



# France

e-manual appendix





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## What is enforced

When the court decision or enforcement title<sup>1</sup> contains an obligation to do, and specifically an obligation to give or to pay, enforcement is direct and focuses on the debtor's goods.

Enforcement on a debtor in person no longer exists except for eviction which concerns the debtor himself and not his goods.

When the sentence only contains an obligation to do, this obligation will be enforced through indirect means of constraint such as penalty, which will finally resolve in an obligation to pay.

Enforceable goods: the legislator considers as principle that goods can be attached, under exceptions. Unseizable goods are therefore the exception and can be classified in different categories:

- Goods declared unseizable by law.
- Goods unseizable by nature.
- Goods unseizable because they are necessary and basic for life.
- Goods unseizable because of their owner.
- Goods unseizable because the place they are stored.
- Goods unseizable because specific proceedings.

Debtor's goods can be enforced even if they are in a third party's possession. Conditional claims, term claims and successive execution claims can also be enforced.

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<sup>1</sup> The 1992 reform regarding civil enforcement has established eight types of enforceable titles, mentioned in Article L.111-3 of the Code of civil enforcement procedures (CEPC):

- Decisions from jurisdictions of judicial system or administrative system when they have acquired legal enforceability, and agreements which have acquired legal enforceability,
- Legal documents and foreign court decisions as well as arbitral awards declared enforceable by a decision not subject to enforcement suspension remedy, with regards to applicable rules from European Union,
- Extracts of conciliation agreements signed by the judge and the parties,
- Notarized agreements imprinted with an order of enforcement;
- Agreements by which couples mutually accept their divorce or their judicial separation by private agreement countersigned by lawyers, registered at a Notary's office in accordance to the terms and **conditions organised** by Article 229-1 of the Civil Code
- The title issued by a judicial officer in case of non-payment of a cheque or in case of an agreement between the creditor and the debtor in the terms and **conditions organised** by Article L.125-1 CPEC and Article L.131-74 of the Monetary and Financial Code,
- Titles legally qualified as such provided by public law legal entities, or decisions to which the law give the same effects as a court decision

Penalty for non-compliance with the decision: penalty is a means to oblige the debtor to fulfil his obligation through punitive means. It consists in a judicial threat of a financial condemnation to indirectly ensure the enforcement of court decisions by punishing the non-compliance or late execution of the decision.

The process includes two steps:

1. First, the judge pronounces a main sentence and combines it with a penalty which is a condemnation to pay an amount of money if the condemnation is not executed within a fixed time.
2. Then, if the debtor does not execute the sentence within the term fixed by the judge, the creditor will require the judge to calculate the financial penalty and to pronounce its final amount.

## **Who enforces**

### The judicial officer (huissier de justice)

Judicial officers are self-employed appointed by the ministry of justice. They can carry out their functions either individually or within a company. Their working area is in the jurisdiction of the court of appeal<sup>2</sup>. The judicial officer is in charge by law to enforce court decisions and has the monopoly of enforcement. This professional is submitted to obligations and duties.

### Obligation to act

The counterpart of the monopoly is that a judicial officer legally entrusted with a mission to enforce cannot refuse it. The public prosecutor can force the judicial officer to respect this obligation. There are two exceptions:

- The judicial officer cannot act for his family.
- The judicial officer can refuse to act when the request does not comply with the law.

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<sup>2</sup> Excepted for amicable recovery of unpaid debts, assessment and public auctions, statements of facts and additional activities for which they have national working area.

### Need for a mandate

The judicial officer will only act upon a mandate from the creditor or the client. The delivery of the enforcement title entrusts the judicial officer with the enforcement and includes the place of jurisdiction in the office of the judicial officer for any notification related to this enforcement.

### Responsibility

If the creditor can choose the mean of enforcement, the judicial officer is responsible for its conduct. To conduct enforcement, the judicial officer can:

- Collect information.
- Carry out usual inquiries on the Internet (Google, directories, Facebook, court administration services registry, etc.).
- Use all available legal means of research to locate the debtor, the debtor's bank details, employer, and vehicle or real estate.
- Consult the family allowance office, the unemployment insurance office, the collector general of taxes and the pension plan office by dematerialized way.
- Require the assistance or support of forces of law and order when needed (e.g., evictions, or physical resistance from the debtor).

### The enforcement judge

The enforcement judge is a special judge competent to judge difficulties related to enforcement titles and disputes resulting from enforcement. A judicial officer faced with a difficulty or a legal issue during enforcement can require the enforcement judge to solve it.

The enforcement judge also:

- Authorize provisional measures and settles disputes related to their implementation.
- Issue compensation claims based on the harmful execution or non-execution of measures of forced execution or provisional measures.
- Grant grace periods.
- Pronounce penalty payments and their liquidation.

## **Enforcement procedure**

### Obligation to pay

This type of enforcement aims to collect the amount of the condemnation. The judicial officer will implement one or several seizures among the following:

- Attachment of sums of money in the hands of a third person (e.g.: bank account).
- Attachment on movables (including their sale) in possession of the debtor or of a third party.
- Attachment of vehicles (car, motorcycles...) allowing their immobilization wherever their location.
- Attachment of intangible assets (e.g.: shares).
- Attachment of goods in a safe.
- Attachment of immovable.

### Obligation to do

This type of enforcement aims to execute an obligation to deliver or give back a good. There are two types of seizures:

- "Apprehension seizure" of movable goods (in possession of the debtor himself, or of a third person, or in a safe), allowing the owner to repossess the goods.
- "Claiming seizure" (saisie-revendication), allowing the immobilisation of the good to be delivered, until it can be repossessed by the owner.

### Provisional measures

Provisional measures are carried out on the debtor's assets when the creditor does not have an enforcement title yet. They prevent the disappearance of the debtor's property and aims to preserve the claim. They also prevent the organisation of insolvency by the debtor before judgment and avoid the selling or the destruction of the movable property subject to the provisional measure. Once judgement is given, the seized good can be sold in case of non-payment by the debtor.

## **Duration of enforcement procedure**

Each procedure includes different legal timeframe. The amount of the debt, the localisation of the debtor's goods, as well as the debtor's solvency, attitude and resistance are also key factors. Payment instalments can also be agreed as part of the enforcement process. Therefore, it is impossible to predict in advance the length of enforcement.

## **Cost of enforcement procedure**

Tariff rules are imposed on judicial officers in civil and commercial matters. The costs incurred vary depending on the nature and purpose of the acts performed.

The tariff depends on the two types of activities of the judicial officer:

- Regulated activities, falling under the monopoly of the judicial officer.
- Non-regulated activities, not falling under the monopoly of the judicial officer.

The regulated tariff concerns acts and formalities relating to monopolistic activity according to the scale fixed by the French Commercial Code. The list of acts is annexed to the decree setting the tariff. There are two guiding principles:

- Collection costs are borne by the debtor (however, if the debtor is insolvent, the costs are covered by the creditor).
- In the event of success in recovery, a performance fee covered by the creditor only is allocated to the judicial officer (article A. 442-32 of the French Commercial Code).

A negotiated tariff applies to activities which do not fall under the monopoly of the judicial officers (carried out concurrently with other professions whose tariff is not itself regulated), are the subject of freely determined fees (article L. 444-1 of the French Commercial Code). These fees consider the difficulty of the case and the steps taken. This is also the case with regards to statement of facts.

The judicial officers may, under the conditions fixed by the same provision, collect, separately or simultaneously depending on the case, chargeable remuneration or free fees.

In addition to these fees are:

- Travel expenses.
- Management costs of the case.
- VAT.
- Disbursements, namely the various expenses advanced by the judicial officer as part of his mission (franking of letters, allowances paid to the police, etc.).



