



Max Planck Institute
LUXEMBOURG
for Procedural Law



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

Project JUST-JCOO-AG-
2019-881802

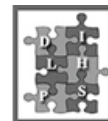
With financial support from
the Civil Justice Programme
of the European Union
In partnership with:



UNIVERSITÄT
HEIDELBERG
ZUKUNFT
SEIT 1386



UNIVERSITÀ DEGLI STUDI DI MILANO
DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



VUB VRIJE
UNIVERSITEIT
BRUSSEL





EFFORTS Practice Guide for outgoing or incoming judgments, court settlements and authentic instruments certified as European Enforcement Orders – Luxembourg

Author: Niels Elsner (Research Fellow, MPI Luxembourg)*

* The author warmly thanks the members of the *EFFORTS Luxembourgish Working Group* for their valuable comments and suggestions regarding the contents of the present Practice Guide:

- Ms K. Basenach (Director, *European Consumer Centre Luxembourg*)
- Prof G. Cuniberti (*Université du Luxembourg*)
- Ms E. Fronczak (Lawyer, *Loyens & Loeff*)
- Judge Th. Hoscheit (*Président de Chambre, Cour d'appel de Luxembourg*)
- Ms J. Jasson (*European Consumer Centre Luxembourg*)
- Mr M. Maillet (Lawyer, *E2M*)
- Ms Cl. Mara-Marhuenda (Lawyer, *Arendt & Medernach*)
- Prof S. Menetrey (*Université du Luxembourg*)
- Mr G. Minne (Lawyer, *Arendt & Medernach*)
- Dr V. Richard (Lawyer, *Wurth Kinsch Olinger*)



I. INTRODUCTION	4
II. OUTGOING	4
A. EEO FOR JUDGEMENTS	4
B. EEO FOR AUTHENTIC INSTRUMENTS	13
C. EEO FOR COURT SETTLEMENTS	16
III. INCOMING	20
A. ENFORCEMENT OF THE EEO FOR THE CREDITOR.....	20
B. POSSIBLE REMEDIES/DEFENCES FOR THE DEBTOR.....	21



Disclaimer. *This Practice guide is the result of a scientific research project elaborated for educational and general information purposes. It has not been tested in legal practice, and is neither intended to provide specific legal advice nor as a substitute for competent legal advice from a licensed attorney. The views, information, or opinions expressed herein are those of the authors and do not reflect the official opinion or position of the European Commission. The authors and the European Commission do not guarantee the accuracy, relevance, timeliness, completeness or the results from the use of the information herein. Any action taken upon the information in this document is strictly at the user's own risk. Both the Commission and the authors of this document disclaim any responsibility and/or liability for any use of the contents in legal practice.*



I. Introduction

Building upon the contents of the *Practice Guide for the Application of the Regulation on the European Enforcement Order of the Commission* ([here](#)), the *EFFORTS Practice Guide* seeks to supplement operators and end-users with clear practical instructions on how to proceed with the European Enforcement Order Regulation (Reg. (EC) No 805/2004) at a national level.

According to the general scope of the EFFORTS Project, the *EFFORTS Practice Guide for outgoing and incoming titles* covers the Member States addressed: Belgium, Croatia, France, Germany, Italy, Lithuania and Luxembourg.

The Guide is structured so that issues relating to outgoing and incoming titles are dealt with separately. *Outgoing* titles are the ones for which certification is sought in the Member State of origin: the interplay between European and national civil procedural rules makes it difficult for operators and end-users to verify how and when to ask for a European Enforcement Order, whether the requirements for the certification are met and which are the possible remedies/defences for the parties.

Incoming titles are the ones, certified as EEOs in another Member State, that must be enforced in the Member State addressed: according to the general principle of mutual recognition in judicial cooperation in civil matters within the European Union, the same conditions apply as for national titles, plus additional remedies specifically drafted for the European Enforcement Order (Arts. 20 ff. EEO Reg.). The interplay between European and national civil procedural rules makes it difficult for operators and end-users to verify how, when and under which conditions they may proceed with enforcement and the procedures and the conditions to ask for refusal of enforcement or for stay/limitation of the enforcement proceedings.

II. Outgoing

When Luxembourg is the Member State of origin

The procedure and the requirements to obtain an EEO certification vary depending on the title to be certified. The following paragraphs will address in turn the certification of judgments that are yet to be given/that have already been issued (A), authentic instruments (B), and court settlements (C).

A. EEO for judgements

Depending on whether the judgment has yet to be given or has already been given, the creditor may take certain steps in order to ensure its certification of as EEO. The Commission Practice Guide distinguishes between these two possibilities, and provides



the creditor with separate step-by-step instructions for the certification of judgments as EEOs. In the present document, however, the requirements for the certification of existing and future judgments are dealt with together, leaving it then to the creditor to follow the different practical instructions (see Chapter II and III of the Commission Practice Guide) for an already given judgment or one that has not been given yet.

1. How and when to ask for the European Enforcement Order. A request for a European Enforcement Order must be addressed to the competent authority in the Member State of origin. In principle this is the court seized on the merits (EC PG II.3.1 and III.2.1).

The request must be made in accordance with the national law of the court seized (EC PG II.3.2 and III.2.2).

The request may be made at any time when or after proceedings have been initiated (EC PG II.3.3) or at any time after the judgement was given (EC PG III.2.3).

In Luxembourgish law, there is no specific provision regarding the competence to issue an EEO certification (Art. 6(1) EEO Reg.).

According to Art. 87 of the Law regarding the organization of the judiciary (loi modifiée du 7 mars 1980 sur l'organisation judiciaire, as amended by Loi du 15 juillet 2021¹) the president or the judge director of the court which has rendered the decision is the competent body to issue certificates under European regulations in civil and commercial matters. Thus, this provision is also applicable for the certification under Art. 6(1) EEO Reg.

Apart from Art. 87 of the Law regarding the organization of the judiciary, there are no other implementing provisions for the EEO.

2. The decision of certification. In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex I. In doing so, the court must check a number of items (see EC PG II.4.1 and ff.). Amongst those, some relate to rules of national civil procedural law.

a. Judgement relating to a pecuniary claim. A European Enforcement Order may be requested with respect to judgments, i.e. any judgment given by a court

¹ No consolidated version available only:
<https://legilux.public.lu/eli/etat/leg/loi/2021/07/15/a541/jo>.



of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court (Art. 4(1) EEO Reg.) (EC PG II.1.3 and III.1.3). The claim which is the subject of the dispute must be a claim for payment of a specific sum of money that has fallen due (EC PG II.1.1, III.1.1 and III.3.1.2) or for which the due date is indicated in the judgment.

- b. The judgment is enforceable.** The judgment to be certified as a European Enforcement Order must be enforceable. However, a certificate may also be issued when the judgment is provisionally enforceable (EC PG II.4.3 and III.3.3).
- c. Sums covered by the EEO certificate: costs of the proceedings.** The European Enforcement Order certificate may cover not only the specific sum of money object of the claim, but also the amount of costs related to the court proceedings which are included in the judgment if the debtor has not specifically objected to his obligation to bear such costs in the course of the court proceedings in accordance with the law of the Member State of origin (EC PG II.4.1.2).

Under Luxembourgish national law, the following titles are enforceable:²

- Court decisions,
- Payment orders,
- Notarial agreements (authentic documents),
- National arbitral awards,
- Foreign arbitral awards,
- Foreign court decisions, and
- Foreign court settlements.

- d. The claim has remained uncontested under Art. 3(1)(b) EEO Reg.** A claim is considered to be uncontested in the situations listed under Art. 3 EEO Reg. Amongst others, the claim is considered uncontested when the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of court proceedings (Art. 3(1)(b) EEO Reg.) (EC PG II.4.2.2 and III.3.2.2).

² Carlos Calvo, European Enforcement Atlas, National Report Luxembourg, p. 4, <https://www.enforcementatlas.eu/wp-content/uploads/2021/07/eu-enforcement-atlas-luxembourg-report.pdf>.



Under Luxembourgish national procedural law, the debtor effectively contests a claim by appearing in court and raising an objection.

Objections raised in former correspondence may not be considered as far as they are not exhibited to the court.

- e. The claim has become uncontested under Art. 3(1)(c) EEO Reg. after an initial objection.** A claim is also considered uncontested when the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin (Art. 3(1)(c) EEO Reg.); this situation occurs when the debtor did participate in the procedure and objected to the claim, but did no longer appear or was no longer represented at a subsequent hearing concerning the claim. In this situation, the court must check that the conduct of the defendant can amount to a tacit admission of the claim or of the facts under the law of the Member State of origin (EC PG II.4.2.3 and III.3.2.3).

Such a situation would be subject to a case to case appreciation under Luxembourgish law.

In general, mere absence in the oral hearing might not always be sufficient to render a claim uncontested under Luxembourgish procedural law.

- f. Additional checks in case the debtor has not expressly agreed to the claim.** If the debtor has not expressly agreed to the claim, i.e. in the situations under Arts. 3(1)(b) and 3(1)(c) EEO Reg., the court must check additional items. Some of them relate to rules of national civil procedural law.
- i. **Service of the document instituting the proceedings.** The document instituting the proceedings as well as any summons to a court hearing must be served by way of a method recognised by the Regulation ⁽³⁾. The

³ If service needs to take place in another Member State, documents must be transmitted to that other Member State in accordance with the rules of Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters or Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25



methods of service accepted are specified in Art. 13 and 14. In general, two types of service are possible: either service with proof of receipt by the debtor or the debtor's representative (Art. 13) or service without proof of receipt by the debtor or the debtor's representative (Art. 14) (EC PG II.2.2 III.3.5.2.1) ⁽⁴⁾.

Under Luxembourgish procedural law, there are several forms of service which satisfy the requirements of Art. 13 ff. EEO. These are: the service through postal services with acknowledgement of receipt (Art. 102 NCPC), the service by a bailiff (Art. 155 NCPC). In Luxembourgish law, the primacy of the delivery at the hands of the debtor has to be respected.⁵

- ii. **Mandatory information.** A creditor wishing to obtain a European Enforcement Order certificate should ensure that some procedural requirements are complied with. In particular, the document instituting the proceedings on the merits must be served on the debtor and must contain specified information for the attention of the debtor: due information about the claim (Art. 16) and due information about the procedural steps necessary to contest the claim (Art. 17). The information due under Art. 17 may be contained in the document instituting the proceedings or in an accompanying document and it may also be contained in any subsequent summons to a court hearing (EC PG II.2.1 and III.3.5.2.2).

Under Luxembourgish law, in proceedings before the tribunal d'arrondissement and before the tribunal de paix, the document instituting the proceedings is served to the debtor by a bailiff (*par voie d'huissier*).⁶

Articles 153 and 154 of the New Luxembourgish Code of Civil Procedure (nouveau code de procédure civil, **NCPC**) enumerate which information must be contained in

November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).

⁴ *Cure of non-compliance*: if the document instituting proceedings or any summons to a court hearing was not served on the debtor in accordance with Art. 13 or 14, the court may nevertheless certify the judgment as a European Enforcement Order if it is proved by the conduct of the debtor in the court proceedings that s/he has personally received the document to be served in sufficient time to arrange for his defence (Art. 18(2) EEO Reg.) (EC PG II.4.5.2.1 and III.3.5.2.1.2).

⁵ Hoscheit, *Le droit judiciaire privé au Grand-Duché de Luxembourg*, 2nd Ed., 2019, para. 481 et seq.

⁶ Hoscheit, para. 298.



the act instituting the proceedings. Among other things, Art. 154(1) and Art. 154(2) NCPC set out that the act instituting the proceedings must contain a description of the claim and information regarding the next procedural steps. Art. 154 further sets out that without this information, the service is void (“le tout à peine de nullité”).

Therefore, under Luxembourgish law, the act instituting the proceeding contains the information due under Art. 16 and 17 EEO.

- iii. **Cure of non-compliance.** If the European Enforcement Order is refused by the court due to a lack of due service of the document instituting the proceedings or any summons to a court hearing under Art. 13 or 14 due to a deficient provision of information under Art. 16 or 17, such non-compliance with the minimum standards may be cured and the claimant may make a new application for a European Enforcement Order to the court having delivered the judgment if the requirements under Art. 18(1) EEO Reg. are met (EC PG II.5.1.1, III.3.5.2.2.2 and III.4.1.1).

Forms of service of a judgment at Luxembourgish national level

At Luxembourgish national level, the service of a judgment is effected either by signification or notification.

Information under Art. 18(1)(b) EEO Regulation

In Luxembourgish procedural law, there is no provision containing any information as to how the debtor is informed according to Art. 18(1)(b) EEO Regulation.

Means of challenge for a full review (Art. 18(1)(b) EEO Regulation)

The means of challenge and the time limits are the following: In case of a default judgment, an opposition has to be filed within 15 days, an appeal has to be filed within 40 days. In case of a contested decision, the time limit for an appeal is 40 days.

- iv. **Review in exceptional cases.** The Member State of the court which has given the judgment must offer the debtor the right to apply for a review of the judgment where the conditions under Art. 19 EEO Reg. are met (EC PG II.4.5.2.3 and III.3.5.2.3).



Luxembourg has not enacted any specific implementing provisions. However, the law on the lifting of the forfeiture resulting from the expiration of a time limit for taking legal action⁷ contains special provision for exceptional cases. According to the information available on the e-Justice Portal, the review procedures are the ordinary review procedures in civil and commercial matters.

3. Possible remedies/defences for the parties

- a. **If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the judgement in another Member State under the Brussels regime (Reg. (EU) No 1215/2012) (EC PG II.5.1.2 and 4.1.2).

There is no express provision in Luxembourgish law which allows the creditor to appeal against the refusal to grant an European Enforcement Order.

- b. **If the European Enforcement Order contains an error.** If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the claimant or the debtor may apply to the court having delivered the certificate requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG II.5.2.1.1, II.5.1.3, III.4.1.3 and III.4.2.1.1).

Luxembourgish law does not contain any specific provision in case the European Enforcement Order contains an error.

However, according to the information available on the e-Justice Portal, administrative practice in Luxembourg foresees that the creditor can request the judge of the court which has rendered the decision, to correct the error in the European Enforcement Order.⁸

⁷ Loi du 22 décembre 1986 relative au relevé de la déchéance résultant de l'expiration d'un délai imparti pour agir en justice, <https://legilux.public.lu/eli/etat/leg/loi/1986/12/22/n3/jo>.

⁸ The information on the e-Justice Portal still indicates that a court clerk is competent (https://e-justice.europa.eu/376/EN/european_enforcement_order?LUXEMBOURG&clang=fr), however, as the order is issued by a judge since 2021, the rectification should as well be done by a judge.



- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having delivered the certificate requesting that the European Enforcement Order certificate may be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG II.5.2.1.2 and III.4.2.1.2).

Luxembourgish law does not contain any provision as to how to proceed when a European Enforcement Order was clearly wrongly granted.

Although the e-Justice-Portal has a section on application of the European Enforcement Order Regulation in Luxembourg, it does not include any information regarding the rights of a debtor, when a European Enforcement Order was clearly wrongly granted.

In practice, Art. 66 NCPC might be a legal basis to set aside an EOP which was wrongly granted. In its ordinary scope of application, Art. 66 NCPC grants a person against whom an ex parte decision is taken a legal remedy. That provision might be applied to a wrongly granted EOP by analogy.

- d. If the judgment has ceased to be enforceable or its enforceability has been suspended or limited.** If the judgment has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the judgment was delivered, the debtor may apply to the court of origin for a certificate indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG II.5.2.1.3 and III.4.2.1.3).

Luxembourgish law does not foresee any special provision in case a substitute certificate is required. The e-Justice Portal does not contain any information either.

- e. Appeal against the judgment.** The debtor may challenge the judgment certified as EEO on the merits in accordance with the national procedural law of the Member State where the judgment was issued. If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (Art. 6(3) EEO Reg.) (EC PG II.5.2.1.4 and III.4.2.1.4).



In Luxembourgish law, there are no implementing provisions in that regard. The e-Justice Portal does not indicate any specific procedure either.

Lacking a specific provision implementing the EEO Regulation, creditor may obtain the certificate at the court which ruled on the appeal.

- f. Review in exceptional cases.** The debtor may lodge a special review against the judgment before the competent court of the Member State where the judgment was issued under the circumstances set forth in Art. 19 EEO Reg. In applying for this special review, the debtor must act promptly (EC PG II.5.2.1.5 and III.4.1.2.5).

About the implementation of Art. 19 EEO Reg., see supra, point **2.f.iv.**



B. EEO for authentic instruments

1. How and when to ask for the European Enforcement Order. The European Enforcement order certificate must be requested from the competent authorities in the Member State where the instrument was drawn up. In some Member States, the competent authority to deliver the certificate is the notary who has drawn up the act or a representative organization. In other Member States, the competent authority is a court (EC PG IV.2.1).

The European Enforcement Order may be asked at the time when the authentic instrument is being drafted or any time thereafter (EC PG IV.2.2).

Under Luxembourgish law, there is no specific provision in the law regarding that issue.

However, according to the information available on the e-Justice Portal, the competent body to issue the EEO certificate for authentic instruments is the notary.⁹ The e-Justice Portal contains a link to the website of the Chamber of the Notaries in Luxembourg to identify a competent notary.¹⁰

2. The decision of certification. In order to issue a European Enforcement Order, the competent authority shall fill in the standard form included in Annex III to the EEO Reg. In doing so, the competent authority must check a number of items (see the EC PG IV.3.1 ff.). Amongst those, some relate to rules of national civil procedural law.

- a. Authentic instrument relating to a pecuniary claim.** An authentic instrument is defined under Art. 4(3) EEO Reg. (EC PG IV.1.3). The claim which is the subject of the authentic instrument must be a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the authentic instrument (EC PG IV.1.1 and IV.3.1.2).
- b. The authentic instrument is enforceable.** The authentic instrument to be certified as a European Enforcement Order must be enforceable (EC PG IV.3.2).
- c. Costs of the procedure.** The European Enforcement Order certificate may cover also the amount of costs related to the drafting of the instrument which are included in the instrument (EC PG IV.3.1.2).

⁹ https://e-justice.europa.eu/376/EN/european_enforcement_order?LUXEMBOURG&clang=fr.

¹⁰ <http://www.notariat.lu/>.



In Luxembourgish law, the rules relating to authentic instruments are located in Art. 1317-1321 of the Luxembourgish Civil Code.

To be enforceable, authentic instruments need to carry an execution clause, Art. 37 of the Law regarding the organization of the notaries.

3. Possible remedies/defences for the parties

- a. **If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the authentic instrument under the Brussels regime (EC PG IV.4.1.1).

There is no specific provision in Luxembourgish law which grants the creditor a right to appeal the refusal to grant a European Enforcement Order.

- b. **If the European Enforcement Order contains an error.** If there is a discrepancy between the authentic instrument and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the competent authority in the Member State of origin requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG IV.4.1.2 and IV.4.2.1.1).

Under Luxembourgish law, there is no specific provision to that regard. According to the e-Justice Portal such application is to be directed to the clerk of the court of origin. However, it is not clear, whether the clerk of the court is the competent body for rectifications of errors in case of authentic instruments, for which the notaries issue the European Enforcement Order. In that case, there would be no “court of origin”. It would thus be more sensible for the notary who issued the European Enforcement Order also to rectify any error in it.

- c. **If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the competent authority in the Member State of origin requesting that the European Enforcement Order certificate be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG IV.4.2.1.2).



In Luxembourgish law, there is no provision which sets out the competent body to address or which describes the procedure to follow to request a wrongly granted European Enforcement Order.

- d. If the authentic instrument has ceased to be enforceable or its enforceability had been suspended or limited.** If the authentic instrument has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the instrument was drafted, the debtor may apply to the competent authority indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG IV.4.2.1.3).

Luxembourgish law does not contain any specific provision in that regard.

Lacking a specific provision, the court decision which caused the authentic instrument to lose its enforceability or which limited or suspended its enforceability may serve as a substitute certificate.

- e. Challenge of authentic instruments.** Under Art. 23 EEO Reg., one of the conditions for stay or limitation of enforcement of an authentic instrument in the Member State addressed is that the debtor challenged an authentic instrument certified as a European Enforcement Order, including an application for review under Art. 19, or applied for rectification or withdrawal (EC PG IV.4.2.2.1).

In Luxembourgish law, Art. 310 to 347 NCPC set out the procedure to challenge an authentic instrument.

The ground for challenge is that the authentic document is false or falsified (Art. 310 NCPC).

The first step in the procedure is to notify the other party (Art. 311 NCPC). After that, the other party has eight days to decide and inform the other party whether it shares its view or not (Art. 312 NCPC).

In addition, it would also be possible under Luxembourgish law to declare the acte contracutel null and void in a civil litigation.



C. *EEO for court settlements*

1. How and when to ask for the European Enforcement Order. A request for a European Enforcement Order must be addressed to the court which approved the court settlement or before which it was concluded (EC PG V.2.1 and V.2.2).

The European Enforcement Order may be asked at any time during the court proceedings or after the approval or conclusion of the court settlement (EC PG V.2.3).

Luxembourgish law does not contain any provision in that regard.

Notably, Luxembourgish law does not foresee the possibility of court settlements in the strict sense. In practice, parties may request a court to authenticate their settlement in 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.

Lacking any specific provision in that regard, it is to assume that in case of a court settlement, the same certification procedure is applicable as in case of judgments. Then, according to Art. 87 of the law regarding the organization of the judiciary, the president or the director of the court of origin is the competent body.

2. The decision of certification. In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex II to the EEO Reg. In doing so, the competent authority must check a number of items (see the EC PG V.3.1 ff.). Amongst those, some relate to rules of national civil procedural law.

a. Court settlement for a pecuniary claim. A European Enforcement Order may be requested with respect to court settlements, i.e. a settlement which has been approved by a court or concluded before a court in the course of proceedings (Art. 3(1) and Art. 24 EEO Reg) (EC PG V.1.3). The claim which is the subject of the settlement must be a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the settlement (EC PG V.1.1 and V.3.1.2).

b. The court settlement is enforceable. The court settlement to be certified as a European Enforcement Order must be enforceable (EC PG V.3.2).



- c. Sums covered by the EEO certificate: costs of the proceedings.** The European Enforcement Order certificate may cover also the amount of costs related to the court proceedings which are included in the court settlement (EC PG V.3.1.2).

Luxembourgish law does not foresee the possibility for a court settlement in the strict sense.

The procedure to obtain a homologation of a mediation agreement between the parties is the following:

Art. 1251-12-1251-16 NCPC set out the rules for judicial mediation in Luxembourg. Art. 1251-21-1251-22 NCPC set the procedure to obtain approval of the court regarding the mediation agreement. The application to obtain approval is to be addressed to the president of the tribunal d'arrondissement, Art. 1251-22(2) NCPC. According to Art. 1251-22(2) NCPC.

The grounds to refuse the homologation of the mediation agreement are the following:

- The agreement is against public policy,
- The agreement is against the interests of children,
- Because of specific provisions, enforcement is not possible,
- It was not allowed to settle the dispute through means of mediation.

Art. 1251-21 NCPC stipulates that the homologation makes the mediation agreement enforceable.

3. Possible remedies/defences for the parties

- a. If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the court settlements under the Brussels regime (EC PG V.4.1.1).

Luxembourgish law does not foresee an appeal procedure in case the European Enforcement Order is refused.

- b. If the European Enforcement Order contains an error.** If there is a discrepancy between the court settlement and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the



court having approved the settlement or before which the settlement was concluded requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG V.4.1.2 and V.4.2.1.1).

Luxembourgish law does not contain a provision in that respect, the e-Justice Portal does not contain any information either.

- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having approved the settlement or before which the settlement was concluded requesting that the European Enforcement Order certificate be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG V.4.2.1.2).

Luxembourgish law does not contain a provision in that respect, the e-Justice Portal does not contain any information either.

- d. If the court settlement has ceased to be enforceable or its enforceability had been suspended or limited.** If the settlement has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where it was approved or concluded, the debtor may apply to the court having approved the settlement or before which the settlement was concluded for a certificate indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG V.4.2.1.3).

Luxembourgish law does not contain a provision in that respect, the e-Justice Portal does not contain any information either.

- e. Appeal against the court settlement.** The debtor may challenge the court settlement on the merits in accordance with the national procedural laws of the Member States. If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (Art. 6(3) EEO Reg.) (EC PG V.4.2.1.4).



As there is no court settlement in Luxembourg in the strict sense, but only the possibility to draw up a mediation agreement which can be homologated, there is no specific appeal procedure.



III. Incoming

When Luxembourg is the Member State of enforcement

According to Art. 20(1) EEO Reg., “[a] judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement” (see also Art. 24(3) and Art. 25(3) EEO Reg. for court settlements and authentic instruments). Thus, the procedure for the enforcement of the EEO mirrors the procedure for the enforcement of any other national title. Additionally, Reg. (EC) No 805/2004 establishes specific remedies or defences for the parties.

A. Enforcement of the EEO for the creditor

Once the claimant has obtained a judgment, authentic instrument or court settlement certified as a European Enforcement Order, s/he may apply for enforcement in the Member State of enforcement. The judgment, court settlement or authentic instrument certified as a European Enforcement Order is treated as if it was given in the Member State of enforcement and it shall be enforced in the same way as a national judgment, court settlement or authentic instrument.

1. Competent court or authority. The claimant must apply for enforcement with the court or authority competent for the enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order in the Member State of enforcement (EC PG VI.1).

In Luxembourgish law, there is no specific implementing provision regarding the enforcement of European Enforcement Orders.

However, debtors can, through the e-Justice Portal, identify the competent body to address for enforcement.

2. Documents to be produced by the claimant. In order to request in a Member State enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order the claimant shall produce the documents listed in Art. 20 EEO Reg. (EC PG VI.2).



According to the information available on the e-Justice Portal, Luxembourg accepts documents in German and in French.¹¹

3. Enforcement authorities. The enforcement authorities must check whether the claimant produces the necessary documents for enforcement. If the necessary documents are produced, the judgment, authentic instrument or court settlement certified as a European Enforcement Order shall be enforced under the same conditions as a judgment, authentic instrument or court settlement handed down in the Member State of enforcement (EC PG VI.3).

In Luxembourg, no separate enforcement authority exists. The court seized (either by the creditor because the procedure requires him to do so or by the debtor because he contests by way of incident the enforcement procedure) with the specific enforcement measure examine whether all conditions for that measure are fulfilled.

B. Possible remedies/defences for the debtor

1. Refusal of enforcement of a judgment. The debtor has the possibility to apply for a refusal of enforcement of a judgment (Art. 21 EEO Reg.) if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country (EC PG II.5.2.2.1 and III.4.2.2.1).

2. Limitations on enforcement. The competent enforcement authorities may refuse, limit or stay enforcement according to the provisions of Chapter IV of the EEO Reg. Without prejudice to the above, the grounds for refusal or suspension of enforcement under national law continue to apply (EC PG VI.4).

In Luxembourgish law, there are no specific implementing provisions.

In practice, the debtor will produce his application by way of incident when opposing the enforcement procedure.

¹¹ https://e-justice.europa.eu/376/EN/european_enforcement_order?LUXEMBOURG&clang=fr.



The e-Justice Portal, a search tool to identify the competent court is implemented.¹²

The grounds for refusal or stay of enforcement on a national level are for example¹³:

- The document, based on which the enforcement decision was issued, does not have an enforceable title,
- The enforcement decision has lost effect,
- The parties have agreed not to enforce during a limited time,
- A deadline, by when enforcement has to be completed, has expired.

A reason to limit enforcement is, for example, that the enforcement is assigned to items, which are exempted from enforcement, Art. 744 NCPC.

3. Refusal of enforcement of a court settlement or an authentic instrument.

Art. 24(3) and Art. 25(3) explicitly exclude the applicability of Art. 21(1) EEO Reg. to authentic instruments and court settlements; only Art. 21(2) (prohibition of a review of the title on its merits) is applicable (EC PG IV.4.2.2 and V.4.2.2). This does not automatically exclude the applicability of national grounds for the refusal of enforcement of an authentic instrument or a court settlement (arg. ex Art. 20(1) EEO Reg.).

In Luxembourgish law, there are no specific rules to that regard, a case by cases assessment will be conducted.

4. Stay or limitation of enforcement of a judgment, court settlement or authentic instrument. The debtor may apply for a stay or limitation of enforcement of a judgement, authentic instrument or court settlement under Art. 23 EEO Reg. (EC PG II.5.2.2.2, III.4.2.2.2, IV.4.2.2.1 and V.4.2.2.1).

The debtor will produce his application by way of incident when opposing the enforcement procedure.

¹² https://e-justice.europa.eu/376/EN/european_enforcement_order?LUXEMBOURG&clang=fr.

¹³ Carlos Calvo, European Enforcement Atlas, National Report Luxembourg, p. 9, <https://www.enforcementatlas.eu/wp-content/uploads/2021/07/eu-enforcement-atlas-luxembourg-report.pdf>



Max Planck Institute
LUXEMBOURG
for Procedural Law