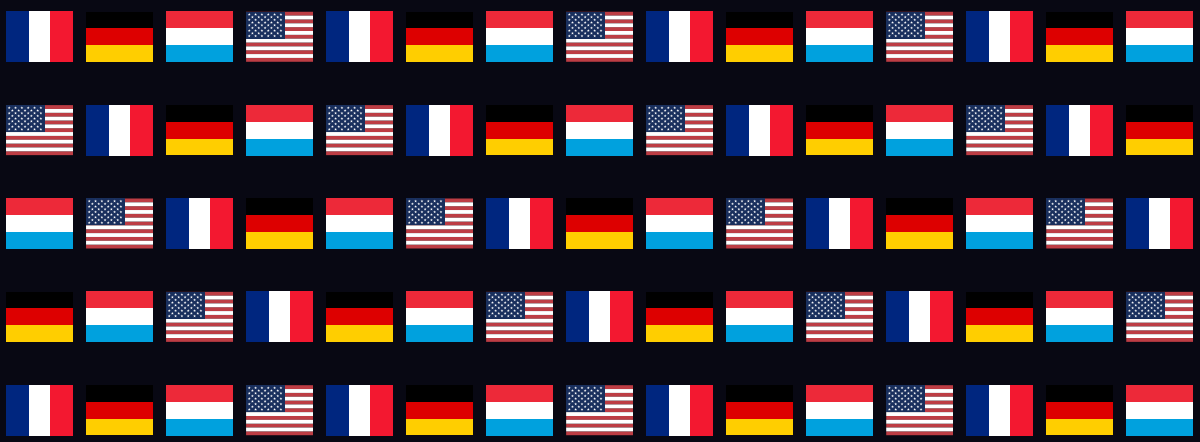
SOVEREIGN IMMUNITY

France



LEXOLOGY
Getting The Deal Through

Consulting editor
White & Case

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France

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BACKGROUND

Concept of sovereign immunity

What is the general approach to the concept of sovereign (or state) immunity in your jurisdiction (eg, restricted or absolute immunity)?

French law distinguishes between immunity of the state from jurisdiction and immunity of state property from enforcement.

With regard to immunity from jurisdiction, contemporary French law enshrines the doctrine of restrictive immunity.

As for the immunity of state property from enforcement, enforcement has become significantly more difficult following the promulgation of Loi Sapin II on 10 December 2016 (Sapin II) amending articles L 111-1-1 to L-111-1-3 of the French Code of Civil Execution Procedure (CCEP) .

Law stated - 03 August 2023

Legal basis

What is the legal basis for the doctrine of sovereign immunity in your jurisdiction (eg, customary international law or case law; give details of any specific statute or statutory provisions)?

French law on sovereign immunity from jurisdiction has been shaped by jurisprudence of the Cour de cassation. French jurisprudence has evolved since the historic Spanish government c/ Lambeze and Pujol case, in which the Cour de cassation applied the doctrine of absolute immunity. The court noted that a state cannot be submitted to the jurisdiction of another state with regard to the obligations that it contracts (Cass. Civ., 22 January 1849) and annulled a seizure of Spanish state assets in the context of a commercial dispute. An early example of the application of the doctrine of restrictive immunity is USSR c/ Association France Export , in which the Cour de cassation held that the USSR was not entitled to immunity and noted that the principle of state sovereignty is completely extraneous to commercial acts of the Soviet commercial mission in France (Cass. req., 19 February 1929).

French law on immunity of state property from execution has been codified by Sapin II via amendments to CCEP. Sapin II renders state property 'unseizable', unless one of the very narrow exceptions is met. Conservatory and execution measures can only be taken in relation to the state property upon a prior judicial authorisation in the form of an order.

Law stated - 03 August 2023

Multilateral treaties

Is your jurisdiction a party to any multilateral treaties on sovereign immunity (eg, the 1972 European Convention on State Immunity, the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property)? Has your jurisdiction made any reservations or declarations regarding the treaties?

France is not a signatory to the European Convention on State Immunity signed in Basle on 16 May 1972 (Basle Convention) , which was the first attempt at codification of the doctrine of restrictive immunity in Europe. The Basle Convention is in force between eight countries: Austria, Belgium, Cyprus, Germany, Luxembourg, the Netherlands, Switzerland and the United Kingdom.

France is a signatory to the United Nations Convention on Jurisdictional Immunities of States and Their Property adopted on 2 December 2004 (UN Convention) , which is the contemporary embodiment of the doctrine of restrictive immunity. The UN Convention was signed by 29 countries and ratified by 23 countries. France signed the UN Convention on 17 January 2007 and approved it on 12 August 2011, without any reservations or declarations. The UN Convention is not yet in force, and 30 ratifications are necessary for its entry into force in accordance with Article 30. Even though the UN Convention is not yet in force, it is considered to be a reflection of customary international law on sovereign immunities of states and their property, in France as in other countries. The Cour de cassation has recognised that the UN Convention reflects customary international law on sovereign immunities (NML Capital c/ Air France , Cass. 1ere Civ., 28 March 2013, No. 11-13.323; Cass. Ch. Soc., 1 July 2020, No. 18-24.643; NML Capital c/ Argentina , Cass. 1ere Civ., 28 March 2013, No. 11-10.450).

Law stated - 03 August 2023

JURISDICTIONAL IMMUNITY

Domestic law

Describe your jurisdiction's law governing the scope of jurisdictional immunity (ie, whether a state itself, or its various political subdivisions, organs, agencies and instrumentalities would be covered by jurisdictional immunity in proceedings before a court and the types of transactions or proceedings to which such immunity would extend).

Jurisprudence of the Cour de cassation indicates that immunity from jurisdiction depends on the nature and purpose of the activity, but not the quality of the state or entity. Thus, the states and their entities can benefit from jurisdictional immunity when the contested activity was performed in the exercise of public authority or in the interest of public service (Levant Express , Cass. Civ. 1 re , 25 February 1969, No. 67-10.243; see also Mme Soliman c/ École saoudienne de Paris , Cass. Ch. mix., 20 June 2003, Nos. 00-45.629 and 00-45.630). Commercial contracts, by their nature or purpose, cannot be performed in the exercise of the state sovereignty (Business Network c/ Libya , Cass. Civ. 1 re , 12 January 2022, No. 20-20.516). On the other hand, private entities may be entitled to jurisdictional immunity when they act on behalf of the state while carrying out sovereign functions (American Bureau of Shipping et al. c/ State Judicial Agent , Cass. Civ. 1 re , 17 April 2019, No. 17-18.286). Broadly speaking, state immunity applies only to sovereign acts (acta jure imperii), as opposed to private or commercial acts (acta jure gestionis). Pure acts of management are thus excluded from the scope of jurisdictional immunity (Mme X c/ Germany , Cass. Civ. 1 re , 19 November 2008, No. 07-10.570).

These principles manifest themselves through labour disputes. For example, the Cour de cassation decided that a failure to declare an employee to the French social security service by an emanation (alter ego) of Saudi Arabia was an act of administrative management, and as such, it was not covered by immunity from jurisdiction (Mme Soliman c/ École saoudienne de Paris , Cass. Ch. mix., 20 June 2003, Nos. 00-45.629 and 00-45.630). The Cour de cassation reached a similar conclusion that a dismissal of a journalist by a press agency that was an emanation of Kuwait was not covered by immunity from jurisdiction (M.X c/ Kuwait News Agency , Cass. Civ. 1 re , 12 June 1990, No. 86-40.242).

According to current jurisprudence, criminal acts, even of extreme gravity, do not deprive the state or its entities from their jurisdictional immunity (Cass. Crim., 13 January 2021, No. 20-80.511). A vivid illustration of this principle is the case related to the acts of Germany (Third Reich) during World War II. The Paris Court of Appeal confirmed that jurisdictional immunity of the Federal Republic of Germany could not be disregarded with respect to international humanitarian claims for forced labour committed by the German Reich (CA Paris, Ch. 1, 14 January 2020, No. 18/09195).

Law stated - 03 August 2023

State waiver of immunity or consent

How can a state, or its various political subdivisions, organs, agencies and instrumentalities, waive immunity or consent to the exercise of jurisdiction (eg, through arbitration agreements)?

The state (including subdivisions, organs, agencies and instrumentalities included in the definition of the state) may waive jurisdictional immunity, and according to the 2011 formulation of the Cour de cassation, such waiver must be 'certain, express and unequivocal' to be valid (GIE La RéUnion européenne c/ Jamahiriya Arabe Libyenne , Cass. Civ. 1 re , 9 March 2011, No. 09-14.743).

Consistent with article 7 of the UN Convention, such waiver can be contained in an international agreement or written contract. For example, by signing a lease agreement containing a forum selection clause, the British government waived jurisdictional immunity from the proceedings regarding termination of such lease agreement (Kroetly c/ Gouvernement de Sa Majesté britannique , CA Colmar, 7 May 1958). Such waiver can also be contained in an arbitration agreement (clause compromissoire), and it would cover both the arbitral proceedings and the ancillary judicial proceedings. For example, by signing the arbitration agreement, Israel waived jurisdictional immunity in judicial proceedings before a judge at the seat of arbitration (juge d'appui) to assist with the constitution of the arbitral tribunal (NIOC c/ Israël , CA Paris, 29 March 2001, confirmed on cassation, Cass. Civ. 1 re , 1 February 2005, Nos. 01-13.742 and 02-15.237). Similarly, by signing the arbitration agreement, the state waived immunity not only in the arbitral proceedings, but also in the ensuing ' exequatur ' proceedings to confirm the resulting arbitral awards in France (SEEE c/ Yugoslavia , Cass. Civ. 1 re , 18 November 1986, Nos. 85-10.912 and 85-12.112; see also Soabi c/ Senegal , Cass. Civ. 1 re , 11 June 1991, No. 90-11.282). However, it is well established that a state's waiver of immunity from jurisdiction does not imply a waiver of immunity from enforcement against state property (France Telecom c/ Congo , CA Paris, 16 January 2014, No. 12/22406).

Consistent with articles 8 and 9 of the UN Convention, such waiver can occur through procedural conduct whereby the state:

- institutes the proceedings;
- participates in the substance of the proceedings without invoking immunity; or
- asserts a counterclaim.

For example, Equatorial Guinea waived immunity by instituting proceedings before French courts (État équatoguinéen c/ SA Gideppe , CA Paris, 2 April 2003, No. 2003-212324). In another case (albeit in the criminal context), SpA Rina, an Italian company, acting as a control authority appointed by the Maltese maritime administration, waived immunity (which it could have otherwise claimed) by actively participating in the proceedings on the merits (which was deemed incompatible with an eventual intention to claim immunity) (Cass. Crim. 25 September 2012, No 10-82.938).

Law stated - 03 August 2023

In which types of transactions or proceedings do exceptions to sovereign immunity apply, such that states do not enjoy immunity from jurisdiction and suit (even without the state's consent or waiver) (eg, commercial transactions, participation in foreign companies, ownership of real estate assets)? How does the law of your jurisdiction assess whether a transaction or proceeding falls into one of these categories?

In the landmark Levant Express case, the Cour de cassation upheld the principle that the state is entitled to immunity

when it is engaged in:

- an act of public authority; or
- an act carried out in the interest of public utility.

(Levant Express , Cass. Civ. 1 re , 25 February 1969, No. 67-10.243). The Cour de cassation, in its 1969 decision of principle (arrêt de principe) set out a disjunctive test: either the act had to be that of public authority or it had to be carried out in the interest of public utility to benefit from immunity. In subsequent judicial practice, sometimes the same act falls into both categories, or the distinction between the two categories is not clear from the court's reasoning.

Examples of acts of public authority benefiting from immunity include:

- transportation of weapons by a private entity pursuant to an order of a foreign state (Libya) (General National Maritime Transport Co. c/ Marseille Fret, Cass. 1ere Civ., 4 February 1986);
- nationalisation of assets, with further attribution of the nationalised assets to a third party (Sté internationale de plantations d'hévéas c/ Sté Lao Import Export et al., Cass. Civ. 1re, 20 October 1987, No. 85-18.608).

Examples of acts carried out in the interest of public utility benefitting from immunity, include:

- collection of charges for flying over state territory by a public air company (République Socialiste de Yougoslavie c/ SEEE, BFCE, BNP, Société Générale, Crédit Lyonnais, Air France et al., TGI Paris, réf., 3 July 1985, JDI 1985);
- supply and installation of cathodic protection for gas pipelines by a private entity (Sté Nationale Algérienne du Gaz c/ Sté Pipeline Service et al., Cass. Civ. 1re, 2 May 1990, No. 88-14.363).

The focus of article 10 of the UN Convention is on whether the state engaged in a 'commercial transaction', with the consequence of the state not benefiting from immunity. Article 2, in turn, defines a 'commercial transaction' by reference to, first and foremost, the nature of the contract or the transaction, while also making into consideration 'its purpose', where the 'purpose' is agreed by the parties to the contract or where the practice of the forum state considers the 'purpose' relevant. This is a multilateral compromise, in which consideration of the 'purpose' and not only the 'nature' of the transaction acknowledges the French view. Indeed, the travaux préparatoires of the UN Convention confirm that while initially the 'purpose test' was subject to objections, it was later acknowledged that the 'nature of the act may not be easily separated from the purpose of the act', and therefore, the 'purpose test' was ultimately included in the text (Report of the Commission to the General Assembly on the work of its fifty-first session, Yearbook of the International Law Commission 1999, A/CN.4/SER.A/1999/Add.l (Part 2), pp. 158–162)).

Consistently with article 10 of the UN Convention, some French jurisprudence, too, examines whether the activity at issue is commercial (acte de gestion) and, as such, benefits from immunity. Commentators note that French jurisprudence accumulates the criteria for determining whether the activity is 'commercial' and, as such, benefiting from immunity:

- commercial or private nature and purpose of the contract;
- private nature of the legal relationship;
- the absence of 'exorbitant clauses of common law' (this term refers to clauses that can be found in 'administrative contracts' by which an entity is required to carry out acts of public authority);
- the presence of an arbitration clause.

(Catherine Kessedjian, Immunités, Répertoire de Droit International , Dalloz, 2017, para. 88).

By application of such criteria, the following acts were deemed commercial and thus not benefiting from immunity:

- renovation works on state property (Mme X c/ Germany, Cass. Civ. 1re, 19 November 2008, No. 07-10.570);
- lease of real estate by the state (Sté Euroéquipement c/ Centre européen de la Caisse de stabilisation et de soutien des productions agricoles de la Côte-d'Ivoire et la Sté de conseil et de gestion, TI Paris, 7 February 1991);
- a mortgage agreement concluded with a state bank (Passelaigues c/ Banque hypothécaire de Norvège, T. civ. Seine, 16 June 1955);
- a lease agreement concluded between the state and a hotel (État espagnol c/ SA Hôtel George-V, TGI Paris, 14 May 1970).

Law stated - 03 August 2023

If one of the exceptions to sovereign immunity set out above applies, is there any related principle that could prevent a court having jurisdiction over a state (eg, the principle of non-justiciability and the act of state doctrine)?

In a nutshell, in France, if the state is not entitled to sovereign immunity with regard to the disputed activity, there is no other principle that would prevent the court from exercising jurisdiction or otherwise hearing the case against the state. The acts of state doctrine or the non-justiciability principle do not exist in France in the same form as in the common law jurisdictions (particularly the UK and the US). However, further explanation is necessary to enable a proper comparison with the common law jurisdictions.

First, in the UK and the US, sovereign immunity is a jurisdictional matter (ie, if the state is entitled to immunity, the court lacks jurisdiction, and vice versa). In France, by comparison, sovereign immunity is a matter of admissibility in the meaning of article 122 of the French Code of Civil Procedure (CPC) (Picasso de Oyague , Cass. Civ. 1 re , 15 April 1986, No. 84-13.422). As noted by the Cour de cassation, immunity from jurisdiction is a ground for inadmissibility and not a ground for lack of jurisdiction, insofar as the prohibition imposed on the judge to hear the case is not a question of the judge's jurisdiction but a question of jurisdictional power (Picasso de Oyague , Cass. Civ. 1 re , 15 April 1986, No. 84-13.422).

Second, it can be said that French courts apply the elements of the act of state doctrine during their analysis of sovereign immunity. When French courts analyse jurisdictional immunity – whether by applying the two Levant Express criteria (ie, whether there was an act of public authority or carried out in the interest of public utility), or by applying the principles of acta jure gestionis versus acta jure imperii – they get into the analysis resembling an application of the act of state doctrine. Ultimately, French courts analyse whether the disputed acts – by their nature or purpose – were performed in the exercise of state sovereignty (Mme Soliman c/ École saoudienne de Paris , Cass. mix., 20 June 2003, Nos. 00-45.629, 00-45.630). Accordingly, it can be said that the resulting decisions account for both sovereign immunity and the act of state doctrine, as it is understood in the common law countries.

Accordingly, it can be said that the resulting decisions account for both sovereign immunity and the act of state doctrine, as it is understood in the common law countries.

An illustrative example of how these principles operate in practice is a recent case related to the treatment of detainees at Guantanamo Bay. The Cour de cassation decided, albeit in the criminal context, that the alleged acts of violence reproached to American officials and members of the armed forces were performed in the exercise of the state's sovereignty (Cass. Crim., 13 January 2021, No. 20-80.511). Accordingly, international customary law, as applied by French courts, precluded prosecution of the US state agents for acts falling in this category.

Law stated - 03 August 2023

Proceedings against a state enterprise

To what extent do proceedings against a state enterprise or similar entity affect the immunity enjoyed by the state? Is there precedent for piercing the corporate veil to subject the state itself to those proceedings?

The first question is whether a state enterprise or a similar entity may be entitled to jurisdictional immunity. The answer to this question depends on: whether the state entity meets the definition of the 'state' and, the activity in which the state entity engaged.

Article 2(1)(b) of the UN Convention, which reflects customary international law applicable by French courts, defines the 'state' to include: 'the state and its various organs of government', 'constituent units of a federal state or political subdivisions of the state', 'agencies or instrumentalities of the state or other entities' and 'representatives of the state acting in that capacity'. But meeting the definition of the 'state' is not enough for entitlement to jurisdictional immunity.

As discussed above, a state enterprise will be entitled to jurisdictional immunity where the disputed conduct constitutes:

- an act of public authority (acte de puissance publique); or
- an act carried out in the interest of public utility (dans l'intérêt d'un service public)

(Levant Express , Cass. Civ. 1 re , 25 February 1969, No. 67-10.243). According to another formulation, a state enterprise will be entitled to immunity with respect to acta jure imperii , as opposed to acta jure gestionis (American Bureau of Shipping et al. c/ State Judicial Agent , Cass. Civ. 1 re , 17 April 2019, No. 17-18.286).

The second question is whether and in what circumstances a claimant can enforce a judgment rendered against the state (the judgment debtor) using the assets of a state enterprise (a third party to the dispute) (or vice versa, enforce a judgment rendered against the state enterprise using the assets of the state itself). The answer to this question depends on the qualification of the state enterprise as an 'emanation of the state' ('alter ego') (Benvenutti et Bonfant c/ Banque commerciale congolaise , Cass. Civ. 1 re , 21 July 1987, No. 85-14.843). If the state enterprise is the state's 'emanation' ('alter ego'), then it is possible to enforce the judgment rendered against the state using the assets of the state enterprise.

The Cour de cassation has applied two cumulative criteria to determine whether a state enterprise with a distinct legal personality can be considered an emanation of the state, allowing judgment creditors of the state to execute the judgment against the assets of the state enterprise:

- a complete functional dependency of the state enterprise upon the state, meaning that the state exercises control over the management of the state enterprise; and
- commingling of the assets, meaning that the state enterprise does not possess assets that are truly separate from those of the state

(Société nationale des pétroles du Congo c/ Walker International , Cass. Civ. 1 re , 6 February 2007, No. 04-13.108; Société national des hydrocarbures du Cameroun c/ Winslow , Cass. Civ. Civ. 1 re , 14 November 2007, No. 04-15.388; see also Société Central Bank of Irak c/ Société Hochtieff Aktiengesellschaft et autres , CA Paris, 1 September 2005, No. 04/14837).

In one pre- Sapin II case, Société nationale des pétroles du Congo c/ Walker International , the Cour de cassation allowed execution of an arbitral award rendered against the Republic of Congo through seizure of assets that belonged to the Congolese state-owned oil company (Cass. Civ. 1 re , 6 February 2007, No. 04-13.108). The judgment creditor obtained recognition (exequatur) of the UK judgment in France, and then proceeded to attach the French bank accounts of the Société Nationale des Pétroles du Congo (SNPC). The bank accounts of SNPC were attached even though it was endowed with a distinct legal personality. In authorizing the attachment, the court noted that SNPC was wholly financed by state subsidies, operated without its own record-keeping system, and provided a public service. In addition, the court held that this entity was under the state's control, since a ministry oversaw its activities and since all the revenues generated by it were disbursed to the state within eight days of receipt.

In another pre-Sapin II case, Société nationale des hydrocarbures du Cameroun c/ Winslow , the Cour de cassation authorised execution of a UK judgment rendered against the Republic of Cameroon using the assets of the Cameroonian state-owned oil company (Cass. Civ. 1 re , 14 November 2007, No. 04-15.388). Just as in the first case, the judgment creditors obtained recognition (exequatur) of the UK judgment in France and then proceeded to attach the French bank accounts of Société Nationale des Hydocarbures (SNH). Again, the attachment of SNH's bank accounts was allowed despite the fact that it was endowed with a distinct legal personality. In authorising the attachment, the court noted that SNH was placed under the authority of the general secretariat of the presidency and that its board of directors was made up of representatives of the presidency, the prime minister and several other ministries. Furthermore, the court relied on the fact that the services rendered by SNH to the state were not remunerated, and that SNH was not financially autonomous in that it did not have its own budget.

Even though Sapin II changed the procedural framework for execution against state assets, it did not affect the substantive law on the qualification of a state enterprise as an 'emanation of the state'. The same test was applied in post- Sapin II cases (Rasheed Bank c/ Citibank , CA Paris, 19 May 2022, No. 21/109197; SNPC c/ Commisimpex , CA Versailles, 14 January 2021, No. 19/06572; Veteran Petroleum c/ Roscosmos , CA Paris, 27 June 2017, Nos. 16/08522,16/01314; SNH c/ Winslow , Cass. Civ. 1 re , 14 November 2007, No. 04-15.388; SNPC c/ Connecticut Bank , Cass. Civ. 1 re , 6 February 2007, Nos. 04-13.108, 04-16.889).

A finding that a state enterprise constitutes an 'emanation of the state' means that the state enterprise's assets constitute state assets. The quid pro quo is well summarised by J-B. Donnier: an emanation ' is liable for the debts of the State in exchange for state immunity ' (J-B Donnier, Immunités d'exécution – Droit International , JCL Voies d'Exécution , para. 36, LexisNexis 2017). Consequently, to be able to execute against such assets, the judgment creditor also needs to prove that the assets meet the requirements of Sapin II (including but not limited to the use of the assets for commercial activity), as discussed below.

Law stated - 03 August 2023

Standing

What does the plaintiff need to show to have standing to bring a claim against a state in your jurisdiction?

Under French law, the plaintiff's standing to bring a claim does not depend on the respondent's quality as a state or a private litigant. Under article 31 of the CPC , the claimant has standing if he has 'a legitimate interest in the success or dismissal of a claim'.

Law stated - 03 August 2023

Nexus of forum court

What is the nexus to your jurisdiction that the forum court requires to exercise jurisdiction over a state if the property or conduct that forms the subject of the claim is outside your jurisdiction's territory?

The need to demonstrate a territorial nexus to the French forum depends, on the one hand, on the applicability of the EU regime, the New York Convention regime or the general regime, and on the other hand, on the type of the proceeding (ie, a claim submitted to French courts, recognition (exequatur) of a foreign judgment or recognition of a foreign arbitral award).

EU regime

EU Regulation No 1214/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Recast Regulation) applies between the EU member states, in civil and commercial matters, except for the revenue, customs or administrative matters, 'liability of the state for acts and omissions in the exercise of state authority (acta iure imperii)' or the matters excluded in article 1(2). It does not apply in arbitration matters, as provided in article 1(2)(d).

If the Brussels Recast Regulation applies, then for the French courts to assert jurisdiction over the dispute – whether involving a state or not – one of the conditions set out in Chapter II needs to be fulfilled. For the French courts to assert jurisdiction in proceedings for recognition (exequatur) of a judgment from another EU member state, then no particular territorial nexuses to the French forum need to be demonstrated as per Chapter III.

New York Convention regime

France is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). If the foreign arbitral award emanates from another New York Convention member state and the New York Convention applies, then it is not necessary to demonstrate a territorial nexus to the French forum to obtain recognition of the foreign arbitral award in France.

General regime

If the EU regime or the New York Convention regime do not apply, then the general regime of the French CPC governs. Pursuant to articles 42-48 of the CPC , French territorial jurisdiction over the dispute exists, inter alia:

- if the respondent has its place of domicile, residence or establishment in France (which is not relevant to the foreign state itself, but may be relevant to the French subsidiaries of foreign state-owned companies);
- in real estate matters, if real estate is located in France;
- in contractual matters, if the place of delivery or provision of services was in France;
- in delictual (tort) matters, if an injurious event occurred or injury was suffered in France; etc.

In addition, article 14 of the French Civil Code (CC) provides that a foreigner (whether a foreign state or not) can be sued in French courts for breach of obligations contracted with a French national, whether in France or abroad.

In exceptional circumstances, French courts may also assert jurisdiction if there is a risk of denial of justice in the meaning of article 6 of the European Convention on Human Rights and a nexus to France exists (short of the nexuses

provided in articles 42-48 of the CPC) (NIOC c/ Israël , Cass. Civ. 1 re , 1 February 2005, Nos. 01-13.742 and 02-15.237; Épx Moukarim c/ Isopehi , Cass. Soc., 10 May 2006, No. 03-46.593).

In exequatur proceedings, there is no need to demonstrate a territorial nexus to France to confirm a non-EU foreign judgment.

Law stated - 03 August 2023

Interim or injunctive relief

When a state is subject to proceedings before a court or other tribunal in your jurisdiction, what interim or injunctive relief is available? (Explain when interim relief would be available and whether a contractual provision to submit to the jurisdiction of a court or tribunal could constitute consent to be bound by interim relief.)

Article 18 of the UN Convention, which reflects customary international law applicable by French courts, provides for state immunity from pre-judgment measures of constraint. Pursuant to article 18, no pre-judgment measures of constraint, such as attachment or arrest against state property, may be taken in connection with a court proceeding, except to the extent that:

- the state has expressly consented to such measures by international agreement, arbitration agreement, written contract, declaration before the court or written communication after the dispute has arisen; or
- the state has allocated the property for the satisfaction of the claim which is the object of that proceeding.

Also, when conservatory measures are sought in respect of state property, similar requirements of Sapin II apply, as discussed below.

Otherwise, if state immunity from pre-judgment measures of constraints does not apply, then the claimant can avail itself of interim relief available under the CPC and CCEP (eg, emergency relief including a junction, interim payment or specific performance, etc).

Law stated - 03 August 2023

Final relief

When a state is subject to proceedings before a court or other tribunal in your jurisdiction, what type of final relief is available (eg, specific performance, damages)?

Article 19 of the UN Convention, which reflects customary international law applicable by French courts, provides for state immunity from post-judgment measures of constraint. Pursuant to article 19, no post-judgment measures of constraint, such as attachment, arrest or execution against state property, may be taken in connection with a court proceeding, except to the extent that:

- the state has expressly consented to such measures by international agreement, arbitration agreement, written contract, declaration before the court or written communication after the dispute has arisen; or
- the state has allocated the property for the satisfaction of the claim which is the object of that proceeding; or
- it has been established that the property is specifically in use or intended for use by the state for other than government non-commercial purposes and is in the territory of the forum state and has a connection with the entity against which the proceeding was directed.

Thus, post-judgment measures of constraints may only be available in respect of the property located in the territory of the forum state; here, France.

Pursuant to article 20, the state's consent to jurisdiction does not imply consent to pre- or post-judgment measures of constraints (just as it does not imply consent to execution measures in respect of state property).

Also, when execution measures are sought in respect of state property, similar requirements of Sapin II apply, as discussed below.

Otherwise, if state immunity from post-judgment measures of constraints does not apply, then the claimant can avail itself of the full range of final relief available under the CPC and CCEP (eg, monetary damages, restitution, specific performance, etc) to restore the claimant to the position in which he would have been but for the respondent's wrongful conduct.

Law stated - 03 August 2023

Service of process

Identify the person or entity that must be served with process before any proceeding against a state (or its political subdivisions, organs, agencies and instrumentalities) may proceed in your jurisdiction.

The modalities of service of proceedings on a foreign state depend on the applicability of the EU regime, the Hague Service Convention regime or the general regime.

EU regime

EU Regulation No. 2020/1784 of 25 November 2020 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) (EU Service Regulation) applies between the EU member states, in civil and commercial matters, except for the revenue, customs or administrative matters or 'liability of the state for acts and omissions in the exercise of state authority (acta iure imperii).'

In essence, the EU Service Regulation provides for service of documents through the 'transmitting agencies' and 'receiving agencies', with assistance from a 'central body', designated by each member state. The 'receiving agency' then serves the documents in accordance with the law of the member state. In France, the 'transmitting agencies' are the judicial commissioners (new title for bailiffs) and the court registries (greffes), the 'receiving agencies' are the judicial commissioners, and the 'central body' is the Ministry of Justice's Département de l'entraide, du droit international privé et européen (Department for mutual assistance, private international law and EU law). The EU Service Regulation provides that each member state shall be free to effect service through the diplomatic or consular channels and by registered mail with acknowledgement of receipt or equivalent. The EU Service Regulation does not contain special provisions for service on a state as a respondent in the proceeding.

Hague Service Convention regime

France is a party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague Service Convention). In essence, the Hague Service Convention provides for service of documents through a 'central authority' designed by each contracting state. The 'central authority' receives requests for service and proceeds with service in conformity with its domestic law. In France, the 'central authority' is the Ministry of Justice , Département de l'entraide, du droit international privé et européen (Department for mutual assistance, private

international law and EU law).

The Hague Service Convention provides that each contracting state shall be free to effect service through the diplomatic or consular channels and through the postal channels – subject to objections by the individual contracting states. Indeed, individual member states may specify their requirements or preferences for service on the state as the respondent in their reservations and declarations. For example, the US stated that 'requests for service on the United States Government itself, which includes its officials (when named in an official capacity), departments, agencies, or instrumentalities, should be mailed directly to the Department of Justice's Office of International Judicial Assistance.' In another example, the Russian Federation stated that 'it is highly desirable that documents intended for service upon the Russian Federation, the President of the Russian Federation, the Government of the Russian Federation, the Ministry of Foreign Affairs of the Russian Federation are transmitted through diplomatic channels.' A similar declaration was made by Azerbaijan.

General regime

Article 684 of the CPC generally provides that the documents intended for service on a foreign resident are delivered to the public prosecutor, unless a European regulation or an international treaty authorise the bailiff or the registrar to transmit the documents directly to the addressee or to a competent authority of the destination state. Article 684, paragraph 2 contains a special provision for service on a foreign state: 'the documents intended for service on a foreign state, a foreign diplomatic agent in France or any the beneficiary of jurisdictional immunity are delivered to the public prosecutor and transmitted through the minister of justice for service through the diplomatic channel,' unless a European regulation or an international treaty provide for other means of service. In practice, the claimant would hand over the document to the bailiff (huissier), who would deliver the documents to the public prosecutor (remis au parquet) for onward service through the diplomatic channel.

Law stated - 03 August 2023

What are the requirements for service of process for states and their political subdivisions, organs, agencies and instrumentalities in your jurisdiction? (See eg, section 12(1) of the UK State Immunity Act 1978; section 14 of the Singapore State Immunity Act.)

If the EU regime and the Hague Service Convention regime do not apply, or in the absence of special mandatory provisions for service on a foreign state, then the special rules in article 684, paragraph 2 for service on a foreign state apply. The claimant would hand over the document to the bailiff, who would deliver the documents to the public prosecutor for onward service through the diplomatic channel.

Law stated - 03 August 2023

Judgment in absence of state participation

Under what conditions will a judgment be made against a state that does not appear or participate in the proceedings before a court or other tribunal in your jurisdiction?

Insofar as jurisdictional immunity is concerned, a judgment may be made against a state that does not appear or participate in the proceedings. In France, jurisdictional immunity is a question of admissibility pursuant to article 122 of the CPC. Pursuant to article 125 of the CPC , questions of admissibility must be raised sua sponte by the court if they concern public policy; they may be raised sua sponte in cases of lack of interest, lack of standing or res judicata. French courts have long recognised jurisdictional immunity as a question of public order, which must be raised sua

sponte. In the landmark case Général National Maritime Transport Company c/ Marseille Fret , the Cour de cassation noted:

> *'Once the conditions necessary for the immunity from jurisdiction of a foreign state . . . have been met, the French judge loses his power to judge, unless this privilege is waived, and the argument based on this immunity must be raised sua sponte, even before the Cour de cassation.'*

Thus, despite the difference in the qualification of jurisdictional immunity in France (as a question of admissibility relating to public policy) and the common law countries (as a question of jurisdiction), the approach is the same: the judge must raise jurisdictional immunity sua sponte and dispose of it before entering a default judgment against the state.

More generally, a default judgment may be made against any litigant, whether a state or not, pursuant to the provisions in articles 471-479 of the CPC . According to article 471, if the respondent fails to appear, the court may issue a second summons (citation). The court may also inform the respondent of the consequences of non-appearance by regular mail. According to article 472, if the respondent fails to appear, the court will rule on the merits and uphold the claim, provided that it considers it to be 'regular, admissible and well-grounded.'

Interestingly, according to article 473, the judgment will be 'deemed adversarial' (not 'default') if it is: subject to appeal, or the summons (citation) was delivered to the respondent personally. Both criteria involve nuanced matters of French civil procedure. The qualification of the judgment being 'deemed adversarial' or 'default' has consequences for the recourse available against such judgment under articles 476–477 discussed below. Whatever the qualification, a 'default' judgment and a judgment 'deemed adversarial' rendered against a respondent residing abroad (including a foreign state) must expressly state what procedural measures were taken to inform the respondent of the institution of the proceedings, consistent with article 479.

Law stated - 03 August 2023

Under what circumstances can a state challenge such a default judgment in your jurisdiction?

Pursuant to article 476, for a 'default' judgment, the means of recourse is 'opposition,' except if it has been expressly waived. Pursuant to article 477, for a judgment 'deemed adversarial,' the means of recourse are those available for adversarial judgments generally. The procedural rules applicable in both situations are set out in the corresponding chapters of title XVI of the CPC on the means of recourse against judgments. One important comparative point is that in France, unlike in the UK and like in the US, appeal is 'as of right' and does not require an 'application for permission to appeal' to the first-instance court or the appellate court.

Law stated - 03 August 2023

ENFORCEMENT IMMUNITY

Domestic law

Describe your jurisdiction's law governing the scope of enforcement immunity (ie, whether the property of a state may be subjected to any process for the enforcement of a judgment or arbitration award or, in an action in rem, for its arrest, detention or sale).

On 10 December 2016, the French legislator promulgated Loi Sapin II amending the provisions of the CCEP on enforcement measures against state property. The promulgation of Loi Sapin II rendered obtaining conservatory and

forced execution measures against state property significantly more difficult.

Pursuant to article L 111-1-1 of the CCEP, conservatory measures and forced execution measures against state property require a prior judicial authorisation, sought without notice to the state. Pursuant to article L 111-1-2, such judicial authorisation may only be granted when one of the three conditions is met:

- the state has expressly consented to the application of the measure;
- the state has reserved or allocated the property concerned for satisfaction of the claim that is the subject matter of the proceeding;
- where a judgment or an arbitral award is rendered against the state, the property concerned is specifically used or intended to be used for purposes other than non-commercial public service and has a connection with the entity against which the proceeding was initiated.

Article L 111-1-2 further provides a non-exhaustive list of assets that are deemed used or intended to be used for purposes other than non-commercial public service (that is, sovereign purposes):

- assets, including bank accounts, used or intended to be used in the exercise of the functions of diplomatic and consular missions, special missions, missions to international organisations;
- assets of military character used or intended to be used in the exercise of military functions;
- assets forming part of the cultural heritage of the state or its archives not put or intended to be put on sale;
- assets forming part of an exhibition of objects of scientific, cultural or historic interest not put or intended to be put on sale; or
- tax or social security receivables.

The first category of assets on the list – bank accounts, of diplomatic and consular missions, special missions, missions to international organisations – benefits from special protection. Pursuant to L 111-1-3, conservatory or forced execution measures can only be used against such assets if the state 'expressly and specifically' consents thereto.

Central bank property is not on the list. Immunity of central bank property from enforcement is already governed by article L 153-1 of the Monetary and Finance Code (MFC). Article L 153-1 provides that property of foreign central banks and monetary authorities held and managed on their account or on the account of their state(s) cannot be seized. An exception in paragraph 2 applies where the creditor holding an 'executory title' for a liquid and payable debt applies to the execution judge for permission to enforce and demonstrates that the central bank property is allocated to activity governed by private law. As relevant here, an 'executory title' refers to a French judgment, a confirmed foreign judgment or a confirmed arbitral award enforceable in France, as discussed further below.

Law stated - 03 August 2023

Describe any differences in your jurisdiction's law between the scope of enforcement immunity pre-judgment and post-judgment.

The French equivalent of the term 'pre-judgment enforcement measures' is 'conservatory measures'. The French equivalent of the term 'post-judgment enforcement measures' is 'forced execution measures'. Sapin II , discussed above, applies to both. The rules governing immunity of state assets are accordingly the same for pre- and post-judgment enforcement measures. The rationale is that sovereign immunity can be infringed by both pre- and post-judgment enforcement measures. The term 'immobilisation' however, is not different and is not considered to be a pre-

or post-judgment enforcement measure capable of infringing sovereign immunity.

Law stated - 03 August 2023

Application of civil procedure codes

When enforcing a judgment against a state in your jurisdiction, would debt collection statutes and the enforcement sections of domestic civil procedure codes or similar codes also apply (eg, debt or third-party debt orders, charging orders)?

When enforcing a judgment against a state, the French procedural rules set out in the CPC, CCEP and other codes apply.

The French procedural rules refer to the term 'executory title': to deploy the enforcement measures available under the CPC, CCEP and other codes, the creditor must hold an 'executory title'. Article L 111-3 contains a list of 'executory titles' and, as relevant here, includes French judgments, confirmed foreign judgments and confirmed arbitral awards enforceable in France.

Confirmation of foreign judgments in France is governed by the European regime, the Hague Judgment Convention Regime, the Hague Choice of Court Convention or the general regime. Without getting into the details, foreign judgments emanating from European countries (and some third countries) can be recognised in France under the following EU regulations and conventions, depending on the date of institution of foreign proceedings:

- the Brussels Recast Regulation (Council Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters);
- the Brussels Regulation (Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters);
- the Brussels Convention 1968 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and
- the Lugano Convention 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

France is a party to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague Judgment Convention 2019), which will enter into force on 1 September 2023. This Convention applies broadly to recognition and enforcement of judgments in civil and commercial matters, to the exclusion of revenue, customs or administrative matters.

France is also a party to the Hague Convention on Choice of Court Agreements 2005 (Hague Choice of Court Convention 2005). A prerequisite to the applicability of the Hague Convention 2005 is that the judgment is given by the court designated in an exclusive choice of court agreement concluded in civil or commercial matters. Without such choice of court agreement, the Convention does not apply.

In the absence of any applicable EU regulation or convention, the general regime applies. Article 509 of the CPC provides that foreign judgments are enforceable in France 'in the manner and in cases provided by law.' Bearing in mind article R 212-8 of the Code of Judicial Organisation , the creditor would apply to the president of the competent first-instance court in an adversarial proceeding, and the judge would recognise the judgment upon verifying that:

- the foreign court had jurisdiction;
- the foreign judgment complied with international public policy viewed from the French perspective; and
- there was no fraud.

(Cornelissen , Cass. Civ. 1 re , 20 February 2007, No. 05-14.082).

Whatever the applicable regime, at the end of the recognition process the creditor would obtain an 'executory title' enabling execution of the foreign judgment in France using the execution measures available under French law.

Recognition and enforcement of foreign arbitral awards is governed by the New York Convention, to which France is a party. Under article 1516 of the CPC , recognition of a foreign arbitral award can be obtained ex parte, without notice to the arbitral award debto r . The arbitral award creditor files an application, accompanied by the arbitral award and the arbitration agreement with the registrar and the French translations (if these documents are not in French). As seen in article 1514 , the judge only makes a prima facie verification that:

- the filed document is an arbitral award; and
- recognition and enforcement of such arbitral award would not be contrary to international public policy from the French perspective.

(Palm Events c/ Centre de Loisirs Etoile , CA Paris, 3 November 2022, No. 22/10018). Upon such verification, the judge affixes exequatur on the arbitral award or its French translation, as seen in article 1517 . The order granting exequatur need not be motivated; only the order refusing exequatur needs to be motivated. The order granting exequatur is then be notified to the debtor, who has one month to appeal it, as per article 1525 .

Finally, exequatur can result from an unsuccessful application for annulment of a French-seated arbitral award, brought pursuant to articles 1518-1523 of the CPC. To that effect, article 1527(2) provides that a refusal of an application for annulment of an arbitral award confers exequatur on that arbitral award and makes it enforceable in France.

Once the judgment or arbitral award creditor has obtained exequatur , it can take advantage of the enforcement measures available under French law. However, before deploying any such measures against state assets, the creditor needs to seek a judicial authorisation, without notice to the state, pursuant to Sapin II , as explained above. Once after obtaining such judicial authorisation, in addition to exequatur , can the creditor actually deploy the enforcement measures against state assets.

Law stated - 03 August 2023

Consent for further enforcement proceedings

Does a prior submission by the state to the jurisdiction of a court or tribunal constitute consent for any further enforcement proceedings against the property of the state?

No, the state's consent or submission to the court's jurisdiction does not constitute consent to enforcement measures against state property, for purposes of article L 111-1-2 of the CCEP or otherwise. In other words, a waiver of immunity from jurisdiction does not amount to a waiver of immunity from enforcement.

Law stated - 03 August 2023

Property or assets subject to enforcement or execution

Describe the property or assets that would typically be subject to enforcement or execution (e.g., property which is in use or intended for use for commercial purposes).

As discussed above, the only state property that would be subject to enforcement is property 'specifically used or intended to be used for purposes other than non-commercial public service,' as provided in article L 111-1-2 of the CCEP. A simplistic, shorthand reformulation would be: property 'specifically used or intended to be used for commercial purposes.'

Law stated - 03 August 2023

Assets covered by enforcement immunity

Describe the property or assets that would normally be covered by enforcement immunity and give examples of any restrictive or broader interpretations of enforcement immunity adopted by the courts in your jurisdiction (eg, diplomatic premises, embassy accounts, 'mixed' embassy accounts).

As discussed above, the state property that is presumptively immune from enforcement includes: diplomatic and consular property, military property, cultural property, scientific property, tax or social security debt owed to the state, as provided in article L 111-1-2 of the CCEP; and central bank property, as provided in article L 153-1 of the MFC.

A recent example of immunity of diplomatic property from enforcement is Lahoud c/ Congo , 9 January 2020, CA Paris, No. 19/11412. The Paris Court of Appeal, applying article L111-1-2 of the CCEP, found that the acquisition of property by Congo for housing its diplomatic personnel was not an act of public authority, but an act of management under private law, and accordingly, the property was not covered by immunity. The Court also confirmed that the real property had a link to the entity against which the proceeding was initiated since Congo was the owner of the building. However, this decision was reversed by the Cour de cassation, since the building was registered as an official residence of the ambassador by the Protocol Service of the French Ministry of Foreign Affairs, and therefore was covered by immunity, whether or not it was actually occupied by the ambassador (Cass. Civ. 1 re , 7 July 2021, No. 20-15.994).

Law stated - 03 August 2023

Explain whether the property or bank accounts of a central bank or other monetary authority of a state would be covered by enforcement immunity even when such property is in use or is intended for use for commercial purposes (eg, section 14(4) of the UK State Immunity Act; article 21(1)(c) UNCSI).

As mentioned above, article L 153-1 of the CMF provides that property of foreign central banks and monetary authorities held and managed on their account or on the account of their state(s) cannot be seized. An exception in paragraph 2 applies where the creditor holding an 'executory title' for a liquid and payable debt applies to the execution judge for permission to enforce and demonstrates that the central bank property is allocated to private-law activity.

In Commisimpex c/ Agent judiciaire de l'Etat , the Cour de cassation recently clarified that the special protection afforded to the property of central banks and monetary authorities by article L 153-1 is independent of sovereign immunity from enforcement (Cass. Civ. 1 re , 12 May 2021, No. 19-13.853). The court further states that it was introduced because of the nature of the assets concerned and the need to guarantee the functioning of the foreign central banks and monetary authorities. Analysing article L 153-1 of the CMF from the perspective of article 6 of the European Convention on Human Rights, the court recognised that article L 153-1 constitutes an infringement on the creditor's rights, but noted that it serves a legitimate purpose of preserving the functioning of the institutions responsible for the conduct of monetary policy and preventing the blockage of foreign reserves held in France. According to the court, this infringement was proportionate, insofar as it only applied to securities and assets held by the foreign central banks and monetary authorities in France, and not all of the assets of the foreign state. Pursuant to

this reasoning and under the facts of the case, Commisimpex's attempt to enforce two arbitral awards against the Republic of Congo and a Congolese public financial institution by seizing the Congolese assets in the bank accounts opened in the name of the Bank of Central African States (BEAC) did not succeed.

Law stated - 03 August 2023

Test for enforcement

Explain whether domestic jurisprudence has developed any further test that must be satisfied before enforcement against a state is permitted (eg, the test applied in Switzerland according to which the legal relationship giving rise to the decision whose enforcement is sought must have a sufficiently close nexus to Switzerland).

The test for judicial authorisation for enforcement against state assets is set out in article L 111-1-2 of the CCEP, as discussed above.

Law stated - 03 August 2023

Service of arbitration award or judgment

How is a state served with process or otherwise notified before an arbitral award or judgment against it (or its organs and instrumentalities) may be enforced?

If the EU Service Regulation or the Hague Service Convention do not apply, under article 684 of the CPC, 'the documents intended for service on a foreign state, a foreign diplomatic agent in France or any the beneficiary of jurisdictional immunity are delivered to the public prosecutor and transmitted through the minister of justice for service through the diplomatic channel.' In practice, the claimant would hand over the document to the bailiff, who would deliver the documents to the public prosecutor for onward service through the diplomatic channel

However, it is necessary to distinguish between different procedural scenarios.

In case of a French proceeding resulting in a French judgment, the foreign state would be served under article 684 of the CPC at the institution of the proceeding. The foreign state would then be notified of the resulting French judgment under articles 675 and 684 of the CPC. The French judgment would be enforceable in France and would constitute an 'executory title'.

In case of exequatur of a foreign judgment in France, the foreign state would be notified of the French adversarial exequatur proceedings, under articles 509 and 684 of the CPC, before exequatur is obtained in France.

But in case of exequatur of a foreign arbitral award in France, the foreign state would not be notified of the application for exequatur , and exequatur would be obtained ex parte under article 1516 of the CPC. Thereafter, similarly to judgments and consistently with article 503 of the CPC , the order granting exequatur will have to be notified by the creditor to be able to pursue enforcement of the arbitral award (Vistra c/ Le Conseil National des Chargeurs du Benin , CA Paris, 17 September 2009, No. 08/22804).

Law stated - 03 August 2023

History of enforcement proceedings

Is there a history of enforcement proceedings against states in your jurisdiction? What portion of these proceedings is based on arbitral awards?

The longest enforcement saga unfolding in French courts is Commisimpex c/ Congo . The story began in 2000, when a Paris-seated arbitral tribunal rendered its first award against Congo, followed by the second award in 2013, settling disputes relating to several public works contracts. Both awards obtained exequatur in France. Commisimpex initiated enforcement proceedings against numerous state assets: bank accounts, immovable property, diplomatic property, tax receivables and an airplane. These enforcement proceedings put at issue the validity of a waiver of both jurisdictional and enforcement immunity by Congo in a letter of undertaking signed by the minister of finance and budget after the dispute with Commisimpex arose. The courts found that the letter contained an 'express' waiver of enforcement immunity, and as such, it was valid for most state property, with the exception of diplomatic property. For diplomatic property, the waiver had to be 'express' and 'specific'. The enforcement measures thus succeeded with regard to most of the state property targeted by Commisimpex , with the exception of diplomatic property. In a recent decision, the Court of Appeal of Bordeaux confirmed a seizure and a forced sale of an airplane belonging to Congo and declared inadmissible the argument raised by Congo and the Congolese president that the airplane was covered by presidential immunity under customary international law, insofar as the Congolese president did not possess a legal personality separate from that of Congo for immunity purposes (CA Bordeaux, 29 June 2023, No. 23/00671). It appears that the saga continues, since Congo applied for revision of the award, accusing the president of the arbitral tribunal of corruption. The Paris Court of Appeal refused to suspend the enforcement measures during the pendency of the revision proceedings despite these corruption allegations (CA Paris, 10 November 2022, No. 21/21942).

Law stated - 03 August 2023

Public databases

Are there any public databases in your jurisdiction through which property or assets held by states may be identified?

While there are no public databases dedicated to the identification of sovereign assets located in France, several public sources by be used to search assets by category.

First, French bailiffs and other professionals have access to a database known as the National File of Bank Accounts and Equivalents, which allows them to identify the owners of bank accounts located in France. The data in the File is compiled mostly from tax declarations provided by financial institutions that manage the bank accounts to Direction Générale des Finances Publiques (General Directorate of Public Finances).

Second, French notaries, other professionals and the creditor may obtain information from the Real Estate Registration/ Publicity Service, a public agency that maintains the real estate registry. Upon request, the Service can provide information about the owners of real property, the successive sale prices of said property and any liens registered on said property.

Third, professionals and the creditor may obtain extracts and other information from the Commercial and Companies Registry, which is maintained by commercial courts. The registry allows to verify the existence of companies registered in France, uncover their corporate structure, identify their owners and trace their assets.

Finally, information about sovereign assets may be discerned from French court decisions. In France, court proceedings are generally public and give rise to public judgments that (depending on the date and the court) are available in online databases. Even if the particular state assets at issue in prior cases may be out of reach, the prior court decisions may indicate how a particular state's and its state enterprises' economic activity and property management are organised.

Law stated - 03 August 2023

Court competency

Would a court in your jurisdiction be competent to assist with or otherwise intervene to help identify property or assets held by states in the territory?

No, French courts do not assist or otherwise intervene to help creditors to identify assets held by foreign states in France. Creditors can turn to specialised lawyers, who in turn can mobilise bailiffs, notaries or asset tracers, depending on the circumstances of each case.

Law stated - 03 August 2023

IMMUNITY OF INTERNATIONAL ORGANISATIONS

Specific provisions

Does your jurisdiction's law make specific provision for immunity of international organisations?

In France, immunities of international organisations are generally governed by international treaties (conventions or headquarters agreements). French courts also recognise the possibility that immunities of international organisations may arise from customary international law. In CEDEAO c/ BCCI , the Paris Court of Appeal noted that the immunities from jurisdiction and enforcement may only be validly raised in France by international organisations if they arise from an international treaty signed by France or a customary rule (CEDEAO c/ BCCI , CA Paris, 13 January 1993, No. 92/3602). However, in that case, the Paris Court of Appeal underlined that no proof of the existence of such customary rule was presented.

It should be noted that on 13 April 2022, the French government issued Ordinance No. 2022-533 defining the nature, terms and conditions under which the government may grant privileges, immunities and facilities to international organisations. According to this Ordinance, immunities may also be granted to an international organisation establishing its headquarters or an office in France on a temporary basis, by decree of the Conseil d'Etat, pending entry into force of an international treaty between France and the international organisation.

Law stated - 03 August 2023

What is the scope of immunity enjoyed by international organisations in your jurisdiction and what are the exceptions to that immunity?

The scope of immunity of international organisations is determined by the applicable treaty. Thus, it is in principle delineated by the text of the treaty itself.

Law stated - 03 August 2023

Domestic legal personality

Does your jurisdiction consider international organisations headquartered or operating in its territory as enjoying domestic legal personality and could such organisations be subjected to proceedings before a court or other tribunal? (If so, please give examples of transactions or proceedings.)

International organisations may enjoy domestic legal personality in France. Their exact legal status and capacity will

depend on constituent documents or the headquarters agreement.

Ordinance No. 2022-533 defines an international organisation as an institution created by international agreement, comprising states and endowed with its own international legal personality. Under article 2 of the Ordinance, such international organisation enjoys legal capacity within the French territory. In particular, it may conclude contracts, acquire or dispose of real and personal property, sue and be sued.

France is a party to the 1986 European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, according to which 'the legal personality and capacity, as acquired by an NGO in the party in which it has its statutory office, shall be recognised as of right in the other parties'.

Examples of international organisations being involved in French legal proceedings include: a labour dispute with an employee (Mme X c/ OCDE , Cass. Soc., 29 September 2020, No. 09-41.030); a dispute regarding a services contract (ON/OFF c/ UNESCO , TGI Paris, 29 March 2011, No. 06/16183); and a dispute related to the imposition of financial measures (Eurotrends c/ Banque Asiatique de Developpement , TGI Paris, 8 April 2015, No. 13/07942), etc.

Law stated - 03 August 2023

Enforcement immunity

Would international organisations in your jurisdiction enjoy enforcement immunity? Are there any cases where debtors sought to enforce against a state by attaching or executing property or assets held by international organisations?

Similarly to the jurisdictional immunity, the content and scope of the enforcement immunity of international organisations will depend on the treaties, headquarters agreements and constituent instruments.

CSR and SATRE c/ Arab Ligue illustrates the French courts' strict approach to interpreting the agreement between France and Arab League in the context of an attempted garnishment of property of the Arab League in satisfaction of Tunisian courts' judgments rendered in favour of CSR and SATRE. The court noted that in accordance with this agreement, the assets of the Arab League could only become an object of enforcement measures in a limited number of cases, such as contracts concluded for activities of the office of the organisation and accidents caused by an office vehicle, to the exclusion of enforcement of other contract claims (Cass. Civ. 1 re , 14 October 2009, No. 08-14.978).

In several cases, the claimants attempted to enforce decisions against the states using the assets of the states' delegations to UNESCO. But considering the status of UNESCO and delegations thereto, the attempts failed due to diplomatic immunity (Noga c/ Russia , CA Paris, 10 August 2000, No. 2000/14157; Commisimpex c/ Congo, Cass. Civ. 1 re , 10 January 2018, No. 16-22.494). In Noga c/ Russia , a Swiss company unsuccessfully attempted to enforce an arbitral award against Russia by attempting to seize the funds held by BCEN-Eurobank in the bank accounts of the permanent delegation of Russia to UNESCO. Similarly, in Commisimpex c/ Congo , an attempt to seize the funds held by Société Générale in the bank accounts of the delegation of Congo to UNESCO failed.

In France, in a case when a party is unable to enforce a decision against a state or an international organisation due to absolute enforcement immunity, it can engage the responsibility of the French state for denial of access to the justice (Cass. Civ. 1 re , 25 May 2016, No. 15-18.646). This action takes place before the administrative jurisdictions on the basis of a breach of 'equality of citizens before public charges" (Conseil d'Etat, 10 July 2023, No. 454276). In a recent case before Conseil d'Etat, the state was ordered to pay indemnity to the plaintiffs due to the impossibility to enforce a decision in a labour dispute against Venezuela under Loi Sapin II (Conseil d'Etat, 10 July 2023, No. 454276).

Law stated - 03 August 2023

UPDATES & TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in your jurisdiction?

The promulgation of Loi Sapin II , with its demanding requirements for enforcement against state assets, had a chilling effect on the legal community. An appellate court even noted that litigation would 'dry up' under Loi Sapin II (CA Aix-en-Provence, 4 June 2020, No. 18/08343). Against all odds, successful enforcement against state assets under Loi Sapin II was witnessed in recent years.

One example of successful enforcement against state assets under Sapin II is Rasheed Bank c/ Citibank , CA Paris, 19 May 2022, No. 21/109197. In that case, the Paris Court of Appeal, applying article L 111-1-2 of the CCEP, confirmed the transformation of conservatory measures into a seizure of assets sought by Citibank. The court authorised Citibank to enforce a Dutch judgment against Rasheed Bank. The court found that the criteria of article L 111-1-2 were satisfied where Rasheed Bank, the judgment debtor, was an emanation of Iraq, and the assets of Rasheed Bank were neither used nor intended to be used for non-commercial public purposes.

Another near win was Al Kharafi et al. c/ Libyan Investment Authority and LAFIC, CA Paris, 5 September 2019, No. 18/17592. In that case, the Paris Court of Appeal authorised enforcement against the property of Libyan state entities under articles L 111-1-2 and L 111-1-3 of the CCEP, since the property was not used or intended to be used for non-commercial public purposes and there was a link between the property and the entities concerned (because they were emanations of the Libyan state). However, this decision was reversed by the Cour of cassation because it concerned frozen assets, which could not be subject to enforcement measures without prior approval of the French Treasury (Cass. Civ. 1 re , 7 September 2022, No. 19-25.108).

Law stated - 03 August 2023