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Legal Alert – Dispute resolution

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LAW OF 15 MAY 2018

The Law of May 15th, 2018¹ (hereinafter: “**the Law**”) modifies the New Code of Civil Procedure in order to implement in Luxembourg Regulation (EU) 2015/2421 of 16 December 2015 amending Regulation (EC) No. 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No. 1896/2006 creating a European order for payment procedure (hereinafter: “**the Regulation**”). The Law foresees the following modifications:

- **Introduction of a new option for the claimant in case of opposition to a European order for payment**

If a statement of opposition is lodged against a European order for payment, the claimant has several options:

- Continue the proceedings in accordance with any appropriate national procedure;
- Explicitly request that the proceedings be terminated; or
- A new option, request that the proceedings be continued in accordance with the European Small Claims Procedure as laid down in the modified Regulation (EC) No 861/2007.

- **Introduction of a new proceedings**

Where the claimant has requested that the European Small Claims Procedure as laid down in

¹ Law of 15 May 2018 on the implementation of Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure and amending the New Code of Civil Procedure. **Memorial A n°394.**

modified Regulation (EC) No 861/2007 be applied to a claim: an appeal shall be offered according to proceedings set by Article 143-1 of the New Code of Civil Procedure:

- The « Juge de paix » has jurisdiction;
- An appeal can be brought against the decision of the “Justice de paix” before the president of the “Tribunal d’arrondissement” sitting as in summary proceedings, within 40 days of the notification of the decision. Legal representation is optional.

- **Introduction of a right to review in exceptional cases**

Where the defendant did not make an appearance in the European Small Claims Procedure, he shall be entitled to apply for a review of the judgment given. The “*juge de paix directeur*” of the court where the decision was delivered has jurisdiction.

According to Article 18 of Regulation (EC) No 861/2007, this right exists where:

- The defendant was not served with the claim form,
- The defendant was not summoned to that hearing, in sufficient time and in such a way as to enable him to arrange for his defence, in the event of an oral hearing; or
- The defendant was prevented from contesting the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part.

- **Introduction of new provisions on recognition and enforcement of foreign decisions**

When a foreign decision relating to “European Small Claims” and European orders for payment has to be recognised and enforced in Luxembourg,

the president of the “Tribunal d’arrondissement” may, upon application by the defendant, refuse the enforcement, suspend the enforcement, limit the enforcement, or make enforcement conditional on the provision of security.

An appeal against the decision of the president of the “Tribunal d’arrondissement” may be lodged with the Court of Appeal and an appeal to the Supreme Court (Cour de Cassation) is possible.

- **Introduction of European amendments to Regulations (EC) No 1896/2006 and (EC) No 861/2007**

In addition, the Law states that Regulations (EC) No 1896/2006 and (EC) No 861/2007 shall be applied in their amended form, i.e., as amended by Regulation (EU) 2015/2421. Please, find these amendments in our [Newsletter published in October 2017](#).

- **Entry into force:** the Law takes effects on 22 May 2018.



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