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French national report

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1.1 Briefly present how an "enforcement title" is defined in your national legal order.

An enforcement title, (titre executoire[1]) is a legal act officially establishing a right and which allows its holder to demand the forced execution. Most often, it will be a creditor who wishes to obtain the enforcement of his debt (non payment of rent, alimony ...). Judgments usually constituate enforceable titles. The debtor then faces three types of obligations: 1) to pay, 2)to do or to refrain from doing something, 3) to give or return.

However, there are also acts which have an enforceable value in principle, which means that going to court is not always necessary. For example, **notarial acts have by default an enforceable value.**

Enforcement titles issued by enforcement authorities (**l'huissier de justice**-the judicial officer, bailiff) in the event of non-payment of a check are also valid. The client has to ask the bank for a certificate of non-payment in the event of invalidity of the check. With the certificate of non-payment issued by the bank, the judicial officer (bailiff) can issue an enforceable title to obtain the recovery of the debt.

It is important to highlight that according to the French legal system, only the debtor's assets are concerned by the enforcement.

[1] www.legalstart.fr/fiches-pratiques/recouvrement/titre-executoire/, visited August 25th, 2020

Article L 111-3 of the Code of Civil Enforcement Procedures lists the documents that are enforceable under French legislation.[2]

1.2 How are "civil and commercial" matters defined in your national legal order?

A civil matter in the French legal system is a case judged by civil courts which apply civil law. Civil justice settles disputes between private persons. Civil disputes can involve property, divorce, pensions, alimony, succession, unregulated debt, poorly executed contract, accident whose consequences must be repaired. Civil matters can also involve labour relations or commercial relations. Civil matters are regulated according to the rules of the Civil Code and the Code of Civil Procedure of France.

Commercial matters deals with relationships between private persons (natural or legal). governs the exercise of the profession of trader and commercial operations. It defines the legal regime applicable to commercial acts and is codified in the Commercial Code.

There are no simple features but the definition feat Within the meaning of the Brussels I bis regulation, ((art. 1, § 1). The Brussels I bis regulation n ° 1215/2012 of 12 December 2012)

1.3 Which bodies conform to the definition of "Courts and Tribunals" as provided for by the B IA under your domestic legal system?

France is currently in the process of reforming the order for payment procedure.[3] New procedures will be revealed no later than April 1, 2021. However, the basic information for debt collection, competent jurisdictions has remained unchanged for now. In domestic cases, the order for payment is a simplified legal procedure, usable when the debt originates from a contract. It is free for debts up to € 10,000. The competent court depends on the nature of the claim. For debts greater than € 10,000, a request written by a lawyer must be made to the court. A civil claim: unpaid rent, alimony (when neither party carries out a commercial activity as a profession and in a habitual and permanent manner) **are under the jurisdiction of the Tribunal Judiciaire, a merger of the Tribunaux d'Instance (TI) et de Grande Instance (TGI), after the 2019 Reform[4].**

For commercial claims (between two parties who have the quality of trader or carry out commercial activities), for example, an unpaid invoice or non-delivery of good order, only the Tribunal de Commerce is competent, whatever the amount of the debt is.

1.4 Briefly present the types of domestic decisions (e.g. Judgments, Decrees, Decisions, Orders) which may be rendered/issued under your Member State's civil procedure

[2] www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025026751&cidTexte=LEGITEXT000025024948#:~:text=3%C2%B0%20Lorsqu'un%20jugement,la%20proc%C3%A9dure%20a%20%C3%A9t%C3%A9%20intent%C3%A9e., visited August 25th, 2020.

[3] Loi n° 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice: www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000036830320/, visited, August 26th, 2020

[4] Loi de programmation et de réforme pour la justice (n° 2019-222 art. 95), décrets n° 2019-965 et n° 2019-966

The law of 23 March 2019 on the reform of the justice system[5], fixes the new judicial organization in France. This being the case, any decision rendered by a first-degree court[6] (Tribunal de Proximite, Tribunal Judiciaire, Tribunal de Commerce, Conseil de Prud'hommes) which orders payment, or which takes an investigative or execution measure, is called upon judgment.

1) For a civil case, the court renders its decision in the form of a judgment. Decisions apply immediately unless otherwise specified. The judgment ends the procedure when all the points of the dispute are judged.

2) The judge can also take a decision of incompetence, that is to say that he considers that the dispute does not concern this court. For example, if the dispute falls under the judicial court of another city or the commercial court.

3) A judge's decision can also be called "ordonnance". An ordonnance in legal matter is:

a) a decision by which the judge decides provisionally, or those by means of which he takes measures of judicial administration;

b) a decision which results from the fact that the judge has decided without a collegial formation: "à juge unique". However, legally, this decision of the "juge unique"- single judge is also a "judgment", regardless of the decision taken in collegiality or by a single judge.

4) Decisions taken by arbitrators are not called "jugement", but " sentences arbitrales"; " arbitral awards". These latter are only enforceable after they have been verified by the President of the Tribunal Judiciaire, according to a simplified procedure known as the "exequatur procedure".

5) The collegial decisions rendered by la Cour d'Appel et la Cour de Cassation (Courts of Appeal and the Court of Cassation) are called " arrêts[7]".

Some decisions are enforceable although they do not emanate from a court. These are, for example, the enforcement titles of notaries[8] or the enforcement titles issued by bailiffs in application of article 65-3 of the decree of October 30, 1935 for the payment of unpaid checks, and the "constraints" issued by certain administrative authorities, tax collection bodies and by social security funds or pension organizations to obtain payment of the contributions due to them.

1.5 Taking account of the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the CJEU for the purposes of B IA, which domestic decisions and instruments conform to these definitions?

[5] Ibidem
[6] www.justice.gouv.fr/organisation-de-la-justice-10031/lordre-judiciaire-10033/, visited, August 26th, 2020
[7] www.dictionnaire-juridique.com/definition/jugement.php, visited, August 27th, 2020
[8] Chapitre Ier du Code des procédures civiles d'exécution : Le créancier et le titre exécutoire, Article L111-3).

The concept of "Judgement" includes:

- Any decision rendered by a first-degree court:

1)Tribunal de Proximite,

2)Tribunal Judiciaire,

3)Tribunal de Commerce,

4) Conseil de Prud'hommes

- An ordonnance taken by a single judge or in in collegiality

The concept of "Judgement" does not include:

Decisions taken by arbitrators.

The collegial decisions rendered by la Cour d'Appel et la Cour de Cassation.

1.6 Have the national courts of your Member State addressed any questions for a preliminary ruling (Art. 263 TFEU) to the CJEU regarding the notion of "Judgment"?

In France, national jurisdictions can apply the solutions given by the Court of Justice of the EU in connection with preliminary rulings from foreign courts. Thus, in "arrêt" Mayen/Alitalia of 17 June 2003 (Soc., 17 juin 2003, Bull. 2003, V, n° 195, p. 193, pourvoi n° 01-41.522) the social chamber applied the principles identified by the Court of Justice and the European Court of Human Rights in matters of indirect discrimination on grounds of nationality. This being the case, the courts can also apply the decisions of the CJEU in matters of preliminary ruling on the "judgment", if it emanates from another member state.

An example of addressed question on preliminary ruling is the decision rendered on November 7, 2006 by the social chamber of the Court of Cassation (Soc., 7 novembre 2006, pourvoi n° 04-44.713) on the basis of article 68 of the EC Treaty (which refers to Article 234 of the EC Treaty) concerned the interpretation of certain provisions of Council Regulation n ° 44/2001 of 22 December 2000 concerning jurisdiction, recognition and enforcement of judgments in civil and commercial matters.

1.7 Please explain the level of judicial control (the "power of assessment") exerted by the courts when rendering default judgments in your Member State.

The law provides that when the defendant does not appear, that is to say does not appear for the hearing, the judgment is rendered by default if the decision is in last resort (that is to say cannot be the subject of 'an appeal) and if the summons has not been delivered to anyone (i.e. if the summons issued by the bailiff had not been delivered to him in person).

The law provides that the judgment is "deemed contradictory" if the defendant does not appear at the hearing, when the decision is subject to appeal or when the summons (the bailiff's deed) has been delivered to the respondent.

The judgment rendered by default may be opposed, except in the case where this remedy is precluded by an express provision, and the judgment rendered by default (or the judgment deemed contradictory on the sole ground that it is liable to 'appeal, that is to say for which one of the two conditions of article 473 of the Code de Procédure Cicile (CPC) is fulfilled, namely that the defendant has not been cited in person) is void if it has not been notified within six months of its date (Article 478 of the CPC)

Part 2: General aspects regarding the structure of Judgements

2.1 Which elements are comprised in the structure of a domestic (civil) Judgment in your legal order?

Generally, the civil judgment has 4 parts:

The header (L'en-tête » ou « **le chapeau** » du jugement)

Most often, it is drafted by the clerk under the supervision of the judge, who includes the mentions « AU NOM DU PEUPLE FRANÇAIS », "IN THE NAME OF THE FRENCH PEOPLE". The mention contains the following indication:

the jurisdiction from which it emanates;

the name of the judges who deliberated on it;

the date;

the name of the representative of the prosecution if he attended the proceedings;

the name of the clerk;

the surname, first name or denomination of the parties as well as their domicile or registered office;

where applicable, the names of the lawyers or of any person who represented or assisted the parties;

in free matters, the name of the persons to whom it must be notified.

The Statement of the dispute: facts, claims and arguments of the parties and which contains the elements of fact and law subject to the judge's analysis and delimiting the subject matter of the trial.

Motivation

It sets out the reasoning by which the judge engages in the analysis of the facts, their legal qualification, the assessment of the means of proof, the application of the rules of law useful for the solution of the dispute and the expression of this solution.

Le dispositive - The decision

He presents the decision (s) on the various requests.

2.2 Is the structure of a Judgement prescribed by law or court rules or developed in court practice (tradition or custom convention)?

No text expressly provides for judgments to be established in writing, this requirement is deduced from **articles 450 to 466 of the Code of Civil Procedure** which prescribe a certain number of statements which must be reproduced. For example, a judgment cannot therefore take an oral form. The original documenting the judges' decision in writing is called a minute. This minute is then kept by the clerk, which ensures the publicity of the judgment and its execution.

The clerk "is the custodian, under the control of the heads of jurisdiction, of the minutes and archives of which he ensures the conservation; he delivers the consignments and copies and has custody of the seals and all sums and documents deposited with the registry. "

However, since the entry into force of Decree No. 2012-1515 of December 28, 2012, it does not matter whether the judgment is drawn up in paper or electronic form.

Article 456 of the Code of Civil Procedure provides that "the judgment may be established on paper or electronically. "

This provision specifies, however, that "when the judgment is drawn up in electronic format, the procedures used must guarantee its integrity and preservation. The judgment drawn up electronically is signed using a secure electronic signature process that meets the requirements of Decree No. 2017-1416 of September 28, 2017 relating to electronic signature. "

The judgment must be written in French, by application of the Villers-Cotterêts ordinance of 1539 and of article 2 of the Constitution of October 4, 1958, according to which "the language of the Republic is French ".

2.3 How standardised (regarding form and structure) do you consider judgments from your Member State to be (e.g. inadequately; adequately; standardised, although exceptions can be found)?

The judgments are standard and include mandatory information provided for by law. The Code of Civil Procedure prescribes that the judgment must include indications relating to its formal regularity as well as a statement of the parties' respective claims and their means. Finally, the judgment must be signed. Article 456 of the Code of Civil Procedure provides that the judgment must be "signed by the president and by the clerk". Failing that, the judgment incurs nullity. Article 454 of the Code of Civil Procedure provides for the content of the judgment.

2.4 How are the different elements of the Judgment separated from one another (e.g. headline, outline point etc.)?

A court decision necessarily has two parts. Under Article 455 of the New Code of Civil Procedure, applicable to all court decisions:

"The judgment must briefly set out the respective claims of the parties and their means. This statement may take the form of a visa of the submissions of the parties with an indication of their date. The judgment must be motivated. It sets out the decision in the form of a clause ".

The reasons constitute the statement of the factual and legal reasons given by the judge in support of his solution. By obliging the magistrate to give reasons, the law protects the parties against possible arbitrariness by the judge.

The solution of the case is expressed in the operative part, to which only the authority of res judicata is attached. The drafting of these two parts follows a certain formalism. The phrase « attendu que » which means "whereas" is traditionally used at the head of a decision and normally repeated in each paragraph. This formula introduces a new stage in the reasoning, and can be compared to the common expression « vu que » "considering that".

2.5 If courts, other than courts of first instance, may issue enforceable judgments, how does the structure of such judgments differ from judgments issued by the courts of first instance?

In civil matters, as opposed to "judgments" which are rendered by the courts of the first degree, the word "arrêt" designates a decision rendered by the civil courts of higher degree, (Courts of Appeal, and Court of Cassation). Beforehand, it should be noted that the Court of Cassation judges in law and not in fact. Concretely, this means that when an appeal is brought before the Court of Cassation (this appeal is made through a cassation appeal), the High Court examines only whether the substantive judges (1st and 2nd degree judges) correctly applied the rule of law to the dispute submitted to them.

The structure of a cassation judgment

All cassation judgments contain 3 parts: le visa, les motifs, et le dispositif.(the visa, the reasons and the operative part). Just below the visa is the" chapeau" which is a general principle

announced by the Court of cassation. The High Court deduces this general principle from the texts previously referred to (ie mentioned in the visa).

2.6 How does the assertion of a counterclaim affect the structure of the Judgment?

Article 64 of the Code of Civil Procedure provides that "constitutes a counterclaim the claim by which the original defendant claims to obtain an advantage other than the simple rejection of his opponent's claim". Concerning the admissibility of the counterclaim, Article 70 of the Code of Civil Procedure provides that a counterclaim is admissible only if it is linked to the original claims by a sufficient link. If the counterclaim offers the defendant the possibility of modifying the subject-matter of the dispute, which therefore enables him to avoid a new trial, he should not divert the issue from the initial claims, at the risk of that the request thus formed be purely dilatory.

2.7 Does the Judgment include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant? Conversely, does the judgment contain a specification of the time-period within which the judgment is not to be enforced? Does the judgment contain a specification of the time-period after which the judgment is no longer enforceable?

In France, you do not automatically have an enforceable title as soon as you initiate an order for payment procedure. The judge issues an order for payment that is not yet enforceable. It is only after the expiration of a certain period without objection from the debtor that you can ask the court office to apply the enforceable form. Even when you have obtained an enforceable title, you do not have an unlimited time to get your debt collected. There is a limitation period for the enforceable title. The limitation period for an enforceable title is 10 years. The question that remains is what is the starting point of this deadline? There is no precise answer. In principle, the limitation period starts from the moment when the creditor becomes aware of his right to enforce his claim.

If the enforceable title comes from a court decision or from a bailiff, the time limit starts from the date of issue of the enforceable title. If the enforceable title comes from a notarial deed, the starting point is assessed on a case-by-case basis (either when the deed is signed or when the debtor is first unpaid). In the event of a dispute, it is the judges who decide on the starting point of the limitation period. The limitation period for an enforceable title may be interrupted by certain court decisions against the debtor. In this case, a new period of 10 years is opened. However, despite the interruptions, the limitation period may not exceed 20 years in the event of an enforceable title from a notarial act or bailiff. However, it can be postponed as many times as there are interruptions if the enforceable title comes from a court decision.

2.8 What personal information must be specified in the Judgment for the purposes of identifying the Parties to the dispute?

It should be noted that the rules of the European Court of Human Rights (Article 47, § 3) provide for the option for the applicant, when he "does not wish his identity to be revealed, that he specifies it and provide a statement of the reasons justifying a departure from the normal rule of publicity of the proceedings before the Court, the president of the chamber being able to authorize anonymity in exceptional and duly justified cases ".

Article 454 of the Code of Civil Procedure provides that the judgment must contain the indication:

- Rendered on behalf of the French people (Rendu au nom du peuple français)
- From the jurisdiction from which it emanates;
- The name of the judges who deliberated on it, or of the judge if there was a single judge;
- Of its date, which is that of its pronouncement;
- The name of the representative of the prosecution if he attended the proceedings;
- From the name of the secretary;
- The identity as well as the domicile or registered office of the parties and, where applicable, the name of the lawyers or any person who represented or assisted the parties.

2.9 How do courts indicate the amount in dispute?

In numbers.

Ex: Condemns the company Bretagne Hydraulique to the costs;

Having regard to Article 700 of the Code of Civil Procedure, rejects her request and orders her to pay Mr. L…, as liquidator of the company Boa Recycling Equipment BV, the sum of 3000 euros[9];

2.10 How do courts indicate the underlying legal relationship (legal assessment of the dispute), if this circumstance bears further relevance, e.g. in enforcement proceedings?

Article 455 of the Code of Civil Procedure which states, quite simply, that "the judgment must be reasoned". Judgments rendered by the Judicial Tribunal must include a certain number of necessary information. In addition, they must be motivated. The challenges of motivating a decision are crucial. Morally, motivation is supposed to guarantee arbitrariness, but its virtues are also of a rational and intellectual order, because motivating one's decision imposes on the one who takes it the rigor of reasoning, the relevance of reasons which he must be able to account for. Although the result of a regulatory text, the obligation to state reasons is undoubtedly of greater value since, both the Constitutional Council and the European Court of Human Rights, have enshrined it in principle.

[9] Cass. 2e civ., 27 juin 2019, n° 18-14.198, Publié au bulletin. Lire en ligne : https://www.doctrine.fr/d/CASS/2019/JURITEXT000038734155

Thus the Council recognized the requirement to state reasons for judgments the value of a fundamental principle by considering in particular, in matters of expropriation, that this requirement fell within the scope of the law (Cons. Const., Decision of 3 November 1977, no 77-101 L.)

In civil matters, the obligation to state the legal relationship for judgments meets a threefold purpose. In the first place, it obliges the judge to reason legally, that is to say to compare the law and the facts.

Second, it constitutes for the litigant the guarantee that his claims and his means have been seriously and fairly examined. In this, it is also a bulwark against the arbitrariness of the judge or his partiality.

Finally, it allows the Court of Cassation to exercise its control and explain its case law. By justifying his decision, the judge explains himself, justifies his decision, etymologically sets it in motion in the direction of the parties and the higher courts to submit it to their criticism and control. It is therefore not a purely formal requirement but an essential rule which makes it possible to verify that the judge applied the law correctly in accordance with the guiding principles of the trial.

2.11 Can the Claimant seek interim declaratory relief and what effects (if any) are attributed to the decision on this claim? How is the decision specified in the Judgment?

The claimant can seek interim declaratory relief and the judge can also issue a provisional judgment as envisaged by articles 482 of the Code of Civil Procedure. This is Section II "Other Judgments". These provisional judgments fall into two classes.

- First category, provisional judgments by nature. It is the nature of jurisdiction that gives them that nature. These are summary orders and on request. These judgments do not have the force of res judicata in the main proceedings.

- Second category, provisional judgments for their very purpose.

These are judgments which order a measure that is not final, but essentially reviewable. This is the case envisaged by article 482 of the Code of Civil Procedure.

This preliminary ruling judgment is limited, according to the text, in its operative part, to ordering an investigative measure or a provisional measure. The provisional character then depends on the measure ordered by the judge. The judge orders a measure he wishes to be able to review.

The provisional judgment, since the measure is essentially reviewable, the essential characteristic lies in the fact that these provisional judgments do not have the force of res judicata, according to articles 482 and 483 of the Code of Civil Procedure.

2.12 What kinds of decisions can a court issue in regular litigation proceedings?

The court renders its decision in the form of a judgment. Decisions apply immediately unless otherwise specified. The judgment ends the procedure when all the points of the dispute are judged.

In cases of "lack of jurisdiction", the judge can also make a decision of incompetence, that is to say, that he considers that the dispute does not fall under his tribunal. For example, if the dispute falls under the commercial court of another city. The judge then invites the parties to seize themselves the court which he considers competent or he transmits the case to another court which he designates. The judge can also suspend the trial until a new hearing, of which he specifies the date.

2.13 How are Judgments drafted when (if) they contain a "decision" on issues other than the merits of the case?

According to article 480 of the Code of Civil Procedure[10], the judgment is defined as a judgment which decides in its operative part all or part of the principal, or one which rules on a procedural exception, an end of inadmissibility, or any other incident which settles part of the dispute, whether this part relates to the merits, proceedings or any other incident. The final judgment is the one that settles the dispute in the broadest sense of the term.

2.13.1 How does this effect the operative part and/or the reasoning?

The office of the judge is strengthened in the context of cross-border litigation when European regulations apply. He thus has the obligation to disclose his lack of jurisdiction ex officio: in civil and commercial matters when the courts of another Member State have exclusive jurisdiction or when the defendant domiciled in a Member State does not appear. The judge can remove his or her incompetence ex officio only in defined cases, in particular in the event of a violation of a public policy jurisdiction rule or when the defendant does not appear[11]. He may automatically raise the exception of lis pendens[12]. He must automatically raise the exceptions of nullity of public order[13] but has the option of automatically raising the nullity for lack of capacity to sue[14], as well as the inadmissibility of the defense not containing the

[10] Article 480 Code de Procédure Civile Section I «les jugements sur le fond.»
[11] See CPC, art. 74. 1 (CPC, art. 92); on the order for payment procedure, see. CPC, art. 1406. 3; CPC, art. 93, on the territorial incompetence that can be raised ex officio in non-binding matters, this option being limited in contentious matters to disputes relating to the status of persons, where the law grants exclusive jurisdiction to another jurisdiction or if the defendant does not appear not ; in the presence of an arbitration agreement, see. CPC, art. 1448.
[12] See. CPC, art. 100.
[13] See CPC, art. 120. 1
[14] See. CPC, art. 120. 2

prescribed elements of identification of the defendant[15]. The judge must automatically note the ends of inadmissibility of public order, in particular when they result from the failure to observe the time limits within which the remedies must be exercised or from the failure to open a remedy. of recourse[16]. It may automatically raise the objection of inadmissibility based on lack of interest, lack of quality or res judicata[17]. On the other hand, he is prohibited from raising ex officio the plea based on the prescription of legal action.

2.13.2 Which decisions (2.12) can be incorporated into the judgment?

The operative part is the part of the judgment which states the court's decision (art. 455 Code de Procédure Civile). It is the most important part of the decision, in that it contains the solution of the dispute to which the authority of res judicata is attached. Article 455, paragraph. 3rd of the Code de Procédure Civile provides in this sense that the judgment " sets out the decision in the form of an operative part. "The system of judgments varies with each dispute; it must respond to all the demands, but it must not go beyond what has been requested (ultra petita). In addition, the judge may not make any modification, either to the object or to the cause of the request. The judge is in fact bound by the framework of the trial drawn up by the parties. The authority of res judicata, even positive, is limited only to the statements of the operative part[18]. It is therefore to this component of the judgment that it is appropriate to refer to determine the extent of the authority of res judicata. However, clumsiness in the drafting of the decision can lead the judge to place in the reasons provisions relating to the solution of the dispute, and the question then arises whether these reasons can have the force of res judicata.

2.13.3 Can provisional and protective measures form part of a Judgment or can they only be issued separately?

There is a clear opposition of the final and provisional or protective judgments. The final judgment will settle any contentious point. The final judgment in all cases, settles a disputed point, a part of the dispute.

On the contrary, the provisional judgment does not settle the dispute in any way. This is why the applicable legal regime is so fundamentally different between these two types of decisions.

Since in a final judgment, the judge decides part of the dispute, the judge exhausts his jurisdictional power. Since this is so, to all this extent, his decision, has the force of res judicata and removes jurisdiction from the judge who can no longer hear this question, according to article 481 of the Code of Civil Procedure. Conversely, in a provisional judgment, since the measure is essentially reviewable, the essential characteristic lies in the fact that these provisional judgments do not have the force of res judicata, according to articles 482 and 483 of the Code of Civil Procedure.

[15] See CPC, art. 59
[16] See CPC, art. 125
[17] See CPC, art. 125. 2
[18] Cass. 3e civ., Jan. 4, 1991; Cass. 1ère civ. 8 July. 1994, Cass. Com. 6 Feb. 2001

Part 3: Special aspects regarding the operative part

3.1 What does the operative part communicate?

See. 2.13.2

3.1.1 Must the operative part contains a threat of enforcement?

NO. The judge first rules on the main claim, then he rules on the incidental claim (s) (counterclaim, etc.), he rules on claims for reimbursement of costs which are based on article 700 of the Code of Civil Procedure that are not included in court costs, and, finally, if applicable, on provisional enforcement.

3.1.2 Must the operative part include declaratory relief if the Claimant sought payment (e.g. if the debtor's obligation to perform is found to be due and the Claimant requested performance)?

The operative part includes the final decision of the judge in view of the only elements provided by the claimant. If the judge considers the request justified, he issues an "order for payment" for the sum he withholds. The claimant can ask the court office to affix the enforceable form on the order. This then has the value of judgment.

3.1.3 Is the specification of the debtor's obligation finalized by the court or is it left to later procedures/authorities?

The judge issues an "order for payment" for the amount he withholds. It is up to the judge to satisfy or not the sum proposed by the creditor. However, it is up to the creditor to send the injunction to pay order to the debtor by bailiff, at his expense, by means of a certified copy of the request and the order. The debtor has 1 month from the service of the injunction order by the creditor to challenge it by way of opposition to the court which issued it[19].

[19] www.service-public.fr/particuliers/vosdroits/F1746#:~:text=dette%20en%20Europe)- visited. August 29th, 2020.
,Par%20un%20juge%20(dette%20en%20France),a%20pour%20origine%20un%20contrat., visited. August 29th, 2020.

3.1.4 How is the operative part drafted in the case of a prohibitory injunction (German: "Unterlassungsklage")?

The operative part contains the decision of the judge and there is no specific structure or regulation how to draft it except articles 450 to 466 of the CPC which prescribe a certain number of information which must be reproduced.

3.1.5 If applicable, how is the operative part drafted in an interim judgment?

Pursuant to article 514 of the CPC, the interim judgment[20] of law enforceable on a provisional basis like all first instance decisions. The provisional enforceability of the interim order is conferred on it as of right, that is to say without the need for the parties to submit a request to the judge. Unlike, however, an order on request which is enforceable on the spot, the summary order must first have been served on the opposing party in order to be able to be executed, except where the judge expressly orders in his decision, as it allows "in case of necessity" paragraph 3 of article 489, that "the execution of the ordinance will take place at the sight of the minute". Once served, the interim order may then give rise to the enforcement of the measures pronounced by the judge. Finally, it should be noted that this order is provisionally enforceable in all these provisions, including those ruling on costs and Article 700.

As of article 484 of the Code of Civil Procedure on the interim order, three characteristics emerge:

- On the one hand, it leads to the issuance of a provisional decision, in the sense that the summary judge does not rule on the merits of the dispute. The interim order is therefore not final
- On the other hand, the summary procedure offers an applicant the possibility of obtaining from the Judge any useful measure in order to protect his rights and interests
- Finally, the summary procedure is, unlike the procedure on request, placed under the sign of adversarial proceedings, the judge being able to rule only after having heard the defendant's arguments.

3.1.6 If applicable, how is the operative part drafted in an interlocutory judgment?

The draft of the judgment follows the same pattern. The interlocutory judgment can be a judgment of first instance or a judgment of the Court of Appeal. In its operative part, the interlocutory judgment settles part of the dispute on the merits. But, concerning another part of the dispute, the judge considers that he cannot decide. He therefore orders an investigative measure or an interim measure in order to be able to judge later on the merits for the remainder of the dispute. The part that has been settled has the authority of res judicata.[21]

[20] In French, " l'ordonnance de référé"
[21] Cass. 3e civ., Oct. 1, 2008, n ° 07-17.051

3.1.7 How is the operative part drafted in the case of alternative obligations, i.e. where the debtor may decide among several modes of fulfilling a claim?

According to article 1307 of the Civil Code, "the obligation is alternative when it relates to several services and the performance of one of them releases the debtor. "The existence of an option is consubstantial with the alternative obligation. Article 1307-1 of the Civil Code provides that "the choice between services belongs to the debtor" However, article 1307-2, of the Civil Code provides that "if the choice is not made within the agreed time or within a reasonable time, the other party may, after formal notice, exercise this choice or terminate the contract". The operative part contains the final option.

3.1.8 How is the operative part drafted when a claim is wholly or partially dismissed (on substantive grounds)?

The Code of Civil Procedure states that judges can reject an application on the grounds that it is "unfounded or inadmissible.[22] If the judge rejects the request, the creditor (the one claiming the payment) has no recourse, but he can initiate classic legal proceedings. The drafting of the judgment takes into account all the necessary elements required by the legislator in article 454 of the CPC.

3.1.9 How is the operative part drafted when a claim is wholly or partially rejected (on formal/procedural grounds)?

The Code of Civil Procedure prescribes that the judgment must include indications relating to its formal regularity as well as the presentation of the respective claims of the parties and their means. The draft is the same.

3.1.10 How is the operative part drafted if the debtor invokes set-off? Provide an example.

The new text, resulting from the ordinance of February 10, 2016 and applicable from October 1, 2016 repeals the old article 1290 of the civil code, and creates a new article 1347 of the civil code, which provides "Compensation is simultaneous extinction reciprocal obligations between two people. It takes place, subject to being invoked, in due amount, on the date when its conditions are met ". The compensation process is now governed by Articles 1347 and 1348 of the Civil Code.

Several types of compensation exist. However, judicial compensation is pronounced by a judge and can only concern debts that do not concern two parties which have reciprocal debts, interchangeable, payable, certain and determined in their amount (liquidity). The judge will

[22] Code de Procédure civile, art. 1385.

then have to ensure the certainty of the debts and the connection of the respective obligations, either when they result from the same contract or when they arise from a single contractual whole. The recognition of the connection of two debts by the judge is conditioned by the declaration of the debt by the creditor of the debtor in difficulty.

3.2 Are there specifications pertaining to the structure and substance of the operative part of the Judgment in your national legal system – set out by law or court rules or developed in court practice? If so, please provide an English translation of the relevant provisions.

Article 454 of the CPC sets the content of judgments. The judge must make decisions neither ultra nor infra petita. He has to rule on everything that has been asked of him and only on that. According to article 4 of the Code of Civil Procedure, it is up to the parties and only the parties to set by their respective claims, the content, the extension, the limits of the matter of the proceeding.

3.3 Does the operative part contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment)?

Definitely Yes. The judgments must be based on reasoning, references to law and they must be motivated, according to article 455 of the CPC. The obligation to mention reasons is undoubtedly of greater value since both the Constitutional Council and the European Court of Human Rights have enshrined it in principle.

3.4 Elaborate on the wording used in your national legal system, mandating the debtor to perform.

The order for payment procedure is governed by Articles 1405 to 1424 of the Code of Civil Procedure. The judgment must be motivated. If the judge considers that the request is at least partially justified, he issues an order for payment. This decision is final for the creditor. In general, in the operative part, the judge must indicate whether the proceedings have continued or not and whether or not the judgment is subject to appeal. Then, he has the obligation to rule on the main request first (see the section on legal remedies), then on the incidental request (s). Finally, the judge comes to rule on the claims for reimbursement of costs based on article 700 of the CPC and costs.

Example:

Having regard to article 1405 and following of the Code of Civil Procedure

Having regard to article 1240 of the Civil Code

Considering the above request and the supporting documents

The President is asked to the Tribunal de Grande instance of [city] to:

END [name of debtor] to pay in principal the sum of [amount] under the contract concluded on [date]

END [name of debtor] to the payment of the sum of [amount] in respect of default interest at the [legal / contractual] rate from the date the formal notice occurred on [date] [OR] from the date of " due date of the contractual debt on […] (if the default interest is stipulated in the GTC or on the invoice).

CONDEMN [name of debtor] to pay the sum of [amount] for late payment penalties provided for in the contract.

CONDEMN [name of debtor] to pay the sum of [amount] in compensation for the damage caused by the undue resistance shown by [name of debtor]

CONDEMN [name of debtor] to pay the sum of [amount] for the lump sum recovery indemnity

CONDEMN [name of debtor] to pay the sum of [amount] for irrecoverable costs incurred by [name of creditor] for the purpose of defending his interests and asserting his rights

CONDEMN [name of the debtor] to pay all costs which cover the costs of the court office and the costs of a bailiff

Adding:

IMMEDIATELY REFER the case to the competent court in case of opposition

3.5 If applicable, explain how the operative part is drafted in cases of reciprocal relationships where the Claimant's (counter-)performance is prescribed as a condition for the debtor's performance? How specifically is this condition set out?

The wording of the operative part must be able to fix the parties on the obligations to be fulfilled by the plaintiff and the defendant, and can specify dates, (not always obvious) amounts and rules on the performance of obligations.

3.6 How are the interest rates specified and phrased in a judgment ordering payment?

In a traditional court, the request for an order for payment is free. The service of the order for payment made on the debtor entails bailiff fees. In cases where a lawyer is involved, fees are due. At the commercial court, the creditor must pay court fees of € 33.47 within 15 days of the presentation of the request. In cases where a lawyer is involved, legal fees are added. In the event of opposition, the debtor's opposition is received free of charge by the clerk. These fees do not include any bailiff fees. The judge issues an "order ordering payment" for the sum he withholds.

3.7 Please demonstrate how the operative part differs when claims to impose different obligations on the debtor are joined (e.g. performance, prohibitory injunction etc.) or when the action is of a different relief sought (e.g. action for performance, action for declaratory relief, action requesting modification or cancellation of a legal relationship).

Ex : "PAR CES MOTIFS" :

REJETTE le pourvoi ;

Condamne la société Bretagne hydraulique aux dépens ;

Vu l'article 700 du code de procédure civile, rejette sa demande et la condamne à payer à M. L…, en qualité de liquidateur de la société Boa Recycling Equipment BV, la somme de 3 000 euros[23] ;

" FOR THESE REASONS":

DISMISSES the appeal;

Condemns the company Bretagne Hydraulique to the costs;

Having regard to Article 700 of the Code of Civil Procedure, rejects her request and orders her to pay Mr. L…, as liquidator of the company Boa Recycling Equipment BV, the sum of 3000 euros;

Ex : PAR CES MOTIFS, et sans qu'il y ait lieu de statuer sur les autres griefs, la Cour :

CASSE ET ANNULE, en toutes ses dispositions, l'arrêt rendu le 31 octobre 2017, entre les parties, par la cour d'appel de Versailles ;

Remet l'affaire et les parties dans l'état où elles se trouvaient avant cet arrêt et les renvoie devant la cour d'appel de Paris[24] ;

FOR THESE REASONS, and without there being any need to rule on the other complaints, the Court:

BREAK AND CANCELED, in all its provisions, the judgment rendered on October 31, 2017, between the parties, by the Versailles Court of Appeal;

Returns the case and the parties to the state they were in before this judgment and refers them to the Paris Court of Appeal;

3.8 May the operative part refer to an attachment/index (for example, a list of "tested claims" in insolvency proceedings)?

No, in the operative part of the judgment, there is no need of an attach or reference.[25]

[23] Cass. 2e civ., 27 juin 2019, n° 18-14.198, Publié au bulletin. Lire en ligne : www.doctrine.fr/d/CASS/2019/JURITEXT000038734155; visited August 29th, 2020.
[24] Arrêt n° 270 du 17 juin 2020 (18-11.737) - Cour de cassation – Chambre commerciale - ECLI:FR:CCASS:2020:CO00270
[25] com., 11 décembre 1990 ; Cass. 3e Civ., 26 mai 1992

3.9 What are the legal ramifications, if the operative part is incomplete, undetermined, incomprehensible or inconsistent?

The Code of Civil Procedure specifies the cases in which there is grounds for invalidity due to the omission or inaccuracy of one of the statements. Thus, the prescriptions concerning:

The mention of the names of the judges;

The presentation of the respective claims of the parties and their means;

The signature by the president and by the secretary as well as, if applicable, the mention of the impediment (458 CPC). However, the omission or the inaccuracy of a statement intended to establish the regularity of the judgment cannot entail the nullity of this one if it is established by the documents of the procedure, by the register of hearing, or by any means other than the legal requirements have in fact been observed (art. 459 CPC).

3.10 May the operative part deviate from the application as set out by the claimant? If so, to what extent? In other words, how much discretion does the court enjoy when formulating the operative part?

Article 455-3 of the CPC provides in this sense that the judgment " sets out the decision in the form of an operative part." The system of judgments varies with each dispute; it must respond to all the heads of demand, but it must not go beyond what has been requested (ultra petita). In addition, the judge may not make any modification, either to the object or to the cause of the request: the judge is in fact bound by the framework of the trial drawn up by the parties. The authority of res judicata, even positive, is limited only to the decision.

Part 4: Special aspects regarding the reasoning

4.1 If applicable, how does the law or court rules or legal practice govern the structure and content of the reasoning of the judgment?

The judgment must necessarily be based on a motivation, a reason which explains the logic of the judge. The legislator has provided, in order to protect against arbitrariness, reasoning as a requirement. In addition, article 455 of the CPC states, quite simply, that "the judgment must be reasoned". The first civil chamber of the Court of Cassation states that the recognition of an unjustified foreign decision is contrary to the French conception of the international public order of procedure, when documents are not produced which can serve as equivalent to the lack of motivation (Cass. 1ère civ., November 28, 2006, n ° 04-19.031; Cass. 1ère civ., October 22, 2008, n ° 06-15.577).

4.1.1 Is there a specific order to be followed when drafting the reasoning?

The judge knows that he must propose an intelligible and logical motivation which explains his decision. In short, his motivation helps the understanding of his diction of law.

The reasons must be specific to each case and sufficiently precise and developed to allow their control, in the context of a possible appeal. This obligation to provide reasons has two aspects: quantitative and qualitative.

4.1.2 How lengthy/detailed is the reasoning?

The reasoning, taking into account the quantitative and qualitative aspects of the case, is lengthy. It is prior to the decision, and it has to explain the logic behind the upcoming decision of the judge, which is usually very concise.

4.1.3 Do you find the reasoning to be too detailed?

The length of the reasoning depends on the court rendering decision. A court of appeal or cassation, for example, do not have so lengthy reasoning. However, the first-degree judge has to thoroughly go through all the aspects of reasoning in order to come to the operative part.

4.1.4 Are the parties' statements (adequately) summarised in the grounds for a decision?

Article 455 of the CPC provides that the judgment must briefly set out the respective claims of the parties and their means. For this purpose, the judge can recall the facts and points on which his authority is sought. By mentioning the grievances of the parties in its reasoning, it allows the parties to know that the Tribunal has ruled on the subject of the request

4.1.5 Is it possible to distinguish between the parties' statements and the court's assessment (the problem of an unclear distinction between the parties' statements and the court's findings and interpretation)?

Yes, the decision is written in a way to distinguish the role played by each party. Moreover, the legal references are visible and expressions such as: "The President is asked to the Tribunal de grande instance of [city] to……."

4.2 In the reasoning, do the courts address procedural prerequisites and applications made after the filing of the claim?

The procedural prerequisites and applications made after the filing of the claim, the succinct statements of the parties' respective claims and their means are addressed before the reasoning. They are important according to article 455 of the CPC, but the reasoning is understood to be the reasons given by the judge in support of his decision, not procedural prerequisites.

4.3 Are independent procedural rulings properly re-addressed in the judgment?

Yes, the judgment addresses all the procedural rulings.

4.4 What legal effects (if any) are attributable to the reasoning, e.g. is the reasoning encompassed within the effects of the finality of the Judgment?

It is important that the reasoning is rigorous and relevant. Rigour requires the judge first to rule on intelligible reasons, to refrain from formulating hypotheses, expressing doubts

or avoiding contradicting himself. Cassation rulings are not uncommon which censor the statement of contradictory, dubious, hypothetical or even incomprehensible reasons.[26]

Part 5: Effects of judgments – the objective dimension of res judicata

5.1 A final judgment will, in most Member States, obtain res judicata effect. With regard to this point, please answer the following questions:

5.1.1 What are the effects associated with res judicata in your national legal order?

The authority of res judicata is attached to any final judgment, in the main, as soon as it is pronounced. In principle, it only applies to the operative parts of judgments. The parties can no longer challenge the judgment when the remedies have been exhausted. This is done with the aim of ensuring immutability of court decisions, given that the authority of res judicata only attaches to decisions emanating from a court. The authority of res judicata is codified in the Civil Code in article 1355, 480 and others.

5.1.2 What decisions in your Member State have the capacity to become res judicata?

Articles 1355 of the Civil Code and article 480 of the Code of Civil Procedure, for example, delimit the domain of the authority of res judicata. They have in fact specified which judgments have or have not - upon their pronouncement - the force of res judicata. In this regard, they are supplemented by other provisions, dating from 1975 or later, such as Article 488 of CPC (which denies the authority of res judicata in the main proceedings to interim orders).

5.1.3 At what moment does a Judgment become res judicata?

Article 480 of the CPC states that "The judgement which decides in its operative part the whole or part of the main issue, or one which rules upon the procedural plea, a plea seeking a plea of non-admissibility or any other interlocutory application, will, from the time of its the pronouncement, become res judicata with regard to the dispute which it determines".

5.1.3.1 How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

The judgment becomes irrevocable when it is no longer susceptible no recourse, or that the time limits for these appeals have expired, without these having been exercised. How does the answer to this question differ depending on whether the remedies being invoked are considered

[26] According to paragraph 1 of Article 458 of the CPC, what is prescribed in Article 455, in particular the obligation to justify the judgment, must be observed on pain of nullity.

"ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

5.1.3.2 How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

The second-degree courts are the Courts of Appeal. The Courts of Appeal rule in the first instance only in very exceptional cases which are defined by the Law. The Court of Cassation, which is a single jurisdiction, is not a third degree of jurisdiction because it does not examine the facts.

5.1.4 Is res judicata restricted to the operative part of the judgment in your legal system or does it extend to the key elements of the reasoning or other parts of the judgment?

Are courts bound by prior rulings on preliminary questions of law?

The res judicata must appear in the operative part of the judgment. On the other hand, case law is less unanimous on the exclusion of the reasoning.

5-.1.4.1 Does your legal order operate with the concept of "claim preclusion"?

Yes, article L624-15 of the French Commercial Code Created by Law n ° 2005-845 of July 26, 2005 stipulates that: Unpaid commercial bills or other securities, delivered by their owner to be collected or to be specially allocated to specific payments, may be claimed if they are still in the debtor's portfolio. Moreover, article 1351 Civil Code and articles 480 and 122 CPC Support the same view.

5.1.4.2 Are courts bound by the determination of facts in earlier judgements?

The authority of res judicata opposes the introduction of a new

instance in order to have the same dispute tried again. The request is considered to be new if there is not simultaneously

identity of object, cause, and parts. A new request does not come up against the authority of res judicata when it is based on different factual elements.[27] Article 122 of the CPC states: "A plea of non-admissibility is any ground whose purpose is to get the adversary's claim declared inadmissible, without entering into the merits of the case, for lack of a right of action, such as a not being the proper party, lack of interest, statute of limitations, fixed time-limit or res judicata. "

5.2 If part of a civil claim is being claimed in civil proceedings, how does this affect the remainder of the claim, taking into account res judicata effects?

Res judicata affects only the decision of the judge. A part of a claim that has not yet been judged cannot have the effect of res judicata.

5.3 In the case of a negative declaratory action, what is the effect of a finding that the matter is res judicata?

Article 30 of the CPC regulates the declaratory action, and it states:

"The action is the right of the plaintiff of a claim to bring an action to be heard on the merits of his claim so that the judge may declare it founded or unfounded. For the adversary, the action is the right to contest the merits of this claim." In case of a negative declaratory action, what is pronounced by a judicial decision is "res judicata", whether or not it is liable to be the subject of an appeal and article 140 of the CPC to mention that the decision of the judge will be enforceable on a purely provisional basis.

5.4 If a court issues an interim judgment concerning the well-foundedness of a claim, does this judgment have any effects outside of the pending dispute?

No. Provisional enforcement is a decision pronounced by the Court having ruled at first instance, authorizing the successful party to continue the enforcement of the judgment rendered against his opponent, despite the remedies he would have initiated[28]. Provisional execution constituting an important exception to the suspensive nature of the appeal. Decree n ° 2009-1661 of December 28, 2009, relating to legal costs in commercial matters and to legal auxiliaries provided that by way of derogation from the provisions of article 524 of the code of civil procedure, the first president of the court of appeal, ruling in summary proceedings, can only stop the provisional execution of the decisions mentioned in 1 °, 2 °, 3 °, 5 °, 6 ° and 8 ° of I of Article L. 661-1, and when the grounds invoked in support of the appeal appears serious.

[27] Civ.1 ère , 11 avril 1995

[28] www.dictionnaire-juridique.com/definition/execution-provisoire.php, visited, September 1st, 2020

5.5 Suppose the following hypothetical. If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to lis pendens rules under B IA.

5.5.1 Is it possible for B to sue S in Member State Z after the case in Member State Y has been decided with res judicata effect? What is the position regarding this question in your Member State?

A few years ago, it was hard to for the exceptions of international lis pendens to be admissible in France. However, some cases met the condition of admissibility, requiring the recognition of foreign judgement in France. French Nationals do have jurisdictional privileges granted by Articles 14 and 15 of the Civil Code, and in practice, French courts had exclusive jurisdiction to hear any dispute when one of the parties was a French national. However, the French Supreme Court in the "Prieur" ruling on 23 May 2006, questioned the exclusive jurisdiction of the French courts and expanded the cases of recognition of international lis pendens.

5.5.2 If it is possible for B to sue S in Member State Z (in the above situation), will the court in State Z be bound by the reasoning in the judgment from the court in Member State Y? What is the position on that question in your national legal order?

Only the operative part has the authority of res judicata. However, the judge has to base his decision on reasoning, citing legal sources that allowed him to take such a decision.

5.5.2.1 If in domestic cases you do not extend res judicata effect to the elements of a court's reasoning (Question 5.1.4)?

No. Only the operative part is concerned.

5.5.2.2 If res judicata effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

No.

5.5.3 How do you handle the limitation period problem in the scenario described above? The lis pendens case law of the CJEU prevents the filing of a warranty liability claim in State Z as

long as a payment claim is pending in State Y. How can the buyer prevent the limitation period from running in State Z (your home State) without making the warranty case pending?

The limitation period for an enforceable title may be interrupted by certain court decisions against the debtor. In this case, a new period of 10 years is opened. However, despite the interruptions, the limitation period may not exceed 20 years in the event of an enforceable title from a notarial act or bailiff. However, it can be postponed as many times as there are interruptions if the enforceable title comes from a court decision.[29]

[29] www.legalstart.fr/fiches-pratiques/recouvrement/prescription-titre-executoire/,visited September 1st, 2020.

Part 6: Effects of judgements - res judicata and enforceability

6.1 What is the relation of res judicata to enforceability, i.e. can a judgment be enforced before it is res judicata?

Comment: *Does your legal order operate with the institution of "provisional enforceability", i.e. the enforceability of judgments that are not (yet) res judicata, but have nonetheless been endowed, either by the decision of a court or by operation of law, with the attribute of enforceability? Do you think such (foreign) judgments might be controversial from the perspective of the (procedural) legal order of your Member State, if the creditor attempted to enforce them? For an example of provisional enforceability, see §§704, 708, 709 of the German ZPO).*

The operative part of a judicial decision is "res judicata", whether or not it is liable to be the subject of an appeal. Therefore, a judgment can be enforced only after it is res judicata.

6.1.1 Is provisional enforceability suspended (by operation of law or at the discretion of the court) if an appeal is lodged?

No, but the First President of the Court of Appeal may stop the provisional execution of decisions which are not automatically enforceable when, in the event of a clear violation of the adversarial principle or of article 12 of the Code of Civil Procedure, provided that it notes that execution risks causing manifestly excessive consequences[30].

6.1.2 Who bears the risk if the provisionally enforceable judgement is reversed or modified?

The reversal of the decision by virtue of which the forced payment was made removes the cause of the decision which ordered the provisional execution and puts the parties back in the situation they were in before the execution[31]

6.1.2.1 Must the judgment creditor provide security before the judgment can be enforced?

Before implementing the enforcement procedure, the creditor must first prove the existence of his claim. The creditor must demonstrate the validity of his claim. It must be liquid, payable and judicially recognized, Article 2 of Law 91-650 of July 9, 1991: "The creditor provided with an enforceable title noting a liquid and payable debt may continue the forced execution on the property. of its debtor under the conditions specific to each execution measure ".

[30] Social chamber September 13, 2012, appeal n ° 11-20348, BICC n ° 774 of January 15, 2013 and Legifrance
[31] www.dictionnaire-juridique.com/definition/execution-provisoire.php, visited September 3rd, 2020.

6.1.2.2 Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

Usually, the debtor is ordered to pay damages in the event of non-performance or delay in performance, except in cases of force majeure (art. 1231-1).The debtor is in principle liable for the loss suffered and the gain missed by the creditor due to non-performance (art. 1231-2).

6.1.2.3 Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?

According to Article L111-3 of the Code of Civil Enforcement Procedure which lists the list of existing enforceable titles, this is a legal act which allows the forced execution of a debt. This means here that the possibilities of settling the non-payment amicably have been exhausted before recourse to justice.

6.1.2.4 Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgement, by a first instance court or a court of appeals?

No.

6.1.2.5 What is the scope of the compensation? Is it limited to direct loss or is indirect loss?

Article 1240 (formerly Article 1382) of the French Civil Code, provides that any person who commits an act that causes damage to another must provide compensation for that damage. Compensation is also defined in article 1347 of the Civil Code as "the simultaneous extinction of reciprocal obligations between two people. » In enforcement matters, the sum due is calculated in proportion to the period of failure to perform, taking into account the pecuniary penalty in addition to other compulsory enforcement measures that may be taken. However, only the obligations established by an enforceable title may, in principle, be subject to compulsory enforcement measures. When the creditor pays the cost of compulsory enforcement measures, the debtor must subsequently reimburse to him or her, in addition to the debt. However, the creditor still pays a portion of these costs.

6.2 Does your legal order prescribe a suspensive period within which the judgement creditor cannot initiate the enforcement proceedings? For example, must the judgement creditor first demand payment from the debtor before he can move to enforcement (execution of the judgement)?

Article L. 111-1of the Civil Enforcement Proceedings Code mentions the exception for enforceability. Debtors with immunity cannot be enforced. However, it is possible to obtain an authorisation from the judge in order to issue an enforcement title.[32]

6.3 Does the judgment incorporate elements akin to the French "command and order to the enforcement officer" (*Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution*) and what are its effect?

The enforcement order, order or judgment must contain the formula set out in Decree No. 47-1047 of 12 June 1947 on the enforcement order to be validly executed:

" Judgments, court orders, as well as contracts and all acts susceptible of enforcement, will be entitled as follows:

"République française
"Au nom du peuple français ", et terminées par la formule suivante :
"En conséquence, la République française mande et ordonne à tous huissiers de justice, sur ce requis, de mettre ledit arrêt (ou ledit jugement, etc.) à exécution, aux procureurs généraux et aux procureurs de la République près les tribunaux de grande instance d'y tenir la main, à tous commandants et officiers de la force publique de prêter main-forte lorsqu'ils en seront légalement requis.
"En foi de quoi, le présent arrêt (ou jugement, etc.) a été signé par...".

In the French legal system, the element "command and order to the enforcement officer" is due to the fact that judges issue an order for payment that is not yet enforceable. It is only after the expiration of a certain period without objection from the debtor that you can ask the court office to apply the enforceable form. The enforceable title allows the bailiff to enforce the payment of the debt by means of different types of seizures. Article L111-3 of the Code of Civil Enforcement Procedure lists the existing enforcement titles (Code des procédures civiles d'exécution).

On the other hand, some acts have an enforceable value, and there is no need to go to court. For example,

1) Notarial acts: can be presented to a bailiff in order to obtain the recovery of a debt which is the subject of a notarial act.
2) Enforceable titles of a bailiff in the event of non-payment of a check: The bailiff, upon presentation of a bank certificate, can, for example, issue an enforcement order to obtain the recovery of the debt in question.

[32] Articles L. 111-1 to L. 111-3 and R. 111-1 to R. 111-5 of the Civil Enforcement Proceedings Code

6.4 How would your legal order deal with foreign enforcement titles, which involve property rights or concepts of property law unknown in your system?

Openness to foreign courts is reflected in two ways. Sometimes, the French judge steps aside in favor of the ongoing trial abroad. Sometimes, he welcomes the court decision made abroad. Accepting the exception of international lis pendens presupposes that the judgment to be given abroad is likely to be recognized in France as emanating, in particular, from an internationally competent judge. Indeed, no provision of the Code of Civil Procedure regulating the exception of international lis pendens, outside the framework of the European Union, case law has set the criteria[33] by transposing the conditions of article 100 of the code of civil procedure to the international order.[34]

[33] (1re Civ., 26 novembre 1974, Rev. crit. DIP 1975, p. 491, note D. Holleaux ; JDI 1975, p. 108, note A. Ponsard)

[34] www.courdecassation.fr/publications_26/tude_annuelle_8869/tude_2017_juge_mondialisation_8661/juge_mondialisation_8662/partie_1_depassement_frontieres_8665/juge_mondialisation_8667/ouverture_justices_38933.html, visited, September 3rd,2020.

Part 7: Effects of Judgments – Personal boundaries of res judicata

7.1 How are co-litigants and third persons (individuals who are not direct parties of the proceedings) affected by the judgment (e.g. alienation of a property or a right, which is the subject of ongoing litigation; indispensable parties)?

"Any judgment is subject to third party opposition if the law does not provide otherwise" (article 585 CPC). The authority that the law attributes to res judicata only occurs between the parties (art. 1351 C. civ.). But if it only produces effects on the parts, third parties cannot ignore the legal situation created by the judgment. This is why the Code of Civil Procedure opens up a specific possibility of recourse to them: the third opposition.[35]

- The third opposition

The usefulness of this remedy, which is described as extraordinary since it is only available to the third party was discussed: to oblige a person "to attack by a third party a judgment to which it was not a party, that would be to recognize, contrary to article 1351, that this judgment may have some effect on him."[36]

However, there are 02 conditions for filing a third party opposition

have neither been a party nor represented in the proceedings, and have an interest therein.

7.2 Do certain judgments produce in rem (*erga omnes*) binding effects?

No, but in case there is an immunity, the authorisation of a judge is still required.

7.3 How are (singular and universal) successors of parties affected by the judgment?

The Book III of the Civil Code, (Articles 711 to 2283) in its Title I: Of successions (Articles 720 to 892) mentions in Article 723 of the Civil Code that: " Universal successors and successors by universal title are liable for an indefinite obligation to the debts of a succession. "

[35] Jean-Claude Dubarry Avocat honoraire: Les tiers et la procédure en droit français. www.henricapitant.org/storage/app/media/pdfs/evenements/tiers_procedures_2015/France_5.pdf, visited September 5th, 2020.
[36] Merlin, cité par Boitard, leçons de procédure civile 1860 page 82

Part 8: Effects of Judgments - Temporal dimensions

8.1 Can changes to statute or case-law affect the validity of a judgment or present grounds for challenge?

No.

8.2 If the judgment requires the debtor to pay future (periodic) instalments (e.g. maintenance or an annuity by way of damages), how can the judgment be challenged in order to amend the amount payable in each instalment?

Once the court decision has been brought to the attention of the party convicted by notification of the registry or by service, if the effects of the judgment are likely to be too severe for individuals who are concerned or who are not directly concerned, the law provides for the possibility of having recourse to the first president of the court of appeal to suspend or adjust the provisional execution affecting a decision which has been appealed, when its execution would risk causing "manifestly excessive consequences" (article 524 of the Code of Civil Procedure).

8.3 Can facts that occur after the last session of the main hearing and are beneficial to the defendant (debtor), be invoked in enforcement proceedings with a legal remedy?

No.

Article 595 of the CPC provides as follows:

An application for revision of a judgment may be made only where:

1. it comes to light, after the judgment is handed down, that it was obtained fraudulently by the party in whose favour it was rendered;

2. decisive evidence that had been withheld by another party is recovered after the judgment was handed down;

3. the judgment is based on documents that have since been proven or have been held by a court to be false;

4. the judgment is based on affidavits, testimonies or oaths that have been held by a court to be false. In all four cases, an application for revision shall be admissible only where the applicant was not able, through no fault of his or her own, to raise such objection before the judgment became res judicata.

4 Opposition is a form of recourse under French law, available when a judgment is rendered by default because a defendant was not properly notified of a hearing. The defendant can then "oppose" the judgment.

8.4 Can set-off of a judicial claim be invoked by the debtor in enforcement proceedings, even if the debtor's counterclaim already existed during the original proceedings?

NO

Part 9: Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1 The B IA Regulation uses the concept of a "cause of action" for the purposes of determining lis pendens.

9.1.1 How does your national legal order determine lis pendens?

In the Code of Civil Procedure, Title IV in SECTION II PLEAS OF LIS PENDENS AND RELATED CASES (Articles 100 to 107) deals with lis pendens
In the Article 100, for example, it is stated that:" If the same dispute is pending before two distinct courts of the same hierarchy that have jurisdiction, the court to
which the matter is brought must decline jurisdiction in favour of the other court if one of the parties requires it. Want of that, it may do it sua sponte."
There is a European lis pendens and an international lis pendens. European lis pendens is regulated by articles 27 of Council Regulation (EC) n ° 44/2001 of December 22, 2000, and 21 of the Lugano Convention of September 16, 1988 (Commercial Chamber June 3, 2014, appeal n ° 12-18012, BICC n ° 810 of November 1, 2014, and Legifrance).[37]

9.1.2 How does the B IA concept of a "cause of action" correspond to any similar domestic concept in your national legal order? Describe how your national legal order establishes the identity of claims.

In application of article 1351 of the Civil Code, the authority of res judicata only takes place with regard to what was the subject of the judgment. The claim must be the same, the request must be based on the same cause, it must be between the same parties and brought by them and against them in the same capacity[38]. Thus, a demarcation action and a new property claim action do not have the same object[39].

9.1.3 Does your national legal order allow a negative declaratory action? If so, how is this action treated in relation to contradictory actions (e.g. for (payment of) damages)?

Yes, this matter is regulated in the CPC in articles 30 to 32-1.

Article 31 states: " The right of action is available to all those who have a legitimate interest in the success or dismissal of a claim, without prejudice to those cases where the law confers the right of action solely upon persons whom it authorises to raise or oppose a claim, or to defend a particular interest."

[37] www.dictionnaire-juridique.com/definition/litispendance.php, visited September 5th, 2020.
[38] www.actualitesdudroit.fr/browse/civil/immobilier/1926/autorite-de-la-chose-jugee-pas-d-identite-d-objet-entre-une-action-en-bornage-et-une-autre-en-revendication-de-biens, visited September 5th, 2020.
[39] Judgment of the Bourges Court of Appeal, delivered on July 21, 2016. (Cass. 3e civ., 11 oct. 2011, n° 10-19.138, F-D).

9. 1.4 How do you determine the identity of parties in national proceedings and how (if at all) does the methodology differ from that of the B IA?

There is no special procedure, however, the role and duties of the parties are mentioned in the CPC art.2, 11, 323, 324.

9.1.5 How should we understand the requirement that judgments need to have "the same end in view" as expressed by the CJEU?

The judgments must try to establish a certain societal justice. The quality of justice is measured by the motivation of the judge and the respect of rights of the parties throughout the procedure. In the French system, motivation (art.455 CPC) plays an important part in court decisions, that is why 2nd-degree judges mostly exercise control in fact and in law.

9.2 Does your national legal order operate with the notion of "related actions"? If so, what are the effects it ascribes to them? Please accompany the answer with relevant case law.

Class actions in France, are related to consumer and competition law breaches.[40] They were introduced in France by Law No. 2014-344 of 17 March 2014, and have been actionable since October 2014. They have been expanded in 2017 and are used by authorised associations[41] on behalf of claimants suffering loss or damage as a result of breaches of consumer law, health product liability, environmental protection, personal data protection and discrimination.[42]

To date, the following **19 class actions** have been brought in France[43]:

1. UFC-Que choisir v Foncia: Foncia allegedly illegally charged its lessees for sending them monthly rent payments receipts. This claim was dismissed by the Court of Nanterre on 14 May 2018.
2. CLCV v Axa-Agipi: insurance companies (Axa and Agipi) allegedly breached their contractual obligations to guarantee a minimum return rate on life insurance investments. The decision on the admissibility of this claim is currently pending.
3. Familles rurales v SFR: the network provider SFR allegedly misled consumers into buying 4G smartphones, without providing actual coverage of the territory. The decision on the admissibility of this claim is currently pending.

[40] https://uk.practicallaw.thomsonreuters.com/1-618-0240?transitionType=Default&contextData=(sc.Default), visited September 5th, 2020.
[41] In order to bring a class action, an association must be expressly authorised to do so by the State. At present, only 15 consumer associations benefit from that authorisation.
[42] www.linklaters.com/en/insights/publications/collective-redress/collective-redress-across-the-globe/france, visited September 5th, 2020.
[43] Ibidem

9.3 Has your Member State experienced cross-border cases involving related actions within the meaning of the B IA?

Related actions are still fresh in term of civil procedure and since 2014, 19 class actions have been initiated but no decision on a defendant's liability has yet been rendered. However, due to economic bounds among EU countries cases such as Laval (C-341/05) and Viking (C-438/05) will become more frequent.

Some cases in France:

Resist v Bayer HealthCare: a contraceptive device developed by Bayer allegedly caused damaging side effects to the users. The decision on the admissibility of this claim is currently pending.

Quadrature du net v GAFAM (that is, Google, Apple, Facebook, Amazon and Microsoft): the association Quadrature du net (which defends the rights and freedom of citizens on the internet) is considering a class action against leading tech companies in September 2018. This depends on the outcome of prior complaints which are to be filed before the C.N.I.L (the French data protection authority) on 25 May 2018. Due to the sanction imposed by the C.N.I.L. against Google on 21 January 2019, the association has not brought a class action before a Court of Justice.

9.3.1 How have your courts defined irreconcilability for the purpose of related actions?

Usually, according to article 29(1) Brussels Ibis Regulation: " Without prejudice to Article 31(2),

where proceedings involving the same cause of action are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings

until such time as the jurisdiction of the court first seised is established".

Also it is important to note that only association with State authorisation can lodge cases involving related cases.[44]

9.3.2 How have your courts exercised the discretion to stay proceedings?

The "suspension" is characterized by a temporary stop. It can affect either the effectiveness the trial or the time of execution of the decision that has become final. It is regulated in the Code of Civil Procedure, Articles 108 et s., 153, 377 et s., 381, 510 et s, 539.

[44] CA Rennes, 2e ch., 13 sept. 2019, n° 18/05116. Lire en ligne : www.doctrine.fr/d/CA/Rennes/2019/C2830BF869AC9C983E736, visited, September 10th,2020

Part 10: Court settlements

10.1 What are the prerequisites for the conclusion of a court settlement?

In France, there is actually a profound judicial reorganization. As of January 1, 2020, the district and district courts (les tribunaux d'instance et de grande instance) have merged to become the Tribunal Judiciaire: courts of law with broad jurisdiction. Due that change, the form of the conclusions of court settlements has been modified by Decree No. 2019-1333 of December 11, 2019 implementing the law for the reform of the justice system published in the Official Journal of December 12, 2019, which amends many provisions of the Code of 'Judicial organization, and comes into force on January 1, 2020.

The new article 768 of the Code of Civil Procedure now regulated the prerequisites for the conclusion of a court settlement. However, regarding payment orders, it must be said that:

- The debt must result from a contract
- The total amount to be paid must be fixed
- The debt must be arrived to his term / end.
- The debt must not be prescribed.

Before a juridical remedy to obtain the payment of the debt, the creditor must prove that the debtor is faulty. To do so, the creditor have to send a "*mise en demeure*" to the debtor, it is an official letter "*lettre en recommandée avec accuse de réception*" that is send to the domicile of the debtor. The purpose of the "*mise en demeure*" is to inform the debtor that he has to pay his debt otherwise the creditor will force the execution of its obligation.[45]

10.1.1 Describe the necessary elements a court settlement must contain.

1- A very synthetic reminder of the facts and the procedure.

2- The discussion with the numbered statement of the claims and their basis in fact and in law, each claim having to refer to the documents on which it is based, by numbering them in the reasons for the conclusions as and when they are used so as to allow the judge to immediately identify the subject of the proceedings.

3 The operative part which starts with " Par ces motifs" must exclusively cover the claims of the parties in the order of the reasons.

Article 768 of the Code of Civil Procedure defines what must be the content of the conclusions submitted to the Tribunal and differentiates the claims on the one hand and the factual and legal grounds on the other.

The conclusions must expressly formulate the claims of the parties and the factual and legal grounds on which each of these claims is based, with an indication for each claim of the

[45] Article 1344 of the Civil Code defines the formal notice to pay.

documents invoked and their numbering. A summary of the documents is attached. The conclusions distinctly include a statement of the facts and procedure, the statement of the judgments criticized, a discussion of the claims and the means as well as a device recapitulating the claims. If, in the discussion, new means compared to the previous scriptures are invoked in support of the claims, they are presented in a formally distinct manner. The Tribunal rules only on the claims set out in the operative part and only examines the grounds in support of these claims if they are raised in the discussion. The parties must resume, in their last submissions, the claims and arguments previously presented or invoked in their previous submissions. In case the parties are represented by lawyers, their submissions are signed by their lawyer and notified in the form of notifications between lawyers. In the event of more than one plaintiff or defendant, they must be notified to all the lawyers constituted. They are not admissible until the information mentioned in paragraph 2 of Article 765 has been provided.[46]

Regarding the competent jurisdiction for the "*requête en injonction de payer*", it was as follows:

- Commercial debt (between two merchants): *Tribunal de commerce*.
- Civil debt (between a consumer and a merchant or between two civilians) : there is a distinction depending on the amount of the debt.
  If the debt is lower than 10 000 euros, the *Tribunal d'Instance* is competent.
  If the debt is equal or superior than 10 000 euros, the *Tribunal de Grande instance* is competent.

However, as already mentioned, both the *Tribunal d'Instance and the* the *Tribunal de Grande instance are now called the Tribunal Judiciaire due to the French reform ''Réforme de la procédure d'injonction de payer du 18 juin 2020''*[47]

10.1.2 What formal requirements must be satisfied (e.g. signature of the parties; service)?

Signature of the parties or lawyers, summary slip of the documents referred to in support of the conclusions.

10.1.3 How are the parties identified?

The parties are identified in the application. It can be a legal entity or a physical person.

[46] Benoit Henry, "LA STRUCTURATION DES CONCLUSIONS DEVANT LE TRIBUNAL JUDICIAIRE." www.village-justice.com/articles/structuration-des-conclusions-devant-tribunal-judiciaire,33251.html, visited September, 21st 2020

[47] *La loi de programmation et de réforme de la justice du 23 mars 2019*

10.1.4 What (substantive) legal relationships can be settled in a court settlement?

All those referring to available (disposable) rights.

10.2 When does a court settlement become enforceable?

After the decision of the judge. It is important to note that at the beginning of the procedure, there are three possibilities:

- The judge can reject the application
- The judge can partially accept the application: not the totality of the amount must be asked to the debtor
- The judge can fully accept the application: the totality of the amount to be asked to the debtor

Once the decision is issued, the claim of the payment can be done through the intermediary of justice officers.

10.3 How are (singular and universal) successors of parties affected by the judgment?

Comment: *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible.*

Once the judgment is pronounced, the creditor or its successors have 6 months to claim the debt to the debtor or its successors.

10.4 If applicable, describe how the legal relationship, once settled, can be amended?

The debtor, once informed of the judgment has two solutions:

- He can pay the debt to the creditor without opposition
- He can make an objection. In this case, the 2 parties must go to court. The judge can maintain his decision and the debtor will be obliged to pay, it may be done by a bailiff's seizure.

10.5 If applicable, describe how (under what circumstances) a court settlement can no longer be considered enforceable?

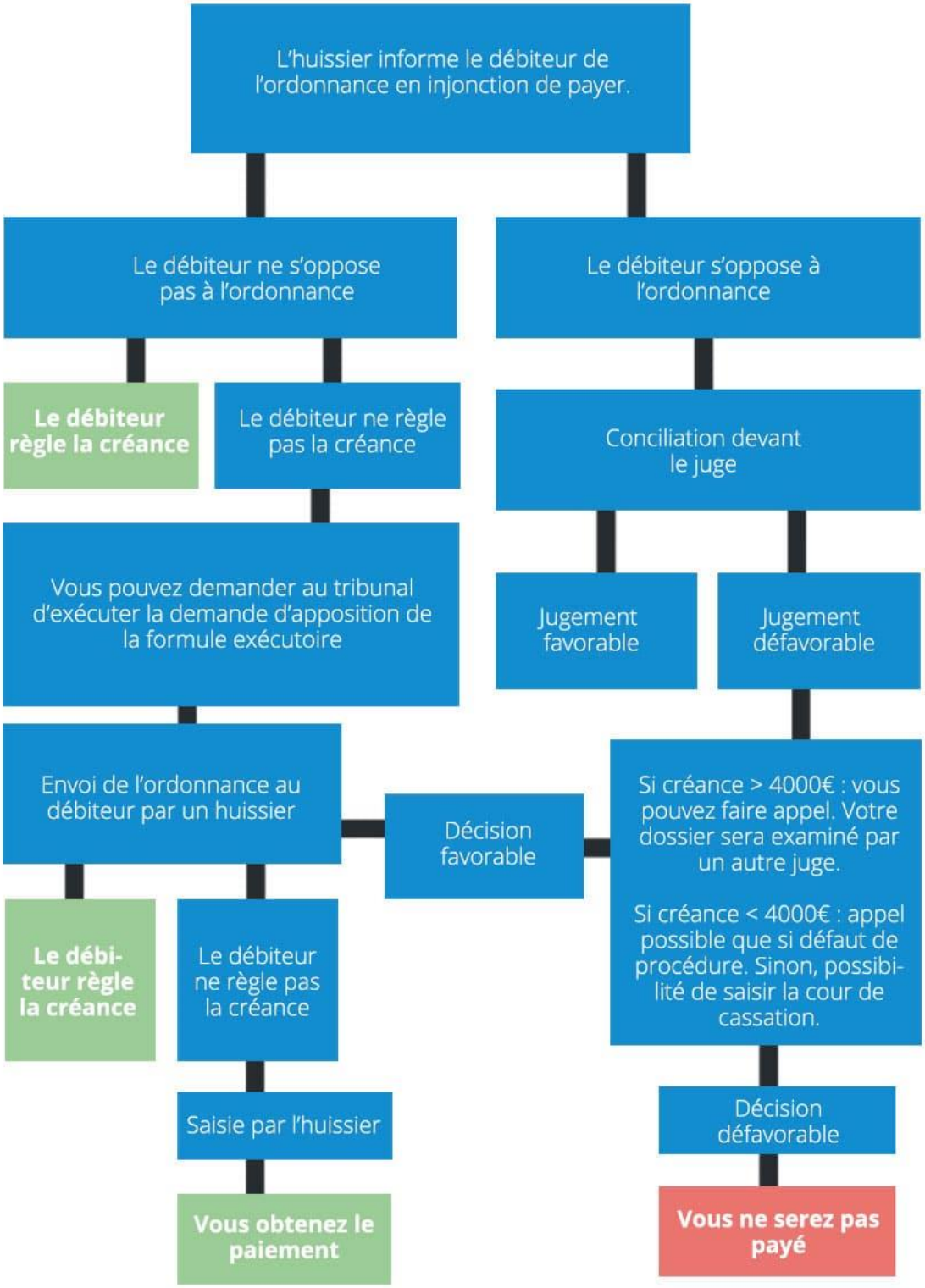
Once approved, the agreement can always be executed.

If it is voluntarily fulfilled, it can no longer be executed.

The same occurs if the obligation has since been extinguished by prescription.

10.6 If applicable, describe how errors in a court settlement can be remedied and the recourses that are available against a notarial act, whether independently or during enforcement proceedings.

The debtor can oppose the judgment, once it has been reconsidered, and use his right to appeal, according to article 545 of the Code de procédure civile but he cannot oppose the notarial act.


L'huissier informe le débiteur de l'ordonnance en injonction de payer.
Le débiteur ne s'oppose pas à l'ordonnance
Le débiteur s'oppose à l'ordonnance
Le débiteur règle la créance
Le débiteur ne règle pas la créance
Conciliation devant le juge
Vous pouvez demander au tribunal d'exécuter la demande d'apposition de la formule exécutoire
Jugement favorable
Jugement défavorable
Envoi de l'ordonnance au débiteur par un huissier
Décision favorable
Si créance > 4000€ : vous pouvez faire appel. Votre dossier sera examiné par un autre juge.
Si créance < 4000€ : appel possible que si défaut de procédure. Sinon, possibilité de saisir la cour de cassation.
Le débiteur règle la créance
Le débiteur ne règle pas la créance
Saisie par l'huissier
Décision défavorable
Vous obtenez le paiement
Vous ne serez pas payé

Part 11: Enforceable notarial acts

11.1 Briefly describe the competence the notary holds in civil and commercial matters in your Member State.

The notary is public officer that have the competence to give an authentic character to acts that the parties submit to him. Its mean that the date of the act is settled, the act will be conserved by the notary and he can give officials copies of the act.

Ordonnance du 2 novembre 1945, article 1 :

"Les notaires sont les officiers publics, établis pour recevoir tous les actes et contrats auxquels les parties doivent ou veulent faire donner le caractère d'authenticité attaché aux actes de l'autorité publique, et pour en assurer la date, en conserver le dépôt, en délivrer des grosses et expéditions. »
« Notaries are public officers, established to receive all deeds and contracts to which the parties must or wish to give the character of authenticity attached to the acts of the public authority, and to date them, keep them in custody, issue large and dispatch them. »

11.2 Is (can) a notarial act be considered an enforcement title in your respective Member State/Candidate Country? If so, briefly present, how the concept of a notarial act as an enforcement title is defined in your national legal order.

Comment: *If the definition is provided by a provision of law, then please provide the citation to the exact article/paragraph of that rule and an English translation.*

In the French juridical order, the authentic act, have the highest probative value. It has 3 principal effects:

- "*date certaine*" = the date of the act has been verified.
- "*force probante*" = the content of the act has been checked by the notary and it give to it the probative value. As a consequence, there is no possibility to bring the contrary evidence. There is just a very complex procedure to contest the proof.
- "*force exécutoire*" = the act is enforceable "de plein droit », it's mean that it is immediately enforceable.

Article L111-3, 4° du code des procédures civiles d'exécution :

« Seuls constituent des titres exécutoires :

[…]

4° Les actes notariés revêtus de la formule exécutoire ;

[...] »

« Only the following constitute enforceable titles:

[…]

4° notarial act with the enforceability formula;

[…]"

11.3 Is, according to your domestic legal order, a notarial act an enforcement title *per se* or must it contain additional conditions/clauses to be considered as such?

Comment: *For instance, in Slovenia, notarial acts are considered enforcement titles only if they contain a so called 'direct enforceability clause'.*

A notarial act is an enforcement title *per se*, there are formal obligations for the redaction of the act that are really precise. An error in the redaction of the notarial act can result in the invalidity of the act or the loose of the enforcement.

11.3.1 If there is a certain clause (that constitutes the notarial deed an enforcement title) please set out an example of such a clause (cite an example clause). Furthermore, explain if there a difference in said clause if the deed refers to monetary or non-monetary claims?

Doesn't apply

11.3.2 Is the debtor's consent to direct enforceability considered to be part of a notarial act?

The debtor's consent is expressed by the signature of the act. The notarial act must be signed by the parties and the notary.

11.3.3 If the previous question is answered in the positive, can such consent be of a general nature or specific and concrete to the debtor's obligations arising from the notarial act?

11.4 How is a notarial act structured in your domestic legal order? What elements must it contain?

A notarial act is written in the French language, without gap or line spacing. Every page has to be signed by the parties and the notary (or the put their initials).

Also, the notarial act must be signed by each party, the notary and the eventual witnesses.

The content is free, according to the principle of freedom of contracts but some elements are always present:

- The identifications of each parties and thirds persons in the act (the deceased for example);
- The place of the redaction of the act
- The date, in letters
- The identification of the notary.

The content is determined by the type of act. For example, for an act of real estate sale, the price of the real estate is written in letters.

11.5 What personal information must be specified in the notarial act for the purposes of identifying the Parties?

Full name, marital status, birth place, full address, fiscal number and ID number.

11.6 Must a notarial act, considered to be an enforcement title, contain a threat of enforcement?

No

11.7 If applicable, how lengthy and important is the part of the notarial act, which contains warnings and explanations by the notary?

Depending on the contents of the act, the notary reads and explains it to the parties. Some contracts, live real estate purchase, must have some legal warnings.

11.7.1 Is the notary obliged to explicitly warn the parties about the direct enforceability of the act?

No.

11.7.2 Is there a need for parties and/or the notary to sign each page of a notarial act, to be considered valid?

Each parties and the notary must "paraphe" each page of the document. It's mean that they have to sign or to put their initials.

11.8 What are the consequences if the parties fail to meet the formal requirements for a valid notarial act?

A notarial act is written by the parties with the presence of the notary or by the notary himself. He will ensure that the required conditions are met.

11.9 What kind of (substantive) obligations, arising out of legal relationships and contained in a notarial act can become directly enforceable, according to your domestic legal order (e.g. mortgage)? Conversely, are there legally valid obligations, which cannot become directly enforceable due to restrictions in legislation or due to judicial decisions?

Comment: *For instance, in Slovenia, taxes, which arise from the claim-enforcement procedure, cannot be directly enforced by the creditor. The same applies to some bank products.*

The obligations are immediately enforceable. If the parties decided to put a term to the obligations, they will be enforceable at the moment the term will be reached.

11.10 Is it possible that conditional claims, contained in a notary act are directly enforceable? If so, are there any special conditions, which have to be met in notarial acts or in enforcement procedure?

A notarial act and its content is directly enforceable.

11.11 Can obligations, contained in a directly enforceable notary deed, be contained in attachments to the notarial act or must they be set out specifically within the text of the act?

Yes, they can be attachments to the notarial act. Attachments are an integral part of the notarial act. They can be on a document that stays archived with the deed and has the same importance and legal value.

11.12 Is it possible for parties to conclude a contract wherein they set up a legal (contractual) relationship and only later bring said contract to the notary in order to confirm the direct enforceability of obligations, arising out of the contract?

In principle, the notary can only authentify the facts that happened in front of him so he notices them. In this case, the notary would identify the parties and their signature and the date for example.

11.13 Must the notarial act include the specification of the time period in which the obligation of the debtor is to be performed? In conjunction, is there the possibility that a notarial act is directly enforceable even if the time period has not yet expired? If so, under what conditions?

The parties are free to fix a term to the obligation.

11.14 Disregarding EU legislation, are there any special restrictions regarding recognition and enforcement under the private international law of you Member State, pertaining specifically to foreign notarial acts?

The authentic instrument is the instrument received, with the required solemnities, by a public officer competent to act in the place where it was drawn up (article 1369 of the Civil Code). It is different from the private deed signed only by the parties, which does not involve the presence of the drafter, and which can be regularized anywhere, including abroad. Certain deeds must be drawn up in notarial form, such as (non-exhaustive list): authentic wills, marriage contracts, deeds of gift, property sales requiring land registration, etc.

However, there is a special case with Quebec. Indeed, under the agreements signed between the Conseil Supérieur du Notariat and the Chambre des notaires du Québec, French people residing in Quebec and Montreal wishing to establish an authentic document could now systematically contact a local notary. The authentic power of attorney established before a Quebec notary will be recognized in the same way as an authentic power of attorney received by a notary in France. The consulates general nevertheless remains competent for other types of notarial deed.[48]

11.15 Is it possible to bring grounds of objection in enforcement proceedings, concerning not only enforcement proper (execution), but opposition to the claim itself? In other words, can the debtor raise grounds against the claim contained in the notary act in enforcement proceedings?

The parties can put conditions to the realization of obligations that are creating by the contract. Or the debtor may be able to invoke elements provided for by French contract law, such as a defect in consent.

But the debtor cannot contest the enforceability of the notarial act. If he wants to, he must prove that the notarial act is a fake. This procedure is very complex.

11.16 If your domestic legal order does not operate with enforceable notarial acts, how would you enforce a foreign enforceable notarial act?

France is operating with enforceable notarial acts.

[48] www.diplomatie.gouv.fr/fr/services-aux-francais/notariat/ , visited September 24th, 2020

11.17 Are there other authentic instruments under your domestic legal order, which are considered enforcement titles?

The article L111-3 of the Code des procédures civiles exécutoires provides a list of enforcement titles :

« Seuls constituent des titres exécutoires :

1° Les décisions des juridictions de l'ordre judiciaire ou de l'ordre administratif lorsqu'elles ont force exécutoire, ainsi que les accords auxquels ces juridictions ont conféré force exécutoire ;

2° Les actes et les jugements étrangers ainsi que les sentences arbitrales déclarés exécutoires par une décision non susceptible d'un recours suspensif d'exécution, sans préjudice des dispositions du droit de l'Union européenne applicables ;

3° Les extraits de procès-verbaux de conciliation signés par le juge et les parties ;

4° Les actes notariés revêtus de la formule exécutoire ;

4° bis Les accords par lesquels les époux consentent mutuellement à leur divorce ou à leur séparation de corps par acte sous signature privée contresigné par avocats, déposés au rang des minutes d'un notaire selon les modalités prévues à l'article 229-1 du code civil ;

5° Le titre délivré par l'huissier de justice en cas de non-paiement d'un chèque ou en cas d'accord entre le créancier et le débiteur dans les conditions prévues à l'article L. 125-1 ;

6° Les titres délivrés par les personnes morales de droit public qualifiés comme tels par la loi, ou les décisions auxquelles la loi attache les effets d'un jugement »

1° The decisions of judicial or administrative courts when they are enforceable, as well as the agreements to which these courts have conferred enforceability;

2° Foreign acts and judgments as well as arbitral awards declared enforceable by a decision that is not subject to an appeal suspending enforcement, without prejudice to the provisions of European Union law applicable;

3° Extracts of conciliation minutes signed by the judge and the parties;

4° Notarial deeds bearing the executory formula;

4° bis Agreements by which the spouses mutually consent to their divorce or legal separation by a private deed under private signature countersigned by attorneys, filed in the minutes of a notary according to the methods provided for in Article 229-1 of the Civil Code;

5° The title delivered by the bailiff in case of non-payment of a check or in case of agreement between the creditor and the debtor under the conditions provided for in Article L. 125-1;

6° Titles issued by public law legal persons qualified as such by law, or decisions to which the law attaches the effects of a judgment."

When the parties must make a notarial act.

	Obligatory notarial act	**Optional notarial act (choice of the parties for more security)**
Only one notary nedeed	• Marital contracts • Beverage outlet lease. • Discharge of registration on goodwill. • Consent to marriage of ascendants. • Sale of building to be built.	• Any act to which the parties wish to give a high probative value • Incorporation act of a company, PACS agreement. • PACS convention. • Translative acts or acts constituting real estate rights (sale, long term leases). The notarial form of the deed is not obligatory but the authenticity of the deed is a condition of land registration. The publication of the deed will not be possible if the deed is not authentic, which makes the notarial form unavoidable to make the deed opposable.
Two notaries nedeed	• Authentic will (drafting). • Authentic will (revocation). • Acts for which one party cannot sign	