

NEW PROCEDURAL RULES IN CIVIL AND COMMERCIAL MATTERS

A long-awaited reform of the Luxembourg New Code of Civil Procedure (the "NCPC") was introduced by a law of 15 July 2021¹ (the "Law").

The relevant amendments to the NCPC aim at improving, simplifying and increasing the efficiency of the Luxembourg procedural regime in civil and commercial matters.

MAIN FEATURES

First and foremost, an important part of the Law relates to the pre-trial procedure (*procédure de mise en état*), as a result of issues commonly encountered in the use of defences. On the one hand, objections were sometimes raised considerably late by the parties, with the result that the judgments to be handed down were significantly delayed. On the other hand, exchanges of written briefs dealing exclusively with the admissibility of the proceedings also caused significant costs to the parties, and increased the workload of the judges.

As a result, lawyers will now be obligated to **raise grounds of lack of jurisdiction, nullity and 'dilatory' exceptions² in their first brief**, or as soon as these grounds are revealed, before the pre-trial judge, who has exclusive jurisdiction to hear these defences, and to rule on their merit. Following the submission of defences, each party to the proceedings may file a maximum of two briefs related to these defences (the submission of the defences counting as a brief).

The Law also introduces a simplified **pre-trial procedure** (as opposed to the current ordinary pre-trial procedure) in first instance and appeal. This procedure concerns either (i) cases in which the value of the claim is less than or equal to EUR 100.000 and which oppose only one plaintiff and one defendant, or (ii) cases where one of the parties makes a reasoned request subject to acceptance by the judge presiding the relevant court chamber.

Under this procedure, the parties will have to submit written briefs each in turn, within fixed time limits: the defendant will have 3 months to respond to the writ of summons, and each party will then have one month to file its reply. The pre-trial judge has the possibility not only to extend these time limits once, but also to request the production of additional submissions. In total, each party will only be able to submit two written briefs (which includes, for the claimant, the writ of summons). The time limits for notifying the brief and exhibits are set under penalty of foreclosure.

Key issues

- Concentration of defences
- Simplified pre-trial procedure
- Value-based jurisdiction
- New appeal provisions
- Interpretation and rectification recourses
- Harmonisation of time limits for appearance before the courts

¹ Published in the Mémorial A, the Luxembourg official gazette, n° 541 of 19 July 2021.

² 'Dilatory' exceptions refers to means raised with the aim of temporarily suspending the proceedings.

As regards the **Luxembourg courts' subject matter jurisdiction**, there are also changes. The proximity judge (*juge de paix*) was competent, with some exceptions, for disputes in civil and commercial matters up to the value of EUR 10.000. For economic reasons linked to inflation, it was decided to adapt this amount to EUR 15.000. The proximity judge's jurisdiction over European payment orders, provisional payment orders and European Account Preservation Order procedure, have also been adjusted to EUR 15.000.

The procedure for **appeals before the district courts** has also been changed. Originally, except in specific matters, in the event of an appeal against a judgment rendered by the proximity courts, the procedure before the district court was of written nature, which was often too cumbersome and slow. Due to the protection of the rights of the litigant provided by both the oral and written procedure, as well as the lower cost of the oral procedure, the Law simplifies the procedure by submitting the appeal against a judgment of the proximity courts to the oral procedure before the district courts. It will therefore no longer be compulsory, for appeals against these judgments in civil matters, to be represented by a lawyer.

The Law also introduces the **right to appeal intermediate judgements**³, which will be subject to an authorization by the jurisdiction competent for the appeal. This procedure, introduced upon request, is likely to reinforce the legal security of the parties, and avoid unnecessary lengthening of proceedings.

Both in first-instance proceedings and in appeal, and prior to the closing of the pre-trial phase, the parties are henceforth required **to submit consolidated briefs** (*conclusions de synthèse*) that recapitulate the claims and means raised in their prior briefs. If they fail to do so, they will be considered as waiving the claims and means not included in their last brief, and the courts will take into account only the latter. Such consolidated briefs are not required as far as cases under the simplified pre-trial procedure are concerned.

Another feature of the Law is the introduction of two extraordinary remedies to challenge judicial decisions: the **recourse for interpretation** (*recours en interprétation*) and the recourse for rectification of clerical errors or omissions (*recours en rectification*).

Otherwise, **the time limit for appearing in commercial matters** has been increased to 15 days, thus aligning with the time limit in civil matters.

CONCLUSION

The vast majority of the provisions come into force on 16 September 2021. With certain exceptions, proceedings launched prior to that date remain governed by the former provisions of the NCPC.

It is now hoped that these new changes will lead to a substantial improvement in the functioning of the judiciary, as well as a relief of the congestion of the courts, for a more efficient procedural regime that will meet litigants' expectations.

³ The immediate appealability of which, separately from the judgment on the merits of the case, has often generated lengthy debates.

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