

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

LUXEMBOURG

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(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

The major force in shaping modern Luxembourg law has been the French Napoleonic codes. In Luxembourg, the main legal sources of the rules of jurisdiction in civil and commercial matters are the Civil Code ("*Code Civil*"), the Code of Commerce ("*Code de Commerce*") and the New Code of Civil Procedure ("*Nouveau Code de Procédure Civile*"). The French Civil Code is the basis of the Luxembourg civil law and remains faithful to the code Napoleon. Besides, a lot of international treaties are integrated in the laws of Luxembourg.

Apart from the international treaties, the main legal provisions applying in case of residual jurisdiction are:

- The New Code of Civil Procedure (hereinafter the "NCPC") describes and sets out the principles governing the competence of the Luxembourg courts *ratione materiae*, *ratione loci* and *ratione valoris*. It also describes a multiplicity of procedures either ordinary, or special, e.g. summary procedures for the urgent matters or particular procedures applicable to matters such as adoptions or parental authority or other family law matters. The NCPC finally details the guidelines applicable to initiating proceedings in front of Luxembourg courts including the right to bring an action, the grounds of defence, the submission of evidence, the execution of judgments, etc.

Originally, the Code of Civil Procedure was enacted in 1806 by Napoleon, at the time when Luxembourg was still part of France. The Code of Civil Procedure was maintained after the split from France in 1814 and was still applicable until a Law of 1998 amended it. As of this amendment, the Code became the New Code of Civil Procedure.

- Articles 14 and 15 of the Civil Code (see section 15. Exorbitant jurisdiction), providing for a jurisdictional privilege in favor of the Luxembourg nationals; and
- Article 4 of the law dated August 25, 1983 on the consumers' protection, as amended.

2. Specific Rules (or Not) for Transnational Disputes

The jurisdictional rules of Luxembourg are not designed for transnational disputes - they are rather derived from those applied in internal disputes, except for the rules stated in Articles 14 and 15 of the Civil Code, and those applying in favor of consumers domiciled in Luxembourg.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

There is no specific set of national rules designed to govern the jurisdiction of courts pursuant to article 4 (1) of the Brussels I Regulation – this is the reason for applying the traditional rules of jurisdiction to cross-border cases.

4. Influence of EU Law

As a matter of fact, the application and interpretation of national jurisdictional rules is influenced by the Brussels I Regulation and by the case law of the European Court of Justice. The Luxembourg courts act in accordance with the Brussels I Regulation and align with these guidelines and with the case law of the European Court of Justice¹.

In general, most of the national rules of jurisdiction are in accordance with the provisions of the Brussels I Regulation².

5. Impact of Other Sources of Law

Others sources of law, in particular human rights principles, public international principles, and private international principles have an important implication on the application of the national jurisdictional rules due to the fact that the legislative as well as the executive authorities just as the judiciary have to observe these general rules of operation and neither of them is allowed to offend against these fundamental principles of the legal framework of Luxembourg.

6. Other Specific Features

In Luxembourg, the most specific features concerning the jurisdictional rules derive from (i) the existence of the jurisdictional privilege in favor of Luxembourg nationals expressed by Articles 14 and 15 of the Civil Code, and (ii) from the specific jurisdiction provided for by Article 4 of the law dated August 25, 1983 on consumers' protection, as amended.

(i) Indeed, under Luxembourg legal provisions, Article 14 of the Civil Code provides for a privilege in favour of Luxembourg nationals: any Luxembourg national can sue a foreigner (even not domiciled in Luxembourg) before a Luxembourg court for execution of a contracted obligation in Luxembourg or abroad.

Article 15 of the Civil Code allows whoever, Luxembourg national or foreigner residing in Luxembourg, to sue before a Luxembourg Court, a Luxembourg citizen, even if he is domiciled abroad, having contracted an obligation in Luxembourg or abroad (even with a foreigner).

(ii) Article 4 of the law dated August 25, 1983 on consumers' protection, as amended, provides for a specific rule of competence in favour of the consumer domiciled in Luxembourg under certain conditions (See section 13 a) below).

7. Reform

In Luxembourg, a specific law concerning the modification of the rules of jurisdiction applicable in cross-border cases does not exist.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

¹ In particular, in matters relating to contracts in general, torts, real property, and parental authority.

² E.g. concerning employment matters, real property matters, contracts, and divorce.

Several bilateral and multilateral conventions between Luxembourg and third countries, which include jurisdictional rules in matters once regulated by the Brussels I Regulation, exist:

a) The Convention on the Recognition and Enforcement of Judgments and Authentic Instruments in Civil and Commercial Matters, between Luxembourg and Austria, was replaced by, the **Lugano Convention**, for the most part.

b) The 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, and the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, done at Lugano in 1988, ("Lugano Convention") were replaced by the **Brussels I Convention** for the most part.

c) Hague Conventions (1954-1980)

Luxembourg is a contracting state in some important multilateral legal assistance Conventions: the Convention of March, 1954 on Civil Procedure, the Convention of November 15, 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters of March, 1970, and the Hague Convention of October 25, 1980 on International Access to Justice.

9. Practical Impact of international conventions with third states

These bilateral and multilateral conventions have an implication on the law and practice in this area – the courts have to apply and to observe the provisions of those conventions.

Luxembourg is, due to its diverse population, its geography and design of investments, prone to attract litigation having many international implications. Therefore, courts do have to apply the conventions and treaties quite often.

(C) Applicable National Rules Pursuant to Article 4 of the Brussels I Regulation

10. Structure

The NCPC does not provide any general structure of rules of jurisdiction for actions against defendants domiciled in non-EU States pursuant to Article 4 (1) of the Brussels I Regulation. Indeed, international jurisdiction for actions against defendants domiciled in non-EU States is determined by national rules (i.e. Articles 27 and seq. of the NCPC, Articles 14 and 15 of the Civil Code, and Article 4 of the law dated August 25, 1983 on the consumers' protection as amended).

Although jurisdiction basically lies with the court situated in the district where the defendant is domiciled, there are some exceptions where specific courts are competent. For example, the competent Labor court is generally the one of the district where the work is performed rather than the one of the district where one of the parties lives. Likewise, a dispute concerning a lease must be brought before the court of the district where the rented property is situated.

11. General Jurisdiction

In Luxembourg, the ordinary court for civil and commercial matters is the District Court. There are two judicial districts and consequently one District Court, each in Luxembourg and Diekirch. The District Court has jurisdiction in all civil and commercial matters for which the law does not confer jurisdiction on another court. Unlike the situation in other countries, there are no specific courts for commercial matters, which are dealt with by specialized divisions of the District Court. But commercial matters are dealt with by a simplified procedure.

Special courts are responsible mainly for:

- Small claims: if the value of the claim is not exceeding EUR 10.000.-, the local court (i.e. "*Justice de Paix*") will have jurisdiction. There are three local courts, in Luxembourg, Esch-sur-Alzette and Diekirch, each with jurisdiction for a specific territory.
- Employment cases: The Labor Court has jurisdiction in cases concerning employment contracts. There are three Labor Courts, in Luxembourg, Esch-sur-Alzette, and Diekirch, each with jurisdiction for a specific territory.
- Leases: jurisdiction in disputes concerning leases, lies with the local courts, whatever the value of the dispute.
- Disputes between neighbors: most disputes between neighbors concern rights of way or boundary disputes and are in the jurisdiction of the local court, except if the claim of damages exceeds the amount of EUR 10.000.-.
- Social security cases: the law confers jurisdiction in social security cases on the Social Security Arbitration Board. The Board sits in Luxembourg and its jurisdiction extends throughout all the Grand-Duchy of Luxembourg.
- Cases concerning custody of minors: if custody of a minor is disputed in divorce proceedings, the case will come before the District Court, usually in urgent proceedings. Outside or after divorce proceedings, jurisdiction will lie with the Youth and Guardianship Court in Luxembourg or Diekirch, depending on the territorial competence.
- Problems of excessive debts (i.e. "*surendettement*"): the local court has jurisdiction in such cases.

The principal rule of jurisdiction under Luxembourg legal provisions is the "*actor sequitur forum rei*" principle under which the plaintiff must sue the defendant before the court of the place where the defendant is domiciled³, provided under Article 28 of the NCPC. The purpose of this is to give the defendant a degree of protection as it will be easier for him to defend himself in the court nearest home.

If the defendant is a natural person, the competent court will be the one of the district where he/she has his/her domicile or residence.

For a body corporate such as a company or an association, it will be the court of the district where it has its registered office. Sometimes, a company's main establishment will be separate from its head office. In such cases, it is possible to sue before the court of the district where the main establishment is located. For major firms with several branches, the action can be brought before the court of the district where one of the branches is located.

In case of plurality of defendants, the plaintiff may choose the court of the place where one of the defendants is domiciled.

³ The domicile of a natural person is the place where the individual is living. This place will be determined by the individual and declared at the local registry. The domicile of a company is the place where it has its registered office, or the place where it has a branch or an agency.

In international matters, the jurisdiction is determined according to the Luxembourg national rules⁴.

The special courts enjoy only the jurisdiction expressly conferred on them, and as a rule it is not possible for the parties to choose a court other than the one designated by the law.

Jurisdiction is regarded as a matter of public policy (in employment matters, for example), which means that, even if the parties do not raise the question of jurisdiction, the court must raise the question on its own motion.

12. Specific Rules of Jurisdiction

a) Contract

The Luxembourg private international law consists of conventions and agreements⁵, statutes⁶ and case law. A framed rule concerning actions against defendants domiciled in non-EU States does not exist.

The general rule contained in Article 28 of the NCPC concerning contractual matters states the following: *"the claimant can bring an action either at the place where the defendant is domiciled or, depending on the nature of the contract, at the place where actual delivery is to be made or where the service is to be provided, depending upon the subject matter of the said contract"*.

Hence, the claimant can bring an action either at the place where the defendant is resident or, depending on the nature of the contract, the place where the goods are to be delivered or the services are to be performed.

Moreover, in contractual matters, Article 14 of the Civil Code provides for an exception of this precept: a foreigner, although not resident in Luxembourg, may be summoned before the Luxembourg courts, to enforce the execution of obligations contracted by him in Luxembourg with a Luxembourg national; he may be summoned before the courts of Luxembourg, on account of obligations entered into by him with a Luxembourg national in a foreign country.

b) Tort

Pursuant to Article 42 of the NCPC, the plaintiff may sue the defendant before the court of the district where he/she is domiciled, or before the court where the loss was suffered or the harmful act occurred.

Luxembourg courts are hence competent to hear a claim against non-EU nationals if the damage suffered by the plaintiff has occurred in Luxembourg.

Luxembourg judges apply case law of the European Court of Justice in case the loss was suffered in several EU Member states.

c) Criminal Proceedings

⁴ Cour, February 1st, 1895, Pasicrisie 3, p. 348 ; Luxembourg, January 23, 1992, n°32/92.

⁵ International instruments of the European Union.

⁶ Article 3 of the Civil Code.

According to Article 3 of the Code of Criminal Proceedings ("*Code d'Instruction Criminelle*"), civil proceedings can be brought by anybody who has suffered loss as a result of an offence. The victim has a choice of either joining a civil claim for damages to the criminal proceedings or awaiting the outcome of the criminal proceedings and then, bringing an action for compensation before the civil courts.

The claim for damages in the criminal proceedings is known in French as the "*partie civile*" action.

Indeed, under Luxembourg legal provisions, Criminal courts have jurisdiction to hear a civil claim if a person has suffered a loss together with the criminal prosecution where the offender, while causing a damage to the plaintiff, has at the same time, committed a criminal offence.

d) Secondary Establishment

Article 41 of the NCPC confers jurisdiction upon the court of the registered office of the company or the place where it has a branch or an agency under two conditions: (i) the company shall have a representative having the powers to represent the company towards third parties and (ii) the claim is related to the branch's activity.

However, Luxembourg case law admitted that a company may be sued before the court of the place where it has a branch, if the dispute raised from the branch's commitments⁷.

⁷ Cour d'appel, June 29, 1993, Pasirisie 29, p. 250.

e) Trust

A specific ground of jurisdiction for trusts in actions brought against defendants domiciled in a non-EU State does not exist. In these cases, jurisdiction is based on the principle of the location of the trust.

f) Arrest and/or location of Property

In cases of enforcement in real and personal property, the competence of court results from the rules of the NCPC⁸. The rules on jurisdiction are usually determined by the statutory provisions empowering the court to order an interim measure. There is no general rule of jurisdiction except that the power to order interim measures usually lies with the President of the court trying the case on the merits.

Moreover, provisional measures may be ordered by the Luxembourg court, if the object or assets to be seized are located in Luxembourg. Nevertheless, the underlying dispute will have to be brought in the territorially competent courts. The provisional arrest does not give by itself a specific territorial competence to local courts as for the merits of the dispute.

13. Protective Rules of Jurisdiction

a) Consumer Contracts

Article 4 of the law dated August 25, 1983 on consumers protection, as amended, provides for a specific rule of competence in favour of the consumer domiciled in Luxembourg.

Indeed, if the final consumer ("*consommateur final privé*") is domiciled in Luxembourg, Luxembourg courts are competent, despite the fact that the contract provides for another jurisdiction, within the framework of a sale of goods, or services provision.

However, the goods or services must be delivered or carried out in Luxembourg and in addition, the conclusion of the contract must have been preceded in Luxembourg by a specific invitation addressed to the consumer, or by advertising, and all the steps necessary on his part for the conclusion of the contract should have been taken place in Luxembourg. This rule is mandatory for the professional while the consumer has the choice to sue the professional before another court, such as the court where the defendant is domiciled.

b) Individual Employment Contracts

Article 47 of the NCPC provides for specific rules regarding the competence in matters relating to individual contracts of employment, contracts of apprenticeship, matters of supplementary pension schemes and also in matters of insolvency insurance, and has hence extended the application of domestic rules to international disputes.

Pursuant to these provisions, the competent court is the one situated in the district where the employee usually carries out his/her work.

⁸ For example, Article 694 of the NCPC in case of real and personal seizure; Article 810 of the NCPC for seizure of immovable properties; and Article 9 of the law dated November 11, 1970 in case of arrest of remuneration.

If the employee does not perform his/her work in Luxembourg, but performs it in a Member State of the European Union, the jurisdiction is determined according to the rules provided for by the Brussels I Regulation.

If the employee does not perform his/her work neither in Luxembourg nor in a Member State of the European Union, the jurisdiction results from the "*Convention of September 27, 1968, on jurisdiction and the enforcement of judgments in civil and commercial matters.*" (i.e. Article 47 paragraph 5 of the NCPC).

In case the employer envisages to bring an action against the employee, he must sue him/her before the courts of the employee's domicile.

c) Insurance Contracts

Concerning insurance matters, the principle of extension of domestic rules on jurisdiction to international disputes also applies.

Pursuant to Article 37 of the NCPC, the insurer can be sued (i) before the court where he has his domicile, or (ii) before the court where his general agent is domiciled, or (iii) before the court where the insured individual (i.e. the plaintiff) is domiciled.

In case of accident liability insurance or matters concerning insurance of immovable property, the insured person may further choose to sue him before the court of the place where the event causing the damage has occurred.

The insurer may also be sued before the court competent to hear disputes between the person who suffered a loss and the insured individual.

d) Distribution Contracts

In matters of distributorship agreements, commercial agency agreements and franchise agreements, a particular protective rule of jurisdiction that applies for claims against parties domiciled in non-EU States does not exist.

General rules provided for in Article 631 and seq. of the Code of Commerce shall apply if the dispute has been raised between laymen and merchants.

e) Protective Rules in Other Matters

The NCPC contains a couple of more protective rules of jurisdiction, for example the jurisdiction in matters of leases, divorce or succession. But neither of these rules makes reference to claims against parties domiciled in non-EU States.

In matters of leases, the court of the district where the property is situated has jurisdiction.

In divorce matters, the competent court is the one of the district where the family lives. If the spouses live apart, the court of the district where they last lived together has jurisdiction.

In succession matters, the court of the district where the deceased last lived has jurisdiction.

14. Rules for the Consolidation of Claims

a) Co-Defendants

The legal framework in Luxembourg does not specifically provide for any specific legal requirements concerning a defendant domiciled in a non-EU State who is sued as a co-defendant in proceedings brought against a defendant domiciled in Luxembourg. But the courts would be competent against a co-defendant domiciled in a non-EU State, if a proceeding has been brought against a defendant domiciled in Luxembourg, especially if the claim against co-defendants are closely linked⁹.

b) Third Party Proceedings

Art. 40 of the NCPC provides that, in matters of incidental guarantee, the competent court shall be the one before which the principal claim is pending.

c) Counter-Claims

The court would accept jurisdiction in case of counter claims under certain circumstances. For example, according to Article 11 of the NCPC, the Justice of Peace is competent to hear counter claims within the limits of the nature of the counter-claim and of its material competence. Article 13 of the NCPC provides also for counter claims relating to the allocation of damages for abusive and vexatious judicial action.

Hence, if a defendant, whether domiciled in Luxembourg or not, has been sued before Luxembourg courts, he is allowed to bring a counter claim against the plaintiff before the same court.

d) Related Claims

Other specific rules different than those above-mentioned, allowing a defendant domiciled in a non-EU State to be sued before a Luxembourg court on the grounds that the claim is connected with another claim pending before the Luxembourg court are not available. Therefore, national legislation applies, and, according to Article 262 of the NCPC, a defendant domiciled in a non-EU state can be sued before Luxembourg courts if another claim is already pending before the Luxembourg courts, in case of a materially connected claim.

e) Any Problems Pertaining to Lack of Harmonisation

To our knowledge, the lack of harmonization of the above-mentioned rules in actions against non-EU citizens did not create any specific problems in practice.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) The rules listed in annex I

In Luxembourg, two rules of jurisdiction listed in annex 1 of the Brussels I regulation exist: Articles 14 and 15 of the Luxembourg Civil Code.

⁹ Article 30 of the NCPC.

Article 14 provides that "a foreigner, even if not residing in Luxembourg, may be sued before the Luxembourg courts for the performance of obligations contracted by him in Luxembourg with a Luxembourg national; he may be called before the courts of Luxembourg for obligations contracted by him in a foreign country towards Luxembourg nationals."

According to Article 15 of the Civil Code, "Luxembourg nationals may be called before Luxembourg courts for obligations contracted by them in a foreign country, even with a foreigner."

b) Practical use of the rules listed in Annex I

The most encountered circumstances lie with the execution of contractual obligations. The main difficulty encountered lies with the execution of the obtained judgments in the foreign country.

The exorbitant character of provisions of Articles 14 and 15 of the Civil Code applies to both natural persons and companies.

The privilege deriving from Articles 14 and 15 is extended to other fields than the contractual field, such as criminal field, and matters concerning personal status.

However, plaintiffs may renounce to these privileges expressly or tacitly, i.e. the renouncement can result from an agreement concluded between parties or can be deduced from the circumstances (for example, a Luxembourg national who has already taken an action before a foreign court is regarded as giving up this privilege, and cannot raise the incompetence of the foreign jurisdiction any more; or a Luxembourg national defending himself before a foreign court without raising the defence).

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

To the best of our knowledge, there is no any reported or known case where Luxembourg courts have applied article 4 (2) of the Brussels I Regulation.

16. Forum necessitatis

The concept of the "*forum necessitatis*" is not to be found in the Luxembourg system of Private International Law. Nevertheless, it is interesting to cite the judgment of the Luxembourg Court of Appeal which felt competent to impose the transfer of seizure, towards an executor, referring to real assets situated in Luxembourg¹⁰. The Court recognized also that it can hear a matter when the plaintiff has no other means to preserve his/her rights¹¹.

¹⁰ Cour, July 13, 1978, Bulletin du Cercle François Laurent, 1978, page 21.

¹¹ Tribunal d'arrondissement de Luxembourg, June 30, 1961, Pasirisie 18, p. 372.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

Luxembourg Courts may refuse the recognition or enforcement in Luxembourg of a judgment issued by a non-EU State in the event this decision does not comply with certain conditions, such as the enforceability of the decision, the international competence of the former judge, and the compliance with national public order.

(E) Declining Jurisdiction

18. Forum Non Conveniens

There is no general rule or practice in Luxembourg which allows Luxembourg courts to either decline jurisdiction or to stay the proceedings, except for the exception of parallel proceedings¹² or connected claims¹³.

However, this rule is used nationally, by Luxembourg-city courts declining their jurisdiction in favor of those of Diekirch, in case they are not territorially competent to hear the matter¹⁴, or when a civil court is seized while a criminal court is seized. In this case, the civil court will stay the proceedings until the criminal court will issue a decision¹⁵.

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

(a) Non-EU Jurisdiction Agreements

Luxembourg law allows “choice-of-forum” clauses whereby the parties to a contract designate a specific court to settle their disputes. Such clauses are particularly interesting in the event a dispute between parties living in different countries. They make it possible to ascertain in advance, which court will have jurisdiction, in a given case. The validity of such clauses, as between Member States of the European Union, is governed by Council regulation (EC) No 44/2001 of 22 December 2001.

If there is a choice-of-court clause designating the court of a non-EU State, this choice by the parties of the venue will be observed under certain conditions, except for the matters where Luxembourg courts have exclusive and specific jurisdiction.

Indeed, choice-of-court clauses are lawful where they apply to international disputes and provided that they are in accordance with the national public order concerning jurisdiction, and with the Luxembourg international public order (“*l’ordre public international*”).

There can also be a choice-of-forum in purely domestic cases. Article 18 of the NCPC allows the parties to bring a dispute before the local court where it theoretically does not have jurisdiction in view of the value of the claim or the territorial rules. The parties’ agreement may be express or simply implicit in the fact that the defendant enters an appearance without protest.

¹² “*Litispendance*”.

¹³ “*Principe de connexité*”.

¹⁴ i.e. *incompétence absolue*, Article 261 of the NCPC.

¹⁵ Principle of “*le criminel tient le civil en l’état*”, Article 3 of the Code of Criminal Proceedings.

A choice-of-forum clause is only valid if it is actually accepted by both parties. Evidence of their agreement must be supplied in the accordance with the usual rules.

The parties' freedom to determine a court is sometimes restricted by the law. For example, the law concerning the protection of consumers provides that clauses calculated to deprive the consumer of his right to take action before the ordinary courts are null and void.

(b) Parallel Proceedings in a non-EU court

If a non-EU State court hears a parallel proceeding, the Luxembourg courts can decline jurisdiction or stay the proceedings provided that the Luxembourg courts are not competent, or provided that the non-EU State court has been seized before the Luxembourg court (basis of the prior tempore rule), except if Luxembourg courts have exclusive jurisdiction, or in case of particular jurisdiction of Luxembourg courts, such as, for example, jurisdiction concerning insurance matters, consumers contracts, etc...

However, Luxembourg courts will not stay the proceeding if the pending dispute before another court has not the same object, the same cause, and has occurred between the same parties¹⁶.

(c) "Exclusive" Jurisdiction in a non-EU State

According to Article 31 of the NCPC, in matters concerning real estate, the jurisdiction lies where the immovable property is located. If the real estate is situated in Luxembourg, Luxembourg courts cannot decline jurisdiction or stay the proceedings.

Moreover, in case of lease agreements, Luxembourg courts shall have jurisdiction if the property is located in Luxembourg.

Concerning the issues relating to the nullity, validity or liquidation of legal entities, Luxembourg courts shall have jurisdiction for legal entities having their registered office in Luxembourg.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

If there is a choice-of-court clause designating the court of a non-EU State, this clause shall be considered, by the Luxembourg courts, as valid only in accordance with the general jurisdiction rules and under certain conditions, such as, the dispute must have an international character, the plaintiff or the defendant must be domiciled in a Member State when he/she has accepted the designation of a specific court. In these cases, the Luxembourg courts can decline jurisdiction or stay the proceedings.

If a non-EU State is seized of a parallel proceeding, the prior tempore rule applies under certain conditions (see our answer to question 19(b)).

¹⁶ Identité d'objet, de cause et des parties.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

A case where the Luxembourg courts have exercised jurisdiction on the basis of national rules in circumstances where it was shown that the plaintiff would not get a fair hearing or an adequate protection in the courts of a non-EU State is not known or related.

Indeed, Luxembourg courts will not retain their jurisdiction only on the basis of an alleged inadequate protection in a Non-EU state.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

To the best of our knowledge, no cases where Luxembourg courts have found not to have jurisdiction or have declined jurisdiction in the present circumstances are published.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

To the best of our knowledge, a case where a Luxembourg national has not been able to invoke the protection of Community legislation because the person involved was no longer domiciled in the EU at the time the proceeding was instituted is not known.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

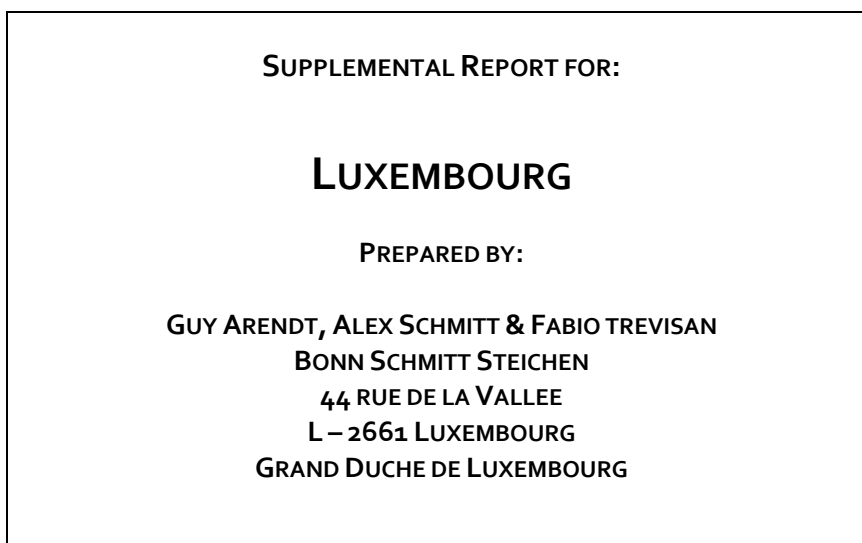
Luxembourg conflict rules provide separately for jurisdiction and applicable law.

We are not aware of any case or circumstance where the application of domestic jurisdictional rules have led to jeopardize the appliance of mandatory Community legislation or efficient working of the Single Market, or the appropriate judicial custody of EU-nationals and citizens.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

As a matter of fact, the NCPC contains an article regarding the residual jurisdiction in matters of parental responsibility: according to Article 1063 of the NCPC, the court in which legal proceedings must be initiated concerning parental care is the one situated in the district where the minor's domicile is located.



26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

There are several multilateral conventions between Luxembourg and third countries that include rules of jurisdiction in matters of parental responsibility.

- a) The Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors.
- b) The European Convention of 20 May 1980 on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children. This convention has also been ratified by the following non-EU countries:
 - Switzerland;
 - Island;
 - Liechtenstein;
 - Former Yugoslav Republic of Macedonia; and
 - Republic of Turkey.
- c) The Convention of 20 November 1989 on the rights of the child.

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

Luxembourg Courts may refuse the recognition or enforcement in Luxembourg of a judgment issued by a non EU-State in the event the decision does not comply with certain conditions, such as the enforceability of the decision, the international competence of the former judge, and the compliance with national public order. Moreover, a judgment rendered by a court of a non-EU state and relating to the exercise of parental authority in respect of a child should be enforceable. Such a decision is enforced in the Grand Duchy after it has been declared enforceable on the application of any interested party. The request for the declaration of enforceability must be submitted to the president of the district court through a Luxembourg licensed lawyer. The decision of the president of the district court may be appealed before the court of appeal. A further appeal against the decision of the court of appeal may be brought before the court of cassation.

Such a request of enforceability in the Grand-Duchy of Luxembourg may be dismissed only on the following grounds:

- It is manifestly not in the public interest;
- The child has not been heard (if the child's interests are at stake and the child has an age compatible with a hearing);
- Failure to respect the rights of the defendant;
- Incompatibility with a judgment given in related proceedings.

(H) Specific Country Questions

29. Jurisdiction in Divorce Proceedings Based on Citizenship

Can divorce proceedings be brought in your country on the basis of the citizenship of only one of the spouses? If yes, is it enough that the spouse was a citizen of your country at the time of marriage, or is it required that the spouse still be a citizen of your country at the time of divorce?

Pursuant to Article 14 of the Civil Code, the Luxembourg Courts are competent as long as one of the spouses is a Luxembourg citizen.

Under the terms of the "Brussels II" Regulation (EC), judgments regarding divorces, legal separations or marriage annulments given by the court of another country of the European Union are recognized *ipso jure*. This means that the recognition of a decision is not subject to any procedure.

30. Jurisdiction in Divorce Proceedings Based on Other Grounds (Bulgaria, Greece, Luxembourg and Romania)

Can divorce proceedings be brought in your country on the basis of one or several of the following grounds: (1) the last habitual residence of one spouse in your country; (2) the close connection with the forum State; (3) the forum necessitatis, i.e. the fact that divorce proceedings cannot be brought in any other court abroad?

a) The last habitual residence of one spouse in Luxembourg

The Luxembourg Courts are competent in matters of divorce when the last habitual residence of one spouse is in Luxembourg.

b) The close connection with the forum State

A close connection with the forum State does not sufficiently ground the competence of the Luxembourg Courts.

c) The Forum *necessitatis*

The concept of the "*forum necessitatis*" is not to be found in the Luxembourg system of Private International Law. As regards this question, we refer to point 16. of our memorandum "*Forum necessitatis*".

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