

France

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Notes

The following responses focus exclusively on the enforcement, in France, of foreign judgments against states, including both the *exequatur* (process required to make the judgment effective in the French territory) and execution (process required to seize assets) phases. It will not, however, cover the specifics relating to the enforcement of arbitral awards, nor interim, provisional and conservatory measures.

1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

The applicable framework for the enforcement of a judgment in France differs depending on whether it is a judgment from: (1) an EU Member State; (2) a non-EU nation to which France is bound by an international convention; or (3) from a country that is not bound to France by any convention, treaty or agreement on the recognition and enforcement of foreign judgments.

A country with no convention, treaty or agreement with France

In this last case, absent of any applicable special regime, the general regime of French private international law governs the enforcement of a foreign judgment.

The party seeking to enforce a foreign judgment in France will have to initiate an adversarial procedure before the French court to acknowledge the judgment as enforceable in France, (ie, seek *exequatur* of the judgment). Such a procedure may be lengthy.

The claimant to such action must demonstrate and evidence that the following conditions are met.

First, the jurisdiction of the foreign court that rendered the foreign judgment over the claim. In assessing this condition, French courts must be satisfied that there was a sufficient connection between the dispute and the foreign court seized, and that the exclusive jurisdiction of French courts has not been disregarded.

Second, the compliance of the foreign judgment with both procedural and substantive French international public policy.

The French court will check that the foreign judgment has been rendered in compliance with the procedural rules and principles deemed fundamental within the French legal order, such as the principle of adversarial proceedings, the right to a proper defence, and more generally, the right to a fair trial and due process (see also response to Question 5, below).

Substantive French international public policy encompasses fundamental principles that can involve debated economic, social or ethic issues. For instance, French courts have refused to enforce a foreign judgment on the ground of violation of substantive international public policy because the said foreign judgment awarded an amount of damages qualified as punitive by the foreign court that were grossly disproportionate to the loss effectively suffered and the seriousness of the contractual breach.

Third, the foreign judgment has not been obtained by fraud, which may refer to fraudulent forum shopping, that is, the act of manipulating conflict of laws rules in order to evade the application of the law of a forum deemed less favourable to one's case in favour of another, for instance.

Those three conditions are cumulative, which means that if at least one of them is not met, French courts will refuse to grant *exequatur* of the judgment.

French courts ruling on the *exequatur* of a foreign judgment are however prohibited from examining the merits of the case.

An EU Member State or country with an agreement

The recognition and enforcement of foreign judgments can be facilitated if the foreign judgment has been rendered in an EU Member State or, to a lesser extent, in a country bound with France by an international convention.

First, the Recast Brussels Regulation No 1215/2012 of 12 December 2012 (the Recast Brussels Regulation), applicable to foreign judgments rendered in an EU Member State following proceedings initiated on or after 10 January 2015 provides for the automatic recognition of foreign judgments in all EU Member States, as long as the party seeking enforcement provides: (1) a copy of the foreign judgment establishing its authenticity; and (2) a certificate from the court having rendered the judgment certifying that it is enforceable.

UK judgments resulting from proceedings initiated after 31 December 2020 (post-Brexit) no longer benefit from this simplified recognition and enforcement regime and are now considered according to French private international law, outlined above.

Under the Recast Brussels Regulation, the party opposing the enforcement may challenge the recognition of the foreign judgment on one or several of the grounds listed in Article 45:

- if such recognition is manifestly contrary to French international public policy;
- if the foreign judgment was given in default of appearance, if the defendant was not served with the initiating act or with an equivalent document in sufficient time and in such a way as to enable them to arrange for their defence, unless the defendant failed to initiate proceedings to challenge the judgment when it was possible for him to do so;
- if the foreign judgment is irreconcilable with a judgment given between the same parties in France;
- if the foreign judgment is irreconcilable with an earlier judgment given in another EU country or in a third state involving the same cause of action and

	<p>between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in France; or</p> <ul style="list-style-type: none"> • the foreign judgment was rendered in violation of the exclusive jurisdiction of the court of an EU Member State. <p>These criteria are consistent with the requirements of French private international law.</p> <p>Second, the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007, applicable throughout the EU and in Switzerland, Norway and Iceland creates a facilitated enforcement regime (Lugano Convention). Although it does not provide for automatic recognition of the foreign judgment (as the Recast Brussels Regulation does), the foreign judgment creditor can obtain enforcement through a non-adversarial procedure, subject to an adversarial appeal, and the grounds for refusal of enforcement are harmonised and mirror the narrow grounds available under the Brussels Recast Regulation.</p> <p>Third, to a lesser extent, the Hague Convention of 30 June 2005 establishes a principle of recognition and enforcement of any judgment rendered by a court of a contracting state having jurisdiction under an exclusive choice of court agreement, without however exempting the applicant from the adversarial exequatur procedure presented above.</p> <p>The grounds for refusal of recognition or enforcement of a judgment are listed exhaustively in the Hague Convention, and include for instance: nullity of the agreement under the law of the state of the designated court; lack of capacity to conclude the agreement under the law of the requested state on the part of one of the parties; procedural fraud; incompatibility of the judgment with the international public policy of the requested state, etc.</p> <p>The Hague Convention of 2 July 2019, applicable between the EU and Ukraine since 1 September 2023 is intended to apply even in the absence of an exclusive choice of court agreement. It offers roughly the same features: principle of recognition and enforcement, application of the French exequatur procedure and exhaustive list of grounds for refusal of recognition or enforcement.</p> <p>Finally, France has concluded bilateral agreements on the recognition and enforcement of foreign judgments with non-EU country, some of which refer to the rules of private international law of the state in which enforcement is sought (see above).</p>
<p>2.</p>	<p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?</p>
	<p>French courts will apply the above mentioned general principles to the enforcement of judgments against states (see response to Question 1, above).</p> <p>In addition, specific rules must be considered.</p> <p>First, immunity from jurisdiction.</p>

	<p>When opposing <i>exequatur</i> of a non-EU judgment under adversarial proceedings (see response to Question 1), the defendant foreign state can invoke its immunity from jurisdiction. Such an action for <i>exequatur</i> would be ruled inadmissible if the said foreign state demonstrates that, by its nature or purpose, the act which gave rise to the foreign judgment is an exercise of its sovereignty. French courts may uphold the state's immunity from jurisdiction, even if this has been set aside by the foreign judgment of which <i>exequatur</i> is sought. However, as <i>exequatur</i> proceedings are not <i>per se</i> execution measures, the foreign state cannot, at this stage, invoke its immunity from execution (see response to Question 3, below).</p> <p>Second, specific provisions of French law regarding notification to a foreign state may apply.</p> <p>Initially, notification to the foreign state of the foreign judgment to be enforced must be affected as per the rules of the state where it has been rendered. The French court will check that such judgment is enforceable in the country in which it was rendered.</p> <p>Specific French provisions will apply to the notification of the subsequent acts required to enforce the foreign judgment in France. These are: (1) to the service of the writ initiating the adversarial <i>exequatur</i> proceedings (when required, response to Question 1) before the French court; (2) to the service of the subsequent French judgment authorising the enforcement of the foreign judgment in France; and, (3) finally to the notification of the seizure made on the basis of this judgment against the assets of the foreign state located in France.</p> <p>In order to serve these various acts at each stage of the enforcement process, the judgment creditor must follow the specific rules of service via diplomatic channel, that is, unless provided otherwise by special conventions on international service. A French bailiff must hand over the act to the French public prosecutor who, in turn, will transfer it through the French Ministry of Justice and the French Ministry of Foreign Affairs to the French embassy of the foreign country which then serves it on the foreign state through its Ministry of Foreign Affairs. The creditor must demonstrate each of these steps have been effected to be able to seize assets of the debtor state in France.</p>
<p>3.</p>	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?</p>
	<p>Once the foreign judgment is enforceable in France, the judgment creditor can obtain execution measures (attachments), provided that the debtor state's assets are located in France. When the execution targets a receivable held by the foreign state against a third party such as the attachment of the positive outstanding amount on bank accounts, or any debt of a counterparty towards the debtor foreign state, such receivable is considered located in France under French law if the debtor of the foreign state has: (1) its registered office is located in France; or (2) if its registered office is located abroad but the receivables must be paid by an entity (subsidiary, establishment) located in France having the power to do so. These principles also apply to tax receivables due by a third party located in France to a foreign state.</p>

	<p>Specific rules govern execution measures against such foreign state assets located in France, since the targeted assets could be protected by state immunity from execution.</p> <p>The judgment creditor must apply for prior judicial authorisation to carry out the execution measure (Code of Civil Enforcement Proceedings, Art L 111-1-1). The application is made <i>ex parte</i> before the Enforcement Judge of the Paris Civil Court (Code of Civil Enforcement Proceedings, Art R 111-1), who must ensure that the conditions required for execution against foreign sovereign assets are met.</p> <p>First, the foreign judgment must be enforceable and validly served on the judgment debtor prior to the date of execution (see responses to questions 1 and 2, above). If not, the attachment is null and void.</p> <p>Second, the targeted assets must not be covered by the foreign state’s immunity from execution. Immunity from execution is applicable by principle but can be waived if:</p> <ul style="list-style-type: none"> • the foreign state has expressly consented to the execution measure; • the foreign state has reserved or allocated the assets in question to the claim raised by the creditor; • the assets in question (1) have a link with the entity against which the measure is carried out and (2) are specifically used or intended to be used by the foreign state ‘other than for non-commercial public service purposes’ (Code of Civil Enforcement Proceedings, Art L 111-1-2). <p>In addition to the above conditions, if the targeted assets are subject to a national or European asset freeze, the judgment creditor is required to obtain an administrative authorisation from the French Treasury to unfreeze the assets, prior to the execution and prior to the judicial authorisation of the Enforcement Judge.</p> <p>French law also provides specific rules of immunity from execution for diplomatic assets, and for foreign central bank assets.</p> <p>If authorisation is granted and execution carried out, it is for the owner of the attached assets to bring the judgment creditor before the Enforcement Judge to challenge the conditions and/or the formal regularity of the execution.</p>
<p>4.</p>	<p>What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?</p>
	<p>The question raised is whether state immunity may not be accorded or may be restricted, when that state has committed serious violations of fundamental rules of international law.</p> <p>First, it should be noted that international courts have to date refused to apply such an exception to immunity.</p> <p>The International Court of Justice ruled that:</p> <p style="padding-left: 40px;">‘under customary international law as it presently stands, a state is not deprived of immunity by reason of the fact that it is accused of serious violations of</p>

international human rights law or the international law of armed conflict’, ‘even on the assumption that the proceedings [...] involved violations of *jus cogens* rules’

(ICJ, *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)*, Judgment, ICJ Reports 2012, p 99, paras 91 and 97).

The European Court of Human Rights ruled in 2001:

‘notwithstanding the special character of the prohibition of torture in international law, the Court is unable to discern in the international instruments, judicial authorities or other materials before it any firm basis for concluding that, as a matter of international law, a state no longer enjoys immunity from civil suit in the courts of another state where acts of torture are alleged.’

(ECtHR, Grand Chamber, *Al-Adsani v the United Kingdom*, 21 November 2001, No 35763/97).

Second, even if some national jurisdictions or legislations have admitted such a restriction of state immunity on that basis, it is not the case for the French courts.

In a recent decision of the French Cour de cassation (Cass. 1^{ère} civ, 28 June 2023, No 21-19.766), several US claimants initiated proceedings in France to enforce a US judgment ordering the Islamic Republic of Iran to pay damages as compensation for a terrorist attack perpetrated in Palestine by a terrorist group supported by Iran.

The US Judgment dismissed Iran’s immunity from jurisdiction on the basis of a specific US legislation providing an exception to immunity from jurisdiction in respect of a claim for damages for personal injury or death caused by an act of torture, extra-judicial killing, aircraft sabotage or hostage-taking, against a state designated by the Secretary of State as a sponsor of terrorism, where the claimant or victim was a national of the United States at the time the act occurred.

Despite this US ruling, the Paris Court of appeal dismissed the claim for *exequatur* of this judgment in France on the basis of Iran’s immunity from jurisdiction. The French *Cour de cassation* upheld this ruling, finding that the fact that the US dismissed Iran’s immunity had no bearing on the French court’s power to appraise in the present case whether such immunity of jurisdiction should stand. In this regard, the *Cour de cassation* ruled that:

‘even assuming that the prohibition of acts of terrorism could constitute a rule of *jus cogens* of international law likely to constitute a legitimate restriction to immunity of jurisdiction, which is not the current state of international law, the circumstances of the case did not allow such exception to immunity since the relief against the Iranian state to pay damages ordered by the US court did not rely on the demonstration of the direct involvement of the Islamic Republic of Iran and its agents in the attacks, but only on the ground of civil liability this State should incur on the basis of the support and material resources provided to the group which claimed that attack’.

While referring specifically to the current state of international law which excludes such an exception to immunity, the findings of this ruling may be construed *a*

	<p><i>contrario</i> as <i>Cour de cassation</i> not fully excluding in principle a restriction of immunity from jurisdiction based on a violation of a rule of <i>jus cogens</i>, as it seems to imply that such a restriction could be possible in some specific circumstances.</p>
5.	<p>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</p>
	<p>The French <i>exequatur</i> judge will not examine the regularity of the procedure followed abroad in the light of foreign procedural rules, but rather in relation to French international procedural public policy, including the rights of the defence and due process guarantees protected under Article 6 of the European Convention on Human Rights (ECHR), even if the judgment has not been rendered in a country that applies the Convention.</p> <p>The burden of proving that the foreign judgment complies with French international procedural public policy lies with the judgment creditor applying for <i>exequatur</i>.</p>
5a.	<p>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</p>
	<p>There is no exhaustive list of acceptable methods of service of the act initiating the proceedings which resulted in the foreign judgment which enforcement is sought.</p> <p>The service of the claim will be deemed compliant with French international procedural public policy if it was carried out using methods equivalent to those observed in France, and if it has been served sufficiently in advance and with sufficient details about the claim to enable the defendant be informed of the proceedings and to prepare his defence effectively.</p> <p>A foreign judgment in default will be scrutinised carefully by French courts but may be granted <i>exequatur</i>, provided that the initiating act has been properly served – or at least that the defendant had sufficient knowledge of the proceedings so that it could take part in it – and that the defendant in default has the possibility to exercise any available means of recourse in the country of origin.</p>
5b.	<p>What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?</p>
	<p>The French <i>exequatur</i> judge will not assess the regularity of the proceedings before the foreign court, nor whether service was made in accordance with foreign law, provided that the defendant state was given the possibility to be aware of the existence of the proceedings brought against it and to prepare its defence in a timely fashion.</p> <p>The compliance of the service with French international procedural public policy is appreciated <i>in concreto</i> by the French <i>exequatur</i> judge, that is, in light of the local circumstances surrounding the foreign proceedings. In this regard, the absence of diplomatic relations may be taken into account by the French <i>exequatur</i> judge, while examining whether the service violated French international procedural public policy.</p>

<p>5c.</p>	<p>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</p>
	<p>Article 6 of the ECHR guarantees an effective and concrete right of access to a court, and not merely a theoretical one.</p> <p>When examining whether a foreign judgment complies with French international procedural public policy, the French <i>exequatur</i> judge will consider whether the defendant had the opportunity to be duly represented in the foreign proceedings, and in particular, whether the defendant had the opportunity to assert his grounds of defence through his counsel. If not, the judge may conclude that the defendant's rights to a proper defence has been violated, especially in proceedings in which representation by a lawyer is mandatory.</p> <p>In addition, a reasonable period of time must have elapsed between the service of the summons and the judgment, giving the defendant sufficient time to organise their defence. However, the French <i>exequatur</i> judge does not have to examine whether or not this period of time complies with the rules of the foreign proceedings.</p>
<p>5d.</p>	<p>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</p>
	<p>French courts have not had the opportunity to rule on the specific issue of the non-representation of a foreign state in foreign proceedings which have resulted in a judgment for which enforcement is sought.</p> <p>In a case where the defendant state cannot find legal representation, it cannot be excluded, depending on the circumstances, which the French court would consider the defendant's rights to a proper defence has been violated. By contrast, where the defendant state willingly chooses not to be represented, it seems more doubtful that this would be an obstacle to enforcement of the foreign judgment in France.</p>
<p>6.</p>	<p>What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?</p>
	<p>Under French enforcement measures law, all assets located in France (see the response to Question 3, above) and belonging to the judgment debtor can in principle be subject to enforcement, whether tangible (movable or immovable) or intangible (Code of Civil Enforcement Proceedings, Art L 112-1), except assets necessary for the life or work of the debtor (Code of Civil Enforcement Proceedings, Art L 112-2) and subject to immunity from execution when the debtor is a foreign state (see the response to Question 3, above).</p> <p>When the judgment debtor is a foreign state, the assets subject to enforcement must be owned by the foreign state against which the judgment has been rendered.</p>

By way of exception, the creditor may also enforce against assets belonging to an alter ego of the foreign state, if: (1) this entity is considered an emanation of that state; and (2) immunity from execution can be lifted.

The qualification of emanation of a foreign state requires the judgment creditor to demonstrate that, at the date of execution: (1) the entity has no autonomy in its organisation and operation in relation to the foreign state; (2) the entity's assets are not separate from those of the foreign state. If these conditions are met, the entity is considered to be an alter ego of the foreign state.

As such, it benefits from the same immunities as the state and its assets can therefore only be attached if the conditions required to lift immunity from execution are met (see the response to Question 3, above).