VRIJE UNIVERSITEIT BRUSSEL

Towards more EFfective enFORcemenT of claimS in civil and commercial matters within the EU EFFORTS

Project JUST-JCOO-AG-2019-881802

With financial support from the Civil Justice Programme of the European Union

In partnership with:

UNIVERSITÀ DEGLI STUDI DI MILANO
DIPARTIMENTO DI STUDI INTERNAZIONALI, GIURIDICI E STORICO-POLITICI

UNIVERSITÄT HEIDELBERG
ZUKUNFT SEIT 1386

Max Planck Institute LUXEMBOURG for Procedural Law

Annex I: Enforcement of titles in Belgium

Authors (VUB): Sajedeh Salehi, Dr. Marco Giacalone, Prof. Gina Gioia

***Disclaimer**. This Practice guide is the result of a scientific research project elaborated for educational and general information purposes. It has not been tested in legal practice and is neither intended to provide specific legal advice nor as a substitute for competent legal advice from a licensed attorney. The views, information, or opinions expressed herein are those of the authors and do not reflect the official opinion or position of the European Commission. The authors and the European Commission do not guarantee the accuracy, relevance, timeliness, completeness or the results from the use of the information herein. Any action taken upon the information in this document is strictly at the user's own risk. Both the Commission and the authors of this document disclaim any responsibility and/or liability for any use of the contents in legal practice.*

Introduction

This section of the EFFORTS Practice Guide deals with the way judgments (and other enforceable instruments) are forcibly executed against the party against whom enforcement is sought [*hereinafter also* the debtor] for the benefit of the person who pursues the enforcement [*hereinafter also* the creditor] in the Member State addressed. In principle, foreign judgments must be enforced under the same conditions as a judgment given in the Member State addressed. Since it would not be possible to exhaustively cover the enforcement proceedings in civil and commercial matters as regulated by national procedural laws, the issues hereby addressed are limited to specific ones. These have been selected with the scope of presenting to foreign creditors and debtors the essential features of the enforcement proceedings in the Member State concerned, highlighting differences from one Member State to the other. Creditors and debtors involved in cross-border enforcement proceedings are left with the question of how to plan the enforcement and how to react to it. Without the presumption of substituting national expert practitioners in assisting their clients with these procedures, the EFFORTS Practice Guide Enforcement Annex aims at providing more clarity for the end-users and operators in the essential choices relating to cross-border claims enforcement. The rules and procedures hereby addressed are applicable insofar as they are compatible with the relevant EU regulation.

1. Locating the debtor's attachable assets.

Planning the enforcement within the EU

Which are the categories of assets that are not attachable, wholly or in part, under your national procedural law? Are there any specific categories of assets (e.g. assets that might be covered by immunity) which are subject to specific additional requirements or procedures prior to execution?

Can the creditor, either directly or through the assistance of the enforcement agents or other public authorities, find official information regarding the domicile and residence of natural persons within the State? If so, please provide some details on how to access such information (e.g., what is the timeline for such request).

- Under the Belgian Judicial Code (BJC), the following goods are not attachable:

''Article 1408. § 1. The following may not be seized[1], in addition to the things declared unseizable by particular laws:

1° the necessary bedding of the seized person and his family, the clothes and linen indispensable for their own use, as well as the furniture necessary to store them, a washing machine and an iron, the appliances necessary for the heating of the family dwelling, the tables and chairs allowing the family to take meals together, as well as the dishes and household utensils indispensable to the family, a piece of furniture to store the dishes and household utensils, an appliance for the preparation of hot meals, an appliance for the preservation of food, a lighting appliance for each inhabited room, the objects necessary for the handicapped members of the family, the objects assigned for the use of the dependent children who live under the same roof, the pets, the objects and products necessary for the body care and the maintenance of the premises, the tools necessary for the maintenance of the garden, the whole excluding furniture and luxury objects;

2° books and other objects necessary for the pursuit of the education or professional training of the seized person or dependent children living under the same roof;

[1] In this study, the term 'seizure' will be used to refer to: 'When a person is ordered to pay money, the legal action relates to the debtor's assets and is qualified as seizure. A distinction is made according to the type of property seized (movable or immovable) and the nature of the seizure (preservation and attachment). Preservation is used in cases of urgency to place property "under the protection of the court": the situation is frozen in order to guarantee any subsequent enforcement once the creditor has obtained a favourable judgment of condemnation to be paid. This means that the seized person can no longer dispose of the seized property. S/He can no longer sell them or divest himself/herself of them. In the context of a garnishment, the debtor's assets are sold, and the proceeds of that sale go to the creditor. The latter has no right to the seized property; he shall have any right only to the revenues earned from their sale.'

3° if not for the payment of their price, goods indispensable to the profession of the seized person, up to the value of (2,500 EUR) at the time of the seizure, and at the option of the seized person;

4° objects used for the exercise of worship;

5° the food and fuel necessary for the seized person and his family for one month;

(6) one cow, or twelve sheep or goats of the seized person's choice, as well as one pig and twenty-four farmyard animals, with the straw, fodder and grain necessary for the bedding and feeding of the said animals for one month.

§ (2) The objects referred to in § 1 shall remain seizable if they are in a place other than that in which the person seized usually lives or works.

§ (3) Difficulties in the application of this article shall be decided by the garnishee judge on the basis of the report of the seizure recording the observations made by the garnishee to the bailiff, under penalty of forfeiture, either at the time of the seizure or within five days of service of the first act of seizure.

Upon deposit of a copy of the report of the seizure at the registry by the bailiff or by the earliest party, within a period of fifteen days following the handing over of the copy of the said report or, where applicable, service of the seizure on the debtor, the garnishee judge shall fix a date and time for the examination and settlement of the difficulties, the creditor and the debtor being heard or called beforehand. The clerk of the court shall summon the parties and inform the bailiff who is acting as an agent.

The procedure cannot be pursued if the copy of the minutes provided for in the preceding paragraph has not been deposited.

The request is suspensive of the proceedings, but the property remains seized until a ruling is made.

The seizure judge shall rule all cases cease, both in the presence and absence of the parties; his order shall not be subject to opposition or appeal; the proceedings may be resumed immediately.

Article 1409. § 1. Sums paid in execution of a contract of employment, a contract of apprenticeship, a statute, a subscription, as well as those paid to persons who, other than under a contract of employment, perform work under the authority of another person for remuneration, [as well as vacation pay paid under the annual vacation law,] may be assigned or seized without limitation for that portion of the total amount of such sums which exceeds F35,000 per calendar month.

The portion of such sums in excess of 29,000 francs and not exceeding 32,000 francs per calendar month may not be assigned or seized for more than 30% in the aggregate, the portion in excess of 32,000 francs and not exceeding 35,000 francs per calendar month may not be assigned or seized for more than 40% in the aggregate; the portion in excess of 27,000 francs

and not exceeding 29,000 francs per calendar month may not be assigned or seized for more than one-fifth in the aggregate.

The portion of these sums that does not exceed 27,000 francs per calendar month may not be assigned or seized.

(Where persons receiving income as referred to in paragraph 1 have one or more dependent children, the seizable or transferable portion shall, within the limits thereof, be reduced by €50 per dependent child). The King shall determine [by a decree deliberated in the Council of Ministers] what is to be understood by dependent child.

[He shall also determine, by an order deliberated in the Council of Ministers, the rules governing the burden of proof, including the probative value and the duration of validity of evidence, as well as the rules of procedure. To this end, he may, until December 31, 2004, establish and modify legal provisions, even in matters that are expressly reserved to the law by the Constitution, with the exception of matters for which the majority required by article 4, paragraph 3, of the Constitution is required. Before 1 January 2005 the King shall introduce in the House of Representatives a bill for the ratification of the decrees issued in application of this paragraph that establish or amend legal provisions. Decrees that are not ratified before January 1, 2006 shall have no effect].

§ 1bis. Income from activities other than those referred to in § 1, may be assigned or seized without limitation for the portion of the total amount of such sums that exceeds 35,000 francs per calendar month.

The part of these sums which exceeds 29,000 francs and does not exceed 35,000 francs per calendar month may not be assigned or seized for more than two fifths in total; the part which exceeds 27,000 francs and does not exceed 29,000 francs per calendar month may not be assigned or seized for more than one fifth in total.

The part of these sums which does not exceed 27,000 francs per calendar month may not be assigned or seized.

(a) the amount of the debtor's income, if any, shall not exceed the amount of the debtor's assets; or (b) the amount of the debtor's assets shall not exceed the amount of the debtor's assets. The King shall determine [by a Royal Decree deliberated in the Council of Ministers] what is to be understood by dependent child.

[He shall also determine, by an order deliberated in the Council of Ministers, the rules governing the burden of proof, including the probative value and the duration of validity of evidence, as well as the rules of procedure. To this end, he may, until December 31, 2004, establish and modify legal provisions, even in matters that are expressly reserved to the law by the Constitution, with the exception of matters for which the majority required by article 4, paragraph 3, of the Constitution is required. Before 1 January 2005, the King shall submit to the House of Representatives a bill for the ratification of the decrees issued in application of this paragraph that establish or amend legal provisions. Decrees that are not ratified before January 1, 2006 shall have no effect].

[§ 1ter. The meal vouchers referred to in Article 19bis of the Royal Decree of 28 November 1969 in execution of the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 concerning the social security of workers may not be seized or transferred if they satisfy the conditions of Article 19bis, § § 2 and 3, of the same Decree.
These meal vouchers do not fall under the cumulative provisions of Article 1411, nor do they fall under the exceptions provided for in Article 1412.]

§ (2) Each year, the King shall adjust the amounts set out in § 1 and § 1bis, taking into account the consumer price index for November of each year.

The starting index for the amounts referred to in the first three paragraphs of § 1 and § 1bis is that for November 1989. The starting index for the amount referred to in paragraph 4 of § 1 and § 1bis is that of the month of publication in the Moniteur belge of the law of 24 March 2000 amending articles 1409, 1409bis, 1410 and 1411 of the Judicial Code, with a view to adapting the non-transferable or unseizable portion of the remuneration.

Each increase or decrease of the index leads to an increase or decrease of the amounts, according to the following formula: the new amount is equal to the basic amount, multiplied by the new index and divided by the starting index. The result is rounded up to the nearest hundred.

The minimum amount thus adapted can never be less than the amount determined in article 2, § 1, 1°, of the law of August 7, 1974 establishing the right to a minimum of means of subsistence, in force on January 1 of the year following the year of the adaptation, rounded up to the next thousand.

In the first fifteen days of December of each year, the new amounts are published in the Moniteur belge. They come into force on 1 January of the year following the year of their adjustment.

§ 3 The King may, in addition, adapt the amounts provided for in § 1 and § 1bis, after consulting the National Labour Council, taking into account the economic situation.

The decree comes into force on 1 January of the year following its publication in the Moniteur belge.

(NOTE: Adjustment of the amounts.
For adjustments to the amounts of 27,000 F, 29,000 F and 35,000 F for years prior to 2001, see archived version 035.

The amount of 32,000 F has not been adapted for years prior to 2001; see Notice in the Belgian Official Gazette of October 20, 2000, p. 35374.

The amounts of 27,000 F, 29,000 F, 32,000 F, 35,000 F and 2,000 F have been increased to : 33,400 F = 827.96 EUR, 35,800 F = 887.46 EUR, 39,500 F = 979.18 EUR, 43,200 F = 1070.90 EUR and 2,100 F = 52.06 EUR for 2001; AR 2000-12-06/32, art. 1-3; Effective: 01-01-2001; MISCELLANEOUS 2000-12-16/31, art. M. for conversion to EURO.

Article 1409bis. The debtor who does not have income referred to in Article 1409 may retain for himself and his family the necessary income calculated in accordance with Articles 1409 (, § 1,) and 1411.

Any claim of the debtor based on paragraph 1 shall be submitted to the attachment judge in accordance with Article 1408, § 3. The latter may limit the period of time during which the debtor benefits from this unseizability.

Article 1410. § 1. Art. 1409 (, § 1bis, § 2 and § 3,) is further applicable:

1° to (alimony and maintenance payments, judicially awarded, as well as to pensions awarded after divorce to the non-offending spouse);

2° to (pensions, adjustment allowances, [transitional allowances,] annuities, increases in annuities) or benefits in lieu of pensions, paid by virtue of a law, statute or contract;

(2°bis. vacation pay and supplementary vacation pay paid under the legislation on retirement and survivor's pensions for employed persons;);

3° to unemployment benefits and to benefits paid by the security of existence funds

4° allowances for incapacity for work and disability allowances paid by virtue of the legislation relating to sickness and disability insurance or the law of 16 June 1960 guaranteeing, in particular, the social benefits provided for former employees of the Belgian Congo and Ruanda Urundi and the legislation relating to overseas social security

5° to (indemnities, annuities and allowances) paid by virtue of the legislation on compensation for damages resulting from accidents at work or occupational diseases, the said law of 16 June 1960 or insurance contracts taken out in application of the provisions of the legislation provided for in § 2, 4° of this article;

6° (...)

(7) the militia allowances provided for in the law of July 9, 1951;

(8° to the indemnity granted in case of interruption of the professional career).

§ 2 (The following claims are not assignable or attachable at the expense of the beneficiary:)

(1) family benefits, including those paid under the legislation providing for compensation for paid military personnel

(2) orphans' pensions and annuities paid under a law, statute or contract

3° (Allowances for the disabled)

4° The part of the compensation paid under the legislation on compensation for damages resulting from work accidents, which exceeds 100 p.c. and which is granted to severely injured persons whose condition absolutely and normally requires the assistance (of another person, as well as the amounts granted as assistance of a third person under the law on compulsory health care and compensation insurance, coordinated on July 14, 1994)

5° the amounts to be paid:

1. to the recipient of health benefits, as an intervention at the expense of the health care and indemnity insurance or under the law of June 16, 1960, or under the legislation relating to overseas social security;
2. for medical, surgical, pharmaceutical and hospital care or for the cost of prosthetic and orthopaedic appliances to a person who has suffered an industrial accident or occupational disease, in accordance with the legislation on industrial accidents or occupational diseases).
(6° amounts paid as guaranteed income or income security to elderly persons.)
(7° amounts paid as a minimum means of subsistence
(8° the sums paid as social assistance by the public social assistance centres.)
9° [7 to the financial benefit referred to in the Act of 22 December 2016 establishing a bridging right for self-employed persons;)
(10° compensation, whether provisional or not, relating to prostheses, medical devices and implants.)
(11° the sums referred to in Article 120 of the Program Law (I) of December 27, 2006 paid as an intervention of the Asbestos Victims Compensation Fund;)
(12°) the expenses referred to in section 10 of the Act of 3 July 2005 on the rights of volunteers;)
[13° the sums referred to in Articles 15 and 16 of Royal Decree No. 22 of June 4, 2020 establishing a Compensation Fund for volunteers who are victims of COVID-19, paid by way of intervention by the Compensation Fund for volunteers who are victims of COVID-19;]…''

- The following specific assets benefit from enforcement immunity and/or are subject to particular procedures prior to enforcement:

''**Article 1412bis.** § 1. Assets belonging to the State, to the Regions, to the Communities, to the provinces, to the communes, to bodies of public interest and generally to all legal persons governed by public law are exempt from seizure.
§ 2. However, without prejudice to Article 8, paragraph 2, of the law of 21 March 1991 reforming certain public economic enterprises, the following may be subject to seizure:
1° the assets of which the legal persons of public law referred to in § 1 have declared that they can be seized. This declaration must come from the competent bodies. It shall be filed in the places prescribed by article 42 for the service of judicial documents. The King sets the terms of this deposit;
2° in the absence of such a declaration or when the realization of the goods which appear therein is not sufficient to satisfy the creditor, the goods which are manifestly not useful to these legal persons for the exercise of their mission or for the continuity of the public service.
§ 3. Legal persons governed by public law referred to in § 1, whose assets are subject to seizure in accordance with § 2, 2°, may lodge an objection. They can make an offer to the seizing creditor to take legal action against other assets. The offer binds the seizing creditor if

the property is located on Belgian territory, and if its realization is likely to pay him off.

If the seizing creditor alleges that the conditions for the replacement of the seized property referred to in the preceding paragraph are not met, the most diligent party seizes the judge under the conditions set out in Article 1395.

§ 4. If there is opposition, it can only result from a writ served on the seizing party with a summons to appear before the attachment judge. The request, which suspends the prosecution, must be made, on pain of forfeiture, within one month of the writ of seizure served on the debtor.

The judgment cannot be accompanied by provisional execution. It is not subject to opposition.

The time limit for appealing is one month from the notification of the judgment. The appeals judge decides all cases that cease to exist. The judgment rendered by default is not subject to opposition.

Article 1412ter. § 1. Subject to the application of the mandatory provisions of a supranational instrument, cultural property which is the property of foreign powers is exempt from seizure when such property is on the territory of the Kingdom with a view to being publicly and temporarily exhibited there.

§ 2. For the application of this article, objects which are of artistic, scientific, cultural or historical interest are considered to be cultural property.

Cultural property that is assigned to an economic or commercial activity under private law does not benefit from the immunity referred to in § 1.

§ 3. The immunity referred to in § 1 also applies to cultural property which is the property of a federated entity of a foreign power, even if this entity does not have international legal personality.

It also applies to cultural property which is the property of a dismemberment of a foreign power. By dismemberment of a foreign power, it is necessary to understand an organization which acts on behalf of a foreign power or one of its federated entities on the condition that this organization has a parcel of sovereignty.

The immunity referred to in § 1 also applies to cultural property which is the property of decentralized territorial communities or other political divisions of a foreign power.

The immunity referred to in § 1 also applies to cultural property which is the property of an international organization governed by public law.

Article 1412quater. § 1. Subject to the application of the mandatory provisions of a supranational instrument, assets of any kind, including foreign exchange reserves, that foreign central banks or international monetary authorities hold or manage in Belgium for their own account or on behalf of third parties are elusive.

§ 2. By way of derogation from § 1, the creditor with an enforceable title may submit a request to the attachment judge to request authorization to seize the assets referred to in § 1, provided

that he demonstrates that they are exclusively assigned to an economic or commercial activity under private law.

Article 1412quinquies. [§ 1. Subject to the application of mandatory supranational and international provisions, property belonging to a foreign power located on the territory of the Kingdom, including bank accounts held there or managed by this foreign power, in particular in the exercise functions of the diplomatic mission of the foreign power or of its consular posts, of its special missions, of its missions to international organizations, or of its delegations in the bodies of international organizations or at international conferences, are exempt from seizure.

§ 2. By way of derogation from paragraph 1, the creditor with an enforceable title or an authentic or private title which, depending on the case, is the basis of the seizure, may submit a request to the attachment judge in order to request authorization to seize the assets of a foreign power referred to in paragraph 1 provided that it demonstrates that one of the following conditions is met:

1° if the foreign power has expressly and specifically consented to the seizure of this asset;

2° if the foreign power has reserved or allocated these assets to satisfy the demand which is the subject of the enforceable title or of the authentic or private title which, as the case may be, is the basis of the seizure;

3° if it has been established that these assets are specifically used or intended to be used by the foreign power other than for non-commercial public service purposes and are located on the territory of the Kingdom, provided that the seizure does not concern only on property that has a link with the entity covered by the enforceable title or the authentic or private title which, as the case may be, is the basis of the seizure.

§ 3. The immunity referred to in paragraph 1 and the exceptions to this immunity referred to in paragraph 2 also apply to the property referred to in these paragraphs if they do not belong to the foreign power itself, but to a federated entity of this foreign power, even if this entity does not have international legal personality, to a dismemberment of this foreign power within the meaning of article 1412ter, § 3, paragraph 2, or to a decentralized territorial community or any other political division of this foreign power.

The immunity referred to in paragraph 1 and the exceptions to this immunity referred to in paragraph 2 also apply to the property referred to in these paragraphs if they do not belong to a foreign power, but to a supranational or international organization governed by public law. who uses them or intends them for use for similar purposes for non-commercial public service purposes.]''

In Belgium, the creditor can seek assistance from the bailiff (as the competent enforcement authority) with territorial jurisdiction to find official data concerning the

domicile and/or residence of individuals in accordance with Article 7 of the Regulation (EU) 2020/1784 on the service of documents (recast)[2].

It should be noted that the Law of 8 August 1983 established a National Register of Natural Persons *(loi du 8 août 1983 organisant un Registre national des personnes physiques)* in Belgium. With respect to finding official information on domicile of natural persons within the context of enforcement procedures, Article 1 of the Royal Decree of 16 May 1986 (*Arrêté royal du 16 mai 1986 autorisant l'accès des huissiers de justice au Registre national des personnes physiques*) authorises the bailiffs to get access to the National Register of Natural Persons for the performance of the assigned tasks for which they have competence. The information includes, in particular, the address registered as the main address for each natural person in the population registers (domicile).[3]

2. Jurisdiction over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

In cases concerning cross-border enforcement, what are the rules that define the jurisdiction of the courts in Belgium? In which cases the courts in Belgium do not have jurisdiction over the enforcement proceedings? I.e. rules of international jurisdiction over the enforcement proceedings

- In Belgium, **Article 569 (5°)** of the Belgian Judicial Code defines the jurisdiction of the Court of First Instance in dealing with the matters related to the enforcement proceedings.

‘‘**Article 569**. (Federal) The court of first instance hears:
…;
5° disputes raised on the execution of judgments and rulings;…’’

- In urgent cases, the president of the Court of First Instance is competent to deal with the enforcement of judgements.

[2] Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).
[3] ‘European e-Justice Portal – service of documents: official transmission of legal documents’ <https://e-justice.europa.eu/371/EN/service_of_documents_official_transmission_of_legal_documents?BELGIUM&member=1> accessed 13 August 2022.

''**Article 584**. The president of the court of first instance decides provisionally in cases the urgency of which he recognizes, in all matters, except those which the law withdraws from judicial power….''

According to **Articles 1396, 1489, and 1498 BJC**, for claims which relate to conservatory attachments and means of enforcement, the judge of attachments is competent authority to deal with the enforcement procedure.

''**Article 1396**. Without prejudice to the means of nullity provided for by law, the judge of attachment shall ensure compliance with the provisions relating to precautionary attachments and enforcement procedures.
He may even, ex officio, obtain a report on the state of the procedure from the acting public or ministerial officers or clerks.
If he observes negligence, he informs the Crown prosecutor, who assesses the disciplinary consequences that it may entail.

Article 1489. The judge of attachment has sole jurisdiction to settle disputes on the regularity of the precautionary attachment procedure. The order of the attachment judge does not prejudice the main proceedings.

Article 1498. In the event of difficulty in execution, any interested party may appeal to the judge of attachment, without however the exercise of this action having a suspensive effect. The judge of attachment orders, if necessary, the release of the attachment.''

2-bis. Territorial competence over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

Which rules govern the territorial competence of the enforcement agents in Belgium?

Which rules govern the territorial competence of the courts of the enforcement proceedings in Belgium ?

- In Belgium, the enforcement of court decisions proceeds via the bailiffs. **Article 516 BJC** refers to determining the territorial competence of the bailiffs (or judicial officers) in Belgium.

‘‘**Article 516.** The judicial district in which the judicial officer will act and will be required to establish his office is determined by the royal decree of appointment. The judicial officer establishes his office in the municipality designated by the Minister of Justice. This designation may be modified at the request of the interested party. In the event of a contravention, the judicial officer will be deemed to have resigned; consequently, the Minister of Justice, after having taken the opinion of the court, may propose his replacement to the King.

The judicial officer can act only in the judicial district determined by the

[The judicial officers having their office in the judicial districts of Antwerp and West Flanders, are competent to exercise their functions in the territorial sea referred to in article 1 of the law of October 6, 1987 fixing the width of the territorial sea of Belgium and in the exclusive economic zone referred to in article 2 of the law of 22 April 1999 concerning the exclusive economic zone of Belgium in the North Sea.]

[In navigation cases, the judicial officers having their office in the judicial districts of Antwerp and East Flanders, are also competent to exercise their functions in the territory of the left bank of the Scheldt, referred to in article 1 of the law relating to the management of the territory of the left bank of the Scheldt near Antwerp and laying down measures for the management and operation of the port of Antwerp, located in the district of East Flanders.]

Judicial officers who have their residence in the cantons of [Limbourg] , of [Spa] , [in the two cantons of Verviers] or in the judicial district of Eupen can draw up any exploits in these territorial districts. Judicial officers who have their residence in the cantons of [Limbourg] , of [Spa], [in the two cantons of Verviers], and who wish to act in the judicial district of Eupen must however provide proof of their knowledge of the German language, in accordance with the provisions of article 2 of the royal decree of 29 November 1993 determining the conditions of linguistic aptitude and organizing linguistic examinations for candidates for the office of judicial officer.]’’

- The territorial competence of the courts of the enforcement proceedings are governed by the rules of the Belgian Judicial Code as below:

‘‘**Article 633** .[§ 1. Requests for precautionary seizures and means of enforcement are brought exclusively before the judge of the place of seizure, unless the law provides otherwise.

In matters of garnishment, [and in matters of applications and appeals referred to in Article 1395/2] the competent judge is that of the domicile of the debtor seized. If the domicile of the debtor seized is located abroad or is unknown, the competent judge is that of the place of execution of the seizure.

[In matters of arrest on a vessel, the competent judge is that of the place where the vessel is or is expected.]

§ 2. For requests for protective seizures and the means of enforcement established under the

law of 20 January 1999 for the protection of the marine environment in the marine areas under the jurisdiction of Belgium, are also competent, the judges of the seizures of the districts [of West Flanders] and Antwerp.

If the request relates to a seizure made in the territorial sea referred to in article 1 of the law of 6 October 1987 determining the breadth of the territorial sea of Belgium or in the exclusive economic zone referred to in article 2 of the law of 22 April 1999 concerning the exclusive economic zone of Belgium in the North Sea, the seizure judges of the districts of Antwerp [and West Flanders] are equally competent.

[§ 3. Subject to article 46 of title XVII of book III of the Civil Code, the judge for seizure of the domicile of the pledgor is competent for requests which relate to security rights and the register of pledges.

If the domicile of the pledgor is abroad or is unknown, the attachment judge of the domicile of the pledgee is competent.]

Article 633bis. with regard to appeals against decisions taken by the Minister, by the (CBFA), by the OCA and by market undertakings and with regard to the intervention of the (CBFA) and the OCA before criminal courts) is only competent to hear the request, in the cases provided for in articles 605bis and 605ter, the [Court of Markets]

Article 633ter. [The [business court] of Brussels and, on appeal, the Brussels Court of Appeal, have sole jurisdiction for actions for collective reparation referred to in Title 2 of Book XVII of the Code of Economic Law.]

Article 633quater. The Brussels Court of Appeal has sole jurisdiction to hear the appeals referred to in Article 605quater.

Article 633quinquies. [Is solely competent to hear claims relating to the intellectual property rights referred to in Article 574, 11°, 14°, 15°, and 19°, the [business court] of Brussels.]

[The [business courts] established at the registered office of a court of appeal.]

The courts of first instance or the [courts of 'company] established at the seat of an appeal court.

§ 2. [The president of the business court of Brussels.]

[Are only qualified to hear requests relating to the intellectual property rights referred to in article 574, 3°, 16°, 17° and 18°, introduced on the basis of article 584, the presidents of the [courts of the business] established at the seat of a court of appeal.]

Are solely competent to hear requests relating to intellectual property rights and the legal protection of technical measures and information on the rights referred to in Article 575, introduced on the basis of Article 584, the presidents of the courts of first instance or [business courts] established at the seat of a court of appeal.

§ 3. [Is solely competent to hear requests for seizure in matters of infringement made under articles 1369bis/1 to 1369bis/10, relating to the intellectual property rights referred to in article 574, 11°, 14° and 15°, the president of the [business court] of Brussels.] [Are solely competent to hear requests for seizure in matters of infringement made under articles 1369bis/1 to 1369bis/10, relating to the intellectual property rights referred to in article 574, 3°, 16°, 17° and 18°, the presidents of [business courts] within the jurisdiction of which the operations, or some of them, will have to be carried out.] /1 to 1369bis /10, relating to the intellectual property rights referred to in Article 575, § 1, the presidents of the courts of first instance or [business courts] established at the seat of a court of appeal in whose jurisdiction the operations, or some of them, are to be carried out.

§ 4. [Has sole jurisdiction to hear an action based on Article XVII.14, §§ 1 and 2, of the Code of Economic Law, seeking the cessation of an act infringing an intellectual property right referred to in article 574, 11°, 14° and 15°, the president of the [business court] of Brussels.] [Sole jurisdiction is to hear an action based on article XVII.14, § § 1 and 2, of the Code of Economic Law, tending to the cessation of an act infringing an intellectual property right referred to in Article 574, 3°, 16°, 17° and 18°, the presidents of the [business courts] established at the seat of an appeal court.] Are solely competent to hear an action based on [article 77quinquies or] article 87 of the law of June 30, 1994 relating to copyright and related rights and on article 12sexies of the law of August 31, 1998 transposing into Belgian law the European directive of March 11, 1996 concerning the legal protection of databases, tending to the cessation of an act infringing an intellectual property right covered by these laws, the presidents of the courts of first instance or [business courts] established at the seat of a court of appeal.

§ 5. Shall alone be competent to hear an action based on article 87bis of the law of June 30, 1994 relating to copyright and related rights and on article 12quater of the law of August 31, 1998 transposing into Belgian law the European directive of 11 March 1996 concerning the legal protection of databases, the presidents of the courts of first instance or [business courts] established at the seat of a court of appeal.

§ 6. Shall alone be competent to hear appeals against a decision rendered by a justice of the peace in the context of a dispute relating to intellectual property rights and the legal protection of technical measures and information on the system of rights referred to in Article 575, §§ 1 and 2, the courts of first instance or the commercial courts established at the seat of a court of appeal.

Article 633quinquies/1. [§ 1. The [business courts] established at the registered office of a court of appeal.

§ 2. Solely competent to hear requests relating to the unlawful acquisition, use or disclosure of business secrets referred to in Article 574, 22°, submitted on the basis of Article 584, are the presidents of the [business courts] established at the seat of an appeal court.

§ 3. Are alone competent to hear an action referred to in Article 589, 20°, tending to the cessation or prohibition of the illicit obtaining, use or disclosure of a secret of cases, the presidents of the [business courts] established at the seat of a court of appeal.

Article 633sexies. The [family court] which is established at the seat of the court of appeal in whose jurisdiction the child, as the case may be, is present or has his habitual residence at the time of filing or sending the request, is solely competent to hear the requests referred to in article 1322bis [1° and 2°].

However, when the proceedings are in German, the [family court] of Eupen has sole jurisdiction.

§ 2. In the absence of the presence of the child in Belgium, the request is filed or sent to the registry of the court of first instance which is established at the seat of the court of appeal in the jurisdiction of which the defendant has his domicile or his habitual residence. However, when the proceedings are in German, the [family court] of Eupen has sole jurisdiction.

Article 633septies. [The requests referred to in article 1322bis, 3°, are brought before the court referred to in article 629bis, § 1.

Failing this, they are brought before the court referred to in Article 629bis, § 2, taking into account the habitual residence of the child before his wrongful removal or retention.]

However, when the proceedings are in the language German, the [family court] of Eupen has sole jurisdiction.

Article 633octies. [The Court of First Instance of Brussels has sole jurisdiction to hear the claims referred to in Article 26ter of the law of 9 July 1975 relating to the supervision of insurance companies, in Article 57ter of the law of 22 March 1993 relating to the status and supervision of credit institutions, and article 23/2 of the law of 2 August 2002 on the supervision of the financial sector and financial services.]

Article 633novies.[Without prejudice to the jurisdiction of the courts referred to in Article 624, the court of first instance of the plaintiff's domicile is also competent to hear the claims referred to in Article 569, paragraph 1, 41°.]

Article 633decies. [The Court of First Instance of Antwerp, division of Antwerp, has sole jurisdiction to hear the appeals referred to in Article 39 of the law of 30 July 1926 establishing a board of maritime inquiry, brought by the members of the crew referred to in article 2 of the law of July 30, 1926 establishing a maritime inquiry council for seagoing vessels referred to in article 1, 1° and 3°, of the law of July 30, 1926 establishing a maritime inquiry council.

The court of first instance of West Flanders, division of Bruges, has sole jurisdiction to hear

appeals referred to in article 39 of the law of 30 July 1926 establishing a board of maritime inquiry, brought by the members of the crew referred to in article 2 of the law of July 30, 1926 establishing a maritime inquiry council for seagoing vessels referred to in article 1, 2°, of the law of July 30, 1926 establishing a maritime inquiry council.]''

3. Preliminary steps and spontaneous compliance.

Taking preliminary steps for the enforcement and possibilities to avoid forced execution

Are there preliminary steps to be taken before starting enforcement proceedings? Is the enforcement authority involved in this phase? How does the debtor receive notice of the upcoming enforcement?

Are there specific instruments for the parties to seek spontaneous or amicable debt recovery to avoid the attachment of her/his assets? What is the deadline, if any, for the debtor to spontaneously comply with her/his obligation and avoid forced execution of the claim?

- The enforcement of judgements is only possible if certain statutory prerequisites are fulfilled. In that regard, prior to initiating with the enforcement proceedings, the judgement (i.e., an enforceable title pursuant to **Article 1494 BJC**) and a formal order of payment must be served upon the debtor by a bailiff in accordance with **Articles 1495, 1499, 1564 BJC**. This is to ensure that the debtor is aware of the judgement and the intention of the creditor to execute the enforceable title.[4]

''**Article 1494**. No seizure of movable or immovable property shall be carried out except by virtue of an enforceable title and for liquid and certain things. (However, when it is practiced with a view to obtaining the payment of due terms of a claim for periodic income, the seizure can also take place to obtain payment of the due terms as they become due.)

Article 1495. Any decision pronouncing a condemnation cannot be executed until it has been served on the party.

[4] For more information on 'statutory prerequisites' under the Belgian legal system, see Piet Taelman and Claudia van Severen, *Civil Procedure in Belgium* (2nd edition, Wolters Kluwer 2021) 174.

Without prejudice to the precautionary seizure provided for in article 1414, the order to pay a sum of money, which is the subject of a decision [still [subject to opposition or appeal by a party faulty]], cannot be executed before the expiry of one month following notification of the decision, unless the provisional execution of the latter has been ordered. These provisions are prescribed on pain of nullity of the implementing acts.

Article 1499. Any seizure-execution of movable property is preceded by a command to the debtor, made at least one day before the seizure and containing, if the title consists of a judicial decision, the service of the latter, if it has not yet intervened.

Article 1564. The real estate seizure-execution is preceded by a command, served by writ to person or to the real or elected domicile in the title of the claim.
At the head of this order, there is given a full copy of the title, unless service has been made to the debtor within the three years preceding the order or if it is an authentic deed containing a constitution of mortgage.
The order contains election of domicile in the district where sits the judge who must hear the seizure and the debtor can make any service at this elected domicile, even opposition to the order, real offers and appeal.
The order states that, for lack of payment, the debtor's buildings will be seized, the indication of which may be given in accordance with article 1568, 2°.
The order indicates the surname, first names [...], domicile, place and date of birth of the debtor.
(The order informs the debtor that he can transmit to the judge any offer to purchase by mutual agreement of his building within eight days of the notification of the writ of seizure.)''

- The debtor is expected to voluntarily comply with the enforcement.[5]

Upon the service of the order for payment, the period for voluntary compliance with the enforcement begins. For attachment of movable property, the waiting period is one day (for attachment of movable property pursuant to **Article 1499 BJC**) and 15 days (for attachments of immovable property in accordance with **Article 1566 BJC**) after the day the order of payment is served upon the debtor. Where the debtor fails to voluntarily comply with the enforcement, the creditor proceeds with the ordinary enforcement procedure.
In accordance with **Article 1403 BJC**, the debtor has the right to file a consignment request. In that sense, creditor and debtor have an opportunity to negotiate and agree on the amount, conditions, etc of the consignment.

[5] ibid, 182.

''**Article 1405**. In the cases provided for in Articles 1403 and 1404, and with the effects attached thereto, the debtor may deposit in the hands of the acting bailiff, a sum sufficient to meet the causes of the seizure in principal, interest and costs. .

The bailiff draws up the minutes of the deposit of the funds in his hands and gives a copy to the debtor.

He is required to pay these funds within three days into an account which he has opened at the Caisse des dépôts et consignations and bearing the name of the seized party. Mention of this payment is made by the agent of the Caisse des dépôts et consignations on the original of the statement containing the minutes of the deposit of the funds, the minutes of which are kept by the bailiff.

Funds can only be withdrawn by the bailiff with the agreement of the seized debtor or by virtue of a decision which is no longer subject to ordinary appeal.''

4. General outline of the enforcement procedure: classification and description of different modes of enforcement.

How to proceed with the enforcement (general and brief outline)

Which is the first act of the enforcement and does it differ from one mode of enforcement to the other? What is the deadline for the creditor to carry out the first measure of execution?

Which is the statute of limitations for the enforcement of a title in Belgium?

May the competent enforcing authority refuse to proceed with the execution if they consider that the creditor has not complied with the general enforcement requirements, such as e.g., the certainty, maturity and liquidity of certain claims; territorial competence relating to the enforcement authorities; further authorization or other formalities to proceed with the enforcement; etc.? What are the remedies available to the creditor in such scenario?

For monetary enforcement, may the creditor avail her/himself of several concurrent or cumulative enforcement procedures? How does coordination between different enforcement procedures for the same claim/enforcement instrument work? In particular, how does the debtor file an opposition for concurrent or subsequent enforcement procedures whose total added value exceeds the total sum due according to the judgment?

Are there secondary or ancillary effects or features of the judgments or other enforcement titles to be mentioned (e.g. the right to register a mortgage on the debtor's

immovable property or the increasing in the interest rate attached to monetary claims)? In the affirmative, which are the applicable procedures and modes of execution?

➢ Under the Belgian legal system, there are some general rules applicable to the execution of any enforceable title.

- Pursuant to **Article 1494 BJC,** attachment in execution of a judgment may only be carried out under an enforceable title. Judgments and deeds can only be enforced on production of the certified copy or the original, accompanied by the enacting formula laid down by the law. The court's judgment is served on the defendant in advance (**Article 1495 BJC**). If the enforceable title is a judgment, prior service is compulsory in any case, to notify the debtor. If the enforceable title is a deed, however, it is not necessary, because the debtor will already be aware of the title. The periods allowed for review or appeal start when the judgment is served. The appeal periods have the effect of suspending attachment in execution of a judgment (but not precautionary attachment) in cases where a party has been ordered to pay a sum of money. Provisional enforcement (judgment that is provisionally enforceable) constitutes an exception to the suspensive effect of ordinary review or appeal procedures.

- As the second phase and the first official act in the enforcement procedure, the claimant makes efforts to force the sale of the property under the payment order (**Article 1499 BJC**). This act is also the last warning for the debtor, who can still avoid attachment at this stage. There is a waiting period after the payment order is issued of one day for attachment of movable property (**Article 1499 BJC**) and 15 days for immovable property (**Article 1566 BJC**). The order must be served on the debtor and constitutes a notice of default and demand for payment. The compulsory enforcement can only serve to recover the amounts stated in the payment order. At the end of the waiting period, the goods can be attached. This is done by a bailiff's writ. Enforcement is therefore through the intermediary of a competent official. This official is regarded as the agent of the claimant; his function is laid down by law and he operates under judicial supervision. He has a contractual liability towards the claimant and a non-contractual liability towards third parties (under the law and on the grounds of infringement of the general duty of care).

- Within 3 working days, the bailiff sends a notice of attachment to the Central Register of notices of attachment, delegation, assignment, collective debt settlement and protest (*Centraal Bestand van berichten van beslag, delegatie, overdracht en collectieve schuldenregeling en van protest/ Fichier central des avis de saisie, de délégation, de cession et de règlement collectif de dettes et de protêt*) (**Article 1390 (§1) BJC**). The notice is compulsory for attachment of both movable and immovable goods. It is not possible to carry out any attachment in execution of a judgment or procedure for dividing the proceeds without first consulting the notices of attachment in the Central Register of Notices (**Article 1391 (§2) BJC**). This rule was introduced to avoid unnecessary attachments and to reinforce the collective dimension of the attachment.[6]

- The statute of limitations for the enforcement of a judgement (*actio judicati*) in Belgium is ten years after the judgement has been issued by the court. This limitation was set in **Article 2262 *bis* (§1) of the old Civil Code**.[7]

- In circumstances where a property of a debtor has been already seized, there is no necessity for other creditors to take any specific actions. As the result, the rest of creditors can partake in the seizure and share in its profits, by opposing the seizure into the hands of the acting bailiff.[8] According to **Article 1515 BJC**, ''The creditors of the seized, for any reason whatsoever, even for rents, can only oppose the sale price. Opponents are not called for sale.''

After the deduction of the expenses, the bailiff distributes the sales price among the creditors on the basis of any priority rights (**Articles 1627 and 1628 BJC**).

''**Article 1627**. Fifteen days at the latest after the sale or seizure of the funds, the judicial officer invites seizing creditors or opponents to send to his offices, within fifteen days, the declaration and justification of the claim in principal, interest and expenses, with the mention, if necessary, of the privilege to which they claim.
He may, under the same conditions, send this invitation to any third party claiming to be a

[6] 'European e-Justice Portal – How to enforce a court decision' <https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?BELGIUM&member=1> accessed 13 August 2022.
[7] For more information see Taelman and van Severen (n 4) 183.
[8] ibid, 187.

creditor.

The invitation is given to the creditors, either by registered letter at the post office to their domicile, or by simple letter to the elected domicile with acknowledgment of receipt dated and signed by the party or his representative.

Article 1628. Only debts that are uncontested or established by a title, even private, can be taken into account for distribution, in whole or in part, up to the sums which are thus justified. In the event of precautionary seizure, the rights of the parties are determined by including the amount of the claim for security of which said seizure has been authorized, which, provisionally recorded, is subsequently distributed in the same forms, if necessary.''

As regards any disputes that might arise from the distribution of the assets among the creditors by the acting bailiff, **Article 1634 BJC** stipulates that ''The attachment judge rules on the difficulties brought before him and decides on the table of the distribution of the funds.''

5. Opposition to the enforcement and stay of the enforcement.

How to challenge the enforcement in a broad sense (for the debtor)

In general, which remedies are available under national law to the party against whom enforcement is sought? Which are the national grounds ([9]) for opposition to enforcement or refusal of enforcement? How does the debtor file such claim(s)? *Please note that under Art. 41 Reg. (EU) No 1215/2012 such grounds are applicable as long as they are not incompatible with the grounds referred to in Art. 45 of the same Reg. Also, according to European jurisprudence (Court of Justice, 4 July 1985, case C-220/84, AS-Autoteile Service GmbH vs. Mahlè), grounds for opposition to enforcement do not include "a set-off between the right whose enforcement is being sought and a claim over which the courts of that state would have no jurisdiction if it were raised independently". How are these requirements interpreted in your jurisdiction?*

Which remedies are available to contest irregularities in the enforcement procedure? Is it possible for the parties to cure irregular acts?

Can the enforcement be stayed under national grounds for stay ([10]) and which is the court before which the request for a stay is to be filed?

[9] "Examples may include", according to the Opinion of Advocate General Pikamäe in Case C-568/20, J v H Limited, §46, "challenges to the seizable nature of certain assets or sums of money, the quantum of the debt as a result of payments or set-off occurring after the judgment, irregularities that may affect the enforcement instruments, but also to the existence of the title itself due to the effects of a limitation period or to its enforceability".

[10] Please note that, unlike national grounds *for refusal*, there is no compatibility clause for national grounds *for stay*. It could be noted that a such clause has been adopted in other European legislative instruments, e.g. in the Reg. (EU) 2019/1111, which states, under Art. 57, that national grounds for suspension of

- Under the Belgian legal system, the debtor is entitled to oppose the enforcement of the foreign judgments in Belgium. Such opposition proceedings are not different from those filed in the framework of enforcement proceedings in the context of domestic judgments and/or authentic instruments.

The following national remedies are available to the party against whom the enforcement is sought:

- Application for refusal of enforcement – Pursuant to **Article 569 (5) BJC**, the Court of First Instance is competent to deal with disputes raised from the enforcement of judgments and rulings. This Court has sitting in each city of Belgium. The Belgian legal system, in general, has a strict approach towards admitting the grounds for refusal of enforcement of a foreign judgement.[11]

About accepting the grounds for refusal of enforcing a foreign judgement, the Belgian legislator has adopted a very strict approach. 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[12] 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.[13] The only exception to this strict approach, in the Belgian jurisprudence, is in circumstances where the judgement is clearly infringing international public policy.[14]

- Applications for stay or limitation of enforcement – The competent authority to deal with the stay or limitation of the enforcement of the court decisions is the judge of attachments with territorial jurisdiction. Each Court of First Instance, in Belgium, accommodates one or several judges of attachment.
  In this regard, **Article 1395 BJC** stipulates that ‘‘All requests relating to precautionary seizures (, enforcement proceedings ((...) and interventions by the

enforcement, as well as national grounds for refusal of enforcement, “shall apply in so far as they are not incompatible with the application of Articles 41, 50 and 56”.

[11] Stefaan Voet and Pieter Gillaerts (2018). Cross border Enforcement of Monetary Claims - Interplay of Brussels I A Regulation and National Rules. National Report: Belgium (University of Maribor Press) 56.

[12] Cour de Cassation, N° 297 – 1re CH. – 29 Avril 2010, RG C.09.0176.N-C.09.0479.N, Pasicrisie 2010, Vol. 4, 1327.

[13] Voet and Gillaerts (n 11).

[14] 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.

Maintenance Claims Department covered by the law of 21 February 2003 creating a Maintenance Claims Department within the FPS Finances)), are brought before the judge of attachment. (The release of the seizure practiced before the granting of the suspension of payment can on the other hand be granted by the court (competent in matters of requests for judicial reorganization)). These requests are introduced and investigated according to the forms of summary proceedings, except in cases where the law provides that they are made by request. [Subject to Article 46 of Title XVII of Book III of the Civil Code, all requests relating to movable real securities and the register of pledges are brought before the attachment judge.]''

Concerning the stay of the enforcement procedure in Belgium, the Court of First Instance 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[15]; 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[16]; or, 4. The Court of First Instance has a considerable doubt about the factual and efficient enforceability of the judgement.[17]

- The Belgian Judicial Code has referred to two kinds of procedural irregularities and the corresponding sanctions, including the non-compliance with formal requirements and the non-compliance with time limits. **Articles 860** to **866 BJC** refer to these irregularities and the pertinent sanctions.

''**Article 860.** [Regardless of the formality omitted or improperly completed, no procedural act may be declared void, no breach of a prescribed time limit on pain of nullity may be sanctioned, if the sanction is not formally pronounced by the law.]
The time limits provided for lodging an appeal are prescribed on pain of forfeiture.
The other deadlines are established on pain of forfeiture only if the law so provides.

Article 861. [The judge may only declare a pleading void or sanction non-compliance with a prescribed time limit on pain of nullity if the omission or irregularity complained of harms the interests of the party invoking the exception.]

[15] See the decision of the attachments judge of Liège (ch. sais.), 20 mars 1991, J.L.M.B., 1991, 694.
[16] See the decision rendered by the Court of Cassation on 1 April 2004, RW 2004-05, 1222, para. K. Broeckx.
[17] Voet and Gillaerts (n 11) 18, 55-6.

[When he finds that the grievance established can be remedied, the judge makes the rejection of the exception of nullity conditional, at the expense of the author of the irregular act, on the performance of measures, the content and time limit of which he determines. beyond which the nullity will be acquired.]

Article 863. In all cases where the signature is necessary for a procedural document to be valid, the absence of signature can be regularized at the hearing or within a time limit set by the judge.

Article 864. [Nullity that would taint a procedural act or non-compliance with a prescribed time limit on pain of nullity are covered if they are not proposed simultaneously and before any other means.]

Article 865. The rules of article 864 and article [861] are not applicable to the forfeitures provided for in article 860, paragraph 2.

Article 866. Procedures and acts that are void or frustrating by the act of a ministerial officer are the responsibility of this officer; the latter may also be condemned to pay the damages of the party.''

6. Costs of the enforcement proceedings, liability of the creditor and deposit of a security.

Considering potential downsides (for the creditor)

Is there any liability of the creditor in cases of irregular execution, abuse of forced execution of claims or even for malicious or fraudulent enforcement proceedings?

Please describe the calculation of the costs of enforcement proceedings, their allocation and the rules governing such matter. Are there any court fees or other taxes applicable? Who bears the costs of the procedure in case of anticipatory termination of the enforcement proceedings?

Does the law of enforcement establish that the creditor must post a security in some cases? If so, under which conditions?

- Under national civil procedural rules in Belgium, the abuse of the right to seizure is one of the grounds for suspension of enforcement by the Court of First Instance

(in urgent matters, by the President of this court) to guarantee a sufficient redress to protect the debtor.[18]

- The costs are difficult to estimate without having comprehensive and precise data about the amount of the claim; also, whether it is necessary to translate the writ and/or court documents. Nevertheless, for services, the **Belgian Royal Decree of 30 November 1976** has established the fees for bailiff services in civil and commercial cases (also any rates for certain allowances). These rates are annually indexed.[19]

In general, costs and expenses in civil proceedings are governed by **Articles 1017-1022 BJC**. Legal costs differ from one case to another and must be specifically assessed in each case.

- **Article 1017 BJC** stipulates as a general rule that any final judgment pronounces, even ex officio, the order to pay costs against the unsuccessful party, unless specific laws provide otherwise and without prejudice to the agreement of the parties that, where applicable, the judgment decrees. However, unnecessary costs, including the procedural indemnity referred to in **Article 1022 BJC**, are charged, even ex officio, to the party who has caused them at fault.

- **Article 1018 BJC** sets out the costs which are covered:

1° miscellaneous, court and registration fees, as well as stamp duties which were paid before the repeal of the Stamp Duty Code; Court fees include registration fees, drafting fees and shipping fees (art. 268 Code of registration, mortgage and court fees).
In principle, a registration fee is charged between €100 and €500 (seizure judge) or between €210 and €800 (Court of Appeal), depending on the value of the claim (art. 269/1 of the same Code). This fee is due for the case to be put on the roll.

[18] See the decisions of the court of appeals of Mons 16 May 1995, *JLMB* 1996, 486; Judge of seizure of Liège 20 March 1991, *JLMB* 1991, 694; Judge of seizure of Namur 30 December 2005, *JLMB* 2006, 1060). See also Voet and Gillaerts (n 11) 6.
[19] For more information visit:
<https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_> accessed 13 August 2022.

In principle, a drafting fee of €35 is levied on the acts of the clerks of the courts and tribunals or passed before them, without the intervention of the judges (art. 270/1 of the same Code).
In principle, a shipping fee of between 0.85 and €3 per page (art. 271 and 272 of the same Code) is levied on shipments, copies or extracts which are issued in court clerks.
Registration fees (3% of the principal amount) are levied on decisions concerning a principal amount of more than €12,500 (legal costs not included).
2° the cost and the fees and salaries of judicial acts;
(3) the cost of sending the judgment; between 0.85 and €3 per page.
4° the costs of all investigative measures, in particular the fee for witnesses and experts;
5° the traveling and living expenses of the magistrates, the clerks and the parties, when their travel has been ordered by the judge, and the costs of legal proceedings, when they have been made for the sole purpose of the trial;
(6) the procedural indemnity referred to in Article 1022; this is in principle paid by the losing party and constitutes compensation for the costs and fees of the lawyer of the winning party. The amount of this procedural indemnity is fixed according to the amount of the dispute. The Royal Decree of 26 October 2007 determines a basic amount, a minimum amount and a maximum amount. The judge can reduce or increase the basic amount, without exceeding the maximum and minimum amounts. These amounts are linked to the consumer price index.
7° the fees, emoluments and expenses of the mediator appointed in accordance with **Article 1734 BJC**.
8° the contribution referred to in **Article 4, § 2, of the law of 19 March 2017** establishing a budgetary fund relating to second-line legal aid.

- **Article 1454 BJC** provides that the costs of the declaration of the garnishee are payable by the debtor. The possibility of recovering other costs, incurred by the bank in the context of the execution or (partial) lifting of the garnishment, is not provided for.

- **Article 555/1 (§2) BJC**, which entered into force on the first of January 2019, provides that the King shall fix the costs for processing the request to obtain information relating to the accounts, as well as the conditions and modes of perception. A part of these costs goes, if necessary, to the bank which will have provided information following the request of the authority in charge of obtaining information designated by our country (see notification for art. 50(I

)(b) of the Regulation), insofar as a written agreement has been concluded with the banks or a representative appointed by the banks, on a compensation scheme, without prejudice to Article 43(3) of the Regulation (EU) no. 655/2014 (see art. 3, 2° of the Royal Decree of 22 April 2019[20] setting the fees for processing the request to obtain information relating to the accounts referred to in article 555/1, § 2, paragraph 6, of the Judicial Code, as well as the conditions and methods of collection). These fees, set by the King, will apply to requests to obtain 'Belgian' information under the new articles 1447/1 and 1447/2 of the Judicial Code (which will probably come into force during 2020) as well as for requests obtaining information under Article 14 of the Rules.

- **Article 1447/1 and 1447/2 of the Belgian Judicial Code** refer to circumstances where the court may order the creditor to post a security in order to pursue with the enforcement procedure.

‘‘**Article 1447/1**. [§ 1. When 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 he does not know the name or address of the bank, nor the IBAN, BIC code or other bank number allowing the bank to be identified, he can ask the court from which the request for obtaining of a protective garnishment is introduced to ask the authority in charge of obtaining information referred to in Article 555/1, § 1, first paragraph, 25°, to obtain the information necessary to enable the identify the debtor's bank(s) and account(s).

§ 2. Notwithstanding paragraph 1, the creditor may also make the request referred to in the said paragraph 1, when the court decision, the court settlement or the authentic instrument which he has obtained is not yet enforceable, provided that the conditions following are met:

1° the amount to be subject to the garnishment is significant in view of the circumstances;

2° the creditor has provided sufficient evidence to convince the judge that it is urgent to obtain information relating to the accounts because there is a risk that, in the absence of this information, the subsequent recovery of his claim will be jeopardized and leads to a significant deterioration of the creditor's financial situation.

§ 3. The creditor formulates the request for information in the request for obtaining a protective garnishment. The creditor justifies the reasons for which he thinks that the debtor

[20] Arrêté royal du 22 Avril 2019 (Arrêté royal fixant les frais pour le traitement de la demande visant à obtenir des informations relatives aux comptes visées à l'article 555/1, § 2, alinéa 6, du Code judiciaire, ainsi que les conditions et les modalités de perception) <https://www.ejustice.just.fgov.be/eli/arrete/2019/04/22/2019030412/justel> accessed 13 August 2022.

holds one or more accounts with a bank in Belgium and provides all the useful information at his disposal concerning the debtor and the accounts to be subject to the protective attachment. If the judge to whom the request is lodged considers that the creditor's request for information is not sufficiently substantiated, he rejects it.

§ 4. When the judge is convinced that the creditor's request for information is well substantiated and that all the conditions and requirements provided for the authorization of the protective attachment are met, with the exception of the mention, required by Article 1447, paragraph 2, 1°, of the data of the third party seized, and, where applicable, of the guarantee required under Article 1447/2, § 1, the judge communicates to the authority responsible for obtaining information referred to in Article 555/1, § 1, first paragraph, 25°, the request for information, so that this authority can obtain the information requested in the manner provided for in Article 555/1, § 2.]

Article 1447/2. [§ 1. In the event referred to in Article 1447/1, § 1, the judge may, before authorizing the precautionary garnishment and at the latest at the end of the fifth working day following the filing of the request, require the creditor that it constitutes a guarantee for a sufficient amount in order to prevent an abusive recourse to the procedure for obtaining a protective attachment and in order to ensure the repair of all the damages suffered by the debtor because of the seizure - protective judgment, insofar as the creditor is responsible for the said damages.

In the case referred to in Article 1447/1, § 2, the judge requires, before authorizing the protective garnishment, and at the latest at the end of the tenth working day following the filing of the request, from the creditor that it constitutes the guarantee referred to in the first paragraph, unless the judge considers that, taking into account the circumstances of the case, this constitution of guarantee is inappropriate.

§ 2. The judge determines, if necessary, this guarantee, of which he fixes, if necessary, the modalities.

§ 3. As soon as the creditor has, where applicable, provided the required security and as soon as the judge has the information he has requested in accordance with Article 1447/1, the judge issues his decision on the request for obtaining a garnishment without delay.

§ 4. If, in accordance with paragraph 1, a guarantee has been lodged and the request to obtain a protective attachment is rejected in its entirety due to the non-availability of information relating to the accounts, the judge who has requested the information orders the release of this guarantee without delay.]''