Article 50(1)(a) – Courts competent to issue the European Account Preservation Order

The attachments judge (*juge des saisies*/*beslagrechter*) at the court of first instance (*tribunal de première instance*/*Rechtbank van eerste aanleg*, Article 1395 /2 of the Judicial Code (*Code judiciaire*/*Gerechtelijk Wetboek*)).

Article 50(1)(b) – Authority designated as competent to obtain account information

The National Bailiffs' Association of Belgium (*Chambre nationale des huissiers de justice*/*Nationale Kamer van Gerechtsdeurwaarders*, Article 555/1, §1, subparagraph 1, 25° of the Judicial Code).

Article 50(1)(c) – Methods of obtaining account information

Article 555/1, §2 of the Judicial Code, which entered into force on 1 January 2019 after a number of further implementing measures were taken, provides for a combination of options (a) and (b) in Article 14(5) of the EU Regulation.

Accordingly, in an initial stage after the judicial request, the National Bailiffs' Association can ask the contact point at the Belgian central bank (*Banque nationale de Belgique*/*Nationale Bank van België*) to provide the requisite information.

On the basis of the information obtained there, the National Bailiffs' Association can, if necessary, ask one or more banks to provide data.

Article 50(1)(d) – Courts with which an appeal against refusal to issue the European Account Preservation Order may be lodged

The Court of Appeal (*Cour d'appel*/*Hof van Beroep*, Article 602, subparagraph 1, 6° of the Judicial Code).

Article 50(1)(e) – Authorities designated as competent to receive, transmit and serve the European Account Preservation Order and other documents

A bailiff (*huissier de justice*/*gerechtsdeurwaarder*, Article 196 of the Act of 18 June 2018 laying down various provisions on civil law and provisions to promote alternative forms of dispute resolution).

Article 50(1)(f) – Authority competent to enforce the European Account Preservation Order

A bailiff (Article 519, §1, 1° of the Judicial Code).

Article 50(1)(g) – Extent to which joint and nominee accounts can be preserved

Account preservation is governed in Belgium by the Judicial Code (Part 5, Title II, Chapter IV (http://www.ejustice.just.fgov.be/eli/loi/1967/10/10/1967101056/justel). Account preservation orders can be issued for joint accounts. If the garnishee bank is aware of the amounts attributable to individual holders of a joint account, the account preservation order will concern solely the amount owed by the attached debtor, failing which the full amount of the credit balance will be indicated in the statement to be provided by the garnishee. In that case, any account holder not subject to the attachment may apply for the attachment to be partially lifted if they can provide evidence of their share of the assets.

- This application can be lodged with the attachments judge at the court of first instance (Article 1395 of the Judicial Code).
- With regard to trust accounts (*comptes de qualité*/*kwaliteitsrekeningen* and *comptes de tiers*/*derdenrekeningen*), the following distinction should be made:

The debtor is the account holder

Notwithstanding Article 8/1 of the Mortgage Act (*loi hypothécaire*/*Hypotheekwet*), which explicitly acknowledges that some trust accounts which are mandatory under the law (i.e. accounts held by lawyers, bailiffs, notaries and estate agents) are separate from the assets of the account holder, and that this separation can be relied upon against third parties, the legislature has not in fact provided for the funds held on those trust accounts to be immune from seizure by the account holder's private creditors. Accordingly, in principle, it is possible to instruct a bank to preserve those funds. When a bank is instructed to preserve funds, it must indicate the specific nature of the account (Article 1452 of the Judicial Code); however, objections may be raised with the attachments judge. The attached debtor may, therefore, apply for the account preservation order to be lifted.

The debtor is the beneficiary of the trust account

The beneficiary of the trust account has a claim against the account holder in respect of the funds managed on their behalf. The claim may be attached by the beneficiary's creditors: this is because any creditor may apply for the preservation of funds owed by a third party to the creditor's debtor (Article 1445 of the Judicial Code). The account preservation order must be issued to the account holder (= the trustee), not to the bank. This is because in this scenario, the bank has debts only vis-à-vis the account holder, not vis-à-vis the beneficiary.

Article 50(1)(h) – Rules applicable to amounts exempt from seizure

Immunity from seizure of certain amounts is governed in Belgium by Articles 1409, 1409bis and 1410 of the Judicial Code (http://www.ejustice.just.fgov.be/eli/loi/1967/10/10/1967101056/justel). These provisions lay down restrictions on and immunity from seizure of certain items of revenue: wages, replacement income, social benefits and maintenance. Below a certain threshold, wages and replacement income are immune from seizure.

With a view to helping the enforcement authorities and, where appropriate, garnishees to determine whether the amounts on an account can be seized, Article 1411bis §3 of the Judicial Code provides for an obligation - enforced by criminal law - for employers and paying agencies to indicate a specific code when effecting payments. The code will vary according to the type of protected income paid into the account.

This requirement to indicate a code is without prejudice to a debtor's right to prove by all legal means that the amounts credited to their current account are immune from seizure (Article 1411bis §2, subparagraph 1 of the Judicial Code). In addition, Article 1411bis §2, subparagraph 2 of the Judicial Code provides for a rebuttable presumption that amounts paid by the debtor's employer into their current account are partially immune from seizure. The presumption applies exclusively to transactions between the debtor and their creditors.

Article 50(1)(i) – Fees, if charged by the banks, for the implementation of equivalent national orders or for providing account information, and information on the party liable to pay those fees

Pursuant to Article 1454 of the Judicial Code, the costs of the statement that has to be provided by a garnishee are borne by the debtor. No provision is made for the recovery of other expenses incurred by the bank in connection with the enforcement or (partial) lifting of an account preservation order.

Pursuant to Article 555/1, §2 of the Judicial Code, which entered into force on 1 January 2019, an order signed by the King is to set the fees for processing account information requests and lay down the conditions and arrangements for collection. Where appropriate, part of these costs are to be borne by the bank which provided the information at the request of the authority designated by Belgium (see Article 50(I)(b) above), in so far as a written agreement on compensation arrangements has been concluded with the banks or a representative thereof, without prejudice to Article 43(3) of the Regulation (see

Article 3, 2° of the Royal Order (*Arrêté Royal*/*Koninklijk besluit*) of 22 April 2019 setting the fees for processing information requests concerning the accounts referred to in Article 555/1, §2, subparagraph 6 of the Judicial Code and laying down the conditions and arrangements for collection (http://www.ejustice.just.fgov.be/eli/arrete/2019/04/22/2019030412/justel). As matters stand, no agreement on compensation arrangements has been concluded with the banks.

These fees will apply to domestic information requests under the new Articles 1447/1 and 1447/2 of the Judicial Code (which will probably enter into force during 2020) and to information requests under Article 14 of the Regulation.

Article 50(1)(j) – The scale of fees or other set of rules setting out the applicable fees charged by any authority or other body involved in the processing or enforcement of the Preservation Order

As regards enforcement by a bailiff, the rates are laid down by the Royal Order of 30 November 1976 setting the rates for measures taken by bailiffs in civil and commercial cases and the rates for certain benefits.

As regards provision of information, under Article 555/1, §2 of the Judicial Code, which entered into force on 1 January 2019, an order signed by the King is to set the fees for processing account information requests and lay down the conditions and arrangements for collection. The Royal Order of 22 April 2019 setting the fees for processing information requests concerning the accounts referred to in Article 555/1, §2, subparagraph 6 of the Judicial Code and laying down the conditions and arrangements for collection (http://www.ejustice.just.fgov.be/eli/arrete/2019/04/22/2019030412/justel) entered into force with retroactive effect from 1 January 2019.

Article 50(1)(k) – Ranking, if any, of equivalent national orders

Under Belgian law, the preservation of an account does not confer preferential status on a debt. Pursuant to Articles 17 and 19, 1° of the Mortgage Act, only those legal costs incurred as a direct result of account preservation receive preferential status.

Article 50(1)(l) – Courts or enforcement authority competent to grant a remedy

Against an account preservation order: the attachments judge at the court of first instance (Article 1395/2, 2° of the Judicial Code).

Against enforcement of an account preservation order: the attachments judge '*juge des saisies*'/'*beslagrechter*' at the court of first instance (Article 1395/2, 2° of the Legal Code).

Article 50(1)(m) – Courts with which an appeal is to be lodged and the time-limit, if any, for lodging the appeal

The Court of Appeal (*Cour d'appel*/*Hof van beroep*, Article 602, first paragraph, 7 ° of the Judicial Code).

Under Article 1051 of the Judicial Code, in principle appeals may be lodged within one month of the date of service or notification of the judgment.

Article 50(1)(n) – Court fees

The costs of civil proceedings are governed by Articles 1017-1022 of the Judicial Code.

Legal costs vary from one case to another and must be determined with reference to the specific circumstances of the case.

Article 1017 states by way of a general rule that even where no application is made, the final judgment will order the unsuccessful party to cover the costs, unless specific legislation provides for other arrangements and without prejudice to any agreement reached between the parties and incorporated into the judgment. However, any unnecessary costs, including the procedural fee referred to in Article 1022, will be borne by the party which generated them, even where no application is made.

Article 1018 of the Judicial Code sets out the costs concerned:

1° Miscellaneous court and registration fees and stamp duty paid before the Stamp Duty Code was repealed; court fees include listing fees, drafting fees and copy fees (Article 268 et seq. of the Code of Registration, Mortgage and Court Registry Fees (*Code des droits d'enregistrement, d'hypothèque et de greffe*/*Wetboek registratie-, hypotheek- en griffierechten*)).

In principle, a listing fee (*droit de mise au rôle*/*rolrecht*) ranging from €100 to €500 (attachments judge) or from €210 to €800 (Court of Appeal) is charged, depending on the value of the application (Article 269/1 of the Code). This fee is payable when the case is listed.

In principle, a drafting fee (*droit de rédaction/opstelrecht*) of €35 is charged on court registrars' documents or documents submitted to them without judicial intervention (Article 270/1 of the Code).

In principle, a copy fee (*droit d'expédition*/*expeditierecht*) ranging between €0.85 and €3 per page is charged on copies or excerpts issued by a court registry (Articles 271 and 272 of the Code).

Registration fees (3% of principal) are charged on decisions concerning a principal sum of more than €12 500 (excluding legal costs).

2° The cost of judicial documents and related emoluments and salaries.

3° The cost of providing a copy of a judgment: between €0.85 and €3 per page.

4° The costs of any measures of inquiry, particularly witness and expert fees.

5° Travel and subsistence expenses for judges, registrars and parties required to travel by order of the court, and costs of documents drawn up solely for the proceedings.

6° The procedural fee referred to in Article 1022; in principle, this is paid by the unsuccessful party and represents compensation for the lawyer's fees and expenses incurred by the successful party. The amount of this procedural fee is calculated in accordance with the value of the claim. The Royal Order of 26 October 2007 lays down a basic amount, a minimum amount and a maximum amount. The judge can reduce or increase the basic amount subject to the maximum and minimum amounts. These amounts are linked to the consumer price index.

7° The fees, emoluments and costs of a mediator appointed pursuant to Article 1734.

8° The contribution referred to in Article 4 §2 of the Act of 19 March 2017 setting up a budget fund for second-line legal assistance (*aide juridique de deuxième ligne*/*juridische tweedelijnsbijstand*).

Article 50(1)(o) – Languages accepted for translations of the documents

No additional language.

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