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Luxembourg

INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Luxembourg.

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LUXEMBOURG
INTERNATIONAL ARBITRATION

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

Articles 1224 to 1251 of the New Code of Civil Procedure (NCCP) govern Luxembourg arbitration proceedings, irrespectively to domestic or international arbitration. Besides general prohibitions, such as in criminal matters[1], there are two areas where arbitration is specifically restricted: Article 46 of the modified Law of 27 July 1997 on insurance contracts limits, and Article L.211-3 of the Consumer Code restricts the use of arbitration.

[1] Luxembourg Court of Appeal, 21 June 2005, decision no 299/05 V.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Luxembourg ratified the New York Convention through the Law of 20 May 1983 approving the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Law entered into force on 25 June 1983.

3. What other arbitration-related treaties and conventions is your country a party to?

Besides the New York Convention, Luxembourg is a party to the European Convention on International Commercial Arbitration of 21 April 1961 (Geneva Convention), which has been ratified by Luxembourg by the law of the 26 November 1981 approving the Geneva Convention and its annexe and has entered into force on 23 December 1981.

Regarding international investment arbitration, Luxembourg ratified the Washington Convention on 30 July 1970 through the law of 8 April 1970 approving the Convention on the settlement of investment disputes between States and nationals of other States signed in Washington on 18 March 1965. The law entered into force on 13 May 1970. Furthermore, Luxembourg, typically within the Belgium-Luxembourg Economic Union (BLEU), entered into over 100 Bilateral Investment Treaties (BITs) and the Energy Charter Treaty (ECT) with other states[1].

As an EU Member State, Luxembourg also benefits from the investment protection agreements and the investment chapters of free trade agreements concluded by the EU and third countries, such as Canada, Singapore, and Vietnam. These agreements may replace Luxembourg BITs with the third countries in question as they enter into force.

[1] PASCHALIDIS Paschalis, BOVÉ Gil, IANCU Iuliana and BALAKRISHNAN Shyam, "Investment Treaty Arbitration: Luxembourg", Know how: Investment Treaty Arbitration, Global Arbitration review (GAR), 2022, <globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration/report/luxembourg>

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Luxembourg law is formally not distinguishing between international and domestic arbitration. The relevant law is not based on UNCITRAL Model Law. Contrary to the Model Law, Luxembourg arbitration law refers to Luxembourg judicial procedure as set out in the NCCP regarding procedural rules (Article 1230 NCCP) and, furthermore, is not limited to commercial matters, but, except to some carve outs pursuant to Article 1225 NCCP, general.

5. Are there any impending plans to reform the arbitration laws in your country?

Yes, Government Bill No. 7671 reforming Luxembourg

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arbitration law is currently before Parliament and will likely be passed into law in the near future. The reform is mostly inspired by French arbitration law as well as the UNCITRAL Model Law.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Established in 1987, the main Luxembourg arbitration institution is the Arbitration Centre of the Luxembourg Chamber of Commerce ("LAC"). The Centre implemented its own Rules of Arbitration inspired by the rules of the International Chamber of Commerce (ICC). The Rules have been amended on 1 January 2020 and added, on an opt out basis operating, a simplified, faster and less expensive procedure for disputes not exceeding EUR 1 million as well as dedicated emergency measures provisions (see question 50). The Centre also makes its secretariat available to parties who have chosen other arbitration rules, such as the ICC Arbitration Rules, with Luxembourg as the seat.

7. Is there a specialist arbitration court in your country?

The Luxembourg judicial system does not provide for a specialised court or court chamber for arbitration.

The District Courts have jurisdiction regarding arbitration-related matters such as, for instance, assisting the constitution of the arbitral tribunal (Article 1227 NCCP), setting aside domestic awards (Article 1244 NCCP) and enforcing domestic (Article 1241 NCCP) and foreign awards (Article 1250 NCCP). The Court of Appeal, however, has jurisdiction to hear challenges to the exequatur order of a foreign award (Article 1251 NCCP referring to Article 682 NCCP).

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The Luxembourg NCCP distinguishes the submission agreement for arbitration ("*compromis d'arbitrage*") from the arbitration clause ("*promesse d'arbitrage*") which has been recognised later by law[1]. While both being an arbitration agreement, the former is a contractual agreement for arbitration, after the dispute has arisen, which has, in order to be valid, explicitly draw up the subject(s) of the dispute and contain the names of the arbitrators (Article 1227 NCCP), whereas such requirements do not apply for the arbitration clause.

Generally, to be valid, the arbitration agreement can only cover matters where the parties are free to dispose of their rights (Article 1224 NCCP) and where the subject is not explicitly carved out by Article 1225 NCCP (such as in matters regarding, for instance, civil capacity or marital relations). More specifically, Article 46 of the modified Law of 27 July 1997 on insurance contracts limits, and Article L.211-3 of the Consumer Code prohibits arbitration clauses. Those restrictions do not apply for the submission agreement for arbitration, as the respective protected party has not waived its right prior to the dispute. Luxembourg case law extended that logic to labour contracts[2] but has been traditionally less favourable to arbitration in labour-related matters[3].

As Luxembourg law does not specifically provide for other formal requirements for the arbitration agreement, the common civil or commercial rules apply. Some legal scholars considered that Article 1135-1 of the Civil Code, a provision regarding standardised contracts ("*contrats d'adhésion*"), could restrict the effect of an arbitration clause as they could be considered an unfair term ("clause abusive"), at least regarding domestic arbitration[4]. A change in legislation in 2004 retracted the condition of special consent for an arbitration clause in standardised contracts, which has been illustrated by Luxembourg case law[5]. Courts, provided they consider Luxembourg law applicable, seem to still attach some importance to Article 1135-1 regarding the questions to prove of and procedure around the arbitration clause.[6] However, Luxembourg case law clarified that, provided the New York Convention is involved, Article 1135-1 is not applicable[7].

[1] Law of the 20 April 1939 [2] Luxembourg Court of Appeal, 22 March 2012, no 33674 of the court register. [3] KINSCH, Patrick, "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997), p.45 [4] KINSCH, Patrick, "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997), pp.149-159. [5] Luxembourg Court of Appeal, 18 February 2015, no 40936 of the court register. [6] Luxembourg Court of Appeal, 6 December 2018, no TAL-2018-00056 of the court register. [7] Luxembourg Court of Appeal, 26 July 2005, no 27789 of the court register.

9. Are arbitration clauses considered separable from the main contract?

Luxembourg law remains silent regarding the separable

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character of an arbitration clause from the main contract. Even though, Luxembourg case law has held that an arbitration clause is bearing a certain amount of autonomy in relation to the contract and as such can be governed by a different law[1], it also held that the arbitration agreement is an accessory contract and as such becomes void if the main contract is also void.[2]

Article 5(4) of the 2020 LAC Rules provides that, unless otherwise agreed, the arbitrator shall continue to have jurisdiction pursuant to an arbitration agreement even though the contract containing the agreement may itself be non-existent or null and void.

[1] Luxembourg Court of Appeal, 26 July 2005, no 27789 of the court register. [2] Luxembourg Court of Appeal, 12 March 2003, Pas. 32, p.399.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

Luxembourg law does not explicitly provide for such a case and Luxembourg case law has not yet decided on such a matter to the best of our knowledge.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Luxembourg law does not provide a specific framework for multiparty or multi-contract arbitration. However, multiparty arbitration is recognised by Article 1227 NCCP regarding the appointment of an arbitrator in such a scenario.

Provided that the parties have agreed to arbitrate under the LAC Rules, Article 7 and 8 of the 2020 Rules expressly provide for arbitration between multiple parties or contracts respectively.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

There is no specific legislation on that matter. Typically, Luxembourg courts decline jurisdiction in favour of an arbitration agreement if the underlying contract, in which an arbitration agreement had been stipulated, has been transferred to a third party[1] or where the clause had been introduced in order to cover and benefit a third party[2].

Recent case law exists but does not amount to draw up a conclusive rule: in one case the Court applied Belgian law to the arbitration agreement and concluded to deny the extension of the arbitration agreement to a third party[3]. In another case the Court held that one party was neither a party to, nor a signatory of a contract between two other parties and could therefore not raise a defence on jurisdiction.[4]

[1] Luxembourg District Court, 29 April 1988, no 186/88 of the court register. [2] KINSCH, Patrick, "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997), pp.63-65, the author notes however that case law might not be unanimous on that subject. [3] Luxembourg District Court, 28 April 2016, no 171853 of the court register. [4] Luxembourg Court of Appeal, 15 July 2010, no 32585 and 33002 of the court register.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Luxembourg law took the approach of considering every matter arbitrable where the parties are free to dispose of their rights (Article 1224 NCCP), therefore including all civil and commercial matters which are not excluded by Article 1225 NCCP (such as, for instance, civil capacity or marital relations). Furthermore, arbitration clauses stipulated within a contract concluded in consumer, labour or insurance contracts are generally seen as non-arbitrable, but not per se (see questions 1 and 8 here above).

Luxembourg law nowadays does not specifically prohibit public entities from entering into arbitration agreements. However, municipalities ("*communes*") must specifically apply to the minister of the interior for approval to conclude a contract containing an arbitration agreement exceeding EUR 100.000[1].

Luxembourg case law and legal doctrine tend to consider insolvency non-arbitrable, but the latter depends on the context and to what extent arbitration is involved within the insolvency procedure[2]. An award infringing public policy in that matter will probably be set aside or not be recognised by Luxembourg courts.

Luxembourg law evolved in the last decades insofar that prior to a decree of 1981 and in combination of Article 83 and 1004 of the former Code of Civil Procedure,

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arbitration was prohibited when it was involving public policy. Even after the reform of the former Article 1004 (nowadays 1225) a doubt persisted regarding arbitration and public policy. Luxembourg case law clarified at a later stage that the mere connection an arbitral proceeding might have with public policy does not make the matter non-arbitrable *per se*.[3]

[1] Article 106(11°) municipal Law of 13 December 1988 ("loi communale du 13 décembre 1988 ») [2] KINSCH, Patrick, "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997), pp.49-52. [3] Luxembourg Court of Appeal, 9 February 2000, Pas. Lux. no. 31, p. 301.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

There has been no recent case law in that regard. However, Luxembourg courts allow the parties to choose the applicable law for their arbitration agreement[1]. It should be noted that international instruments such as the Convention on the Law Applicable to Contractual Obligations of 19 June 1980 (in force in Luxembourg) and the Rome I Regulation do not apply to arbitration agreements (Article 1(2)(d)).

[1] Luxembourg District Court, 28 April 2016, no 171853 of the court register.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

Luxembourg Law does not provide for mandatory choice of law rules that should be applied by the arbitrator. Typically, the parties can agree on the law applicable to the merits to their contracts and the arbitrators generally have to comply with such a choice. Furthermore, Article 1240 NCCP, however, allows the parties to provide for the tribunal to render its award *ex aequo et bono* ("*amiable compositeur*"), which offers the tribunal more leeway to organise the procedure, chose the applicable law and generally decide on the merits.

If no law has been chosen in the contract or during the proceedings, Article 1240 NCCP simply states that the arbitrators will decide in accordance with the law ("*d'après les règles du droit*"). To the best of our knowledge, no award has been set aside or refused enforcement because the arbitrator did not rely on Luxembourg, foreign, or international conflict of law rules, but is free to do so.

The European Convention on International Commercial Arbitration of 21 April 1961 provides that the parties are free to determine the law applicable on the merits. Failing to do so, the arbitrators shall apply the conflict of law rules they deem applicable but must "take account of the terms of the contract and trade usages" (Article VII(1)). The European Convention only applies when both parties have, at the time of concluding the agreement, "their habitual place of residence or their seat in different Contracting States" (Article I(1)(a)).

Similarly, Article 13 of the LAC Rules give the parties the latitude to agree on the applicable law to the merits or grant the powers of an "*amiable compositeur*" to the arbitrator. Alternatively, the Rules provide that the arbitrator can determine the applicable law if the Parties did not agree on that matter.

16. Have the courts in your country applied the UNIDROIT or any other transnational principles as the substantive law? If so, in what circumstances have such principles been applied?

To the best of our knowledge, Luxembourg courts have not applied the UNIDROIT principles, nor had an award been challenged in Luxembourg courts on the grounds of being rendered under UNIDROIT or other transnational principles.

17. In your country, are there any restrictions in the appointment of arbitrators?

There are no specific requirements or necessary qualifications under Luxembourg law for the arbitrator. The parties are free to choose for the person of their choice, as long as this person is impartial and independent with regard to the parties. The arbitrator solely needs to be able to act within its civil rights and has legal capacity to contract. Thus lawyers, civil servants (if their department is not involved), magistrates and foreigners can be chosen as arbitrators.

Article 10(10) of the 2020 LAC Rules requires arbitrators to disclose any facts or circumstances which may affect their impartiality and independence. This disclosure has to happen notwithstanding the relevant issue arising before appointment/confirmation or during the arbitration proceedings.

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18. Are there any default requirements as to the selection of a tribunal?

Article 1227 NCCP provides for a default procedure. If the parties have not provided for the appointment of the arbitrators and did not agree on arbitration rules in their arbitration agreement, the tribunal will be composed of three arbitrators. Each party appoints its own arbitrator and informs the other party thereof. If a party fails to appoint an arbitrator and does not inform the other party thereof, it shall be summoned by the non-defaulting party to proceed to the appointment within eight days of the receipt of such summons by registered mail.

Luxembourg law does not provide for the number of arbitrators which can be even or uneven. In the case of an even number of arbitrators, Article 1238 NCCP provides for a specific procedure allowing the arbitrators to appoint an additional umpire arbitrator to resolve any deadlocks. This provision is a relic from the French code of civil procedure enacted in 1806 that is still in force in Luxembourg. Given that most tribunals are composed of one or three arbitrators, this provision is effectively obsolete.

19. Can the local courts intervene in the selection of arbitrators? If so, how?

Luxembourg law provides for the intervention of the President of the District Court at different stages of the constitution of the arbitral tribunal:

First, Article 1227 NCCP gives the President of the District Court the power to appoint an arbitrator in lieu of a defaulting party, or a party that failed to appoint its choice in the given deadline. This decision is unappealable.

Second, the President of the District Court can, pursuant to Article 1227 NCCP, appoint some or all the required arbitrators if there are more parties to the dispute and they cannot agree on the arbitrators.

Finally, the President of the District Court appoints the third arbitrator if the two arbitrators appointed by the parties cannot agree so, either at the constitution stage (Article 1227 NCCP) or in the context of aobsolete procedure of appointing an umpire (Article 1238 NCCP).

20. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The procedure to challenge the appointment of an arbitrator is primarily settled within the arbitration agreement, or by the arbitration rules chosen by the parties. Luxembourg procedural law only intervenes subsidiarily and mostly refers to the rules regarding challenges of judges (Article 521 NCCP).[1] However, questions regarding, *in fine*, impartiality and independence of the arbitrator are sensitive to due process and public policy. Courts therefore sanctioned awards which were rendered by arbitrators considered incompatible to agree to the mandate.[2]

Pursuant to Article 1235 NCCP, the Arbitrator cannot withdraw from the proceedings (unless, implicitly through Article 1229 NCCP, the parties unanimously agree) and can only be challenged for reasons arising after the submission agreement designating them as arbitrators. The challenging of the arbitrator is governed, unless specifically provided by the agreement, by Article 521 NCCP and is held *ex parte* in District Court. Only the party who is challenging the arbitrator can take part in the procedure. Starting from the day of the judgment on the challenge, the challenging party has 15 days to lodge an appeal (Article 535 NCCP).

The grounds for challenging an arbitrator may include, for instances,

- the arbitrator being part or having a substantial link to the management of one of the parties,
- a family relationship between the arbitrator and a party,
- the arbitrator has advised a party on the same or similar subject, or
- the arbitrator has received any gift shortly before or during the proceeding.

Article 11 of the LAC Rules provide for a broader framework regarding the challenge and replacement of an arbitrator which will, if chosen, govern the procedure and most likely comply with due process and Luxembourg public policy.

Apart of successfully challenging an arbitrator during the proceedings, an irregularly constituted tribunal is a ground for setting aside an award (Article 1244(6°)), provided the party raising the issue had, even unsuccessfully, objected to the appointment of the arbitrator during the arbitration proceedings. Parties should, however, carefully balance the decision to challenge an arbitrator and weigh the consequences of challenging a sitting arbitrator or to potentially lose a later remedy by omitting to doing so.

[1] Luxembourg District Court, 10 February 1960, Pas. 18, p.101. [2] Ibidem.

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21. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

To the best of our knowledge, Luxembourg courts have not been recently requested to rule on such a matter.

22. Have there been any recent decisions in your concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

Luxembourg law does not have case law with the bearing of the Halliburton v Chubb decision, insofar that courts did not have the opportunity to clarify to a similar extent the duty to disclose for arbitrators.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

In case of death, refusal, withdrawal or impediment of the Arbitrator, Article 1233 NCCP provides for the end of the arbitration, unless provided otherwise in the agreement, if the arbitration is based on a submission for arbitration.

Luxembourg case law seems to not extend the effect of Article 1233 to an arbitration clause[1], as in one case the District Court of Luxembourg declined jurisdiction despite that the, by name, designated arbitrator declined the mandate[2]. More recent case law has casted some doubts in that respect as the Court of Appeal, despite an arguably valid arbitration clause, accepted jurisdiction after the ICC secretariat rejected the request for arbitration by a party who failed to pay the advance on costs.[3]

[1] KINSCH, Patrick "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997) pp. 97-98. [2] Luxembourg District Court, 26 October 1983, no 1050/83 (II) of the court register. [3] Luxembourg Court of Appeal, 31 Mai 2017. no 43831, note that the underlying question was about an application to declare another party insolvent. Other court decisions simply held that a claimant can apply to declare a respondent insolvent despite an arbitration clause, as a claimant can prove a definitive, liquid and due debt towards the respondent.

24. Are arbitrators immune from liability?

Luxembourg law does not specifically provide for immunity for civil liability. The common contractual rules therefore apply.

Articles 250 and 252 of the Luxembourg Criminal Code (Code Pénal) provide sanctions against corrupt arbitrators. In particular, Article 250 threatens a corrupt arbitrator with ten to fifteen years' imprisonment and a fine ranging from EUR 2,500 to EUR 250,000 if he or she has directly or indirectly requested or accepted any offer, promise, donation, present or advantage of any sort, for him or herself or for any third party, in order to accomplish or not an act under his jurisdiction.

Arbitrators are bound to confidentiality regarding the facts that have been revealed in the proceedings, unless they are ordered to disclose confidential information by a court or by the law. If they do not respect this obligation, arbitrators are liable under Article 458 of the Criminal Code and are threatened with eight days to six months imprisonment and a fine ranging between € 500 and € 5,000.

25. Is the principle of competence-competence recognized in your country?

Luxembourg law remains silent regarding the principle of competence-competence of an arbitration clause from the main contract.[1] Despite this principle not being enshrined in the NCCP, and influenced by Article II(3) of the New York Convention and V. § 3 of the European Convention, case law has recognised at least the negative aspect of the principle of competence-competence which provides for a court to decline jurisdiction if the parties are bound by an arbitration agreement.

The positive aspect of competence-competence allows an arbitral tribunal to rule on challenge to its jurisdiction but has not explicitly been subject to a court ruling in Luxembourg. Luxembourg courts are, however, aware of the difference as they had to analyse in two different cases if respectively French and Belgian law (applicable to their respective agreements) recognise the positive aspect of competence-competence.[2] Recent case law might suggest, however, that Luxembourg courts primarily analyse their jurisdiction notwithstanding an arbitral decision on its own jurisdiction.

Furthermore, according to the case law, a principal claim cannot aim pre-emptively at invalidating an agreement to arbitration. However, the agreement's invalidity is a ground to set aside the award.[3]

[1] Hoscheit, T., "Le point de vue luxembourgeois", J.T.L., 2015/2, no. 38, p. 48, pt. 14 and 15 [2] Luxembourg

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Court of Appeal, 14 March 2012, no 36006 of the court register and Luxembourg District Court, 28 April 2016, no 171853 of the court register. [3] Luxembourg Court of Appeal, 5 March 2003, Pas. 32, p.443.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Despite Luxembourg law being silent in regard to the principle of competence-competence, Luxembourg courts regularly decline jurisdiction if they consider the arbitration agreement valid and applicable to the parties to a dispute. However, a party has to object the jurisdiction of the court in favour of an arbitral tribunal in *limine litis*, as Luxembourg courts may not raise the argument *ex officio*.

In case of *ex parte* proceedings, the defendant is obviously unable to raise an objection to the court's jurisdiction. Luxembourg law, contrary to, for instance, Article 76 of the French Code of Civil Procedure or Article 28 of the Brussels I recast Regulation, does not specifically provide for Luxembourg courts to decline jurisdiction ex officio in *ex parte* procedures. Luxembourg case law, however, seems to have held that in such an *ex parte* scenario, the Luxembourg court must consider declining jurisdiction ex officio, as there is no defendant to effectively raise the defence.[1]

[1] Luxembourg Court of Appeal, 15 July 2015, no 42489 of the court register, note however that this case was about attachment procedures and the contract contained a jurisdiction clause rather than an arbitration clause.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

Rules of arbitration institutions typically provide for the commencement of arbitral procedures, such as Article 3 of the LAC Rules. Luxembourg law does not provide for mandatory rules in that respect, provided that the procedure respects due process and public policy.

If no institutional arbitration had been chosen by the parties or if the agreement is silent on procedural questions, the Luxembourg NCCP provides for subsidiary rules of procedure. Note that the parties can agree to proceed differently and that most rules typically only apply for *ad hoc* proceedings.

Pursuant to Article 1227 NCCP, the tribunal is composed of 3 arbitrators. Usually, each party appoints one arbitrator, and those two arbitrators decide on the third arbitrator. The district court can appoint one or all the arbitrators if there are difficulties in constituting the tribunal.

Unless the parties have otherwise agreed either explicitly or tacitly, the NCCP provides that the parties and the arbitrators must follow common judicial procedures, including time limits and forms (Article 1230 NCCP), whereas those common judicial rules are leniently interpreted by Luxembourg case law[1].

Luxembourg law provides, except if the parties agreed otherwise, that the arbitration agreement ends after 3 months (Article 1228 NCCP), which can only be extended by common contract. Failing so, courts consider the arbitration to have ended[2] and may annul the award for being rendered *ultra vires* (Article 1244(4) NCCP).[3] Luxembourg law seems to be strict in that respect as neither a judge, nor the arbitrator can extend the 3-month deadline without the consent of the parties. For one, the oral agreement during a procedural hearing granting the arbitrator "the time needed" to render the award does not constitute an agreement as to a specific deadline[4]. Luxembourg courts will annul an award, rendered in Luxembourg, if the arbitrator extended the deadline by himself, as this does not constitute a mere act of administering the arbitration proceedings but represents a core aspect of the arbitration[5]. Nevertheless, case law has also held that the arbitration agreement is void if one party breaches the general obligation of good faith by maliciously and without good reason refusing to accept an extension of the time limit in order to render an award in good conditions.[6]

Furthermore, pursuant to Article 1237 NCCP, parties must exchange their written submissions and exhibits at least 15 days before the end of the agreed or legal time limit of the agreement. It is mandatory for arbitrators to judge on the submissions and documents provided till that date. If a third party (umpire) tiebreaker is appointed in accordance with Article 1238 NCCP, that umpire must render the award no later than one month after acceptance of the role as a tiebreaker.

[1] Luxembourg Court of Appeal, 22 July 1904, Pas. 6, p. 517. [2] Luxembourg District Court, 15 January 2009, no. 11376 of the court register. [3] Luxembourg Court of Appeal, 2 April 2014, Pas. Lux. no. 37, p. 161. [4] Luxembourg District Court, 25 January 2011, no. 104723 of the court register . [5] Luxembourg Court of Appeal, 5 July 2006, Pas. 33, p. 263 [6] Luxembourg District Court, 15 January 2009, Journal des Tribunaux Luxembourg

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2009 p. 134.

28. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Neither Luxembourg law regarding arbitration proceedings nor the LAC Rules specifically provide for the handling state immunity.

Typically, the arbitrator will carefully analyse the arbitration agreement for the award to be enforceable. Luxembourg law grants foreign states immunity from jurisdiction and courts will set aside or refuse enforcement of awards rendered in breach of said granted immunity of jurisdiction. We refer to our answer to question 46, here below, regarding state immunity at the enforcement stage.

29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Luxembourg law does not specifically allow courts to compel participation, and, to the best of our knowledge, there has not been any case law regarding a request or challenge to compel a party to participate in arbitration.

Luxembourg courts, however, will decline jurisdiction if a party appears before them, despite a valid arbitration agreement, provided the other party raises a defence on jurisdiction in *limine litis*. Luxembourg courts will enforce awards where a respondent illegitimately failed to participate, provided that certain standards of due process and public policy were respected.

The Luxembourg Court of Appeal seems to have accepted jurisdiction in one case despite a valid arbitration clause but following a failed attempt by the claimant to initiate an arbitration proceeding and failing for the respondent to participate.[1]

[1] Luxembourg Court of Appeal, 31 Mai 2017, no 43831, the reasoning of the Court to accept jurisdiction is, however, dubious.

30. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Luxembourg law does not specifically provide for that scenario. Article 1230 NCCP generally refers to the ordinary procedural rules if the parties did not agree otherwise and therefore to Article 483 of the NCCP. It is, however, unlikely that the parties did not agree on any procedural rules and, as the arbitration agreement only binds the parties to the agreement, it should not be possible to base a voluntary intervention of a third party on Article 1230 and 483 of the NCCP.

Article 6 of the LAC Rules provides for the procedure of requests for joinder. A third party cannot join the arbitral proceedings after the constitution of the tribunal except if all the parties, including the third party agree to do so. Generally, if all parties to a dispute agree, including the third party, the arbitrator is most likely bound by that agreement.

31. Can local courts order third parties to participate in arbitration proceedings in your country?

To the best of our knowledge there has not been any case law in that matter and Luxembourg law does not provide for such a Court order. It does, however, seem unlikely as that third party was not party to the initial arbitration agreement.

32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

It can be reasonably inferred of Article 1242 NCCP that Luxembourg law allows arbitral tribunals to issue interim measures ("preparatory awards"), although without specifying which measures can be ordered. Moreover, arbitrators cannot issue interim measures against third parties (Article 1243 NCCP). If the parties do not comply voluntarily, interim measures issued a tribunal, pursuant to Article 1242 NCCP, must be enforced through an order of the President of the District Court.

Although it had been held in the past that "[t]he provisional nature of interim orders renders arbitration agreements on summary proceedings ineffective", recent case law distinguishes between "ordinary" summary procedures and the so-called "*référé-provision*". The latter consists of a payment order issued in summary proceedings, either adversarial or *ex parte*. Established in a praetorian manner and due to its relative proximity to the merits of the case, the référé-provision cannot be granted where there is an arbitration

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clause, unless urgency can be established.[1]

The intervention of the courts may be sought in some cases for provisional and conservatory measures even when the parties have agreed to an arbitration clause through the application to the judge sitting in summary proceedings ("*juge des référés*"),[2] for example if there is a legitimate reason to seek an order to preserve evidence or to establish proof of the facts that are essential to the outcome of future litigation (Article 350 NCCP). Unlike the arbitral tribunal, the judge requested for interim relief orders can authorise, for instance, an attachment or a garnishment in the hands of third parties.

Generally, Luxembourg court accept jurisdiction to grant interim relief orders provided that the parties did not explicitly exclude state courts to take such measures.[3]

Furthermore, the LAC Rules also provide for conservatory or interim measures before and after the constitution of the tribunal (Articles 20 and 21 of the Rules) as well as a specific procedure since the 2020 amendment in Appendix III of the Rules.

[1] Luxembourg Court of Appeal, 10 February 2021, no. CAL-2020-00829. [2] Luxembourg Court of Appeal, 5 December 1985, no. 10606 of the court registry; District Court, 13 October 2006, no. 204/06 of the court registry; Ord. Référés, 10 November 2008, no. 796/2008 of the court registry; Ord. Référés, 29 July 2004, no. 583/2004 of the court registry; Ord. Référés, 16 October 2007, no. 596/2007 of the court registry. [3] Luxembourg District Court, 21 June 2019, No. TAL-2019-00209.

33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No, such remedies are not available in Luxembourg Courts or in Luxembourg law, as they are incompatible with EU law and specifically with the Brussels I recast Regulation[1].

Anti-suit injunctions which are issued by an arbitral tribunal might, however, have an impact as those awards are subject to the New York Convention and not the Brussels I recast Regulation[2]. There has not been conclusive case law regarding that matter, but Luxembourg courts would, however, most probably refuse the recognition and enforcement of anti-suit injunctions.

[1] West Tankers, ECJ, 10 Feb. 2009, case C-185/07. [2] Gazprom, ECJ, 13 May 2015, case C-536/13

34. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The relevant parts of the Luxembourg NCCP on arbitration does not give a framework to evidentiary proceedings, except Article 1236 NCCP which prevents arbitrators to rule on whether a document is false or forged or even examine documents with such aim The Anglo-Saxon concept of discovery is not part of Luxembourg law. An arbitrator may verify whether the signatures on private deeds are genuine[1]. Typically, documents such as witness statements are to be collected according to the agreement of the parties.

If the parties did not provide for this in their arbitration agreement (either by including it in the agreement or by failing to designate applicable rules, then the relevant supplementary rules of the NCCP must apply, notably Articles 58, 59, 60 and 411 of the NCCP. The arbitral tribunal may not refuse to hear a witness presented by a party on a relevant fact. The same principle also applies to documentary evidence.

The arbitrators' right to take coercive action is disputed in Luxembourg law and factually limited to the state court's willingness to enforce orders from the tribunal (see question 32 here above). The question has not yet been submitted to the courts for decision.

Nevertheless, the arbitrators' right to take coercive action is much disputed in Luxembourg law and the question has not yet been submitted to the courts for decision. In any event, according to Article 60 NCCP, if a party refuses to provide the arbitral tribunal with the requested documents the tribunal has the right to draw all obvious conclusions from this refusal.

[1] KINSCH, Patrick "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997) p. 107.

35. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Luxembourg law does not specifically provide for ethical standards that counsels have to abide. Usually, lawyers registered within the Luxembourg bar have to respect their own ethical rules even in the context of arbitration

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proceedings. Those standards can amount to a caveat for Luxembourg practitioners.

The Luxembourg bar has therefore amended their internal ethical rules in 2018 insofar that the new Article 3.6.5 of the Internal Rules of the Luxembourg Bar Association (“*règlement intérieur de l’Ordre des avocats du Barreau de Luxembourg*”) allows Luxembourg lawyers to adapt to foreign or arbitral procedural rules, norms or guidelines regarding the handling of witnesses in such procedures.

36. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Luxembourg law does not have mandatory provisions with respect to confidentiality. Confidentiality in regard to the arbitration proceedings (its existence, filed documents, etc.) can be agreed by the parties and will be binding on a contractual level. This agreement to confidentiality can be drawn out in the arbitration agreement itself, before or during the proceedings or by choosing institutional rules that provide for confidentiality. The LAC Rules, however, do not provide for confidentiality.

To the best of our knowledge no award has been set aside or refused enforced because an arbitrator has ordered confidentiality in a procedural order. In any case, a breach of confidentiality by a party will most likely not be enough grounds to set aside or refuse enforcement of an award. Such a breach can, however, amount to damages on contractual grounds, ordered by the tribunal or a court, to be paid by one party to the other party.

In 1981, for reasons of confidentiality, a Grand Ducal Decree withdrew the compulsory requirement to file the arbitral award, which previously had to be fulfilled by one of the arbitrators within three days after rendering the award (Article 1020 of the pre-1981 Code of Civil Procedure). Nonetheless, it should be noted that, except if the parties voluntarily submit to the award, the award must be enforced in a Luxembourg court. To that extent, the mere existence of an arbitration will be disclosed at the enforcement (or rather the challenge of enforcement) stage

37. Are there any recent decisions in your country regarding the use of evidence acquired illegally in arbitration proceedings (e.g. ‘hacked evidence’ obtained through unauthorized access to an electronic system)?

To the best of our knowledge, no recent decision regarding the use of hacked evidence/evidence acquired illegally has been rendered by the Luxembourg Courts.

38. How are the costs of arbitration proceedings estimated and allocated?

The relevant Luxembourg law regarding arbitration is silent regarding the allocation of costs. Arbitrators, however, tend to have significant leeway in that respect. The costs of arbitration are typically freely apportioned between the parties by the arbitrators; thus, one party can bear all or only a part of the expenses. No general practice exists in this respect, and the arbitrators decide on a case-by-case basis.

The 2020 LAC Rules provide for how to allocate costs and give an estimated range of procedural costs before the arbitration (Appendix I of the Rules). Article 31 that costs should include “reasonable expenses incurred by the parties for their defence and the fees and expenses of experts in case of an expertise “. Even though the rule according to which “costs follow the event”, is generally recognised, the 2020 Rules of Arbitration of the Chamber of Commerce provide that in making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 33(2)).

Costs can be reduced if the parties agree to, and the Rules allow the use of, the simplified procedure, provided in Article 22 and Appendix II of the Rules (see question 50).

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

The recovery of interest is a matter of applicable law. Therefore, and if the parties did not agree otherwise, under Luxembourg law, arbitral tribunals are able to award compensatory interest at either the statutory or the contractually agreed rate.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a

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requirement that the award be reasoned, i.e. substantiated and motivated?

For the recognition and enforcement of an award, Luxembourg law distinguishes awards rendered within Luxembourg from awards rendered abroad. In order to be recognised and declared enforceable by order of the President of the District Court, a domestic award has to comply with Article 1241 NCCP and a foreign award with Article 1250 NCCP, while not being affected by grounds of annulment (Article 1244 NCCP) or refusal to enforcement (Article 1251 NCCP) respectively (see question 44). The latte, primarily, refers to international conventions. Therefore, foreign awards, if the New York convention is applicable, have to comply with the requirement of that convention (such as Article IV(2) of the New York Convention).

There is a requirement for the award to be reasoned, except if the parties have expressly exempted the arbitrators from any reasoning (Article 1244(8°) NCCP).

41. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The estimated timeframe to obtain an exequatur order for the recognition and enforcement of an award before the Luxembourg national court is generally a few days (*ex parte* application).

42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Yes, Luxembourg law provides for a different standard of review for recognition and enforcement depending on if the seat of the arbitration was in Luxembourg or abroad (see question 40). Parties have to expect a delay of a few months if a party lodges an appeal against the *exequatur* order. Article 1251 NCCP (grounds to refuse foreign awards), while adding two conditions, mostly refers to Article 1244 NCCP (grounds to set aside a domestic award). However, by prioritising the standards of international conventions, Article 1251 NCCP effectively introduced a very distinguishable threshold for review of foreign awards, which is generally seen as more liberal (see question 44).

43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

The law is silent as to the types of remedies an arbitral tribunal can award. It can, however, be reasonably assumed that the Luxembourg courts will analyse any remedy through the scope of Luxembourg international public policy (similar to the enforcement of foreign judgements). For instance, under Luxembourg law, damages can only be compensatory and cannot exceed the amount of the loss sustained by the injured party. In that respect, it should be noted that an arbitral award granting punitive damages is likely face annulment on the basis of violation of the Luxembourg public order (Article 1244(1°) NCCP) and 1251(2°).

44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

For challenging the recognition and enforcement of an award, Luxembourg law distinguishes awards rendered within Luxembourg from awards rendered abroad.

Regarding awards rendered within Luxembourg, Article 1241 NCCP provides for the procedure to enforce a domestic award. It is not possible to appeal an award in Luxembourg, despite the existence of Article 1231 NCCP which is inoperable and simply an omission by the legislator[1]. In fact, Luxembourg law only allows to challenge a domestic award through a setting aside procedure (Article 1244 NCCP) which is initiated by opposing the enforcement order within the District Court that issued the order (Article 1246 NCCP). As the award can only be set aside by challenging the exequatur order, Luxembourg case law has clarified that any party to the award can request the enforcement and that the same party can challenge that enforcement order[2].

In order to be recognised and enforced, a domestic award must not be affected by one of the grounds provided by Article 1244 NCCP:

the arbitral award is contrary to public policy;

the dispute could not be referred to arbitration;

the arbitration agreement was not valid;

the arbitral tribunal exceeded its jurisdiction or powers;

the arbitral tribunal omitted decisions on one of the issues submitted to arbitration, if the omitted issue cannot be separated from the topics addressed in the arbitral award;

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the arbitral tribunal was improperly constituted;

there has been a violation of the rights of the defence;

the arbitral award is not reasoned, unless the parties have expressly exempted the arbitrators from any reasoning;

the arbitral award contains conflicting provisions;

the arbitral award has been obtained by fraud;

the arbitral award is based on evidence that has been declared false by an irrevocable court decision or on evidence that has been recognised to be false;

if, since the arbitral award was made, a document or other evidence was discovered that would have had a decisive influence on the arbitral award and that had been withheld by the opposing party.

Regarding awards rendered abroad, Article 1250 NCCP provides for the relevant enforcement procedure and refers to Article 682 NCCP. Contrary to the enforcement of a domestic award, the challenge of enforcement of a foreign award must be initiated directly in the Court of Appeal.[3] Article 1251 NCCP provides for the reasons to refuse enforcement and primarily refers to international conventions. Effectively, Article V of the New York Convention is the usual threshold for an award to be recognised and enforced in Luxembourg, as well as to a lesser extend the Geneva Convention (see question 2 and 3).

Furthermore, Luxembourg case law has recently held that annulment proceedings against an award in the country in which it was rendered justifies the stay of proceedings for enforcement of this foreign award[4] and renders the award eventually unenforceable if the award is set aside in its country of origin[5], completely moving away from previous case law[6] which was influenced by the French approach.

If the unlikely case were to arise and no international convention would to be applicable, Article 1251 NCCP refers to Article 1244, the grounds to set aside an award rendered within Luxembourg, and adds that the foreign award must, to be enforceable, be final (1°) and cannot be contrary to public policy (2°).

[1] KINSCH, Patrick "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997) p. 94. [2] Luxembourg Court of Appeal, 5 March 2003, Pas. Lux. no. 32, p. 443. [3] Luxembourg Court of Appeal, 12 November 2003, Pas. Lux. no. 32, p. 605. [4] Luxembourg Court of Appeal, 25 June 2015, no. 42067 of the court register. [5] Luxembourg Court of Appeal, 27 April 2017, no. 40105 of the court register. [6] Luxembourg Court of Appeal,, 28 January 1999, Pas. 31, p.95.

45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Luxembourg case law does not allow the parties to exclude in their arbitration agreement the right to request for setting aside a domestic award based on Article 1244 NCCP. Such a clause would be null and void[1].

[1] Luxembourg District Court, 3 January 1996, Bulletin Laurent 1994, IV, pp. 282 to 285.

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

Luxembourg law grants foreign states immunity from jurisdiction and execution, whereas only the former involves arbitration proceedings. Immunity from jurisdiction implies the lack of jurisdiction for a Luxembourg court to rule in matters involving a foreign state as a party and, by extension, to refuse enforcement of an award rendered in breach of that granted immunity from jurisdiction. Immunity from jurisdiction, however, can be waived. Such a waiver must be certain and unequivocal; it may be express or implied and be inferred from the circumstances[1]. Specifically, a foreign state is considered to have waived immunity from jurisdiction if that state had validly agreed to arbitrate.[2]

Typically, an agreement can be inferred through a contract or an offer by the state to arbitrate through its legislation or a Bilateral Investment Treaty (BIT). It should be noted, however, that Luxembourg Supreme Court, brining itself into line with the case law of the Court of Justice of the European Union (CJEU), *see question 54*, has recently held that an offer by an EU member state to arbitrate within an Intra-EU BIT is considered retracted, *ex post*, by acceding to the Union, even if the arbitration had commenced before the accession of that member state. Hence, the EU member state has not waved its immunity from jurisdiction and the award had been rendered in breach of that immunity and can therefore not be enforced.[3]

Furthermore, Luxembourg has ratified the European

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Convention on State Immunity of 16 May 1972[4]. The Convention aims to establish common rules relating to the scope of the immunity of one party from the jurisdiction of the courts of another party. Specifically, Article 23 of the Convention provides that *"No measures of execution or preventive measures against the property of a Contracting State may be taken in the territory of another Contracting State except where and to the extent that the State has expressly consented thereto in writing in any particular case."*

[1] Luxembourg Court of Appeal, 11 February 2021, no 43054 of the court register, note that this decision had been overturned (see footnote 51), but it can reasonably be assumed that Luxembourg courts are continuing to take those aspects into consideration. [2] Luxembourg Court of Appeal, 27 April 2017, no 37955 of the court register. [3] Luxembourg Court of Cassation, 14 July 2022, no CAS-2021-00061 of the court register. [4] Law of 8 June 1984 approving the European Convention on State Immunity and the Additional Protocol, signed in Basel on 16 May 1972.

47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

As for Luxembourg law, the underlying principle is that an award which was rendered for and between the two parties of the arbitration cannot be binding or opposable to a third party or non-signatory (Article 1243 NCCP). The extent of that provision can be ambiguous from case to case.

A third-party opposition against an order of exequatur enforcing a foreign award may be brought before a Luxembourg court. Although third parties cannot oppose the award itself before a Luxembourg court, a third party against whom an award rendered abroad is likely to be enforced may argue before the Luxembourg court that the award is ill-founded and therefore cannot be invoked against them.

48. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Luxembourg law is silent on that matter and there has not been case law in connection with arbitration proceedings. There are, however, funds operating in Luxembourg which fund litigation and arbitration proceedings abroad.

49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The 2020 LAC Rules established an arbitral emergency procedure through Article 20, 21 and the Appendix III of the Rules. The status and enforceable character of those measures or awards are debated (see question 32).

50. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Luxembourg law does not provide for such procedures, but the 2020 LAC Rules implemented an, on an opt out basis operating, simplified, faster and less expensive procedure for disputes. Article 22 of the Rules provides that the simplified procedure applies if (i) the value of the dispute does not exceed EUR 1 million and the arbitration agreement has been concluded after the LAC Rules amendment came into force (1 January 2020) or if (ii) the parties agree irrespectively of the date. Appendix II of the Rules establishes the procedural framework of the simplified procedure which differs from the ordinary procedure of the Rules.

51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

We are not aware of such efforts.

52. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

To the best of our knowledge, no Court decision has been recently rendered regarding the setting aside of an award in Luxembourg and the enforcement in another country. However, Luxembourg case law has recently held that annulment proceedings against an award in the country in which it was rendered justifies the stay of proceedings for enforcement of this foreign award[1] and renders the award eventually unenforceable if the award is set aside in its country of origin[2], completely moving away from previous case law[3] which was influenced by the French approach.

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[1] Luxembourg Court of Appeal, 25 June 2015, no. 42067 of the court register. [2] Luxembourg Court of Appeal, 27 April 2017, no. 40105 of the court register. [3] Luxembourg Court of Appeal, 28 January 1999, Pas. 31, p. 95.

53. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

The issue of corruption has been raised in a recent decision where the Luxembourg court considered that corruption would prevent the recognition and enforcement of an award. Giving effect to an award obtained by fraud or corruption would be unacceptable violation to a fundamental principle and therefore an infringement to public policy of the requested state.[1]

[1] Luxembourg Court of Appeal, 5 November 2020, Pas. 40, p.94.

54. Have there been any recent court decisions in your country considering the judgments of the Court of Justice of the European Union in Slovak Republic v Achmea BV (Case C-284/16), Republic of Moldava v Komstroy LLC (Case C-741/19) and Republiken Polen v PL Holdings Sarl (Case C-109/20) with respect to intra-European investor-state arbitration? Are there any pending decisions?

The Luxembourg Court of Cassation recently held, referring to the Achmea[1], European Food[2] and PL Holdings[3] cases, that an offer by an EU member state to arbitrate within an Intra-EU BIT is considered retracted, ex post, by acceding to the Union, even if the arbitration had commenced before the accession of that member state. Hence, the EU member state has not waved its immunity from jurisdiction and the award had been rendered in breach of that immunity and can therefore not be enforced.[4]

The Luxembourg Court of Cassation implicitly prioritised EU law over international treaty obligations provided by the Washington Convention. Under the ICSID convention, an award rendered by an ICSID tribunal must be enforced as if it was a final judgement of the country where enforcement is requested, without other grounds to object to the award (Article 54(1) ICSID Convention), except of the mere verification of authenticity of the award. The award cannot be subject to any other objection or appeal, except those provided by the treaty (Article 53(1) ICSID Convention).

The Luxembourg Court of Cassation has nevertheless analysed the arbitration agreement and incidentally the jurisdiction of the arbitral tribunal. The Court concluded that the arbitrators were lacking jurisdiction to render an award against an EU member state as the agreement had been retracted.

[1] Slovak Republic v Achmea BV, 6 March 2018 (C-284/16, ECLI:C:2018:158.). [2] Commission v/ European Food , Victor M) a.o., 25 January 2022 (C-638/19 P, ECLI:EU:C:2022:50). [3] PL Holdings, 26 October 2021 (C-109/20, EU:C:2021:875). [4] Luxembourg Court of Cassation, 14 July 2022, no CAS-2021-00061 of the court register.

55. Have there are been any recent decisions in your country considering the General Court of the European Union's decision Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?

To our knowledge, Luxembourg Courts have not yet rendered a decision by explicitly considering the General Court of the European Union's decision Micula & Ors. However, the Luxembourg Court of Cassation has issued an important decision within the Micula matter (see question 54).

56. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

The Rules have not specifically been amended in response to the COVID-19 pandemic and there has not been an official statement. In practice, the Centre allowed hybrid and virtual proceedings and gave substantial leeway to the parties and the arbitrators to adapt the hearings to the situation.

57. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments

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regarding virtual hearings?

The Centre has amended its rules in 2020 and added a simplified procedure (see question 50), which provides for a faster and less expensive procedure. Those Rules also allow the arbitrator, after consultation with the parties, to hold all the proceedings through virtual hearings (Appendix II, 5. of the Rules). Regarding ordinary proceedings, Article 16 of the Rules allow to hold the case management conference through virtual hearing. In Practice, however, the Centre mostly leaves it to the parties and the arbitrators to decide how proceedings should be held.

There are efforts undertaken by the Centre to amend the Rules and to implement greater use of technology, as, for instance, allowing virtual filings. In practice, virtual hearings are already used, but there has not been an official statement for when such amendments to the Rules are to be made.

58. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

If a person becomes insolvent after an arbitration agreement had been concluded or during an arbitration, the receiver is bound by the agreement, as has held recent case law[1]. There is a legal debate to what extent the binding force of the agreement differs, in a bankruptcy context, in case of a submission agreement ("*compromise d'arbitrage*") or an arbitration clause ("*promesse d'arbitrage*")[2] (see question 8) Nevertheless, this question has not yet been conclusively resolved by case law.

[1] Luxembourg Court of Appeal, 26 April 2022, no CAL-2020-00977 of the court register. [2] KINSCH, Patrick, "La législation luxembourgeoise en matière d'arbitrage", p. 50.

59. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?

Yes, Luxembourg is a member to the Energy Charter Treaty. Luxembourg supports the agreement in principle regarding the ECT's modernisation reached by the ECT contracting parties in June 2022.

60. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There have not yet been developments in regards to arbitration in matters regarding climate change and/or human rights. There were, however, proceedings initiated by Greenpeace in the Luxembourg administrative court aiming to compel the Government to disclose information related to investments done by the national pension fund in the context of on climate-related financial risk and the objectives fixed by the Paris Agreement. The request got rejected by the Court[1].

[1] Luxembourg Administrative Court (tribunal administratif), 17 December 2019, no 43604 of the court register.

61. Has your country expressed any specific views concerning the work of the UNCITRAL Working Group III on the future of ISDS?

To the best of our knowledge Luxembourg has not expressed any specific views in that respect.

62. Has your country implemented a sanctions regime (either independently, or based on EU law) with regard to the ongoing crisis in Ukraine? Does it provide carve-outs under certain circumstances (i.e., providing legal services, sitting as an arbitrator, enforcement of an award)?

With Luxembourg being a member state of the European Union, EU regulations adopted by the Council of the European Union (the "Council") become part of Luxembourg national law and are enforceable through Luxembourg courts from their entry into force. Furthermore, the Law of 19 December 2020 on the implementation of restrictive measures in financial matters obliges all natural and legal persons residing, established or operating in or from Luxembourg to apply those sanctions.

Due to Russia's invasion of Ukraine, the Council has adopted, since 3 March 2022, 7 packages of EU economic sanctions against Russia, as well as Belarus because of its involvement in the crisis. Through numerous regulations amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial

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integrity, sovereignty and independence of Ukraine and Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, Russia (and to some extent also Belarus) is subject to various restrictive measures, intended to put pressure on key persons and strategic economic areas.

Those various sanctions relate to restrictive measures against designated individuals and entities (including freeze on funds and economic resources, ban on making funds or economic resources available and travel bans), restrictive measures in the banking and financial sectors as well as other sectors of the economy (media, iron and steel products, luxury goods, gold, etc.) and sanctions targeting particularly trade from Donetsk and Luhansk, two non-government controlled separatist regions of Ukraine, to and from the EU.

The Council has, however, foreseen different carve-outs regarding those restrictive measures. Both Regulation (EU) No 269/2014 and Regulation (EU) No 833/2014 include derogations and exceptions for transactions necessary for the purchase, import or transport of pharmaceutical, medical, agricultural and food products as well as for transactions necessary for a fair access to judicial or administrative proceedings.

For instance, Article 5aa(3)(g). of Regulation 833/2014, as amended, explicitly carves out "transactions which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State and if such transactions are consistent with the objectives of this Regulation and Regulation (EU) No 269/2014" from the prohibition established by Article 5aa(1) of Regulation (EU) No 833/2014.

63. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Luxembourg courts most likely consider international economic sanctions, issues by Luxembourg or the European Union as part of their international public policy. There have not been any recent decisions on that matter.

64. Have arbitral institutions in your country taken any specific measures to administer arbitration proceedings involving sanctioned individuals/entities? Do their rules address the issue of sanctions?

The LAC Rules have not been updated and there has not been an official statement. The Centre, however, has established internal procedures in order to comply with all the legal requirements.

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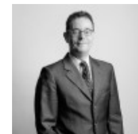

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