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Luxembourg: Trends and Developments

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Trends and Developments

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Introduction

Luxembourg has long been a jurisdiction of choice for international financing and investment structures. Largely due to the absence of adequate local tools, Luxembourg companies have long relied on foreign restructuring regimes to implement complex group financial restructurings. The introduction of the Luxembourg Law of 7 August 2023 on the preservation of businesses and the modernisation of bankruptcy law marks a turning point, equipping Luxembourg with preventive restructuring mechanisms aligned with EU standards. While this development is expected to reduce reliance on foreign courts, the inherently international nature of groups present in Luxembourg – with debt governed by multiple governing laws and entities incorporated across jurisdictions – suggests that cross-border considerations will continue to shape Luxembourg's restructuring landscape.

Two recent decisions – the Luxembourg District Court decision 2025TALCH02/00603 and the Frankfurt Regional Court (*Landgericht Frankfurt*) judgment of 22 August 2025 – provide interesting insights into the impact and treatment of foreign processes, and into the broader European debate on the coordination of restructurings.

Beyond these decisions, this article also examines the very recent inclusion of Luxembourg processes of judicial reorganisation (*réorganisation judiciaire*) in Annex A of the EU Insolvency Regulation 2015/848 and how it ensures their automatic recognition across all EU member states.

It also considers how the Law of 7 August 2023 introduces practical innovations, notably the ability to appoint a provisional administrator (*administrateur provisoire*) or a court-appointed agent (*mandataire de justice*) inside or outside a judicial reorganisation at the request of creditors or other interested parties – tools that, if used strategically, may reshape stakeholders' leverage in specific contexts.

Together, these developments reinforce Luxembourg's position as a strategic restructuring jurisdiction, combining pragmatic cross-border recognition and offering new domestic tools capable of providing critical support in financial distress situations.

The Luxembourg Decision (2025TALCH02/00603): The Need for and Scope of Exequatur

The Luxembourg District Court decision in case 2025TALCH02/00603 addressed a key question in cross-border restructurings: the enforceability in Luxembourg of a foreign restructuring judgment and the conditions under which an exequatur (ie, a judgment granting formal recognition) is required.

The case involved a Luxembourg company whose centre of main interests (COMI) had shifted to the UK and, soon thereafter, a restructuring plan under Part 26A of the UK Companies Act 2006 was sanctioned. The plan included, amongst other measures, the extinguishment of subordinated debt, modifications to existing guarantees, and a capital reorganisation through share transfers resulting in shareholder dilution. While the instruments and guarantees were primarily governed by German law, certain pledges over shares and receivables were subject to Luxembourg law.

In this case, the applicants sought to, inter alia, prevent the implementation in Luxembourg of any part of the UK restructuring judgment, and specifically, any actions that would amount to material execution of the plan on Luxembourg territory (amongst other actions, the transfer of shares, the release or waiver of claims, the discharge of guarantees and security interests granted by Luxembourg companies and the effects of the power of attorney granted for the purpose of executing the UK restructuring judgment) without prior exequatur.

The Luxembourg court recalled that Luxembourg law requires that, in the absence of an international convention or European regulation, judgments rendered by foreign courts, as well as acts executed by foreign public officers, be declared enforceable by a Luxembourg court before they can be enforced in Luxembourg, pursuant to Article 678 of the new Code of Civil Procedure (*Nouveau Code de procédure civile*).

However, the decision also contained an important clarification: a foreign judgment (in the absence of an international convention or European regulation) requires exequatur only when it is used to carry out acts of material execution on Luxembourg territory involving public force – that is, when the judgment is invoked to directly modify patrimonial rights through coercive measures, such as asset seizures, forced transfers, or other actions requiring the intervention of public authorities. The court distinguishes such coercive measures from private acts which do not require prior exequatur and can be performed directly without judicial validation of the foreign decision – for example, the transcription of the release of a pledge or the transfer of shares in a company's shareholders' register.

In its reasoning, the court also emphasised that the legal consequences of the UK restructuring judgment – notably the extinguishment of the subordinated notes, were primarily situated in Germany, where the relevant claims and guarantees were governed by German law. While certain pledges over shares and receivables were governed by Luxembourg law, the court clarified that these pledges were accessory in nature and could not survive the elimination of the underlying debt. On this basis, and after stressing that any potential action related to the enforcement of such pledges would not involve the use of public authority or coercive measures, the court concluded that the UK judgment did not produce enforceable effects on Luxembourg territory, and that the plaintiffs' request for exequatur lacked sufficient territorial and procedural justification.

The court drew a parallel with a decision of 30 April 2021 where the Luxembourg District Court had ruled that the risk of "contempt of court" in the United States meant that a Luxembourg entity could be pressured into executing foreign judgments under threat of sanctions, effectively substituting foreign judicial coercion for Luxembourg's own authority. In that earlier case, exequatur was required precisely because such coercive measures would have led to material execution on Luxembourg territory. By contrast, in the present case, the court found that only private, non-coercive acts were at issue, with no risk of contempt or forced execution.

The territorial and legal distinction drawn by the court was central to its reasoning – since no act of execution had occurred or was planned on Luxembourg soil, and the legal effects of the judgment were confined to jurisdictions outside Luxembourg, no exequatur was required.

This distinction is practically significant. It means that foreign restructuring plans may in practice extend to Luxembourg entities without judicial formalities, provided their effect in Luxembourg remains contractual or voluntary in nature. The Luxembourg court thus reaffirmed its cautious but business-oriented approach: open to recognising foreign restructurings where appropriate, but insistent on procedural safeguards where Luxembourg legal rights or assets are directly impacted.

Frankfurt's Provisional Refusal to Recognise UK Restructuring Plan: Luxembourg's Legal Crossroads

The Frankfurt Regional Court's provisional refusal to recognise a UK Part 26A restructuring plan has been the subject of attention across European legal and restructuring circles. In particular, the Frankfurt Court declined recognition of the UK plan under both Sec-

tion 343 of the German Insolvency Code and Section 328 of the German Civil Procedure Code, citing two key concerns: the plan lacked the necessary collectivity to qualify as an insolvency proceeding, and the lack of reciprocity between the UK and Germany following Brexit. The court also ruled that the Brussels Convention no longer applied, further limiting the legal basis for recognition.

While the judgment is not final and remains subject to appeal, its reasoning raises certain questions for Luxembourg, particularly in the context of cross-border recognition and enforcement of non-EU restructuring tools. The decision is especially relevant for Luxembourg, given the involvement of Luxembourg-incorporated entities in the Aggregate Group restructuring. The UK restructuring plan had direct implications for these entities, including the extinguishment of creditor claims and the release of guarantees. The Frankfurt decision also raises broader concerns about the viability of COMI shifts to the UK as a restructuring strategy to access the UK's flexible restructuring regime.

Contrary to the approach taken by the Frankfurt Regional Court, crucially, the Luxembourg District Court in the decision analysed above (2025TALCH02/00603) did not determine whether a UK restructuring plan qualifies as an insolvency process under Luxembourg law. This is particularly important as insolvency processes benefit from the general principle of universality or unicity of insolvency procedures – ie, aside from cases governed by the EU Insolvency Regulation, insolvency proceedings of a debtor should apply comprehensively to all of its assets with recognition being granted across jurisdictions. Following this principle, Luxembourg courts will, where certain conditions apply, recognise foreign, non-EU insolvency judgments automatically without requiring a separate exequatur decision from a Luxembourg court.

This omission is particularly relevant in light of the Frankfurt Regional Court's approach, where such court considered that a UK restructuring plan lacked the necessary collectivity to be considered an insolvency proceeding under German law. The Luxembourg court's silence on this point leaves open the question of whether similar reasoning could be considered in Luxembourg. There is room to argue that this will not be the case, particularly given their numerous similarities with insolvency procedures included in Annex A, and especially with the Luxembourg judicial reorganisation by collective agreement (*réorganisation judiciaire par accord collectif*).

The interplay between the Luxembourg and Frankfurt decisions thus highlights the evolving challenges in cross-border restructurings involving Luxembourg entities, particularly in a non-EU context, and notably with respect to the recognition and enforcement of foreign restructuring plans, especially when their effects extend to Luxembourg assets or rights.

Inclusion of Luxembourg Judicial Reorganisation in Annex A of the EU Insolvency Regulation

These Luxembourg and provisional Frankfurt decisions arrive at a critical juncture when the Luxembourg restructuring framework is being shaped by the reform introduced by the Law of 7 August 2023 and the inclusion of its procedures in Annex A of the EU Insolvency Regulation, prompting renewed attention to recognition risks, enforcement pathways and jurisdictional considerations in cross-border restructurings involving Luxembourg entities.

The modification of Annex A of the EU Insolvency Regulation was indeed published in the Official Journal of the European Union on 17 October 2025, following the adaptation of the relevant amendment regulation on 8 October 2025.

For Luxembourg, Annex A now includes the three options for judicial reorganisations – ie, reorganisation by collective agreement, reorganisation by judicial transfer of assets or activities and reorganisation via an amicable agreement with the debtor's creditors.

In addition, the court-appointed agent (*mandataire de justice*) which may be appointed under the Law of 7 August 2023 is also mentioned in Annex B of the Insolvency Regulation.

This official recognition at EU level comes almost two years after the entry into force of the Law of 7 August 2023. The absence of such recognition, in particular, its consequence on jurisdiction, was already noted by the Luxembourg courts, specifically in the *Aggregate*

case. Indeed, in the absence of clear rules on international jurisdiction in the Law of 7 August 2023, the District Court had to rely on the criterion of the registered office to find jurisdiction over a debtor.

This gap is now closed, as the inclusion of all types of judicial reorganisations pursuant to the Law of 7 August 2023 in Annex A allows the courts to rely on Article 3 of the Insolvency Regulation which states that the courts of the member state where the COMI of the debtor is located have exclusive jurisdiction to open primary insolvency proceedings (which by definition now includes Luxembourg judicial reorganisations). The European Court of Justice insisted on the exclusive nature of the jurisdiction conferred by Article 3 in *Galapagos* (C-723/20, §30).

In *Galapagos*, the Luxembourg District Court had also given useful guidance on its stance regarding COMI shifts. The court ruled that for a COMI shift to be recognised, and thus for the Luxembourg courts to decline jurisdiction on the basis of Article 3, all connections with Luxembourg would need to be completely severed. It held that this was not the case, as although significant steps had been undertaken to transfer the COMI to England, there remained some links with Luxembourg, namely the registered office, the corporate documents and the assets of the company.

In light of these considerations, the inclusion of the Luxembourg judicial reorganisation proceedings in Annex A will have significant consequences, due to the exclusive nature of the jurisdiction conferred by Article 3. Indeed, any breach of an exclusive jurisdiction provision is grounds for refusal of exequatur pursuant to Luxembourg law. This means that, in the absence of a valid COMI shift, the exequatur of foreign restructuring proceedings which are the functional equivalent of those established under the Law of 7 August 2023 will likely be refused. Evidence of recognition in Luxembourg, which is sometimes required in foreign restructuring proceedings involving a Luxembourg debtor, will thus be harder to obtain.

It also means that pending foreign restructuring proceedings may no longer be taken into account, as they were, for instance, in *Aggregate*,where the debtor was able to claim a stay pending the English restructuring proceedings. This is particularly relevant for the only form of judicial reorganisation that can be creditor-led – the judicial transfer of assets and liabilities.

In combination with the scrutiny of the Luxembourg courts regarding alleged COMI shifts, it can reasonably be argued that in-court restructurings of the debt of Luxembourg companies may now need to take place more frequently within Luxembourg itself. This certainly would be in line with the intention of the European legislature to create efficient and viable restructuring options in all member states. Independently of this policy consideration, the increasing focus on Luxembourg restructuring options should be a call for the Luxembourg legislature to continue modernising its restructuring legislation, particularly by considering necessary amendments to the Law of 7 August 2023.

Appointment of Independent Parties Inside or Outside Judicial Reorganisation Proceedings

In alignment with the EU directive it transposed, the Law of 7 August 2023 adopts a debtor-in-possession regime, placing the debtor at the centre of all reorganisation measures available. However, it also provides for certain options, whereby the debtor's management can be assisted (or in limited cases presented below, also replaced) by an independent party.

Against this background, the Law of 7 August 2023 provides for the following four options:

- outside of judicial reorganisation proceedings under Article 9, the appointment of a company conciliator (*conciliateur d'entreprise*);
- outside of judicial reorganisation proceedings under Article 10, the appointment of a court-appointed agent (*mandataire de justice*);
- as part of judicial reorganisation proceedings under Article 23, the appointment of a provisional administrator (*administrateur provisoire*); and
- as part of judicial proceedings under Article 22, the appointment of an insolvency practitioner (*mandataire de justice*).

Assistance by the Article 9 Company Conciliator or the Article 22 Insolvency Practitioner

The Law of 7 August 2023 allows the debtor to request the Minister for the Economy or the Minister for Small and Medium-sized Businesses, depending on their respective areas of competence, to appoint a company conciliator to facilitate the reorganisation its assets or activities, or a part of them, without any formal requirements being applicable.

The mandate of the company conciliator can also be terminated or continued upon the commencement of judicial reorganisation proceedings. Under Article 22, the debtor or any interested party may further request the appointment of an insolvency practitioner to assist the debtor in such proceedings.

Both options remain available to Luxembourg companies that form part of international groups; however, they are not expected to play a significant role in cross-border restructurings.

However, at least in theory and on a case-by-case basis, a skilled and neutral intermediary between the debtor and its various stakeholders may be capable of facilitating consensual transactions, which in most situations would prove more cost-effective. This would apply in circumstances where a neutral professional is considered capable of addressing specific strategic needs. However, such role could also be assumed on an ad hoc basis without a formal court appointment necessarily offering any additional benefits.

The Article 10 Court-Appointed Agent and Guidance by Case Law

There are two key requirements for the application of Article 10 under the Law of 7 August 2023:

- the existence of serious and aggravated misconduct to such an extent that business continuity is at risk; and
- the likelihood that the appointment of a court-appointed agent would help preserve that continuity.

In the decision by the Luxembourg District Court in the decision of 7 June 2024 (2024TALCH02/00950), the court reiterated that the principles of proportionality and minimal interference, meaning the benefits must outweigh any harm to the company and the intervention should go no further than necessary, are applicable. Additionally, the mandate of a court-appointed agent must be sufficiently broad to enable them to effectively fulfil their role, including, when necessary, replacing the company's management to ensure business continuity.

This decision represents an important clarification of how Article 10 of the Law of 7 August 2023 should be applied. While adherence to the principles of proportionality and minimal interference remains essential, the Luxembourg District Court recognised that interested third parties, including creditors, may now seek the appointment of an independent agent under Article 10 to effectively replace the company's management when necessary to preserve business continuity outside the context of judicial reorganisation proceedings.

The Article 23 Provisional Administrator and Guidance by Case Law

Similarly to the designation of an Article 10 court-appointed agent, the appointment of a provisional administrator is an exceptional measure which must meet strict criteria – ie, serious and aggravated faults/misconduct by the debtor or one of its bodies. The request must be sufficiently reasoned to justify this measure. The principles of limited interference and proportionality must also be adhered to.

In several cases, including the ones listed below, Luxembourg courts have decided to replace the management of the debtor with a provisional administrator after making a cumulative assessment of facts that could qualify as serious and aggravated faults:

- non-publication of the annual accounts of the company within the applicable deadlines;
- a shareholder indebted towards the company and receiving a dividend;
- activities carried out without the required business licences;
- failing to keep complete accounting records; and
- the existence of public creditors (such as the Luxembourg tax administration) – which, interestingly,

appears to be considered an aggravating factor by the courts.

The possible appointment of a provisional administrator as part of judicial reorganisation proceedings and the associated loss of control of the management constitute a potential risk for debtors. This risk needs to be carefully assessed by considering the position of the debtor and its level of compliance with the various legal rules before applying for the opening of judicial reorganisation proceedings.

Conclusion

The Law of 7 August 2023 represents a significant milestone in Luxembourg's evolution as a restructuring jurisdiction, offering long-awaited tools capable of reducing dependence on foreign jurisdictions. However, the framework remains at an early stage of development, and its full potential will depend on both legislative refinement and further judicial interpretation. Complex cases involving bespoke restructuring arrangements will test the boundaries of the Law of 7 August 2023 and determine how flexibly it can accommodate innovative solutions.

Although no formal amendment proposals have been introduced to date, it seems increasingly likely that the legislature will revisit the Law of 7 August 2023 in the future, a development that is highly awaited by market practitioners.

Equally crucial will be how Luxembourg courts interpret and apply these restructuring tools in practice and how Luxembourg, as well as foreign courts, will approach recognition matters.

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