Euler Hermes

Collection Profile **Belgium**

Collecting in Belgium

- Payment terms in Belgium are 35 days on average, though DSO could be improved and the transposition of EU rules on late payment in domestic law is not as demanding as in other EU countries.
- Court proceedings are reliable and benefit from EU standards, but enforcing domestic judgments remains time consuming and costly, so pre-legal action conducted by collection specialists remains the most efficient option when it comes to recovering debt.
- Although domestic insolvency law aims at rescuing companies to increase the chances of recovering debts, it provides no limitations as to how much of the debt may be written off in restructuration negotiations. It is rare for unsecured creditors to recover from insolvent debtors in practice.

Collection complexity

Notable | High | Very High | Severe

Complexity relating to

	Notable → Severe
Payments	$ **$** $ $
Court proceedings	**⚖** ⚖ ⚖ ⚖
Insolvency proceedings	**↘** ↘ ↘ ↘

EULER HERMES
Our knowledge serving your success

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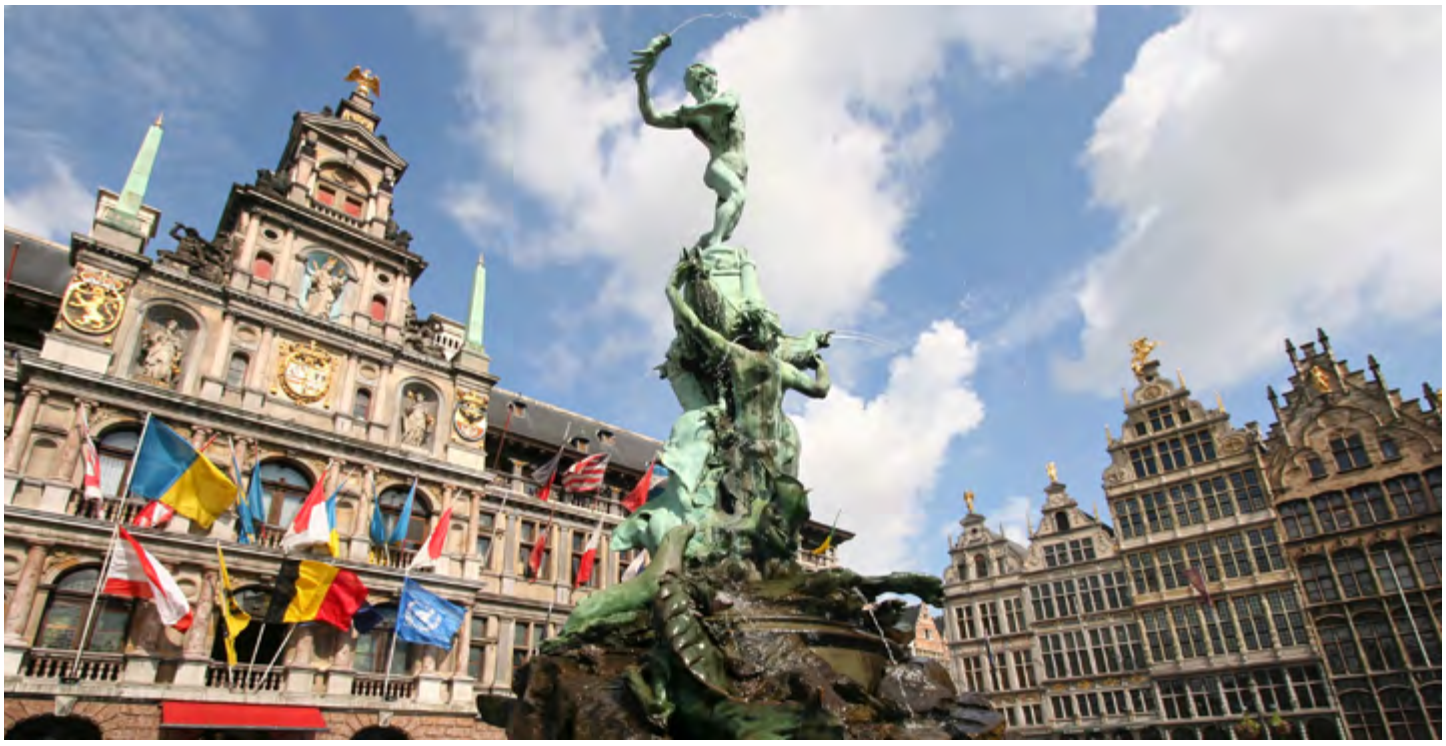


General information

Availability of financial information

Visibility on company records is fairly good and relevant financial information on domestic companies may be obtained through Official Registers since publishing yearly financial results is mandatory for the majority of companies in Belgium. In addition, Euler Hermes cross-verifies the information available with audit firms as well as with solvability reports provided by external bailiffs in order to allocate each company a grade reflecting its financial health and how it conducts business. Grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

- Sole Proprietorship is commonly relied upon for small scale operations because it is based on the qualities of the sole proprietor who personally owns the business assets. As a result, the proprietor is fully liable for the business' activities and debts.
- General Partnerships (sociétés en nom collectif/vennootschap onder firma) allow partners to conduct business together but offer different liability thresholds. Unless a Limited Partnership is set up (sociétés en commandite simple/gewone commanditaire vennootschap), indeed, the partners' liability is joint and unlimited, even if one partner generates business debts without the other partners' knowledge or consent. The partners establish their liabilities and rights in a specific 'partnership agreement' but do not create a separate legal entity. SCRI Cooperative Companies (sociétés coopératives à responsabilité illimitée/coöperatieve vennootschap met onbeperkte aansprakelijkheid) are alternatively made up of multiple partners whose contributions may vary even though their liability is unlimited.
- Limited Liability Companies (sociétés privées à responsabilité limitée SPRL/besloten vennootschap met beperkte aansprakelijkheid BVBA) are entered into by at least two associates (if one associate: SPRLU/EBVBA) whose liability is limited to their contribution. As a general rule, managers act on behalf of the company but cannot be held personally liable for its debts, except in case of gross misconduct or fraud.
- Public Limited Companies (sociétés anonymes SA / naamloze vennootschap NV) may be constituted by at least two shareholders, usually to create a controlling entity. A minimum capital of EUR 61,500 must be fully invested while incorporating the company.

Regulatory environment

Procedures in Belgium are regulated by the Judicial Code of October 1967 (as amended). The courts are not bound by a case law system, but precedents nonetheless constitute a significant source of authority. First instance tribunals (tribunal de première instance/ rechtbank van eerste aanleg) and Courts of Commerce (Tribunal du Commerce/rechtbank van koophandel) are present through a network of 27 District Courts while 187 Justices of the Peace (Juges de Paix/vrederechter) rather deal with small claims not exceeding EUR 1,860. The decisions rendered in first instance may be brought before five Courts of Appeals (Cour d'Appel/Hof van beroep) dealing with all civil, commercial and criminal cases.

The Supreme Court (Cour de Cassation/Hof van cassatie) operates at the highest level together with the Administrative Court (Conseil d'Etat/Raad van Staat) and the Arbitration Court, whose name is misleading insofar as it is competent exclusively on constitutional matters (Cour Constitutionnelle/Grondwettelijk Hof).

Days Sales Outstanding (DSO): DSO in Belgium was 65 days in 2016, but payment terms are 35 days on average.

Getting Paid

Days Sales Outstanding (DSO)

Payments in Belgium take place within 55 days on average, whereas payment terms are 35 days on average. For listed companies, the DSO is slightly higher at 77 days.

Late payment interest

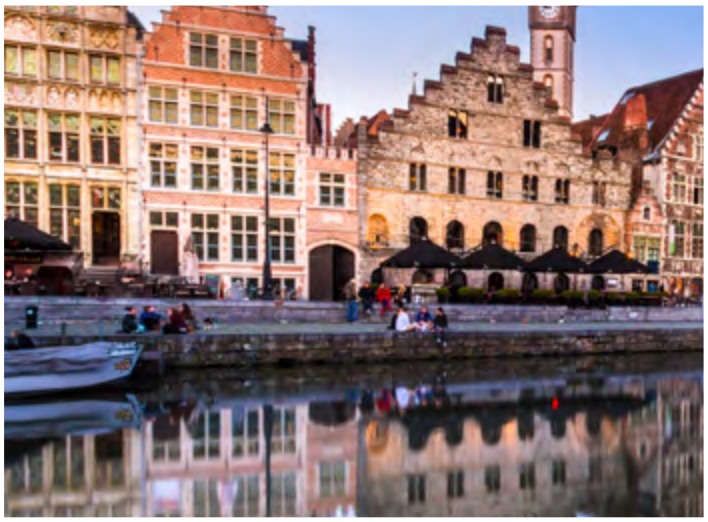
In accordance with the law of 2 August 2002 (Loi sur la Lutte contre les Retards de Paiement) which transposed the Directive 2000/35/EC into Belgium law, late payment interest may be requested 30 days following the invoice's date of issuance. In practice, late payment interest ranging from 12% to 15% is mostly ruled by general terms and conditions, but these may also be calculated by taking as a basis the interest rate of the European Central Bank's refinancing rate (reviewed twice a year by the Ministry of Finance and published in the Official Belgian Journal) increased by a minimum of 7 percentage points when the parties have not concluded any agreement to this extent.
In July 2013 (about three months after the official deadline), the government proposed a law aiming at transposing the new Recast Directive 2011/7/EU on Late Payments. Under the new EU rules, failure to pay within a maximum of 60 days (for businesses, versus 30 days for public authorities) would allow requesting late payment interests on the day following the due date mentioned on the invoice, but it is not clear at this stage whether the implementing law will reduce this time requirement. In addition, the European Central Bank's interest rate will be increased by a minimum of 8 percentage points.

Debt collection costs

As of March 2014, collection costs cannot be charged as such but may be covered by the penalties as agreed in general terms and conditions or given by a judge. Interests and penalties can be lowered to the effective collection costs in the framework of an amicable negotiation. As Directive 2011/07/EU is transposed into law, by contrast, creditors should be entitled to receive a flat EUR 40 fee to cover their collection costs, while claiming extra compensation for any other reasonable costs (legal fees, recovery agency fees, etc.) occurring as a result of the debtor's late payment.

Ownership protection

Retention of Title clauses (RoT) are often relied upon in Belgium. Originally designed in relation to bankruptcy law, they aim to oppose existing ownership rights to third parties during bankruptcy proceedings in case of concurrence of creditors. There is a limitation in enforcing the clauses, insofar as the property protected under the contract had to remain within the buyer's premises and had to be clearly identifiable. In other words, any consumed or fundamentally transformed goods automatically fell out of the scope of application of the RoT. Similarly, the provisions provided no protection over goods which had been resold by the buyer.
The Bankruptcy law of 1997 was recently replaced by the Law of 11 July 2013 which created a new legal framework. RoT provisions will now be considered a matter of property law and will be incorporated into the Civil Code (Article 67; 84-84 of the law). A key feature of the new framework will be the recognition of the so-called 'lengthened RoT' which aim at preserving ownership (i) despite the buyer's manufacturing process (Articles 18-20 of the Civil Code) and (ii) despite the goods being resold. In addition, where the goods are mixed and cannot be identified anymore, the RoT could become a 'Businesslike Subrogation' and would be extended to all receivables which replace the charged goods (including indemnity due to destruction, damage, loss of value).
At this stage, the new regulation has however denied validity to 'all monies clauses' (enlarged RoT) which aims at retaining ownership of all goods supplied to the buyer until the buyer has settled all its outstanding debts with the creditor.
In relation to insolvency proceedings, the new law also grants specific protection to creditors through the recognition of a 'Purchase Money Priority' over other creditors. That is, while the issue in insolvency is to obtain payment of a debt against secured creditors enjoying a higher degree of priority over 'unsecured' debts, the unpaid seller who has preserved its property through a RoT may be entitled to a 'super priority' over other creditors. Behind this measure clearly lies the idea



Late payment interest:
In practice, late payment interests ranging from 12% to 15% are mostly ruled by general terms and conditions.

that, without strong privilege, sellers are not motivated to deliver before being paid.
Success in enforcing RoT is unpredictable since the mechanism is very formal and, in practice, compliance with all conditions tends to be inconsistent. Seeking specialized legal advice on the issue would thus be essential.

Payments

The most common payment methods are as follows:
Swift bank transfers are among the most popular payment means as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers are usually guaranteed through an Export Credit Insurance policy, which helps minimize the risk of sudden or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of customers and grants them a specific credit limit up to which clients may trade and claim should something go wrong. Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) also constitute reliable guarantees which can be interpreted as a sign of good faith since they can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment.
Bills of exchange are also commonly used in Belgium and offer interesting means to exercise pressure of indelicate debtors as they constitute debt recognition titles. Checks are not considered as debt recognition titles anymore, and would thus not give access to fast-track payment order proceedings. Down payments are frequently relied upon and recommended.

Collecting overdues

Amicable action

Negotiating

Although courts in Belgium are efficient and reliable, amicable settlement opportunities should always be seen as a strong alternative to formal litigation proceedings. In addition, before starting legal proceedings against a debtor, assessment of assets is important as it allows verification as to whether the company is still active and whether recovery chances are good. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt (see below).

Legal action

Ordinary proceedings

Various options exist when the claim is certain and undisputed. First, bills of exchange left unpaid may be brought to the National Bank to obtain formal recognition (prôtet) and registration of the debtor's failure to pay in a registry (le Journal des Protêts). A fast track procedure conducted by the Justice of the Peace allows Payment Orders to be obtained for claims below EUR 1,860 (Procédure Sommaire d'Injonction de Payer), however it is hardly used in practice as it is perceived as being overly constraining. A legislation proposal has recently been submitted to the Parliament with the aim of abolishing the EUR 1,860 threshold while granting jurisdiction to Commercial Courts. When the debtor company has assets in other EU Member States, a European Payment Order procedure facilitating the recovery of undisputed debts (under Regulation EC No 1896/2006) may furthermore be triggered before the Justices of the Peace, the court of first instance or the Commercial Court). In this case, the demanding party may request a domestic court to issue an Order to Pay which will then be enforceable in all European Union countries (except Denmark) without exequatur proceedings.
If the amicable phase fails or if the debtor questions the claim, the option of starting legal proceedings remains. Formal legal proceedings may commence following a voluntary action of the parties (comparution volontaire/vrijwillige verschijning), or once a Writ of Summons is served to the defendant and the claim has been registered with the court. Legal action thus takes the form of a full lawsuit before the Commerce Tribunal, but these tend to be short, efficient and fairly cheap. If the defendant does not challenge the claim, the courts usually render a default judgment within a month, awarding the amount claimed in the Writ (Article 770 of the Judicial Code). If the claim is challenged, however, the parties may be required to provide briefs while the court establishes a procedural planning for the trial. The court then issues a judgment which only acquires res judicata value (autorité de la chose jugée/gezag van het rechterlijk gewijsde) once it is deemed definitive (i.e. when all appeal venues have been exhausted).
The courts would typically award remedies in the form of damages, specific performance or any form of declaratory relief, but they are not entitled to award punitive damages.
As a general rule, there is no discovery principle in civil proceedings, which implies that the parties must bear the burden of proving their claim. Proceedings are conducted exclusively in French in Wallonia and in Dutch in Flanders. Both languages are possible in Brussels, according to the circumstances of the case, and German can be used (instead of

Collection methods @ Euler Hermes
It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.

French) as the language of proceedings in the small German-speaking region. It is worth emphasizing that, as a general rule, the competent court is chosen in accordance with the contract's general terms and conditions rather than on the basis of the debtor's language.

Necessary documents

Commencing formal litigation proceedings requires having various documents in possession, including the general terms and conditions applicable to the claim at stake, copies of invoices and credit notes, a statement of account and a copy of the first formal dunning letter. Although optional, evidence as to the order and delivery of the goods and correspondence exchanged with the debtor would also be considered essential.

Time limitations

According to Article 2262 of the Civil Code, commercial claims must be brought to court within ten years (three years in specific circumstances; five years for tort claims) starting from the date the cause for action arose. Beyond this, legal action will not be granted since time limitations are considered a matter of substantive rather than procedural law. Having said this, certain factors (such as starting legal action or formally acknowledging debts) may interrupt the prescription period. Debts due by public authorities must be brought within five years.

Precautionary measures

Precautionary measures may be awarded to preserve the creditor's interests pending a final and enforceable judgment. Indeed, the courts may order protective measures ex parte (without the presence of both parties) before or during the proceedings. These may usually be requested through a summary proceeding (action en référé/ kortgeding) and will be granted in emergency cases to avoid imminent damage or to protect evidence. The courts would typically order the establishment of an inventory of the debtor's assets by a notary, but seals may also be placed.

Measures acting as provisional enforcement proceedings may also be ordered while the judgment only has a relative res judicata value (i.e. as long as the judgment may still be appealed and is not final yet). These would include the seizure of the debtor's assets (i.e. the debtor retains the right to enjoy the assets but is prevented from selling them) provided that the debt is certain. Sequestration would alternatively deprive the debtor from seized assets, particularly if ownership is disputed by the parties and the status quo must be preserved. Interim and precautionary orders are never definitive or irrevocable.

Lodging an appeal

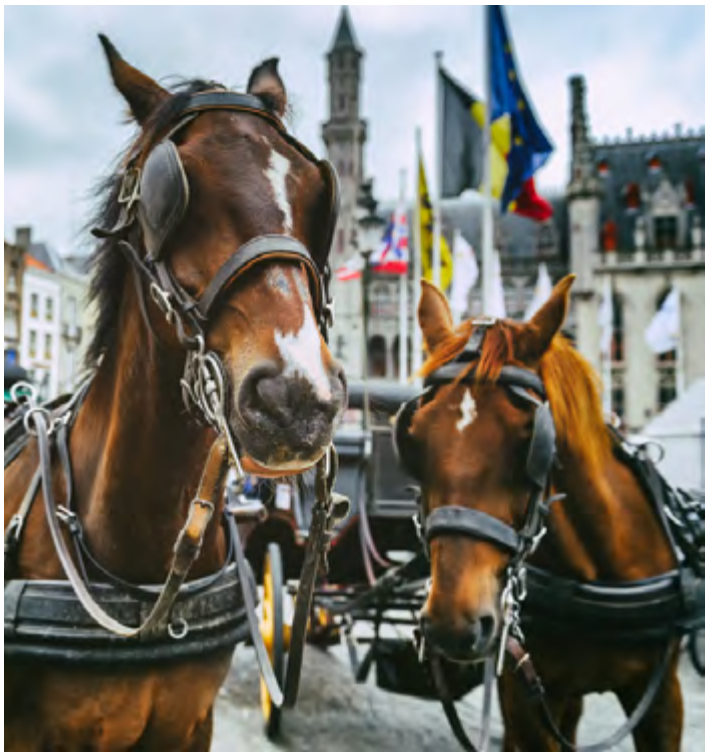
Debt-related claims above EUR 1,860 brought to the Commerce Tribunal may be appealed before the Court of Appeal, which would be competent to consider both questions of fact and law. Decisions rendered in second instance may also be reviewed by the Supreme Court on legal grounds (wrong interpretation of the law, failure to follow procedural requirements, failure to state reasons, etc.).

Enforcing court decisions

A judgment becomes enforceable once it has become final (i.e. when all appeal venues have been exhausted) and provided that the defeated party has been notified. If the opposite party refuses to execute the decision, the latter may still be enforced by requesting a bailiff to attach the debtor's movable assets, or by filing for bankruptcy. The direct action (action directe – rechtstreekse vordering) procedure also allows the creditor to obtain payment of a debt through a third party (own clients) owing money to the debtor. Enforcement proceedings remain long and relatively expensive, but judgments may be enforced within ten years following the decision (strict Statutes of Limitations apply).

How long could legal action take?

Proceedings in first instance may take three months in simple cases, but obtaining a final decision may take longer when the claim is disputed (appeal proceedings last for two years on average). In addition, enforcement would usually take an additional year. There is no particular time or cost difference in Belgium between domestic and international claims.



Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

How much could this cost?

As a general rule, Belgian law entitles the successful party to receive compensation from the defeated party for its legal expenses ('Case Preparation Allowance' as regulated by Royal Decree of 2007), to which penalties and debt collection costs may be added (a bailiff would for instance charge 8% of the debt value) together with award registration costs (3% of the amount). Overall, the cost for undisputed simple claims could reach 10% to 15% of the claim. There are no upfront court fees.

Conditional arrangements whereby attorneys are not paid upfront but rather receive of a fixed sum upon success (no-win-no-pay) are prohibited. However, litigation-funding companies may provide third party funding, to be repaid as a share of the final award.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution methods are common for business-related disputes. In particular, arbitration (regulated under Articles 1676 to 1723 of the Judicial Code) is often viewed as being more efficient than ordinary lawsuits because it offers expeditious confidential proceedings together with a binding award on the merits. To be enforced, arbitral awards must be recognized by a court of first instance through an exequatur proceeding.

In addition, voluntary and judicial mediation proceedings (regulated under Articles 1724 to 1737 of the Judicial Code) are increasingly used as a means to help the parties reach a compromise. Settlement arrangements obtained through mediation would then be considered as contracts rather than as awards. As such, they become enforceable upon failure of the parties to respect their commitments provided that the agreement has been homologated by the court.

Finally, if the parties have agreed in writing on an ADR, the court shall stay the proceedings until the negotiations have had a chance to succeed.

Foreign forums

Foreign forums are rather uncommon for debt-related disputes in Belgium because domestic courts are efficient in providing timely decisions. Belgium is nonetheless a signatory to the Rome I Regulation on the law applicable to contractual obligations, which stipulates that the parties to a contract may, by mutual agreement, choose the law applicable to the contract, and select the court that will have jurisdiction over disputes. Therefore, Belgium commonly admits foreign jurisdiction provisions and foreign traders may agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court). Typically, domestic courts would however tend to retain exclusive jurisdiction over areas of law possibly impacting public policy.

It is furthermore essential that the agreement be characterized by an international connection (for example, one party has elected domicile in another country, or the place of execution is located abroad), and that a jurisdiction clause is specifically drafted for this purpose. It is recommended to always seek legal advice.

Enforcing foreign awards

As previously mentioned, having foreign forums in order to obtain enforceable decisions against domestic debtors is rather unusual since domestic courts are efficient, and because such proceedings may take time. Nonetheless, foreign decisions issued against foreign debtors owning assets in Belgium may be recognized and enforced in Belgium provided that various criteria are observed, as various circumstances may apply. On one hand, decisions rendered in an EU country would benefit from particularly advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts, the two main methods of enforcing an EU judgment in Belgium are by the use of a European Enforcement Order (EEO, as provided under Regulation EC No. 805/2004) when the claim is undisputed, or by registering the judgment under the provisions of the Brussels I Regulation (44/2001).

If the judgment qualifies as an uncontested claim, it can be enforced directly (i.e. without registration) by use of an EEO provided that the debtor has identified assets in the country. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000.

If the claim is disputed, the procedure for registering an EU judgment with domestic courts is relatively simple. The judgment holder must apply to the relevant court for the judgment to be registered and provide the court with, among other documents, an authenticated copy of the judgment, a certified translation and, if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, it can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure is no longer required from January 2015).

On the other hand, judgments rendered in foreign countries outside the EU would also be recognized and enforced through exequatur proceedings, as planned under treaty terms or in accordance with the Code of Private International Law (Articles 22 to 25). The courts would typically consider whether the decision was issued in a country with which a Reciprocity Agreement in recognition and enforcement has been signed (Austria, France, Germany, the Netherlands, and Switzerland). The courts would verify that the decision is final and enforceable in the issuing country, that both parties benefit from a due process of the law before the issuing tribunal and that enforcement would be compatible with Belgian public policy.

Belgium is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Therefore, domestic courts also ought to recognize and enforce decisions rendered through international arbitration proceedings.

Handling insolvent debtors

By law, a debtor who is no longer able to pay their debts as they fall due, and who is unable to obtain further credit is deemed insolvent. The Belgian Parliament adopted the 2009 Law on the Continuity of Undertakings (loi relative à la continuité des entreprises/wet betreffende de continuïteit van de ondernemingen) which aims at supporting business from going bankrupt by fostering the recovery of companies facing financial difficulties. This law has replaced the 1997 law on judicial composition (wet betreffende gerechtelijk akkoord/loi relative au concordat judiciaire) and the mechanism it created is increasingly relied upon.

Insolvency proceedings

Out-of-Court proceedings

Insolvency law in Belgium does not provide any out-of-court mechanism aiming to negotiate debt restructuration informally prior to commencing formal restructuration proceedings.

Restructuring the debt

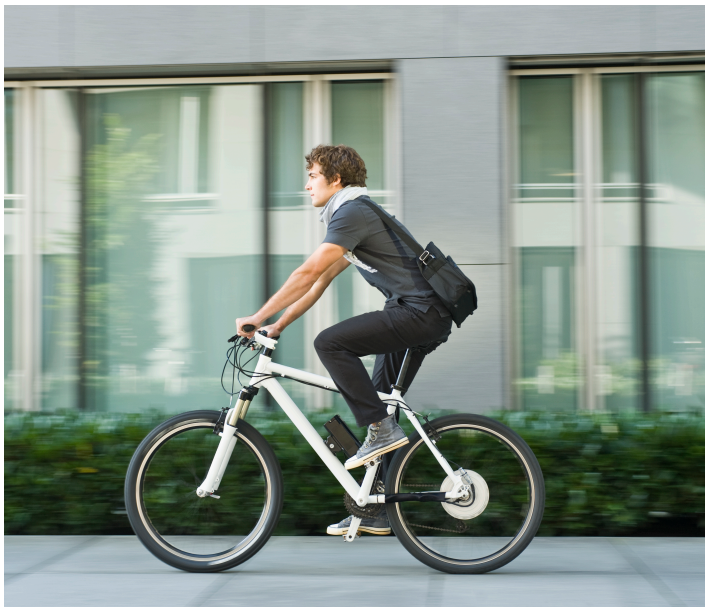
Judicial composition (gerechtelijke reorganisatie/reorganization judiciaire) aims at reorganizing the debt with the creditors. This mechanism is equivalent to Chapter 11 procedures under U.S. law and can be granted by the court upon request of any debtor facing financial difficulties threatening its continued business in the short or medium term.

The debtor establishes a list deemed representative of the various creditor's claims and remains in possession of the company's management throughout the proceedings. A moratorium stays all enforcement proceedings against the debtor for three months (an additional 12-month extension may be granted under Article 38 of the law). Meanwhile, the debtor may reach either an amicable settlement with selected creditors (case-by-case procedure) or a more generalized re-organisation plan involving the majority of creditors representing at least half of all debts. There is no debt write-off limitation and, once the agreement is approved by the court, it becomes opposable to all the creditors. Failure to reach a compromise however leads to commencing liquidation proceedings.

In order to maximize the impact of this 'second chance' framework, a new law was enacted on 27 May 2013. The structure of the previous law will remain intact but the 2013 law aims at increasing the credibility of restructuration schemes while reducing the scope for abuses (more severe entry formalities, greater role of specialized professionals, etc.).

Winding up proceedings

The debtor must file for bankruptcy (faillissement/faillite) when it has permanently ceased making payments or when the creditors' confidence has been lost (undermined creditworthiness), but creditors alone cannot initiate the proceedings.



If petition is granted, the creditors must register their claims within a timeframe prescribed in the court's insolvency declaration (one year as a maximum) as published in the Official Gazette. Failure to register claims normally cancels a creditor's priority rights and would bar entitlement to future proceeds. The President of the Commercial Court, as sole judge, then appoints a trustee or official receiver (curateur/curator) in charge of verifying the claims and of formulating an opinion as to the recoverability of the debt in the 7th and 13th month regarding the previous six months.
The proceeds' distribution plan can then be filed by the trustee/receiver, an attorney, the notary, or a director or manager of the company.
It should be added that the law of 19 March 2012 (amending the Companies Code) and the law of 22 April 2012 (amending the Judicial Code) have allowed voluntary liquidation upon the unanimous vote of all the shareholders, without appointing a trustee/receiver.

Priority rules

Unsecured creditors may enforce their rights as long as no insolvency proceedings have been opened. Once insolvency proceedings commence, the debtors' assets are divided among creditors, giving respective priority to secured creditors and statutory creditors. Public creditors (tax, social security) are considered as statutory creditors and would thus have priority over unsecured debts, which in practice would be unlikely to recover their due. RoT holders would be considered as secured creditors but would only have a privilege on a specific good outside the assets pool.

Cancellation of suspect transactions (clawback)

In addition, the trustee/receiver may cancel various types of transactions concluded over the last six months preceding the insolvency proceedings (suspect period). For instance, any fraudulent transactions aiming at favoring one creditor over the others, at reducing the value of the debtor's estate, or any unbalanced deals (improper prices, unfair loans) would typically be void.

How long could insolvency proceedings take?

It is impossible to say how long reorganization proceedings could last, as this would essentially depend on specific agreements between debtors and creditors. Suspension of Payment may last for 18 months, while reorganization plans are limited to five years. Liquidation proceedings would however tend to be fairly quick (about a year), but may also be lengthy (up to ten years) depending on the complexity of the case.

Necessary documents

The documents provided during ordinary proceedings would be also required in insolvency litigation. In the framework of RoT proceedings, it would however be essential to prove that the general terms and conditions have been brought to the knowledge of the debtor at the delivery. In our experience, a simple reference on the invoice to the RoT article in the General Terms and Conditions at the back could be sufficient.

Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

Euler Hermes, a company of Allianz, leader in credit insurance solutions helping companies grow their business safely at home and abroad, provides global commercial debt collection services with true end-to-end capability. Euler Hermes offers both domestic and international trade debt collection services worldwide. Through our network, we use our experience and knowledge of local markets to ensure a professional service for our clients from pre-legal action through to legal proceedings.

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