Max Planck Institute
LUXEMBOURG
for Procedural Law

Towards more EFfective enFORcemenT of claimS in civil and commercial matters within the EU EFFORTS

Project JUST-JCOO-AG-2019-881802

With financial support from the Civil Justice Programme of the European Union

In partnership with:

UNIVERSITÄT HEIDELBERG
ZUKUNFT SEIT 1386

UNIVERSITÀ DEGLI STUDI DI MILANO
DIPARTIMENTO DI STUDI INTERNAZIONALI, GIURIDICI E STORICO-POLITICI

VILNIAUS UNIVERSITETAS · 1579 · UNIVERSITAS VILNENSIS

VUB VRIJE UNIVERSITEIT BRUSSEL

UNIVERSITAS ZAGRABIENSIS · 17 · 76 · FACULTAS IURIDICA

4, rue Alphonse Weicker
L-2721 Luxembourg

Tel.: +352 26 94 88 0
Fax: +352 26 94 88 902

info@mpi.lu
www.mpi.lu

Max Planck Institute
LUXEMBOURG
for Procedural Law

Collection of French implementing rules

Table of Contents

A. France

Drafted by: *Marco Buzzoni and Veerle Van Den Eeckhout*

I. General implementation strategy

In France, the powers of the legislator are limited by Article 34 of the Constitution, which sets out an exhaustive list of subjects where new legislation may be adopted[1]. In all other matters, Article 37 of the Constitution confers the power to enact new rules on the executive branch. Therefore, competence to enact new rules in the field of civil procedure mostly lies with the executive branch. France has effectively employed the strategy and technique of governmental decrees ("*décrets*") to implement the targeted regulations.

For the most part, French implementation rules have been adopted around or shortly after the date of applicability of the relevant regulation. Where new rules have been enacted, they have usually been codified into the provisions of the French Code of Civil Procedure[2], which contains the procedural rules applicable before French courts, or of the Code of Judicial Organisation[3], which sets out the rules detailing the structure and the internal functioning of the French judicial system. Typically, the entry into force of a new regulation is also accompanied by the adoption of a circular prepared by the Ministry of Justice, whose aim is to explain the interplay between European and French national rules of civil procedure. All decrees and circulars are available online on the *Légifrance* portal[4], where one can also consult legislation in its previous versions, as well as information about the legal history of the legislation, *i.e.* information regarding when rules were introduced or changed.

---

[1] See Article 34 of the French Constitution (*Constitution du 4 octobre 1958, art. 34*). *Inter alia*, Article 34 gives the Parliament the power to enact laws determining the objectives of the State's action, as well as the fundamental principles applicable to the system of property, rights *in rem* and civil and commercial obligations.
[2] *Code de procédure civile.*
[3] *Code de l'organisation judiciaire.*
[4] See *Légifrance | Le service public de la diffusion du droit*, available at https://www.legifrance.gouv.fr/ [last visited 9 June 2021]. *Adde*, for some other useful information on the European rules of procedural law, the website of the Ministry of Justice, available at http://www.justice.gouv.fr/europe-et-international-10045/ [last visited 9 June 2021].

Here is a list of the main instruments that have been enacted so far to implement the targeted regulations into French law:

- regarding the Brussels 1 bis Regulation: the **Decree nº 2014-1633 of 26 December 2014**[5], amending Articles 509-1 *et seq.* of the Code of Civil Procedure;

- regarding the EEO Regulation: the **Decree nº 2008-404 of 22 May 2008**[6] and the **Decree nº 2017-892 of 6 May 2017**[7], amending Articles 509-1 *et seq.* of the Code of Civil Procedure;

- regarding the EPO and the ESCP Regulations: the **Decree nº 2008-1346 of 17 December 2008**[8] introducing two new sets of specific provisions in the Code of Civil Procedure, as well as the **Decree nº 2010-433 of 29 April 2010** (regarding the ESCP only)[9], the (clarifying) **Law nº 2011-1862 of 13 December 2011**[10], and the recent changes made by the **Law nº 2019-222 of 23 March 2019**[11].

---

[5] *Décret nº 2014-1633 du 26 décembre 2014 modifiant le décret nº 2010-434 du 29 avril 2010 relatif à la communication par voie électronique en matière de procédure civile et portant adaptation au droit de l'Union européenne.* On the Brussels 1 bis Regulation, see also the Circular of the Ministry of Justice dated 12 February 2015 (*Circulaire du 12 février 2015 de présentation des dispositions du décret nº 2014-1633 du 26 décembre 2014 modifiant le décret nº 2010-434 du 29 avril 2010 relatif à la communication par la voie électronique en matière de procédure civile et portant adaptation au droit de l'Union européenne*).

[6] *Décret nº 2008-484 du 22 mai 2008 relatif à la procédure devant la Cour de cassation.* See also the Circular of the Ministry of Justice dated 26 May 2006 on the EEO (*Circulaire relative à l'entrée en vigueur du règlement (CE) nº 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées*).

[7] *Décret nº 2017-892 du 6 mai 2017 portant diverses mesures de modernisation et de simplification de la procédure civile.*

[8] *Décret nº 2008-1346 du 17 décembre 2008 relatif aux procédures européennes d'injonction de payer et de règlement des petits litiges.* See also the two Circulars of the Ministry of Justice dated 26 May 2009, on EPO and ESCP respectively (*Circulaire de la DACS 06-09 du 26 mai 2009 relative à l'application du règlement (CE) nº 1896/2006 du Parlement européen et du Conseil du 12 décembre 2006 instituant une procédure européenne d'injonction de payer* and *Circulaire de la DACS 07-09 du 26 mai 2009 relative à l'application du règlement (CE) nº 861/2007 du Parlement européen et du Conseil du 11 juillet 2007 instituant une procédure européenne de règlement des petits litiges*).

[9] *Décret nº 2010-433 du 29 avril 2010 portant diverses dispositions en matière de procédure civile et de procédures d'exécution.*

[10] *Loi nº 2011-1862 du 13 décembre 2011 relative à la répartition des contentieux et à l'allègement de certaines procédures juridictionnelles.*

[11] *Loi nº 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice.*

- regarding the EAPO Regulation: the **Law n° 2019-222 of 23 March 2019**, amending Article L. 151 A of the French Tax Procedures Book[12].

In addition to these instruments, this Report will also provide an overview of the general rules governing enforcement measures under French national law. In this respect, the Report will focus in particular on the provisions of the French Code of Civil Enforcement Procedures[13], which sets out the rules governing the execution of enforceable titles under French law. As a general remark, it is noteworthy that the list of enforceable titles set out in Article L. 111-3 of this code specifies that enforcement should be carried out on the basis of a domestic enforceable title "without prejudice to the applicable provisions of the law of the European Union".

At this stage, it might already be pointed out that two different philosophies seem to have inspired the implementation of the targeted regulations into French law. On the one hand, uniform European procedures such as the EPO and the ESCP have led to the adoption of a rather complete set of rules that have been included into the relevant national codes and have provided an alternative to the equivalent procedures applicable under domestic law. On the other hand, any time that the targeted regulations directly deal with issues of enforcement, only a very limited number of issues have been explicitly addressed through the adoption of specific implementation rules. Hence, the execution stage of the procedure remains for the most part governed by general French domestic law. This is particularly evident with regards to the EAPO Regulation, where only one specific and very narrow issue has been dealt with by the French legislator.

In the following sections, we will address the implementation of each targeted regulation into French law (II-VI), before providing some general concluding remarks and overall assessment (VII). Finally, a list and translation of the most important implementation rules will also be provided in the Annex (B).

[12] *Livre des procédures fiscales, art. L. 151 A.*
[13] *Code des procédures civiles d'exécution.*

II. Brussels I bis Regulation

1. Competent court or authority and procedure for issuance of certificates (outgoing)

Under French law, Articles 509-1 to 509-9 of the Code of Civil Procedure currently set out the competent authorities and procedure applicable to the certification of titles under European Law, thus including certification under Articles 53 and 60 of the BI bis Regulation. These provisions were originally designed to deal with the issuance of certificates under the old Brussels I Regulation, but were subsequently amended by Article 2 of the Decree nº 2014-1633 of 26 December 2014, which removed all the mentions of Regulation nº 44/2001 and replaced them with references to the new Regulation nº 1215/2012.

Under the current framework, French law provides for a slightly different treatment of judicial titles (decisions and court settlements) (**a**) and authentic instruments issued under the BI bis Regulation (**b**). We will therefore address each category separately, while also signalling rules applicable to both of them.

a) Certification procedure applicable to judicial titles

Building upon the procedure applicable under the old Brussels I Regulation, Article 509-1 of the French Code of Civil Procedure grants to the chief clerk ("*directeur de greffe*"[14]) of the court of origin (*i.e.*, the court which rendered the decision or approved the court settlement) the authority to issue a certificate pursuant to the RBI bis Regulation.

Pursuant to Article 509-4 of the same code, the application must be presented in two copies and must include a precise indication of the documents on which it is based. Even though the article does not provide any details concerning these documents, one can only assume that the requesting party must at the very least provide the clerk with a copy of the judgment or court settlement that forms the basis for its application, as well as with any other information which might be necessary in order to accurately fill the certificate. Furthermore, the interpretation of this provision should also take into account the recent case law of the

[14] Prior to the Decree nº 2017-892 of 6 May 2017, reference was made to the "*greffier en chef*", which is the old denomination of the chief clerk.

CJEU, which held that the authority responsible for issuing the certificate should determine whether the dispute falls within the scope of application of the BI bis regulation any time that the court of origin did not proceed to such verification[15].

Pursuant to Article 509-5 of the Code of Civil Procedure, the decision rejecting the application must set forth the reasoning for the refusal. Conversely, no reasoning is required when the application is granted. In either case, Article 509-6 of the same code provides that the certificate shall be given to the applicant against a signature or a receipt, or shall be notified to him by registered letter with acknowledgement of receipt. A copy of the certificate, together with a copy of the request, must also be kept at the court registry.

Finally, Article 509-7 of the Code of Civil Procedure provides a remedy whenever the application for the issuance of the certificate has been rejected. In this case, the requesting party may appeal the decision to the President of the Regional Court ("*tribunal judiciaire*"), who renders a final decision on the matter after hearing or calling both the applicant and the requested authority.

b) Certification procedure applicable to authentic instruments

Following the entry into force of the Decree nº 2014-1633 of 26 December 2014, Article 509-3 of the French Code of Civil Procedure sets out the procedure applicable to certificates relating to "notarial authentic instruments" covered by Article 60 of the BI bis Regulation. Unfortunately, however, Article 509-3 of the code was subsequently amended by the Decree nº 2015-1395[16], which added an erroneous reference to "applications for certification […] *on the territory of the Republic*, of *foreign* notarial authentic instruments" pursuant to Regulation (EU) nº 1215/2012[17].

---

[15] CJEU, 28/02/2019, C-579/17, *BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse v Gradbeništvo Korana d.o.o.*. On the limits of this decision, see CJEU, 04/09/2019, C-347/18, *Alessandro Salvoni v Anna Maria Fiermonte* (holding that the authority issuing the certificate may not "ascertain of its own motion whether there has been a breach of the rules set out in Chapter II, Section 4 of that regulation, so that it may inform the consumer of any breach that is established and enable him to assess, in full knowledge of the facts, the possibility of availing himself of the remedy provided for in Article 45 of that regulation").

[16] *Décret nº 2015-1395 du 2 novembre 2015 portant diverses dispositions d'adaptation au droit de l'Union européenne en matière de successions transfrontalières.*

[17] Article 509-3 of the French Code of Civil Procedure.

Despite its poor drafting, this article has been unanimously interpreted as conferring to the President of the Chamber of Notaries ("*président de la Chambre des notaires*") of the place where the authentic instrument has been drawn up the authority to certify a *French* authentic instrument in view of its enforcement *abroad*[18]. Moreover, given the absence of any indication to the contrary, Articles 509-4 to 509-7 of the Code of Civil Procedure are generally deemed applicable by analogy to the certification of authentic instruments[19]. Overall, the lack of precision regarding the certification of authentic instruments might nevertheless hamper the effectiveness of Article 60 of the BI bis Regulation.

2. Competent court or authority and procedure for the enforcement of foreign titles (incoming)

In accordance with the minimalistic approach described above (see *supra*, I), France has not adopted any specific implementation rule concerning the enforcement of foreign titles under the BI bis Regulation[20]. Pursuant to Article L. 111-3 of the French Code of Civil Enforcement Procedure, enforceable titles issued in another Member State are therefore regarded as having the same value as the domestic ones. Nevertheless, the foreign nature of the title and the specific provisions contained in the Regulation do inevitably have an impact on both the enforcement procedures that have to be followed by the creditor (**a**) and the remedies available to the person against whom enforcement is sought (**b**).

a) Enforcement of titles issued in another Member State

Pursuant to Article 41(1) and Article 58(1) of the BI bis Regulation, French domestic law governs the procedure for the enforcement of foreign judgments, authentic instruments and

---

[18] On this point, see *e.g.* D. Alexandre and A. Huet, "Compétence judiciaire européenne, reconnaissance et exécution des décisions en matières civile et commerciale", *Répertoire Dalloz Droit International* (2019), nos 466-474. See also J.-P. Beraudo and M.-J. Beraudo, "Fasc. 633: Convention de Bruxelles, Conventions de Lugano, Règlement (CE) no 44/2001, Règlement (UE) no 1215/2012 – Exécution des décisions judiciaires, des actes authentiques et des transactions judiciaires", *JCl. International* (2020), no 87.

[19] See *e.g.* P. Callé, "Fasc. 300: Acte notarié – Acte notarié établi en France (droit international privé)", *JCl. Notarial Formulaire* (2019), nos 56-61.

[20] Following the abolition of *exequatur* among EU Member States, the Decree no 2014-1633 of 26 December 2014 amended Articles 509-1 *et seq.* of the Code of Civil Procedure in order to delete any reference to the simplified procedure applicable to the recognition and enforcement of foreign titles under the old Brussels I Regulation. This procedure still applies, however, to proceedings initiated and acts concluded before the entry into force of the new BI bis Regulation.

court settlements, to the extent that its application is compatible with the rules contained in the Regulation itself.

Under French domestic law, enforcement is governed by the Code of Civil Enforcement Procedures, which confers to French bailiffs ("*huissiers de justice*"), acting under the supervision of a specialized enforcement judge ("*juge de l'exécution*")[21], the monopoly over enforcement measures (with the notable exception of the attachment of earnings, which is carried out by the court clerk[22]). Bailiffs are also competent to carry out provisional measures, such as provisional attachments of the debtor's assets[23].

In order to provide a general overview of the implementation of the provisions of Chapters III and IV of the BI bis Regulation within the context of French enforcement proceedings, we will first address the rules applicable to provisional and protective measures (**i**), and then issues related to the execution of foreign judgments and extra-judicial titles (**ii**)

i. Provisional and protective measures

With respect to provisional and protective measures, Chapter III of the BI bis Regulation distinguishes between:

- protective measures that may be carried out under the law of the Member State addressed on the basis of an enforceable judgment or title issued in another Member State (Article 40); and

- the enforcement of provisional and protective measures that have been ordered abroad and are immediately enforceable under the Regulation (Article 42(2)).

As to the first hypothesis, Article 40 of the BI bis Regulation provides that: "An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed". In France, this case is addressed by Article L. 511-2 of the Code of Civil Enforcement Procedures. Specifically, this article provides that a protective measure may be carried out without leave of the court when

[21] See Article, L. 121-1 of the Code of Civil Enforcement Procedures.
[22] See Articles L. 3252-1 *et seq.* and R. 3252-1 *et seq.* oft he French Labour Code ("*Code du travail*").
[23] Article L. 122-1 of the Code of Civil Enforcement Procedures.

it is based upon "an enforceable title or a court decision that is not yet enforceable"[24]. Under this provision, the creditor of a foreign title issued in another Member State may therefore take advantage of one of the several "conservatory measures" ("*mesures conservatoires*") laid out in the Code of Civil Enforcement Procedures[25] even before the issuance of a certificate by the competent authority of the State of origin[26].

In particular, the creditor may seek a provisional attachment of one or more of the debtor's movable assets, both tangible and intangible, in accordance with the procedures detailed by Articles L. 521-1 to L. 523-2 and Articles R. 521-1 to R. 525-5 of the Code of Civil Enforcement Procedures. These procedures are both extra-judicial and *ex parte*, and have the effect of prohibiting the debtor from transferring ownership of his property[27] or, in the specific case of an interlocutory third-party debt order, of preventing the debt from being validly discharged by the third party[28]. Provisional attachments under French law operate *in rem*, and are therefore only available insofar as the debtor's assets are located within the jurisdiction.

Provisional attachments are carried out by the bailiff and can be initiated upon the communication by the creditor of a copy of the enforceable title[29], which will then be served upon the debtor[30] and/or the person in possession of the targeted asset(s)[31]. In the specific case of an interlocutory third-party debt order, the attachment is made upon the service of a notice to the third-party debtor pursuant to Article R. 523-1 of the Code. Although a

[24] Indeed, Article L. 511-2 of the Code of Civil Enforcement Procedures goes even beyond what is required by Article 40 of the BI bis Regulation. In fact, the term "court decision" has been consistently interpreted by French courts to include any foreign (including extra-European) judgment, even if it is not yet enforceable under French law.
[25] The specific procedural rules applicable to conservatory measures are detailed by Articles L. 511-1 to L. 533-1 and Articles R. 511-1 to R. 534-1 of the Code of Civil Enforcement Procedures.
[26] This procedure seems in line with Article 43(3) oft he BI bis Regulation, which exempts the creditor from having to serve the certificate before proceeding to protective measures in accordance with Article 40.
[27] Article L. 521-1 of the Code of Civil Enforcement Procedures.
[28] Article L. 523-1 of the Code of Civil Enforcement Procedures.
[29] See Article R. 521-1 of the Code of Civil Enforcement Procedures.
[30] See Articles R. 522-1 to R. 522-3 of the Code of Civil Enforcement Procedures.
[31] See Article R. 522-5 (tangible assets) and R. 524-1 (intangible assets) of the Code of Civil Enforcement Procedures.

translation of the title is not formally required, it is often included by the creditor in order to avoid any procedural delay[32].

In the second hypothesis, Article 42(2) of the BI bis Regulation provides that a creditor seeking to enforce a provisional or a protective measure contained in a judgment issued in another Member State shall provide the competent enforcement authority with a copy of the decision, together with a certificate including:

- a description of the measure; and
- information certifying that:
    - the court of origin had jurisdiction as to the substance of the matter;
    - the judgment is enforceable in the Member State of origin; and
    - whenever the measure was ordered *ex parte*, proof of service of the judgment upon the defendant.

In France, these documents must therefore be communicated by the judgment creditor to the bailiff prior to the first enforcement measure.

Furthermore, pursuant to Article 54(1) of the Regulation, if a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall be adapted to an equivalent measure or order known in the law of that Member State addressed. Under French law, it is accepted that the bailiff has the authority to proceed to such determination on the basis of the information provided to her by the judgment creditor. In case of doubt however, the bailiff may ask the *juge de l'exécution* to rule on the issue[33].

Pursuant to Article 43(3) of the Regulation, the party seeking to enforce a protective measure covered by Article 42(2) does not have to serve the certificate on the person against whom

---

[32] In this respect, see in particular the requirements set out by Article 8 of the Regulation n° 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, as well as Article 688-6 of the French Code of Civil Procedure.
[33] See Articles R. 151-1 to R. 151-4 of the Code of Civil Enforcement Procedures.

the enforcement is sought prior to the first enforcement measure. In the absence of any specific rule implementing this provision into French domestic law, it is therefore unclear when, if at all, the certificate should be served on the recipient. This point might be relevant, however, given that Article 54(2) of the Regulation grants to the person against whom the enforcement is sought the right to challenge the adaptation made pursuant to Article 54(1). In all likelihood, this challenge will have to take into account the content of the certificate.

Finally, given the (comparatively) more restrictive conditions applicable to the enforcement of provisional and protective measures under the Regulation, it might be questioned whether the judgment creditor preserves a separate right to seek a protective measure under French domestic law rather than pursuing the enforcement of the foreign title. In a case covered by the old Brussels I Regulation, the French Supreme Court answered this question in the affirmative, holding that the beneficiary of a foreign *Mareva* injunction whose effects had been recognised pursuant to that Regulation still had the right to seek a temporary attachment under French domestic law[34]. This interpretation, however, may undermine the effectiveness of Articles 42(2) and 54 of the BI bis Regulation.

ii. Enforcement of foreign judgments and extra-judicial titles

Contrary to the enforcement of provisional and protective measures, the execution of foreign titles under the Regulation must be preceded by the service of the certificate upon the person against whom the enforcement is sought[35]. In addition to that, Article 43 of the Regulation also provides that, whenever the proceedings are based upon a foreign judgment, the certificate shall be accompanied by the decision, if not already served. Finally, the same provision also specifies the cases in which the person against whom enforcement is sought may request a translation of the judgment. Contrary to Article 42 of the old Brussels I Regulation, Article 43 of the BI bis Regulation does not determine, however, whether these documents should be served pursuant to the law of the Member State of origin or that of the Member State addressed.

[34] Cour de cassation, Civ. 1, 03.10.2018, n° 17-20.296.
[35] Article 43(1) of the BI bis Regulation.

Assuming that service has to be made in accordance with the law of the Member State addressed[36], French law provides that the documents listed in Article 43 of the BI Regulation may be notified to the person against whom enforcement is sought by any bailiff practicing in the jurisdiction of the Court of Appeal where service is to be made.

In the case of monetary obligations, the documents may be served together with a writ or order of payment ("*commandement de payer*") established pursuant to Articles R. 221-1 *et seq.* of the Code of Civil Enforcement Procedures. The writ specifically mentions the title sought to be enforced, and contains a detailed account of all the sums claimed in principal, costs and accrued interest in accordance with the applicable interest rate. In addition to that, the writ also warns the recipient that failure to comply with it within *eight days* may result in a forced execution upon its movable assets. Therefore, even though the writ does not, in and of itself, constitute an enforcement measure under French domestic law, one might question whether a longer notice should be given to the recipient in order to allow her to submit an application for refusal of enforcement pursuant to Articles 46 *et seq.* of the BI bis Regulation[37].

Once the certificate has been served on the person against whom the enforcement is sought, the creditor may take advantage of one or more of the several enforcement methods laid out by the French Code of Civil Enforcement Procedures[38]. As with regards to protective measures, the execution of enforceable titles is carried out *ex parte* by the bailiff, and judicial intervention is confined to cases in which the implementation of an enforcement measure runs into difficulties or is challenged by the debtor or a third party. Some of these issues will be addressed in more detail in par. (**b)**) below.

---

[36] This was the solution under Article 42 of the old Brussels I Regulation. If the documents had to be served pursuant to the law of the Member State of origin, the uniform rules set out by Regulation nº 1393/2007 may also apply, depending on the place of service. This circumstance does not, however, solve all problems, given that such rules may still differ from those applicable to domestic service under the law of the Member State addressed.

[37] In this regard, see Recital nº 32: "In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure".

[38] See Articles L. 211-1 *et seq.* and Articles R. 211-1 *et seq.* of the Code of Civil Enforcement Procedures.

From the creditor's standpoint, a particular issue that may come up with respect to the articulation between French domestic law and the principles set out by the BI bis Regulation concerns the enforcement of judgments granting injunctive relief. Under Article L. 131-1 of the Code of Civil Enforcement Procedures, the party who has been granted an injunction may in fact ask the *juge de l'exécution* to set a monetary penalty ("*astreinte*") which is to be paid to the beneficiary by the debtor in case of non-compliance and that may later be enforced by way of attachment. The question is whether this provision can also apply to cases where:

- the law of the Member State where the injunction was first granted does not normally allow the judge to set a penalty in case of non-compliance and/or the creditor to enforce it;

- a penalty has already been set by the judgment which has to be recognised, even though the amount has not yet been finally determined by the court of origin.

In the first case, the principle set out by Article 54(1) of the BI Regulation[39] might be an obstacle to the application of Article L. 131-1 of the Code of Civil Enforcement Procedures. In the second, the question is whether, despite the rule set out by Article 55 of the BI bis Regulation[40], the judgment creditor may still preserve a separate right to seek an injunction under the law of the Member State addressed.

b) Remedies available to the person against whom the enforcement is sought

Three main issues have to be addressed regarding the remedies available under the BI bis Regulation to the person against whom enforcement is sought. Firstly, we will describe how the procedure of refusal of enforcement has been implemented under French law (**i**). Secondly, we will address the ways in which the debtor may invoke, before the French enforcement authorities, the fact that the enforceability of the title has been suspended or that an appeal is or may be lodged in the Member State of origin (**ii**). Finally, we will describe

[39] In the relevant part, this article provides that: "Such adaptation shall not result in effects going beyond those provided for in the law of the Member State of origin".
[40] According to this article: "A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin".

the residual remedies that may be available to this party under French domestic law in accordance with Article 41(2) of the BI bis Regulation (**iii**).

i. Refusal of enforcement (Articles 46 to 51 of the BI bis Regulation)

According to the declaration made by the French Government to the Commission pursuant to point (a) of Article 75 of the BI bis Regulation[41], the competent courts to which the application for refusal of enforcement is to be submitted are:

> *"For applications for refusal of enforcement:*
>
> *The court responsible for enforcement in the case of requests made following an enforcement measure (*'juge de l'exécution*'), with the exception of attachment of earnings,*
>
> *The district court in the case of requests made in connection with attachment of earnings (*'Tribunal d'instance*').*
>
> *For applications for a decision that there are no grounds for refusal of recognition under Article 36(2) and applications for refusal of recognition (Article 45), the regional court if this is the principal issue (*'Tribunal de grande instance*')".*

Phrased as such, however, the declaration is both outdated and ambiguous.

Firstly, the declaration is outdated because the Law nº 2019-222 of 23 March 2019[42] merged the *tribunal d'instance* and the *tribunal de grande instance* into a unique jurisdiction called *tribunal judiciaire*. Secondly, the same law also granted to the *juge de l'exécution* jurisdiction over the attachment of earnings by amending Article L. 213-6 of the Code of Judicial Organisation[43]. Today, therefore, the declaration should be read as follows:

- with respect to applications for refusal of enforcement lodged after an enforcement measure, jurisdiction lies with the judge responsible for enforcement ("*juge de l'exécution*"). In this case, the jurisdiction of the court is based upon Article L. 213-6

[41] The declaration is published on the *European E-Justice Portal | European Judicial Atlas in Civil Matters*, available at https://e-justice.europa.eu/content_brussels_i_regulation_recast-350-fr-en.do?member=1 [last visited 9 June 2021].
[42] Which entered into force on 1 January 2021.
[43] See Article L. 213-6 of the Code of Judicial Organisation.

of the Code of Judicial Organisation, and the procedure is carried out pursuant to Articles R. 121-1 to R. 121-24 of the Code of Civil Enforcement Procedures;

- with respect to applications for a decision that there are no grounds for refusal of recognition under Article 36(2) and applications for refusal of recognition (Article 45), jurisdiction lies with the Regional Court ("*tribunal judiciaire*"). In this case, the jurisdiction of the court is based upon Article R. 212-8 of the Code of Judicial Organisation and the procedure is carried out pursuant to the Code of Civil Procedure, especially pursuant to Articles 750 to 852, which set out the rules applicable to the *tribunal judiciaire*.

Despite all these caveats, however, the meaning of the declaration also remains ambiguous.

At first glance in fact, the person against whom enforcement is sought must bring her application either before the *tribunal judiciaire* or before the *juge de l'exécution*, depending on whether the action is introduced before or after the first enforcement measure. The application of such rule is uncertain, though, any time that the documents mentioned by Article 43 of the BI bis Regulation are served together with a writ established pursuant to Articles R. 221-1 *et seq.* of the French Code of Civil Enforcement Procedures[44].

Even though the writ itself cannot be characterized as an enforcement measure[45], French case law has in fact consistently held that any challenge regarding its validity has to be brought before the *juge de l'exécution*[46]. Therefore, the question is whether the person who has been served the certificate together with the writ has the option of bringing her application either before the *tribunal judiciaire* (refusal of recognition, Article 45 BI bis) or the *juge de l'exécution* (refusal of enforcement, Article 47 BI bis), or must rather apply to the latter court.

In our opinion, the answer to this question hinges upon another point that has already been raised by French legal scholars regarding the articulation of the remedies provided for by Articles 45 and 47 of the Regulation. In this respect, it has in fact been questioned whether the effects of a decision granting an application for refusal of recognition should be the same

---

[44] See *supra*, **ii**.
[45] *Id.*
[46] In this respect the French Supreme Court has in fact held that: "the service of a writ initiates the enforcement procedure" (see *e.g.* Cour de cassation, Civ. 2, 16.12.1998, 96-18.255, Bull. civ. II n° 301).

as those granting an application for refusal of enforcement, or rather whether the latter should be limited to the specific measures that gave rise to the challenge, without precluding any further attempt to enforce the decision in the Member State addressed[47].

Under the first hypothesis, it could be argued that after the beginning of the enforcement proceedings, the person against whom the enforcement is sought should always bring his action before the *juge de l'exécution*. Under the second hypothesis, on the contrary, this party should always preserve the right apply for a refusal of recognition in order to permanently prevent the judgment from producing any further effect under the law of the Member State addressed[48].

Finally, the French Government has also declared pursuant to points (b) and (c) of Article 75 that the decisions rendered on applications for the refusal of enforcement or recognition may be appealed to the Court of Appeal ("*cour d'appel*")[49] and then to the French Supreme Court ("*Cour de cassation*")[50].

ii. Suspension of the enforceability or appeal in the Member State of origin (Article 44(2) of the BI bis Regulation)

According to Article 44(2) of the Regulation: "The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin".

---

[47] On this point, see in particular L. d'Avout, "Refonte du règlement Bruxelles I (Règlement UE nº 1215/2012 du 12 décembre 2012)", *Recueil Dalloz* (2013), p. 1014.

[48] In our opinion, the first solution should prevail, as it has the advantage of concentrating the litigation before a single court after the first enforcement measure has been carried out. It is also noteworthy that, in this case, the *juge de l'exécution* would also have jurisdiction to grant the relief provided for by Article 44(1) of the Regulation, which allows the court before which an application for refusal of enforcement has been submitted to: (a) limit the enforcement proceedings to protective measures; (b) make enforcement conditional on the provision of such security as it shall determine; or (c) suspend, either wholly or in part, the enforcement proceedings.

[49] See the declaration made by the French Government pursuant to point (b) of Article 75 of the BI bis Regulation.

[50] See the declaration made by the French Government pursuant to point (c) of Article 75 of the BI bis Regulation.

In France, this power falls within the jurisdiction of the *juge de l'exécution*, who is exclusively competent to rule on any dispute arising in connection with the carrying out of enforcement proceedings. The territorial jurisdiction of the court is determined pursuant to the Code of Civil Enforcement Procedures, and varies depending on the specific proceedings at hand. The procedural rules are also set forth by the same Code.

By contrast, Article 51 of the Regulation deals with the case where the judgment issued in State of origin has been or may still be subject to an "ordinary appeal". In this case, the Regulation allows, but does not require, the court to which an application for refusal of recognition or enforcement is submitted to stay the proceedings. In this case, the jurisdiction of French courts should be determined in accordance with the principles set out in the previous sub-section.

iii. Residual grounds of refusal and/or suspension of enforcement available under the law of the Member State addressed (Article 41(2) of the BI bis Regulation)

Pursuant to Article 41(2) of the Regulation, "the grounds for refusal or of suspension of enforcement under the law of the Member State addressed shall apply in so far as they are not incompatible with the grounds referred to in Article 45".

Concerning the residual grounds of refusal available under French domestic law, applications should be brought before the *juge de l'exécution*. However, the powers of this court depend on the nature of the title on the basis of which enforcement is sought.

If the enforcement proceedings are based upon an enforceable judgment issued in another Member State, the principle of *res judicata* prohibits the court from questioning the substance of the rights contained in the judgment[51] so long as the decision has not been successfully appealed in the country of origin or an application for refusal of recognition or enforcement has been granted by the competent court in the country addressed.

If the enforcement proceedings are based upon an extra-judicial title, the question arises whether the person against whom the enforcement is sought has the right to challenge the validity or the enforceability of the obligations set out in the underlying contract or

[51] See also Article 52 of the BI bis Regulation: "Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed".

settlement. Under French domestic law, the Supreme Court has recently admitted that this kind of arguments may be raised before the *juge de l'exécution* in order to resist enforcement of an authentic instrument[52]. Under the Regulation, though, there is reason to doubt that these defences might be available unless the jurisdiction of French courts can be established pursuant to the rules set out in Chapter II.

Concerning the residual grounds of suspension available under French domestic law, French courts are generally considered to have jurisdiction to grant a grace period ("*délai de grâce*") to the person against whom the enforcement is sought so long that the requirements set out by Article 1343-5 of the French Civil Code[53]. Here again, the power to grant a grace period lies within the jurisdiction of the *juge de l'exécution*. According to French domestic law, the decision to grant a grace period (which cannot exceed two years) should take into account both the situation of the debtor and the needs of the creditor. During the grace period, enforcement proceedings are suspended and the interest rate can be adjusted by the judge on the basis of the circumstances of the case.

3. Other implementation rules

In the previous sub-sections, we have attempted to describe the interactions between the rules set out in Chapters III and IV of the BI bis Regulation and the general rules governing enforcement procedures under French domestic law. Before moving on to the critical assessment of the implementation of the BI bis Regulation within the French legal system, however, we must also underscore that the abolition of exequatur will inevitably give rise to some unprecedented questions, the answers to which will necessarily require some adaptations to traditional private international law rules that have historically been applied to cross-border legal relations.

A good example in this regard could be the application of Article 2412 of the French Civil Code to a judgment issued in another Member State and covered by the Regulation. Pursuant to this provision in fact, any person who has obtained an enforceable judgment has the right to register a mortgage ("*hypothèque*") on the debtor's immovable property in order acquire a

---

[52] See *e.g.* Cour de cassation, Civ. 2, 31.01.2013, 11-26.992. On this issue, *adde* also P. Callé, "L'acte authentique établi à l'étranger. validité et exécution en France", *Revue Critique de Droit International Privé* (2005), p. 377.
[53] On this point, see *e.g.* D. Alexandre and A. Huet, "Compétence judiciaire européenne, reconnaissance et exécution des décisions en matières civile et commerciale", *Répertoire Dalloz Droit International* (2019), nº 376.

security, which may result in foreclosure proceedings. When the judgment has been issued in another country, however, Article 2412 of the Code specifically provides that the mortgage can be obtained only after the decision has been declared enforceable by a French court.

Following the abolition of exequatur by the BI bis Regulation, however, it might be questioned whether the measure provided for by Article 2412 of the Civil Code should be characterized as a protective measure covered by Article 40, or rather as an enforcement procedure subject to the (relatively) more stringent requirements set out in Articles 42 and 43 of the Regulation. A second, related question, would also be whether a mortgage on a foreign judgment can be registered irrespective of the existence of a similar right under the law of the country of origin[54].

4. Critical assessment

In order to provide a critical assessment of the rules implementing Chapters III and IV of the BI bis Regulation into the French legal system, we must distinguish between the rules governing the issuance of certificates under Articles 53 and 60 of the Regulation (see *supra*, II.1) (**a**) and the rules governing the enforcement of foreign titles in France (see *supra*, II.2) (**b**).

a) Rules governing the issuance of certificates under the BI bis Regulation

Firstly, the certification procedure laid out in Articles 509-1 *et seq.* of the French Code of Civil Procedure could possibly be redrafted to better reflect the changes introduced by the BI bis Regulation. The overall scheme, which was initially set up to implement the provisions of the old Brussels I Regulation, might in fact have become inadequate in light of the more recent developments brought by European legislation as well as by the most recent case law of the CJEU. Specifically, the modifications may touch upon the competent authorities (**i**) and the procedure applicable to the issuance of the certificates (**ii**).

[54] On this point, see also the rule contained in Article 54(1) and discussed *supra*. *Adde* also the extensive study by L. d'Avout, *Sur les solutions du conflit de lois en droit des biens*, Economica (2006), as well as G. Khairallah, "Hypothèque", *Répertoire Dalloz Droit International* (1998).

i. Competent authorities

Here again, the situation differs depending on the nature of the title that has to be certified:

- with regards to judicial titles, Article 509-1 of the French Code of Civil Procedure treats the certification as an administrative task that can be fulfilled by the court clerk. In two recent cases decided in 2019, however, the CJEU held that the issuance of a certificate under the Regulation has a judicial nature[55], and that the competent authority of the State of origin should check the applicability of the BI bis Regulation before issuing the certificate[56]. Given these circumstances, some legal scholars have therefore suggested that, by analogy to the rules applicable to certificates issued under the EEO Regulation[57], the certification procedure should be handled by a judge rather than by the court clerk[58];

- with regards to authentic instruments, Article 509-3 of the French Code of Civil Procedure confers to the President of the Chamber of Notaries the authority to issue certificates pursuant to Article 60 of the Regulation. As we have seen, this provision should at the very least be redrafted in order to provide a more precise statement of this rule. In addition to that, it is also noteworthy, though, that the procedure set up by this provision is also more cumbersome compared to that applicable to the certification of titles under the EEO Regulation, which allows the certificate to be issued directly by the notary who drafted the authentic instrument[59]. In order to increase the effectiveness of the BI bis Regulation, this rule might perhaps be extended to the certification of authentic instruments covered by the BI bis Regulation.

---

[55] See CJEU, 28/02/2019, C-579/17, *BUAK v Gradbeništvo Korana d.o.o.*, and 04/09/2019, C-347/18, *Alessandro Salvoni v Anna Maria Fiermonte*, cited above.
[56] CJEU, 28/02/2019, C-579/17, *BUAK v Gradbeništvo Korana d.o.o.*
[57] See *infra*, III.
[58] See J.-S. Quéguiner, "Chronique de droit international privé de l'Union européenne"; *Journal du Droit International (Clunet)* (Oct. 2020), chron. 10, p. 1542 *et seq.* ; *contra* V. Richard, "L'office du juge certifiant une décision rendue en droit de la consommation", *Revue Critique de Droit International Privé* (2020), p. 149, nº 8.
[59] See *infra*; III.

ii. Procedure

Concerning the procedure applicable to the issuance of certificates, Jean-Sébastien Quéguiner has suggested that Articles 509-1 *et seq.* of the French Code of Civil Procedure should at least be redrafted to provide some more guidance regarding the remedies available in the case where the certificate was erroneously granted[60]. Currently, in fact, Articles 509-5 and 509-7 of the Code provide that only the refusal to issue a certificate should be reasoned, and that only such refusal can be appealed to the President of the *tribunal judiciaire*. These rules, however, might be at odds with the duty to verify the applicability of the Regulation set out in the case law of the CJEU[61].

b) Rules governing the enforcement of foreign titles in France

Secondly, given the lack of specific implementation rules regarding the enforcement of foreign titles covered by the Regulation, several issues will necessarily give rise to litigation and will have to be clarified by the French courts. At the very least, however, the French Government should update the declaration made to the European Commission pursuant to point (a) of Article 75 in order to reflect the changes introduced by the Law n° 2019-222 of 23 March 2019. On this occasion, the French Government might also clarify the articulation between the rules applicable to applications for refusal of recognition and those applicable to applications for refusal of enforcement under the Regulation.

Additionally, some specific rules should be introduced in the French Code of Civil Enforcement Procedures in order to provide more clarity with respect to the service of the certificates issued under Articles 53 and 60 of the Regulation. Given the peculiar nature of these certificates, it would be particularly useful to lay out in some detail the rules applicable to the service required under Article 43 of the Regulation, as well as the delay that should be given to the debtor before the first enforcement measure.

Finally, more specific rules might also be adopted to provide some guidance to the parties and the competent authorities as to the interactions between existing measures and the Regulation. These rules may address, for instance, the interplay between foreign and

[60] On this point, see in particular J.-S. Quéguiner, cit., p. 1551-1552.
[61] *Id.*

domestic protective measures, the availability of *astreintes* in the context of the Regulation, as well as the applicability of Article 2412 of the French Civil Code to judgments covered by the BI bis Regulation.

III. European Enforcement Order Regulation ("EEO Regulation")

1. Competent authority for (re-)issuance and suspension of the EEO (outgoing)

issuing: cf. Art. 6 (1), 9 (1), 24 (1), 25 (1); suspending: cf. Art. 6 (2); reissuing: cf. Art. 6 (3); specialization or concentration?

By analogy to what has already been said regarding the BI bis Regulation, the competent authority for the (re-)issuance and suspension of the EEO is determined pursuant to Articles 509-1 and 509-3 of the French Code of Civil Procedure. Here again, these provisions treat differently the issuance of a EEO following a judicial title (judgment or court settlement) (**a**) and an authentic instrument (**b**).

a) Judicial titles (judgments and court settlements)

At the time when Article 509-1 of the French Code of Civil Procedure was first adopted, this provision did not specifically mention the EEO Regulation, but rather invested the chief clerk with the general authority to rule on "requests for certification of French enforceable titles with a view to their recognition or enforcement abroad"[62]. However, even though this article had originally been drafted with the old Brussels I Regulation in mind, a circular of the Ministry of Justice dated 26 May 2006 specifically mentioned this provision as the legal basis for the issuance of certificates under the EEO Regulation. Later, this interpretation was explicitly endorsed by the Decree n° 2008-404 of 22 May 2008, which added a reference to the EEO Regulation in Articles 509-1 *et seq.* of the Code[63].

Following the decision of the CJEU in the case *Imtech Marine*[64] though, these provisions were once again amended[65] in order to grant the power to issue a EEO to the court which rendered the decision or approved the court settlement. Today therefore, any application for

---

[62] See Article 17 of the Decree n° 2004-836 of 20 August 2004 (*décret* n° 2004-836 *du 20 août 2004 portant modification de la procédure civile*).
[63] See Article 15 of the Decree n° 2008-404 of 22 May 2008, which specifically provided that the article should apply to both the Brussels I and the EEO Regulation.
[64] CJEU, 17.12.2015, C-300/14, *Imtech Marine Belgium NV v Radio Hellenic SA.*
[65] See the Decree n° 2017-892 of 6 May 2017.

certification of a judicial title as a EEO must be made to a judge, contrary to what happens under Article 53 the BI bis Regulation.

In addition to that, the Circular of 26 May 2006 also indicates that the authority that granted the initial certificate should also be competent for the issuance of a replacement certificate pursuant to Article 6(3) of the EEO Regulation[66]. The same holds true regarding the issuance of a certificate indicating the lack or limitation of enforceability of the title certified as an EEO (cf. Article 6(2) of the EEO Regulation)[67].

b) Authentic instruments

Regarding authentic instruments, Article 509-3 of the French Code of Civil Procedure currently grants to the notary ("*notaire*") who drafted the authentic instrument the power to issue the certificates mentioned by Article 25 of the EEO Regulation. As with the provisions of Article 509-1, Article 509-3 was first drafted in very general terms[68], and a specific reference to the EEO was only introduced by the Decree nº 2008-404 of 22 May 2008[69].

In this respect, it is noteworthy that the competent authority to certify an authentic instrument as a EEO is the notary who drew up the instrument, rather than the President of the Chamber of Notaries as it is the case under the BI bis Regulation[70]. This circumstance undoubtedly facilitates the certification of the title as a EEO, and thus provides an incentive to the parties to opt for this mechanism rather than turning to the newer BI bis Regulation. In the IC2BE research, for example, French notaries described the EEO Regulation as a remarkable and flourishing experience, and underscored that the EEO has remained relevant for their international practice even after the entry into force of the BI bis Regulation[71].

---

[66] See Circular of 26 May 2006, p. 4 and 7.
[67] See Circular of 26 May 2006, p. 7.
[68] See Article 17 of the Decree nº 2004-836 of 20 August 2004.
[69] See Article 15 of the Decree nº 2008-404 of 22 May 2008.
[70] The difference between Brussels 1 bis and EEO in this regard is emphasized in the comparative study on the application of the BI bis Regulation conducted by the European Bailiffs' Foundation, the Notaries of Europe and the *Instituto Superior de Contabilidade e Administração de Lisboa*. See *Etude comparative sur l'application du règlement Bruxelles I bis*, available at http://www.notaries-of-europe.eu/files/publications/Rapport-BruxIBis.pdf (hereinafter, the "Comparative Study on BI bis").
[71] See the Report on France published in J. von Hein and Th. Kruger, *Informed Choices in Cross-border Enforcement*, Intersentia (2021), p. 202-204 (hereinafter "IC2BE Report").

Given the lack of any indication to the contrary, the notary who first drafted the act is also competent to issue the certificates set out in Article 6(2) and (3) of the EEO Regulation.

2. Procedural rules on (re-)issuance and suspension of the EEO

e.g. hearing of the debtor, service to the debtor, remedies for the creditor in case of refusal

In the absence of more specific rules in the French Code of Civil Procedure, the procedural rules governing the issuance, the reissuance and the suspension of an EEO are almost identical to those applicable to the issuance of certificates under the BI bis Regulation. This is so, even though the competent authorities differ from one Regulation to another, and despite the fact that the issuance of a EEO should be conditional upon the verification of the minimal standards set out in the EEO Regulation[72].

With respect to judicial titles in particular, Article 509-4 of the Code of Civil Procedure provides that the application for the issuance of a EEO has to be made *ex parte* and has to be presented in two copies containing a detailed indication of the documents on which it is based[73]. Furthermore, Article 509-5 provides that any refusal to issue a EEO must be reasoned. Finally, the certificate or the refusal must be conveyed to the applicant in accordance with Article 509-6 of the Code[74].

Following the adoption of Decree nº 2017-892 of 6 May 2017, some minor adaptations were nevertheless made with respect to the procedure applicable to judgments and court settlements in order to reflect the transfer of competence from the chief clerk to the judicial authority[75].

---

[72] These standards are specifically referenced to in Annex I of the Circular of 26 May 2006.
[73] In the case of the certification of a judgment as a EEO, the Circular of 26 May 2006 specifies that the applicant should provide the competent authority with the documents relating to the notification of the respondent, accompanied by a translation if necessary.
[74] Similarly to what happens under the BI bis Regulation, the certificate is delivered to the applicant against a signature or a receipt, or is notified to him by registered letter with acknowledgement of receipt. A copy of the certificate, together with a copy of the request, is also kept at the court registry.
[75] For a more detailed description of these provisions, see in particular F. Ferrand, "Titre exécutoire européen", *Répertoire Dalloz Droit de la Procédure Civile* (2019).

First of all, it is generally admitted that, even though the Code does not include any specific provision to this effect, an application for the issuance of a certificate pursuant to the EEO Regulation can be made during the course of the proceedings, and not only after that a judgment has already been issued[76]. Secondly, Article 509-1 of the Code of Civil Procedure specifies that the applicant does not need to be assisted by a lawyer. Finally, and maybe most importantly, Article 509-7 of the Code provides that the decision denying the certification of a judgment under the EEO Regulation cannot, contrary to what happens under the BI bis Regulation, be subject to any challenge[77]. Therefore, this remedy is only available with respect to the certification of authentic instruments.

3. Procedural rules on rectification or withdrawal of the EEO

cf. Art. 10 (2)

If the application for issuance of an EEO is granted, the only remedies available to challenge the issuance of the certificate are those set out in Article 10(2) of the Regulation itself, which distinguishes between the rectification and the withdrawal of the EEO.

In the case of a judicial title, the application for a rectification of a EEO can be characterized as a mere correction of a material error and should therefore be treated in accordance with the rules set out in Article 462 of the French Code of Civil Procedure. Under this provision, a request for rectification can be made *ex parte*, and the judge has the authority to rule on the application without a hearing.

By contrast, the purpose of an application for withdrawal should be to allow the party against whom the EEO has been granted to submit her comments on the correct applicability of the EEO Regulation. From a procedural standpoint, the application for withdrawal should therefore be treated as a request to revoke the certificate that had been granted *ex parte*, and should therefore be governed by Articles 496 and 497 of the Code of Civil Procedure. This

---

[76] This solution appears to be in line with CJEU, Case C-511/14, *Pebros Servizi Srl v Aston Martin Lagonda Ltd.* See also the Commission's Practice Guide for the Application of the EEO Regulation, p. 16 (https://e-justice.europa.eu/fileDownload.do?id=b7198c94-2976-4b61-82be-29abdc70f4ef).

[77] Except, maybe, an appeal for excess of power. On this point, see F. Ferrand, "Titre exécutoire européen", *Répertoire Dalloz droit de la procédure civile*, nº 170.

means that the parties should always be allowed an opportunity to be heard prior to the ruling.

4. Rules on service

cf. Art. 13, 14, 15, e.g. standard forms, competent service person, exclusion of national forms of service (cf. Art. 14(2), CJEU, C-292/10)

Without prejudice to the provisions of the Service Regulation[78], rules on service are laid out by Articles 651 to 694 of the French Code of Civil Procedure. In particular, Article 651 of the Code specifies that the service of documents on the recipient can always be made by the bailiff pursuant one of the means set out in Articles 653 to 664-1 of the Code, even when the law permits service by other ordinary means set out by Articles 665 to 670-3 of the Code.

With respect to the document instituting the proceedings[79], Article 54 of the Code of Civil Procedure[80] provides that the claim can either be lodged by summons ("*assignation*")[81] or by direct application to the court ("*requête*")[82]. In the former case, the documents must be served on the defendant by the bailiff pursuant to one of the methods detailed below. In the latter, the claim is first delivered to the court, and it is then up to the clerk ("*greffier*") to notify the application to the defendant (usually, by registered letter with acknowledgment of receipt[83]).

When service is done by the bailiff, the Code provides, schematically, that the documents should primarily be delivered personally to the recipient[84]. In this case, the recipient may be served wherever he is found[85], and the bailiff must attest the date and the circumstances of the receipt[86]. When service in person proves to be impossible, the documents can be

[78] See Regulation nº 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.
[79] See Articles 13 and 16 of the EEO Regulation.
[80] As amended by Article 1 of the Decree nº 2019-1333 of 11 December 2019.
[81] Article 55 of the Code of Civil Procedure.
[82] Article 57 of the Code of Civil Procedure.
[83] See, for instance, Article 758 of the Code of Civil Procedure. In this event, service will be deemed to have been delivered personally if the proof of receipt is signed by the debtor (on this point, see Article 670 of the Code of Civil Procedure).
[84] Article 654 of the Code of Civil Procedure.
[85] Article 689 of the Code of Civil Procedure.
[86] Articles 663 and 664-1 of the Code of Civil Procedure.

delivered at the domicile of the defendant (or, if this address is unknown, at her place of residence)[87]. In this event, a copy may either be delivered to a person present on-premises[88] or be kept at the bailiff's office, in which case a notice is left at the defendant's address stating that the documents must be collected as soon as possible by the recipient or by a person representing her[89]. In either case, the bailiff must drew up a statement relating the circumstances of the service and send a copy of the summons by letter without proof[90].

When the recipient of the act is a legal person, Article 654 of the Code provides that service should be deemed to be made personally whenever the act is delivered to "the legal representative, to an authorised representative of the legal representative, or to any other person empowered for that purpose".

If the addressee of the act has specifically consented to service by electronic means, the act can also be notified by the bailiff through a secured electronic portal in accordance with the procedure laid out in Articles 748-1 to 748-9 of the French Code of Civil Procedure. Finally, the same code also provides for more informal rules of service whenever the parties have already appointed an attorney for the purpose of the proceedings[91].

All these methods of service fulfil the minimum standards set out in Articles 13 to 15 of the EEO Regulation. By contrast, an EEO cannot be issued if the service is made pursuant to Article 659 of the French Code of Civil Procedure. This provision applies when the defendant does not have any known address and cannot be found by the bailiff. In this case, the bailiff must drew up a statement detailing all the steps taken in the attempt to serve the documents and send a letter to the recipient's last known address.

5. Possibilities for review under Art. 19 (1) and (2)

In principle, the general review mechanisms available under French domestic law are considered as more generous than the minimum standards described by Article 19(1) of the EEO Regulation. In this regard, the declaration made by the French Government pursuant

[87] Article 655 of the Code of Civil Procedure.
[88] *Id.*
[89] Article 656 of the Code of Civil Procedure.
[90] Articles 657 and 658 of the Code of Civil Procedure.
[91] See Articles 652 and 671-673 of the French Code of Civil Procedure.

to Article 30(1)(a) of the EEO Regulation states that: "The review procedure referred to in Article 19 is the ordinary procedure applicable to decisions taken by the court that issued the original enforcement order"[92], which means that a judgment on the merits is subject to one of the challenges set out in Articles 527 to 639-4 of the Code of Civil Procedure.

Specifically, Article 540 of the Code provides that when the judgment has been issued without the defendant entering an appearance, the judge may allow him or her to change the judgment even after the expiration of the ordinary time limit if: "the defendant, without any fault on his part , did not learn of the judgment in time to exercise his recourse, or if he found it impossible to act"[93].

6. Competent authority and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 21, 23, e.g. remedies and hearings, specialization or concentration?

In accordance with Articles 5, 24 and 25 of the EEO Regulation, a foreign title which has been certified as a EEO can immediately be enforced in France in accordance with the procedures set out in the French Code of Civil Enforcement Procedures[94], without the need for a declaration of enforceability and without having to be served on the debtor prior to the first enforcement measure[95]. In practice, the debtor will therefore be able to apply for a refusal, stay or limitation of enforcement only after the beginning of enforcement proceedings by the creditor.

In the absence of any specific provisions implementing the enforcement procedure of a EEO in France, any application for refusal, stay or limitation of enforcement will have to be lodged before the *juge de l'exécution*[96]. In principle, the debtor has an option to file his claim either

---

[92] See the information published on the *European E-Justice Portal | European Judicial Atlas in Civil Matters*, available at https://e-justice.europa.eu/content_european_enforcement_order-376-fr-en.do?member=1 [last visited 9 June 2021].
[93] Article 540 of the Code of Civil Procedure. On this point, see in particular V. Richard, *Le jugement par défaut dans l'espace judiciaire européen*, nº 520-522 (accessible through https://www.theses.fr/2019PA01D044).
[94] See also Article 20(1) of the EEO Regulation, which provides that the enforcement procedures should ne governed by the law of the Member State of enforcement.
[95] Cf. Article 43 of the BI bis Regulation.
[96] See Article L. 213-6 of the Code of Judicial Organisation, , which grants exclusive jurisdiction to the *juge de l'exécution* over any claim arising in connection with the carrying out of enforcement proceedings.

before the court of the place of his domicile or before the court where the enforcement measure has been carried out[97]. Except where the circumstances require that an urgent measure be taken *ex parte*, the procedure is adversarial in nature, meaning that the debtor has the duty to serve the application on the defendant[98], and that the court will rule on it only after a hearing has been held in the presence the parties[99]. Furthermore, since the 1 January 2020, the parties must be represented by a lawyer unless otherwise provided by law[100].

With respect to the grounds for refusal, stay or limitation of enforcement of a foreign judgment certified as a EEO, French courts have consistently held that enforcement proceedings can only be opposed in accordance with the very limited grounds set out in Articles 21 and 23 of the EEO Regulation[101]. By contrast, most legal scholars have highlighted that, in the case of the enforcement of an extrajudicial title, the debtor might in some exceptional cases invoke the invalidity or the unenforceability of the instrument or court settlement underlying the EEO before the French courts[102]. In order to do so, however, international jurisdiction would need to be established in accordance with the provisions of the BI bis Regulation[103].

---

[97] See Article R. 121-2 of the Code of Civil Enforcement Procedures. This rule is subject to some exceptions: in the case of a third party debt order, for instance, only the court of the place where the debtor has his domicile has jurisdiction (see Article R. 211-10 of the Code of Civil Enforcement Procedures); in the case of real estate seizure, on the contrary, only the court where the asset is located has jurisdiction (see Article 311-2 of the same code).

[98] See Article R. 121-11 of the French Code of Civil Enforcement Procedures.

[99] See Article R. 121-8 of the French Code of Civil Enforcement Procedures, providing that: "The procedure is oral", meaning that parties are not required to file written submissions unless the court orders otherwise.

[100] In this regard, see in particular, Article R. 121-7 of the Code of Civil Enforcement Procedures.

[101] See Articles 21 and 23 of the EEO Regulation.

[102] Under French domestic law, this kind of claim could in fact be brought before the *juge de l'exécution*.

[103] In this respect, French scholars have been debating whether the jurisdiction of the French courts should be assessed by reference to the creditor, who acts as the formal defendant in the action brought by the debtor, or rather to the debtor himself, who is the passive party in the enforcement proceedings, and whether jurisdiction could be based on Article 26 of the BI bis Regulation alone. In any event, it is doubtful that French courts would have jurisdiction pursuant to Article 24(5) of the BI bis Regulation (see the restrictive interpretation of this provision in CJEU, 04.07.1985, Case 220/84, *AS-Autoteile Service GmbH v Pierre Malhé*). On this debate, see in particular Ph. Théry, "Voies d'exécution", *Répertoire Dalloz Droit International* (2013), n^{os} 85-93.

Finally, Article R. 121-14 of the French Code of Civil Procedure provides that unless otherwise indicated, the judgments issued by the *juge de l'exécution* have the authority of *res judicata* as to the claims they settle.

7. Costs for the issuance of an EEO

if any, please provide the relation to comparable costs of national enforcement orders

In France, the certification of a judicial title as a EEO is not subject to any court fee. As for the certification of an authentic instrument, the Decree n° 2006-558 of 16 March 2006 has erased any reference to the tariff applicable to the EEO at the same time that it transferred the authority to issue the certificates from the President of the *chambre des notaires* to the notary who drafted the act[104]. As a reference, the delivery of an enforceable copy of an authentic act is currently subject to a fee of 1,15 €[105].

8. Other implementation rules

cf. preliminary remarks

[*none*]

9. Critical assessment

As it has already been pointed out with regards to the BI bis Regulation, the certification procedure set out in Articles 509-1 *et seq.* of the Code of Civil Procedure should be redrafted in order to provide a clearer understanding of the interplay between European and French national law in the context of the EEO Regulation. In our view, such a modification would in particular allow to better implement the case law of the CJEU, which underscored the "judicial nature" of the certification procedure under the EEO Regulation.

---

[104] See Article 6 of the Decree, which abrogated Article 34-1 of the Decree n° 78-262 of 8 March 1978 (*décret n° 78-262 du 8 mars 1978 portant fixation du tarif des notaires*).
[105] See also IC2BE Report, *op. cit.*, p. 196, where it was highlighted that even though "access to justice in France is really inexpensive", peripheral costs related such as translations, bailiffs' costs and attorneys' fees may render the procedures expensive.

Additionally, the redrafting of Articles 509-1 to 509-9 of the Code of Civil Procedure would also allow to solve some inconsistencies between the rules applicable to the EEO and the certification under the BI bis Regulation. In this respect, it is particularly noteworthy that Article 509-3 of the Code of Civil Procedure refers to the notary (and not to the "*président de la chambre des notaires*"), regarding authentic instruments in the context of the EEO. The difference between Brussels 1 bis and EEO in this regard had already been emphasized in a previous study of Brussels 1 bis[106] and put forward as an important factor in favour of the EEO in the context of the IC2BE Project[107].

[106] See the Comparative Study on BI bis, *op. cit.*.
[107] See the IC2BE Report, p. 203.

IV. European Payment Order Regulation ("EPO Regulation")

The European Payment Order Regulation (EPO Regulation) was first implemented in France by Article 5 of the Decree n° 2008-1346 of 17 December 2008, which added Articles 1424-1 to 1424-15 to the French Code of Civil Procedure. These provisions were placed right after the provisions applicable to domestic orders for payment[108] and were grouped in a whole new section dedicated to the EPO[109].

The implementation rules, as well as the EPO Regulation itself, were subsequently summarized by a Circular of the Ministry of Justice dated 26 May 2009. Since then, more provisions have been adopted over the years in order to clarify and/or update the procedure applicable to the issuance of a EPO in France.

All these provisions will be analysed in detail in the following paragraphs. At the outset, it should nevertheless be pointed out that due to the wide-ranging reform introduced by the Law n° 2019-222 of 23 March 2019, both the domestic and European order for payment procedures are currently undergoing a process of centralization and digitalization[110]. Even though the specifics of the new rules are not yet known to this date[111], we will highlight the main changes brought about by this reform when necessary.

1. National distribution of competences under Art. 6

specialization or concentration?

Pursuant to Article 6(1) of the EPO Regulation, jurisdiction should be determined in accordance with the "relevant rules of Community law, in particular Regulation (EC) n° 44/2001"[112]. Furthermore, according to Article 6(2) of the Regulation, "if the claim relates

---

[108] See Articles 1405 to 1424 of the French Code of Civil Procedure. These provisions undoubtedly provided a model for the implementation of the EPO in France.
[109] See Section II of Book III, Title IV, Chapter II of the Code of Civil Procedure.
[110] See Article 27 pf the Law n° 2019-222 of 23 March 2019.
[111] The new rules where initially scheduled to be adopted and to enter into force by 21 January 2021 at the latest, but the deadline was later extended to 1 September 2021 due to the pandemic. See Article 25 of the Law n° 2020-734 of 17 June 2020 (*loi n° 2020-734 du 17 juin 2020 relative à diverses dispositions liées à la crise sanitaire, à d'autres mesures urgentes ainsi qu'au retrait du Royaume-Uni de l'Union Européenne*).
[112] See Article 6(1) of the EPO Regulation.

to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled"[113].

In France, these provisions had been implemented by Article 1424-1 of the French Code of Civil Procedure, which set out the rules applicable to territorial competence, as well as by Articles L. 211-17 of the Code of Judicial Organisation and L. 722-3-1 of the French Code of Commerce[114], which dealt with subject matter jurisdiction. According to these articles, territorial competence was allocated among different courts on the basis of the jurisdictional rules set out in the Brussels I bis Regulation[115], whereas subject matter jurisdiction was shared between the *tribunal d'instance* (competent in civil matters pursuant to Article L. 211-17 of the Code of Judicial Organisation[116]) and the president of the *tribunal de commerce* (competent in commercial matters pursuant to Article L. 722-3-1 of the Code of Commerce[117]).

In practice, these provisions had set up a decentralized system for the purposes of the EPO procedure, which was mainly inspired by the jurisdictional rules normally applicable in civil and commercial disputes. This situation is, however, subject to change following the general overhaul of French civil procedure brought by the Law nº 2019-222 of 29 March 2019.

First of all, the old *tribunal d'instance* has been suppressed since 1 January 2020, which has lead to the repeal of Article L. 221-7 of the Code of Judicial Organisation[118]. According to the information published on the *e-Justice Portal*, subject-matter jurisdiction to issue EPO in civil

---

113 See Article 6(1) of the EPO Regulation.
114 See *Code de commerce, art. L. 722-3-1*. See also Article L. 721-3 of the same Code.
115 Specifically, Article 1424-1 of the Code of Civil Procedure provides that where the rules laid out in the BI bis Regulation designate the courts of a Member State without further specification, "the court with territorial jurisdiction shall be that of the place of domicile of the or one of the defendants". This provision was amended by Article 2 of the Decree nº 2014-1633 of 26 December 2014, which updated the reference made by Article 1424-1 to the old Brussels I Regulation. It is noteworthy, however, that the information communicated by France and published on the *e-Justice* portal still references the old Brussels I Regulation as the relevant instrument.
116 This Article was first enacted by Article 4 of the Law nº 2011-1862 of 13 December 2011, whose aim was to clarify some inconsistencies between the information first reported in the Circular of 26 May 2009 and the communication made by France to the Commission pursuant to Article 29(1)(a) of the EPO Regulation.
117 On this point, see also Article L. 721-3 of the Code of Commerce, which defines the term "commercial matters".
118 See Article 95 of the Law nº 2019-222 of 29 March 2019.

matters is therefore currently shared between the chamber for the protection of vulnerable adults (*juge des contentieux de la protection*) and the president of the Regional Court (*tribunal judiciaire*), each of them acting within the limits of their ordinary jurisdiction[119].

Secondly, Article 27 of the Law n° 2019-222 of 29 March 2019 has created a new Article L. 211-17 of the Code of Judicial Organisation, providing for a concentration of all EPO before a unique *tribunal judiciaire* designated by the Government at the national level. According to the current schedule, the designation is due by 1 September 2021 at the latest. It is not clear, however, if the rule set out in Article L. 211-17 of the Code of Judicial Organisation should apply indiscriminately to both civil and commercial matters. If implemented, this provision will undoubtedly mark a radical shift in the application of the EPO Regulation in France.

2. Sanctions under Art. 7 (3)

According to Article 7(3) of the EPO Regulation: "In the application, the claimant shall declare that the information provided is true to the best of his knowledge and belief and shall acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin".

In the absence of any specific rule implementing this provision into French law, an author[120] has pointed out that any false statement intentionally made by the claimant in the application may theoretically be charged as a criminal forgery[121] or as an attempted judgment fraud[122].

---

[119] Unlike the rules applicable to the territorial competence of French courts, this information seems to have been updated after the enactment of Law n° 2019-222 of 29 March 2019. On this point, see the page published on the *European e-Justice Portal*, available at https://beta.e-justice.europa.eu/353/EN/european_payment_order?FRANCE&init=true&member=1 [last visited 20 May 2021], which explicitly mentions 11 June 2020 as the day of the last update.
[120] On this point, see *e.g.* D. Mas, "Injonction de payer – Procédure d'injonction de payer européenne", *Répertoire Dalloz Droit Commercial* (2021), n° 253.
[121] See Article 441-1 of the Penal Code (*code pénal, art. 441-1*).
[122] See Article 313-1 of the Penal Code (*code pénal, art. 313-1*).

3. Means of communication

cf. Art. 7 (5), (6) and Art. 16 (4), (5); please bear in mind the Report on the digitalization of enforcement procedures (D3.17)

According to the declaration made by France pursuant to Article 29(1)(c) of the EPO Regulation[123]: "Applications for European orders for payment may be submitted to the relevant court by post or electronically". In addition to that, the Circular of 26 May 2009 on EPO also mentioned that applications could be made either by mail, pursuant to Article 1424-2 of the French Code of Civil Procedure, or by electronic means, in accordance with the provisions set out in Articles 748-1 *et seq.* of the same code[124].

In reality, however, digitalization of the EPO procedure has yet to be implemented in France[125]. A first step in this direction has been taken by an Order of the Minister of Justice dated 1 August 2017 authorising the implementation of an automated processing of personal data based on "e-CODEX". According to the Order, this system will allow for the digital filing and processing of claims under both the EPO and ESCP Regulations[126]. In addition to that, the new Article L. 211-18 of the Code of Judicial Organisation[127] provides that applications for an order for payment (both domestic and European) shall be made by electronic means before the specially designated court mentioned in Article L. 211-17[128]. Naturally, however, this provision will apply only after such court is effectively designated by the Government (see *supra*, IV.1).

---

123 See the information published on the *European e-Justice Portal*, available at https://beta.e-justice.europa.eu/353/EN/european_payment_order?FRANCE&init=true&member=1 [updated 11 June 2020, last visited 20 May 2021].
124 Circular of 26 May 2009, § 3.2.
125 See also the IC2BE Report. On this point, see also A. Ontanu, *Cross-Border Debt Recovery in the EU: A Comparative and Empirical Study on the Use of the European Uniform Procedures*, p. 136.
126 On the Order, see specifically C. Degert-Ribeiro and V. Blairon, "La dématérialisation de la procédure européenne d'injonction de payer grâce à la mise en place du projet e-Codex", 111 *L'Observateur de Bruxelles* (2018). *Adde* G. Payan, "Procédure d'injonction de payer européenne", *Répertoire Dalloz Procédure Civile*, n° 55.
127 This provision was enacted by Article 27 of the Law n° 2019-222 of 23 March 2019.
128 The Article also provides a specific exception for the EPO, specifying that applications for a EPO can also be sent to the clerk's office on paper.

Currently, Article 1424-2 of the French Code of Civil Procedure remains therefore relevant when it comes to means of application. According to this article, an application for an EPO may be submitted personally to the court registry or sent by post.

Regarding the language of the application, the Circular of 26 May 2009 stated that the forms set out in the EPO Regulation should be filled out in French, but that competent courts can accept them in a different language, provided the information is completed in French[129]. It is noteworthy, however, that the website of the registry of the Paris commercial court ("*greffe du tribunal de commerce de Paris*") indicates ambiguously that the applicant should: "complete the application form A (languages accepted are French, English, German, Italian, Spanish)"[130].

Regarding opposition, reference might be made to article 1424-8 of the Code of Civil Procedure. This article provides that the opposition to an EPO must be lodged before the court which first issued the order, either by a declaration with the court's clerk, who subsequently delivers a proof of receipt, or by letter with acknowledgment of receipt.

4. Rules on service and verification by courts pursuant to Art. 12 (5)

cf. Art. 13, 14, 15, e.g. standard forms, competent service person, exclusion of national forms of service (cf. Art. 14(2), CJEU, C-292/10)

Pursuant to Article 12(5) of the EPO Regulation: "The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15".

In France, this provision has been implemented by Article 1424-5 of the Code of Civil Procedure, which provides that a certified copy of the application form and the decision shall be served, at the initiative of the claimant, on each of the defendants, together with a copy of the standard form F set out in Annex VI of the EPO Regulation[131].

---

[129] On this point, see *e.g.* A. Ontanu, *op. cit.*, p. 136; G. Payan, *op. cit.*, nº 56. See also *infra*, with respect to the languages accepted under the ESCP Regulation and possible confusion on this point.
[130] See *Injonction de Payer Européenne – Greffe du Tribunal de commerce de Paris*, available at https://www.greffe-tc-paris.fr/procedure/injonction_payer_europeenne [last visited 21 May 2021].
[131] See Article 16(1) of the EPO Regulation.

According to Article 1424-5 of the Code, service should be made by "*signification*", *i.e.* by the bailiff pursuant to the rules set out in Articles 653 to 664-1 of the French Code of Civil Procedure (on these, see *supra*, III.4). In addition to that, the same provision also specifies that, under penalty of nullity, the notification shall contain:

- an indication of the court before which the opposition must be brought, of the time limit and of the forms in which it must be made;

- a warning to the defendant that if he fails to lodge an objection within the time limit indicated, he may be required to pay the sums claimed by all legal means; and

- information the defendant of his right to apply for a review of the European order for payment before the court that issued it, after expiry of the time limit for opposition, in the exceptional cases provided for in Article 20 of the EPO Regulation.

Furthermore, Article 1424-6 of the French Code of Civil Procedure also provides that any time that the EPO is served personally on the defendant, the bailiff must verbally bring to his attention the relevant information laid out in the standard form and the points mentioned in Article 1424-5, and that the accomplishment of this formality must be mentioned in the notification. Finally, Article 1424-7 of the same Code also provides that the bailiff shall send a copy of the writ of service to the court of origin.

In general, the rules laid out in Articles 1424-5 to 1424-7 of the Code of Civil Procedure are considered to meet the minimum standards set out in the EPO Regulation[132].

During the IC2BE research however, one specific issue was put forward regarding the implementation of Article 12(5) of the Regulation. This provision, in fact, requires the *court* to ensure that service takes place according to national law, whereas French domestic law provides that the *claimant* should be responsible for service of the EPO, and that the service

[132] On this point, see *e.g.* G. Payan, *op. cit.*, n[os] 99-118. For the specific case where the defendant's address is unknown, see nevertheless *supra*, III.4.

itself should be carried out by the bailiff[133]. This point was highlighted as an example of the "difficult articulation of the regulations with national law"[134].

5. Rules on opposition to and review of the EPO (outgoing)

cf. Art. 16, 17, 20 (cf. CJEU, C-324/12)

In France, the procedure applicable to the opposition to a EPO has been implemented by Articles 1424-8 to 1424-13 of the Code of Civil Procedure. Furthermore, according to Article 1424-15 of the Code, the same rules also apply to the review procedure set out in Article 20 of the EPO Regulation[135].

Pursuant to Article 1424-8, the opposition should be lodged with the court of origin, and should be filed either in person or by mail addressed at the court registry[136]. Upon receipt of the opposition, the clerk of the court then convenes the parties to the hearing by a registered letter with acknowledgement of receipt[137]. This letter is addressed to all the parties, including those who did not oppose the EPO[138].

Pursuant to Article 1424-9, the court of origin shall rule on the original claim, as well as on any other incidental claims and defenses within the limits of its subject-matter jurisdiction, at least unless none of the parties appears at the hearing. In this particular case in fact, Article 1424-11 provides that the court shall terminate the proceedings and declare the EPO null

---

133 See also A. Ontanu, *op. cit.*, p. 137. V. Richard (*op. cit.*, p. 478) has pointed out that France is the only country compared to three others (Belgium, Luxembourg and the UK) having included a particular domestic rule on the service of EPO.

134 See the Report drafted after the IC2BE seminar of June 2018, available at https://www.mpi.lu/research/department-of-european-and-comparative-procedural-law/research-projects/ic2be-project/). *Adde* also the IC2BE Report, p. 197.

135 On this last point, see also the communication made by France to the Commission pursuant to Article 29(1)(b) of the EPO Regulation and published on the *European E-Justice Portal* (cit.), stating that: "The rules governing the review procedure in the exceptional cases provided for in Article 20 of the Regulation are exactly the same as those applicable to the opposition procedure. Requests for review must be submitted to the court which issued the European order for payment".

136 On the ongoing digitalization of this procedure, see also *supra*, IV.3.

137 See Article 1424-10 of the French Code of Civil Procedure.

138 *Id.*

and void. Otherwise, the decision of the court replaces the original EPO[139] and is subject to appeal in accordance with the ordinary rules of French civil procedure[140].

6. Competent authority and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 22, 23, e.g. remedies and hearings, specialization or concentration?

Pursuant to Article 21(1) of the EPO Regulation, a EPO issued in another Member State can be enforced pursuant to the law of the Member State of enforcement, and is subject to the same conditions as an enforceable decision issued in this State. In France, a EPO which has become enforceable in the Member State of origin[141] may therefore be enforced by the creditor pursuant to the procedures set out in the French Code of Civil Enforcement Procedures.

In the absence of any specific provisions implementing the enforcement procedure of a EPO in France, and absent any declaration made by the French government pursuant to Article 28 of the EPO Regulation, any application for refusal, stay or limitation of enforcement shall be lodged before the *juge de l'exécution*[142]. In principle, the debtor has an option to file the application either before the court of the place of his domicile or before the court where the enforcement measure has been carried out[143].

Except where the circumstances require that an urgent measure be taken *ex parte*, the procedure is adversarial in nature, meaning that the debtor has the duty to serve the application on the defendant[144], and that the court will rule on it only after a hearing has been

---

[139] See Article 1424-12 of the French Code of Civil Procedure.
[140] See Article 1424-13 of the French Code of Civil Procedure.
[141] See Article 19 (abolition of exequatur) and 21(2) (documents to be provided by the claimant) of the EPO Regulation.
[142] See Article L. 213-6 of the French Code of Judicial Organisation, , which grants exclusive jurisdiction to the *juge de l'exécution* over any claim arising in connection with the carrying out of enforcement proceedings.
[143] See Article R. 121-2 of the French Code of Civil Enforcement Procedures. This rule is subject to some exceptions: in the case of a third party debt order, for instance, only the court of the place where the debtor has his domicile has jurisdiction (see Article R. 211-10 of the Code of Civil Enforcement Procedures); in the case of real estate seizure, on the contrary, only the court where the asset is located has jurisdiction (see Article 311-2 of the same code).
[144] See Article R. 121-11 of the French Code of Civil Enforcement Procedures.

held in the presence the parties[145]. Pursuant to Article R. 121-14 of the Code of Civil Procedure and unless otherwise indicated, the judgments issued by the *juge de l'exécution* have the authority of *res judicata* as to the claims they settle. Since 1 January 2020, the parties must be represented by a lawyer unless otherwise provided by law[146].

7. Remedies under national law in cases such as CJEU, C-119/13 and C-120/13

cf. also Art. 19 (2) EEOR

According to the judgment of the CJEU in cases C-119/13 and C-120/13, the procedures set out in Articles 16 to 20 of the EPO Regulation are not applicable where it appears that a EPO has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of the Regulation. According to the CJEU, in fact: "where it is only after a European order for payment has been declared enforceable that such an irregularity is exposed, the defendant must have the opportunity to raise that irregularity, which, if it is duly established, will invalidate the declaration of enforceability"[147].

Even though Articles 1424-1 to 1424-15 of the French Code of Civil Procedure are silent on this issue, the defendant might seek a leave from the court to be allowed to oppose the EPO in accordance with Article 540 of the French Court of Civil Procedure. Specifically, this article provides that when a decision has been issued without the defendant entering an appearance, the president of the court competent to hear the opposition may allow a challenge if: "the defendant, without any fault on his part , did not learn of the judgment in time to exercise his recourse, or if he found it impossible to act"[148].

---

[145] See Article R. 121-8 of the French Code of Civil Enforcement Procedures, providing that: "The procedure is oral", meaning that parties are not required to file written submissions unless the court orders otherwise.
[146] In this regard, see in particular, Articles L. 121-4 and R. 121-6 of the French Code of Civil Enforcement Procedures, which lay out the exceptions to this rule.
[147] CJEU, 04.09.2014, C-119/13 and C-120/13, *eco cosmetics GmbH & Co. KG v Dupuy*, and *Raiffeisenbank St. Georgen reg. Gen. mbH v Bonchyk*, holding.
[148] Article 540 of the French Code of Civil Procedure.

8. Costs for the issuance of the EPO

if any, please provide the relation to comparable costs in the national legal order

In France, a distinction is made between civil and commercial cases when it comes to court fees. Pursuant to Article 1525 of the Code of Civil Procedure, court fees for the issuance of the EPO are only due in commercial cases and must deposited by the claimant at the court registry within fifteen days of the application.

According to the information publicly available online, the current fee for issuing a EPO in commercial cases is 33,47 euros[149].

9. Other implementation rules

cf. preliminary remarks

With respect to outgoing EPOs, Article 1424-14 of the French Code of Civil Procedure specifies that the certificate of enforceability set out in Annex VII of the EPO Regulation shall be issued by the court clerk ten days after the expiration of the delay for opposition set out in Article 16 of the EPO Regulation. This provision was enacted in order to implement Article 18(1) of the Regulation, which mentions that the court of origin shall take into account "an appropriate period of time to allow a statement [of opposition] to arrive" before declaring a EPO enforceable.

With respect to the enforcement of incoming EPOs, France has declared that the languages accepted pursuant to Article 21(2)(b) are French, English, German, Italian and Spanish[150].

---

[149] See *e.g.* data pulished on the online service platform of the French commercial court registries ("*Infogreffe*"): *Formalités Entreprise : Injonction de Payer - Infogreffe*, available at https://www.infogreffe.fr/formalites-entreprise/injonction-de-payer.html [last visited 25 May 2021]; this information is also consistent with the data published on the website of the Paris commercial court: *Tarifs Fond/Référés/Requêtes - Greffe Du Tribunal de Commerce de Paris*, available at https://www.greffe-tc-paris.fr/procedure/tarifs_fond [last visited 25 May 2021].

[150] See the declaration made by France pursuant to Article 29(1)(d) of the EPO Regulation published on the *European e-Justice Portal*, available at https://beta.e-justice.europa.eu/353/EN/european_payment_order?FRANCE&init=true&member=1 [last visited 20 May 2021].

10. Critical assessment

Overall, Articles 1424-1 to 1424-15 to the French Code of Civil Procedure have provided a clear and stable framework for the implementation of the EPO Regulation into French law. With the exception of a couple of minor changes, these rules have in fact been in force since they were introduced by the Decree n° 2008-1346 of 17 December 2008. Nevertheless, information published by French authorities on publicly available websites such as the *e-Justice Portal* appears sometimes to be incomplete or outdated. In this respect, the Circular of the Ministry of Justice dated 26 May 2009 undoubtfully provides some helpful information, even though potential lay users most likely would not find much help in it.

In such situation, legal practitioners might therefore prefer to use the rules applicable to domestic orders for payments, which for France are set out in Articles 1405 to 1424 of the Code of Civil Procedure, and then seek recognition and enforcement of such orders under the BI bis Regulation. As a result, the implementation of the EPO procedure in France has not been particularly successful so far[151]. This situation might however evolve in the near future thanks to the digitalization and the centralization of the EPO procedure. In our opinion, this reform might prove to be a considerable incentive for foreign parties, who might be tempted to opt for the uniform EPO procedure rather than engaging with the equivalent measure under domestic law.

[151] For an empirical assessment, see in particular A. Ontanu, *op. cit.*, p. 111-189.

V. European Small Claims Procedure Regulation ("ESCP Regulation")

The ESCP Regulation was first implemented in France by Article 3 of the Decree n° 2008-1346 of 17 December 2008, which added a new First Chapter to Book III, Title IV of the Code of Civil Procedure[152]. Today, the relevant rules are set out in Articles 1382 to 1391 of the Code of Civil Procedure. These implementation rules, as well as the ESCP Regulation itself, were summarized by a Circular of the Ministry of Justice dated 26 May 2009.

These provisions will be described in detail in the following paragraphs, together with the generally applicable rules of civil procedure governing the ESCP in France.

1. Competent court

cf. Art. 4 (1) and Art. 20 (2): local jurisdiction, jurisdiction ratione materiae, specialization or concentration?

Even though the ESCP Regulation does not contain any specific provision regarding the allocation of jurisdiction among Member States[153], the claim form set out in Annex I of the Regulation expressly mentions that "the court/tribunal must have jurisdiction in accordance with the rules of Regulation (EU) n° 1215/2012 of the European Parliament and of the Council"[154].

In France, this rule has been implemented in Article 1382 of the Code of Civil Procedure, which provides that: "Where Regulation (EU) n° 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters designates the courts of a Member State without further specification, the court with territorial jurisdiction shall be that of the place of residence of the or one of the defendants"[155].

---

[152] See *Code de procedure civile, Livre III, Titre IV, Chapitre Ier : La procédure européenne de règlement des petits litiges*.
[153] On this point, see *e.g.* G. Payan, "Procédure européenne de règlement des petits litiges", *Répertoire Dalloz Procédure Civile*, n° 63-64.
[154] Annex I to the ESCP Regulation, amended in 2017.
[155] Article 1382, par. 2, of the French Code of Civil Procedure, last amended by Article 2 of the Decree n° 2014-1633 of 26 December 2014 (*décret n° 2014-1633 du 26 décembre 2014, art. 2*). In this case, the place of residence of the defendant shall be determined pursuant to Articles 42 and 43 of the Code of Civil Procedure.

Regarding subject matter jurisdiction, France has decided to split the competence over the ESCP between civil and commercial courts.

With respect to civil disputes, the Circular of 26 May 2009 initially pointed to the "*juridictions de proximité*" as the competent courts to handle the ESCP[156]. This information, however, was not consistent with the communication provided by France to the Commission pursuant to Article 25(1)(a) of the ESCP Regulation[157]. As with the EPO procedure[158], Article 4 of the Law nº 2011-1862 of 13 December 2011 clarified the situation by creating a new provision in the Code of Judicial Organisation. Specifically, the "*tribunaux d'instance*" were granted jurisdiction over ESCP in civil cases pursuant to Article L. 221-4-1.

Following the abolition of the *tribunaux d'instance* by the Law nº 222-2019 of 23 March 2019, however, Article L. 221-4-1 of the Code of Judicial Organisation has been replaced by a new Article L. 211-4-2[159]. This provision currently grants jurisdiction in civil cases to the "*tribunal judiciaire*". This information has recently been published on the *e-Justice Portal*[160], even though the notification made by France pursuant to Article 25(1)(a) of the ESCP Regulation still needs to be updated on the same website[161].

With respect to commercial disputes[162], Article L. 721-3-1 of the French Code of Commerce grants jurisdiction to the "*tribunaux de commerce*". Thus, contrary to the EPO procedure, the Law nº 222-2019 of 23 March 2019 has *not* initiated a process of concentration of the ESCP. ESCP remains therefore de-centralised, and the jurisdiction lies in principle with the court of the place where the defendant resides.

---

156 See Circular of 26 May 2009 on the application of the ESCP Regulation, p. 6.
157 On this point, see A. Ontanu, *op. cit.*, p. 135-136.
158 See *supra*, IV.
159 See Article 95 of the Law nº 2019-222 of 23 March 2019.
160 See *European E-Justice Portal*, available at https://beta.e-justice.europa.eu/42/EN/small_claims?FRANCE&member=1 [last updated 15 June 2020, last visited 27 May 2021].
161 See *Small claims | Finding competent courts (France) | European E-Justice Portal*, available at https://beta.e-justice.europa.eu/354/EN/small_claims?FRANCE&member=1 [last updated 7 December 2018, last visited 27 May 2021].
162 *I.e.* disputes defined by Article L. 721-3 of the French Code of Commerce.

2. Means of communication

cf. Art. 4 (1), 8, 13; please bear in mind the Report on the digitalization of enforcement procedures (D3.17)

In order to provide a general overview of the means of communication available in France under the ESCP Regulation, we will distinguish between the filing of the initial claim (**a**), the ways in which a hearing may be conducted (**b**), and the service of documents and other communications (**c**).

a) Filing of the initial claim (Article 4 of the ESCP Regulation)

Pursuant to Article 4(1) of the ESCP Regulation: "The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced". Additionally, the ESCP Regulation also provides that Member States shall communicate to the Commission the means of communication that are acceptable to them[163].

The implementation of these provisions in France has given rise to some difficulties[164]. On the one hand in fact, both the Circular of the French Ministry of Justice dated 26 May 2009 and the initial communication made by France pursuant to Article 25(1)(b) stated that the proceedings could be commenced either by post or by electronic means, in accordance with the requirements set out in Articles 748-1 *et seq.* of the Code of Civil Procedure[165]. On the other hand, both the Article 1383 of the French Code of Civil Procedure (which was enacted by the Decree nº 2008-1346 of 17 December 2008[166]) and the communication made by

[163] On this obligation, see Article 4(2) and 25(1)(b) of the ESCP Regulation.
[164] In this regard, see also *supra*, IV.3, on the digitalization of the EPO procedure.
[165] On this point, see *e.g.* A. Ontanu, *op. cit.*, p. 138.
[166] See Article 3 of the Decree nº 2008-1346 of 17 December 2008.

France following the entry into force of Regulation nº 2015/2421[167], only mention the possibility to submit the initial claim by post[168].

As a result, legal scholars have described the information provided by the French government as "contradictory"[169], and the possibility to submit a claim through electronic means remains at best "unclear" under the current rules[170]. As with the EPO Regulation, however, several factors indicate that the situation might evolve in the near future.

Firstly, as seen above, a Ministerial Order of the Minister of Justice dated 1 August 2017 has already authorised the implementation of an automated processing of personal data based on "e-CODEX" for the filing and processing of claims falling under the ESCP Regulation[171]. Secondly, the Law nº 2019-222 of 23 March 2019[172] created a new Article L. 212-5-2 of the French Code of Judicial Organisation, which provides that claims brought before the Regional Court for payment of a sum not exceeding an amount set by decree may, with the express consent of the parties, be processed in a dematerialized procedure[173]. Thirdly, two other recent Ministerial Orders of the Minister of Justice dated 18 February 2020[174] have

---

167 See Regulation (EU) nº 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) nº 861/2007 establishing a European Small Claims Procedure and Regulation (EC) nº 1896/2006 creating a European order for payment procedure.

168 Pursuant to Article 1383 of the French Code of Civil Procedure, in fact: ""The claim form is delivered personally or sent by post to the court registry". On this point, see also the information published on the *European e-Justice Portal*, available at https://beta.e-justice.europa.eu/354/EN/small_claims?FRANCE&member=1 [last visited 27 May 2021]: .

169 G. Payan, *op. cit.*, nº 76.

170 M. Winkler and P. Baquero, "The Implementation of the European Small Claims Procedure in France", *Journal of European Consumer and Market Law* (2021), p. 39.

171 See *supra* IV.3.

172 See Article 26 of the Law nº 2019-222 of 23 March 2019.

173 Furthermore, the same Article also provides that: "In this case, the procedure takes place without a hearing. However, the court may decide to hold a hearing if it considers that it is not possible to reach a decision on the basis of written evidence or if one of the parties so requests".

174 *Arrêté du 18 février 2020 modifiant l'arrêté du 6 mai 2019 relatif aux caractéristiques techniques de la communication par voie électronique des avis, convocations ou récépissés via le « Portail du justiciable »* and *Arrêté du 18 févr. 2020 modifiant l'arrêté du 28 mai 2019 modifiant l'arrêté du 28 mai 2019 autorisant la mise en œuvre d'un traitement automatisé de données à caractère personnel dénommé « Portail du justiciable » (suivi en ligne par le justiciable de l'état d'avancement de son affaire judiciaire)*. On this topic, see also the Decree nº 2019-402 of 3 May 2019 amending Articles 748-3, 748-6, 748-8 and 748-9 of the French Code of Civil Procedure related to electronic communications; *adde* C. Bléry and J.-P. Teboul, "Dématérialisation des procédures : saisine d'une juridiction par le Portail du justiciable", *Dalloz Actualités*, 5 March 2020, available at https://www.dalloz-actualite.fr/flash/dematerialisation-des-procedures-saisine-d-une-juridiction-par-portail-du-justiciable [last visited 27 May 2021].

recently set up an electronic platform called "*Portail du justiciable*"[175] which should soon allow citizens to submit their claims electronically in all proceedings where the representation by a lawyer is not mandatory, thus including claims falling under the ESCP Regulation[176].

b) Oral hearing (Article 8 of the ESCP Regulation)

According to Article 8(1) of the ESCP Regulation, the use of any distance communication technology available to the court or tribunal, such as videoconference or teleconference, should be prioritised in the course of the ESCP. Additionally, the same provision also specifies that: "Where the person to be heard is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized, that person's attendance at an oral hearing by way of videoconference, teleconference or other appropriate distance communication technology shall be arranged by making use of the procedures provided for in Council Regulation (EC) nº 1206/2001".

In the absence of any specific provision implementing Article 8 of the ESCP Regulation, we will lay out the rules of general application that may allow for remote hearings before French courts (**i**), and then briefly describe the specific tools available under Regulation nº 1206/2001 (the "Evidence Regulation") (**ii**).

i. Rules applicable to remote hearings

Even though, in ordinary circumstances, the use of distance communication technologies before French courts remains quite strictly regulated, the COVID-19 pandemic has led to the implementation of more liberal rules. These rules are currently set to expire on 30 September 2021[177].

With respect to ordinary rules, Article L. 111-12 of the French Code of Judicial Organisation provides that the presiding judge may decide to hold hearings by videoconference, provided that all the parties have given their consent and that the hearing is conducted in "several

---

[175] See *Justice.fr | Le Portail du justiciable*, available at https://www.justice.fr/ [last visited 27 May 2021].
[176] On this point, compare Article 10 of the ESCP Regulation to the information published on *Saisir la justice en ligne | justice.fr*, available at https://www.justice.fr/actu/saisir-la-justice-en-ligne [last visited 27 May 2021].
[177] See Article 1 of the Order nº 2020-1400 du 18 November 2020 (*ordonnance nº 2020-1400 du 18 novembre 2020, art. 1er*), as amended by Article 8 of the Law nº 2021-689 of 31 May 2021 (*loi nº 2021-689 du 31 mai 2021 relative à la gestion de la sortie de crise sanitaire, art. 8*).

courtrooms directly connected through telecommunication means that guarantee the confidentiality of the transmission"[178]. In this respect, Article R. 111-7 of the same code also specifies that the decision to hold a remote hearing is not subject to appeal, and that a Ministerial Order of the Minister of Justice should set the technical requirements of the telecommunication means that may be used. These requirements are currently detailed in a Ministerial Order of the Minister of Justice dated 5 December 2008[179].

However, to ensure the functioning of the judicial system throughout the COVID-19 pandemic, the French government also enacted several orders that exceptionally allow for remote hearings in most civil and commercial disputes[180]. Under the current framework, the presiding judge may therefore decide that the hearing will be held "using an audiovisual means of telecommunication that ensures the identity of the persons participating and guarantees the quality of the transmission and the confidentiality of the exchanges between the parties and their lawyers"[181]. Additionally, the same article provides that whenever such means of communication is not available, the presiding judge may decide to hear the parties, their lawyers, or any other person: "by any means of electronic communication, including telephone, that makes it possible to ensure their identity and to guarantee the quality of the transmission and the confidentiality of exchanges"[182]. In either case, the decision of the presiding judge is not subject to any appeal[183].

---

178 See Article L. 111-12 of the Code of Judicial Organisation. On this topic, see Fricero, "Comprendre le nouveau schéma procédural à l'épreuve de la justice numérique", in S. Guinchard (ed.), *Droit et Pratique de la Procédure Civile: Droit Interne et Européen*, 10th ed., (2021), chap. 112.

179 *Arrêté du 5 décembre 2008 pris pour l'application de l'article R. 111-7 du code de l'organisation judiciaire et fixant les caractéristiques techniques des moyens de communication audiovisuelle susceptibles d'être utilisés pour la tenue d'audiences dans les juridictions judiciaires.*

180 On this topic, see specifically: Article 7 of the Order nº 2020-304 of 25 March 2020 (*ordonnance nº 2020-304 du 25 mars 2020, art. 7*); as amended by Article 5 of the Order nº 2020-595 of 20 May 2020 (*ordonnance nº 2020-595 du 20 mai 2020, art. 5*), as well as Article 5 of the Order nº 2020-1400 of 18 November 2020; *adde* the Circular nº CIV/02/20, dated 26 March 2020 (*Circulaire du 26 mars 2020 de présentation de l'ordonnance n° 2020-304 du 25 mars 2020 portant adaptation des règles applicables aux juridictions de l'ordre judiciaire statuant en matière non pénale et aux contrats de syndic de copropriété*). For an overview of these provisions, see *e.g.* Guinchard, "La procédure civile à l'épreuve de l'état d'urgence sanitaire", in S. Guinchard (ed.), *op. cit.*, chap. 002.

181 Article 5 of the Order nº 2020-1400 of 18 November 2020.

182 *Id.*

183 *Id.*

ii. Tools available under the Evidence Regulation

According to the information communicated by France and currently published on the *e-Justice Portal*[184], French courts accept to take evidence by videoconference in accordance with the provisions of the Evidence Regulation. With respect to hearings conducted on French soil, however, France has declared that "the entire hearing before the requesting court cannot be conducted by videoconference"[185] and that, more generally: "Only the hearing of persons may be carried out by videoconference. The production of documents or their certification in person cannot be done by videoconference"[186]. Overall, these statements seem to cast doubt on the ability of the parties to conduct remote hearings in accordance with the provisions of the Evidence Regulation in the context of the ESCP.

c) Service of documents and other written communications (Article 13 of the ESCP Regulation)

Pursuant to Article 13 of the ESCP Regulation, service of documents referred to in Articles 5(2) and 6 can be made either by postal service or by electronic means of communication. With regards to other written communications between the court and the parties or other persons involved in the proceedings, the same article also encourages the use of electronic means of communication attested by an acknowledgment of receipt.

Nevertheless, according to the communication made by France pursuant to Article 25 of the ESCP Regulation, service and communication by electronic means does not seem to be allowed under French law. Specifically, the information published on the *e-Justice Portal* states that: "Communication with the French courts with competence to handle claims lodged under the Small Claims Regulation is by post only"[187].

---

[184] See the information published (in French only) on *Taking Evidence by Videoconference | Portail E-Justice Européen*, available at https://beta.e-justice.europa.eu/405/FR/taking_evidence_by_videoconference?FRANCE&init=true [last updated 19 May 2021, last visited 1 June 2021].
[185] *Id.* ("*l'entière audience devant la juridiction requérante ne peut être effectuée par vidéoconférence*").
[186] *Id.* ("*Seule l'audition de personnes peut être effectuée par vidéoconférence. La production de documents ou leur certification de visu ne peuvent être faites par voie de vidéoconférence*").
[187] Information published on *Small claims – Finding competent courts (France) | European E-Justice Portal*, available at https://beta.e-justice.europa.eu/354/EN/small_claims?FRANCE&member=1 [last updated 7 December

Additionally, Article 1387 of the French Code of Civil Procedure also provides that the court is to employ a bailiff to notify the defendant if service by post does not result in receiving an acknowledgment of receipt signed by the defendant, or when he is domiciled abroad. As noted by Alina Ontanu[188], the Service Regulation provisions apply in the latter situation.

Overall, these provisions seem at odds with the current trend towards the digitalization of French civil procedure. In particular, Articles 748-1 to 748-9 of the Code of Civil Procedure, which were last amended by the Decree n° 2019-402 of 3 May 2009[189] lay out the conditions under which service of documents and communications between the court and the parties may be carried out by electronic means. In general, the use of electronic means of communications requires the consent of the recipient[190] and give rise to the sending of an electronic acknowledgement of receipt[191]. Furthermore, when documents are communicated via an electronic platform by the court clerk, an electronic notice of availability is sent to the addressee at the address chosen by him, indicating the date and, where applicable, the time of availability[192].

3. Procedure for claims outside the scope of the ESCPR

cf. Art. 4 (3)

Pursuant to Article 4(3) of the ESCP Regulation: "Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted". In France, this provision is implemented by Article 1384 of the Code of Civil

2018, last visited 27 May 2021]. *Adde* the communication made by France pursuant to Article 25(1)(b) of the ESCP Regulation: "Parties to a proceeding commenced under Regulation (EC) n° 861/2007 establishing a European Small Claims Procedure can communicate with the courts by post".

188 A. Ontanu, *op. cit.*, p. 138. See also G. Payan, *op. cit.*, n°s 144-164.

189 *Décret n° 2019-402 du 3 mai 2019 portant diverses mesures relatives à la communication électronique en matière civile et à la notification des actes à l'étranger.*

190 See Article 748-2 of the French Code of Civil Procedure.

191 See Article 748-3 of the French Code of Civil Procedure.

192 See Articles 748-3 and 748-8 of the Code of Civil Procedure.

Procedure, which determines howthe claims that do not fall within the subject mater scope of the ESCP must be treated.

When this is the case, the court clerk first notifies the applicant by registered letter with acknowledgment of receipt that the case will be heard and decided according to the ordinary procedure unless he withdraws the application within a certain time limit[193]. Then, if the claimant does not withdraw his claim by the end of the time limit, the court rules that the dispute does not fall within the scope of the ESCP and invites the claimant to initiate ordinary proceeding by serving the summons on the defendant. This decision is not subject to appeal and is notified to the plaintiff by registered letter with acknowledgement of receipt[194].

Finally, it is also worth noting that when ordinary proceedings are initiated pursuant to the rules set out in Article 1384, the court may still reject the claim for lack of jurisdiction following the ordinary provisions of the Code of Civil Procedure[195].

4. Costs and distribution of costs

cf. Art. 15a and 16: if any, please provide the relation to comparable costs in the national legal order; distribution of costs in cases where one party is only partly successful/not wholly successful (cf. CJEU, C-554/17)

With regards to costs and the distribution of costs, Article 16 of the ESCP Regulation provides that: "The unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim". Furthermore, Article 15a, which was created by the Regulation nº 2015/2421, also provides that the court fees charged in a Member State for the ESCP shall not be disproportionate and shall not be higher than those charged for comparable national simplified court procedures, and that Member States shall ensure that the court fees can be paid by means of distance payment methods allowing the parties to make the payment from abroad.

[193] See Article 1384, par. 1 of the Code of Civil Procedure.
[194] See Article 1384, par. 2 of the Code of Civil Procedure.
[195] See Article 1384 par. 3 of the Code of Civil Procedure.

In France, the amount of costs in ESCP depends on the nature of the case[196]. In civil cases, there are no court fees, and the court also bears the costs of document notifications unless service has to be performed by a bailiff pursuant to Article 1387 of the French Code of Civil Procedure[197]. In commercial cases, court fees depend on whether a hearing has to be held. According to the information published on the *e-Justice Portal*, court fees are 18.72 euros if there is no hearing, and around 70 euros when a hearing has to be held[198].

Additionally, the information communicated by France also specifies that the court may, in any event, order the losing party to pay the costs generated by the ESCP (i.e. the costs of representation and assistance possibly incurred by the opposing party, as well as the costs of execution of the decision)[199]. This is true both before civil and commercial courts[200].

Thus, it has to be noted and acknowledged that even though court fees are inexistent/low, the carrying out of a ESCP in France may in some instances give rise to considerable costs. This might be the case, for example, when translations of documents are required. In this respect, some legal scholars have therefore pointed out that: "There is a significant degree of uncertainty surrounding the costs of the proceedings in France which is an obstacle to the successful implementation of the ESCP"[201].

---

196 On this topic, see in particular M. Winkler and P. M. Baquero, *op. cit.*, § I.5; *adde* G. Payan, *op. cit.*, nos 129-142.

197 G. Payan, *op. cit.*, no 141.

198 See *Frais de justice applicables à la procédure de règlement des petits litiges | Portail e-Justice européen*, available at https://beta.e-justice.europa.eu/306/FR/court_fees_concerning_small_claims_procedure?FRANCE&init=true&member=1 [last updated 5 May 2019, last visited 3 June 2021]. The information is currently available in French only.

199 *Id.* On this point, see also M. Winkler and P. M. Baquero, *op. cit.*, § I.5: "according to Article 696 CPC, the court may order the losing party to pay certain costs (such as those established by Art. 695 CPC, involving, for instance, certain fees due to court clerks, fees related to the notifications of judicial acts abroad, the translation of documents, among others), including the costs of enforcing the decision. The court of first instance may also order the losing party to pay unrecoverable costs such as any representation and assistance costs incurred by the opposing party".

200 See *Frais de justice applicables à la procédure de règlement des petits litiges | Portail e-Justice Européen*, available at https://beta.e-justice.europa.eu/306/FR/court_fees_concerning_small_claims_procedure?FRANCE&init=true&member=1 [last updated 5 May 2019, last visited 3 June 2021].

201 M. Winkler and P. M. Baquero, *op. cit.*, § I.5. *Adde* A. Ontanu, *op. cit.*, p. 138-139.

5. Competent court and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 22, 23, e.g. remedies and hearings, specialization or concentration?

Pursuant to Article 21 of the ESCP Regulation, the enforcement procedures shall be governed by the law of the Member State of enforcement, and any judgment given in the ESCP shall be enforced under the same conditions as a domestic judgment. Furthermore, pursuant to Articles 22 and 23 of the ESCP Regulation, the enforcement of a ESCP judgment in another Member State may be refused, stayed or limited only under very limited circumstances, i.e. where the decision is irreconcilable with an earlier judgment given in any Member State or in a third country or where it is subject to a challenge or a review under the ESCP Regulation[202].

In the absence of any specific provision implementing these articles into French domestic law, applications for refusal, stay or limitation of enforcement are governed by the general rules set out in the French Code of Civil Enforcement Procedures[203]. In this respect, it is however worth mentioning that, as an exception to the general rule, Articles L. 121-4 and R. 121-6 provide that the parties do not need to be represented by a lawyer any time that the amount to be recovered does not exceed 10.000 euros[204].

6. Other implementation rules

cf. preliminary remarks

Regarding issues of language, the Circular of 26 May 2009 on the ESCP stated that requests to French courts should be done in French, but added that competent courts may accept the standard forms in a different language, provided the information is completed in French.

---

[202] On these points, see *e.g.* M. Nioche, *op. cit.*, nos 41-49; G. Payan, *op. cit.*, nos 143-210.
[203] For an overview of these rules, see *supra*, II.2, III.6., IV.6. *Adde* M. Winkler and P. M. Baquero, *op. cit.*, § II.
[204] On this point, cf. Article 21(3) of the ESCP Regulation, which provides that: "The party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have: (a) an authorised representative […] in the Member State of enforcement, other than with agents having competence for the enforcement procedure".

With respect to the enforcement stage, the information published on the *e-Justice Portal* states that the enforcement certificate mentioned in Article 21(2)(b) of the ESCP Regulation could be submitted in French, English, German, Italian and Spanish[205]. In practice, however all five languages do not seem to be accepted: during the interviews conducted for the IC2BE Project, an interviewee indicated the information on the *e-justice Portal* as being possibly misleading and as not being representative for what effectively happened (at least at that time) at the stage of enforcement itself[206].

Finally, it may be noted that the issuance of the enforcement certificate set out in Article 20 of the ESCP Regulation is not governed by Articles 509-1 *et seq.* of the Code of Civil Procedure, but rather by Article 1390 of the same code. Pursuant to this provision, the court's clerk office provides an enforcement certificate regarding a decision issued under the ESCP.

7. Critical assessment

For the most part, the same comments made with regards to the EPO Regulation (see *supra*, IV.10) do also apply to the implementation of the ESCP Regulation. On the one hand in fact, the existence of specific rules in the French Code of Civil Procedure provides a useful framework for the implementation of this uniform procedure into French law. On the other hand, the fact that the information published on the *e-Justice Portal* seems sometimes inconsistent and/or outdated creates some confusion and may therefore discourage French and foreign practitioners alike to make use of the ESCP procedure in France.

Above all however, the fact that the procedure before French courts has not yet been fully digitalized does constitute a considerable obstacle to the development of the ESCP. As for the EPO Regulation, this situation might nevertheless evolve in the near future, particularly thanks to the changes brought by the Law n° 2019-222 of 23 March 2019. On this point, though, it remains to be seen how the new rules implementing this reform will be set up.

---

[205] *Small claims | Finding competent courts (France) | European E-Justice Portal*, available at https://beta.e-justice.europa.eu/354/EN/small_claims?FRANCE&member=1 [last updated 7 December 2018, last visited 27 May 2021]
[206] See IC2BE Report.

VI. European Account Preservation Order Regulation ("EAPO Regulation")

By contrast to what happened with the EPO and ESCP regulations, the entry into force of the EAPO Regulation did not lead to the adoption of a complete set of implementation rules into French domestic law. Rather, the French legislator only dealt with one particular issue, namely the procedure allowing the creditor to obtain account information pursuant to Article 14 of the EAPO Regulation. In this respect, Article 15 of the Law n° 2019-222 of 23 March 2019 amended Article L. 151 A of the French Tax Procedures Book[207] in order to expand the powers of the French bailiffs to obtain relevant data about the debtor's account information[208].

Other than this provision, no domestic legislative implementation has been carried out so far. As it has been noted during the IC2BE Project, this is perhaps because "the EAPO Regulation is perceived as relatively similar to the equivalent domestic provisional measure: the *saisie conservatoire*"[209]. Given that no explicit embedding of the EAPO Regulation in France has taken place, the following paragraphs will therefore provide an overview of the generally applicable rules allowing creditors to seek or to enforce a Preservation Order in France.

1. Competent court

cf. Art. 6, 10: local jurisdiction, jurisdiction ratione materiae, specialization or concentration?

Pursuant to Articles 6 of the EAPO Regulation, international jurisdiction to issue a Preservation Order varies depending on whether or not the creditor has already obtained a judgment, court settlement or authentic instrument before seeking the order:

- When this is not the case, Article 6(1) and (2) of the Regulation provide that jurisdiction shall lie either with the courts of the Member State which have jurisdiction to rule on the substance of the matter, or with the courts of the Member

[207] *Livre des procédures fiscales, art. L. 151 A.*
[208] For an overview of this procedure, see *infra*, VI.5.
[209] IC2BE Report, p. 206.

State in which the debtor is domiciled if he is a consumer who has entered into a contract with the creditor for a purpose outside the debtor's trade or profession[210];

- By contrast, after the obtention of a judgment, court settlement or authentic instrument, Article 6(3) and (4) confer jurisdiction, respectively, to the courts of the Member State in which the judgment was issued, to the courts where the court settlement was approved or concluded, or to the courts designated by the Member State in which that instrument was drawn up.

In the absence of any specific provision implementing Article 6 of the EAPO Regulation into domestic law, the rules determining the jurisdiction of the French courts within the context of the *saisie conservatoire* apply by analogy. In this respect, Article L. 511-3 of the French Code of Civil Enforcement Procedures confers jurisdiction *ratione materiae* to the *juge de l'exécution*. Additionally, where the measure is requested before the initiation of the proceedings on the substance of the matter and aims at the preservation of a claim falling within the jurisdiction of the commercial court, the application may also be filed before the president of the commercial court (*président du tribunal de commerce*)[211].

With regards to local jurisdiction, Article R. 511-2 of the Code of Civil Enforcement Procedure, which applies to domestic disputes, provides that: "The judge competent to authorize a conservatory measure is the one of the place of domicile of the debtor". In addition to that, however, the territorial jurisdiction of French courts may also be established in accordance with the relevant provisions of the BI bis and the Maintenance[212] Regulations.

2. National provisions on the taking of evidence pursuant to Art. 9

Pursuant to Article 9 of the EAPO Regulation, the court competent to issue a Preservation Order shall take its decision by means of a written procedure on the basis of the information and evidence provided by the creditor in or with his application, unless it considers that

---

[210] These rules do also apply when the creditor seeks a Preservation Order before the initiation of proceedings on the substance of the matter in accordance with Article 10 of the EAPO Regulation.
[211] Article L. 511-3 of the Code of Civil Enforcement Procedures. On this competence, see *e.g.* E. du Rusquec, M. Défossez and C. Tirvaudey, "Fasc. 500: Mesures conservatoires – Dispositions communes", *JCl. Voies d'exécution* (2021), nos 42-44.
[212] See Council Regulation (EC) no 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

additional evidence is required in order to issue its ruling. In this case, the court may request the creditor to provide additional documentary evidence or even, insofar that this does not unduly delay the proceedings: "use any other appropriate method of taking evidence available under its national law, such as an oral hearing of the creditor or of his witness(es) including through videoconference or other communication technology".

As with many other provisions of the EAPO Regulation, there are no specific rules implementing Article 9 into French domestic law. In this respect however, Gilles Cuniberti and Sara Migliorini have suggested that Member States should adapt their systems in order to accommodate the fact that the Preservation Order is, as a matter of principle, granted only on the basis of documentary evidence, whereas domestic procedures such as the French *saisie conservatoire* normally include a hearing of the creditor[213].

3. Procedure for and means of providing security under Art. 12

According to Article 12 of the EAPO Regulation, the issuance of a Preservation Order in a case where the creditor has not yet obtained a judgment, court settlement or authentic instrument should in principle be conditional upon the posting of a security for an amount sufficient to prevent abuse of the procedure, and to ensure compensation of any damage suffered by the debtor in the event that the creditor is liable for such damage pursuant to Article 13 of the Regulation. Additionally, the court may also require the creditor to provide a security even where he has already obtained a judgment, court settlement or authentic instrument, if it considers this necessary and appropriate in the circumstances of the case.

Under French domestic law, by contrast, no security is normally required in order to obtain a *saisie conservatoire*, either before or after obtaining a judgment or an extrajudicial title. During the IC2BE Project, this point has been described as the "main difference"[214] between the

[213] G. Cuniberti and S. Migliorini, *The European Account Preservation Order Regulation: A Commentary* (2018), p. 135: "Conversely, protective measures under national law are often oral procedures and the Member States will have to adapt their systems to accommodate the PO that, as a matter of principle, is granted only on the basis of documentary evidence. For example, the French equivalent of the PO, the *saisie conservatoire*, is an oral procedure, that includes a hearing of the creditor in which his arguments and evidence are assessed by the judge". See also Article R. 121-8 of the French Code of Civil Enforcement Procedures, which provides that: "The procedure is oral".
[214] IC2BE Report, p. 207.

EAPO procedure and the French *saisie conservatoire*, as well as a factor that might "discourage creditors from requesting a EAPO"[215].

In this respect, it is nevertheless worth noting that nothing formally prevents the court from asking the creditor to post a security before issuing a Preservation Order. As the IC2BE French national Report also pointed out, however: "Since there is no equivalent procedural provision in the *saisie conservatoire* […] it is difficult to determine how the amount or the form [of the security] would be determined"[216].

4. Liability of the creditor under national law

cf. Art. 13 (3), (4)

Article 13 of the EAPO Regulation sets out the conditions under which the creditor may be liable for damages suffered by the debtor in connection with the EAPO procedure. In this respect, Article 13(1) and (2) provide that the creditor shall be liable for any damage due to fault on his part. Additionally, Article 13(3) also provides that: "Member States may maintain or introduce in their national law other grounds or types of liability or rules on the burden of proof", while Article 13(4) specifies that the law applicable to the liability of the creditor shall be, in principle, the law of the Member State of enforcement.

In France, Article L. 512-2, par. 2 of the Code of Civil Enforcement Procedures, applicable to protective measures in general, provides that: "When the release has been ordered by the judge, the creditor may be ordered to pay compensation for the damage caused by the protective measure". On the basis of this provision, the French Supreme Court has consistently held that the creditor may be held liable for damages caused to the debtor in connection with the carrying out of a protective measure even in the absence of any fault on his part[217].

---

[215] *Id.*
[216] *Id.*
[217] On this point, see *e.g.* Cour de cassation, Civ. 2, 29.01.2004, nº 01-17.161; Cour de cassation, Civ. 3, 21.10.2009, nº 08-12.687; Cour de cassation. Com., 25.092012, nº 11-22.337. *Adde* E. du Rusquec, M. Défossez and C. Tirvaudey, *op. cit.*, nº 100.

5. Competent authority and methods to obtain account information

cf. Art. 14 (1), (5)

Article 14(1) and (5) of the EAPO Regulation set out the requirements for obtaining account information under the EAPO procedure. In addition to that, Article 50(1)(b) and (c) also require each Member State to communicate to the Commission the competent authority and the methods to obtain account information in accordance with Article 14.

In France, these methods are laid out in Article L. 151 A of the French Tax Procedures Book, as well as in the Annex IV of the Circular of the Ministry of Justice dated 25 March 2019, which describes the changes made to this provision by the Law n° 2019-222 of 23 March 2019[218].

Under this Article, French bailiffs are competent to access the debtor's account information any time a request to this effect is made by the competent court in accordance with the requirements set out in Article 14 of the EAPO Regulation[219]. According to the Circular of 25 March 2019, the request for information may be transferred to the bailiff by any means, and the court can only issue a Preservation Order after the bailiff has returned the information relating to the debtor's account[220].

In practice, the information is accessed by the bailiff through an electronic register, known as *Ficoba*, which centralises all the bank accounts held by an individual in France. On the *e-Justice Portal*, the content and functioning of this register is described in the following terms:

> *"The Ficoba register (the national register of bank and similar accounts, Fichier national des comptes bancaires et assimilés) was established in 1971 and is managed by the Directorate-General for Public Finance (Direction Générale des Finances*

---

[218] See *Circulaire CIV/04/2019 du 25 mars 2019 de présentation des entrées en vigueur des dispositions civiles de la loi n° 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice, annexe IV*.

[219] In addition to that, banks are also required, upon request made by the bailiff, to disclose whether the debtor holds an account with them (on this point, see communication made by France pursuant to Article 50(1)(c) of the EAPO Regulation, available at: *European Account Preservation Order - France | European e-Justice Portal - European Judicial Atlas in Civil Matters*, available at https://e-justice.europa.eu/content_european_account_preservation_order-379-fr-en.do?member=1 [last updated 1 June 2021, last visited 3 June 2021].

[220] See Annex IV to Circular of 25 March 2019, p. 2-3.

Publiques). It lists accounts of all kinds (accounts held with banks, the post office, savings banks, etc.) and provides authorised persons with information on the accounts held by an individual or company.

An entry is made in the register when an account is opened. The account holder is informed by the financial institution that the new account will be registered in Ficoba. Declarations that an account has been opened, closed or modified include the following information:

the name and address of the institution with which the account is held;

the number, type and characteristics of the account;

the date and nature of the reported transaction (account opened, closed or modification);

the name, date and place of birth and address of the account holder, and in the case of sole traders their Siret number (register of business premises identification system, système d'identification du répertoire des établissements);

in the case of a legal person, the name, legal form, Siret number and address.

The register does not provide any information on transactions effected on the account, or of the account balance.

On receipt of the report from the bank which opened, modified or closed the account, the entry in the register is made by the Directorate-General for Public Finance. Details of the civil status of individuals are certified by INSEE (the National Institute of statistics and Economic Studies, Institut national de la statistique et des études économiques); the details of legal persons are certified and updated by the Directorate-General for Public Finance, using the Sirene system (national system for the identification and registration of enterprises and their premises, Système national d'identification et du répertoire des entreprises et de leurs établissements)"[221].

Finally, the Circular of 25 March 2019 also specifies that, in the absence of any time limit regarding the communication of the account information to the competent court, the court's clerk shall ensure the follow up of the requests for information under Article 14 of the EAPO Regulation.

[221] Communication made by France pursuant to Article 50(1)(c) of the EAPO Regulation, published on the *e-Justice Portal.*

6. Means of communication

cf. Art. 17 (5), 29, 36; please bear in mind the Report on the digitalization of enforcement procedures (D3.17)

With respect to means of communication, Article 17(5) provides that "The decision on the application shall be brought to the notice of the creditor in accordance with the procedure provided for by the law of the Member State of origin for equivalent national orders". In France however, the decision authorising the carrying out of a *saisie conservatoire* is usually delivered by the court immediately after an *ex parte* hearing with the creditor[222]. As it has been pointed out by Gilles Cuniberti and Sara Migliorini, this rule should therefore be adapted any time that a Preservation Order is issued on the sole basis of a written application[223]. In order to allow the time limit provided for in Article 21(2) of the EAPO Regulation to start running, the decision may therefore be notified by the court's clerk by registered mail with acknowledgement of receipt[224] or by electronic means in accordance with Articles 748-1 to 748-9 of the French Code of Civil Procedure.

Little guidance is also provided with respect to the means of communications available for the transmission of documents under Article 29 of the EAPO Regulation. On this point in fact, Annex IV of the Circular of 25 March 2019, which describes the methods for obtaining account information under Article 14 of the EAPO Regulation, laconically states that: "The European Regulation does not impose any form for the transmission of this request for information by the court (Article 29 of the Regulation). It can therefore be made by any means".

Finally, Article R. 121-11 of the French Code of Civil Enforcement Procedures applies to the remedies set out in Article 36 of the EAPO Regulation. This Article provides that the application has to be made by summons. It therefore has to be served on the defendant by

---

[222] See *supra*, VI.2. On this point, see also S. Guinchard and T. Moussa (eds.), *Droit et pratique des voies d'exécution*, (9th ed., 2018), n[os] 0612.41-45.
[223] See G. Cuniberti and S. Migliorini, *op. cit.*, p. 207, who observe that: "A problem may arise in Member States where equivalent measures are granted after an *ex parte* hearing, during which the creditor is informed orally of the decision of the court. In such circumstances, the national rule should be adapted to the written nature of the [EAPO] procedure".
[224] See, by analogy, Article R. 121-15 of the French Code of Civil Enforcement Procedures.

the bailiff in accordance with Articles 653 to 664-1 of the French Code of Civil Procedure and then lodged with the court pursuant to Article 754 of the same code.

7. Appeals and remedies

cf. Art. 21, 33-35, 37-39

The EAPO Regulation sets out the appeals and remedies available against the decisions issued in the course of the EAPO procedure, as well as the remedies available at the enforcement stage. We will address them in turn, keeping in mind that France has not enacted any implementation rules in this regard and that, therefore, the rules normally applicable to *saisies conservatoires* should also apply in the context of the EAPO procedure unless otherwise provided by the Regulation itself.

Firstly, Article 21 of the Regulation provides that the creditor shall have the right to appeal any decision of the court rejecting, wholly or in part, his application for a Preservation Order. According to the communication made by France pursuant to Article 50(1)(d) of the EAPO Regulation, jurisdiction to rule on the application lies with the Court of Appeal[225]. Absent any indication to the contrary, the procedure is governed by Article 496, par. 1 of the French Code of Civil Procedure, which is normally applicable to *ex parte* applications for protective measures under French domestic law[226].

Secondly, Articles 33 to 35 of the EAPO Regulation set out the remedies available to the debtor and/or the creditor against the Preservation Order itself or against its enforcement. In this respect, Article 50(1)(l) of the EAPO Regulation requires the Member States to communicate to the Commission: "the courts or, where applicable, the enforcement authority, competent to grant a remedy (Article 33(1), Article 34(1) or (2))". According to the communication made by France:

> *"The authority with power to revoke a Preservation Order, to limit or terminate the enforcement of a Preservation Order, or to decide that the enforcement of a Preservation*

[225] See information published on the *e-Justice Portal*.
[226] This provision also refers to Articles 950 to 953 of the French Court of Civil Procedure. Pursuant to these articles, the appeal has to be filed by way of a declaration made or sent by registered mail to the clerk's office of the court that first rendered the decision (Article 950), which has then the power to either revoke or modify the decision, or to send the application to the registry of the Court of Appeal (Article 952).

Order would be contrary to public policy and must be terminated on those grounds, is the enforcement judge at the Regional Court"[227].

The procedure is governed by Articles R. 121-11 to R. 121-24 of the Code of Civil Enforcement Procedures, which lay out the general rules applicable before the enforcement judge, as well as by Articles R. 512-1 to R. 512-3 of the same code, which apply specifically to the *saisie conservatoire*. These rules are also applicable to claims brought by third parties under Article 39 of the EAPO Regulation.

Thirdly, Article 37 of the EAPO Regulation provides that either party has the right to appeal any decision issued pursuant to Article 33, 34 or 35. According to the communication made by France pursuant to Article 50(1)(m) of the Regulation[228], the appeal can be brought before the Court of Appeal within 15 days from the day when the recipient signs the acknowledgement of receipt of the registered letter containing the decision of the enforcement judge, which is sent by the clerk of the court to the parties[229]. The communication also specifies that: "If the acknowledgement of receipt is unsigned, the decision of the enforcement judge must be served by a bailiff, at the request of a party, and time then begins to run on the date on which the decision is served"[230].

Finally, Article 38 of the Regulation also provides that the debtor may apply to the competent court (or enforcement authority) to seek the release of the funds preserved in exchange of appropriate security. In France, this hypothesis is explicitly addressed by Article L. 512-1 of the Code of Civil Enforcement Procedures, which provides that, upon application by the debtor, the court may replace the protective measure initially issued with "any other measure likely to safeguard the interests of the parties"[231]. The same article also provides that the provision of an irrevocable bank guarantee matching the protective measure shall entail the release of the funds[232].

---

[227] See information published on the *e-Justice Portal*.
[228] *Id.*
[229] On this point, see Article R. 121-15, par. 1 of the French Code of Civil Enforcement Procedures.
[230] See Article R. 121-15 of the Code of Civil Enforcement Procedures, par. 2 and 3.
[231] Article L. 512-1, par. 2 of the Code of Civil Enforcement Procedures.
[232] Article L. 512-1, par. 3 of the Code of Civil Enforcement Procedures.

8. Enforcement procedure

cf. Art. 23-25, 27-28

The procedure applicable to the enforcement of a Preservation Order is set out in Articles 23 to 25 and 27-28 of the EAPO Regulation. More specifically, these provisions lay out the rules governing the enforcement of the Preservation Order by the competent authorities of the Member State in which the bank account to be preserved is maintained (**a**), the rules governing the implementation of the Preservation Order by the bank (**b**), and finally the rules related to the duties of the creditor and the service of the Preservation Order on the debitor (**c**).

a) The enforcement of the Preservation Order (Article 23 of the EAPO Regulation)

Unless where otherwise provided by the EAPO Regulation, the enforcement of the Preservation Order is conducted in accordance with the procedures applicable to the enforcement of equivalent national measures in the Member State of enforcement[233]. In France, the enforcement of a Preservation Order is therefore carried out by the bailiff[234], and the procedure is governed by the provisions of the Code of Civil Enforcement Procedures applicable to the domestic *saisie conservatoire de créances*[235].

Under these rules, the bailiff serves the Preservation Order on the bank or banks designated in the order. In this regard, the new Article L. 523-1-1 of the Code of Civil Enforcement Procedures provides that service has to be carried out by electronic means[236]. In practice, service is made through a secured online platform that can only be accessed by the recipient

[233] Article 23(1) of the EAPO Regulation.
[234] See communication made by France pursuant to Article 50(1)(f) of the EAPO Regulation, published on the *e-Justice Portal.*
[235] See Articles L. 523-1 and L. 523-1-1, as well as by Articles R. 523-1 to R. 523-6 of the Code of Civil Enforcement Procedures.
[236] This provision was enacted by the Law n° 222-2019 of 23 March 2019 and is applicable since 1 April 2021 (see Article 25, I, 3° of the Law n° 2020-734 of 17 June 2020 – *Loi n° 2020-734 du 17 juin 2020 relative à diverses dispositions liées à la crise sanitaire, à d'autres mesures urgentes ainsi qu'au retrait du Royaume-Uni de l'Union européenne, art. 25, I 3°*).

with a login and password combination[237]. The Preservation Order produces its effects from the day of service on the bank[238] (i.e. from the day the bailiff has uploaded it on the online platform[239]).

With respect to language, the communication made by France pursuant to Article 50(1)(o) of the EAPO Regulation states that: "Only documents in French will be accepted"[240].

Finally, Article 23(3) also provides that, where the Preservation Order was issued in a Member State other than the Member State of enforcement, the relevant documents shall be transmitted by the issuing court or the creditor, depending on who is responsible under the law of the Member State of origin for initiating the enforcement procedure. Given the extrajudicial nature of enforcement proceedings under French law, the latter solution applies to outgoing Preservation Orders issued by French courts.

b) ***The implementation of the Preservation Order by the bank (Articles 24 and 25 of the EAPO Regulation)***

By analogy to what happens under French domestic rules, the bank implements the Preservation Order by preventing the debtor from transferring or withdrawing the relevant amount from the account or accounts indicated in the Order[241]. Under Article L.162-2 of the Code of Civil Enforcement Procedures, the bank is responsible for settling pending transactions and for handling requests for exemption coming from the debtor[242]. As to the latter aspect however, Gilles Cuniberti and Sara Migliorini have noted that contrary to what happens under French domestic law, any request for exemption has to be lodged with the

---

237 For a detailed description of this process, see *e.g.* C. Bléry, "Communication par voie électronique", in S. Guinchard (ed.), *op. cit.*, chap. 273 ; M. Dochy, *La dématérialisation des actes du procès civil*, Dalloz, 2021, nos 139-143.

238 On this point, see G. Cuniberti and S. Migliorini, *op. cit.*, p. 236, citing Article R. 523-1 of the French Code of Civil Enforcement Procedures.

239 M. Dochy, *op. cit.*, no 142.

240 See information published on the *e-Justice Portal*.

241 See Article L. 523-1 of the Code of Civil Enforcement Procedures. This rule does not prevent the bank from releasing the funds where the requirements set out in Article 24(3) of the EAPO Regulation are met (on this point, see *e.g.* S. Guinchard and T. Moussa (eds.), *op. cit.*, no 0621.51).

242 For more information on the rules applicable to amounts exempt from seizure, see the communication made by France pursuant to Article 50(1)(h) of the Regulation, published on the *e-Justice Portal*.

court of the Member State of enforcement under Article 34(1)(a) of the EAPO Regulation[243]. Finally, where the Preservation order covers several accounts held by the debtor with the same bank, the same authors have also pointed out that French law gives the debtor the right to waive the order of priority set out in Article 24(5) of the Regulation[244].

Under French domestic law[245], the bank is also responsible for issuing the declaration concerning the preservation of funds[246]. However, the content and means of the declaration are directly set out in Article 25 of the Regulation[247].

c) ***Duties of the creditor and service on the defendant (Articles 27 and 28 of the EAPO Regulation)***

Pursuant to Article 27 of the EAPO Regulation, the creditor has a duty to request the release of over-preserved amounts where: the Order covers several accounts in the same Member State or in different Member States (Article 27(1)(a)); or the Order was issued after the implementation of one or more equivalent national orders against the same debtor and aimed at securing the same claim (Article 27(1)(b)). This request has to be made in accordance Article 27(2) of the Regulation, but Member States are free to decide that the release of over-preserved funds from any account maintained in their territory is to be initiated by the competent enforcement authority of its own motion. This does not appear to be the case under French national law.

Under French national law, the creditor is also responsible for initiating service of the Preservation Order on the debtor in accordance with Article 28 of the Regulation[248]. Where the Preservation Order has been issued in France and the debtor is domiciled in France,

---

[243] G. Cuniberti and S. Migliorini, *op. cit.*, p. 240, fn. 77: "The debtor could not, therefore, use national procedures for that purpose. In Member States where such requests are sent directly to the bank for application of exemption rules (see, e.g. French Code des procédures civiles d'exécution, Art. R162-4), the procedure is unavailable".
[244] *Id.*, p. 243.
[245] Article R. 523-4 of the Code of Civil Enforcement Procedures.
[246] Piedelièvre, "Droit Européen et Saisie de Comptes Bancaires", *Revue de Droit Bancaire et Financier* (2014), nº 5, comm. 175.
[247] See G. Cuniberti and S. Migliorini, "La procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires établie par le règlement UE nº 655/2014", *Revue Critique de Droit International Privé* (2018), p. 31, nº 45.
[248] See, by analogy, Article R. 523-3 of the Code of Civil Enforcement Procedures.

service is made by the bailiff, in accordance with the rules applicable to French *saisies conservatoires*[249]. Where the debtor is domiciled in a third State, service is governed by Articles 683 to 688-8 of the French Code of Civil Procedure.

9. Liability of the bank under national law

cf. Art. 26

Pursuant to Article 26 of the EAPO Regulation: "Any liability of the bank for failure to comply with its obligations under this Regulation shall be governed by the law of the Member State of enforcement". In France, Article R. 523-5 of the Code of Civil Enforcement Procedures, which is applicable to the equivalent domestic measure, provides that: "A garnishee who, without legitimate reason, fails to provide the required information, shall be liable to pay the sums for which the order was made" and may also be ordered to pay damages "in the event of culpable negligence or inaccurate or untrue declaration".

10. Fees and costs of courts, authorities, and banks

cf. Art. 42, 43, 44

Article 42, 43 and 44 of the EAPO Regulation set out the rules applicable to the fees and costs related to the issuance and the enforcement of a Preservation Order. Furthermore, Member States are also required to provide information on these points pursuant to Article 50(1)(i)(j) and (n) of the Regulation.

Firstly, with regards to court fees referenced in Article 42, the communication made by France states that: "There are no charges for submitting an application for a Preservation Order, or for lodging an appeal", and that the costs of the proceedings are to be borne by the debtor, unless the court provides otherwise[250].

Secondly, with regards to costs incurred by the banks, France has declared that: "French law does not have specific provisions on charges for the enforcement of preservation orders"[251].

---

[249] *Id.*. See also Articles 653 to 664-1 of the Code of Civil Procedure.
[250] See communication made by France pursuant to Article 50(1)(n) and published on the *e-Justice Portal.*
[251] See communication made by France pursuant to Article 50(1)(i) and published on the *e-Justice Portal.*

Nevertheless, the communication also specified that information regarding the amount that might be charged to a debtor must be provided by the bank to its customers in advance and that the amount seems to vary between 78 and 111 euros[252].

Thirdly, with regards to fees charged by the enforcement authorities, France has declared that: "The total cost of the procedure (including converting the Preservation Order into a final garnishment order (*saisie-attribution*) varies between € 166.19 and € 397.88 depending on the amount of the claim in question"[253], and has submitted a detailed account of the applicable fees, including those related to the procedure for obtaining account information[254].

11. Other implementation rules

cf. preliminary remarks

[*none*]

12. Critical assessment

As it has been noted throughout this section, the almost complete absence of implementation rules regarding the EAPO Regulation has led French practitioners to apply the rules governing the domestic *saisies conservatoires* to almost every aspect not explicitly covered by the Regulation. In our opinion however, this approach gives rise to considerable uncertainty as to the interplay between European rules and French national law. This result is only partly mitigated by the fact that the information communicated by France under the EAPO Regulation seems to be more accurate and up-to-date than the communications made under the other targeted regulations.

In our view, the adoption of a set of specific provisions dedicated to the implementation of the EAPO Regulation would greatly promote knowledge of the EAPO procedure, while also reducing the risk of protracted litigation over procedural issues. These provisions could for

[252] *Id.* For more information, visit the *e-Justice Portal.*
[253] See communication made by France pursuant to Article 50(1)(j) and published on the *e-Justice Portal.*
[254] *Id.*

instance be inserted in the Code of Civil Enforcement Procedures after Articles R. 523-1 to R. 523-10, applicable to the equivalent domestic measures.

VII. Summary and overall assessment

Some remarks are made here regarding the French implementation strategy, in an overall summary and assessment of the implementation of the targeted regulations.

As mentioned in the introduction, the implementation of the targeted regulations into French law mainly falls within the powers of the executive branch, who has used the technique of decrees and circulars to enact the necessary provisions into French national law.

However, the French government seems to have followed two different approaches with regards to the implementation of the targeted regulations. On the one hand, the EPO and the ESCP regulations received a quite extensive implementation, in that they led to the adoption of a complete set of specific provisions in the Code of Civil Procedure. On the other hand, the three regulations that deal more directly with enforcement issues – namely the BI bis, EEO and EAPO regulations – remain for the most part governed by the general rules applicable to the execution of domestic titles. This is probably due to the fact that enforcement procedures are still considered to be a matter largely governed by the law of the Member States rather than by European uniform rules.

Consequently, each of these two implementation strategies should be addressed separately.

With regards, firstly, to the *EPO and the ESCP regulation*s, , the adoption of a specific set of implementation rules in the Code of Civil Procedure has certainly helped to increase the visibility of the European instruments and provided a precious support for French and foreign practitioners alike[255]. Moreover, the French government appears to have been quite in time when implementing these regulations into French law, as the implementing decree was published just some days after the date the EPO became applicable[256].

Unfortunately however, the communication of the French government regarding the interplay between European and domestic rules has given rise to some interpretative difficulties. On the one hand, the circulars on the EPO and the ESCP created some

---

[255] See A. Ontanu, *op. cit.*, p. 135 where she writes that "The choice of incorporating the rules on EOP and ESCP application into the French CPC can contribute to the visibility of these European procedures for the national practitioners and parties. Additionally, they provide support and certainty on certain application.**"**
[256] *Id.*, p 134.

confusion with regards to some crucial issues, such as the rules applicable to jurisdiction before French courts. On the other hand, the information published on the *e-Justice Portal* appears to be quite outdated and does not always match the reality of the procedural rules applicable before French courts. This is true, in particular, with regards to practical questions such as the languages and the means of communications available under national law. As a result, the lack of exhaustive information on these points has likely hampered the success of these regulations in France.

Finally, a very important point with respect to the implementation of the EPO and the ESCP regulations concerns the underdevelopment of digital means of communications in French civil proceedings, as well as the almost complete absence of digital dispute resolution mechanisms and digital procedures for the taking of evidence. Overall, these factors weigh heavily against the development of cross-border civil procedure, especially with respect to instruments that aim to provide injunctive and small claims relief to parties established in different Member States. On this point though, the general overhaul of French civil procedure brought by the Law nº 2019-222 of 23 March 2019 might lead to some interesting developments in the near future.

With regards, secondly, to the *BI bis, EEO and EAPO regulations*, the strategy followed by the French government has also given rise to some uncertainties with respect to the interaction between the regulations and French domestic rules. In the course of the IC2BE project, for instance, statements have been reported regarding the so-called "difficult articulation of the regulations with French national law"[257]. For this reason alone, the implementation of the targeted regulations into French domestic law would greatly benefit from a more in-depth treatment of the certification procedure set out in Articles 509-1 *et seq.* of the French Code of Civil Procedure, which could be systematically redrafted taking into account the most recent developments of European Union Law, as well as from a more complete implementation of the EAPO Regulation in the Code of Civil Enforcement Procedures.

[257] On this point, see in particular the Report of the Workshop held in June 2018, available at https://www.mpi.lu/fileadmin/mpi/medien/research/IC2BE/IC2BE_Workshop_Report_MPI_Luxembourg_2018-06-08.pdf.

B. Annex: Implementation Rules and Translations

What follows is an unofficial translation of the provisions that were added or amended into French codes in order to implement the targeted regulations.

I. *Code de procédure civile* – Code of Civil Procedure

Livre Ier : Dispositions communes à toutes les juridictions […]	**Book I: Provisions common to all courts […]**
Titre XV : L'exécution du jugement […]	**Title XV: Enforcement of the judgment […]**
Chapitre II : La reconnaissance transfrontalière	*Chapter II: Cross-border recognition*
Article 509 Les jugements rendus par les tribunaux étrangers et les actes reçus par les officiers étrangers sont exécutoires sur le territoire de la République de la manière et dans les cas prévus par la loi.	Article 509 Judgments rendered by foreign courts and deeds received by foreign officers shall be enforceable in the territory of the Republic in the manner and in the cases provided for by law.
Article 509-1 I. - Sont présentées au directeur de greffe de la juridiction qui a rendu la décision, homologué la convention ou visé le mandat de protection future : 1° Les requêtes aux fins de certification des titres exécutoires français en vue de leur reconnaissance et de leur exécution à l'étranger en application : […] - du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ; II. - Sont présentées au juge qui a rendu la décision ou homologué la convention : 1° Les requêtes aux fins de certification des titres exécutoires français en vue de leur	Article 509-1 I. - The following shall be submitted to the registrar of the court which rendered the decision, approved the agreement or endorsed the future protection mandate: 1° Requests for the certification of French enforceable titles with a view to their recognition and enforcement abroad pursuant to : […] - Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; II. - The following shall be submitted to the judge who rendered the decision or approved the agreement:

reconnaissance et exécution à l'étranger en application : […] - du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées ; […] Les requêtes présentées devant le juge sont dispensées du ministère d'avocat.	1° Requests for certification of French enforceable titles with a view to their recognition and enforcement abroad pursuant to: […] - Regulation (EC) n° 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims; […] Applications do not need to be submitted by a lawyer.
Article 509-2 […]	Article 509-2 […]
Article 509-3 Par dérogation aux articles 509-1 et 509-2, sont présentées au président de la chambre des notaires ou, en cas d'absence ou d'empêchement, à son suppléant désigné parmi les membres de la chambre les requêtes aux fins de certification, de reconnaissance ou de constatation de la force exécutoire, sur le territoire de la République, des actes authentiques notariés étrangers en application : […] - du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ; […] Pour l'application du règlement précité du 12 décembre 2012, ainsi que de la convention précitée du 30 octobre 2007, l'élection de domicile est faite dans le ressort de la cour d'appel où siège la chambre des notaires. Par dérogation à l'article 509-1 sont présentées au notaire ou à la personne morale titulaire de l'office notarial conservant la minute de l'acte reçu les requêtes aux fins de certification des actes authentiques notariés en vue de leur	Article 509-3 By way of exception from Articles 509-1 and 509-2, applications for certification, recognition or declaration of enforceability, on the territory of the Republic, of foreign notarial deeds are submitted to the President of the Chamber of Notaries or, in case of absence or impediment, to his deputy appointed among the members of the Chamber any time that the application is made pursuant to: […] - Regulation (EU) n° 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; […] For the application of the aforementioned Regulation of 12 December 2012, as well as the aforementioned Convention of 30 October 2007, the election of domicile is made within the jurisdiction of the Court of Appeal where the Chamber of Notaries has its seat. By derogation from Article 509-1, applications for certification of authenticated instruments in view to their reception and enforcement abroad shall be submitted to the notary or to the legal person holding the notarial office which keeps

acceptation et de leur exécution à l'étranger en application : - du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées ; […]	the original of the instrument received where such applications are made pursuant to: - Regulation (EC) n° 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims; […]
Article 509-4 La requête est présentée en double exemplaire. Elle doit comporter l'indication précise des pièces invoquées.	Article 509-4 The application shall be submitted in duplicate. It must include a precise indication of the documents relied on.
Article 509-5 La décision rejetant la requête aux fins de constatation de la force exécutoire est motivée.	Article 509-5 Reasons shall be given for the decision rejecting the application for a declaration of enforceability.
Article 509-6 Le certificat, ou la décision relative à la demande de reconnaissance ou de constatation de la force exécutoire, est remis au requérant contre émargement ou récépissé, ou lui est notifié par lettre recommandée avec demande d'avis de réception. Le double de la requête ainsi que du certificat ou de la décision sont conservés au greffe. […]	Article 509-6 The certificate or the decision on the application for recognition or declaration of enforceability shall be delivered to the applicant against a receipt or by registered letter with acknowledgement of receipt. The duplicate of the application and the certificate or decision shall be kept at the registry. […]
Article 509-7 S'il n'émane du juge, le refus de délivrance du certificat peut être déféré au président du tribunal judiciaire. Ce dernier statue en dernier ressort sur requête, le requérant et l'autorité requise entendus ou appelés.	Article 509-7 Where the refusal to issue the certificate is not issued by a judge, it may be referred to the president of the regional court. The latter shall give a final decision on the application, after hearing or calling the applicant and the requested authority.
Article 509-8 […]	Article 509-8 […]
Article 509-9 […]	Article 509-9 […]

Livre III: Dispositions particulières à certaines matières […]	**Book III: Provisions specific to certain matters […]**
Titre IV : Les obligations et les contrats	**Title IV: Obligations and contracts**
Chapitre Ier : La procédure européenne de règlement des petits litiges	*Chapter I: The European Small Claims Procedure*
Article 1382 Le présent chapitre est relatif à la procédure européenne de règlement des petits litiges prévue par le règlement (CE) n° 861/2007 du Parlement européen et du Conseil du 11 juillet 2007 instituant une procédure européenne de règlement des petits litiges. Lorsque le règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale désigne les juridictions d'un Etat membre sans autre précision, la juridiction territorialement compétente est celle du lieu où demeure le ou l'un des défendeurs.	Article 1382 This chapter concerns the European Small Claims Procedure provided for in Regulation (EC) no 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. Where Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters designates the courts of a Member State without further specification, the court with territorial jurisdiction shall be that of the place where the defendant or one of the defendants resides.
Article 1383 Le formulaire de demande est remis ou adressé par voie postale au greffe de la juridiction.	Article 1383 The application form shall be delivered or sent by post to the court registry.
Article 1384 Si, au vu du formulaire de demande qui lui est présenté, il apparaît au tribunal que l'affaire ne relève pas du champ d'application de la procédure européenne de règlement des petits litiges, il en avise le demandeur par lettre recommandée avec demande d'avis de réception. Il lui impartit un délai pour se désister de sa demande et l'informe que, à défaut, l'affaire sera instruite et jugée selon la procédure au fond applicable devant lui. A l'expiration de ce délai, si le demandeur ne s'est pas désisté de sa demande, le tribunal constate que le litige ne relève pas de la procédure européenne de règlement des petits	Article 1384 If, on the basis of the claim form submitted to it, it appears to the court that the case does not fall within the scope of the European Small Claims Procedure, it shall so inform the claimant by registered letter with acknowledgement of receipt. It shall set a time limit for the claimant to withdraw his claim and inform him that, if he fails to do so, the case will be heard and determined in accordance with the rules governing the procedure on the merits applicable before the court. At the end of this period, if the claimant has not withdrawn his claim, the court finds that the dispute does not fall within the scope of the

litiges et invite le demandeur à faire citer le défendeur par voie de signification. Cette décision est une mesure d'administration judiciaire. A la diligence du greffe, elle est notifiée au demandeur par lettre recommandée avec demande d'avis de réception. Le tribunal qui a renvoyé l'affaire pour qu'il soit statué selon la procédure au fond applicable devant lui peut se déclarer incompétent dans les conditions prévues par le présent code.	European Small Claims Procedure and invites the claimant to summon the defendant by way of service. This decision is a measure of judicial administration. At the registry's request, it is notified to the claimant by registered letter with acknowledgement of receipt. The court which has referred the case for adjudication in accordance with the procedure on the merits applicable before it may declare that it does not have jurisdiction under the conditions laid down in this Code.
Article 1385 Lorsque le tribunal rejette la demande au motif que celle-ci apparaît manifestement non fondée ou irrecevable ou que le demandeur n'a pas complété ou rectifié le formulaire de demande dans le délai qui lui a été fixé, la décision rendue est insusceptible de recours. Le demandeur peut toutefois procéder selon les voies de droit commun.	Article 1385 Where the court rejects the application on the grounds that it is manifestly unfounded or inadmissible or that the applicant has not completed or rectified the application form within the time limit set, the decision rendered is not subject to appeal. The applicant may, however, proceed in accordance with the ordinary rules.
Article 1386 Lorsqu'une demande reconventionnelle ne relève pas du champ d'application de la procédure européenne de règlement des petits litiges, le tribunal en avise les parties par lettre recommandée avec demande d'avis de réception. Il les informe qu'à moins que le demandeur reconventionnel ne se désiste de sa demande dans un délai qui lui est imparti, l'affaire sera instruite et jugée selon la procédure au fond applicable devant lui. A l'expiration de ce délai, si le demandeur ne s'est pas désisté de sa demande, le tribunal constate que le litige ne relève pas de la procédure européenne de règlement des petits litiges. Lorsque le tribunal décide, d'office ou à la demande d'une partie, que le litige ne relève pas de la procédure européenne de règlement des petits litiges au motif qu'une demande reconventionnelle ne relève pas du champ d'application de cette procédure, il ordonne le renvoi de l'affaire à une audience pour qu'il soit	Article 1386 Where a counterclaim falls outside the scope of the European Small Claims Procedure, the court shall notify the parties by registered letter with advice of delivery. It shall inform them that unless the counterclaimant withdraws his claim within a given time limit, the case will be heard and decided in accordance with the procedure on the merits applicable before it. On expiry of this time limit, if the claimant has not withdrawn his claim, the court shall find that the dispute is not covered by the European Small Claims Procedure. Where the court decides, of its own motion or at the request of a party, that the dispute does not fall within the scope of the European Small Claims Procedure on the grounds that a counterclaim does not fall within the scope of that procedure, it shall order that the case be remitted to a hearing to be decided in accordance with the procedure on the merits applicable before it. At the Registry's request,

statué selon la procédure au fond applicable devant lui. A la diligence du greffe, les parties sont avisées de cette décision et sont convoquées à l'audience par lettre recommandée avec demande d'avis de réception. Le tribunal qui a renvoyé l'affaire pour qu'il soit statué selon la procédure au fond applicable devant lui peut se déclarer incompétent dans les conditions prévues par le présent code.	the parties shall be notified of this decision and summoned to the hearing by registered letter with acknowledgement of receipt. The court which has referred the case for adjudication in accordance with the procedure on the merits applicable before it may declare that it does not have jurisdiction under the conditions laid down in this Code.
Article 1387 En cas de retour au greffe d'une lettre de notification dont l'avis de réception n'a pas été signé dans les conditions prévues à l'article 670, la notification est faite par acte d'huissier de justice, à la diligence du greffe. L'avance des frais de signification est à la charge du Trésor public.	Article 1387 If a letter of notification is returned to the court registry and the notice of receipt has not been signed under the conditions provided for in Article 670, notification shall be made by a bailiff, at the behest of the court registry. The advance of the costs of service shall be borne by the Treasury.
Article 1388 Lorsque le tribunal décide de tenir une audience en application de la procédure européenne de règlement des petits litiges, il connaît du litige conformément à la procédure au fond applicable devant lui.	Article 1388 Where the court decides to hold a hearing under the European Small Claims Procedure, it shall hear the case in accordance with the procedure on the merits applicable before it.
Article 1389 Les dispositions de l'article 1387 ne sont pas applicables à la notification aux parties de la décision rendue. Cette notification est faite, à la diligence du greffe, par lettre recommandée avec demande d'avis de réception.	Article 1389 The provisions of Article 1387 shall not apply to the notification of the decision to the parties. This notification shall be made, at the registry's motion, by registered letter with acknowledgement of receipt.
Article 1390 A la demande qui lui en est faite, le greffe délivre le certificat relatif à une décision rendue dans le cadre de la procédure européenne de règlement des petits litiges.	Article 1390 On request, the Registry shall issue the certificate relating to a judgment given in the European Small Claims Procedure.
Article 1391 Le droit à réexamen prévu par l'article 18 du règlement (CE) n° 861/2007 du Parlement européen et du Conseil du 11 juillet 2007 instituant une procédure européenne de	Article 1391 The right of review provided for in Article 18 of Regulation (EC) n° 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims

règlement des petits litiges s'exerce selon la procédure de l'opposition, lorsque celle-ci est ouverte, ou, dans le cas contraire, selon des modalités procédurales similaires.	Procedure shall be exercised in accordance with the opposition procedure, where it is applicable, or, where it is not, in accordance with similar procedures.
Chapitre II : Les procédures d'injonction […] Section II : L'injonction de payer européenne Article 1424-1 La présente section est relative à la procédure européenne d'injonction de payer prévue par le règlement (CE) n° 1896/2006 du Parlement européen et du Conseil du 12 décembre 2006 instituant une procédure européenne d'injonction de payer. Lorsque le règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale désigne les juridictions d'un Etat membre sans autre précision, la juridiction territorialement compétente est celle du lieu où demeure le ou l'un des défendeurs. Article 1424-2 Le formulaire de demande d'injonction de payer européenne est remis ou adressé par voie postale au greffe de la juridiction. Article 1424-3 Le juge peut délivrer une injonction de payer européenne pour partie de la demande, après que le demandeur a accepté la proposition en ce sens qu'il lui a faite. Dans ce cas, le demandeur ne peut plus agir en justice pour réclamer le reliquat, sauf à ne pas signifier l'ordonnance et à procéder selon les voies de droit commun. Article 1424-4 L'injonction de payer européenne ou la décision de rejet d'une demande d'injonction de payer européenne ainsi que le formulaire de demande sont conservés à titre de minute au greffe.	*Chapter II: Injunction procedures* […] Section II : The European order for payment Article 1424-1 This section deals with the European order for payment procedure provided for in Regulation (EC) n° 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. Where Regulation (EU) n° 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters designates the courts of a Member State without further specification, the court with territorial jurisdiction shall be that of the place where the defendant or one of the defendants resides. Article 1424-2 The application form for a European order for payment shall be delivered or sent by post to the court registry. Article 1424-3 The judge may issue a European order for payment for part of the claim after the claimant has accepted the judge's proposal to that effect. In that case, the claimant can no longer take legal action to claim the balance, unless he does not serve the order and proceeds according to the ordinary law. Article 1424-4 The European order for payment or the decision rejecting an application for a European order for payment together with the application

	form shall be kept as a record at the court's registry.
Article 1424-5 Une copie certifiée conforme du formulaire de demande et de la décision est signifiée, à l'initiative du demandeur, à chacun des défendeurs. Le formulaire d'opposition à injonction de payer européenne est annexé à l'acte de signification. A peine de nullité, l'acte de signification contient, outre les mentions prescrites pour les actes d'huissier de justice, l'indication du tribunal devant lequel l'opposition doit être portée, du délai imparti et des formes selon lesquelles elle doit être faite. Sous la même sanction, l'acte de signification : - avertit le défendeur qu'à défaut d'opposition dans le délai indiqué, calculé en application du règlement (CEE, EURATOM) n° 1182/71 du Conseil du 3 juin 1971 portant détermination des règles applicables aux délais, aux dates et aux termes, il pourra être contraint par toutes voies de droit de payer les sommes réclamées ; - informe le défendeur de son droit de demander le réexamen de l'injonction de payer européenne devant la juridiction qui l'a rendue, après l'expiration du délai d'opposition, dans les cas exceptionnels prévus à l'article 20 du règlement (CE) n° 1896/2006 du Parlement européen et du Conseil du 12 décembre 2006 instituant une procédure européenne d'injonction de payer.	Article 1424-5 A certified copy of the claim form and the decision shall be served, at the initiative of the claimant, on each of the defendants. The European order for payment opposition form shall be annexed to the service. Service shall be declared null and void when it does not contain, in addition to the requirements prescribed for any bailiff's notification, an indication of the court before which the opposition must be brought, the applicable time limit and the forms in which it must be made. Under the same sanction, the document of service: - warns the defendant that if he fails to lodge a statement of opposition within the time limit specified, calculated in accordance with Council Regulation (EEC, EURATOM) n° 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits, he may be required, by any legal means, to pay the sums claimed; - inform the defendant of his right to apply for a review of the European order for payment before the issuing court after the expiry of the opposition period in the exceptional cases provided for in Article 20 of Regulation (EC) n° 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.
Article 1424-6 Si la signification est faite à la personne du défendeur et à moins qu'elle ne soit effectuée par voie électronique, l'huissier de justice doit porter verbalement à sa connaissance les informations qualifiées d'importantes par le formulaire d'injonction de payer européenne ainsi que les indications mentionnées à l'article 1424-5. L'accomplissement de cette	Article 1424-6 If service is made on the defendant and unless it is made by electronic means, the bailiff must verbally bring to the defendant's attention the information qualified as important by the European order for payment form as well as the indications mentioned in Article 1424-5. The completion of this formality shall be mentioned in the document of service.

formalité est mentionné dans l'acte de signification.	
Article 1424-7 L'huissier de justice adresse une copie de l'acte de signification à la juridiction qui a rendu l'injonction.	Article 1424-7 The bailiff shall send a copy of the document of service to the court that issued the injunction.
Article 1424-8 L'opposition est portée devant la juridiction dont émane l'injonction de payer européenne. Elle est formée au greffe soit par déclaration contre récépissé, soit par lettre recommandée.	Article 1424-8 The opposition shall be brought before the court that issued the the European order for payment. The opposition shall be lodged at the registry either by declaration against a receipt or by registered letter.
Article 1424-9 Le tribunal statue sur la demande en recouvrement. Il connaît, dans les limites de sa compétence d'attribution, de la demande initiale et de toutes les demandes incidentes et défenses au fond. En cas de décision d'incompétence, l'affaire est renvoyée devant la juridiction compétente selon les règles prévues à l'article 82.	Article 1424-9 The court shall rule on the claim for recovery. It hears, within the limits of its jurisdiction, the initial claim and all incidental claims and defences on the merits. In the event of a decision on jurisdiction, the case shall be referred to the competent court in accordance with the rules laid down in Article 82.
Article 1424-10 Le greffier convoque les parties à l'audience par lettre recommandée avec demande d'avis de réception. La convocation est adressée à toutes les parties, même à celles qui n'ont pas formé opposition. La convocation contient : 1° Sa date ; 2° L'indication de la juridiction devant laquelle l'opposition est portée ; 3° L'indication de la date de l'audience à laquelle les parties sont convoquées ; 4° Les conditions d'assistance et de représentation des parties. La convocation adressée au défendeur précise en outre que, faute de comparaître, il s'expose à ce qu'un jugement soit rendu contre lui sur les seuls éléments fournis par son adversaire.	Article 1424-10 The court clerk shall convene the parties to the hearing by registered letter with acknowledgement of receipt. The convocation is sent to all parties, even those who have not lodged an objection. The convocation contains: 1° Its date; 2° Indication of the court before which the opposition is brought; 3° The date of the hearing to which the parties are summoned; 4° The conditions of assistance and representation of the parties. The convocation addressed to the defendant also states that, if he fails to appear, a judgment may be entered against him on the sole basis of the evidence provided by his opponent.

Ces mentions sont prescrites à peine de nullité.	In the absence of one of these elements, the convocation shall be declared null and void.
Article 1424-11 Si aucune des parties ne se présente, le tribunal constate l'extinction de l'instance. Celle-ci rend non avenue l'injonction de payer européenne.	Article 1424-11 If neither party appears, the court will declare the proceedings terminated. This will render the European order for payment null and void.
Article 1424-12 Le jugement du tribunal se substitue à l'injonction de payer européenne.	Article 1424-12 The judgment of the court replaces the European order for payment.
Article 1424-13 Le tribunal statue à charge d'appel lorsque le montant de la demande excède le taux de sa compétence en dernier ressort.	Article 1424-13 The court shall decide on appeal when the amount of the claim is such that an appeal is available under the law.
Article 1424-14 Lorsqu'aucune opposition n'a été formée dans le délai imparti et après prise en compte d'un délai supplémentaire de dix jours nécessaire à l'acheminement du recours, le greffier déclare l'injonction de payer européenne exécutoire au moyen du formulaire prévu à cet effet et appose sur l'injonction de payer européenne la formule exécutoire.	Article 1424-14 Where no objection has been lodged within the time limit laid down and after allowing for an additional period of ten days for the appeal to be forwarded, the court's clerk shall declare the European order for payment enforceable using the form provided for that purpose and shall write the enforcement formula on the European order for payment.
Article 1424-15 La procédure de réexamen dans des cas exceptionnels est régie par les articles 1424-8 à 1424-13.	Article 1424-15 The review procedure in exceptional cases is governed by Articles 1424-8 to 1424-13.
Section III : Les frais des procédures d'injonction de payer et d'injonction de payer européenne devant le tribunal de commerce	Section III : The costs of the order for payment and European order for payment procedures before the commercial court
Article 1425 Devant le tribunal de commerce, les frais de la procédure sont avancés par le demandeur et consignés au greffe au plus tard dans les quinze jours de la demande, faute de quoi celle-ci sera caduque. L'opposition est reçue sans frais par le greffier. Celui-ci invite sans délai le demandeur, par lettre recommandée avec demande d'avis de	Article 1425 Before the commercial court, the costs of the proceedings are advanced by the plaintiff and deposited at the court's registry within fifteen days of the application, failing which the application will lapse. The opposition shall be received free of charge by the registrar. The clerk shall immediately invite the applicant, by registered letter with

réception, à consigner les frais de l'opposition au greffe dans le délai de quinze jours à peine de caducité de la demande. Toutefois, la caducité n'est pas encourue en cas de procédure d'injonction de payer européenne.	acknowledgement of receipt, to deposit the costs of the opposition at the registry within a period of fifteen days, failing which the application shall lapse. However, the European order for payment procedure does not lapse.

II. *Code des procédures civiles d'exécution* – Code of Civil Enforcement Procedures

PARTIE LÉGISLATIVE :	**LEGISLATIVE PART:**
Livre Ier : Dispositions générales	**Book I: General provisions**
Titre Ier : Les conditions de l'exécution forcée	**Title I: Conditions of enforcement**
Chapitre Ier : Le créancier et le titre exécutoire	*Chapter I: The creditor and the writ of execution*
Article L111-3 : Seuls constituent des titres exécutoires : 1° Les décisions des juridictions de l'ordre judiciaire ou de l'ordre administratif lorsqu'elles ont force exécutoire, ainsi que les accords auxquels ces juridictions ont conféré force exécutoire ; 2° Les actes et les jugements étrangers ainsi que les sentences arbitrales déclarés exécutoires par une décision non susceptible d'un recours suspensif d'exécution, sans préjudice des dispositions du droit de l'Union européenne applicables ; 3° Les extraits de procès-verbaux de conciliation signés par le juge et les parties ; 4° Les actes notariés revêtus de la formule exécutoire ;	Article L111-3: Only the following acts shall constitute enforceable titles: 1° Enforceable decisions issued by civil or administrative courts, as well as court settlements to which these courts have conferred enforceability; 2° Foreign authentic instruments and judgments as well as arbitration awards declared enforceable by a decision that is not subject to a suspensive appeal, without prejudice to the applicable provisions of European Union law; 3° Extracts from conciliation minutes signed by the judge and the parties; 4° Notarial deeds bearing the enforcement formula;

4° bis Les accords par lesquels les époux consentent mutuellement à leur divorce ou à leur séparation de corps par acte sous signature privée contresigné par avocats, déposés au rang des minutes d'un notaire selon les modalités prévues à l'article 229-1 du code civil ; 5° Le titre délivré par l'huissier de justice en cas de non-paiement d'un chèque ou en cas d'accord entre le créancier et le débiteur dans les conditions prévues à l'article L. 125-1 ; 6° Les titres délivrés par les personnes morales de droit public qualifiés comme tels par la loi, ou les décisions auxquelles la loi attache les effets d'un jugement.	4° bis Agreements by which the spouses mutually consent to their divorce or legal separation by private signature act countersigned by lawyers, deposited in the minutes of a notary in accordance with the procedures set out in Article 229-1 of the Civil Code; 5° The document issued by the bailiff in the event of non-payment of a cheque or in the event of an agreement between the creditor and the debtor under the conditions provided for in Article L. 125-1; 6° Deeds issued by legal persons of public law qualified as such by the law, or administrative decisions to which the law attaches the effects of a judgment.

III. Code de l'organisation judiciaire – Code of Judicial Organisation

PARTIE LÉGISLATIVE […] **Livre II : Juridictions du premier degré** **Titre I : Le tribunal judiciaire** *Chapitre I : Institution et compétence* Section 1 : Compétence matérielle Sous-section 1 : Compétence commune à tous les tribunaux judiciaires Article L211-4-2 Le tribunal judiciaire connaît des demandes formées en application du règlement (CE) n°	**LEGISLATIVE PART […]** **Book II: Courts of first instance** **Title I: The regional court** *Chapter I: Establishment and jurisdiction* Section 1 : Subject matter jurisdiction Sub-section 1: Jurisdiction common to all regional courts Article L211-4-2 The regional court shall hear claims made pursuant to Regulation (EC) nº 861/2007 of

861/2007 du Parlement européen et du Conseil du 11 juillet 2007 instituant une procédure européenne de règlement des petits litiges.	the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.
Sous-section 2 : Compétence particulière à certains tribunaux judiciaires Article L211-17 Un tribunal judiciaire spécialement désigné par décret connaît : 1° Des demandes d'injonction de payer, à l'exception de celles relevant de la compétence d'attribution du tribunal de commerce lorsqu'elle est exercée par la juridiction mentionnée à l'article L. 721-1 du code de commerce ; 2° Des demandes formées en application du règlement (CE) n° 1896/2006 du Parlement européen et du Conseil du 12 décembre 2006 instituant une procédure européenne d'injonction de payer. Article L211-18 Les demandes d'injonction de payer sont formées par voie dématérialisée devant le tribunal judiciaire spécialement désigné mentionné à l'article L. 211-17. Toutefois, les demandes formées par les personnes physiques n'agissant pas à titre professionnel et non représentées par un mandataire ainsi que les demandes mentionnées au 2° du même article L. 211-17 peuvent être adressées au greffe sur support papier. Les oppositions sont formées devant le tribunal judiciaire spécialement désigné. Les oppositions aux ordonnances portant injonction de payer sont transmises par le greffe	Sub-section 2: Special jurisdiction of certain regional courts Article L211-17 A regional court specially designated by decree shall hear: 1° Applications for an order for payment, with the exception of those falling within the jurisdiction of the commercial court when exercised by the court mentioned in Article L. 721-1 of the Commercial Code; 2° Claims made pursuant to Regulation (EC) n° 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. Article L211-18 Applications for an order for payment shall be made by electronic means before the specially designated court mentioned in Article L. 211-17. However, applications made by natural persons not acting in a professional capacity and not represented by an agent as well as the applications mentioned in the second paragraph of the same Article L. 211-17 may be sent to the court registry in paper form. Oppositions shall be lodged before the specially designated court. Oppositions to orders for payment shall be transmitted by the court's registry of the

du tribunal judiciaire spécialement désigné aux tribunaux judiciaires territorialement compétents.	specially designated regional court to the territorially competent regional courts.
Chapitre III : Fonctions particulières Section 1 : Fonctions particulières exercées en matière civile […] Sous-section 4 : Le juge de l'exécution […] <u>Article L213-5</u> Les fonctions de juge de l'exécution sont exercées par le président du tribunal judiciaire. Lorsqu'il délègue ces fonctions à un ou plusieurs juges, le président du tribunal judiciaire fixe la durée et l'étendue territoriale de cette délégation. <u>Article L213-6</u> Le juge de l'exécution connaît, de manière exclusive, des difficultés relatives aux titres exécutoires et des contestations qui s'élèvent à l'occasion de l'exécution forcée, même si elles portent sur le fond du droit à moins qu'elles n'échappent à la compétence des juridictions de l'ordre judiciaire. Dans les mêmes conditions, il autorise les mesures conservatoires et connaît des contestations relatives à leur mise en oeuvre. Le juge de l'exécution connaît, sous la même réserve, de la procédure de saisie immobilière, des contestations qui s'élèvent à l'occasion de celle-ci et des demandes nées de cette procédure ou s'y rapportant directement, même si elles	*Chapter III: Special functions* Section 1 : Special functions exercised in civil matters […] Subsection 4: The enforcement judge […] <u>Article L213-5</u> The functions of the enforcement judge shall be exercised by the president of the regional court. Where he delegates these functions to one or more judges, the president of the regional court shall determine the duration and territorial scope of this delegation. <u>Article L213-6</u> The enforcement judge has exclusive jurisdiction over difficulties relating to enforceable titles and disputes arising in connection with enforcement, even if they concern the merits of the claim, unless they fall outside the jurisdiction of the courts of law. Under the same conditions, he authorises protective measures and hears disputes relating to their implementation. The enforcement judge hears, within the same limits, the procedure of seizure of property, the disputes which arise on the occasion of this procedure and the requests arising from this procedure or directly related to it, even if they relate to the merits of the law as well as the procedure of distribution which results from it.

portent sur le fond du droit ainsi que de la procédure de distribution qui en découle. Il connaît, sous la même réserve, des demandes en réparation fondées sur l'exécution ou l'inexécution dommageables des mesures d'exécution forcée ou des mesures conservatoires. Il connaît de la saisie des rémunérations, à l'exception des demandes ou moyens de défense échappant à la compétence des juridictions de l'ordre judiciaire. Le juge de l'exécution exerce également les compétences particulières qui lui sont dévolues par le code des procédures civiles d'exécution.	It hears, subject to the same reservation, claims for compensation based on the harmful execution or non-execution of forced execution measures or protective measures. He deals with the attachment of earnings, with the exception of claims or defences which fall outside the jurisdiction of the courts. The enforcement judge shall also exercise the specific powers conferred upon him by the code of civil enforcement procedures.
Article L213-7 Le juge de l'exécution peut renvoyer à la formation collégiale du tribunal judiciaire qui statue comme juge de l'exécution. La formation collégiale comprend le juge qui a ordonné le renvoi. […]	Article L213-7 The enforcement judge may refer to the panel of the regional court which rules as an enforcement judge. The panel shall include the judge who ordered the referral. […]
PARTIE RÈGLEMENTAIRE […] **Livre II : Juridictions du premier degré** **Titre Ier : Le tribunal judiciaire […]** *Chapitre II : Organisation et fonctionnement* […] Section 1 : Le service juridictionnel […] Article R212-8 : Le tribunal judiciaire connaît à juge unique : […]	**REGULATORY PART […]** **Book II: Courts of first instance** **Title I: The regional court […]** *Chapter II: Organisation and functioning* […] Section 1 : The judicial service […] Article R212-8 : The regional court hears with a sole judge: […]

2° Des demandes en reconnaissance et en exequatur des décisions judiciaires et actes publics étrangers ainsi que des sentences arbitrales françaises ou étrangères ; […] Le juge peut toujours, d'office ou à la demande des parties, renvoyer une affaire en l'état à la formation collégiale. Cette décision est une mesure d'administration judiciaire.	2° Applications for recognition and enforcement of foreign judicial decisions and foreign authentic documents as well as French or foreign arbitration awards; […] The judge may always, of his own motion or at the request of the parties, refer a case back to the panel. This decision is a measure of judicial administration.

IV. *Code de commerce* – Code of Commerce

PARTIE LÉGISLATIVE […] **Livre VII : Des juridictions commerciales et de l'organisation du commerce […]** **Titre II : Du tribunal de commerce** *Chapitre Ier : De l'institution et de la compétence* […] Section 1 : Compétence commune à tous les tribunaux de commerce Article L721-3 : Les tribunaux de commerce connaissent : 1° Des contestations relatives aux engagements entre commerçants, entre établissements de crédit, entre sociétés de financement ou entre eux ; 2° De celles relatives aux sociétés commerciales ; 3° De celles relatives aux actes de commerce entre toutes personnes.	**LEGISLATIVE PART […]** **Book VII: Commercial courts and the organisation of commerce […]** **Title II: Commercial court** *Chapter I: Institution and jurisdiction* […] Section 1 : Jurisdiction common to all commercial courts Article L721-3: The commercial courts shall hear: 1° Disputes relating to commitments between traders, between credit institutions, between finance companies or between these categories; 2° those relating to commercial companies; 3° those relating to commercial acts between all persons. However, the parties may, at the time of contracting, agree to submit to arbitration the disputes listed above.

Toutefois, les parties peuvent, au moment où elles contractent, convenir de soumettre à l'arbitrage les contestations ci-dessus énumérées. Article L721-3-1 : Les tribunaux de commerce connaissent, dans les limites de leur compétence d'attribution, des demandes formées en application du règlement (CE) n° 861/2007 du Parlement européen et du Conseil du 11 juillet 2007 instituant une procédure européenne de règlement des petits litiges. […]	Article L721-3-1: The commercial courts shall hear, within the limits of their jurisdiction, claims made pursuant to Regulation (EC) nº 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. […]
Chapitre II : De l'organisation et du fonctionnement Section 1 : De l'organisation et du fonctionnement du tribunal de commerce […] Article L722-3-1 Le président du tribunal de commerce connaît, dans les limites de la compétence d'attribution du tribunal de commerce, des demandes formées en application du règlement (CE) n° 1896/2006 du Parlement européen et du Conseil du 12 décembre 2006 instituant une procédure européenne d'injonction de payer.	*Chapter II: Organisation and functioning* Section 1 : Organisation and functioning of the commercial court […] Article L722-3-1 The President of the commercial court shall hear, within the limits of the jurisdiction of the commercial court, applications made pursuant to Regulation (EC) nº 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

V. Livre des procédures fiscales – Tax Procedures Book

PARTIE LÉGISLATIVE **Titre II : Le contrôle de l'impôt […]**	**LEGISLATIVE PART** **Title II: Tax auditing […]**

Chapitre III : Le secret professionnel en matière fiscale […]	*Chapter III: Professional secrecy in tax matters* […]
Section II : Dérogations à la règle du secret professionnel	Section II: Exceptions to the rule of professional secrecy
<u>Article L151 A :</u> I.-Aux fins d'assurer l'exécution d'un titre exécutoire ou lorsqu'il est saisi par une juridiction d'une demande d'informations en application de l'article 14 du règlement (UE) n° 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale, l'huissier de justice peut obtenir l'adresse des organismes auprès desquels un compte est ouvert au nom du débiteur. II.-Conformément aux dispositions de l'article L. 152-1 du code des procédures civiles d'exécution, les administrations fiscales communiquent à l'huissier de justice chargé de l'exécution les renseignements qu'elles détiennent permettant de déterminer l'adresse du débiteur, l'identité et l'adresse de son employeur ou de tout tiers débiteur ou dépositaire de sommes liquides ou exigibles et la composition de son patrimoine immobilier, à l'exclusion de tout autre renseignement, sans pouvoir opposer le secret professionnel.	<u>Article L151 A :</u> I.-For the purpose of ensuring the enforcement of an enforceable title or when a court requests information pursuant to Article 14 of Regulation (EU) nº 655/2014 of the European Parliament and of the Council of 15 May 2014 creating a European Account Preservation Order intended to facilitate cross-border debt recovery in civil and commercial matters, the bailiff may obtain the address of the banking institutions with which an account is opened in the name of the debtor. II - In accordance with the provisions of Article L. 152-1 of the Code of Civil Enforcement Procedures, the tax authorities shall communicate to the enforcement agent the information they hold that enables the debtor's address, the identity and address of his employer or any third party debtor or depositary of liquid or payable sums and the composition of his real estate assets to be determined, to the exclusion of any other information, without being able to invoke professional secrecy.