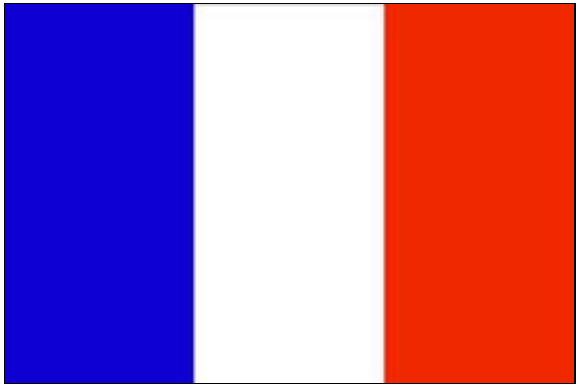
NATIONAL REPORT

- FRANCE -



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SCOPE OF THE PROCEDURE

Eligible claims	According to Article 1405 CPC, two categories of claims can be recovered through the order for payment procedure: - Contractual claims or claims based on statutory obligations (e.g. contributions to social insurance or debts arising from joint ownership). In both cases, the amount of the claim must be determined. If the claim is contractual, the amount is determined according to the terms of the contract, including any penalty clause. The order for payment procedure is not available for a claim arising from a liability in tort. - Claims arising from several negotiable instruments: bills of exchange, promissory notes and assignments of commercial claims according to the Loi n° 81-1 du 2 janvier 1981 facilitant le crédit aux entreprises. The order for payment procedure is not available for unpaid cheques: a specific simplified procedure is applicable to them, provided for at Article L 131-73 of the Code monétaire et financier. A specific order for payment procedure is set forth by the Code du travail (labour Code) for the reimbursement of unemployment benefits following an unfair dismissal (Art. R 1235-1 ff.). For contractual non-monetary claims, the creditor may have recourse to an injonction de faire."
Limit regarding value of claim	There are no limits regarding value.
Rules on using the procedure	The use of order for payment procedure is optional. If the creditor chooses the order for payment procedure and his application is rejected, this does not preclude him to have recourse to an ordinary procedure (Art. 1409 al. 2 CPC).

Possibility of using national procedure in cross border cases	While there is no doubt concerning the availability of the procedure when the debtor is domiciled abroad but has a residence in France, it is uncertain whether an order can be granted when the debtor has no residence or domicile in France or when the order has to be served abroad[1]. Yet, a large majority of scholars consider that the procedure should be excluded in such circumstances. However, the French procedure remains of course available for a foreign creditor against a debtor established or domiciled in France.
Number of steps	It is a one-step procedure.
Rules on representation by a lawyer	Representation by a lawyer is not compulsory.

COMPETENT COURTS

According to matter	According to the subject matter and the amount of the claim, three different courts may have jurisdiction (Art. 1406 CPC): - The tribunaux d'instance have jurisdiction in civil matters, up to EUR 10,000.They also have jurisdiction, no matter the amount, in specific matters, e.g. leases or consumer credit. - The tribunaux de grande instance have jurisdiction in civil matters for claims higher than EUR 10,000 and where the tribunaux d'instance have no specific jurisdiction. - The presidents of the tribunaux de commerce have jurisdiction in commercial matters. As a rule, the competent court is that of the place where the debtor, or one of the debtors, live (Art. 1406 al. 2 CPC). There is an exception for joint ownership cases, where the court of the place where the real estate is located has jurisdiction. Note that all these rules are mandatory. As a consequence, any stipulation to the contrary would be void and the court should declare sua sponte that it has no jurisdiction (Art. 1406 al. 3 CPC). This is true not only for territorial jurisdiction, but also for jurisdiction ratione materiae.

APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

Availability of standardized form and form description	Different forms exist, one for each court that can deliver an order for payment. These forms are available on the French Administration's website and from the offices of the courts concerned. They are very short (less than two pages) and contain the data required for a valid application under Articles 58 and 1407 CPC. The use of these forms is not compulsory.
Rules on representation by a lawyer	Representation is not obligatory. According to Article 1407 al. 1 CPC, the application may be submitted either by the creditor himself or by any representative (mandataire). It has been decided that, among others, a huissier de justice is able to represent the creditor (but he can not represent him anymore in the opposition proceedings)
Description of the reasons for the clame	Since the application is a requête (i.e. a referral to a court where the opposite party has not been previously summoned), it must contain all the information listed in Art. 58 CPC for any kind of requête: identification of the applicant (for natural persons: name, surname, profession, etc.; for legal entities: form, company name and head office); identification of the debtor; object of the application. It must further specify, as a particular type of requête, the amount and all the elements of the sum claimed, as well as the grounds for it (Art. 1407 CPC).

Need for written evidence and documents admissible as proof	Article 1407 of the Code of civil procedure only states that the application must be accompanied by the documents supporting his claim. There is no precision as to the kind or the form of these documents. It is admitted that any type of document (contract, invoice, etc.) is admissible as long as it is likely to ascertain the claim
Option of electronically filing the form	The tribunaux de commerce have an online service for the registration of applications, (available on their common website infogreffe. The user can fill the form online; add the digitized documents supporting his claim; sign the form by way of an electronic certificate; pay online the cost of the application. As to the other courts, there is still no possibility to file an application online.

ISSUE OF THE ORDER OF PAYMENT

Specific rules for dealing with submitted apps for order of payment and court decision	According to Article 1409 CPC, the claim is examined by the court 'on the basis of the documents produced'. The court has the power – and the duty – to appreciate the documents submitted and to decide whether, on the basis of these documents, the application "seems" well-founded. In other words, the court relies on the mere plausibility of the claim. If the claim does not seem well-founded, the court rejects the application. If it seems well-founded, the court issues an order for payment. It can also consider that the claim is only partially founded and therefore deliver an order to pay the amount retained (Art. 1409 CPC). In such case, i.e. when the creditor obtains an order for a lower amount than requested, he has no appeal but he can decide not to serve the order and start an ordinary procedure in order to obtain a more favorable decision (Art. 1409 al. 3 CPC). In any case, the order needs not to be substantiated. However, it has been noted that judges, according to their 'habits', often substantiate their decisions when they reject the application.
Existence of guidelines for submitting application	There are no guidelines; The task to inform the defendant on his procedural rights is in practice devoted to the huissier de justice who serves the order (see d below). The need to properly inform and warn the defendant is precisely the reason why the possibility to serve the order by way of a registered letter was abandoned in 1981.

Defendant's service of the order of payment	Service of the order is completed on initiative of the creditor. A certified copy of the order must be served by a huissier de justice on every debtor within six months, failing which the order is lapsed (Art. 1411 CPC). General rules on service are laid down at Articles 653 ff. of the Code de procédure civile. In principle, according to Article 654, the recipient must receive personal service (signification à personne). It is only when personal service is impossible that service can be made at his domicile or residence (Art. 655 CPC). The legal formalism imposed on service of an order for payment is constraining (Art. 1413 CPC). If the debtor receives personal service, he must also be given all this information verbally (Art. 1414 CPC).

REJECTION OF THE APPLICATION

Grounds for rejecting application	Application is rejected if it does not “seem” well-founded on the basis of the documents produced, as assessed by the court.
Existence of prima facie of claim	No.
Appeal availability (creditor)	If the application is rejected, the creditor has no appeal against the court decision. However, ordinary procedures remain open to him (Art. 1409 al. 2 CPC).

OPPOSITION BY THE DEFENDANT

Procedural rules	The statement of opposition must be lodged within one month following service of the order. Yet, when the debtor did not receive personal service (signification à personne), i.e. when the service was made at his domicile or at his residence, the time limit runs from the date of the first document served personally or from the date of the first measure of enforcement on the debtor's property (Art. 1416 al. 2 CPC). Since the time-limit for applying for an enforcement clause runs from the date of service, this means that in some instances opposition will be available after the order has become enforceable. According to Article 1415 CPC, the statement is made to the office of the court that issued the order for payment (the office of the tribunal de commerce if the order was issued by its president). A model letter for opposition is available on the website of the Ministry of Economy. Representation by a lawyer is governed by the procedural rules applicable to the court before which opposition is lodged.
Substantiated order of payment requirement	Since opposition is the only defense available to the debtor, it is considered that it must be a largely open procedure. As a consequence, the statement of opposition does not have to be substantiated. However, the statement must make it clear that the debtor lodges an opposition to the order: this is not the case, for instance, if the debtor only asks for an extension of the payment deadline. Although the statement needs not to be substantiated, the model letter provided by the website of the Ministry of Economy provides for a motivation of the opposition. Many defenses are available to the debtor, such as the absence of claim, the non-contractual nature of the claim, formal irregularity of the order, etc.

Effects of notice of opposition	Upon opposition, the procedure is converted automatically into an ordinary, inter partes, procedure. The order for payment itself is considered as void and will not have the force of res judicata. The court that issued the order is seized of the whole claim, i.e. the initial application and all incidental applications and defense on the merits (Art. 1417 CPC).
Nature of the structure of the procedure	Must subject to: - The fact that this court has jurisdiction only within the limits of its competence ratione materiae. This means that if a tribunal d'instance has issued an order for an amount over his monetary competence (EUR 10,000), it is the tribunal de grande instance that is competent to hear the opposition. - The possibility given to the creditor, in his application, to demand that, upon opposition, the case be referred to the court he deems competent (Art. 1408). The office of the court summons to the hearing all the parties, including those who did not lodge an opposition (Art. 1418 CPC). The letter of summons is null unless it contains various information listed in Article 1418: date of the letter, indication of the court to which the opposition is referred, date of the hearings, conditions in which the parties can be assisted or represented. Notice must also be given to the defender that if he does not appear, the court may pronounce a judgment based on the sole information provided by his opponent. If none of the parties appear, the court takes notice of the extinction of the proceedings, as a consequence of which the order for payment lapses (Art. 1419 CPC). If only one party does not appear, it is usually considered that ordinary rules for default judgments apply. Nothing is said about the default of only one party. According to common law, the creditor must prove his claim and the amount of it.

	The judgment concluding such ordinary procedure – either by rejecting the opposition or by invalidating the order – replaces the order for payment (Art. 1420 CPC). It acquires the force of res judicata (of which the order itself is therefore deprived) and is enforceable. It is subject to appeal according to ordinary rules i.e., depending on the amount of the claim, before a cour d'appel or only before the Cour de cassation (Art. 1421 CPC).

EFFECTS OF ABSENSE OF TIMELY OPPOSITION

Consequences on not filing opposition	In the absence of opposition within one month after service of the order, Article 1422 CPC provides that, no matter the form or the service (i.e. personal or not), the creditor is entitled to apply for a formule exécutoire (enforcement clause) to be affixed on the order . Such application can also be made if the debtor has withdrawn his opposition (ibid.).
How to obtain an enforcement judgement	The Cour de cassation considers that an order for payment is not a plain judgment (decision de justice) until the time limit for opposition has run out. It has been said that it is only a virtual or a conditional judgment until then. The request for a formule exécutoire can be made either by declaration or by an ordinary letter addressed to the office of the court (Art. 1423 al. 1 CPC). It must be made within one month after expiry of the time limit for submitting the statement of opposition, failing which the order lapses (Art. 1423 al. 2 CPC). It is therefore the office – not the judge – which affixes itself the formule and checks if the conditions thereto are fulfilled. Until 1981, the judge could control that service had been properly rendered or that the debtor had really withdrawn his opposition: this is no more the case.
Effects for the order of payment	The formule exécutoire – which writing is the same for any enforceable act or decision – orders to all the huissiers de justice to enforce the order with the help of enforcement officials. The formule exécutoire confers on the order all the effects of a jugement contradictoire (judgment after trial, inter partes). It is not subject to appeal (Art. 1422 al. 2 CPC). Only formal regularity of the formule exécutoire or the conditions in which it was affixed by the office of the court may be contested, by means of an appeal (pourvoi) to the Cour de cassation.

COURT FEES

Since 2011, a EUR 35 fee (intended to fund legal aid) must be paid by every claimant in non-criminal cases. Beneficiaries of legal aid must not pay this fee. A new Article 1424-16 CPC states that in orders for payment proceedings, this fee must be paid at the moment when the claimant applies for the formule exécutoire (or, in case of a European order for payment, when a copy of the notice is addressed to the court). For an application to the president of the tribunal de commerce, the cost is about EUR 38. Lodging an opposition before the tribunal de commerce and obtaining a judgment upon opposition costs about EUR 100. Plus the order of service subject to various adjustments (postal costs, VAT, transport cost), the base rate varies from EUR 13,20 to EUR 52,80 according to the amount of the claim.

ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

Domestically	Enforcement (called, as a specific branch of French law, voies d'exécution) is ruled since June 2012 by the Code des procédures civiles d'exécution (CPCE). Article L 111-2 authorizes enforcement when the creditor has obtained a titre exécutoire (enforcement order), for example a judgment (Art. L 111-3). It must be recalled that, in the absence of timely opposition, the formule exécutoire confers on the order all the effects of an ordinary judgment. The office of the court delivers an enforceable copy (copie exécutoire) of the enforcement order with the formule exécutoire. In possession of this copy, the creditor can resort to a huissier de justice, to whom Article L 122-1 CPCE entrusts enforcement. Before initiating enforcement proceedings, the huissier must serve the order on the debtor.
Abroad	Concerning cross-border-enforcement, since the formule exécutoire confers on the order all the effects of a jugement contradictoire, it is usually admitted that once a French order for payment has been issued, it should be enforced abroad without major difficulties. Reference is made to Klomps v Michel and Hengst Import BV v Campese. In these cases, the Court of Justice decided that a national order for payment complies with Article 34(2) of Regulation 44/2001 (ex-Article 27(2) of the 1968 Brussels Convention), and should therefore be enforced in another member state, provided that the order was duly served on the debtor and that the debtor had the possibility to lodge an opposition. The same position had been previously adopted by the Cour de cassation. The only real difficulty pointed out by the French doctrine and case-law relates to foreign orders for payment provisionally enforceable, i.e. before service on the debtor. In fact, the Cour de cassation refused

	to recognize such an order. It is sometimes argued that it is only for those situations that a European instrument would have been justified. Obviously, the question has evolved since the adoption of Regulation 805/2004 on a European Enforcement Order for uncontested claims. An injunction de payer that was properly served on the debtor and faced no opposition from him can be certified as a European enforcement order.

COMPARING NATIONAL AND EU ORDER FOR PAYMENT

The main difference between French and EU order for payment procedure lays in the prerogatives of the court as to the assessment of the application.

The role of the judge is jurisdictional under French law, in that the judge is entitled to appreciate the merits of the claim on the basis of the documents submitted by the applicant. In the words of the Commission, France has adopted the "evidence" model.

In contrast, the intervention of the judge is rather administrative under EU law, closer to the "no-evidence" model. However, the judge must examine, on the basis of the application form – and therefore on the basis of the "description of evidence supporting the claim" – whether the claim appears to be founded (Art. 8 Regulation 1896/2006). The option retained is therefore intermediate – some have called it a "strange cultural mix".

A technical consequence of the above is that the use of forms is much more extensive under EU law than under French law. This makes the entire EU procedure more straightforward that the domestic one.