



Luxembourg Court clarifies article 10 of the Restructuring Law: A useful tool for creditors

In a decision delivered on 7 June 2024 (2024TALCH02/00950) (the Decision), the Luxembourg District Court provided for substantive clarifications regarding article 10 of the Luxembourg Law of 7 August 2023 on the continuation of businesses and modernisation of insolvency law (the Restructuring Law). This article empowers the Court to appoint judicial agents (*mandataires de justice*) in case of serious and aggravated misconduct (*manquements graves et caractérisés*) by the debtor or its corporate bodies, threatening the continuity of the business.

1 Key takeaways from the Decision

In this case, pleaded by Loyens & Loeff, the District Court restated the two prerequisites for the designation of a judicial agent:

- **serious and aggravated misconduct:** the existence of a serious and aggravated misconduct which threatens the continuity of the business; and
- **preservation of business:** the measure requested is likely to preserve the business continuity.

Although the parties disagreed on the powers of the Court in relation to the appointment of a judicial agent – the Court upheld that:

- the Court can appoint a judicial agent with the powers of a provisional administrator (*administrateur provisoire*), effectively replacing the management bodies if necessary; and
- in line with Belgian doctrine, the decision to designate a judicial agent under article 10 of the Restructuring Law can only be made in compliance with the principles of proportionality (meaning that the advantage of the measure must not

be disproportionate to the damage suffered by the company) and minimal interference in the affairs of the company.

The Court also emphasised that the mission entrusted to the legal agent must enable him to “*concretely and effectively*” discharge of its duties. It was also note that the powers vested with the legal agent must be “*reasonable but sufficiently extensive and likely to ensure the continuity of the relevant companies*”.

2 Why this matters

Before the Restructuring Law, provisional administrators could be appointed by the summary judge

- (i) in urgent situations; or
- (ii) to prevent an imminent harm or bring a manifestly illicit disorder to an end – in principle only at the request of shareholders or directors of a company.

It is generally recognised that the mission of a provisional administrator can be very wide based on the needs of each case and can go so far as to manage the company with powers of administration and representation, as well as, in certain circumstances, disposal powers. Luxembourg Courts have long held that the principles of subsidiarity, proportionality and limited interference must be complied with when such appointment is made.

Article 10 of the Restructuring Law expands this capability, allowing **any interested party with a legitimate interest**, including creditors, to request the appointment of a provisional administrator.

3 Conclusion

The Decision marks a significant step in clarifying the application of article 10 of the Restructuring Law. While emphasising the application of proportionality and minimal interference, the Court recognised the ability of interest third parties to request the appointment of judicial agents who can effectively replace the management body of a company, in the interest of business continuity in times of crisis.

Importantly, creditors can now rely on article 10 of the Restructuring Law to request the replacement of the management of a company with a court-appointed agent, if the above-mentioned conditions are fulfilled. This alternative open will undoubtedly be a useful tool for creditors to consider if severe misconduct of management needs to be addressed swiftly, with an eye on the continuity of the business.

For more information on the Decision or how article 10 of the Restructuring Law can be applied in practice – feel free to reach out to our experts:

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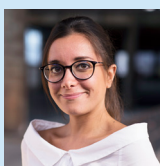


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