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EFFORTS Practice Guide for the European Account Preservation Order (Reg. (EU) No 655/2014) - Belgium

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I. Outgoing

When Belgium is the Member State of origin

A. Subject matter, scope and main features

1. Alternative preservation measures under national law

The European Account Preservation Order (EAPO) shall be available to the creditor as an alternative to preservation measures under national law, but it does not replace them (Art. 1(2) EAPO Reg.).
Given that:

- The EAPO lets a court in one EU country freeze funds in the bank account of a debtor in another EU country;
- It applies to financial claims in civil and commercial matters, excluding the following matters (Art. 2 EAPO Reg.):
    - revenue, customs or administrative matters and social security;
    - rights in property arising out of marriage or equivalent relationship, and wills and succession;
    - claims against a debtor who is the object of bankruptcy or insolvency proceedings, judicial arrangements, compositions or other similar proceedings.;
- The procedure may be used in cross-border cases only, whereby the court carrying out the procedure or the country of domicile of the creditor must be in a different Member State than the one in which the debtor's account is maintained (European Judicial Atlas, Art. 2 EAPO Reg.);
- The preservation of funds held in the debtor's account should prevent the risk that, without such a measure, the subsequent enforcement of a claim against the debtor will be impeded or made substantially more difficult (Whereas 7);
- The EAPO shall be available to the creditor: (i) before s/he initiates proceedings against the debtor on the substance of the matter; (ii) at any stage during such proceedings; or (iii) after s/he has obtained in a Member State an enforceable title;
- Because the EAPO procedure is ex parte, debtors will not be informed of creditors' applications, or be notified prior to the issue of the EAPO or its implementation.

In Belgium, preservation measures are intended to guarantee the preservation of rights. In concrete terms, they enable the creditor to protect himself against the risk of non-payment by his debtor.
If purely precautionary measures are not sufficient, the judge may order provisional measures, the effects of which are comparable to those of the decision awaited in the proceedings on the merits. The final decision may confirm or cancel these provisional measures.

The judge may pronounce provisional and conservatory measures relating to the assets of the debtor. Reimbursement of debts is subject to the principle that the debtor is indebted for all his movable property (cash, furniture, movable titles) and immovable property (land, buildings, dwelling house). The creditor can also assert the rights held by his debtor (credit, salary).

Garnishment ("saisie-arrêt") is the procedure whereby a creditor attaches moneys or movables (shares, securities, etc.) belonging to the debtor that are in the hands of a third party[1].
This type of attachment differs somewhat from the attachment of movable and immovable property in that there are no longer two parties involved (the creditor and the debtor) but three: the creditor taking action by garnishment, the debtor/garnishee and the third-party garnishee (in other words, the garnishee's debtor).
For example, garnishment is typically used to attach from a bank the moneys that the debtor lodges in his bank account, or for the direct attachment of the debtor's earnings in the hands of his employer.

The purpose of these measures is essentially to render the goods constituting the debtor's personal assets temporarily unavailable to him.

Scope of Garnishment
Garnishment aims to enable a creditor to intercept sums of money owed to his debtor while they are still in the possession of a third-party (art.1445 BJC).

[1] There are other precautionary measures in Belgium, but they are not used for preservation orders. Any creditor may, in case the situation requires a swift judicial measure, apply to the court for temporarily seizure the seizable assets that belong to his debtor (article 1413 of the BJC).
The debtor then no longer has free disposal of the property subject to the protective attachment. He/she can therefore no longer sell them, donate them or encumber them with a mortgage. This incapacity to dispose has only a relative effect: it only applies to the benefit of the seizing creditor. The debtor remains the owner of the goods and retains the right of enjoyment over them. In matters of protection, the creditor has a choice of 3 different types of attachment:

1) The seizure of movable property, ("Saisie Mobilièr")
2) The seizure of immovable property, ("Saisie Immobilièr")
3) Garnishment, (Saisie Arrêt Conservatoire)

There are three other precautionary attachments, although they are employed less often because of their specific features.They are:

1) Distraint ('saisie-gagerie'), whereby the owner or principal lessor of a rural property may attach the effects and produce that are accretions to the building and land leased, if the property rents or farm rentals are in arrears.
2) Replevin ('saisie-revendication'), whereby the right is exercised to follow property wherever it has passed, to ensure the conservation of tangible personal property and secure its repossession once a ruling has been given on its ownership, possession or custody. This attachment of the property can be made in whoever's hands it may be held.
3) Attachment of vessels.

In the rest of this document, we shall concentrate only on normal attachment.

In other words, it is a question of attaching money that are held by a third-party, but which already belong to the assets of the pursued debtor if the third-party is in turn the debtor's debtor. The garnishee must be the attachment creditor's debtor and the third-party/garnishee's creditor.

Procedure
The executory garnishment therefore enables the creditor to obtain payment of sums that s/he is owed by obliging the third-party/garnishee to hand over amounts to the acting judicial officer, to the amount of his/her debt towards the garnishee.
Therefore, the garnishment brings together three persons:

- The attachment creditor, the person who carries out the attachment;
- The garnishee, creditor or owner of the items or money that are being attached;
- The third-party/garnishee, the debtor of the garnishee against whom the attachment is carried out.

In addition, this enforcement measure must be justified with regard to an existing claim in favour of the attachment creditor.
There are conditions of substance and conditions of form.

Substantive conditions
The substantive conditions are two in number: rapidity, and the qualities of the claim.
Article 1413 BJC: "Any creditor may, in cases in which speed is required, apply (…) to attach as a precaution the seizable assets belonging to his debtor".
This requirement means that the attachment may be implemented or authorised only if, were this not done, the creditor might fear prejudice. In other words, the debtor's attitude or his asset situation might give reasonable cause to believe that, if no such protection measure were taken, future recovery of the debt would be placed at risk.
The need for a precautionary attachment will therefore be examined in the light of the debtor's existing or threatened insolvency.
By way of examples, the following situations may give rise to such a measure:

- where the debtor deliberately makes himself insolvent;
- where several de facto elements show that the debtor's situation is such that s/he is unable to meet his financial commitments;
- where, having regard to the documents of the case, the judge is persuaded that the debtor is in an objectively difficult situation (recurring or even constant difficulties in making payments, the debtor's non-responsiveness despite numerous reminders to pay, etc.).

"Rapidity" is therefore not a factor if the sole grounds for the creditor's application are that s/he is in need of money.
Secondly, the qualities of the claim.
Article 1415 BJC states*: "A precautionary attachment may be authorised only for a claim that is certain and payable, of a fixed amount or can be provisionally estimated"*.

A precautionary attachment may be authorised only for a claim that is certain and payable or of a fixed amount or can be provisionally estimated.

Formal conditions
The formal conditions to be met can be summarised as the obligation or non-obligation of applying to the attachment judges (‘*juge des saisies’*) for prior authorisation to carry out the precautionary attachment measure.

ATTACHMENT IMPLEMENTED WITH THE AUTHORISATION OF THE ATTACHMENT JUDGES

In the majority of cases the attachment judges must authorize an attachment.
To obtain authorization, the creditor must lodge his application in the form of an “*ex parte*” petition setting out certain elements, some pertaining to the date on which the petition is made, the identification of the parties or the purpose of and grounds for the application, while others are associated with the type of attachment applied for.
All supporting documents must also be included in the case file so that the judge can arrive at a decision with full knowledge of the case.

ATTACHMENT CARRIED OUT WITHOUT THE AUTHORISATION OF THE ATTACHMENT JUDGES

There are, however, certain circumstances in which the creditor may directly instruct a bailiff to carry out a precautionary attachment without prior authorization:

- Where he is already in possession of a Belgian judgment, even if it is not immediately enforceable, or a Belgian arbitral award;
- Where he is in possession of a foreign judgment or arbitral award, provided that either one is recognized under Belgian law as complying with the terms of a convention concluded between Belgium and the country of origin of the judgment or arbitral award;
- Where he is already in possession of a notarial instrument, even if authority to execute is not appended, provided that this instrument clearly specifies the debtor’s obligation to pay a debt of an amount that has been determined;
- In the case of garnishment, whether the creditor already possesses a title – a judgment or authentic instrument – or a simple private agreement.

Special rules for precautionary garnishment (articles 1445 to 1460 of the BJC)

In the event of precautionary garnishment, this may be carried out without the judge's authorisation, not only by a creditor who has an authentic right, but also merely based on a simple private right and at the creditor's own risk. This right must consist of a document that is regular in form, enforceable against the garnishee and which certifies to a claim that is certain, of a fixed amount and due.

In the absence of such a right, the attachment must be requested unilaterally, in accordance with articles 1417 and 1418 BJC.
Within eight days of the third-party's receipt of the document containing the garnishment, the attach must be notified on the third party to the attached debtor, by registered letter with acknowledgement of receipt or in a bailiff's writ (article 1457 BJC).
If the third-party/garnishee fails to fulfil these obligations, s/he may simply be declared a debtor, either partly or fully, of the causes of the attachment (i.e. the debtor's credit) following an action brought by the creditor before the enforcement judge (article 1456 BJC).

B. Procedure for obtaining a European Account Preservation Order and for the obtaining of account information

Obtaining a Preservation Order

The EAPO shall be available to the creditor:

i. before s/he initiates proceedings against the debtor on the substance of the matter (Art. 5(a) EAPO Reg.);
ii. at any stage during such proceedings (Art. 5(a) EAPO Reg.); or
iii. after s/he has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim (Art. 5(b) EAPO Reg.).

1. Notion of enforceable title, and procedure to obtain a copy of it which satisfies the conditions necessary to establish its authenticity

According to Article 1494 (BJC): *"No attachment of movable or immovable property in execution may be made except by virtue of an enforceable title (...)".*
An enforceable title or decision is an instrument that may be deployed, where necessary, by recourse to compulsory execution measures against a party who fails to comply with its obligations.
Such a title may take different forms:

1) a court decision[2];

[2] Where the enforcement title takes the tangible form of a court decision, its enforceability is nonetheless conditional on, for example, the appending of authority to execute, either because provisional enforcement has been granted or because the decision is no longer open to recourse through the ordinary courts (opposition or appeal) and is therefore considered to be final.
It is important to point out that, in the case of a decision declared to be immediately enforceable even though an appeal has been lodged, it will be executed at the risk of the party taking the action. Accordingly, if a first instance judgment has been issued but is the subject of an appeal in the ordinary courts, which then set it aside, the assets attached will have to be restored in their original condition by the party concerned.

2) a consent order[3];
3) an arbitral award;
4) a notarial instrument;
5) or also an administrative document to which the law has conferred enforceability.

According to Article 1495 (BJC): *"A decision ruling against a party may not be executed until it has been served on that party"*.
Any enforcement measure based on an enforcement order inevitably calls for the prior service of that order upon the party against whom execution is sought, the aim being to acquire the certainty that the decision made against him has been brought to that party's knowledge. If this prerequisite is not satisfied, the whole of the enforcement procedure would be rendered void.
To have the order served, a Belgian judicial officer (a '*huissier*') with territorial jurisdiction should be called upon.
This obligation of service of notice does not, however, apply to a notarial instrument, since it is presumed that it has been signed by all the parties concerned and therefore that they have taken due note of its content.
The payment order ('*commandement de payer'*), is a judicial officer's writ whereby the debtor receives an order to pay pursuant to the enforceable title, with a warning that, failing voluntary payment, the debtor will be compelled to do so by means of compulsory execution[4].
The payment order may be served at the same time as the enforceable title and, at all events, is a preliminary to any attachment of movable and immovable property in execution of a judgment, except for a garnishment ('saisie-arrêt exécution').
The service of the payment order is also of significance where a precautionary attachment measure has been carried out, since this service will on its own convert that precautionary attachment into an attachment in execution of a judgment, so that the claimant does not need to renew the procedural formalities that have already been performed in the precautionary phase.

As for the period of validity of a court decision, this is limited to ten years. In certain cases, this time frame may be extended and, in such instances, the terms used are the causes of suspension or interruption of the limitation period.

[3] A consent order is an order confirming an agreement between the parties which is filed at court so it can be entered and sealed. Some consent orders also require approval by the court. The agreement is legally binding and enforceable.

[4] Article 1499 (BJC): *"Any attachment in execution of a judgment on movable property will be preceded by an order to the debtor, given at least one day before the attachment and, if the title is in the form of a court decision, containing the writ of notice of the attachment if this has not already been served".*
Article 1564 (BJC): *"An attachment in execution of a judgment on immovable property will be preceded by an order, given by a notice served personally or to the actual address or the address for service stated in the title of the debt".*

The creditor's claim must be certain, which means that it must appear sufficiently well-founded and not be capable of giving rise to a reasonable challenge. Then the credit should be liquid. Its amount must, in fact, be determined or, at least, capable of a provisional estimate. If the debt is not yet precisely determined, it will be estimated by the judge. Finally, the debt must be payable, that is to say that the creditor must be entitled to demand payment.
In the case of attachment regarding a current account, the credit institution must set out in its third-party garnishee declaration a list of the coded amounts that were credited during a period of 30 days prior to the attachment date.
Article 1411-c § 2 draws a distinction between whether the attachment or assignment takes place with the involvement of a judicial officer.
If this is the case, it is the bailiff who establishes the statement and who, under pain of nullity of the attachment or assignment, sends the statement to the debtor by a letter registered with the postal service with acknowledgement of receipt within 8 days of notice being given of the third-party garnishee's declaration or the one that has to be given by the assigned third-party in that instance.
Under threat of the same nullity, this registered writ given to the debtor shall be accompanied by a reply form as specified by the Crown. This form must facilitate the debtor's task if s/he intends to contest the statement sent to him.
If, on the other hand, notice of the attachment or assignment is not given by a bailiff, it is the creditor (in the event of tax attachment in simplified form or if the assignment is implemented by the creditor personally) who must draw up the statement personally. The same shall apply with regard to the writ given to the debtor and credit institution. The time periods and penalties of theses formalities are the same.
If the debtor intends to dispute the calculation that s/he has been sent, s/he must, on pain of forfeiture, use a reply form to provide his comments to the person who sent the statement (bailiff or creditor). He must do this, by a letter registered with the post office with acknowledgement of receipt, within 8 days of the arrival of the letter (registered with the postal service and with acknowledgement of receipt) at his place of residence, containing the contested statement.

2. Jurisdiction to issue the EAPO *ante causam* or pending proceedings on the substance

Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, jurisdiction to issue a Preservation Order shall lie with the courts of the Member State which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of jurisdiction applicable (Art. 6 (1) EAPO Reg.). Often such rules will be those set out in EU Regulations, thus domestic ones apply residually.

By virtue of article 633 of the BJC, applications regarding precautionary attachments and means of enforcement shall solely be referred to the judge of the place in which the attachment is taking place, unless otherwise provided for by law.
In the case of garnishment, this is the attachments judge for the attached debtor's place of residence.
Then, the attachments judge (juge des saisies/beslagrechter) at the Court of first instance (tribunal de première instance/Rechtbank van eerste aanleg), according to Article 1395(2) BJC (Code judiciaire/Gerechtelijk Wetboek).
Since 2001, the judge having territorial jurisdiction to authorize an attachment or to hear disputes arising from it is the judge of the domicile of the seized debtor and not that of the domicile of the garnishee, i.e. the bank. However, if the domicile of the seized debtor is located abroad or is unknown, the competent judge is the one of the place of execution of the seizure, i.e. the registered office of the bank or the seat of one of its branches (Article 633 of the BJC).

3. Internal competence

Within the jurisdiction of the Member State as defined by Art. 6 EAPO Reg., *i.e.*:

i. Ante causam > the Member State which have jurisdiction to rule on the substance of the matter
ii. Pending proceedings on the substance > the Member State which have jurisdiction to rule on the substance of the matter
iii. Where the creditor has already obtained a judgment or court settlement > the Member State in which the judgment was issued, or the court settlement was approved or concluded
iv. Where the creditor has already obtained an authentic instrument > the Member State in which that instrument was drawn up,

the internal competence shall be located according to national rules; such rules form part of the information to be provided by Member States under Art. 50 EAPO Reg.

According to art. 1395 BJC the competent judge shall solely be referred to the judge of the place in which the attachment is taking place, unless otherwise provided for by law.
In the case of garnishment, this is the attachments judge for the attached debtor's place of residence.

i. Ante causam > the court of the place where the debtor resides, (or where the property to be seized is located). However, if the domicile of the seized debtor is located abroad or is abroad or is unknown, the competent judge is the one of the places of execution of the seizure, either the bank or the seat of one of its branches (article 633 BJC)
ii. Pending proceedings on the substance > the same court of the pending proceedings

iii. Where the creditor has already obtained a judgment or court settlement > The judge of the place where the debtor resides, or where the property to be seized is located and whenever the third party resides in another place, the court of where the third party resides

4. Application for a Preservation Order

i. **Lodging**. The application and supporting documents may be submitted by any means of communication, including electronic, which are accepted under the procedural rules of the Member State in which the application is lodged (Art. 8(4) EAPO Reg.).

According to Article 1417 of the BJC: "*The authorization provided for in Article 1413 (authorization to seize) is requested by petition addressed to the judge. The motion is filed or sent to the court office, stamped on its date by the court clerk and entered in the register of motions"*.
A creditor who has secured an enforceable right may have an enforceable attachment order served by a bailiff upon a third-party regarding the sums and items that the latter owes to their debtor.
The writ containing the enforceable attachment order must contain, in addition to the formalities that are common to all served writs of attachment, the wording of articles 1452 to 1455 of the BJC (the chapter on precautionary attachment orders) and article 1543 of the BJC (the chapter on enforceable attachment orders); in accordance with article 1539, paragraph 4 of the BJC).
By analogy, it is also appropriate to consider that the serving of the enforceable attachment order must also contain a warning to the third-party/garnishee that s/he must comply with these provisions.

i. **Court fees**. The court fees in proceedings to obtain a EAPO shall not be higher than the fees for obtaining an equivalent national order or a remedy against such a national order (Art. 42 EAPO Reg.).

Costs and expenses in civil proceedings are governed by articles 1017-1022 of the BJC. Legal costs differ according to each proceeding and must be assessed case by 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 of the 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.
In principle, a drafting fee of 35 euros 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 euros 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.
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 of the 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 (partial) lifting of the garnishment, is not provided by the law.
Article 555/1, §2, of the BJC, which entered into force on January 1, 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 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 BJC, as well as the conditions and methods of collection[5]. 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 BJC, as well as for requests obtaining information under Article 14 of the Rules.
With regard to execution by the judicial officer, the tariffs are regulated by the Royal Decree of 30 November 1976 setting the tariff for acts performed by judicial officers in civil and commercial matters as well as that of certain allowances.
With regard to the provision of information, Article 555/1, §2, of the BJC, which entered into force on 1 January 2019, provides that the King shall fix the costs for processing the request aimed at obtaining information relating to the accounts, as well as the conditions and methods of collection. The Royal Decree of 22 April 2019 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 BJC, as well as the conditions and methods of collection[6].

5. Procedure for issuing a Preservation Order

i. **Hearing of the creditor**. Where the court determines that, provided that this does not delay the proceedings unduly, an oral hearing of the creditor and, as the case may be, her/his witness(es) is necessary, the court shall hold the hearing without delay, also using videoconference or other communication technology, and shall issue its decision by the end of the fifth working day after the hearing has taken place (cf. Arts. 9(2) and 18(3) EAPO Reg.).

Hearings are not held online.
The proceedings to obtain a precautionary seizure procedure does not provide for a hearing.
The creditor has a relationship with the bailiff to whom he has entrusted the enforcement. Given the automaticity of the process of payment of the funds by the third party to the bailiff, the creditor is however not "heard" in the strict sense.
The order for payment is a "non-adversarial" procedure. Legally, this means that the defendant (the one who is being attacked, in this case the debtor) is not in a position to contest the facts or the legal arguments put forward by his opponents. It is therefore not necessary to give notice to the debtor when applying for an injunction.
However, if the order for payment is granted, a bailiff must serve it on the debtor. It is often at this stage that the debtor becomes aware of the procedure that has been carried

[5] (http://www.ejustice.just.fgov.be/eli/arrete/2019/04/22/2019030412/justel).
[6] (http://www.ejustice.just.fgov.be/eli/arrete/2019/04/22/2019030412/justel) entered into force with retroactive effect from 1 January 2019.

out against him and has the opportunity to object to it. The debtor has one month to lodge an objection and ask to be heard by the judge to defend his case.
It is important to note that in the context of this procedure, the judge may decide without having heard the parties. The judge has the option of calling the parties to the hearing, but the debate in open court is not compulsory.
If the debtor intends to dispute the calculation that s/he has been sent, s/he must, on pain of forfeiture, use a reply form to provide his comments to the person who sent the statement (bailiff or creditor). S/he must do this, by a letter registered with the post office with acknowledgement of receipt, within 8 days of the arrival of the letter (registered with the postal service and with acknowledgement of receipt) at his place of residence, containing the contested statement.
Article 1541 of the BJC gives the attached debtor the right to object to the attachment within fifteen days of being given notice of it.
This objection shall be carried out in compliance with ordinary rules, through a summons, served upon the attachment creditor at the garnishee's request, to appear before the attachment judges who is competent for the territory concerned, i.e. the judge of the attached debtor's place of residence or the judge of the place of enforcement if the debtor is domiciled abroad or has no known residence in Belgium.
At that time, the debtor may put forward any procedural or substantive pleas.

i. **Taking of evidence**. The court shall take its decision by means of a written procedure on the basis of the information and evidence provided by the creditor in or with her/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 documentary evidence (Art. 9(1) EAPO Reg.).

The court may, provided that this does not delay the proceedings unduly, also use any other appropriate method of taking evidence available under its national law (cf. Art. 9(2) EAPO Reg.).

In Belgium, according to the Act of 13 April 2019, there are various types of means of proof under ordinary civil law: documents, witnesses, presumptions, admissions by parties, and sworn statements.
According to art. 970 BJC, measures of inquiry must be requested by one of the parties by means of a principal or incidental application. The judge may - by reasoned order - grant or deny such requests.
Normally, as mentioned above, when requesting an order of attachment, the documents placed as the basis of the request are attached.
If the court finds that the documents attached by the creditors are insufficient to prove the claim, it shall order the supplementation of documents (only documents).

Other means of evidence, in addition to documents, may possibly be produced in opposition to an injunction order. The provisions concerning evidence in commercial law are contained in Article 25 of the Commercial Code. Their main features are the open system and the relative freedom of means of proof in commercial matters. Article 25 of the Commercial Code stipulates that "In addition to the means of proof allowed by civil law, commercial obligations may also be proved by witness in all cases in which the court deems it can authorize it, subject to the exceptions established for specific cases. Purchases and sales may be proved by an invoice accepted by the recipient, without prejudice to other means of proof authorized by the provisions of commercial law."

The party who makes a claim must be able to prove it. At the opposition stage, the court may require the appellant to produce documents if necessary (Article 1366 of the Civil Code).

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)) [7] allows the admission of digital evidence if it is submitted in a claim[8]:

- 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 euros[9], or;
- between companies, or against a company, regardless of the value of the claim.[10]

[7] 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 10 August 2022.

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

[9] According to Article 8.9 (§ 1); *''Regulated Evidence'*

§ 1. A legal act involving a sum or value equal to or greater than 3,500 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.''

[10] 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.

Therefore, digital evidence is admitted at courts, for the claims whose value is under the threshold of 3,500 euros.[11] As a result, in the capacity of the EAPO proceedings, parties are allowed to present their means of proof in written or electronic (e.g., e-mail, text messages, etc.) format.[12]

i. **Security to be provided by the creditor**. If the court requires security to be provided pursuant to Art. 12 EAPO Reg., it shall inform the creditor of the amount required and of the forms of security acceptable under the law of the Member State in which the court is located. It shall indicate to the creditor that it will issue the PO once security in accordance with those requirements has been provided (Art. 12(3) EAPO Reg.).

There are no specific indications regarding the provisions of Art. 12 EAPO Reg.
Thus, it is necessary to refer to the general measures of the creditor in a seizure.
The creditor must pay to the registry of the territorially competent court of first instance the costs of any application for authorization for seizure (about 50 euros) and advance the bailiff's fees (from 300 to 600 euros) but he can recover them from the seized debtor (Article 1024 of the BJC).
It also happens that third parties, especially banks, claim compensation (not fixed but usually 25 to 50 euros) to the seizing creditor for the cost of their declaration (Articles 1454 and 1539, paragraph 4 of the BJC).
Garnishment and enforceability are governed by very similar procedures.
Only the substantive conditions differ; moreover, the obligation of the garnishee to pay to the garnishee's bailiff what he owes to the garnished debtor exists naturally only in the case of garnishment.

i. **Communication of the decision**. The decision on the application shall be brought to the notice of the creditor in accordance with the procedure provided for by the law of the Member State of origin for equivalent national orders (Art. 17(5) EAPO Reg.).

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.''

[11] Currently, any claim with a value of more than 3,500 euros must be in writing (according to Art. 1341 of the Belgian Civil Code), and the digital evidence is not admissible.

[12] As far as the amount of the claim does not exceed 3,500 euros.

In Belgium, the decision of the attachment judge is brought to the attention of the creditor via e-mail or by simple letter by post, within 5 days after the order has been given.

6. Initiation of proceedings on the substance of the matter

Where the creditor has applied for a EAPO before initiating proceedings on the substance of the matter, s/he shall initiate such proceedings and provide proof of such initiation to the court with which the application for the Preservation Order was lodged within 30 days of the date on which s/he lodged the application or within 14 days of the date of the issue of the Order, whichever date is the later (Art. 10(1) EAPO Reg.; see also Art. 10(3) for the definition of the initiation of proceedings).

For precautionary attachment, in principle the permission of the attachment judges is required and there must be reasons of urgency (Article 1413 BJC). Authorisation must be sought by an *ex parte* application (Article 1417 BJC). The same application may not be used simultaneously for attachment of movable and immovable property. For attachment of immovable property, a separate request is in any case always required.
The attachment judge will reach a decision no later than eight days after deposition of the application (Article 1418 BJC). The judge may decide to refuse permission or to grant it in full or in part to the claimant. The attachment judge's decision must be served on the debtor. The decision is issued to a bailiff, who then takes the necessary steps to serve it.
There is one important exception to this rule, in which the permission of the attachment judge is not required: every judgment constitutes authorisation to impose precautionary attachment in respect of the sentences handed down (Article 1414 BJC). Here, too, it must be a matter of urgency. The judgment simply has to be handed over to a bailiff, who will take the necessary steps to attach the goods.
Precautionary attachment may be converted into attachment (Articles 1489 to 1493 BJC).
Once the order has been received, it is necessary to see if the judge has set a deadline for the substantive procedure.
The procedure for converting a precautionary seizure into an enforceable seizure is provided in the following articles:
Art. 1489. The seizure judge alone shall have jurisdiction to rule on disputes concerning the regularity of the procedure for protective attachment.
The order of the distraint judge shall not prejudice the principal.
Art. 1490. A creditor who causes a protective attachment may, in the same writ or, in the case of a garnishment, in the writ notifying the attachment to the distrainee debtor, summon the latter to be heard to decide on the merits of the claim.

Art. 1491. The judgment on the merits of the claim shall constitute, where applicable, up to the amount of the sentences pronounced, the writ of execution which, by its mere service, transforms the protective seizure into an execution.
This provision shall be without prejudice to the suspensive effect of appeals and to the rights of the owner in the case of seizure and reclamation.
If the seizure is contested before the seizure judge at the time of service of the final decision on the merits of the dispute, the transformation of the protective seizure into an execution seizure shall take place only by service of the decision of the seizure judge recognizing the regularity of the seizure.
Art. 1492. The judgment on the merits of the dispute which rejects the application shall pronounce the release of the seizure. The application on the merits shall suspend the time limits provided for in articles 1425, 1458 and 1459 until the day on which the final decision of the court is no longer subject to ordinary appeal. In matters of sequestration of immovable property [3 ...], suspension shall take place only if the application on the merits has been entered, before the expiry of the period of validity of the seizure, in the margin of the transcript [3 ...]3 of the writ of seizure. This suspension shall expire at the end of a period of three years from the entry of the request, unless before the expiry of this period the said entry has been renewed for a further three-year period.
Renewal shall take place upon presentation [2 to the General Administration of Heritage Documentation][13][1 or to the Belgian Naval Registry][14] of a request, in duplicate, containing a precise indication of the registration to be renewed and of the cause of suspension of the period of validity of the seizure, without prejudice to the application of Article 90, paragraph 2, of the Law of 16 December 1851, if applicable.
Any final decision, no longer subject to ordinary appeal, rendered on the merits of the claim shall be entered, at the request of the earliest party, following the entry of the claim.

7. Appeal against the refusal to issue the Preservation Order

i. **Appeal**. The creditor shall have the right to appeal against any decision of the court rejecting, wholly or in part, her/his application for a PO. Such an appeal shall be lodged within 30 days of the date on which the decision was brought to the notice of the creditor. It shall be lodged with the court which the Member State concerned has communicated to the Commission. Where the application for the PO was rejected in whole, the appeal shall be dealt with in *ex parte* proceedings as provided for in Article 11 (Art. 21 EAPO Reg.).

[13] L. 2016-12-25/46, s. 16, 097; Effective: 01-02-2017, but not earlier than the first day after the date of entry into force of Title 3, Chapter 1, of the Act of December 18, 2015, on tax and miscellaneous provisions (L 2015-12-18/12 (see s. 100)), namely 02-11-2016.
[14] L. 2018-07-11/07, s. 57, 108; Effective: 07-30-2018.

In Belgium the courts or enforcement authority competent to grant a remedy are:

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

Such judge is to be considered competent to examine the creditor's request of the release of over-preserved amounts (Art. 27 (2))
Against the upholding or rejection order, a complaint can be made to the attachment judge to obtain revocation or modification of the order, according to art. 1419 BJC.
As shown in the EU Atlas, 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.
Art. 1419 BJC: "The order granting or refusing the authorization to carry out a precautionary seizure and the order granting or refusing the withdrawal of this authorization are subject to the remedies provided for in articles 1031 to 1034 of this code. (The garnishee may, in the event of a change in circumstances, request the modification or revocation of the order by citing to this end all the parties before the garnishment judge.) The withdrawal order is worth release.»

i. **New application**. The right to appeal against a refusal to issue the EAPO should be without prejudice to the possibility for the creditor to make a new application for a EAPO on the basis of new facts or new evidence (Whereas 22).

In order to obtain a new order, the creditor must file a new unilateral request with the new proofs to the competent judge, in order to sue the debtor. The new request must contain new facts and new evidence. It is a total new claim, different from the previous one. If circumstances have been changes (new facts, new evidence or both), then the new application may be granted.

Obtaining account information

8. Request for the obtaining of account information

In the application for the EAPO, the creditor may request that the information authority of the Member State of enforcement obtain the information necessary to allow the bank or banks and the debtor's account or accounts to be identified. The conditions for the creditor's request are detailed under Art. 14 EAPO Reg..

Belgium has designated as authority to obtain banking account information (Art. 14, 1 Regulation) the 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.
The main problem is the discovery of the existence of bank accounts. While there is no banking secrecy banking secrecy in the strict sense of the word in Belgium, the banks nevertheless avail themselves of the duty of discretion towards their customers and refrain from providing any information to their creditors.

C. Means of communication: service and transmission of documents

1. Service on the debtor

When Belgium is the Member State of origin and the debtor is domiciled in Belgium, service shall be effected in accordance with the law of that same Member State (cf. Art. 28(2) EAPO Reg.). Also, when Belgium is the Member State of origin and the debtor is domiciled in a third State, service shall be effected in accordance with the rules on international service applicable in the same Member State of origin (cf. Art. 28(2) and (4) EAPO Reg.).

If the claim of which the distrainor avails himself meets the conditions set out above, he may
address himself to a territorially competent judicial officer who will serve two successive summonses: the first summons (protective or enforceable) will be served to the third party, in this case the bank (articles 1445, 1450, 1539 and 1540 BJC); the second notice of garnishment will be served on the garnishee who holds the account (articles 1457 and 1539 BJC).
In Belgium a distinction is made between notification [*notification*] and service [*signification*].
In essence, service means issuing a document to another person via a government official. In Belgium that government official is known as a bailiff. In practice, the bailiff serves a certified copy of the document on the person in question.

In essence, service refers to the delivery of a document by writ via the bailiff.
The bailiff may deliver various writs (referred to below as 'service' or 'record of service'), like:
- summons to appear in court;
- service of a judgment (possibly with an order to pay);
- order to pay;
- seizure from your personal property, accommodation);
Notification is required in specific cases provided by law, according to art. 792 (1) BJC.
In contrast to service, notification is made when a court document (original or copy) is sent by post, i.e. without the involvement of a government official.
The date of service is significant.
In the case of application, deadlines are provided. These deadlines are referred to the moment of the service.
When a judgment is served, from that date the expiring period goes by.
In general, documents of the proceedings are served.
The receipt of service (*l'exploit de signification*) must be signed by the bailiff who served the document and must indicate the following (Article 43 BJC), failing which it shall not be valid:
1° day, month, year and place of service;
2° name, first name, occupation, domicile and, if applicable, capacity and listing on the commercial or trade register of the person at whose request the writ is being served;
3° name, first name, domicile, or, in the absence of domicile, residence and, if applicable, capacity of the addressee of the writ;
4° name, first name and, if applicable, capacity of the person to whom the copy has been given, or where a copy where left in the cases referred to in Article 38(1), or to where the writ has been posted in the cases referred to in Article 40;
5° name and first name of the bailiff and address of their office;
6° breakdown of the cost of the document.
The person to whom the copy is given endorses the original. If they refuse to sign, the bailiff notes the refusal on the notice.
According to Article 47 of the BJC, the bailiff may not serve documents:
1° before 6 a.m. or after 9 p.m. in a place not opened to the public;
2° on Saturdays, Sundays or public holidays (this restriction does not apply to service in criminal cases, see Court of Cassation case-law, Cass., 27 March 1984, R.W. 1984-1985, 1093; Antwerp, 2 October 1975, R.W. 1976-1977, 1834), except in urgent cases and with the permission of the magistrate (*juge de paix*) for summonses in cases to be brought before him or her, the judge who authorised the document for documents requiring prior authorisation and in all other cases the president of the Court of First Instance.
When the document is served, the person on whom it is served is given an authentic copy of the document (service) and the bailiff retains the original whilst the case is pending at his office. In the case of summonses, the bailiff does not retain the original but sends it to the court to be added to the case list (notice of the summons to the court).

The copy of the notice must contain all the information on the original and be signed by the bailiff (Article 43 of the BJC).

Where the debtor is domiciled in a Member State other than Belgium, the issuing court or the creditor, depending on who is responsible for initiating service in that Member State, shall, by the end of the third working day following the day of receipt of the declaration showing that amounts have been preserved, transmit the EAPO and the accompanying documents in accordance with Art. 29 EAPO Reg. to the competent authority of the Member State in which the debtor is domiciled (cf. Art. 28(2) EAPO Reg.).

Documents are served by bailiff and must therefore be served by the bailiff themselves. Notification is made by the clerk of the court (on rare occasions by the public prosecutor's office) by judicial recorded delivery (a special type of registered letter with acknowledgement of receipt) or by ordinary or registered post. The rules governing judicial recorded delivery are set out in Article 46 of the BJC.

2. Transmission of documents

i. **Transmission**. Where the EAPO Reg. provides for transmission of documents in accordance with Art. 29(1), such transmission may be carried out by any appropriate means, provided that 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.

Notification is effected by the court registry *("griffie"/ "greffe")* by so-called judicial mail (i.e. special type of registered letter with acknowledgement of receipt), registered mail or ordinary mail.
According to Art. 792 BJC, the court registry sends an unsigned (free) copy of the judgement by ordinary mail to each of the parties or their counsel (Art.792 BJC).
The method of service is governed by Articles 32 to 47 BJC and applies to both civil and criminal cases.

1) Service in person (Articles 33 to 34 BJC)

If the bailiff intends to serve a document, s/he will first endeavour to give the copy of the document to the addressee in person. That is service in person.

Documents may be served in person on the addressee wherever the bailiff finds them. This does not necessarily have to be at the addressee's place of residence; valid service may be done, for example, at the addressee's place of work, on the street or at the bailiff's own office.

The condition is that the place of service must be within the bailiff's area of jurisdiction. In the absence of any information on the whereabouts of the addressee, the bailiff goes directly to the addressee's domicile in the hope of finding them there.

In case of evading copy, if the bailiff locates the party (wherever that might be) and the party refuses to accept the copy of the document, the bailiff notes the refusal on the original (the copy is then attached to the original) and service is deemed to have been effected in person.

With regard to legal persons, service is deemed to have been made in person when the copy of the document has been given to the agency or an employee authorised by law, by the articles of association or by due delegation to represent the legal person in judicial proceedings, even on a joint basis. Thus, in the case of a private limited company, for example, service is valid if effected on the manager, whether they are at the registered place of business or elsewhere, away from the registered place of business.

2) Service at domicile/registered place of business (Article 35 BJC)

If service cannot be made in person, it is affected at the domicile of the addressee. 'Domicile' means the place listed as the main address for the addressee in the population registers, i.e. the domicile address.

For an addressee with no official domicile address, service may be at their residence. 'Residence' means any other establishment, such as the place at which the person has an office or operates a business or industry. The chief police officer must inform the executing bailiff of the place of residence of a party not having an official domicile when instructed to do so.

In the case of a legal person, service may be at the registered place of business or administrative office if service in person is impossible.

With service at domicile, the copy of the document is delivered to a relative, in-law, servant or employee of the addressee. It may not be given to a child under the age of 16. The bailiff notes on the original and the copy the capacity of the person to whom the copy was given (e.g. relationship to the addressee).

3) Service by countersignature (Article 38(1) BJC)

If the bailiff is unable to serve the document by one of the specified methods (Articles 33 to 35 BJC), service will be made in accordance with Article 38(1) of the BJC, i.e. by leaving the writ at the domicile or, in the absence of a domicile, at the residence of the addressee (service by countersignature).

The copy of the document is issued at the address using the letterbox, in a sealed envelope (showing the office of the bailiff, the name and first name of the addressee

and the place of service, marked '*Pro Justitia – A remettre d'urgence* (to be delivered urgently)').
If there is no letterbox, the bailiff is authorised to leave the copy, in an envelope, by any means (e.g. sliding it under the door, putting it through a gate or hedge, attaching it to the door with adhesive tape).
The bailiff indicates the date, time and place at which the copy was left on the original writ and on the copy served.
No later than the first working day following service of the writ, the bailiff sends a signed letter to the domicile, or, in the absence of a domicile, the residence of the addressee. The letter indicates the date and time of delivery and states that an identical copy of the writ may be collected by the addressee in person or by a proxy duly authorised in writing from the bailiff's office within three months of the date on which the writ was served.
Where an addressee has applied for a change of domicile (request to change address), the registered letter referred to in paragraph 3 will be sent to the place where they are listed on the population registers and the address at which they have indicated they wish to establish their new domicile.
When a proposal has been made for removal from the public register (of the domicile address) for the addressee and the bailiff cannot infer from the facts that the addressee is no longer actually resident at the domicile address, it is sufficient for service to be made according to Article 38(2) BJC.
Where removal from the public register has been proposed, service on the public prosecutor in accordance with Article 38(2) BJC (see below) is only permissible when the bailiff confirms that the addressee no longer resides at the domicile address (e.g. when the bailiff has established that the addressee at the address in question has been evicted) or it is physically impossible to serve the documents.
As mentioned above, notification is by letter, registered letter or judicial recorded delivery. In future electronic notification might also be an option.

4) Service at elected domicile (Article 39 BJC)

When the addressee has elected domicile with an agent, documents may be served or notified at the elected domicile. This is an option and not an obligation. There is therefore no reason why service should not be made at the actual domicile (in Belgium) rather than at the elected domicile (Cass. (1st Ch.), 26 February 2010, J.T., 2010, no 6397, 371; Cass. (1st Ch.), 10 May 2012, R.W., 2012-13, 1212).
There is only one exception, when an addressee whose actual domicile (or registered place of business) is abroad has an elected domicile in Belgium, service must take place at the elected domicile, failing which it shall not be valid (Article 40 BJC, see also Cass. (1st Ch.), 9 January 1997, R.W. 1997-98, 811: 'When the party at whose request service has been effected is aware of the elected domicile of the addressee, that party is required to have the writ served at that place; that is not an option but an obligation and is a matter of public policy').

If the copy is handed to the agent in person at the elected domicile, that is deemed to be service in person. Service and notification are longer possible at the elected domicile if the agent is deceased, is no longer domiciled there or has ceased operations.
Domicile is elected on the basis of a legal relationship between parties (i.e. in a procedure between the parties). Hence it is only valid between those parties and is confined to that legal relationship. Thus, the Court of Cassation ruled that election of domicile in a procedural act of first instance (e.g. in the summons or pleadings) was only valid for the whole of the first instance proceedings, the enforcement of the subsequent judgment and an appeal against that judgment (by the opposing party). If that election of domicile was not repeated in subsequent proceedings (e.g. in an appeal) it did not apply to those subsequent proceedings (Cass. 1st Ch., 30 May 2003, R.W. 2003-2004, 974; Cass. 2nd Ch., 10 May 2006, R.W. 2008-2009, 455; Cass. 1st Ch., 29 May 2009, R.W. 2010-2011, 1561).

ii. **Receipt**. The court or authority that received documents in accordance with paragraph 1 of Art. 29 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 forms (Art. 29(2) EAPO Reg.).

When the document is sent by registered letter with acknowledgement of receipt, if the addressee cannot be found at the address shown on the letter, a delivery notification is left at that address. In that case the letter may be collected from the place designated on the delivery notification or the place agreed between the postal service and the addressee within 15 days, not including the date of remittance.
When the document is served, the record of service must show the date of service (Article 43 BJC). When the document is notified, Belgium uses a dual-date system.
The date applicable for the sender differs from the date applicable for the addressee of the document. For the sender, the notification date is the date of dispatch.
Article 53 bis of the Belgian BJC states that, save as otherwise provided by law, the period for the addressee shall commence on the first day following the date on which the letter was delivered to their domicile, or their residence or elected domicile, as applicable.

D. Remedies

1. Revocation or termination of the Preservation Order for lack of initiation of proceedings

If the court has not received proof of the initiation of proceedings within the time period referred to in paragraph 1 of Art. 10 EAPO Reg., the EAPO shall be revoked or shall terminate and the parties shall be informed accordingly (Art. 10(2) EAPO Reg.).

2. Revocation or modification of the Preservation Order

i. **Application of the debtor**. Upon application by the debtor to the competent court of the Member State of origin, the Preservation Order shall be revoked or, where applicable, modified on the grounds listed in Art. 33(1) EAPO Reg.

In Belgium preservation orders can be revoked if there is a change in circumstances.
If the attachment judge refuses permission for precautionary attachment, the applicant (i.e. the claimant) may lodge an appeal against the decision with the Court of Appeal within a month. This is an *ex parte* procedure. If the attachment is allowed on appeal, the debtor has the right to institute third-party proceedings against the decision (see Article 1419 BJC).
If the attachment judge authorises precautionary attachment, the debtor or any other interested party may institute third-party proceedings against the decision. The deadline for doing so is one month and the proceedings are instituted at the court that issued the decision. The court will then rule in an adversary procedure. Third-party proceedings do not normally have suspensive effect (see Articles 1419 and 1033 BJC).
Where precautionary attachment can be imposed without judicial authorisation, the debtor can appeal against it by applying to the attachment judges to lift the attachment (Article 1420 BJC). This is the procedure for opposing attachment and is dealt with as in interlocutory proceedings, if necessary, in conjunction with the imposition of a penalty payment.
If there is a change in circumstances, either the attachee (by summoning all parties to appear before the attachment judges) or the attachment creditor or an intermediary (by means of an application) may apply to the attachment judges to amend or withdraw the attachment.

ii. **Court decision on its own motion**. The court that issued the EAPO may also, where the law of the Member State of origin so permits, of its own motion modify or revoke the Order due to changed circumstances (Art. 35(2) EAPO Reg.).

In Belgium, it is not possible for the judge to revoke or modify the EAPO of its own motion, since it is an *ex parte's* prerogative.

iii. **Joint application**. The debtor or the creditor may apply to the court that issued the EAPO for a modification or a revocation of the Order on the ground that the circumstances on the basis of which the Order was issued have changed (Art. 35(1) EAPO Reg.). The debtor and the creditor may also, on the ground that they have agreed to settle the claim, apply jointly to the court that issued the EAPO for revocation or modification of the Order (Art. 35(3) EAPO Reg.).

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

NotwithstandingArt.8/1of the Mortgage Act(*loihypothécaire*/*Hypotheekwet*), which explicitly acknowledges that some trust accounts which are mandatory 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 foreclosure63 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.

There are no Belgian legal provisions concerning the seizure of joint accounts (undivided accounts or joint accounts). The doctrine decides that the creditor of one of

the two holders can in principle seize the whole, unless the non-debtor holder can prove that he is the originator of the credit balance[15].
The decision to revoke, modify or terminate the protective attachment order is immediately enforceable and may still be appealed.
The debtor and the creditor may both apply to the court that issued the EAPO.
This procedure is written, non-adversarial and fast. Representation by a lawyer is not mandatory. It is thus a procedure acting as a real means of pressure against the defaulting debtor allowing to safeguard the interests of the creditors.

3. Review of the decision concerning security

Upon application by the debtor to the competent court of the Member State of origin, the decision concerning the security pursuant to Art. 12 EAPO Reg. (*see §(I)(B)(5)(iii) above*) shall be reviewed on the ground that the conditions or requirements of that Article were not met. The court may require the creditor to provide security or additional security, under penalty of revocation or modification of the EAPO (cf. Art. 33(2) EAPO Reg.).

The request to review the decision concerning security can be obtained only if an application for review has been made to the court who granted the order.
Art. 1447/1. [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, nor the IBAN, BIC code or other bank number by which the bank can be identified, the debtor may request the court before which the application for a garnishment is filed to request the authority responsible for obtaining information referred to 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.

[15] See Practical Directory of Belgian Law, Compl. VIII, v° Saisie-arrêt bancaire, Bruylant, 1995, p. 823, n° 55 : « *En principe, la saisie de l'un de ces comptes ne peut rendre indisponibles que la part du saisi dans la créance de solde vis-à-vis du banquier...En pratique, le banquier ignore quelle est cette part. Il doit donc respecter la saisie-arrêt pour la totalité du solde (indisponibilité et déclaration). Pour satisfaire à son devoir de discrétion professionnelle, il déclarera que le saisi est créancier « avec d'autres personnes » pour le montant saisie-arrêt. Il appartient aux cotitulaires non saisis de demander la mainlevée partielle de la saisie, en faisant la preuve de leur part dans la créance saisie-arrêtée* » ; E. DIRIX et K. BROECKX, Beslag, Story-scientia, 2001, p. 415, n° 712.

§ (2) 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 failure to obtain such information will jeopardize the further collection of his claim 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 he has 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. If the judge 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 fulfilled, with the exception of the mention, required by Article 1447, paragraph 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 the manner provided for in Article 555/1, § 2.][16]

Art. 1447/2. [1 § 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 abuse of the procedure for obtaining a protective attachment and to ensure compensation for any damage suffered by the debtor as a result of the protective attachment, insofar as the creditor is liable for such damage.

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 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 account

[16] <Inserted by L 2018-06-18/03, art. 194, 106; Effective: 01-01-2019>

information, the judge who requested the information shall order the release of that guarantee without delay.
Representation by a lawyer is not mandatory.
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).

4. Right to provide security in lieu of preservation

Upon application by the debtor the court that issued the EAPO may order the release of the funds preserved if the debtor provides to that court security in the amount of the Order, or an alternative assurance in a form acceptable under the law of Belgium and of a value at least equivalent to that amount (Art. 38(1)(a) EAPO Reg.).

According to art. 1419 BJC: "The order granting or refusing authorization for a protective attachment and the order granting or refusing to revoke such authorization shall be subject to the remedies provided for in Articles 1031 to 1034 of this Code[17].
(The garnishee may, in the event of a change in circumstances, request the modification or retraction of the order by summoning all parties to this end before the seizure judge).
The order of retraction shall be equivalent to a release.
The opposition must be lodged within one month of service of the decision on the opponent, according to art. 1034 BJC.
Any person who has not intervened in the case, in the same capacity, may oppose the decision which prejudices his rights, according to Art. 1033 BJC.
If the security is provided by the judge competent on the merit proceedings, the decision can be appealed, according to Art. 1050 BJC.

5. Rights of third parties

The right of a third party *to contest a EAPO* shall be governed by the law of the Member State of origin (Art. 39(1) EAPO Reg.).

[17] Art. 1031. An appeal against the order by the petitioner or by any intervening party shall be lodged within one month of notification, by means of a petition in accordance with the provisions of article 1026 and deposited at the registry of the appellate court.
Art. 1032. The petitioner or intervener may, where circumstances have changed and subject to the rights acquired by third parties, apply by petition to the court for the modification or withdrawal of the order he has made.
Art. 1033. Any person who has not intervened in the case, in the same capacity, may oppose the decision which prejudices his rights.
Art. 1034. Article 1125 is applicable to an opposition filed under article 1033. The opposition must be lodged within one month of service of the decision on the opponent.

According to 1449 BJC, on the first working day following the pronouncement of the order, the registrar shall notify, by judicial letter, the petitioner and the garnishee of a copy of the order and the petition.
The notification shall contain a reproduction of Articles 1451 to 1456 BJC and a warning to the garnishee that he shall comply with those provisions. Representation by a lawyer is not mandatory.

II. Incoming

When Belgium is the Member State of enforcement

A. Enforcement of the Preservation Order

1. Procedure for the enforcement and for the implementation of the Preservation Order

As a general rule, the EAPO shall be enforced in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State of enforcement (Art. 23(1) EAPO Reg.).

Account preservation is governed in Belgium by the BJC, Part 5, Title II, Chapter IV. (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.
If the claim of which the distrainor avails himself meets the conditions set out above, he may
address himself to a territorially competent judicial officer who will serve two successive summonses: the first summons (protective or enforceable) will be served to the third party
third party, in this case the bank (articles 1445, 1450, 1539 and 1540 of the BJC); the second notice of garnishment will be served on the garnishee who holds the account (Articles 1457 and 1539 BJC).

According to the EAPO Reg., a bank to which a Preservation Order is addressed shall implement it without delay following receipt of the Order or, where the law of the Member State of enforcement so provides, of a corresponding instruction to implement the Order (Art. 24(1) EAPO Reg.).

Seizure in the hands of a bank takes the form of garnishment under Belgian law. Like any seizure, the garnishment can be exercised as a precaution (articles 1445 to 1460 of the BJC) or as enforcement (article 1539 to 1544 of the BJC).
Art. 1445: Any creditor may, by virtue of authenticated or private instruments, seize by bailiff, as a precautionary measure, in the hands of a third party, the sums and effects which the latter owes to his debtor. In case of inaction of his debtor, the creditor can, by application of article 1166 of the Civil Code, form the same procedure.
The act of seizure shall contain the text of Articles 1451 to 1456 and a warning to the garnishee that he must comply with these provisions.
Art. 1446. Precautionary attachment may also relate to term, conditional or disputed claims belonging to the debtor.
Art. 1447. Whether or not there is a title, the judge may, on request, allow garnishment.

The petition, drawn up in three copies, shall contain, in addition to the particulars provided for in Article 1026, an indication of

(1) the full name, domicile, or in the absence of a domicile, the residence of the debtor and the garnishee

(2) the causes and the amount or valuation of the claim.

Art. 1448. The order shall state, on pain of nullity, the sums for which the seizure is made.

Art. 1449. On the first working day following the pronouncement of the order, the registrar shall notify, by judicial letter, the petitioner and the garnishee of a copy of the order and of the petition. The notification shall contain a reproduction of Articles 1451 to 1456 and a warning to the garnishee that he shall comply with those provisions.

Art. 1450. The petitioner may in addition and without delay have a copy of the petition and the order referred to in Article 1449 served by a bailiff.

Such service shall contain a reproduction of Articles 1451 to 1456 and a warning to the garnishee that he must comply with such provisions.

Art. 1451. Upon receipt of the writ of seizure, the garnishee may no longer divest himself of the sums or effects which are the subject of the seizure, under penalty of being declared purely and simply a debtor in respect of the causes of the seizure, without prejudice to damages to the party, where applicable.

Article 1411c, § 1 of the BJC stipulates that in the event of attachment, income from work or other activities as well as replacement income paid into the attached bank account shall be covered by the protective system of partial unavailability stipulated by article 1409, 1409a and 1410 of the BJC, during a period of thirty days from when these sums are credited to the current account.

In order to identify the protected income, a traceability system has been implemented that therefore establishes a relationship of unavailability or inaccessibility in the event of attachment of protected income credited to a current account opened at a banking (financial) institution.

Therefore, the various types of income must be labelled with a special code when they are paid into the bank account (salary, benefits etc.) so that they can be separated from other amounts credited to the current account. As for other paid amounts, these may be attached in full.

The codes that are to be used are as follows:

/A/ income from work and income of other kinds (e.g. rent)

/B/income from other activities and replacement income that may be attached partially (pensions, maintenance, pensions [sic], unemployment benefit, ESF benefits, incapacity benefit, insurance payments, pensions for accidents at work or occupational diseases etc.)

/C/ replacement income that is unavailable and inaccessible (family allowances, orphans' pensions, allowances paid to disable persons, social assistance etc.)

Therefore, this is an obligation that lies with the originator's bank to label the sums that it is paying with a special code, under penalty of criminal penalties (fines) in the event of oversight or fraud.

2. Limitations on the preservation

i. **Accounts immune from seizure.** The EAPO Reg. does not apply to bank accounts which are immune from seizure under the law of the Member State in which the account is maintained (Art. 2(3) EAPO Reg.).

Article 1410, paragraph 2, BJC specifies the claims which cannot in any case give rise to seizure, in particular family benefits and the minimum wage.
Trust accounts are not immune from seizure.
With regard to trust accounts (comptes de qualité/kwaliteitsrekeningen and comptes de tiers/derdenrekeningen), the following distinction should be made:
The debtor is the account holder
Notwithstanding Article 8/1 of the Mortgage Act (loi hypothécaire/Hypotheekwet), which explicitly acknowledges that some trust accounts which are mandatory under the law (i.e. 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 seizure 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 (Article 1452 of the 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 (Article 1445 of the BJC). The account preservation order must be issued to the account holder (= the trustee), not to the bank. This is because in this scenario, the bank has debts only vis-à-vis the account holder, not vis-à-vis the beneficiary.

ii. **Preservation of joint and nominee accounts.** Funds held in accounts which, according to the bank's records, are not exclusively held by the debtor or are held by a third party on behalf of the debtor or by the debtor on behalf of a third party, may be preserved under the EAPO Reg. only to the extent to which they may be subject to preservation under the law of the Member State of enforcement (Art. 30 EAPO Reg.).

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 attachment 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 (Article 1395 of the BJC).

iii. **Amounts exempt from preservation.** Amounts that are exempt from seizure under the law of the Member State of enforcement shall be exempt from preservation under the EAPO Reg. Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 of Art. 31 EAPO Reg. are exempted from seizure without any request from the debtor, the body responsible for exempting such amounts in that Member State shall, of its own motion, exempt the relevant amounts from preservation.

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

Request of the debtor. Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 of Art. 31 EAPO Reg. are exempted from seizure at the request of the debtor, such amounts shall be exempted from preservation upon application by the debtor as provided for by point (a) of Art. 34(1) EAPO Reg.

Request of the creditor. The creditor may apply to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for modification of the enforcement of the PO, consisting of an adjustment to the exemption applied in that Member State pursuant to Art. 31 EAPO Reg., on the ground that other exemptions have already been applied in a sufficiently high amount in relation to one or several accounts maintained in one or more other Member States and that an adjustment is therefore appropriate (Art. 35(4) EAPO Reg.).

3. Ranking of the Preservation Order

The EAPO shall have the same rank, if any, as an equivalent national order in the Member State of enforcement (Art. 32 EAPO Reg.).

There is no provision in the BJC that requires the precise designation of the debtor's bank account. More generally there is no provision in the BJC specific to bank seizures. Then, it is the bailiff who must verify the conditions for his intervention, set out in Art. 1413 -1415 BJC.
Because of the opaque nature of bank assets, it is de facto impossible for the bailiff to carry out any control over the object of the seizure.
to carry out any control on the object of the seizure. This question joins the theme of transparency of assets.
On the one hand, if the creditor seeks the authorization of the seizure judge to proceed with the seizure (article 1417 BJC), the creditor may have to complete the factual information that he or she to complete the factual information that he submits to the judge to justify his request.
On the other hand, if between the time of the seizure and the time of the distribution of the funds, the seizer's claim is increased, the latter may produce his claim up to the most recent amount.

4. Costs incurred by the banks

A bank shall be entitled to seek payment or reimbursement from the creditor or the debtor of the costs incurred in implementing a EAPO only where, under the law of the Member State of enforcement, the bank is entitled to such payment or reimbursement in relation to equivalent national orders.

Pursuant to Article 1454 of the BJC, the costs of the statement that must 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 Article 555/1, §2 of the BJC, 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 Article 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 Article 43(3) of the Regulation (see Article 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 Article 555/1, §2, subparagraph 6 of the BJC and laying down the conditions and arrangements for collection
(http://www.ejustice.just.fgov.be/eli/arrete/2019/04/22/2019030412/justel).
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 Articles 1447/1 and 1447/2 of the BJC and to information requests under Article 14 of the Regulation.

B. Means of communication: service and transmission of documents

1. Service on the debtor

Where the debtor is domiciled in Belgium that is not the Member State of origin, the competent authority that received the EAPO and the accompanying documents shall, without delay, take the necessary steps to have service effected on the debtor in accordance with the law of Belgium (Art. 28(3)) ([18]). Also, where the debtor is domiciled in Belgium and it is the only Member State of enforcement, the competent authority that received the EAPO and the accompanying documents shall initiate the service of such documents by the end of the third working day following the day of receipt or issue of the declaration showing that amounts have been preserved.

Authorities designated as competent to receive, transmit and serve the European Account Preservation Order and other documents are bailiffs (huissier de justice/gerechtsdeurwaarder), according to article 196 of the Act of 18 June 2018 laying

[18] Please consider that in this case the Member State in which the debtor is domiciled need not be the Member State of enforcement.

down various provisions on civil law and provisions to promote alternative forms of dispute resolution.
Under article 1445 of the BJC, a creditor who has a written document signed by the debtor may immediately signed by the debtor may immediately apply to a territorially competent judicial officer to proceed with the garnishment.

2. Transmission of documents

i. **Transmission**. Where the EAPO Reg. provides for transmission of documents in accordance with Art. 29 EAPO Reg., such transmission may be carried out by any appropriate means, provided that 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.

When the document is sent by registered letter with acknowledgement of receipt, if the addressee cannot be found at the address shown on the letter, a delivery notification is left at that address. In that case the letter may be collected from the place designated on the delivery notification or the place agreed between the postal service and the addressee within 15 days, not including the date of remittance.
When the document is served, the record of service must show the date of service (Article 43 of the BJC).
When the document is notified, Belgium uses a dual-date system.
The date applicable for the sender differs from the date applicable for the addressee of the document.
For the sender, the notification date is the date of dispatch.
Article 53 bis of the Belgian BJC states that, save as otherwise provided by law, the period for the addressee shall commence on the first day following the date on which the letter was delivered to their domicile, or their residence or elected domicile, as applicable[19].

ii. **Receipt**. The court or authority that received documents in accordance with paragraph 1 of Art. 29 EAPO Reg. shall, by the end of the working day following the day of receipt, send to the authority, creditor or bank that

[19] In particular, see:
Art. 1449. On the first working day following the pronunciation of the order, the clerk notifies, by court order, to the petitioner and to the garnishee, a copy of it and of the motion.
Art. 1450. The petitioning party may also and without delay cause a bailiff to serve a copy of the petition and of the order referred to in article 1449. This service contains the reproduction of articles 1451 to 1456 and the warning the garnishee that s/he must comply with these provisions.

transmitted the documents an acknowledgment of receipt, employing the swiftest possible means of transmission and using the standard forms.

The writ of attachment is served on the third party debtor, in this case the bank (Articles 1445 and 1539 BJC). If the seizure is precautionary and has been authorised by the seizure judge, the authorisation order is also served on the third party (Article 1450 BJC). Moreover, in order to make this order final by the end of the period for third-party proceedings (Article 1034 BJC), it may be served at the same time as the writ of notification of the attachment (1457 BJC).
3.1.3. Are alternative notifications allowed?
At the protective stage, instead of a writ of attachment, the creditor may ask the registry of the attachment judge who issued the authorisation order to notify the garnishee of that order (Article 1449 BJC). This possibility is rarely used in practice. The alternative methods provided for by the Proposal for a Council Regulation of 18 April 2002 are not allowed.

C. Remedies

1. Revocation or termination of the Preservation Order for lack of initiation of proceedings

If the court has not received proof of the initiation of proceedings within the time period referred to in paragraph 1 of Art. 10 EAPO Reg., the PO shall be revoked or shall terminate and the parties shall be informed accordingly (Art. 10(2) EAPO Reg.). Where the court that issued the Order is located in the Member State of enforcement, the revocation or termination of the Order in that Member State shall be done in accordance with the law of that Member State (Art. 10(2) second indent EAPO Reg.).

The revocation of the Preservation order is the result of the lack of the initiation of proceedings.
If the attachment judge refuses permission for precautionary attachment, the applicant (i.e. the claimant) may lodge an appeal against the decision with the Court of Appeal within a month. This is an "*ex parte*" procedure. If the attachment is allowed on appeal, the debtor has the right to institute third-party proceedings against the decision (see Article 1419 BJC).
If the attachment judge authorises precautionary attachment, the debtor or any other interested party may institute third-party proceedings against the decision. The deadline for doing so is one month and the proceedings are instituted at the court that issued the

decision. The court will then rule in an adversary procedure. Third-party proceedings do not normally have suspensive effect (see Articles 1419 and 1033 BJC).
Where precautionary attachment can be imposed without judicial authorisation, the debtor can appeal against it by applying to the attachment judge to lift the attachment (Article 1420 BJC). This is the procedure for opposing attachment and is dealt with as in interlocutory proceedings, if necessary in conjunction with the imposition of a penalty payment.
If there is a change in circumstances, either the attachee (by summoning all parties to appear before the attachment judges) or the attachment creditor or an intermediary (by means of an application) may apply to the attachment judge to amend or withdraw the attachment.

2. Over-preservation of funds

i. **Debtor**. Any funds held in the account or accounts indicated in the Order or held by the debtor with the bank indicated in the Order which exceed the amount specified in the Preservation Order shall remain unaffected by the implementation of the Order (cf. Art. 24(5) EAPO Reg.).

If the amount seized is greater than that mentioned in the order, the debtor must oppose the seizure by summons. The opposition is brought before the same judge who made the order, according to art. 1419 BJC.

ii. **Creditor**. By the end of the third working day following receipt of any declaration pursuant to Art. 25 EAPO Reg. showing over-preservation of funds, the creditor shall submit a request for the release to the competent authority of the Member State of enforcement in which the over-preservation has occurred (Art. 27(2) EAPO Reg.).

If, at the conservatory stage, a seizure has been made to secure an excessive amount of money,
the creditor may be ordered to pay damages for improper conduct.
Any dispute concerning the seizure itself may be submitted to the seizure judge (Article 1395
BJC). Any challenge by the garnishee to its own debt must be submitted to the judge of the merits (Articles 1456, paragraph 2 and 1542, paragraph 2 BJC).

3. Limitation or termination of the enforcement of the Preservation Order

Application of the debtor. Upon application by the debtor to the competent court or, where national law so provides, to the competent enforcement authority in the Member State of enforcement, the enforcement of the EAPO in that Member State shall be limited or terminated on the grounds listed in Art. 34(1) EAPO Reg. or terminated if it is manifestly contrary to the public policy (ordre public) of the Member State of enforcement (Art. 34(2) EAPO Reg.).

According to art. 1460 BJC, the order shall be deemed null and void if it is not served by a bailiff's writ on the seized debtor and the garnishee before the expiry of the period of validity of the previous seizure.
Art. 1425. Except in the case of suspension provided for in article 1493, the protective seizure shall be valid for three years from the date of the order, or, if there is no order, from the date of the writ. However, the judge authorizing the seizure may reduce the duration of this period.
On the expiry of the three-year period or of the period reduced by application of the preceding paragraph, the seizure shall cease to have effect as of right, unless it has been renewed.
Art. 1426. A creditor who establishes that for just reasons the seizure must be maintained may obtain authorization to renew it.
Renewal shall be requested by a reasoned request, presented under their signature by a lawyer or a bailiff, to the judge who authorized the seizure.
A decision on the request shall be taken within the time limit provided for in Article 1418.
The order refusing renewal shall not be subject to appeal.
Art. 1427. An order granting renewal shall be deemed null and void if it is not served on the party seized before the expiry of the period of validity of the previous seizure.
Art. 1428. The duration of the renewal is determined by the judge who authorizes it. The new period shall begin on the expiry of the period of validity of the seizure which has been renewed.

ii. **Joint application.** The debtor and the creditor may, on the ground that they have agreed to settle the claim, apply jointly to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for termination or limitation of the enforcement of the Order (Art. 35(3) EAPO Reg.).

Parties that want to apply for termination or limitation of the enforcement of the EAPO under Art. 35 (3) may be submitted to the seizure judge (Article 1395 BJC). Any challenge by the garnishee to its own debt must be submitted to the judge of the merits (Articles 1456, paragraph 2 and 1542, paragraph 2 BJC). Representation by a lawyer is not mandatory.

4. Adjustment to the exemption of amounts

The creditor may apply to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for modification of the enforcement of the EAPO, consisting of an adjustment to the exemption applied in that Member State pursuant to Art. 31 EAPO Reg., on the ground that other exemptions have already been applied in a sufficiently high amount in relation to one or several accounts maintained in one or more other Member States and that an adjustment is therefore appropriate (Art. 35(4) EAPO Reg.).

The creditor can always start an opposition for modification of the enforcement of the EAPO.The opposition must be lodged within one month of service of the decision on the opponent, according to art. 1034 BJC.

5. Right to provide security in lieu of preservation

Termination of enforcement ordered in the Member State addressed. Upon application by the debtor the competent court or, where national law so provides, the competent enforcement authority of the Member State of enforcement may terminate the enforcement of the EAPO in the Member State of enforcement if the debtor provides to that court or authority security in the amount preserved in that Member State, or an alternative assurance in a form acceptable under the law of the Member State in which the court is located and of a value at least equivalent to that amount (Art. 38(1)(b) EAPO Reg.). The provision of the security in lieu of preservation shall be brought to the notice of the creditor in accordance with national law (Art. 38(2) EAPO Reg.).

According to Art. 1447/2 BJC:
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 after the filing of the petition, require the creditor to provide security in an amount sufficient to prevent abuse of the procedure for obtaining a protective attachment and to ensure compensation for any damage suffered by the debtor as a result of the protective attachment, insofar as the creditor is liable for such damage.

In the case referred to in Article 1447/1, § 2, the court shall, before authorising the protective attachment, and at the latest by the end of the tenth working day following the filing of the petition, require the creditor to provide the security referred to in the first paragraph, unless the court considers that, in view of the circumstances of the case, such provision of security is inappropriate.

§ (2) The court shall, where appropriate, determine such security and, where necessary, fix the terms thereof.

§ (3) As soon as the creditor has provided the required security, if any, and as soon as the judge has the information he has requested in accordance with Article 1447/1, the judge shall give his decision on the application for a protective attachment without delay.

§ (4) If, in accordance with paragraph 1, security has been provided and the application for garnishment is dismissed in its entirety due to the unavailability of account information, the judge who requested the information shall order the release of such security without delay.

i. **Release of funds ordered in the Member State of origin**. In the event that the court that issued the EAPO ordered the release of the funds preserved upon security provided by the debtor (Art. 38(1)(a) EAPO Reg.)(*see §(I)(D)(4) supra*)

The bailiff will serve the official copy of the act of release together with a translation into French, Dutch or in German, if necessary, depending on which region the debtor lives in.

6. Rights of third parties

The right of a third party *to contest the enforcement of a EAPO* shall be governed by the law of the Member State of enforcement (Art. 39(2) EAPO Reg.).

Under Belgian law, a third party can exercise a third-party objection also to contest an EAPO. The opposition (recourse to the court that rendered a decision by default), the appeal (recourse to a higher court for annulment or reformation), the appeal in cassation (extraordinary recourse against decisions rendered at last instance) and the civil petition (extraordinary recourse for retraction of a decision that has become res judicata) can only be lodged by a person who was party to the case.
The third-party opposition is the extraordinary remedy that allows a person who was not a party to the case to have a decision that prejudices his rights retracted by the court that rendered it (art. 1122 to 1133 BJC) It allows a third party to challenge a decision, both in terms of the probative force of its instrument s(the authentic act that constitutes the judgment being proof, until it is registered as false, vis-à-vis the parties as well as third parties, of the particulars that it contains when they have been ascertained and verified by the judge, such as the identity of the parties, their addresses, certain facts, statements made at the bar, etc.), and in terms of its evidential value (the authentic act that constitutes the judgment being proof, until it is registered as false, vis-à-vis the parties as well as third parties, of the particulars that it contains when they have been

ascertained and verified by the judge). The decision constitutes a legal presumption that can be rebutted with respect to third parties. The exercise of third-party opposition is, however, optional for the third party, who may prefer to counter this legal presumption by providing proof to the contrary, by all legal means, during the subsequent proceedings in which the decision is opposed to him .
The third party opposition does not have a suspensive effect as of right, the judge before whom the contested decision was produced being able, depending on the circumstances, to "disregard or suspend" (art. 1126 BJC). On the other hand, at the enforcement stage, "the judge in charge of seizures may, upon summons at the request of the party who lodged the third party opposition and all other parties called upon, provisionally suspend, in whole or in part, the enforcement of the contested decision" (art. 1127 BJC).
The court which accepts the third party opposition annuls the contested decision in whole or in part, but only with regard to the third party (art. 1130, para. 1 BJC). The contested decision thus remains between the parties to the original proceedings. As an exception, however, the annulment will take place with respect to all the parties insofar as the execution of the contested decision would be incompatible with the execution of the annulment decision (art. 1130, para. 1 BJC) i.e. in the case of indivisibility (art. 31 BJC). Since the third party opposition only seizes the court to the extent of the right of the third party, this court cannot rule anew and in its entirety on the initial dispute (absence of devolutive effect), except, teaches a part of the doctrine, in the case of indivisibility and when the third party invokes a right of his own or a fraud (infra, no. 20), in which case the recourse would also seize the court of a new question, namely, the existence or scope of this right of his or her own, or the existence of the fraud. The dispute may also, if necessary, evolve between the original parties and the third party in the context of the third party opposition by the introduction of incidental claims. Finally, it should be noted that, in the context of a third party opposition lodged against an order on a unilateral motion against a third party, the third party opposition reconstitutes the dispute in a contradictory manner, so that it can be considered as having a devolutive effect.