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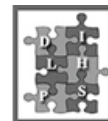
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Annex I: Enforcement of titles in Luxembourg

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Introduction

This section of the EFFORTS Practice Guide deals with the way judgments (and other enforceable instruments) are forcibly executed against the party against whom enforcement is sought [*hereinafter also* the debtor] for the benefit of the person who pursues the enforcement [*hereinafter also* the creditor] in the Member State addressed. In principle, foreign judgments must be enforced under the same conditions as a judgment given in the Member State addressed. Since it would not be possible to exhaustively cover the enforcement proceedings in civil and commercial matters as regulated by national procedural laws, the issues hereby addressed are limited to specific ones. These have been selected with the scope of presenting to foreign creditors and debtors the essential features of the enforcement proceedings in the Member State concerned, highlighting differences from one Member State to the other. Creditors and debtors involved in cross-border enforcement proceedings are left with the question of how to plan the enforcement and how to react to it. Without the presumption of substituting national expert practitioners in assisting their clients with these procedures, the EFFORTS Practice Guide Enforcement Annex aims at providing more clarity for the end-users and operators in the essential choices relating to cross-border claims enforcement. The rules and procedures hereby addressed are applicable insofar as they are compatible with the relevant EU regulation.



1. Locating the debtor's attachable assets.

Planning the enforcement within the EU

Which are the categories of assets that are not attachable, wholly or in part, under your national procedural law? Are there any specific categories of assets (e.g. assets that might be covered by immunity) which are subject to specific additional requirements or procedures prior to execution?

Can the creditor, either directly or through the assistance of the enforcement agents or other public authorities, find official information regarding the domicile and residence of natural persons within the State? If so, please provide some details on how to access such information (e.g., what is the timeline for such request).

Attachable assets:

a) Movable objects

In Luxembourgish law, Art. 728 of the New Code of Civil Procedure (*Nouveau Code de Procédure Civile*, **NCPC**) gives a list of objects of the debtor which are not attachable.

According to Art. 728(1)(2) NCPC, these objects are:

- Beds needed by the debtor and his family,
- the clothes and linen essential for their own use,
- as well as the furniture needed to store them, a washing machine and an iron,
- the appliances needed to heat the family home, the tables and chairs allowing the family to take meals in common as well as the crockery and household utensils essential to the family,
- a piece of furniture for storing crockery and household utensils,
- an appliance for preparing hot meals,
- one device for preserving food, one lighting device per inhabited room,
- objects necessary for disabled members of the family,
- objects assigned for the use of children who live in the debtor's household,
- pets,
- objects and products necessary for personal care and upkeep of the premises,
- the tools necessary to maintain the garden,



- all excluding luxury furniture and items.

However, according to Art. 728(2) NCPC, the objects mentioned in Art. 728(1)(2) NCPC are attachable if they are located in another place than the place in which the debtor usually lives or works in.

Art. 728(1)(3) NCPC declares books and other objects of the debtor or his children – if they live in the same household–, as not attachable, if they are necessary for their pursuit of studies or professional education.

Art. 728(1)(4) NCPC further declares not attachable objects which are indispensable for the profession of the debtor, up to the value of 2.478,94 EUR.

According to Art. 728(1)(5) NCPC objects used for worship cannot be attached.

According to Art. 728(1)(6) NCPC the food and the fuel for one month for the debtor and his family cannot be attached.

According to Art. 728(1)(7) NCPC not attachable are:

Either a cow, twelve ewes or goats – at the debtor's choice, and a pig and twenty-four animals of the debtor's stable. In addition, the straw, fodder, and grain necessary for the before-mentioned animals is not attachable as well.

b) Salary

The attachment of salaries in Luxembourg is not governed by the NCPC but by a different code, the Law of 11 November 1970 on assignments and attachments of work remuneration as well as pensions and annuities.¹

On the official website of the Luxembourgish government, there is specific information available as to which percentage of a salary is attachable.²

2. Jurisdiction over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

In cases concerning cross-border enforcement, what are the rules that define the jurisdiction of the courts in Luxembourg? In which cases the courts in Luxembourg do

¹ <https://legilux.public.lu/eli/etat/leg/loi/1970/11/11/n1/jo>.

² <https://guichet.public.lu/en/entreprises/gestion-juridique-comptabilite/contentieux/cessions/saisie.html>.



not have jurisdiction over the enforcement proceedings? I.e. rules of international jurisdiction over the enforcement proceedings

In Luxembourg, as the general rule, the jurisdiction of the enforcement authorities is limited to the territory of the state.

2-bis. Territorial competence over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

Which rules govern the territorial competence of the enforcement agents in Luxembourg?

Which rules govern the territorial competence of the courts of the enforcement proceedings in Luxembourg?

In Luxembourg, the Law regarding the organization of bailiffs (*Loi du 4 décembre 1990 portant organisation du service des huissiers de justice*)³ sets out the rules and competences of the bailiffs.

3. Preliminary steps and spontaneous compliance.

Taking preliminary steps for the enforcement and possibilities to avoid forced execution

Are there preliminary steps to be taken before starting enforcement proceedings? Is the enforcement authority involved in this phase? How does the debtor receive notice of the upcoming enforcement?

Are there specific instruments for the parties to seek spontaneous or amicable debt recovery to avoid the attachment of her/his assets? What is the deadline, if any, for the debtor to spontaneously comply with her/his obligation and avoid forced execution of the claim?

³ https://legilux.public.lu/eli/etat/leg/loi/1990/12/04/n3/jo#art_13.



As to our knowledge, there is no legislature which oblige the parties to seek spontaneous or amicable debt recovery.

4. General outline of the enforcement procedure: classification and description of different modes of enforcement.

How to proceed with the enforcement (general and brief outline)

Which is the first act of the enforcement and does it differ from one mode of enforcement to the other? What is the deadline for the creditor to carry out the first measure of execution?

Which is the statute of limitations for the enforcement of a title in Luxembourg?

May the competent enforcing authority refuse to proceed with the execution if they consider that the creditor has not complied with the general enforcement requirements, such as e.g., the certainty, maturity and liquidity of certain claims; territorial competence relating to the enforcement authorities; further authorization or other formalities to proceed with the enforcement; etc.? What are the remedies available to the creditor in such scenario?

For monetary enforcement, may the creditor avail her/himself of several concurrent or cumulative enforcement procedures? How does coordination between different enforcement procedures for the same claim/enforcement instrument work? In particular, how does the debtor file an opposition for concurrent or subsequent enforcement procedures whose total added value exceeds the total sum due according to the judgment?

Are there secondary or ancillary effects or features of the judgments or other enforcement titles to be mentioned (e.g. the right to register a mortgage on the debtor's immovable property or the increasing in the interest rate attached to monetary claims)? In the affirmative, which are the applicable procedures and modes of execution?

Under Luxembourgish law, the different modes of enforcement are found in Art. 686-918 NCPC.



In general, the enforceable title has to be served to the debtor before enforcement procedures can begin. The enforcement procedure then is, in general, the obligation of the bailiff.

The **attachment of movable** objects is governed by Art. 719-761 NCPC. The debtor has to be notified at least one day in advance, Art. 719 NCPC. During the seizure of movable objects, two Luxembourgish witnesses have to be present, Art. 721 NCPC. Art. 728 NCPC contains the already above-mentioned list of non-attachable objects. When objects are seized, a report with a detailed description of the objects has to be prepared, Art. 724 NCPC. The objects are then liquidated by an auction. Art. 753-757 NCPC are the provisions setting out the rules for the announcement of the auction. Between the seizure of the objects and the auction must be a minimum time period of 8 days, Art. 749 NCPC.

The rules regarding the **attachment of money in bank accounts** are to be found in Art. 693-718 NCPC. The procedure for the attachment of money in bank accounts is the following: The creditor can apply for the attachment in an ex parte procedure, the decision has to be validated by a court then. After that, the decision is served to the bank.

Art. 809-854 NCPC set out the rules for the **enforcement in immovable property**. Before it is possible to enforce in immovable property, the debtor has to receive a payment order, Art. 809 NCPC. Enforcement in the immovable property can only begin 15 days after the payment order has been served. Art. 812 NCPC gives the details which have to be included in the seizure report. The debtor will be served with the report of seizure. Within 15 days after the service, the seized property will be transcribed in a list, maintained by the mortgage office. From that point on, the debtor cannot alienate the immovable property anymore.

15 days after the transcription, the creditor file a request at the court that the immovable property is to be liquidated. Within 8 days, the debtor is served with a summons to provide his/her statement. After that, a court will rule on the validity of the seizure and appoint a notary for the sale of the property, Art. 832 NCPC.

The appointed notary will then handle the sale of the property.

The rules for the **enforcement in wages and other income** is not laid down in the NCPC but in the Law of 11 November 1970 on assignments and attachments of work remuneration as well as pensions and annuities. The rough outline of the procedure is as follows: The creditor has to file an application before the justice of peace (small claims court, *justice de paix*). The notice of attachment is then served on the attached third party. When the notice is served, the attachment is considered effective.



5. Opposition to the enforcement and stay of the enforcement.

How to challenge the enforcement in a broad sense (for the debtor)

In general, which remedies are available under national law to the party against whom enforcement is sought? Which are the national grounds ⁽⁴⁾ for opposition to enforcement or refusal of enforcement? How does the debtor file such claim(s)? *Please note that under Art. 41 Reg. (EU) No 1215/2012 such grounds are applicable as long as they are not incompatible with the grounds referred to in Art. 45 of the same Reg. Also, according to European jurisprudence (Court of Justice, 4 July 1985, case C-220/84, AS-Autoteile Service GmbH vs. Mahlè), grounds for opposition to enforcement do not include “a set-off between the right whose enforcement is being sought and a claim over which the courts of that state would have no jurisdiction if it were raised independently”. How are these requirements interpreted in your jurisdiction?*

Which remedies are available to contest irregularities in the enforcement procedure? Is it possible for the parties to cure irregular acts?

Can the enforcement be stayed under national grounds for stay ⁽⁵⁾ and which is the court before which the request for a stay is to be filed?

Luxembourgish law offers two options for a debtor to oppose enforcement.⁶

One option is to turn to the juge des référés. With this option, however, the enforcement can only be stopped preliminarily.

The other option a party has is to bring the matter before the court who has ruled on the merits. The competence is determined according to the circumstances surrounding the decision to be enforced: In case of a decision which was not appealed, the court of first instance is the competent court. In case of a decision which was

⁴ “Examples may include”, according to the Opinion of Advocate General Pikamäe in Case C-568/20, J v H Limited, §46, “challenges to the seizable nature of certain assets or sums of money, the quantum of the debt as a result of payments or set-off occurring after the judgment, irregularities that may affect the enforcement instruments, but also to the existence of the title itself due to the effects of a limitation period or to its enforceability”.

⁵ Please note that, unlike national grounds *for refusal*, there is no compatibility clause for national grounds *for stay*. It could be noted that a such clause has been adopted in other European legislative instruments, e.g. in the Reg. (EU) 2019/1111, which states, under Art. 57, that national grounds for suspension of enforcement, as well as national grounds for refusal of enforcement, “shall apply in so far as they are not incompatible with the application of Articles 41, 50 and 56”.

⁶ Cf. T. Hoscheit, *Le droit judiciaire privé au Grand-Duché de Luxembourg*, 2nd Ed., 2019, para. 1605-1606.



appealed but the appeal court confirmed the decision, the court of first instance stays competent. Only in case of a decision which was appealed and the court of appeal changed the ruling of the court of first instance, then the court of appeal is the competent court.

6. Costs of the enforcement proceedings, liability of the creditor and deposit of a security.

Considering potential downsides (for the creditor)

Is there any liability of the creditor in cases of irregular execution, abuse of forced execution of claims or even for malicious or fraudulent enforcement proceedings?

Please describe the calculation of the costs of enforcement proceedings, their allocation and the rules governing such matter. Are there any court fees or other taxes applicable? Who bears the costs of the procedure in case of anticipatory termination of the enforcement proceedings?

Does the law of enforcement establish that the creditor must post a security in some cases? If so, under which conditions?

In Luxembourg, the costs of enforcement are set out in the Regulation regarding the costs of bailiffs (Règlement grand-ducal du 24 janvier 1991 portant fixation du tarif des huissiers de justice).⁷

⁷ <https://legilux.public.lu/eli/etat/leg/rgd/1991/01/24/n2/consolide/20211002>.