Thomson Reuters™

Pre-Action Letters: Overview (France)

by Franck Poindessault and Milan Sikyurek, Watson Farley & Williams

Status: **Law stated as of 01 Oct 2025** | Jurisdiction: **France**

This document is published by Practical Law and can be found at: **content.next.westlaw.com/w-034-0635**
Request a free trial and demonstration at: **tr.com/practicallaw-home**

A Practice Note providing an overview of the key issues to consider before issuing or responding to a pre-action letter in France.

When instructing local counsel or dealing with a dispute with an international element or regulatory perspective, a legal practitioner needs to know about the pre-action requirements, including the rules and legal practice in relation to pre-action letters. In most jurisdictions, it is not mandatory to send or respond to a pre-action letter for many types of action. In these cases, parties can commence proceedings without making an offer of compromise or taking any other step.

Regardless of the pre-action requirements, it is generally customary for parties to send a warning or demand letter to the adverse party before commencing court proceedings. It is also customary for adverse parties to reply, even if there is no requirement to respond. This is usually the case unless the situation demands otherwise (see *Disputes Not Suitable for Pre-Action Letters*).

This Note provides an overview of the rules in relation to pre-action correspondence from a potential claimant or their lawyer before initiating legal proceedings, which addresses a potential claim or suit, or defence to a potential claim or suit. It explains the practice of notifying the prospective defendant before an action commences in France and its use and effectiveness in resolving disputes amicably. It also provides practical drafting tips for both drafting and responding to pre-action correspondence.

Rules on Pre-Action Letters

Under French law, the equivalent of a pre-action letter is called a *mise en demeure* (formal demand).

It is only standard practice to send a pre-action letter in certain types of proceeding. However, there is a statutory requirement to do so for specific types of claims (see also *Disputes Suitable for Pre-Action Letters*).

A pre-action letter, in addition to notifying a potential defendant that a claim is about to be filed, usually requests that the recipient pay, perform an action, or immediately cease engaging in certain activities. It is usually perceived by the potential defendant as a threat to issue legal proceedings.

The circumstances in which pre-action letters are mandatory are specific. They include:

- Before a subcontractor's action against the main contractor (Article 12, Law no 75-1134 of 31 December 1975).
- Before a creditor can sue directly a shareholder of a certain type of company (*société en nom collectif*) (SNC) for its debts (Article L221-1, Commercial Code (*Code de commerce*)).
- When a debtor requests early reimbursement of the capital (Cassation Court (Cour de cassation), 1st Civil Chamber, 22 June 2017, no 16-18.418).
- Circumstances related to the non-performance of a contract, such as:
  - where the non-breaching party wishes to claim damages for breach of contract (Article 1231, Civil Code (*Code civil*));
  - where the non-breaching party wishes to rely on a contractual penalty clause (Article 1231-5, Civil Code);

- where the non-breaching party wishes to terminate a contract with the breaching party; or
- where the non-breaching party wishes a third party to perform the contractual duties of the breaching party.

In these circumstances related to the non-performance of a contract, unless the situation is an emergency, the non-breaching party cannot initiate a pre-action letter unless it has first given the breaching party formal notice to execute its obligation within a reasonable time (Article 1226, Civil Code). However, in 2023, the Cassation Court ruled that the formal notice is not necessary when it is clear from the circumstances that the formal notice would have no actual effect on the breaching party (Cassation Court, Commercial Chamber, 18 October 2023, 20-21.579).

On 16 June 2021, the Cassation Court requested a preliminary ruling from the Court of Justice of the European Union (CJEU) on whether exclusion of the obligation to give a notice of default in consumer contracts is contrary to EU law (specifically, Article 3, paragraphs 1 and 4 of the Unfair Contract Terms Directive (93/13/EEC).

The CJEU had previously stated that Article 3, paragraph 1 of the Unfair Contract Terms Directive must be interpreted as meaning that the examination of the potential unfairness of a clause in a consumer contract requires the national court to determine whether that term causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer (*Banco Primus SA v Gutierrez Garcia (Case C-421/14) EU:C:2017:60*).

In its judgment of 8 December 2022, the CJEU ruled on the request of the Cassation Court and held that:

- The *Banco Primus* decision must be interpreted as meaning that the criteria for assessing the unfairness of a contractual term, in particular the significant imbalance between the rights and obligations of the parties to the contract to the detriment of the consumer, cannot be understood as being cumulative or alternative. They must be understood as forming part of all the circumstances surrounding the conclusion of the contract in question, which the national court must examine to assess the unfairness of a contractual term.
- The Unfair Contract Terms Directive must be interpreted as precluding the parties to a loan contract from including a clause that expressly and unequivocally provided that the contract could be automatically cancelled (that is, without a formal demand or notice) in the event of late payment of an instalment in excess of a certain period, if that clause had not been individually negotiated and created a significant imbalance between the rights and obligations of the parties under the contract, to the detriment of the consumer.

(*Caisse regionale de Credit mutuel de Loire-Atlantique and du Centre Ouest (C-600/21) EU:C:2022:970*.)

In two judgments of 22 March 2023, the Cassation Court applied the CJEU's approach on the assessment of the unfairness of acceleration clauses without prior formal notice or reasonable notice (*Cassation Court, 1st Civil Chamber, 22 March 2023,* 21-16.476 *and* 21-16.044).

Disputes Suitable for Pre-Action Letters

Generally, pre-action letters are used in contract cases. The letter describes the contractual obligations the sender wants the recipient to perform and the threat to issue legal proceedings if the latter fails to perform these obligations.

In some cases, sending a pre-action letter is required by law (see *Rules on Pre-Action Letters*).

The parties can agree that prior formal notice is not required. The validity of these clauses is accepted in case law. However, the judge must verify the potential unfair nature of the clauses. This was decided in a matter where the Cassation Court set aside a ruling because of "the unfair nature of a clause authorising ... immediate payment ... without prior formal notice or summons or reasonable notice." (*Cassation Court, 1st Civil Chamber, 22 March 2023, Nos* 21-16.476 *and* 21-16.044*).*

Technically, pre-action letters can be sent in any dispute, and it is common practice to do so. In most cases, under Article 1344 of the Civil Code, local courts consider service of process but also a formal request to perform contractual obligations or an act of sufficient interpellation to have the same effect as that of a pre-action letter.

Disputes Not Suitable for Pre-Action Letters

The claimant has no obligation to send a pre-action letter when the law does not specify that a pre-action letter must be sent (see *Rules on Pre-Action Letters*).

The main field of law in which a pre-action letter is not required is tort law (*responsabilité civile*).

Furthermore, French law provides for an exception in certain cases of emergency (Article 1226, French Civil Code).

Pre-Action Procedures for Different Types of Disputes

There is no specific pre-action procedure. While various legal provisions mention pre-action letters, there are no specific requirements relating to the form and timing of such letters.

In most cases, and when pre-action letters are required, the law specifies the timescale for the recipient's response before the claimant can file an action. For example:

- In the circumstances specified in *Rules on Pre-Action Letters* regarding the liability of shareholders of SNCs, the claimant can file a suit (against shareholders) eight days after sending the letter to the SNC if no satisfactory response is received (Article R221-10, Commercial Code).
- In some cases, the timescale for response before a claim can be submitted can be up to several months. For example, in insolvency cases, creditors can sue the court-appointed manager two months after sending a pre-action letter (Article R651-4, Commercial Code).
- Under public law, the procedure for starting proceedings is generally to send a letter to the state or public body and challenge in court the answer or the lack of answer.

Contractual terms can also specify rules relating to pre-action letters, for example:

- Specifying how a pre-action letter must be sent.
- Determining the content of the pre-action letter.
- Setting out the timescale for response.
- Detailing any pre-action procedures.

Contractual terms cannot exclude statutory requirements. For example, the contract must generally provide for a reasonable timescale for responding to a pre-action letter (Cassation Court, 3rd Civil Chamber, 16 October 1990, 89-15.670; Cassation Court, 3rd Civil Chamber, 5 June 1991, 89-21.166; Cassation Court, 3rd Civil Chamber, 11 May 1995, 93-18.154; Cassation Court, 1st Civil Chamber, 29 May 2024, 23-12.904).

Who Can Send a Pre-Action Letter?

Lawyers generally send pre-action letters to emphasise the threat of legal proceedings if the recipient does not comply. As the letter is sent directly to a party (and not to its counsel), a lawyer sending a pre-action letter must comply with ethical rules of the legal profession (such as Decree no 2005-790 of 12 July 2005) and refrain from abusing their position to make the recipient believe that compliance is mandatory.

In some cases, the claimant can also ask a bailiff to send the pre-action letter. This is usually done:

- To give the action a more official nature (as it brings weight to the claimant's arguments and helps to show that the party is truly willing to bring legal action).
- When the claimant is unable to locate the defendant and has had to use a bailiff to do so.

The potential claimant themselves or an in-house lawyer can also send a pre-action letter.

Contents of Pre-Action Letter

Unless specific statutory requirements apply, there are no content requirements for pre-action letters. However, in practice, the letter should set out what is expected from the defendant, and usually when it is expected.

A contract can provide how and when a pre-action letter must be sent, unless specific requirements apply (for example, a pre-action letter in an insurance dispute must be sent by registered mail with acknowledgment of receipt, and contract terms cannot specify otherwise (Article R113-1, Insurance Code (*Code des assurances*)).

If the pre-action letter is delivered by a bailiff at the claimant's request, the bailiff notification must include the following details:

- If the claimant is an individual:
  - the date of the letter;
  - the claimant's name; and
  - the claimant's profession.
- If the claimant is a company:
  - the date of the letter;
  - the company's name and corporate form;

  - the company's representative body;
  - the company's date of incorporation; and
  - the location of the company's head office.
- The bailiff's name and address.
- The name and address of the recipient.

(Article 648, Civil Procedure Code (*Code de procédure civile*).)

The Cassation Court clarified that a formal notice is effective even if it was not actually received (Cassation Court, 1st Civil Chamber, 20 January 2021, 19-20.680).

French case law has also ruled on cases involving multiple recipients, stating that a formal notice must be served on each co-borrower (*CA Bourges, 8 February 2024, No. 23/00075*).

Response to a Pre-Action Letter

There are no legal requirements governing the details to include in a response to a pre-action letter. Most applicable legal requirements compel the claimant to send a pre-action letter before being able to file a claim. Therefore, the response should specify the action the defendant is willing to take to resolve the matter.

Standard Forms

There is no standard form of response.

Time Limit for Response

In some cases, the right to file an action with a court is subject to a waiting period after sending a pre-action letter.

However, unless provided for in a particular statutory provision, there is no set time limit.

In practice, the claimant usually includes in the pre-action letter a time limit after which proceedings will be commenced.

Failure to Respond

Under French law, there is generally no negative implication if the recipient chooses not to respond to a pre-action letter (that is, silence will not be construed as an acceptance of the claim mentioned in the letter).

The only risk in not responding to a pre-action letter is usually that no response within a certain time could allow the sender to start proceedings. However, there are exceptions. For example, in administrative law disputes, silence on the administration's part for more than two months after a communication is interpreted as implicit acceptance of the communication (Law no 2013-1005 of 12 November 2013).

In practice, a pre-action letter has its own negative implication for the defendant whether they respond or not, for example:

- In sale of goods cases, the risk of loss shifts when the pre-action letter is received (Article 1344-2, Civil Code).
- Calculation of damages for delay in performance of an obligation starts when the letter is received (Article 1344-1, Civil Code). (This applies in all cases, and not just when sending a pre-action letter is a statutory requirement.)
- A claimant can only claim monetary damages after sending a pre-action letter (see *Disputes Suitable for Pre-Action Letters*).

Suspension of Limitation Period

Generally, a pre-action letter does not interrupt the running of the limitation period. However, in certain cases, pre-action letters may do so, for example in:

- Insurance matters (Article L114-2, Insurance Code).
- Social security matters, where a formal notice sent by registered letter with acknowledgement of receipt interrupts the limitation period (Cassation Court, Plenary Assembly, 7 April 2006, 04-30.353).

The limitation period is also interrupted when a party acknowledges their obligation (Article 2245, Civil Code). This could happen:

- In a response to a pre-action letter.
- If the claimant hires a bailiff to notify the defendant directly, by the defendant acknowledging their obligations to the bailiff.

To protect their position in relation to limitation, the claimant usually starts legal proceedings, which interrupts the running of the limitation period (Article 2241, Civil Code).

The parties must comply with pre-action rules, if any, before starting the legal proceeding. However,

a pending legal proceeding does not prevent the parties from resolving their dispute amicably or signing a settlement agreement.

Effectiveness of a Pre-Action Letter

A pre-action letter is arguably a good means to avoid legal proceedings if the parties intend to resolve the dispute. In other cases, pre-action letters are usually used to set out the facts of the other party's alleged breach.

Most of the time, a pre-action letter helps to avoid litigation and is mainly used as a threat of legal action. If the defendant is unable to perform its obligation despite the pre-action letter, the letter at least allows the parties to start negotiations and discussions. For example, the recipient may request a longer period than the deadline prescribed by the pre-action letter or ask for a payment schedule.

If the pre-action letter does not lead to an amicable settlement of the dispute, it may qualify as an attempt at conciliation or mediation, if such attempt is required by law before bringing court proceedings (Article 54, Civil Procedure Code).

Practical Tips

It is advisable to send a pre-action letter to legal counsel to avoid legal issues. When drafting a pre-action letter, lawyers often employ techniques to encourage the recipient to perform their obligations (for example, citing specific case law).

For example, a letter can be written in such a way to encourage the recipient to send a response acknowledging their obligations, resulting in a suspension of the limitation period (see *Suspension of Limitation Period*).

Standard Clauses in a Pre-Action Letter

The clauses in Standard document, Letter before action: Cross-border are and can be included in any pre-action letter under French law.

Pre-action letters sent by French lawyers should also contain a final sentence inviting the recipient to forward the letter to their lawyer (to allow the start of discussions between lawyers and encourage settlement between the parties through their lawyers) (see *Practical Tips*).