

**ENFORCING JUDGMENTS IN THE U.K. AND FRANCE AFTER BREXIT**

June 2017

Authors:

[Robert Campbell](#)  
[Jonathon A. Gunn](#)  
[Stephen Llewellyn](#)  
[James Wagner](#)

[Laure Marolleau](#)

Soulier AARPI\*\*  
[www.soulier-avocats.com](http://www.soulier-avocats.com)

Faegre Baker Daniels LLP\*  
[www.faegrebd.com](http://www.faegrebd.com)

Enforcing judgments expeditiously across borders is critical for multinational businesses. Accordingly, it is important to understand whether cross-border enforcement is practicable before pursuing proceedings.

As is widely known, the EU has legislation facilitating the reciprocal recognition of member state judgments as well as providing a streamlined procedure for cross-border enforcement. These rules have established certainty and predictability when it comes to enforcement. But, in the context of the U.K.'s impending departure from the EU, we wish to revisit the practicalities of enforcing French and English judgments in the other's jurisdiction and discuss how a "hard" Brexit may affect the present state of affairs.

**Current Position**

For proceedings commenced on or after 10 January 2015, the Recast Brussels Regulation (Council Regulation (EU) 1215/2012, the "**Regulation**") governs the enforcement of judgments across the EU and has direct effect in all EU member states. The Regulation applies "*in civil and commercial matters whatever the nature of the court or tribunal.*" There are very limited grounds for refusal.

***How to enforce a French judgment in England & Wales***

A business wishing to enforce a French judgment in England would take the following steps:

- (1) Obtain the standard form certificate (as set out in Annex 1 of the Regulation) from the relevant French court.

- (2) Serve the certificate and the judgment on the person against whom enforcement is sought. This should also include a translation of the judgment.
- (3) Provide the English court with (a) an authenticated copy of the judgment, and (b) the standard form certificate referred to in (1) above. The English court may request a translation of both the certificate and the judgment.

### ***How to enforce an English judgment in France***

A business wishing to enforce an English judgment in France would take the following steps:

- (1) Obtain the standard form certificate (as set out in Annex 1 of the Regulation) from the relevant English court.
- (2) Serve the certificate and the judgment on the person against whom enforcement is sought. This should also include a translation of the judgment. Service will be carried out by the bailiff (*huissier de justice*).

In France, the enforcement of the judgment would be assigned to a bailiff.

### **Post-Brexit**

When the U.K. ceases to be an EU member state, the Regulation will no longer apply. A number of possibilities are currently mooted as alternatives. For instance, there has been discussion surrounding amendment of the 2007 Lugano Convention (which governs reciprocal enforcement and recognition of judgments between EFTA and EU member states) to include the U.K. This would go some way to maintaining the current position. There is also considerable academic debate regarding the status of certain, now largely superseded, international conventions such as the 1968 Brussels Convention and the 1988 Lugano Convention. But what is the default position if the U.K. leaves the EU without alternative arrangements in place?

### ***How a French judgment could be enforced in England & Wales***

#### **Enforcement under statute**

Whilst the Foreign Judgments (Reciprocal Enforcement) Act 1933 primarily applies to Commonwealth countries and British overseas territories, it still applies to a small number of European countries (including France) where the subject matter of the judgment lies outside the scope of the Regulation and the general EU legislative framework. Consequently, in the event of a “hard” Brexit, it is possible that businesses seeking to enforce a French judgment in the U.K. may be required to follow this statutory regime.

A business wishing to enforce a French judgment in England under the statutory regime would have to take the following steps:

- (1) Apply to the English court for registration of the judgment. Registration requires the following documents to be filed at the English court:
  - a) Authenticated copy of the judgment;
  - b) English translation of the judgment (duly certified or accompanied by written evidence confirming that the translation is accurate); and
  - c) Witness statement in support.
  
- (2) Once the English court has issued a registration order, this must be served on the other party. The registration order will set out a period in which the other party may challenge the registration of the judgment. If no challenge is brought within the timeframe, the foreign judgment order can be enforced and will have the same force as an English High Court judgment.

The type of French judgment that could be enforced using this statutory regime is more restricted than under the Regulation. Under the Regulation, “judgment” is defined broadly and includes the enforcement of both money judgments and non-money judgments (e.g. injunctions). By contrast, under the statutory regime, a judgment must be (1) final and conclusive as between the parties, and (2) for a sum of money (excluding sums for taxes, fines or other penalties).

#### Enforcement under the common law

In certain circumstances, a French judgment may also be enforced using the so-called “common law” method. Similar to the statutory regime outlined above, only conclusive and final judgments for a sum of money can be enforced under the common law method. Furthermore, such a judgment could only be enforced by issuing fresh proceedings that must be validly served on the other party (a potentially difficult and costly task). Following service, the party seeking to enforce the judgment would apply for summary judgment on the grounds that there is no defence to the claim.

#### ***How an English judgment could be enforced in France***

In the absence of any applicable multilateral or bilateral treaty, the recognition of an English judgment in France would be subject to the ordinary French recognition regime known as the *exequatur*.

A writ of summons (*assignation*) to appear before the French court (*Tribunal de grande instance*) must be served on the defendant. The competent French court is the court of the

defendant's domicile or, if he is not domiciled in France, the court of the claimant's domicile or the court of the claimant's choice if he is not domiciled in France.

The French court will grant recognition of the English judgment if it satisfies the following conditions:

- (1) the English court had jurisdiction (which means in practice that the French court will verify that there was a connection between the matter and the English court and that the choice of the English court was not fraudulent);
- (2) the English judgment complies with the French concept of "international public policy"; and
- (3) No fraudulent acts have been carried out to circumvent the law normally applicable (i.e. fraudulent forum shopping).

Once the recognition of the English judgment is no longer subject to a remedy which has suspensive effects, the enforcement of the English judgment would be assigned to a bailiff.

### **Conclusion**

The ease of the mutual enforcement of judgments throughout the EU is a significant achievement of EU policy that has benefited multinational businesses significantly. The certainty and predictability created by the Regulation is advantageous to businesses operating in EU member states. It follows that the EU and U.K. must attempt to negotiate a mutually beneficial reciprocal enforcement regime.

But, even if there is no alternative arrangement in place post-Brexit, English and French law offer solutions that ensure enforcement will remain possible across both sides of the Channel.

\* **Faegre Baker Daniels LLP** offers a full complement of legal services to clients ranging from emerging enterprises to multinational companies. The firm's 750-plus lawyers and consultants handle complex transactions and litigation matters throughout the United States, Europe and Asia. With offices in Beijing, California, Colorado, Illinois, Indiana, Iowa, London, Minnesota, Shanghai and Washington, D.C., Faegre Baker Daniels is one of the 75 largest law firms in the U.S. In the United Kingdom, Faegre Baker Daniels LLP focuses on advising middle market and high quality emerging companies meeting their legal needs, both domestically and internationally, in corporate finance, mergers and acquisitions, dispute resolution, employment, commercial property and commerce and technology. For more information, please visit [www.FaegreBD.com](http://www.FaegreBD.com).

\*\* **Soulier AARPI** is an independent full-service law firm that offers key players in the economic, industrial and financial world comprehensive legal services. We advise and defend our French and foreign clients on any and all legal issues that may arise in connection with their day-to-day operations, specific transactions and strategic decisions. Our clients, whatever their size, their nationality and branch of activity, benefit from customized services that are tailored to their specific needs. For more information, please visit us at [www.soulier-avocats.com](http://www.soulier-avocats.com).