under the value of 5000 € is the justice of the peace. Upon the submission of the Claim Form and other supporting documents to the justice of the peace with the competent territorial jurisdiction, the proceeding will be initiated by serving the defendant with the Claim Form through the bailiff (Art. 700 of the BJC). For a defendant who has his/her domicile in Belgium, according to Art. 707 BJC, there is a one-week time frame – from the date of receiving the Claim Form and the preliminary hearing date – to provide his/her defence and any other supporting materials. At the preliminary hearing session, the parties (or their legal counsels) must be physically present (Art. 728 BJC) to provide their arguments and defences. If the nature of the case is complex and requires a major hearing, the parties should agree on a calendar trial date, otherwise the court will fix a date and notify the parties (Art. 747 BJC). At the main

[45] According to Article 8.9 (§ 1); *"Regulated Evidence'*
§ 1. *A legal act involving a sum or value equal to or greater than 3,500.00 euros must be proven by the parties in a signed writing.*
This amount can be adapted by Royal Decree deliberated in the Council of Ministers, according to the evolution of the cost of living or social necessities.
It can only be proven in addition to or against a signed writing, even if the sum or value does not exceed this amount, by another signed writing."
[46] Article 8.11 (§ 1) stipulated that "*Evidence by and against companies*
§ 1. Against companies or between companies, as defined in article I.1, paragraph 1, of the Code of Economic Law, evidence can be given by any means, except in special cases.
The rule stated in paragraph 1 does not apply to companies when they intend to prove against a party that is not a company. Non-enterprise parties who wish to prove against an enterprise may use any mode of evidence.
The rule set out in paragraph 1 shall also not apply, in respect of natural persons carrying on a business, to the proof of legal acts that are clearly unrelated to the business."
[47] Currently, any claim with a value of more than 3,500 € must be in writing (according to Art. 1341 of the Belgian Civil Code), and the digital evidence is not admissible.
[48] As far as the amount of the claim does not exceed 3,500 €.

trial session, the counterparts or/and their lawyers will present their pleadings orally to the court. Once the court announces the termination of hearings, it is supposed to render the judgement within one month (Art. 770 BJC). An appeal may be filed against the decision of the court provided that the value threshold of the claim exceeds 2,000 €. For claims that fall below this monetary threshold, the unsatisfied party can lodge an opposition before the court that delivered the same judgement.

Under Belgian Judicial Code, there is an alternative track available for small and simple claims. This specific procedure is known as the summary order for payment procedure that was established under Art. 1338 to 1344 BJC in 1976.[49] The summary order is a voluntary

[49] Art. 1338 of the Belgian Judicial Code: *"Any request for the jurisdiction of the justice of the peace, tending to the payment of a liquid debt which has as its object a sum of money the amount of which does not exceed ((1,860 EUR)), may be introduced, investigated and judged in accordance with the provisions of this chapter, (if it appears justified by a written document from the debtor.), (The writing which serves as the basis for the request does not necessarily have to constitute an acknowledgment of debt.) [These provisions also apply to any claim within the jurisdiction of the [Commercial Court] when it hears the disputes referred to in Article 573 [regardless of the amount of the claim]. (These provisions also apply to any request for the jurisdiction of the police court when it hears the disputes referred to in Article 601bis.)."*

Art. 1339, "*The request is preceded by a request to pay either served on the debtor by bailiff's writ or sent by registered letter with acknowledgment of receipt. The letter or document must contain, in addition to the reproduction of the articles of this chapter, the formal notice to have to pay within fifteen days of the sending of the letter or of the service, the amount requested and the indication of the court that, in case the debtor fails to pay, will hear the case. All is stated under sanction of nullity.*

[A and B are the conditions to start the proceeding]

Art. 1340, *"Within the fifteen days following the expiry of the period provided for in article 1339, the request shall be sent to the judge by request in two copies containing:*

1 ° the indication of the day, month and year;

2 ° the surname, first name [...] and domicile of the applicant, as well as, where applicable, [his national register number or company number and] the surname, first name, domicile and position of his legal representatives;

3 ° (the subject of the request and the precise indication of the amount of the sum claimed with the statement of the various elements of the claim as well as the basis of this claim;)

4 ° the designation of the judge who must hear it;

5 ° the signature of the party's lawyer.

If appropriate, the applicant indicates the grounds for his opposition to the granting of (grace periods).

(The following are annexed to the request:

1° a photocopy of the writing which serves as the basis for the request;

2° either the document, or the copy of the registered letter to which the acknowledgment of receipt is attached, or the original of this letter to which are attached the proof of the refusal of receipt or of the non-complaint by post and a certificate establishing that the debtor is registered at the address indicated in the population registers.)

Art. 1341, *"The request is filed at the court, stamped on its date by the registrar and entered in a register kept for that purpose. It is included in the proceedings file as well as, where applicable, any communication sent to the judge by the debtor.*

It can also be sent under cover by the lawyer to the clerk."

Art. 1342, *"Within fifteen days of the filing of the request; the judge accepts it or rejects it by an order made in chambers. It can partially grant it. He may also grant grace periods as stated in chapter XIV of this book.*

A copy of the order is sent, by simple letter, to the applicant's lawyer."

Art. 1343, *"§1. When the judge grants the motion, in whole or in part, his order has the effects of a default judgment.*

§ 2. "Under penalty of nullity, the act of service of this ordinance contains, in addition to a copy of the request, an indication of the time limit within which the debtor can lodge an opposition, of the judge before whom it must be brought as well as forms in which it must be made.

Under the same sanction, the act of service warns the debtor that in the absence of recourse within the time limit indicated, he may be forced by all legal means to pay the sums claimed.

redress mechanism with the aim to provide a more expedited and efficient method of dealing with low-value claims, on the one hand, and to establish a solution for saving the overburdened courts time and labour in dealing with simple and small claims, on the other.[50] Despite the clear benefits in using this procedure, it has failed to meet its core objectives in satisfying the needs of creditors in small claims cases by giving them access to a more expedited and simplified model of recovery in Belgium. The major underlying grounds for this failure can be found in the limited threshold of the procedure,[51] which deprives many creditors of the benefits of this process. Even though one of the major goals of establishing this procedure was to simplify debt collection in Belgium, it still contains some difficulties, including the necessity for a written document by the debtor, the requirement that a final reminder is sent to the debtor and the obligation to be assisted by a lawyer. These factors, which are felt to be very burdensome for creditors, have considerably limited the use of the summary order for payment procedure in the Belgian courts.[52]

4. Costs and distribution of costs

cf. Art. 15a and 16: if any, please provide the relation to comparable costs in the national legal order; distribution of costs in cases where one party is only partly successful/not wholly successful (cf. CJEU, C-554/17)

In terms of the procedural costs of the ESCP, the Belgian legislator has acted transparently. The costs for the first instance procedure before a justice of the peace are at a fixed rate of 50 € per claim. Since the beginning of February 2019, as indicated in Art. 1017 BJC, this amount must be paid at the end of legal proceedings by the losing party. In addition to this

§ 3. The order for payment may be opposed or appealed by the debtor, in accordance with the provisions of Titles II and III of Book III of this part.
By way of derogation from Article 1047, the opposition may be formed by request filed at the court registry in as many copies as there are parties involved and lawyers, and notified by the clerk, under judicial cover. , the creditor and his lawyer.
Under penalty of nullity, the request contains:
1 ° the indication of the days, months and year;
2 ° the surname, first name [...] and domicile of the opponent [and, where applicable, his national register number or company number];
3 ° the surname, first name and domicile of the creditor and the indication of the name of the latter's lawyer;
4 ° the determination of the prescription undertaken;
5 ° the opponent's means.
The parties are summoned by the clerk to appear at the hearing fixed by the judge.
§ 4. If the request provided for in Article 1340 is rejected, the request may be introduced by ordinary means.
The order which partially grants it in accordance with Article 1342, first paragraph, is not subject to opposition or appeal by the applicant, except for the latter not to serve the order and to submit the request for the whole by the ordinary way."
Art. 1344, *"The rules set out in this Chapter are only applicable if the debtor has his domicile or residence in Belgium."*
[50]Voet (n 32) 156.
[51]Except the claims falling under the jurisdiction of the Commercial Court that there is no defined threshold for them.
[52]Voet (n 32) 156-57.

fixed litigation fee, Art. 1018 BJC refers to some other necessary costs associated to the procedure, such as expenses related to the judicial investigation measures taken by the court, the travel costs of the parties or a judiciary staff where their presence was ordered necessary for the trial by the court, etc. These costs are all calculated based on the day that the final judgement is rendered by the court. The reimbursement of such costs is also carried out based on the general rule of 'to be borne by the part who loses the case'. There are, however, two exceptions to this general rule: 1. if there are any specific laws that provide otherwise, and 2. where there is an agreement between the parties about the distribution of costs. In these circumstances, the court will assess the distribution of costs based on the specific law or the existing agreement. It must be stressed that if the claimant loses the case, then in addition to the fees for the proceedings that s/he must pay, the necessary expenses incurred by the defendant during the ESCP proceeding are also the responsibility of the claimant. Regarding the distribution of litigation costs, where each party is partially successful – in accordance with Art. 2017 BJC – the judge assesses the contribution of each party towards the incurred necessary expenses, in the final judgement. With respect to the enforcement procedure expenses, Art. 1024 BJC provides that the costs of enforcement shall be borne by the party against whom the enforcement is sought.

5. Competent court and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 22, 23, e.g. remedies and hearings, specialization or concentration?

Art. 20 of the ESCPR explicitly indicates that the ESCP judgements are automatically recognized and entail an enforceable title in all the EU Member States. About accepting the grounds for refusal of enforcing a foreign judgement, the Belgian legislator has adopted a very strict approach. However, in circumstances where the court – upon the request of the debtor – declares that at least one of the conditions of Art. 22 (§ 1) of the ESCPR has been met, the enforcement of the judgement may be refused by the Belgian enforcement authority. It should be, nonetheless, pointed out that under no circumstance the Belgian court will review the judgement on its merit. This view was also reflected in a decision delivered by the Court of Cassation[53] in 2010. It was held that the substance of a foreign judgement cannot be reviewed by a Belgian judge, even when the judgement is in violation with the EU law.[54]

[53] Cour de Cassation, N° 297 – 1re CH. – 29 Avril 2010, RG C.09.0176.N-C.09.0479.N, Pasicrisie 2010, Vol. 4, 1327.
[54] Voet and Gillaerts, (n 1)

The only exception to this strict approach, in Belgian jurisprudence is in circumstances where the judgement is clearly infringing international public policy.[55]
Concerning the limitation and/or suspension of an ESCP judgement enforcement procedure in Belgium, any objection shall be lodged before the Court of First Instance[56]. Without prejudice to Art. 18 and 23 ESCPR, under Belgian civil procedural rules, the court can exceptionally suspend the enforcement procedure upon the request of the party against whom the enforcement is sought, provided that: 1. There is an abuse of the right of enforcement-related rules and the suspension is required against such an abuse[57]; 2. There is a serious conflict about the enforceability of the judgement; 3. The enforcement of the judgement leads to infringing a fundamental civil procedural rule e.g. the right to defence[58]; or, 4. The Court of First Instance has a considerable doubt about the factual and efficient enforceability of the judgement.[59] In practice and in the context of enforcement of the ESCP judgements, the courts rarely suspend the enforcement procedure.

6. Other implementation rules

cf. preliminary remarks
There are no additional implementation rules concerning the ESCPR in Belgium.

7. Critical assessment

The implementation of the ESCP in Belgium, despite its huge potential specifically for low-threshold disputes – that are mostly consumer claims – has been remarkably under-used to the present day. The main reason behind this limited application mainly refers to the lack of awareness among citizens and some practitioners (e.g. lawyers and judiciary staff) about the existence and function of this procedure. Furthermore, there are some other obstacles that hamper the efficient implementation of this instrument at national courts in Belgium. For instance, there is no centralised system within the Belgian judiciary to deal with the ESCP cases. Centralisation not only provides an opportunity to appoint English-speaking justices of the peace, so they can accept the ESCP Forms and other evidentiary materials in English, but also these it will be more cost-effective to equip these courts with more advanced technological means of communications for conducting the entire court proceedings digitally

[55] Cf. Piteus, Karen, "Commentaar Bij Art. 42 T.e.m. 48 EEX-Verordening." (2001) In Gerechtelijk Recht, Artikelsgewijze Commentaar Met Overzicht Van Rechtspraak En Rechtsleer, 1–45. Kluwer.
[56] In French juge des saisies, in Dutch beslagrechter, and in German Pfändungsrichter. See Art. 1489 BJC.
[57] See the decision of the attachments judge of Liège (ch. sais.), 20 mars 1991, *J.L.M.B.*, 1991, 694.
[58] See the decision rendered by the Court of Cassation on 1 April 2004, *RW* 2004-05, 1222, para. K. Broeckx.
[59] Voet and Gillaerts (n 1)18, 55-56.

and remotely. Another obstacle that impedes effective implementation of the ESCP in Belgium is the lack of free legal assistance for the citizens to aid and encourage them using this instrument for their small claims. Finally, as the courts are swamped with the caseload, they do not pay sufficient attention to the added-value of encouraging the parties to use the alternative (Online) dispute resolution – e.g. mediation – methods available to them[60] as a more expedited, amicable, and user-friendly process. In general, the application of the ESCP in Belgium, like many other EU Member States, has not achieved considerable success. In this sense, increasing the effective application of this Procedure requires sufficient and serious efforts from the state to encourage and support the necessary initiatives in raising citizens' awareness, and to eliminate the existing obstacles in the path of efficient application of the ESCP Regulation by the national courts.

VI. European Account Preservation Order Regulation (EAPOR)

1. Competent court

cf. Art. 6, 10: local jurisdiction, jurisdiction ratione materiae, specialization or concentration?

In Belgium, the courts designated as competent to issue a Preservation Order are the attachments judges, operating at the Court of First Instance (, Art. 1395/2 BJC). The same judicial authorities can be considered competent to order the extension of the terms provided for by Art. 10 of the Regulations. Based on this designation, the local competence for issuing EAPOR may be defined specialized, according with material and territorial jurisdiction under the Belgian Judicial Code.

2. National provisions on the taking of evidence pursuant to Art. 9

About taking of evidence, EAPOR provides that the court shall take its decision by means of a written procedure based on the information and means of proof provided by the creditor in or with his application. If the court considers that the evidence provided is insufficient, it may, where national law so allows, request the creditor to provide additional documents. The

[60]In Belgium, there is a well-established ADR/ODR service that is known as *Belmed* (Belgian Mediation). *Belmed* was launched by the Federal Public Service Economy (*FPS economie*) of Belgium as a digital multilingual platform aiming at promoting the use of ADR and ODR by consumers and traders in the country to have access to a more expedited, cost-effective, and convenient access to justice. This platform is structured on two main pillars, namely providing citizens with the essential information relating to ADR/ODR and offering these services to consumers and traders. For more information visit <https://economie.fgov.be/en/themes/online/belmed-online-mediation/belmed-your-partner> accessed 20 April 2021.

court may, if this does not delay the proceedings unduly, also use any other appropriate method of taking of evidence available under its national law, such as an oral hearing of the creditor or of his witness(es) including through videoconference or other communication technology. In Belgium, according to the Act of 13 April 2019[61], there are various types of means of proof under ordinary civil law: documents, witnesses, presumptions, admissions by parties, and sworn statements. The principle, according to which evidence can be provided by all legal means, which currently already governs business-to-business relations, is extended as follows:

- An act of 15 April 2018 has, since 1 November 2018, introduced a broadened "enterprise" concept. The definition of "enterprise" now also includes liberal professions and non-profit associations. The principle of free evidence now unequivocally applies to these persons and entities as well.
- Under European influence, the digital age has finally made its entrance into Belgian evidence law: the legal means that are accepted as evidence between enterprises shall also include digital evidence such as e-mails and text messages.

3. Procedure for and means of providing security under Art. 12

As for the extent to which joint and nominee accounts can be preserved (Art. 501, g EAPO), it is be considered that account preservation is governed under Belgium Judicial Code[62]. Account preservation orders can be issued for joint accounts. If the garnishee bank is aware of the amounts attributable to individual holders of a joint account, the account preservation order will concern solely the amount owed by the attached debtor, failing which the full amount of the credit balance will be indicated in the statement to be provided by the garnishee. In that case, any account holder not subject to the foreclosure may apply for the attachment to be partially lifted if they can provide evidence of their share of the assets. This application can be lodged with the attachments judge at the court of first instance (Art. 1395 BJC). Regarding trust accounts (*comptes de qualité/kwaliteitsrekeningen* and *comptes de tiers/derdenrekeningen*), the following distinction should be made:

- The debtor is the account holder
    - Notwithstanding Art. 8/1 of the Mortgage Act (*loi hypothécaire/Hypotheekwet*), which explicitly acknowledges that some trust accounts which are mandatory

[61] http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2019041329
[62] Belgian Judicial Code, Part 5, Title II, Chapter IV <<http://www.ejustice.just.fgov.be/eli/loi/1967/10/10/1967101056/justel> accessed 20 April 2021.

under the law (e.g. accounts held by lawyers, bailiffs, notaries and estate agents) are separate from the assets of the account holder, and that this separation can be relied upon against third parties, the legislature has not in fact provided for the funds held on those trust accounts to be immune from foreclosure[63] by the account holder's private creditors. Accordingly, in principle, it is possible to instruct a bank to preserve those funds. When a bank is instructed to preserve funds, it must indicate the specific nature of the account (Art. 1452 BJC); however, objections may be raised with the attachments judge. The attached debtor may, therefore, apply for the account preservation order to be lifted.

- The debtor is the beneficiary of the trust account
  - The beneficiary of the trust account has a claim against the account holder in respect of the funds managed on their behalf. The claim may be attached by the beneficiary's creditors: this is because any creditor may apply for the preservation of funds owed by a third party to the creditor's debtor (Art. 1445 BJC). The account preservation order must be issued to the account holder (= the trustee), not to the bank. This is because in such a scenario, the bank has debts only vis-à-vis the account holder, not vis-à-vis the beneficiary.

4. Liability of the creditor under national law

cf. Art. 13 (3), (4)

With reference to the liability of the creditor, EAPOR provides that the creditor shall be liable for any damage caused to the debtor by the Preservation Order due to fault on the creditor's part. To the extent of what it is ruled in paragraph 3 and 4 of Art. 13, the burden of proof in Belgian system is regulated as follows.
The procedural and technical aspects of evidence in civil and commercial matters are governed by Art. 870 et seq. BJC. Art. 876 BJC requires the court to judge the dispute before it in accordance with the rules of evidence that apply to the type of dispute. The dispute is either civil or commercial. Evidence of a fact, postulate or allegation must be submitted by the party relying on it. A party requesting performance of an obligation must provide evidence of that obligation. Conversely, a party asking to be freed from an obligation must submit evidence of the payment or act extinguishing the obligation. In legal proceedings,

[63] For more information on the term 'Foreclosure' visit https://www.legislation.gov.uk/uksi/1998/3132/schedule/1/part/40/made accessed 20 April 2021.

each party must submit evidence of the facts that it alleges (Art. 870 BJC: *'actori incumbit probatio')*. It is then for the opposing party to rebut the probative value of these facts, where this is possible and permitted.

5. Competent authority and methods to obtain account information

cf. Art. 14 (1), (5)

Belgium has designated as authority to obtain banking account information (Art. 14, 1 Regulation) **t**he National Bailiffs' Association of Belgium (*Chambre nationale des huissiers de justice/Nationale Kamer van Gerechtsdeurwaarders*, Art. 555/1, §1, subparagraph 1, 25° BJC). Methods of obtaining such account information (Art. 13, 5 and 50, 1 c Regulation), according to Belgium legal system are the following: Art. 555/1, §2 BJC, which entered into force on 1 January 2019 after several further implementing measures were taken, provides for a combination of options (a) and (b) in Art. 14(5) of the EU Regulation. Accordingly, in an initial stage after the judicial request, the National Bailiffs' Association can ask the contact point at the Belgian central bank (*Banque nationale de Belgique/Nationale Bank van België*) to provide the required information. Based on the information obtained there, the National Bailiffs' Association can, if necessary, ask one or more banks to provide data.

6. Means of communication

cf. Art. 17 (5), 29, 36; please bear in mind the Report on the digitalization of enforcement procedures (D3.17)

Where the EAPOR provides for transmission of documents in accordance with its Art. 29, such transmission may be carried out by any appropriate means, if the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible. The court or authority that received documents in accordance with Art. 29 paragraph 1 of EAPOR shall, by the end of the working day following the day of receipt, send to the authority, creditor or bank that transmitted the documents an acknowledgment of receipt, employing the swiftest possible means of transmission and using the standard form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Art. 52(2).

7. Appeals and remedies

cf. Art. 21, 33-35, 37-39

In Belgium the courts or enforcement authority competent to grant a remedy (Art. 33-35 Eu Regulation) are:

- Against an account preservation order: the attachments judge at the court of first instance (Art. 1395/2, 2° of the Judicial Code).

- Against enforcement of an account preservation order: the attachments judge at the court of first instance (Art. 1395/2, 2° of the Legal Code).

Such judge is to be considered competent to examine the creditor's request of the release of over-preserved amounts (Art. 27.2 EAPOR).
In Belgium, Courts with which an appeal against an EAPO judgement is to be lodged is the Court of Appeal (*Cour d'appel/Hof van beroep*, Art. 602, first paragraph, 7° BJC). About the time-limit for lodging the appeal take note that under Art. 1051 BJC, appeals may be lodged within one month of the date of service or notification of the judgement.

8. Enforcement procedure

cf. Art. 23-25, 27-28

In Belgium a bailiff (Art. 519, §1, 1° BJC) has been designated as the competent authority to enforce the European Account Preservation Order, also about the enforcement of the Preservation Order and relevant service on the debtor.

9. Liability of the bank under national law

cf. Art. 26

The liability of the bank for eventual failure to comply with its obligations under this Regulation is governed by the (general) tort law of the Belgian system. No special law is provided.

10. Fees and costs of courts, authorities, and banks

cf. Art. 42, 43, 44

About the court fees of EAPOR, the costs of civil proceedings are governed by Art. 1017-1022 of the Belgian Judicial Code. Legal costs vary from one case to another and must be determined with reference to the specific circumstances of the case.
Art. 1017 states by way of a general rule that even where no application is made, the final judgement will order the unsuccessful party to cover the costs, unless specific legislation provides for other arrangements and without prejudice to any agreement reached between the parties and incorporated into the judgement. However, any unnecessary costs, including the procedural fee referred to in Art. 1022, will be borne by the party which generated them, even in case no application is submitted.

- Art. 1018 of the Belgian Judicial Code sets out the costs concerned:

- 1° Miscellaneous court and registration fees and stamp duty paid before the Stamp Duty Code was repealed; court fees include listing fees, drafting fees and copy fees (Art. 268 et seq. of the Code of Registration, Mortgage and Court Registry Fees (*Code des droits d'enregistrement, d'hypothèque et de greffe/Wetboek registratie-, hypotheek- en griffierechten*)).
    - In principle, a listing fee (*droit de mise au rôle/rolrecht*) ranging from 100 € to 500 € (attachments judge) or from 210 € to 800 € (Court of Appeal) is charged, depending on the value of the application (Art. 269/1 of the Code). This fee is payable when the case is listed.
    - In principle, a drafting fee (*droit de rédaction/opstelrecht*) of 35 € is charged on court registrars' documents or documents submitted to them without judicial intervention (Art. 270/1 of the Code).
    - In principle, a copy fee (*droit d'expédition/expeditierecht*) ranging between 0.85 € and 3 € per page is charged on copies or excerpts issued by a court registry (Art. 271 and 272 of the Code).

Registration fees (3% of principal) are charged on decisions concerning a principal sum of more than 12 500 € (excluding legal costs).

- 2° The cost of judicial documents and related emoluments and salaries.
- 3° The cost of providing a copy of a judgement: between 0.85 € and 3 € per page.
- 4° The costs of any measures of inquiry, particularly witness and expert fees.

- 5° Travel and subsistence expenses for judges, registrars and parties required to travel by order of the court, and costs of documents drawn up solely for the proceedings.
- 6° The procedural fee referred to in Art. 1022; in principle, this is paid by the unsuccessful party and represents compensation for the lawyer's fees and expenses incurred by the successful party. The amount of this procedural fee is calculated in accordance with the value of the claim. The Royal Order of 26 October 2007 lays down a basic amount, a minimum amount, and a maximum amount. The judge can reduce or increase the basic amount subject to the maximum and minimum amounts. These amounts are linked to the consumer price index.
- 7° The fees, emoluments and costs of a mediator appointed pursuant to Art. 1734.
- 8° The contribution referred to in Art. 4 §2 of the Act of 19 March 2017 setting up a budget fund for second-line legal assistance (*aide juridique de deuxième ligne/juridische tweedelijnsbijstand*).

About the bank fees, if any, for the implementation of equivalent national orders or for providing account information (Art. 50 EU Reg.) it is to be noticed that pursuant to Art. 1454 BJC, the costs of the statement that has to be provided by a garnishee are borne by the debtor. No provision is made for the recovery of other expenses incurred by the bank in connection with the enforcement or (partial) lifting of an account preservation order. Pursuant to Art. 555/1, §2 of the Belgian Judicial Code, which entered into force on 1 January 2019, an order signed by the King is to set the fees for processing account information requests and lay down the conditions and arrangements for collection. Where appropriate, part of these costs are to be borne by the bank which provided the information at the request of the authority designated by Belgium (see Art. 50(I)(b) above), in so far as a written agreement on compensation arrangements has been concluded with the banks or a representative thereof, without prejudice to Art. 43(3) of the Regulation (see Art. 3, 2° of the Royal Order (*Arrêté Royal/Koninklijk besluit*) of 22 April 2019 setting the fees for processing information requests concerning the accounts referred to in Art. 555/1, §2, subparagraph 6 of the Judicial Code and laying down the conditions and arrangements for collection.[64] As matters stand, no agreement on compensation arrangements has been concluded with the banks. These fees will apply to domestic information requests under the new Art. 1447/1 and 1447/2 BJC (which will probably enter into force during 2020) and to information requests under Art. 14 of the Regulation.

[64] <http://www.ejustice.just.fgov.be/eli/arrete/2019/04/22/2019030412/justel> accessed 20 April 2021.

11. Other implementation rules

cf. preliminary remarks

First, it is to be underlined that Belgium adopted a specific additional implementation legislation to embed EAPO Regulation. The European uniform procedure is also applicable to purely internal cases.

Others Belgian implementing information are the following:

- An appeal against refusal to issue the European Account Preservation Order may be lodged with the Court of Appeal (Art. 602, subparagraph 1, 6° BJC).

- Exemptions from foreclosure (Art. 50, 1, h EAPO). Immunity from foreclosure of certain amounts is governed in Belgium by Art. 1409, 1409bis and 1410 BJC. These provisions lay down restrictions on and immunity from foreclosure of certain items of revenue: wages, replacement income, social benefits, and maintenance. Below a certain threshold, wages and replacement income are immune from foreclosure. With a view to helping the enforcement authorities and, where appropriate, garnishees to determine whether the amounts on an account can be seized, Art. 1411bis §3 BJC provides for an obligation - enforced by criminal law - for employers and paying agencies to indicate a specific code when effecting payments. This code will vary according to the type of protected income paid into the account. The specification of the code is without prejudice to the debtor's right to prove by all legal means that the amounts credited to their accounts are immune from foreclosure (Art. 1411bis §2, subparagraph 1 of the Belgian Judicial Code). In addition, Art. 1411bis §2, subparagraph 2 BJC provides for a rebuttable presumption that amounts paid by the debtor's employer into their current account are partially immune from foreclosure. The presumption applies exclusively to transactions between the debtor and their creditors.

- Ranking of equivalent national orders (Art. 50, 1, k): under Belgian law, the preservation of an account does not confer preferential status on a debt. Pursuant to Art. 17 and 19, 1° of the Mortgage Act, only those legal costs incurred as a direct result of account preservation receive preferential status.

12. Critical assessment

First, the EAPO Regulation provides means for obtaining information about bank accounts. This represents an important new tool, but it is a missing opportunity that this measure refers only to preservation orders and not to other executive orders, for which this tool could also be very useful. The transparency in information about banking account of the debtor has meaning in a system, like the Belgian one, in which the proof about debtor's funds availability is charged on the creditor.

VII. Summary and overall assessment

- **Brussels *I bis* Regulation:**
  It is difficult to thoroughly evaluate the extent to which the *Brussels I bis Regulation* 's main objective – in facilitating the free circulation of judgements within the EU to improve citizens' access to justice – has been successfully achieved as a solution to the 'Belgian torpedo'. The major hurdles can be found in the insufficient access to the Belgian case law and the lack of transparent data concerning the length of the civil proceedings, which impede the conduct of an in-depth analysis of the effective implementation of this Regulation at Belgian national courts.
  It is to be noted that one of the points to consider – in evaluating the effective implementation of the Brussels I *bis* Regulation in Belgium – is the low speed of courts in dealing with the enforcement of judgements under this Regulation. Although, the process can be more expedited in some courts, however, in general there are some cases that may take more than one year to be dealt with. Experts are convinced that this low speed mainly depends on the workload of every court in handling cases.
  All in all, the issuance of the certificate of the judgement – as provided by Art. 53 of the Brussels I *bis* Regulation – using the form as set out in Annex I of the Regulation has not received any major critical comments under the Belgian legal doctrine. Nevertheless, it is necessary to point out that in reference to Art. 38 (10) of the Language ACT 1935, the party who requests for the translation of the certificate in his/her language bears the translations costs.

- **European Enforcement Order Regulation:**

  About the application of *European Enforcement Order Regulation* in Belgium, it should be underlined that this EU regulatory instrument has not been widely endorsed by the creditors. Practically, lawyers have a common tendency towards adopting

national legal procedures in combination with the Brussels I-*bis* Regulation, since the abolishment of the role of *exequatur* produces the similar effects. This practice, nonetheless, does not correspond to the effective mission of the EEOR in facilitating the free circulation of judgements, courts settlements, and authentic instruments across the EU. In fact, this specific Regulation, if correctly and largely embedded within the Belgian procedural rules, may present more advantages than the Brussels I-*bis* Regulation procedure, since the latter's regulation facilitates the debtor to avoid enforcement than can be the case under EEOR, due to fewer causes for refusal of enforcement, laid down in EEOR.

- **European Order for Payment Regulation:**

  As refers to the *European Order for Payment Regulation* no specific implementing rules have been adopted in Belgium. So, several factors impede an effective implementation of the Regulation. First, the definition of "uncontested claim", ex Art. 1 EOP Regulation, is interpreted differently between the courts: some judges define this term in the sense that the procedural phase, after having applied for an EOP, serves to determine whether the claim is uncontested, while other courts only accept an EOP procedure for claims that have never been contested at all. Secondly, the definition of "description of evidence supporting the claim", ex Art. 7(2)(e) EOP Regulation: some courts don't require more than a description of evidence, while others ask for a more scrutinized proof in depth. The consequence of this second approach is that it is controversy whether a court can ask for additional documentation to enable it to better verify the address of the defendant. Thirdly, the acceptation of the bailiff's signature in the application: some courts accept applications signed by the bailiff, while others don't recognize bailiff as a legal representative for the claimant. This is due to Belgian law not recognizing bailiffs as a profession that can represent parties in legal proceedings. This shows that the wide variety of involved courts does not help in creating a uniform approach.

- **European Small Claims Procedure Regulation:**

  With respect to the *European Small Claims Procedure Regulation*, there are several factors impeding the effective implementation of this legal instrument in Belgium. First, there is a considerable lack of awareness about the existence and function of this Procedure among the citizens and some practitioners at national level that has led to

a very limited use of this Procedure. Second, accepting the ESCP Forms and supporting documentations only in the official languages of the country (namely only in French, Dutch, and German) is another obstacle that has impeded widespread application of this Procedure in the country. Next, there is no transparent official record available on the number of the referred ESCP cases to the justices of the peace, the function of these tribunals, and the challenges faced by the national courts in dealing with these cases. As a result, it is difficult to make a thorough evaluation of implementing the ESCP at Belgian national courts. Against this background, the findings of the present study show that there are several measures to be taken by the Belgian national authorities to enhance the effective application of this Regulation at national level. Among the most important steps are:

1. To raise public awareness among citizens about the existence and function of the ESCP with specific focus on the Belgian procedural rules. It is also essential to ensure that lawyers and particularly judiciary staff are sufficiently trained for dealing with the ESCP cases;
2. To centralise handling the ESCP cases by determining specific justices of the peace as the competent authority to receive the Claim Form and handle the procedures. These courts can be facilitated with more advanced digital means of communications to be able to conduct a fully digitalised proceeding and most importantly to hold videoconference hearings. Another added value of centralising the application of the ESCP is to appoint English-speaking justices of the peace for the purpose of overcoming the linguistic obstacles and relieving creditors from high translation costs;
3. To encourage the parties to benefit from alternative (online) dispute resolution methods – specifically, negotiation and/or mediation – prior to the commencement of the court proceeding. This proposed approach will evidently provide disputants with an opportunity to have access to justice through a more expedited and amicable models of dispute settlement. It is noteworthy that the use of alternative models of dispute resolution can considerably reduce the immense workload of the already swamped Belgian justices of the peace.

- **European Account Preservation Order Regulation:**

About the *European Account Preservation Order Regulation*, as indicated above, this Regulation has been specifically embedded in the Belgian legal order through supplementing legislation and the uniform European procedure is also applicable to

purely internal cases. Anyway, the practice shows that the effectiveness of the Regulation is still seriously affected by insufficient uniformity regarding the service of documents and the effectiveness of the procedure for debt recovery. These two elements are considered by many experts as the "Achille's heel" of various cross borders cases. It would also be advisable to integrate this regulation into the Belgian Judicial Code, to create a higher level of awareness of these rules.

B. Annex: Implementation Rules and Translations

22 JUIN 2005. - Circulaire relative au Règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées[65]	***22 JUNE 2005. - Circular on Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims***
Article M.	**Article M.**
1.Introduction **1.1. Droit commun** Lorsqu'aucune convention internationale n'est applicable en la matière, il convient d'appliquer le droit commun belge relatif à la reconnaissance et à l'exequatur de décisions judiciaires étrangères en matière civile et commerciale. Le Code de droit international privé (2) entré récemment en vigueur règle, dans ses articles 22 à 31, les effets des décisions judiciaires et actes authentiques étrangers. Le tribunal de première instance est désigné comme juridiction compétente pour connaître des demandes concernant la reconnaissance ou la déclaration de la force exécutoire de décisions judiciaires étrangères et d'actes authentiques étrangers (3). ((2) Loi du 16 juillet 2004 portant le Code de droit international privé, Moniteur belge du 27 juillet 2004, entrée en vigueur le 1er	**1. Introduction** **1.1. General law** Where no international convention is applicable, Belgian general law on the recognition and enforcement of foreign judgments in civil and commercial matters must be applied. The Code of Private International Law (2), which recently came into force, regulates in its Articles 22 to 31 the effects of foreign judicial decisions and authentic instruments. The court of first instance is designated as the competent court to hear applications concerning the recognition or declaration of enforceability of foreign judgments and foreign authentic instruments (3). ((2) Act of 16 July 2004 on the Code of Private International Law, Belgian Official

[65] 22 JUIN 2005. - Circulaire relative au Règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées (Journal officiel n° L 143 du 30 avril 2004, p. 0015-0039)< http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005062237&table_name=loi#:~:text=Le%20R%C3%A8glement%20(CE)%20n%C2%B0%20805%2F2004%20du%2021,authentiques%20dans%20tous%20les%20Etats> accessed 12 May 2021.

octobre 2004.) ((3) Article 23, § 1er, et article 27 de la loi du 16 juillet 2004 portant le Code de droit international privé. L'article 570 du Code judiciaire renvoie à ces articles.)	Journal of 27 July 2004, entered into force on 1 October 2004). (3) Article 23, § 1, and Article 27 of the Act of 16 July 2004 on the Code of Private International Law. Article 570 of the Judicial Code refers to these articles.)
1.2. Droit communautaire. Le 27 septembre 1968, les Etats membres de la Communauté économique européenne signaient la Convention de Bruxelles concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale (4). La Convention de Bruxelles contient une procédure judiciaire simple et uniforme pour la reconnaissance et l'exécution des décisions judiciaires étrangères et des actes authentiques étrangers. Ainsi, l'article 31 de cette Convention prévoit que les décisions rendues dans un Etat contractant et qui y sont exécutoires ne sont mises à exécution dans un autre Etat contractant qu'après y avoir été déclarées exécutoires sur requête de toute partie intéressée. En Belgique, la juridiction compétente est le tribunal de première instance du domicile de la partie contre laquelle l'exécution est demandée (c'est-à-dire le défendeur) ou du lieu de l'exécution (article 32). Il en va de même pour l'exécution des transactions judiciaires et des actes authentiques. ((4) Convention de Bruxelles concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale, signée à Bruxelles le 27 septembre 1968, JO C 189, 28 juillet 1990, appelée en abrégé " Convention de Bruxelles ".) Par l'article 68 du Règlement (CE) n° 44/2001 du Conseil du 22 décembre 2000 concernant la compétence judiciaire, la	1.2 EU law. On 27 September 1968, the Member States of the European Economic Community signed the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (4). The Brussels Convention contains a simple and uniform judicial procedure for the recognition and enforcement of foreign judgments and authentic instruments. Thus, Article 31 of this Convention provides that judgments given in a Contracting State and enforceable there shall be enforced in another Contracting State only after they have been declared enforceable there at the request of any interested party. In Belgium, the competent court is the court of first instance of the domicile of the party against whom enforcement is sought (i.e. the defendant) or of the place of enforcement (Article 32). The same applies to the enforcement of court settlements and authentic instruments. (4) Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968, OJ C 189, 28 July 1990, abbreviated as the "Brussels Convention".)

reconnaissance et l'exécution des décisions en matière civile et commerciale (5), la Convention de Bruxelles a été remplacée pour les relations entre Etats membres, par le Règlement précité, sauf pour le Danemark et les territoires des Etats membres qui tombent dans le champ d'application territorial de la Convention de Bruxelles mais sont exclus de ce Règlement en vertu de l'article 299 du Traité instituant la Communauté européenne. Toutefois, il n'a pas été porté atteinte fondamentalement aux principes qui sont à la base de l'exécution des décisions judiciaires, des transactions judiciaires et des actes authentiques (voir les articles 38 et suivants ainsi que les articles 57 et suivants du Règlement). En revanche, la reconnaissance et l'exécution ont été simplifiées dans une large mesure. ((5) Règlement (CE) n° 44/2001 du Conseil du 22 décembre 2000 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale, JO L 12, 16 janvier 2001, 1-30, appelé en abrégé " Règlement de Bruxelles I ".) Les 15 et 16 octobre 1999 (6), s'est tenu le sommet de Tampere. Dans les conclusions de la présidence, il est clairement dit qu'il faut tendre à supprimer la procédure d'exequatur afin que les décisions judiciaires, les transactions judiciaires et les actes authentiques d'un Etat membre puissent être exécutés de manière quasi automatique dans un autre Etat membre. ((6) Voir les points 34, 37 et 38 des conclusions du Conseil de Tampere. Ces conclusions peuvent être consultées sur le site suivant: http://europa.eu.int/council/off/conclu/o	By Article 68 of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (5), the Brussels Convention was replaced, for relations between Member States, by the above-mentioned Regulation, except for Denmark and the territories of the Member States which fall within the territorial scope of the Brussels Convention but are excluded from this Regulation by virtue of Article 299 of the Treaty establishing the European Community. However, the principles underlying the enforcement of judgments, court settlements and authentic instruments (see Articles 38 et seq. and 57 et seq. of the Regulation) have not been fundamentally affected. On the other hand, recognition and enforcement have been simplified to a large extent. (5) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16 January 2001, 1-30, referred to as the "Brussels I Regulation" for short.) On 15 and 16 October 1999 (6), the Tampere Summit was held. In the conclusions of the Presidency, it is clearly stated that the aim should be to abolish the exequatur procedure so that court decisions, court settlements and authentic instruments from one Member State can be enforced almost automatically in another Member State.

ct99/oct99_fr.htm.) Une étape dans cette direction a été franchie avec le Règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées (7). Il peut être noté dès à présent que le Règlement précité ne présente qu'un caractère facultatif. ((7) Règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création du titre exécutoire européen pour les créances incontestées, JO L 143, 30 avril 2004, 15-39. Le texte du Règlement peut également être consulté sur le site Internet du conseil de l'Europe, http://europa.eu.int/eur-lex, et dans la banque de données Législation du SPJ Justice, http://www.just.fgov.be.)	(6) See points 34, 37 and 38 of the Tampere Council conclusions. These conclusions can be consulted on the following website: http://europa.eu.int/council/off/conclu/oct99/oct99_fr.htm.) A step in this direction was taken with Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (7). It can be noted at this point that the above-mentioned Regulation is only optional. (7) Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30 April 2004, 15-39. The text of the Regulation can also be consulted on the Council of Europe's website, http://europa.eu.int/eur-lex, and in the Legislation database of the SPJ Justice, http://www.just.fgov.be.)
2.Objectif Le Règlement (CE) n° 805/2004 du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées, a pour objet d'assurer, grâce à l'établissement de normes minimales, la libre circulation des décisions et des transactions judiciaires ainsi que des actes authentiques dans tous les Etats membres, sans qu'il soit nécessaire de recourir à une procédure intermédiaire dans l'Etat membre d'exécution préalablement à la reconnaissance et à l'exécution (article 1er). Cet objectif est toutefois limité aux créances incontestées relatives à des affaires civiles ou commerciales. Pour les créances	**2. Objective** The purpose of Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims is to ensure, through the establishment of minimum standards, the free circulation of judgments and court settlements as well as authentic instruments in all Member States, without the need for an intermediate procedure in the Member State of enforcement prior to recognition and enforcement (Article 1). This objective is, however, limited to uncontested claims

qui n'entend pas dans le champ d'application, le Règlement (CE) n° 44/2001 (dit " Règlement Bruxelles I ") reste le principal instrument juridique communautaire applicable.	relating to civil or commercial matters. For claims that do not fall within the scope, Regulation (EC) No. 44/2001 (the so-called "Brussels I Regulation") remains the main applicable Community legal instrument.
3. Champ d'application territorial Le 1er mai 2004, la Hongrie, la Pologne, la Tchéquie, la Slovaquie, l'Estonie, la Lettonie, la Lituanie, la Slovénie, Malte et Chypre ont adhéré à l'Union européenne. Par leur adhésion, ces nouveaux Etats membres de l'Union européenne entrent également dans le champ d'application territorial du Règlement portant création du titre exécutoire européen pour les créances incontestées, au même titre que la Belgique, les Pays-Bas, le Luxembourg, la France, l'Italie, l'Espagne, le Portugal, la Grèce, l'Allemagne, l'Autriche, le Royaume-Uni, l'Irlande, la Suède et la Finlande. Le Danemark n'a pas participé à l'adoption de ce Règlement, qui n'est dès lors ni contraignant, ni d'application au Danemark. Cette exception est d'ailleurs expressément mentionnée à l'article 2, paragraphe 3, du Règlement.	**3. Territorial scope of application** On May 1, 2004, Hungary, Poland, the Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Slovenia, Malta and Cyprus joined the European Union. By their accession, these new EU Member States also fall within the territorial scope of the Regulation creating the European Enforcement Order for uncontested claims, along with Belgium, the Netherlands, Luxembourg, France, Italy, Spain, Portugal, Greece, Germany, Austria, the United Kingdom, Ireland, Sweden and Finland. Denmark did not participate in the adoption of this Regulation, which is therefore neither binding nor applicable in Denmark. This exception is expressly mentioned in article 2, paragraph 3, of the Regulation.
4. Principe de suppression de l'exequatur Le principe général de suppression de l'exequatur est inscrit à l'article 5 du Règlement. Aux termes de cette disposition, une décision qui a été certifiée en tant que titre exécutoire européen dans l'Etat membre d'origine (8) est reconnue et exécutée dans les autres Etats membres,	**4. Principle of abolition of exequatur** The general principle of the abolition of exequatur is laid down in Article 5 of the Regulation. According to this provision, a judgment that has been certified as a European Enforcement Order in the Member State of origin (8) shall be recognized and enforced in the other Member States without the need for

sans qu'une déclaration constatant la force exécutoire soit nécessaire et sans qu'il soit possible de contester sa reconnaissance. ((8) Conformément à l'article 4, paragraphe 4, du Règlement, il convient d'entendre par " Etat membre d'origine " " l'Etat membre dans lequel la décision, la transaction judiciaire ou l'acte authentique à certifier en tant que titre exécutoire européen a été respectivement rendue, approuvée ou conclue, ou dressé ou enregistré.") La suppression de la procédure d'exequatur intervient à deux niveaux, tous deux réglés par le Règlement : (1) Le Règlement contient des règles relatives aux modalités d'exécution d'une décision ou d'une transaction judiciaire prononcée par une juridiction belge dans un autre Etat membre. Il en va de même pour l'exécution d'un acte authentique belge dans un autre Etat membre (articles 6 et 19). (2) Le Règlement précise également comment une décision, une transaction judiciaire ou un acte authentique respectivement rendue, approuvée ou conclue, ou dressé ou enregistré dans un autre Etat membre, doit être exécuté en Belgique (articles 20 à 23).	a declaration of enforceability and without the possibility of challenging its recognition. (8) According to Article 4(4) of the Regulation, "Member State of origin" means "the Member State in which the judgment, court settlement or authentic instrument to be certified as a European Enforcement Order was given, approved or concluded or was drawn up or registered. ") The abolition of the exequatur procedure takes place at two levels, both of which are regulated by the Regulation: (1) The Regulation contains rules on how to enforce a judgment or a court settlement pronounced by a Belgian court in another Member State. The same applies to the enforcement of a Belgian authentic instrument in another Member State (Articles 6 and 19). (2) The Regulation also specifies how a judgment, court settlement or authentic instrument given, approved or concluded, or drawn up or registered in another Member State, must be enforced in Belgium (Articles 20 to 23).
5. Modalités d'exécution d'une décision, d'une transaction judiciaire ou d'un acte notarié belge dans un autre Etat member 5.1. Délivrance du certificat de titre exécutoire européen. Dès qu'une décision judiciaire est rendue, la juridiction qui a prononcé la décision peut, conformément à l'article 9, délivrer le certificat de titre exécutoire européen sur	**5. Procedures for the enforcement of a Belgian decision, court settlement or notarial act in another Member State** 5.1. Issue of the European Enforcement Order certificate. As soon as a court decision has been given, the court that gave the decision may, in

demande de la partie requérante. Le même principe est prévu à l'article 24 pour la transaction judiciaire. Sous réserve de l'interprétation des cours et tribunaux, comme il ne s'agit pas d'un acte juridictionnel en tant que tel, la demande peut être introduite auprès du greffier en chef de la juridiction qui a rendu la décision ou acté la transaction judiciaire. Etant donné que le Règlement n'impose pas de formalités sur ce plan, la demande peut même être formulée verbalement. Dans cette hypothèse, le greffier rédige une note succincte exposant l'objet de la demande. Dans tous les cas, le demandeur joint les pièces requises à sa demande. Le formulaire contenant le certificat de titre exécutoire européen est délivré par le greffier en chef de la juridiction qui a rendu la décision ou acté la transaction judiciaire. A cette fin, le greffier en chef ou le greffier désigné par lui, utilise les formulaires-types figurant à l'annexe Ire (Certificat de titre exécutoire européen - Décision) et à l'annexe II (Certificat de titre exécutoire européen - Transaction judiciaire (9)) du Règlement. ((9) Sont notamment compris : jugements d'accords et d'homologation d'un accord de médiation volontaire ou de médiation judiciaire.) A la différence de ce qui précède, pour les actes authentiques, l'article 25, paragraphe 1er, du Règlement prévoit que le certificat de titre exécutoire européen est délivré par une autorité désignée par l'Etat membre d'origine. En Belgique, cette compétence est dévolue au notaire (10) qui utilisera à cette fin le formulaire figurant à l'annexe III (Certificat de titre exécutoire européen -	accordance with Article 9, issue the European Enforcement Order certificate. The same principle is laid down in Article 9 of the Convention. The same principle is laid down in Article 24 for the court settlement. Subject to the interpretation of the courts, as this is not a judicial act as such, the application can be made to the chief clerk of the court that issued the judgment or recorded the court settlement. Since the Regulation does not impose any formalities in this respect, the request may even be made orally. In this case, the clerk of the court writes a brief note explaining the purpose of the request. In all cases, the applicant must attach the required documents to the application. The form containing the European Enforcement Order certificate is issued by the chief clerk of the court that issued the judgment or recorded the court settlement. For this purpose, the chief clerk or the clerk designated by him shall use the standard forms set out in Annex I (European Enforcement Order Certificate - Judgment) and Annex II (European Enforcement Order Certificate - Court settlement (9)) to the Regulation. (9) This includes in particular: judgments of agreement and homologation of an agreement of voluntary mediation or judicial mediation.) In contrast to the above, for authentic instruments, Article 25, paragraph 1, of the Regulation provides that the European Enforcement Order certificate is issued by an authority designated by the Member State of origin. In Belgium, this competence is vested

Acte authentique). ((10) Pour de plus amples renseignements, il peut être renvoyé au site www.notaire.be ou www.notaris.be Le greffier en chef, le greffier désigné par lui ou, le cas échéant, le notaire délivre le certificat de titre exécutoire européen à condition que le dossier soit complet de sorte qu'il apparaisse que toutes les exigences du Règlement sont rencontrées. La délivrance du certificat de titre exécutoire européen par le greffier ou le notaire n'est susceptible d'aucun recours sur le fond conformément à l'article 10, paragraphe 4 (voir toutefois, ci-après, le point 5.4 de la présente circulaire). Le Règlement ne règle pas le refus du greffier en chef ou du notaire de délivrer le certificat de titre exécutoire européen. Cela signifie qu'une demande ne peut être refusée qu'avec la plus grande prudence et en en mentionnant les motifs. En effet, le demandeur qui voit sa demande de délivrance d'un certificat de titre exécutoire européen refusée peut toujours s'adresser au juge, conformément au droit commun, afin que le greffier en chef ou le notaire soient contraints d'établir le certificat. En pareil cas, la responsabilité de l'Etat peut être engagée. L'Etat peut éventuellement être condamné aux dépens. Une alternative à cette procédure consiste en ce que le demandeur, confronté à un refus parce que le greffier ou le notaire allègue qu'il n'est pas établi que toutes les conditions du Règlement sont remplies, demande l'exequatur conformément au " Règlement Bruxelles I " dans un Etat membre où il souhaite obtenir l'exécution de son jugement ou de son acte. Cette procédure a	in the notary (10) who will use the form in Annex III (European Enforcement Order Certificate - Authentic Instrument) for this purpose. (10) For further information, please refer to www.notaire.be or www.notaris.be The chief clerk, the clerk designated by him or, where appropriate, the notary issues the European Enforcement Order certificate provided that the file is complete so that it appears that all the requirements of the Regulation are met. The issuance of the European Enforcement Order certificate by the registrar or the notary is not subject to any appeal on the merits in accordance with Article 10(4) (see, however, point 5.4 of this circular below). The Regulation does not regulate the refusal of the chief clerk or notary to issue the European Enforcement Order certificate. This means that an application can only be refused with the utmost care and with the reasons for the refusal. An applicant who is refused a European Enforcement Order certificate can always apply to the judge in accordance with the general law, so that the chief clerk or notary is obliged to issue the certificate. In such cases, the State may be held liable. The State may be ordered to pay the costs. An alternative to this procedure is that the applicant, faced with a refusal because the clerk or notary alleges that it is not established that all the conditions of the Regulation are met, applies for exequatur in accordance with the "Brussels I Regulation" in a Member State

l'avantage d'être rapide étant donné qu'elle est introduite sur requête unilatérale, contrairement à la procédure visant l'annulation du refus. Grâce à la délivrance du certificat de titre exécutoire européen par le greffier en chef ou le notaire, la décision, la transaction judiciaire ou l'acte authentique belge pourront être exécutés dans n'importe quel autre Etat membre sans autres démarches procédurales.	where he wishes to obtain enforcement of his judgment or deed. This procedure has the advantage of being quick since it is introduced by unilateral request, contrary to the procedure aiming at the cancellation of the refusal. Thanks to the delivery of the European Enforcement Order certificate by the chief clerk or the notary, the Belgian judgment, court settlement or authentic instrument can be enforced in any other Member State without further procedural steps.
5.2. Champ d'application. La suppression d'une procédure d'exequatur dans l'Etat membre d'exécution est limitée aux demandes civiles et commerciales, quelle que soit la nature de la juridiction (article 2). Tant le paragraphe 1er que le paragraphe 2 de l'article 2 contiennent une énumération des affaires qui sont explicitement exclues du champ d'application du Règlement. En outre, seules les décisions, transactions judiciaires et actes authentiques portant sur des créances incontestées entrent en ligne de compte en tant que titre exécutoire européen (article 3, paragraphe 1er) ainsi que les décisions rendues à la suite de recours formés contre des décisions, des transactions judiciaires ou des actes authentiques certifiés comme étant des titres exécutoires européens (article 3, paragraphe 2). Conformément à l'article 3 de la Convention, sont considérées comme créances incontestées : (1) la créance que le débiteur a reconnue et acceptée en recourant à une transaction judiciaire; (2) la créance à laquelle le débiteur ne s'est pas	5.2. Scope of application. The abolition of an exequatur procedure in the Member State of enforcement is limited to civil and commercial claims, irrespective of the nature of the court (Article 2). Both paragraph 1 and paragraph 2 of Article 2 contain a list of cases that are explicitly excluded from the scope of application of the Regulation. Furthermore, only judgments, court settlements and authentic instruments relating to uncontested claims qualify as European Enforcement Orders (Article 3(1)) as well as judgments on appeals against judgments, court settlements or authentic instruments certified as European Enforcement Orders (Article 3(2)). According to Article 3 of the Convention, the following are considered uncontested claims: (1) the claim that the debtor has recognized and accepted by resorting to a court settlement; (2) the claim to which the debtor has not objected. In this respect, reference is made to cases of failure of the debtor to appear at a hearing or of failure

opposé. A cet égard, il est fait référence aux cas de défaut de comparution du débiteur à une audience ou d'une suite non donnée par le débiteur à l'invitation faite par la juridiction de notifier par écrit l'intention de défendre l'affaire (voir point 6 des considérations préalables au Règlement); (3) la créance que le débiteur a initialement contestée au cours de la procédure judiciaire mais dans le cadre de laquelle il n'a pas comparu ou ne s'est pas fait représenter, pour autant que cette conduite équivaille dans le droit de l'Etat membre à une reconnaissance tacite; (4) la créance que le débiteur a expressément reconnue dans un acte authentique. Le contenu précis des termes " décision ", " créance " et " acte authentique " est défini à l'article 4 du Règlement.	of the debtor to respond to the court's invitation to notify in writing the intention to defend the case (see point 6 of the preliminary considerations to the Regulation); (3) a claim which the debtor initially contested in the course of the court proceedings but in which he did not appear or was not represented, provided that such conduct is equivalent in the law of the Member State to tacit recognition; (4) a claim which the debtor has expressly recognised in an authentic instrument. The precise content of the terms "judgment", "claim" and "authentic instrument" is defined in Article 4 of the Regulation.
5.3. Conditions Une décision judiciaire relative à une créance incontestée rendue dans un Etat membre peut uniquement être certifiée en tant que titre exécutoire européen à la condition cumulative que la décision soit exécutoire dans l'Etat membre d'origine (article 6, paragraphe 1er, a)) et que la décision ne soit pas incompatible avec les dispositions en matière de compétence figurant dans le " Règlement Bruxelles I " (article 6, paragraphe 1er, b)). Si le débiteur ne s'est pas opposé à la créance au cours de la procédure judiciaire ou s'il n'a pas comparu ou ne s'est pas fait représenter lors d'une audience relative à cette créance après l'avoir initialement contestée au cours de la procédure judiciaire, il convient de prendre en considération des conditions	5.3. Conditions. A judgment on an uncontested claim given in a Member State can only be certified as a European enforcement order on the cumulative condition that the judgment is enforceable in the Member State of origin (Article 6(1)(a)) and that the judgment is not incompatible with the provisions on jurisdiction contained in the Brussels I Regulation (Article 6(1)(b)). If the debtor has not objected to the claim in the course of the court proceedings or has not appeared or been represented at a hearing on the claim after having initially contested it in the course of the court proceedings, additional requirements have to be taken into account besides those listed in Article 6(1) a) and b). These additional requirements relate to the

supplémentaires, outre celles énumérées à l'article 6, paragraphe 1er, a) et b). Ces conditions supplémentaires portent sur des normes minimales en matière de notification et de signification indiquées expressément aux articles 12 à 19 du Règlement (article 6, paragraphe 1er, c)). Lorsque la créance se rapporte à un contrat conclu par un consommateur pour un usage pouvant être considéré comme étranger à son activité professionnelle et par laquelle le débiteur est le consommateur, la décision doit en outre avoir été rendue dans l'Etat membre où le débiteur a son domicile (article 6, paragraphe 1er, d)).	minimum standards of notification and service specifically set out in Articles 12 to 19 of the Regulation (Article 6(1)(c)). Where the claim relates to a contract concluded by a consumer for a purpose that can be regarded as being outside his trade or profession and where the debtor is the consumer, the judgment must also have been given in the Member State where the debtor is domiciled (Article 6(1)(d)).
5.4. Rectification ou retrait du certificat de titre exécutoire européen. Comme déjà relevé, le certificat exécutoire européen n'est susceptible d'aucun recours sur le fond. L'article 10 prévoit toutefois qu'une demande peut être adressée à la juridiction d'origine (11) en vue du retrait ou de la rectification du certificat de titre exécutoire européen (voir l'annexe VI concernant le formulaire-type de demande de rectification et/ou de retrait). En Belgique, cette demande doit être adressée au greffier en chef de la juridiction d'origine qui a délivré le certificat de titre exécutoire européen (12), ou au notaire qui a délivré un tel certificat sur base d'un acte authentique. ((11) Conformément à l'article 4, paragraphe 6, du Règlement, on entend par " juridiction d'origine " la juridiction saisie de l'action au moment où les conditions visées à l'article 3, paragraphe 1, point a, b ou c ont été remplies ".) ((12) Par analogie avec l'article 795 du Code judiciaire qui prévoit que les	5.4. Rectification or withdrawal of the European Enforcement Order certificate. As already noted, the European Enforcement Order certificate is not subject to any appeal on the merits. However, Article 10 provides that an application may be made to the court of origin (11) for the withdrawal or rectification of the European Enforcement Order certificate (see Annex VI for the standard application form for rectification and/or withdrawal). In Belgium, this application must be addressed to the chief clerk of the court of origin which issued the European Enforcement Order certificate (12), or to the notary who issued such a certificate on the basis of an authentic instrument. (11) According to Article 4(6) of the Regulation, the court of origin shall mean the court before which the action was brought at the time when the conditions referred to in Article 3(1)(a), (b) or (c) were fulfilled.) (12) By analogy with section 795 of the Judicial Code, which provides that applications for

demandes d'interprétation ou de rectification d'un jugement sont portées devant le juge qui a rendu la décision à interpréter ou à rectifier.) En cas de demande de rectification, il conviendra de vérifier l'existence d'une divergence entre la décision et le certificat de titre exécutoire suite à une erreur matérielle (article 10, paragraphe 1er, a)). En cas de demande de retrait, il faudra examiner si le certificat de titre exécutoire européen satisfait aux conditions prévues dans le Règlement et n'a pas été délivré indûment (article 10, paragraphe 1er, b)). Le contrôle tant de la rectification que du retrait revient au greffier en chef ou au notaire car il s'agit de vérifier des données objectives et fixes sur lesquelles un contrôle effectué par un magistrat n'est pas requis. La rectification et le retrait ont pour conséquence que le certificat de titre exécutoire européen déjà délivré perd ses effets. Dès que l'erreur matérielle est corrigée (par rectification) ou que le greffier en chef ou le notaire est arrivé à la conclusion que toutes les conditions du Règlement sont rencontrées (par retrait), il sera délivré un nouveau certificat qui remplacera le certificat délivré précédemment. La décision de rectification ou de retrait est communiquée à la (ou aux) partie(s) requérante(s) et à la ou aux partie(s) défenderesse(s) selon les règles de notification et/ou de signification prévues par le Règlement portant création du titre exécutoire européen.	interpretation or rectification of a judgment shall be made to the judge who rendered the decision to be interpreted or rectified.) In the case of an application for rectification, it will be necessary to verify the existence of a discrepancy between the decision and the certificate of enforceability as a result of a material error (Article 10, paragraph 1, a)). In the case of an application for withdrawal, it will be necessary to examine whether the European Enforcement Order certificate meets the conditions laid down in the Regulation and has not been issued unduly (Article 10(1)(b)). The control of both rectification and withdrawal is the responsibility of the chief clerk or the notary, since it is a question of verifying objective and fixed data on which a control by a magistrate is not required. The consequence of rectification and withdrawal is that the European Enforcement Order certificate already issued loses its effect. As soon as the material error is corrected (by rectification) or the chief clerk or the notary has come to the conclusion that all the conditions of the Regulation are met (by withdrawal), a new certificate will be issued which will replace the previously issued certificate. The decision of rectification or withdrawal is communicated to the applicant(s) and the defendant(s) according to the rules of notification and/or service provided for in the European Enforcement Order Regulation.

5.5. Autres certificats. Certificat indiquant que la décision n'est plus exécutoire ou que son caractère exécutoire a été limité. Lorsqu'une décision relative à une créance incontestée n'est plus exécutoire ou que son caractère exécutoire a été limité, la partie requérante peut s'adresser au greffier en chef de la juridiction d'origine. Sur base du dossier, le greffier en chef vérifiera que la décision n'est plus exécutoire ou que son caractère exécutoire a été limité et, si nécessaire, délivrera à la partie requérante le formulaire type complété et signé (voir annexe IV) (13). ((13) A cet égard, on peut penser, par exemple, au jugement par défaut réputé non avenu s'il n'est pas signifié dans l'année (article 806 du Code judiciaire).) Certificat de remplacement du titre exécutoire européen suite à un recours En cas de recours contre une décision qui s'accompagne déjà d'un certificat de titre exécutoire européen, le greffier en chef peut, à la demande de l'une des parties, délivrer un certificat de remplacement du titre exécutoire européen après l'introduction du recours (cf. annexe V).	5.5. Other certificates. Certificate indicating that the judgment is no longer enforceable or that its enforceability has been limited. Where a judgment on an uncontested claim is no longer enforceable or its enforceability has been limited, the applicant may apply to the chief clerk of the court of origin. On the basis of the file, the chief clerk will verify that the judgment is no longer enforceable or that its enforceability has been limited and, if necessary, will issue to the claimant the completed and signed standard form (see Annex IV) (13). (13) In this respect, one may think, for example, of the default judgment which is deemed null and void if it is not served within one year (article 806 of the Judicial Code).) Certificate of replacement of the European enforcement order following an appeal In the event of an appeal against a decision that is already accompanied by a European Enforcement Order certificate, the chief clerk may, at the request of one of the parties, issue a replacement certificate for the European Enforcement Order after the appeal has been lodged (see Annex V).
5.6. Normes minimales pour la rectification ou le retrait Champ d'application Comme déjà expliqué au point 5.3 de la présente circulaire qui concerne les conditions prévues par le Règlement, des conditions particulières relatives à la signification ou à la notification doivent être	5.6. Minimum standards for rectification or withdrawal. Scope of application As already explained in section 5.3 of this circular, which concerns the conditions laid down in the Regulation, special conditions relating to service must be taken into

prises en considération dans les situations où le débiteur ne s'est jamais opposé à la créance au cours de la procédure judiciaire, ou lorsqu'il n'a pas comparu ou ne s'est pas fait représenter lors d'une audience relative à cette créance après l'avoir initialement contestée au cours de la procédure judiciaire (article 12, paragraphe 1er). Les mêmes conditions s'appliquent à la délivrance du certificat de titre exécutoire européen ou du certificat de remplacement du titre exécutoire européen pour une décision rendue à la suite d'un recours formé contre la décision (article 12, paragraphe 2).	consideration in situations where the debtor has never objected to the claim in the course of the court proceedings, or where he has not appeared or been represented at a hearing relating to the claim after having initially contested it in the course of the court proceedings (Article 12, paragraph 1). The same conditions apply to the issue of the European Enforcement Order certificate or the replacement European Enforcement Order certificate for a judgment given following an appeal against the judgment (Article 12(2)).
Mode de signification ou de notification Les normes minimales relatives à la signification et à la notification figurent explicitement dans le Règlement (articles 12 à 19 inclus), elles ont trait aux actes introductifs d'instance et à la citation à comparaître. Condition de délivrance du certificat de titre exécutoire européen, la signification de l'acte introductif d'instance doit avoir lieu conformément au droit en vigueur en Belgique et aux normes minimales du Règlement. Les modes de signification et de notification prévus par le Règlement peuvent être répartis en deux catégories : ceux qui sont accompagnés d'un accusé de réception (article 13) de la part du débiteur et ceux qui ne le sont pas (article 14). Il appartient au greffier en chef de vérifier sur base du dossier si les règles relatives à la signification ou à la notification ont été respectées. Si ce n'est pas le cas, il ne pourra pas délivrer de certificat de titre exécutoire.	Method of service The minimum standards for service are explicitly laid down in the Regulation (Articles 12 to 19 inclusive) and relate to the documents initiating proceedings and the summons to appear. As a condition for the delivery of the European Enforcement Order certificate, the service of the document instituting the proceedings must take place in accordance with the law in force in Belgium and the minimum standards of the Regulation. The methods of service provided for by the Regulation can be divided into two categories: those that are accompanied by an acknowledgement of receipt (article 13) from the debtor and those that are not (article 14). It is the responsibility of the Chief Clerk to ascertain from the file whether the rules relating to service have been complied with. If

Obligation d'information. Outre la réglementation relative au mode de signification et de notification, le Règlement contient deux dispositions qui précisent quelles sont les informations minimales qui doivent être communiquées au débiteur. Ces informations portent tant sur la créance (article 16) que sur les formalités procédurales à accomplir pour contester la créance (article 17) (14). ((14) Cette obligation d'information européenne va plus loin que le Code judiciaire belge - cf. article 43 du Code judiciaire (disposition générale), article 702 du Code judiciaire (exploit de citation), article 1026 du Code judiciaire (requête unilatérale) et articles 1034ter du Code judiciaire (requête contradictoire). Toutefois, en raison de l'effet direct des règlements européens, le Règlement portant création du titre exécutoire européen sortira immédiatement ses effets dans le système national. Il revient dès lors aux parties qui introduisent l'instance de veiller à ce qu'il soit répondu à toutes les conditions d'information requises par le Règlement, à peine de non-délivrance du certificat de titre exécutoire européen.) L'obligation d'information est contrôlée par le greffier en chef sur base du dossier mis à sa disposition. Aucun certificat de titre exécutoire européen n'est délivré en cas de violation des règles prescrivant l'information en bonne et due forme du débiteur. Moyens de remédier au non-respect des normes minimales. Dans les cas où il n'est pas satisfait aux	this is not the case, he cannot issue a certificate of enforceability. Duty to provide information. In addition to the rules on the method of service, the Regulation contains two provisions that specify the minimum information that must be provided to the debtor. This information relates both to the claim (Article 16) and to the procedural formalities to be completed in order to contest the claim (Article 17) (14). (14) This European information obligation goes further than the Belgian Judicial Code - see Article 43 of the Judicial Code (general provision), Article 702 of the Judicial Code (summons), Article 1026 of the Judicial Code (unilateral request) and Article 1034ter of the Judicial Code (contradictory request). However, due to the direct effect of the European regulations, the Regulation creating the European Enforcement Order will immediately take effect in the national system. It is therefore up to the parties who initiate the proceedings to ensure that all the information requirements of the Regulation are met, failing which the European Enforcement Order certificate will not be issued.) The obligation to provide information is checked by the chief clerk on the basis of the file made available to him. No European Enforcement Order certificate is issued in case of violation of the rules prescribing the proper information of the debtor.

exigences de signification ou de notification, il est remédié au non-respect de ces exigences dans les deux situations exceptionnelles citées à l'article 18, de sorte que la décision puisse valoir comme titre exécutoire européen. C'est le cas lorsque la décision a été signifiée et/ou notifiée dans le respect des articles 13 et 14 du Règlement, que le débiteur a eu la possibilité d'introduire un recours et qu'il a été dûment informé des exigences de procédure qui y sont relatives mais qu'il a néanmoins omis d'introduire un recours (article 18, paragraphe 1er). Une deuxième exception concerne la situation où l'attitude du débiteur au cours de la procédure judicaire indique qu'il a reçu l'acte personnellement et en temps utile (article 18, paragraphe 2). Le greffier en chef décidera sur la base des éléments portés à sa connaissance d'accepter ou non les moyens de remédier au non-respect des normes minimales en matière de signification ou de notification. Normes minimales pour un réexamen dans des cas exceptionnels Conformément à l'article 19, le débiteur doit avoir la possibilité en vertu de la loi de l'Etat membre d'origine de demander un réexamen de la décision lorsque la signification ou la notification, sans accusé de réception du débiteur, n'est pas intervenue en temps utile sans qu'il y ait eu faute de sa part (article 19, paragraphe 1er, a)). De même, le droit de l'Etat membre d'origine doit lui permettre de demander un réexamen de la décision lorsqu'il n'a pas pu contester la créance pour des raisons de force majeure ou par suite de circonstances extraordinaires indépendantes de sa volonté	Means to remedy non-compliance with minimum standards. In cases where the requirements of service are not fulfilled, the non-compliance is remedied in the two exceptional situations mentioned in Article 18, so that the judgment can be valid as a European enforcement order. This is the case where the judgment has been served in compliance with Articles 13 and 14 of the Regulation, the debtor has had the opportunity to lodge an appeal and has been duly informed of the procedural requirements relating to it but has nevertheless failed to lodge an appeal (Article 18(1)). A second exception concerns the situation where the debtor's attitude in the course of the court proceedings indicates that he received the document personally and in good time (Article 18(2)). The chief clerk will decide on the basis of the evidence brought to his knowledge whether to accept the means to remedy the non-compliance with the minimum standards of service. Minimum standards for review in exceptional cases According to Article 19, the debtor must have the possibility under the law of the Member State of origin to apply for a review of the judgment where service, without acknowledgement of receipt by the debtor, has not been effected in due time through no fault of his own (Article 19(1)(a)). Similarly, the law of the Member State of origin must allow him

(article 19, paragraphe 1er, b)). Si ces normes minimales de réexamen n'existent pas dans un Etat membre, la justice de cet Etat membre ne pourra pas délivrer valablement de certificat de titre exécutoire européen. Le second paragraphe de l'article 19 prévoit que les Etats membres ont toujours la possibilité de prévoir un réexamen de la décision dans des conditions plus favorables.	to apply for a review of the decision where he was unable to contest the claim for reasons of force majeure or extraordinary circumstances beyond his control (Article 19(1)(b)). If these minimum standards of review do not exist in a Member State, the courts of that Member State will not be able to issue a valid European Enforcement Order certificate. The second paragraph of Article 19 provides that Member States always have the possibility to provide for a review of the judgment under more favorable conditions.
6. Modalités d'exécution en Belgique d'une décision, d'une transaction judiciaire ou d'un acte authentique pris dans un autre Etat membre. **Procédure d'exécution** Les procédures d'exécution sont régies par le droit de l'Etat membre d'exécution. Une décision certifiée en tant que titre exécutoire européen est par conséquent exécutée dans les mêmes conditions qu'une décision rendue par une juridiction belge (article 20, paragraphe 1er). Il en va de même pour la transaction judiciaire et pour l'acte authentique en vertu, respectivement, des articles 24, paragraphe 2, et 25, paragraphe 2. Le créancier est toutefois tenu de fournir aux autorités belges chargées de l'exécution, une expédition de la décision, une expédition du certificat de titre exécutoire européen et, si nécessaire, une transcription du certificat de titre exécutoire européen ou une traduction de celui-ci dans la langue officielle de l'Etat membre d'exécution ou, si ledit Etat membre a plusieurs langues officielles, dans la langue officielle ou dans une des langues officielles de la procédure	**6. Procedures for the enforcement in Belgium of a decision, a court settlement or an authentic instrument taken in another Member State.** **Enforcement procedure** Enforcement procedures are governed by the law of the Member State of enforcement. A judgment certified as a European enforcement order is therefore enforced under the same conditions as a judgment given by a Belgian court (Article 20(1)). The same applies to the court settlement and the authentic instrument by virtue of Articles 24(2) and 25(2) respectively. The creditor is, however, obliged to provide the Belgian enforcement authorities with a copy of the judgment, a copy of the European Enforcement Order certificate and, if necessary, a transcription of the European Enforcement Order certificate or a translation of it into the official language of the Member State of enforcement or, if there are several official languages in the Member State of

judiciaire du lieu ou l'exécution est demandée (article 20, paragraphe 2). La traduction doit cependant être certifiée conforme par une personnes habilitée à cet effet dans l'un des Etats membres (article 20, paragraphe 2, c)). Aucun cautionnement, aucune caution, aucun gage, sous quelle forme que ce soit, ne peut être demandé dans les circonstances détaillées à l'article 20, paragraphe 3. Refus d'exécution Dans les conditions limitativement déterminées à l'article 21, paragraphe 1er, l'exécution peut être refusée si la décision certifiée en tant que certificat de titre exécutoire européen est incompatible avec une décision rendue antérieurement dans tout Etat membre ou dans un pays tiers. Suspension ou limitation de l'exécution Lorsque le débiteur a introduit un recours, une demande de réexamen (article 19), ou une demande de rectification ou de retrait (article 10), la juridiction compétente peut, à la demande du débiteur, limiter la procédure d'exécution à des mesures conservatoires (article 23, paragraphe 2, a)), demander la constitution d'une sûreté (article 23, paragraphe 2, b)) ou suspendre la procédure d'exécution (article 23, paragraphe 2, c)).	enforcement, into the official language or one of the official languages of the court proceedings of the place where enforcement is sought (Article 20 (2)). However, the translation must be certified by a person qualified to do so in one of the Member States (Article 20, paragraph 2, c)). No security, bond or pledge in any form whatsoever may be required in the circumstances detailed in Article 20, paragraph 3. Refusal of performance Under the conditions set out in Article 21(1), enforcement may be refused if the judgment certified as a European enforcement order certificate is incompatible with an earlier judgment given in any Member State or in a third country. Suspension or limitation of enforcement Where the debtor has lodged an appeal, an application for review (Article 19), or an application for rectification or withdrawal (Article 10), the competent court may, on application by the debtor, limit the enforcement proceedings to protective measures (Article 23(2)(a)), request the provision of security (Article 23(2)(b)) or suspend the enforcement proceedings (Article 23(2)(c)).
7. Instrument juridique facultatif Le Règlement (CE) n° 805/2004 qui fait l'objet de la présente circulaire est un instrument juridique européen facultatif qui n'affecte pas la possibilité de faire appel au "	**7. Optional legal instrument** Regulation (EC) No 805/2004, which is the subject of this circular, is an optional European legal instrument which does not

Règlement Bruxelles I (article 27). Les parties ont par conséquent la possibilité d'utiliser l'instrument le plus intéressant pour elles. De plus, une procédure sur le base du " Règlement Bruxelles I " peut toujours être lancée après une procédure sur la base du présent Règlement et inversement. L'application du Règlement examiné ici n'affecte pas le Règlement (CE) n° 1348/2000 du 29 mai 2000 relatif à la signification et à la notification dans les Etats membres des actes judiciaires et extrajudiciaires en matière civile et commerciale (15).	affect the possibility of appealing to the Brussels I Regulation (Article 27). The parties therefore have the possibility to use the instrument that is most interesting for them. Moreover, a procedure on the basis of the Brussels I Regulation can always be initiated after a procedure on the basis of the present Regulation and vice versa. The application of the Regulation examined here does not affect Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (15).
8. Dispositions transitoires L'article 26 dispose que le Règlement portant création du titre exécutoire européen pour les créances incontestées n'est applicable qu'aux décisions rendues, aux transactions judiciaires approuvées ou conclues et aux actes authentiques dressés ou enregistrés postérieurement à l'entrée en vigueur du règlement.	**8. Transitional provisions** Article 26 provides that the Regulation creating the European Enforcement Order for uncontested claims shall apply only to judgments given, court settlements approved or concluded and authentic instruments drawn up or registered after the entry into force of the Regulation.
9. Entrée en vigueur Le Règlement entre en vigueur le 21 octobre 2005, à l'exception des articles 30, 31 et 32 qui sont entrés en vigueur le 21 janvier 2005. Lu conjointement avec ce qui est prévu au point 8 de la présente circulaire, cela signifie que des décisions rendues, des transactions approuvées ou conclues ou des actes authentiques enregistrés pourront être certifiés comme titre exécutoire européen, à partir du 21 octobre 2005, s'ils portent la date du 21 janvier 2005 ou une date ultérieure	**9. Entry into force** The Regulation comes into force on October 21, 2005, with the exception of sections 30, 31 and 32 which came into force on January 21, 2005. Read in conjunction with what is provided for in point 8 of this circular, this means that judgments rendered, settlements approved or concluded or authentic instruments registered may be certified as European Enforcement Orders, as from 21 October 2005, if they bear the date of 21 January 2005 or a later date

Loi du 18 Juin 2018 ***Loi portant dispositions diverses en matière de droit civil et des dispositions en vue de promouvoir des formes alternatives de résolution des litiges***[66]	*Act of 18 June 2018 (translation)* ***Law on various civil law provisions and provisions to promote alternative forms of dispute resolution***
TITRE 7. - Dispositions mettant en œuvre et complétant le Règlement (UE) n° 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale	**TITLE 7. - Provisions implementing and supplementing Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 creating a European order for the precautionary attachment of bank accounts to facilitate cross-border debt recovery in civil and commercial matters**
CHAPITRE 1er. - Dispositions générales Art. 180. Le présent titre vise à mettre en œuvre et à compléter le Règlement (UE) n° 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale, dénommé ci-après "le Règlement". Pour l'application du présent titre, les définitions figurant à l'article 4 du Règlement s'appliquent.	**CHAPTER 1. - General provisions** Article 180. The purpose of this Title is to implement and supplement Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, hereinafter referred to as "the Regulation". For the purposes of this Title, the definitions in Article 4 of the Regulation shall apply.

[66] 18 JUIN 2018. - Loi portant dispositions diverses en matière de droit civil et des dispositions en vue de promouvoir des formes alternatives de résolution des litiges (NOTE : Consultation des versions antérieures à partir du 02-07-2018 et mise à jour au 07-08-2020)< https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2018061803&table_name=loi> accessed 13 May 2021.

CHAPITRE 2. - Modifications du Code judiciaire	**CHAPTER 2. - Amendments to the Judicial Code**
Art. 181. Dans l'article 552, § 2, alinéa 1er, du Code judiciaire, remplacé par la loi du 7 janvier 2014, les mots "conformément à l'article 555/1, 15° " sont remplacés par les mots "conformément à l'article 555/1, § 1er, alinéa 1er, 15°. ".	**Art. 181.** In Article 552, § 2, paragraph 1, of the Judicial Code, replaced by the Law of 7 January 2014, the words "in accordance with Article 555/1, 15°" are replaced by the words "in accordance with Article 555/1, § 1, paragraph 1, 15°. ".
Art. 182. A l'article 555/1 du même Code, inséré par la loi du 7 janvier 2014 et modifié par les lois des 8 mai 2014 et 4 mai 2016, les modifications suivantes sont apportées : 1° l'alinéa 1er est complété par un 25°, rédigé comme suit : "25° de jouer le rôle d'autorité chargée de l'obtention d'informations, telle que visée à l'article 4, paragraphe 13, du Règlement (UE) 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale."; 2° dans l'alinéa 3, les mots "23° et 24° " sont remplacés par les mots "23°, 24° et 25° ". 3° l'article, dont le texte actuel formera le paragraphe 1er, est complété par un paragraphe 2 rédigé comme suit : " § 2. Pour l'application du paragraphe 1er, 25°, et de l'article 1447/1, la Chambre nationale est habilitée à demander, sur la base d'une demande juridictionnelle, au point de contact central tenu par la Banque Nationale	**Art. 182.** In Article 555/1 of the same Code, inserted by the Law of 7 January 2014 and amended by the Laws of 8 May 2014 and 4 May 2016, the following amendments are made: 1° paragraph 1 is completed by a 25°, drafted as follows: "25° to act as an information gathering authority as referred to in Article 4(13) of Regulation (EU) 655/2014 of the European Parliament and of the Council of 15 May 2014 creating a European order for the precautionary seizure of bank accounts to facilitate cross-border debt recovery in civil and commercial matters." 2° in paragraph 3, the words "23° and 24°" are replaced by the words "23°, 24° and 25°". 3° the Article, the current text of which will form paragraph 1, is completed by a paragraph 2 worded as follows "For the application of paragraph 1, 25°, and Article 1447/1, the National Chamber is entitled to request, on the basis of a judicial request, from the central contact point maintained by the National Bank of Belgium the available data

de Belgique les données disponibles visées à l'article 322, § 3, alinéa 1er, du Code des impôts sur les revenus 1992. Sur la base des données obtenues dans ce cadre, la Chambre nationale peut, si nécessaire, adresser une demande d'informations à une ou plusieurs banques au sens de l'article 4, paragraphe 2, du Règlement visé au paragraphe 1er, alinéa 1er, 25°. La banque communique les informations demandées, ou la non-disponibilité de ces informations, avec célérité à la Chambre nationale. Cette banque ne peut informer le débiteur de la demande d'informations qu'après un délai de trente jours suivant le jour de la communication à la Chambre nationale des informations demandées, ou de la non-disponibilité de ces informations. Si la banque ne respecte pas ces obligations, l'article 1456, alinéa 1er, s'applique. Dès que la Chambre nationale a reçu la communication du point de contact central visé à l'alinéa 1er et, le cas échéant, de la banque, elle la transmet à la juridiction qui a demandé les informations. Le Roi fixe les frais pour le traitement de la demande visant à obtenir des informations relatives aux comptes, ainsi que les conditions et les modalités de perception. L'article 520, § 1er, 3°, s'applique.". **Art. 183.** Dans l'article 602 du même Code, les modifications suivantes sont apportées : a) dans l'alinéa 1er, 5°, le mot "principaux." est remplacé par le mot "principaux;";	referred to in Article 322, § 3, subparagraph 1, of the Income Tax Code 1992. Based on the data obtained in this context, the National Chamber may, if necessary, send a request for information to one or more banks within the meaning of Article 4, paragraph 2, of the Regulation referred to in paragraph 1, subparagraph 1, 25°. The bank shall promptly inform the National Chamber of the information requested or of the unavailability of such information. The bank may only inform the debtor of the request for information after a period of thirty days following the day on which the information requested was communicated to the National Chamber, or the unavailability of such information. If the bank does not comply with these obligations, Article 1456, paragraph 1, applies. As soon as the National Chamber has received the communication from the central contact point referred to in paragraph 1 and, where applicable, from the bank, it shall forward it to the court that requested the information. The King shall determine the costs of processing the request for information on accounts, as well as the conditions and methods of collection. Article 520, § 1, 3°, shall apply.

b) l'alinéa 1er est complété par les 6° et 7° rédigés comme suit : "6° des décisions dans lesquelles la demande d'ordonnance européenne de saisie conservatoire est rejetée en tout ou en partie, telles que visées à l'article 21, paragraphe 1er, du Règlement (UE) n° 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale; 7° des décisions rendues en vertu des articles 33, 34 ou 35 du même Règlement (UE); c) l'article est complété par un alinéa rédigé comme suit : "Dans les cas visés à l'alinéa 1er, 6°, la cour d'appel qui réforme la décision attaquée entièrement ou en partie, renvoie l'affaire devant la juridiction qui a rendu la décision attaquée, afin de faire délivrer au demandeur une ordonnance européenne de saisie conservatoire. La juridiction à laquelle l'affaire est ainsi renvoyée, est liée par la décision de la cour qui a renvoyé l'affaire.".	**Art. 183.** In Article 602 of the same Code, the following amendments are made a) in paragraph 1, 5°, the word "principal" is replaced by the word "principal"; b) Paragraph 1 is supplemented by 6° and 7°, worded as follows "6° decisions in which the application for a European order for the attachment of bank accounts is rejected in whole or in part, as referred to in Article 21(1) of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a procedure for the European order for the attachment of bank accounts to facilitate cross-border debt recovery in civil and commercial matters; 7° decisions given under Articles 33, 34 or 35 of the same Regulation (EU); c) a paragraph is added to the Article as follows: "In the cases referred to in paragraph 1, 6°, the court of appeal which amends the contested decision in whole or in part, shall refer the case to the court which gave the contested decision, in order to have a European order of attachment issued to the applicant. The court to which the case is thus referred shall be bound by the decision of the court that referred the case.
Art. 184. Dans l'article 633, § 1er, alinéa 2, première phrase, du même Code, remplacé par la loi du 30 décembre 2009, les mots "et en matière de demandes et recours visés à l'article 1395/2" sont insérés entre les mots "En matière de saisie-arrêt," et les mots "le juge compétent".	**Art. 184.** In Article 633, § 1, paragraph 2, first sentence, of the same Code, replaced by the law of 30 December 2009, the words "and in matters of claims and appeals referred to in Article 1395/2" are inserted between the words "In

Art. 185. Dans la cinquième partie, titre Ier du même Code, il est inséré un chapitre 1erbis/1, intitulé "Registre central pour les saisies conservatoires européennes des comptes bancaires".	matters of attachment," and the words "the competent court".
Art. 186. Dans le chapitre 1erbis/1, inséré par l'article 185, il est inséré un article 1391/1, rédigé comme suit: "Art. 1391/1. Il est institué, à la Chambre nationale des huissiers de justice, un "Registre central pour les saisies conservatoires européennes des comptes bancaires", ci-après dénommé "Registre central EAPO". Le Registre central EAPO est une base de données informatisée dans laquelle sont collectées les données qui sont nécessaires pour atteindre les objectifs de la demande juridictionnelle et pour contrôler le bon déroulement des procédures concernant les demandes visant à obtenir des informations relatives aux comptes, telles que visées dans l'article 14 du Règlement (UE) n° 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale, et dans les articles 1447/1 et 1447/2. Sont enregistrées dans le Registre central EAPO : 1) Les métadonnées et la demande électronique ou les copies dématérialisées de la demande non-électronique visant à obtenir des informations relatives aux comptes, qui a été transmise à la Chambre nationale, ainsi que les annexes de cette	**Art. 185.** In Part Five, Title I of the same Code, a Chapter 1bis/1 is inserted, entitled "Central Register for European Protective Attachments of Bank Accounts". **Art. 186.** In Chapter 1bis/1, inserted by Article 185, an Article 1391/1 is inserted, worded as follows "Art. 1391/1. A "Central Register for European Protective Seizures of Bank Accounts", hereinafter referred to as the "EAPO Central Register", shall be established at the National Chamber of Judicial Officers. The EAPO Central Register is a computerised database in which data are collected that are necessary to achieve the objectives of the jurisdictional request and to monitor the proper conduct of the proceedings concerning requests for account information, as referred to in Article 14 of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a procedure for the European order for the precautionary attachment of bank accounts, in order to facilitate the cross-border recovery of claims in civil and commercial matters, and in Articles 1447/1 and 1447/2. The following are recorded in the EAPO Central Register 1) The metadata and the electronic request or dematerialised copies of the non-electronic request for account information, which has been

demande; 2) Les métadonnées et les données concernant le payement des frais pour le traitement de la demande visant à obtenir des informations relatives aux comptes; 3) Les données nécessaires afin de pouvoir identifier le débiteur qui fait l'objet de la demande visant à obtenir les informations relatives aux comptes; 4) Les métadonnées et la correspondance électronique ainsi que les copies dématérialisées de la corrrespondance non-électronique échangée par la Chambre nationale en vue de répondre à la demande visant à obtenir les informations relatives aux comptes; 5) Les métadonnées et la réponse électronique ou les copies dématérialisées de la réponse non-électronique de la Chambre nationale à la demande visant à obtenir les informations relatives aux comptes. Le Roi détermine, après avoir recueilli l'avis du gestionnaire du registre et de l'Autorité de protection des données formelles, les données exactes enregistrées dans le registre. Le registre vaut comme source authentique pour tous les données qui y sont enregistrées.".	transmitted to the National Chamber, as well as the annexes of this request; 2) The metadata and the data concerning the payment of the fees for the processing of the request for account information; 3) The data necessary to identify the debtor who is the subject of the request for account information; 4) Metadata and electronic correspondence as well as dematerialised copies of non-electronic correspondence exchanged by the National Chamber in order to respond to the request for account information; 5) The metadata and the electronic response or dematerialised copies of the non-electronic response of the National Chamber to the request for information on the accounts. The King shall determine, after obtaining the opinion of the manager of the register and the Formal Data Protection Authority, the exact data recorded in the register. The register shall be the authentic source for all data recorded in it.
Art. 187. Dans le même chapitre, il est inséré un article 1391/2 rédigé comme suit : "Art. 1391/2. La Chambre nationale des huissiers de justice, ci-après dénommé "le gestionnaire", met en place et gère le fontionnement du registre. Elle assure le contrôle du fonctionnement et de l'utilisation du registre. Le cas échéant, le chapitre VII du livre IV de la deuxième	**Art. 187.** In the same chapter an article 1391/2 is inserted, worded as follows "Article 1391/2. The National Chamber of Judicial Officers, hereinafter referred to as "the manager", shall set up and manage the operation of the register. It shall ensure the control of the operation and use of the register. Where

partie du présent Code s'applique. La Chambre nationale est considérée, pour ce qui concerne le Registre central EAPO, comme le responsable du traitement, au sens de [1 l'article 4, 7), du Règlement (UE) 2016/679 du Parlement européen et du Conseil du 27 avril 2016 relatif à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données, et abrogeant la directive 95/46/CE]1.".	applicable, Chapter VII of Book IV of Part II of this Code shall apply. The National Chamber shall be considered, as far as the EAPO Central Register is concerned, as the controller, within the meaning of [1 Article 4(7) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC]1."
Art. 188. Dans le même chapitre, il est inséré un article 1391/3, rédigé comme suit : "Art. 1391/3. Le Roi détermine, après avoir recueilli l'avis du gestionnaire du registre et de l'Autorité de protection des données : 1° parmi les organes et employés de la Chambre nationale et parmi les organes et employés des associations qu'elle a créé, quels organes, quelles personnes physiques ou quelles catégories de personnes peuvent, pour l'application du présent chapitre, enregistrer les données visées à l'article 1391/1 dans le Registre central EAPO et accéder à ces données; 2° parmi les organes et employés de la Chambre nationale et parmi les organes et employés des associations qu'elle a créé, quels organes, quelles personnes physiques ou quelles catégories de personnes peuvent consulter ces données pour l'application du présent chapitre; 3° les modalités relatives à l'enregistrement, l'accès et la consultation visés aux 1° et 2°.	**Art. 188.** In the same chapter, an article 1391/3 is inserted, worded as follows: "Art. 1391/3. The King shall determine, after obtaining the opinion of the manager of the register and the Data Protection Authority : 1° among the bodies and employees of the National Chamber and among the bodies and employees of the associations it has set up, which bodies, which natural persons or which categories of persons may, for the application of this chapter, record the data referred to in Article 1391/1 in the EAPO Central Register and have access to such data 2° among the bodies and employees of the National Chamber and among the bodies and employees of the associations it has set up, which bodies, which natural persons or which categories of persons may consult these data for the application of this chapter 3° the modalities for registration, access and consultation referred to in 1° and 2°. Anyone who, in any capacity whatsoever, participates in the collection or recording of data

Celui qui, à quelque titre que ce soit, participe à la collecte ou à l'enregistrement des données dans le Registre central EAPO ou au traitement ou à la communication des données qui y sont enregistrées ou a connaissance de telles données, est tenu d'en respecter le caractère confidentiel. L'article 458 du Code pénal s'applique.".	in the EAPO Central Register or in the processing or communication of the data recorded therein, or who has knowledge of such data, is obliged to respect the confidential nature thereof. Article 458 of the Criminal Code shall apply.
Art. 189. Dans le même chapitre, il est inséré un article 1391/4 rédigé comme suit : "Art. 1391/4. Le gestionnaire informe le débiteur qui fait l'objet de la demande visant à obtenir des informations relatives aux comptes bancaires, sur la demande explicite du débiteur et pas avant que le délai visé à l'article 555/1, § 2, alinéa 3, ait expiré : 1° des données du registre qui le concernent; 2° des organes, personnes physiques et catégories de personnes qui ont accès à ces données; 3° du délai de conservation de ces données; 4° du responsable du traitement visé à l'article 1391/2, alinéa 2; 5° de la manière dont il peut obtenir accès à ces données; 6° de la manière dont il peut obtenir la correction des données erronées.	**Art. 189.** In the same chapter, the following Article 1391/4 shall be inserted "Art. 1391/4. The manager shall inform the debtor who is the subject of the request to obtain information on bank accounts, at the debtor's express request and not before the period referred to in Article 555/1, § 2, paragraph 3, has expired : 1° of the data in the register which concern him; 2° the bodies, natural persons and categories of persons who have access to such data 3° the period of conservation of these data; 4° the controller referred to in Article 1391/2, paragraph 2; 5° the way in which he can obtain access to these data; 6° the way in which he can obtain the correction of erroneous data.
Art. 190. Dans le même chapitre, il est inséré un article 1391/5 rédigé comme suit : "Art. 1391/5. Les données contenues dans le Registre central EAPO sont conservées pendant six mois au plus, et ce, à partir du moment de l'enregistrement.".	**Art. 190.** In the same chapter, an article 1391/5 is inserted as follows: "Article 1391/5. The data contained in the EAPO Central Register shall be kept for a maximum of six months from the time of registration.
Art. 191. Dans le même chapitre, il est	**Art. 191.** In the same chapter, the following article 1391/6 shall be inserted

inséré un article 1391/6 rédigé comme suit : "Art. 1391/6. Le Roi détermine, après avoir recueilli l'avis du gestionnaire et de l'Autorité de protection des données, les modalités de mise en place et de fonctionnement du registre.".	"Art. 1391/6. The King shall determine, after obtaining the opinion of the manager and the Data Protection Authority, the procedures for setting up and operating the register.
Art. 192. Dans le même Code, il est inséré un article 1395/2 rédigé comme suit : "Art. 1395/2. Le juge des saisies statue sur : 1° les demandes d'ordonnance européenne de saisie conservatoire, telles que visées par le Règlement (UE) n° 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale; 2° les recours visés aux articles 33, 34 et 35 du même Règlement.".	**Art. 192.** In the same Code, an Article 1395/2 is inserted, worded as follows "Art. 1395/2. The attachment judge shall rule on : 1° applications for a European order for precautionary seizure, as referred to in Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 creating a procedure for the European order for the precautionary seizure of bank accounts, intended to facilitate cross-border debt recovery in civil and commercial matters; 2° the appeals referred to in Articles 33, 34 and 35 of the same Regulation.".
Art. 193. Dans le même Code, il est inséré un article 1447/1, rédigé comme suit : "Art. 1447/1. § 1er. Lorsque le créancier a obtenu une décision judiciaire, une transaction judiciaire ou un acte authentique exécutoire exigeant du débiteur le paiement de sa créance et que le créancier a des raisons de croire que le débiteur détient un ou plusieurs comptes auprès d'une banque en Belgique, mais qu'il ne connaît pas le nom ou l'adresse de la banque, ni le code IBAN, BIC ou un autre numéro bancaire permettant d'identifier la banque, il peut demander à la juridiction auprès de laquelle	**Art. 193.** In the same Code, an Article 1447/1 is inserted, worded as follows "Art. 1447/1. § 1. Where the creditor has obtained a court decision, a court settlement or an enforceable authentic instrument requiring the debtor to pay his claim and the creditor has reason to believe that the debtor holds one or more accounts with a bank in Belgium, but does not know the name or address of the bank or the IBAN, BIC code or other bank number enabling the bank to be identified, he may ask the court before which the application for a protective attachment is made to request the authority responsible for obtaining information referred to

la requête pour l'obtention d'une saisie-arrêt conservatoire est introduite de demander à l'autorité chargée de l'obtention d'informations visée à l'article 555/1, § 1er, alinéa 1er, 25°, d'obtenir les informations nécessaires pour permettre d'identifier la ou les banques et le ou les comptes du débiteur. § 2. Nonobstant le paragraphe 1er, le créancier peut également formuler la demande visée audit paragraphe 1er, lorsque la décision judiciaire, la transaction judiciaire ou l'acte authentique qu'il a obtenu n'est pas encore exécutoire, pour autant que les conditions suivantes soient réunies : 1° le montant devant faire l'objet de la saisie-arrêt conservatoire est important compte tenu des circonstances; 2° le créancier a fourni suffisamment d'éléments de preuve pour convaincre le juge qu'il est urgent d'obtenir des informations relatives aux comptes parce qu'il existe un risque qu'à défaut de ces informations le recouvrement ultérieur de sa créance soit mis en péril et entraine une détérioration importante de la situation financière du créancier. § 3. Le créancier formule la demande d'informations dans la requête pour l'obtention d'une saisie-arrêt conservatoire. Le créancier justifie les raisons pour lesquelles il pense que le débiteur détient un ou plusieurs comptes auprès d'une banque en Belgique et fournit toutes les informations utiles dont il dispose concernant le débiteur et les comptes devant faire l'objet de la saisie conservatoire. Si le juge auprès duquel la requête est introduite considère que la demande d'informations du créancier n'est pas suffisamment étayée, il la rejette.	in Article 555/1, § 1, paragraph 1, 25°, to obtain the information necessary to identify the bank(s) and the account(s) of the debtor. § Notwithstanding paragraph 1, the creditor may also make the request referred to in paragraph 1, when the court decision, court settlement or authentic instrument he has obtained is not yet enforceable, provided that the following conditions are met 1° the amount to be garnished is substantial in the circumstances; 2° the creditor has provided sufficient evidence to convince the judge that there is an urgent need to obtain account information because there is a risk that without such information the further recovery of his claim will be jeopardised and lead to a significant deterioration of the creditor's financial situation. § (3) The creditor shall formulate the request for information in the application for protective attachment. The creditor shall justify the reasons why he believes that the debtor holds one or more accounts with a bank in Belgium and shall provide all relevant information at his disposal concerning the debtor and the accounts to be subject to the protective attachment. If the judge to whom the application is made considers that the creditor's request for information is not sufficiently substantiated, he shall reject it. § 4. When the court is satisfied that the creditor's request for information is well-founded and that all the conditions and requirements for authorising the protective attachment are met, with the exception of the mention, required by Article 1447, paragraph 2,

§ 4. Lorsque le juge est convaincu que la demande d'informations du créancier est bien étayée et que toutes les conditions et exigences prévues pour l'autorisation de la saisie-arrêt conservatoire sont remplies, à l'exception de la mention, exigée par l'article 1447, alinéa 2, 1°, des données du tiers saisi, et, le cas échéant, de la garantie exigée en vertu de l'article 1447/2, § 1er, le juge communique à l'autorité chargée de l'obtention d'informations visée à l'article 555/1, § 1er, alinéa 1er, 25°, la demande d'informations, afin que cette autorité puisse obtenir les informations demandées selon les modalités prévues dans l'article 555/1, § 2.".	1°, of the garnishee's data and, where applicable of the guarantee required under Article 1447/2, § 1, the judge shall communicate the request for information to the authority responsible for obtaining information referred to in Article 555/1, § 1, subparagraph 1, 25°, so that this authority can obtain the information requested in accordance with the procedures set out in Article 555/1, § 2. ".
Art. 194. Dans le même Code, il est inséré un article 1447/2 rédigé comme suit : "Art. 1447/2. § 1er. Dans l'hypothèse visée à l'article 1447/1, § 1er, le juge peut, avant d'autoriser la saisie-arrêt conservatoire et au plus tard à la fin du cinquième jour ouvrable suivant le dépôt de la requête, exiger du créancier qu'il constitue une garantie pour un montant suffisant afin de prévenir un recours abusif à la procédure pour l'obtention d'une saisie-ârret conservatoire et afin d'assurer la réparation de tous les dommages subi par le débiteur en raison de la saisie-arrêt conservatoire, dans la mesure où le créancier est responsable desdits dommages. Dans l'hypothèse visée à l'article 1447/1, § 2, le juge exige, avant d'autoriser la saisie-arrêt conservatoire, et au plus tard à la fin du dixième jour ouvrable suivant le dépôt de la requête, du créancier qu'il constitue la garantie visée à l'alinéa 1er, sauf si le juge	**Art. 194.** An article 1447/2 is inserted in the same Code, worded as follows "Art. 1447/2. § 1. In the case referred to in Article 1447/1, § 1, the court may, before authorising the protective attachment and at the latest by the end of the fifth working day following the filing of the petition, require the creditor to provide a guarantee in an amount sufficient to prevent abusive recourse to the procedure for obtaining a protective attachment and to ensure reparation of all damages suffered by the debtor as a result of the protective attachment, insofar as the creditor is responsible for such damages. In the case referred to in Article 1447/1, § 2, the court shall require the creditor to provide the security referred to in paragraph 1 before authorising the protective attachment, and at the latest by the end of the tenth working day following the filing of the application, unless the

considère que, compte tenu des circonstances de l'espèce, cette constitution de garantie est inappropriée. § 2. Le juge détermine, le cas échéant, cette garantie, dont il fixe, s'il y a lieu, les modalités. § 3. Dès que le créancier a, le cas échéant, constitué la garantie requise et dès que le juge dispose des informations qu'il a demandées conformément à l'article 1447/1, le juge rend sa décision sur la requête pour l'obtention d'une saisie-arrêt conservatoire sans délai. § 4. Si, conformément au paragraphe 1er, une garantie a été constituée et la requête pour l'obtention d'une saisie-arrêt conservatoire est rejetée dans son intégralité du fait de la non-disponibilité des informations relatives aux comptes, le juge qui a demandé les informations ordonne sans tarder la libération de cette garantie.".	court considers that, in view of the circumstances of the case, the provision of such security is inappropriate. § 2 The judge shall determine the security, if any, and shall set the terms and conditions of the security, if any. § (3) As soon as the creditor has provided the required security, if any, and as soon as the court has the information it has requested in accordance with Article 1447/1, the court shall give its decision on the application for a protective attachment without delay. § If, in accordance with paragraph 1, a guarantee has been provided and the application for garnishment is rejected in its entirety due to the unavailability of information on the accounts, the judge who requested the information shall order the release of that guarantee without delay.
CHAPITRE 3. - Autres dispositions explicatives et complémentaires **Art. 195.** Pour l'application de l'article 10, paragraphe 2, deuxième phrase, du Règlement, l'ordonnance européenne de saisie conservatoire prend fin en ce qu'elle est d'office révoquée par la juridiction qui a délivré l'ordonnance. **Art. 196.** L'autorité compétente, visée à l'article 4, paragraphe 14 du Règlement, est l'huissier de justice. **Art. 197.** La déclaration visée à l'article 25, paragraphe 1er, du même Règlement est faite par la banque entre les mains de	**CHAPTER 3. - Other explanatory and additional provisions** **Article 195.** For the purposes of the second sentence of Article 10, paragraph 2 of the Rules, the European order for precautionary seizure shall terminate in that it shall be revoked ex officio by the court which issued the order. **Article 196.** The competent authority referred to in Article 4, paragraph 14 of the Regulation shall be the bailiff. **Article 197.** The declaration referred to in Article 25, paragraph 1 of the same Regulation

laquelle la saisie-arrêt conservatoire a été exécutée. Dans les cas visés à l'article 25, paragraphe 2, du Règlement, la déclaration est adressée par cette banque par envoi recommandée ou remise contre récépissé à l'huissier de justice instrumentant pour le créancier. Ensuite, ledit huissier de justice envoie la déclaration, conformément à l'article 25, paragraphe 2, du même Règlement, à la juridiction qui a délivré l'ordonnance et au créancier.	shall be made by the bank in whose hands the protective attachment has been executed. In the cases referred to in Article 25, paragraph 2, of the Regulation, the declaration shall be sent by this bank by registered mail or delivered against a receipt to the bailiff acting for the creditor. The bailiff shall then send the statement, in accordance with Article 25(2) of the Regulation, to the court which issued the order and to the creditor.
Art. 198. La signification ou la notification visée à l'article 28, paragraphes 2 et 3, du Règlement est faite à l'initative du créancier.	**Article 198.** The service referred to in Article 28, paragraphs 2 and 3 of the Regulation shall be made at the creditor's initiative.
Art. 199. Pour les coûts supportés par les banques visés à l'article 43, paragraphe 1er, du Règlement, et sans préjudice de l'article 43 du Règlement, l'article 1454 du Code judiciaire s'applique.	**Art. 199.** For the costs incurred by the banks referred to in Article 43, paragraph 1, of the Regulation, and without prejudice to Article 43 of the Regulation, Article 1454 of the Judicial Code shall apply.
Art. 200. Les frais, visés à l'article 44 du Règlement, qui sont facturés par les huissiers de justice pour le traitement ou l'exécution d'une ordonnance européenne de saisie conservatoire, sont fixés conformément à l'arrêté royal du 30 novembre 1976 fixant le tarif des actes accomplis par les huissiers de justice en matière civile et commerciale ainsi que celui de certaines allocations.	**Article 200.** The costs, referred to in Article 44 of the Regulation, which are charged by the bailiffs for the processing or enforcement of a European attachment order, are fixed in accordance with the Royal Decree of 30 November 1976 fixing the tariff of acts performed by bailiffs in civil and commercial matters and that of certain allowances.
Art. 201.[L'article 182, 3°, entre en vigueur le 1er janvier 2019. Le Roi peut fixer une date d'entrée en vigueur antérieure à cette date.	**Art. 201** [Article 182, 3°, enters into force on 1 January 2019. The King may set an earlier date of entry into force.

Les articles 193 et 194 entrent en vigueur à la date de mise en production du PCC2, comme visée dans l'article 1er, alinéa 2, 4°, de l'arrêté royal relatif au fonctionnement du point de contact central des comptes et contrats financiers.] Les autres dispositions entrent en vigueur le jour de la publication de la présente loi au Moniteur belge.	Articles 193 and 194 shall enter into force on the date on which the CCP2 goes into production, as referred to in Article 1, paragraph 2, 4°, of the Royal Decree on the operation of the central contact point for financial accounts and contracts]. The other provisions enter into force on the day of publication of this law in the Belgian Official Gazette.