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civil and commercial matters
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Annex I: Enforcement of titles in France

Author: Marco Buzzoni (Research Fellow, MPI Luxembourg)*

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- Prof C. Bléry (*Université Polytechnique Hauts-de-France*)
- Prof B. Deffains (*Université Paris-Panthéon-Assas*)
- Mr Luc Ferrand (*Chambre nationale des commissaires de justice*)
- Prof Fabienne Jault-Seseke (*Université de Versailles Saint-Quentin-en-Yvelines – UVSQ*)
- Mrs T. Jewczuk (*Cheffe du Département de l'entraide, du droit international privé et européen, Ministère de la Justice*)
- Prof R. Laher (*Université de Limoges*)
- Mrs I. Peni-Trouillas (*Chambre nationale des commissaires de justice*)
- Dr A. Raccah (Lawyer, *EleaAvocat*)
- Dr N. Reichling (Lawyer, *Barreau de Caen*)
- Dr V. Richard (Lawyer, *Wurth Kinsch Olinger*)
- Judge C. Roth (*Chef du pôle de l'exécution, Tribunal judiciaire de Paris*)
- Mrs Catherine Rumeau (*Adjointe du Département de l'entraide, du droit international privé et européen, Ministère de la Justice*)



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Introduction

This section of the EFFORTS Practice Guide deals with the way judgments (and other enforceable instruments) are forcibly executed against the party against whom enforcement is sought [*hereinafter also* the debtor] for the benefit of the person who pursues the enforcement [*hereinafter also* the creditor] in the Member State addressed. In principle, foreign judgments must be enforced under the same conditions as a judgment given in the Member State addressed. Since it would not be possible to exhaustively cover the enforcement proceedings in civil and commercial matters as regulated by national procedural laws, the issues hereby addressed are limited to specific ones. These have been selected with the scope of presenting to foreign creditors and debtors the essential features of the enforcement proceedings in the Member State concerned, highlighting differences from one Member State to the other. Creditors and debtors involved in cross-border enforcement proceedings are left with the question of how to plan the enforcement and how to react to it. Without the presumption of substituting national expert practitioners in assisting their clients with these procedures, the EFFORTS Practice Guide Enforcement Annex aims at providing more clarity for the end-users and operators in the essential choices relating to cross-border claims enforcement. The rules and procedures hereby addressed are applicable insofar as they are compatible with the relevant EU regulation.



1. Locating the debtor's attachable assets.

Planning the enforcement within the EU

Which are the categories of assets that are not attachable, wholly or in part, under your national procedural law? Are there any specific categories of assets (e.g. assets that might be covered by immunity) which are subject to specific additional requirements or procedures prior to execution?

Can the creditor, either directly or through the assistance of the enforcement agents or other public authorities, find official information regarding the domicile and residence of natural persons within the State? If so, please provide some details on how to access such information (e.g., what is the timeline for such request).

Determining the debtor's attachable assets:

According to Art. 2284 of the Civil Code (hereinafter, "CC"): "Anyone who has entered into a personal obligation shall make good on his commitment with all his movable and immovable assets, present and future". Furthermore, Art. 2285 CC provides that creditors may recover their claims against the debtor's property by pursuing the forced sale of the debtor's assets and distributing their price in proportion to their respective shares, except where there are legitimate grounds for preference between the creditors.

Accordingly, Art. L112-1 of the Code of Civil Enforcement Procedures (hereinafter, "CCEP") provides that all the assets belonging to the debtor can be subject to execution, including assets held by third parties and claims that are conditional, not yet matured or periodical (within the limits of the rules applicable to them).

However, there are a number of exceptions to these general principles, the main ones being summarised below.

Specific assets excluded from attachment. Firstly, some specific categories of assets are excluded from execution. These categories are listed in Arts L112-2 ff CCEP, and the general rules applicable to them are detailed in Arts R112-1 ff CCEP.

The information published on the e-Justice Portal¹ summarises the most notable of them as follows:

¹ 'European e-Justice Portal | How to enforce a court decision', <https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?FRANCE&init=true> accessed 18 June 2022.



- 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 dependents (see Arts L3252-1 ff and R3252-1 of the Labour Code)²;
- 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 Art. R112-2 CCEP; 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 (Art. L112-2 7° CCEP); for example, a disabled person's wheelchair may not be attached.

Assets belonging to individuals carrying out one or more independent professional activities in their own name. More fundamentally, Art. L526-22 of the Code of Commerce (hereinafter, "CCOM") lays out the principle according to which the assets that are useful for the independent professional activities of an individual entrepreneur (*entrepreneur individuel*) may only be attached by his/her professional creditors. Conversely, all the assets that are outside of his/her professional activity may only be sued by his/her personal creditors. This general principle is subject to the conditions and exceptions laid out in Art. L526-23 ff and R526-26 ff CCOM. In particular, the individual entrepreneur may waive this privilege under the conditions laid out in Art. L526-25 CCOM.

Immunity from execution. According to Art. L111-1 (3) CCEP, persons who enjoy immunity from execution may not be subject to execution nor protective measures against their assets. This category includes French legal entities organised under public law, which are in principle subject to the jurisdiction of administrative courts.

Immunity also extends to foreign States and high ranking officials, within the limits set out in Art. L111-1-2 CCEP. Furthermore, by exception to the general rules applicable to civil enforcement proceedings, Art. L111-1-1 also provides that no enforcement nor conservatory measure may be taken against the property belonging to a foreign State without an *ex parte* prior authorisation issued by the enforcement judge.

² General information on the proceedings for the attachment of earnings and the calculation of the attachable amounts is available on 'Saisie sur salaire (ou "saisie des rémunérations")', <<https://www.service-public.fr/particuliers/vosdroits/F115>> accessed 18 June 2022.



Finally, special provisions also address specific issues of immunity regarding assets held in France by foreign central banks (Art. L153-1 of the Monetary and Financial Code) as well as assets and bank accounts used or intended for the functioning of the diplomatic mission of foreign States or their consular posts, special missions or missions to international organisations (Art. L111-1-3 CCEP).

Locating the debtor's attachable assets:

Information accessible to the judicial officer. According to Arts L152-1 to L152-3 and Art. R152-1 CCEP, a judicial officer acting on the basis an enforceable title or a decision authorising a provisional attachment on bank accounts (*saisie conservatoire sur comptes bancaires*) as well as an EAPO, may request State and local authorities, including administrative bodies and companies controlled by the State, regions, departments and municipalities, to provide him with information regarding:

- the debtor's address;
- the identity and address of his/her employer, third party debtor, or other depositary of liquid or payable sums;
- the debtor's real estate assets;

In addition to that, judicial officers who have been mandated for the purposes of enforcement of an enforceable title or of a decision authorizing the attachment of a bank account can consult the information contained in the national file of bank accounts (FICOBA) in order to gather information on the debtor's accounts. Similarly, judicial officers may, under the same conditions, request any credit institution authorized by law to keep deposit accounts to provide them with information regarding the debtor's bank accounts, including joint accounts or merged accounts, that have been opened in his/her name, as well as the places where the accounts are kept. In this respect, it is important to note that, according to the case law of the Court of Cassation, French banks are also required to communicate information regarding bank accounts that are maintained in their foreign branches (Cass. Civ. 2, 14.02.2008, No 05-16.167, Bull. Civ. II No 36).

The subjects that are required to comply with the judicial officer's request are prohibited from sharing any other data regarding the debtor or his/her assets, and are not subject to their usual professional confidentiality. To obtain such information, the judicial officer also has access to an official registry kept by the Ministry of Finance containing information on bank accounts opened in French institutions.



2. Jurisdiction over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

In cases concerning cross-border enforcement, what are the rules that define the jurisdiction of the courts in France? In which cases the courts in France do not have jurisdiction over the enforcement proceedings? I.e. rules of international jurisdiction over the enforcement proceedings

In the absence of any specific provisions addressing the question of the international jurisdiction of French courts with respect to enforcement proceedings, reference must be made to both Art. 24(5) BI bis Reg., which provides that the courts of a Member State shall have exclusive jurisdiction “in proceedings concerned with the enforcement of judgments” that have been or are to be enforced in that Member State, as well as to the principles laid down in European and national case law.

Lack of jurisdiction concerning enforcement proceedings conducted abroad.

According to the consistent case law of the CJEU, the rule of exclusive jurisdiction laid out in Art. 24(5) BI bis Reg. must be interpreted restrictively and covers “actions intended to obtain a decision in proceedings relating to recourse to force, constraint or distraint on movable or immovable property in order to ensure the effective implementation of judgments and authentic instruments” (CJEU, C-242/20, 09.12.2021, *HRVATSKE ŠUME d.o.o., Zagreb v BP Europa SE*, ECLI:EU:C:2021:985, pt 31; see also, e.g., *Reichert et al v Dresdner Bank AG*, C-261/90, 26.03.1992, ECLI:EU:C:1992:149, pts 27-28). Similarly, French courts have consistently held that public international law prevents them from ruling on the validity of enforcement measures carried out abroad by the authorities of another State (See e.g. Cass. Civ., 12.05.1931, *Sté Cyprien Fabre*, Sirey 1932, I, p. 137, rapp. Casteil, n. Niboyet J.-P.; JDI 1932, p. 387, n. Perroud J.; DP 1933, I, p. 60, n. Silz E.). Under these principles, it is therefore accepted that French courts lack jurisdiction regarding enforcement proceedings conducted abroad.

The territorial scope of French jurisdiction. Conversely, it is traditionally considered that French courts have exclusive jurisdiction regarding enforcement proceedings located in France.

In two recent decisions decided on 10 December 2020, the French Court of Cassation held in particular that by virtue of the “rule of territoriality of enforcement procedures”, a third-party debt order may only be carried out by a French judicial officer if the third-party debtor is “established in France” (Cass. Civ. 2, 10.12.2020, Nos 18-17.937 and 19-10.801). Where a third-party debtor is a legal person, the court ruled that it is deemed to be established in France if it has its registered office there or if it maintains an entity in France with the power to pay the underlying claim to the debtor. In case of



bank accounts, the latter requirement is satisfied if the bank account was opened at a foreign branch of a French institution.

2-bis. Territorial competence over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

Which rules govern the territorial competence of the enforcement agents in France?

Which rules govern the territorial competence of the courts of the enforcement proceedings in France?

Territorial competence of French enforcement agents. Art. 1(1) of Decree No 2021-1625 of 10 December 2021 relating to the competences of judicial commissioners henceforth sets out the rule of the territorial competence of French judicial commissioners in the following terms: “Judicial commissioners may perform the acts provided for in 1°, 2°, 3°, 5°, 6°, 7°, 8° and 9° of I of Article 1 of the aforementioned Ordinance of June 2, 2016 [among which are protective and enforcement measures] within the jurisdiction of the court of appeal of the seat of their office and, where applicable, of the annexed office(s) attached to the office.”

Note that the French courts have held that the jurisdiction of French judicial commissioners extends to the entire national territory when they act as “transmitting agencies” under the Services Regulation (Cass. Civ. 2, 05.06.2014, No 13- 13 765, Bull Civ II, No. 129).

In addition, the general rule set forth in Art. 1 of Decree No 2021-1625 is accompanied by some additional clarifications.

Firstly, Art. 2 of the same Decree provides that the service of documents by electronic means may be made by any judicial commissioner as long as one of the addressees of the document has his domicile or residence within the jurisdiction of the court of appeal where he exercises his jurisdiction.

However, this rule is subject to an exception when the documents are to be served electronically to a third party within the framework of an enforcement procedure or a precautionary measure within the meaning of Art. L. 111-1 CCEP. In this case, only the judicial commissioners who practice in the jurisdiction of the court of appeal where the debtor has his domicile or residence are competent to serve the document, unless the debtor has his domicile or residence abroad.



Secondly, art. R213-1 CCEP provides that in the case of enforcement of maintenance obligations, the creditor may instruct any judicial commissioner of his place of residence to notify the request for direct payment to the third party mentioned in art. L213-1 of the same code.

Thirdly, it is important to note that the procedure for seizure of earnings is directly managed by the court itself and, therefore, is subject to the rules of territorial competence described below.

Territorial competence of French courts. Art. R121-2 CCEP sets out the general rule concerning the territorial competence of French courts over enforcement proceedings. According to this provision, territorial competence lies, unless otherwise provided, with the enforcement judge of the place where the debtor resides or of enforcement of the measure. Competence between these different courts is allocated at the applicant's choice, but once the applicant has sued before one of these courts, no application may be brought before the other. Furthermore, the court of the place of enforcement has jurisdiction if the debtor lives abroad or if the debtor's place of residence is unknown.

Nevertheless, this rule is subject to numerous exceptions, the most important of which are mentioned below:

- Eviction: enforcement judge of the place where the building is located (Art. R412-4 CCEP)
- Protective measures: enforcement judge or president of the commercial court of the place where the debtor lives (authorisation) (Art. R511-2 CCEP); enforcement judge or president of the commercial court that authorised the measure or of the place where the debtor lives if the measure was taken without prior authorisation (application for release) (Art. R512-2 CCEP); enforcement judge of the place of enforcement of the measure and therefore of the location of the seized goods (other disputes) (Art. R512-3 CCEP); enforcement judge of the place where the debtor resides (conversion into seizure of assets) (Art. R523-9 CCEP); enforcement judge of the debtor's domicile (protective seizure of partners' rights and securities) (Art. R524- 2, 3° CCEP);
- Enforcement measures on vehicles: enforcement judge of the place where the debtor lives (Art. R223-3 CCEP); enforcement judge of the place where the vehicle is immobilised (Art. R223-9, 4° CCEP); enforcement judge of the place where the debtor lives or where the vehicle is immobilised (Art. R223-10, 4° CCEP); enforcement judge of the place where the person required to surrender the vehicle lives or where the vehicle is immobilised (Arts R223- 12, 3° and R223- 13, 5° CCEP).



- Seizure of goods placed in a safe: execution judge of the place where the seized goods are located (Art. R224-8, R224-10 6° and R525-3 CCEP) ;
- Seizure of immovable property: enforcement judge of the court in whose jurisdiction the seized property is located (Art. R311- 2 CCEP); enforcement judge of the court in whose jurisdiction the seized property where the debtor lives is located or, failing that, in whose jurisdiction any of the properties is located (in the case of a plurality of seized properties) (Art. R311- 3 CCEP); Distribution of funds enforcement judge of the place of sale (Art. R251-8 and R251-11 CCEP);
- Procedure for the delivery of a specific tangible movable asset (*saisie apprehension*): execution judge of the place where the addressee of the act lives (Arts R222-2 4° and R222- 7 3° CCEP); execution judge of the place where the person from whom the property is taken lives (Art. R222-3 CCEP); execution judge of the place where the third party holder lives (Art. R222-8, CCEP) ;
- An injunction to deliver a movable asset: enforcement judge of the place where the debtor lives (Art. R222-11 CCEP); enforcement judge who issued the order (Art. R222-13 CCEP);
- Third-party debt order and attachment of partners' rights: enforcement judge of the place where the debtor lives (Arts R211-10 and R232-6 CCEP);
- Interlocutory attachment of a specific tangible movable asset (*saisie-revendication*): enforcement judge who authorised the seizure or of the place where the person required to deliver or return the property resides or the president of the commercial court of the same place (Art. R222-18 CCEP); enforcement judge of the place where the property is located (Art. R222-19 CCEP); enforcement judge of the place where the holder resides (Art. R222-24 CCEP);
- Seizure and sale of movable assets: enforcement judge of the place of seizure (Arts R221- 20 and R221- 40 CCEP); enforcement judge of the place where the third party lives (Art. R221- 29 CCEP);
- Direct payment of maintenance claims: enforcement judge of the place where the debtor lives (Art. R213- 6 CCEP);
- Attachment of earnings: enforcement judge of the place of residence of the debtor or, if this place is unknown or located abroad, the place where the garnishee lives (Art. R3252-7 of the Labour Code).



3. Preliminary steps and spontaneous compliance.

Taking preliminary steps for the enforcement and possibilities to avoid forced execution

Are there preliminary steps to be taken before starting enforcement proceedings? Is the enforcement authority involved in this phase? How does the debtor receive notice of the upcoming enforcement?

Are there specific instruments for the parties to seek spontaneous or amicable debt recovery to avoid the attachment of her/his assets? What is the deadline, if any, for the debtor to spontaneously comply with her/his obligation and avoid forced execution of the claim?

Under French law, the need to carry out preliminary steps before the beginning of the enforcement proceedings depends on the kind of enforcement measures sought by the creditor.

Where the latter seeks to enforce a title against the debtor's movable tangible property, enforcement proceedings need to be preceded by a writ and summon to pay (*commandement de payer*) (see e.g. Art. R221-1 CCEP). This document mentions the enforcement order on which the execution is based and lays out the details of the debtor's obligation. It also informs the debtor that non-compliance with his/her obligation may lead to enforcement against his/her movable property starting eight days from the day of service. When enforcement is based on an enforceable judgment, the writ and summon to pay may be served together with the underlying judgment.

A writ and summon to leave the property (*commandement d'avoir à libérer les locaux*) is also needed in case of eviction proceedings (Art. R411-1 CCEP). In this case, Art. L412-1 CCEP provides that if the eviction concerns a place inhabited by the evicted person or by any occupant in his or her name, it may not take place until the expiry of a period of two months following the writ.

Moreover, Art. L124-1 and R124-1 ff CCEP set out some mandatory rules designed to protect the debtor's rights that apply to natural or legal persons who, on a regular or even an occasional and accessory basis, proceed to amicable debt recovery on behalf of others.

Occasionally, specific provisions may require the creditor to go through a mandatory conciliation procedure before being able to pursue the enforcement against specific assets (see, in particular, Arts R3252-12 of the Labour Code regarding the attachment of earnings). Furthermore, a debtor who complies with the underlying claim before or in the course of the enforcement proceedings will be able to avoid forced execution



over his/her assets by applying to the competent enforcement judge. In particular, where the enforcement proceedings rely on injunctive relief ordering payments by way of a penalty in case of non-compliance (*astreintes*), the Court of Cassation has held that penalties may only be liquidated if the debtor has not already complied with the underlying obligation (see recently, Cass. Civ. 3, 04.03.2021, No 20-14.141).



4. General outline of the enforcement procedure: classification and description of different modes of enforcement.

How to proceed with the enforcement (general and brief outline)

Which is the first act of the enforcement and does it differ from one mode of enforcement to the other? What is the deadline for the creditor to carry out the first measure of execution?

Which is the statute of limitations for the enforcement of a title in France?

May the competent enforcing authority refuse to proceed with the execution if they consider that the creditor has not complied with the general enforcement requirements, such as e.g., the certainty, maturity and liquidity of certain claims; territorial competence relating to the enforcement authorities; further authorisation or other formalities to proceed with the enforcement; etc.? What are the remedies available to the creditor in such scenario?

For monetary enforcement, may the creditor avail her/himself of several concurrent or cumulative enforcement procedures? How does coordination between different enforcement procedures for the same claim/enforcement instrument work? In particular, how does the debtor file an opposition for concurrent or subsequent enforcement procedures whose total added value exceeds the total sum due according to the judgment?

Are there secondary or ancillary effects or features of the judgments or other enforcement titles to be mentioned (e.g. the right to register a mortgage on the debtor's immovable property or the increasing in the interest rate attached to monetary claims)? In the affirmative, which are the applicable procedures and modes of execution?

First act of enforcement. In France, the first act of enforcement usually corresponds to an act of attachment (*acte de saisie*) by which the competent enforcement authority (most often, the judicial officer) notifies the debtor or the person against whom enforcement is sought that enforcement proceedings are being brought against one or more assets that are in their possession or control at the moment of service.

According to Art. L141-2 CCEP, the act of attachment makes the targeted assets non-transferable to any third parties. In the case of tangible assets, the debtor or the third party holder against whom enforcement is sought is made the custodian of the seized assets and exposed to the penalties set out in Art. 314-6 of the Penal Code. If the attachment concerns a claim held by the debtor against a third party, the act of attachment interrupts the limitation period applicable to that claim.



By derogation, where the attachment is carried out as part of a third-party debt order (*saisie-attribution*), the act of attachment immediately transfers the ownership of the claim from the original debtor to the creditor (*effet attributif immédiat*).

Finally, creditors must also bear in mind that where the enforcement is sought against movable and tangible assets, the act of attachment has to be preceded by a writ and summon to pay (see *supra*, no 4). Even though the latter does not *per se* constitute an enforcement act, it triggers the competence of the enforcement judge. Furthermore, Art. R221-5 CCEP provides that if the creditor does not carry out any enforcement measure within two years after the service of the writ and summon to pay, enforcement may not be pursued against the debtor's movable and tangible assets without the notification of a new writ.

Statute of limitations. According to Art. L111-4 CCEP, the enforcement of the enforceable titles mentioned in 1° to 3° of Art. L111-3 (including domestic and foreign judgments and court settlements) may only be pursued for ten years unless the underlying actions expire after a more extended period. Other enforceable titles (including authentic instruments) are subject to the ordinary statute of limitations applicable to the underlying obligations calculated in accordance with Arts 2219 ff CC. In principle, Art. 2224 CC provides a five-year statute of limitations from the day when the creditor knew or should have known the facts enabling him to exercise it.

Enforcement authorities' discretion concerning enforcement proceedings. 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".

Concurrent/cumulative enforcement proceedings. Under Art. L111-7 CCEP: "The creditor may choose among the adequate measures to ensure the enforcement or preservation of his claim. The execution of these measures may not exceed what is necessary to obtain payment of the obligation".



This general principle is subject to several exceptions:

- According to Arts L221-2 and R221-2, where the enforcement concerns a claim other than a maintenance obligation valued less than 535 euros, the seizure and sale of movable assets located at the debtor's habitual residence needs to be authorised by the enforcement judge in cases any time that the claim could also be recovered through an attachment of a bank account or an attachment of earnings. Concretely, the creditor will have to look for the employer's address or the debtor's bank account by asking the administrations and establishments authorised by law to keep deposit accounts, in accordance with the provisions of Arts L152-1 and L152-2 CCEP. If he does not obtain any information, he will then ask the court to authorise the seizure of the movable assets at the debtor's place of residence;
- Under Art. L311-4 CCEP, where the seizure of immovable property is carried out by virtue of a provisionally enforceable court decision, the forced sale may only take place after a final decision has become *res judicata* (also, no proceedings may be instituted under a decision rendered by default during the opposition period);
- Under Art. L311-5 CCEP, a creditor may only seize several of his debtor's immovables if the seizure of one or more of them is not sufficient to satisfy him and the registered creditors. Furthermore, a creditor who benefits from a mortgage in his/her favour may not seize other immovable property of the debtor unless the mortgage does not allow him to be satisfied of his rights;

More generally, Art. L111-7 CCEP provides that enforcement measures must comply with the principle of proportionality. According to this provision, in fact: "the creditor has the choice of measures to ensure the execution or preservation of his claim", but: "The execution of these measures cannot exceed what is necessary to obtain payment of the obligation".

To ensure the effectiveness of this principle, Art. L121-2 of CCEP provides that "The enforcement judge has the power to order the release of any useless or abusive measure and to order the creditor to pay damages in case of abuse of seizure". The enforcement judge thus appears to be the guarantor of the real necessity of the measure, and of the fact that it was not undertaken in bad faith or in a devious manner; if this is the case, the law allows him to pronounce two different sanctions: the release of the measure, and, in the event of abuse of seizure, the condemnation of the creditor to damages.

One may consider that a measure is useless when, without any idea of fault, it "serves no purpose and adds nothing to the safeguarding of the creditor's rights" (cf. R. Perrot and Ph. Théry, *Procédures civiles d'exécution*, 3rd ed., Dalloz 2013, No 120, p 132),



in other words, when it is not necessary for the recovery of the debt. This will be the case, for example, when a creditor, although paid the amount of his invoice, allows the effects of a seizure “which (he) knew to be useless” to continue (Civ. 2, 24.02.1982, No 80-16.527). A ministerial reply also considered that “insofar as the proceeds of the seizure are allocated in priority to the payment of the necessary costs, a seizure relating to goods whose value clearly does not exceed the foreseeable amount of such costs must be considered useless since it will not allow the debt to be recovered” (Rép. min. No 26545, JOAN Q 15 Dec. 2003, p. 9962).

Accordingly, the enforcement authorities must stop the forced sale of the debtor’s movable assets as soon as the price of the goods sold is sufficient to cover the payment of the creditors’ claims, including interests and costs.

The enforcement judge also has the power to order the release of an abusive seizure, but the abuse, as soon as it is retained and characterized, can also be accompanied by an order to pay damages. This is the price of the fault in the use of enforcement measures, whether it is an intentional fault or a misuse of procedure.

In the case of third-party debt orders, Art. L211- 2 CCEP provides that the creditor is only awarded the sums for which the seizure was carried out; thus, it is not necessary for the debtor to file a request in order to limit the attachment when the available funds exceed those for which the measure was carried out.

Regarding the attachment of partners’ rights, Art. R232-8(2) CCEP offers the debtor the possibility of obtaining release by depositing a sum sufficient to pay off the creditor.

Finally, Art. 512-1(2) CCEP allows the debtor to ask the court to replace any conservatory measure initially taken by the creditor with any other measure which is appropriate to safeguard the interests of the parties; moreover, Art. 512-1(3) CCEP allows the debtor to obtain the lifting of the measure upon the provision of an irrevocable bank guarantee for an amount equal to the claim.

Secondary or ancillary effects of enforceable titles. French law lays out several rules to persuade the debtor to fulfil his/her obligations and avoid compulsory enforcement, especially when the obligation results from an enforceable judgment.

Firstly, 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 judgment on the debtor (Cass. Civ. 2, 04.04.2002, No 00-19.822).

Secondly, Art. 2412 CC provides that any person who has obtained an enforceable judgment has the right to register a mortgage on the debtor’s immovable property, thus benefiting from privileged security in case of seizure and sale of the property.



Thirdly, Art. 524 and 1009-1 CCP provide that where the debtor has filed an appeal or a recourse in Cassation against an enforceable decision without having previously complied with its terms or provided a guarantee, the creditor may ask the court to strike the case out of the court's roll. The decision is taken after a hearing of the parties, and the striking-off is ordered unless enforcement is likely to lead to manifestly excessive consequences or the applicant is unable to comply with the decision. If the court grants the creditor's request, the case can be reinstated provided that the debtor complies with the terms of the decision or posts adequate security and that the proceedings have not lapsed in the meantime (see Art. 383(2) CCP) because "none of the parties takes any action for two years" (Art. 386 CCP).



5. Opposition to the enforcement and stay of the enforcement.

How to challenge the enforcement in a broad sense (for the debtor)

In general, which remedies are available under national law to the party against whom enforcement is sought? Which are the national grounds ⁽³⁾ for opposition to enforcement or refusal of enforcement? How does the debtor file such claim(s)? *Please note that under Art. 41 Reg. (EU) No 1215/2012 such grounds are applicable as long as they are not incompatible with the grounds referred to in Art. 45 of the same Reg. Also, according to European jurisprudence (Court of Justice, 4 July 1985, case C-220/84, AS-Autoteile Service GmbH vs. Mahl ), grounds for opposition to enforcement do not include “a set-off between the right whose enforcement is being sought and a claim over which the courts of that state would have no jurisdiction if it were raised independently”. How are these requirements interpreted in your jurisdiction?*

Which remedies are available to contest irregularities in the enforcement procedure? Is it possible for the parties to cure irregular acts?

Can the enforcement be stayed under national grounds for stay ⁽⁴⁾ and which is the court before which the request for a stay is to be filed?

General principles on opposition. 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. In the case of authentic instruments and court settlements, this jurisdiction also extends to challenges against the validity of the underlying title. 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.

³ “Examples may include”, according to the Opinion of Advocate General Pikam e in Case C-568/20, J v H Limited, §46, “challenges to the seizable nature of certain assets or sums of money, the quantum of the debt as a result of payments or set-off occurring after the judgment, irregularities that may affect the enforcement instruments, but also to the existence of the title itself due to the effects of a limitation period or to its enforceability”.

⁴ Please note that, unlike national grounds *for refusal*, there is no compatibility clause for national grounds *for stay*. It could be noted that a such clause has been adopted in other European legislative instruments, e.g. in the Reg. (EU) 2019/1111, which states, under Art. 57, that national grounds for suspension of enforcement, as well as national grounds for refusal of enforcement, “shall apply in so far as they are not incompatible with the application of Articles 41, 50 and 56”.



To the best of our knowledge, French courts have not yet ruled on the compatibility between national and European grounds for refusal of enforcement, nor to the extent of the international jurisdiction of French courts in these kinds of cases.

Main features of the procedure applicable before the enforcement judge. The procedural rules applicable before the enforcement judge are laid out in the French CCEP (see in particular Arts L121-1 ff and R121-1 ff CCEP). In general, the debtor has to raise claims for opposition to enforcement and procedural irregularities against an existing enforcement measure brought against him/her. Since enforcement is, in principle, extrajudicial, the debtor must raise the challenge by filing a lawsuit against the creditor before the enforcement judge. The procedure is adversarial, and the decision of the enforcement judge may be subject to appeal and recourse in Cassation under the ordinary rules. The decisions of the enforcement judge have the authority of *res judicata* with respect to the disputes they settle.

National grounds for stay. Noteworthy, oppositions to the enforcement or the enforcement procedure do not automatically stay or suspend the execution of the title. Nevertheless, specific rules applicable to each enforcement measure may have the effect of staying or suspending the enforcement procedure (see, e.g., Art. L211-5 CCEP – third-party debt order – and Art. R221-56 CCEP – seizure and sale of movable property). Furthermore, the enforcement judge also has the power to grant a delay (*délai de grâce*) 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.



6. Costs of the enforcement proceedings, liability of the creditor and deposit of a security.

Considering potential downsides (for the creditor)

Is there any liability of the creditor in cases of irregular execution, abuse of forced execution of claims or even for malicious or fraudulent enforcement proceedings?

Please describe the calculation of the costs of enforcement proceedings, their allocation and the rules governing such matters. Are there any court fees or other taxes applicable? Who bears the costs of the procedure in case of anticipatory termination of the enforcement proceedings?

Does the law of enforcement establish that the creditor must post a security in some cases? If so, under which conditions?

Creditor's liability. According to Art. L111-10 CCEP, creditors may carry out the enforcement against their debtors' assets (except the forced sale of immovable property) on the basis of a provisional title. Nevertheless, this provision also specifies that the enforcement is carried out "at the creditor's risk", which means that the creditor must restore the debtor's rights if the title is subsequently vacated or modified, and is also liable for any damages caused to the debtor because of the enforcement. According to French case law, this liability also extends to cases where the debtor has voluntarily complied with a provisionally enforceable decision after the creditor has served it on him, and the decision is later reversed by a higher court (see Cass. AP, 24.02.2006, 05-12.679, Bull AP 2006 No 2)

By way of exception, Art. L111-11 CCEP nevertheless provides that the enforcement of a judgment that is subject to recourse in cassation may only give rise to restitution and does not trigger the creditor's liability.

Costs. The costs of carrying out enforcement proceedings in France are outlined in the communication made by the French Government on the [e-Justice Portal](#)⁵. As of date, the declaration states the following:

"Judicial officers are paid for their services. The creditor pays the cost of compulsory enforcement measures, which the debtor must subsequently reimburse to him or her, in addition to the debt. However, the creditor still pays a portion of these costs.

The remuneration of judicial officers is governed by Decree No 2016-230 of 26 February 2016 and by an order of 26 February 2016 that establishes the sum due to them for each enforcement measure. This scale of charges primarily includes:

⁵ 'European e-Justice Portal | How to enforce a court decision' (cit n 1).



- for each measure, a fixed charge, which is a sum set at a fixed rate by the order; based on the amount of the claim, this fixed charge is multiplied by 0.5 (claim of no more than €128), by 1 (claim of between €128 and €1,280) or by 2 (claim of more than €1,280);
- a charge for initiating proceedings that may be levied only once per enforceable title; it is €4.29 when the claim is less than €76; above that, it is proportional to the amount of the claim, up to a limit of €268.13;
- a recovery and collection charge; this is a proportional sliding scale charge that the judicial officer charges only when he or she has recovered or collected all or part of the claim; in any case, part of this charge remains payable by the creditor (Article A. 444-32 of the Commercial Code (Code de commerce));
- case management fees; the judicial officer charges €6.42 per instalment paid by the debtor, with the exception of the balance of the debt on which he or she is not entitled to charge this sum; these fees may not exceed €33 for a single case;
- travel expenses of €7.68 (€8.80 in the event of notification exclusively by electronic means);
- VAT (20%);
- subject to certain exceptions, a flat-rate tax of €14.89 (as at 1 January 2017), that is paid to the State by judicial officers;
- postage costs for letters that constitute mandatory procedural formalities;
- locksmith, removals, garage and furniture storage costs (per invoice).

For example, for a recovered claim of €10,000, the minimum amount for some enforcement measures is as follows:

- preventive attachment of bank account: €129.64 incl. taxes (fixed charge, travel expenses and flat-rate tax)
- attachment or sale of movable property: €114.21 incl. taxes (fixed charge, travel expenses and flat-rate tax)
- attachment of vehicle by declaration at the prefecture: €124.50 incl. taxes (fixed charge, travel expenses and flat-rate tax)
- formal notice to pay entailing the attachment of immovable property: €178.55 incl. taxes (fixed charge, travel expenses and flat-rate tax).



In addition to these fixed charges, there are, in particular, proportional charges which, for the entire claim, amount to €707.52 incl. taxes, of which €118.46 is payable by the debtor and €589.06 by the creditor”.