Enforcement of arbitral awards in Belgium: overview

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ENFORCEMENT OF ARBITRAL AWARDS
Definitions and preliminary proceedings

1. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

There is no statutory definition of "arbitral award" in the Belgian Code of Civil Procedure (CCP). Article 1711, section 1 of the CCP does require that the award must be rendered after deliberation between all of the arbitrators and with an absolute majority, unless the parties have agreed to another type of majority. Belgian arbitration law, moreover, requires that the award must be rendered in writing and signed by the majority of the members of the arbitral panel, with the reasons for any missing signature(s) to be mentioned. In addition to the actual decision and the reasons on which it is based, the award must also contain, inter alia:

- The names and domiciles (office addresses) of the arbitrators.
- The names and domicile of the parties.
- The object of the dispute.
- The date when the award is rendered.
- The seat of the arbitration.

Belgian arbitration law also specifies that the arbitral award must be reasoned.

The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), to which Belgium is a contracting state, does not contain a statutory definition of what an arbitral award is. However, it does state that the term arbitral award includes not only awards made by arbitrators appointed for each case, but also those made by permanent arbitral bodies to which the parties have submitted the case. Arbitral awards must arise out of the "differences" between persons, whether natural or juristic.

2. Are decisions in preliminary/provisional proceedings recognised and enforceable?

By virtue of Article 1696 of the Code of Civil Procedure (CCP), provisional measures ordered by an arbitrator or arbitral tribunal, unless rendered ex parte are automatically recognised and can be enforced under Belgian arbitration law after they have been declared enforceable by the court of first instance. Article 1697 of the CCP provides for limited grounds for refusal to declare enforceability. Arbitral tribunals cannot grant attachment orders, which fall under the exclusive jurisdiction of state courts (Article 1691, Code of Civil Procedure (CCP)).

Applicable conventions

3. What conventions is your jurisdiction a contracting party to?

As regards the recognition or enforcement of foreign arbitral awards, Belgium is a contracting state to the following multilateral conventions (which is not an exhaustive overview):

- The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). Belgium has declared that it would apply the New York Convention subject to reciprocity.

Bilateral conventions dealing with the recognition or enforcement of foreign arbitral awards exist concerning the relationship with a number of EU member states, including France (8 July 1899), the Netherlands (28 March 1925), Germany (30 June 1958), Switzerland (29 April 1959) and Austria (16 June 1959).

These conventions take precedence over Articles 1676 to 1723 of the Code of Civil Procedure (CCP). However, Article VII of the New York Convention states that the Convention does not deprive an interested party of any right that he or she may have to avail him or herself of an arbitral award in the manner and to the extent allowed by national arbitration law or the treaties of the country where such an award is relied upon. A party that seeks to recognise or enforce a foreign arbitral award in Belgium can thus choose between the New York Convention, another (multilateral or bilateral) convention to which Belgium is a party, or national arbitration law.

Enforcing awards

4. What is the applicable statutory framework for enforcement of awards?

Chapter VIII of Part 6 of the Code of Civil Procedure (CCP) deals with the recognition and enforcement of awards, without distinguishing between domestic or foreign awards. When there is a bilateral or multilateral treaty on recognition and enforcement that could apply, the treaty prevails. Belgium is a contracting state to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) (see Question 3).
5. What are the grounds for refusing enforcement?

**Domestic awards**
Enforceability will be refused if:

- The result of such recognition and/or enforcement is manifestly incompatible with Belgian international public policy (see Questions 11 and 12, Enforcement of Judgments).
- The subject matter of the dispute is not capable of settlement by arbitration.

Enforceability will also be denied if one of the following grounds is submitted and proven before the court by the party against which enforcement is sought:

- A party to the arbitration agreement was under some incapacity, or the agreement is not valid under the law to which the parties have subjected it or, failing any such indication, under the law of the country where the award was rendered.
- The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case, and this irregularity affected the arbitral award.
- The award deals with a dispute not falling under the terms of the arbitration agreement.
- The award does not include reasons whereas such reasons must be given according to the rules of law applicable to the arbitral proceedings.
- The composition of the arbitral tribunal was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place.
- The arbitral proceedings were not in accordance with the agreement of the parties or, failing such agreement, were not in accordance with the law of the country where the arbitration took place if this irregularity affected the arbitral award.
- The award can still be brought before the arbitrators on appeal, or if the arbitrators did not make the award enforceable notwithstanding appeal.
- The award has not yet become binding on the parties, or it has been set aside or suspended by a competent authority of the country in which that award was made.

**International awards**
The grounds for refusing enforcement of international awards are the same as those for domestic awards (see above, Domestic awards).

6. Is the enforcing court required to examine the refusal grounds during the enforcement proceedings ex officio?

The court of first instance, at its own initiative, will review whether the award or its enforcement will be contrary to public policy; and whether the dispute is arbitrable. The question whether a reason to have the arbitral award set aside under the other grounds of refusal mentioned above must be submitted to the court by the party against whom enforcement is sought (see Question 9).

7. What is the effect of pending challenge proceedings in the foreign state where the decision is granted?

Enforcement will be denied if the award has been set aside or suspended by a court of the country in which, or under the law of which, that award was made. If the challenge is pending and no such suspension has been ordered by the foreign court, there is no provision in the Code of Civil Procedure (CCP) forcing the court to, or preventing it from, staying the proceedings (see Question 29).

8. What types of arbitral awards are enforceable?

Subject to the award being binding on the parties and the subject matter of the dispute being arbitrable, all awards are (in principle) amenable to enforcement in Belgium. These include:

- Money awards.
- Awards containing injunctions ordering or prohibiting the doing of acts.
- Decisions or awards by arbitral tribunals (including emergency arbitrators) granting provisional measures.
- Declaratory awards.
- Other awards.

9. Can parties seek to enforce only part of the award?

No. The enforcing court only has the power to either grant the enforcement or refuse the enforcement. It cannot review the substance of the award and, therefore, it cannot in principle enforce only part of it. However, when the award deals with a dispute not falling within the terms of the arbitration agreement or contains decisions on matters beyond the scope of the arbitration agreement, while the provisions of the award on matters submitted to arbitration can be separated from those not so submitted, the enforcing court can decide to enforce only the part of the award which contains decisions on matters submitted to arbitration (Article 1721 §1a(iii), Code of Civil Procedure (CCP) and article V(1)(c) of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)).

10. Are any class of awards excluded from recognition and enforcement? If so, what types of awards?

Apart from the cases in which the award falls under one of the grounds for refusal (see Question 9), any arbitral award is amenable to enforcement in Belgium.

**Jurisdiction**

11. In what circumstances do the courts have jurisdiction over enforcement proceedings?

The court of first instance has jurisdiction over an application relating to the recognition and enforcement of an arbitral award rendered in Belgium or abroad.

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12. What grounds for international jurisdiction are characterised as exorbitant bases for jurisdiction?

Not applicable.

13. If the foreign court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?

Exorbitant grounds
Not applicable.
Other grounds
Not applicable.

14. Will service that does not conform to the requirements of international treaties/regulations in force automatically result in a denial of the enforcement of a judgment/award/deed?

The application for enforcement is introduced and dealt with on a unilateral request, which means that it is not served on the party against whom enforcement is sought.

Once the decision on enforcement is rendered, it is notified to the opposing party by registered letter.

15. What methods of service are not acceptable against defendants domiciled in the state where enforcement is sought?

See Question 14.

Public policy

16. Which country’s public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or international award?

Domestic awards
If the dispute that is subject to arbitration is purely national, the enforcing court reviews whether Belgian internal public policy is violated.

International awards
When the award to be enforced is an international award, Belgian international public policy applies. Upon determining this incompatibility, the court must consider the extent to which the matter is connected to the Belgian legal order and the seriousness of the consequences that will be caused if the arbitral award were to be recognised or enforced. Belgian international public policy is to be construed restrictively, meaning that it can only be triggered in exceptional circumstances. In commercial matters, an arbitral award is seldom considered as violating Belgian substantive international public policy.

17. In which cases and against which awards has the principle of public policy generally been applied?

See Question 16.

ENFORCEMENT PROCEEDINGS

Procedure

18. What is the procedure for enforcing arbitral awards?

Domestic awards
Articles 1719 to 1721 of the Code of Civil Procedure (CCP) describe the procedure for enforcing both domestic and foreign arbitral awards. An arbitral award can be enforced under Belgian arbitration law after it has been declared enforceable by the court of first instance.

Ex parte or on notice. The proceedings to have a foreign arbitral award declared enforceable in Belgium is ex parte (see Question 22).

Applicable court. The court of first instance has jurisdiction over an application relating to the recognition and enforcement of an arbitral award rendered in Belgium or abroad.

Limitation period. There is no limitation period for commencing enforcement proceedings.

Timing. The court of first instance is not bound by any particular time period to render its decision on a request for enforcement.

Court fees. See Enforcement of Judgments in Belgium, Question 22.

Recourse. The only recourse against a decision to deny enforcement is specific recourse before the highest Belgian appellate court, the Court of Cassation (pourvoi en cassation) which must be applied for within three months after the notification of the decision.

If the request is granted (and the foreign arbitral award is declared enforceable), the petitioner must serve the exequatur decision on the party against whom the enforcement was requested and obtained. This party can oppose the enforcement within one month after such service or notification. The opposition must be lodged before the court of first instance that denied the enforcement.

International awards
Articles 1719 to 1721 of the CCP, which describe the details of enforcement proceedings, apply equally to the enforcement of foreign awards (see above, Domestic awards).

19. Can the enforcing court review the foreign award if all formalities were complied with and if the award meets all requirements?

No. The recognition or enforcement of an award implies that under no circumstances can there be a review of its merits, meaning that a "re-trial" of the substance of the matter before a Belgian court is precluded. The enforcing court can only grant or deny the enforcement on the grounds for refusal under Article 1721 of the Code of Civil Procedure (CCP), which are limited.

Formalities

20. What are the documentary requirements for enforcement?

Documentary requirements
The petitioner who seeks the enforcement of a foreign arbitral award must enclose with his or her request the original copy of the award and the arbitration agreement, or any copy thereof that fulfils the conditions for authenticity.
**Authentication**

According to the provisions of the Code of Civil Procedure (CCP), there is no statutory requirement to have a foreign arbitral award legalised before it can be recognised or declared enforceable in Belgium.

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**21. Is it required to translate the award into the language of the state where enforcement is requested?**

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**Translations**

As regards the recognition or enforcement of foreign arbitral awards, it is mandatory to submit a (certified) translation of all documents submitted to the court in the language of the proceedings (that is, Dutch, French or German, depending on where recognition or enforcement proceedings have been initiated) (Court of Appeal of Ghent, 22 March 1962, R.W. (1962-63), p.1633 and 'L’exécution en Belgique des sentences arbitrales étrangères', B. Hanotiau and B. Duquese, J.T. (1997), p.309, no.29).

**Other languages**

A translation of all documents submitted to the court in the language of the proceedings is required.

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**Certification**


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**22. What is the format of the application for a declaration of enforceability?**

The application for enforcement is introduced by means of a unilateral request (requête unilatérale) containing the following information (Article 1026, Code of Civil Procedure (CCP)):

- The date.
- The name, domicile and profession of the applicant.
- The subject of the dispute and a brief summary of arguments.
- The judge in charge of the case.
- The signature of the applicant’s lawyer.

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**23. What information must be included in the application regarding the award, the claim as awarded in the award, the facts and legal grounds of the case, and that the judgment is no longer appealable?**

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**Award**

The original copy of the award and the arbitration agreement, or any copy of it that fulfils the conditions for authenticity must be enclosed to the request.

**Claim as awarded**

See above, Award.

**Facts and legal grounds**

The request must also contain the subject of the claim and a short summary of the arguments (Article 1026, Code of Civil Procedure (CCP)).

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**Appeals**

The provisions of the CCP do not require that the application explicitly mention the fact that the award is no longer appealable. This is, however, one of the grounds for refusal that the enforcing court must review ex officio.

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**24. Is it possible to request the enforcing court for provisional measures pending the enforcement proceedings?**

As regards the enforcement of foreign arbitral awards, the claimant can provisionally attach the assets of the respondent on the mere basis of the foreign arbitral award, without any court intervention or approval being required (saisie conservatoire (Droit judiciaire: l’arbitrage). Ph. De Bouronville, Brussels, Larcker, 2002, p.201, no.259). The claimant can also request from the judge an express order to provisionally attach the assets of the respondent (juge des saisies).

Similarly, the arbitrators are entitled to declare their award provisionally enforceable. Only arbitral awards that can be appealed can be declared provisionally enforceable. If the arbitrators did make their arbitral award enforceable notwithstanding appeal, the court can grant the provisional enforcement of the foreign arbitral award.

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**25. Is it required to convert the value of the award into the local currency?**

The uncertainty concerning local currency as regards enforcement of foreign judgments also exists with regard to foreign arbitral awards. See Enforcement of Judgments in Belgium, Question 28.

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**26. Can the enforcing court stay the enforcement proceedings pending the outcome of proceedings to set aside the award at the seat of arbitration? If so, will the court order the party seeking the stay to provide security?**

Article VI of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) provides for the possibility of the enforcing court to stay the proceedings if an application to set aside the award has been made to a competent authority. Security can then be ordered. The enforcing court will only stay the proceedings if there is reasonable chance that the award could be set aside (see Civ. Brussels (15e ch.), 25 January 1996, J.T., 6-11 and ‘L’exécution en Belgique des sentences arbitrales étrangères’ B. Hanotiau and B. Duquese, J.T. (1997), p.309, nos. 63–65). It is worth noting, however, that the enforcement proceedings in Belgium occur, at first stage, ex parte.

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**ACTUAL ENFORCEMENT**

**27. What is the enforcement procedure when a declaration of enforceability is granted?**

Once the declaration of enforceability is granted, the enforcement of the award will be treated as the enforcement of a purely internal judgment. See Enforcement of Judgments in Belgium, Question 16.
28. Can defendants oppose the actual enforcement procedure, and if so, on what grounds/defences?

See Enforcement of Judgments in Belgium, Question 17.

PROPOSALS FOR REFORM

29. Are any changes to the law currently under consideration or being proposed?

There are no changes to the law currently under consideration.

ONLINE RESOURCES

Juridat - Service public federal justice
W www.juridat.be

Description. Official, consolidated and up-to-date legislation (including the Code of Private International Law (PIL Code) and the Civil Procedure Code (CCP)), maintained by the justice department. Available in Dutch and French. This website also contains case law from Belgian courts.

Moniteur belge – Belgisch Staatblad
W www.ejustice.just.fgov.be/cgi/welcome.pl


Service central de traduction allemande

Description. German translation of Belgian laws.

PIL Code
W www.ipr.be/data/B.WbIPR%5BEN%5D.pdf

Description. This is an unofficial site where an English translation of the PIL Code is available.

Belgian Center for Arbitration and Mediation (CEPANI)

Description. Provisions concerning arbitration in the Civil Procedure Code are translated on the website of the Belgian Center for Arbitration and Mediation (CEPANI).
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**Professional qualifications.** Brussels Bar, 2007

**Areas of practice.** International arbitration; cross-border litigation.

**Professional associations/memberships.** Member of the ICC Commission on Arbitration and Alternative Dispute Resolution (ADR).

**Non-professional qualifications.** PhD in Law, 2007

**Professional qualifications.** Brussels Bar, 2001

**Areas of practice.** Complex litigation; arbitration.

**Professional associations/memberships.** President of the advisory commission on civil procedure at the Flemish Bar Association.

**Professional qualifications.** Brussels Bar, 2015

**Areas of practice.** Commercial and cross-border litigation.

**Non-professional qualifications.** LLM, University of Edinburgh, 2015

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