



Belgium

e-manual appendix





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What is enforced

No seizure of movables can be effected without an enforcement title (article 1494 Judicial Code). The wording "enforcement title" is to be interpreted in the broadest sense¹. The provisions of the Judicial Code govern the enforcement of judgments and acts. According to this Code, the enforcement title is "the title which, bearing the executory formula determined by the R.D. (Royal Decree) of 9 August 1993, permits the immediate expropriation of the debtor's property"².

Enforcement can therefore take place by virtue of a judgment, a notarial deed with an enforcement clause, an administrative act enforceable by law, or a decision issued under tax law.

Who enforces

The enforcement is carried out by a judicial officer. The judicial officer is a public servant who performs his functions under the status of a self-employed professional. In fact, the judicial officer has a dual professional identity: official and independent. The judicial officer fulfils a specific and active role at the crossroads between executive and judicial power. As a self-employed professional, he works independently and impartially.

The judicial officer is obliged to carry out their formal duties whenever requested and by whomever requested. However, he may not act on behalf of his spouse or his relatives and direct allies, nor those of his spouse, his relatives and collateral allies, up to the fourth degree. This obligation is the normal counterpart to his monopoly. The judicial officer must refuse to lend his ministry if the mission is illegal or contrary to public order or good morals.

Enforcement procedure

Different measures can be adopted by the judicial officer, namely he/she can:

- initiate and end the enforcement procedures
- enforce against movable assets to settle pecuniary claims
- attach the bank account of the debtor
- enforce against savings deposits and current accounts
- enforce on immovable property
- enforce against wages and other permanent pecuniary Income
- attach under the debtor's debtor
- enforce against shares

¹ See. Rapport Comm. royal, Pasin., p. 517, col. 1.

² See. G. de Leval, La saisie-arrêt, Liège, Faculté de droit, 1976, nos 166 et s.

To facilitate this decision, the judicial officer has access to certain data and information on the assets and domicile of the debtor, through the National register; Register of companies; Employee register; Vehicle register; Centralized file of seizure notification.

Duration of enforcement procedure

The duration of the forced execution may vary according to the specific case, and depends mainly on two criteria: Solvency of the debtor, and Enforcement proceedings initiated. The more solvent a debtor is and the simpler the procedure, the quicker the case can be settled. On average the duration of a procedure is as follows (considering that the judicial officer has an enforceable title):

- Movable property procedure: +/- 2 months
- Real estate procedure: +/- 4 months
- Attachment on bank accounts: +/- 3 months
- Eviction procedure: +/- 2 months

Cost of enforcement procedure

To safeguard equal access to justice and predictability, Article 522 of the Judicial Code stipulates that "the King shall set the fees for all acts of judicial officers and allowances for transport costs". The fee, fixed by royal decree, imposes fixed costs for each action performed by the judicial officer within the functions legally assigned to him in his capacity as judicial officer and public servant. There are five categories of fees:

1. fee connected to the value of the claim
2. proportional fee
3. service fee
4. fixed fees
5. fees and disbursements

Fee connected to the value of the claim: as a rule, for any act, a fee is allocated to the judicial officer, which is paid in progressive instalments, and calculated based on the value of the claim. The value taken into consideration is the value as claimed, or the amount as mentioned in the writ of execution under which the proceedings are instituted. This fee includes:

- the cost of the original
- the cost of a copy
- the cost of the envelope in case of a visa
- the cost of listing in the directory
- the cost of sending (excluding postage) the original or a copy to the applicant or his/her counsel

One-fifth of the fee shall be charged for each additional copy served to another recipient, within the same document. This fee is shared ($\frac{3}{4} - \frac{1}{4}$) if the file is sent to a colleague in another district. In case the debtor pays in instalments, an additional, fixed, fee per payment can be charged. The amount of the fee depends on the value of the claim.

Proportional rights fees: established as a decreasing percentage on instalments, it is relevant to:

- acts of protest
- public sales
- distribution procedures by contribution

Service fees: they constitute additional remuneration based on the time required for performance of the service. A distinction shall be made between the session due for any service, and the hourly session. The latter, the hourly shift, is provided for:

- seizure
- eviction
- inventory
- furniture removal
- enforcement in respect of rights of contact with children

Fixed fees: payment for various one-off steps, ranging from the lifting of a dispatch or a copy of a court decision to the cost of correspondence and stationery, and from steps taken at the mortgage office to the drafting of specifications.

Reimbursement of expenses and fee for transportation: Judicial officers are entitled to reimbursement of the following costs:

- copies and extracts of documents or papers drawn up by the judicial officer and served with the exploits;
- dispatches, copies and excerpts of the minutes of sale;
- the translation made by the judicial officer, both of the documents and of the documents served;
- removal

The judicial officer is entitled to a transportation fee. the amount of which depends on the size of the territory within which the judicial officer is competent.

