

# Enforcement of Foreign Judgments 2020

Contributing editor  
Patrick Doris



**Publisher**

Tom Barnes  
tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall  
claire.bagnall@lbresearch.com

**Senior business development managers**

Adam Sargent  
adam.sargent@gettingthedealthrough.com

**Dan White**

dan.white@gettingthedealthrough.com

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Meridian House  
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# Enforcement of Foreign Judgments 2020

**Contributing editor****Patrick Doris****Gibson, Dunn & Crutcher LLP**

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Lexology Getting The Deal Through is delighted to publish the ninth edition of *Enforcement of Foreign Judgments*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia, Brazil, Canada (Quebec), Cyprus, Germany, Hong Kong, Jordan, Luxembourg, the Netherlands and Sweden.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Patrick Doris of Gibson, Dunn & Crutcher LLP, for his continued assistance with this volume.



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Nathaniel L Bach  
Gibson, Dunn & Crutcher LLP

# France

Anke Sprengel

EBA Endrös-Baum Associés

## LEGISLATION

### Treaties

1 | 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 EU member states as outlined in this chapter.

### Enforcement of judgments between EU member states

#### EU regulations and treaties

The issues of enforcement of judgments between EU member states were, 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 old Brussels I Regulation) (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 21 March 2013 applies (which includes the new Brussels I Regulation)). A reformed regulation of Brussels I (Regulation (EU) No. 1215/2012) was adopted by the European Council on 6 December 2012 and published in the Official Journal on 20 December 2012. This recast regulation has applied since 10 January 2015 and replaced Council Regulation (EC) No. 44/2001 (the new Brussels I Regulation). Important modifications have been adopted, the most important of which is that exequatur proceedings have been abolished. However, the old Brussels I Regulation continues to apply to the recognition and enforcement of all judgments given in proceedings initiated before 10 January 2015. 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 member states. Besides the Brussels I Regulation, the following EU regulations contain rules on the recognition and enforcement of judgments between EU member states:

- Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings, which came into force on 31 May 2002; repealed and replaced by Regulation (EU) No. 2015/848 of 20 May 2015, which came into force on 26 June 2017;
- 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 European Enforcement Order Regulation), which came into force on 21 January 2005;
- 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 European Payment Order Regulation), which came into force on 31 December 2006; 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 European Small Claims Procedure Regulation), which came into force on 1 January 2009.

For relations between EU member states and Norway, Iceland 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 (the 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](http://www.legifrance.gouv.fr); however, the most important treaties are listed below.

#### 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 (Brussels Convention of 31 January 1963, supplementary to the Paris Convention of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, the Additional Protocol of 16 November 1982 and the Additional Protocol of 12 February 2004); and
- liability and funding for oil pollution damages (the International Convention on Civil Liability for Oil Pollution Damage, Brussels of 29 November 1969 (no longer in force and replaced by the Protocol of 27 November 1992), the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, of 18 December 1971 (no longer in force and replaced by the Protocol of 27 November 1992) and the 2003 Protocol establishing an International Oil Pollution Compensation Supplementary Fund, London, of 16 May 2003).

### International treaties: bilateral treaties

An extensive network 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, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada (Quebec), Central African Republic, Chad, China, Croatia, the Czech Republic, Democratic Republic of the Congo, Djibouti, Egypt, Gabon, Hong Kong, 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, United States, Uruguay, Vietnam and Yugoslavia.

Many of these treaties, such as the treaty with the United States, refer only to family law.

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

### Intra-state variations

#### 2 | 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.

### Sources of law

#### 3 | What are the sources of law regarding the enforcement of foreign judgments?

In principle, the national and supranational legislation mentioned in question 1 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.

### Hague Convention requirements

#### 4 | 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 the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

## BRINGING A CLAIM FOR ENFORCEMENT

### Limitation periods

#### 5 | 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 L111-3 and L111-4 of the French Code of Civil Enforcement Procedures 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 regard 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 European regulations and conventions, international

agreements and bilateral conventions mentioned in question 1, or French rules on private international law.

However, articles L111-3 and L111-4 of the French Code of Civil Enforcement Procedures 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 will have to take the longer prescriptions of the foreign jurisdiction into account.

It should be noted 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.

### Types of enforceable order

#### 6 | 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), according to both French private international law and European conventions, and international agreements or conventions. However, French courts do not recognise decisions on punitive damages that are disproportionate to the harm sustained and the contractual breach (see Court of Cassation, First Civil Chamber, 1 December 2010, Appeal No. 09-13.303; more recently, see Court of Cassation, Criminal Chamber, 15 October 2014, Appeal No. 13-83.884 and Court of Cassation, First Civil Chamber, 24 May 2018, Appeal No. 16-26.012). 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.

### Competent courts

#### 7 | 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 of the Code of Judicial Organisation). The local jurisdiction will be determined by the domicile of the defendant (article 42 of the Code of Civil Procedure) or the registered office of the legal person (article 43 of the Code of Civil Procedure).

### Enforcement of judgments between EU member states

#### The old Brussels I Regulation

For decisions that are subject to the old Brussels I Regulation (Regulation (EC) No. 44/2001), the presiding judge of the district court also has subject-matter jurisdiction according to article 39(1) in conjunction with Annex II of the old Brussels I Regulation (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) of the old Brussels I Regulation).

#### The new Brussels I Regulation

The new Brussels I Regulation (Regulation (EU) No. 1215/2012) only applies to judgments given in proceedings commenced on or after 10 January 2015 (see article 66 of the new Brussels I Regulation). Under the new Brussels I Regulation, a judgment given in a member state that is enforceable in that member state shall be enforceable in the other member states without any declaration of enforceability being required (article 39 of the new Brussels I Regulation).

### European Payment Order Regulation (No. 1896/2006)

According to article 18(1) of the European Payment Order Regulation, 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 the European Payment Order Regulation). More specifically, enforcement procedures shall be governed by the law of the member state of enforcement.

### European Enforcement Order (EEO) Regulation (No. 805/2004)

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

### European Small Claims Procedure Regulation (No. 861/2007)

For the European Small Claims Procedure (see article 1382 et seq of the 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. A judgment delivered under this procedure is recognised and enforceable in other member states (except Denmark) without any need for a declaration of enforceability.

### Separation of recognition and enforcement

8 | 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. Because of 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) of the old Brussels I Regulation, and article 36 of the new Brussels I Regulation) (for the possibilities available to challenge the recognition of a foreign judgment under the Brussels I Regulation, 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 of the old Brussels I Regulation and article 509-2(1) of the Code of Civil Procedure). This formality remains a requirement for the enforcement of a foreign judgment (this is also the case under the old Brussels I Regulation). However, this requirement has been abolished by Regulation (EU) No. 1215/2012. Under the new Brussels I Regulation, a judgment given in one member state is enforceable in all other member states. There is no longer any need to apply for a declaration of enforceability.

Owing to the European Enforcement Order Regulation 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 European Enforcement Order Regulation).

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 European Enforcement Order Regulation are complied with (eg, the regular service of the documents

ensuring compliance with the rights of defence and the compatibility of the judgment with the rules of jurisdiction or court proceedings established by the Brussels I Regulation).

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

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

Finally, the European Small Claims Procedure Regulation simplifies small claims litigation 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 for declaration of enforceability (ie, article 20(1) of the European Small Claims Procedure Regulation). The party seeking enforcement need only 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.

## OPPOSITION

### Defences

9 | 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 non-compliance 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. See Court of Cassation, First Civil Chamber, 20 March 2019, Appeal No. 18-50.005:

*'The decision rendered by a court sitting in Morocco shall automatically have the authority of res judicata in France if it emanates from a competent court, if the parties have been legally summoned, represented or declared defaulting, if it has, according to Moroccan law, authority of res judicata and is enforceable, if it does not contain anything contrary to French public policy and is not contrary to a French judicial decision having in its regard the authority of res judicata; . . . the judge hearing a request for recognition of a Moroccan judgment, who shall examine ex officio the conditions for its international regularity, shall confine himself to verifying whether these conditions are met.'*

### Enforcement of judgments between EU member states

The debtor's possibilities to attack a foreign judgment under the Brussels I Regulation are also limited: under no circumstances may a foreign judgment be reviewed as to its substance (see article 36 of the new Brussels I Regulation and article 45(2) of the old Brussels I Regulation).

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 recognition or to raise an incidental question of recognition (article 36 of the new Brussels I Regulation), and within the appeal procedure lodged by the defendant after the decision on the application for a declaration of enforceability (article 49 of the Brussels I Regulation).

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

Defences that 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.

Under the new Brussels I Regulation, the judgment debtor can prevent a judgment from being enforced for the same reasons according to article 46. The reasons for a refusal of recognition and enforcement provided for in articles 34 and 35 of the old Brussels I Regulation have been incorporated in article 45 of the new Brussels I Regulation. They remain unchanged.

### Injunctive relief

#### 10 | 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 (eg, 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 event 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 the old Brussels I Regulation is, in general, recognised ipso jure in other member states without any special procedure being required. The judgment creditor must only apply for a declaration of enforceability (see article 38(1) of the old Brussels I Regulation).

A judgment given in one member state that falls within the scope of Regulation (EU) No. 1215/2012 is immediately enforceable in another EU member state, without any need for a declaration of enforceability (see article 39 of the new Brussels I Regulation).

## REQUIREMENTS FOR RECOGNITION

### Basic requirements for recognition

#### 11 | 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.

It should be noted 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 title (eg, allowing a request for a protective measure).

Under the scope of Brussels I, the recognition of a foreign judgment is made as a right in other member states (article 33(1) of old Brussels I and article 36(1) of new Brussels I). Nevertheless, the Regulation determines the basic requirements for recognition (articles 35 and 36 of old Brussels I and article 45 of new Brussels I) (see above).

### Other factors

#### 12 | 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 question 11).

Brussels I also contains no non-mandatory factors.

### Procedural equivalence

#### 13 | 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 insofar as the principles of fair process are concerned.

### Enforcement of judgments between EU member states

For a European civil procedure according to the Brussels I Regulation, 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 particular importance under Brussels I. Article 45 of new Brussels I (article 34 of old Brussels I) is mainly applicable to judgments in contumacy and guarantees the principle of a contradictory process in case of an incorrect or late notice of the action. Therefore, following an objection raised by the judgment debtor, the French court will examine whether the judgment debtor had sufficient opportunities to defend itself 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 Court of Justice of the European Union (CJEU) in Case C-7/98, *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 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 enshrined in article 45(I b) of Brussels I.

## JURISDICTION OF THE FOREIGN COURT

### Personal jurisdiction

- 14 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.

### Subject-matter jurisdiction

- 15 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 (Court of Cassation, First Civil Chamber, 20 February 2007, Appeal 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 Court of Cassation continues to apply the principles developed in the *Cornelissen* case (see Court of Cassation, First Civil Chamber, 4 May 2017, Appeal No. 16-13.645; and Court of Cassation, First Civil Chamber, 15 May 2018, Appeal No. 17-17.546).

### Enforcement of judgments between EU member states

According to the Brussels I Regulation, the subject-matter jurisdiction of the court rendering the judgment will not be examined by the French court (article 45(3) of new Brussels I and article 35(3) of old Brussels I).

The international jurisdiction of the foreign court will be examined only in exceptional cases provided for in article 45 of new Brussels I (article 35 of old Brussels I). This is especially the case in consumer law and insurance law disputes, or in the case of French courts having exclusive jurisdiction according to article 24 of Brussels I. For example, in proceedings that have as their object rights in rem, immovable property or tenancies of immovable property, the courts of the member state in which the property is situated have exclusive jurisdiction (article 24 of new Brussels I and article 22 of old Brussels I).

### Service

- 16 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 on 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.

### Enforcement of judgments between EU member states

#### The old Brussels I Regulation

According to article 26, the foreign court is obliged to verify whether the defendant was able to receive the document instituting the proceedings, or an equivalent document, in sufficient time to enable it to arrange for a defence, or that all necessary steps were 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 its 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 the Brussels I Regulation 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 set out in article 19 of this Regulation.

#### The new Brussels I Regulation

According to article 45, recognition shall be refused where the judgment was given in default of appearance, if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable it to arrange for a defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for it to do so.

### Fairness of foreign jurisdiction

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

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

## EXAMINATION OF THE FOREIGN JUDGMENT

### Vitiating by fraud

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

According to French private international law, the French court 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 fraudulently determined its residence in a foreign country in order to base the jurisdiction in that 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 would apply only an attenuated public policy and not the full public policy) (see, for instance, Court of Cassation, First Civil Chamber, 4 May 2017, Appeal No. 16-13.645); 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 Brussels I Regulation obtained by fraud violate the principle of public policy and therefore will not be recognised in France according to article 45 of the new Brussels I Regulation (article 34 of the old Brussels I Regulation).

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

### Public policy

- 19 | 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 to a defence.

If the foreign judgment contradicts 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).

### Enforcement of judgments between EU member states

According to article 45 of new Brussels I (article 34 of old Brussels I), the French court will examine the foreign judgment for its compliance with public policy. The term 'public policy' as used in article 45 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 judgments in *Hoffmann/Krieg* (Case C-145/86, 4 February 1988) and *Krombach*, the CJEU 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.

### Conflicting decisions

- 20 | 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 is French or foreign.

This rule also applies under the Brussels I Regulation. At the request of any interested party, the recognition of a decision shall be refused if the decision is irreconcilable with a decision rendered between the same parties in the requested member state or if the decision is irreconcilable with a decision given previously in another member state or in a third state between the same parties in a dispute having the same subject matter and the same cause, where the decision given previously satisfies the conditions necessary for its recognition in the

requested member state (see article 34 of the old Brussels I Regulation and article 45 of the new Brussels I Regulation).

### Enforcement against third parties

- 21 | 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 principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor.

### Alternative dispute resolution

- 22 | 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 that have agreed on alternative dispute resolution (ADR) are prevented from bringing an action in a state court. When one party to the ADR 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 will 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 fails to invoke before the foreign state court that an enforceable ADR clause exists, it is unlikely to succeed in arguing that its rights under the clause have not been respected in order to prevent the enforcement of the foreign judgment. If the defendant raises 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 article 34 or 35 of old Brussels I (article 45 of new Brussels I) as a reason for objection. Article 35(3) of old Brussels I (article 45(3) of new Brussels I) 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. Therefore, a judgment on the substance of the matter given by a court after having determined that an arbitration clause or another ADR clause is null and void, inoperative or incapable of being performed can be enforced in another member state under Brussels I.

A judgment that considers whether or not an arbitration clause is null and void, inoperative or incapable of being performed does not fall within the scope of the Brussels I Regulation.

### Favourably treated jurisdictions

- 23 | 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.

## Alteration of awards

24 | 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 damages award.

In addition, 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 old Brussels I, the enforcement of only parts of a judgment is possible. A partial recognition of a judgment is not mentioned; however, a partial recognition is admissible. This will 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. Partial recognition or partial enforcement is not mentioned in the new Brussels I Regulation but should be possible under the same conditions as described above.

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

## AWARDS AND SECURITY FOR APPEALS

### Currency, interest, costs

25 | 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 begins to run from the day of the declaration of enforceability and must be paid according to French law.

Concerning the enforcement of judgments under the Brussels I Regulation, 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.

## Security

26 | 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.) The old Brussels I Regulation establishes an independent system of legal protection.

Decisions in favour of an application for a declaration of enforceability may be appealed and, according to article 43(2) and Annex III of old Brussels I, the Court of Appeal is competent for hearing 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 of the Code of Civil Procedure). For legal proceedings before the district court, the parties have to be represented by a lawyer (article 751(1) of the Code of Civil Procedure).

During the timeframe 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 which enforcement is sought (article 47(3) of 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 will make the enforcement conditional on the provision of security determined by him or her at 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 be appealed by the party concerned. This appeal is lodged in accordance with French law (article 542 et seq of the Civil Procedure Code).

Between EU member states, the new Brussels I Regulation no longer obliges a party wishing to enforce a foreign judgment in France to obtain a judgment in France recognising or enforcing the foreign judgment. A judgment given in a member state that is enforceable in that member state shall be enforceable in the other member states without any declaration of enforceability being required (see article 39). An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures that exist under the law of the member state addressed (see article 40).

The European Enforcement Order Regulation (article 5) does not include the possibility to oppose 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 limitation of the enforcement. According to article 23 of the European Enforcement Order Regulation, 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 European Payment Order Regulation, the defendant has to lodge its 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.

The European Small Claims Procedure Regulation disposes of a particular legal protection: according to article 18(1) of the Regulation (Minimum Standards for Review of Judgments), a defendant which, 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 security.

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

## ENFORCEMENT AND PITFALLS

### Enforcement process

#### 27 | 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 its obligation or award. The applicable rules are laid down in articles 11 to 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 old 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) of old 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 served) on the party against which enforcement is sought, even though a contradictory proceeding is not intended (ie, article 42 of Brussels I, now abolished by Regulation (EU) No. 1215/2012).

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

Under Regulation (EU) No. 1215/2012, a party that wishes to invoke in a member state a judgment given in another member state shall produce a copy of the judgment that satisfies the conditions necessary to establish its authenticity and the certificate issued pursuant to article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest (articles 37 and 42 of new Brussels I).

An enforceable judgment shall carry with it, by operation of law, the power to proceed to any protective measures that exist under the law of the member state addressed (article 40 of Brussels I).

Where enforcement is sought of a judgment given in another member state, the certificate issued pursuant to article 53 shall be served on the person against which the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person (article 43(1) of Brussels I).

Where the person against whom the enforcement is sought is domiciled in a member state other than the member state of origin, it may

**EBA** | **Endrös-Baum Associés**  
Avocats / Rechtsanwälte

**Anke Sprengel**  
eba@eba-avocats.com

63 rue de Varenne  
75007 Paris  
France  
Tel: +33 1 53 85 8181  
www.eba-avocats.com

request a translation of the judgment in order to contest the enforcement if the judgment is not written in or accompanied by a translation into either a language that it understands or the official language of the member state in which it is domiciled or, where there are several official languages in that member state, the official language or one of the official languages of the place where it is domiciled (article 43(2) of Brussels I).

### Pitfalls

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

Owing to the large number of different rules applying to the recognition and enforcement of foreign judgments (ie, French private international law, EU 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.

## UPDATE AND TRENDS

### Hot topics

#### 29 | Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

There have been no significant recent developments in this area in France.

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