



Euler Hermes

# Collection Profile France

## Collecting in France

- The payment behavior of domestic companies is good but does have some margin for improvement as the average DSO does not match the standards set forth in recent regulations stringently transposing EU payment standards into domestic law.
- French courts are fairly efficient in dealing with disputes in a timely manner, however once the debtor is declared insolvent it becomes extremely difficult to enforce a debt since French law protects the debtor as long as insolvency proceedings are not terminated.

## Collection complexity



## Complexity relating to

Notable → Severe

	Notable	High	Very High	Severe
Payments	\$	\$	\$	\$
Court proceedings	⚖️	⚖️	⚖️	⚖️
Insolvency proceedings	↘️	↘️	↘️	↘️



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Our knowledge serving your success

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## General information

### Availability of financial information

Visibility on company records in France is good and companies must file their balance sheets with the Commercial Courts even though, in practice, some tend to disregard this obligation in order to preserve confidentiality. New rules discussed in early 2014 could allow small companies not to publish their financials anymore. Proceedings are published in the Registry of the Commercial Courts and in official journals.

### Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

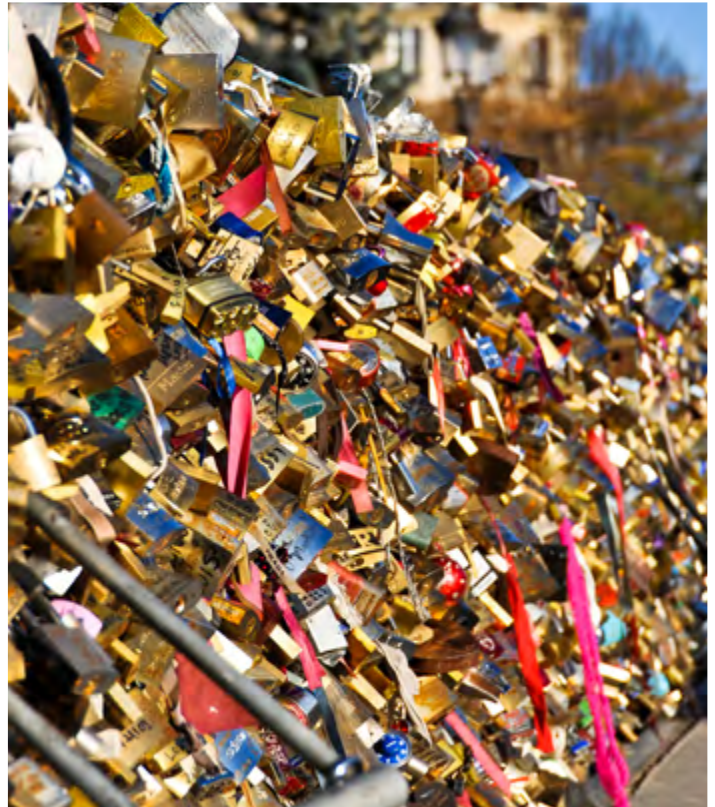
- Individual businesses are increasingly run through Sole Proprietorship (Entreprise Individuelle, EI), a business entity contributed and owned by one person acting in their own name and who may be held liable for all the debts incurred. In certain circumstances, individual businesses may also be incorporated through a Single Person Limited Liability Company (Entreprise Unipersonnelle à Responsabilité Limitée, EURL), in which case personal liability is limited to the owner's contribution.
- Partnerships (Société de Personnes) are founded by at least two partners who are jointly and severally liable for the obligations of the entity, but liability limitations may be put into place through Limited Partnerships which involve one or more managing partners jointly liable for the company's operations and debts together with silent partners liable only in relation to their capital contribution.
- Limited Liability Companies (Société à Responsabilité Limitée, SARL) are very popular for medium-sized businesses as there is no minimum capital requirement and the structure may be owned by up to fifty shareholders, whom may only be held liable for the company's debts in relation to their capital contribution.
- Public Limited Companies (Société Anonyme, SA) are the most common structure for larger businesses as it allows involvement of more shareholders. These are also available in simplified (Société par Action Simplifiée, SAS) and individual (Société par Action Simplifiée Unipersonnelle, SASU) formats.

### Regulatory environment

Commercial Courts (Tribunal de Commerce) are responsible for dealing with business disputes. This jurisdiction is operated by non-professional judges elected by their peers, and it is efficient in rendering decisions in reasonable timeframes.



**Days Sales Outstanding (DSO):** Payments occur within 70 days on average for listed companies.



## Getting Paid

### Days Sales Outstanding (DSO)

The law of 2012 (loi n° 2012-387 du 22 mars 2012 relative à la simplification du droit et à l'allègement des démarches administratives) which transposed the Recast Directive 2011/7/EU into French law came into force on 1 January 2013.

Payment in business-to-business transactions shall now occur within 30 days following the delivery of the goods or services but, where contractual agreements stipulate otherwise, the payment terms may be extended to 60 days following the issuing date of the invoice.

In practice, payments occurred within 70 days on average for listed companies in 2016. **In overseas departments and territories, the French law applies in many cases except for the specificity of the tax law.**

### Late payment interest

Interest on late payment may be charged to the debtor provided that the applicable interest rate is indicated within the contractual agreement (15% per annum would be acceptable), although the European Central Bank's interest rate (reconsidered every six months) may be applied automatically if the parties fail to do so. Beware: failure to mention these legal requirements in invoices will expose the creditor to criminal prosecution and to a fine of up to EUR 75,000 or 50% of the invoice.

In practice, in the amicable phase, interest is collected and negotiated when a payment plan is set up. Otherwise, when the debtor pays the debt, it is very difficult to get them to pay interest. In the legal phase, interest and any other contractual penalty must be asked of the court.

French law allows the court, if the debtor's situation requires it, to postpone or spread the payment over up to two years ('délais de grace' as provided under Article 1244-1 of the Civil Code).

### Debt collection costs

Since January 2013, a recovery fee of EUR 40 may furthermore be applied. Additional compensation may also be claimed if the effective collection costs are higher than the flat sum. Failure to mention the EUR 40 flat fee in contractual payment terms would expose the creditor to a potential fine of up to EUR 15,000.

### Ownership protection

The law entitles a seller to retain ownership until its buyer has paid the related invoice in full, as long as a written Retention of Title (RoT, Réserve de propriété) agreement has been concluded between the parties. More details can be found in the upcoming Insolvency Proceedings section.

### Payments

The most common payment methods are as follows:

- Sepa bank transfers are used increasingly. They are fast, secure and practical for both domestic and international payments via the banking network.



#### Late payment interest:

Interest on late payment may be charged to the debtor provided that the applicable interest rate is indicated within the contractual agreement.



- For export transactions, transfers are usually guaranteed through Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) which may constitute reliable guarantees.
- Checks are also a common payment instrument, which constitute a debt recognition title if they remain unpaid. After two unsuccessful payments, the beneficiary may, subject to certain conditions, obtain a certificate recognized as an enforceable order ('commandement de payer' under Article L 131-73 of the Financial and Monetary Code).
- Bills of exchange, although less common nowadays, are still an attractive means of payment for domestic businesses because they are a source of short-term financing by means of discounting or transfer. In particular, they are appropriate for payments made in instalments.

## Collecting overdues

### Amicable action

#### Negotiating

Although French courts are reliable, it is advisable to first consider amicable settlement opportunities as an alternative to formal proceedings.

Before starting legal proceedings against a debtor, it is also essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt.

### Legal action

#### Ordinary proceedings

Various proceedings are available. When the debt is fairly modest and undisputed, it is first possible to seek a Payment Order (injonction de payer) from the Commerce Court. These fast-track proceedings are inexpensive (less than EUR 75, excluding bailiffs' fees) and efficient, presence in court is not required and a lawyer (avocat) is not necessary. The judge may then deliver a formal Payment Order (ordonnance portant injonction de payer). The debtor must be informed of this decision within six months and has a month to contest. If not, the Payment Order may usually be enforced directly with a bailiff.

When the debt is undisputed but the amount at stake is significant, 'référé' fast-track proceedings are also very efficient insofar as they allow obtaining judgments (ordonnances) without delays. The judge's decision is enforceable immediately even though part of the dispute remains to be settled through an ordinary lawsuit.

Ordinary proceedings (Procédures au fond) are reserved for disputed and complex cases. Lawsuits are initiated by serving summons (assignation) on the defendant through a bailiff (huissier de justice) prior to filing the claim with the court. The court then considers whether the claim is receivable (mise en état), focuses on the parties' evidence and opinions through hearings (audiences), and then reaches a decision. If the defendant fails to file a defence, a default judgment may be rendered ex parte on the basis of the claimant's arguments.

Provided that the debt is undisputed, the courts are able to issue European Payment Orders enforceable in all European Union countries (except Denmark) without exequatur proceedings (Regulation 1896/2006/EC).

#### Necessary documents

The general rule is that the applicant bears the burden of proof and thus needs to provide the court with documents proving the debt on its reality and on its quantum, i.e. evidence of both order and delivery, contracts, General Terms and Conditions and all correspondence exchanged with the debtor. It should be noted that the signing of documents is considered increasingly necessary by the local courts.

**Above all, it is important for overseas recoveries. In overseas departments, courts are much more demanding in terms of the signing of documents.**

Thanks to its deep knowledge and proximity with local courts, Euler Hermes' local agents are able to guide its clients through these procedures.



#### Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.



### **Time limitations**

As a general rule, business claims must be brought to court within five years (Article L.110-4 Code de Commerce), starting from the date on which the facts causing the action occurred or on which the creditor obtains knowledge of the circumstances which caused the claim. Transportation and communication-related disputes must be brought within one year.

### **Provisional measures**

Provisional measures (mesures conservatoires) that may be taken to protect clients' interests are conservatory seizures (of bank accounts or trade receivables). Those measures must be authorized by the court and are handled by a bailiff. As conservatory measures, they are taken to protect the claimant's interests and remain provisional: the latter will have to introduce a legal action ('référé' or 'assignation au fond') within one month of the date of enforcement of the protective order. Once the courts achieve a final decision, protective orders may be either cancelled or confirmed (preventive attachments may for instance be converted into a forced sale). When a decision has been made, protective orders must be enforced within three months notwithstanding any attempt of the respondent to lodge an appeal.

### **Lodging an appeal**

The defeated party is entitled to lodge an appeal before the Court of Appeal (Cour d'Appel) within one month of the notification (three months if the responding party is located abroad), provided that the claim is in excess of EUR 4,000. Appeal proceedings have a suspensive effect (unless the first instance judgement is temporarily enforceable), which means that enforcement is delayed while the facts and legal issues are reviewed.

Decisions rendered in the second instance (arrêts) may also be appealed before the Supreme Court (Pourvoi en Cassation) within two months. This court is divided into criminal, employment, commercial and financial sections, and focuses on erroneous applications of the law by the Court of Appeal. Therefore it never re-considers decisions on the merits. Quashed decisions would then be sent back to a Court of Appeal with a request to reconsider the case on its merits, but the procedure has no suspensive effect.

By contrast with domestic arbitral awards, international arbitration awards cannot be appealed. Annulment may however be considered on various grounds (lack of jurisdiction, faulty procedure, etc).

### **Enforcing court decisions**

Unless the court decision is temporarily enforceable, enforcement may commence once a judgment is final (i.e. if no appeal is lodged within one month), and must occur within ten years of notification of the court's decision.

If the defeated party fails to satisfy the judgment, compulsory enforcement may be requested. Obligations to pay would be enforced through attachment (bank account, assets) or garnishment (orders allowing the creditor to obtain payment of a debt through a third party owing money to the debtor), obligations to give or to return would be enforced through seizure. Obligations to do or refrain from doing something would usually be enforced through pecuniary penalties. These proceedings would typically be carried out by a bailiff.

### **How long could legal action take?**

Obtaining a Payment Injunction may take three to six months while protective orders may be rendered within a month on average. Proceedings before the courts of first instance may vary from one

court to another but would tend to take one year on average when the debt is disputed. Appeal proceedings may take up to two years. Enforcement is normally fairly fast (up to three months on average). There is no difference between domestic and transnational litigation proceedings but the debtor can try to gain some time in disputing the jurisdiction of the seized court or the applicable law. Therefore, it is very important that the creditor adapts its general terms and conditions accordingly.

**In overseas departments, legal actions can be very long – three times longer than in mainland France. Obtaining a payment injunction may take six months to a year. In mainland France, it takes around two months.**

#### **How much could this cost?**

As a general rule, the successful party may request that part of its court fees and legal costs be paid by the defeated party. In practice, full compensation is never awarded. Court fees are very low in France: it costs only EUR 50 to initiate a request for an order of payment. This proceeding does not require a lawyer and only the bailiff fees (around EUR 300) are required. Conditional arrangements whereby attorneys are not paid upfront and receive a fixed sum upon success are strictly forbidden.

#### **Alternatives to legal action**

##### **Alternative Dispute Resolution methods (ADR)**

Use of alternative dispute resolution methods (such as conciliation, mediation and arbitration) in France is widespread but remains rather uncommon in relation to debt collection since the courts are efficient in providing timely decisions. Nonetheless, a cross-business mediation mechanism was recently set up to facilitate communication and payment-related disputes between debtors and creditors. On average, eight out of ten mediations lead to amicable settlements. Similarly, a credit mediation aiming at solving financing difficulties and at facilitating finance-related disputes has also been put in place.

##### **Foreign forums**

Use of foreign forums is also uncommon. Nonetheless, it can be mentioned that France is a signatory to the Rome I Regulation on the law applicable to contractual obligations, which stipulates that the parties to a contract may, by mutual agreement, choose the law applicable to this contract, and select the court that will have jurisdiction over disputes. France is also a signatory to the Hague Convention of 15 June 1955 on the law applicable to international sales of goods, which stipulates that contracts shall be governed by the law chosen by the parties, the general spirit of the agreement and the circumstances of the case. The designated foreign law may, however, be excluded by the court if it contradicts with the public order and 'the principles of universal justice,' or if the case relates to real estate property. It is essential that the agreement be characterized by an international connection (for example, one party has elected domicile in another country, or the place of execution is located abroad), and that a jurisdiction clause is specifically drafted for this purpose.

##### **Enforcing foreign awards**

As previously mentioned, using foreign forums in order to obtain enforceable decisions against French debtors is rather unusual. However, foreign decisions issued against foreign debtors may be fairly enforced in France.

Various circumstances may apply. On one hand, decisions rendered in an EU country would benefit from particularly advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts, the two main methods of enforcing an EU judgment in France are by the use of a European Enforcement Order (EEO, as provided under Regulation EC No. 805/2004) when the claim is undisputed, or by registering the judgment under the provisions of the Brussels I Regulation (44/2001). If the judgment qualifies as an uncontested claim, it can be enforced directly (i.e. without registration) by use of an EEO provided that the debtor has identified assets in the country. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000.

If the claim is disputed, the procedure for registering an EU judgment with domestic courts is relatively simple. The judgment holder must apply to the relevant court for the judgment to be registered and provide the court with, among other documents, an authenticated copy of the judgment, a certified translation and, if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, the judgment can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure is no longer required from January 2015).

On the other hand, judgments rendered in foreign countries outside of the EU would normally be recognized and enforced provided that the issuing country is party to a bilateral or multilateral agreement with France. In the absence of a reciprocity agreement, the French courts would essentially verify that the issuing court had jurisdiction over the claim, that the decision is not incompatible with the necessity to preserve the French public order, and that the decision was not rendered fraudulently.

France is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore its domestic courts ought to recognize and enforce awards rendered through international arbitration proceedings.

#### **Litigation @ Euler Hermes**

Should legal action be necessary Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

## Handling insolvent debtors

Insolvency (état de cessation de paiements) under French Law refers to a corporation's incapacity to meet its due debts with its (immediately) available assets.

The rules applicable to firms facing economic difficulties are contained in the Commercial Code, which provides multiple opportunities to open preventive or collective procedures. On one hand, preventive procedures ('Mandat ad hoc' or 'conciliation') are confidential and would only concern a limited amount of creditors or suppliers. On the other hand, collective proceedings may be opened against companies facing difficulties in overcoming economic difficulties (safeguard) and companies in a permanent state of insolvency (judicial reorganization or liquidation). Naturally, the opening of safeguard, recovery procedure or liquidation results in the suspension of individual prosecutions and a prohibition on paying claims.

It should be added that Article L.631-1 of the French Commercial Code stipulates that the purpose of insolvency procedures is to allow the follow-up of the company's activity, to maximize employment preservation, and to reduce the debtor's liabilities, respectively. Numerous procedures are available depending on the company's financial situation and on the parties' expectations.

### Insolvency proceedings

#### Restructuring the debt

Confidential preventive procedures may be relied upon in the first instance of debt restructuring proceedings. Ad hoc mediation (mandat ad hoc) is commonly used when a company's capacity to pay its debts is endangered by management issues or by emerging economic difficulties. It allows the petitioning company to benefit from the support of a third party (mandataire) approved by the Commerce Tribunal. This procedure leads to the signing of a confidential agreement and cannot take place if the debtor has ceased payments. If the debtor has already stopped making payments (for less than 45 days) and/or if the parties require that a tribunal ensures that their respective interests are guaranteed, they may alternatively benefit from a very similar conciliation procedure. Formal non-confidential collective proceedings can also commence. Since 2006 (nouvelle loi de Sauvegarde des entreprises du 26 juillet 2005), debtors willing to avoid a cessation of payments situation (severe insolvency procedure) may indeed request to benefit from a safeguard (sauvegarde) procedure as soon as it can "prove it is having financial difficulties which it is unable to overcome." Safeguard aims at continuing the business, at safeguarding employment and at paying the debts. It leads the Commerce Tribunal to establish an anticipatory restructuring plan: the court would appoint a supervisory judge (Juge-Commissaire) to monitor the proceedings, an administrator (Administrateur judiciaire) to supervise the management of the company, and a representative for the creditor (Mandataire judiciaire). The creditors must then lodge their claims (déclaration de créances)



within two months – or four months for foreign creditors – of the publication of the procedure opening decision. For companies with a turnover of more than EUR 20 million or 150 employees, the court will then establish two committees of creditors (one for credit institutions, another for supplier creditors). A restructuring plan is then drawn up following an observation period of a maximum of six months, renewable twice. In this period, the trustee will face the lodging claims with the list of their suppliers established by the debtor at the beginning of proceedings. According to the law, the trustee has to receive an answer within 30 days from the reception of the letter they sent to the creditor of whom the debt is disputed. In case of disagreement, the matter will be resolved by the supervisory judge. In addition, Commercial Courts seized with an insolvency petition outside the scope of safeguard procedures usually come up with two alternative solutions. The first is to rely on a formal judicial reorganization (Redressement Judiciaire) with the aim of bringing the debtor back into a solvent position. In this situation, the company is administered either directly, or alongside the existing management by a third party insolvency practitioner appointed by the court and to whom the parties must submit their claims within two months of notification. Liquidation would be a second solution. It should be emphasized that, in both safeguard and judicial reorganization proceedings, a moratorium may be set up to protect the rescued company from parallel enforcement claims for up to ten years. The Law on insolvency had been revised by two ordonnances (12 March and 26 September 2014). The objective is to reinforce





negotiations with creditors and to accelerate proceedings. This revision was implemented and based on three major themes:

1. The 'pré-pack cession,' which is offering the debtor the possibility to organize the transfer of business assets before the opening of insolvency proceedings. A conciliation will be opened and followed by an insolvency proceeding that will confirm the assets transfer. In this case, creditors' interests are ignored and only employment preservation that would prevail.
2. The professional reestablishment (rétablissement professionnel), which is a simplified proceeding for individuals who are working alone and in their own name, with assets below EUR 5,000. The effect of this proceeding is to cancel the debt in order to allow the debtor to start a new activity.
3. The accelerated safeguard proceeding, for companies with a turnover of more than EUR 3 million and over 20 employees. This proceeding would only concern specific creditors (banks or main suppliers).

### Winding up proceedings

In addition, the courts may order the liquidation of the insolvent debtor (Liquidation Judiciaire). In this case, the debtor's assets are realized by a court-appointed liquidator. The creditors must lodge their claims with the creditors' representative within two months of the publication of the liquidation decision; otherwise they would be prevented from participating in the proceeding and from receiving their share of the proceeds.

### Priority rules

Priority rules normally apply in liquidation proceedings while distributing the proceeds to the creditors. Secured claims are paid first (employees' wages with AGS scheme, taxes, etc.). Unsecured claims would be treated last.

### How long could insolvency proceedings take?

Insolvency proceedings may take up to ten years, but almost 90% of collective proceedings tend to terminate with a liquidation phase.

### Ownership protection

The Retention of Title (RoT, Réserve de propriété) is particularly efficient in insolvency proceedings. It allows goods to be reclaimed

### Reunion, Martinique and Guadalupe

In French Overseas Departments and Territories, Euler Hermes opts for amicable collection.

Indeed, legal actions are very time consuming – three times longer than in mainland France! Moreover, judges demand documentation to be signed by the client in order to prove the claim.

In order to be successful this particular context, Euler Hermes has local correspondents with strong expertise on business activities and local territories. As a result, a majority of the time, our collection actions are successful without legal proceedings.

(action en revendication) and entitles the creditor to be recognized as secured, enjoying a priority right during insolvency proceedings. In practice, RoT provisions do not provide absolute guarantees but remain the best way to obtain payment from insolvent debtors provided that (i) the RoT has been specifically acknowledged while signing the contract, (ii) the creditor sent their request within three months following public notification of the insolvency proceedings, and (iii) the goods are clearly identifiable in their original form. More sophisticated forms of RoT provisions aiming at maintaining ownership despite transformation or sale to third parties would not be recognized under French law. In France, RoT provisions are rarely used outside of insolvency proceedings and would thus not constitute a reliable means to exercise pressure on the debtor during the debt collection process.

### Necessary documents

Invoices, statements of account, orders, proof of delivery, power of attorney and general sales terms.

### Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes.

With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

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