How to enforce a court decision

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1 What does 'enforcement' mean in civil and commercial matters?

Enforcement (implying compulsory enforcement, since voluntary compliance by debtors with their obligations does not require proceedings) covers all proceedings that make it possible to force a debtor to perform his or her obligations under an enforceable title. Enforceable titles are primarily judgments (French or foreign) and notarial acts that are certified enforceable (see 2. below). In French law, these titles can impose three types of obligations on the debtor: to pay, to do or to refrain from doing something, and lastly to give or return.

The right of enforcement concerns only the debtor's assets. Enforcement against persons does not exist. This means, for example, that debtors cannot be imprisoned solely for failing to repay their debt. However, a refusal to comply with certain obligations (maintenance obligations) is a criminal offence, making the debtor liable to prosecution and a prison sentence. The same applies to the fraudulent organisation of insolvency by a debtor.

Obligations to pay are enforceable by means of attachments of sums of money, movable property or immovable property belonging to the debtor. If the attachment concerns a sum of money, the sum attached will be assigned to the creditor (for instance, attachment of a bank account). If the attachment concerns movable or immovable property belonging to the debtor, the attachment will result in the compulsory sale of the asset and the proceeds of the sale will be given to the creditor, up to the amount of his or her claim.

Obligations to give or to return vary depending on the nature of the asset. In the case of movable property, the asset is seized, by way of an attachment, to be returned to the legitimate owner. In the case of immovable property, possession of the property is returned to the owner by evicting the occupant.

Since it is prohibited to physically force a person to perform an obligation to do or to refrain from doing something, the debtor is encouraged to perform those obligations by obtaining a court judgment imposing a pecuniary penalty. The amount of the penalty is the sum of money the debtor must pay if he or she does not perform his or her obligations. The sum due is calculated in proportion to the period of failure to perform (in the case of obligations to do something) or according to the number of breaches of the obligation to refrain from doing something. Since obligations to pay, to give or to return are also interpreted as obligations to do something, they may also be combined with a pecuniary penalty in addition to other compulsory enforcement measures that may be taken.

It should also be noted that only the obligations established by an enforceable title may, in principle, be subject to compulsory enforcement measures.

2 Which authority or authorities are competent for enforcement?

Bailiffs have a monopoly for undertaking compulsory enforcement. They are public and ministerial officials, appointed as such by the Minister for Justice, who verifies that they discharge their duties in compliance with strict ethical rules. They are paid for their services (see 3. below). The creditor pays the cost of compulsory enforcement measures, which the debtor must subsequently reimburse to him or her.

When a claim is to be brought before a court, the competent judge is in principle the enforcement judge, who is a specialist judge in the judicial court (*tribunal judiciaire*).

Finally, while precautionary measures are in principle authorised by the enforcement judge, they may also, by way of exception, be authorised by the president of the commercial court (*tribunal de commerce*) when they are intended to protect a claim within the jurisdiction of the commercial court.

It is not necessary to have a lawyer in order to ask a court enforcement officer - *commissaire de justice)* (formerly a bailiff – *huissier de justice*) to initiate compulsory enforcement measures.

A lawyer is compulsory throughout proceedings for the attachment of immovable property. By way of exception, the debtor may, without a lawyer, request authorisation from the enforcement judge to sell his or her property privately.

In other proceedings, representation by a lawyer is in principle mandatory, unless the contested enforcement measure concerns a claim of less than EUR 10 000. In the latter case, the parties may appear in person or be assisted or represented by a lawyer, their spouse, their cohabitant, a person with whom they have entered into a civil partnership agreement, their direct relatives, their collateral relatives to the third degree inclusive or people exclusively attached to their personal staff or to their company.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

A list of the enforceable titles recognised in France is set out in Article L. 111-3 of the Civil Enforcement Proceedings Code (*Code des procédures civiles d' exécution*). They are:

legally binding decisions by ordinary courts or administrative courts and agreements which these courts have made legally enforceable;

foreign measures and judgments and arbitral awards declared enforceable by a ruling not subject to an appeal suspending enforcement, without prejudice to the applicable provisions of European Union law;

rulings handed down by the Unified Patent Court;

extracts from official conciliation reports signed by the judge and parties;

notarial acts that contain a clause granting authority to enforce;

agreements by which spouses mutually consent to their divorce through a private instrument countersigned by lawyers and filed in the official records of a notary in accordance with the arrangements laid down by Article 229-1 of the Civil Code (*Code civil*);

title issued by a court enforcement officer in the event of non-payment of a cheque or in the event of an agreement between the creditor and the debtor in accordance with the conditions laid down in Article L. 125-1 of the Civil Enforcement Proceedings Code;

titles issued by corporate persons established under public law and described as such by the law, or decisions to which the law grants the same effects as a judgment;

transactions and documents recording an agreement resulting from mediation, conciliation or participatory proceedings, where they are countersigned by the lawyers of each of the parties and endorsed by the registry of the competent court.

Rulings of ordinary courts are enforceable and can therefore make it possible to initiate compulsory enforcement measures, when they are not subject to an action suspending enforcement, i.e. an appeal or opposition, when provisional enforcement is mandatory (which is in principle the case for first-instance rulings) or when the judge has ordered the provisional enforcement of his or her ruling. The rulings of administrative courts are enforceable even when they are subject to an appeal.

Authorised compulsory enforcement measures:

Once a person has an enforceable title, he or she may in principle initiate all the compulsory enforcement measures provided for by the Civil Enforcement Proceedings Code, without prior authorisation by the judge. By way of exception, two compulsory enforcement procedures may be initiated only with prior authorisation by the judge:

attachment of earned income, authorised by the enforcement court of the place of residence of the debtor or the garnishee, if the debtor lives abroad or has no known place of residence;

attachment of immovable property, which is undertaken by the enforcement court of the place where the property is situated.

In addition, any attachment for an amount of less than EUR 535 in living quarters requires prior authorisation by the enforcement judge.

The compulsory enforcement measures provided for by the Civil Enforcement Proceedings Code are varied and differ depending on the type of asset concerned (immovable property, tangible movable property, money, etc.; see 4.2 below). In any case, they must be limited to what is necessary to recover the claim and there must be no abuse in the choice of these measures.

By way of derogation from the principle that compulsory enforcement measures may be initiated only on the basis of an enforceable title, precautionary measures may be applied before an enforceable title has been issued. They enable the creditor to safeguard his or her rights while awaiting an enforceable title.

The precautionary measures are attachments and judicial liens. They are authorised by the judge if the applicant's claim appears to be founded in principle and the applicant demonstrates circumstances likely to jeopardise its recovery. Prior authorisation by the judge is not necessary when the creditor has a judgment that is not yet enforceable. In any case, the measures taken under these conditions lapse if the bailiff does not notify the debtor of them very quickly and if the creditor has not initiated legal proceedings on the merits to obtain a court ruling endorsing his or her claim.

The time at which compulsory enforcement measures may be carried out:

Enforcement measures may be carried out only between 6.00 and 21.00. They are prohibited on Sundays and public holidays, unless prior authorisation has been granted by the enforcement judge.

The cost of compulsory enforcement measures:

Court enforcement officers are paid for their services. The creditor pays the cost of compulsory enforcement measures, which the debtor must subsequently reimburse to him or her, in addition to the debt. However, the creditor still pays a portion of these costs.

The remuneration of bailiffs is governed by Decree No 2016-230 of 26 February 2016 and by an Order of 26 February 2016 that establishes the sum due to them for each enforcement measure. This scale of charges primarily includes:

for each measure, a fixed charge, which is a sum set at a fixed rate by the Order; based on the amount of the claim, this fixed charge is multiplied by 0.5 (claim of no more than EUR 128), by 1 (claim of between EUR 128 and EUR 1 280) or by 2 (claim of more than EUR 1 280);

a charge for initiating proceedings that may be levied only once per enforceable title; it is EUR 4.29 when the claim is less than EUR 76; above that, it is proportional to the amount of the claim, up to a limit of EUR 268.13;

a recovery and collection charge; this is a proportional sliding-scale charge that the court enforcement officer charges only when he or she has recovered or collected all or part of the claim; in any case, part of this charge remains payable by the creditor (Article A. 444-32 of the Commercial Code (*Code de commerce*));

case management fees; the court enforcement officer charges EUR 6.37 per instalment paid by the debtor, with the exception of the balance of the debt on which he or she is not entitled to charge this sum; these fees may not exceed EUR 32.74 for a single case;

travel expenses of EUR 7.67 (EUR 8.80 in the event of notification exclusively by electronic means);

VAT (20%);

subject to certain exceptions, a flat-rate tax of EUR 14.89 (as at 1 January 2017), that court enforcement officers pay to the State;

postage costs for letters that constitute mandatory procedural formalities;

locksmith, removals, garage and furniture storage costs (per invoice).

For example, for a recovered claim of EUR 10 000, the minimum amount for some enforcement measures is as follows:

preventive attachment of bank account: EUR 129.64 incl. taxes (fixed charge, travel expenses and flat-rate tax)

attachment or sale of movable property: EUR 114.21 incl. taxes (fixed charge, travel expenses and flat-rate tax)

attachment of vehicle by declaration at the prefecture: EUR 124.50 incl. taxes (fixed charge, travel expenses and flat-rate tax)

formal notice to pay entailing the attachment of immovable property: EUR 178.55 incl. taxes (fixed charge, travel expenses and flat-rate tax).

In addition to these fixed charges, there are, in particular, proportional charges which, for the entire claim, amount to EUR 707.52 incl. taxes, of which EUR 118.46 is payable by the debtor and EUR 589.06 by the creditor.

3.2 The main conditions

In principle, no court order is required to proceed with enforcement measures based on enforceable titles (see 3.1 above).

Creditors who do not have an enforceable title may initiate precautionary measures, if certain conditions are met (see 3.1 above).

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

In principle, all the assets belonging to the debtor may be subject to a compulsory enforcement measure.

However, by way of exception, the law states that certain assets may not be attached. This is the case, in particular, for:

sums needed for maintenance; thus, for example, it is not possible to attach all of a person's earned income because that person has to keep a sum sufficient to meet his or her everyday needs; the amount of that sum is set each year and takes into account the amount of earned income and the number of dependants;

movable goods needed for the debtor's everyday life and work; in principle, these goods may be attached only to ensure payment of their price, or if they are of significant value; a list of these goods is set out in Article R. 112-2 of the Civil Enforcement Proceedings Code; for example, it is not possible to attach the debtor's bed or table, unless the attachment is justified by the failure to pay their purchase price or if they are high-value goods;

assets that are essential for the disabled or intended for the care of the sick; for example, a disabled person's wheelchair may not be attached.

In certain cases, sole proprietors also benefit from special protection of all or part of their assets.

4.2 What are the effects of enforcement measures?

Compulsory enforcement measures on movable property and monetary debts are carried out in several phases. First, the court enforcement officer proceeds with their attachment. The attachment means that the property cannot be disposed of. It prohibits the debtor from parting with the movable property attached. If the debtor does not comply with this obligation to keep the property, he or she is committing an offence. Sums of money attached remain blocked in the debtor's account. The court enforcement officer then informs the debtor of the attachment. If the debtor does not challenge the attachment by bringing the matter before the enforcement judge, the court enforcement officer may seize the movable property to have it sold at public auction or have the sums of

money attached handed over. In the event of a challenge, the enforcement judge either authorises carrying out the compulsory enforcement measure or puts a stop to it if it has not been validly carried out.
The compulsory enforcement measure on buildings is the procedure for the attachment of immovable property. It begins with the court enforcement officer issuing a formal notice to pay to the debtor entailing the attachment, which means that the property cannot be disposed of. The creditor then brings the matter before the enforcement judge in order for the latter to determine how to proceed with the case. If a private sale of the property is possible and requested by the debtor, the judge will direct the case towards a private sale and set the deadline for the completion of that sale. If a private sale is not possible or it has failed, the judge orders the property to be sold at public auction. The public auction takes place at a hearing before the judge.

4.3 What is the validity of such measures?

Enforceable titles may, in principle, be enforced within a period of 10 years (Article L. 111-4 of the Civil Enforcement Proceedings Code). That period begins when a compulsory enforcement measure is initiated on the basis of that title.

5 Is there a possibility of appeal against the decision granting such a measure?

This question applies only to:
attachments when the creditor does not yet have an enforceable title;
orders to issue or return specific movable property where the person seeking the issue or return of the property is not yet in possession of an enforceable title;
the attachment of remuneration;
the attachment of immovable property.
These procedures are the only compulsory enforcement measures that must be authorised by an enforcement judge. The judge's ruling is subject to appeal or to an appeal in the Court of Cassation (*Cour de cassation*) depending on the amount of the claim.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

Enforceable titles may, in principle, be enforced within a period of 10 years (Article L. 111-4 of the Civil Enforcement Proceedings Code). That period begins when a compulsory enforcement measure is initiated on the basis of that title.
Enforcement measures may be carried out only between 6.00 and 21.00. They are prohibited on Sundays and public holidays, unless prior authorisation has been granted by the enforcement judge.
Moreover, enforcement procedures must be limited to what is necessary to recover the claim and there must be no abuse in the choice of these measures. In addition, certain assets may not be attached (see 4.1 above), and any attachment or sale in premises used as a dwelling must be authorised in advance if it is for the recovery of a claim other than for maintenance of an amount less than EUR 535 (Articles L. 221-2 and R. 221-2 of the Civil Enforcement Proceedings Code).
Finally, if the debtor has immunity from enforcement, no compulsory enforcement measures may be initiated against his or her assets covered by that immunity. To be able to carry out a compulsory enforcement measure on an asset belonging to such a person on the grounds that he or she is not covered by immunity from enforcement, prior authorisation must be obtained from the judge (Articles L. 111-1 to L. 111-3 and R. 111-1 to R. 111-5 of the Civil Enforcement Proceedings Code).

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