



The Legal 500 Country Comparative Guides

Belgium

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

Contributor

Janson



Dominique Blommaert

Partner | d.blommaert@janson.be

Didier Bracke

Partner | d.bracke@janson.be

Jens Benoot

Counsel | j.benoot@janson.be

Charles Buytaert

Counsel | c.buytaert@janson.be

This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Belgium.

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BELGIUM

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS



1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

As Belgium is an EU member state, the following EU Regulations apply:

- Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation), which applies to Denmark and to proceedings commenced before 10 January 2015;
- Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast Regulation), which applies to all EU member states other than Denmark regarding proceedings commenced on or after 10 January 2015.

Furthermore, the following regulations may be relevant for recovering debts or enforcing judgments and claims:

- Regulation (EC) 1896/2006 creating a European order for payment procedure (Payment Regulation)
- Regulation (EC) 805/2004 creating a European Enforcement Order for uncontested claims (EEO Regulation)
- Regulation (EU) 655/2014 on establishing a European Account Preservation Order procedure (EAPO Regulation)

In terms of insolvency, the following, the following EU Regulations apply:

- Regulation (EC) 1346/2000 on insolvency proceedings (Insolvency Regulation)

applicable for insolvency matters until 25 June 2017

- Regulation (EU) 848/2015 on insolvency proceedings (Insolvency Recast Regulation) applicable for insolvency matters as of 26 June 2017

As mentioned above, Belgium is a EU member state which implies that judgements rendered in other EU member states are recognized and enforceable. The Brussels I Recast Regulation provides for the mutual enforcement and recognition of judgements rendered by courts in EU member states.

In addition, Belgium is a party to several multilateral and bilateral conventions regarding the recognition and enforcement of foreign judgments, including most notably the 2007 Lugano Convention on jurisdiction and recognition and enforcement of judgments in civil and commercial matters, which applies to the EFTA states (Iceland, Norway and Switzerland, without Liechtenstein).

Other noteworthy conventions to which Belgium is a party are the:

- HCCH Convention on Civil Procedure of 1 March 1954
- Convention of 30 June 2005 on Choice of Court Agreements (Hague Choice of Court Convention)

As regards foreign judgements from non-member states of the EU, the Law of 16 July 2004 establishing the Code of Private International ("CPIL"), which is Belgian national legislation, applies save if international treaties and conventions or EU Regulations apply as they have preference over the CPIL.

2. What, if any, reservations has your

jurisdiction made to such treaties?

No reservations have to our knowledge been made regarding the application of the Regulations and conventions mentioned under 1.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

Outside the framework of the EU regulations and international conventions or treaties, foreign judgments will be recognized and be enforceable unless the application for recognition is refused on one of the grounds provided in art. 25 of the CPIL:

- Recognition would be incompatible with Belgian public policy;
- The rights of defence were violated;
- The judgment was obtained with the sole purpose of escaping the application of the law designated by the CPIL, in a matter in which the parties could not freely dispose of their rights;
- The judgment is not a final judgment;
- The judgment is incompatible with a domestic or foreign judgment;
- The foreign proceedings were commenced after Belgian proceedings were commenced which remain pending between the same parties and with the same subject matter;
- The Belgian courts had exclusive jurisdiction to hear the claim;
- The jurisdiction of the foreign court was based solely on the presence of the defendant or property without a direct connection with the dispute in the State to which that court belongs;
- Specific procedural errors were made regarding intellectual property rights that require registration;
- The foreign judgement relates to the validity, working, dissolution, or liquidation of company that had its main place of establishment in Belgium at the time the claim was made;
- The enforcement of a foreign judgement relating to insolvency proceedings would generate specific effects for third parties affected by the insolvency.

4. What basic criteria does a foreign judgment have to satisfy before it can be

enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

The basic criteria that a foreign judgement must have for it to be able to be enforced in Belgium may differ as to whether it concerns a EU or outside EU judgement.

EU judgements

Enforceable judgments rendered in EU member states are enforceable under the Brussels I Recast Regulation unless they meet one of the grounds for refusal. Under the CPIL Code, enforceable judgments rendered in non-EU member states are enforceable unless they meet one of the grounds for refusal.

For judgments rendered in EU member states, the grounds for refusal of recognition and enforcement are listed in article 45 of the Brussels I Recast Regulation. On the application of any interested party, the recognition of a judgment will be refused if:

- Recognition is manifestly contrary to public policy in the member state addressed;
- The judgment was rendered in default of appearance and the defendant was not served with the document that instituted the proceedings, or with an equivalent document, in sufficient time and in a way that enabled them to arrange for their defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible to do so;
- The judgment is irreconcilable with a judgment given between the same parties in the member state addressed;
- The judgment is irreconcilable with an earlier judgment given in another member state or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the member state addressed;
- The judgment conflicts with sections 3, 4 or 5 of Chapter II of the Brussels I Recast Regulation where the defendant was the policyholder insured or beneficiary of an insurance contract or the injured party, or a consumer or an employee;
- The judgment conflicts with the exclusive jurisdiction of another member state.

For judgments rendered in outside EU states, the relevant grounds for refusal will be set out in the applicable bi- or multilateral treaties. If there is no

applicable international treaty or convention, the grounds for refusal that are stated in the CPIL (see question 3).

Enforcement is not limited to merely money judgments. Other types of judgments, e.g. injunctions or declaratory judgments, can also be enforced.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Again, a distinction must be made between judgments rendered by local courts in EU member states, and outside EU judgments.

EU judgments

Pursuant to art. 39 of the Brussels I Recast Regulation, a judgment given in a EU member state which is enforceable in that member state, shall be enforceable in Belgium (as in any other member state) without any declaration of enforceability being required.

The procedure for enforcement in Belgium of judgments given in another EU member state, is governed by Belgian law, in accordance with art. 41 of the Brussels I Recast Regulation.

In principle, an enforceable judgment rendered in an EU member state is enforceable in the other EU member states without any declaration of enforceability or special procedure being required. The procedure for enforcement of foreign EU member state judgments is governed by the law of the addressed member state, and such judgments are enforced in the same way as domestic judgments.

A party seeking enforcement of a judgment rendered in another EU member state is not required to have a postal address or an authorised representative in the addressed member state, unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

To enforce a judgment rendered in another EU member state, the applicant must provide the competent enforcement authority with:

1. A copy of the judgment that satisfies the conditions necessary to establish its authenticity.
2. A certificate issued according to Article 53 of the Brussels I Recast Regulation that:

- certifies that the judgment is enforceable;
- contains an extract of the judgment; and
- contains relevant information on the recoverable costs of the proceedings and the calculation of interest, where appropriate.

To enforce a judgment rendered in another EU member state ordering a provisional or protective measure, the applicant must provide the competent enforcement authority with:

1. A copy of the judgment that satisfies the conditions necessary to establish its authenticity.
2. A certificate issued according to Article 53 of the Recast Brussels Regulation, containing a description of the protective measure and certifying that:

- the court has jurisdiction as to the substance of the matter; and
- the judgment is enforceable in the member state of origin.
- Proof of service of the judgment if the measure was ordered without the defendant being summoned to appear.

The competent enforcement authority can, where necessary, require the applicant to provide a translation or a transliteration of the contents of the certificate, if it is unable to proceed without such a translation.

The certificate issued according to Article 53 of the Brussels I Recast Regulation must be served on the person against whom the enforcement is sought before the first enforcement measure. The certificate must be accompanied by the judgment, if not already served on that person.

On application of the person against whom enforcement is sought, the enforcement of a judgment will be refused if one of the grounds for refusal is found to exist.

No security, bond or deposit (however described) is required from parties who apply in one EU member state for the enforcement of a judgment rendered in another EU member state on the ground that they are foreign nationals or not domiciled or resident in the addressed member state.

The exequatur procedure applies for judgments to which the Brussels I Recast Regulation is not applicable.

Outside EU judgements

The courts of first instance are, in principle, exclusively competent to hear an action for the recognition or enforcement of a foreign court judgment or foreign

authentic instrument. There are a few exceptions to this rule (see for instance Article 23 §1 and 121, PIL Code, in which cases the Family Court or Court of Enterprises may be competent). The locally competent court is the court of the domicile or habitual residence of the person against whom enforcement is sought or, if the person is not domiciled or habitually resident in Belgium, the court of the place of the enforcement of the judgment.

Alternatively, the courts of the domicile of the claimant or the courts of Brussels may be competent.

The CPIL refers to the enforcement procedure set out in the Code of Civil Procedure ("CCP").

The applicant must have a postal address or a representative in the territory of the enforcing court.

The enforcement proceedings for a foreign judgment are initiated by an ex parte application by the party requesting the foreign judgment (or foreign authentic instrument) to be recognized or declared enforceable. The judge must render their decision within a short period and this procedure does not differ depending on the nature of the judgment.

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

See question 5.

7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

EU judgements

No enforcement proceedings are necessary for judgments from EU member states and no further exequatur or declaration of enforceability is required. Such an enforceable judgment carries with it the power to use any protective measures that exist under the law of the addressed member state.

(see also question 5)

Outside EU judgements

For enforcement of outside EU judgements to which the CPIL is applicable, a Belgian judge must declare that the foreign judgment is enforceable. This enforcement procedure does not include a review of the

grounds/merits. The Belgian judge will verify whether the foreign judgment's enforcement would infringe the grounds for refusal that are exhaustively listed in Article 25, paragraph 1 of the CPIL.

Article 24 of the PIL Code stipulates that the following documents must be produced:

1. A certified copy of the foreign judgment that meets the conditions required for its authenticity according to the law of the state where it was rendered;
2. If the foreign judgment is a decision by default, the original or a certified copy of the document establishing that the act that introduced the foreign court proceedings, or equivalent document, was served or brought to the notice of the defaulting party in accordance with the law of the state where the foreign judgment was rendered;
3. Any document on the basis of which it can be established that the judgment is enforceable and has been served or brought to notice according to the law of the state where the foreign judgment was rendered.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

Proceedings to obtain **exequatur** of a foreign judgment are ex parte proceedings. The decision on a request for exequatur is generally issued within a short timeframe (one to two weeks).

The length of the **enforcement** as such depends on the nature of the assets and the extent to which the debtor opposes the enforcement. Proceedings before the attachment judge regarding enforcement are conducted in accordance with the rules of summary proceedings.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Pursuant to art. 40 Brussels I Recast Regulation, an enforceable judgment rendered in a EU member state carries with it the power to proceed to any protective measures which exist under the law of the member state addressed.

It is consequently possible to obtain certain forms of interim measures from the attachments judge (e.g. conservatory attachment, garnishment) in Belgium

pending enforcement of the foreign judgment, provided that all other requirements for those measures are met. In summary, the judgment creditor will need to establish (i) that his claim is certain, liquidated and due; and (ii) that there is urgency (e.g. risk of dissipation of assets).

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

Under Belgian law, the limitation period of a judgment is ten years, with a maximum of thirty years after extension. In other words, the applicant must initiate the enforcement within the first ten years period to obtain the extension. The limitation period may be shorter, if the limitation period is shorter in the foreign country.

11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

Enforcement of outside EU judgments can be challenged on the grounds provided in art. 25 §1 of the CPIL (see above, question 3).

Enforcement of EU judgements can be challenged on the grounds provided in article 45 of the Brussels Recast Regulation (see above question 4).

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

No, the Belgian judge will not conduct a review of the merits of the case.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Article 25 of the CPIL provides excessive jurisdiction grounds, where it is possible for the enforcing court to refuse enforcement because the jurisdiction of the foreign court infringes the exclusive competence of the Belgian courts to deal with a dispute. This will be the case for instance if there was an exclusive choice of jurisdiction clause or because the competence of the foreign judge was founded solely on the presence of the defendant or assets located in the foreign state, but without any direct relationship with the dispute.

Under the Brussels I recast Regulation, the jurisdiction of the court of origin cannot be questioned. Jurisdiction can only be questioned if the judgment either conflicts with (i) jurisdiction in matters relating to insurance, consumer contracts or individual employment contracts, where the defendant was the insured/beneficiary, injured party, consumer or employee, or (ii) in its assessment of the grounds of jurisdiction, the court will be bound by the findings of fact on which the court of origin based its jurisdiction.

The enforcing court cannot review the judgment. However, exorbitant grounds will be considered as a ground for refusal.

There are no explicit rules on this in the CPIL or Brussels I Recast Regulation with regard to recognition and enforcement of judgments (only with regard to jurisdiction, see Article 26.1 of the Recast Brussels Regulation) in terms of voluntary acknowledgement. If the defendant appeared voluntarily before a foreign court or did not challenge the jurisdiction of the foreign court, it will not be possible to invoke exorbitant grounds of jurisdiction as a ground for refusal before the enforcing court.

Both the CPIL provide that a foreign judgement will not be recognize if it goes against the public order of Belgium (CPIL) or against the public order of the seized EU member state (Brussels I Recast Regulation).

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

Again, a distinction must be made between EU and outside EU judgements.

The manner in which the service of the writ must be performed in the country of origin is not listed in the CPIL or the CCP as a separate ground for refusing the recognition or enforcement of a foreign judgment. However, if the rights of the defense were violated, enforceability can be challenged.

Under the Brussels I Recast Regulation, there is no enforcement procedure. However, to enforce a judgment rendered in another EU member state ordering a provisional or protective measure, the claimant must provide the competent enforcement authority with proof of service of the judgment if the measure was ordered without the defendant being summoned to appear.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

Judgments issued by courts of EU member states are automatically recognized, no further exequatur proceedings are required.

Recognition of outside EU judgments can only be refused on the limitative grounds provided in art. 25 §1 of the CPIL.

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

See questions 3 and 4.

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

As regards outside EU judgements, it should be noted that the judgment must be enforceable in the state where the decision was rendered. Whether it is final (in the sense that the judgment can no longer be appealed/opposed) is not relevant, as long as it is enforceable.

As regards EU judgements, to enforce in an EU member state a judgment rendered in another EU member state ordering a provisional or protective measure, the applicant must provide the competent enforcement authority with a certificate issued according to Article 53 of the Brussels I Recast Regulation, containing a description of the measure and certifying that:

- The court has jurisdiction as to the substance of the matter.
- The judgment is enforceable in the EU member state of origin.

The most essential element of the judgment is that it must be enforceable in the country where it was rendered. Whether it is only enforceable when it is final (in the sense that the judgment can no longer be appealed/opposed) depends on the law of that specific country. Therefore, the effect of pending appeal proceedings has effect when it prevents the judgment from being enforceable under the law of the country in which it was rendered.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

Pursuant to article 1029 of the CCP, the decision on enforceability is in principle provisionally enforceable, notwithstanding appeal, unless stated otherwise. By means of derogation however, only measures of a conservatory nature can be ordered against the property of the party against whom enforcement is sought, during the period within which a recourse may still be lodged against decisions authorising enforcement, and this until such recourse has been decided. The decision authorising enforcement entails leave to take such measures.

The decision on enforceability can be appealed. article 1031 of the CCP states that such an appeal, by either the applicant or by any intervening party, must be brought within one month of its notification, by an application complying with the provisions of article 1026 CCP, and lodged at the Registry of the Court of Appeal.

Based on article 1033 CCP, a third party may also oppose against a decision adversely affecting its rights. Article 1034 of the CCP states that this opposition must be lodged within one month after the decision is notified to the third party. In accordance with article 1125 of the CCP such third-party, proceedings must be brought, with summons to all parties, before the court that delivered the contested decision. If the decision on the opposition filed by the third party is one rendered in first instance, an appeal can be lodged. However, articles 1131 of the CCP provides that this is not possible if the contested decision itself was rendered on appeal. In that case, only a more limited appeal is possible before the Supreme Court ("Hof van Cassatie"/"Court de Cassation").

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

Interest depends on what is determined in the foreign judgment, but it is possible for interest to be granted.

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

There is no requirement for the conversion of a foreign currency into the local currency in the (enforcement) judgment itself.

Article 562 of the CCP only provides that the foreign currency must be converted into Euros at the highest exchange rate on the date of payment.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

The applicant must pay the bailiff's fees and the court fees which amount to about EUR 350.

The attorney's fees are charged on basis the work that was carried out, following the Bar regulations. The fee for a straightforward application would be at least EUR 1,500.

The court expenses are recoverable. The necessary costs for translation should be recoverable but some Courts still reject claims their recovery. The lawyer's fees are not recoverable with the exception of the lawyer proceedings costs that are governed and of which the amounts are set forth by Royal Decree.

Unless a treaty is applicable (which is the case for almost every civilized country) the defendant may ask the judge in accordance with article 851 of the CCP to oblige the applicant to provide security for the costs.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third-party funding is not regulated in Belgium. Moreover, as a civil law jurisdiction, the concepts of champerty and maintenance are not part of the Belgian legal framework. Therefore, there is no prohibition on litigation funding.

Third-party funders generally are not a party to the proceedings they are funding. A court therefore cannot order the funder to pay costs to the adverse party, and the defendant will not have a direct claim against the funder. Moreover, there is no obligation under Belgian law to disclose the existence of third-party funding to the court or the adverse party. As a result, the adverse party and the court may not even be aware that the claimant is benefitting from litigation funding.

The litigation funding agreement can provide however that the funder will cover its client's adverse cost risk, in which case the funded client will have a claim against the funder to cover such costs.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

To our knowledge there are no changes to the applicable enforcement laws under consideration.

24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

Yes, Belgium is a signatory to the Hague Choice of Courts Convention 2005.

25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

On 12 July 2022, the European Council has approved the accession of the European Union to the Hague Judgments Convention 2019. Upon its entry into force, Belgium (as well as all other EU member states except Denmark) will be bound by the convention.

Contributors

Dominique Blommaert
Partner

d.blommaert@janson.be



Didier Bracke
Partner

d.bracke@janson.be



Jens Benoot
Counsel

j.benoot@janson.be



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