Part 1: Main features of the national enforcement procedures for recovery of monetary claims (general overview)

1.1. Briefly present domestic legal sources on enforcement.

Legal sources on enforcement are first of all domestic. Traditionally, enforcement was regulated almost exclusively by statutes enacted by the Parliament. However, the 1958 French Constitution introduced the possibility for the executive power to legislate by way of decree. The first modern reform of this area of the law was carried out by a statute enacted in 1991[1] and its application decree adopted in 1992[2].

The aim of the statute was to improve the efficiency of the law of enforcement by upgrading the enforcement order and yet ensuring a "humane" treatment for bona fide debtors. However enforcement procedures on immovables were not modified until 2006. Two further instruments, the aim of which was to guarantee a balance between the rights of the debtor and the interests of the creditors were adopted: decree ("ordonnance") n°2006-461, 21 april 2006 (réformant le titre XIX du livre III du code civil désormais intitule "De la saisie et de la distribution du prix de vente de l'immeuble) and application decree n°2006-936, 27 july 2006. Later on, a code of civil enforcement procedures was adopted by decree n°2011-1895, 19 December 2011. It came into force on June 1st 2012. Of course the law of enforcement must respect constitutional principles. Hence, it should be noted that the Conseil Constitutionnel attaches great importance to the possibility of enforcement by considering that any judgement is, in principle, enforceable and may lead to enforcement measures[3]

Legal sources on enforcement are also international. The European court of human rights guarantees the right to effective enforcement of judgements on the basis of article 6§1. In the famous Hornsby c/Greece[4] case the court clarified that the execution of judgements must be considered as an integral part of the trial and hence is guaranteed by application of article 6§1 of the Convention.

1.2. Was there a recent reform or is there an ongoing reform in progress? If yes, please comment the changes introduced by the reform or proposed solutions.

The main provisions on enforcement are still to be found in the 1991 statute and the 1992 decree. Recent reforms include the creation in 2011 of the civil enforcement procedures code and the creation in 2015 of a simplified procedure for the recovery of small claims. Indeed a new article 1244-4 has been introduced into the civil code

[1] Loi n°91-650, 9 juillet 1991 portant réforme des procédures civiles d'exécution.
[2] Décret d'application n°92-755 du 31 juillet 1992.
[3] Cons. Constit., 29 juill. 1998, n°98-403, JCP G1999, I, 141, Mathieu et Verpeaux.
[4] ECHR, 19 mars 1997, Case n°107/1995/613/701, Hornsby v. Greece ; D. 1998, p. 74, note Fricero N., JCP G 1997, II, p. 507, nº 22949, note Dugrip O. et Sudre F.

allowing creditors who have a claim under 4000 euros with a contractual or statutory origin to recover their claim by turning directly to the enforcement authority (huissier de justice) without seizing a court.

1.3. Please indicate whether there exists an underlying philosophical or dogmatic framework for your system of enforcement.

The law of enforcement seeks a balance between the interest of the creditor and the interest of the debtor, that is a balance between the efficiency and the humanity of the enforcement measures. On the one hand, the interest of the creditor supposes fast and cheap enforcement procedures. From the creditor's point of view efficiency lies in the diversification of procedures, which need to be adapted to the debtor's patrimony. In particular, there is a need for special procedures in relation to securities and shares. The creditor also needs to be assisted with the search of information concerning the debtor's address, his employer and his bank accounts. On the other hand it is in the interest of the debtor that other imperatives be taken into account. The debtor should be able to challenge the creditor's claim. His right to dignity and privacy should also be taken into account.

Another manifestation of the search for efficiency is the tendency to favour out of court procedures. Indeed one of the characteristics of the 1991 statute is to have introduced procedures without a systematic court control. When the creditor has an enforcement title he does not need to systematically seize the court.

1.4. Are there different types of enforcement procedures in your member state?

The ordinary procedure is an adversarial procedure in front of the "juge de l'exécution" (specialised enforcement judge)[5]. The claim should be brought at the first available hearing. However, in case of emergency a claimant may be allowed to present his claim at a moment determined by the judge, even on week-ends or holidays[6]. The procedure is oral and the parties need not be represented by a lawyer. The decisions of the "juge de l'exécution" are notified to the parties by the registrar (a registered letter is used). An appeal can be lodged within fifteen days from notification.

In certain cases specified by statute and if the circumstances justify that an urgent measure be taken ex parte (unilaterally) a specific procedure is provided for.[7] This is the "ordonnance sur requête". There is also a specific procedure for cases where the enforcement authority (l'huissier de justice") in charge of the enforcement of an enforcement title, faces difficulties during the enforcement[8].

[5] Art. R. 121-11 CPCE.
[6] Art. R. 121-12 CPCE
[7] Art. R. 121-23 CPCE
[8] Art. R. 151-1 CPCE.

1.5 Is your system of enforcement considered to be centralized or decentralized?

1.6 *The authorities/bodies and agents involved. Which authorities have competence with respect to enforcement?*

The main enforcement authorities are "huissier de justice". They have been instituted as such by two decrees adopted in 1945 and 1956[9]. They have a monopoly for carrying out coercive and interim measures[10]. When called upon, they have the obligation to act (if the measure is to be executed within the territory for which they have competence), except if the measure appears to them as illegal or if the costs of their intervention will clearly exceed the amount of the debt.

The underlying philosophy of the reforms since 1991 is to limit the role of the courts within the civil enforcement procedures. However, the public ministry has a role to play[11] : it may order the enforcement authorities to act.

Generally speaking, the State has the obligation to ensure the enforcement of enforcement titles. The enforcement authority, may, in order to accomplish their mission, seek the help of public force if needed . The refusal of the State gives rise to a right to reparation.

1.7 How 'private' is the system in actuality, if it is private at all?

Enforcement law is considered as being part of the "public order", which means that rules on enforcement are often mandatory. A creditor must use enforcement procedures instituted by the law in order to ensure equal treatment for all debtors and the respect of fundamental rights of debtors. This is why clauses aiming to organise differently enforcement procedures are traditionally void under French law[12].

However, the will of the parties does play a role in the law of enforcement. The creditor may choose the enforcement measure. On the other hand, the debtor may sometimes choose the assets on which the enforcement measures are to be executed. (for example, the debtor may choose a bank account) [13]. The parties may also agree on the voluntary sale of assets[14]. More radically, the creditor may, of course, renounce the enforcement.

1.8. Briefly enumerate the means of enforcement (methods which serve to procure involuntary collection of the claim).

Incentive measures : periodic penalty payments ("astreinte"), letter of demand, increase of legal interest

[9] Ordonnance n°45-2592 du 2 nov. 1945 et décret n°56-222 du 29 fév. 1956.
[10] Art. L. 122-1 CPCE.
[11] Art. L121-5 et L ; 121-6 CPCE.
[12] Prohibition of the « clause de voie parée » and « pacte commisoire ». See. Articles 2346 and 2458 of the civil code.
[13] R211-23 ; R233-4
[14] R221-30

Provisional measures : provisional seasure, judicial security interests[15]

Enforcement measures on movables : different types of seizure

Enforcement measures on immovable : eviction; seizure and sale of immovable

1.9 Present the underlying principles which govern the enforcement procedure in short (territorial, sovereignty principle regarding coercive measures).

The underlying principles are : freedom of the creditor; subsidiarity; proportionality, the respect of fundamental rights.

By virtue of article L 111-1 of the code of civil enforcement procedures all creditors may, under the conditions provided for by the law, force a defaulting debtor to perform their obligations toward them. According to article L111-2 of the same code, the creditor with an enforcement title may seek enforcement on the assets of his debtor under the conditions specific to each measure. The creditor may choose the appropriate measure (article L111-7). However, the measures must not exceed what is necessary in order to obtain performance of the obligation. The law does not, in principle, create a hierarchy between the different measures : the creditor has no obligation to have recourse to an amicable settlement or a periodic penalty payment before coercive measures. However, there are some exceptions. When enforcement measures on immovables are concerned article L311-5 imposes to seize by priority the immovable with a mortgage.

An important principle of enforcement law is the necessity to seek a balance between the right of the creditor to be paid and the necessary protection of the fundamental rights of the debtor. First of all several provision aim to incite the debtor to perform voluntarily. Then certain assets considered as indispensables to the life of the debtor and his family are exempt of seizure. Other rules restrain the investigation powers of the enforcement authority in order to preserve the debtor and his family from intrusive measures at certain moments (certain days, during the night time, during winter for evictions etc….). This balance is based on a certain proportion. As mentioned, although the creditor has the possibility to choose the appropriate measure, it must not exceed what is necessary. The juge de l'exécution may lift all unnecessary measures and grant damages in case of abuse by the creditor. In order to help the creditor with his choice, the enforcement authority must seek all necessary information about the debtor's patrimony and inform the creditor of what seems the most appropriate measure.

1.10. Does the stage of 'permitting the enforcement' in exist in your legal system? Please comment, e.g. German 'Titel mit Klausel' (explanations will be added).

The idea behind the 1991 reform was to reinforce enforcement titles and favour out of court procedures. Hence, as a general rule, when the creditor has an enforcement title there is no need for a judge to permit enforcement. However, the creditor has to send a letter of demand or "a commandement to pay" delivered by the enforcement authority

[15] see. infra

before coercive measures. However, the authorisation to enforce delivered by a judge does exist under French law : it is necessary for interim measures, when the creditor does not have an enforcement title[16]. It is also necessary for some specific measures : enforcement on Sundays, on holidays, during night-time (21h-6h), a measure involving entry into the home of a third party etc…..

1.11. Substantive jurisdiction. Please provide a short presentation of the judicial system - courts system.

Substantive jurisdiction lies with the juge de l'exécution (enforcement judge). This is the president of the Tribunal de grande instance (first instance court that has general jurisdiction). His jurisdiction is exclusive and mandatory. Any other court seized must of its own motion declare itself incompetent. As an exception another court (tribunal d'instance) has jurisdiction for the question of seizure of remunerations. As a general rule the juge de l'exécution sits as a unique judge, but he may decide to refer the case to a formation of three judges.

On the other hand he only has jurisdiction for any question pertaining to enforcement titles and enforcement. He may not modify the ruling. However it is sometimes difficult to make the difference between modification and interpretation.

1.12. Territorial jurisdiction. Please provide a short description in this regard.

French courts have exclusive jurisdiction for any question pertaining to enforcement in France. The applicant may choose between the court of the domicile of the debtor and the court of the place where the enforcement measure is to be carried out[17]. If the domicile of the debtor is abroad, only the court of the place of enforcement has jurisdiction. However, there are some specific jurisdiction rules for certain measures[18].

1.13. Enforcing the conditional claims.

In order for enforcement to be able to take place, the claim must be certain, liquid and due.

The claim is considered liquid when its precise amount can be assessed. In other words the enforcement title must contain all the elements necessary to its assessment. Case law considers that a debt denominated in a foreign currency is liquid.

As far as enforcement of provisionnal titles is concerned it is at the risk of the creditor. If the title is later on challenged and annuled the creditor will have to repare the damage caused to the debtor by the enforcement measures. Case law considers that this obligation exists even if the debtor spontaneously performed the obligation[19]. However seizure of immovables can only take place if a final decision has been granted.

1.14. Legal succession after the enforcement title was obtained. What has to be done to proceed the enforcement against the successors?

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[16] Article L511-1 CPCE.
[17] Article R121-2 CPCE.
[18] For example, Article R311-2 CPCE. The court of the place of the immovable has exclusive jurisdiction in matters relating to seizure of immovables.
[19] Cass. Ass. Plen. 24 fév. 2006, Bull Ass. Plen n°2

The general rule under French law is the transmission of debts to heirs. Hence it is not necessary to obtain a new enforcement title. The existing title against the deceased is enforceable against the heirs eight days after service to the heirs[20]. However, the debt is not imposed on the heirs. They have the possibility to accept or renounce the inheritance. They can also accept within the limits of the assets. If this is the case, the creditor needs to declare his claim. Any claim that has not been declared within fifteen months is lost[21]. During this fifteen months period enforcement measures are forbidden.

1.15. Enforcement titles: Decisions (judgments and other court decisions), settlements, public documents. Please define and comment your system!

Under French law there is a list of enforcement titles established by statute[22].

1.16. Requirements for enforceability certification in Member State of origin - procedural steps.

1.17. Service/notifications of documents and decisions. Please present an overview of said activity.

1.18. Division between enforcement and security measures

Part 2: National procedure for recognition and enforcement of foreign judgements

2.1. Which of the three systems is enacted in your system, disregarding EU or other international acts: (1) Révision au fond; (2) Contrôle limité; (3) Ex lege.

French law on recognition and enforcement of foreign judgments is mainly case-law. Although the Cour de cassation initially adopted the « revision au fond » system, the 1964 Munzer case[23] abandoned it. Indeed, the revision au fond system, based on suspicion towards foreign judgments, did not favour the development of private international relations. Consequently, since 1964, recognition and enforcement of foreign judgments are subject to conditions of international regularity, in other words a system of limited control. Ever since, the system has been evolving towards further liberalisation. Out of the five conditions, laid out by the Munzer case, two have been set aside in more recent decisions[24]. Hence, according to the law as it stands today there are three conditions of international regularity of foreign judgments : jurisdiction of the foreign court, conformity of the judgment to international public policy and absence of

[20] Article 877 civil code.
[21] Article 792 civil code.
[22] Article L111-3 CPCE
[23] Cass. civ. 1re, 7 janv. 1964.
[24] Cass. civ. 1re, 4 oct. 1967, *Bachir*.; Cass. civ. 1re, 20 févr. 2007, *Cornelissen*.

fraud. One should add the absence of an irreconcilable decision rendered or recognised in France. Although this condition is definitely required by the case law, it is generally not presented as an autonomous condition. Rather, it is seen as part of the condition relating to international public policy. However when enforcement is not sought, French law accepts de plano recognition (without any preliminary procedure) of some foreign judgments. Nonetheless this recognition remains subject to the respect of the conditions of international regularity. The scope of the *de plano* recognition is controversial. In other words the question whether all decisions should benefit from it gives rise to debate.

2.2 What is the concept of 'recognition' and 'enforcement' of foreign judgement in your member state?

Under French law it is admitted that a foreign decision can produce mainly three effects : *res judicata*, « substantial efficiency » and enforceability. Res judicata makes it impossible to start the trial over again in France. « Substantial efficiency » modifies the legal situation of the parties and compels the French judge to take into account the decision of the foreign judge. Last, but not the least, enforceability allows the use of coercive measures on persons or assets. In other words, it allows the enforcement of the decision through, if necessary, the use of force. The concept of recognition covers the first two effects. Enforcement covers the third.

French law provides for *de plano* (meaning without any special prior procedure) recognition of foreign decisions in matters of status or capacity of natural persons (whether these decisions are considered as constitutive or declaratory under French law). The same applies for decisions on patrimonial matters considered as « constitutive » under French law. On the contrary decisions on patrimonial matters considered as declaratory (for example annulment or termination of contract) are not included in this system. They will only be granted« substantial efficiency » and *res judicata* after a special « exequatur » procedure. However, for several reasons and in particular because this distinction between constitutive and declaratory judgments, unknown to many legal systems, remains uncertain even under French law, academic writers generally consider that all foreign decisions should benefit from *de plano* recognition. As for enforcement, it always requires a special, prior "exequatur" procedure.

2.3. Main features of 'delibation' (procedura di delibazione) or 'incidenter' procedure – type of procedure.

Comment: On the continent usually two distinct civil procedures exist. One is a separate non- contentious civil procedure especially tailored for recognition and enforcement of foreign judgements in Italy called 'procedura di delibazione'. However, in certain countries a possibility also exist that the foreign judgement is recognised and enforced directly within the procedure of enforcement (in the meaning of the execution) (in France called 'incidenter' procedure).

Enforcement of foreign decisions in France requires going through an exequatur procedure. In other words, a person who wishes to pursue « an act of material enforcement on assets or coercion on persons » must, prior to those, bring an action called action for exequatur.

This is a contentious action. It is independent from the original action relating to the merits which has been decided by the foreign judge. It is also characterised by its adversarial character. The claimant is the beneficiary of the foreign judgment. The defendant is in general the person against whom the foreign judgment has been rendered. However if the foreign action was non contentious, the person seeking exequatur must bring an action against the public ministry (representative of the government)

When only recognition of the foreign judgment is sought, several situations must be distinguished. If the decision is one of those that are recognised *de plano*, the beneficiary may still bring an action for exequatur, although enforceability is not at stake. This is referred to as « exequatur for all purposes ». This action can be brought by both parties and even by third parties whose interests are affected by the decision. The foreign decision may also be invoked during separate proceedings in France. This will provoke an incidental control by the judge seized of the main proceedings. If the decision is one of those that are not recognised *de plano* (this is, in principle, still the case for "declaratory" decisions in patrimonial matters), once again the action for exequatur may be used in order to obtain mere recognition. However, this will be rare since the most commonly sought effect, concerning declaratory patrimonial judgments is enforceability.

2.4. Jurisdiction (substantive and territorial). Provide a short description.

As far as substantive jurisdiction is concerned, no regard should be had for jurisdiction rules that would apply if the underlying action as to the merits was brought in France. Civil courts and more specifically the Tribunal de grande instance sitting as a unique judge has exclusive jurisdiction for actions for exequatur.
As far as territorial jurisdiction is concerned, the court that has jurisdiction for actions for exequatur is according to the general rule under French law the court of the domicile of the defendant. However because of the independence of the action for exequatur vis-à-vis the action on the merits, special rules on jurisdiction depending on the subject matter can not be taken into account. By way of consequence, when the defendant has no domicile or residence in France, the case law allows the claimant to bring the action in front of any court in France as long as this choice does not contradict the requirements of a sound administration of justice. The place of potential enforcement of the decision satisfies this criterion. The same is true for the Paris court because of its extensive experience in matters relating to exequatur.
Finally, when a foreign judgment is invoked incidentally during other proceedings brought in France, the court that has jurisdiction for the main proceedings has jurisdiction also for the incidental question.

2.5 Types of decisions

Two main actions can be brought regarding the foreign judgment : action for exequatur (for the purpose of enforcement or for all purposes) and l'action en inopposabilité. This last action is preventive. It aims to declare the foreign judgment irregular in order to prevent the effects of *de plano* recognition.
Moreover, the control may be carried out incidentally. The party who wishes to invoke a foreign judgment will do so during main proceedings in front of the French judge. In this case, different situations may arise. If the main claim in front of the French judge is identical to the one that has been decided upon by the foreign judge, then the foreign decision will be invoked in support of a *res judicata* defence. Of course, the decision must have *res judicat*a effect according to the foreign law. If, on the contrary the claim presented to the French judge is different from the one decided by the foreign judge, then the foreign judgment will simply be presented, as an argument, in support of the main claim.

2.6. Effects of decision (constitutive effects, extension of effects from the state of origin and state of enforcement).

Concerning the action for exequatur, the judge may grant it or refuse it, but he may never modify the foreign judgment. However, he may grant exequatur only to certain heads of the ruling, if the different heads are separable. This is partial exequatur. If exequatur is granted, the judgment is enforceable in France. Hence recourse may be had, if necessary, to the use of force. The enforcement measures will be those provided for under French law. The limitation period applicable to judgement debts is also the one provided for under French law. As far as the date of efficiency of the foreign judgement is concerned, it is, generally speaking, independent of the date of the exequatur except if enforceability is invoked. The foreign judgment is enforceable only after exequatur is granted. The other effects are attached to the foreign judgement from the date determined by the foreign law. This last point is certain for judgements that are recognised *de plano*. For other judgements it is more debatable, although academic commentators are unanimously in favour of a generalisation of the solution.
The annulment of the foreign judgement by a superior court entails the automatic annulment of the French decision granting exequatur[25] .
If the exequatur is refused, the ruling is *res judicata*. Hence it can be opposed to a new action for exequatur. On the contrary, it can not be opposed to a substantive claim which is identical to the one that had been presented to the foreign judge.
As for the ruling on "inopposabilité", it can be opposed to a action for exequatur brought by the other party. Conversely, the rejection of this action, equals exequatur.

Part 3: Recognition and Enforcement in B IA

3.1. Certification or declaration of enforceability in Member States of origin (Art. 53. B IA RE).

[25] Civ. 1ère 23 sept. 2015, n°14-14.823.

Article 509-1 of the civil procedure code provides that the application for certification of a judgment has to be addressed to the chief registrar of the court of origin. The rule could be problematic in the light of the fact that article 53 of the regulation refers to « the court » of origin. A similar question arose in the context of the regulation on European enforcement order for uncontested claims. Article 6 of that regulation does not specify who within that court is competent to carry out the certification. The ECJ[26] held that a distinction should be made between the certification as such and the formal act of issuing the certificate. The actual certification itself requires a judicial examination. However, in the context of the Brussels I recast regulation since a control has been maintained in the country of enforcement, no substantive review is imposed in the country of origin (in particular relating to the rights of the defence). Therefore the rule giving competence to the registrar should not be a source of difficulty. Concerning authentic instruments, the president of the « Chambre des notaires » is competent[27].
Another question concerns the moment of certification. A certification which would be simultaneous to the decision would be time-saving. One could even envisage a systematic application. However, this would only be possible for judgments that are immediately enforceable. In other cases, the certificate can only be applied for after the time limit for appeal or review procedure with suspensive effect has expired. It will be conditioned by the presentation of proof of service and the certificate of non-appeal.
The application takes the form of a « requete ». This is a simple, non adverserial formality which is consistent with the spirit of the regulation. The provision[28] specifies that there is no need to be represented by a lawyer even if the application is submitted to a judge. Of course the same applies for applications addressed to the registrar or president of the "Chambre des notaires"

3.1.2. Lack of certificate of non-enforceability. Cross-border infringement of assets.

Comment: It has been criticised that security measures only prohibit debtor's disposal with assets without acquiring a mortgage or pledge especially with regard to extremely high requirements for the obtaining of the injunction. The purpose of security measures has to be obtaining safeguards for the creditor also for the case of debtor's bankruptcy. Notification of court has no influence on type of procedure.

In addition to security measures the effect of which is to prohibit the debtor's disposal of assets, French law also provides for "judicial securities" (sûretés judiciaires) : generally speaking the court will authorise the creation of a security interest in certain types of assets, mainly immovables and securities. The list of assets is an exhaustive one : for example a pledge on a movable is not possible. However, sometimes an authorisation by the court is not necessary. This is in particular the case when the applicant has a judgement, even if it is not enforceable. It is generally admitted that the same is true for foreign judgements (the Cour de cassation expressly admitted this solution for an arbitral award[29]). It is an *ex parte* (unilateral) application : a notification to the debtor must be carried out within 8 days.

[26] ECJ, 17 december 2015, C-300/14.
[27] Article 509-3 CPC.
[28] Article 509-1 CPC.
[29] Civ. 2ème 12 oct. 2006, n°04-19.062.

3.1.3. Does a specific legal remedy exist to challenge the certificate of enforceability in the Member State of origin? If yes, how does it influence the course of civil enforcement?

The only remedy provided for under French law concerns the denial of issuance of the certificate. Hence, this remedy has no influence on the course of civil enforcement. The denial can be challenged in front of the president of the tribunal de grande instance[30] (first instance court). There is no possibility of appeal[31]. However a "pourvoi" in front of the Cour de cassation is possible[32]. The procedure is not adversarial and the person against whom the decision has been rendered has no place in it.

3.1.4. In addition to certificate of enforceability, the Regulation does not include any provisions related to rectification or withdrawal of certificate (cf. Art. 10 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims). This issue is therefore governed by domestic law in the Member state of origin. Moreover, certificate of non-enforceability unfortunately also does not exist (Art. 6(2) Reg. 805/2004) which could ease termination or suspention of enforcement procedure in Member State of enforcement in cases where a judgement has ceased to be enforceable or its enforceability has been suspended or limited.

B IA does not provide for certificate in case of withdrawal of enforceability in the Member State of origin, unlike Art. 10 Reg. 805/2004. What happens if the court in the Member State of origin certifies the enforceability for a judgement which has not yet acquired this effect (e.g. in Slovenia the time limit for voluntary fulfilment of the claim in the legally binding judgement has not yet expired. Is it possible to apply Art. 42 ZIZ?). What happens if the judgement was served to the wrong address or to the wrong person? Does this constitute a ground for withdrawal of certificate of enforceability in the Member State of origin?

French domestic law does not provide for rectification or withdrawal of the certificate. This is true even concerning the certificate for European enforcement order. However since regulation 805/2004 provides for it, French case law, of course applies this provision. The Cour de cassation, has held that the application for rectification or withdrawal must be addressed to the issuing authority, meaning the registrar[33]. In the context of the Brussels I recast regulation the difficulty comes from the fact that the regulation does not provide for rectification or withdrawal. As for domestic procedural law it does not provide for the withdrawal of acts delivered by the registrar either. The question could be addressed in two different ways : by way of analogy, one could envisage applying the rules from regulation 805/2004. On the other hand, the *a contrario* argument could apply, leading to refuse any such remedy in the absence of a clear provision in the Brussels I recast regulation.

3.1.5. What are the effects of the certificate in your legal order (Member State of origin) (e.g. Germany - Klausel).

[30] Article 509-7 CPC.
[31] Article 509-7 CPC.
[32] Article 509-7 CPC.
[33] Cass. 2ème Civ. 25 juin 2015, n°14-18270.

Under French law, the certificate has no specific legal effect in the member state of origin.

3.1.6. Control and Correction. What options are available for challenging errors?

Once again, there are no specific provisions allowing for control and correction of the certificate. There are several possible ways of reasoning. First of all, one could envisage the application of domestic procedural rules on rectification of material errors[34]. These rules however concern judgments, so it is not certain that they may apply to certificates delivered by registrars. If this was nevertheless accepted, then one of the parties should seize the court of origin. The court could also proceed of its own motion. Another way of reasoning would be to apply the rules applicable to European enforcement orders. In that case, the application should be addressed to the registrar. Finally, one could also consider that in so far as the certificate is not a judgement, there is no res judicata. It should be possible to apply for another certificate without the errors.
Moreover the ECJ has held that the court of the member state of enforcement has jurisdiction to verify that the information in that certificate is consistent with evidence[35]. It stems from this case that respect for the rights of the defence prevails over the free movement of judgements. However, the case concerned only default judgements. Hence one can wonder weather this type of reasoning could be transposed in a more general manner.

3.1.7. Plurality of certificated documents (number of copies of certificate). Provide a comment on said subject and possible problems which may stem from it.

Only one copy of the certificate is delivered to the applicant. It is either given to him directly or served upon him by a registered letter[36]. The rule can be problematic in the event of enforcement in several member states if the original of the certificate is required.

3.1.8. Legal nature of certificate of enforcement. The relation between B IA and national rules. Please comment on possible discrepancies and similarities.

The legal nature of the certificate is uncertain. Since it is issued by the registrar and not a judge, it can not be considered as an adjudicatory/judicial act. Case-law on the European enforcement order can also be invoked in favour of this assertion[37]. It is also difficult to consider it as an administrative act under French administrative law. Hence it could not be reviewed by administrative courts.

3.1.9. Post festum cancelation or withdrawal of certificate of enforceability in Member State of origin. How should such an event be treated and what effects, if any, are to be ascribed to it?

[34] Article 462 CPC.
[35] ECJ, 6 sept. 2012, C-619/10
[36] Article 509-6 CPC.
[37] See. ECJ 17 dec. 2015, C-300/14

The enforcement authority in France (l'huissier de justice) has the obligation to guarantee the legality of enforcement and hence that the enforcement order is flawless[38]. By way of consequence, the enforcement authority must verify the continuity of the enforcement order. The cancelation or withdrawl of certificate of enforceability in member state of origin should prevent enforcement in the member state of enforcement. (by way of analogy, one can remind that when exequatur is needed, the annulment of the foreign judgement by a superior court entails the automatic annulment of the French decision granting exequatur cf. Civ. 1ère 23 sept. 2015, n° 14-14.823)

3.1.10. Does the certificate need to be served to defendant at all? Does it have to be served withing a specific timeframe?

3.1.11. Service of declaration of enforceability if it is foreseen in the national law (it is not in Slovenia and in Austria).

3.1.12. A key question is whether the certificate on standard form B IA is served before starting enforcement

French law does not contain special provisions on service of the certificate weather France is state of origin or state of enforcement. It is true that one can wonder about the utility of the service, especially if the judgment has been already served on the defendant. Under French law, this is in most cases a condition to make the judgment enforceable[39].
However, although some writers consider that service by the court of origin, would be preferable since this court has all the necessary information[40], the regulation (article 43) seems to impose service in the state of enforcement.
In the absence of any provision in French procedural law, it appears that the French court as court of origin has no such obligation. Service will be performed at the initiative of the beneficiary of the certificate. In France, the authority in charge of service and the enforcement authority is the same. This means that this authority will be the same weather France is country of origin or country of enforcement. "L'huissier de justice" to whom a judgement from another member state is presented for enforcement will serve the certificate upon the person against whom enforcement is sought.

3.1.13. Certificating the amount of interests

The detailed indication of interest in the certificate simplifies the task of the enforcement authority. In France judgement debts give rise to interest, the rate of which is determined by default rules. The rate is fixed by decree every six months. There are two different rates : one applicable to natural persons acting outside of their profession and another one applicable in all other cases. French law also provides for an increase of the rate interest for monetary judgements two months after the decision became enforceable. However, this increase is at the discretion of the judge. He may decide not to apply it or to reduce its amount. A precise information about this should be given in

[38] Cass. 1ère Civ., 28 sept. 2016, n°14-29.776
[39] See. Article 503 CPC.
[40] F. Gascon-Inchausti, « La reconnaissance et l'exécution des décisions dans le règlement Bruxelles I bis » in Le nouveau règlement Bruxelles I bis (Bruylant 2014), p. 205 et s.

the certificate. It would also be relevant to specify which of the two default interest rates is applicable.

3.2. Parties' succession. Content of certificates, procedure.

French law does not contain any specific provision concerning succession within the scope of the regulation. By analogy, the rules relating to the application of enforcement orders to heirs should apply to the certificate. However, the certificate needs to indicate the person against whom the judgment is enforceable. One could ask whether the indication of the deceased comprises the heirs in conformity with the spirit of French law and the idea of continuation of the deceased person.

3.3. Recognition and enforcement of a judgment in the Member State of enforcement.

3.3.1. The concept of 'recognition' (Art. 36/1). Provide an understanding.

Although the term recognition might have several meanings, it is quite clear that within article 36 it refers to two effects attached to foreign judgements, namely *res judicata* and substantial efficiency. *Res judicata* makes it impossible to start the trial over again in France. « Substantial efficiency » modifies the legal situation of the parties and compels the French judge to take into account the decision of the foreign judge. There is a debate concerning the concept of recognition in the context of authentic instruments. However the debate seems to be resolved by article 58 since this provision only refers to enforcement. Hence it appears that authentic instruments are not entirely assimilated to judgements. They are considered as legal instruments comparable to contracts and as such can not benefit from the provisions on recognition, particularly *res judicata*. On the contrary they are subject to a choice of law reasoning.

.3.2. The scope of a judgement's authority and effectiveness. Do you see any national (problematic) issues considering the doctrine of spreading the effects of a judgment from the Member State of origin to the Member State of enforcement?

By virtue of the regulation a judgement which is enforceable in a member state shall be enforceable in other member states without any prior procedure. However it is interesting to note that the French and the English version vary slightly. According to the French version, a judgment which is enforceable in a member state will have "executory force" in other member states. Under French law the two concepts are not exactly the same. However, this discrepancy is not very problematic since functionally the formalities under the regulation and under French law are the same.

Concerning recognition the spreading of substantial efficiency does not seem to give rise to difficulties. Concerning *res judicata* a question might arise. In France the Cesareo[41] case stands, in domestic French law, for the rule of concentration of arguments. By virtue of this rule a claimant must present in front of the first instance court all the legal

[41] Cass. Ass.Plén., 7 juill. 2006, ***Césaréo***, *Bull. civ.* n° 8, *BICC* 15 oct. 2006, rapp. Charruault, note Koering-Joulin, avis Benmakhlouf, *D.* 2006. 2135, note L. Weiller, *JCP* 2006. I. 183, obs. S. Amrani-Mekki, *JCP* 2007. II. 10070, note G. Wiederkehr, *Dr. et proc.* 2006. 348, obs. N. Fricero, *RTD civ.* 2006. 825, obs. R. Perrot, *Procédures* 2006, Repère 9, obs. H. Croze

grounds for his claim. In other words, the *res judicata* defence may be opposed to an argument raised in front of the court of appeal even though that argument has not been raised at first instance. The question then is which law governs *res judicata*. Should the French conception be extended to French judgements invoked in other member states and reversely, should this conception of *res judicata* apply to judgements from other member States?
Concerning enforcement, the main difficulty will be raised by enforcement measures unknown in the state of enforcement. This type of situation might require certain adaptations. The enforcement authority (l'huissier de justice) might proceed with the necessary adaptations directly if they consider that the adaptation does not raise any major questions. If the adaptation of the measure or order is challenged, the juge de l'exécution will have jurisdiction. The ECJ has already held that where the national law of a member state does not contain a coercive measure similar to that ordered by the court of origin the objective pursued by that measure must be attained in the state of enforcement by having recourse to the relevant provisions of its national law which are such as to ensure that the decision is complied with in an equivalent manner[42]. Up till now, the biggest difficulties have been raised by *in personam* injunctions issued by British courts.

3.3.3. Recognition as an incidental question (Art. 36(3)). Explain this option in your Member State (of enforcement).

There are no specific difficulties with this option. The court seized for the main proceedings will have jurisdiction for the incidental question. The main problem will be to decide whether the court should check *ex officio* the existence of a grounds for refusal or whether it has to be invoked by the party against whom recognition is sought.

3.3.4. Although the ex ante exequatur has been abolished, the challenge stage is retained as a result of negotiations. How is the residual stage regulated in your member state?

Comment: By initiating a procedure in accordance with the national law of the Member State (of enforcement) the grounds for refusal of enforcement listed in Art 45 can be invoked by any interested party.

Contrary to the situation in most member states, in France, several courts might have jurisdiction in matters relating to the recognition and enforcement of judgments from other member states. In matters relating to recognition, the competent court is the tribunal de grande instance, just like concerning recognition and enforcement of foreign judgements from non EU countries. On the contrary, concerning refusal of enforcement it is the juge de l'exécution, (court that has jurisdiction for any difficulties relating to enforcement under domestic law) that has jurisdiction. Finally a different court (tribunal d'instance) will have jurisdiction if the enforcement involves the seizure of remuneration. This is a consequence of the application of domestic rules on jurisdiction relating to enforcement. The procedural rules applicable in these matters in domestic cases are to be applied without any particularities.

[42] ECJ, 12 april 2011, C-235/09

Part 4 : Remedies

4.1. General observations on the systematization and availability of national remedies

4.2. Remedies in enforcement procedure

4.2.1. *Characteristics of legal remedies in enforcement procedure*

By virtue of article 213-5 of the Code de l'organisation judiciaire the function of enforcement judge (juge de l'exécution) is performed by the president of the tribunal de grande instance (first instance court that has general jurisdiction). His jurisdiction is exclusive and mandatory.
One of the characteristics of enforcement procedures in France is precisely the concentration of litigation in front of the enforcement judge with the aim of simplifying enforcement procedures.
The procedure in front of the enforcement judge presents several specificities.
First of all, by virtue of article R 121-5 parties may be assisted or represented. Representation by a lawyer is not compulsory. Parties may be assisted or represented by other people (spouse, partner, parents…) the list of whom is given by article R121-7 CPCE.
The procedure is, generally speaking oral[43]. However, the code also organises the possibility to introduce written arguments, by registered letters sent to the judge[44].
The decisions of the enforcement judge are *res judicata*. They are notified to the parties by way of registered letter. In case of necessity the judge can decide that service is not necessary[45].
The decisions of the enforcement judge can be appealed against. The appeal must be lodged within 15 days after service. Representation by a lawyer is compulsory. The Court of appeal must rule within "a short period of time". Appeal does not have suspensive effect. However, in certain circumstances it is possible to apply to the first president of the court of appeal for suspension of the enforcement of the enforcement judge's decision.

4.2.2. *Should objections be brought in enforcement or in separate procedure ?*

Since, as a general rule, there is no need for an authorisation to enforce, enforcement often takes place independently of any judicial proceedings. A challenge of an enforcement measure hence initiates new proceedings in front of the enforcement judge.
These proceedings are independent from the merits of the case. However, it is admitted that the enforcement judge's decision may touch upon the merits in so far as it is necessary in order to decide on the validity of the enforcement or provisional measure.

4.2.3 *Opposition in enforcement*

[43] Article R121-8 CPCE.
[44] Article R 121-10 CPCE.
[45] Article R121-17 CPCE.

The enforcement judge has jurisdiction for challenges relating to enforcement titles (regularity of the title). He also has jurisdiction for challenges relating to the underlying debt (the exact amount, whether or not it is due). Last but not the least, he has jurisdiction over disputes relating to the enforcement measure itself or to the assets on which the measure is performed.

4.2.4. *If a separate judicial procedure to enforce claims from judgements is not foreseen in your member state, what options does the debtor have in order to challenge inadmissibility of particular enforcement on the grounds that appeared (came into being) after the enforcement title was acquired (nova producta) or due to the inadmissible way of performing*

The enforcement judge has jurisdiction to stop enforcement if new elements (payment, set-off) justify it. However, he cannot annul the judgment nor modify it. The enforcement judge also has jurisdiction to assess formal regularity of enforcement procedures as well as liability of agents in charge of enforcement[46].

4.2.5 *Does the opposition against enforcement decree have to be sustantiated or not ?*

4.3. Remedies in international private procedure

4.3.1 *Types and main features of legal remedies*

As a general rule, a decision granting exequatur can be challenged in the same ways as any other decision in civil and commercial matters. This means it is possible to lodge an appeal and a « pourvoi » in front of the Cour de cassation. It should be noted that in spite of the independence of the exequatur proceedings from the proceedings on the merits, the admissibility of appeal depends on the amount of the foreign ruling. Another remedy, « tierce opposition » open to third parties, will be allowed only, if it would have been allowed in similar proceedings as to the merits.
Finally, case-law seems to have accepted another remedy specific to exequatur. If the foreign judgement is annulled in the state of origin the judgement granting exequatur is considered lapsed (caduque).

4.3.2 *Grounds for challenging foreign judgement.*

Since 1964, recognition and enforcement of foreign judgments are subject to conditions of international regularity, in other words a system of limited control. Ever since, the system has been evolving towards further liberalisation. Out of the five conditions, laid out by the Munzer case[47], two have been set aside in more recent decisions[48]. Hence, according to the law as it stands today there are three conditions of international regularity of foreign judgments : jurisdiction of the foreign court, conformity of the judgment to international public policy and absence of fraud. One should add the

[46] Civ. 2ème 27 fév. 2014, n°13-11788.
[47] Cass. civ. 1re, 7 janv. 1964
[48] Cass. civ. 1re, 4 oct. 1967, *Bachir.*; Cass. civ. 1re, 20 févr. 2007, *Cornelissen*.

absence of an irreconcilable decision rendered or recognised in France. Although this condition is definitely required by the case law, it is generally not presented as an autonomous condition. Rather, it is seen as part of the condition relating to international public policy.

Jurisdiction of the foreign court

Concerning jurisdiction of the foreign court, the rule has been laid down by the Simitch[49] case. A foreign court is considered to have jurisdiction in the eyes of French law, if the French court does not have exclusive jurisdiction and there is a characteristic connection between the foreign court and the dispute. Rules establishing exclusive jurisdiction of French courts are quite rare. One can mention the rule giving exclusive jurisdiction to French courts for disputes concerning *in rem* rights in immovables situated in France, for disputes concerning enforcement measures to be executed in France, or for disputes covered by a choice of court agreement. As for, the characteristic connection it is assessed in a very flexible manner. The elements taken into account will vary according to the nature of the dispute. Generally speaking, the rule is very liberal since it leads to consider that a foreign court has jurisdiction even in circumstances in which French rules on jurisdiction would not consider a French court competent.

Conformity of the judgment to international public policy.

This conformity has two aspects : a substantial and a procedural one.

The procedural aspect covers principles of civil procedure considered as so fundamental under French law that it would be impossible to give effect within the French legal order to a decision that does not respect them. For example, in the case of default judgements, the document instituting the proceedings must have been served on the defendant in sufficient time and in such a way as to enable him to prepare his defence, the adversarial principle must have been respected, it must be possible to challenge the decision. It should also be noted that the violation of public policy is not assessed in abstracto, but rather in regard of the circumstances of the case. For example, a decision that is not motivated, is in principle contrary to procedural public policy. However, this will not be the case if separate documents that can be produced in front of the court can serve the same purpose as motivation and allow the court to perform its control. Moreover, the violation of public policy must be characterised. It must be demonstrated that the violation of these fundamental principles objectively compromised the interests of a party[50].

The ECHR has a great influence in this field. The important Pellegrini case[51] decided by the European court of human rights in 2001 stands for the rule that any European judge within an exequatur procedure must make sure that the procedure that lead to the decision of the foreign court satisfies the requirements of article 6 of the ECHR even if the State of origin of the judgement is not a party to the convention.

Going even further, the Negrepontis case[52] decided that the contents of public policy of member states must be consistent with fundamental rights protected by the convention.

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[49] Civ. 1ère 6 fév. 1985, Rev.crit DIP 1985, 369 et la chronique de M. Franceskakis.

[50] Cass. civ. 1re, 19 sept. 2007, *Pêcherie du Port*.

[51] CEDH 20 juillet 2001, n° 30882/96, AJDA 2001. 1060, chron. J.-F. Flauss ; Rev. crit. DIP 2004. 106, note L.-L. Christians ; RTD civ. 2001. 986, obs. J.-P. Marguénaud ; Gaz. Pal. 2002. Doctr. 1157, chron. L. Sinopoli.

[52] CEDH, 3 mai 2001, *Negropontis c. Grèce* ; v. égal. P. Kinsch, « La non-conformité du jugement étranger à l'ordre public international mise au diapason de la Convention européenne des droits de l'homme », *Rev. crit. DIP* 2011. 817.

As for the substantial aspect, the concept of international public policy is the same as the one generally used in private international law. A French court will refuse to introduce into the French legal order a foreign judgement which violates principles considered as fundamental under French law. Of course, international public policy is different from public policy in the domestic sense. It does not include all mandatory rules. Decisions refusing exequatur on this grounds in matters which are within the material scope of the Brussels I regulation are rare.

Absence of fraude

Traditionally this condition, originally called absence of "fraude à la loi" was about manipulating the connecting factor in order to artificially make applicable a law which should not have been applicable to the situation. But this type of fraud was extremely rare in practice. On the contrary another type of fraud was more frequent : "la fraude au jugement". It consists of seeking abroad a judgement, that one could not obtain from the forum court which should have had jurisdiction and would have refused to render such a decision, in order to invoke it in the forum state. The idea is to try to obtain in an indirect way something one can not obtain in a direct way. This scenario was very frequent for example, in matters of divorce but also in matters of surrogate maternity. However in this type of situation, most often there are other grounds (such as lack of jurisdiction of the foreign court or violation of public policy allowing to refuse recognition and enforcement. Nevertheless, commentators consider this condition should be maintained since it may be used against all types of disloyalty. Accordingly, since 2013, the Cour de cassation[53] uses the wording "absence of fraude" instead of the more restrictive wording "absence of fraude à la loi" used before.

4.3.3 Please indicate what are the differences compared to the grounds in B IA

Generally speaking, the control of foreign judgments in BIA is even more liberal than under French law. Article 45 enumerates the only grounds for refusal which can be invoked. First of all, contrary to French law, in BIA there is no review of the jurisdiction of the court of origin[54] except concerning rules on exclusive jurisdiction and rules concerning contracts concluded with weaker parties (employment, insurance, consumer contracts)[55]. Lack of jurisdiction is not a ground for refusal. In a similar manner, absence of fraud is not a ground for refusal. However, it is traditionally admitted[56] that if a fraud is discovered after the decision has been rendered in the country of origin it can be considered as a violation of the public policy of the country of enforcement. When deciding on this point, it is important to ask whether it is still possible to challenge the decision in the country of origin. If it is, then the fraud may not be invoked as a violation of public policy of the country of enforcement. If it is not, it may be invoked.
Concerning public policy, there does not seem to be a big difference. Even though the term manifestly used in BIA, which is absent under French law could indicate that the assessment should be stricter in BIA, case law shows that it is very comparable and that

[53] Civ. 1ère 30 janvier 2013, n°11-10588
[54] Article 45§3.
[55] Article 45§1.
[56] The Schlosser report envisages this situation. French commentators are generally in favour of this view.

decisions refusing recognition and enforcement on the grounds of violation of public policy are very rare.
Finally another difference that comes to mind is the fact that irreconcilability with a judgment rendered or recognised in the state of enforcement is not as such a ground for refusal under French law. However, as mentioned earlier it is considered as part of the condition of conformity to French international public policy.

4.4. Remedies concerning Enforcement of Foreign Judgements according to B IA following the abolishment of exequatur

4.4.1 *Remedies in the Member State of origin regarding the enforcement title itself. Do these remedies influence the enforcement procedure in the Member State of enforcement ?*

In France the debtor may challenge the enforcement title if he/she considers that enforcement would be unjust, for example because he/she already paid a part of the sum at stake. However, contrary to the general rule, the appeal does not suspend enforcement[57]. Nevertheless, it is possible to apply to the first president of the court of appeal for suspension.
Within the BIA system the judgement needs to be enforceable in the country of origin. According to article 44§2 of the regulation the competent authority in the member state of enforcement will suspend the enforcement proceedings where the enforceability of the judgment is suspended in the member state of origin. Consequently, if the first president of the court of appeal grants suspension, this should affect enforcement in other member states.
It should also be noted that provisional enforcement is not subject to the constitution of a guarantee.

Finally, according to article 51 « the court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under article 49 or 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the member state of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged. »
Consequently, an appeal in France as member state of origin may affect the enforcement procedure I the member state of enforcement, but this is left to the discretion of the court in the latter state.

4.4.2 : *Refusal of enforcement. What and/or which are the proceedings in your Member State (of enforcement) ? Present the procedural aspects of the application (demande) for refusal and the role of national procedural law (Art. 47).*

Contrary to the situation in most member states, in France, several courts might have jurisdiction in matters relating to the recognition and enforcement of judgments from other member states. In matters relating to recognition, the competent court is the tribunal de grande instance, just like concerning recognition and enforcement of foreign judgements from non EU countries. On the contrary, concerning refusal of enforcement

[57] Article R121-21 Code des procédures d'exécution.

it is the juge de l'exécution, (court that has jurisdiction for any difficulties relating to enforcement under domestic law) that has jurisdiction. Finally a different court (tribunal d'instance) will have jurisdiction if the enforcement involves the seizure of remuneration. This is a consequence of the application of domestic rules on jurisdiction relating to enforcement. The procedural rules applicable in these matters in domestic cases are to be applied without any particularities.
In front of the juge de l'exécution or tribunal d'instance, competent in matters relating to enforcement, there is no need for representation by attorney. However in front of the tribunal de grande instance, competent in matters relating to recognition an attorney is generally required. A difficulty may arise in relation to the document instituting proceedings in front of the juge de l'exécution. Proceedings need to be instituted by an "assignation" which is a costly document. Some commentators suggested that a different rule should be adopted concerning refusal of enforcement in order to make the procedure as simple as possible.
Article 48 of the regulation states that the court should decide on the application for refusal of enforcement without delay. French procedural rules are in accordance with this provision in the sense that they provide for flexibility. In case of emergency a claimant may be allowed to present his claim in front of the juge de l'exécution at a moment determined by the judge, even on week-ends or holidays[58].

4.4.3 : *What are your own specifics regarding required documents.*

There are no specific requirements.
In France, enforcement of a judgement is subject to prior notification to the person against whom enforcement is sought of a copy of the judgment with the « formule exécutoire ».[59]
The chief registrar of the court that rendered the decision is competent to deliver the certificate which is necessary for enforcement.
There are no additional formalities.

4.4.4 : *Service of documents and representation in your country. Please elaborate.*

Representation by a lawyer is not compulsory in front of the tribunal d'instance (art. L. 121-4 CPCE ; art. 828 CPC) or the juge de l'exécution (enforcement judge) except in matters relating to seizure of immovables (art. R. 311-4 CPCE).
In France, judgments need to be notified to the person against whom enforcement is sought. Subject to certain limited exceptions, notification takes place by "signification", which means that it has to be performed by a "huissier de justice" (enforcement authority). A different way of notification (for example, registered letter) may be used only where a specific provision provides for this possibility[60].
The service provided for by article 43 of the regulation shall be performed by the huissier de justice at the request of the creditor.

[58] Art. R. 121-12 CPCE
[59] Articles 502 and 503 of the civil procedure code.
[60] Article 675, al 2, CPC ; Article R 331-9-4 code de la consommation ; art. R 1454-26 code du travail ; art. R 121-15 CPCE etc…)

4.4.5 *Opposition by the defendant (objection against recognition and enforcement of foreign judgement) – prerequisites and procedure. Does the law envisage « incidenter » or separate procedure. Separate procedure at the first instance/at the second instance. Elaborate on the particularities of the herein provided issues.*

The defendant can bring an action for refusal of recognition or refusal of enforcement. In terms of jurisdiction the action for refusal of enforcement can only be brought as a separate action in front of the juge de l'exécution or in front of the tribunal d'instance in matters relating to seizure of remuneration. The action for refusal of recognition can be brought as a separate action in front of the tribunal de grande instance or as an incidental question in front of the court seized of the main question.
It is possible to lodge an appeal generally within one month after notification. However the appeal must be lodged within 15 days concerning decisions of the enforcement judge. If the party who seeks to lodge an appeal is domiciled abroad the time for appealing is extended by two months. A pourvoi en cassation is also possible within two months after notification. If the party who seeks to bring a "pourvoi" is domiciled abroad the time for pourvoi is extended by a month.

4.4.6. *Third legal remedy – is it to be utilised only in cases of violation (of procedural or substantive law) or can it be used for control of facts as well ?*

In France it is possible to form a « pourvoi en cassation ». This is an extra-ordinary remedy. It aims to quash decisions of inferior courts that in any way violate the law. The Cour de cassation will not reexamin the facts, it is not a third-level court. It's role, among others,is to ensure that the law is interpreted in the same way in the whole country.

4.4.7 *Who is eligible to apply for a refusal of recognition or enforcement ? How do you see the euro-autonomous interprétation ?*

According to article 46 only the person against whom enforcement is sought may apply for refusal of enforcement. On the contrary according to article 45 any interested party may apply for refusal of recognition. The terms interested party are not defined by the regulation.
Under French domestic law, the definition of interest allowing to bring an action is quite wide. It has to be personal and certain, but it can be financial or purely moral. Sometimes it can be future.

4.4.8. *Suspension and limitation of enforcement proceedings (article 44). How is it regulated in your legislation ?*

There are no specific rules on this point under French law. The judge has discretionary power to choose limitation or suspension as provided for under article 44. Some

commentators[61] consider that since suspension of enforcement is not automatic, it is in the debtor's interest to apply preventively for refusal of recognition as soon as the decision has been rendered in the country of origin; This shows that the system could lead to unforeseen complications.

4.5 Protective measures

4.5.1 Which protective measures are available according to article 40 ?

In addition to protective seizure (saisie conservatoire) the effect of which is to prohibit the debtor's disposal of assets, French law also provides for "judicial securities" (sûretés judiciaires) : generally speaking the court will authorise the creation of a security interest in certain types of assets, mainly immovables and securities, without affecting the debtor's disposal of the assets. The list of assets is an exhaustive one : for example a pledge on a movable is not possible.

The general rule is that a prior judicial authorisation is necessary for any protective measure. However, sometimes an authorisation by the court is not necessary. This is in particular the case when the applicant has a judgement, even if it is not enforceable. It is generally admitted that the same is true for foreign judgements (the Cour de cassation expressly admitted this solution for an arbitral award[62]). It is an *ex parte* (unilateral) application : a notification to the debtor must be carried out within 8 days.

4.5.2 What are the prerequisites for these protective measures?

For the beneficiary of a foreign judgment there are no prerequisites.

4.5.3 *How long do protective measures last (duration period)?*

There are very detailed rules on this question.
Generally speaking, the creditor must proceed with the protective measure within three months of the judicial authorisation (article R511-6 CPCE). If this is not the case the authorisation lapses.
According to article R511-7 the creditor must within the month of the execution of the protective measure initiate proceedings or accomplish formalities necessary to obtain an enforcement title. Once he has obtained the enforcement title the creditor must inform the debtor within 8 days.
There are also specific time-periods for each protective measure. For example, for judicial securities the maximum time period is three years. The creditor should, during this period, obtain an enforcement title.

4.5.4 *Effects of protective measures - Auszahlungsverbot (Verfügungsverbot) or pledge (mortgage).*

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[61] LEGRAND (V.), « Justice, notariat : quel est l'impact du règlement Bruxelles I ? », *JCP N.,* 20 février 2015, 1082, spéc. no26

[62] Civ. 2ème 12 oct. 2006, n°04-19.062.

The effect depends on the type of measure envisaged.
Protective seizure prohibits the debtor's disposal of assets. On the contrary, judicial securities do not affect the disposal. Rather, as other securities, they confer a preferential right to the creditor (droit de préférence et droit de suite)

4.5.5

4.6. **Grounds for refusal**
4.6.1 *What are the past characteristics in your country regarding grounds for refusal of recognition? Do you see any new problems regarding grounds for refusal?*

Generally speaking there are few problems concerning grounds for refusal. The most often used ground is public policy, especially in its procedural aspect. It is well settled law that a violation of procedural public policy may be a ground for refusal even in situations other than judgments given in default of appearance[63]. All the procedural guarantees referred to by article 6 ECHR can be invoked. In particular the absence of motivation is very frequently invoked[64]. On the other hand, although violation of rights of the defence in the context of default judgments is a ground for refusal it is not often accepted by French courts[65]. Another question concerns fraud and deciding whether it can be considered as a violation of public policy of the state of enforcement[66]. It is accepted that this argument can only be admissible if it was not possible to invoke it in front of the foreign judge[67].

4.6.2. *What is your opinion on the fact that the grounds for refusal in the B I (44/2001) apply in B IA as well?*

Interpreted strictly as they are, it is not problematic. These grounds constitute means of safeguarding not only the interests of the person against whom enforcement is sought but also the consistency of the legal order of the enforcement state. However certain adjustments, namely concerning irreconcilable judgments, could still be made.

. 4.6.3. *Please comment on the most problematic grounds in your country in more detailed*

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[63] Cass. civ. 1re, mars 1999, *Pordea*, pourvoi n° 97-17598, *RTD civ.* 1999. 469, note R. Perrot ; *JDI* 1999. 773, note A. Huet ; G. Droz, « Variations Pordea - De l'accès au juge entravé par les frais de justice. À propos de l'arrêt de la Cour de cassation, 1re Chambre civile, du 16 mars 1999 », *Rev. crit. DIP* 2000. 181 ; CJUE, 28 mars 2000, *Dieter Krombach c. André Bamberski,* aff. C-7/98, *JDI* 2001. 690, note A. Huet ; *Rev. crit. DIP* 2000. 481, note H. Muir Watt ; *Europe* 2000, comm. 157, obs. L. Idot ; *JCP* 2001. II. 1067, note C. Nourissat ; *Gaz. Pal.* 2000, n° 275, p. 230, obs. M.-L. Niboyet

[64] See, for ex. Civ 1ère 28 nov. 2006, 04-19031.

[65] L. Sinopoli, Ph. Guez, M. Roccati, R. Marcelo Sotomaye, *Rapport français en vue de l'Etude relative à l'application du Règlement CE 44/2001 à la demande de la Commission européenne coordonnée par les Professeurs Hess, Pfeiffer et Schlosser*, p. 34. Le rapport est disponible à l'adresse suivante : http://ec.europa.eu/civiljustice/news/docs/study_bxl1_france.pdf

[66] G. A. L. Droz, *Compétence judiciaire et effets des jugements dans le Marché commun [Étude de la convention de Bruxelles du 27 septembre 1968]*, 1972, Dalloz, n° 493 ; G. Gothot et D. Holleau, *La convention de Bruxelles du 27 septembre 1968, Compétence judiciaire et effets des jugements dans la CEE*, 1985, Jupiter, n° 260 ; P. Mayer et V. Heuzé, *op. cit.,* p. 328, n°477 ; P. Schlosser, rapport précité, p. 128.

[67] M.-L. Niboyet et G. de Geouffre de La Pradelle, *Droit international privé,* LGDJ,5ème éd., n°s 802..

manner.

The rule about irreconcilable judgments is criticised. One difficulty concerns the status of provisional judgments (see. *Infra 4.6.4.).* Another one concerns the rule in article 45.1.d. Many commentators find the rule too restrictive in the sense that judgments can be irreconcilable even without identity of cause of action. This is why, in the dominant view this concept should be interpreted widely, like in matters of lis pendans.
Another point which is discussed is procedural public policy and more precisely the possibility to refuse enforcement for absence of motivation. This ground has been regularly accepted[68]. Yet some commentators consider that it is against the principle of mutual trust and should be limited to cases of violation of the rights of the defence[69].

. 4.6.4. *Grounds regarding related actions and irreconcilable judgements. Do you find any open issues in your country in this regard?*

A question has been raised in France as to the definition of the judgments referred to within the rule about irreconcilable judgements. How should judgments granting provisional measures be treated in this context?
First of all if the foreign judgement is a judgment granting provisional measures, by virtue of article 2 it will only be considered as a judgment (hence be able to circulate within the EU) if it has been rendered by a court that has jurisdiction as to the substance. However commentators hesitate as to whether this covers any court that « potentially » has jurisdiction by application of the rules of the regulation or only the court which has in fact been seized. In France, before the recast regulation, one could consider that a French final decision was an obstacle to the recognition of the foreign judgement granting provisional measures[70]. One can wonder what the solution would be today. Could the French court still be validly seized in such a case ?

On the other hand, in a decision rendered in 2006[71], the Cour de cassation refused exequatur to a final Greek judgement on the grounds that it was irreconcilable with an order issued by the juge des référés (urgent applications judge) and concerning provisional measures. The solution has been criticised since final judgments should have more weight than provisional measures. It has also been observed that the solution was an incitement to seize the urgent applications judge in order to prevent enforcement of a foreign final judgement. However, the recast regulation does not specify that final judgements have priority over provisional orders. How this situation should be apprehended in the context of BIA is uncertain.

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[68] Cass. civ. 1re, 17 mai 1978, *JDI* 1979. 380, note D. Holleaux ; Cass. civ. 1re, 28 nov. 2006, n° 04-19031, *JDI* 2007. 139, G. Cuniberti, *JDI* 2007. 543, note H. Péroz.
[69] B. Audit et L. d'Avout, *op. cit.,* p. 568, n° 649, ndbp n°3.
[70] M.-L. Niboyet et G. de Geouffre de La Pradelle, *Droit international privé,* LGDJ,5ème éd., n°s 785.
[71] Cass. civ. 1re, 20 juin 2006, n° 03-14553, *Rev. crit. DIP* 2007. 164, note J.-P. Rémery ; *RTD civ.* 2007. 172, obs. Ph. Théry ; *Dt et patr.* 2008. 111, obs. M.-L. Niboyet.

Part 5: Final critical evaluation of B IA – what necessary adaptations to national legislations need to be done?

5.1. Does B IA in your opinion actually simplify, speed up and reduce the costs of litigation in cross-border cases concerning monetary claims and eases cross-border enforcement of judgments?

As far as the reduction of costs is concerned, one must keep in mind that in France the procedure under the Brussels I regulation was not very costly. The cost was generally speaking due to attorney fees and translation expenses[72] and these expenses were not very high since in the vast majority of cases there was no need for representation by attorney in France[73]. The opposite was true only in case of challenge.
Under the BIA system, since several courts have jurisdiction, the situation will be different. In front of the juge de l'exécution or tribunal d'instance, competent in matters relating to enforcement, there is no need for representation by attorney. However in front of the tribunal de grande instance, competent in matters relating to recognition an attorney is generally required. Moreover, translation expenses will remain. It is true that the need to translate the judgement is limited and the form of the certificate should reduce the need for translation and the costs. However, several elements lead to nuance this assertion. French case-law has held, for the application of the 2000 regulation that the certificate was not compulsory if the document delivered by the court of origin contains all the necessary elements[74]. If this solution was to be upheld[75] it would diminish the role of the uniform certificate from the point of view of ease of comprehension and reduction of the need for translation. Moreover, one can not exclude that practitioners, in order to save time, might continue to prepare translations in a preventive manner. The translation must be prepared by an authorised translator[76]. It has been noted that the regulation might entail the necessity to translate into several languages, increasing the costs and delays[77].
All in all the cost reduction is purely potential.
The requirement of authenticity of the judgement laid out by article 37 of BIA is a further factor of complexity. For example, in France it has been held that a document reproducing the ruling does not satisfy the conditions necessary to establish its authenticity[78]. Furthermore, the extension of the effects of the foreign judgment and the problem of adaptation of the measures could lead to the need for expert witnesses. Once again the cost and even the duration of the procedure could be increased.

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[72] F. GASCON-INCHAUSTI, « La reconnaissance et l'exécution des décisions dans le règlement Bruxelles I bis », in E. Guinchard (ed), Le nouveau règlement Bruxelles I bis (Bruylant 2014) p.205, spéc. p.209
[73] Cass. 2e civ., 29 septembre 2011, pourvoi n 10-14968, Bull. civ. 2011, II, n° 178
[74] CA Besançon, RG 07/731, 10 oct. 2007.
[75] This is unlikely but not impossible.
[76] H. GAUDEMET-TALLON et C. KESSEDJIAN, « La refonte du règlement Bruxelles I », RTD Eur., 2013, p.435, spéc. n°49 ; CA Colmar, RG 06/05176, 3 juillet 2008 (infirmation d'une déclaration de force exécutoire en l'absence d'une traduction certifiée par une personne habilitée). In France attorneys are authorised to translate.
[77] F. GASCON-INCHAUSTI, « La reconnaissance et l'exécution des décisions dans le règlement Bruxelles I bis », in E. Guinchard (ed), Le nouveau règlement Bruxelles I bis (Bruylant 2014) p.205, spéc. p.237 ; see articles 42.4 and 43.2
[78] CA Versailles, 6 janvier 2005

Concerning the duration, the first factor to take into account is the certificate itself. Since the certificate needs to be very detailed, the issuing of this document will necessarily take time. But, above all there is no time limit for the issuing of the certificate. This means that the procedure might last longer. In addition, contrary to the 2000 regulation, the BIA regulation does not provide for the possibility to accept a document equivalent to the certificate or any possibility of exemption.
In addition, in a very general manner, another factor that can possibly extend the duration of the procedure is the fact that, if enforcement is challenged, contrary to the 2000 regulation, an adversarial procedure is imposed at all three stages of the procedure. Of course, on this point everything will depend on how the new system is used. One can hope that the action for refusal of enforcement will not be used frequently. In this case the regulation will have permitted to save time. If, on the contrary, it is used often, the procedure will actually be longer.
Several other factors must be mentioned: the necessity of translation; the necessity to respect a reasonable time period between service and the first enforcement measure (recital n°32). Finally, in the event of an application for refusal of enforcement, article 44 authorises the court to adopt several measures that might extend the duration of the procedure. For example, the court may suspend, either wholly or in part the enforcement proceedings.

. *5.2. Which is, from the creditor's point of view, the most convenient alternative in your country in case of cross-border collection of debts in the EU?*

The alternatives are the European enforcement order and the European order for payment. It is true that, during the drafting of the BIA regulation, the first commentators predicted that alternative procedures and in particular the European enforcement order would become obsolete[79]. Concerning this last regulation, although it does not allow challenge in the country of enforcement and hence appears to be a factor of simplification, the conditions to be fulfilled in the country of origin are more complex. And since it applies only to uncontested claims, one can assume that there will be no challenge in the country of enforcement. In that case BIA will appear to be the better solution. However, since the concept of uncontested claims is understood widely, in some cases the European enforcement order might actually be preferable for the creditor.
As for the European order for payment it can also be an interesting alternative especially since its material scope is not exactly the same as the scope of BIA.

5.3. Language issues: Is it possible or advisable to choose the form in the language of the debtor?

Generally speaking, linguistic problems will always remain difficult to solve. It is quite unlikely that any document including the certificate issued by a French court could be issued or completed in a foreign language. Hence, it appears that translation will be

[79] J. Carriat, « Instruments de recouvrement de créances : premier bilan d'application », *in Un recouvrement de créances sans frontières ?*, Bruxelles, Larcier, 2013, p. 104, cité par A. Berthe, « L'impact du règlement Bruxelles I bis sur les règlements T.E.E, I.P.E et R.P.L », in E. Guinchard (ed), Le nouveau règlement Bruxelles I bis (Bruylant 2014) p. 295 et s., spéc. p. 309.

necessary. By way of consequence several questions may arise. First, one may wonder how the rules on translation contained in BIA coexist with the rules laid out by the 2007 regulation on the service of documents. In particular one can wonder whether the « regularisation » provided for by this regulation will also be open within the scope of the BIA regulation.

The interpretation of article 43.2 gives rise to other questions. The provision allows the person against whom enforcement is sought to request a translation but it does not say that he or she may choose the language of translation. Another question is who will assess whether the person against whom enforcement is sought understands a certain language and how should this requirement be applied to legal persons.

5.4. Do you anticipate that the principle of national procedural autonomy shall be adversely affected by the provisions of B IA?

Comment: The principle (in essence) provides that member states are free to choose the remedies and procedures which govern the enforcement of EU law. The principle is not confined to the enforcement of substantive rights, even more so, its importance is revealed in cases such as the one at hand. B IA (in part) relies on remedies provided by national procedural law. The latter must therefore conform the euro-autonomous nature of B IA and provide for adequate remedies in terms of interpretation, effectiveness, effective judicial protection of non-discrimination. If these prerequisites are not duly respected, certain corrections to national procedural law are in order, perhaps even ad hoc introduction of new remedies.

Although it has been submitted that the introduction of a very detailed certificate is an indirect way of harmonising national procedures, it seems actually that procedural autonomy is greater under BIA than before. One can even regret that the national procedures relating to enforcement and recognition may be so different from one member state to another[80].

. *5.5. Costs.*

The implementation of this regulation will not generate important costs for the State. In France it has not been considered necessary to create new procedures and not even to substantially modify existing ones. Any additional costs will be supported by the parties. The only true difficulty concerns the certificate which will be more complex to issue for the registrars. This might, as already mentioned entail additional delays.

[80] A. NUYTS, « La refonte du règlement Bruxelles I », RCDIP, 2013, p.1, spéc. n°20