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

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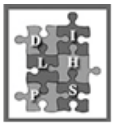

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National Policy Recommendations – France

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I. Introduction

A. The EFFORTS Project in Brief

The *National Policy Recommendations – France* (hereinafter, also referred to as the '**French Policy Recommendations**') are prepared within the context of *EFFORTS* (*Towards more EFfective enFORcemenT of claimS in civil and commercial matters within the EU*, hereby also referred to as the '**Project**'), a two-year comparative study conducted with the financial support of the Civil Justice Programme of the European Union (JUST-JCOO-AG-2019-881802) and focusing on the interplay between European and national procedural rules in the context of the cross-border enforcement of civil and commercial claims.

Over the last two years, an international Consortium comprising the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law and the Universities of Milan (Coord.), Heidelberg, Brussels VUB, Vilnius and Zagreb (hereby, also referred to collectively as the '**Project Partners**') has analysed the state of implementation and the concrete application of five European Regulations (BI bis, EEO, EOP, ESCP, and EAPO Regulations, collectively referred to as the '**EFFORTS Regulations**') in the national laws of seven European Member States (Belgium, Croatia, France, Germany, Italy, Lithuania, and Luxembourg), with a view to spreading awareness of the EFFORTS Regulations and contribute to the development of the existing legal framework governing cross-border enforcement.

During the first year of the Project (Nov 2020 – Oct 2021), the Project Partners conducted an in-depth study of the national provisions dealing with the implementation of the five EFFORTS Regulation within the national legal systems of the targeted Member States, analysed the national case law dealing with the cross-border enforcement of civil and commercial claims within the European Union, and organised a series of *National Exchange Seminars* promoting dialogue and exchange of experiences among professionals and experts of European procedural law. The results of these analyses have been collected in seven *Reports on National Implementing Rules* and *National Case-Law*, freely accessible on the Project's website (https://efforts.unimi.it/).

In the course of the Project's second year (Nov 2021 – Oct 2022), the Project Partners have been tasked with promoting good practices at a European level through the organisation of

ghan *International Exchange Seminar*, the drafting of a *Comparative Report*, and the conduct of a study on the *Digitalization of the Enforcement Procedures and Cross-Border Cooperation*. Additionally, the Project Partners have also been responsible for preparing a series of *National Practice Guides*, which provide a toolbox for professionals and economic operators dealing with the cross-border recovery of claims within the European Union, as well as for the elaboration of a set of *National Policy Recommendations* and *EU Policy Guidelines* containing proposals on how to improve the current national and European legal regime applicable to the circulation of civil and commercial titles within the European Union.

Against this background, the French Policy Recommendations draw upon the contents of previous deliverables elaborated during the Project – most notably, the *Report on the Collection of French Implementing Rules* and the *Report on French Case-Law* – in an attempt to formulate realistic suggestions on how to address the most challenging issues unearthed by the research and respond to some recurring concerns expressed by professionals and legal experts regarding the implementation of the EFFORTS Regulations in France.

B. Structure of the French Policy Recommendations

In order to achieve the Project's overarching goal of strengthening the effectiveness of European instruments governing the cross-border enforcement of claims in civil and commercial matters, the French Policy Recommendations adopt a comprehensive approach to tackling both the legal and institutional factors that might hinder the smooth application of the EFFORTS Regulations at the French national level.

To do so, the Guidelines follow four separate axes of recommendations aimed at addressing some of the core objectives underlying the development of European cross-border judicial cooperation in civil matters: (i) promoting legal certainty and predictability (to the benefit of creditors and debtors alike); (ii) ensuring consistency and fairness in transnational civil litigation through the correct implementation of European harmonised rules of civil procedure; (iii) enhancing the access to streamlined enforcement solutions allowing for the direct enforcement of claims across Member States; and (iv) spreading awareness amongst professionals and potential users regarding the benefits of these mechanisms, thus reinforcing the trust of European economic operators and contributing to the proper functioning of the internal market.

Accordingly, Part II will first put forward a series of reform options aimed at updating and clarifying the procedural framework applicable to the EFFORTS Regulsations with a view to fostering legal certainty and consistency at the national level. Secondly, Part III will articulate a set of recommendations aimed at unlocking the full potential of the European instruments on cross-border enforcement of titles by raising awareness and increasing their attractiveness in the eyes of French legal practitioners and economic operators. Finally, Part IV will provide an overview of the recommendations.

II. Refining the National Legal Framework Applicable to the EFFORTS Regulations

As the *Report on the Collection of French Implementing Rules* has shown, France has enacted at least some implementing provisions for each EFFORTS Regulation. Overall, the French Government acted promptly and efficiently and adopted the necessary provisions to ensure the applicability of the EFFORTS Regulations in the French legal system. Nonetheless, some adjustments to the current regime are still needed to address some gaps left open by European harmonisation (A) and reduce the inconsistencies that have emerged from the accumulation of legal reforms at both the European and national levels (B).

A. Filling the Gaps Left by European Harmonization

Even though the EFFORTS Regulations are directly applicable within the national legal systems of the Member States, the principle of procedural autonomy often requires the latter to determine how the objectives set by the European legislature should be achieved. In such cases, the presence of national implementing rules is needed to fill the gaps[1] left open by the European legislature.

[1] The term "gaps" is used here in its generic sense, to indicate any point which has not been exhaustively regulated by the European legislature and which therefore needs to be supplemented by national law.

The recommendations below are intended to address areas where specific guidance appears necessary to further the objectives of legal certainty and predictability in the application of European law.

1. Designating the Courts with Jurisdiction over Recognition and Enforcement Proceedings

Following the general abolition of exequatur among European Member States operated by the BI bis Regulation, Decree No 2014-1633 of 26 December 2014 amended Articles 509-1 ff of the Code of Civil Procedure in order to delete any reference to the simplified procedure applicable to the recognition and enforcement of foreign titles under the old Brussels I Regulation. Today, the only remaining provision dealing with the recognition and enforcement of incoming titles is Article L111-3 2° of the Code of Civil Enforcement Procedures, according to which: "Foreign authentic instruments and judgments as well as arbitration awards declared enforceable by a decision that is not subject to a suspensive appeal, without prejudice to the applicable provisions of European Union law".

This provision alone, however, does not explicitly clarifies the court competent to deal with applications for refusal of enforcement (and/or recognition, where applicable) brought under the EFFORTS Regulations. Some information is sometimes[2], but not always[3], available on the *e-Justice Portal*. Furthermore, French law does not provide any specific guidance regarding the coordination between applications for refusal of recognition and/or enforcement brought under European law and objections to enforcement based on domestic grounds.

It would therefore be useful to provide a clear jurisdictional basis specifying that applications for refusal of recognition and enforcement brought in the context of enforcement proceedings shall be brought before the enforcement judge, while applications for refusal of

[2] See, in particular 'European E-Justice Portal – Brussels I Regulation (Recast)' <https://e-justice.europa.eu/350/EN/brussels_i_regulation_recast>; 'European E-Justice Portal – Small Claims' <https://e-justice.europa.eu/42/EN/small_claims>. Interestingly, the information reported does not seem entirely consistent, as the answers provided by the Government seem to address slightly different scenarios.
[3] No information is provided regarding incoming titles under the EEO and EOP Regulations. See 'European E-Justice Portal – European Enforcement Order (France)' <https://e-justice.europa.eu/376/EN/european_enforcement_order?FRANCE&member=1>; 'European E-Justice Portal – European Payment Order' <https://e-justice.europa.eu/353/EN/european_payment_order>.

recognition brought by way of action and outside of any enforcement proceedings should be brought before the same court competent to rule on the exequatur of judgments of third States.

- Recommendation No 1:

Amend Article L213-6 of the Code of Judicial Organisation to clarify that jurisdiction to hear applications for refusal of enforcement under Article 47 BI bis and Article 21 EEO Reg. lies with the enforcement judge.

Proposed amendment:

> "Article L213-6:
>
> Le juge de l'exécution connaît, de manière exclusive, des difficultés relatives aux titres exécutoires et des contestations qui s'élèvent à l'occasion de l'exécution forcée, même si elles portent sur le fond du droit à moins qu'elles n'échappent à la compétence des juridictions de l'ordre judiciaire.
>
> Dans les mêmes conditions, il autorise les mesures conservatoires et connaît des contestations relatives à leur mise en œuvre.
>
> **[Le juge de l'exécution connaît, sous la même réserve, des demandes de refus de reconnaissance et d'exécution des titres étrangers exécutoires sur le territoire de la République en vertu des dispositions du droit de l'Union européenne applicables.]**
>
> **[II]** connaît, sous la même réserve, de la procédure de saisie immobilière, des contestations qui s'élèvent à l'occasion de celle-ci et des demandes nées de cette procédure ou s'y rapportant directement, même si elles portent sur le fond du droit ainsi que de la procédure de distribution qui en découle. (…)"

- Recommendation No 2:

Amend Article R212-8 of the Code of Judicial Organisation to clarify jurisdiction to hear applications seeking a declaration that there are no grounds for refusal of recognition based on Article 36 BI bis, and applications for refusal of recognition pursuant to Article 45 BI bis lies with the Combined Court sitting as a single judge.

Draft provision:

"Article R212-8:

Le tribunal judiciaire connaît à juge unique :

(…)

[2° bis Des demandes en constatation d'absence de motifs de refus de reconnaissance et des demandes de refus de reconnaissance introduites conformément aux articles 36, paragraphe 2, et 45 du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale, lorsqu'elles sont introduites à titre principal avant l'engagement d'une mesure d'exécution forcée sur le territoire de la République.]

(…)"

2. Clarifying the Remedies Available Against Wrongly Issued Certificates (EEO and BI bis Regulations)

In France, Chapter II of Title XV of the first Book of the Code of Civil Procedure (Articles 509-1 ff), dedicated to cross-border recognition, governs the certification of French enforceable titles with a view to their recognition and enforcement in another EU Member State. These provisions apply, in particular, to the certification of domestic titles falling under the EEO and BI bis Regulations. While these provisions set out a general framework for the certification process, they fail to provide any guidance with respect to the remedies available against wrongly issued certificates. This absence can be particularly unfortunate for the parties, as the content of the certificate delivered by the French authorities cannot always be challenged in the Member State of enforcement. Therefore, legislative intervention in this area seems particularly appropriate to strengthen the legal certainty of parties involved in cross-border disputes.

In this respect, Article 10(2) EEO Reg. explicitly provides that "The law of the Member State of origin shall apply to the rectification or withdrawal of the European Enforcement Order certificate". However, the French Code of Civil Procedure does not contain any rule addressing this procedure. This situation has already given rise to some litigation. In a

judgment issued on 25 June 2015, the *Cour de cassation*[4] ruled that applications for refusal or withdrawal should be brought before the same authority who issued the initial certificate[5].

However, this solution does not solve all the difficulties related to this kind of application. Firstly, it is unclear whether applications for rectification or withdrawal should be governed by reference to the rules applicable to the issuance of the initial certificate or by analogy to the rules applicable to the rectification of judgments in general. Secondly, it is not clear how this solution would apply in cases where the certificate concerns an extrajudicial title, such as an authentic instrument falling under the EEO Regulation. Thirdly, no guidance is provided regarding the relationship between applications for rectification or withdrawal under Article 10 EEO Reg. and applications for the issuance of certificates indicating the lack or limitation of enforceability (Article 6(2) EEO Reg.) and applications for the issuance of a replacement certificate following a challenge to a judgment already certified as an EEO (Article 6(3) EEO Reg.). For all these reasons, it would be helpful to create a new provision explicitly addressing these issues in the Code of Civil Procedure.

Similar questions also arise regarding the remedies available against certificates wrongly issued under Articles 53 and 60 of the BI bis Regulation. Currently, the BI bis Regulation is silent as to what remedies might be available against such certificates in the Member State of origin. In this context, legal scholars have questioned whether the absence of any explicit provision to this effect should be interpreted as precluding the right to seek rectification or withdrawal of certificates issued under the BI bis Regulation or whether a specific remedy should be provided by national law[6]. In favour of the latter solution, some authors[7] have argued that an appeal against wrongly issued certificates might be necessary in light of the case law of the CJEU, which has highlighted the 'judicial nature' of certification and emphasised the issuing authority's duty to verify that the requirements set out in the

[4] Cour de cassation, Civ. 2, 25.06.2015, No 14-18.270.
[5] At that time, the chief clerk of the court of first instance that issued the decision. Today, Article 509-1 of the Code of Civil Procedure confers this authority upon the judge who issued the decision or approved the court settlement.
[6] See in particular 'National Report: France' Project BI A RE (JUST/2014/JCOO/AG/CIVI/7749) <https://www.pf.um.si/site/assets/files/3539/national_report_france.pdf>.
[7] J.-S. Quéguiner, 'Chronique de droit international privé de l'Union européenne'; *JDI (Clunet)* (2020), chron 10, p 1542; *contra* V. Richard, 'L'office du juge certifiant une décision rendue en droit de la consommation', *RCDIP* (2020), p 149, No 8.

Regulation are fulfilled[8]. This interpretation also prevailed in Germany, where § 1111(2) ZPO provides a remedy against wrongfully issued certificates under the same conditions applicable to challenges brought against enforcement formulas issued under domestic law.

In our view, a possible way to address this issue would be to extend the same rules governing the rectification and withdrawal of EEO certificates to certificates issued under BI bis. This approach would foster legal certainty and predictability while promoting consistency across different EEFORTS Regulations.

- Recommendation No 3:

Create a new Article 509-7-1 of the Code of Civil Procedure to clarify the procedure applicable to requests for rectification or withdrawal of erroneously granted certificates under Article 10(2) EEO Reg.

The same procedure could also be made available to interested parties who intend to apply for rectification or withdrawal of erroneously granted certificates issued pursuant to Articles 509-1 ff of the Code of Civil Procedure (including certificates issued under Articles 53 and 60 BI bis).

Draft provision:

"**[Article 509-7-1:**

Les demandes aux fins de rectification d'erreur matérielle ou de retrait d'un certificat [OPTION A : ***introduites en application de l'article 10 du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées*****] [OPTION B :** ***délivré conformément aux articles 509-1 et 509-***

[8] CJEU, 28.02.2019, C-579/17, Case C-579/17, *BUAK Bauarbeiter-Urlaubs - u Abfertigungskasse v Gradbeništvo Korana doo*, EU:C:2019:162. On the limits of this decision, see Case C-347/18, *A Salvoni v A M Fiermonte*, EU:C:2019:661 (holding that the authority issuing the certificate may not "ascertain of its own motion whether there has been a breach of the rules set out in Chapter II, Section 4 of that regulation, so that it may inform the consumer of any breach that is established and enable him to assess, in full knowledge of the facts, the possibility of availing himself of the remedy provided for in Article 45 of that regulation").

3], ainsi que les demandes introduites aux fins de la délivrance d'un des certificats prévus à l'article 6(2) et (3) du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées sont présentées à l'autorité ayant délivré le certificat initial.

Lorsque la demande concerne un certificat délivré en application de l'article 509-1, elle est introduite par requête adressée par toute partie intéressée dans les conditions fixées à l'article 509-4, ou par requête commune.

Lorsqu'elles doivent être présentées devant un juge, les requêtes sont dispensées du ministère d'avocat. La décision est prise en dernier ressort et sans audience, à moins que le juge n'estime nécessaire d'entendre les parties. La décision rectificative ou de retrait est mentionnée sur le double du certificat conservé au greffe conformément à l'article 509-6.

Lorsque la demande concerne un certificat délivré en application de l'article 509-3, l'autorité compétente y fait droit après avoir procédé aux vérifications nécessaires. La décision rectificative ou de retrait est mentionnée sur la minute du certificat ayant donné lieu à la rectification ou au retrait. Le refus de faire droit à la demande peut faire l'objet d'un recours dans les conditions prévues à l'article 509-7.]"

3. Supplementing "Uniform" European Procedures

Contrary to the BI bis and EEO Regulations, which both facilitate the circulation of domestic enforcement titles issued under national procedural rules, the EPO, ESCP, and EAPO Regulations contain a set of harmonised provisions governing the filing, examination, and issuance of truly European titles which can be directly enforced in all European Member States (except Denmark). Despite their uniform nature, however, these instruments still rely on domestic procedural rules in order to function correctly.

Indeed, Member States retain considerable leeway on a number of important matters ranging from the designation of the authorities competent to hear applications brought under these European instruments to the definition of the regime applicable to the enforcement of titles coming from another Member State. Similarly, issues such as service of documents and the available remedies remain largely governed by national law, within the limits of minimum

standards set out by the European legislature[9]. Therefore, national implementing rules still play a decisive role in ensuring the smooth application of these instruments in each Member State[10].

Against this backdrop, the French authorities seem to have followed two very different approaches. On the one hand, the entry into force of the EPO and ESCP Regulations was accompanied by the enactment of two dedicated chapters into the Code of Civil Procedure[11] that helped provide a clear and stable framework for their application in the French legal system. On the other hand, the entry into force of the EAPO Regulation was not met with the adoption of a complete set of implementation rules into French domestic law. Rather, the French legislature only dealt with the procedure allowing the creditor to obtain account information pursuant to Article 14 EAPO Reg.[12]

Apart from this provision, there has been no national legislative implementation, most likely because the EAPO procedure is seen as relatively similar to the equivalent national provisional measure: the *saisie conservatoire*. Nevertheless, the absence of explicit provisions implementing EAPO in the French legal system raises several concerns. First, relying almost exclusively on an application by analogy of national provisions designed to govern a domestic proceeding may lead to divergent applications by French courts, thereby undermining the general objective of legal certainty and predictability. Second, the lack of specific guidance on the operation of the Regulation may discourage its application and thus reduce its success with French legal practitioners. Thirdly, further difficulties may arise in identifying the

[9] On these issues, see M. Buzzoni and V. Van Den Eeckhout, 'Collection of French Implementing Rules' EFFORTS Collection of national implementing rules <https://efforts.unimi.it/wp-content/uploads/sites/8/2021/07/D2.4-Collection-of-French-implementing-rules.pdf>.

[10] On the importance of national implementing legislation, see eg K. Van der Borght and others, 'Collection of Belgian Implementing Rules' EFFORTS Collection of national implementing rules <https://efforts.unimi.it/wp-content/uploads/sites/8/2021/06/Collection-of-Belgian-implementing-rules.pdf>; F. C. Villata and others, 'Collection of Italian Implementation Rules' EFFORTS Collection of national implementing rules <https://efforts.unimi.it/wp-content/uploads/sites/8/2021/07/D2.2-Collection-of-Italian-implementing-rules-1.pdf>, both pointing to the lack of national implementing rules as a major obstacle to the implementation of the EFFORTS Regulations in Belgium and Italy, respectively.

[11] See arts 1424-1 to 1424-15 of the Code of Civil Procedure (EPO Regulation) and arts 1382 to 1391 of the Code of Civil Procedure (ESCP Regulation).

[12] In this respect, see art 15 of the Law No 2019-222 of 23 March 2019, amending art L151 A of the French Tax Procedures Book to expand the powers of the French bailiffs to obtain relevant data about the debtor's account information.

relevant national rules whenever the Regulation itself refers to national law to resolve a specific issue.

For all these reasons, it could be helpful to add a new chapter in the Code of Civil Enforcement Procedures addressing the implementation of the EAPO Regulation into French procedural law. The chapter should be divided into two parts: the first part should deal with the aspects related to the issuance of EAPOs by French domestic courts; the second should address aspects related to the enforcement of EAPOs, irrespective of whether they have been issued in France or another Member State. In our view, this chapter should at least clarify the authorities competent to issue an EAPO, decide on appeals against decisions rejecting an EAPO, and hear the debtors' challenges against the EAPO. Additionally, the chapter could also address issues that do not easily translate into the rules applicable to domestic attachments, such as the rules governing the security to be provided by the creditor when applying for an EAPO (Article 12 EAPO Reg.) or the means of communications between French and foreign authorities (Article 29 EAPO Reg.).

- Recommendation No 4:

Add a dedicated chapter in the Code of Civil Enforcement Procedures addressing the implementation of the EAPO Regulation into French procedural law. The Section should be divided into two parts: the first part should deal with the aspects related to the issuance of EAPOs by French domestic courts; the second part should address aspects related to the enforcement of EAPOs, irrespective of whether they have been issued in France or another Member State.

B. Fostering Consistency at the National Level

Adopted over the span of the last two decades, the provisions of EFFORTS Regulations have already been the subject of several reforms by the European legislature. They have also given rise to a significant number of preliminary rulings by the CJEU, some of which have substantially impacted the scope of application and the functioning of these Regulations. From the perspective of the French legal system, these developments have been met with a series of fast-pacing reforms in the area of European civil procedure (to name just one

example, Article 509-1 of the Code of Civil Procedure has already been amended nine times since it was first enacted by the Decree No 2004-836 of 20 August 2004).

Even though these updates were often required to keep up with the changes introduced at a European level, they sometimes seem to have followed a piecemeal legislative approach rather than being the result of a comprehensive assessment of the effects that partial modifications might have on the overall system of cross-border civil enforcement. Over time, the layering of successive amendments has led to some inconsistencies concerning the national implementation rules applicable to the different EFFORTS Regulations and raised doubts about their interaction with other areas of European harmonisation, such as consumer law.

Taking a step back, this second straw of recommendations strives to achieve more coherent solutions that might help reduce regulatory arbitrage and restore fairness between the parties.

1. Aligning the Rules Applicable to the Certification of Outgoing Titles (BI bis and EEO Regulations)

Articles 509-1 ff of the Code of Civil Procedure entrust the certification of titles covered by the BI bis Regulation to different authorities than the ones competent under the EEO Regulation. However, these differences seem to result from an accumulation of successive amendments rather than objective differences in these European instruments.

As far as judicial titles are concerned, Article 509-1 of the Code of Civil Procedure provides that certificates issued in accordance with Article 53 BI bis must be issued by the chief clerk, whereas EEO certificates must be issued by the same judge who issued the underlying decision. This difference stems from an amendment introduced in 2017[13] in response to the CJEU's decision in *Imtech Marine*[14], where the court held that the certification of titles under the EEO Regulation was a 'judicial act' rather than a mere administrative task. Following this decision, the Government modified Article 509-1 in order to grant the authority to hear applications for the issuance of EEO certificates to the same judge who rendered the

[13] See the Decree No 2017-892 of 6 May 2017.
[14] Case C-300/14, *Imtech Marine Belgium NV v Radio Hellenic SA*, EU:C:2015:825, para 46.

underlying decision[15]. Two years later, however, the CJEU similarly held that the issuance of a certificate under the BI bis Regulation had a 'judicial nature'[16] and that the competent authority of the State of origin had a duty to check the applicability of the BI bis before issuing the certificate[17]. In our view, the certification of judicial titles under the BI bis Regulation should therefore be subject to the same rules that apply to EEO certificates.

Regarding authentic instruments, Article 509-3 of the Code of Civil Procedure sets up a more cumbersome procedure for issuing certificates under Article 60 BI bis compared to EEO certificates[18]. In fact, this provision confers the power to issue certificates under the BI bis Regulation to the President of the Chamber of Notaries, while it allows EEO certificates to be issued directly by the notary who drafted the authentic instrument. This distinction, however, does not seem to rest on any objective justification, especially if one considers that an authentic instrument may very often concurrently fall within the scope of application of each Regulation, and that the grounds for refusal of enforcement under the EEO Regulation are more restrictive than the ones provided for in the BI bis Regulation. In our view, the conditions for certification of authentic instruments under Article 60 BI bis could be aligned with the rules governing the EEO Regulation.

Taken together, these discrepancies seem to lead to some incoherent results: on the one hand, Article 509-1 lays out more stringent requirements for the certification of judgments under the BI bis Regulation than under the EEO Regulation. On the other hand, Article 509-3 makes obtaining an EEO certificate with respect to an authentic instrument harder than seeking the certification according to Article 60 BI bis. In our view, these differences should be avoided as they distort the parties' incentives and do not find any legal basis in European law.

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[15] This amendment also had the additional spillover effect of excluding EEO certificates from the scope of art 509-7 of the Code of Civil Procedure, which provides a remedy against the refusal to issue certificates only insofar as the refusal does not come from a judge.
[16] See CJEU, 28.02.2019, C-579/17, *BUAK*, and 04.09.2019, C-347/18, *Alessandro Salvoni*.
[17] CJEU, 28.02.2019, C-579/17, *BUAK*.
[18] See Buzzoni and Van Den Eeckhout (cit n 9), pp 20–22.

- Recommendation No 5:

Amend Article 509-1 of the Code of Civil Procedure so as to allow applications for the certification of titles under Article 53 BI bis to be filed before the same judge that issued the decision. Additionally, amend Article 509-7 of the Code of Civil Procedure provide a remedy against refusals of certificates issued by a judge.

Draft provisions:

"Article 509-1:

I. - Sont présentées au directeur de greffe de la juridiction qui a rendu la décision, homologué la convention ou visé le mandat de protection future :

1° Les requêtes aux fins de certification des titres exécutoires français en vue de leur reconnaissance et de leur exécution à l'étranger en application :

(…)

~~**[- du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ;]**~~

(…)

II. - Sont présentées au juge qui a rendu la décision ou homologué la convention :

1° Les requêtes aux fins de certification des titres exécutoires français en vue de leur reconnaissance et exécution à l'étranger en application :

(…)

- du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées ;

[- du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ;]

(…)"

"Article 509-7:

(…)

S'il n'émane du juge, le refus de délivrance du certificat peut être déféré au président du tribunal judiciaire. Ce dernier statue en dernier ressort sur requête, le requérant et l'autorité requise entendus ou appelés.

[S'il émane du juge, le refus de délivrance du certificat peut faire l'objet d'un appel dans les conditions prévues à l'article 496.]

- Recommendation No 6:

Amend Article 509-3 of the Code of Civil Procedure so as to grant the authority to issue certificates under Article 60 BI bis to the same notary who drafted the authentic instrument rather than to the President of the Chamber of Notaries.

"Article 509-3:

Par dérogation aux articles 509-1 et 509-2, sont présentées au président de la chambre des notaires ou, en cas d'absence ou d'empêchement, à son suppléant désigné parmi les membres de la chambre les requêtes aux fins de certification, de reconnaissance ou de constatation de la force exécutoire, sur le territoire de la République, des actes authentiques notariés étrangers en application :

(…)

~~**[- du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ;]**~~

Par dérogation à l'article 509-1 sont présentées au notaire ou à la personne morale titulaire de l'office notarial conservant la minute de l'acte reçu les requêtes aux fins de certification des actes authentiques notariés en vue de leur acceptation et de leur exécution à l'étranger en application :

- du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées ;

[- du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ;]

(…)"

2. Taking Stock of the Specificities of Consumers' Rights

Sometimes, the EFFORTS Regulations' overarching objective to provide creditors with swift and effective tools for the cross-border recovery of debts across the Member States may come into tension with the values enshrined in other instruments of EU law. This phenomenon manifested itself recently with respect to the protection afforded to consumers by Directive No 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

On the one hand, Articles 6 and 7 of this Directive provide that unfair terms used in a contract concluded with a consumer by a seller or supplier should not be binding on consumers and that the Member States should provide adequate and effective means to prevent the continued use of unfair terms in consumer contracts. On the other hand, the BI bis, EEO, and EPO Regulations allow creditors to pursue the direct enforcement of titles in another Member State based on default judgment and authentic instruments. As such, these instruments may lead to the certification of titles against consumer defendants without any prior adversarial debate on the possible presence of unfair terms in their contracts, which may then become enforceable across the EU[19].

In *Bondora*[20], the CJEU struck a balance between these conflicting interests by holding that when a court is seized in EPO proceedings in a dispute concerning a consumer contract, it has the power to ask the creditor for additional information on the terms of the contract relied upon, in order to carry out an *ex officio* review of the possible unfairness of those terms. Similarly, the Court also held that national courts seized within the context of domestic order for payment procedures must have the power to ask for the communication of all the elements required in order to carry out such verification before issuing an *ex parte* order[21]. Furthermore, in a series of judgments handed down on 17 May 2022, the Grand Chamber of the Court held, *inter alia*, that if a domestic order for payment issued without explicitly addressing the issue of unfair terms is subsequently declared enforceable due to the absence

[19] This result is especially problematic in the case of EEO and EPO certificates, given that the authorities of the Member State of enforcement cannot refuse the enforcement of these titles on public policy grounds.
[20] CJEU, joined cases C-453/18 and C-494/18, *Bondora AS,* EU:C:2019:1118, paras 47 et seq.
[21] See CJEU, Case C-618/10, *Banco Español de Credito*, ECLI:EU:C:2012:349, and Case C-176/17, *Profi Credit Polska*, ECLI:EU:C:2018:711.

of opposition, the unfairness of the terms may still be raised at the enforcement stage, either at the consumer's request or by a court ruling on opposition to enforcement[22].

In France, Articles 1424-1 ff of the Code of Civil Procedure, implementing the EPO into national law, remain silent on consumer protection issues but do not prevent French courts from following the CJEU's interpretation in *Bondora*. On the other hand, Article 1407 of the Code of Civil Procedure, applicable to domestic orders for payment, already explicitly provides that creditors must submit all the documentation supporting their claim together with the initial application. Hence, the current state of French law is not incompatible with the requirements stemming from Directive No 93/13/EEC.

Nonetheless, it is already possible to anticipate some major difficulties that are likely to arise in the future in connection with the recent rulings of the Grand Chamber of the CJEU, given that no provision currently requires French courts to adopt an explicit determination on the presence of unfair terms before issuing a (European or domestic) order for payment. Indeed, it is perfectly reasonable to think that consumers who did not timely oppose an order for payment before it became enforceable might then try to raise this argument before the enforcement judge. However, the admissibility of such objections might conflict with the principle of *res judicata* as well as the limits imposed on the jurisdiction of the enforcement judge in the French legal system.

In order to avoid these difficulties, it would therefore be preferable to include an explicit provision requiring courts confronted with applications for orders for payment to explicitly address the question of unfair terms. In domestic order for payment procedures, a specific mention could even be included in the initial order for payment. In European order for payment procedures (where the order itself is issued through a standard form), it might be helpful to codify the CJEU's interpretation in *Bondora* and explicitly require judges to address the presence of unfair terms before issuing an EPO based on a consumer agreement.

[22] See CJEU, joined cases C-693/19 and C-831/19, *SPV Project 1503 Srl* and *Banco di Desio e della Brianza SpA*, ECLI:EU:C:2022:395, and Case C-725/19, *Impuls Leasing România*, ECLI:EU:C:2022:396.

- Recommendation No 7:

Amend Articles 1409 and 1424-3 of the Code of Civil Procedure to better align these provisions with the CJEU's interpretation of the protection laid out in Articles 6 and 7 of Directive No 93/13/EEC.

Draft provisions:

"Article 1409:

Si, au vu des documents produits, la demande lui paraît fondée en tout ou partie, le juge rend une ordonnance portant injonction de payer pour la somme qu'il retient. **[Lorsque la demande porte sur une obligation contractée par un consommateur dans un contrat conclu avec un professionnel, l'ordonnance constate que la créance n'est pas fondée sur une clause abusive ;]**

(…)"

"Article 1424-3:

Le juge peut délivrer une injonction de payer européenne pour partie de la demande, après que le demandeur a accepté la proposition en ce sens qu'il lui a faite. Dans ce cas, le demandeur ne peut plus agir en justice pour réclamer le reliquat, sauf à ne pas signifier l'ordonnance et à procéder selon les voies de droit commun.

[Lorsque la demande porte sur une obligation contractée par un consommateur dans un contrat conclu avec un professionnel, le juge ne peut délivrer une injonction de payer européenne qu'après avoir vérifié que la créance n'est pas fondée sur une clause abusive.]"

III. Unlocking the Full Potential of the EFFORTS Regulations

Beyond the presence of formal implementing rules in national legislation, the effectiveness of EFFORTS Regulations also largely depends on the availability of practical and accessible tools capable of maximising their impact to the benefit of legal practitioners and economic operators. The recommendations below are therefore designed to address some of the institutional barriers that may hinder the effectiveness of EFFORTS regulations (A) and further encourage initiatives promoting awareness of European law among the relevant stakeholders (B).

A. Enhancing the Efficiency of the EU Instruments in France

In order to take full advantage of the streamlined cross-border enforcement mechanisms provided by the EFFORTS Regulations, future national civil procedure reforms should consider the impact that changes in the domestic legal framework may have on the application of European instruments of civil procedure. Conversely, since cases covered by the EFFORTS Regulations almost invariably involve parties from different Member States, existing tools of national civil procedure should sometimes be adapted to meet the specific needs of cross-border civil litigation.

1. Making EU Instruments Benefit From the Broader Trend Towards Digitalisation

In recent years, the French Government has promoted several reforms aimed at modernising the field of civil procedure and increasing the level of digitalisation of French civil justice[23]. In particular, Law No 2019-222 of 23 March 2019 and subsequent implementing decrees had envisioned the development of a single national jurisdiction for domestic and European orders for payment which would be seized in a dematerialised manner[24], as well as the implementation of a governmental platform called '*Portail du justiciable*'[25] allowing the parties

[23] For an overview, see recently C. Bléry, 'Réflexions sur les modalités de déploiement des projets numériques de la justice civile', *RJA* (2021), p 56.
[24] See art L211-17 of the Code of Judicial Organisaton, now abrogated.
[25] See art 748-8 of the Code of Civil Procedure.

to access information about their proceedings, consult the notices, summonses and receipts issued by the clerk's office, and to file electronic applications for specific proceedings where the parties do not need to be represented by a lawyer, including small claims proceedings of under 5 000 euros in value[26].

Obviously, such reforms had the potential to create a considerable impact on the application of the EFFORTS Regulations in France. Nevertheless, these reforms were either completely abandoned or significantly scaled down in their ambitions in the wake of the COVID-19 pandemic.

Yet, the digitalisation of civil procedure remains one of the priorities of the European Union for the next years. On 30 May 2022, the European legislature enacted Regulation 2022/850 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), whose objective is to establish an EU-wide IT system for the cross-border electronic exchange of case-related data between European authorities and citizens.

Therefore, ongoing efforts toward the digitalisation of French civil procedure should take into account the effects that future reforms may have on the accessibility and effectiveness of the European Regulations on cross-border recovery of civil and commercial claims within the European Union. For instance, any e-filing solution based on an online platform accessible through a password identification system should be designed to be equally accessible to foreign-based parties and practitioners, rather than being limited to domestic actors[27]. Similarly, the progressive dematerialisation of specific procedures should not overlook the advantages that digitalisation is likely to bring in terms of time and costs for the application of the procedures covered in the EFFORTS Regulations, which often involve parties established abroad. By way of example, it would be particularly helpful if the digitalisation of small claims procedures foreseen through the *Portail du justiciable* also allowed

[26] See 'Procédure dématérialisée pour les petits litiges' (*justice.gouv.fr*) <http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/procedure-dematerialisee-pour-les-petits-litiges-33579.html>.

[27] Unfortunately, this template does not seem to have been followed during the development of the first remote communication tools between French courts, legal professionals and litigants, such as the *Réseau privé virtuel des avocats (RPVA)* and the Digital Court set up by the *Conseil national des greffiers des tribunaux de commerce*.

to file electronic applications under the ESCP Regulation, as already encouraged by Article 13 ESCP Reg.

In our view, this "European by design" approach would not only allow European instruments to benefit from the general trend towards digitisation of civil procedure, but would also better prepare the French legal system to implement the changes to come under the impulse of the European Commission in the framework of the e-CODEX Project.

- Recommendation No 8:

Follow a "European by design" approach to future reforms in the field of civil procedure, especially with regard to the ongoing developments of the e-CODEX Project. In particular, the French Government should prioritise deployment methods that allow actors established in other Member States to access future French digital civil justice instruments.

2. Meeting the Needs of Cross-Border Civil Litigation

Contrary to the approach taken by other European countries, such as Germany, France has decided to entrust the power to decide disputes covered by the EFFORTS Regulations to the courts with ordinary jurisdiction to resolve domestic disputes. After being briefly abandoned by Law No 222-2019 of 23 March 2019, this solution was finally reaffirmed by the decision to abandon the proposal for a unified national jurisdiction for payment orders.

Yet, the specificities of European litigation could in our opinion justify the use of a certain concentration and specialisation of the courts with jurisdiction to resolve this type of disputes. Indeed, these procedures often present a high level of technicality and systematically require a very good knowledge of European Union law. In addition, the recurrent presence of parties established abroad who do not necessarily have a perfect command of the French language could justify specific derogations from the rule that requires the use of French as the language of proceedings (all the more so when these proceedings are based on the use of standardised forms accessible in all EU languages).

Without going as far as setting up special courts with exclusive jurisdiction over disputes falling under the scope of the EFFORTS Regulations, a possible approach in this regard

could be to concentrate litigation involving the application of the European instruments of cross-border civil procedures before a specialised chamber within an existing court or tribunal. Here, a possible template could be provided by the existing International Chamber of the Paris Commercial Court and International Chamber of the Paris Court of Appeal, where the parties are allowed to use English in the debates and submit documentary and oral evidence in English under the judge's supervision. This approach could prove to be especially fruitful concerning the application of the EPO, ESCP, and EAPO Regulations, because it would foster the development of uniform practices with regard to harmonised European procedures.

- Recommendation No 9:

Promote specialisation and concentration of jurisdiction over disputes falling under the EFFORTS Regulations (especially with regard to the harmonised European procedures established by the EPO, ESCP, and EAPO Regulations) by setting-up specialised chambers within an existing court or tribunal in order to develop uniform practices, improve the level of expertise, and promote a more flexible approach to the rules governing the proceedings.

B. Spreading Awareness of European Procedural Law

This last set of recommendations acknowledges the importance of legal communication and training in the development of European civil procedure, both at the European and national levels. Indeed, spreading awareness of the EFFORTS Regulations is key to building confidence among the relevant stakeholders and thus encouraging the use of the European instruments of cross-border civil procedure.

1. Updating and Expanding the *E-Justice Portal*

According to the website *e-justice.europa.eu*, the European *e-Justice Portal* should in time become an "electronic one-stop shop in the area of justice"[28]. The Portal is therefore conceived as a

[28] 'European E-Justice Portal' <https://e-justice.europa.eu/home?action=home&plang=en>.

critical source of information for European citizens and practitioners, as it is designed to provide data on the implementation of European law in the national legal orders in all official languages of the Union. In particular, information on the EFFORTS Regulations is published in the Section entitled '*European Judicial Atlas in civil matters*'[29], which collects all the communications made by the Member States to the Commission under the main European instruments of judicial cooperation in civil and commercial matters. Additional information may also be found in the Section dedicated to '*Money/monetary claims*'[30], which collects several Chapters titled '*European payment order*', '*Small claims*', and '*Securing assets during a claim in EU countries*', among others.

Overall, the French authorities, starting from the national contact point for the European Judicial Network in civil and commercial matters, have done a remarkable job in providing a general overview of the rules governing the application of the EFFORTS Regulations in France and keeping the information updated. Indeed, all the pages of the *European Judicial Atlas in civil matters* dedicated to the five EFFORTS Regulations have been updated and translated into English between 2021 and 2022. Some minor adjustments could nevertheless be introduced in order to provide even better guidance to citizens and practitioners who might seek the application of these Regulations in France.

Firstly, the amount of information and the level of detail available on the *e-Justice Portal* could sometimes be improved. Indeed, the degree of specificity of the data published on the website varies considerably from one Regulation to another. On the one hand, the pages dedicated to the EAPO and BI bis Regulations contain a fair amount of detail and provide valuable and practical information on the functioning of these Regulations in France. On the other hand, the pages dedicated to the EPO and EEO Regulations remain at such a high degree of generality that they seem insufficient to provide meaningful help to their readers. By way of example, the communication made by the French Government regarding the review procedure referred to in Art 19(1) EEO Reg. merely states: "The review procedure referred to in Article 19 is the ordinary procedure applicable to decisions taken by the court that issued the original enforcement order"[31]. In our view, this information is clearly

[29] 'European E-Justice Portal – European Judicial Atlas in Civil Matters' <https://e-justice.europa.eu/321/EN/european_judicial_atlas_in_civil_matters>.
[30] 'European E-Justice Portal – Money/Monetary Claims' <https://e-justice.europa.eu/509/EN/moneymonetary_claims>.
[31] 'European E-Justice Portal – European Enforcement Order (France)' (cit n 3).

inadequate to guide prospective users (especially users established in another Member State), as it does not allow to identify the relevant provisions of national law that may apply in such cases.

Secondly, the information published on the *e-Justice Portal* concerning the different Regulations seems sometimes to be inaccurate, or at least to lack sufficient detail and nuance. For instance, the information reported regarding the means of communications available under the EPO Regulation merely states, "Applications for European orders for payment may be submitted to the relevant court by post or electronically". In practice, however, only commercial courts seem to provide for a real possibility to initiate EPO proceedings by filing electronic applications. Furthermore, this possibility seems to be limited to plaintiffs represented by a French lawyer with access to the private professional system of electronic communications (*RPVA*). On the other hand, the information reported regarding the ESCP states that: "A request for institution of legal proceedings can be submitted to the court by post. Parties to a proceeding commenced under Regulation (EC) No 861/2007 establishing a European Small Claims Procedure can communicate with the courts by post". However, Articles 748-1 ff of the Code of Civil Procedure provide that communications between the court and the parties, with the exception of the commencement of legal proceedings or an initial request, may be made by electronic means, provided that the recipient has given his consent or is represented by a French lawyer with access to the *RPVA*. Given the practical importance that the availability of electronic means of communication might have in the context of the EPO and ESCP regulations, which are written proceedings that often involve parties from abroad, it would be useful to be more specific about the current state of practice on these issues.

Thirdly, very few information is provided regarding the available languages. Indeed, the French Government did not provide any information regarding the BI bis Regulation, and has only communicated information regarding incoming certificates of enforceability under the EEO, EPO, and ESCP Regulations. Given the additional delay and costs that could arise from translation issues, it would be very helpful to provide additional guidance to creditors in this regard.

Finally, it would also be useful to improve the consistency of the information provided in different sections of the *e-Justice Portal*. Currently, the communications made by the French Government about the EFFORTS Regulations and reported in the '*European Judicial Atlas in civil matters*' do not always coincide with the summary sheets published under the tab

dedicated to '*Money/monetary claims*'. In the latter, the Chapters dedicated to the '*European payment order*' and '*Small Claims*' only tackle French domestic procedures, rather than providing some details on the specific provisions that have been adopted in order to implement the EPO and ESCP Regulations into the French legal system. However, this approach is likely to create some confusion in the minds of potential users, as it could give the impression that France has not adopted specific legislation to deal with uniform European procedures, so that the latter should be governed by the same provisions applicable to domestic disputes. In our opinion, it would be more useful to indicate from the outset the different avenues available to creditors who wish to pursue the cross-border recovery of their pecuniary claims within the European Union, specifying that they can either take advantage of the national procedures for orders for payment and the settlement of small claims (coupled, where appropriate, with their certification under the BI bis or the EEO Regulation), or avail themselves of the EPO and ESCP Regulations which have been implemented in France by a set of specific provisions.

- Recommendation No 10:

Develop the information published on the *e-Justice Portal* by following a three-prong approach: (i) further enrich the pages related to the so-called 'second generation' Regulations, in particular the EEO and EPO Regulations, with a view to providing more practical tools to foreign practitioners; (ii) review the information regarding the availability of digital means of communications and available languages, which might be particularly important in a cross-border setting; (iii) ensure better consistency and coordination across different Sections of the *e-Justice Portal*, thus providing better guidance to prospective users of the EFFORTS Regulations.

2. Continue Developing National Channels of Communication

In addition to the information published on the *e-Justice Portal*, judicial training and public awareness campaigns at the national level can play a key role in the success of the EFFORTS Regulations. In this regard, the Department of Mutual Assistance, Private International and European Law at the French Ministry of Justice has been particularly active in providing legal

information and training in the area of European civil procedure[32]. In recent years, the Department has carried out several initiatives to reinforce the visibility of the tools of judicial cooperation and European law (such as the dissemination of newsletters[33], the publishing of a dedicated new Section on the *Portail du justiciable*[34], and the production of a series of podcasts on the application of European procedures in civil and commercial matters[35]); and to encourage the exchange of good practices between practitioners (through training seminars for judges and other legal professionals active in the field of European private international law). Furthermore, the Department also assists French practitioners and members of the network from other EU countries in solving practical issues in judicial cooperation in civil and commercial matters, either directly or through its tied-knit collaboration with the representatives of the judiciary[36], lawyers, notaries, and judicial officers that are all part of the EJN[37].

These initiatives were notably developed within the framework of the projects '*Connaître la legislation de l'Union européenne (CLUE I and CLUE II)*', carried out with the financial support of the European Commission. They represent a virtuous model of cooperation between

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[32] The Departement acts as French contact point for the European Judicial Network in civil and commercial Matters. For more information about its work, see 'European E-Justice Portal - About the Network' <https://e-justice.europa.eu/431/EN/about_the_network?FRANCE&member=1>.

[33] The newsletters are freely available at 'Le réseau judiciaire européen en matière civile et commerciale' (*justice.gouv.fr*) <http://www.justice.gouv.fr/europe-et-international-10045/entraide-civile-internationale-11847/le-reseau-judiciaire-europeen-en-matiere-civile-et-commerciale-34331.html>.

[34] See 'Procédures Internationales/Européennes' on 'Justice.Fr | Le Portail Du Justiciable' <https://www.justice.fr/>.

[35] 'Droit vers l'Europe' (*justice.gouv.fr*) <http://www.justice.gouv.fr/europe-et-international-10045/la-justice-europeenne-10282/droit-vers-leurope-34498.html>.

[36] In order to represent the network at a local level, the French national contact point has set up a system of 'reporting judges' designated in each French Court of Appeal and in the Court of Cassation (*Cour de cassation*). According to the information published on the *e-Justice Portal*, reporting judges help 'facilitate cooperation locally and inform the judiciary about the implementation of civil judicial cooperation tools and, in particular, about EU law. The reporting judges in the Courts of Appeal and the Court of Cassation can also inform the national point of contact about difficulties in the application of European legislation. The national point of contact passes the information on these difficulties to the network's secretariat at the European Commission' ('European E-Justice Portal - About the Network' <https://e-justice.europa.eu/431/EN/about_the_network?FRANCE&member=1>).

[37] A list of the national contact points set up by each of these professions is available online at 'Le réseau judiciaire européen en matière civile et commerciale' (*justice.gouv.fr*) <http://www.justice.gouv.fr/europe-et-international-10045/entraide-civile-internationale-11847/le-reseau-judiciaire-europeen-en-matiere-civile-et-commerciale-34331.html>.

European and national authorities for the promotion of European law within the Member States. In the future, it could be interesting to further develop the resources available for legal professionals by establishing direct links between the thematic sheets published on the European *e-Justice Portal* and the information published and updated on the *Portail du Justiciable*. This way, potential users would have access to an integrated system of legal information at both the European and national level.

- Recommendation No 11:

Keep developing national tools of legal information and professional training; explore new avenues of cooperation between the European and national level, for instance by integrating direct links on the *e-Justice Portal* redirecting to relevant sources of information at the national level.

IV. Overview of the Recommendations

- Recommendation No 1:

Amend Article L213-6 of the Code of Judicial Organisation to clarify that jurisdiction to hear applications for refusal of enforcement under Article 47 BI bis and Article 21 EEO Reg. lies with the enforcement judge.

Proposed amendment:

> "Article L213-6:
>
> Le juge de l'exécution connaît, de manière exclusive, des difficultés relatives aux titres exécutoires et des contestations qui s'élèvent à l'occasion de l'exécution forcée, même si elles portent sur le fond du droit à moins qu'elles n'échappent à la compétence des juridictions de l'ordre judiciaire.
>
> Dans les mêmes conditions, il autorise les mesures conservatoires et connaît des contestations relatives à leur mise en œuvre.
>
> **[Le juge de l'exécution connaît, sous la même réserve, des demandes de refus de reconnaissance et d'exécution des titres étrangers exécutoires sur le territoire de la République en vertu des dispositions du droit de l'Union européenne applicables.]**
>
> **[Il]** connaît, sous la même réserve, de la procédure de saisie immobilière, des contestations qui s'élèvent à l'occasion de celle-ci et des demandes nées de cette procédure ou s'y rapportant directement, même si elles portent sur le fond du droit ainsi que de la procédure de distribution qui en découle. (…)"

- Recommendation No 2:

Amend Article R212-8 of the Code of Judicial Organisation to clarify jurisdiction to hear applications seeking a declaration that there are no grounds for refusal of recognition based on Article 36 BI bis, and applications for refusal of recognition pursuant to Article 45 BI bis lies with the Combined Court sitting as a single judge.

Draft provision:

"Article L212-8:

Le tribunal judiciaire connaît à juge unique :

(…)

[2° bis Des demandes en constatation d'absence de motifs de refus de reconnaissance et des demandes de refus de reconnaissance introduites conformément aux articles 36, paragraphe 2, et 45 du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale, lorsqu'elles sont introduites à titre principal avant l'engagement d'une mesure d'exécution forcée sur le territoire de la République.]

(…)"

- Recommendation No 3:

Create a new Article 509-7-1 of the Code of Civil Procedure to clarify the procedure applicable to requests for rectification or withdrawal of erroneously granted certificates under Article 10(2) EEO Reg.

The same procedure could also be made available to interested parties who intend to apply for rectification or withdrawal of erroneously granted certificates issued pursuant to Articles 509-1 ff of the Code of Civil Procedure (including certificates issued under Articles 53 and 60 BI bis).

Draft provision:

"**[Article 509-7-1:**

Les demandes aux fins de rectification d'erreur matérielle ou de retrait d'un certificat [OPTION A : ***introduites en application de l'article 10 du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées*****] [OPTION B :** ***délivré conformément aux articles 509-1 et 509-3*****], ainsi que les demandes introduites aux fins de la délivrance d'un des certificats prévus à l'article 6(2) et (3) du règlement (CE) n° 805/2004 du**

Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées sont présentées à l'autorité ayant délivré le certificat initial.

Lorsque la demande concerne un certificat délivré en application de l'article 509-1, elle est introduite par requête adressée par toute partie intéressée dans les conditions fixées à l'article 509-4, ou par requête commune.

Lorsqu'elles doivent être présentées devant un juge, les requêtes sont dispensées du ministère d'avocat. La décision est prise en dernier ressort et sans audience, à moins que le juge n'estime nécessaire d'entendre les parties. La décision rectificative ou de retrait est mentionnée sur le double du certificat conservé au greffe conformément à l'article 509-6.

Lorsque la demande concerne un certificat délivré en application de l'article 509-3, l'autorité compétente y fait droit après avoir procédé aux vérifications nécessaires. La décision rectificative ou de retrait est mentionnée sur la minute du certificat ayant donné lieu à la rectification ou au retrait. Le refus de faire droit à la demande peut faire l'objet d'un recours dans les conditions prévues à l'article 509-7.]"

- Recommendation No 4:

Add a specific section to the Code of Civil Enforcement Procedures addressing the implementation of the EAPO Regulation into French procedural law. The Section should be divided into two parts: the first part should deal with the aspects related to the issuance of EAPOs by French domestic courts; the second part should address aspects related to the enforcement of EAPOs, irrespective of whether they have been issued in France or another Member State.

- Recommendation No 5:

Amend Article 509-1 of the Code of Civil Procedure so as to allow applications for the certification of titles under Article 53 BI bis to be filed before the same judge that issued the decision. Additionally, amend Article 509-7 of the Code of Civil Procedure provide a remedy against refusals of certificates issued by a judge.

Draft provisions:

"Article 509-1:

I. - Sont présentées au directeur de greffe de la juridiction qui a rendu la décision, homologué la convention ou visé le mandat de protection future :

1° Les requêtes aux fins de certification des titres exécutoires français en vue de leur reconnaissance et de leur exécution à l'étranger en application :

(…)

~~**[- du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ;]**~~

(…)

II. - Sont présentées au juge qui a rendu la décision ou homologué la convention :

1° Les requêtes aux fins de certification des titres exécutoires français en vue de leur reconnaissance et exécution à l'étranger en application :

(…)

- du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées ;

[- du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ;]

(…)"

"Article 509-7:

(…)

S'il n'émane du juge, le refus de délivrance du certificat peut être déféré au président du tribunal judiciaire. Ce dernier statue en dernier ressort sur requête, le requérant et l'autorité requise entendus ou appelés.

[S'il émane du juge, le refus de délivrance du certificat peut faire l'objet d'un appel dans les conditions prévues à l'article 496.]

- Recommendation No 6:

Amend Article 509-3 of the Code of Civil Procedure so as to grant the authority to issue certificates under Article 60 BI bis to the same notary who drafted the authentic instrument rather than to the President of the Chamber of Notaries.

"Article 509-3:

Par dérogation aux articles 509-1 et 509-2, sont présentées au président de la chambre des notaires ou, en cas d'absence ou d'empêchement, à son suppléant désigné parmi les membres de la chambre les requêtes aux fins de certification, de reconnaissance ou de constatation de la force exécutoire, sur le territoire de la République, des actes authentiques notariés étrangers en application :

(…)

~~**[- du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ;]**~~

Par dérogation à l'article 509-1 sont présentées au notaire ou à la personne morale titulaire de l'office notarial conservant la minute de l'acte reçu les requêtes aux fins de certification des actes authentiques notariés en vue de leur acceptation et de leur exécution à l'étranger en application :

- du règlement (CE) n° 805/2004 du Parlement européen et du Conseil du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées ;

[- du règlement (UE) n° 1215/2012 du Parlement européen et du Conseil du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale ;]

(…)"

- Recommendation No 7:

Amend Articles 1409 and 1424-3 of the Code of Civil Procedure to better align these provisions with the CJEU's interpretation of the protection laid out in Articles 6 and 7 of Directive No 93/13/EEC.

Draft provisions:

"Article 1409:

Si, au vu des documents produits, la demande lui paraît fondée en tout ou partie, le juge rend une ordonnance portant injonction de payer pour la somme qu'il retient. **[Lorsque la demande porte sur une obligation contractée par un consommateur dans un contrat conclu avec un professionnel, l'ordonnance constate que la créance n'est pas fondée sur une clause abusive ;]**

(…)"

"Article 1424-3:

Le juge peut délivrer une injonction de payer européenne pour partie de la demande, après que le demandeur a accepté la proposition en ce sens qu'il lui a faite. Dans ce cas, le demandeur ne peut plus agir en justice pour réclamer le reliquat, sauf à ne pas signifier l'ordonnance et à procéder selon les voies de droit commun.

[Lorsque la demande porte sur une obligation contractée par un consommateur dans un contrat conclu avec un professionnel, le juge ne peut délivrer une injonction de payer européenne qu'après avoir vérifié que la créance n'est pas fondée sur une clause abusive.]"

- Recommendation No 8:

Follow a "European by design" approach to future reforms in the field of civil procedure, especially with regard to the ongoing developments of the e-CODEX Project. In particular, the French Government should prioritise deployment methods that allow actors established in other Member States to access future French digital civil justice instruments.

- Recommendation No 9:

Promote specialisation and concentration of jurisdiction over disputes falling under the EFFORTS Regulations (especially with regard to the harmonised European procedures established by the EPO, ESCP, and EAPO Regulations) by setting-up specialised chambers within an existing court or tribunal in order to develop uniform practices, improve the level of expertise, and promote a more flexible approach to the rules governing the proceedings.

- Recommendation No 10:

Develop the information published on the *e-Justice Portal* by following a three-prong approach: (i) further enrich the pages related to the so-called 'second generation' Regulations, in particular the EEO and EPO Regulations, with a view to providing more practical tools to foreign practitioners; (ii) review the information regarding the availability of digital means of communications and available languages, which might be particularly important in a cross-border setting; (iii) ensure better consistency and coordination across different Sections of the *e-Justice Portal*, thus providing better guidance to prospective users of the EFFORTS Regulations.

- Recommendation No 11:

Keep developing national tools of legal information and professional training; explore new avenues of cooperation between the European and national level, for instance by integrating direct links on the *e-Justice Portal* redirecting to relevant sources of information at the national level.