

Interest on Damages and Enforcement of UK Judgments Overseas: a Comparative Analysis - A Pan- European Perspective

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Example of France

Karel Roynette
Avocat Roynette
Paris

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Our Agenda

- I - Interest on damages in France
- II - Enforcement of UK judgments in France

I - Interest on Damages in France

- France will enforce interest on damages awarded by a foreign (non-EU) judgment, provided that such a foreign judgement is enforceable in France (TGI Paris, 24 Nov. 1977)
- In addition, there may apply interest on damages after French courts rule that the foreign judgment is applicable in France. This extra interest on damages will be governed by French law (Cass. 1e civ., 6 March 2007)

II - Enforcement of UK Judgments in France

- France enforces a foreign judgment, such as UK judgments over cases after the Implementation Period, after the application of a process called “exequatur”
- Three requirements for exequatur (Cass 1e civ., 20 Feb. 2007):
 - i. The foreign country is narrowly connected to the claim, i.e., **the establishment of jurisdiction by the foreign country’s court complies with French jurisdictional rules**
 - ii. There is **no impediment of French public policies**
 - iii. **No fraud** is committed

Overview of 2nd and 3rd Requirements: Public Policies & Fraud

- Two familiar requirements, as they are similar to what applies under Brussels I (Recast)
- Including:
 - compliance with substantive French public policies
 - proper service of the defendant with the lawsuit in the foreign country
 - availability for the defendant to discover adverse evidence duly in time
 - no irreconcilability with a judgment already given between the same parties
 - no misrepresentation of the facts leading to the foreign judgement

Focus on 1st Requirement: Compliance with French Jurisdictional Rules

- Enforcement depends on whether the different scenarios of when UK courts establish jurisdiction are deemed narrowly connected to claims especially in liability or, otherwise, comply with French jurisdictional rules on such claims
- This is in addition to the scenario always possible when the defendant is domiciled in the UK
- *For the record: a treaty dated on 18/01/1934 for the reciprocal enforcement of judgments between the UK and France is, if ever still applicable, irrelevant, as it follows the same rules from the French standpoint*

1st Scenario: a Choice-of-Court Agreement

- A choice-of-court agreement, stipulated by parties in a cross-border contract, shall determine which court has jurisdiction to hear their contract claim (Cass 1e civ., 17 Dec. 1985)
- E.g., a UK choice-of-court agreement under Brussels I (Recast) provides jurisdiction to a UK court and its judgment will then validly be enforced in France
- The Hague Convention of 30 June 2005 on Choice of Court Agreements may prevail after the Implementation Period

2nd Scenario: a Contract Claim in the Lack of a Choice-of-Court Agreement

- The court for the place where the contract is to be performed may have jurisdiction over a contract claim (Code Civ. Proc., Art. 46)
- E.g., a UK court can establish jurisdiction over a **sale contract**, when delivery takes place in the UK or, a **service contract**, when the service is provided there, so that its judgment will be validly enforced in France
- However, the English law applicable to a contract cannot provide jurisdiction to an English court under French jurisdictional rules

3rd Scenario: a Tort Claim (1)

- The court for the place where the wrongdoing or damage happens can have **jurisdiction** to hear such claims (Code Civ. Proc., Art. 46)
- E.g., a French manufacturer who, directly or via UK distributors, sells **defective products** causing harm in the UK may be sued in front of a UK court whose judgement will be enforceable in France

3rd Scenario: a Tort Claim (2)

- However, when both the wrongdoing and damage are caused to a UK victim while being in France, the court for the place where these circumstances take place is a **French court** which should accordingly have sole jurisdiction
- E.g., this concerns a UK victim who suffers from a **road traffic accident in France**
- As a result, it may be irrelevant for a UK court to have jurisdiction when a victim suffers consequential losses in the UK, as newly provided in *Brownlie II*. Indeed, its judgement is unlikely to be enforced in France

4th Scenario: UK Consumer vs. French Professional Cases (1)

- A consumer may sue a professional before the court for the place where the consumer was domiciled during their contract (i.e., either at the time they agreed on their contract or when the loss occurred) (Article R. 631-3 of the French Consumers' Code)
- This may lead a UK consumer to sue a French professional in the UK where he was domiciled back then
- This may especially be relevant when a UK consumer and a French professional enter into a contract to be performed notably in France, and the UK consumer later suffers from an accident which occurs precisely in France (such as in **accidents occurring at French hotels**)

4th Scenario: UK Consumer vs. French Professional Cases (2)

- In that respect, when the UK consumer and the French professional made their contract, especially on the internet, after the French professional directed its commercial activities to the UK, a UK court is likely to take jurisdiction under English law, and its judgment will be enforceable in France
- One caveat may be a choice of court agreement between professionals and consumers overseas