

Immunity of Foreign Central Banks Assets in Belgium

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Belgium has recently adopted a specific legislation granting immunity of enforcement to assets held by foreign central banks and international monetary institutions, such as the World Bank. The Act of 24 July 2008 provides that no attachment can be performed on assets, whatever their nature, including foreign reserves, held or maintained in Belgium by foreign central banks and international monetary institutions

With this new legislation, Belgium joins the growing club of countries which have adopted specific legislation to protect assets of foreign central banks. In the United Kingdom (Section 14(4) Sovereign Immunities Act) and the United States (§ 1611 -b (1) FSIA), the relevant acts on foreign sovereign immunity already guarantee that assets of foreign central banks cannot be attached, save in specific circumstances such as when the State has given its consent to the attachment.

As with these countries, the special immunization given by the Kingdom of Belgium to central banks aims to ensure that Belgium remains an attractive place for foreign central banks to deposit their assets and in the first place foreign reserves. For international monetary institutions, the new legislation comes on top of the immunity already enjoyed under specific agreements made with States where the bank or institution has its seat or a branch.

In other countries, judicial practice supports the existence of a principle of immunity for assets of foreign central bank. However, the immunity appears to be far from absolute. Hence, a distinction may need to be made according to the nature of the assets held. At least when foreign reserves are concerned, the general rule seems to be that immunity from enforcement will be granted.

In the future, central banks may enjoy a privileged position if and when the Convention on Immunities prepared by the ILC enters into force. According to Article 21(1)(c) of the UN Convention on State Immunities, « *property of the central bank or other monetary authority of the State* » must be immune from enforcement. Under the Convention, it appears not possible to demonstrate that

such property is used or intended for use for a commercial purpose.

The immunity granted by the Belgian legislator - which only prevents execution against central banks, without guaranteeing that the banks will also enjoy immunity from the jurisdiction of the courts - is defined broadly : it is not restricted to a specific class of assets, nor to those owned or held by the foreign central bank for its own account. Assets held by a central bank for a third party - one can think of the gold reserves which are sometimes held by one central bank for another - also enjoy the immunity.

The law also provides that creditors may attempt to attach assets held by central banks provided they demonstrate that such assets are exclusively used for commercial purposes. In practice, creditors will probably find it very difficult to target specific assets and to demonstrate that these assets are indeed not used for typical central bank activities. In any case, this possibility is only open for creditors seeking post-judgment relief. Pre-judgment attachment appears to be always excluded.