GETTING THE DEAL THROUGH

Enforcement of Foreign Judgments

in 28 jurisdictions worldwide

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1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what if any amendments or reservations has your country made to such treaties?

In this regard, as well as others, the enforcement of foreign non-EU judgments must be distinguished from the enforcement of judgments between the EU members as outlined in this chapter.

Enforcement of judgments between the EU members

EU regulations and treaties

The issues of enforcement of judgments between EU members are, in particular, governed by Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the EU Regulation Brussels I) (for relations between Denmark and other EU member states, the Agreement between the European Community and the Kingdom of Denmark on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 19 October 2005 applies). An EU regulation is binding and directly applicable in all member states. As a member of the European Union, France is required to observe and apply the respective EU regulations regarding the recognition and enforcement of judgments between EU members. Besides the EU Regulation Brussels I, the following EU regulations contain rules on the recognition and enforcement of judgments between EU members:

- Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings;
- Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order (EEO) for uncontested claims (the Regulation on European Enforcement Order);
- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (the Regulation on European Payment Order); and
- Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (up to €2,000) (the Regulation on European Small Claims Procedure).

For relations between the EU member states and Iceland, Norway and Switzerland, the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of the European Community with Iceland, Norway and Switzerland of 30 October 2007 (New Lugano Convention) applies.

Enforcement of foreign non-EU judgments

Furthermore, France is bound by multiple international treaties dealing with the reciprocal recognition and enforcement of foreign judgments. All the relevant treaties are listed on www.legifrance.gouv.fr; however, the most important ones are the following ones.

International treaties – multilateral treaties

Multilateral treaties containing rules on the recognition and enforcement of foreign judgments cover a plurality of special cases (excluding family law):

- navigation on the Rhine (revised Mannheim Convention of 17 October 1868) or the canalisation of the Moselle (Convention of 27 October 1956);
- the exequatur of costs or expenses (the Hague Conventions of 1 March 1954 on Civil Procedure and of 25 October 1980 on International Access to Justice);
- contracts for international carriage of goods by road (CMR Convention of 19 May 1956) or international carriage by rail (COTIF of 9 May 1980);
- liability in the field of nuclear energy (Convention of 31 January 1963, supplementary to the Paris Convention of 29 July 1960, as amended by the additional Protocol of 28 January 1964 and by the complementary Convention of Brussels of 31 January 1963, as amended by the additional Protocol of 28 January 1964); and
- liability and funding for oil pollution damages (the International Convention on Civil Liability for Oil Pollution Damage, Brussels of 29 November 1969, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels of 18 December 1971 and the 2003 Protocol establishing an International Oil Pollution Compensation Supplementary Fund, London of 16 May 2003).

International treaties – bilateral treaties

An extensive number of bilateral treaties of legal cooperation or legal assistance exists with the following states, usually containing a chapter on the recognition and enforcement of reciprocal judgments: Algeria; Argentina; Austria; Belgium; Benin; Brazil; Bosnia and Herzegovina; Bulgaria; Burkina Faso; Canada (Quebec); Cameroun; Chad; China; Central African Republic; Croatia; Czech Republic; Democratic Republic of the Congo; Djibouti; Egypt; Gabon; Hungary; Italy; Laos; Macedonia; Madagascar; Mali; Mauritania; Monaco; Mongolia; Morocco; Niger; Poland; Portugal; Romania; San Marino; Senegal; Serbia and Montenegro; Slovakia; Slovenia; Spain; Togo; Tunisia; United Arab Emirates; United Kingdom and Hong Kong; United States of America; Uruguay; Vietnam; and Yugoslavia.

Please note that many of these treaties, such as the one with the US, only refer to family law.

Treaties with members of the European Union only apply to questions that are not subject to the European regulations (see above).

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

France is a highly centralised state. Therefore, there is uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

In principle, the national and supranational legislation mentioned above is the only source of law for the enforcement of foreign judgments. However, the legal practice for civil and commercial matters is constantly being defined and refined by the French Supreme Court.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

France has not signed the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

As far as enforcement of a foreign decision is concerned, articles 3-1 and 3 of Law No. 91-650 of 9 July 1991 concerning the reform of civil procedures on enforcement, modified by Law No. 2008-561 of 17 June 2008 concerning the statute of limitations in civil law, stipulate a limitation period of 10 years starting with the declaration of enforceability of the foreign decision (the term 'enforcement' is employed here only with regards to enforcement in a technical sense; this does not comprise the recognition and declaration of enforceability (see below)). However, no possibility of a remedy suspending the execution of the declaration of enforceability should still exist.

A declaration of enforceability depends on the applicable rules, namely, the above-named European regulations and conventions, international agreements and bilateral conventions or French rules on private international law.

However, article 3-1 also provides that the period of 10 years does not apply if the actions for debt recovery that are taken into account in the decision have set a longer time limit. In this case, the French court enforcing the decision would have to take the longer prescriptions of the foreign jurisdiction into account.

Please note that, contrary to enforcement, there are no rules as to the prescription of the recognition of a foreign judgment. Therefore, the recognition of foreign decisions can take place at any time and the above-mentioned limitation period of 10 years will only start to run at such time.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

All remedies ordered by a foreign court are enforceable (except for interim injunctions) both according to French private international law and European conventions, and international agreements or conventions. However, please note that French courts do not recognise decisions on punitive damages that are disproportionate to the harm sustained and the contractual breach (see Cour de cassation, First Civil chamber, 1 December 2010, pourvoi No. 09-13303). Therefore, in the case of French courts finding that the punitive damages awarded are disproportionate, they will refuse to order the enforcement of such a decision.

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Enforcement of foreign non-EU judgments

For the enforcement of foreign judgments according to French private international law, the presiding judge of the district court has subject-matter jurisdiction (article R212-8 French Code of Judicial Organisation). The local jurisdiction will be determined by the domicile of the defendant (article 42 French Civil Code) or the registered office of the legal person (article 43 French Civil Code).

Enforcement of judgments between the EU members

EU Regulation Brussels I

For decisions that are subject to EU Regulation Brussels I, the presiding judge of the district court also has subject-matter jurisdiction according to article 39(1) in conjunction with annexe II of EU regulation Brussels I (however, the recognition will take place ipso jure). The local jurisdiction will be determined by the domicile of the defendant or the place of enforcement (article 39(2) Brussels I).

Regulation on European Payment Order

According to article 18(1) of the Regulation on European Payment Order, the declaration of enforceability will be rendered by the court that issued the order. According to article 6(1) of this Regulation, the rules of Brussels I apply to this question of international competence unless the defendant is a consumer. In this case, only the jurisdictions in the member state where the consumer is domiciled will be competent.

The competent enforcement administration is determined by French law (article 21 of Regulation on European Payment Order).

Regulation on European Enforcement Order (EEO)

A foreign judgment certified as an EEO according to the Regulation on European Enforcement Order shall be enforced in France under the same conditions as a judgment rendered in France.

Regulation on European Small Claims Procedure

For the European small claims procedure (see article 1382 et seq of the French Code of Civil Procedure) the district court and the commercial court have subject-matter jurisdiction. The local competence is defined according to the Brussels I Regulation (domicile of the defendant or place of enforcement).

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

According to French private international law, foreign judgments are recognised and enforced by way of an exequatur procedure. Therefore, the judgment must first be recognised (ie, it needs to obtain full legal effect not only in the issuing state but also in France). After receiving enforceable status through the declaration of enforceability, enforcement proceedings can start.

According to the European idea of creating a common area of freedom, security and justice, the treaties of recognition are based on the principle of mutual confidence in jurisdiction and decisions. Due to this principle, a foreign judgment in civil and commercial matters is in general recognised ipso jure in other member states without any special procedure being required (article 33(1) Brussels I) (for the possibilities available to attack the recognition of a foreign judgment under Brussels I, see question 9).

As a result of the recognition by law, the beneficiary can directly apply to the chief clerk of the district court for the declaration of enforceability (article 38 Brussels I and article 509-2(1) French Code of Civil Procedure). This formality remains a requirement for the enforcement of a foreign judgment (this is also the case under the Brussels I regime).

Due to the Regulation on European Enforcement Order establishing an EEO for uncontested claims in all member states (except Denmark), the process of declaration of enforceability is no longer required (article 5 of the Regulation on European Enforcement Order).

The member state in which the judgment has been rendered will issue an EEO certificate provided that the procedural requirements of certification of articles 6(1) and 12(1) of the Regulation on European Enforcement Order are complied with (eg, the regular service of the documents ensuring compliance with the rights of defence or the compatibility of the judgment with the rules of jurisdiction or court proceedings established by EU regulation Brussels I).

The enforcement of an EEO in France will be governed by French law.

In the same way, the Regulation on European Payment Order simplifies cross-border litigations in European Union countries (except Denmark) by abandoning the process of recognition and the requirement of declaration of enforceability (article 19 of the Regulation on European Payment Order).

Finally, the Regulation on European Small Claims Procedure simplifies small claims litigations in civil and commercial matters not exceeding the sum of €2,000. A judgment delivered under this procedure is recognised and enforceable in other member states (except Denmark) without any need of declaration of enforceability (cf article 20(1) of the Regulation on European Small Claims Procedure). The party seeking enforcement only has to produce an original copy of the judgment and of the certificate of the judgment, and if necessary a duly certified translation into the language of the member state of enforcement.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

Enforcement of foreign non-EU judgments

According to French private international law, the defendant cannot obtain a review of the case; French legal practice only permits a defence of noncompliance with procedural regularities according to French international public policy, the lack of competence of the foreign court or the existence of fraud against law in the prior action.

Enforcement of judgments between the EU members

The debtor's possibilities to attack a foreign judgment under EU regulation Brussels I are also limited: according to articles 36 and 45(2), 'under no circumstances may a (the) foreign judgment be reviewed as to its substance'.

The only possible means of defence are defined in articles 34 and 35 of the Regulation. According to article 34, recognition of a foreign judgment will be refused in cases of a manifest conflict with French public policy, provided that the defendant had no possibility of defence in the prior action, and in cases of incompatibility with an earlier judgment involving the same cause of action and the same parties in the member state of recognition, another member state or a third state.

Although article 35(3) states the principle that the competence of the jurisdiction in the country of origin must not be reviewed, it allows exceptions to this principle with regard to decisions in matters relating to insurance or to consumer contracts, or decisions by the exclusive jurisdictions according to article 22 of Brussels I. In these cases, a lack of competence will constitute a reason for the refusal of recognition.

The reasons for a refusal provided for by articles 34 and 35 can be taken into consideration during different stages of the process of recognition and enforcement if there is a legal action either to solely obtain the recognition or to raise an incidental question of recognition (article 32(2-3) of the Regulation); and within the appeal procedure lodged by the defendant after the decision on the application for a declaration of enforceability (article 43 Brussels I).

The burden of proof concerning the reasons provided for by articles 34 and 35 of Brussels I falls on the defendant.

Defences the debtor could already have raised within the prior action are also excluded. They can only be raised as part of an appeal against the foreign judgment in the member state where the decision was rendered.

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

Under French law, the judgment debtor cannot obtain injunctive relief to prevent foreign judgment enforcement proceedings in France. The judgment creditor can only be prevented from enforcing a foreign judgment in the case of bankruptcy proceedings having been initiated against the judgment debtor or in the case of immunity from execution having been granted to the judgment debtor (for example, a public legal entity or a state).

Otherwise, a foreign judgment can be enforced in France by way of an exequatur procedure before the relevant district court. In the case that the conditions of the exequatur are fulfilled, the court will grant exequatur. A foreign judgment in civil and commercial matters falling within the scope of EU regulation Brussels I is, in general, recognised ipso jure in other member states without any special procedure being required.

11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

According to current French legal practice with regard to foreign non-EU judgments, a foreign judgment will be recognised if it complies with international regularity.

International regularity comprises three conditions: the competence of the foreign jurisdiction, the absence of fraud against law and compliance with international public policy.

Please note that, independently of the effects rendered by recognition and enforcement, there are also other effects to a foreign judgment according to French legal practice; a foreign judgment will therefore be considered as a fact (the existence of the judgment will generate consequences that will equally generate consequences in France, for example, the order in a foreign country may constitute a case of force majeure for the French debtor), as a proof (the establishment of facts in the foreign judgment can serve as a proof within another case) and as a title (eg, allowing a request for a protective measure).

Under the scope of Brussels I, the recognition of a foreign judgment is made as of right in other member states (article 33(1) Brussels I). Nevertheless, the Regulation determines the basic requirements for recognition in articles 34 and 35 of Brussels I (see above).

12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

There are no other non-mandatory factors to be considered. All factors for recognition of a foreign non-EU judgment are defined by French private international law (see above).

Brussels I also does not contain non-mandatory factors.

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

Enforcement of foreign non-EU judgments

According to French private international law, the following rules on procedural requirements exist:

As explained above, the foreign judgment must be internationally regular; the judge in charge of recognition and enforcement will therefore verify that the foreign judgment complies with international public policy and that the parties did not commit any fraud against the law. He or she will also verify the competence of the foreign judge. The foreign judgment also has to be enforceable in its original country.

The criterion of compliance with international public policy especially allows for an examination of procedural equivalence, but only as far as the principles of fair process are concerned.

Enforcement of judgments between the EU members

For a European civil procedure according to EU regulation Brussels I, no requirement of procedural equivalence exists. By applying Brussels I, member states already ensure a homogeneous legal landscape throughout the EU.

In any case, the rights of defence have a particular importance under article 26(2-4) and article 34(2) of Brussels I. Article 34(2) of Brussels I is mainly applicable to judgments in contumacy and guarantees the principle of a contradictory process in cases of an incorrect or late notice of the action. Therefore, the French court will, following an objection raised by the defendant, examine whether the defendant had sufficient opportunities to defend him or herself in the prior action. The criterion of adequate notice cannot be generally defined; it is determined by the court according to the circumstances of each case.

Additionally, French legal practice, as confirmed by the European Court of Justice (ECJ, Krombach, 28 March 2000), generally penalises procedural errors violating the right to a fair trial that constitute an infringement of article 6 of the European Rights Convention on Human Rights. However, procedural errors do not in general prevent the recognition of a foreign judgment. Recognition is only refused in cases of a manifest violation of the principles of procedural justice on which the French legal system is based.

As a result, it is not the procedural equivalence that is decisive, but rather the respect of due process of law fixed in article 34(2) of Brussels I.

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

The French legal system only distinguishes between subject-matter and local jurisdiction. The concept of personal jurisdiction does not exist under French law. Therefore, the enforcing court will not examine whether the court that rendered the judgment had personal jurisdiction over the defendant.

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

Enforcement of foreign non-EU judgments

Since the *Cornelissen* case (Cour de cassation, First Civil Chamber, February 20, 2007, pourvoi No. 05-14082), the enforcing court is only obliged to verify the indirect competence of the foreign court, which means that there must be a connection between the subject-matter of the dispute and the foreign court to which the dispute has been referred. Furthermore, French courts must not have had exclusive subject matter jurisdiction.

The enforcement of judgments between the EU members

According to EU regulation Brussels I, the subject-matter jurisdiction of the court rendering the judgment will not be examined by the French court (article 35(3)).

The international jurisdiction of the foreign court will be examined only in exceptional cases provided for in article 35(1) Brussels I. This is especially the case in consumer law or insurance law disputes, or in the case of French courts having exclusive jurisdiction according to article 22 of Brussels I.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

Enforcement of a foreign non-EU judgment

According to French private international law, the foreign judgment must be enforceable and have been served in the foreign country.

In order to obtain recognition and enforcement in France, the claimant must prove the service of the judgment. However, according to legal practice, it does not constitute an infringement of procedural public policy if the service does not mention the means of redress authorised in the foreign country. The claimant must also prove that notice of action has been served to the defendant. The enforcing court must ensure that the defendant had knowledge of the proceedings or, failing this, that the requirements of the provisions of article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters have been met by the foreign court.

The enforcement of judgments between the EU members

According to article 26 of the EU regulation Brussels I, the foreign court is obliged to verify whether the defendant has been able to receive the document instituting the proceedings, or an equivalent document, in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps have been taken to this end in order to ensure compliance with the fundamental principle of a fair trial, including that no party to the legal proceedings may be judged without having had the opportunity to state his or her case. The requirements of sufficient notice are not fixed in Brussels I but will be established according to the specific circumstances of the individual case. However Council Regulation (EC) No 1348/2000 of 29 May 2000 on the Service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial matters applies instead of the provisions of EU regulation Brussels I if the document instituting the proceedings or an equivalent document had to be transmitted from one member state to another pursuant to this regulation. Requirements of sufficient notice are fixed in article 19 of this regulation

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

Other factors than those presented in this chapter will not be taken into consideration by a French court.

18 Vitiation by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

According to French private international law, the recognising and enforcing court in France will not examine the foreign judgment as to its substance. However, the court can refuse recognition or enforcement of the judgment if it was rendered on a fraudulent basis.

French legal practice distinguishes between:

- fraud against the law (eg, fraudulent manipulation of the rules on recognition and enforcement of foreign decisions);
- fraud against the court (eg, if the claimant had fraudulently determined his or her residence in a foreign country in order to base the jurisdiction in this foreign country);
- fraud with regard to the judgment (eg, in the case of a claimant pleading before a foreign jurisdiction with the intent to come back to France in order to enforce the decision, knowing that under these conditions, the judge of recognition and enforcement will apply only an attenuated public policy and not the full public policy); and
- fraud with regard to the rights of defence (eg, a claimant's manipulations in order to deprive the defendant of the possibility to correctly defend his or her rights).Judgments falling within the scope of the Regulation Brussels I obtained by fraud violate the principle of public policy and therefore will not be recognised in France according to article 34(1).

The defence of fraud must be raised by the damaged party, except in cases of fraud affecting French state interests such as in anti-trust law or law of foreign exchange matters, which are automatically examined by the enforcing court.

19 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

Enforcement of a foreign non-EU judgment

According to French private international law, foreign judgments sought to be enforced in France have to comply with the condition of international procedural regularity (the aspect of public policy that is relevant here). International procedural regularity principally concerns the rights of the defence.

If the foreign judgment is in contradiction with international procedural regularity, the court will refuse to enforce it (eg, if a foreign jurisdiction applies a nationalisation law that does not provide any compensation to dispossessed persons, the court will not enforce the judgment by virtue of its violation of the principle of public policy).

The enforcement of judgments between the EU members

According to article 34(1) of Brussels I, the French court will examine the foreign judgment for its compliance with public policy. The term 'public policy', as used in article 34(1), has to be interpreted as international public policy that is based on a more limited understanding of the term compared to the notion of general French public policy. In its decisions *Hoffmann/Krieg* (4 February 1988) and *Krombach* (28 March 2000), the European Court of Justice affirmed that the notion of public policy in Brussels I has to be interpreted autonomously (ie, not according to French private international law).

Nevertheless, international public policy, as well as French private international law, also includes a procedural notion, therefore the French court examines the regularity of the prior procedure (independence and impartiality of the court, right to be heard, right of equal treatment and right to a fair trial) as under French private international law.

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

According to French private international law, a final and conclusive judgment has the authority of res judicata, that is, the court cannot allow the enforcement of a foreign judgment that is in conflict with a former judgment, whether it be French or foreign.

This rule also applies under EU regulation Brussels I.

21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

A judgment can only be enforced against the named judgment debtor. In France, courts do not apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor.

22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

According to French legal practice, parties who have agreed on an alternative dispute resolution (ADR) are prevented from bringing an action in a state court. When one party to the alternative dispute resolution clause brings an action in a state court in violation of the clause, the other party can contest the jurisdiction of the state court. French courts would declare the action inadmissible, unless the clause is manifestly invalid.

Under French private international law, there is no legal practice concerning the question raised here. But if the defendant failed to invoke before the foreign state court that an enforceable ADR clause exists, it is unlikely that he or she will be successfully in arguing that his or her rights under the clause have not been respected in order to prevent the enforcement of the foreign judgment. If the defendant raised the issue before the foreign state court then one can argue that the violation of the clause constitutes a violation of procedural public policy. However, it depends on the circumstances of the case.

In contrast to this hypothesis based on private international law, non-compliance with a clause on ADR has no impact on the enforcement of a foreign judgment under Brussels I in France, as non-compliance is not explicitly mentioned in articles 34 or 35 as a reason for objection. Article 35(3) explicitly excludes applying the test of public policy to rules relating to jurisdiction, meaning that under Brussels I, non-respect of an ADR clause cannot be attacked by arguing that this would be contrary to public policy in the competent jurisdiction.

23 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

As demonstrated, European regulations facilitate the recognition and enforcement of judgments within the European Union.

However, no preference can be given to judgments from certain jurisdictions based on such legal grounds.

24 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

According to French private international law, the court can recognise only part of a judgment unless the judgment is indivisible (ie, in cases where, if one of the measures is recognised, all of them must be recognised).

French judges have no competence to reduce or increase a damage award.

Further, French decisions cannot allow any punitive damages because this kind of compensation does not exist in the French system.

According to actual legal practice, a foreign decision that includes punitive damages is not against public policy, but if the amount of punitive damages appears to be disproportionate with regard to the damage, the court will not recognise the foreign decision.

According to article 48 of Brussels I, the enforcement of only parts of a judgment is possible. A partial recognition of a judgment is not mentioned; nevertheless, a partial recognition is admissible – this

would be the case if the foreign judgment concerns several matters. As a result, Brussels I can be applied only in parts or the reasons for objection of articles 34 and 35 can be applicable to only some of the actions.

A reduction or increase of the amount due is not admissible at all under Brussels I.

25 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

For foreign judgments that are recognised and enforced according to French private international law, and where the judgment is executed in France, the court will convert the award into euros.

The judge rendering the declaration of enforceability cannot allow interest if the foreign judge did not do so. However, the judge in charge of recognition and enforcement can allow interest in arrears, which begin to run from the day of the declaration of enforceability and must be paid according to French law.

Concerning the enforcement of judgments under EU regulation Brussels I, the French court does not convert the currency during the process of recognition and declaration of enforceability. It is only at the moment of the effective payment to the bailiff that the conversion is effected (this issue is increasingly irrelevant, as most member states have adopted the euro).

Concerning legal interests according to the foreign decision, the claimant has to seize the enforcing court in order for the due sum to be fixed.

26 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

According to French private international law, the means of redress against a declaration of enforceability are an appeal and third party proceedings.

An appeal suspends the execution of a district court decision in France, and also a declaration of enforceability.

The judgment will be enforceable against the defendant after the exhaustion of all available remedies, after which the decision will be conclusive and final. (French doctrine allows for the possibility of provisional enforcement by lodging a security before the exhaustion of remedies).

Brussels I establishes an independent system of legal protection; the defendant's rights of appeal are provided for in articles 36 and 37 and the applicant's in articles 40 and 41.

Decisions in favour of an application for a declaration of enforceability may be appealed against and, according to article 43(2) and Annex III of Brussels I, the Court of Appeal is competent for decisions concerning the approval of the application.

For decisions rejecting an application for a declaration of enforceability the presiding judge of the district court is competent (article 509(7) French Code of Civil Procedure). For legal proceedings before the district court, the parties have to be represented by a lawyer (article 751(1) French Code of Civil Procedure).

During the time limit specified for lodging an appeal against the declaration of enforceability, pursuant to article 43(5) of Brussels I and until the court has ruled on any such appeal, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought (article 47(3) Brussels I).

If an ordinary appeal against the judgment has been lodged in the foreign country, the competent court may suspend the proceedings according to article 46(1) of Brussels I.

If a suspension of the proceedings is not suitable, the judge makes the enforcement conditional on the provision of a security determined by him or her in his or her legal discretion, in order to reduce the risk of insolvency (article 46(3) of Brussels I).

In addition to the appeal against the decision in favour of a declaration of enforceability, the enforcement itself can also be appealed against by the party concerned. This appeal is lodged in accordance with French law (article 542 et seq Civil Procedure Code).

The Regulation on European Enforcement Order (article 5) does not include the possibility to oppose against the recognition of an EEO. Nevertheless, article 21(1) establishes the possibility of a refusal of enforcement in cases of irreconcilability of the judgment with a prior judgment and the suspension and the limitation of the enforcement. According to article 23 of the Regulation on European Enforcement Order, the enforcing court can limit the enforcement proceedings to protective measures, make enforcement conditional on the provision of a security or suspend the enforcement proceedings.

With regard to the Regulation on European Payment Order, the defendant has to lodge his or her appeal before the court of origin by using the standard form F set out in Annex IV of the Regulation (article 12(4)(b) within 30 days from the service of the order.

The enforcement will be rejected according to article 22(1) of the Regulation if the judgment, certified as a European Payment Order, is irreconcilable with an earlier judgment given in any member state or in a third country.

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The Regulation on European Small Claims Procedure disposes of a particular legal protection: according to article 18(1) of the Regulation (Minimum Standards for Review of Judgments), the defendant who, without fault, is not capable of reacting in due time to the prior action, can obtain a review of the foreign judgment by the foreign court.

It is important to note that the European small claims procedure allows for enforcement without the provision of a security.

Only in cases of an appeal against the judgment, the competent court can make the enforcement conditional on some security, limit the enforcement procedure to protective measures or, under exceptional circumstances, suspend the enforcement proceedings.

27 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

According to French private international law, the claimant must ask for the exequatur of the judgment in order to enforce the judgment. If the exequatur is allowed, the judgment is enforceable and the claimant can use coercion to obtain his or her obligation or award. The applicable rules are laid down in articles 11-37 of Decree No. 92-755 of 31 July 1992 (recently modified by Decree No. 2012-783 of 30 May 2012).

After the judgment has been declared enforceable and a request for enforcement (according to article 39(1) and Annex II of Brussels I) has been sent to the presiding judge of the competent district court, the judge will make a decision about the enforcement proceedings (article 38(1) Brussels I).

The claimant must be notified of the decision authorising enforcement proceedings and such notification must be served (together with the judgment if this has not already been already served) to the party against whom enforcement is sought, even though a contradictory proceeding is not intended (cf article 41 Brussels I).

The enforcement proceedings of all European decisions under the regulations mentioned above are governed by French law. In France, bailiffs are responsible for enforcing judgments.

28 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

Due to the huge amount of different rules applying to the recognition or enforcement of foreign judgments (ie, French private international law, European regulations and international bilateral or multilateral treaties – see question 1) it is a challenge to identify, within a reasonable amount of time, the rules that are applicable in any respective case.

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