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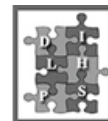
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# **EFFORTS Practice Guide for cross-border enforcement of judgments, court settlements and authentic instruments under the Reg. (EU) No 1215/2012 – Luxembourg**

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<b>I. OUTGOING .....</b>	<b>4</b>
A. OUTGOING JUDGMENTS.....	4
B. OUTGOING AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS .....	10
<i>Authentic instruments</i> .....	10
<i>Court settlements</i> .....	12
<b>II. INCOMING .....</b>	<b>14</b>



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## I. Outgoing

When Luxembourg is the Member State of origin

### A. Outgoing judgments

When a party wishes to invoke a judgment or seeks its enforcement in another Member State, s/he shall produce certain documents, depending on each specific case, that shall be obtained in the Member State of origin, according to the applicable procedures and rules: (1) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; (2) the certificate issued pursuant to Art. 53, either in the standard version or with mandatory information (see Art. 42(1)(b) and Art. 42(2)(b)-(c) *BI bis Reg.*); (3) a translation or a transliteration of the contents of the certificate or a translation of the judgment.

**1. How and when to obtain a copy of the judgment which satisfies the conditions necessary to establish its authenticity. See Art. 37(1)(a) and Art. 42(1)(a)-(1)(b) *BI bis Reg.***

In Luxembourg, Art. 79 of the Code of Judicial Organisation<sup>1</sup> (hereinafter “**CJO**”) grants the authority to deliver authentic copies to the chief clerk (*greffier en chef*).

The application is done by simple letter. There are no fees incurred.

According to Art. 254 of the New Civil Code<sup>2</sup> (hereinafter “**NCPC**”) stipulates that the execution formula is to be added to the authentic copy.

**2. How and when to ask for the certificate issued pursuant to Article 53. See Art. 37(1)(b) and Art. 42(1)(b)-(2)(b) *BI bis Reg.*** The certificate attached in the Annex I, concerning a judgment in civil and commercial matters, contains the indication of the court of origin (name, address, and other relevant information), of the parties (identification of the claimant and of the defendant) and information regarding the judgment (date and reference number, if a default judgment, service of the judgment on

<sup>1</sup> Loi du 7 mars 1980 sur l'organisation judiciaire, [https://data.legilux.public.lu/filestore/eli/etat/leg/recueil/cours\\_tribunaux/20210916/fr/pdf/eli-etat-leg-recueil-cours\\_tribunaux-20210916-fr-pdf.pdf](https://data.legilux.public.lu/filestore/eli/etat/leg/recueil/cours_tribunaux/20210916/fr/pdf/eli-etat-leg-recueil-cours_tribunaux-20210916-fr-pdf.pdf).

<sup>2</sup> Nouveau Code de Procédure Civile, [https://legilux.public.lu/eli/etat/leg/code/procedure\\_civile/20211226](https://legilux.public.lu/eli/etat/leg/code/procedure_civile/20211226).



the defendant, terms of the judgment and interests, information on the kinds of obligations contained in the judgment (monetary or otherwise), judgment ordering a provisional/protective measure, information on the costs and applicable interests).

Art. 87 CJO (as amended by the law of 14 July 2021<sup>3</sup>) stipulates that the presiding judge or the president of the court which rendered the decision is the competent body for the certificate according to Art. 37(1)(a) and Art. 42(1)(a)-(b) BI bis Reg. There are no additional implementation rules regarding the procedure.

Before the amendment, the chief clerk of the jurisdiction which rendered the decision was the competent body.<sup>4</sup> This was amended because the ECJ has stated in its *Imtech Marine* judgment<sup>5</sup>, that, when issuing the certificate, the issuing body has to verify whether the conditions for issuing the certificate are met. As this can include difficult legal questions, a judge is better suited for this task than the chief clerk.

**2 bis. Specific information for the enforcement.** For the purposes of enforcement in a Member State of a judgment given in another Member State, the certificate shall certify that the judgment is enforceable and contain an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest. Furthermore, when the judgment orders a provisional, including protective, measure the certificate shall contain a description of the measure and certify that the court has jurisdiction as to the substance of the matter and that the judgment is enforceable in the Member State of origin.

**Arts. 2(a) and 42(2)(c): provisional measure ordered without the defendant being summoned to appear.** When a provisional, including protective, measure was ordered without the defendant being summoned to appear, the creditor shall provide the competent authority of the Member State addressed also with proof of service of the judgment.

In the absence of a specific provision on these points, the applicant should include all the information needed to fill in the certificate in its initial request. The request

<sup>3</sup> Loi du 15 juillet 2021, <https://legilux.public.lu/eli/etat/leg/loi/2021/07/15/a541/jo>, no consolidated version of the law regarding the organization of the judiciary available yet.

<sup>4</sup> Compare Veerle Van Den Eeckhout, Collection of Luxembourg implementing rules, p. 7 for the situation before the amendment.

<sup>5</sup> ECJ, judgment of 17 Decembre 2015, case C-300/14.



should also draw attention to the relevant statutory rules that may have an impact on the information to be included in the certificate, such as the provisions detailed below.

Luxembourgish law does not contain a provision regarding the process of applying for a new certificate or requesting the amendment of an insufficient or inaccurate certificate. However, the usual practice seems to be that a creditor can obtain a new/amended certificate by simply approaching the court and requesting a new certificate/ an amendment of the certificate. In practice, the same chamber which has issued the original certificate will also issue the new/ amended certificate.

When requesting a new certificate, the creditor should return the original certificate to the court to. This excludes the risk of double enforcement.

Luxembourgish law foresees the possibility of ex parte decisions in a number of cases, for example Art. 66 NCP.

For example, the proceeding before the juge des référés according to Art. 919 et seq. NCP is a unilateral (ex parte) proceeding.<sup>6</sup>

The creditor can receive – depending on the type of service – two different kinds of proof of service: When the service is effected by post, the proof of service is the acknowledgement of receipt. When the service is effected by a bailiff, the proof of service is the protocol of the bailiff.<sup>7</sup> Electronic service is not available in Luxembourg under the NCP.<sup>8</sup>

**2 ter. Enforceability of the judgment.** A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

**Art. 44(2): suspension of the enforceability.** The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

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<sup>6</sup> Hoscheit, *Le droit judiciaire privé*, 2019, p. 840.

<sup>7</sup>

[https://e-justice.europa.eu/371/EN/service\\_of\\_documents\\_official\\_transmission\\_of\\_legal\\_documents?LUXEMBOURG&init=true&member=1](https://e-justice.europa.eu/371/EN/service_of_documents_official_transmission_of_legal_documents?LUXEMBOURG&init=true&member=1),

<sup>8</sup>

[https://e-justice.europa.eu/371/EN/service\\_of\\_documents\\_official\\_transmission\\_of\\_legal\\_documents?LUXEMBOURG&init=true&member=1](https://e-justice.europa.eu/371/EN/service_of_documents_official_transmission_of_legal_documents?LUXEMBOURG&init=true&member=1), No. 6.





**Art. 51(1): ordinary appeal against an enforceable judgment.** The court of the Member State addressed to which an application for refusal of enforcement is submitted may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired.

Under Luxembourgish civil procedure law, two conditions must be fulfilled so that a judgment becomes enforceable:<sup>9</sup> First, the judgment must include an enforcement clause according to Art. 677 NCPC. This requirement is also included in the constitution of Luxembourg. Art. 49 of the Luxembourgish constitution stipulates that orders and judgments are executed in the name of the Grand Duke. The greffier of the jurisdiction in which the judgment was rendered issues the enforcement clause on application of the party.

Second, the judgment needs to be duly served or notified. Art. 155 et seq. stipulate the conditions which must be observed during the service. When respondent is represented by a lawyer during the proceeding, Art. 255 NCPC stipulates that the judgment may only be enforced if it is served the lawyer before it is served the party.

Notably, the judgment is enforceable despite the fact that the time limits for a recourse have not yet lapsed.<sup>10</sup> However, as soon as an appeal is lodged against the judgment, the judgment is not enforceable anymore – except for “execution sur minute” and “exécution provisoire”. When the judgment is confirmed in the course of the appeal, the judgment regains its enforceability.<sup>11</sup> According to the information available on the e-Justice Portal, the time limit to lodge an appeal in ordinary matters is 40 days after the judgment has been served.<sup>12</sup> The ordinary appeal procedures are “l’opposition” and “l’appel”.

According to the information available on the e-Justice Portal the most important procedures for the suspension of the enforceability are the following:<sup>13</sup>

<sup>9</sup> Hoscheit, *Le droit judiciaire privé*, 2019, para. 1513.

<sup>10</sup> *Le droit judiciaire privé*, 2019, para. 1517.

<sup>11</sup> Hoscheit, *Le droit judiciaire privé*, 2019, para. 1518.

<sup>12</sup> [https://e-justice.europa.eu/content\\_procedural\\_time\\_limits-279-lu-maximizeMS\\_EJN-en.do?member=1](https://e-justice.europa.eu/content_procedural_time_limits-279-lu-maximizeMS_EJN-en.do?member=1).

<sup>13</sup> [https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?LUXEMBOURG&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?LUXEMBOURG&member=1).



According to Art. 590 NCPC, a debtor may block provisional enforcement, if it has been ordered in a case that is not foreseen by the law. However, this procedure is not available in commercial matters, Art. 647 Code de commerce<sup>14</sup>.

Art. 703(2) NCPC sets out the rules for the protective measure of “ring-fencing”.

*2 quater. Art. 55: judgment ordering payment of a penalty.* A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

Luxembourgish judges can order the payment of a penalty (“astreinte”). Art. 2059-2066 Code Civil Luxembourgais sets out the rules for the ordering of an astreinte. The astreinte is always accessory to the principal judgment, it cannot be ordered alone. In general, every judgment can include also the order of the payment of an astreinte<sup>15</sup> – except judgment which order the payment of a sum of money, Art. 2059, sentence 2 Code Civil.

Examples for judgments which can be connected with an astreinte are therefore typically judgments which order an act or omission of the respondent.

Juges des paix<sup>16</sup> and the juges des référés<sup>17</sup> are allowed to orders astreintes.

Regarding the procedure it is to note that an anstreinte may only be ordered if the party has demanded it.<sup>18</sup>

Furthermore, because of the accessory nature of the astreinte, it can only be ordered together with the judgment. An application for an astreinte after the judgment has been ordered will not be successful.<sup>19</sup>

<sup>14</sup> <https://legilux.public.lu/eli/etat/leg/code/commerce/20160101>.

<sup>15</sup> Thewes, L’Astreinte en droit luxembourgeois, Annales du droit luxembourgeois 1999, 119, 130.

<sup>16</sup> Art. 17 NCPC.

<sup>17</sup> Art. 940 NCPC.

<sup>18</sup> Art. 2059 Code Civil: “Le juge peut, à la demande d’une partie, condamner l’autre partie [...] au paiement d’une [...] astreinte [...]”

<sup>19</sup> Thewes, L’Astreinte en droit luxembourgeois, Annales du droit luxembourgeois 1999, 119, 144.



The amount to be paid under the astreinte is determined by the judge, there is no specific procedure to fix the final amount due. The law does not contain any guidance as to the amount. According to courts and literature the astreinte has to be deterrent. In order to reach that effect, the circumstances of the case and the behavior and the resources of the debtor have to be taken into account.

The astreinte may be fixed as a one-time payment, it might be payable per time-unit or by contravention.<sup>20</sup>

### 3. How and when to obtain a translation or a transliteration of the contents of the certificate or a translation of the judgment. See Art. 37(2) and 42(3)-(4) *BI bis Reg.*

**Translation or transliteration of the contents of the certificate.** The court or authority before which the judgment is invoked or the competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Art. 57, a translation or a transliteration of the contents of the certificate <sup>(21)</sup>.

**Translation of the judgment.** The court or authority before which the judgment is invoked may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation. In addition, the competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

It is not possible to obtain a translation or transliteration of the certificate from a Luxembourgish court, an external translator has to be contacted.

The government of Luxembourg has published a list of sworn-in translators and interpreters: <https://mj.gouvernement.lu/fr/professions-droit/expert-judiciaire/liste-experts-traducteurs.html>. According to a national report, translation costs can reach 100 to 200 EUR per page.

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<sup>20</sup> Thewes, L'Astreinte en droit luxembourgeois, *Annales du droit luxembourgeois* 1999, 119, 147.

<sup>21</sup> Please note that the translation or the transliteration of the certificate issued pursuant to Art. 53 shall be into the official language of the Member State addressed under Art. 57(1) as well as any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept under Art. 57(2) *BI bis Reg.*



## ***B. Outgoing authentic instruments and court settlements***

### Authentic instruments

When a party seeks the enforcement of an authentic instrument in another Member State, s/he shall produce (1) an enforceable authentic instrument that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

#### **1. How and when to obtain an authentic instrument which satisfies the conditions necessary to establish its authenticity.**

1 *bis*. **Enforceability of the authentic instrument.** An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 58).

**Art. 44(2): suspension of the enforceability.** The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the authentic instrument is suspended in the Member State of origin.

In Luxembourgish law, the rules relating to the authentic instruments (“acte authentique”) are to be found in the following provisions:<sup>22</sup>

Art. 1317-1321 of the Luxembourgish Civil Code and the law of 9 Decembre 1976 relating to the organization of notaries.<sup>23</sup>

For an authentic instrument to be enforceable, it needs to carry the execution clause, Art. 37 of the law of 7 December 1976.

Art. 310-347 NCPC set out the procedure for a party to claim that an authentic act is not authentic in fact, i.e. faked or falsified.

#### **2. How and when to ask for the certificate issued pursuant to Article 60 for authentic instruments.**

<sup>22</sup> Cf. <https://www.authentic-acts.eu/en/questions-luxembourg/>.

<sup>23</sup> <https://legilux.public.lu/eli/etat/leg/loi/1976/12/09/n1/jo>.



The competent body to issue the certificate pursuant to Art. 60 BI bis Reg. is the notary who has drawn up the authentic instrument.<sup>24</sup>

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<sup>24</sup> Art. 1 Law regarding the Organisation of the Notary, as amended by the Law of 13 March 2009, <https://legilux.public.lu/eli/etat/leg/loi/2009/03/13/n1/jo> (no consolidated version available online).



## Court settlements

When a party seeks the enforcement of a court settlement in another Member State, s/he shall produce (1) an enforceable court settlement that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

### 1. How and when to obtain a court settlement which satisfies the conditions necessary to establish its authenticity.

1 *bis*. **Enforceability of the court settlement.** A court settlement which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 59).

**Art. 44(2): suspension of the enforceability.** The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the court settlement is suspended in the Member State of origin.

The settlement (“transaction”) in Luxembourg is governed by Art. 2044-22058 Code Civil and Art. 345 NCPC.

However, Luxembourgish law does not know the possibility of *court* settlements.<sup>25</sup> In practice, parties may settle their dispute and ask the judge to authenticate the settlement through a judgment.

Instead, the NCPC foresees the option for mediation. According to Art. 1251-12 NCPC the judge can, at every stage of the proceedings, invite the parties to mediate their dispute. Art. 1251-15(3) NCPC stipulates that – when the parties have settled their dispute through mediation – the parties can submit their agreement to the competent judge who then homologates the agreement in accordance with Art. 1251-21, 1251-22 NCPC.

### 2. How and when to ask for the certificate issued pursuant to Article 60 for court settlements.

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<sup>25</sup> Notably, the European Enforcement Atlas only refers to *foreign* court settlements, not to Luxembourgish, national, court settlements.



Two scenarios have to be distinguished:

In the case that a court authenticates the settlement through a judgment, the process for obtaining a certificate is the same process as with an ordinary judgment.

In the case of a homologation judgment (Art. 1251-21, 1251-22 NCPC), this process has to be followed.



## II. Incoming

When Luxembourg is the Member State addressed

When a party wishes to invoke a judgment in the Member State addressed or seeks its enforcement, s/he shall invoke it before the courts of the Member State addressed or follow the procedure for the enforcement of judgments of the Member State addressed. The procedure for the enforcement of claims in Luxembourg is dealt with in the Annex “Enforcement procedure”. In addition to national rules, the Regulation provides that enforcement must be preceded by (1) service of the judgment and of the certificate. Furthermore, the creditor may avail her/himself of: (2) the right to apply for a decision that there are no grounds for refusal of recognition as referred to in Art. 45; (3) the power to proceed to any protective measures which exist under the law of Luxembourg; (4) the request for adaptation of a measure or an order which is not known in the law of Luxembourg. On the other hand, the person against whom enforcement is sought (or, in case of the refusal of recognition, any interested party) may fight the recognition or the enforcement of the judgment issued in another Member State, either filing a claim for opposition to enforcement under national rules (which also will be dealt with in the Annex “Enforcement procedure”) or (5) filing a claim for refusal of recognition or enforcement, also with the power to apply for the measures under Art. 44(1). The person against whom enforcement is sought may also (6) apply for the suspension of the enforcement proceedings pursuant to the grounds of suspension provided for by national law (to the extent that they are not incompatible with the Regulation, see Art. 41(2)) or in cases where the enforceability of the judgment has been suspended in the Member State of origin in accordance with Art. 44(2) BI bis Reg.

**1. Service of the judgment and the certificate prior to the enforcement.** Alongside the conditions and the procedural steps applicable under the law of the Member State addressed, the Regulation requires the creditor to take a number of steps before proceeding with the enforcement. First, the certificate issued pursuant to Art. 53 BI bis Reg. shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43(1)). The certificate should be served on that person within a reasonable time before the first enforcement measure (Whereas (32)).

Generally, service of the certificate and of the judgment before the enforcement takes place could be classified as cross-border service, i.e., “service from one Member State to another Member State”, according to the definition given by the Service Regulation <sup>(26)</sup>, applicable from 1 July 2022. However, in case the person against whom recognition or enforcement is sought is domiciled in the Member

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<sup>26</sup> Whereas (6) of the Reg. (EU) 2020/1784 of the European parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).





State of enforcement, such service could be out of the scope of application of the Service Regulation and therefore national rules on service could be applicable.

The creditor has to effect service through a Luxembourgish bailiff.

1 *bis*. **Language.** Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, s/he may request a translation *of the judgment* <sup>(27)</sup> if the judgment is not written in or accompanied by a translation into the official language of the Member State in which s/he is domiciled or a language that s/he understands (Art. 43(2)).

Where such translation is requested, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought (Art. 43(2)).

According to the information available on the e-Justice Portal, Luxembourg accepts documents in French and German.<sup>28</sup>

1 *ter*. **Art. 41(3): authorized representative in the Member State addressed.**

A party seeking enforcement of a judgment is not required to have an authorized representative in Luxembourg.

2. **Protective measures.** An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

The protective measures in available in Luxembourg are: the attachments (*saisie*), namely the *saisie-arrêt*, the *saisie-conservatoire*, the *saisie-gagerie*.

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<sup>27</sup> Creditors should be aware that translation of the certificate, unlike the translation of the judgment, is not strictly required at this stage of the enforcement but may be requested just afterwards by the enforcement authorities, according to Art. 42(3).

<sup>28</sup> [https://e-justice.europa.eu/350/EN/brussels\\_i\\_regulation\\_recast?LUXEMBOURG&member=1](https://e-justice.europa.eu/350/EN/brussels_i_regulation_recast?LUXEMBOURG&member=1).



Certain protective measures (appointing a sequester or a *administrateur provisoire*) can be ordered by the *juge de référé*.

3. **Adaptation.** If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests (Art. 54). How, and by whom, the adaptation is to be carried out should be determined by each Member State (Whereas (28)).

There is no specific Article in the NCPC that deals with adaptation.

4. **Claim for refusal of recognition or enforcement.** On the application of the party against whom enforcement is sought (or, in case of refusal of recognition, of any interested party), the recognition or the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist. The party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of Luxembourg, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law. The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present (Whereas (30)).

**Procedure.** The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted (Art. 47(1)).

Art. 685-4(2) NCPC stipulates that the application for the refusal of enforcement is to be submitted before the “*président du tribunal d’arrondissement siégeant comme en matière de référé*”.



Art. 685-4(3) NCPC provides the rules for a procedure to review the decision of the president du tribunal d'arrondissement.

According to the information available on the e-Justice-Portal, there are no court fees in Luxembourg.<sup>29</sup> Lacking any information to the contrary, the application for refusal does not cause any court fees as well.

**4 bis. Authorised representative in the Member State addressed.** The party seeking the refusal of a judgment given in another Member State shall not be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

The party seeking the refusal of recognition or enforcement of a judgment is not required to have an authorized representative in Luxembourg.

**4 ter. Grounds for refusal.** National grounds for refusal of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)) <sup>(30)</sup>.

Luxembourg does not provide for an exhaustive list of grounds for refusal available to the debtor.

As a general matter, Luxembourgish law provides, by reason of securing a minimum standard of living for the debtor, that certain assets may not be attached.

<sup>29</sup> <https://e-justice.europa.eu/37/EN/costs?LUXEMBOURG&member=1>.

<sup>30</sup> For guidance see, amongst others: "This means that domestic grounds relating to, for example, the disproportionality of enforcement means, prohibitions on seizing certain (primary) goods or abuse of rights, or indeed set-off, may generally be allowed. However, for example disputes on the service of documents or a violation of jurisdiction rules beyond those set out in the Regulation, or a re-examination of the facts or the applicable law are not allowed.", X. KRAMER, *Cross-border enforcement and the Brussels I-bis Regulation: towards a new balance between mutual trust and national control over fundamental rights*, in *Netherlands International Law Review*, 2013, p. 360.



The Luxembourgish government maintains a website with information available as to how much of the salary of a person is attachable.<sup>31</sup>

Art. 728 NCPC contains a list of movable objects which may not be attached. These are typical objects, necessary for maintaining a minimum everyday life of the debtor.

*4 quater. Appeal.* The decision on the application for refusal may be appealed against by either party. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged. The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

Art. 685-4(2),(3) NCPC sets out the procedure for an application to refuse recognition and enforcement.

Art. 685-4(3) NCPC stipulates that there is the possibility of a further appeal. When a party has attacked the decision by way of recours, the decision of the Cour d'appel can be attacked by way of cassation.

#### *4 quinquies. Measures under Art. 44(1) BI bis Reg.*

The application for the measures listed in Art. 44(1) BI bis Regulation is presented to the court in the procedure foreseen in Art. 685-4(2) NCPC.

All the three measures may be ordered by the president of the court.

**5. Claim for a decision that there are no grounds for refusal of recognition.** According to Art. 36(2), the application for a decision that there are no grounds for refusal

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<sup>31</sup> <https://guichet.public.lu/fr/entreprises/ressources-humaines/remuneration/cessions-saisies-salaire/saisie.html>.



of recognition as referred to in Art. 45 is presented in accordance with the procedure provided for in Subsection 2 of Section 3 of the Regulation.

In Luxembourg, there is no separate procedure to claim that there are no grounds for refusal of recognition. The relevant article 685-4(2) NCPC stipulates: "The claim for the refusal of recognition, the claim that there are no grounds for refusal of recognition [...] are to be brought before the president of competent the tribunal d'arrondissement like a 'matière de référé'".

**6. Suspension of the enforcement.** National grounds of suspension of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)).

**6 bis. Enforceability suspended in the Member State of origin.**

In Luxembourgish law, there is no specific provision which names the competent authority under Art. 44 BI bis Regulation. Such a claim to suspend enforcement would fall under the general provision of Art. 685-4(2) NCPC.

**7. Measures for the indirect enforcement (payment orders).** Art. 55 establishes the rules for recognition of a judgment given in a Member State which orders a payment by way of a penalty. However, it does not cover the case in which the incoming judgment has not a payment order attached to it. It may be possible that the competent authorities of the Member State of the enforcement have the power to issue measures of indirect enforcement.

Two situation for the indirect enforcement have to distinguished:

In the first scenario, the incoming judgment does have a payment order attached to it, the amount of the payment is just not liquidated. In that case, there might be the possibility that a Luxembourgish court liquidates the amount and issues a payment order.

In the second scenario, the penalty order has no payment order at all attached to it. In such a case, it would not be possible to enforce a payment of a penalty in Luxembourg.



In Luxembourg, courts would not have jurisdiction to add a payment order to the penalty.



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