UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI, GIURIDICI E STORICO-POLITICI

Towards more EFfective enFORcemenT of claimS in civil and commercial matters within the EU EFFORTS

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Luxembourg

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I. Pre-selection

In this report, insight is provided into Luxembourgish case law on the regulations covered by the EFFORTS project (the Brussels 1 bis Regulation and, as far as relevant, its predecessor Brussels 1 – both limited to rules of recognition and enforcement -, the EEO Regulation, the EPO Regulation, the ESCP Regulation, the EAPO Regulation).

The report relies on several sources.

Firstly, a new online available search system, freely available at https://justice.public.lu/fr/jurisprudence.html, was fruitfully utilized: this search system allowed carrying out a search processing through "base de jurisprudence JUDOC"[1] and "juridictions judiciaires."[2] Luxembourgish courts have made many of their judgments publicly available in this search system. A search carried out until May 2021, making use of the numbers of the Regulations to search relevant cases, gave the following result in "base de jurisprudence JUDOC": 8 cases on the Brussels 1 bis Regulation, 79 on its predecessor Brussels 1, 2 on the EEOR, none on the EPOR, 1 on the ESCPR, none on the EAPOR. In "juridiction judiciaries", the numbers of cases retrieved were: 58 on the Brussels 1 bis Regulation, 257 on the Brussels 1 Regulation, 4 on the EEOR, 11 on the EPOR, 6 on the ESCPR, 1 on the EAPOR. The most relevant of these cases will be pointed out below.

Moreover, regarding the Brussels 1 Regulation, case law as presented and analysed in a report written by Gilles Cuniberti and Anthi Beka in the context of a previous MPI-study[3] was used.

Lastly, the report also relies on the collection of case law that was retrieved during the IC2BE-project.[4] The IC2BE-project focused on four of the five regulations that are studied in the EFFORTS project,

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[1] https://justice.public.lu/fr/jurisprudence.html https://justice.public.lu/fr/jurisprudence/jurisprudence-judoc.html

[2] https://justice.public.lu/fr/jurisprudence/juridictions-judiciaires.html

[3] See https://op.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1, (the report of Cuniberti and Beka is dated 2016; the book derived from this project was published as B. Hess and P. Ortolani, *Impediments of National Procedural Law to the Free Movement of Judgments. Luxembourg Report on European Procedural Law Volume 1*, 2019 (i.e. the publication of Volume 1 - the first strand of the MPI-study). Several of the decisions/summaries of decisions on the Brussels 1 bis Regulation are recapitulated from the report of Cuniberti and Beka.

[4] This case law was presented and analysed in the extensive IC2BE Report on Luxembourg (V. Van Den Eeckhout, "Report "Luxembourg" (IC2BE)" 2019, 84 pages, as submitted to the European Commission in 2019) as well as in the IC2BE book chapter on Luxembourg (V. Van Den Eeckhout and C. Santaló Goris, "Luxembourg", in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 275-302).

namely the EEOR, the EPOR, the ESCPR and the EAPOR.[5] In the IC2BE-project, in total 822 Luxembourgish cases were collected by the MPI Luxembourg: 144 EEO-cases, 147 EPO-cases, 527 ESCP-cases and 4 EAPO-cases. These cases were mainly retrieved at the Cité Judiciaire of Luxembourg, with the help of the Cité Judiciaire of Luxembourg.[6] Summaries of the most relevant and representative cases have been uploaded to the IC2BE-database[7] and are freely accessible there. In total, the summaries of 79 Luxembourgish cases have been uploaded to this database: 11 on the EEOR, 36 on the EPOR, 31 on the ESCPR and 1 on the EAPOR. Some of those cases and some of the summaries of those cases and discussions thereof are incorporated into this report.

At the end of the report, some statistical information is inserted. The inserted tables are derived from documentation that is available at https://justice.public.lu/fr/publications.html . : regarding *numbers* of cases, information was found in reports that are available from this site. The reports[8] that have been consulted on this site demonstrate, inter alia, the very high numbers of EPO cases and ESCP cases in Luxembourg.

Noteworthy indeed is that in Luxembourg, a high application of the EPOR and the ESCPR can be observed. This might be, inter alia, related to the highly cosmopolitan character of the country and the

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[5] The Brussels 1 bis Regulation was not studied as such in the IC2BE-project; and Luxembourg was not included in the predecessor of the IC2BE project, the EUPILLAR project - https://w3.abdn.ac.uk/clsm/eupillar/#/home Meanwhile, other projects have been carried out on the Brussels 1 bis Regulation, though with a different focus than EFFORTS, see the Judgtrust project (https://www.asser.nl/projects-legal-advice/regulation-bia-a-standard-for-free-circulation-of-judgments-and-mutual-trust-in-the-eu-judgtrust-2018-2020/) and the project EN2BRIA (https://dispo.unige.it/node/1042).

[6] The cases were found in the "Regain" database of the Cité Judiciaire Luxembourg. It is of particular note that, on the one hand, Regain did not cover every case since the creation of the Regulations and that, on the other hand – even from the moment cases started to be uploaded to Regain – it was not absolutely complete. In reality, the numbers of cases are, thus, even higher than the number of cases retrieved by the MPI Luxembourg during the IC2BE research. This was also confirmed in the documents "la justice en chiffres" to which is referred below, in footnote 8.

[7] Available at https://ic2be.uantwerpen.be/?_ga=2.20506045.42244589.1626270068-1695268062.1602579720#/search/national

[8] See the reports "la justice en chiffres" available at https://justice.public.lu/fr/publications.html (https://justice.public.lu/fr/publications.html?r=f%2Faem_theme%2Ftags_theme%3Ajustice%5Cjustice-en-chiffres&). See also the report "Juridictions judiciaires. Rapport d'activité 2020", also available at the site https://justice.public.lu/fr/publications.html (https://justice.public.lu/dam-assets/fr/publications/rapport-activites-judiciaires/Rapports-juridictions-judiciaires-2020.pdf , https://justice.public.lu/fr/publications/juridictions-judiciaires/rapports-juridictions-judiciaires-2020.html (made available in May 2021), also including numbers of cases.

circumstance that many commuters work in Luxembourg[9] – whereby many cases are "commuter" related cases: many cases initiated by Luxembourgish dentists, cases initiated by Luxembourgish lawyers recovering their lawyer fees from their clients in neighbouring countries, cases initiated by the Administration Communale de la Ville de Luxembourg regarding the recovery of ambulance costs, cases regarding aviation claims etc., were retrieved in which European uniform procedures were applied. The very high number of ESCP cases in Luxembourg - especially when taking into account that Luxembourg is a small country - has been indicated as *atypical* when comparing it to the practice in other countries.[10]

More information on case law regarding the EPOR and the ESCPR as well as on each of the regulations will be provided below: Luxembourgish case law on each of the regulations will be discussed below – starting with the Brussels 1 bis Regulation, and subsequently discussing the case law on the EEOR, EPOR, ESCPR and EAPOR - followed by a presentation of recurring issues and a summary with an overall assessment.

[9] The high number of applications of the Regulations in Luxembourg was also confirmed during the IC2BE-workshops that were organized at the MPI Luxembourg, particularly by the Luxembourgish judges present. As stated by a Luxembourgish judge during one of those workshops, "the instruments are really needed in Luxembourg, maybe due to the cosmopolitan nature of the population and above all, due to the high number of commuters residing in France, Germany and Belgium, but working in Luxembourg." For other factors that may (also) explain the high number of, particularly, ESCP-cases, see below.

[10] See V. Van Den Eeckhout and C. Santaló Goris, "Luxembourg", in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 299. See also J. von Hein and T. Imm, "Conclusions and Recommendations" in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 529-574.

II. Brussels I bis Regulation and its predecessor Brussels I Regulation

Representative/relevant case law

Cour d'appel 8 Janvier 2009 (case no 32781)

Decision of the Court of Appeal in a judgment of 8 January 2009[11] regarding the argument of irreconcilability of decisions – the argument was considered by the court but rejected, as the decisions had both been rendered in the same foreign State (Belgium).

Judgment of 10 February 2011 (case no 35005)

The plaintiff initiated proceedings in a lower claims court in France (*tribunal d'instance*). The French court then transferred the case to the main first instance court (*tribunal de grande instance*). The latter court was supposed to inform the parties of the transfer by sending them a letter with acknowledgment of receipt (French CPC, Art. 97). The plaintiffs appeared before the *tribunal de grande instance*, but the defendants did not, and later argued that they had never received the letter of transfer. The Luxembourg court denied enforcement to the resulting judgment, on the ground that the plaintiff had the burden of proof to show that the defendants had been properly notified under Art. 34 (2), and that he could provide such proof.

Cour d'appel 13 Janvier 2013

Decision of the Court of Appeal dated 13 January 2013[12] - regarding issues of public order - also as related to issues of punitive damages - with reference to the decision of the CJEU in the Owens Bank case, as the case was in fact about an originally American decision and a French decision on the exequatur of this American decision, with a certificate; recognition in Luxembourg was denied.

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[11] *BIJ* 2009, 78.
Available at
https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2009/20090108_32781exequatur-accessible.pdf

[12] Available at
https://anon.public.lu/Décisions%20anonymisées/CSJ/07_Chambre%20civil/2021/20210113_CAL-2020-00584-CAL-2020-00632-accessible.pdf

Cour d'appel 24 Janvier 2013 (case no 38614) [13]

Judgment of 24 January 2013 of the Court of Appeal whereby the Court denied enforcement of a foreign judgment on the ground that the application for a declaration of enforceability had not been signed by a member of the Luxembourg bar, but only by an enforcement official (huissier de justice) – the Court underlined hereby that this issue is governed by national law pursuant to Art 40 of the Brussels 1 Regulation.

Judgment of 19 December 2013 (case no 37613)[14]

Belgian default judgment against a defendant domiciled in Kazakhstan. The defendant has initiated a challenge to the default judgment in Belgium which is still pending. The Luxembourg court has found that there is no evidence that the document which instituted the proceedings was ever provided to the defendant. Return documents which should have been signed upon receipt are not signed. Furthermore, the document was in Dutch. Enforcement of the judgment in Luxembourg has been denied pursuant to Art 34.2 of the Brussels I Regulation.

Judgment of 19 June 2014 (case no 36918)[15]

Italian default judgment against defendants domiciled in Iraq. The document which instituted the proceedings was initially served on an Iraqi Ministry by post and diplomatic channels. The Luxembourg court found that there was no evidence that such document was ever received by the defendant. The Italian proceedings were later extended to 7 Iraqi entities deemed to be organically the same without notifying any of them with a document instituting the proceedings. All 8 Iraqi defendants appealed against the Italian judgment. However, the appeal was found inadmissible as the power of attorney that they had provided to their Italian lawyer did not comport with Italian requirements. The Luxembourg court has found that the defendants could not raise any issue on appeal. Enforcement of the judgment in Luxembourg has been denied pursuant to Art 34.2 of the Brussels I Regulation.

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[13] Available at https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2013/20130124_38614_exequatur_a-accessible.pdf

[14] Available at (https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2013/20131219_37613_exequatur_a-accessible.pdf)

[15] Available at (https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2014/20140619_36918_exequatur_a-accessible.pdf):

Judgment of 26 June 2014 (case no 40006)[16]

French default judgment against a defendant domiciled in Luxembourg. The French plaintiffs only notified judicial documents to the former French address of the defendant, although the French enforcement official noted it was his "last known address". The Luxembourg court ruled that, although French law did not require further research, the result was that the defendant could not defend himself in the French proceedings. Enforcement of the judgment in Luxembourg has been denied pursuant to Art 34.2 of the Brussels I Regulation.

Judgment of 18 June 2015 (case no 41927)[17]

Belgian default judgment against a defendant domiciled in Luxembourg. The Belgian plaintiff considered that there was no known domicile for the defendant. It argued that it sent notification of the judgment to the last known address of the defendant in Luxembourg, but provided no evidence supporting this. Enforcement of the judgment in Luxembourg has been denied pursuant to Art 34.2 of the Brussels I Regulation.

Cour d'appel 6 Juin 2016 (case no 43010)

Judgment of the Court of Appeal, dated 6 June 2016,[18] where the Court considered an alleged irreconcilability between two French judgments, but rejected the argument, as it found that the two foreign judgments could be reconciled.

[16] Available at https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2014/20140626_40006_exequatur_a-accessible.pdf

[17] Available at https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2015/20150618_41927_exequatur_a-accessible.pdf

[18] Available at https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2016/20160606_43010_exequatur_a-accessible.pdf

Cour de Cassation 28 Juin 2018[19]

Decision of the Cour de Cassation dated 28 June 2018 - regarding issues of "droits de la défense" in a context of discussion of issues of notification and signification, regarding Article 34(2) Brussels 1 Regulation – see also on this decision the decision of the Cour d'appel of 22 December 2016[20]; in both the decision of the Cour de Cassation and the Court of Appeal reference was made to the decision of the Cour d'appel dated 8 octobre 2015.

Some noteworthy points regarding the case law on the Brussels I bis Regulation/the Brussels I Regulation

The case law on the Brussels 1 bis Regulation/the Brussels 1 Regulation that could be retrieved in JUDOC and juridictions judiciaires includes several decisions of the Cour de Cassation. Several cases deal with issues of human rights. The majority of these cases mainly deal with issues of the scope and international jurisdiction though, and *not* with issues of recognition and enforcement. Regarding issues of recognition and enforcement, the findings as presented previously in the report of Gilles Cuniberti and Anthi Beka[21], regarding the Brussels 1 Regulation, appear to be noteworthy and still leading, also at the current state of the art. Case law regarding issues of recognition and enforcement of the Brussels 1 Regulation as presented and discussed in this report notably includes: five cases of the Court of Appeal Luxembourg[22] in which

[19] Available at https://anon.public.lu/Décisions%20anonymisées/Cour%20de%20Cassation/Cour%20de%20Cassation/2018/20180628_3946a-accessible.pdf

[20] Available at https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2016/20161222_40688_exequatur_a-accessible.pdf

[21] https://op.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1, Also the book of Wiwinius, dated 2011 (J.-Cl. Wiwinius, *Le droit international privé au Grand-Duché de Luxembourg*, Luxembourg, Bauler, 2011) includes references to relevant case law on the Brussels 1 regulation, see nr. 1166 p. 249 and following and nr. 1625 p. 341 and following.

[22] As reported by Cuniberti and Beka, the Luxembourg Court of Appeal denied enforcement to foreign judgments in such circumstances in the five following cases (most of them are retrievable in juridictions judiciaires, the links are added; the summaries hereafter and in the following footnotes are the summaries as presented by Cuniberti and Beka in their report: firstly, the Judgment of 10 February 2011 (case no 35005): In this case, the plaintiff had initially initiated proceedings in a lower claims court in France (*tribunal d'instance*). The French court transferred the case to the main first instance court (*tribunal de grande instance*). The latter court was supposed to inform the parties of the transfer by sending them a letter with acknowledgment of receipt (French CPC, Art. 97). The plaintiffs appeared before the *tribunal de grande instance*, but the defendants did not, and later argued that they had never received the letter of transfer. The Luxembourg court denied enforcement to the resulting judgment, on the ground that the

enforcement of foreign decisions was denied in cases where the absence of proper notification of the claim in case of a defendant not entering into an appearance was raised; a decision of the Court of Appeal in a judgment of 8 January 2009[23] regarding the argument of irreconcilability of decisions – the argument was considered by the court but rejected, as the decisions had both been rendered in the same foreign State

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plaintiff had the burden of proof to show that the defendants had been properly notified under Art. 34 (2), and that he could provide such proof. Secondly, the Judgment of 19 December 2013 (case no 37613) (https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2013/20131219_37613_exequatur_a-accessible.pdf): Belgian default judgment against a defendant domiciled in Kazakhstan. The defendant has initiated a challenge of the default judgment in Belgium which is still pending. The Luxembourg court finds that there is no evidence that the document which instituted the proceedings was ever provided to the defendant. Return documents which should have been signed upon receipt are not signed. Furthermore, the document was in Dutch. Enforcement of the judgment in Luxembourg is denied pursuant to Art 34.2 of the Brussels I Regulation. Thirdly, Judgment of 19 June 2014 (case no 36918) (https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2014/20140619_36918_exequatur_a-accessible.pdf): Italian default judgment against defendants domiciled in Iraq. The document which instituted the proceedings was initially served on an Iraqi Ministry by post and diplomatic channels. The Luxembourg court found that there was no evidence that such document was ever received by the defendant. The Italian proceedings were later extended to 7 Iraqi entities deemed to be organically the same without notifying any of them with a document instituting the proceedings. All 8 Iraqi defendants appealed against the Italian judgment. However, the appeal was found inadmissible as the power of attorney that they had provided to their Italian lawyer did not comport with Italian requirements. The Luxembourg court found that the defendants could not raise any issue on appeal. Enforcement of the judgment in Luxembourg has been denied pursuant to Art 34.2 of the Brussels I Regulation. Fourthly, Judgment of 26 June 2014 (case no 40006) https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2014/20140626_40006_exequatur_a-accessible.pdf : French default judgment against a defendant domiciled in Luxembourg. The French plaintiffs only notified judicial documents to the former French address of the defendant, although the French enforcement official noted it was his "last known address". The Luxembourg court ruled that, although French law did not require further research, the result was that the defendant could not defend himself in the French proceedings. Enforcement of the judgment in Luxembourg has been denied pursuant to Art 34.2 of the Brussels I Regulation. Finally, Judgment of 18 June 2015 (case no 41927) https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2015/20150618_41927_exequatur_a-accessible.pdf : Belgian default judgment against a defendant domiciled in Luxembourg. The Belgian plaintiff considered that there was no known domicile for the defendant. It argued that it notified the judgment to the last known address of the defendant in Luxembourg, but provided no evidence supporting it. Enforcement of the judgment in Luxembourg has been denied pursuant to Art 34.2 of the Brussels I Regulation.

[23] The argument was considered by the Luxembourg Court of Appeal in a judgment of 8 January 2009 (case no 32781, *BIJ* 2009, 78). It was rejected, as the decisions had both been rendered in the same foreign State (Belgium). https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2009/20090108_32781exequatur-accessible.pdf

(Belgium) – and another judgment of the Court of Appeal, dated 6 June 2016,[24] where the Court considered an alleged irreconcilability between two French judgments, but rejected the argument, as it found that the two foreign judgments could be reconciled; a judgment of 24 January 2013[25] of the Court of Appeal whereby the Court denied enforcement of a foreign judgment on the ground that the application for a declaration of enforceability had not been signed by a member of the Luxembourg bar, but only by an enforcement official (huissier de justice) – the Court underlined hereby that this issue is governed by national law pursuant to Art 40 of the Brussels 1 Regulation. Almost all of these cases are currently retrievable in JUDOC/juridictions judiciaires.

Regarding case law that has been delivered after the report of Gilles Cuniberti and Anthi Beka and that is retrievable in JUDOC/juridictions judiciaires, two decisions in particular are noteworthy:[26] firstly, a

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[24] In a judgment of 6 June 2016, the Luxembourg Court of Appeal considered an alleged irreconcilability between two French judgments, but rejected the argument, as it found that the two foreign judgments could be reconciled (case no 43010). https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2016/20160606_43010_exequatur_a-accessible.pdf

[25] In a judgment of 24 January 2013 (case no 38614), the Court of Appeal of Luxembourg denied enforcement to a foreign judgment on the ground that the application for a declaration of enforceability had not been signed by a member of the Luxembourg bar, but only by an enforcement official (*huissier de justice*). The Court underlined that this issue is governed by national law pursuant to Art 40 of the Brussels I Regulation. https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2013/20130124_38614_exequatur_a-accessible.pdf

[26] *Besides* these two decisions, a brief reference might additionally be made to two cases found on JUDOC (available at JUDOC, but not in "juridictions judiciaires": on the one hand, a decision of the Tribunal d'arrondissement of 14 January 2020, available at https://judoc.public.lu/ECLI_LU_TAD_2020_CIV-1-0114.pdf (i.a. on the issue of the determination of the regulation applicable ratione temporis in issues of exequatur with reference to CJEU 6 June 2019 (C-361/18), as well as on issues of violation of "droits de la defense." On the other hand, a decision of the Cour d'appel of 2 October 2017 , available at https://judoc.public.lu/ECLI_LU_CA_2017_00118-1002.pdf , i.a. on issues of signification in the context of the Brussels 1 Regulation. Ultimately, the following noteworthy decisions may be consulted: a decision of the Court of Appeal dated 11 July 2019 (available at https://anon.public.lu/Décisions%20anonymisées/CSJ/03_Chambre/2019/20190711_CAL-2019-00047_92_ARRET_MEE_a-accessible.pdf), a decision of the Court of Appeal dated 21 June 2017 (available at https://anon.public.lu/Décisions%20anonymisées/CSJ/04_Chambre/2017/20170621_44769_II_A-accessible.pdf), a decision of the Tribunal d'arrondissement de Diekirch dated 14 January 2020 (available at https://judoc.public.lu/ECLI_LU_TAD_2020_CIV-1-0114.pdf), a decision of the Tribunal d'arrondissement dated 7 June 2019 (available at https://anon.public.lu/Décisions%20anonymisées/Tribunal%20d%27arrondissement%20Luxembourg%20civil/10_Chambre/2019/20190607_TALux10-142988a-accessible.pdf) and a decision of the Tribunal d'arrondissement dated 20 December 2017 (available at https://anon.public.lu/Décisions%20anonymisées/Tribunal%20d%27arrondissement%20Luxembourg%20civil/

decision of the Court of Appeal dated 13 January 2013[27] - regarding issues of public order - also as related to issues of punitive damages - with reference to the decision of the CJEU in the Owens Bank case, as the case was in fact about an originally American decision and a French decision on the exequatur of this American decision, with a certificate; recognition in Luxembourg was denied. Secondly, a decision of the Cour de Cassation dated 28 June 2018[28] - regarding issues of "droits de la défense" in a context of discussion of issues of notification and signification, regarding Article 34(2) Brussels 1 Regulation – see also on this decision the decision of the Cour d'appel of 22 December 2016[29]; in both the decision of the Cour de Cassation and the Court of Appeal reference was made to the decision of the Cour d'appel dated 8 octobre 2015.

Finally, it may be noted that one of the cases to be found in "juridictions judiciaires" regarding the Brussels 1 bis Regulation is case Cour Cass. 8.10.2020[30] that will be mentioned below, in the context of the EPOR, as it does not concern the rules of recognition and enforcement of the Brussels 1 bis Regulaton, but the rules of international jurisdiction of the Brussels 1 bis Regulation as relevant for the application of the EPOR.

17_Chambre/2017/20171220-TALux17-174334a-accessible.pdf), all regarding particular issues of the Brussels 1/Brussels 1 bis Regulation.

[27] Available at https://anon.public.lu/Décisions%20anonymisées/CSJ/07_Chambre%20civil/2021/20210113_CAL-2020-00584-CAL-2020-00632-accessible.pdf

[28] Available at https://anon.public.lu/Décisions%20anonymisées/Cour%20de%20Cassation/Cour%20de%20Cassation/2018/20180628_3946a-accessible.pdf

[29] https://anon.public.lu/Décisions%20anonymisées/CSJ/08_Chambre/2016/20161222_40688_exequatur_a-accessible.pdf

[30] Available at https://anon.public.lu/Décisions%20anonymisées/Cour%20de%20Cassation/Cour%20de%20Cassation/2020/20201008_CAS-2019-00130_122a-accessible.pdf

III. European Enforcement Order Regulation (EEOR)

Representative/relevant case law

Tribunal d'arrondissement Luxembourg Jugement civil, n° 76/08 (XIe chambre), 18.04.2008
Proceedings between X and Y, both domiciled in Italy, and Z, domiciled in Italy, before the Tribunal d'arrondissement (First instance court) of Luxembourg. X and Y obtained judgment against Z. The Tribunal of Velletri (Italy) sentenced Z to the payment of the claim. Afterwards, X and Y requested to have the judgment certified as a European Enforcement Order ("EEO") before the court which rendered the judgment. The Tribunal of Velletri certified the judgment as an EEO after examining the minimum prerequisites established in Regulation No 805/2004. During the enforcement of the EEO in Luxembourg, Z contested the enforceability of the judgment certified as an EEO before the Tribunal d'arrondissement of Luxembourg. Specifically, Z argued that in the standard form used to certify the judgment as an EEO, it was not indicated that the claim was uncontested. The Tribunal of Velletri did not tick the box of the standard form indicating that the "judgment is on an uncontested claim under Article 3(1)" of the Regulation No 805/2004. The Tribunal d'arrondissement of Luxembourg considered that due to this material error, the EEO was not validly certified as an EEO.

Tribunal d'arrondissement 13 Octobre 2009

This decision that was retrieved from JUDOC[31] dealt with a certificate that was not considered to be a certificate in the sense of the EEOR.

Tribunal de paix Luxembourg, Rép. fisc. n°1506/11, 30.03.2011
Proceedings between X, a German registered company, and Mr Z, domiciled in Germany. On 16 September 1998, the Amtsgericht Mayen rendered a judgment sentencing Mr Z to the payment of a certain amount to X. On 11 November 2009, the Amtsgericht Mayen certified the judgment as an European Enforcement Order ("EEO"). On March 2010, X requested the provisional enforcement of the EEO in Luxembourg before the Tribunal de paix of Luxembourg. The Tribunal de paix of Luxembourg considered that the EEO satisfied all the requisites of Regulation No 805/2004 and it was therefore a valid title on which to proceed with provisional enforcement.

[31] Available at https://judoc.public.lu/ECLI_LU_TAL_2009_00203-1013.pdf

Jugement commercial II n°1895/12, 30.11.2012

In a dispute about a loan between a Belgian company and a Cypriot company, the Belgian company asked the court not only for a decision on the merits, but also for the provisional enforcement without bail of the judgment to intervene and a European Enforcement Order. The court ordered in favour of the plaintiff, but regarding the request for the provisional enforcement without bail of the judgment, the court ordered that there was no reason to order the provisional enforcement without bail of the judgment, as the conditions of Article 567 of the New Code of Civil Procedure were not present in the case; regarding the request to issue a European Enforcement Order, the court firstly recalled the requirements of Article 6 of Regulation 805/2004 and subsequently ordered that, since the decision was provisionally enforceable only on the basis of the claimant's obligation to give a bail, the condition laid down in Article 6 (a) of Regulation 805/2004 had not yet been fulfilled, so that the request to issue the certificate was premature.

Tribunal de paix Luxembourg, Rép. fisc. n° 1500/13, 17.4.2013

Proceedings between X, a French registered company, and Mr Y, domiciled in France, before the Tribunal de paix of Luxembourg. On 9 August 2011, X obtained a French payment order before the Tribunal de Commerce of Briey (France) against Mr Y. On 13 February 2012, the payment order was certified as a European Enforcement Order ("EEO"). Subsequently, X requested the provisional enforcement of the EEO in Luxembourg. The Tribunal de paix of Luxembourg examined whether a French payment order could be certified as an EEO. The court found that according to Article 6(1)(a) of Regulation No 805/2004, a judgment can be certified as an EEO as long as it is enforceable in the Member State of origin. In this particular case, the French payment order was enforceable in France. Consequently, the Tribunal de paix of Luxembourg granted the provisional attachment of the EEO in Luxembourg.

Tribunal d'arrondissement Luxembourg, Jugement civil n°127/13 (XIe chambre), 24.05.2013

Proceedings between X, a Luxembourgish registered company, and Y, domiciled in France, before the Tribunal d'arrondissement (First instance court) of Luxembourg. X sued Y before the Tribunal d'arrondissement of Luxembourg, in order to recover several unpaid invoices. Simultaneously, X requested the certification as a European Enforcement Order ("EEO") of the judgment resulting from that proceeding. Whereas the Tribunal d'arrondissement of Luxembourg sentenced Y to the payment of the invoices, it refused to certify the judgment as an EEO. According to Article 6(1)(a) of Regulation No 805/2004, the judgment has to be enforceable in the Member State of origin in order to be certified as an EEO. The Tribunal d'arrondissement of Luxembourg found that this condition was not yet satisfied by the judgment. Consequently, it did not certify the judgment as an EEO.

Tribunal de paix Luxembourg, Rép. fisc. n° 3710/13 du 16.10.2013

Proceedings between X, a French registered company, and Ms Z, domiciled in France, before the Tribunal de paix of Luxembourg. X requested the provisional attachment (saisie-arrêt) of Ms Z's salary in Luxembourg on the basis of a European Enforcement Order ("EEO") obtained in France. Ms Z challenged the provisional attachment before the Tribunal de paix of Luxembourg. Ms Z stated that she had not been notified of the EEO. The Tribunal de paix of Luxembourg considered that Regulation No 805/2004 does not require the defendant to be notified of the EEO. Furthermore, the court remarked that in the provisional phase of the attachment there is no need of a valid title. Consequently, the Tribunal de paix of Luxembourg granted the provisional attachment of Ms Z's salary.

Tribunal d'arrondissement Luxembourg, Jugement civil n° 89/2016 (XVIIe chambre), 23.03.2016

Proceedings between Ms X, domiciled in Luxembourg, and Ms Y, domiciled in France, before the Tribunal d'arrondissement of Luxembourg. On 23 February 2012, Ms X obtained an interim order (ordonnance de référé) before the Tribunal d'instance of Cannes sentencing Ms Y to pay Ms X a certain amount. On 20 November 2014, the Tribunal d'instance of Cannes certified the interim order as a European Enforcement Order ("EEO"). Ms X requested the enforcement (saisie-exécution) of the EEO in Luxembourg. Ms Y challenged the enforcement before the Tribunal d'arrondissement of Luxembourg. Ms Y argued that an ordonnance de référé could not be used as a valid title to proceed with an enforcement in Luxembourg. Even if the ordonnance de référé was certified as an EEO, Ms Y argued that an ordonnance de référé lacks res judicata effect and is merely provisional. For these reasons, the EEO could not be enforced in Luxembourg. The Tribunal d'arrondissement of Luxembourg considered that Regulation No 805/2004 does not prescribe that a title must have the force of res judicata in order to be certified as an EEO. The Tribunal stated that on the basis of Article 11 of Regulation No 805/2004, a title only has to be enforceable in the Member State ("MS") of origin to be certified as an EEO. After examining the French code of civil enforcement(Article 111(10)), the Tribunal d'arrondissement of Luxembourg, considered that an ordonnance de référé can be certified as an EEO since it can be enforced in France, despite its provisional nature. Consequently, the Tribunal found that the EEO could be enforced in Luxembourg.

Tribunal d'arrondissement Luxembourg, Jugement civil n° 238/2017 (8e chambre), 14.11.2017

Proceedings between Z, a German registered company, and Mr Y, domiciled in Luxembourg, before the Tribunal d'arrondissement of Luxembourg. On 17 March 2009, Z and Mr Y entered into a mortgage agreement, regulated and signed in a notarial deed before a German public notary. On the 31 October 2014, the German notary certified the notarial deed as a European Enforcement Order ("EEO"). Z requested the enforcement (validation de la saisie-arrêt) of the EEO granted by a German notary before the Tribunal d'arrondissement of Luxembourg. The Tribunal d'arrondissement of Luxembourg considered that on the basis of Article 25(2) of Regulation No 805/2004, "an authentic instrument which has been certified as a European Enforcement Order in the Member State of origin shall be enforced in the other Member States without the need for a declaration of enforceability and without any possibility

of opposing its enforceability". Consequently, the Tribunal d'arrondissement of Luxembourg considered that the EEO could be enforced in Luxembourg.

Cour d'Appel 5 Avril 2017

This decision was retrieved in JUDOC.[32] The case related to a foreign EEO. In Luxembourg, review was asked for but competence for review was denied, taking into account thereby Articles 21 and 23 of the EEOR.

Tribunal d'arrondissement Luxembourg, Jugement civil n° 202/17 (XIe chambre), 15.12.2017
Proceedings between Z, a Polish registered company, and Mr X, domiciled in Germany, before the Tribunal d'arrondissement of Luxembourg. On 22 November 2010, Z obtained a judgment sentencing Mr X to the payment of a certain amount before the Sad Rejonowy w Nowym Saczu (District Court of Nowy Sacz) in Poland. On 18 September 2015, the Sad Rejonowy w Nowym Saczu certified the judgment as a European Enforcement Order ("EEO"). Z requested the enforcement of the EEO in Luxembourg before the Tribunal d'arrondissement of Luxembourg. This tribunal considered that based on Article 5 of Regulation No 805/2014, "a judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition." Therefore, the EEO granted by the Polish courts could be enforced in Luxembourg.

Tribunal de paix Luxembourg, Rép. fiscal 11.01.2018
Proceedings between Z, a French registered company, and Mr X, domiciled in France, before the Tribunal de paix of Luxembourg. On 9 December 2016, Z obtained a French payment order against Mr X before the Tribunal d'instance de Briey in Poland. Mr X did not oppose the French payment order. Consequently, the French payment order became enforceable and on 19 September 2017, the Tribunal d'instance de Briey certified it as a European Enforcement Order ("EEO"). On the basis of the EEO, Z requested the attachment (saisie-arrêt spéciale) of Mr X's salary in Luxembourg before the Tribunal de paix of Luxembourg. The Tribunal de paix of Luxembourg stated that on the basis of Articles 5 and 20 of Regulation No 805/2004, an EEO granted in another Member State "shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement". Consequently, the Tribunal de paix of Luxembourg granted the enforcement of the EEO.

[32] Available at https://judoc.public.lu/ECLI_LU_CA_2017_00068-0405.pdf

Tribunal d'arrondissement Luxembourg Jugement saisie-arrêt spéciale (IIIe chambre) n° 12/2018, 12.01.2018

Proceedings between Z, a French registered company, and Mr X, domiciled in France, before the Tribunal d'arrondissement of Luxembourg. On 30 May 2014, Z obtained a French payment order against Mr X before the Tribunal de commerce of Briey. Mr X was served with the payment order on 23 June 2014. On 25 March 2015, the French payment order was certified as a European Enforcement Order ("EEO"). Meanwhile, on the basis of Article 1416 of the French Civil Procedural Code, Mr X opposed the French payment order. Consequently, ordinary civil proceedings were opened on the substance of the claim. On 20 May 2015, Z requested the provisional enforcement of the EEO over Mr X's salary in Luxembourg before the Tribunal de paix of Luxembourg. Mr X opposed the provisional enforcement. The Tribunal de paix found Mr X's opposition unfounded and confirmed the provisional enforcement of the EEO. Mr X decided to appeal against the decision of the Tribunal de paix of Luxembourg. He argued that the French payment order was not enforceable and it was not served on him. Therefore, in Mr X's view, the EEO was vitiated by a manifest error (entaché d'une erreur manifeste). Conversely, Z proved that the French payment order was declared enforceable and it had been served on Mr X. On that basis, the Tribunal de paix of Luxembourg found the grounds invoked by Mr X to be unfounded. In addition, the Tribunal de paix of Luxembourg affirmed that according to Regulation No 805/2004, courts in the Member State of enforcement have very limited powers with regards to an EEO granted in another Member State. In particular, the court recalled that according to Article 23 of Regulation No 805/2004, courts in the Member State of enforcement could only limit the enforcement of the EEO in those cases when "the defendant has applied for a review in accordance with Article 20". This had not happened in the present case. The court could only examine the enforceability of the title on which the procedure of enforcement relies – on this occasion, the enforceability of the EEO. Consequently, since the EEO was enforceable, it could serve as a valid title to proceed with the enforcement in Luxembourg.

Some noteworthy points regarding the EEOR case law

The most representative/relevant cases that could be retrieved are chronologically presented above.

A typical case, regarding a request for a Luxembourgish European Enforcement Order that was refused because it was judged that conditions had not been fulfilled, is the decision of 30 November 2011 as summarized above.

The cases presented above relate though both to "incoming" and "outgoing, Luxembourgish" European Enforcement Orders.

IV. European Payment Order Regulation (EPOR)

Representative/relevant case law

Tribunal de paix de et à Luxembourg, Rép. fiscal n°4704/2013, 10.12.2013

Proceedings between Mr X, domiciled in Luxembourg, and Mr Y, domiciled in Germany, before the Tribunal de Paix of Luxembourg. On 9 July 2013, Mr X obtained an European Payment Order ("EPO") against Mr Y, before the Tribunal de paix of Luxembourg. On 24 August 2013, Mr Y was served with the EPO. On 11 September 2011, Mr Y lodged a statement of opposition against the EPO. The Tribunal de paix of Luxembourg considered the opposition admissible since it was lodged respecting the 30-day period prescribed by Article 16 of Regulation No 1896/2006, and opened ordinary civil proceedings. Mr Y argued that, since he was a consumer on the basis of Article 6(2) of Regulation No 1896/2006, only a German court would have been competent to grant the EPO. The court proceeded to examine if the special jurisdictional rules concerning consumer contracts were applicable to this claim. To this effect, the court relied on the concept of consumer developed by the CJEU concerning Article 15 of Regulation No 44/2011. Particularly, the court referred to (première chambre) case C-419/11 Česká spořitelna (ECLI:EU:C:2013:165), in which the CJEU affirmed that the concept of consumer has to be strictly interpreted. Based on that judgment, the court found that three prerequisites must be fulfilled in order to use the jurisdictional rules concerning consumer contracts: "first, a party to a contract is a consumer who is acting in a context which can be regarded as being outside his trade or profession; second, the contract between such a consumer and a professional has actually been concluded; and, third, such a contract falls within one of the categories referred to in Article 15(1)(a) to (c) of Regulation No 44/2001" (para. 30). The court found that the contractual relations between Mr X and Mr Y did not fall within any of the categories referred to in Article 15 of the Regulation No 44/2001, so jurisdictional rules regarding consumer contracts were, as a result, not applicable. Mr X argued in the alternative that the Luxembourg courts were competent based on Article 5(1)(b) of Regulation No 44/2001, since it was the place 'where the services were provided or should have been provided'. In the light of the facts of the claim, the Tribunal de paix confirmed that Luxembourg courts were competent to grant the EPO on the basis of Article 5(1)(b) of Regulation No 44/2001. Consequently, it declared that the EPO was valid.

Tribunal de paix Luxembourg, Rép. fiscal n° 2690, 30.06.2015

Proceedings between Ms Y, domiciled in Luxembourg and X, a French registered company, before the Tribunal de paix of Luxembourg. Ms Y had booked a journey from the USA to Luxembourg with the flight company X. Due to a flight delay of 5 hours, Ms Y requested compensation relying on Articles 5, 6 and 7 of Regulation No 261/2004. On that basis, on 18 December 2014, Ms Y obtained a European Payment Order ("EPO") before the Tribunal de paix of Luxembourg. X opposed the EPO and ordinary civil proceedings were opened before the Tribunal de paix of Luxembourg. X argued that Luxembourg courts were not competent to grant the EPO. In X's view, according to Article 5(1)(b) of Regulation No 44/2001, interpreted in light of the CJEU judgment C-204/08, Rehder (ECLI:EU:C:2009:439), the

competent courts would be those in the place of the departure of the flight or the place of arrival. In this particular case, this would correspond to USA or French courts respectively. Ms Y had booked a journey from the USA to Luxembourg, including a connecting flight to Luxembourg via Paris. On this basis, the Tribunal de paix of Luxembourg found that it had jurisdiction to grant the EPO and, consequently, also to rule on the substance of the matter in the proceedings.

Tribunal de paix Luxembourg, Rép. fiscal n° 2691, 30.06.2015

Proceedings between Mr Y, domiciled in Luxembourg, and Mr X, domiciled in Italy, before the Tribunal de paix of Luxembourg. On 11 October 2012, Mr Y obtained a European Payment Order ("EPO") against Mr X before the Tribunal de paix of Luxembourg. On 4 March 2013, the EPO was served on Mr X, and on December 19, 2013, it was declared enforceable. On 31 March 2015, Mr X requested the review of the EPO based on Article 20 of Regulation No 1896/2006. Mr X argued that Luxembourg courts lacked jurisdictional competence to grant the EPO. According to Mr X, he was a consumer, and on the basis of Article 6(2) of Regulation No 1896/2006, only an Italian court would have been competent to grant the EPO. The court, after analysing the case law of the CJEU, particularly case C-89/91, Shearson (ECLI:EU:C:1993:15), and based on the facts of the case, found Mr X was acting outside his trade or profession, and that he was therefore a consumer. Consequently, only Italian courts would have been competent to grant the EPO, leading the Tribunal de paix of Luxembourg to declare the EPO to be null and void.

Tribunal de paix Luxembourg, Jugement n° 3582, 20.10.2015

Proceedings between X, a company registered in Luxembourg, and Y, a company registered in Germany, before the Tribunal de paix of Luxembourg. On January 22, 2015, X obtained a European Payment Order ("EPO") before Tribunal de paix of Luxembourg against Y. On January 27, 2015, the EPO was served on Y, who lodged a statement of opposition against the EPO on 3 March 2016. Alternatively, Y also requested the review of the EPO on the basis of Article 20 of Regulation No 1896/2006, claiming that the Tribunal de paix of Luxembourg lacked the international jurisdiction to grant the EPO. Y affirmed that the contract between the parties contained a clause attributing jurisdiction to German courts. Regarding the statement of opposition, the Tribunal found that the period of 30 days for the lodging of the opposition established on Article 16 of Regulation No 1896/2006 had not been respected. Therefore, the statement of opposition was not granted. Regarding the review, the Tribunal de paix found that the jurisdiction clause mentioned was not valid in the terms of Article 25 of Regulation No 1215/2012. Notwithstanding, the Tribunal found that on the basis of Article 7(1)(b) of Regulation No 1215/2012, only German courts would have been competent to grant the EPO. Consequently, the Tribunal de paix of Luxembourg found that it had no jurisdiction to grant the EPO, declaring it null and void.

Tribunal de paix Luxembourg, Rép. fiscal n° 4800, 20.12.16

Proceedings between X, a Luxembourg registered company, and Y, a French registered company, before the Tribunal de paix of Luxembourg. On 12 June 2016, X obtained a European Payment Order ("EPO")

against Y before the Tribunal de paix of Luxembourg. Mr Y lodged an opposition against the EPO on the basis of Article 16 of the Regulation No 1896/2006. However, Mr Y did not use the pre-established standard form F as set out in Annex VI of Regulation No 1896/2006 to lodge the opposition. The Tribunal de paix of Luxembourg considered that the use of the standard form was not an obligatory prerequisite to lodge the opposition. Particularly, the court relied on recital 23 of Regulation No 1896/2006 which states that "courts should take into account any other written form of opposition if it is expressed in a clear manner". The court understood from the recital the willingness of the European legislator "to limit the formal requirements of the opposition to a bare minimum." Before deciding on the substance of the case, the Tribunal de paix of Luxembourg examined again (the first time was when it examined the application for the EPO) if it had jurisdiction to grant the EPO. The Tribunal de paix of Luxembourg referred to Article 26 of Regulation No 44/2001 which establishes that "where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation." The Tribunal de paix of Luxembourg found that in light of Article 7(1) of Regulation No 44/2001, this court had jurisdiction to hear the procedure on the substance of the matter. Since the opposition was correctly lodged and the Tribunal de paix had jurisdiction, in accordance with Article 17(1) of Regulation No 1896/2006 the proceedings continued as an ordinary civil procedure before the Tribunal de paix of Luxembourg.

Tribunal de paix Luxembourg, 17.01.2017, n° 257A/2017, IPA 54/16

Proceedings between Ms Y, a lawyer domiciled in Luxembourg, and Mr X, domiciled in France, before the Tribunal d'arrondissement of Luxembourg. On April 26, 2016, Ms Y obtained a European Order for Payment ("EPO") before a Tribunal d'arrondissement of Luxembourg against Mr X. On May 27, 2016, Mr X lodged a statement of opposition against the EPO. He argued that Luxembourg courts lacked the competence to grant the EPO. He claimed to be a consumer; and according to Article 6(2) of Regulation No 1896/2006, only French courts would be competent to grant the EPO. The Court declared the opposition receivable and decided to open ordinary civil proceedings. The Court proceeded to analyse the existing CJEU case law on EU consumer rights. Particularly, the Tribunal relied on case C-537/13, Šiba (ECLI:EU:C:2015:14), in which the CJEU affirmed that "a lawyer who, as in the case in the main proceedings, provides a legal service for a fee, in the course of his professional activities, to a natural person acting for private purposes is a 'seller or supplier' within the meaning of Article 2(c) of Directive 93/13" (para. 24). In the light of this decision, the Court found that whereas Ms Y was acting within her professional activities, Mr X was acting for private purposes, and therefore he had to be considered a consumer. On this basis, the Tribunal d'arrondissement of Luxembourg found that Luxembourg courts were not competent to grant an EPO.

Tribunal de paix Luxembourg, Rép. fiscal du 14.03.2017

Proceedings between Mr X, domiciled in Luxembourg against Mr Y, domiciled in Germany, before the Tribunal de paix of Luxembourg. On 26 September 2016, Mr X obtained a European Payment Order ("EPO") against Mr Y before the Tribunal de paix of Luxembourg. On 27 October 2016, Mr Y lodged an opposition against the EPO on the basis of Article 16 of Regulation No 1896/2006. However, Mr Y did not use the pre-established standard form F as set out in Annex VI of the Regulation No 1896/2006 to lodge the opposition. The Tribunal de paix of Luxembourg considered that the use of the standard form was not an obligatory prerequisite to lodge the opposition. The court relied particularly on recital 23 of Regulation No 1896/2006 which states that "courts should take into account any other written form of opposition if it is expressed in a clear manner". Since the defendant correctly lodged their opposition, then according to Article 17(1) of the Regulation No 1896/2006, the proceedings continued as an ordinary civil procedure before the Tribunal de paix of Luxembourg.

Tribunal d'arrondissement de Luxembourg 21 Mars 2017

In the judgment of the Tribunal d'arrondissement de Luxembourg of 21 March 2017,[33] a solution was provided for Luxembourg for the situation as had come forward in the CJEU-case Eco Cosmetics.[34]

The decision may be summarized as follows: a European Order for Payment had been issued by a Luxembourgish Juge de Paix in March 2016. In April 2016, the order was made enforceable by this judge. The enforceable European Order was served on the defendant by a bailiff. The company-defendant appealed against the European Order for Payment of March 2016, arguing inter alia that the European Order for Payment of March 2016 was not served or notified at a correct address (but at the previous seat of the company). The court referred to the decision of the CJEU of 4 September 2014, C-119/13 to C-121/13, Eco Cosmetics and Raiffeisenbank St. Georgen. The court ordered that where a European Order for Payment has not been served in the correct manner according to the minimum standards set out in Articles 13 to 15 of Regulation N° 1896/2006, and that where such irregularity is not revealed until the European Order for Payment has been made enforceable, that European Order for Payment may be appealed according to Luxembourgish procedural law. The court considered that the Order had not been served or notified in a manner consistent with the minimum standards set out in sections 13 to 15 of Regulation 1896/2006; whereas the CJEU refers to national law in a situation that this irregularity is not revealed until the European Order for Payment has been made enforceable, it was, therefore, necessary to apply Luxembourgish procedural law here, according to the court. The court considered that appeal

[33] Tribunal d'arrondissement de Luxembourg, 14e ch 21 Mars 2017, N° 178460 du role, N° 78/2017, Journal Tribunaux 2018, p. 28-30.
[34] CJEU Eco Cosmetics (C-119/13 and C-120/13).

against an enforceable European Order for payment is not expressly provided for in domestic law, but that under article 578 of the New Code of Civil Procedure, the appeal is open in all matters against first instance judgments, unless declared otherwise. The court concluded that it must therefore be admitted that the appeal was open against the European order for payment. The appeal was declared admissible. The declaration of the Juge de Paix of April 2016, noting the enforceability of the European Order for Payment of March 2016, was declared null and void.

Thus, the Luxembourgish judiciary offered a solution for Luxembourg for the "Eco Cosmetics" situation.

Tribunal de paix Luxembourg, 11.07.2017

Proceedings between Ms Y, domiciled in Luxembourg, and Mr X, domiciled in Germany, before the Tribunal d'arrondissement of Luxembourg. On May 12, 2016, Ms Y obtained a European Payment Order ("EPO") before a Tribunal d'arrondissement of Luxembourg against Mr X. On June 6, 2016, Mr X lodged a statement of opposition against the EPO claiming to be a consumer. Therefore, according to Article 6(2) of Regulation No 1896/2006, only the German courts - and not the Luxembourgish ones- would be competent to grant the EPO. He asked the court to declare the opposition receivable and to open ordinary civil proceedings. The national court proceeded first to analyse the existing CJEU case law on EU consumer rights, and in particular case C-537/13, Šiba (ECLI:EU:C:2015:14), in which the CJEU affirmed that "a lawyer who, as in the case in the main proceedings, provides a legal service for a fee, in the course of his professional activities, to a natural person acting for private purposes is a 'seller or supplier' within the meaning of Article 2(c) of Directive 93/13" (para. 24). In the light of this decision, the court found that whereas the applicant -Ms Y- was acting within her professional activities, the defendant -Mr X- was acting for private purposes, and therefore he had to be considered a consumer. On this basis, the Tribunal d'arrondissement found that Luxembourg courts were not competent to grant an EPO.

Tribunal d'arrondissement Luxembourg (première chambre), Jugement civil n°19/2018, 17.01.2018

Proceedings between Y, a company registered in Luxembourg, and X, a company registered in Germany, before the Tribunal d'arrondissement of Luxembourg. On 27 April 2016, Y obtained a European Payment Order ("EPO") before the Tribunal d'arrondissement of Luxembourg against X. On 26 July 2016, X applied for a review of the EPO on the basis of Article 20 of Regulation 1896 No 1896/2006. X argued that the Tribunal d'arrondissement was not materially competent to grant an EPO. Furthermore, X also stated that due to extraordinary circumstances, the statement of opposition provided for in Article 16(2) of Regulation No 1896/2006 could not be lodged. Relying on case C-245/14, Thomas Cook (ECLI:EU:C:2015:715), the court found that Article 20 of Regulation No 1896/2006 has to be interpreted strictly. After concluding that the grounds of review raised by the defendant did not fall within the scope

of Article 20(1)(a) of Regulation No 1896/2006, the court proceeded to examine if Article 20(1)(b) or Article 20(2) were applicable. Concerning Article 20(1)(b) of the Regulation No 1896/2006, the court found that there was no force majeure due to the absence of an exteriority ('extériorité'); irresistibility ('irrésistibilité'); or unpredictability ('imprévisibilité'), or any other extraordinary circumstances that might have impeded the defendant from contesting the claim. Regarding Article 20(2) of Regulation No 1896/2006, the court proceeded to examine if the EPO had been "clearly wrongly issued". The defendant argued that the court who granted the EPO was not jurisdictionally competent. After a prima facie examination of the facts of the claim, the court found that the EPO was not "clearly wrongly issued" on the basis of Article 20(2).

Cour de Cassation 8 Octobre 2020[35]

The recent decision of the Cour de Cassation dated 8 October 2020[36] that was already mentioned above, with the Brussels 1 bis Regulation, was found in "juridictions judiciaires".

In this case, the Luxembourgish Supreme Court had to deal inter alia with the rules of international jurisdiction of the Brussels 1 bis Regulation within the context of the application of the EPOR, discussing thereby the validity of a forum choice that had been made. The Court of Appeal had decided that Luxembourgish judges were competent based on a forum choice. In the decision of the Supreme Court, the decision of the Court of Appeal was confirmed.

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[35] Available at https://anon.public.lu/Décisions%20anonymisées/Cour%20de%20Cassation/Cour%20de%20Cassation/2020/20201008_CAS-2019-00130_122a-accessible.pdf

[36] Available at

https://anon.public.lu/Décisions%20anonymisées/Cour%20de%20Cassation/Cour%20de%20Cassation/2020/20201008_CAS-2019-00130_122a-accessible.pdf

Besides this decision of the Luxembourgish Supreme Court, three other of the decisions found in "juridictions judiciaires" are noteworthy, namely: a decision of the Court of Appeal dated 15 May 2019 available at https://anon.public.lu/Décisions%20anonymisées/CSJ/07_Chambre%20civil/2019/20190515_CA7_CAL-2018-00469a-accessible.pdf ; a decision of the Tribunal d'arrondissement dated 18 February 2020 available at https://anon.public.lu/Décisions%20anonymisées/Tribunal%20d%27arrondissement%20Luxembourg%20civil/14_Chambre/2020/20200218-TALux14-TAL-2019-06562a-accessible.pdf and a decision of the Tribunal d'arrondissement dated 18 June 2019 available at https://anon.public.lu/Décisions%20anonymisées/Tribunal%20d%27arrondissement%20Luxembourg%20civil/14_Chambre/2019/20190618-TALux14-TAL-2019-01308a-accessible.pdf

Some noteworthy points regarding the EPOR case law

Particularly noteworthy points regarding EPO case law appear to be the following.

Regarding the special rule of jurisdiction[37] for consumer-defendants in Article 6(2) of the EPOR, a remark can be made regarding the interpretation by Luxembourgish judges of this "consumer-concept.": it might be noted that regarding the concept of consumer in this special rule, in Luxembourg a broader concept of consumer than the one used in Brussels 1 bis (the one that, moreover, is also used in the context of the ESCPR as the ESCPR follows the rules of international jurisdiction of the Brussels 1 bis Regulation) seems to be applied, namely not requiring that the additional requirements enshrined in Art. 17 Brussels 1 bis be fulfilled in the context of Article 6(2) EPOR.

From the interviews with Luxembourgish judges that were conducted for the IC2BE-research, it appeared that Luxembourgish judges tend to *check* if Art. 6(2) EPOR is respected as soon as the claimant requests an EPO.[38] Another moment when Article 6(2) could come into play is at the review stage. There is Luxembourgish case law in which a review was granted because Art. 6(2) EPOR had been violated.[39] The case is especially interesting when taking into account the judgment delivered by the CJEU in the Thomas Cook case,[40] as in this Luxembourgish case a review based on the argument of the violation of rules of jurisdiction – particularly Art. 6(2) EPOR – was granted.

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[37] More in general regarding rules of jurisdiction, the Luxembourgish case law is in line with Case C-144/12 Goldbet Sportwetten GmbH v. Massimo Sperindeo, ECLI:EU:C:2013:393: lodging an opposition is not considered as making a court competent.

[38] As mentioned in V. Van Den Eeckhout and C. Santaló Goris, "Luxembourg", in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 286, Luxembourgish judges mentioned their "educational" goal in doing so. It was also said that because of Art. 6(2) EPOR, many requests for payment orders are rejected; often those requests are rejected for lack of response to form B, as Luxembourgish judges often use this form B in this context.

[39] Tribunal de Paix de Luxembourg, 30.06.2015, no. 2691/2015 (in Tribunal de Paix Luxembourg 26.09.2017, no. 3142, jurisdiction was also assessed, but review was not granted, as it was said that the defendant was no "consumer" in the sense of Art. 6(2) EPOR because he had not acted as a non-professional). See also on the issue of checking rules of international jurisdiction in the context of a review, V. Van Den Eeckhout, "Regels van internationale bevoegdheid in de context van de 'tweede generatie' verordeningen. Enkele beschouwingen vanuit het perspectief van bescherming van zwakke partijen", tijdschrift@ipr.be, 2018, issue 3, p. 147-184 and V. Van Den Eeckhout, "Handhaving van regels van internationale bevoegdheid ter bescherming van consument-verweerders in de context van de EBB-verordening en de EGV-verordening, enkele actuele beschouwingen. En attendant Godot?", 2019, 23 p.

[40] Case C-245/14 , *Thomas Cook Belgium NV v. Thurner Hotel GmbH* , ECLI:EU:C:2015:715. See also in this context the decision Tribunal de Paix de Luxembourg, 20.10.2015, no. 3582, regarding review because of violation of other

It is worth noting that some Luxembourgish judges also use and check Art. 6(2) EPOR after an opposition by the defendant, so at the stage of the transfer of the case to an ordinary procedure/ESCP procedure. Instead of merely checking the rules of international jurisdiction of Brussels 1 bis (both for an ordinary procedure and for an ESCP-procedure, and thus, in fact, starting all over again), these judges first check whether Art. 6(2) EPOR has been respected, and if it was not, they just "stop" the proceedings.[41]

Also noteworthy is case law regarding requests to the defendants as to the form of an opposition to an EPO – whereby Luxembourgish judges accepted that opposition was lodged in another way than by using the form designated for that.[42]

Regarding the *type* of the – many – Luxembourgish EPO-cases, it might be noted that whereas the *ESCPR* is seemingly mainly used for aviation cases when it comes to using a European procedure for these cases, a case has also been retrieved where an EPO-procedure was used in an aviation case – at a time when the threshold of ESCP-procedures was still 2000 euros whereas the claim in this procedure exceeded this threshold.[43]

jurisdiction rules (not about consumer issues but sales contract – Arts. 25 and 7(1)(b) Brussels I bis). But see e.g. also, for Luxembourg, the reference in Tribunal d 'arrondissement, Jugement civil, 1ere chambre, 17.01.2018, no. 19/2018 to *Thomas Cook* , seemingly in the sense that it is quite difficult to criticise a judge for having made an "error" for they are not expected to conduct a thorough examination; as a judge will not be quickly reproached for having made an incorrect assessment, they will not be quickly reproached for having made an "error": "En l'espèce … le tribunal estime que la vérification de la compétence par la jurisdiction d'origine aurait nécessité un examen approfondi des circonstances de fait … Par conséquent, le tribunal retient qu'il n'est pas "manifeste" que l' injunction de payer européenne … aurait été délivrée à tort au vu des exigences fixées par le règlement et rejette ce moyen." In that sense, a difference between an error regarding jurisdiction on the one hand, and an error by the judge in the (quick) assessment might seem to have been made.

[41] See Tribunal de Paix de Luxembourg, 11.07.2017; Tribunal de Paix de Luxembourg, 17.01.2017, no. 257A/2017, IPA 54/16; Tribunal de Paix de Luxembourg, 10.12.2013, no. 4704/2013. See, though, Art. 17 EPOR and Case C-94/14, *Flight Refund Ltd v. Deutsche Luft hansa AG* , ECLI:EU:C:2016:148 . As the rule in Art. 6(2) EPOR differs from the rules in Brussels I bis, in some cases the result of checking (only) Brussels I bis might be that there *is* competence for an ordinary procedure or an ESCP.

[42] See notably Tribunal de Paix de Luxembourg, 20 December 2016, n°4800/2016 and Tribunal de Paix du Luxembourg, 14 March 2017; in case nr. 4800/2016 it was discussed if opposition should be lodged using form F/if opposition can also be lodged in another way; according to the court, opposition might also be lodged in another way.

[43] Tribunal de paix Luxembourg 30.06.2015 n° 2690.

Finally, as already indicated in the Efforts-report on Luxembourgish implementation legislation, in the judgment of the Tribunal d'arrondissement de Luxembourg of 21 March 2017,[44] a solution was provided for Luxembourg for the situation as had come forward in the CJEU-case Eco Cosmetics.[45]

[44] Tribunal d'arrondissement de Luxembourg, 14e ch 21 Mars 2017, N° 178460 du role, N° 78/2017, Journal Tribunaux 2018, p. 28-30.
[45] CJEU Eco Cosmetics (C-119/13 and C-120/13).

V. European Small Claims Procedure Regulation (ESCPR)

Representative/relevant case law

Juge de Paix de Luxembourg, 03.04.2015 - n° 1553/15
Mr K. who was domiciled in Luxembourg had introduced a European Small Claims Procedure in Luxembourg against a company that was domiciled in Germany. The court ordered the defendant to pay. The defendant subsequently asked for a review, arguing that an expert report that was communicated to him was written in French, while the defendant did not understand French. The court examined if the conditions of Article 18 ESCPR for a review were fulfilled. The court rejected the request for a review.

Juge de Paix de Luxembourg, 20.12.2016 - n° 4802/2016 , RPL 104/16
A company that was domiciled in Luxembourg had introduced a European Small Claims Procedure in Luxembourg against Ms K. who was domiciled in Germany. The court had ordered Ms K to pay. Ms K. subsequently requested a review. The court examined if the conditions of Article 18 ESCPR were fulfilled. The court rejected the arguments of Ms K regarding language issues, but as Ms K. had been a victim of cybercriminality and had also put forward arguments regarding this particular circumstance, the court granted the request for a review.

Juge de Paix de Luxembourg, 20.12.2016 - n° 4803/2016 , RPL 84/16
A lawyer who was domiciled in Luxembourg had introduced a European Small Claims Procedure in Luxembourg against Mr B. who was domiciled in Germany, regarding the payment of lawyer's fees. The court had ordered the defendant to pay. Mr B. subsequently asked for a review, arguing that he did not have the occasion to take position previously i.a. because he did not know whom to address to solve the conflict. The court examined if the conditions of Article 18 ESCPR were fulfilled. The court rejected the request for a review.

Juge de Paix de Luxembourg, 13.06.2017 - n° 2296/2017 RPL 231/16
A lawyer who was domiciled in Luxembourg had introduced a European Small Claims Procedure in Luxembourg against Mr B. who was domiciled in Germany. Mr B. has been sentenced to pay. He then asked for a review on the basis of Article 18 ESCPR, arguing that the documents were communicated to him in French while he did not understand French. The court examined if the conditions of Article 18 were fulfilled. The court rejected the request for a review.

Juge de Paix Luxembourg, 19.04.2018 - n° 1364/2018, RPL 7/18

In February 2018, a procedure based on Regulation n° 861/2007 was introduced in Luxembourg (Juge de Paix). The plaintiff (a lawyer) asked for the sentencing of the other party (BC), domiciled in Portugal, to the payment of a sum of 882.26 euros. The plaintiff's application related to legal advice. Although duly informed, the defendant did not take a position on the documents sent to him within the 30-day period. The court checked if the conditions for competence were fulfilled, referring to Article 28 of Regulation n° 1215/2012. The court considered that the defendant was not a consumer to which Articles 17 to 19 of Regulation n° 1215/2012 applies, as the plaintiff did not direct his activity to Portugal; thus, the court concluded that the special rules relating to competence in matters relating to contracts by consumers did not apply in this case. The court declared it was competent on the basis of Article 7, 1, b Regulation n° 1215/2012. The court appreciated the claim and declared the claim was founded.

Some noteworthy points regarding the ESCPR case law

A high proportion of the ESCP case law is constituted of cases involving Luxembourgish lawyers claiming unpaid invoices against clients domiciled outside of Luxembourg. Hereby it is relevant whether the client is considered as a "consumer" in the sense of the Brussels 1 bis Regulation or not. In several cases, it was decided that the lawyer did not address the client abroad – the result was then often that the court allowed the Luxembourgish lawyer to start an ESCP in Luxembourg against a client domiciled abroad. The case decided on 19.04.2018 as summarized above might be considered as representative in this regard.

Very often, when a Luxembourgish plaintiff files an ESCP case in Luxembourg against foreign defendants, the basis of the jurisdiction relies on Art. 7(1)(b) Brussels 1 bis Regulation, arguing that the services were performed in Luxembourg. In addition, Art. 7(2) Brussels 1 bis Regulation is also quite often used as a basis for competence.

If the defendant does not respond, Luxembourgish judges appear to check whether they are effectively competent.

Overall, the ESCPR is apparently frequently used in Luxembourg and is quite a popular procedure.[46] It is apparently an attractive instrument, especially for Luxembourgish lawyers against clients living abroad, for the Administration Communale de la Ville de Luxembourg for recovery of ambulance costs, for dentists against clients living abroad.

[46] See also on the application of the ESCPR in Luxembourg, the PowerPoint presented at the CEC Conference 2019 of B. Hess and V. Van Den Eeckhout regarding the ESCP, available at https://cecluxembourg.lu/2019/06/13/7eme-conference-sur-des-aspects-du-droit-europeen-de-la-consommation-le-19-juin/

In several of these ESCP cases, the ESCPR seems to have been used as a weapon *against* non-professionals. Luxembourgish professionals and organisations seem to have discovered the ESCP as a welcome instrument in cases against defendants living abroad.

At the same time, many other types of ESCP cases can be observed as well. The ESCPR is, for example, also used by Luxembourgish consumers or, more broadly, non-professionals against foreign defendants, for instance regarding products bought, or for the reimbursement of a guarantee for a tenancy. In an interview that was conducted for the IC2BE-research with a Luxembourgish consumer organisation, it was said that seemingly, there is no big difference between "active" and "passive" consumers here; for instance, having bought a product from a foreign company, the conditions for "having addressed the person in his own country" would be easily met.[47]

Interestingly, there were also several cases against foreign airlines in Luxembourg for claims related to aviation cases, whereby the competence of the Luxembourgish judge was sometimes rejected, sometimes accepted - it is worth noting that in one case the competence of the Luxembourgish court was (implicitly) accepted even though Luxembourg was just the original departure of a subsequent second flight that was cancelled.[48] Where competence is accepted and the claim of the plaintiff is granted, some "victories" from non-professionals against companies can be pointed out here.

The one ESCP-case that could be retrieved from JUDOC is exemplary for many Luxembourgish ESCP-cases: the decision of the Juge de Paix 07.04.2017[49] is an aviation case, whereby the judges applied Article 28 Brussels 1 bis checking its competence, and decided that the Luxembourgish court was competent on the basis of Article 7,1, b Brussels 1 bis Regulation as Luxembourg was indicated as the place of arrival.

[47] See V. Van Den Eeckhout, "Report "Luxembourg" (IC2BE)", 2019, 84 p., p. 36 and V. Van Den Eeckhout and C. Santaló Goris, Luxembourg, in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, with footnote 40.

[48] See Juge de Paix de Luxembourg, 18.07.2018, no. 2768/2018, RPL 118/17.

[49] Juge de Paix 07.04.2017 https://judoc.public.lu/ECLI_LU_JPL_2017_01573-0407.pdf

VI. European Account Preservation Order Regulation (EAPOR)

Representative/relevant case law

Ordonnance 30 August 2018

In this case, Ms Y, domiciled in Luxembourg, requested a European Account Preservation Order ("EAPO") before the Tribunal d'arrondissement of Luxembourg to attach two Romanian bank accounts held by X, a company registered in Romania. The Court refused to grant the EAPO arguing the claimant did not satisfy the minimum requirements laid down in Article 7 Regulation (EU) No 655/2014. According Article 7.1, the creditor shall provide enough evidence proving that "the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult". Furthermore, pursuant to paragraph 2 where the creditor has not yet obtained a judgment, court settlement or authentic instrument, he is obliged to prove that "he is likely to succeed on the substance of his claim against the debtor". In the present case, the creditor had provided a copy of the contract with X and expertise showing that X had breached the contractual obligations. The Tribunal d'arrondissement of Luxembourg considered that this was not enough to satisfy the material prerequisites laid down in Article 7 of the Regulation (EU) No 655/2014.

Some noteworthy points regarding the EAPOR case law

In the "rapport d'activité 2020"[50], numbers of EAPO cases are included for the period 2018-2020, indicating an increasing number of requests for an EAPO in Luxembourg. A screenshot of page 64 of the "rapport d'activité 2020" is inserted below.

A Luxembourgish "Ordonnance" that might be indicated as a representative one – rejecting an EAPO-request - is Ordonnance 30 August 2018, as pointed out above.

[50] In the "Rapport d'activité 2020 de juridictions judiciaires", information on the application of the EAP is included on p. 64 for the period 2018-2020, https://justice.public.lu/dam-assets/fr/publications/rapport-activites-judiciaires/Rapports-juridictions-judiciaires-2020.pdf available at https://justice.public.lu/fr/publications.html as mentioned above.

VII. Recurring issues

Particularly in the discussion above on the case law on the EPOR and the ESCPR, attention was given to issues of *international jurisdiction*. Regarding Luxembourgish case law in this regard, one might particularly recall here what has been mentioned above regarding the stage of control of rules of international jurisdiction in the EPOR, and the effects attached to it; regarding the application of the ESCPR, especially interesting is the seemingly lack of a special check mechanism at the stage of enforcement when it comes to controlling protective jurisdiction rules of the Brussels 1 bis Regulation against consumer-defendants – and the Luxembourgish case law shows that in the Luxembourgish practice the ESCP is often used against private persons/consumers.[51] When it comes to checking mechanisms during the ESCP-procedure itself, one might recall here inter alia the check of jurisdiction rules by Luxembourgish judges when the defendant does not respond and the interpretation of the additional requirements of the Brussels 1 bis Regulation by Luxembourgish judges.

Elsewhere,[52] I have already further developed these issues, also in relation to a discussion of check mechanisms (regarding issues of international jurisdiction as well as regarding other issues) in *all* of the regulations, comparing these regulations thereby also one to each other.

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[51] On the ESCPR seen from this perspective, see i.a. previously V. Van Den Eeckhout, "The Court of Justice of the European Union" in T. Kruger and J. Von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 131-162.

[52] See V. Van Den Eeckhout, "Regels van internationale bevoegdheid in de context van de 'tweede generatie' verordeningen. Enkele beschouwingen vanuit het perspectief van bescherming van zwakke partijen", tijdschrift@ipr.be, 2018, issue 3, p. 147-184; V. Van Den Eeckhout, "Handhaving van regels van internationale bevoegdheid ter bescherming van consument-verweerders in de context van de EBB-verordening en de EGV-verordening, enkele actuele beschouwingen. En attendant Godot?", 2019, 23 p., and V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, 49-68; see also V. Van Den Eeckhout, "Report "Luxembourg" (IC2BE)", 2019, 84 p. and V. Van Den Eeckhout and C. Santaló Goris, "Luxembourg", in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 275-302 as well as V. Van Den Eeckhout, "The Court of Justice of the European Union" in T. Kruger and J. Von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 131-162.

One of the questions I put forward thereby[53] was the question to what extent the second generation regulations might be considered as being regulations in which a pure "shift"[54] has been made from check mechanisms from the courts of the Member State of enforcement to the courts of the Member State of of origin – or to what extent (some of) the second generations are either "more severe" when it comes to the incorporation of some rights of the debtor than the Brussels 1 bis Regulation, or rather "stripped-down" versions of the Brussels 1 bis Regulation, comparing thereby also the second generations between

[53] See the previous articles for a comparison between the Brussels 1 bis Regulation and the EEOR (also discussing thereby case law of the CJEU such as Cornelius de Visser (C-292/10), Collect Inkasso (C-289/17), Zulfikarpasic (C-484/15), Vapenik (C-508/12) and e.g. Salvoni (C-347/18) – discussing Salvoni also in a broader way, including in a comparison e.g. also the EPOR. Cfr. See about this V. Van Den Eeckhout, "The Court of Justice of the European Union" in T. Kruger and J. Von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 131-162 etc. where I indicated that to a certain extent and seen from a certain perspective, the ESCPR might be seen as a stripped-down version of the Brussels 1 bis Regulation. Regarding the EPOR I analysed check and control mechanisms and to a certain extent it appeared that as to some issues, some more possibilities to check/sanction here might exist, ultimately, compared to the Brussels 1 bis Regulation, particularly when it comes to checking mechanisms at the stage of enforcement and the effect of it – but that thereby it should be kept in mind in any case that in principle check and sanction mechanisms should be carried out by the *court of origin*, which might possibly be seen as a complication for the party who would like to ask for these mechanisms. Cfr. also e.g. the comparison I made between the EPOR and the ESCPR regarding the possibility to ask for a review. Regarding the comparison between the Brussels 1 bis Regulation and the EEOR itself, particularly V. Van Den Eeckhout, "The Court of Justice of the European Union" in T. Kruger and J. Von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, footnote 53 and V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 62 footnote 69 and 70, might be recalled here, indicating and distinguishing situations whereby it might not be possible to obtain an EEO-certificate whereas it might be possible to use the Brussels 1 bis Regulation but with a refusal ground at the stage of enforcement, situations whereby it might not be possible to obtain an EEO-certificate whereas it might be possible to use the Brussels 1 bis Regulation without a refusal ground at the stage of enforcement, situations whereby it might be possible to obtain an EEO certificate whereas it might also be possible to use the Brussels 1 bis Regulation without a refusal ground at the stage of enforcement, situations whereby it might be possible to obtain an EEO-certificate whereas it might also be possible to use the Brussels 1 bis Regulation but with a refusal ground at the stage of enforcement, …. , especially when looking at cases involving defendants without a known address, defendants-"consumers" ("consumers" in the sense of the Brussels 1 bis Regulation and/or the EEOR) and defendants-employees.

[54] Without affecting the substance of the rights of the debtor. One hypothesis thereby would be that the court of origin, within the system of the second generation Regulations, simply performs tasks that are assigned to the courts of the requested State at the enforcement stage within the Brussels 1 bis Regulation – but the question arises if this is indeed the case.

themselves. Cases of the European Court of Justice including inter alia the cases Cornelius de Visser[55], Bondora,[56] Salvoni[57] were brought to attention in this context.

Particularly in the article "Europees recht en nationaal procesrecht", issues were discussed comparing the Brussels 1 bis Regulation with the EEOR and broader, exposing thereby the choices a plaintiff might have[58] between a European procedure in one country or another, with possible differences originating

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[55] Cornelius de Visser (C-292/10). See also two previous cases on the EEOR, namely Collect Inkasso (C-289/17) and Zulfikarpasic (C-484/15), brought into the discussion in, inter alia, V. Van Den Eeckhout, "Regels van internationale bevoegdheid in de context van de 'tweede generatie' verordeningen. Enkele beschouwingen vanuit het perspectief van bescherming van zwakke partijen", tijdschrift@ipr.be, 2018, issue 3, p. 147-184, together with several more issues such as the issue of protection of employees in the EEOR as compared with the Brussels 1 bis Regulation (see e.g. footnote 69 of V. Van Den Eeckhout, "Regels van internationale bevoegdheid in de context van de 'tweede generatie' verordeningen. Enkele beschouwingen vanuit het perspectief van bescherming van zwakke partijen", tijdschrift@ipr.be, 2018, issue 3 as already indicated also previously in earlier publications, including e.g. V. Van Den Eeckhout, "Regels van internationale bevoegdheid in de context van de 'tweede generatie' verordeningen. Enkele beschouwingen vanuit het perspectief van bescherming van zwakke partijen", tijdschrift@ipr.be, 2018, issue 3, p. 147-184, referring thereby to U. Grusic, "Recognition and Enforcement of Judgments in Employment Matters in European Private International Law", *Journal of Private International Law* 2016, Vol. 12, No 3, p. 521-544).

[56] Bondora (C-494/18 and C-453/18). in the article of 2020 (and in V. Van Den Eeckhout, "The Court of Justice of the European Union" in T. Kruger and J. Von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 131-162. I myself tried to explore thereby also the relevance of the decision in the case Bondora (C-494/18 and C-453/18) – regarding consumer protection based on the Directive on unfair terms in consumer contracts - for issues of jurisdiction, particularly issues of consumer protective rules on jurisdiction and the check thereof.

[57] Salvoni (C-347/18) (with special, particular interest for the opinion in the opinion, whereas in nr. 72 of the opinion reference is made to the EEOR, distinguishing the EEOR from the Brussels 1 bis Regulation).

[58] In V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 49-68, I made remarks about the relationship and interaction between European law and national procedural law, distinguishing thereby two types of relationship: national law as being part of a European procedure; national procedure (special or ordinary) as standing next to a European procedure (included in this procedure national component, European regimes as the EPOR and the ESCPR thereby being *optional* to the national regimes) – leading to a variety of options that may be at the disposal of a plaintiff (between European procedure in one country/another with differences as to the content of the national component; between several European procedures (especially: Brussels 1 bis/EEOR; EPOR/ESCPR …); between a European procedure and an ordinary/special national procedure …); for each of these types I made remarks; in this paper, besides the perspective of the relationship between European Law and national procedural law, I also took a second perspective, namely the perspective of the protection of the defendant, in particular the consumer-defendant. In the paper I paid special attention – as I had also already done in previous articles – to issues of international jurisdiction (working out in several senses e.g. sometimes working out in the sense of allowing to start procedures in several Member States, and opposed to that working out in the sense of, sometimes, blocking the possibility to start a

from differences in the national component of the European procedure in one country compared to another,[59] between a European procedure and a (special or ordinary) domestic procedure, between several European procedures – especially between the EPOR and the ESCPR, or between the Brussels 1 bis Regulation and the EEOR after a domestic procedure.

The plaintiff's option for one or another regime might have an impact on his rights and obligations as well as on the rights and obligations of the defendants – ultimately, awareness of these differences might influence the plaintiff in his choice for one or another regime, as far as he has options - whereby it is important to note that while the ESCPR appears to have been originally created by the European legislator with a private person/consumer - or an SME- in mind as a *plaintiff*,[60] also with the aim of improving their access to justice, private persons, non-professionals/consumers might certainly also be *defendants* in ESCP-procedures, as can also be seen in the Luxembourgish practice where private persons appear to be quite often defendants in ESCP-procedures.

procedure in a particular Member State); in an analysis of the possible deductions from CJEU Bondora (C-494/18 and C-453/18) to check mechanisms when it comes to protection of consumer-defendants through rules of international jurisdiction; in an analysis of the consumer-concept in different regimes as to the rules of international jurisdiction etc. …in an analysis of the question, when discussing check mechanisms regarding the aspect of rules of international jurisdiction and in a broader way, if second generation regulations may be seen as having realized a pure shift from the court of enforcement to the court of origin, or not (with special attention hereby for a comparison between the Brussels 1 bis Regulation and the EEOR, particularly with attention to CJEU case law like Cornelius de Visser (C-292/10); and Salvoni (C-347/18) and also wider in a comparison with other regulations and in a comparison of regulations between themselves).

[59] Whereby regarding the European uniform procedures, sometimes discussion exists about what is to be indicated as an issue that is regulated at European level and what is left to the national level and thus possibly also creating differences, see recently on this issue Austrian pending case C-18/21 on the EPOR regarding time-limits; regarding what is foreseen in EPOR or not, see previously on the issue of what is foreseen in the regulation or not regarding jurisdiction (i.a. discussed in V. Van Den Eeckhout, "Handhaving van regels van internationale bevoegdheid ter bescherming van consument-verweerders in de context van de EBB-verordening en de EGV-verordening, enkele actuele beschouwingen. En attendant Godot?", 2019, i.a. with footnote 112)). See also for a discussion of CJEU Rebecka Jonsson (C-554/17) V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 51 and following.

[60] Cfr. The aim of the ESCPR "to improve access to justice in low value cross-border disputes for consumers and SMEs" – as quoted e.g. in the Commission staff working document impact assessment SWD/2013/0459final. Cfr. E.g. also nr. 7 of the preamble of the original ESCP-Regulation and nr. 1 of the amended Regulation 2015/2421. See e.g. also art. 28 1.a of the consolidated version.

Particularly in the article "Europees recht en nationaal procesrecht"[61], attention was also given to allegations of *discrimination* (from the perspective of the plaintiff or the defendant) that have already been brought forward or still might come forward for supranational/national courts, when comparing one regime to another, and, more broadly, to influences that might take place from one regime to another.

In this context, case law both of (foreign) national courts (looking in a comparative broad way) – including the decision of the Belgian Constitutional Court of 12 October 2017[62] on the EPOR as compared to the Belgian national procedural law – *compare* the recent French decision of the Court of Appeal of Paris of 28 January 2021[63] on the EAPOR as compared to the French national procedural law - and of supranational courts – including the decisions Bondora[64] (also in the comparison between the EPO procedure in Spain and the national procedure in Spain) and Parking and Interplastics[65] of the CJEU – are noteworthy.[66]

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[61] V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 49-68.

[62] Belgian Constitutional Court of 12 October 2017. A summary has been uploaded to the IC2BE-database at https://ic2be.uantwerpen.be/?_ga=2.101753665.1721081593.1627809227-1695268062.1602579720#/search/national

[63] Court of Appeal of Paris, 28 January 2021 – Cour d'Appel de Paris, Pôle 1 – chambre 10, 28 janvier 2021, n° 19/21727.

[64] Bondora (C-494/18 and C-453/18).

[65] Parking and Interplastics (C-267/19 and C-323/19).

[66] See especially for a discussion of the decision of the Belgian Constitutional Court of 12 October 2017 the discussion in V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 55 and following, with footnote 58 on the EPOR as compared to the Belgian national procedure (*compare* recently the decision of the Court of Appeal of Paris, 28 January 2021 – Cour d'Appel de Paris, Pôle 1 – chambre 10, 28 janvier 2021, n° 19/21727 on the EAPO and the French national procedure; see on this decision the blog of C. Santaló Goris "The EAPO Regulation: An unexpected interpretative tool of the French civil procedural system", available at https://conflictoflaws.net/2021/the-eapo-regulation-an-unexpected-interpretative-tool-of-the-french-civil-procedural-system/); on Bondora (C-494/18 and C-453/18) (especially about nr. 51 of the judgment and nr. 134 of the opinion in its comparison between the protection provided to consumer-defendants in the Spanish national procedure compared to the application of the EPOR in Spain) see V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 56 and following. Ultimately, when it comes to issues of discrimination/influence (i.a. by interpretation)/respect for certain rights, one might also look from the perspective of the defendant/consumer - besides the perspective of discrimination of the plaintiff, in supranational/national decisions. On Parking and Interplastics (C-267/19 and C-323/19) – looking myself both from the perspective of the plaintiff and the defendant - see V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 64 and

In the article, also the issue of "internationality" and "cross-border" nature has been discussed, particularly with regard to the cases Parking and Interplastics[67] (in its reference to the EPOR and Bondora, as to the issue of (in)consistency), Bondora[68] and ZSE Energia[69] of the European Court of Justice[70] – (affecting the availability of a regime in a specific case) making a particular regime available or unavailable in specific cases (next to other aspects that might determine the availability of a particular regime, such as rules of international jurisdiction or special requirements regarding e.g. domestic procedures).

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following. Noteworthy hereby is that in the case of Parking and Interplastics, i.a. allegations of reverse discrimination were at stake at the CJEU; interesting hereby is to refer i.a. to nr. 50 of the judgment, where the court – formulating it as a "moreover" - referred to the existence of "alternative remedies"; compare in this regard the comments I made in V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, footnote 38, regarding the decision of the Belgian Constitutional Court. On possible issues of discrimination/obstacles – seen in this case from the perspective of the plaintiff -, see also the case C-412/97, with an extensive (divergent) opinion from the advocate-general; to the judgment in this case is referred by Th. Hoscheit, *Le droit judiciaire privé au Grand-Duché de Luxembourg*, Luxembourg, Editions Paul Bauler, 2019, p. 394, footnote 710, regarding the requirement about the defendant in article 129 Luxembourgish Nouveau Code de Procédure Civile; see also what is written regarding issues of "need for action at Community level", "scope of the proposal" and "subsidiarity and proportionality" in COM(2002)746 and COM(2004)173. On possible *influences* see also V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, footnote 20.

[67] Parking and Interplastics (C-267/19 and C-323/19).

[68] Bondora (C-494/18 and C-453/18).

[69] C-627/17 (C-494/18 and C-453/18), especially in its reference in nr. 29 to COM(2013)794final, nr. 6.

[70] Especially when discussing in the paper Parking and Interplastics (C-267/19 and C-323/19) in its reference to the EPOR and to CJEU Bondora (C-494/18 and C-453/18), see nr. 34 of the judgment for the reference of the Court to the EPOR and Bondora, and see nr. 35 of the judgment for the expressed concern about "harmonized interpretation" – considerations possibly purely meant in the sense that if the criterium of "internationality" in the sense of the EPOR is fulfilled, it might certainly also be fulfilled in the context of the Brussels 1 bis Regulation, and thus in that sense "harmonized interpretation" is realized, but for a short discussion of nr. 34 within nrs. 27-39 under the heading "The jurisdiction of the Court" (cfr. nr. 42) and nr. 35, also indicating meanwhile the case ZSE Energia and nr. 25 of the opinion in Zulfikarpasic (C-484/15), see V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 62 and following. And see also in the context of the above-mentioned decision of the Belgian Constitutional Court, the comments as made on p. 55 and following, including footnote 38; see also on nr. 25 of the opinion in Zulfikarpasic (C-484/15) as discussed and referred to in Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be , 2020, issue 4, p. 63 including footnote 76.

Regarding, particularly, aspects of "availability" of regimes in *Luxembourg*, it might be recalled here[71] that the Luxembourgish OPA-procedure ("Ordonnance de Paiment", the national order for payment procedure) is, according to Articles 129 and 919 Nouveau Code de Procédure Civile, only available if the condition is fulfilled that the defendant is domiciled in Luxembourg. This requirement of the special Luxembourgish procedure, in combination with the way Luxembourgish judges appear to apply the rules of international jurisdiction of the ESCPR – while Article 6(2) EPOR (and the way this article is applied in Luxembourg when it comes to the interpretation of the "consumer" concept in this article) might in some cases block the possibility to start a procedure in Luxembourg[72] and while it might be seen as cumbersome to start an ordinary domestic procedure in Luxembourg as far as allowed - might possibly be *one* of the factors explaining the high application rate of the *ESCPR* in Luxembourg.

More specifically, regarding the way Luxembourgish judges appear to apply the rules of international jurisdiction of the ESCPR,[73] reference might be made here to the Luxembourgish practice regarding the interpretation of the additional requirements in the Brussels 1 bis Regulation in order to be considered as a consumer, implying the application of special protective rules. Assessed from the perspective of a Luxembourgish plaintiff wanting to sue a private person living abroad – *e.g.* a Luxembourgish lawyer claiming lawyer fees from a private person living outside Luxembourg - cases might be pointed out whereby the rules of international jurisdiction are applied in a rather lenient c.q. liberal way, in the sense that in those cases it is decided that the additional requirements to qualify the private person as a passive consumer are *not* fulfilled, leading to the conclusion that the protective consumer jurisdiction rules don't apply and that in those cases the general rules of international jurisdiction apply – often allowing the plaintiff to start a procedure in Luxembourg against a person living abroad. On the other hand though, it might also be noted that when it comes to the use of an ESCP procedure *by* a private person against a company domiciled abroad, it was reported in an IC2BE-interview[74] that when e.g. a private person has bought a product from a foreign company online and wants to sue this company afterwards making use thereby of the ESCPR, Luxembourgish judges quite easily decide that the additional requirements in order for this private person to qualify as a passive consumer are fulfilled, leading to the conclusion that the protective consumer rules of the Brussels 1 bis Regulation are applicable, and that the procedure may be

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[71] Cfr. Already also the EFFORTS-report on *legislation* (V. Van Den Eeckhout, "Collection of Luxembourgish Implementation Rules", (EFFORTS-Report), available at https://efforts.unimi.it/ , see https://efforts.unimi.it/wp-content/uploads/sites/8/2021/07/D2.8-Collection-of-Luxembourg-implementing-rules.pdf).

[72] See above on i.a. the broad interpretation of the consumer-concept of Article 6(2) EPOR in Luxembourgish case law.

[73] As enshrined in the Brussels 1 bis Regulation, but as also applicable in the context of the ESCPR.

[74] See V. Van Den Eeckhout, "Report "Luxembourg" (IC2BE)", 2019, p. 36 and V. Van Den Eeckhout and C. Santaló Goris, "Luxembourg", in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, with footnote 40.

started by this "consumer" in Luxembourg. Also in those cases, ultimately, the plaintiff desiring to use the ESCP-procedure is allowed to start an ESCP-procedure in Luxembourg.

It might be noted, finally, that in the many Luxembourgish aviation cases whereby the ESCP procedure is used, case law might be pointed out whereby rules of international jurisdiction were discussed, sometimes leading to the conclusion that Luxembourgish judges had competence, sometimes also leading to the conclusion that Luxembourgish judges lacked competence.

Thus, rules of international jurisdiction and the way they are handled by judges are factors influencing the *availability* of a particular regime.

As came forward in interviews that were conducted for the IC2BE-project[75] several factors – including the lack of court fees and the familiarity of Luxembourgish judges with the European procedures – influence the *attractiveness* of starting a European procedure (EPO or ESCP) in Luxembourg while other factors - such as the fact that English is not an officially accepted language - might be, on the other hand, rather discouraging factors to start a procedure in Luxembourg.

Many of the issues that are mentioned here as "recurring issues" will be retaken and recaptured in subsequent EFFORTS-deliverables such as, particularly, the future "policy recommendations" for the European legislator and for national legislators: what is mentioned above, might be relevant not only for the report on Luxembourgish case law but also for upcoming "policy recommendations."

Issues that will be retaken in those future documents will be recaptured at that moment particularly from the perspective of discussing "policy issues." They will include, inter alia, issues of consistency and harmonization. Those issues relate themselves inter alia to definitions/requirements of "internationality" and "scope" cq requirements of application of the regulations. Indeed, questions of consistency and harmonization might arise whereas differences can be identified for these or other aspects. A fundamental question that should be addressed thereby might be to what extent it would indeed be necessary or desirable to obtain consistency, harmonization, coordination. Also possibly, in some cases where differences are acknowledged, consistency might perhaps be "allowed", but then the question might still be if consistency/amendment is also mandatory and required – for reasons of consistency as such and/or for other particular reasons. Issues of consistency and harmoniziation also relate e.g. to the issue of the authority competent to certify and possible consistency or not between the regulations on this point. Possibly also pushed by the way competent authorities are indicated/should be indicated according to the CJEU in the context of one particular regulation, harmonization might be questioned and ultimately take place between several regulations – at the European level itself or at the national level as far as the European level might appear to leave room for uniformity/differentiation. Regarding competent

[75] See e.g. V. Van Den Eeckhout and C. Santaló Goris, "Luxembourg", in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 275-302.

authorities to certify, it is noteworthy to point out the recent amendment of Article 87 Loi sur l'organisation judiciaire in Luxembourg as realized by the Loi 15 July 2021.[76] The recent Luxembourgish change might be compared also to the current discussions on this in France – especially regarding the desirability or need to change the competent authority in the context of the Brussels 1 bis Regulation – as pointed out in the EFFORTS-legislation report on France.[77] Again, a question might possibly be whether uniformisation and consistency/amendment – even though possibly "allowed" - would be mandatory. Issues of consistency and harmonization also relate to numerous other differences between regimes – the way these regimes are organized as such (e.g. by organizing a "transfer" from the court of the country of enforcement to the court of origin) but also going beyond, e.g. when it comes to a possible change of rights when comparing regimes that have been organized in a different way; the latter might especially be the case when it would be observed that some rights/ways of protection that are granted in one regime are not to be found in another regime, even not in a way that is organized differently. Some of these issues are coming forward at the European level, some at the national level. If it comes to "harmonization" at the European level, by the European legislator, some issues will appear to be more sensitive to harmonize than others. In this regard, one might recall e.g. that the difference between the EEOR and the Brussels 1 bis Regulation when it comes to protection of employees against violation of jurisdiction rules seems to have been based on the corresponding articles regarding refusal grounds, at the time, in the Brussels 1 Regulation; meanwhile the articles on refusal grounds in the Brussels 1 bis Regulation include employee protection, but no amendment has been carried out (yet) regarding EEOR; possibly, thus - as far as the EEOR will remain available as a regime - it might appear to be less sensitive to amend the EEOR in the sense of (just) aligning it with the Brussels 1 bis Regulation on this particular point.

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[76] See for the Loi https://legilux.public.lu/eli/etat/leg/loi/2021/07/15/a541/jo#:~:text=1%C2%B0,-du%20Nouveau%20Code&text=5%C2%B0-,de%20la%20loi%20modifi%C3%A9e%20du%207%20novembre%201996%20portant%20organisation,la%20justice%20civile%20et%20commerciale . In the projet de loi, it was mentioned i.a. "Cette modification vise à supprimer les termes « le greffier en chef » de l'article 87 de la loi précitée, alors que la CJUE a récemment rendu une décision (CJUE 17 décembre 2015, C-300/14) qui retient explicitement que « la décision de certifier une décision en tant que titre exécutoire doit être réservée au juge »." and "D'autre part, les formulaires annexés aux règlements de l'Union Européenne sont parfois d'une complexité telle que les greffiers en chef, qui ne sont pas juristes par formation, rencontrent des difficultés à les remplir." For the relevance of this article also for other EFFORTS-regulations than the EEOR, see the EFFORTS-legislation report on Luxembourg, available at https://efforts.unimi.it/, see https://efforts.unimi.it/wp-content/uploads/sites/8/2021/07/D2.8-Collection-of-Luxembourg-implementing-rules.pdf .

[77] Available at https://efforts.unimi.it/, see https://efforts.unimi.it/wp-content/uploads/sites/8/2021/07/D2.4-Collection-of-French-implementing-rules.pdf Also the above-mentioned reference to the EEOR in the opinion in the Salvoni case might possibly be recalled here, as in the opinon there is a reference to the EEOR by way of indicating *differences* between the Brussels 1 bis Regulation and the EEOR, on another issue though than the issue of the authority competent to certify.

Other issues that will be recaptured in future documents relate to the need cq desirability as such of the regulations, their very "right of existence", as well as to the evaluation of the way they are organized, especially regarding rights and obligations of plaintiffs and defendants, and duties of or possibilities to check/sanction by the judge. Regarding the "raison d'être" of the regulations, it might be recalled that particularly the ESCPR is frequently used in Luxembourg and is sometimes presented as being "needed" in Luxembourg. The question might still arise though to what extent the frequent use as such of a regulation, or the fact that the regime of the regulation appears to be received in some hypotheses as a "welcome tool" by plaintiffs, is as such, in itself, a justification of the existence of the regulation – or the way the regime has been organized- especially if one takes into account the reasons or manners to use the regime, and the assessment on itself of the particular regime. One might recall in this regard e.g. that the frequent use of the ESCPR seems to be partly pushed by obstacles that are to be identified in the Luxembourgish special domestic procedure (the "ordonnance de paiement", "OPA"), regarding requirements of the domicile of the defendant – see namely Articles 129 and 919 Luxembourgish Code de Procédure Civile. One might wonder in this context e.g. to what extent an abolishment of those national requirements regarding the special domestic procedure would have an impact on the use of the Luxembourgish special domestic procedure - namely in the sense of increasing the use of the special domestic procedure, especially in situations where the defendant is domiciled abroad - , to what extent that change on a national level would make the ESCPR ultimately superfluous, or at least less "attractive" as a regime to choose; and to what extent thus another situation would occur or not when looking at rights of plaintiffs and defendants and duties and possibilities for judges to check and sanction. Possible factors that might be considered hereby might – also at some points regarding the use of the *EPOR*, and also at some points regarding the use of the ESCPR in case the use of the ESCPR (or the use of the EPOR) is possible *next to* the special Luxembourgish procedure -, i.a.[78], be factors relating to court fees – if it would be possible to start procedures in Luxembourg using the Luxembourgish special domestic procedure instead of the ESCPR also in cases where this is currently not possible, and if the requirements in the Code de Procédure Civile were abolished and rules of international jurisdiction were applied by Luxembourgish judges the same way as they are now in the context of the ESCPR, the attractiveness of starting procedures in Luxembourg because there are no court fees might remain the same - ; factors regarding familiarity of the Luxembourgish judges with the regimes – Luxembourgish judges seem quite familiar with regulations such as the ESCPR, but are, of course, also familiar with the Luxembourgish special domestic procedure; noteworthy hereby is though the choice of *plaintiffs*/their lawyers for the ESCPR instead of the special domestic procedure in some cases: it appears that also in cases where the special domestic procedure might

[78] Next to numerous other factors that might be taken into account when comparing the EPOR/ESCPR with an ordinary/special domestic procedure, such as *i.a.* enforceability as such of the outcome of a decision (see what is mentioned in this context regarding the situation at the time in Luxembourg in COM(2002)746 p. 108 footnote 108 and footnote 44), the written/oral nature of the procedure, the issue which situation occurs if contestation takes place (the procedure being adversarial or not, and the consequences of opposition/contestation), *etc.*

be used, plaintiffs/their lawyers themselves sometimes prefer to use the ESCPR (a regime including a "uniform" part) over the use of the special domestic procedure, which might be interesting to observe especially when looking from the perspective of a foreign plaintiff - ; factors regarding language issues – noteworthy hereby is that the fact that English is not officially accepted in Luxembourg sometimes seems to function as a factor determining *not* to start a ESCP-procedure in Luxembourg, especially by foreign plaintiffs, but this "obstacle" would remain the same when using the Luxembourgish special domestic procedure - ; factors related to the enforceability of the decision abroad if enforceability abroad might be at stake[79] – one might i.a. compare hereby the regimes of the Brussels 1 bis Regulation and the EEOR with the rules at the stage of enforcement of the ESCPR and particularly point out the differences between the ESCPR and the Brussels 1 bis Regulation, the ESCPR seemingly being at some points a "stripped-down" version of the Brussels 1 bis Regulation when it comes to protection of rights of defendants, especially when looking at the refusal ground based on violation of jurisdiction rules protecting consumer-defendants that can be found in the Brussels 1 bis Regulation[80] (and that is, as a "requirement" to certify, inserted in an even broader way in the EEOR – see, regarding the EEOR in comparison to the Brussels 1 bis Regulation, in any case the "absolute" nature of the requirement of article 6, 2 of the EEOR, not allowing a forum of choice; cfr. also the possibly *broader* consumer-concept in the EEOR as compared to the consumer-concept in the Brussels 1 bis Regulation). In any case, the ESCPR, in its creation, in the analysis of its use and application, might "expose" more sharply than before its promulgation particular requirements, points of attractiveness or to the contrary lack of attractiveness, rights and obligations for plaintiffs and defendants, duties and possibilities for judges etc. that exist outside its existence and application – including obstacles to use other regimes, rights and obligations of parties etc. – and invite and encourage to reflect on them. Ultimately, and looking more broadly also to other regulations, at least some of the regulations/some of their characteristics have already worked as a "mirror", a test, a reason for and source of reflection on change or instead on maintenance - and thus, ultimately, have already done (part of their) work. Reflection on this might be a reason to change *or* to maintain rules that have been promulgated outside the application of the regulations – or, regarding the latter, to attempt to introduce them also in the regimes of the regulations themselves if they are maintained as regimes next to the national regimes. Reflection might indeed be stimulated by the way the regimes that are created by the regulations

[79] Plausible but not necessarily at stake when a defendant is domiciled abroad, plausible also when a plaintiff is domiciled abroad and the defendant is domiciled where the judge is located. See regarding the plausibility of enforcement in cases where the plaintiff is domiciled abroad in the context of the *EPO*R, V. Van Den Eeckhout, "Europees recht en nationaal procesrecht. Enkele beschouwingen naar aanleiding van recente rechtspraak van het Europees Hof van Justitie inzake grensoverschrijdende inning van schuldvorderingen in de EU", tijdschrift@ipr.be, 2020, issue 4, footnote 49.

[80] See on this V. Van Den Eeckhout, "Regels van internationale bevoegdheid in de context van de 'tweede generatie' verordeningen. Enkele beschouwingen vanuit het perspectief van bescherming van zwakke partijen", tijdschrift@ipr.be, 2018, issue 3, p. 147-184, p. 179; see moreover regarding possibilities, or the lack thereof, to sanction violation of article 26 par 2 Brussels 1 bis in the context of the ESCPR footnote 155 (p. 177).

function in the legislative landscape of the Member States: regulations such as the ESCPR, the EPOR and the EEOR are created as optional regimes, to be invoked by the plaintiff, but as far as a plaintiff invokes them and as far as conditions are fulfilled,[81] judges can't refuse the choice of the plaintiff for this regime and have to apply the rules of the regime (questioning thereby sometimes however the interpretation/application of certain rules, cfr. e.g. the Bondora case, that was referred to the CJEU); thus, the regulations truly "entered" the legislative landscape of Member States and thus legal practice might effectively be confronted with them – as is particularly the case with the ESCPR and the EPOR in Luxembourg - thus allowing the regulations to function in a way as pioneers, thereby possibly either acting as pacemakers or as canaries in coals mines – the latter especially when it comes to the protection of rights of defendants, possibly raising alarm bells on some points and ultimately leading to extinction – the regulations thereby themselves also functioning either as catalysts, or as systems that might be subject themselves to adaptation/interpretation. In sum, the regulations are thus functioning as explorers, especially when it comes to rights and obligations of plaintiffs and defendants and the duties/possibilities for judges – see e.g. in the context of the EPOR, the issue of the way action is left or not completely to the defendant; regarding the Luxembourgish practice, some notes have been made in this regard in this report, regarding i.a. the role Luxembourgish judges take up in this regard when it comes to checking, at several stages, if Article 6(2) EPOR is respected.

To what extent rights and obligations of plaintiffs and defendants are well-balanced in the various regimes themselves – if differences between systems are allowed, one might still wonder to what extent the systems in themselves are well-balanced – is an issue that especially might be recaptured in future EFFORTS-documents in a more general way, addressing thereby the organization of several regimes and the way they are applied in different countries. As far as regulations have been created with the idea of meeting needs of plaintiffs-creditors in cross-border situations, it might be noteworthy to point out thereby - while the ESCPR is certainly *also* used in Luxembourg *by* consumers, including Luxembourgish consumers against foreign defendants[82] - that Luxembourgish practice demonstrates that a regulation such as the ESCPR is not only used *by* consumers/private persons, but also often by professionals and organisations *against* non-professionals, being sometimes consumers. In those circumstances, the alignment of the particular aims

[81] Regarding the EEOR, what is said in the Luxembourgish legislation report regarding Article 19 EEOR might be recalled, see p. 10 of the Luxembourgish legislation report, available at at https://efforts.unimi.it/, see https://efforts.unimi.it/wp-content/uploads/sites/8/2021/07/D2.4-Collection-of-French-implementing-rules.pdf

[82] On the accessibility of Luxembourgish courts in the context of the application of the ESCPR if a Luxembourgish consumer is the plaintiff, see above, with "V. European Small Claims Procedure Regulation (ESCPR)." For some remarks on the accessibility of the courts of the plaintiff of the *EPOR* in case the plaintiff is a consumer (in the current situation and regarding some proposals), see V. Van Den Eeckhout, "Regels van internationale bevoegdheid in de context van de 'tweede generatie' verordeningen. Enkele beschouwingen vanuit het perspectief van bescherming van zwakke partijen", tijdschrift@ipr.be, 2018, issue 3, p. 147-184, especially p. 174-175.

of the regulations with more general or other particular aims of, especially, protection of consumers, might possibly appear more diffuse, less one-lined and less straightforward than if a private person/consumer is the plaintiff. In this context, e.g., the rules of international jurisdiction of the ESCPR and the other regulations, and their control and sanction mechanisms, might be recalled. Also more in general, in assessing the fairness of the regulations when it comes to rights of plaintiffs and defendants – and duties/possibilities related to that by judges – both the rules of the regulations themselves (as they are promulgated to be respected) and the possible control and sanction mechanisms thereof might be considered: which rules or principles are taken very seriously, which ones appear to be taken less seriously, either as such, or in the possibilities that are offered to check and sanction if they have indeed been respected – taking into account hereby features of the second generation regulations as being in principle written procedures, carried out in cross-border situations? In this regard, both case law of the European Court of Justice and of national courts might be relevant too, *e.g.* regarding issues of service, or regarding issues of violation of jurisdiction rules, as indicated above. Case law of the European Court of Justice and of national courts might also be relevant, as already indicated, when it comes to allegations of "discrimination" between regimes. To the extent that the judgments might be compared, judgments such as the above-mentioned judgment of the Belgian Constitutional Court of 12 October 2017 might be opposed here to the reasoning of the above-mentioned French Cour d'Appel of Paris in its decision of 28 January 2021. As also already mentioned above, with the "recurrent issues", also (requests for) "influence" of one regime to another might be at stake when looking in a broader way than pure allegations of discrimination. In a broader view, also cases of the CJEU such as the case Bondora – including the concern not to allow a plaintiff to "undermine" the protection of defendant-consumers - and the case Parking and Interplastics come into play. Issues of availability and attractiveness of regimes/hindering and discouraging factors to use a particular regime or aspects thereof can also come forward in such an analysis.

In future, subsequent documents, several of these issues will be recaptured as issues to possibly reflect on at a European and/or national level – with particular attention thereby for the Luxembourgish situation in the deliverables that will be focused on the Luxembourgish situation and with Luxembourg as an interesting country in any case to examine the implementation and the operation of the regulations.

VIII. Summary and overall assessment

This report has made use of the database available at https://justice.public.lu/fr/jurisprudence.html, particularly JUDOC[83] and juridictions judiciaires,[84] for the collection of relevant Luxembourgish case law. It also made use of an earlier report on Luxembourgish case law regarding the Brussels 1 Regulation that was written by Gilles Cuniberti and Anthi Beka, and to case law already collected and discussed in the context of the IC2BE-project.

As is apparent from figures presented in the annual reports of the cité judiciaire, the very high number of Luxembourgish EPO-cases and ESCP-cases is particularly noteworthy.

For a discussion of *recurring* issues regarding the EPOR and the ESCPR – as also related to the other regulations, with special attention to issues of international jurisdiction and check mechanisms – and to particular issues regarding each of them, reference might be made here to the section above "VI. Recurring issues" and to the sections on each of the regulations. In future deliverables, and particularly in the upcoming policy recommendations, many of these issues, regarding all regulations and regimes, will be retaken, at that moment particularly recaptured from the perspective of policy recommendations.

In this summary of the report on Luxembourgish case law, it may be recalled that regarding the *EPOR*, interesting issues came forward from the Luxembourgish case law regarding the interpretation of the concept of "consumer" in Article 6 EPOR – sometimes blocking the possibility to start an EPO-procedure in Luxembourg - regarding the various stages of control of respect for jurisdiction rules of the EPOR and the consequences attached to it – including the control of jurisdiction rules at the stage of opposition and review.

Regarding the *ESCPR*, it may be recalled here that, on the one hand, Luxembourgish judges appear to check the relevant rules of international jurisdiction on their own motion if the defendant does not react – in line with Article (28) Brussels 1 bis Regulation. On the other hand, Luxembourgish judges appear to interpret in a rather flexible and lenient way the rules on international jurisdiction themselves when it comes to the interpretation of the consumer-concept, allowing e.g. Luxembourgish lawyers to start an ESCP-procedure in Luxembourg for payment of lawyer fees against a client who is domiciled outside of Luxembourg, or e.g. Luxembourgish dentists to start an ESCP-procedure in Luxembourg against clients living abroad. Starting an ESCP-procedure in Luxembourg is thus often made *possible*, and, moreover,

[83] https://justice.public.lu/fr/jurisprudence/jurisprudence-judoc.html
[84] https://justice.public.lu/fr/jurisprudence/juridictions-judiciaires.html

might also appear to be *attractive* for Luxembourgish plaintiffs who want to start an "easy, quick" procedure in Luxembourg – their own jurisdiction – against defendants living abroad. It might be noted hereby that starting a procedure in Luxembourg might particularly seem attractive taking into account that there are no court fees in Luxembourg; moreover, Luxembourgish judges themselves appear to be quite familiar with the ESCP-procedure as became evident already during the IC2BE-research.[85] The attractiveness of the ESCP-procedure particularly comes forward when taking into account that regarding the Luxembourgish OPA-procedure (the "easy and quick" special Luxembourgish procedure, namely the "Ordonnance de Paiement") a requirement exists as to the domicile of the defendant in Luxembourg, thus sometimes blocking the possibility to start an OPA-procedure in Luxembourg, whereas starting an "easy and quick" ESCP-procedure in Luxembourg might appear to be allowed even in a case where the defendant is living outside of Luxembourg. Overall though, a high *variety* of situations in which the ESCP-procedure is used in Luxembourg may be observed, including varied constellations of localisation of the domicile of both plaintiffs and defendants. Noteworthy hereby is that many cases relate to the *aviation* sector.

All in all, especially when it comes to the application in Luxembourg of the EPOR and ESCPR – and except for a landmark decision such as Tribunal d'arrondissement de Luxembourg of 21 March 2017 on the situation as came forward in CJEU Eco Cosmetics, in Luxembourg[86] - rather than *landmark* decisions, *representative* cases standing for *patterns* of cases may be pointed out.

As the analysis of these recurring patterns of cases, having themselves possibly spill-over effects, allows to study in depth the application in practice of the EPOR and the ESCPR in Luxembourg, Luxembourg appears to be a "grateful" country to study – a fruitful testing ground of the application[87] by the judiciary of, particularly, the EPOR and the ESCPR.

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[85] See V. Van Den Eeckhout and C. Santaló Goris, "Luxembourg", in T. Kruger and J. von Hein (eds.), *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, 2021, p. 275-302.

[86] See, as mentioned above, the decision of the Tribunal d'arrondissement de Luxembourg of 21 March 2017 on the situation in CJEU Eco Cosmetics (C-119/13 and C-120/13), determining in this decision how to act in this particular situation in Luxembourg.

[87] As also already indicated in the EFFORTS-report on Luxembourgish *legislation* regarding the implementation of, particularly, the EPOR, ESCPR and EAPOR, see V. Van Den Eeckhout, "Collection of Luxembourgish Implementation Rules", (EFFORTS-Report), available at https://efforts.unimi.it/ , see https://efforts.unimi.it/wp-content/uploads/sites/8/2021/07/D2.8-Collection-of-Luxembourg-implementing-rules.pdf .

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SOME STATISTICS (source: "rapport d'activité 2020", referred to in footnote 8)

Tribunal d'arrondissement de Luxembourg

Tableau 2.1.8 : Les saisies conservatoires européennes

		2018	2019	2020
Demandes d'ordonnance de saisie conservatoire européenne	*avec titre*	6	14	17
	sans titre			2
dont demandes visant à obtenir des informations relatives aux comptes (art. 14)		*NA*	*NA*	*6*
Demandes non-recevables		*1*	*3*	*0*
Ordonnances de rejet		*3*	*6*	*0*
Ordonnances délivrées		*2*	*5*	*16*
Nombre de demandes de recours introduites en vertu des articles 33 et 34		0	0	0
Nombre d'appels interjetés		0	0	0

Tableau 2.1.9 : Les injonctions de payer européennes

	2016	2017	2018	2019	2020
Demandes d'injonction de payer européenne (IPA)	NA	NA	NA	NA	63
Décisions IPA	91	61	68	94	52
IPA émises	*NA*	*NA*	*NA*	*NA*	*15*
Titre exécutoires émis	*NA*	*NA*	*NA*	*NA*	*23*
Demandes refusées	*NA*	*NA*	*NA*	*NA*	*14*
Réexamen/Demandes d'informations complémentaires	NA	NA	NA	NA	2
Oppositions	NA	NA	NA	NA	9

Justice de paix de Luxembourg

Tableau 4.1.8 : Procédure européenne d'injonction de payer (IPA) – Règlement CE n° 1896/2006

	2016	2017	2018	2019	2020
Demandes introduites	168	163	157	186	143
Décisions IPA	132	178	181	172	141
IPA émises	*26*	*14*	*97*	*20*	*47*
Titres exécutoires émis	*60*	*68*	*33*	*69*	*36*
Demandes refusées	*46*	*96*	*51*	*83*	*58*
Oppositions	0	1	1	4	1
Affaires fixées à l'audience	16	5	4	5	4
Jugements	NA	NA	NA	7	2

Tableau 4.1.9 Procédure européenne de règlement de petits litiges – Règlement CE n° 861/2007

	2016	2017	2018	2019	2020
Demandes introduites	240	226	189	364	314
Décisions rendues	NA	354	263	491	586
Décisions émises	*95*	*137*	*113*	*227*	*271*
Titres exécutoires émis	*NA*	*122*	*104*	*211*	*248*
Demandes refusées	*64*	*95*	*46*	*53*	*67*
Affaires fixées à l'audience	2	8	1	5	4
Jugements	NA	NA	NA	0	0

Justice de paix de Luxembourg

Tableau 4.1.12 : Divers

	2016	2017	2018	2019	2020
Actes de notoriété	NA	NA	4	4	9
Assermentations	NA	NA	10	33	24
Certificats de non opposition et de non appel	NA	NA	458	576	587
Délivrance de grosse	NA	NA	1457	1442	1 145
Délivrance de seconde grosse	NA	NA	11	31	21
Ordonnances sur base de l'article 11 de la loi du 23 décembre 1978[172]	±30 000	±30 000	±30 000	25 120	17 806
Ordonnances en matière de dégâts de chasse / gibier	2	1	3	7	3
Jugements en matière de dégâts de chasse / gibier	NA	NA	1	0	0
Jugements contradictoires	*NA*	*NA*	*NA*	*0*	*0*
Jugements par défaut	*NA*	*NA*	*NA*	*0*	*0*
Requêtes en matière de saisies conservatoires et saisies gageries	NA	4	47	56	61
Scellés (apposition et levée)	4	4	6	2	1
Titres exécutoires européens	NA	NA	15	19	10
Saisies européennes (autorisations)	NAP	NAP	0	1	2
Affaires nouvelles	*NAP*	*NAP*	*0*	*1*	*2*
Décisions	*NAP*	*NAP*	*0*	*1*	*2*
Certificats relatifs à une décision en matière civile et commerciale (art. 53)	NA	NA	34	27	19
Warrants agricoles	NA	NA	3	4	2
Remembrements	NA	NA	2	1	0
Commissions rogatoires	NA	NA	1	1	1

[172] Ordonnances sur base de l'article 11 de la loi du 23 décembre 1978.

Justice de paix d'Esch-sur-Alzette

Tableau 4.2.8 : Procédure européenne d'injonction de payer (IPA) – Règlement CE n° 1896/2006

	2016	2017	2018	2019	2020
Demandes introduites	85	56	34	39	44
Décisions IPA	84	53	30	37	39
IPA émises	*8*	*4*	*5*	*9*	*6*
Titres exécutoires émis	*55*	*38*	*22*	*16*	*20*
Demandes refusées	*21*	*11*	*3*	*12*	*13*
Oppositions	0	0	3	3	1
Affaires fixées à l'audience	6	6	3	3	6
Jugements	3	3	1	1	2

Tableau 4.2.9 : Procédure européenne de règlement de petits litiges – Règlement CE n° 861/2007

	2016	2017	2018	2019	2020
Demandes introduites	178	186	171	187	228
Décisions rendues	NA	NA	NA	266	308
Décisions émises	*122*	*169*	*115*	*133*	*174*
Titres exécutoires émis	*NA*	*NA*	*NA*	*121*	*127*
Demandes refusées	*12*	*24*	*13*	*12*	*7*
Affaires fixées à l'audience	NA	NA	4	0	2
Jugements	1	0	0	2	0

Justice de paix d'Esch-sur-Alzette

Tableau 4.2.12 : Divers

	2016	2017	2018	2019	2020
Actes de notoriété	5	12	8	5	11
Assermentations	3	6	2	2	9
Certificats de non opposition et de non appel	± 320	± 200	306	255	231
Délivrance de grosse	NA	NA	NA	1 086	728
Délivrance de seconde grosse	NA	NA	NA	6	9
Ordonnances sur base de l'article 11 de la loi du 23 décembre 1978[184]	± 7 900	± 7 900	17 008	17 685	16 681
Ordonnances en matière de dégâts de chasse / gibier	NA	NA	1	0	2
Jugements en matière de dégâts de chasse / gibier	NA	NA	NA	1	4
Jugements contradictoires	*NA*	*NA*	*NA*	*1*	*4*
Jugements par défaut	*NA*	*NA*	*NA*	*0*	*0*
Requêtes en matière de saisies conservatoires et saisies gageries	17	6	14	8	8
Scellés (apposition et levée)	0	0	0	2	0
Titres exécutoires européens	NA	NA	6	19	19
Saisies européennes (autorisations)	NA	NA	2	0	0
Affaires nouvelles	*NAP*	*NAP*	*NA*	*0*	*0*
Décisions	*NAP*	*NAP*	*NA*	*0*	*0*
Certificats relatifs à une décision en matière civile et commerciale (art. 53)	NA	NA	NA	2	6
Warrants agricoles	NA	NA	NA	0	0
Remembrements	NA	NA	NA	0	0
Commissions rogatoires	NA	NA	NA	0	0

[184] La différence entre le chiffre avancé pour l'année 2018 et ceux des années précédentes résulte du fait que le chiffre actuel est basé sur des données réelles tandis que les chiffres des années antérieures étaient des évaluations basées sur les données d'un mois déterminé multipliées par 12.

Justice de paix de Diekirch

Tableau 4.3.7 : Ordonnances de paiement (OPA)

	2016	2017	2018	2019	2020
Affaires nouvelles	16 052	15 023	14 337	14 624	13 245
Ordonnances conditionnelles de paiement émises	15 917	14 801	14 328	14 613	13 235
Contredits	274	307	296	255	175
Titres exécutoires émis	8 931	8 209	8 148	7 605	6 968
Oppositions	29	35	40	38	25
Affaires fixées à l'audience	138	116	133	123	89
Ordonnances de refus	0	2	0	3	4

Tableau 4.3.8 : Procédure européenne d'injonction de payer (IPA) – Règlement CE n° 1896/2006

	2016	2017	2018	2019	2020
Demandes introduites	39	50	43	24	26
Décisions IPA	33	53	37	37	43
IPA émises	*5*	*19*	*4*	*20*	*21*
Titres exécutoires émis	*26*	*15*	*16*	*13*	*18*
Demandes refusées	*2*	*19*	*17*	*4*	*4*
Oppositions	0	6	1	2	1
Affaires fixées à l'audience	3	6	2	1	1
Jugements	NA	3	1	2	2

Justice de paix de Diekirch

Tableau 4.3.9 : Procédure européenne de règlement de petits litiges – Règlement CE n° 861/2007

	2016	2017	2018	2019	2020
Demandes introduites	72	30	49	55	47
Décisions rendues	NA	NA	NA	63	55
Décisions émises	*17*	*12*	*30*	*28*	*36*
Titres exécutoires émis	*NA*	*NA*	*NA*	*28*	*16*
Demandes refusées	*39*	*2*	*7*	*7*	*3*
Affaires fixées à l'audience	0	0	1	1	1
Jugements	NA	NA	0	1	1

Justice de paix de Diekirch

Tableau 4.3.12 : Divers

	2016	2017	2018	2019	2020
Actes de notoriété	3	4	4	2	4
Assermentations	2	3	1	9	4
Certificats de non opposition et de non appel	105	123	85	109	99
Délivrance de grosse	522	482	410	485	348
Délivrance de seconde grosse	15	7	17	9	8
Ordonnances sur base de l'article 11 de la loi du 23 décembre 1978	NA	NA	NA	10 800	9 100
Ordonnances en matière de dégâts de chasse / gibier	NA	NA	NA	2	5
Jugements en matière de dégâts de chasse / gibier	8	3	4	5	8
Jugements contradictoires	*NA*	*3*	*0*	*5*	*3*
Jugements par défaut	*NA*	*0*	*4*	*0*	*5*
Requêtes en matière de saisies conservatoires et saisies gageries	NA	NA	0	0	0
Scellés (appositions et levées)	0	0	0	0	0
Titres exécutoires européens	18	20	9	1	13
Saisies européennes (autorisations)	NAP	NAP	0	0	0
Affaires nouvelles	*NAP*	*NAP*	*0*	*0*	*1*
Décisions	*NAP*	*NAP*	*0*	*0*	*0*
Certificats relatifs à une décision en matière civile et commerciale (art. 53)	NA	NA	8	7	14
Warrants agricoles	NA	NA	0	0	0
Remembrements	NA	NA	0	1	0
Commissions rogatoires	NA	NA	NA	0	0