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Navigating enforcement against sovereigns in France

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Introduction

Sovereign immunity is a double-edged sword: for States, it is a legitimate privilege that protects public interests and diplomatic stability; for creditors and claimants, it often constitutes an almost insurmountable obstacle to justice and debt recovery. By its nature, immunity allows States to stand apart from the ordinary legal rules that bind private actors, shielding them from the authority and coercive power of foreign courts.

The discussion that follows concentrates on execution immunity (*immunité d'exécution*) – the procedural safeguard that protects State assets from coercive measures, even where creditors hold final judgments or arbitral awards. Securing a foreign court judgment or arbitral award against a sovereign State is one thing; enforcing it in France is another. French law gives foreign States a robust shield of immunity from execution, yet it also sets out carefully defined exceptions through which creditors may access sovereign assets. This chapter outlines the practical considerations involved in turning a paper victory into actual recovery.

The analysis is confined to States and their emanations. An emanation of the State refers to an entity that, although formally distinct from the State, operates under its close control and lacks genuine functional or financial autonomy. French courts have consistently held that State control is necessary but not sufficient to qualify an entity as an emanation: it must also lack a separate and autonomous patrimony.[1] Conversely, private or separate bodies with their own assets and accounts – even if partially State-owned – may be subject to enforcement if those assets are allocated to private law activities.[2] This distinction is crucial: execution immunity extends to the property of a State's emanations only where they cannot be deemed truly independent.

This chapter pursues three objectives. First, it explains the hybrid legal framework that governs execution immunity in France, combining customary international law, landmark case law and codified statutory provisions. Second, it examines the three statutory gateways that enable creditors to pierce a State's immunity from execution. Third, it converts doctrine into practice, describing each procedural step before French courts and highlighting the practical aspects of asset tracing in France.

Legal sources and principle

In France, the legal regime governing State immunity has historically been shaped by judicial decisions rather than by comprehensive legislation. For many years, French courts relied primarily on customary international law and developed rules of immunity through case law. Notably, the Court of Cassation recognised early on that respecting the sovereign equality of States required domestic courts to refrain from judging acts performed by foreign States.[3]

This judge-made framework remained the governing law for decades. While some common law jurisdictions opted for statutory codification – such as the UK's State Immunity Act 1978 or the US's Foreign Sovereign Immunities Act 1976 – France left the matter to judicial discretion, within the bounds of international custom. As a result, France's doctrine of immunity from execution has emerged mainly from jurisprudence. This case law origin provides a degree of flexibility, yet also leaves room for ambiguity.

To address this, recent years have seen partial codification. In 2012, Article L. 111-1 of the French Code of Civil Enforcement Procedures (*Code des procédures civiles d'exécution*) (hereinafter '**CCEP**') was introduced, affirming that sovereign States benefit from immunity against enforcement measures in France. However, this provision remained very general.

A major step followed with the adoption of the Sapin II Act in 2016,[4] which aimed to clarify and stabilise the rules governing when and how the assets of a foreign State may be subject to enforcement in France. This law responded both to developments in legal practice and to high-profile financial disputes involving States, and reflects France's broader effort to balance respect for sovereignty with creditors' rights.

Since the enactment of the Sapin II Act, the rules on immunity from execution have been codified in Articles L. 111-1-1 to L. 111-1-3 of the CCEP.

On the international level, the 2004 UN Convention provides a comprehensive codification of the rules governing State immunity rules, including the conditions under which a State may waive immunity and the limits placed on enforcement against sovereign assets. Although France signed the Convention and parliamentary approval for ratification was granted in 2011, it has not yet been ratified and therefore has no binding domestic effect.

Nevertheless, the 2004 UN Convention remains highly influential: French courts have consistently interpreted domestic law in light of its provisions, treating it as a restatement of customary international law.

In summary, France's regime on State immunity is hybrid in nature: deeply rooted in case law, now partially codified – for enforcement matters since 2012 and 2016 – and shaped by the standards reflected in the 2004 UN Convention.

Conditions of enforceability under French law

While the enforcement of judicial or arbitral decisions against foreign States or their emanations in France is subject to the strict regime of sovereign immunity from execution, Article L. 111-1-2 of the CCEP provides a triple-gate framework for enforcement.

Under this provision, a creditor seeking to attach assets belonging to a foreign State must demonstrate that one of the following three alternative conditions is met:

- the State has expressly consented to enforcement;
- the asset has been specifically allocated or earmarked to satisfy the debt; or
- the asset is specifically used, or is intended to be used, by the State for purposes other than non-commercial public service *and* links to the debtor entity.

These conditions must be interpreted restrictively, and the burden of proof lies entirely with the applicant.

Express consent of the State to enforcement

Pursuant to Article L. 111-1-2, 1° of the CCEP, French courts may authorise conservatory or enforcement measures against assets belonging to a foreign State only if it has expressly consented to such measures.[5]

French courts require a waiver that is clear, written and unequivocal *and* that relates specifically to enforcement, not merely to jurisdiction.

The Court of Cassation first acknowledged that such a waiver might be inferred from an arbitration clause, provided that the clause contains clear and unequivocal language demonstrating the State's intention to subject its assets to enforcement.[6] The subsequent legal debate then focused on whether such waiver must be not only **express** but also ***special*** – that is, whether it must specifically identify the asset or class of assets to which enforcement may apply.

In the long-running *Commisimpex v. Republic of Congo* case law saga, the Court of Cassation, in a landmark decision dated 13 May 2015, held that under customary international law – as reflected in Article 19 of the 2004 UN Convention – an express waiver is sufficient to lift immunity from execution in respect of assets that are not allocated to diplomatic or consular functions. In such circumstances, a *special*[7] waiver designating the asset is not required.[8]

In response, Parliament enacted the Sapin II Act, which introduced enhanced protections under Article L. 111-1-3 of the CCEP for assets used in diplomatic or consular functions. The provision states: '*Precautionary measures or measures of forced execution may be implemented on property, including bank accounts, used or intended to be used in the exercise of the functions of the diplomatic mission of foreign States or of their consular posts, of their special missions, or of their missions to international organisations only in the case of an* ***express*** *and* ***specific waiver*** *by the States concerned*.'

The Court of Cassation quickly aligned its case law with this legislative development. In decisions rendered in 2018, it confirmed that (i) diplomatic premises and related assets remain immune unless the State has issued a *special* waiver, that is, one that expressly identifies the asset or category of assets concerned,[9] and that (ii) in the case of embassy bank accounts, a general waiver is insufficient in the absence of the special wording required by the statute.[10]

This framework was reaffirmed in a decision of 13 March 2024, in which the Court of Cassation found that a presidential aircraft located in France was attachable: as the aircraft was not used for diplomatic purposes, it did not fall within the scope of Article L. 111-1-3, and the State's simple express waiver was held sufficient.[11]

In practical terms, this settled case law means that an express waiver opens the door to enforcement against ordinary commercial assets, whereas diplomatic, consular and special-mission property continues to benefit from heightened protection.

The French courts' current position can be summarised as follows:

- For ordinary sovereign assets (e.g., trading accounts, commercial real estate): an **express** waiver is sufficient to lift immunity from execution.
- For diplomatic, consular or special-mission assets: an **express** and ***special*** waiver is mandatory.

Practitioners must carefully analyse both the text of the waiver clause and the actual use of each targeted asset to ensure that enforcement does not infringe protected immunities.

In commercial contracts with sovereign counterparties, it is prudent to stipulate a bilingual clause that (i) expressly waives immunity *from execution*, and, ideally, (ii) identifies the types of assets that may be subject to enforcement – for example, '*all assets of a commercial nature, including bank accounts held with French credit institutions*'.

Allocation or reservation of the asset to the debt

The second gateway, set out in Article L. 111-1-2,2° of the CCEP, applies only where the foreign State has '*reserved or allocated the asset to the satisfaction of the claim*'.

In practice, this ground is exceptional. The creditor must prove that the specific asset targeted was earmarked in advance for the particular debt – a situation comparable to a trust or escrow. This may involve, for example, a dedicated bank account opened to secure an arbitral award, or a contractual clause expressly providing that the proceeds of a particular commercial transaction will be paid over to the award creditor.

The evidentiary threshold is high: the claimant must provide explicit documentation, such as escrow instructions, a written allocation formally endorsed by the competent State authority, or a banking mandate expressly identifying the account as security for the debt.

Because the burden of proof is stringent, French courts scarcely uphold claims under this provision, and published case law remains limited.

Commercial use of the asset and link to the debtor entity

Article L. 111-1-2, 3° of the CCEP creates the third exception to sovereign immunity from execution. Seizure is permitted where:

(i) the creditor holds a court judgment or arbitral award against the State;

(ii) the targeted asset is specifically used, or intended to be used, for purposes other than a non-commercial public service; and

(iii) the targeted asset is linked to the State entity against which the decision was rendered.

The provision expressly identifies several categories of property that remain off limits due to their inherently public nature. These include:

- assets, including bank accounts, used or intended to be used in the performance of the functions of the State's diplomatic mission or its consular posts, its special missions, its missions to international organisations, or its delegations in the organs of international organisations or at international conferences;
- military equipment;
- cultural heritage and archives not offered for sale;
- items placed on public exhibition; and
- tax or social security receivables.

Even with a court judgment or arbitral award in hand, a creditor cannot attach these assets.

However, the list is illustrative, not exhaustive. By contrast, assets associated with commercial operations, such as ticket revenues from a State-owned airline or debts owed by a French company to the State, may be subject to attachment if proper evidence is provided.

For asset categories not expressly listed in Article L. 111-1-2, 3° of the CCEP, practitioners refer to case law, including decisions rendered prior to the Sapin II Act, which introduced this provision.

French judges examine each asset on a case-by-case basis, applying the classical distinction between sovereign activity (*jure imperii*) and commercial activity (*jure gestionis*).

The '*commercial use*' exception was first articulated in the landmark *Eurodif* ruling.[12] Confronted with uranium enrichment contracts in which a foreign State had acted as a trader, the Court of Cassation held that an asset may be attached if it (i) is used in an economic or commercial activity, and (ii) bears a direct connection to the dispute that generated the claim. This two-step test, commercial use *and* a nexus with the underlying obligation, became the prevailing standard for the next three decades.

Early applications applied both criteria strictly:

- In *Sonatrach*,[13] the Court authorised attachment only after confirming that the targeted receivables formed part of a separate, commercially oriented asset pool allocated to the Algerian oil company, distinct from sovereign functions. It made clear that once an entity, whether or not legally separate (incorporated) from the State, is endowed with an asset pool dedicated to a principal private law activity, the entire estate may serve to satisfy the entity's debts. There is no requirement to show that the specific asset seized was earmarked for the litigated transaction. The commercial use test was therefore met, and the nexus element was inferred from the asset's inclusion in that private pool.
- In its 25 January 2005 decision, the Court held that the apartments purchased to accommodate embassy staff were part of the State's ordinary private management and therefore satisfied the commercial use criterion. It further found that the unpaid co-ownership charges arose directly from that acquisition, meeting the nexus requirement. Having verified both elements, the Court concluded that the State could not invoke execution immunity.[14]

As international arbitration and sovereign borrowing expanded, litigants increasingly challenged the *Eurodif* requirement of a link between the asset and the underlying dispute, arguing that it was both artificial and impracticable. A first softening of this standard appeared in the case law of the Courts of Appeal, where some panels suggested that a commercial nature alone should suffice.[15]

The decisive shift came with the Court of Cassation's decision in *Rasheed Bank*.[16] Relying on customary international law as reflected in Article 19 (c) of the 2004 UN Convention on State Immunity, and now codified in Article L. 111-1-2, 3° of the CCEP, the Court held that the creditor is no longer required to establish a link between the asset and the underlying claim. It is enough to prove that the asset is '*by its nature destined*' for commercial use and that it is owned or controlled by the debtor entity.

The seized funds in question – a cash pledge deposited in support of ordinary banking operations – were therefore declared attachable. The Court of Cassation further held that no evidence of the State's intent to allocate the asset to commercial use is required.

The Court of Cassation reaffirmed this objective approach, relying on factors such as the role of the depository bank and its commercial advertising, in order to characterise a bank asset as commercial in nature.[17]

Recently, the Court of Cassation, in its decision of 12 June 2025, refined the evidentiary framework governing diplomatic immunity claims under Article L. 111-1-2, 3° of the CCEP. The Court confirmed an earlier decision[18] according to which, where a State claims that a property is allocated to a diplomatic mission, this claim gives rise to a rebuttable presumption of diplomatic use. In this case, the property is included in the first category of assets listed by Article L. 111-1-2, 3° of the CCEP that cannot be attached due to its inherently non-commercial nature. The Court further held that it is then for the creditor to disprove this presumption by producing a formal response from the Protocol Department of the French Ministry for Europe and Foreign Affairs indicating that no such declaration has been made, or that the alleged allocation has been expressly rejected.

In the case at hand, the property – although located near the embassy and claimed to be the ambassador's residence – had not been formally notified to the Ministry. The Court found that the absence of such a declaration was sufficient to rebut the presumption, and thus precluded the State from invoking execution immunity.

Conversely, where such a declaration exists – for instance, evidenced by an exemption from local property taxes pursuant to Article 23 of the Vienna Convention on Diplomatic Relations – immunity remains fully effective. This decision clarifies the evidentiary burden placed on the creditor and draws a clear distinction between asserted diplomatic use and officially recognised diplomatic status under French law.[19]

It is also worth noting that certain assets are subject to distinct statutory protections. For example, central bank reserves benefit from Article L. 153-1 of the Monetary and Financial Code, which provides that they are immune from enforcement unless the creditor can demonstrate that the funds are held for the bank's own commercial account – an exceptionally high threshold.

The practical implication is clear: success under this exception depends on assembling solid evidence – such as bank mandates, transaction documents, expert analyses, or a response from the Protocol Department of the French Ministry for Europe and Foreign Affairs – demonstrating that the targeted asset is genuinely commercial in nature and linked to the judgment debtor. Without such proof, the immunity of execution remains intact.

Procedural steps before French courts

Enforcing an arbitral award or a foreign judgment against a sovereign State in France is rarely a straightforward exercise. It requires navigating a carefully structured sequence of procedural steps, each governed by both domestic legal provisions and obligations arising under customary international law and the principles embodied in the 2004 UN Convention.

What follows is a concise roadmap of the main stages through which counsel must steer to pursue enforcement effectively.

Enforcement order (exequatur)

Before a creditor can pursue any form of attachment in France, it must first obtain an **exequatur order**, i.e., a court decision recognising and converting a foreign judgment or arbitral award into an enforceable title under French law. Apart from the specialised recognition regimes that operate within the European Union, which fall outside the scope of this discussion, no arbitral award or foreign judgment is self-executing on French territory.

It is worth noting that this exequatur requirement does not apply to French court judgments rendered against a foreign State. Such domestic titles are directly enforceable in France, subject to the same immunity constraints and exceptions under Articles L. 111-1-1 to L. 111-1-3 of the CCEP. In such cases, the creditor may immediately proceed with enforcement steps, provided it can demonstrate that one of the statutory gateways applies.

Exequatur and execution are therefore two distinct stages:

- Recognition must come first.
- Only then can forced execution proceed – unless the creditor limits itself to provisional conservatory measures, in which case it must apply for exequatur of the arbitral award or foreign judgment within one month of the execution of the interim conservatory measure.

The recognition test varies with the nature of the title:

- For **international or foreign arbitral awards**, Article 1514 of the French Code of Civil Procedure adopts an award-friendly approach: exequatur may only be refused if recognition would be manifestly contrary to French international public policy. The creditor is not required to prove affirmative compliance with public order in its application.
- For **foreign court judgments**, the starting point is to determine whether an applicable international convention or European regulation governs recognition. If no such convention applies, French courts revert to the control framework established by case law.[20] Exequatur will only be granted if the following cumulative conditions are met:
    - The dispute must have a substantial connection to the foreign forum, French courts must not have exclusive jurisdiction, and the choice of forum must be free of '*fraude à la compétence*'.

- The foreign decision must not conflict with France's fundamental principles or values (*ordre public international*).
- **There must be no existing** French judgment, nor any foreign judgment already recognised in France, that has decided the same disputes between the same parties on the same cause of action.

French courts have consistently held that granting an exequatur is a purely jurisdictional act, not a measure of execution.[21] As such, it cannot, in itself, violate the State's immunity from execution.

The sovereign debtor may nonetheless oppose the exequatur on jurisdictional grounds – for example, by alleging that the original tribunal lacked jurisdiction, that due process was violated, or that recognition of the arbitral award would be contrary to French international public order (*ordre public international*). These grounds are narrowly construed but regularly raised in practice.

In the specific context of arbitral awards, the filing process is standardised (whereas the recognition of foreign court judgments depends on the applicable treaty regime). A French lawyer typically files an *ex parte* petition with the Paris enforcement judge, enclosing:

- the authenticated original of the arbitral award or foreign judgment;
- a sworn translation if required; and
- in the case of arbitral awards, evidence of the arbitration clause's authenticity.

Routine applications are processed administratively, often within four weeks.

Exequatur of international arbitral awards	
What to file	• The original arbitral award (each page stamped by a sworn translator).* • A copy of the arbitral award (also stamped).* • The original certified French translation of the award.* • A copy of the certified translation.* • Two copies of the arbitration clause *'meeting the requirements of authenticity'* and its French translation.** * Only required when the arbitral award is not in French. ** Authenticity may be established by an affidavit from a signatory of the clause.
Filing method	A French-qualified lawyer must lodge the bundle at the general lawyers' counter of the Paris Judicial Court (*tribunal judiciaire de Paris*). Each of the four versions of the arbitral award (original, copy, and both translations) must bear the following handwritten note in ink: *'Je soussignée, Maître* [name]*, en qualité de représentant de* [client]*, requiers l'exequatur de la présente sentence arbitrale et sollicite la délivrance d'une expédition revêtue de la formule exécutoire.* *Fait le* [date] *à Paris* [Signature].'
Processing	Submissions are processed in the order received. The court clerk issues a docket number. Absent any manifest conflict with French international public policy, the President of the Court will issue the exequatur order without a hearing. Do not contact the registry before one month has elapsed.
Timing	The exequatur order is usually issued within one month of lodging the bundle.
Deliverables	Counsel collects: • the signed order; and • at least one executory copy bearing the enforcement formula (*formule exécutoire*). No court fees apply; translation and reproduction costs are borne by the applicant.

Exequatur of international arbitral awards	
Appeal	The debtor may appeal within one month of service, pursuant to Article 1525 of the French Code of Civil Procedure. The appeal is not suspensive unless a stay of enforcement is obtained.

Attachment: precautionary measures and forced execution

Once an arbitral award or foreign judgment has been recognised in France, the creditor's first practical step is often to seek a precautionary attachment (*saisie conservatoire*): a court-authorised freezing measure designed to prevent the State from transferring or dissipating the targeted asset while enforcement proceedings are ongoing.

As sovereign immunity reaches its fullest effect at the enforcement stage, French law imposes an additional filter. No precautionary measure may be taken against State-owned property without prior authorisation from the Paris enforcement judge (*juge de l'exécution de Paris*). Such authorisation is granted by way of an *ex parte* order (*ordonnance sur requête*), and only where one of the three exceptions set out in Article L. 111-1-2 of the CCEP is clearly met.

Once granted, the same Paris enforcement judge retains exclusive jurisdiction over any subsequent challenge to the attachment.

Steps to filing an application for precautionary measures

Step	Description
1	The application must be filed with the Paris enforcement judge in two copies. It must be reasoned and accompanied by a detailed list of supporting documents (Article R. 111-2 of the CCEP).
2	The order issued upon application must state the grounds on which it is based. It is directly enforceable on the strength of the original document (Article R. 111-3 of the CCEP).
3	The creditor must proceed with enforcement in accordance with the specific requirements applicable to each measure (Article R. 111-4, para. 1, of the CCEP).
4	The bailiff (*commissaire de justice*) must execute the measure upon presentation of the judge's authorisation. When the enforcement measure must be notified to the foreign State, it must be served with a copy of both the application and the order (Article R. 111-5 of the CCEP).
5	If the application is dismissed, an appeal may be lodged within 15 days. It is processed and decided as a non-contentious matter. Conversely, if the application is granted, any interested party may refer the matter to the judge who issued the order, who may modify or revoke the order (Article R. 111-6 of the CCEP).

If the debt remains unpaid, the creditor may apply to convert the precautionary measure into a forced execution (e.g., forced sale). At that stage, the court will reassess sovereign immunity. If there remains any doubt as to whether the asset is used for sovereign or diplomatic purposes, authorisation will be denied.

This two-tier control system – court-controlled provisional attachment followed, where applicable, by court-controlled realisation – ensures that State assets are not sold unless they demonstrably fall outside the sphere of sovereign activity.

Diplomatic considerations

A further key procedural dimension is France's strict adherence to diplomatic protocols when proceedings

involve a sovereign State. The service of legal documents on a foreign State is subject to specific rules designed to preserve international comity and avoid diplomatic incidents.

Pursuant to Article 684 of the French Code of Civil Procedure, any summons or court decision addressed to a State must be served through diplomatic channels, unless an applicable international treaty provides otherwise. In practice, this typically involves transmission via the Public Prosecutor and the French Ministry for Europe and Foreign Affairs, which in turn notify the foreign State's Ministry of Foreign Affairs. This practice reflects Article 22 of the 2004 UN Convention, which provides that notification is deemed effective upon receipt by the Ministry of Foreign Affairs of the recipient State.

Failure to comply with these service formalities may render the proceedings void. French courts have consistently upheld this requirement.[22]

When a creditor seeks to attach property that may serve diplomatic or military purposes, prior notification to the French Ministry for Europe and Foreign Affairs is often required to ensure that enforcement does not breach France's international obligations. This is particularly important given that certain categories of assets – embassies, consulates, military bases, and related bank accounts – enjoy near-absolute immunity and are not subject to seizure under any circumstances.

Practical aspects of asset tracing in France

While France offers a structured legal framework for recognition and enforcement, the practical reality is that many sovereigns hold few – if any – assets within reach of French jurisdiction. As a result, asset tracing often emerges as the most challenging step in the enforcement process, requiring a carefully calibrated combination of legal strategy, financial intelligence, and procedural precision.

Locating assets: limited visibility and institutional reluctance

The initial challenge is structural: sovereign States tend to maintain minimal commercial assets in enforcement-friendly jurisdictions. Most of their property – such as embassy premises, consulate buildings, and central bank reserves – is either immune from execution or subject to heightened statutory protection under French law.

Even when a State has commercial interests – e.g., through national airlines, oil companies or infrastructure ventures – tracing beneficial ownership and establishing the commercial use of specific assets can be complex. Such assets are frequently held through layers of subsidiaries or contractual arrangements, making it difficult to establish a direct link to the sovereign.

French financial institutions add another layer of difficulty. Strict banking secrecy and data protection laws mean that banks rarely disclose information voluntarily. In the absence of a court order, informal approaches are generally ineffective, compelling creditors to resort to judicially authorised disclosure, and, where appropriate, to engage asset tracing professionals.

Available tools for asset tracing

In these complex proceedings, local counsels play an indispensable role. Beyond gathering facts, French lawyers act as strategic intermediaries, translating intelligence into legally effective action. We assist creditors not only in identifying potential assets but also in assessing whether those assets can realistically be subject to enforcement under French law, given the strict application of sovereign immunity.

We systematically map out potential garnishees – such as French companies owing payments to the State, local subsidiaries, or commercial partners – and guide the client through every procedural stage, from seeking disclosure orders to implementing precautionary attachments. This targeted legal guidance is essential to avoid wasted efforts and to ensure that any intelligence gathered translates into concrete, enforceable action.

In practice, two key tools complement this strategic approach: access to the Ficoba bank account registry; and the engagement of reputable private investigative firms. Both must be used with care and in close coordination with local counsel, who serve as the orchestrator of the enforcement process, ensuring that every step remains cost-effective and legally compliant.

Ficoba: France's national bank account registry

Ficoba (*Fichier des comptes bancaires et assimilés*) is a national database maintained by the French tax authorities, which lists the existence of bank accounts held in France by individuals and legal entities. While it does not reveal account balances or transaction history, it does indicate the existence of accounts, their location, and the name of the account holder.

However, its practical use in sovereign enforcement is limited for several reasons:

- Access is restricted: only bailiffs (*commissaires de justice*)[23] can request a Ficoba search, and they must act under a valid court order.
- Procedure is slower for States: unlike standard domestic enforcement, where the officer can quickly run a search, searches involving a foreign State require a special paper form processed by the tax administration – often taking weeks or even months.
- Limited visibility of sovereign accounts: States rarely open bank accounts in France under the name 'Republic of X'. If such accounts exist, they are typically linked to embassies or diplomatic missions and thus benefit from absolute immunity from execution.

Therefore, while Ficoba is an efficient and often productive tool in domestic debt recovery, it often proves disappointing for sovereign enforcement. As legal practitioners, we must manage client expectations accordingly and carefully weigh the potential benefits of a Ficoba search against the practical challenges of its implementation.

Private investigative firms

Given these limitations, specialised investigative firms often play a pivotal role in sovereign enforcement. These firms leverage open-source intelligence, confidential human sources, and global networks to trace assets indirectly connected to the State, including commercial subsidiaries, contractual receivables, or trade flows.

However, these services can be costly and may yield more leads than clear, enforceable targets. That makes the role of legal counsel essential:

- Framing the inquiry: counsel must define the scope of the investigation, specifying which types of assets are legally attachable. For example, a targeted search might prioritise receivables owed by private third parties in France or bank accounts held domestically, rather than physical assets such as aircraft, vessels, or cultural property that may attract immunity or provoke diplomatic resistance.
- Interpreting findings: raw intelligence must be legally actionable. Counsel must determine whether the identified asset use is truly commercial, assess the ownership structure, and assemble the documentary evidence necessary to convince the enforcement judge.
- Rapid deployment: when investigators identify a temporary or in-transit asset within French jurisdiction – such as an aircraft scheduled to land in Paris or a vessel docking at Marseille – local counsel must be prepared to file an urgent application with the Paris enforcement judge and dispatch a *commissaire de justice* immediately, before the asset reaches the territory.

Pitfalls and key strategic considerations

Tracing sovereign assets in France presents not only legal and evidentiary challenges but also significant practical risks that creditors must manage carefully. One major pitfall is **cost**. Comprehensive asset

tracing can rapidly become disproportionate in relation to the value of the claim. This is where experienced counsel proves essential: by designing a targeted and realistic search strategy, lawyers help clients avoid wide-ranging 'fishing expeditions' that generate substantial investigation fees without yielding viable enforcement prospects. Early and clear advice on budget expectations and recovery prospects is crucial to keep efforts cost-effective.

Legal risks are another key concern. French banking secrecy and data protection laws are strict, and breaching them can expose creditors to civil or even criminal liability. All financial intelligence must be obtained through lawful means, and any evidence must be admissible before a French court. As legal counsel, it is our role to ensure that both investigative work and procedural steps remain fully compliant with local laws.

Understanding how sovereign immunity applies is equally critical. Not every asset identified will be lawfully seized: French courts scrutinise the nature and function of each targeted asset. Assets used for diplomatic, consular, or non-commercial governmental purposes generally enjoy absolute immunity from execution, whereas those linked to a purely commercial activity may be attachable. For instance, an embassy bank account is typically immune, while ticket revenues collected by a State-owned airline may not be.

Finally, practical experience shows that **some assets are more accessible than others**. Liquid assets held in domestic bank accounts or receivables owed by local counterparties tend to be easier to garnish than physical assets such as aircraft, vessels, or artwork, which raise additional evidentiary, diplomatic and logistical barriers.

In short, successful enforcement requires meticulous planning, robust legal judgment, and close collaboration between counsel and reputable investigators. Each step of the process must turn intelligence into enforceable outcomes, always within the limits imposed by French law.

Enforcement of arbitral awards or court judgments against a foreign State in France is legally feasible but operationally complex. Success depends less on any individual procedural step than on a holistic strategy that begins at the outset and extends through asset tracing, courtroom advocacy and, where necessary, diplomatic risk management.

The table below distils the key practical lessons practitioners should bear in mind when planning or pursuing sovereign enforcement in France:

- draft robust, unambiguous waiver clauses from the beginning;
- conduct granular and thorough due diligence to identify where attachable State assets are located; and
- assess each enforcement measure carefully against its cost, recovery prospects, and potential political or diplomatic consequences.

Taken together, these considerations highlight that effective enforcement against sovereigns in France is a multidisciplinary exercise – one that requires close coordination between legal counsel, investigators and, where appropriate, crisis management teams.

Section	Key points
Prior to any dispute	

Drafting effective waivers	• Ensure that contracts or investment agreements contain:
	  • Explicit waivers regarding execution immunity.
	  • Clear identification of assets not covered by immunity.

Section	Key points
Enforcement process	
Choosing the right enforcement forum	• Assess France's suitability: does the State hold accessible assets within French jurisdiction? • Consider parallel proceedings in other jurisdictions – where the sovereign maintains attachable commercial assets – to maximise pressure and enforcement potential. • Weigh costs *vs* benefit: protracted enforcement proceedings may erode recovery. In some cases, transactional negotiations may prove more effective.

Anticipating sovereign defence tactics	• Expect States to argue that:
	  • The targeted assets serve diplomatic or sovereign functions.
	  • Waiver language is ambiguous or ineffective.
	  • Enforcement violates international public order.
	• Be prepared for political or media pushback, especially in high-profile cases.

Managing diplomatic and reputational risks	• States may retaliate through diplomatic pressure, pre-emptive parallel proceedings or other countermeasures aimed at frustrating enforcement. • Companies should carefully assess reputational exposure and PR strategy: some investors favour discreet settlements over aggressive asset seizures that risk triggering political or media backlash.
Alternative enforcement strategies	• Pursue structured negotiations in parallel with legal action ('carrot and stick' approach). • Such negotiated solutions can also limit reputational fallout and preserve commercial relationships where appropriate. • Consider political risk insurance or third-party funding to mitigate costs and financial exposure. • Explore partial settlements, debt swaps, or other creative solutions where full recovery may be impractical.
Emerging trends to watch	• Potential ratification of the 2004 UN Convention, which could help harmonise and clarify enforcement standards across jurisdictions. • Ongoing developments in specialised asset tracing technologies and digital intelligence tools.

Endnotes

1 Court of Cassation, First Civil Chamber, 6 Feb. 2007, No. 04-13.108.

2 Court of Cassation, First Civil Chamber, 1 Oct. 1985, No. 84-13.605.

3 Court of Cassation, Civil Chamber, 22 Jan. 1849, *Spanish Government v. Lambèze*.

4 Law No. 2016-1691 of 9 December 2016.

5 The term 'measures' refers to either 'conservatory measures' or 'enforcement measures' – the latter also being known as 'execution measures' or 'measures of forced execution'.

6 Court of Cassation, First Civil Chamber, 6 Jul. 2000, No. 98-19.068.

7 The term '*spécial*' is used in the decision.

8 Court of Cassation, First Civil Chamber, 13 May 2015, No. 13-17.751.

9 Court of Cassation, First Civil Chamber, 10 Jan. 2018, No. 16-22.494.

10 Court of Cassation, First Civil Chamber, 24 Jan. 2018, No. 16-16.511.

11 Court of Cassation, First Civil Chamber, 13 Mar. 2024, No. 21-17.599.

12 Court of Cassation, First Civil Chamber, 14 Mar. 1984, No. 82-12 462.

13 Court of Cassation, First Civil Chamber, 1 Oct. 1985, No. 84-13.605.

14 Court of Cassation, First Civil Chamber, 25 Jan. 2005, No. 03-18.176.

15 Paris Court of Appeal, 17 Oct. 2019, No. 19/02411.

16 Court of Cassation, First Civil Chamber, 3 Nov. 2021, No. 19-25.404.

17 Paris Court of Appeal, 19 May 2022, No. 21/109197.

18 Court of Cassation, First Civil Chamber, 3 Feb. 2021, No. 19-10.669.

19 Court of Cassation, First Civil Chamber, 12 Jun. 2025, No. 21-11.991.

20 For example: Court of Cassation, First Civil Chamber, 7 Jan. 1964; Court of Cassation, First Civil Chamber, 6 Feb. 1985; and Court of Cassation, First Civil Chamber, 20 Feb. 2007, No. 05-14.082.

21 Paris Court of Appeal, 26 Jun. 1981 (*Benvenutti et Bonfant v. Republic of Congo*); and Court of Cassation, First Civil Chamber, 11 Jun. 1991, No. 90-11.282 (*SOABI v. Republic of Senegal*).

22 Court of Cassation, Second Civil Chamber, 2 Jun. 2016, No. 14-11.576.

23 Formerly called '*huissier de justice*'.

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