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**« Enforcement in France of foreign Judgments and
Arbitral awards »**

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EC Regulation n°44/2001 of dec. 22, 2000 on recognition and enforcement of judgments

- ⌘ Recognition and enforcement of foreign judgments are made in EU, according to EC Regulation n°44/2001 (except for Denmark, where Brussels Convention of sept. 27, 1968 still applies)
- ⌘ Art. 33.1: « *A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required* »
- ⌘ Art. 38.1: « *A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there* »

Application for enforcement of EU judgments

- ⌘ Art. 39.1 : « *The application shall be submitted to the court or competent authority indicated in the list in Annex II* »
- ⌘ In France, the President of the *Tribunal de Grande Instance* (TGI)
- ⌘ New article 509-2 (in force since January 1, 2005) of New Code of Civil Procedure (NCCP) « *The applications for recognition or declaration of enforceability of foreign enforceable titles, in France, in application of EC Regulation n°44/2001, shall be submitted to the Chief Clerk of the *Tribunal de Grande Instance** »
- ⌘ Consequently, the proceedings have been notably simplified in France

Application for enforcement of EU judgments

- ⌘ Art. 41 : « *The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35 »*
- ⌘ Fundamental difference with respect to the Brussels Convention : the proceedings is limited to a formal control: namely the production of a certificate authenticating the foreign judgment and the proof of its service to the Defendant
- ⌘ The proceedings is not contradictory at that stage, only the applicant is heard by the judge
- ⌘ As a conclusion, **EU judgments are considered as regular**, at least up to the appeal

Appeal against enforcement declaration of EU judgments

- ⌘ Art. 43 : *The decision on the application for a declaration of enforceability may be appealed against by either party, within one month of service thereof...*
- ⌘ The appeal is to be lodged before the Court of Appeal in France
- ⌘ New article 509-7 NCCP (in force since Jan. 1, 2005) « *The refusal may be subject to review before the President of the First Instance Tribunal. His decision, after hearing the Appellant and the Chief Clerk, can not be appealed* »
- ⌘ From now on, the refusal of enforceability may be contested by the applicant only before the President of TGI
- ⌘ Whereas, the decision granting enforcement may be contested by the other party before the Court of Appeal only

Appeal against enforcement declaration of EU judgments

- ⌘ Art. 45 : « *The Court of Appeal shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35 :*
 - ☑ *recognition is **manifestly** (added % **Brussels C°**) contrary to public policy in the Member State in which recognition is sought;*
 - ☑ *the rights for the defence are violated, in particular if the judgment was delivered by default, **unless** the defendant failed to challenge the judgment when it was possible for him to do so*
 - ☑ *if it is irreconcilable with another judgment*

- ⌘ *Under no circumstances may the foreign judgment be reviewed as to its substance.*

Enforcement in France of Judgments issued outside EU

- ⌘ Art. 509 NCCP on transborder recognition: “*Foreign judgments ... shall be enforced in France as specified by law*”
- ⌘ Unless bilateral conventions simplify the proceedings, recognition and enforcement of foreign judgments need to summon the Defendant before the Tribunal de Grande Instance for exequatur
- ⌘ The Judge controls the judgment to be enforced according to 5 conditions:
 - ⊞ The French tribunal must not have exclusive jurisdiction (for example when validity of a French patent or TM is challenged)
 - ⊞ The foreign proceedings shall have been regular
 - ⊞ The applicable law has been chosen according to with French rules
 - ⊞ No violation of international public order
 - ⊞ The foreign judgment is not irreconcilable with another judgment
- ⌘ As a conclusion, the control is substantive and contradictory

Statistics for Enforcement in France of foreign Judgments

- ⌘ Based on an Official Report on 1390 exequatur decisions rendered in 1999-2001, at the request of the French Ministry of Justice
- ⌘ Before the Tribunal de Grande Instance, exequatur granted for :
 - ⊞ 100% of EU judgments, in a mean delay of 24 days, sometimes 24h only (justifying the simplification of the proceedings)
 - ⊞ 95% of judgments from other countries, in a delay < 9 months
- ⌘ Before the Cour of Appeal, exequatur granted for:
 - ⊞ 87% of EU judgments,
 - ⊞ 84% of judgments from other countries,
 - ⊞ In a mean delay of 22 months before Paris Court
- ⌘ Exequatur is refused mostly when the rights for defence have been seriously violated abroad

Recognition and compelled enforcement of Arbitral awards given abroad or in international arbitration

- ⌘ Generally speaking, arbitral awards are executed spontaneously, since Arbitration is generally chosen for avoiding the public debate before the Tribunals
- ⌘ Article 1498 NCCP : « *Arbitral awards shall be recognized and rendered enforceable in France where (1) their existence has been established and (2) where recognition of the same would not manifestly be contrary to public international order* »
- ⌘ (1) Article 1499 NCCP : « *The existence of a arbitral award shall be established by the production of (i) the original award together with (ii) a copy of the arbitration convention, so as to satisfy the conditions required as to its authenticity.* »

Proceedings for compelled enforcement of Arbitral awards

- ⌘ Article 1477 NCCP : « *For compelled enforcement, the arbitral award must be subject to a judgment of exequatur by the Tribunal de Grande Instance in whose province the award was given. »*
- ⌘ If the award is given outside France, the enforcement may be sought in France, as far as a French national is concerned by the award (Art. 14 and 15 of French Civil Code)
- ⌘ In such a case, the provisions of art.42 NCCP apply, for example the Tribunal of the domicile of the claimant if the defendant is established outside France, or any Tribunal of its choice, if the claimant is also established abroad

Appeal on exequatur judgments of Arbitral awards

- ⌘ *Article 1501*: The decision refusing the recognition or enforcement of an award may be subject to appeal.
- ⌘ *Article 1502*: An appeal against the decision granting recognition or enforcement shall be opened only in the following cases:
 - ☒ 1° where the arbitrator has ruled upon the matter without an arbitration agreement or where this agreement is null or has lapsed;
 - ☒ 2° where the arbitration tribunal has been unlawfully constituted;
 - ☒ 3° where the arbitrator has ruled upon the matter contrary to the assignment given to him;
 - ☒ 4° where the contradictory principle has not been respected;
 - ☒ 5° where the recognition or enforcement shall be contrary to public international order.

Review of Arbitral Awards in international arbitration

- ⌘ *Art. 1504*: The arbitral award issued in France, in matters of international arbitration, may be subject to a nullity review in the cases provided at article 1502.
- ⌘ *Art. 1503 & 1505*: The appeal under Articles 1501 & 1502 and the review according Art. 1504 shall be brought before the Court of Appeal, within a delay of one month from the judgment or award.
- ⌘ *Art. 1506* : The time-limit to bring an appeal or review under Articles 1501, 1502 and 1504 shall operate a stay of execution of the arbitral award. The review brought within this time-limit shall equally operate a stay of execution.
- ⌘ As a conclusion, compelled enforcement of arbitral awards is not more difficult than for foreign judgments outside EU

Civil penalties ordered by the French Judges to ensure enforcement of foreign decisions

- ⌘ Art.49 of EC Regulation n°44/2001 « *a civil penalty is enforceable in another country, only if its final amount has been determined by the Courts of the Member State of origin* »
- ⌘ *Art. 33 of French Law of July 9, 1991*: Any Judge may order a civil penalty to ensure execution of his decision. But only the Judge for Execution may order a civil penalty for ensuring execution of a decision rendered by another judge, where necessary
- ⌘ Consequently, the claimant has to summon the Defendant before the Judge for Execution, in a contradictory proceedings.
- ⌘ Indeed, the Judge for Exequatur cannot order the civil penalty, since it is not his own judgment which has to be enforced but the foreign judgment

Source



- ⌘ Les Petites Affiches n°169, June 17, 2004
- ⌘ Gazette du Palais n°315-318, November 10-13, 2004
- ⌘ Conference of January 19, 2005 before the Paris Bar, on Exequatur in France of foreign Judgments