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EFFORTS Practice Guide for cross-border enforcement of judgments, court settlements and authentic instruments under the Reg. (EU) No 1215/2012 – France

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I. Outgoing

When France is the Member State of origin

A. Outgoing judgments

When a party wishes to invoke a judgment or seeks its enforcement in another Member State, s/he shall produce certain documents, depending on each specific case, that shall be obtained in the Member State of origin, according to the applicable procedures and rules: (1) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; (2) the certificate issued pursuant to Art. 53, either in the standard version or with mandatory information (see Art. 42(1)(b) and Art. 42(2)(b)-(c) BI bis Reg.); (3) a translation or a transliteration of the contents of the certificate or a translation of the judgment.

1. **How and when to obtain a copy of the judgment which satisfies the conditions necessary to establish its authenticity. *See Art. 37(1)(a) and Art. 42(1)(a)-(1)(b) BI bis Reg***.

In France, Art. R123-5 of the Code of Judicial Organisation (hereinafter, "**CJO**") grants the authority to deliver authentic copies to the chief clerk (*directeur de greffe*) of the court that issued the judgment. Nevertheless, the chief clerk may delegate this authority to a director of the registry services of the same court (*directeur des services de greffe*) in accordance with Art. R. 123-7 CJO.

According to Art. 1435 of the Code of Civil Procedure (hereinafter, "**CCP**"), these officers are obliged to deliver, without fees, a copy of the documents to the parties themselves, their heirs or assignees. In case of enforceable decisions, each party has also the right to obtain a copy of the judgment bearing the execution formula (Art. 465(1) CCP).

The request can be submitted using a standard form accessible online[1]. The form can then be transmitted by post to the competent authority.

When the request concerns a judgment bearing the execution formula, a second copy can be delivered provided the applicant shows a legitimate reason for the request. If the application for a second copy is granted, this information must appear on the copy itself. Before commercial courts, the issuance of the second enforceable copy may be

[1] See *Formulaire Cerfa No 11808*06*, available at https://www.service-public.fr/simulateur/calcul/11808. Use of the form is not mandatory.

subject to a small fee (generally under 10 euros), which is collected by the court registry.

If the request for a second enforceable copy is denied, Art. 465(2) CCP provides for an *ex parte* remedy before the president of the court that issued the decision. The procedure to be followed in this case is governed by Arts 493 to 498 CCP, as well as the special rules applicable to each court[2].

Finally, it should also be mentioned that when a party has been assisted by a lawyer, a copy of the decision is systematically given to the lawyer and can be requested by the client.

2. **How and when to ask for the certificate issued pursuant to Article 53. *See Art. 37(1)(b) and Art. 42(1)(b)-(2)(b) BI bis Reg*.** The certificate attached in the Annex I, concerning a judgment in civil and commercial matters, contains the indication of the court of origin (name, address, and other relevant information), of the parties (identification of the claimant and of the defendant) and information regarding the judgment (date and reference number, if a default judgment, service of the judgment on the defendant, terms of the judgment and interests, information on the kinds of obligations contained in the judgment (monetary or otherwise), judgment ordering a provisional/protective measure, information on the costs and applicable interests).

Art. 509-1 CCP grants the chief clerk of the court of origin the authority to issue a certificate pursuant to the BI bis Reg.

Pursuant to Art. 509-4 CCP, the application must be presented in two copies and include a precise indication of the documents on which it is based. The procedure is carried out *ex parte* and does not provide for a hearing.

According to Art. 509-5 CCP, the decision to reject the application must be reasoned. Conversely, no reasons are required when the application is granted. In both cases, Art. 509-6 CCP provides that the certificate shall be delivered to the applicant against signature or receipt, or shall be notified to the applicant by registered letter with acknowledgement of receipt. A copy of the certificate and a copy of the application must also be kept at the court registry.

[2] See *eg* Arts. 812 ff (Regional Court – *tribunal judiciaire*); Arts. 874 ff (Commercial Court – *tribunal de commerce*); Arts. 958 ff (Court of Appeal – *cour d'appel*).

Finally, Art. 509-7 CCP provides a remedy where the application has been rejected. In this case, the applicant may challenge the decision before the President of the Regional Court (*président du tribunal judiciaire*), who shall give a final decision on the matter after hearing or calling the applicant and the requested authority.

2 *bis*. **Specific information for the enforcement**. For the purposes of enforcement in a Member State of a judgment given in another Member State, the certificate shall certify that the judgment is enforceable and contain an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest. Furthermore, when the judgment orders a provisional, including protective, measure the certificate shall contain a description of the measure and certify that the court has jurisdiction as to the substance of the matter and that the judgment is enforceable in the Member State of origin.

Arts 2(a) and 42(2)(c): provisional measure ordered without the defendant being summoned to appear. When a provisional, including protective, measure was ordered without the defendant being summoned to appear, the creditor shall provide the competent authority of the Member State addressed also with proof of service of the judgment.

In the absence of specific provisions on these points, the applicant should include all the information needed to fill in the certificate in its initial request. To this effect, Art. 509-4 CCP provides in particular that the application should contain a precise indication of the documents on which it is based. Additionally, the request should also draw attention to the relevant statutory rules that may have an impact on the information to be included in the certificate, such as the provisions detailed below.

Regarding **interests**, Arts 1231-6 and 1231-7 of the Civil Code (hereinafter, "**CC**") distinguish between interest on monetary obligations (Art. 1231-6 CC) and interest on awards of compensation contained in a judgment (Art. 1231-7 CC). The latter does not need to be mentioned in the judgment and runs from the date of delivery of the judgment unless the court decides otherwise. Conversely, the payment of the former should, at least in principle, be ordered in the title itself (Cass. Civ. 1, 10.03.1998, No 95-21.817). Moreover, Art. L313-3 of the Monetary and Financial Code provides that the legal interest rate is increased by 5% after two months from the day of the notification of a (provisionally or finally) enforceable decision on the debtor (Cass. Civ. 2, 04.04.2002, No 00-19.822).

Regarding **costs**, Arts 695 ff CCP distinguish between "The costs of the proceedings, acts and enforcement procedures" (Art. 695 CCP), on the one hand, and "expenses incurred and not included in the costs" (Art. 700 CCP, including especially lawyers' fees):

- The judgment must order the losing party to pay the costs falling in the first category unless the court awards all or part of them to another party by a reasoned decision (Art. 696 CCP). If in doubt, the parties may also, after the judgment, informally ask the court clerk to verify the amount of the costs mentioned in Art. 695 CCP (Art. 704 CCP);
- Additionally, each party may request payment of expenses corresponding to the second category, which the court may allocate at its discretion based on a lump-sum determination in the judgment itself (Art. 700 CCP).

When a **provisional measure is ordered *ex parte*** (*ordonnance sur requête*), French domestic law does not require formal service prior to enforcement, but only provides that a copy of the application and the order shall be left with the person against whom enforcement is sought (*exécution sur minute*, see Art. 495 CCP). These provisions should take into account the requirements set out in Arts 2(a) and 42(2)(c) BI bis Reg., which provide that an *ex parte* decision cannot be enforced unless it is served on the defendant prior to enforcement.

Arguably, the applicant should be responsible for such service, which a judicial officer can carry out by adapting the general rules applicable to judgments (Arts 503 ff and 675 CCP). Unless in cases covered by the Service Regulation, the judicial officer serves the decision according to one of the methods set out in Art. 653 ff CCP, and the date of service is determined pursuant to Art. 664-1 CCP.

This approach could apply in particular to provisional measures (*mesures conservatoires*) such as interlocutory attachments (*saisies conservatoires*) and provisional securities (*sûretés judiciaires*) authorised before the issuance of a decision on the merits (Arts L511-1 ff and R511-1 ff of the Code of Civil Enforcement Procedures – hereinafter, "**CCEP**"), *ante demandam* measures of inquiry authorised under Art. 145 CCP (*mesures d'instruction in futurum*) (provided they are issued *ex parte*), and any other urgent measures that require derogating from the adversarial principle (see eg Art. 845 CCP – *ex parte* orders (*ordonnances sur requête*) issued by the Regional Court).

Finally, French law does not provide any specific remedy for cases where the creditor considers that the **information included in the certificate is erroneous and/or incomplete**. Here, the general provisions applicable to judgments (see Arts 462 and 463 CCP) do not seem to extend to the issuance of a certificate by the chief clerk. On

the other hand, nothing should prevent the applicant from filing a new request because the issuance of the certificate does not have *res judicata*[3].

2 *ter*. **Enforceability of the judgment**. A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

Art. 44(2): suspension of the enforceability. 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.

Art. 51(1): ordinary appeal against an enforceable judgment. The court of the Member State addressed to which an application for refusal of enforcement is submitted may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired.

Enforceability of the judgment. According to Art. 501 CCP, a judgment becomes enforceable from the moment it acquires the force of *res judicata*, unless the debtor benefits from a delay in payment (*délai de grâce*, see Arts 510-513 CCP) or the creditor from provisional execution.

Arts 500 and 501 CCP provide that judgments acquire the force of *res judicata* once they are not subject to any suspensive appeal or after the time limit for the appeal has expired. In the latter case, the creditor may proceed to enforcement after obtaining a certificate demonstrating that no timely appeal has been filed or by proving that the defendant acquiesced to the decision (Arts 504-505 CCP).

Furthermore, first instance decisions are provisionally enforceable unless the law or the decision itself provides otherwise (Art. 514 CCP).

Enforcement itself is subject to the procedural requirements laid out in Arts 502-508 CCP. In particular, the creditor must obtain a copy of the judgment including the enforcement formula (Art. 502 CCP) and must serve the judgment on the defendant and on any other person against whom enforcement is sought prior to the first enforcement measure (Art. 503 CCP). Service must in principle be carried out by a

[3] See 'National Report: France' Project BI A RE (JUST/2014/JCOO/AG/CIVI/7749), <https://www.pf.um.si/site/assets/files/3539/national_report_france.pdf> accessed 1 May 2022.

judicial officer in accordance with Arts 675-682 CCP and must in particular indicate in a very visible manner the applicable time limits for opposition, appeal or appeal in cassation (where applicable), as well as the manner in which these remedies may be exercised (Art. 682 CCP).

From a substantive point of view, judgments and other enforceable titles may only give rise to enforcement measures if they contain an obligation capable of being enforced, i.e. an enforceable title containing a liquid and payable claim (Art. L111-2 CCEP).

Suspension of the enforceability. When a judgment is provisionally enforceable, enforceability may be suspended by the First President of the Court of Appeal, if an appeal has been filed, or by the court that issued the judgment, in case of opposition (see Arts 514-3 and 517-1 CCP). Conditions vary slightly depending on whether the judgment is provisionally enforceable as of right (which is the principle, see Arts 514-1 ff CCP) or whether the court has declared it provisionally enforceable (which is now the exception, see Arts 515 ff CCP).

In general, a suspension may be granted only where there is a serious ground for annulment or reversal of the decision, and where the enforcement is likely to entail manifestly excessive consequences. The procedure is adversarial and follows the rules applicable to summary proceedings (*référés*).

Ordinary appeal against an enforceable judgment. First instance judgments are subject to an ordinary appeal in all matters, including those of a non-contentious nature, unless otherwise provided (see Arts 543 ff CCP). As of date, the appeal is notably excluded against judgments under 5,000 euros in value (see Arts R211-3-24 and R211-3-25 CJO). Furthermore, default judgments are subject to opposition by the defendant (see Arts 571 ff CCP).

The general time limit to file an appeal or an opposition is one month, calculated from the date of the notification of the judgment to the defendant (Art. 528 CCP). However, if the defendant participated in the proceedings, the appeal becomes inadmissible two years after the date of the judgment, irrespective of the notification (Art. 528-1 CCP). The CCP provides shorter time limits for specific judgments[4]. These time limits are automatically extended where the judgment has to be served on a defendant domiciled in a foreign country (2 months) or in an oversea territory (1 month) (see Arts 643 ff CCP).

Moreover, Art. 540 CCP provides for the possibility to apply for an extension where the defendant did not receive the service of the document instituting the proceedings

[4] Eg, the time limit is 15 days in non-contentious matters (e.g. adoption, change of matrimonial regime, guardianship), Orders for interim relief or in the form of summary proceedings (*référés*), decisions of the enforcement judge. The time limit is 10 days in matters of receivership or judicial liquidation.

or an equivalent document in sufficient time to arrange for its defence, provided s/he did not learn of the judgment in time to exercise his challenge through no fault of his own, or if s/he found it impossible to act. The application must be made to the President of the court with jurisdiction to hear the opposition or appeal within two months following the first document served personally or, failing that, following the first enforcement measure. The procedure is adversarial.

Before the Court of Appeal, parties must be represented by a lawyer who is responsible for lodging a declaration of appeal electronically (Art. 930-1 CCP). In case of opposition, the application must be filed before the same court that issued the judgment, and the procedure depends on the nature of the decision against which the opposition is directed.

2 *quater*. **Art. 55: judgment ordering payment of a penalty**. 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 expression "judgments ordering payment by way of a penalty" corresponds to the French mechanism of "*astreinte*", which is generally regulated by Arts L131-1 ff and R131-1 ff CCEP. *Astreintes* are measures of coercion ordering a person to pay a sum of money for each violation or period of delay in the performance of an obligation resulting from a court decision. An *astreinte* is distinguishable from the award of damages and can only run with respect to an enforceable obligation.

The amount due is calculated depending on the delay in the performance of an act or the number of breaches (in case of duties of abstention). Since obligations to pay, give or return are also interpreted as obligations to do, they may also be subject to an *astreinte* in addition to other enforcement measures.

Pursuant to Art. L131-1(1) CCEP: "Any judge may, even *ex officio*, impose an *astreinte* to ensure compliance with his/her decision". Furthermore, Art. L131-1(2) CCEP also grants the enforcement judge general authority to impose an *astreinte* on a decision made by another judge if the circumstances make this necessary.

An *astreinte* becomes enforceable only after its amount has been liquidated by a judge. Competence to liquidate the *astreinte* lies with the enforcement judge, unless the judge who ordered it in the first place has expressly reserved the power to do so to himself/herself or the case is still pending before him/her (Art. L131-3 CCEP).

The powers of the judge liquidating the *astreinte* depend on whether the latter had been imposed for a provisional amount (*astreinte provisoire*) or a fixed one (*astreinte définitive*) (Art. L131-2 CCEP). In the former case, the judge liquidating the *astreinte* may consider the debtor's behaviour and the difficulties of complying with the underlying obligation to mitigate the amount of the *astreinte* (Art. L131-4(1) CCEP). In the second case, the amount due under the *astreinte* may not be modified by the judge who liquidates it (Art. L131-4(2) CCEP). In either case, the debtor may nonetheless be exempted in whole or in part from the payment if the non-compliance or the delay is not wholly or partly attributable to him/her (Art. L131-4(3) CCEP).

Regarding the international jurisdiction of French courts to order *astreintes*, the case law suggests the following solutions:

- In principle, a French court with jurisdiction on the merits has international jurisdiction to order an *astreinte* to support its judgment (Cass. Civ. 1, 19.11.2002, No 00-22.334);
- If a French decision orders the defendant to perform an obligation in France, the French enforcement judge may order an *astreinte* to secure compliance with that decision even if the respondent is domiciled abroad (Cass. Civ. 2, 06.11.2008, No 07-17.445, and Civ. 2, 15.01, No 07-20.955).

3. **How and when to obtain a translation or a transliteration of the contents of the certificate or a translation of the judgment.** ***See Art. 37(2) and 42(3)-(4) BI bis Reg***.

Translation or transliteration of the contents of the certificate. The court or authority before which the judgment is invoked or the competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Art. 57, a translation or a transliteration of the contents of the certificate ([5]).

Translation of the judgment. The court or authority before which the judgment is invoked may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation. In addition, the competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

[5] Please note that the translation or the transliteration of the certificate issued pursuant to Art. 53 shall be into the official language of the Member State addressed under Art. 57(1) as well as any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept under Art. 57(2) BI bis Reg.

In France, no provision allows the parties to request the competent authority to deliver a translated copy of the contents of the certificate set out in Annex I of the BI bis Reg.

Therefore, parties needing to obtain a translation of the certificate's contents or a translation of the judgment must contact an accredited translator. An updated list of the accredited translators is maintained by each Court of Appeal and is accessible online on the French Ministry of Justice website[6].

The costs vary depending on the length of the document and the languages involved. If the translation concerns the contents of a foreign judgment or certificate into French and is necessary to enforce the creditor's rights, the creditor may recover translation costs during the enforcement proceedings.

Finally, it should also be mentioned that judgments handed down by the International Chamber of the Paris Commercial Court[7] and the International Chamber of the Paris Court of Appeal (ICCP-CA)[8] are issued in French and English, and translation costs are directly included in the court fees.

[6] 'Traduction d'un document : comment trouver un traducteur agréé ? | Justice.fr', <https://www.justice.fr/fiche/traduction-document-trouver-traducteur-agree> accessed 16 June 2022.

[7] See 'Tribunal de Commerce de Paris | La Chambre Internationale' (*AFFIC*), <http://www.tribunal-de-commerce-de-paris.fr> accessed 16 June 2022.

[8] See 'Présentation générale CCIP-CA / The ICCP-CA' (*Cour d'appel de Paris*), <https://www.cours-appel.justice.fr/paris/presentation-generale-ccip-ca-iccp-ca> accessed 16 June 2022.

B. Outgoing authentic instruments and court settlements

Authentic instruments

When a party seeks the enforcement of an authentic instrument in another Member State, s/he shall produce (1) an enforceable authentic instrument that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. **How and when to obtain an authentic instrument which satisfies the conditions necessary to establish its authenticity.**

> 1 *bis*. **Enforceability of the authentic instrument**. An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 58).
>
> **Art. 44(2): suspension of the enforceability**. 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 authentic instrument is suspended in the Member State of origin.

Art. 2(c) BI bis Reg. defines an "authentic instrument" as "a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose". Furthermore, an authentic instrument must be enforceable in the Member State of origin to be eligible for enforcement under the BI bis Regulation.

In France, this definition covers authentic instruments drawn up by notaries that include an enforcement formula (Art. L111-3 4° CCEP) but does not extend to other kinds of instruments such as enforceable titles issued by judicial officers (Art. L111-3 5° CCEP) or out-of-court settlements and mediation agreements approved by the parties' lawyers (Art. L111-3 7° CCEP).

Additionally, under French enforcement law, an enforceable authentic instrument may only give rise to enforcement measures if it contains an obligation capable of being enforced (Art. L111-2 CCEP).

An enforceable copy of the title is delivered to the parties directly by the notary who drew up the instrument (Art. 1435 CCP). If a party needs a second copy of the instrument, it must first file an *ex parte* request before the President of the Regional Court (*Président du tribunal judiciaire*)(Art. 1439 CCP).

In France, there is no specific procedure to suspend the enforceability of an authentic instrument. However, the party who wishes to avoid enforcement may challenge the validity of the authentic instrument before the court competent to rule on the merits or before the enforcement judge if the creditor has already started enforcement proceedings based on the authentic instrument.

2. **How and when to ask for the certificate issued pursuant to Article 60 for authentic instruments**.

In order to obtain the certificate mentioned in Art. 60 BI bis Reg., the creditor must apply 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 (Art. 509-3 CCP).

In the absence of any indication to the contrary, Arts 509-4 to 509-7 CCP are generally deemed applicable by analogy to the certification of authentic instruments.

Court settlements

When a party seeks the enforcement of a court settlement in another Member State, s/he shall produce (1) an enforceable court settlement that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. **How and when to obtain a court settlement which satisfies the conditions necessary to establish its authenticity.**

1 *bis*. **Enforceability of the court settlement**. A court settlement which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 59).

Art. 44(2): suspension of the enforceability. 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 court settlement is suspended in the Member State of origin.

Art. 2(c) BI bis Reg. defines a "court settlement" as a "settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings". Furthermore, a court settlement must be enforceable in the Member State of origin to be eligible for enforcement under the BI bis Regulation.

In France, this definition covers out-of-court settlement agreements that have later been declared enforceable by a court (Art. L111-3 1° CCEP) and agreements resulting from in-court conciliation and signed by the judge and the parties (Art. L111-3 3° CCEP). These court settlements may give rise to enforcement measures if they contain an obligation capable of being enforced (Art. L111-2 CCEP).

Out-of-court settlements, including settlements resulting from alternative dispute resolution mechanisms other than arbitration, are declared enforceable following the rules set out in Arts 1565 to 1567 CCP (*homologation*). The application may be filed by one of the parties, and the judge shall decide on it without a hearing of the parties unless it deems it necessary. If the application is granted, any interested party may then file for reconsideration before the same judge.

The judge's verification does not extend to the validity of the settlement but only to its compliance with public policy.

An appeal may be lodged against a decision refusing to approve the agreement. This appeal is lodged by declaration at the registry of the court of appeal. It is decided according to the procedure applicable to non-contentious matters.

In France, there are no specific procedures to suspend the enforceability of an enforceable settlement. However, the party wishing to avoid enforcement may either file an application for reconsideration against the decision homologating the settlement or challenge the validity of the settlement agreement itself before the court competent to rule on the merits or before the enforcement judge, if the creditor has already initiated enforcement proceedings based on the settlement.

2. **How and when to ask for the certificate issued pursuant to Article 60 for court settlements**.

In France, the rules applicable to the issuance of the certificate under Art. 60 BI bis Reg. and the challenges against it are the same as those described for domestic judgments (see above, **I.A.2**)

II. Incoming

When France is the Member State addressed

When a party wishes to invoke a judgment in the Member State addressed or seeks its enforcement, s/he shall invoke it before the courts of the Member State addressed or follow the procedure for the enforcement of judgments of the Member State addressed. The procedure for the enforcement of claims in France is dealt with in the Annex "Enforcement procedure".

In addition to national rules, the Regulation provides that enforcement must be preceded by (1) service of the judgment and of the certificate. Furthermore, the creditor may avail her/himself of: (2) the right to apply for a decision that there are no grounds for refusal of recognition as referred to in Art. 45; (3) the power to proceed to any protective measures which exist under the law of France; (4) the request for adaptation of a measure or an order which is not known in France.

On the other hand, the person against whom enforcement is sought (or, in case of the refusal of recognition, any interested party) may fight the recognition or the enforcement of the judgment issued in another Member State, either filing a claim for opposition to enforcement under national rules (which also will be dealt with in the Annex "Enforcement procedure") or (5) filing a claim for refusal of recognition or enforcement, also with the power to apply for the measures under Art. 44(1). The person against whom enforcement is sought may also (6) apply for the suspension of the enforcement proceedings pursuant to the grounds of suspension provided for by national law (to the extent that they are not incompatible with the Regulation, see Art. 41(2)) or in cases where the enforceability of the judgment has been suspended in the Member State of origin in accordance with Art. 44(2) BI bis Reg.

1. **Service of the judgment and the certificate prior to the enforcement**. Alongside the conditions and the procedural steps applicable under the law of the Member State addressed, the Regulation requires the creditor to take a number of steps before proceeding with the enforcement. First, the certificate issued pursuant to Art. 53 BI bis Reg. shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43(1)). The certificate should be served on that person within a reasonable time before the first enforcement measure (Whereas (32)).

> Generally, service of the certificate and of the judgment before the enforcement takes place could be classified as cross-border service, i.e., "service from one Member State to another Member State", according to the definition given by the

Service Regulation ([9]), applicable from 1 July 2022. However, in case the person against whom recognition or enforcement is sought is domiciled in the Member State of enforcement, such service could be out of the scope of application of the Service Regulation and therefore national rules on service could be applicable.

Under French enforcement law, the "**first enforcement measure**" within the meaning of Art. 43 BI bis Reg. depends on the type of property that is the object of enforcement proceedings.

In the case of movable property, this expression should probably point to the writ or order of payment ("*commandement de payer*") established pursuant to Arts R221-1 ff CCEP. 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. Even though the writ does not, in and of itself, constitute an enforcement measure under French domestic law, it is sufficient to establish the jurisdiction of the French enforcement judge.

In the other cases (attachment of claims, bank accounts, immovable property), enforcement begins with the judicial officer directly serving a writ of attachment to the debtor or to the person against whom enforcement is sought. From this moment, the property cannot legally be disposed of by the debtor or the person possessing the property.

France did not enact any specific rules concerning **the time at which the certificate must be served on the debtor**. According to the limited case law available, however, neither the BI bis Regulation nor domestic law imposes any specific time limit on the creditor (Tribunal judiciaire de Paris, JEX, 01.07.2021, No 21/80506 – service carried out one day before the first enforcement measure).

In the absence of any specific rules governing the **service of the certificate** itself, the provisions applicable to the service of judgments should apply by analogy. To the extent that French domestic rules apply, service of a foreign certificate should therefore take place prior to the first enforcement measure and be carried out by a judicial officer in accordance with Arts 675-682 CCP.

Nevertheless, the provisions of Art. 682 CCP – requiring to indicate in a very visible manner the time limit for opposition, appeal or appeal in cassation against the decision and the manner in which the appeal may be exercised – should not apply in this

[9] Whereas (6) of the Reg. (EU) 2020/1784 of the European parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).

context (see by comparison Cass. civ. 1, 14.10.2009, No 08-14.849, also excluding the application of this provision to the notification of foreign judgments).

1 *bis*. **Language**. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, s/he may request a translation *of the judgment* ([10]) if the judgment is not written in or accompanied by a translation into the official language of the Member State in which s/he is domiciled or a language that s/he understands (Art. 43(2)).

Where such translation is requested, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought (Art. 43(2)). *Please refer to section (3) below*.

For the purpose of Art. 43(2), French must be regarded as the only official language accepted in France.

1 *ter*. **Art. 41(3): authorised representative in the Member State addressed**.

In principle, French enforcement procedures are extrajudicial in nature and do not require the party seeking enforcement to have an authorised representative in order to instruct a judicial officer to carry out enforcement measures on his/her behalf.

Nonetheless, if a case is brought before the enforcement judge, each party must in principle be legally represented by a lawyer when the case exceeds 10,000 euros (see Art. R127-1 CCEP).

[10] *Creditors should be aware that translation of the certificate, unlike the translation of the judgment, is not strictly required at this stage of the enforcement but may be requested just afterwards by the enforcement authorities, according to Art. 42(3)*.

2. **Protective measures**. 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.

According to Art. L511-2 CCEP protective measures may be carried out without leave of the court when it is based upon "an enforceable title or a court decision that is not yet enforceable". 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*) or "judicial securities" (*sûretés judiciaires*) laid out in the CCEP even before the issuance of a certificate by the competent authority of the State of origin.

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 Arts L521-1 to L523-2 and Arts R521-1 to R525-5 CCEP. These procedures are both extrajudicial and *ex parte*, and have the effect of prohibiting the debtor from transferring ownership of his property or, in the specific case of an interlocutory third-party debt order, preventing the debt from being validly discharged by the third party. 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 judicial officer and can be initiated upon the communication by the creditor of a copy of the title , which will then be served upon the debtor and/or the person in possession of the targeted asset(s). 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 R523-1 CCEP. Although a translation of the title is not formally required, it is often included by the creditor in order to avoid any procedural delay.

Alternatively, the creditor may also constitute judicial security as a precautionary measure on buildings, businesses, shares and securities (Arts L531-1 ff and R531-1 ff CCEP). These securities are provisionally registered on the relevant public registries and have to be renewed after three years (Art. R532-7 CCEP).

If the property is sold before the final publicity has been completed, the creditor holding the judicial security shall enjoy the same rights as the holder of contractual or legal security. However, his share in the sale price is deposited with the *Caisse des dépôts et consignations* and remitted to him if s/he obtains final security within the prescribed period. Otherwise, the price is remitted to the creditors or to the debtor (Art. R532-8 CCEP).

3. **Adaptation**. 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, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests (Art. 54). How, and by whom, the adaptation is to be carried out should be determined by each Member State (Whereas (28)).

The issue of adaptation has not been explicitly addressed by the French legislator nor by French courts so far. In general, legal authors believe that the primary responsibility for adapting the content of a foreign measure should lie with the judicial officer carrying out the enforcement[11]. Nevertheless, the judicial officer should be able to file an application before the enforcement judge in case of doubt regarding the correct implementation of the foreign measure (see Art. L122-2 CCEP).

Furthermore, in a judgment issued by the French Court of Cassation in 2018 (Cass. Civ. 1, 03.10.2018, No 17-20.296), the court also implicitly allowed the creditor of a worldwide freezing injunction issued in Cyprus to seek additional protective relief under French domestic law rather than pursuing the adaptation of the foreign measure under Art. 54(1) BI bis Reg.

4. **Claim for refusal of recognition or enforcement**. On the application of the party against whom enforcement is sought (or, in case of refusal of recognition, of any interested party), the recognition or the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist. The party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of France, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law. The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present (Whereas (30)).

Procedure. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted (Art. 47(1)).

[11] See e.g. Danièle Alexandre and André Huet, 'Compétence judiciaire européenne, reconnaissance et exécution des décisions en matières civile et commerciale' [2019] Répertoire Dalloz droit international, no 401 and the references cited therein.

According to the communications made by the French Government to the European Commission[12]:

- Applications for **refusal of enforcement** lodged after an enforcement measure must be brought before the enforcement judge. In this case, the jurisdiction of the court is based upon Art. L213-6 CJO, and the procedure is carried out adversarially pursuant to Arts R121-1 to R121-24 of the CCEP;
- 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) should be brought before Regional Court. In this case, the jurisdiction of the court is based upon Art. R212-8 CJO. The procedure is carried out adversarially before a single judge, in accordance with the provisions of Arts 812-816 CCP.

In a decision issued in 2021, the enforcement judge of the Paris Regional Court held that, even though a claim for refusal of recognition does not normally fall within his jurisdiction, the question may be raised incidentally in the course of enforcement proceedings (see Tribunal judiciaire de Paris, JEX, 01.07.2021, No 21/80506).

These procedures do not give rise to any special fees or taxes. However, the overall costs of the proceedings are calculated and allocated following the ordinary rules described above under **I.A.2 bis** and include the judicial officer's fees.

4 *bis*. **Authorised representative in the Member State addressed**. The party seeking the refusal of a judgment given in another Member State shall not be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

If the party against whom enforcement is sought decides to resist enforcement by applying to an enforcement judge, each party must in principle have a legal representative when the claim exceeds 10,000 euros (see Art. R127-1 CCEP) unless the law provides otherwise (See, e.g. Art. L3252-11 of the Labour Code – attachment of earnings; Art. L121-4 1° CCEP – evictions).

[12] See 'European e-Justice Portal - Brussels I Regulation (recast)', <https://e-justice.europa.eu/350/EN/brussels_i_regulation_recast?FRANCE&init=true&member=1> accessed 16 June 2022.

4 *ter*. **Grounds for refusal**. National grounds for refusal of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)) ([13]).

French law does not include an exhaustive list of the national grounds for refusal available to the debtor under the Regulation.

As a general matter, French law provides that certain assets may not be attached. This is the case, in particular, for:

- sums needed for maintenance; thus, for example, it is not possible to attach all of a person's earned income because that person has to keep a sum sufficient to meet his or her everyday needs; the amount of that sum is set each year and takes into account the amount of earned income and the number of dependants;
- movable goods needed for the debtor's everyday life and work; in principle, these goods may be attached only to ensure payment of their price, or if they are of significant value; a list of these goods is set out in Article R. 112-2 of the Civil Enforcement Proceedings Code; for example, it is not possible to attach the debtor's bed or table, unless the attachment is justified by the failure to pay their purchase price or if they are high-value goods;
- assets that are essential for the disabled or intended for the care of the sick; for example, a disabled person's wheelchair may not be attached.
- In certain cases, sole proprietors also benefit from special protection of all or part of their assets.

Other than issues regarding the targeted assets, other substantive obstacles to the creditor's right to enforce may also be raised at the enforcement stage, within the limit of its international jurisdiction. These claims may include, *inter alia*, the existence of sovereign immunity, the expiry of the time limit for the enforcement, the total or partial performance of an obligation, and set-off.

[13] For guidance see, amongst others: "This means that domestic grounds relating to, for example, the disproportionality of enforcement means, prohibitions on seizing certain (primary) goods or abuse of rights, or indeed set-off, may generally be allowed. However, for example disputes on the service of documents or a violation of jurisdiction rules beyond those set out in the Regulation, or a re-examination of the facts or the applicable law are not allowed.", X. KRAMER, *Cross-border enforcement and the Brussels I-bis Regulation: towards a new balance between mutual trust and national control over fundamental rights*, in *Netherlands International Law Review*, 2013, p. 360.

4 *quater*. **Appeal**. The decision on the application for refusal may be appealed against by either party. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged. The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

According to the information published on the e-Justice Portal, the appeal against the decisions on the claims for refusal of recognition and of enforcement must be lodged before the Court of Appeal with territorial jurisdiction depending on the court that issued the first instance decision.

If the case concerns **a decision on the refusal of enforcement issued by the enforcement judge**, the appeal is admissible even under 5,000 euros (Art. R.121-19 CCEP). The appeal has to be lodged within fifteen days of the decision. Proceedings are carried out in accordance with the rules applicable to the urgent procedures set out in Art 905 CCP or Arts 917 to 925 CCP (*procedure à jour fixe*) (Art. R.121-20 CCEP).

If the case concerns a decision issued by the Regional Court on the issue of **recognition**, the appeal follows the ordinary rules set out in Arts 542 ff and 899 ff CCP.

A further appeal is then available before the French Court of Cassation (see Arts 604 ff and 973 ff CCP)

4 *quinquies*. **Measures under Art. 44(1) BI bis Reg**.

In the absence of any specific provisions implementing Art. 44(1) BI bis Reg. into French domestic law, applications made under this provision should be filed before the French enforcement judge by the person against whom enforcement is sought within the context of a challenge directed against a concrete protective or enforcement measure that has been carried out against him/her. The procedure is adversarial, and the powers of the enforcement judge arguably depend on the different possible scenarios:

- Firstly, the possibility of limiting the enforcement proceedings to protective measures seems to be quite narrow in light of the extrajudicial nature of French enforcement measure. In principle, the enforcement judge has the power to order the release of any unnecessary or abusive measure and to order the creditor to pay damages in case of abuse (Art. L121-2 CCEP). However, this power does not necessarily extend to converting an existing enforcement measure into a protective one; more plausibly, the person against whom enforcement is sought will then sought a delay in accordance with Art. R121-1 CCEP, during which no enforcement measure can be carried out, but the creditor has the right to seek conservatory measures (see Art. 513 CCP);
- In some cases, the French enforcement judge should nonetheless have the possibility to make enforcement conditional on the provision of such security as it shall determine, at least in some specific cases. In particular, Art. L512-1 CCEP allows the enforcement judge to replace a conservatory measure that has already been carried out with "any other measure appropriate to safeguard the interests of the parties". Furthermore, it is also important to mention that, under the same provision, "The posting of an irrevocable bank guarantee in accordance with the measure requested in the provisional attachment shall entail the release of the measure, subject to the provisions of Art. L511-4 CPEC";
- Finally, even though the enforcement judge may neither modify the terms of the court decision on which the proceedings are based, nor suspend its enforceability of the decision, s/he has the power to grant a delay to the person against whom the enforcement is sought. During this time, no enforcement measure can be carried out by the creditor (Art. R121-1 CCEP). The delay is discretionary and subject to the provisions laid out in Art 1343-5 CC and Arts 510 to 513 CCP; it cannot exceed two years; it does not prevent the creditor from seeking conservatory measures.

5. **Claim for a decision that there are no grounds for refusal of recognition**. According to Art. 36(2), the application for a decision that there are no grounds for refusal of recognition as referred to in Art. 45 is presented in accordance with the procedure provided for in Subsection 2 of Section 3 of the Regulation.

In the absence of specific provisions addressing this particular remedy, reference can be made to the case law regarding actions seeking a declaration that there are no

grounds for refusal of recognition (*exequatur à toutes fins utiles*) brought outside the scope of EU procedural law.

First of all, French courts have consistently held that they have international jurisdiction to rule on actions seeking declarations that there are no grounds for refusal of recognition or enforcement without the need to prove any specific territorial connection to France (See e.g. Civ. 10.03.1863, S. 1863. 1. 293). Furthermore, where the ordinary rules of territorial competence do not allow the plaintiff to find a competent court within the French territory, the case law allows the claimant to choose a court within the limits of what is compatible with the proper administration of justice[14].

Secondly, in a recent decision issued in 2019 (Cass. Civ. 1, 26.06.2019, No 17-19.240) the Court of Cassation interestingly specified that the party who obtained a judgment in his/her favour in a third country has legal standing to seek a declaration that there are no grounds for refusal of recognition or enforcement in France without the need to prove that the debtor owns any asset in France. The same solution should logically apply to their heirs or assignees.

More generally, an action seeking a declaration that there are no grounds for refusal of recognition may be brought by or against a third party to the foreign proceedings, provided that an actual legal interest is established[15].

6. **Suspension of the enforcement**. National grounds of suspension of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)).

6 *bis*. **Enforceability suspended in the Member State of origin**.

Where the enforceability of the judgment is suspended in the Member State of origin, the person against whom enforcement is sought will have to raise this argument by bringing a challenge against a concrete protective or enforcement measure that has been carried out against him/her. Competence lies with the enforcement judge and the procedure is adversarial.

Procedurally, the type of challenge will depend on the specific enforcement measure that the creditor has carried out. From a substantive point of view, however, the

[14] On this point, see e.g. Pascal De Vareilles-Sommières, 'Jugement étranger' [2013] Répertoire Dalloz droit international, nos 253–255.
[15] See ibid 340 and the references cited therein.

challenge will rely on the absence of an enforceable title upon which the execution can be based.

In the case of a challenge against a third-party debt order or an attachment of a bank account, the suspension of enforceability will have to be raised before the third party has discharged his/her debt by paying the creditor. If this requirement is fulfilled, the person against whom enforcement is sought may then ask for a stay of the proceedings until the day when the foreign judgment has become final or has been definitively vacated (Art. L211-5 CCEP).

In the case of enforcement against movable property, the debtor will have to challenge the validity of the enforcement proceedings in accordance with Art. R221-54 CCEP. In this case, the judge should suspend the proceedings even though the suspension is only discretionary under domestic law (Art. R221-56 CCEP).

In the case of enforcement against immovable property, the person against whom enforcement is sought is in principle protected by Art. L311-4 CCEP, stating that where proceedings are instituted under a judgment that is only provisionally enforceable, a forced sale may only occur after a final decision has acquired force of res judicata (moreover, no proceedings can be brought against immovable property in case of default judgments pending the time limit for opposition). On the other hand, Art. L111-1 CCEP also provides that the sale is not prevented in case of an appeal in cassation, and that in such case, enforcement may only give rise to restitution. However, the person against whom enforcement is sought may still apply for a delay following the general rules described above (see point **II.4 quinquies**).

7. **Measures for the indirect enforcement (payment orders)**. Art. 55 establishes the rules for recognition of a judgment given in a Member State which orders a payment by way of a penalty. However, it does not cover the case in which the incoming judgment has not a payment order attached to it. It may be possible that the competent authorities of the Member State of the enforcement have the power to issue measures of indirect enforcement.

Under French domestic law, two situations should be distinguished, depending on whether the foreign judgment orders a payment by way of a penalty without liquidating the amount due or whether the foreign decision does not contain any indirect measure of enforcement.

In the first case, French courts have so far held that, even though French domestic law normally grants the authority to liquidate the *astreinte* on the enforcement judge,

it lacks international jurisdiction under Art. 55 BI bis Reg. to liquidate penalties ordered abroad (see Tribunal judiciaire de Paris, 17.09.2020, No 20/80618).

In the second case, Art. L131-1 CCEP grants authority to the French enforcement judge to impose an *astreinte* on a decision made by another judge if the circumstances make it necessary. On its face, this provision does not necessarily prevent the French enforcement judge from ordering an *astreinte* with respect to a foreign judgment, provided that it has international jurisdiction to do so (see Cass. Civ. 2, 06.11.2008, No 07-17.445, and Civ. 2, 15.01, No 07-20.955, both regarding *astreintes* ordered by the enforcement judge after a French decision on the merits).