

1 What does 'enforcement' mean in civil and commercial matters?

If a debtor fails to comply voluntarily with a judgment, the claimant can enforce compliance through the courts; this is known as compulsory enforcement. It requires an enforceable title (Article 1386 of the Judicial Code), because it involves an intrusion into the debtor's personal legal sphere. Such a title will usually be a judgment or a notarial deed. Out of respect for the debtor's privacy, the title may not be enforced at certain times (Article 1387 Judicial Code). The title is executed by a bailiff.

Compulsory enforcement is usually used to recover money, but it can be applied to enforce performance of, or refraining from, an act.

Another important aspect is the penalty payment (Article 1385a Judicial Code). This is a means of exerting pressure on the person convicted in order to encourage compliance with a judgment. A penalty payment cannot, however, be imposed in certain cases: when the person has been ordered to pay a sum of money or to comply with an employment contract and when it would be incompatible with human dignity. A penalty payment is enforced on the basis of the title providing for it and no further title is therefore required.

In the case of a person ordered to pay a sum of money, the claim is enforced against the debtor's assets and is referred to as attachment. A distinction is made between the type of goods attached (movable or immovable) and the nature of the attachment (precautionary attachment and attachment in execution of a judgment). Precautionary attachment is used in emergency cases to place goods under the protection of the court: the situation is frozen in order to safeguard any subsequent enforcement. The attachee no longer has control over the goods and cannot sell them or give them away. When a debtor's goods are attached in execution of a judgment, they are sold and the proceeds are given to the claimant. The claimant has no right to the attached goods themselves, only to the proceeds from their sale.

In addition, on application of Article 1445 *et seq.* of the Judicial Code, there is also the garnishment order (see below).

In addition to normal precautionary attachment and attachment in execution of movable and immovable property, there are also special rules for attachment of ships (Articles 1467 to 1480 and Articles 1545 to 1559 Judicial Code), distraint (Article 1461 Judicial Code), replevin (Articles 1462 to 1466 Judicial Code) and attachment of unharvested fruit and crops (Articles 1529 to 1538 Judicial Code). In the rest of this document, we shall concentrate only on normal attachment.

2 Which authority or authorities are competent for enforcement?

Bailiffs and judges of attachments. The latter are competent to rule in disputes relating to enforcement.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

2.1.1. Precautionary attachment

For precautionary attachment, in principle the permission of the judge of attachments is required and there must be reasons of urgency (Article 1413 Judicial Code). Authorisation must be sought by an *ex parte* application (Article 1417 Judicial Code). The same application may not be used simultaneously for attachment of movable and immovable property. For attachment of immovable property, a separate request is in any case always required.

The judge of attachments will reach a decision no later than eight days after deposition of the application (Article 1418 Judicial Code). The judge may decide to refuse permission or to grant it in full or in part to the claimant. The judge of attachment's decision must be served on the debtor. The decision is issued to a bailiff, who then takes the necessary steps to serve it.

There is one important exception to this rule, in which the permission of the judge of attachments is not required: every judgment constitutes authorisation to impose precautionary attachment in respect of the sentences handed down (Article 1414 Judicial Code). Here, too, it must be a matter of urgency. The judgment simply has to be handed over to a bailiff, who will take the necessary steps to attach the goods.

Precautionary attachment may be converted into attachment in execution (Articles 1489 to 1493 Judicial Code).

2.1.2. Attachment in execution of a judgment

A. General

Attachment in execution of a judgment may only be carried out under an enforceable title (Article 1494 Judicial Code). Judgments and deeds can only be enforced on production of the certified copy or the original, accompanied by the enacting formula laid down by Royal Decree.

The court's judgment is served on the defendant in advance (Article 1495 Judicial Code). If the enforceable title is a judgment, prior service is compulsory in any case, to notify the debtor. If the enforceable title is a deed, however, it is not necessary, because the debtor will already be aware of the title. The periods allowed for review or appeal start when the judgment is served. The appeal periods have the effect of suspending attachment in execution of a judgment (but not precautionary attachment) in cases where a party has been ordered to pay a sum of money. Provisional enforcement (judgment that is provisionally enforceable) constitutes an exception to the suspensive effect of ordinary review or appeal procedures.

The second stage in the claimant's efforts to force the sale of the property is the payment order (Article 1499 Judicial Code). This is the first act of enforcement and the last warning for the debtor, who can still avoid attachment at this stage. There is a waiting period after the payment order is issued of one day for attachment of movable property (Article 1499 Judicial Code) and 15 days for immovable property (Article 1566 Judicial Code). The order must be served on the debtor and constitutes a notice of default and demand for payment. The compulsory enforcement can only serve to recover the amounts stated in the payment order.

At the end of the waiting period, the goods can be attached. This is done by a bailiff's writ. Enforcement is therefore through the intermediary of a competent official. This official is regarded as the agent of the claimant; his function is laid down by law and he operates under judicial supervision. He has a contractual liability towards the claimant and a non-contractual liability towards third parties (under the law and on the grounds of infringement of the general duty of care).

Within 3 working days, the bailiff sends a notice of attachment to the Central Register of notices of attachment, delegation, assignment, collective debt settlement and protest (*Centraal Bestand van berichten van beslag, delegatie, overdracht en collectieve schuldenregeling en van protest*) (Article 1390, §1,

Judicial Code). The notice is compulsory for attachment of both movable and immovable goods. It is not possible to carry out any attachment in execution of a judgment or procedure for dividing the proceeds without first consulting the notices of attachment in the Central Register of Notices (Article 1391, §2, Judicial Code). This rule was introduced to avoid unnecessary attachments and to reinforce the collective dimension of the attachment.

B. Attachment in execution of a judgment: movable goods

Attachment in execution of a judgment on movable goods requires a payment order, which the debtor has the right to oppose. Attachment is carried out by bailiff's writ and in the first instance is a precautionary measure: the goods are not moved and there is no change in their ownership and use. It is also possible to attach goods at a location other than the debtor's home and on the premises of a third party.

In the case of movable property, attachment is not limited to a single procedure only, but there is virtually no point in placing a second attachment on the same goods, given the costs involved. When it comes to the proportional division of the proceeds from the sale of the debtor's goods, claimants other than the one who carried out the attachment will be involved (Article 1627 *et seq.* Judicial Code).

An official report of the attachment will be drawn up. The goods seized will be sold at the earliest one month after service or notification of the copy of the official report of attachment. This delay is intended to give the debtor a final chance to prevent the sale. The sale must be advertised to the public by means of posters and notices in the newspapers. It is held in an auction room or on a public market, unless a request is made for another more suitable place. It is conducted by a bailiff, who writes an official report and collects the proceeds from the sale. Within 15 days, the bailiff then divides the proceeds proportionately (Article 1627 *et seq.* Judicial Code). This procedure is usually settled amicably, failing which the matter is referred to the judge of attachments.

C. Attachment in execution of a judgment: immovable property (Articles 1560 to 1626 Judicial Code)

Enforcement begins with service of the payment order.

The attachment is then carried out at the earliest 15 days and at the latest six months later, failing which the order ceases to be legally valid. The writ of attachment must then be transcribed into the records of the mortgage registry within 15 days and served within six months. The act of transcribing the writ makes the property unavailable and is valid for a maximum of six months. Failure to transcribe the writ makes the attachment invalid. In the case of immovable property, unlike movable property, the principle of a single attachment only applies (property that has been attached once cannot be attached a second time).

The final step is an application to the judge of attachments to appoint a notary to handle the sale of the goods and the marshalling of creditors. The debtor may lodge a statement of opposition with the judge of attachments against the actions of the appointed notary. Detailed rules on the sale of the goods are clearly laid down by law (see Articles 1582 *et seq.* Judicial Code). The sale is normally public, but on the judge's initiative or at the request of the claimant making the attachment a private sale may be possible. The proceeds from the sale are then divided between the different creditors according to the agreed order of priority (marshalling) (see Articles 1639 to 1654 Judicial Code). Disputes about the marshalling of creditors are referred to the judge of attachments.

2.1.3. Garnishment

Garnishment is the attachment of claims that the debtor has on a third party (e.g. for earnings from his employer). This third party is thus the secondary debtor of the claimant making the attachment. Garnishment (*beslag onder derden*) is not the same as attaching goods belonging to the debtor but located on the premises of a third party (*beslag bij derden*).

The claim constituting the grounds for the attachment is the attachment creditor's claim on the attached debtor. The claim that is attached is the claim that the attachee has on a third party/secondary debtor.

Detailed rules on garnishment may be found in Articles 1445 to 1460 Judicial Code (precautionary attachment) and Articles 1539 to 1544 Judicial Code (attachment in execution of a judgment).

2.1.4. Costs

In addition to the legal costs, there will be bailiff's costs to take into account in cases of attachment. The fees for the bailiff's official services are laid down in the Royal Decree of 30 November 1976 setting the rates for acts of bailiffs in civil and commercial matters and the rate for certain surcharges (*Koninklijk Besluit van 30 november 1976 tot vaststelling van het tarief voor akten van gerechtsdeurwaarders in burgerlijke en handelszaken en van het tarief van sommige toelagen*) (see Federal Public Service Justice (*Service public fédérale Justice/Federale Overheidsdienst Justitie*)).

3.2 The main conditions

A. Precautionary attachment

Any claimant with a claim displaying certain characteristics may exercise precautionary attachment, regardless of the value of the goods attached and the amount of the claim (see Article 1413 Judicial Code).

The first pre-condition for this type of attachment is urgency: the debtor's solvency must be in danger, with the result that the subsequent sale of the assets is jeopardised. The decision as to whether this condition is met is taken by the court on the basis of objective criteria. There must be urgency, not just at the time the attachment is made, but also when an assessment is made of the need to continue the attachment. There are a few exceptions to this condition: attachment in the case of forgery, attachment for debts on bills of exchange and execution of a foreign judgment.

A second condition for precautionary attachment is that the claimant must have a claim. If a claim is required, it must satisfy certain conditions (Article 1415 Judicial Code): it must be definitive (not conditional), payable (applies also to guarantees for future claims) and fixed (amount has been determined or can be determined). The nature and amount of the claim, on the other hand, are immaterial. The judge of attachments decides whether these conditions have been met, but the court subsequently hearing the case will not be bound by this decision.

Thirdly, the claimant seeking precautionary attachment must be competent to do so. This is an act of control (not use) that can, if necessary, be performed by a legal representative.

The permission of the judge of attachments is required unless the claimant has already obtained a judgment (see above). However, this is not required for precautionary garnishment or distraint or for claimants who have already obtained a judgment (Article 1414 Judicial Code: any judgment constitutes an enforceable title). Notarial deeds also provide an enforceable title.

B. Attachment in execution of a judgment

For attachment in execution of a judgment too, an enforceable title is required (Article 1494 Judicial Code). This may be a judicial decision, an authentic instrument, a writ of execution from the tax authorities, a foreign judgment with exequatur, etc.

The claim must be set out in a deed meeting certain criteria. As with precautionary attachment, the claim must be certain, fixed and payable. The second paragraph of Article 1494 Judicial Code states that attachment made in order to obtain payment of income due in instalments will also apply to future instalments, as these fall due.

The title must also be current. The judge of attachments will not consider the title to be current if the attachment creditor is no longer a claimant or if all or part of the claim has ceased to be active (because it is time-barred or has been paid or otherwise settled).

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

A. General

Only movable and immovable goods owned by the debtor may be attached. Goods belonging to a third party may not be attached, although it is irrelevant in whose possession the debtor's goods happen to be at the time. It is therefore possible to attach goods on the premises of a third party, subject to the authorisation of the court (Article 1503 Judicial Code).

The claimant may in principle recover the debt only from the debtor's current assets. Only if the debtor dishonestly renders himself insolvent is it also possible to attach his former assets. Attachment of future assets is also normally ruled out, with the exception of future claims.

The income from the goods attached in principle remains with the attachée in the case of precautionary attachment. In the case of attachment in execution of a judgment, however, the income is also subject to attachment and therefore goes to the attachment creditor.

It is possible to attach an undivided estate, but the forced sale of the property is then suspended until the estate has been divided (see, for example, Article 1561 Judicial Code). Special rules apply to spouses.

B. Goods eligible for attachment

The goods must be eligible for attachment. Certain goods cannot be attached. Their exemption from attachment must be because of a statutory provision, or the nature of the goods or the fact that they have a strict personal association with the debtor. It is not possible, for example, to exempt goods from attachment on the basis of the purpose. The following goods are therefore not eligible for attachment:

The goods listed in Article 1408 Judicial Code. This restriction was introduced in order to guarantee reasonable living conditions for the debtor and his family. Goods that have no sale value and are therefore of no use to the claimant.

Goods that are inalienable because they are so closely associated with the debtor personally.

Goods excluded from attachment by specific legislation (e.g. the income and wages of minors, unpublished books and music, income earned by prisoners from prison jobs).

Wages (attachment of earnings) and similar claims are usually eligible for attachment to a limited extent only (see Articles 1409, 1409a and 1410, § 1, Judicial Code). This includes, for example, maintenance payments awarded by the court to the non-culpable spouse. Certain payments, such as the minimum subsistence income, however, are entirely excluded from attachment (see Article 1410, § 2, Judicial Code). However, the restrictions on eligibility for attachment do not apply to claimants seeking to recover maintenance debt, whose claims take precedence (see Article 1412 Judicial Code).

In the past the government enjoyed immunity from enforcement actions, with the result that it was not possible to attach government property. This has now been modified slightly by Article 1412a Judicial Code.

There are special rules governing attachment of ships and aircraft (for precautionary attachment: see Articles 1467 to 1480 Judicial Code and for attachment in execution of a judgment: see Articles 1545 to 1559 Judicial Code).

C. *Kantonnement*

When an item is attached, the attachment usually applies to the item as a whole, even if its value exceeds the amount of the claim. This is very disadvantageous to the debtor, because the item becomes completely unavailable to him. The Belgian legislator has therefore provided for a judicial deposit arrangement (*kantonnement*): the debtor deposits a certain sum and is allowed to regain the use of his property (see Articles 1403 to 1407a Judicial Code).

4.2 What are the effects of enforcement measures?

A. Attachment

From the moment the goods are attached, the debtor loses the right to dispose of them. The attachment does not, however, give the attachment creditor a preferential claim. Disqualification means that the debtor is no longer allowed to alienate or encumber them. However, the goods do remain in the debtor's possession. In practical terms, there is no change in the situation; the legal situation is, however, different.

The penalty for contravening this disqualification is that the actions taken by the attachée are not binding on the attachment creditor.

This disqualification is, however, only relative, in the sense that it applies only to the advantage of the attachment creditor. Other claimants still have to tolerate fluctuations in the debtor's assets. However, it is a simple matter for them to associate themselves with the attachment that has already been granted. Disqualification is the first stage in the process of selling off the assets. The goods come under the control of the court. Attachment in execution of a judgment thus also has a precautionary function in the first instance.

B. Garnishment

This form of attachment removes control over the entire claim attached, regardless of the value of the claim which formed the grounds for the attachment.

The garnishee can make a partial payment (*kantonneren*). Actions that undermine the claim are not enforceable against the attachment creditor. Once garnishment has been served, there can be no further settlement between the attachée and the garnishee.

4.3 What is the validity of such measures?

A. Precautionary attachment

Precautionary attachment is valid for up to three years. In the case of attachment of movable property and garnishment, the three-year period runs from the date of the order or writ (Articles 1425 and 1458 Judicial Code). In the case of attachment of immovable property, the date of the transcription into the records of the mortgage registry marks the start of the three-year period (Article 1436 Judicial Code).

The period may be extended if there are well-founded reasons for doing so (Articles 1426, 1459 and 1437 Judicial Code).

B. Attachment in execution of a judgment

In the case of attachment in execution of a judgment, only the order that precedes attachment is subject to a maximum period of validity. For this type of attachment, the period is ten years in the case of movable property (the normal time limit, because no special provisions apply) and six months in the case of immovable property (Article 1567 Judicial Code). For attachment of ships, the period is one year (Article 1549 Judicial Code).

5 Is there a possibility of appeal against the decision granting such a measure?

A. Precautionary attachment

If the judge of attachments refuses permission for precautionary attachment, the applicant (i.e. the claimant) may lodge an appeal against the decision with the Court of Appeal within a month. This is an *ex parte* procedure. If the attachment is allowed on appeal, the debtor has the right to institute third-party proceedings against the decision (see Article 1419 Judicial Code).

If the judge of attachments authorises precautionary attachment, the debtor or any other interested party may institute third-party proceedings against the decision. The deadline for doing so is one month and the proceedings are instituted at the court that issued the decision. The court will then rule in an adversary procedure. Third-party proceedings do not normally have suspensive effect (see Articles 1419 and 1033 Judicial Code).

Where precautionary attachment can be imposed without judicial authorisation, the debtor can appeal against it by applying to the judge of attachments to lift the attachment (Article 1420 Judicial Code). This is the procedure for opposing attachment and is dealt with as in interlocutory proceedings, if necessary in conjunction with the imposition of a penalty payment. The grounds for the claim may be the lack of urgency (Cass. 14 September 1984, Arr. Cass. 1984-85, 87).

If there is a change in circumstances, either the attachée (by summoning all parties to appear before the judge of attachments) or the attachment creditor or an intermediary (by means of an application) may apply to the judge of attachments to amend or withdraw the attachment.

B. Attachment in execution of a judgment

The debtor may lodge a statement of opposition to the payment order, thus contesting its legal validity. There is no statutory time limit for this, and opposition does not have suspensive effect. Grounds for opposition include procedural defects and a request for a period of grace (if the enforceable title is a notarial deed).

Debtors may lodge a statement of opposition with the judge of attachments against the sale of their goods, but this opposition does not have suspensive effect either.

Claimants other than the attachment creditor may oppose the sale price, but not the sale itself.

A third party claiming to be the owner of the goods attached may also lodge a statement of opposition with the judge of attachments (Article 1514 Judicial Code). This is a recovery procedure and does have suspensive effect.

The party wishing to have the judgment enforced receives only a single certified copy. This is issued by the registry on payment of a fee (issue fee).

Execution form:

'We, Filip, King of the Belgians,

To all those present and to come, be it known:

We order and command that all bailiffs so requested shall execute this judgment, sentence, decision, order or deed;

That Our Procurators-General and Public Prosecutors at the courts of first instance shall enforce it and that all commanders and officers of the public authorities shall lend their assistance if required by law to do so;

In witness whereof this judgment, sentence, decision, order or deed has been signed and sealed with the seal of the court or notary.'

For actions relating to the execution of the judgment or deed, the bailiff is answerable to the judge of attachments. In matters of ethics he is answerable to the public prosecutions service and the regional branch of the chamber of bailiffs.

The registry in the place where the goods are situated (Article 1565 Judicial Code). The registry provides information about the immovable property, e.g. property rights, mortgages taken out against the property.

i.e. all the parties appear in the case.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

The Judicial Code contains various rules regarding the goods which are not eligible for attachment (Articles 1408 to 1412c of the Judicial Code).

Creditors may not pursue claims against certain tangible movable goods: which are necessary for the daily lives of attachees and their families; for the pursuit of their profession; or for the continuation of training or studies of attachees or their dependent children living at the same address (see Article 1408 of the Judicial Code). Partial exemption from attachment and assignment applies to income from work and other activities, as well as to allowances, pensions and other income.

The thresholds on which the full or partial exemption from attachment is based are set out in Article 1409, § 1, of the Judicial Code and are indexed annually.

The progressive amounts of the tranches of eligible amounts for attachment or assignment are increased if the debtor has dependent children.

The legal claim with a view to execution of the court judgment is in principle subject to the general period of limitation, i.e. 10 years.

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