



Max Planck Institute
LUXEMBOURG
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Towards more Effective
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civil and commercial matters
within the EU EFFORTS

Project JUST-JCOO-AG-
2019-881802

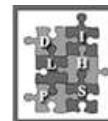
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EFFORTS Practice Guide for outgoing or incoming judgments, court settlements and authentic instruments certified as European Enforcement Orders – France

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* The author warmly thanks the members of the *EFFORTS French Working Group* for their valuable comments and suggestions regarding the contents of the present Practice Guide:

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I. INTRODUCTION	4
II. OUTGOING	4
A. EEO FOR JUDGEMENTS	4
B. EEO FOR AUTHENTIC INSTRUMENTS	17
C. EEO FOR COURT SETTLEMENTS	21
III. INCOMING	25
A. ENFORCEMENT OF THE EEO FOR THE CREDITOR.....	25
B. POSSIBLE REMEDIES/DEFENCES FOR THE DEBTOR.....	27



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I. Introduction

Building upon the contents of the *Practice Guide for the Application of the Regulation on the European Enforcement Order of the Commission* ([here](#)), the *EFFORTS Practice Guide* seeks to supplement operators and end-users with clear practical instructions on how to proceed with the European Enforcement Order Regulation (Reg. (EC) No 805/2004) at a national level.

According to the general scope of the EFFORTS Project, the *EFFORTS Practice Guide for outgoing and incoming titles* covers the Member States addressed: Belgium, Croatia, France, Germany, Italy, Lithuania and Luxembourg.

The Guide is structured so that issues relating to outgoing and incoming titles are dealt with separately. *Outgoing* titles are the ones for which certification is sought in the Member State of origin: the interplay between European and national civil procedural rules makes it difficult for operators and end-users to verify how and when to ask for a European Enforcement Order, whether the requirements for the certification are met and which are the possible remedies/defences for the parties.

Incoming titles are the ones, certified as EEOs in another Member State, that must be enforced in the Member State addressed: according to the general principle of mutual recognition in judicial cooperation in civil matters within the European Union, the same conditions apply as for national titles, plus additional remedies specifically drafted for the European Enforcement Order (Arts. 20 ff. EEO Reg.). The interplay between European and national civil procedural rules makes it difficult for operators and end-users to verify how, when and under which conditions they may proceed with enforcement and the procedures and the conditions to ask for refusal of enforcement or for stay/limitation of the enforcement proceedings.

II. Outgoing

When France is the Member State of origin

The procedure and the requirements to obtain an EEO certification vary depending on the title to be certified. The following paragraphs will address in turn the certification of judgments that are yet to be given/that have already been issued (A), authentic instruments (B), and court settlements (C).

A. EEO for judgements

Depending on whether the judgment has yet to be given or has already been given, the creditor may take certain steps in order to ensure its certification of as EEO. The Commission Practice Guide distinguishes between these two possibilities, and provides



the creditor with separate step-by-step instructions for the certification of judgments as EEOs. In the present document, however, the requirements for the certification of existing and future judgments are dealt with together, leaving it then to the creditor to follow the different practical instructions (see Chapter II and III of the Commission Practice Guide) for an already given judgment or one that has not been given yet.

1. How and when to ask for the European Enforcement Order. A request for a European Enforcement Order must be addressed to the competent authority in the Member State of origin. In principle this is the court seized on the merits (EC PG II.3.1 and III.2.1).

The request must be made in accordance with the national law of the court seized (EC PG II.3.2 and III.2.2).

The request may be made at any time when or after proceedings have been initiated (EC PG II.3.3) or at any time after the judgement was given (EC PG III.2.3).

Following the decision of the CJEU in the case *Imtech Marine*, Art. 509-1 of the Code of Civil Procedure (hereinafter, “**CCP**”) was amended to grant the power to issue an EEO to the judge who rendered the decision or approved the court settlement. Today, therefore, any application for certification of a judicial title as an EEO must be made to a judge, contrary to what happens under Art. 53 the BI bis Reg.

In addition, a Circular of the Ministry of Justice dated 26 May 2006 indicates that the authority that granted the initial certificate should also be competent for the issuance of a replacement certificate pursuant to Art. 6(3) EEO Reg. 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. Art. 6(2) EEO Reg.).

Art. 509-4 CCP provides that the application for the issuance of an 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. Furthermore, Art. 509-5 CCP provides that any refusal to issue an EEO must be reasoned. Finally, the certificate or the refusal must be conveyed to the applicant in accordance with Art. 509-6 CCP.

There are no specific time limits applicable to the EEO application. Nonetheless, the creditor should bear in mind that, under Arts 478 and 1411 CCP, default judgments and French payment orders become moot if they are not served on the debtor within six months following the day they were issued. Thus, an EEO should not be issued if service was carried out only after such date.



2. The decision of certification. In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex I. In doing so, the court must check a number of items (see [EC PG II.4.1 and ff.](#)). Amongst those, some relate to rules of national civil procedural law.

- a. Judgement relating to a pecuniary claim.** A European Enforcement Order may be requested with respect to judgments, i.e. any judgment given by a court of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court (Art. 4(1) EEO Reg.) (EC PG II.1.3 and III.1.3). The claim which is the subject of the dispute must be a claim for payment of a specific sum of money that has fallen due (EC PG II.1.1, III.1.1 and III.3.1.2) or for which the due date is indicated in the judgment.
- b. The judgment is enforceable.** The judgment to be certified as a European Enforcement Order must be enforceable. However, a certificate may also be issued when the judgment is provisionally enforceable (EC PG II.4.3 and III.3.3).
- c. Sums covered by the EEO certificate: costs of the proceedings.** The European Enforcement Order certificate may cover not only the specific sum of money object of the claim, but also the amount of costs related to the court proceedings which are included in the judgment if the debtor has not specifically objected to his obligation to bear such costs in the course of the court proceedings in accordance with the law of the Member State of origin (EC PG II.4.1.2).

Eligible judgments. Considering the broad definition of “judgment” provided for in Art. 4(1) EEO Reg., any court decision containing an order against the defendant to pay a sum of money that has fallen due or for which the due date is indicated in the judgment may fall under the EEO Regulation if it meets the other requirements set out in the Regulation and concerns a dispute arising in civil and commercial matters.

Specifically, the notion of “judgment” under the EEO Regulation encompasses unopposed *ex parte* orders issued following a national order for payment procedure (see Arts 1405 ff CCP), as well as court decisions ordering the payment of maintenance or other periodical obligations that have not yet fallen due.

Conversely, the definition of “judgment” in Art. 4(1) EEO Reg. should not cover the enforceable titles listed in Art. L111-3 of the Code of Civil Enforcement Procedures (hereinafter, “**CCEP**”), because these instruments are not issued by a “court” within the meaning of the case-law of the CJEU (see Case C-484/15, *Zulfikarpašić*).



Enforceability. 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 judicial officer following Arts 675-682 CCP and must indicate in a very visible manner the applicable time limits for opposition, appeal or appeal in cassation (where applicable), as well as how these remedies may be introduced (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).

Costs. In France, the decision on the obligation to bear costs related to the court proceedings is usually contained in the judgment itself. Therefore, an EEO may also cover the costs related to the court proceedings, unless the defendant has filed a challenge against this obligation following the ordinary rules of civil procedure.

- d. The claim has remained uncontested under Art. 3(1)(b) EEO Reg.** A claim is considered to be uncontested in the situations listed under Art. 3 EEO Reg. Amongst others, the claim is considered uncontested when the debtor has never objected to it, in compliance with the relevant procedural requirements



under the law of the Member State of origin, in the course of court proceedings (Art. 3(1)(b) EEO Reg.) (EC PG II.4.2.2 and III.3.2.2).

Under French domestic procedural law, the mechanisms allowing the debtor to effectively contest the claim depend on the kind of proceedings at stake:

- In the event of domestic order for payment proceedings (Arts 1405 ff CCP), the debtor may effectively contest the claim by filing a timely opposition in accordance with Arts 1415-1416 CCP;
- In the event of an ordinary lawsuit filed on the merits or in summary proceedings (*référé*s) that take place adversarially, the debtor may effectively contest the claim by participating in the proceedings and raising one or more objections to the claim (see Arts 71 ff CCP). However, if the debtor only objects to the court's competence without raising any defence on the merits, legal scholars disagree on whether a claim should be regarded as "contested";
- Finally, different views have been expressed concerning the applicability of Art. 3(1)(b) EEO Reg. to cases where the defendant did not enter any appearance. According to some authors, the notion of "uncontested claims" is sufficiently broad to encompass all the cases covered by Art. 473 CCP (*jugements par défaut* and *jugements réputés contradictoires*), irrespective of whether the plaintiff managed to serve the lawsuit personally on the defendant¹. Conversely, others contend that the definition of "uncontested claims" should not encompass cases where the defendant did not appear without being served personally with the lawsuit².

e. The claim has become uncontested under Art. 3(1)(c) EEO Reg. after an initial objection. A claim is also considered uncontested when the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin (Art. 3(1)(c) EEO Reg.); this situation occurs when the debtor did participate in the procedure and objected to the claim, but did no longer appear or was no longer represented at a subsequent hearing concerning the claim. In this situation, the court must check that the conduct of the defendant can amount to a tacit

¹ Louis D'Avout, 'La circulation automatique des titres exécutoires imposée par le règlement 805/2004 du 21 avril 2004' [2006] RCDIP, 1, no 15; Vincent Richard, 'Le jugement par défaut dans l'espace judiciaire européen', no 485.

² Frédérique Ferrand, 'Titre exécutoire européen', *Rep. Dalloz droit de la procédure civile*, 21 no 90.



admission of the claim or of the facts under the law of the Member State of origin (EC PG II.4.2.3 and III.3.2.3).

Under French procedural law, each party has the right to unilaterally consent to the other party's claims and renounce their right of action, provided that their acceptance (*acquiescement*) concerns rights freely available to them (Art. 408 CCP). According to Art. 410(1) CCP, the acceptance can be either express or implicit but cannot be presumed unless provided by law (cf Art. 410(2) CCP).

Accordingly, Art. 3(1)(c) should not apply to cases where the debtor initially objected to the claim but later did no longer appear or was no longer represented at a subsequent hearing concerning the claim because mere absence at the proceedings is not sufficient to prove that the defendant accepted the claim under French procedural law.

Nevertheless, the defendant's acceptance of the claim may result from a positive declaration or an unambiguous act carried out by the defendant or their attorney in the course of the proceedings. In such cases, the judge may enter judgment for the claimant within the limits of the respondent's acceptance.

f. Additional checks in case the debtor has not expressly agreed to the claim. If the debtor has not expressly agreed to the claim, i.e. in the situations under Arts. 3(1)(b) and 3(1)(c) EEO Reg., the court must check additional items. Some of them relate to rules of national civil procedural law.

- i. **Service of the document instituting the proceedings.** The document instituting the proceedings as well as any summons to a court hearing must be served by way of a method recognised by the Regulation ⁽³⁾. The methods of service accepted are specified in Art. 13 and 14. In general, two types of service are possible: either service with proof of receipt by the debtor or the debtor's representative (Art. 13) or service without proof

³ If service needs to take place in another Member State, documents must be transmitted to that other Member State in accordance with the rules of Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters or Regulation (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).



of receipt by the debtor or the debtor's representative (Art. 14) (EC PG II.2.2 III.3.5.2.1) ⁽⁴⁾.

Without prejudice to the provisions of the Service Regulation, rules on service are laid out by Arts 651 to 694 CCP. In particular, Art. 651 CCP specifies that the service of documents on the recipient can always be made by a judicial officer pursuant to one of the means set out in Arts 653 to 664-1 CCP, even when the law permits service by other ordinary means set out by Arts 665 to 670-3 CCP.

Concerning the document instituting the proceedings, Art. 54 CCP provides that the claim can either be lodged by summons (*assignation*) or by direct application to the court (*requête*). In the latter case, the claim is first delivered to the court, and it is then up to the clerk (*greffier*) to serve the application on the defendant (usually by registered letter with acknowledgement of receipt). In the former, the documents must be served on the defendant by a judicial officer acting on the creditor's behalf according to one of the methods detailed below.

Schematically, the CCP provides that the documents should primarily be delivered personally to the recipient. In this case, the recipient may be served wherever he is found, and the judicial officer must attest to the receipt's date and circumstances.

When service in person proves impossible, the documents can be delivered at the defendant's domicile (or, if this address is unknown, at their place of residence). In this event, a copy may either be delivered to a person present on-premises or kept at the judicial officer'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 them. In either case, the judicial officer must draw up a statement relating the circumstances of the service and send a copy of the summons by letter without proof.

When the recipient of the act is a legal person, Art. 654 CCP 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 consented explicitly to service by electronic means, the act can also be notified by the judicial officer through a secured electronic portal under the procedure laid out in Arts 748-1 to 748-9 CCP. Finally, the same code also

⁴ *Cure of non-compliance*: if the document instituting proceedings or any summons to a court hearing was not served on the debtor in accordance with Art. 13 or 14, the court may nevertheless certify the judgment as a European Enforcement Order if it is proved by the conduct of the debtor in the court proceedings that s/he has personally received the document to be served in sufficient time to arrange for his defence (Art. 18(2) EEO Reg.) (EC PG II.4.5.2.1 and III.3.5.2.1.2).



provides for more informal rules of service whenever the parties have already appointed an attorney for the purpose of the proceedings.

These methods fulfil the minimum standards in Arts 13-15 EEO Reg. By contrast, an EEO cannot be issued if the service is made pursuant to Art. 659 CCP. This provision applies when the defendant does not have any known address and cannot be found by the judicial officer. In this case, the judicial officer must draw 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.

- ii. **Mandatory information.** A creditor wishing to obtain a European Enforcement Order certificate should ensure that some procedural requirements are complied with. In particular, the document instituting the proceedings on the merits must be served on the debtor and must contain specified information for the attention of the debtor: due information about the claim (Art. 16) and due information about the procedural steps necessary to contest the claim (Art. 17). The information due under Art. 17 may be contained in the document instituting the proceedings or in an accompanying document and it may also be contained in any subsequent summons to a court hearing (EC PG II.2.1 and III.3.5.2.2).

In France, the information required under Arts 16 and 17 EEO Reg. must always be included in the document instituting the proceedings on the merits and served on the defendant:

- In disputes brought under the ordinary rules applicable to adversarial proceedings, the creditor provides the information required by serving the summons on the defendant (see Arts 54 and 56 CCP);
- Where the case concerns *ex parte* order for payment, the information is included in the documents served on the debtor following the issuance of the initial order, which starts the time limit for opposition (see Arts 1407 and 1411 CCP).



- iii. **Cure of non-compliance.** If the European Enforcement Order is refused by the court due to a lack of due service of the document instituting the proceedings or any summons to a court hearing under Art. 13 or 14 due to a deficient provision of information under Art. 16 or 17, such non-compliance with the minimum standards may be cured and the claimant may make a new application for a European Enforcement Order to the court having delivered the judgment if the requirements under Art. 18(1) EEO Reg. are met (EC PG II.5.1.1, III.3.5.2.2.2 and III.4.1.1).

Art. 675 CCP lays out the principle according to which judgments must be served by a judicial officer unless otherwise provided by law. The service of the judgment is therefore carried out following one of the methods summarised above (see point **g.i.**). Furthermore, Arts 677 and 678 CCP provide that the judgment must be served to the parties and their lawyers (where legal representation is mandatory).

Moreover, Art. 680 CCP provides that the documents of service must indicate in a very visible manner the time limit for opposition, appeal or appeal to the Court of Cassation if one of these remedies is available, as well as the manner in which the appeal may be exercised; it must also indicate that the author of an abusive or dilatory appeal may be condemned to a civil fine and the payment of compensation to the other party.

Similarly, Arts 1411 and 1413 CCP provide that domestic orders for payments must be served to each debtor by a judicial officer on the creditor's behalf and that the documents of service shall indicate in a very visible manner the time limit for opposing the order and the procedural rules applicable to the opposition.

In France, the time limits to apply for a "full review" of the decision (Art. 18 EEO reg.) are the following:

- Appeal or opposition (default judgments and order for payments): 1 month from the date of the notification of an ordinary judgment on a contentious matter or an order for payment (Art. 534 CCP and 1416 CCP, respectively) and 15 days for a summary judgment (*référé*) (Art. 490); if the defendant resides abroad, these time limits are extended by two months (Art. 643 CCP)

- Conversely, Arts 478 and 1411 CCP provide that default judgments and domestic orders for payments are deemed null and void if they have not been notified within six months of their date.



- iv. **Review in exceptional cases.** The Member State of the court which has given the judgment must offer the debtor the right to apply for a review of the judgment where the conditions under Art. 19 EEO Reg. are met (EC PG II.4.5.2.3 and III.3.5.2.3).

According to the information published on the e-Justice Portal⁵: “The review procedure referred to in Art. 19 is the ordinary procedure applicable to decisions taken by the court that issued the original enforcement order”. In practice, the debtor will therefore have to file either an appeal or an opposition, depending on whether the decision at stake was adversarial or *ex parte*.

Furthermore, Art. 540 CCP allow debtors who did not appear in the proceedings to apply for permission to file an appeal or opposition after the ordinary time limit has expired, provided that, without fault on their part, the debtor did not have knowledge of the judgment in time to exercise his recourse, or if they found it impossible to act. The application has to be filed before the President of the court that issued the decision within two months following the first document served personally or, failing that, following the first enforcement measure.

In the case of domestic orders for payment, Art. 1416(2) CCP provides that if the order was not served personally on the debtor, the opposition is admissible until the expiry of the period of one month following the first document served personally or, failing that, following the first enforcement measure.

In both cases, the conditions set out by French law are considered more favourable than the provisions of Art. 19 EEO Reg.

In the case of cross-border service, the rules laid out by French domestic law may, however, be preempted by the provisions of the Service Regulation. According to Art. 22(4) Service Reg. provides that the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment where: (a) the defendant, without any fault on the defendant’s part, did not have knowledge of the document in sufficient time to enter a defence or did not have knowledge of the judgment in sufficient time to appeal; and (b) the defendant has raised a *prima facie* defence to the action on the merits.

According to the Regulation, an application for such relief may be filed only within a reasonable time after the defendant has knowledge of the judgment, and each Member State may communicate to the Commission the fact that an application for

⁵ ‘European e-Justice Portal - European enforcement order (France)’, <https://e-justice.europa.eu/376/EN/european_enforcement_order?FRANCE&member=1> accessed 1 May 2022.



relief will not be admissible if it is filed after the expiry of a deadline set by the Member State in that communication. According to the information published on the e-Justice Portal⁶, France declared that the application must be made within one year of the decision.

3. Possible remedies/defences for the parties

- a. If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the judgement in another Member State under the Brussels regime (Reg. (EU) No 1215/2012) (EC PG II.5.1.2 and 4.1.2).

Unlike the refusal of certification under the BI bis Reg., Art. 509-7 CCP provides that the refusal to certify a judgment as an EEO cannot be subject to any challenge. Nevertheless, some authors have suggested that this decision could be appealable for “excess of power” in cases where the judge manifestly misapplied the criteria laid out in the EEO Reg.⁷

- b. If the European Enforcement Order contains an error.** If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the claimant or the debtor may apply to the court having delivered the certificate requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG II.5.2.1.1, II.5.1.3, III.4.1.3 and III.4.2.1.1).

In the absence of any specific provisions, the rectification of an EEO issued by a judge can be characterised as a mere correction of a material error and should therefore be treated in accordance with the rules set out in Art. 462 CCP. Under this provision, a

⁶ ‘Portail e-Justice européen - Signification ou notification des actes (refonte)’, <https://e-justice.europa.eu/38580/FR/serving_documents_recast?FRANCE&member=1> accessed 5 July 2022.

⁷ Ferrand (cit n 6) no 170.



request for rectification can be made *ex parte* or by a joint request. The request is not subject to any time limits, and the judge may also rule on the rectification *ex officio*.

In principle, the procedure is adversarial, but the judge has the authority to rule on the application without a hearing if the request has been filed *ex parte*.

The notification of the rectified decision follows the ordinary rules on the service of a judgment.

- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having delivered the certificate requesting that the European Enforcement Order certificate may be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG II.5.2.1.2 and III.4.2.1.2).

In the absence of any specific provisions, the rules applicable to an application for withdrawal should be construed taking into account the remedy's purpose, which is to allow the debtor to submit their comments on the application of the EEO Regulation.

From a procedural standpoint, the application for withdrawal should be treated as a request to revoke the certificate that had been granted *ex parte*, and should therefore be governed by Arts 496 and 497 CCP. These provisions state that the application for withdrawal should be made following the rules applicable to summary procedures (*référé*s). The procedure is adversarial and the request is not subject to any specific time limit.

- d. If the judgment has ceased to be enforceable or its enforceability has been suspended or limited.** If the judgment has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the judgment was delivered, the debtor may apply to the court of origin for a certificate indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG II.5.2.1.3 and III.4.2.1.3).

Unfortunately, French law does not provide any explicit guidance regarding the implementation of Art. 6(2) EEO Reg.



In fact, Art. 509-1 only provides that requests for certification of French enforceable titles with a view to their recognition and enforcement abroad under the EEO Reg. “shall be submitted to the judge who rendered the decision or approved the agreement”.

However, this provision is ambiguous where the enforceability of a judgment has been suspended or limited by a subsequent decision given by a different court than the one that issued the initial EEO (see e.g., in case of appeal, Art. 514-3 CCP).

Nonetheless, given that Art. 4(6) EEO Reg. defines the term “court of origin” as “the court or tribunal seised of the proceedings at the time of fulfilment of the conditions set out in Art. 3(1)(a), (b) or (c)”, the authority to issue certificates under Art. 6(2) EEO Reg. should probably lie with the same court that issued the initial certificate and be subject to the same rules detailed above (cf Arts 509-1 ff CCP).

- e. Appeal against the judgment.** The debtor may challenge the judgment certified as EEO on the merits in accordance with the national procedural law of the Member State where the judgment was issued. If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (Art. 6(3) EEO Reg.) (EC PG II.5.2.1.4 and III.4.2.1.4).

Unfortunately, French law does not provide any explicit guidance regarding the implementation of Art. 6(3) EEO Reg.

According to the ordinary principles applicable under national law, two situations should nonetheless be distinguished:

- If the judgment issued on appeal is a mere confirmation of the first instance judgment, the latter remains enforceable against the debtor (Cass. Civ. 2, 04.06.2020, No 19-12.727). Therefore, if the first instance judgment had been certified as an EEO, the creditor should arguably be entitled to pursue the enforcement abroad without being required to obtain a replacement certificate;
- Otherwise, the creditor should apply for a replacement certificate under Art. 6(3) EEO Reg.; in such cases, the same difficulties detailed *supra*, under point **3.d.**, also arise *mutatis mutandis*. Nevertheless, legal authors suggest that the application for a



replacement certificate should be filed before the court that issued the decision initially certified as an EEO⁸.

- f. **Review in exceptional cases.** The debtor may lodge a special review against the judgment before the competent court of the Member State where the judgment was issued under the circumstances set forth in Art. 19 EEO Reg. In applying for this special review, the debtor must act promptly (EC PG II.5.2.1.5 and III.4.1.2.5).

About the implementation of Art. 19 EEO Reg., see supra, point 2.f.iv.

B. EEO for authentic instruments

1. **How and when to ask for the European Enforcement Order.** The European Enforcement order certificate must be requested from the competent authorities in the Member State where the instrument was drawn up. In some Member States, the competent authority to deliver the certificate is the notary who has drawn up the act or a representative organisation. In other Member States, the competent authority is a court (EC PG IV.2.1).

The European Enforcement Order may be asked at the time when the authentic instrument is being drafted or any time thereafter (EC PG IV.2.2).

Regarding authentic instruments, Art. 509-3 CCP currently grants the power to issue the certificates mentioned in Art. 25 EEO Reg. to the notary (*notaire*) who drafted the authentic instrument. As with the provisions of Art. 509-1, Art. 509-3 was first drafted in very general terms, and a specific reference to the EEO was only introduced by Decree No 2008-404 of 22 May 2008.

In this respect, it is noteworthy that, contrary to the BI bis Reg., the competent authority to certify an authentic instrument as an EEO is the notary who drew up the instrument,

⁸ See e.g. André Huet, 'Titre exécutoire européen' [2020] Répertoire Dalloz droit international, no 43.



rather than the President of the Chamber of Notaries. This circumstance undoubtedly facilitates the certification of the title as an EEO.

No formal procedure is required but the provisions of Arts 509-1 ff CCP could apply by analogy.

The EEO certificate may be issued by the notary at the moment when the authentic instrument is drawn up⁹. On the other hand, the fact that the EEO Regulation only applies to “uncontested claims” requires the notary to draw the attention of the parties to this specific feature. In practice, the authentic instrument should include a specific clause where the debtor expressly accepts that, in the event of default, the creditor could seek the enforcement of the title pursuant the EEO Regulation.

2. The decision of certification. In order to issue a European Enforcement Order, the competent authority shall fill in the standard form included in Annex III to the EEO Reg. In doing so, the competent authority must check a number of items (see the [EC PG IV.3.1 ff.](#)). Amongst those, some relate to rules of national civil procedural law.

- a. Authentic instrument relating to a pecuniary claim.** An authentic instrument is defined under Art. 4(3) EEO Reg. ([EC PG IV.1.3](#)). The claim which is the subject of the authentic instrument must be a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the authentic instrument ([EC PG IV.1.1](#) and [IV.3.1.2](#)).
- b. The authentic instrument is enforceable.** The authentic instrument to be certified as a European Enforcement Order must be enforceable ([EC PG IV.3.2](#)).
- c. Costs of the procedure.** The European Enforcement Order certificate may cover also the amount of costs related to the drafting of the instrument which are included in the instrument ([EC PG IV.3.1.2](#)).

The notion of “authentic instruments” set out in the EEO Reg. covers French notarial acts containing an execution formula pursuant to Art. L111-3 CCEP, provided that they fulfil the requirements set out in the Regulation itself. Accordingly, the act must contain obligations relating to “civil and commercial matters” (Art. 2 EEO Reg.) and must concern the payment of a specified sum of money that has fallen due or a periodic claim that will become due at a specified date (Art. 4 EEO Reg.), to which the debtor

⁹ Hélène Péroz, ‘Le notaire, nouvel acteur du titre exécutoire européen’ (2008) 24 JCP N, 3.



has expressly agreed (Art. 3(1)(d) EEO Reg.). Finally, the authentic instrument must be enforceable under domestic law.

Under French law, these requirements largely correspond to the conditions set out in Art. L111-2, according to which an enforceable title (including a notarial act) may only be enforced so long as it contains “a liquid and payable debt”. Accordingly, a notarial act is not considered enforceable under French national law if the relevant obligation is subject to a condition that has not yet been fulfilled or relates to an amount that cannot yet be evaluated. In such cases, the act should not be eligible for certification under the EEO Reg.

Finally, it should be underscored that settlements and acts recording an agreement resulting from mediation, conciliation or a participative procedure, even though they may become enforceable after they are countersigned by the lawyers of each of the parties and signed by the clerk of the competent court (see Art. L111-3 7° CCEP), do not qualify as “authentic instruments” under the EEO Reg.

3. Possible remedies/defences for the parties

- a. **If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the authentic instrument under the Brussels regime (EC PG IV.4.1.1).

According to Art. 509-7 CCP, where a refusal to issue a certificate under the EEO Reg. is not issued by a judge, the decision may be appealed to the President of the Judicial Court. In the absence of any indication to the contrary, this provision should also apply, *mutatis mutandis*, to appeals brought against the refusal to issue certificates based on authentic instruments.

- b. **If the European Enforcement Order contains an error.** If there is a discrepancy between the authentic instrument and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the



competent authority in the Member State of origin requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG IV.4.1.2 and IV.4.2.1.1).

Absent any indication to the contrary, the notary who first drafted the act is also competent to issue the certificates in cases of rectification or withdrawal.

No formal procedure is required, even though the provisions of Arts 509-1 ff CCP should apply by analogy.

- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the competent authority in the Member State of origin requesting that the European Enforcement Order certificate be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG IV.4.2.1.2).

Absent any indication to the contrary, the notary who first drafted the act is also competent to issue the certificates in cases of rectification or withdrawal.

No formal procedure is required, even though the provisions of Arts 509-1 ff CCP should apply by analogy.

- d. If the authentic instrument has ceased to be enforceable or its enforceability had been suspended or limited.** If the authentic instrument has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the instrument was drafted, the debtor may apply to the competent authority indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG IV.4.2.1.3).

Absent any indication to the contrary, the notary who first drafted the act is also competent to issue the certificates under Art. 6(2) EEO Reg.

No formal procedure is required, even though the provisions of Arts 509-1 ff CCP should apply by analogy.

- e. Challenge of authentic instruments.** Under Art. 23 EEO Reg., one of the conditions for stay or limitation of enforcement of an authentic instrument in the Member State addressed is that the debtor challenged an authentic instrument



certified as a European Enforcement Order, including an application for review under Art. 19, or applied for rectification or withdrawal (EC PG IV.4.2.2.1).

As a contract, the authentic instrument can be subject to an action for annulment or termination before the court competent on the merits. In this case, international jurisdiction should be determined following the rules in the BI bis Regulation.

C. *EEO for court settlements*

1. How and when to ask for the European Enforcement Order. A request for a European Enforcement Order must be addressed to the court which approved the court settlement or before which it was concluded (EC PG V.2.1 and V.2.2).

The European Enforcement Order may be asked at any time during the court proceedings or after the approval or conclusion of the court settlement (EC PG V.2.3).

In France, the certification of court settlements as EEOs is subject to the same rules governing the certification of judgments (see *supra*, II.A.). In case of out-of-court settlements that have later been homologated by a judge pursuant to Arts 1565-1567 CCP, the judge that homologated the court settlement should also be competent to issue the EEO.

2. The decision of certification. In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex II to the EEO Reg. In doing so, the competent authority must check a number of items (see the EC PG V.3.1 ff.). Amongst those, some relate to rules of national civil procedural law.

a. Court settlement for a pecuniary claim. A European Enforcement Order may be requested with respect to court settlements, i.e. a settlement which has been approved by a court or concluded before a court in the course of proceedings (Art. 3(1) and Art. 24 EEO Reg) (EC PG V.1.3). The claim which is the subject of the settlement must be a claim for payment of a specific sum of money that



has fallen due or for which the due date is indicated in the settlement (EC PG V.1.1 and V.3.1.2).

- b. The court settlement is enforceable.** The court settlement to be certified as a European Enforcement Order must be enforceable (EC PG V.3.2).
- c. Sums covered by the EEO certificate: costs of the proceedings.** The European Enforcement Order certificate may cover also the amount of costs related to the court proceedings which are included in the court settlement (EC PG V.3.1.2).

The notion of “court settlement” under the EEO Reg. corresponds to settlements that have been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings (see Art. 24 EEO Reg.). Furthermore, a court settlement must be enforceable in the Member State of origin and contain a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the settlement to be eligible for enforcement under the EEO Reg.

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 a liquid and payable claim capable of being enforced (Art. L111-2 CCEP), thus satisfying the requirements of the EEO Reg.

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.

3. Possible remedies/defences for the parties

- a. If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such



possibility exists under national law, or pursue the enforcement of the court settlements under the Brussels regime (EC PG V.4.1.1).

In France, the same rules applicable to the certification of judgments also apply to the certification of court settlements under the EEO Reg.

Accordingly, Art. 509-7 CCP does not provide any remedy against the refusal to issue an EEO, because the initial certification is carried out by a judge. Nevertheless, some authors have suggested that this decision could be appealable for “excess of power” in cases where the judge manifestly misapplied the criteria laid out in the EEO Reg.

- b. If the European Enforcement Order contains an error.** If there is a discrepancy between the court settlement and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the court having approved the settlement or before which the settlement was concluded requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG V.4.1.2 and V.4.2.1.1).

The rectification of an EEO certificate issued concerning a court settlement is subject to the same rules applicable to the rectification of an EEO issued with respect to a judgment (see *supra* I.A.).

- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having approved the settlement or before which the settlement was concluded requesting that the European Enforcement Order certificate be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG V.4.2.1.2).

The withdrawal of an EEO certificate issued concerning a court settlement is subject to the same rules applicable to the withdrawal of an EEO issued with respect to a judgment (see *supra* I.A.).

- d. If the court settlement has ceased to be enforceable or its enforceability had been suspended or limited.** If the settlement has ceased to be enforceable or its enforceability has been suspended or limited under the law of



the Member State where it was approved or concluded, the debtor may apply to the court having approved the settlement or before which the settlement was concluded for a certificate indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG V.4.2.1.3)

The issuance of a substitute certificate under Art. 6(2) EEO Reg. concerning a court settlement is subject to the same rules applicable to the issuance of such certificate with respect to a judgment (see supra I.A.).

- e. Appeal against the court settlement.** The debtor may challenge the court settlement on the merits in accordance with the national procedural laws of the Member States. If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (Art. 6(3) EEO Reg.) (EC PG V.4.2.1.4)

With respect to court settlements, French law distinguishes between the remedies available against the judgment that homologates the parties' agreement and renders it enforceable and the remedies available against the underlying settlement.

According to Art. 1566 CCP, the party that wants to challenge the decision homologating a court settlement, may do so by applying for reconsideration before the judge who first issued the decision. In this case, however, the judge will only consider whether the enforcement of the court settlement is contrary to public policy.

On the other hand, the debtor may also challenge the validity of the underlying settlement agreement before the court competent to rule on the merits. In this case, the international jurisdiction of the court is determined according to the rules laid out in the BI bis Reg.

In both cases, the request to obtain a replacement certificate under Art. 6(3) EEO Reg. should probably be filed before the court that issued the first certificate (see supra I.A.).



III. Incoming

When France is the Member State of enforcement

According to Art. 20(1) EEO Reg., “[a] judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement” (see also Art. 24(3) and Art. 25(3) EEO Reg. for court settlements and authentic instruments). Thus, the procedure for the enforcement of the EEO mirrors the procedure for the enforcement of any other national title. Additionally, Reg. (EC) No 805/2004 establishes specific remedies or defences for the parties.

A. Enforcement of the EEO for the creditor

Once the claimant has obtained a judgment, authentic instrument or court settlement certified as a European Enforcement Order, s/he may apply for enforcement in the Member State of enforcement. The judgment, court settlement or authentic instrument certified as a European Enforcement Order is treated as if it was given in the Member State of enforcement and it shall be enforced in the same way as a national judgment, court settlement or authentic instrument.

1. Competent court or authority. The claimant must apply for enforcement with the court or authority competent for the enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order in the Member State of enforcement (EC PG VI.1).

Given the extrajudicial nature of French enforcement proceedings, incoming EEOs are enforced by judicial officers acting on the creditors' behalf.

The territorial competence of French judicial officers is determined based on the place where the enforcement procedure has to be carried out, which corresponds to the location of the (movable or immovable) tangible assets against which enforcement is sought, or the place where the third party is domiciled in case of attachment of earnings, bank accounts, shares and third party debt orders. According to Art. 1(1) of Decree No 2021-1625, an enforcement measure may be carried out concurrently by the judicial officers within the jurisdiction of the court of appeal of their residence.

In order to find a competent judicial officer, the creditor may search the official search engine at <https://commissaire-justice.fr/>.



2. Documents to be produced by the claimant. In order to request in a Member State enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order the claimant shall produce the documents listed in Art. 20 EEO Reg. (EC PG VI.2).

Under Art. 20 EEO Reg., the law of the Member State of enforcement should govern the execution of foreign EEOs, subject to the provisions laid out by the Regulation itself. In particular, Art. 20(2) EEO Reg. sets out the documents that a creditor must provide to the competent authorities of the Member State of enforcement when seeking to enforce the EEO in another Member State.

The application of this provision has given rise to some litigation in France, especially with respect to the documents that the creditor must provide under Art. 20(2) EEO Reg. to establish the authenticity of the title and the EEO certificate that form the basis for the enforcement. In particular, French courts have adopted a pro-enforcement stance by interpreting these requirements rather liberally.

In a case decided in 2010, the Paris Court of Appeal (Cour d'appel de Paris, 28.10.2010, No 10/14439) held, for instance, that this provision does not concern the service of the EEO on the debtor but merely enumerates the documents that the creditor must provide to the French enforcement authorities. Therefore, the court held that the debtor could not rely on Art. 20(2) EEO Reg. in a case where the documents accompanying the writ and summon to pay did not fulfil the conditions set out in this provision.

In the same way, French courts have also held that a creditor who does not provide the enforcement authorities with all the documents laid out in Art. 20(2) EEO Reg. before the first enforcement measure may cure this defect in the course of the enforcement proceedings (Cour d'appel de Bordeaux, 23.11.2009, No 08/04353).

In order to be enforceable in France, the documents laid out in Art. 20 EEO Reg. should be produced in French. However, the same liberal approach seems to apply regarding the translation of a foreign EEO. For example, the cour d'appel of Colmar allowed the enforcement of three Polish default judgments to go ahead even though one of the translations accompanying the EEOs did not include the whole certificate due to an error (Cour d'appel de Colmar, 24.11.2014, No 14/01787).

3. Enforcement authorities. The enforcement authorities must check whether the claimant produces the necessary documents for enforcement. If the necessary documents are produced, the judgment, authentic instrument or court settlement certified as a European Enforcement Order shall be enforced under the same conditions as a



judgment, authentic instrument or court settlement handed down in the Member State of enforcement (EC PG VI.3).

Art. L122-1(2) CCEP provides that judicial officers are required to provide their services or assistance to creditors: “except where the measure requested appears to them to be unlawful or where their costs seem likely to exceed the amount of the claim” (excluding cases of symbolic damages). Furthermore, Art. R122-1 of the same Code provides that: “A judicial officer who intends to refuse to lend his ministry or assistance pursuant to Art. L122-1 may, if he considers it necessary, refer the matter to the enforcement judge beforehand”.

The enforcement judge may therefore be called upon to solve disputes between the judicial officer and his/her client regarding the refusal to proceed with the enforcement. Alternatively, the creditor may also instruct another judicial officer to proceed with the enforcement, provided s/he is also territorially competent.

In any case, it should also be mentioned that, according to Art. L121-2 CCEP: “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”.

B. Possible remedies/defences for the debtor

1. Refusal of enforcement of a judgment. The debtor has the possibility to apply for a refusal of enforcement of a judgment (Art. 21 EEO Reg.) if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country (EC PG II.5.2.2.1 and III.4.2.2.1).

2. Limitations on enforcement. The competent enforcement authorities may refuse, limit or stay enforcement according to the provisions of Chapter IV of the EEO Reg. Without prejudice to the above, the grounds for refusal or suspension of enforcement under national law continue to apply (EC PG VI.4).

In France, the enforcement judge has exclusive jurisdiction to rule on any claim for opposition to enforcement (both formal and substantive) as well as on any irregularity that might affect the enforcement procedure itself. This includes actions for refusal of enforcement under Art. 21 EEO Reg.

[For more information on the general principles applicable to enforcement under French law, see also the Annex on Enforcement]



3. Refusal of enforcement of a court settlement or an authentic instrument.

Art. 24(3) and Art. 25(3) explicitly exclude the applicability of Art. 21(1) EEO Reg. to authentic instruments and court settlements; only Art. 21(2) (prohibition of a review of the title on its merits) is applicable (EC PG IV.4.2.2 and V.4.2.2). This does not automatically exclude the applicability of national grounds for the refusal of enforcement of an authentic instrument or a court settlement (arg. ex Art. 20(1) EEO Reg.).

In the case of authentic instruments and court settlements, the competence of the enforcement judge extends to challenges against the validity or enforceability of the obligations contained in the underlying title, provided that French courts have international jurisdiction to rule on those matters. Where the enforcement is based on an enforceable court decision, however, the authority of *res judicata* prevents the enforcement judge from setting aside or modifying the underlying decision.

[For more information on the general principles applicable to enforcement under French law, see also the Annex on Enforcement]

4. Stay or limitation of enforcement of a judgment, court settlement or authentic instrument. The debtor may apply for a stay or limitation of enforcement of a judgement, authentic instrument or court settlement under Art. 23 EEO Reg. (EC PG II.5.2.2.2, III.4.2.2.2, IV.4.2.2.1 and V.4.2.2.1).

According to Art. 23 EEO Reg., the courts of the Member State of enforcement may, under exceptional circumstances, stay or limit the enforcement of a foreign EEO where the debtor challenged the judgment certified as an EEO (including an application for review within the meaning of Art. 19 EEO Reg.) or applied for the rectification or withdrawal of an EEO certificate according to Art. 10 EEO Reg. In France, these applications may be raised before the enforcement judge following the creditor's first enforcement measure.

Even though French courts usually construe the requirements of Art. 23 EEO Reg. narrowly, a stay has for instance been granted in a case where the constitutionality of the underlying judgment was being challenged in the State of origin (Cour d'appel de Pau, 18.11.2013, No 12/02662). Similarly, another court granted a stay where the court of origin had annulled all the procedural acts leading to the issuance of the EEO (Cour d'appel d'Aix-en-Provence, 29.05.2015, No 13/18557).

Conversely, applications for a stay are generally refused if the challenges against the EEO have been rejected in the State of origin (Cour d'appel de Lyon, 6e ch.,



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14.10.2010, No 09/04873; Cour d'appel de Saint-Denis de la Réunion, ch. Civile tgi,
27.10.2020, No 19/00368).