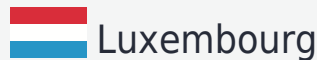


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# Which country's law applies?



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European Judicial Network  
(in civil and commercial  
matters)

## 1 Sources of the rules in force

### 1.1 National rules

There is no code on private international law in Luxembourg. Rather, provisions governing conflicts of law in domestic law are scattered among various codes and specific laws. This area is mainly governed by multilateral international conventions and by instruments of secondary EU law.

### 1.2 Multilateral international conventions

Many rules governing conflicts of laws are derived from the multilateral international conventions to which Luxembourg is a party. Most of these conventions were drawn up within the framework of the Hague Conference on Private International Law.

A summary of these conventions can be found on the [Hague Conference](#) website.

### 1.3 Principal bilateral conventions

Some bilateral conventions contain conflict-of-law rules. For details, please consult the [Legilux](#) website.

## 2 Implementation of conflict of law rules

### 2.1 Obligation of the judge to apply conflict of law rules on his own initiative

As regards the status of individuals, the court applies conflict-of-law rules on its own initiative. This is not the case if the parties are free to choose which law to apply, for example in contractual matters, because of the principle of the parties' freedom to choose the applicable law. In such cases, the court will apply conflict-of-law rules on its own initiative only in the case of manifest fraudulent evasion of the law.

The court hearing the action will automatically apply its own law unless the parties have requested the application of a foreign law.

### 2.2 Renvoi

In Luxembourg, in areas not covered by an international convention or an EU regulation which specifically exclude *renvoi* (reference to a law of another jurisdiction), the case-law accepts such references to a certain extent. Where the reference following the application of the conflict-of-law rule designates the law of the court seized, that reference is permitted, but the reference ends there. It is considered as referring to the substantive law of the court seized.

Reference is excluded in matters in respect of which the parties are free to choose the applicable law.

## 2.3 Change of connecting factor

This concerns cases where, because of a change in the connecting factor which designates the applicable law, a situation is subject to two different legal systems, one after the other. It can be defined as a conflict of laws in terms of time, due to a change of place in the connecting factor.

In Luxembourg, the new law is applied to the future effects of a situation arising in the past with respect to consequences that persist. However, the new law designated in the conflict-of-laws rule will apply when changes are made to a situation arising under the old applicable law.

## 2.4 Exceptions to the normal application of conflict rules

There are situations in which the court seized must apply its own law even if the conflict-of-law rule confers jurisdiction on another law:

- Where it is impossible to determine the foreign law.
- Where the persons concerned are stateless.
- Where there is no solution in the foreign law.
- In the event of urgent interim measures being taken.
- Where the foreign law is contrary to the public policy of the State where the court is seized.

Where provisions are immediately applicable, the court will also apply the law of the forum:

- Procedural laws and laws of judicial organisation.
- Legal provisions for the protection of workers and rental leases.
- Legal protection for consumers.
- Finally, if, for a purpose which clearly appears to be fraudulent, the application of the law of the court seized has been rejected by the parties in favour of a foreign law rendered artificially applicable, the court must refuse to take that law into account and re-establish the application of its own law.

## 2.5 Proof of foreign law

Since, in Luxembourg, the foreign law constitutes a fact to be taken into account by the Luxembourg court, it is in principle the responsibility of the party relying on it to prove that it is applicable. It is for the parties and, more specifically, the party whose claim is based on the foreign law, to furnish proof.

## 2.6 National resources such as national websites for finding the content of the applicable law and translations in other languages

The Official Journal of the Grand Duchy of Luxembourg, hereinafter referred to as '[Legilux](#)', is the official website of the Grand Duchy of Luxembourg devoted to national legislation.

It provides access to the electronic Official Journal, consolidated versions, thematic search functionalities and legislative alerts.

The site is divided into three main areas, which are:

[Mémorial A](#), the legislative area, which contains the following legislative, regulatory and other acts concerning the general public: laws, Grand-Ducal regulations, ministerial regulations, other texts concerning the general public, all consolidated versions of legislation in force (consolidated texts published separately or in the form of codes and compendia of legislation, with no legal value).

[Mémorial B](#), the administrative area, which contains the following texts that do not concern the general public: administrative acts, circulars, opinions and records since 1996.

[Mémorial C](#), the corporate space, which brings together publications on commercial companies, non-profit associations and foundations dating from before 1 June 2016. Since 1 June 2016, Mémorial C has been replaced by a list of publications available on the Luxembourg Business Registers ([LBR](#)) website under the Electronic Compendium of Companies and Associations ([RESA](#)). However, archives with a filing date prior to 1 June 2016 (from 1996 until the last Mémorial C was published on 27 July 2016) are still available on Legilux.

Documents on [Legilux](#) are mainly in French or German, which are, together with Luxembourgish, official languages in Luxembourg. There is no official translation into other languages such as English or Luxembourgish. Some texts may have been translated by third parties, but these translations are not available on the official website.

## 3 Conflict of law rules

### 3.1 Contractual obligations and legal acts

In principle, contractual obligations are governed by the law chosen by the parties, subject to compliance with mandatory provisions on public policy and fraudulent evasion of the law.

In the absence of a choice expressed by the parties, the provisions of the Rome Convention of 1980 and of Regulation No 593/2008 of 17 June 2008 apply. In the latter case, the court will apply the most objectively appropriate law.

### 3.2 Non-contractual obligations

In principle, non-contractual obligations are governed by the law of the place where the event giving rise to the damage or obligation occurred, unless another law is more closely connected with the facts or an international convention applies.

### 3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

In principle, personal status is subject to the national law of the natural person, subject to emerging criteria such as the habitual residence of the persons concerned and in particular that of any children concerned. The same applies to the formation and composition of names, and the conditions for any change of name, as a person's name is an integral part of their status.

General capacity to perform a legal act and procedural capacity are governed by the national law of the person in question. However, legal standing is governed by the law applicable to that right, since it affects the substance of the law. In matters relating to a contract, this rule is tempered where the other party to the contract was surprised in good faith by a cause of incapacity unknown in the country where the act was performed. It is accepted in such cases that national law will give way to the law of the place of performance.

### 3.4 Establishment of parent-child relationship, including adoption

#### 3.4.1 Establishment of parent-child relationship

With respect to legitimate parenthood, in Luxembourg it is the law governing the marriage which applies in principle, i.e. the common national law of the parents, otherwise the law of their common domicile, or the law of the forum.

Everything connected to the establishment of the natural parent-child relationship is, in principle, governed by the national law of the child.

As regards the nature of the evidence for establishing the parent-child relationship, the national law of the child applies to the substantive conditions for recognition, the time limit and disqualification periods for challenging parenthood and the defences available.

#### 3.4.2 Adoption

- Conditions for adoption

In principle, pursuant to Article 370 of the Civil Code (*Code civil*), the conditions for adoption are governed by the national law of the adopter(s). Where the two adopting spouses are of different nationalities, the applicable law is that of their common usual place of residence at the time of the application. However, the conditions for the adoption itself remain governed, in principle, by the national law of the child being adopted. There is an exception to that principle where the adoption confers the nationality of the adopter on the child. In such cases,

the conditions are governed by the national law of the adopter.

#### - Effects of adoption

The effects of adoption are governed by the national law of the adopter(s). Where the adopting spouses are of different nationality or are stateless, or one of the spouses is stateless, the law of their common usual place of residence at the time the adoption took effect is deemed to be applicable.

In the case of adoptions carried out abroad, there is a risk of conflict between the rules on jurisdiction laid down by the national law of the adopting parties and that of the adopted child. In such a case, the adoption is deemed to be valid if the formal requirements laid down by the law of the country in which the adoption took place are complied with before the competent authorities under that law.

### 3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

#### 3.5.1 Marriage

##### - Conditions for the validity of a marriage

The formal requirements are in principle governed by the law of the place where the marriage was celebrated.

For a marriage to be valid, under the Hague Convention on Celebration and Recognition of the Validity of Marriages of 14 March 1978, the substantive conditions imposed by the domestic laws of both spouses must be met. The domestic laws are those designated by the conflict-of-law rules of the State where the marriage was celebrated. It is also necessary, provided that at least one spouse is a national of that State or habitually resides there, that the substantive conditions of the law of the State of celebration are observed. The law governing the conditions for the validity of a marriage also applies to the substantive conditions of any action for annulment of the marriage.

In the case of marriages contracted abroad, there is a presumption of validity where the marriage certificate drawn up in accordance with the formal requirements of the law of the place of celebration has been presented. Recognition may be refused if a marriage contracted abroad is manifestly incompatible with public policy in Luxembourg.

##### - Effects of the marriage

Where there is no common nationality, the effects in Luxembourg are governed in principle by the law of the spouses' common domicile, i.e. the place where the couple have actually settled.

#### 3.5.2 Unmarried/Cohabiting couples and partnerships

There are no conflict-of-law rules governing unmarried and cohabiting couples since, under Luxembourg law, relationships between cohabitantes constitute a de facto situation.

The law applicable to partnerships concluded in Luxembourg is the law of the forum.

It is possible for partners who have registered their partnership abroad to register their partnership in the civil register if, at the time of the conclusion of the partnership abroad, both partners fulfilled the conditions laid down in Article 4 of the Law of 9 July 2004 on the effects of certain partnerships. Once the partnership concluded abroad is recognised in Luxembourg, the same advantages as those conferred on Luxembourg partnerships will be applied.

#### 3.5.3 Divorce and judicial separation

Where the spouses have the same nationality, divorce and legal separation are governed by the national law of the spouses. Otherwise, the law of their actual common domicile will be applied. If both criteria are missing, the law of the forum applies.

These rules also apply to the admissibility of a divorce in general, its grounds, effects and ancillary measures.

### 3.5.4 Maintenance obligations

Pursuant to Article 15 of Regulation No 4/2009 on maintenance obligations, the law applicable to maintenance is determined in accordance with the Protocol of 23 November 2007 on the international recovery of child support and other forms of family maintenance. The principle is to apply the law of the creditor's state of habitual residence, but the parties may choose by common accord to designate, for proceedings already initiated, the law of the forum or one of the following laws:

- a) the law of a State of which either party is a national at the time of designation;
- b) the law of the State of habitual residence of either party at the time of designation;
- c) the law designated by the parties as applicable to their property regime or the law actually applied;
- d) the law designated by the parties as applicable to their divorce or legal separation, or the law actually applied to such divorce or legal separation.

### 3.6 Matrimonial property regimes

The matrimonial property regime is subject to the domestic law designated by the spouses prior to the marriage.

If, at the time of the marriage, the spouses did not make a choice of law, the applicable law is determined in accordance with the Hague Convention of 14 March 1978 on the Celebration and Recognition of the Validity of Marriages.

Under the Hague Convention of 14 March 1978, spouses may designate only one of the following laws:

1. the law of a State of which either spouse is a national at the time of designation;
2. the law of the State in whose territory one of the spouses is habitually resident at the time of such designation;
3. the law of the first State in whose territory one of the spouses will establish a new habitual residence after the marriage.

The law thus designated applies to all their property.

However, irrespective of whether or not the spouses have made the designation provided for in the preceding paragraphs, they may designate, in respect of the property or some of the property, the law of the place where the property is located. They may also provide that any property subsequently acquired will be subject to the law of the place where it is located.

If the parties fail to make a choice, the court will have to establish their tacit choice. There is a presumption in favour of the domestic law of the State in whose territory they first establish their habitual residence after the marriage.

However, in the following cases, the matrimonial property regime is, in accordance with the Hague Convention of 14 March 1978, subject to the domestic law of the State of the spouses' common nationality:

1. where the declaration provided for in Article 5 has been made by that State and its effect is not excluded by the second paragraph of that Article;
2. where that State is not a Party to the Convention, its domestic law is applicable under its private international law, and the spouses establish their first habitual residence after the marriage:
  - a) in a State which has made the declaration provided for in Article 5,or
  - b) in a State which is not a Party to the Convention and whose private international law also provides for the application of the law of their nationality;
3. where the spouses do not establish their first habitual residence after the marriage in the territory of the same State.

If the spouses do not have their habitual residence in the territory of the same State and do not have a common nationality, their matrimonial property regime is subject to the domestic law of the State with which, taking into account all the circumstances, it is most closely connected.

It is possible to voluntarily change the applicable law to the extent provided for by the new law chosen.

### 3.7 Wills and successions

The provisions of Regulation (EU) No 650/2012 of 4 July 2012 apply to successions opened on or after 17 August 2015. Article 21 of the Regulation states that the law applicable to the succession as a whole is the law of the State in which the deceased had his or her habitual residence at the time of death.

Successions opened before 17 August 2015 continue to be governed by the Luxembourg conflict-of-law rules.

#### - Legal succession

In Luxembourg, the estate is divided into several parts: movable assets, and one or more immovable assets. In order to determine whether an item of property is movable or immovable, the law of the forum must be applied.

Succession to moveable assets is, in principle, governed by the law of the deceased's last domicile on the date of death. Domicile is to be determined in accordance with the rules in the Civil Code.

Succession to immovable property is subject to the law of the State in which each of these properties is located.

#### - Testamentary succession

In principle, the general capacity to dispose of property upon death is governed by the person's status. However, specific cases of incapacity fall within the area of succession law. The general capacity to benefit from a gift is governed by personal law.

### 3.8 Real property

In accordance with Article 3 of the Civil Code, property ownership is determined by the law of the State in which the property is situated. This also applies to the content of the rights in rem that may be associated with them, their creation and transfer and their acquisition by enjoyment over a long period of time (*usucapion*).

### 3.9 Insolvency

Outside the scope of Regulations (EU) Nos 1346/2000 and 2015/848, in the matter of bankruptcy, it is the law of the place where the bankruptcy is opened that applies.

This applies to the effects of all collective proceedings opened in Luxembourg and to those declared abroad. However, for the specific effects of the bankruptcy of one of the parties on rights which may be invoked by the other contracting party, the applicable law is that of the State where the bankruptcy is declared.

The jurisdiction of that law is limited to the specific effects and does not extend to all aspects of the operation affected by the bankruptcy.

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