

## Belgium

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### 1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

The basic criteria and enforcement procedure depend on the origin of the judgment.

#### **A judgment from an EU Member State**

For the purposes of Regulation (EU) 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), a judgment is any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by a court officer.

Under Regulation (EU) 1215/2012, judgments from the courts of the EU Member States are enforceable in Belgium without an exequatur or a declaration of enforceability. The judgment creditor must produce (a) a copy of the judgment that satisfies the conditions necessary to establish its authenticity, (b) the standard certificate (prescribed by the Regulation) certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest, and (c) a translation (when requested in accordance with the Regulation). On this basis, a judgment by a court of another EU Member State should be enforced in Belgium under the same conditions as a judgment given in the Belgian courts.

There are a limited number of grounds on the basis of which, following the debtor's application, the enforcement of a judgment may be refused. This includes the situation in which (a) the recognition is manifestly contrary to Belgian (international) public policy; (b) there has been a violation of due process; (c) the judgment is irreconcilable with a Belgian judgment given between the same parties; (d) 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; or (e) the judgment conflicts with certain grounds for (exclusive) jurisdiction defined in the Regulation.

#### **A judgment from Iceland, Norway and Switzerland (Lugano Convention)**

A judgment given in Iceland, Norway or Switzerland and enforceable in the state of origin, shall be enforced in Belgium when, on the application of the judgment creditor, it has been declared enforceable (in Belgium) by virtue of the 2007 Lugano Convention.

For the purposes of the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, ‘judgment’ means any judgment given by a court or tribunal of a state bound by this Convention, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by a court officer.

The creditor should file an *ex parte* application with the tribunal of first instance of the place of enforcement, together with (a) a copy of the judgment that satisfies the conditions necessary to establish its authenticity, (b) the standard certificate prescribed by the Convention confirming that the judgment is enforceable, and (c) a translation (when requested in accordance with the Convention). The judgment shall be declared enforceable immediately on completion of the formalities without any review of the grounds for refusal.

Either party (including the state against whom enforcement is being sought) may appeal the ensuing decision with the court of appeal. The appeal period is one month from the date of service. If the appealing party is domiciled in a Lugano Convention State other than Belgium, then the time period for appealing is two months from service. No extension of time may be granted on account of distance. The appeal proceedings are adversarial.

The court of appeal may not review the judgment’s substance and may refuse or revoke a declaration of enforceability only in a limited number of situations, i.e. where (i) the recognition of the judgment is manifestly contrary to public policy in Belgium, (ii) in the event of a default judgment, the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him/her to arrange for his/her defense (unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him/her to do so); (iii) the judgment is irreconcilable with a Belgian judgment given in a dispute between the same parties; (iv) the judgment is irreconcilable with an earlier judgment given in another Lugano Convention 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 Belgium; (v) the judgment conflicts with certain grounds for (exclusive) jurisdiction defined in the Convention.

### **A judgment from the UK**

Belgium entered into some bilateral conventions regarding the enforcement of judgments, most of which have lost importance, given the multilateral instruments above. The most relevant bilateral convention is the one with the UK, which has regained relevance after Brexit.

The principles of the 2 May 1934 Convention between Belgium and the UK for the Reciprocal Enforcement of Judgments apply to the enforcement of a UK court judgment in Belgium. This Convention takes precedence over the Hague Choice of Court Convention 2005 as long as the judgment is not recognised to a lesser extent than under the Hague Convention 2005. In any event, there are no *a priori* objections against enforcing a UK court judgment in Belgium.

Under the 1934 Convention 'judgment' refers to any decision of a court however described (judgment, order and the like) by which the rights of the parties are finally determined. The Convention applies to judgments in civil and commercial matters, including certain judgments for the payment of a sum of money as compensation upon the claim of an injured party appearing as a 'civil party' in criminal proceedings.

The judgment creditor should introduce an *ex parte* application and produce an original or certified copy of the judgment to certify its authenticity, which includes full particulars regarding the proceedings and the causes of action for which it was given. Although it is not specified in the 1934 Convention that a certified translation is required, it is advisable to include an informal (unofficial) translation into the language used in the relevant Belgian court.

The court may refuse to declare the judgment enforceable in Belgium if (a) the UK courts did not have jurisdiction to decide on the matter; (b) the judgment was given in default and the defendant did not acquire knowledge of the proceedings in a reasonably sufficient time to act upon it; (c) the judgment is contrary to Belgian public policy; (d) the subject matter of the case was already dealt with by the Belgian courts between the same parties; (e) the judgment has been obtained by fraud; (f) the judgment was given against a person who was entitled to immunity from the jurisdiction from the UK courts; (g) if the defendant proves that an appeal, or an opposition or a cassation has been introduced; (h) the defendant proves that the judgment debt has been wholly satisfied; or (i) the right to enforce the judgment debt is not vested in the person by whom the application is made.

### **A judgment enforceable under the Hague Conventions**

For the purpose of the following Hague Conventions, 'judgment' means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits that may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.

#### *The Hague Convention of 30 June 2005 on Choice of Court Agreements*

A judgment given by a court of a contracting state (for an overview of contracting states, see <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98>) designated in an exclusive choice of court agreement must be recognised and enforced in Belgium without any review of the merits, unless one of the grounds for refusal listed in the Convention applies. These grounds include cases where (a) the agreement was null and void under the law of the State of the chosen court (unless the chosen court has determined that the agreement is valid); (b) a party lacked the capacity to conclude the agreement under the law of the requested state; (c) the document that instituted the proceedings or an equivalent document, including the essential elements of the claim, (i) was not notified to the defendant in sufficient time and in such a way as to enable him/her to arrange for his/her defence, unless the defendant entered an appearance and presented his/her case without contesting notification in the court of origin, provided that the law of the state of origin permitted notification to be contested; or (ii) was

notified to the defendant in the requested state in a manner that is incompatible with fundamental principles of the requested state concerning the service of documents; (d) the judgment was obtained by fraud in connection with a matter of procedure; (e) recognition or enforcement would be manifestly incompatible with the public policy of the requested state, including situations where the specific proceedings leading to the judgment were incompatible with that state's fundamental principles of procedural fairness; (f) the judgment is inconsistent with a judgment given in the requested state in a dispute between the same parties; or (g) the judgment is inconsistent with an earlier judgment given in another state between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested state.

The party seeking recognition or applying for enforcement must file an *ex parte* application and produce – (a) a complete and certified copy of the judgment; (b) the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence; (c) if the judgment was given by default, the original or a certified copy of a document establishing that the document that instituted the proceedings or an equivalent document was notified to the defaulting party; (d) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the state of origin; (e) in the event of a judicial settlement, a certificate of a court of the State of origin that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the state of origin.

In accordance with the declaration made by the EU, the Convention does not apply to insurance contracts, except as specifically provided for in that declaration.

*The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*

This convention entered into force on 1 September 2023 between Belgium (through its EU membership) and Ukraine. The Convention aims to create a common framework for cross-border recognition and enforcement of court judgments in civil or commercial matters among the countries that are party to the convention (for an overview of contracting states, see (<https://www.hcch.net/en/instruments/conventions/status-table/?cid=137>)). It does not apply to revenue, customs, administrative or other excluded matters, such as family law, intellectual property, defamation or sovereign debt restructuring through unilateral state measures.

A judgment given by a court of one contracting state must be recognised and enforced in Belgium, without any further review of the merits, if one out of a list of requirements is met, e.g. if the judgment debtor was habitually resident or had its principal place of business in the state of origin of the judgment at the time that the person became a party to the proceedings; if the judgment ruled on a contractual obligation and was given by a court of the state in which performance of that obligation took place or should have taken place in accordance with the agreement between the parties or the law applicable to the contract; or the judgment ruled on a non-contractual obligation arising from death, physical injury, damage to or loss of tangible property, and the act or omission directly causing such harm occurred in the state of origin, irrespective of where that harm occurred.

Recognition or enforcement may be refused on the basis of a list of grounds, including public policy, due process, inconsistency with a prior judgment, and fraud.

The party seeking recognition or applying for enforcement must file an *ex parte* application and produce (a) a complete and certified copy of the judgment; (b) if the judgment was given by default, the original or a certified copy of a document establishing that the document that instituted the proceedings or an equivalent document was notified to the defaulting party; (c) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the state of origin; (d) in the event of a judicial settlement, a certificate of a court (including that of a court officer) of the state of origin stating that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the state of origin.

### **A judgment from any other state**

A judgment by the courts of any state that is not a party to the conventions above and any judgment from the courts of any state that is a party to the conventions above, but which does not fall within the scope of the (se) relevant convention(s) can be declared enforceable in Belgium on the basis of the Code of Private International Law. For this purpose, the Code refers to the term 'judicial decision', meaning the decisions made by an authority exercising jurisdiction.

To obtain a declaration of enforceability, the judgment debtor should file an *ex parte* application with the court of first instance of the judgment debtor's domicile or habitual residence. If the debtor does not have his/her domicile or habitual residence in Belgium, then the court of the place of enforcement has jurisdiction. The applicant must elect domicile in the jurisdiction of the court. The court must give its decision within a short period of time.

With its application, the judgment creditor should produce (a) a copy of the judgment that, under the law of the state where it was made, satisfies the conditions necessary for its authenticity; (b) in the case of a judgment rendered *in absentia*, the original or a certified copy of the document proving that the document that instituted the proceedings or an equivalent document was served on the defaulting party under the law of the state in which the judgment was made; and (c) any document proving that the judgment is enforceable and has been served in accordance with the law of the state in which it was made.

Under no circumstances may the foreign judgment be reviewed as to its substance. The judgment may only be recognised or declared enforceable if it does not violate the conditions set out in the list of grounds for refusal. This implies that the judgment shall not be recognised or declared enforceable if (a) the consequence of the recognition or of the declaration of enforceability would be manifestly incompatible with public policy (in assessing this incompatibility, account should be taken in particular of the extent to which the case is connected with the Belgian legal order and of the gravity of the consequences thus caused); (b) the rights of the defense have been violated; (c) the judgment has been obtained solely to escape the application of the law designated by this law, which is in a matter where the parties cannot freely dispose of their rights; (d) it is still subject to an ordinary appeal under the law of the state in which it was rendered; (e) it is incompatible with a decision rendered in Belgium or with a decision

	<p>previously rendered abroad that can be recognised in Belgium; (f) the claim was brought abroad after the initiation in Belgium of a claim that is still pending between the same parties and with the same subject matter; (g) the Belgian courts had exclusive jurisdiction to hear the claim; (h) the jurisdiction of the foreign court was based exclusively on the presence of the defendant or assets without any direct connection with the dispute in the state to which that court belongs; (i) the recognition or declaration of enforceability would be contrary to a limited number of specific grounds for refusal regarding natural persons, family and matrimonial matters, intellectual property rights, company and insolvency law related matters.</p>
<p><b>2.</b></p>	<p><b>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</b></p>
	<p>In Belgium, there are no specific notice provisions concerning the enforcement against a foreign state.</p> <p>Service of judicial acts against a state is done through diplomatic channels. Additionally, as with service against any other debtor, service against the foreign state occurs, depending on the location of the recipient, by virtue of (i) Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (for service within the EU), (ii) the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (for service in Member States), or (iii) the Belgian Judicial Code (for service in any other state). In practice, bailiffs tend to organize service through several channels concomitantly to ensure its success.</p> <p>Belgian law does not require the judgment creditor to inform or notify the Belgian authorities of its intention to enforce against a foreign state. Nevertheless, the Belgian authorities (especially the Ministry of Foreign Affairs) have voluntarily intervened in a limited number of proceedings in the Belgian courts to support the debtor state and to ensure compliance with the diplomatic and state immunity regimes.</p> <p>As set out below, any attachment against a foreign state requires prior court approval.</p>
<p><b>3.</b></p>	<p><b>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</b></p>
	<p>Obtaining an exequatur (declaration of enforcement) of a foreign judgment is not considered as infringing upon sovereign immunity. Sovereign immunity is at stake at the stage of the actual enforcement only, i.e. when the creditor is actually attaching the debtor's property (Brussels 10 March 1993, <i>JT</i> 1994, 787).</p> <p><b>General immunity regime</b></p>

The 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property (UN Convention) has not entered into force. In 2015 Belgium enacted a legal provision (article 1412*quinquies* of the Judicial Code) corresponding in substance to the UN Convention.

Subject to the application of mandatory supranational and international provisions, the property of a foreign state located in the territory of Belgium, including bank balances held or managed there by that foreign power, in particular in the performance of the duties of diplomatic representations of the foreign power or its consular posts, its special missions, its representations to international organisations or delegations to organs of international organisations or to international conferences, shall not be subject to attachment (Article 1412*quinquies*, par. 1 of the Judicial Code).

However, the principle of immunity from enforcement enjoyed by a foreign state in Belgium is not absolute. Article 1412*quinquies* of the Judicial Code provides for exceptions and the current trend is for the immunity principle to be construed less absolutely by taking into account Article 6 of the European Convention on Human Rights, which has enshrined the right to enforcement. In this context and especially regarding employment disputes, it has been held that proportionality requires the principle of immunity to be tested in each case individually 'in the light of the particular circumstances of the case' against the fundamental right under Article 6 ECHR (Cass. 21 December 2009, RW 690-692; E. DIRIX, *Beslag*, 2018, 167).

A foreign state may waive immunity. A waiver needs to be express. Except for assets covered by diplomatic immunity, such a waiver does not have to be specific (i.e. the waiver should not specifically indicate a certain asset to be enforced against) (Constitutional Court n° 48/2017 of 27 April 2017).

Furthermore, a creditor may enforce against assets used for other than non-commercial purposes. Therefore, the purpose for which an asset is used is the central criterion to define the scope of the immunity enjoyed by a foreign state. Goods that are affected to commercial use are not excluded from enforcement measures. The affectation of the assets of a foreign power is assessed on the basis of all the concrete circumstances of the case (Brussels 29 June 2021, *b-Arbitra* 2022/1, 83).

For a more detailed overview of assets that can be seized and the relevant procedure, please see the answer to question 6. below.

### **Specific immunity regimes**

#### *Diplomatic immunity*

By virtue of the 1961 Vienna Convention on Diplomatic Relations no attachment or coercive measure may be applied to goods employed in the operation of a diplomatic mission, unless the relevant State expressly permits coercive measures to be taken regarding the relevant asset or (part of the) category of assets.

The Belgian Supreme Court has held that the judgment that, without establishing that the amounts seized were used for purposes other than the operation of the diplomatic mission of the foreign state, decides that a general waiver of immunity from

enforcement may also apply to the property of the state's diplomatic mission, including its bank accounts, without requiring that state to expressly and particularly waive immunity regarding those goods, will violate the 1961 Vienna Convention and disregard the rule of customary international law *ne impediatur legatio* (Cass. 22 November 2012, AR nr. C.11.0688.F).

#### *Cultural objects*

By virtue of article 1412<sup>ter</sup> of the Belgian Judicial Code and *without* prejudice to mandatory supranational provisions, cultural objects (i.e. objects of artistic, scientific, cultural or historical interest) owned by a foreign state (or any subdivision or decentralized administration) may not be subject to seizure when such objects are located in the territory of Belgium for a public and temporary exhibition.

#### *Assets of central banks*

By virtue of article 1412<sup>quater</sup> and subject to the application of mandatory supranational provisions, balances of any kind, including foreign exchange reserves, held or managed in Belgium by foreign central banks for their own account or for the account of third parties may not be subject to attachment. However, a creditor in possession of an enforceable title may, by application to the attachment judge, request authorization to attach such assets on condition that he/she demonstrates that these assets are intended exclusively for a private economic or commercial activity (Antwerp 11 February 2019, *P&B* 2021/3, 128).

#### *Funds earmarked for development cooperation*

By virtue of Article 11<sup>bis</sup> of the Belgian Act of 25 May 1999 on Belgian international cooperation, the amounts and goods intended for Belgian international cooperation, as well as the amounts and goods intended for other Belgian official development assistance - other than that of Belgian international cooperation - may not be subject to attachment or transfer.

#### *Clearing institutions/Euroclear*

Several provisions under Belgian law explicitly prohibit a creditor from levying a third-party attachment in the hands of a clearing institution, such as Euroclear. In this regard, reference can be made to article 7:39 of the Belgian Code on Companies and Associations; article 9 of the Act of 28 April 1999 on the conversion of the Directive 98/26/EC of 19 May 1998, and article 11 of the Royal Decree n° 62 dated 10 November 1967. The basis for this prohibition is not the sovereign immunity regime, but rather the immunity the clearing institution enjoys.

Even though a third-party attachment in the hands of a clearing institution (Euroclear) would fail, this does not prevent the creditor (provided that the immunity regime is complied with) from proceeding to a third-party attachment in the hands of the intermediary (most likely a bank) where the judgment debtor (in our case, the state) (initially) deposited the relevant assets.

#### *Vulture funds*

	<p>Under the Act of 12 July 2015 (hereafter the ‘Act’), the Belgian legislator attempted to curb the activities of so-called ‘vulture funds’. The Act applies to ‘creditors who pursue an improper advantage by acquiring a loan or a debt from a state’. Such creditors will not be able to obtain an exequatur or proceed to any enforcement measures (whether conservatory or executory) in Belgium for obtaining the payment of their claims if this payment were to result in obtaining the improper advantage that the Act envisages.</p> <p>Under Article 2 of the Act, there is an ‘improper advantage’ if two criteria are met. First, an apparent imbalance must exist between, on the one hand, the price at which the loan or debt (of the foreign state) was acquired and, on the other hand, the nominal value of this loan or debt or the amount claimed. The Belgian legislator has not provided a benchmark for determining the existence of an apparent imbalance and so has left it to the courts’ discretion.</p> <p>Second, besides the existence of an ‘apparent imbalance’, at least one of the following six criteria, as listed in Article 2 of the Act, must be met: a) the debtor state was in proven or imminent insolvency or cessation of payments at the moment of the acquisition of the loan or debt; b) the creditor’s registered office is located in a country that is considered to be a ‘tax haven’ (the Act refers to the Financial Action Task Force’s list of non-cooperative states in this regard); c) the creditor systematically uses court proceedings to claim payment of the (debts or) loans that the creditor earlier acquired; d) measures regarding debt restructuring were developed for the debtor state, to which the creditor refused to contribute; e) the creditor abused the debtor state’s weakened position to obtain, through negotiations, a clearly unbalanced repayment agreement; f) the full repayment of the amounts claimed by the creditor would have a demonstrable adverse effect on the debtor state’s public finances and could endanger the socioeconomic development of its population.</p>
<p><b>4.</b></p>	<p><b>What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?</b></p>
	<p>A war of aggression or a breach of international law in themselves have not been accepted as a basis for an exception to the applicability of the regime of sovereign immunity from enforcement in Belgium.</p>
<p><b>5.</b></p>	<p><b>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</b></p>
	<p>In this respect, Belgian law does not differentiate between a state debtor and any other judgment debtor.</p> <p>A foreign court decision will not be recognised or declared enforceable if due process or the rights of the defense have been violated. The precise wording and scope of the exception will depend on the convention or regime applicable to the situation (see chapter 1 above).</p>

	<p>However, generally, the interpretation of the concept of rights of defense must be made in accordance with Belgian procedural law. The requirement does not involve a review of the regularity of the proceedings according to the law of the State in which the judgment was rendered whose enforceability is sought, but a review to ascertain whether the proceedings abroad, regardless of whether they were regular or irregular according to the law of the foreign court, respected the defendant's rights of defense, as understood under Belgian law and whether, consequently, the foreign judgment may be ratified by the Belgian legal order (Cass. 5 January 1995, Arr. Cass. 1995, 15).</p> <p>This does not imply that the foreign procedural rules applied are automatically tested against the Belgian legal rules with the same object, but means that all the fundamental principles of Belgian procedure must be respected (Cass. 20 June 2008, <i>Pas.</i> 2008, 1600). Thus, it could be examined whether the defendant was regularly summoned, whether he/she was able to adequately prepare his/her defense, whether he/she could understand the language of the proceedings, whether the foreign court was independent, etc. One of the requirements of due process is that the defendant must be able to follow the proceedings. If one does not speak the language of the court, then the (most important) procedural documents must be translated (Cass. 24 October 1975, <i>Pas.</i> 1976, I, 251).</p> <p>In short, the rights of defense must enable the defendant to organize his/her defense in a timely and effective manner. The exequatur judge should consider whether it was possible in concrete terms to prepare the defense. In doing so, the exequatur judge must examine the concrete individual decision, taking into account all the factual circumstances specific to the case (Cass; 24 February 2012, <i>Pas.</i> 439; Cass. 9 February 2015, <a href="mailto:tijdschrift@ipr.be">tijdschrift@ipr.be</a> 2016/2, 17). An abstract review of or general statement about the foreign law or judicial system is out of the question (Cass. 29 April 2002, <i>RW</i> 2002-03, 862; Cass. 24 February 2012, C11394F).</p> <p>Moreover, the fact that a party would have acquiesced in the outcome of the foreign proceedings does not necessarily mean that a violation of the rights of defense in the context of those foreign proceedings is undone and that the foreign decision can be recognised or enforced (Cass. 29 September 2003, <a href="mailto:tijdschrift@ipr.be">tijdschrift@ipr.be</a> 2004, 67).</p> <p>Finally, in the parliamentary preparation of the Code of Private International Law, it was stressed that the procedural rights in the European Convention for the Protection of Human Rights and Fundamental Freedoms are also part of the benchmark.</p>
<p><b>a.</b></p>	<p><b><i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i></b></p>
	<p>As such, there are no means of service that are <i>a priori</i> excluded or that should in any circumstances be complied with. Service should be assessed in the actual circumstances of the case and in the light of its purpose.</p>

	<p>It is not sufficient that service was duly effected. Service must enable the defendant to actually organize his/her defense in a timely and effective manner. This requires that the defendant be served in a manner that allows him/her to prepare his/her defense (Cass. 11 December 1995, Arr.Cass. 1995, 1101).</p> <p>As an example: the Ghent Court of Appeal (Ghent 23 March 2017) held, in the context of the recognition of a US court order confirming a class action settlement, that the rights of defense of the non-US resident class members were, in the given circumstances, not violated as sufficient notice had been ordered and effectively realized in order to inform those not in the US residing persons class who could belong to the class about the existence of the class action and its consequences. The finding that not all such persons had been individually informed did not affect this decision, as the court held that it could be expected from a normal and prudent investor, who owned shares in the relevant company and who had known or should have known that his/her financial instruments had become worthless, that he/she was alerted given the publication in the American, European and Belgian media about the pending group claim, which had clearly received extensive attention.</p> <p>The condition of effective service, however, does not necessarily imply that the defendant actually participates in the proceedings (Brussels 9 May 2000, <i>EJ</i> 2000, 139). Only the non-appearing party who acted in good faith is protected. If this party did not file an appeal against the default judgment even though he/she was able to do so, then the judgment may be recognised and enforced. Of course, a non-appearing defendant is only able to lodge an appeal against a default judgment if he/she had knowledge of the content of this judgment. This presupposes that this default judgment was served on the non-appearing defendant (properly or otherwise) (CJEU 14 December 2006, C-283/05, <i>ASML</i>; I. Couwenberg in B. Allemeersch, T. Kruger (eds.), <i>Handboek Europees Burgerlijk procesrecht</i>, Intersentia, Antwerpen, 2015, p.155).</p> <p>In the context of the declaration of enforceability of a decision by the US District Court for the District of Columbia against the Iraqi Ministry of Industry and Armaments, the Brussels Court of Appeal, given the armed conflict between Iraq and the US, and with all the communication difficulties those circumstances entailed, prompted the American court to be particularly attentive to respect the rights of the defense (Brussels, 10 march 1993, <i>JT</i> 1994, 787). However, as to the analysis of the service requirement in the circumstance of the case, the Brussels Court of Appeal erroneously assessed the service on the basis of the local laws of the USA and was censored by the Belgian Supreme Court (see Cass. 5 January 1995, Arr. Cass. 1995, 15, quoted above).</p>
<p><b>b.</b></p>	<p><b><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></b></p>
	<p>Belgian law does not provide for an express or predetermined solution to this problem.</p> <p>There is one rather unclear precedent (Brussels 10 March 1993, <i>JT</i> 1994, 787). In the context of proceedings (set out above) initiated by a creditor against the Iraqi Ministry of Industry and Armaments in the US District Court for the District of Columbia, the</p>

	<p>service of the introductory act occurred by way of a diplomatic letter through the Belgian embassy in Bagdad, whereas diplomatic relations between the USA and Iraq were broken-off at the time of Iraq's invasion of Kuwait in 1991. The Brussels Court of Appeal held that, this creative solution was contrary to US law. However, the Belgian Supreme Court censored this decision and held that the Belgian courts, when assessing the rights of the defense in the context of exequatur proceedings, should verify whether the defendant's rights of defense, as understood under Belgian law, were respected.</p> <p>Even though the formalities of service are secondary to effectiveness, it is unclear whether in this case and on this basis the Belgian courts would eventually have accepted the service through the Belgian diplomatic channels (as a substitute for the diplomatic channels between the jurisdictions involved).</p>
<p>c.</p>	<p><b><i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i></b></p>
	<p>It is undisputed that the right of a litigant to defend him/herself in proceedings, and to be represented by counsel in the process, is a fundamental feature of any fair trial as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and thus falls under Belgian international public policy (CJEU 28 March 2000, C-7/98, <i>Krombach</i>). However, this right is not absolute. Restrictions are possible as long as they meet public interest objectives, and do not constitute a manifest and excessive infringement of this guaranteed right (CJEU 2 April 2009, C-394/07, <i>Gambazzi</i>; CJEU 6 September 2012, C619/10, <i>Trade Agency</i>; I. Couwenberg in B. Allemeersch, T. Kruger (eds.), <i>Handboek Europees Burgerlijk procesrecht</i>, Intersentia, Antwerpen, 2015, p.154).</p> <p>In the context of the declaration of enforceability of a decision by the US District Court for the District of Columbia against the Iraqi Ministry of Industry and Armaments, which was made during the First Gulf War, the Brussels Court of Appeal held that the Iraqi Ministry had not received a fair and serene trial (Brussels 10 March 1993, <i>JT</i> 1994, 787). Apart from the finding that service had not occurred in compliance with the applicable (US) law (a decision that was censored by the Belgian Supreme Court - Cass. 5 January 1995, Arr. Cass. 1995, 15, quoted above), the Court of Appeal based its decision on the following factual elements:</p> <ul style="list-style-type: none"> <li>• some of the US court judge's own interventions suggested that the Gulf War continued before his court;</li> <li>• at the time, it was virtually impossible for Iraqi defendants to obtain legal representation in the US courts (OFAC imposed draconian conditions before authorizing an American lawyer to represent Iraqi parties in the US).</li> </ul> <p>The Belgian courts do not limit themselves to an examination of formal compliance with the rights of defense. For example, a person who was represented by counsel during a foreign proceeding may in fact have been unaware of that proceeding and never had contacts with counsel representing him/her. In such a case, the Brussels Court of Appeal looked beyond appearances and decided that the rights of defense had been</p>

	violated (Brussels 27 June 1995, <i>EJ</i> 1997, 57, noot I. Couwenberg; see also CJEU 10 October 1996, C-78/95, <i>Hendrikman</i> ).
<b>d.</b>	<b><i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i></b>
	Belgian law does not provide for an express or predetermined solution to this problem. However, as the right to be represented by counsel is not absolute, restrictions may be possible as long as they meet public interest objectives, and do not constitute a manifest and excessive infringement of this guaranteed right (CJEU 2 April 2009, C-394/07, <i>Gambazzi</i> ; CJEU 6 September 2012, C619/10, <i>Trade Agency</i> ; I. Couwenberg in B. Allemeersch, T. Kruger (eds.), <i>Handboek Europees Burgerlijk procesrecht</i> , Intersentia, Antwerpen, 2015, p.154).
<b>6.</b>	<b>What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?</b>
	<p>Following the exception contained in Article 1412<i>quinquies</i> of the Belgian Judicial Code, enforcing against or seizing property of a foreign state is possible provided that the creditor obtains prior court authorization. The court (i.e. the attachment judge) seized <i>ex parte</i> will verify whether the targeted asset may be attached. In this context the debtor state cannot make any arguments. It will have to file (adversary) opposition proceedings against the decision made on this basis.</p> <p>The judgment creditor may seek authorization to attach the property of a foreign state if he/she demonstrates that one of the following conditions has been satisfied:</p> <ol style="list-style-type: none"> <li>(1) the foreign state has expressly consented to the attachment of that property;</li> <li>(2) the foreign state has reserved or designated that property in satisfaction of the claim that is the subject of the judgment on which the attachment is based;</li> <li>(3) it is established that such property is particularly used or intended to be used by the foreign state for other than non-commercial governmental purposes and is located in Belgian territory, it being understood that only property related to the entity against which the enforceable title or the authentic or private documents, as the case may be, on which the attachment is based, may be attached.</li> </ol> <p>The exceptions to immunity also apply to assets that are not the property of the foreign state itself, but of a subdivision of that foreign state, even if it does not have international legal personality, of an affiliate of that foreign state, or of a territorially decentralized administration, or any other political subdivision of that foreign state.</p> <p>The private or commercial use of the targeted property is assessed based on the specific circumstances of the case. The starting point of the assessment is the concrete, actual, current use of the asset (e.g. funds). By way of an example, case law recently held that pure investments do not fall within the protection of state immunity (Brussels 29 June 2021, <i>b-Arbitra</i> 2022/1, 83).</p>

Even though the burden of proof is on the judgment creditor in the *ex parte* proceedings, the debtor state may, in the context of adversarial proceedings, be required to loyally cooperate in the administration and taking of evidence by virtue of the general principles of Belgian Civil Law (Article 8.4 of the Belgian Civil Code – Constitutional Court 27 April 2017, n° 48/2017). A possible reversal of the burden of proof can take place after the court has ordered all useful investigative measures and ensured that the parties cooperate in the administration of evidence. For example, in the case of mixed-use assets, given the impossibility for the seizing creditor to obtain the information needed to distinguish between assets belonging to a foreign state and used for commercial purposes and those used for sovereign purposes, it is up to the foreign state to make this distinction on the basis of concrete elements supported by documentary evidence (Brussels 16 May 2023, 2022/AR/543, 2022/AR/547, 2022/AR/569).

Moreover, the principle of freedom of evidence applies. Proof of the allocation of seized goods can be provided by any means, including factual presumptions (Brussels 16 May 2023, 2022/AR/543, 2022/AR/547, 2022/AR/569).

The Belgian courts have held that it is inaccurate to assert that only property that is ‘manifestly’ not useful to the exercise of the state's mission or the continuity of public service may be seized under Article 1412*quinquies* of the Judicial Code. Nor does the wording of Article 1412*quinquies* of the Judicial Code require that the seized assets must be “exclusively” assigned to an economic or commercial activity under private law (Trib. Brussels (Fr.) 23 March 2022, 20/7265/A en 21/2665/A). The Brussels Court of Appeal decided that the air navigation en-route charges collected by Eurocontrol on behalf of Albania are of a mixed nature and can thus be seized (Trib. Brussels (Fr.) 23 March 2022, 20/7265/A en 21/2665/A).

Finally, Belgian legal doctrine, following international legal doctrine, recognises the possibility of seizing the assets of a legal entity that differs from the foreign debtor state in the event of simulation or if the ‘corporate veil’ can be pierced. According to the standing case law of the Belgian Supreme Court (Cass., 11 May 1995, Pas. I, 487) there is simulation in the context of enforcement when the goods only ostensibly belong to a third party. There is simulation when one demonstrates that the true holder of the account subject to attachment, opened in the name of another legal entity, is in reality the creditor's debtor. Once proof of simulation is provided, the judgment creditor can ignore the simulation and consider it non-existent. It is not necessary to prove fraud on the part of the (judgment) debtor.

For example, the Brussels Court of Appeal allowed the seizure of funds in cash and securities accounts in the name of the central bank with a separate legal personality from the state debtor. This decision was justified by the fact that there were ‘*sufficient indications of the existence of simulation, leading to the conclusion that the seizure took place on the assets of the seized person.*’ (Brussels 29 June 2021, *b-Arbitra* 2022/1, 83). In another case, the attachment judge allowed a creditor to seize the air navigation en-route charges collected by a state through a commercial legal entity of which the state was the sole shareholder and in which the state appointed all directors and gave instructions on the use of these charges (Trib. Brussels (Fr.) 23 March 2022, 20/7265/A en 21/2665/A, confirmed by Brussels 16 May 2023, 2022/AR/543, 2022/AR/547, 2022/AR/569).

