

THE DISPUTE
RESOLUTION
REVIEW

ELEVENTH EDITION

Editor
Damian Taylor

THE LAWREVIEWS

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REVIEW

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PREFACE

The Dispute Resolution Review provides an indispensable overview of the civil court systems of 36 jurisdictions. It offers a guide to those who are faced with disputes that frequently cross international boundaries. As is often the way in law, difficult and complex problems can be solved in a number of ways, and this edition demonstrates that there are many different ways to organise and operate a legal system successfully. At the same time, common problems often submit to common solutions, and the curious practitioner is likely to discover that many of the solutions adopted abroad are not so different to those closer to home.

I wrote with hope in last year's preface that in 2019 we would have increased certainty about the future laws and procedures that will apply to cross-border litigation in the United Kingdom and across the European Union. But despite the huge volume of analysis and commentary across the legal sector, we seem to be no further forward. Instead, the UK Parliament is to vote on the proposed deal by the end of January 2019. Given the interwoven nature of UK and EU law, the next few months will be of huge importance to the legal profession in my home jurisdiction and have a long-lasting impact on how disputes (many of which are between international parties) are resolved in the United Kingdom. This edition includes an updated Brexit chapter that charts the progress (or lack thereof) made over the past year

This 11th edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward-looking, and the contributors offer their views on the likely future developments in each jurisdiction. Collectively, the chapters illustrate the continually evolving legal landscape, responsive to both global and local developments.

Finally, I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at page 573 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

Damian Taylor
Slaughter and May
London
February 2019

LUXEMBOURG

*Michel Molitor*¹

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

i Structure of the law

Luxembourg's legal system is based on the civil law tradition.

The sources of law are international treaties, European Union law, the Constitution, national statutes and regulations, and general principles of law.

Case law

National case law

Theoretically, precedent does not bind judges; each decision must be confined to the particular case. In practice, however, earlier court decisions in comparable cases will be seriously considered. This is particularly the case where a statute is unclear or lacunar, which gives judges the opportunity to make law through interpretation.

European case law

The case law of the Court of Justice of the European Union affects the case law of Member States. Luxembourg is a Member State and, by virtue of Article 267 of the Treaty on the Functioning of the European Union, Luxembourg courts may request a preliminary ruling from the Court of Justice of the European Union in cases where the interpretation of EU treaties, or the validity and interpretation of acts of EU institutions, bodies, offices or agencies is raised.

ii Structure of the courts

Civil law proceedings in Luxembourg are conducted, at the first level, in the district courts (there are two districts courts, one in Luxembourg-Ville and the other in Diekirch), which have jurisdiction in all civil and commercial matters for which the law does not confer jurisdiction on a specific specialised court.

Examples of such courts are:

- a magistrates' courts (there are three of them, one in Luxembourg-Ville, one in Diekirch, and one in Esch-sur-Alzette) hear claims under €10,000, and cases concerning employment and lease contracts; and

¹ Michel Molitor is the managing partner at Molitor Avocats à la Cour.

- b* the Insurance Arbitration Council hears all disputes relating to the national insurance system (problems of affiliation, qualification to receive pensions, contributions, administrative fines, etc.).

There are no dedicated courts for commercial matters; specialised divisions of the district courts deal with these.

Appeals are generally brought before the Court of Appeal. By way of exception, appeals against decisions rendered by magistrates' courts are heard before the district courts, except for cases related to employment that remain within the scope of the Court of Appeal.

After appeal, if a party still wishes to challenge a legal point, other than on the facts, the case can be brought before the Court of Cassation in the last instance.

iii Structure of alternative dispute resolution procedures

Alternative dispute resolution such as arbitration and mediation have been generating interest in Luxembourg for some years. In particular the Centre for Civil and Commercial Mediation² has been very active in promoting mediation in Luxembourg. Specific legislation concerning civil and commercial mediation was introduced in Luxembourg in February 2012.

The Luxembourg New Civil Procedure Code (NCPC) provides for rules on arbitration. Luxembourg has also ratified international agreements regarding arbitration, and in particular the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention 1958).

II THE YEAR IN REVIEW

The past year has seen some interesting legislative developments.

On 17 February 2017, the European Regulation No. 655/2016 of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (the EAPO Regulation) has entered into effect. The EAPO Regulation provides for a procedure for creditors to obtain a European Account Preservation Order (EAPO) to secure payment of pecuniary claims in civil and commercial matters in cross-border cases. The Luxembourg legislator has implemented the EAPO Regulation by the Law of 17 May 2017. However, the EAPO Regulation does not regulate the interim phase of the above attachment procedure and refers to the national law of each EU Member State for the executory phase, namely, recovery of the debt after having obtained an EAPO. While some EU Member States make a distinction between the interim phase and the executory phase, Luxembourg Procedural law closely links the two phases and makes them indivisible. Accordingly, the procedural scheme provided by the EAPO Regulation was not transposable as such under Luxembourg law. The Luxembourg legislator, by an act as of 18 July 2018, has therefore introduced a new Title VII *bis* into the NCPC, which provides for the legal framework for the debt recovery procedure during the executory phase. Under this new title, the attaching creditor serves a deed of conversion on the garnishee including information on the obtained EAPO, the enforceable title on the underlying claim, the calculation of the amount payable and a request for payment. A copy of this deed must

² www.cmcc.lu/node/1.

also be served on the attached debtor who can challenge it before the courts within 15 days. If the deed is not challenged, the bailiff establishes a certificate that allows the garnishee to pay the amount owed to the creditor.

In another vein, with the aim of improving and simplifying the procedural rules in civil and commercial matters, Bill No. 7307 has been submitted to the Luxembourg Chamber of Deputies.

This Bill provides for two adjustments to the courts' jurisdiction. Currently, magistrates' courts hear claims, with some exceptions, in all civil and commercial matters under €10,000. The Bill intends to raise magistrates' courts' competence rate to €20,000 in order to relieve court congestion in the district courts. The Bill also amends Article L. 131-18 of the Luxembourg Labour Code. Disputes relating to a labour supply contract are currently exclusively handled within the jurisdiction of the district court sitting in commercial matters. The Bill proposes to attribute these disputes either to the magistrates' courts, or to the district courts depending on the value of the litigation.

The Bill also amends and modernises the pretrial procedure by framing the means of defence that may be raised by the parties and by creating a simplified pretrial procedure. The aim is to reduce delays and to optimise the procedure's efficiency.

Means of defence on the admissibility of the action or the jurisdiction of the court are sometimes raised at a late stage, which inevitably delays the outcome of the proceedings in these cases. The Bill thus obliges the parties to raise these pleas in law immediately before the pretrial judge or, if not, as soon as they are revealed. The Bill also restricts the parties' positions on these pleas in law to only one per party in order to allow the pretrial judge to take a swift decision on the admissibility of the action. Furthermore, if these pleas in law have been revealed during the pretrial proceedings and none of the parties has raised them, the parties will no longer be entitled to raise them at a later stage.

The Bill establishes a simplified pretrial procedure, in parallel with the current 'standard' pretrial procedure, which should enable a quick evaluation of the simplest cases and avoid delaying practices. The simplified pretrial procedure will automatically apply to cases where the value of the litigation is less than or equal to €50,000 and that oppose only one plaintiff to a single defendant; or will apply upon a reasoned request by one of the parties accepted by the president of the relevant chamber. In this case, the president of the chamber will issue an order to decide whether or not to admit the case to the simplified pretrial procedure. The order will set the time limits for the parties to notify their submissions and communicate their documents, under pain of foreclosure.

Another important change is that this Bill, if passed, would introduce a simplified management case conference for the most straightforward cases under which all the deadlines for submitting evidence, documents and submissions will be mandatory. Along the same lines, the practice of the summary briefs would be introduced by the Bill. The summary briefs, which must be submitted at the end of the proceedings and before the ruling, must contain all the claims and arguments raised by a party for the purpose of effective analysis of the case by the judge.

As a consequence of these changes, the role of the judge rapporteur in the written proceedings should disappear. Currently, the purpose of the judge rapporteur is, at the pleading hearing, to read his or her report summarising the claims and arguments of each party to the dispute.

Finally, it is expected that appeals against decisions issued by the magistrate courts will be heard by the district courts through oral proceedings, which is not necessarily the case today.

III COURT PROCEDURE

i Overview of court procedure

The main rules governing court procedure are laid down by the NCPC. First instance civil proceedings and proceedings before the Court of Appeal differ from first instance commercial proceedings and proceedings before magistrates.

ii Procedures and time frames

The main stages in court proceedings are as follows.

Before the district court (in civil matters) and the Court of Appeal:

- a* issue of a writ served on the defendant by a bailiff;
- b* exchange of written statements between lawyers and disclosure of documents, exchange of witness and expert evidence in some cases;
- c* closing of the investigation;
- d* trial; and
- e* handing down of the judgment.

Before the district court (in commercial matters) and magistrates:

- a* issue of a summons to the defendant by a bailiff or by the clerk of the court, depending on the type of case;
- b* court hearing of the parties or of their representatives; and
- c* handing down of the judgment.

As a principle, judges strive to provide strict guidance on the time frames for the exchange of written statements, documents and expert evidence. This is done by issuing written notices or by calling parties before case management hearings where the progress of the case is assessed.

It is difficult to estimate the average duration of civil proceedings as it varies depending on the number of parties involved, the complexity of the matter and whether it is pending in front of first instance courts or on appeal.

iii Class actions

Class actions are not allowed under Luxembourg law.

However, professional groups or associations representing a particular interest are entitled to take legal action before the courts for collective damage. The admissibility of claims brought by these groups and associations will be subject to evidence that the legal action is motivated by a specific corporate interest and benefits all the members of the group. But if the claimed interest corresponds to the general interest, the legal action is in principle declared inadmissible.

iv Representation in proceedings

Representation by a lawyer who is a member of the Luxembourg Bar is compulsory before the district court (with some exceptions, such as in commercial proceedings) and before the Court of Appeal, whereas parties can appear before the magistrates either in person or through a representative, who might be a lawyer, spouse, parent, etc.

v Service out of the jurisdiction

The following rules apply to service out of the jurisdiction regardless of whether the recipient is an individual or a corporate entity.

If a document (a writ of summons or a judgment) related to a civil or commercial matter needs to be served in another EU Member State, the applicable rules are those in EU Regulation No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service of Documents), and repealing Council Regulation (EC) No. 1348/2000.

This Regulation provides for different ways of transmitting and serving documents: transmission through transmitting and receiving agencies, transmission by consular or diplomatic channels, service by postal services and direct service. Transmitting agencies, determined by each Member State (the bailiff and the court clerk in Luxembourg), effect the transmission of judicial or extrajudicial documents to be served in another Member State. Receiving agencies, determined by each Member State (the bailiff in Luxembourg), are competent to receive judicial or extrajudicial documents from another Member State.

Luxembourg is also party to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. This Convention provides that each party must designate a central authority (the Public Prosecutor of the Superior Court of Justice in Luxembourg) responsible for receiving requests for service arising from a foreign authority or judicial officer (with respect to civil or commercial matters) and dealing with them, as well as supplying information to the transmitting agencies and seeking solutions to any difficulties that may arise during transmission of documents for service.

In the absence of any applicable international provision (EU regulation, international treaty or bilateral convention), the NCPC applies to service abroad. The bailiff sends a copy of the judicial document to the domicile of the recipient by registered letter with acknowledgment of receipt unless the foreign state does not accept this kind of service, in which case the bailiff will require the Ministry of Foreign Affairs to serve it by diplomatic means.

vi Enforcement of foreign judgments

The enforcement in Luxembourg of foreign judgments rendered in a country outside the EU is possible once such judgments are given an enforcement title by the Luxembourg District Court.

As for judgments originating in an EU Member State, Council Regulation (EU) No. 1215/2012 of the European Parliament and the Council of 12 December 2012 on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, which came into force on 10 January 2015 and replaces Regulation No. 44/2001, provides for

the direct enforcement of judgments throughout the EU by means of a simplified procedure whereby the district court will only check if the required set of documents is complete, without any review of the merits of the case.

vii Assistance to foreign courts

Assistance in the taking of evidence

Council Regulation (EC) No. 1206/2001 of 28 May 2001 is designed to improve, simplify and accelerate cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

Under this regulation, any EU court (other than in Denmark) may request the competent court of another Member State to take evidence, or to be allowed to take evidence directly itself. The execution of such a request may be refused if:

- a* the request does not fall within the scope of Regulation No. 1206/2001 (if, for instance, it concerns criminal and not civil or commercial proceedings);
- b* the execution of the request does not fall within the functions of the judiciary;
- c* the request is incomplete;
- d* a person of whom a hearing has been requested invokes a right to refuse, or a prohibition, from giving evidence; or
- e* a deposit or advance relating to the costs of consulting an expert has not been made.

Luxembourg is furthermore party to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Under this convention, a judicial authority from another contracting state may, in civil or commercial matters, ask the Public Prosecutor of the Luxembourg Superior Court of Justice to obtain evidence.

Assistance in relation to foreign law

Luxembourg is party to the European Convention on Information on Foreign Law of 7 June 1968. This convention obliges the parties to undertake to supply information concerning their law and procedure in civil and commercial fields as well as on their judicial system.

Each contracting state must set up or appoint two bodies: a 'receiving agency', to receive requests for information from another contracting state and to take action on its request (the Ministry of Justice in Luxembourg), and a 'transmitting agency', to receive requests for information from its judicial authorities and to transmit them to the competent foreign receiving agency (again, the Ministry of Justice in Luxembourg).

The requested state may not refuse to take action on the request for information unless its interests are affected by the case that gave rise to the request or if it considers that the reply might prejudice its sovereignty or security.

viii Access to court files

Court hearings are public, meaning that everybody may attend and listen to the trial.

However, third parties are not supposed to have access to the documents on file (i.e., submissions, pleadings and supporting documents).

Judgments dealing with interesting legal issues or particular matters are published in legal journals. Furthermore, in specific areas (for instance, a judgment declaring a company bankrupt), the judgment is published in a local newspaper and made available to the Trade and Companies Register.

ix Litigation funding

It is possible for a third party to finance litigation proceedings in which it is not involved. Depending on the circumstances, this funding could be regarded as a loan or a donation.

When the litigation involves a corporate entity that is part of a group of companies, in practice the entity's fees will be funded by the mother company or by the beneficial owner.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

The law governing the profession of attorney expressly forbids an attorney from assisting or representing parties with conflicting interests.

In addition, the Luxembourg Bar guidelines on conflicts of interest recommend the following:

- a* refusing multiple mandates if there is a real risk of conflict at a later stage;
- b* if an attorney has advised several parties at a preliminary stage, he or she should refuse to represent one of them in litigation cases; and
- c* refusing cases against parties who are regular clients of the attorney.

Rules governing conflicts of interest apply to all attorneys working in the same law firm.

Although not regulated by law and professional regulations, Chinese walls are in practice set up subject to the interested clients' prior approval.

ii Money laundering, proceeds of crime and funds related to terrorism

The Luxembourg Law of 12 November 2004 as amended on the Fight Against Money Laundering and Terrorist Financing provides for specific obligations, particularly for lawyers assisting their clients in the context of:

- a* transactions in respect of buying or selling of real estate or business entities;
- b* management of money, securities or other assets;
- c* opening or management of a bank or securities account;
- d* organisation of contributions necessary for the creation, operation or management of companies; or
- e* creation, domiciliation, operation or management of trusts, companies or similar structures.

These obligations are:

- a* the establishment of adequate and appropriate internal proceedings;
- b* the identification of the client and the beneficial owner and of the purpose of the business relationship as well as the origin of the funds; and
- c* cooperation with the Luxembourg authorities in charge of the fight against money laundering and financing of terrorism (mainly, the Bar and the Public Prosecutor), including reporting suspicions. The attorney's professional duty of confidentiality does not apply in this respect.

iii Data protection

Any operation or set of operations whereby personal data is, for example, collected, recorded, organised, stored, retrieved, consulted, used or disclosed by transmission, dissemination or otherwise made available, including operations performed by lawyers in the normal course of business, is considered as processing of personal data and therefore falls within the scope of the Data Protection Regulation.

Applicable regulations

The General Data Protection Regulation (GDPR) took direct effect in Luxembourg on 25 May 2018. However, as it allows EU Member States latitude in specific areas, Luxembourg passed a new law on 1 August 2018 that repealed the former Luxembourg law on data protection of 2 August 2002: the 1 August 2018 Act concerning the organisation of the Luxembourg Data Protection Authority and the General Data Protection Regulation (the Data Protection Act), which took effect on 20 August 2018.

Luxembourg also enacted an Act, again on 1 August 2018, on the protection of individuals with regard to the processing of personal data in criminal and national security matters, which is a transposition into national law of Directive (EU) 2016/680 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

Finally, the Law of 30 May 2005 concerning specific provisions for protection of the individual in respect of the processing of personal data in the electronic communications sector, as amended, is still applicable and targets in particular the use of cookies.

Territorial scope of application

The territorial scope of the GDPR³ is determined by Article 3 thereof. It applies to the processing of personal data by controllers and processors in the EU, regardless of whether or not the processing takes place in the EU. The GDPR also applies to the processing of personal data of data subjects in the EU by a controller or processor not established in the EU, where the activities relate to: offering goods or services to EU citizens and the monitoring of behaviour that takes place within the EU. Non-EU businesses processing the data of EU citizens also have to appoint a representative in the EU.

The Data Protection Act

The Data Protection Act applies to all data processing that does not fall under the scope of the GDPR as well as the Data Protection Act in criminal and national security matters, and is subject to the Data Protection Act (provisions of Chapter I, Article 4, Chapters II–VI, VIII, IX and Chapter VII Section 1 of the GDPR). It does not apply to data processing made by individuals for personal or domestic purposes. It applies restrictively; in other words, provisions of Title II only apply to data controllers and data processors established in the Luxembourg territory.

3 Currently under discussion: European Data Protection Board Guidelines 3/2018 on the territorial scope of the GDPR.

Law firms are mainly construed as data controllers and are therefore required to comply with the GDPR and subsequent national data protection regulations. In this respect, the data processing of information, which is defined as ‘any information of any type regardless of the type of medium, including sound and image, relating to an identified or identifiable natural person’ (data subject), must comply with the provisions set out under the Data Protection Regulation.

The collection of personal data must be performed in a fair and lawful manner, in particular for specified, explicit and legitimate purposes, and not further processed in a way that is incompatible with those purposes.⁴

For a law firm, personal data may be processed in particular if:

- a* it is necessary for compliance with a legal obligation to which the controller is subject;
- b* it is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- c* it is in its legitimate interests, or those of a third party recipient of the data subject’s personal data, in a way that can be reasonably expected as part of running the law firm, which is not detrimental to the data subject and that will have a minimum impact on its privacy; or
- d* if the data subject has provided a clear, express and explicit consent.

It is standard practice, prior to establishing a client relationship, to inform the client about the processing of their personal data (i.e., categories of data, purposes of processing, retention period, transfer and access by third parties) and their rights regarding the processing of their data via the firm’s privacy policy.⁵

As a rule, the transfer of personal data is not restricted within the EU, provided that data subjects are duly informed of such transfer. Because the GDPR is effective, as a general rule, the transfer of personal data to a country outside the European Economic Area (EEA) may only take place if that country (where the recipient is located) ensures an adequate level of data protection. The EU Commission has the power to recognise a third country as providing an adequate level of protection where personal data can be transferred without any further protective measures or authorisation.

Where the recipient is located in a country that does not ensure an adequate level of protection, there are three different levels of situations when such a transfer can still be made, provided:

- a* the controller or processor provides appropriate safeguards; and
- b* enforceable data subject rights and effective legal remedies for data subjects are available.

Level 1: Transfer of personal data to third countries that do not ensure an adequate level of protection

A transfer will be lawful, without requiring any specific authorisation from a supervisory authority, if it is made by using:

- a* binding corporate rules (i.e., internal rules adopted by a group of undertakings that define its global policy with regard to the international transfer of personal data within the same corporate group to entities in countries that do not provide an adequate level of protection and are not previously approved by a national authority);

4 Articles 5 and 6 of the GDPR.

5 Articles 12 and 13 of the GDPR.

- b* standard contractual clauses adopted by the EU Commission (i.e., the transfer of personal data to a third country that does not provide an adequate level of protection is also allowed if standard contractual clauses adopted by the EU Commission or by a supervisory authority (and approved by the Commission) are used);
- c* approved codes of conduct; and
- d* approved certification mechanisms.

Level 2: Derogations for specific situations

The GDPR contains various derogations from the prohibition to transfer personal data outside the EEA without adequate protection.

The derogations apply when:

- a* the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject owing to the absence of an adequacy decision and appropriate safeguards. It is insufficient simply to mention that data will be transferred to a third country;
- b* the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request; or
- c* the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and a third party.

Level 3

If the transfer cannot be based on safeguard measures described under Level 1 or Level 2, the transfer may take place if:

- a* it is not repetitive;
- b* it concerns only a limited number of data subjects;
- c* it is necessary for the purposes of compelling, legitimate interests pursued by the controller that are not overridden by the interests and freedoms of the data subjects;
- d* the controller has assessed all circumstances and has provided suitable safeguards; and
- e* the controller informs the supervisory authority of the transfer.

Additional rules on confidentiality may also apply. For example, the Code of Conduct of the Council of Bars and Law Societies of Europe requires that lawyers pay particular attention to their communications with lawyers in another Member State to ensure the confidentiality of the data they intend to transfer.⁶

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Unlike in-house lawyers, attorneys and law firms are subject to rules of privilege provided for by Luxembourg law relating to the profession of attorney. As a matter of principle, communications between attorneys and their clients are confidential.

Communications between one Luxembourg attorney and another are also confidential unless otherwise specified or if the communication is by nature non-confidential. Relationships

⁶ Article 5.3 of the Code of Conduct of the Council of Bars and Law Societies of Europe.

between Luxembourg and non-Luxembourg attorneys are governed by the Code of Conduct for European Lawyers. According to the Code, communications between attorneys are in principle non-confidential unless otherwise expressly specified in a covering letter or at the head of the communication.

ii Production of documents

Any party must evidence the facts on which it bases its claim or its defence. Supporting documents must be communicated to all the parties involved in the litigation as well as to the court.

Depending on the type of case (civil or commercial), the proof must consist of written documents or may also be brought through a witness statement or hearing. Legal presumptions may also apply. In each case, the court itself assesses the credibility of supporting evidence.

If relevant, a court may, either by itself or at the request of one of the parties, appoint an expert responsible for examining documents stored electronically or other technical issues. In relation to documents stored overseas, courts may use mechanisms applicable for assistance in evidence (see above).

A court may also, either by itself or at the request of one of the parties, order a party to the proceedings or a third party to deliver documents considered as relevant.

VI ALTERNATIVES TO LITIGATION

i Arbitration

Arbitration is commonly used in Luxembourg to settle contract and commercial disputes. Owing to the geographical and economic position of the Grand Duchy, Luxembourg-Ville is more and more often chosen as a seat of arbitration, especially for cross-border disputes arising between parties from neighbouring countries such as France and Germany.

The rules governing arbitration proceedings are mainly provided for by the NCPC. Luxembourg has also ratified international agreements regarding arbitration (including the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958). In addition, the Luxembourg Chamber of Commerce has its own Arbitration Centre, created in 1987, and has put its Secretariat at the service of parties interested in using arbitration to settle their dispute.

Arbitration can only take place if both parties have agreed. The agreement to arbitrate is made through an arbitration clause included in the contract or, after the performance of the contract, through the conclusion of a written agreement to arbitrate.

Under Article 1224 of the NCPC, a dispute may be submitted to arbitration provided that the issue at stake relates to rights of which parties have free disposal. Therefore, disputes involving family law, criminal law or, more broadly, involving public policy, cannot be subject to arbitration.

There are two kinds of arbitration proceedings in Luxembourg:

- a Ad hoc* arbitration: the parties use arbitration without submitting the proceedings to the rules of any arbitration institution. In this case, the parties and the arbitrators must use time limits and forms required before local courts.⁷

⁷ Article 1230 of the NCPC.

- b* Institutional arbitration: most often, the parties will agree to use the rules of an established organisation such as the Arbitration Centre at the Luxembourg Chamber of Commerce or the International Court of Arbitration of Paris.

Arbitral awards under Luxembourg law have the same legal effect as a court judgment. However, in order to be enforceable, an arbitral award requires an enforcement order issued by the president of the district court of Luxembourg.

The only possibility to challenge an arbitral award is to take an opposition procedure against the order of the president of the district court to have it declared null and void.

ii Mediation

Specific legislation concerning civil and commercial mediation was introduced in Luxembourg by the Law of 24 February 2012 on the Introduction of Mediation in Civil and Commercial Matters. The Mediation Centre of the Luxembourg Bar (CMBL) was set up on 13 March 2003.

The CMBL can be contacted by any legal entity or individual within the context of their civil, commercial or labour dispute resolution. The mediator is then chosen from a list approved by the CMBL, taking into consideration the nature of the dispute and the wishes of the parties.

At the beginning of the process, the mediator must ensure that the parties sign a mediation agreement in which they undertake to settle their dispute through mediation. The mediation procedure is entirely confidential. The mediator's mission is to help the parties negotiate a solution.

iii Other forms of alternative dispute resolution

Ombudsman

Claims against a public administration body may be submitted to an ombudsman. The ombudsman analyses the claim and issues a recommendation to the public administration body as to whether he or she finds the claim founded.

Settlement agreement

In practice, especially when the outcome of a dispute is not obvious, parties tend to negotiate and enter into out-of-court settlement agreements. These kinds of arrangements are usually confidential. They are very common in labour law cases.

Settlement agreements have the authority of *res judicata*.

VII OUTLOOK AND CONCLUSIONS

Reorganisation of the justice system is gradually being implemented in Luxembourg. The main purpose of Bill No. 7307 is to strengthen the effectiveness of civil and commercial justice by introducing significant changes in Luxembourg civil procedure. This will be achieved by modernising the Luxembourg judicial system, accelerating legal proceedings and strengthening the independence of judges. In order to meet these goals, other reforms are being prepared, such as Bill No. 7323 on the organisation of the Supreme Council of Justice, which is intended to be a collegiate body responsible for the independence of the magistrates but also in charge of the reception and treatment of the grievances of the litigants.

Although Bill No. 7307 is still under discussion in the Chamber of Deputies, the reform of Luxembourg procedural law will happen. The Luxembourg Bar Council is very enthusiastic about the content of Bill No. 7307 and has great expectations regarding the positive effects that such a reform will bring.

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