

International Comparative Legal Guides



Enforcement of Foreign Judgments 2020

A practical cross-border insight into the enforcement of foreign judgments

Fifth Edition

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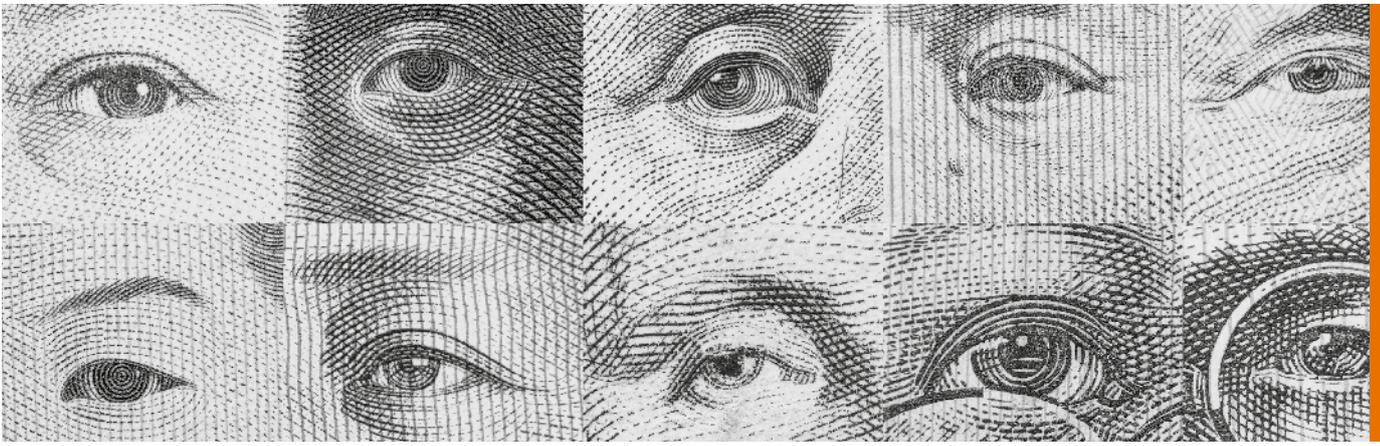
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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Belgian Code of Private International Law of 16 July 2004 (“CPIL”)	All foreign jurisdictions	Section 2

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

The legal framework in Belgium regarding the recognition and enforcement of foreign judgments is governed by the Law of 16 July 2004 establishing the Code of Private International Law (hereafter referred to as “CPIL”), which was published on 27 July 2004 and entered into force on 1 October 2004.

Subject to the application of international treaties, the law of the European Union or provisions in special laws, the CPIL regulates the jurisdiction of the Belgian courts for international cases. This includes the designation of the applicable law, as well as the conditions for the recognition and enforcement in Belgium of foreign judicial decisions and authentic instruments (Article 2 CPIL).

The specific rules regarding the recognition and enforcement of foreign judgments can be found in Chapter 1 (“General provisions”), section 6 of the CPIL. This section, which contains Articles 22 to 31, is entitled “effect of foreign judicial decisions and authentic instruments”.

The CPIL is applicable to all civil and commercial matters. As regards its applicability in time, Article 126, §2 CPIL states that the provisions relating to the recognition and enforcement of foreign judgments apply to judgments rendered after the entry into force of the CPIL (1 October 2004). However, a judgment or instrument issued before the entry into force of the CPIL may nevertheless have effect in Belgium if it meets the conditions laid down in the CPIL. For such judgments, recognition can in other words be based on the most favourable regime.

2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?

According to Article 22 §3, 1° CPIL, a court decision means a decision taken by a State authority exercising judicial power. This means that the decision needs to have been issued by an authority which has power in the country of origin to render binding decisions. This can be a judicial authority but may also be an administrative authority in some cases. However, arbitral decisions are not judgments in the sense of Article 22 CPIL and are governed by their own regulations.

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

A foreign judgment must in principle be final, in the sense that no ordinary recourse against it remains possible (Article 25, §1, 4° CPIL). It must also be enforceable in the country of origin (Article 24, §1, 3° CPIL), although judgments against which an ordinary appeal has been lodged or which might still be subject to an ordinary appeal may still be provisionally enforced (in the event, made conditional on the provision of a security) (Article 23, §4 CPIL). Finally, the (remaining) grounds of refusal listed in Article 25, §1 CPIL and discussed below in question 2.7 must also be borne in mind.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

The Belgian legal framework does not require any connection to Belgium in order for courts to accept jurisdiction for recognition and enforcement of a foreign judgment.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Yes, there is a difference between recognition and enforcement. According to Article 22, §3, 2° CPIL, recognition confers binding force to a foreign judgment. Enforceability, on the other hand, is the forced execution of a decision.

To be enforceable, judgments which are enforceable in the country of origin must be declared enforceable in Belgium (i.e., must receive an *exequatur*). The procedure hereto is established in Article 23 CPIL.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

Prerequisite: Legalisation

Article 30 CPIL states that a foreign judgment must be legalised in order to be produced in Belgium. This legalisation confirms the authenticity of the signature, the capacity in which the person who signed the document was acting and, where necessary, the identity of the seal or the stamp. The legalisation does not, however, guarantee the authenticity of the document. The legalisation of a document is a necessity but it is, in and of itself, an insufficient condition for a judgment to be recognised and enforced.

After legalisation in the country of origin, the foreign judgment must be legalised in Belgium.

Article 30, §2 foresees a cascade system to determine who is responsible for legalisation. At the top of the list we find, first, a Belgian diplomatic or consular official accredited in the State where the decision was taken; second, and failing the former, a diplomatic or consular official of the foreign State representing Belgium's interests in that State; and, finally, if the two former options were not possible, the Minister of Foreign Affairs.

Finally, it should be noted that several international instruments, e.g., within the European Union, have abolished or simplified the requirement of legalisation through the use of the so-called “*apostille*”.

Recognition

A second step, following legalisation of the foreign judgment, is that of recognition. According to Article 22 CPIL, a foreign judgment is recognised in Belgium, in whole or in part, without the procedure laid down in Article 23 having to be followed. This “*de plano*” recognition means that a foreign judgment can be presented to Belgian (administrative) authorities without any adherence to prior procedures. The grounds for refusal of recognition and enforcement listed in Article 25 CPIL (see question 2.7 below) must of course be borne in mind.

In addition, and pursuant to Article 22, §2 CPIL, any person may take steps to have a foreign judgment explicitly recognised, in whole or in part, by a Belgian court, and this in accordance with the procedure provided for in Article 23 CPIL. In cases concerning the status of physical persons, the Public Prosecutor's Office can also initiate a procedure. If recognition is invoked on an incidental basis before a Belgian court, i.e., in the course of an ongoing procedure, that court shall have jurisdiction to recognise the foreign judgment (Article 22, §1 CPIL).

Enforcement

Alternatively, after legalisation, enforcement can be considered. Following Article 22 CPIL, a foreign judgment that is enforceable in the State in which it was delivered shall be declared enforceable in Belgium, in whole or in part, in accordance with the procedure provided for in Article 23 CPIL. This may be requested by any interested person and, in cases concerning the status of persons, also by the public prosecutor.

In most cases, it is the court of first instance that is competent to hear cases regarding a declaration of enforceability (Article 23, §1 CPIL). In order to determine territorial jurisdiction, the CPIL imposes a cascade system. The territorially competent courts are, in the following order: (1) that of the defendant's domicile or habitual residence; (2) in the absence of domicile or residence in Belgium, the court of the place of enforcement (Article 23, §2 CPIL); (3) when the first two options are not possible, the court of the place where the applicant is domiciled or habitually resident; and (4) if the applicant is not domiciled or resident in Belgium, the court for the district of Brussels (Article 23, §2 CPIL).

The application for a declaration of enforcement must be brought and heard in accordance with the procedure referred to in Articles 1025 to 1034 of the Belgian Code of Civil Procedure (“CCP”), i.e., by way of unilateral (*ex parte*) petition. To this end, the applicant must first choose an address within the jurisdiction of the court (Article 23, §2 CPIL). The judge will subsequently examine the petition, and may, for this purpose, summon the applicant and the intervening parties to be heard in chambers. In that case, the summons shall be sent by the registrar to the parties by court letter (Article 1028 CCP). In this type of procedure, the judge is required to give his or her verdict at short notice (Article 23, §3 CPIL).

The foreign judgment against which an ordinary appeal has been lodged, or which might still be subject to an ordinary appeal, may be provisionally enforced. The court may make enforcement conditional on the provision of a guarantee (Article 23, §4 CPIL). A lawyer's signature is required for the petition to be admissible (Article 1026, 5° CCP).

Conditions common for recognition and enforcement

According to Article 24, §1 CPIL, the party seeking recognition of a foreign judgment, or seeking its declaration of enforceability, must produce the following documents:

- an issue of the judgment that satisfies the conditions necessary to establish its authenticity under the law of the State in which it was rendered;
- in the case of a judgment rendered *in absentia*, the original or a certified copy of the document establishing that, under the laws of the State in which the judgment was rendered, the party which did not appear was served with the document which instituted the proceedings, or with an equivalent document; and
- any document that makes it possible to establish that the judgment is enforceable and has been served under the laws of the State in which it was given.

If the documents are not produced, the court may specify a time limit for their production, accept equivalent documents or, if it considers that it in fact has sufficient information, waive the requirement altogether (Article 24, §2 CPIL).

The decision on enforceability can be appealed. Article 1031 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 Appeals Court.

A third party, too, may file an opposition against a decision adversely affecting its rights (Article 1033 CCP). This opposition must be lodged within one month after the decision is notified to the third party (Article 1034 CCP). Such third-party proceedings must be brought, with summons to all parties, before the court that delivered the contested decision (Article 1125 CCP). If the decision on the opposition filed by the third party is one rendered in first instance, an appeal can be lodged; this is not possible if the contested decision itself was given on appeal (Article 1131 CCP). In that case, only a more limited appeal is possible before the Court of Cassation.

The decision on enforceability is in principle provisionally enforceable, notwithstanding appeal, unless stated otherwise (Article 1029 CCP). By way of derogation from Article 1029 CCP, 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 (Article 23, §5 CPIL).

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Article 25, §1, 1°–8° CPIL lists, in a limitative way, eight grounds for the refusal of recognition and enforcement of a foreign judgment. Article 25, §1, 9° refers to a number of specific subject matters which are subject to additional rules (see also question 2.8 below).

1. A manifest incompatibility with international private law public order (Article 25, §1, 1°)

The first ground for refusal is when the judgment is incompatible with the principles which are essential for the moral, political and economic order of Belgium. The Belgian judge will not verify the decision as such, but will, instead, examine the effects that a recognition or enforcement would have on the Belgian legal order. The judge will look especially at the degree to which a case is connected to the Belgian legal order, and at the severity of the consequences caused by the recognition or enforcement of the judgment.

2. A violation of the rights of defence (Article 25, §1, 2°)

A second refusal ground can be found in a violation of the rights of defence. In practice, this does not mean that all the rules of Belgian procedure have to be followed, but it does mean that the fundamental principles governing Belgian procedure must have been respected. These may include the impartiality of the judge, and the possibility for the defendant to organise his defence in a timely and effective manner, as well as other guarantees found in the European Convention on Human Rights.

3. The decision was obtained solely in order to evade the application of the law (Article 25, §1, 3°)

The third refusal ground can be found in the situation where a decision appears to have been obtained solely to evade the application of the law designated by the CPIL, and this in a matter where the parties are not free to dispose of their rights. The check required under this refusal ground does not pertain to a general investigation of the law applied abroad. Only cases where parties were exclusively guided by fraudulent intention will be sanctioned.

4. The foreign judgment is still susceptible to ordinary recourse (Article 25, §1, 4°)

A fourth ground for refusal can be found in a situation where a foreign judgment is still susceptible to ordinary recourse in the country of origin. In that case the judgment, as a matter of principle, cannot be recognised or enforced in Belgium. An exception is made, however, for judgments which are provisionally enforceable in the country of origin (Article 23, §4).

5. Incompatibility with a Belgian decision or with a foreign judgment that can be recognised in Belgium (Article 25, §1, 5°)

A fifth ground for refusal can be found in the situation where a foreign judgment is incompatible either with a Belgian decision, or with a foreign decision that can be recognised in Belgium; decisions being here understood as comprising arbitral decisions. For this refusal ground to be applicable, it is necessary that the Belgian procedure has been concluded with a decision against which no further appeal is possible. It is irrelevant whether the Belgian decision comes chronologically after the foreign decision or not. Conversely, if a foreign decision is invoked at the time when the Belgian procedure of recognition/enforceability has not yet been concluded, this foreign judgment can be invoked. In other words, for this ground of refusal to be applicable, the foreign judgment that is invoked must predate the foreign judgment for which recognition/enforceability is requested.

6. The foreign action was brought abroad following the bringing in Belgium of an action which is still pending between the same parties and with the same subject matter (Article 25, §1, 6°)

The sixth ground for refusal aims at preventing two procedures

from being conducted in parallel with one another. However, for this ground to apply, it is required that the Belgian procedure was initiated between the same parties, with the same object and cause of action, and is still pending.

7. The Belgian courts had exclusive jurisdiction (Article 25, §1, 7°)

A seventh ground for refusal is when Belgian courts do in fact have exclusive jurisdiction. The question in such cases of whether the CPIL imposes exclusive jurisdiction is disputed among legal scholars.

8. When the jurisdiction of the foreign court was based solely on the presence of the defendant or of property not directly connected with the dispute in the State to which that court belongs (Article 25, §1, 8°)

An eighth ground for refusal can be found in the perceived excessive international jurisdiction of the foreign court. This can be deemed the case, for example, when jurisdiction was based on the sole presence of the defendant or of certain goods which further have no bearing upon the subject matter of the dispute. Such mere “presence” can include a vacation in a particular country, or the fact that one was merely passing through a certain country.

9. Finally, a number of specific refusal grounds (Article 25, §1, 9°)

Additional refusal grounds apply in the case of specific subject matters, i.e., name, repudiation, adoption, intellectual property, legal entities and insolvency (see also question 2.8 below).

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

Several specific subject matters are dealt with separately by the CPIL:

- name (Chapter II, section 2, Article 39);
- repudiation (Chapter III, section 5, Article 57);
- adoption (Chapter V, section 2, Article 72);
- intellectual property (Chapter VIII, section 3, Article 95);
- legal entities (Chapter X, Article 115); and
- insolvency (Chapter XI, Article 121).

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

In such cases, the recognition or enforcement of the judgment can be refused. This will, more specifically, be the case when Article 25, §1, 5° or 6° CPIL applies (see also question 2.7 above).

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

Incompatibility with a local law *per se* does not constitute a ground for refusal of recognition or enforcement. However, as stated above, manifest incompatibility with international private law public order does constitute a ground for refusal (Article 25, §1, 1° CPIL; see question 2.7 above).

The incompatibility between a foreign judgment and a Belgian decision (or, for that matter, with a foreign judgment that can be recognised in Belgium) also constitutes a possible ground for a

refusal of recognition and enforcement (Article 25, §1, 5° CPIL; see question 2.7 above).

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

There is no special approach in this case, as judgments are not reviewed on their merits.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

No, there are no differences. The CPIL constitutes federal legislation and is applicable to the whole of the Belgian territory, without exception.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

The CPIL does not provide for a limitation period to recognise and enforce a foreign judgment.

Nevertheless, it must be noted that, as per Article 22, §1 CPIL, it is a precondition for any foreign judgment to be recognised or enforced in Belgium that it is enforceable in its country of origin. If a foreign judgment is therefore time-barred in its country of origin, it will no longer be possible to recognise or enforce it in Belgium.

Moreover, Article 2262*bis*, §1 of the Belgian Civil Code lays down a limit of 10 years for legal actions, including those pertaining to the enforcement of judgments. This limitation will most likely also apply to the enforcement of foreign judgments after its enforcement has been authorised by Belgian courts.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

Belgium in its national legislation does not differentiate between countries when it comes to the recognition and enforcement of foreign judgments. However, several international treaties (e.g., the 1956 CMR Convention or the 2005 Hague Choice of Court Convention) as well as European instruments (the Brussels *Ibis* Regulation, the Insolvency Regulation) may take precedence over the CPIL.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

This is not applicable in Belgium. Please refer to question 3.1.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

This is not applicable in Belgium. Please refer to question 3.1.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

This is not applicable in Belgium. Please refer to question 3.1.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

The full panoply of enforcement measures is available to the creditor once a judgment is recognised and declared enforceable. This includes the attachment of movable and immovable assets, third-party attachment, and garnishment of bank accounts and earnings.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

A judgment of the Supreme Court of 12 September 2019 (C.19.0033.N) has confirmed that a foreign judgment does not, by itself, empower a creditor to make a conservatory attachment on the assets of its debtor, unless the conditions set by the CPIL for the recognition of this foreign judgment are fulfilled.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

The CPIL foresees in a *de plano* recognition of foreign judgments. However, this is only a presumed recognition. While there is, strictly speaking, no necessity to initiate legal proceedings, each authority for which recognition is invoked still has an obligation to verify whether the conditions for recognition have been met. Of particular importance in this regard are the grounds for refusal set out in Article 25 CPIL. A petition to obtain recognition through the court system can therefore be held to offer more legal certainty.



Rafaël Jafferali specialises in dispute resolution (including arbitration and proceedings before the Belgian Supreme Court), contract law, tort law and private international law. He mainly acts in major judicial proceedings and arbitration cases and advises clients on complex questions in his various areas of practice. He is also Associate Professor and holder of the Chair of Law of Obligations at the Université Libre de Bruxelles (ULB). He is the author of numerous publications in the areas of contract law, tort law and private international law, including a PhD thesis on the theme of retrospectivity in contract law. He is a member of the editorial committee of *Journal des Tribunaux*, *Revue de droit commercial*, *Revue générale de droit civil* and *Répertoire pratique de droit belge*. He is a member of CEPANI40 and of the Belgian group of Association Henri Capitant.

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Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control

Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Outsourcing
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Sanctions
Securitisation
Shipping Law
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms