# How to enforce a court decision

Luksemburg

## 1 What does enforcement mean in civil and commercial matters?

If a debtor fails to comply voluntarily with a judgment, the claimant can enforce compliance. This is known as compulsory enforcement.

For a judgment to be enforceable, it must include an enforcement clause and must have been duly served or notified.

The enforceability of the judgment is put on hold for a week from the date of the judgment and/or by the effective exercise of a right of appeal, unless the decision is provisionally enforceable.

Compulsory enforcement is usually used for the recovery of money, but it can be applied to enforce performance of a specific action.

In the case of a person ordered to pay a sum of money, the enforcement measure targets the debtor's assets and is referred to as an attachment.

There are, however, other more specific enforcement measures: garnishment, distraint by seizure of crops, attachment of income, attachment of immovable property, distraint, foreign attachment, replevin, attachment of earnings, attachment of inland waterway vessels, attachment of aircraft and 'distraint-description' (saisie-description) in the context of the protection of intellectual property rights.

The attachments most commonly used in Luxembourg are garnishment and attachment to enforce a judgment.

## 2 Which authority or authorities are competent for enforcement?

Bailiffs have sole capacity to enforce judgments that have been ruled enforceable by a Luxembourg court under Luxembourg law or by a court of another European Union Member State under European Union legislation in civil or commercial matters, agreements arising from mediation in civil and commercial matters that are enforceable, and other enforceable instruments or rights.

## 3 What are the conditions under which an enforceable title or decision may be issued?

### 3.1 The procedure

Judgments passed and instruments drawn up in the Grand Duchy

These are enforceable in the Grand Duchy with no requirement for official approval or a letter of pareatis, even if they are being enforced outside the jurisdiction of the court that handed down the judgment or outside the territory in which the instruments were drawn up.

Delivering the instrument or judgment to the bailiff constitutes authorisation for all enforcements other than attachment of immovable property and imprisonment, for which special authorisation is required.

Foreign decisions that are subject to a treaty or European Union legislation requiring an exequatur procedure

Judgments in civil and commercial matters handed down in a foreign State which are enforceable in that State and which, under the terms of

- the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the accession conventions of new Member States to that convention,
- the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters,
- the Convention of 29 July 1971 between the Grand Duchy of Luxembourg and the Republic of Austria on the recognition and enforcement of judgments in civil and commercial matters,
- the Treaty of 24 November 1961 between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, as long as it is in force,
- or the Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations,

fulfil the conditions required to be recognised and enforced in Luxembourg, are rendered enforceable in the forms laid down in Articles 680 to 685 of the New Code of Civil Procedure (Nouveau code de procédure civile).

Judgments in civil and commercial matters handed down in an EU Member State that are enforceable in that Member State and which, according to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, fulfil the conditions required to be recognised and enforced in Luxembourg, are rendered enforceable as laid down in that Regulation.

Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, known as the 'recast Brussels I Regulation', repealed Regulation (EC) No 44/2001. Regulation (EC) No 44/2001 does, however, continue to apply to decisions handed down in legal actions brought, authentic instruments drawn up or formally registered and legal transactions approved or concluded before 10 January 2015 that fall within the scope of application of that Regulation.

Judgments in civil matters handed down in an EU Member State that are enforceable in that Member State and which, according to Regulation (EU) No 650 /2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, fulfil the conditions required in order to be recognised and enforced in Luxembourg, are rendered enforceable as laid down in that Regulation.

Decisions handed down in a Member State not bound by the Hague Protocol on the Law Applicable to Maintenance Obligations concluded on 23 November 2007 in the sense of Chapter IV, Section 2 of Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations that fulfil the conditions required in order to be recognised and enforced in Luxembourg, are rendered enforceable as laid down in that Regulation.

Judgments in civil matters handed down in an EU Member State that are enforceable in that Member State and which, according to Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, fulfil the conditions required in order to be recognised and enforced in Luxembourg, are rendered enforceable as laid down in the aforementioned Regulations (EU) 2016/1103 and (EU) 2016/1104.

Foreign decisions subject to EU legislation abolishing exequatur

On 12 December 2012, the European Parliament and the Council adopted Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, known as the 'recast Brussels I Regulation'. According to Article 36 of that Regulation, a judgment

given in a Member State is recognised in the other Member States without any special procedure being required (abolition of exequatur). This Regulation has applied in all EU Member States since 10 January 2015 according to the conditions laid down in that Regulation.
Decisions handed down in a Member State that is bound by the Hague Protocol on the Law Applicable to Maintenance Obligations concluded on 23 November 2007 in the sense of Chapter IV, Section 2 of Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations are recognised in Luxembourg without any special procedure being required and with no possibility of objecting to recognition.
Judgments in civil and commercial matters handed down in an EU Member State and which, according to Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, fulfil the conditions required in order to be recognised and enforced in Luxembourg, are recognised and enforced as laid down in that Regulation.
Judgments handed down in an EU Member State that are enforceable in that Member State and which, according to Regulation (EC) No 861/2007 establishing a European Small Claims Procedure or Regulation (EC) No 1896/2006 creating a European order for payment procedure, as amended, fulfil the conditions required in order to be recognised and enforced in Luxembourg, are recognised and enforced as laid down in those Regulations.

### 3.2 The main conditions

No attachment of movable or immovable property can be carried out unless there is an enforceable title issued under Luxembourg law, and for a due and certain claim; if the debt due is not a sum of money it is deferred, following attachment, for all subsequent proceedings, until it has been valued.
Judgments requiring a release, a deletion of a mortgage registration, a payment, or anything else to be done by a third party or on their behalf, are only enforceable by the third parties or against them, even after the objection or appeal periods have expired, on the basis of certification by the claimant's lawyer, giving the date on which the judgment was served at the home of the party against whom the judgment was passed, and on the basis of certification by the court registrar that there is no objection to or appeal against the judgment.
If the certificate shows that there is no objection or appeal, receivers, custodians and any others are bound to comply with the judgment.

## 4 Object and nature of enforcement measures

### 4.1 What types of assets can be subject to enforcement?

Goods eligible for attachment
Only movable or immovable goods owned by the debtor are eligible for attachment, not goods belonging to a third party. It is of little importance, however, in whose possession the debtor's goods are at the time of attachment, therefore it is possible to attach goods at the premises of a third party.
Goods not eligible for attachment
Article 728 of the New Code of Civil Procedure states that, in addition to items declared to be ineligible for attachment under specific laws, the following goods may not be attached:
items that Luxembourg law declares to be immovable by purpose;
movable property such as for example a place to sleep, clothes, furniture in which to keep them, a washing machine, and tables and chairs to enable a family to eat a meal together.
These items may not be attached, regardless of the capacity of the creditor, even if it is the State, with the exception of certain debts listed exhaustively in law.
To prevent the creditor from attaching all of the debtor's means of subsistence, a Grand-Ducal regulation sets the rates for assignment and attachment of salaries, pensions and annuities. The law has provided for the attachment of protected regular income (salaries, annuities, pensions). These types of regular income may not be attached in full, but only up to a certain limit, which is determined according to brackets fixed by a Grand-Ducal regulation. Debtors therefore retain a minimum subsistence income.
Ring-fencing
Ring-fencing aims to protect the attachee against the consequences of the unavailability of the entirety of their assets. It enables the judge to limit the amounts garnished.

### 4.2 What are the effects of enforcement measures?

From the moment when the goods are attached, the debtor loses the right to dispose of them. The attachment does not, however, create any preferential right of purchase for the attaching creditor. Disqualification means that the debtor is not allowed to sell, transfer or take out a mortgage on the attached goods. The attached goods may be removed immediately. The debtor remains the owner of the attached goods until the forced sale even without retaining their possession. The situation does not change in practical terms, but rather in legal terms.
If this disqualification is contravened, the measures taken by the attachee are not binding on the attaching creditor.
That being the case, the disqualification is only relative, in the sense that it only applies to the benefit of the attaching creditor. The other creditors must still put up with fluctuations in the debtor's assets. It is, however, simple for them to share in the attachment that has already been agreed.
Disqualification is the first phase in the process of selling assets. The goods are placed under the control of the court. Attachment in execution of a judgment therefore plays a precautionary role in the first instance.
With regard to garnishment, it must be specified that this form of attachment removes all control over the entirety of the debt attached, whatever its value. The third party attachee may, however, place a sufficient amount in deposit (ring-fencing).

### 4.3 What is the validity of such measures?

Enforceable instruments issued under Luxembourg law do not expire and are not forfeited due to the passage of time.
Authorisations by the presiding judge of a commercial court to carry out precautionary attachments expire if the precautionary measure is not taken within the time period laid down in the order.

## 5 Is there a possibility of appeal against the decision granting such a measure?

An order issued by the presiding judge of a commercial court authorising a precautionary attachment is subject to objection or appeal.
As regards an attachment to enforce a judgment, the debtor may bring an action pleading difficulty of enforcement (action en difficulté d'exécution) or object to the sale of the goods attached.
Third parties may also lodge an objection, i.e. to the sale of the goods attached, and request that these items be excluded for their benefit.

## 6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

According to Article 590 of the New Code of Civil Procedure, a debtor may block a provisional enforcement if it has been ordered in a case other than those provided for by law. For this purpose, the debtor may apply to the court of appeal for a prohibition of provisional enforcement. This only applies in civil matters and is excluded in commercial matters by Article 647 of the Commercial Code (Code de commerce).
Article 703(2) of the New Code of Civil Procedure establishes the procedure for ring-fencing. Ring-fencing aims to protect the attachee against the consequences of the unavailability of the entirety of their assets. It enables the judge to limit the amounts garnished.

In order to prevent the creditor from attaching all of the debtor's means of subsistence, a Grand-Ducal regulation sets the rates for assignment and attachment of salaries, pensions and annuities. The law has organised the attachment of protected regular income (salaries, annuities, pensions). These types of regular income may not be attached in full, but only up to a certain limit, which is determined according to brackets fixed by a Grand-Ducal regulation. Debtors therefore retain a minimum subsistence income.

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