



ENFORCEMENT IN LUXEMBOURG OF FOREIGN JUDGMENTS

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1. Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

In Luxembourg, the main act for the reciprocal recognition and enforcement of foreign judgments is Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation 44/2001) and its several amending acts, which applies to any judgment given by a court or tribunal of an EU country (except in revenue, customs or administrative matters, status or legal capacity of natural persons, matrimonial matters, wills and succession, bankruptcy, social security and arbitration).

Several other regulations and treaties should be mentioned:

- Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings;
- the Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters, signed in Lugano; and
- the Convention between Luxembourg and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed in Luxembourg on 29 July 1971.

Entrance into these treaties and adoption of these regulations is mainly part of the process of European integration, and they do not raise major difficulties as the contracting countries are organised on similar basic principles; therefore, judgments are rarely contrary to Luxembourg public order and can be easily enforced.

2. Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Not applicable.

3. Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

In addition to the sources of law regarding the enforcement of foreign judgments mentioned in question 1, when there are no bilateral or multilateral treaties or EU regulations that can be applied, the Luxembourg courts apply the principles established by case law to allow or refuse the enforcement of foreign judgments.

Furthermore, it is worth mentioning that many regulations were adopted in the European Union to facilitate the settlement of crossborder disputes and cross-border enforcement, such as:

- Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (article 20, paragraph 1);
- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedures (article 16); and
- Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (article 5).

These regulations abolished the enforcement procedure. A judgment given in a member state in the European Small Claims Procedure, a European order for payment that has become enforceable in the member state or a judgment that 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’.

4. Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Luxembourg is not a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

5. Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

There is no limitation period for enforcement of foreign judgments in matters not subject to a treaty or an EU regulation, except if the law of the state of origin limits the enforceability of certain judgments over time. However, in matters subject to a treaty or an EU regulation, the Luxembourg court may not be aware that the decision of the state of origin can no longer be enforced, particularly in proceedings in which enforcement is requested on the basis of a unilateral petition.

In order to be enforced, the enforcement order must always be served to the party against which the enforcement is required. Such party will then be able to appeal the enforcement order before the Court of Appeal of Luxembourg and then argue that the foreign judgment was no longer enforceable according to the law of the state of origin.

6. Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Any kind of enforceable judgments in the state of origin, even those with provisional enforcement, may be enforced in Luxembourg if they satisfy certain conditions (see question 10), such as the rights of defence, and if the foreign judgment is not contrary to Luxembourg public policy.

In Luxembourg, the enforcement of a foreign judgment that has lost its enforceability in the state

of origin cannot be granted, provided that the verification of this enforceability is based on foreign law.

7. Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Cases must be brought before the president of the district court and, in matters not subject to a treaty or an EU regulation, before the district court sitting in collegial court.

8. Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

Article 33 of Regulation 44/2001 shall apply to foreign judgments issued in an EU country and they shall be recognised in Luxembourg without any special procedure being required.

For matters regulated by EU Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure; EU Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure;

or EU Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, both recognition and enforcement procedures are abolished.

With respect to other foreign judgments, Luxembourg law recognises that they are the proof of their content, in the absence of proof to the contrary, and that they produce all effects that do not involve material acts for their execution. They receive a sort of prima facie recognition for the facts they contain.

9. Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

A defendant cannot raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction. The only possible defences will be based on:

- the enforceability of the foreign judgment;

- the international jurisdiction of the foreign court, according to the Luxembourg rules of distribution of jurisdiction;
- the procedural regularity, especially the rights of defence; and
- most important, the fact that the foreign judgment is not contrary to Luxembourg public policy.

10. Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

According to case law, foreign judgments can be recognised in Luxembourg if they satisfy the following conditions that shall be verified by the Luxembourg court:

- the international jurisdiction of the foreign court, according to the Luxembourg rules of distribution of jurisdiction;
- the procedural regularity, especially the rights of defence; and
- the foreign judgment is not contrary to Luxembourg public policy.

This traditional position of Luxembourg case law is reflected in article 34 of Regulation 44/2001:

A judgment shall not be recognised:

- 1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;*
- 2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;*
- 3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;*
- 4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State that addressed specific statements regarding the enforcement of foreign judgments.*

11. Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered, and if so, what factors?

There is no further non-mandatory requirement for recognition in Luxembourg.

12. Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

There is no requirement of equivalence in Luxembourg jurisdiction.

13. Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

The president of the district court or the district court shall automatically check whether the Luxembourg courts had exclusive jurisdiction. This check is a matter of public policy for the Luxembourg judge or court.

For example, under Luxembourg law, the court jurisdiction to put a company into liquidation shall be where the principal place of business is located. According to Luxembourg law, the principal place of business is presumed to be the place of its registered office.

Therefore, the Luxembourg court may authorise the enforcement of a foreign court's decision that appointed a voluntary liquidator, if it appears that the principal place of business of the company was in the state of origin.

14. Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

Since the court order of the European Court of Human Rights of 28 June 2007 in the Wagner v Luxembourg case, Luxembourg courts have accepted that the enforcing court is not required to verify that the law applied by the foreign court is the one designated by the Luxembourg rules of conflict of laws.

15. Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice

sufficient? How much notice is usually considered sufficient?

The president of the district court or the district court checks whether the writ of summons was formally served to the defendant at his or her domicile and if the foreign court order was duly notified to him or her. The enforcing court also verifies if the defendant was represented by a lawyer before the foreign court and whether he or she had the opportunity to defend his or her rights. It has to be pointed out that the violation of the rights of defence is often pleaded before the enforcing court, as it is considered a contradiction of Luxembourg public policy.

This traditional position of Luxembourg case law is in line with article 45 and article 34, paragraph 2 of Regulation 44/2001:

... a judgment shall not be recognised where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so.

16. Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

No. The president of the district court or the district court will only consider defences as further described in question 10.

17. Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Compliance with the procedural rules of the law of the state of origin is checked by the enforcement court to ensure that due process was followed in order to detect possible fraud committed against the defendant.

18. Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

According to the traditional position of Luxembourg case law and to specific statements regarding the enforcement of foreign judgments, such as article 34, paragraphs 1 and 2 and article 45 of Regulation 44/2001, a foreign judgment shall not be enforced if such enforcement is contrary to public policy.

The Luxembourg court shall verify that the foreign judgment does not violate public policy. The public policy exception occurs only when the application of foreign law consists, in the specific case submitted to the enforcing court, of a serious violation to the interests that should be protected under the Luxembourg legal system.

Luxembourg case law considers that the enforcing court shall not have to verify the compatibility of the foreign judgment with Luxembourg public policy, but must only check whether the recognition and enforcement of judgments is likely to undermine public policy.

For example, banking secrecy is considered as a matter of public policy and a Luxembourg court will refuse to enforce a foreign judgment that would have granted to the party claiming enforcement the right to obtain information from the bank of the defendant.

It is firmly established by Luxembourg case law that any review of the merits of the foreign decision is excluded and that the enforcing court should only verify the eligibility of enforcement and cannot challenge the findings of foreign court.

19. Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

A foreign judgment shall not be enforced if it is irreconcilable with a judgment given in a dispute between the same parties in Luxembourg in which enforcement is sought. Moreover, according to article 34, paragraph 4 of Regulation 44/2001, a foreign judgment involving the same cause of action and between the same parties shall not be recognised or enforced:

if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

20. Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

The main principle consists of the fact that under no circumstances may the foreign judgment be reviewed as to its substance. Based on this principle, the Luxembourg court shall not be allowed to check whether an enforceable agreement to use alternative dispute resolution has not been followed.

Therefore, the party has no other possibility than to appeal in its state of origin and argue before this court that the requirement to use an alternative dispute resolution was not followed.

21. Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

Judgments given by EU jurisdictions are very easily recognised and enforced due to the existing EU regulations that provide the circumstances in which these judgments shall be enforced in other member states and the summary procedure to be followed in the concerned member state in which recognition is sought.

Foreign judgments may also be easily enforced when Luxembourg is party to bilateral (currently only the Convention with Austria of 29 July 1971) or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments. However, the procedure for enforcement of such judgments not subject to EU regulations can take more time, as such proceedings occur before the district court sitting in collegial matters.

Finally, judgments given by Council of Europe jurisdictions and that are not subject to EU regulations may be relatively easily enforced in Luxembourg, as the member state of origin is generally organised on similar basic principles.

22. Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

Luxembourg courts simply give effect to foreign judgments in Luxembourg under the same terms as the initial foreign judgments.

Luxembourg case law refuses to review the merits of foreign judgments.

This position is in line with articles 36 and 45 of Regulation 44/2001: 'Under no circumstances may a foreign judgment be reviewed as to its substance.'

However, according to a traditional position of Luxembourg case law, enforcement can be given to a part of the foreign judgment.

23. Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest, and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Luxembourg courts simply give effect to foreign judgments in Luxembourg under the same terms. For example, if the foreign judgment orders a party to pay an amount of US\$100,000, the Luxembourg court will only state that this foreign judgment can be enforced in Luxembourg as if it were a Luxembourg judgment. Therefore, the court will not convert the sum into euros and the bailiff in charge of the enforcement of the judgment may have to convert the amount due while enforcing it. If the foreign judgment does not clearly determine the date or the conversion rate, the applicant must obtain an interpretive ruling of the sentence. In any case, the interest rate is governed by the law of the state of origin.

There are no court expenses, except the bailiff's costs for service of the writ of summons in matters not subject to a treaty or an EU regulation and for service of the enforcement judgment or order.

24. Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

The enforcement orders delivered by the president of the district court and, in matters not subject to a treaty or an EU regulation, the enforcing judgments rendered by the district court sitting in collegial court, can be appealed before the Court of Appeal. Once the appeal is lodged with the Court of Appeal, each party notifies its written submissions to the other party, and other additional documents (if any). Depending on the complexity of the case, there may be several exchanges of submissions.

When the Court of Appeal considers that the written submissions are sufficiently comprehensive and that no further details are required, it schedules a date for the hearing during which the case will be pleaded. The appeal procedure lasts for around one year.

25. Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

As explained in question 8, some judgments are automatically recognised. Where enforcement is sought, it has to be required either through an ex parte petition (under EU regulations or treaties) or through a writ of summons (all other foreign judgments).

Once the enforcement order or judgment is rendered, the foreign judgment will be enforceable in Luxembourg, after notification of the enforcement order or judgment by the claimant party through a Luxembourg bailiff.

At the end of the appeal time-limit (i.e. 40 days for a defendant residing in Luxembourg, 55 days for EU residents, 65 days for other European residents and 75 days for residents of all other countries), if no appeal has been lodged, the foreign judgment can be executed by the bailiff who sends a formal notice to the debtor and asks for payment to be due in a time-limit of one day.

26. Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

There are no real pitfalls in seeking recognition or enforcement of a foreign judgment in Luxembourg, especially in the case of judgments rendered in another EU member state.

NB: this article was written before the entry into force of Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters



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