



COMMISSION EUROPEENNE POUR L'EFFICACITE DE LA JUSTICE  
(CEPEJ)

QUESTIONNAIRE POUR ÉVALUER LES SYSTÈMES JUDICIAIRES2011

Pays : Allemagne

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## 1. Données démographiques et économiques

### 1. 1. Généralités

#### 1. 1. 1. Habitants et informations économiques

##### 1) Nombre d'habitants (si possible au 1er janvier 2011)

81 751 602

##### 2) Total des dépenses publiques annuelles au niveau national et le cas échéant, les dépenses publiques des collectivités territoriales ou entités fédérales (en €) - (Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP)

	Montant
Niveau national	353 299 000 000
Niveau territorial / entités fédérales (total pour l'ensemble des niveaux territoriaux/entités fédérales)	485 706 000 000

##### 3) PIB par habitant (en €)

30 566

##### 4) Salaire moyen brut annuel (en €)

44 532

##### 5) Taux de change de la monnaie nationale (zone non Euro) en € au 1 janvier 2011

#### A.1

**Veuillez indiquer les sources des réponses aux questions 1 à 4 et, le cas échéant, tout commentaire relatif à l'interprétation des données fournies:**

1. Statistisches Bundesamt, Wiesbaden. Online database.(31.12.2010)
2. Federal Statistical Office, Statistical Yearbook for the Federal Republic of Germany (Statistisches Bundesamt, Statistisches Jahrbuch für die Bundesrepublik Deutschland 2011), Table 23.
3. Calculated on the Basis of Federal Statistical Office, Statistical Yearbook 2011 for the Federal Republic of Germany (Statistisches Jahrbuch für die Bundesrepublik Deutschland 2011), Table 24 and the answer to question no. 1.
4. The figure refers to the average gross income of private households per month (€ 3.711) in 2009 (x12), excluding households of the self-employed and farmers and households with a monthly income of € 18 000 and above.  
Source: Federal Statistical Office, Statistical Yearbook 2011 for the Federal Republic of Germany (Statistisches Bundesamt, Statistisches Jahrbuch für die Bundesrepublik Deutschland 2011), Table 22.2.1.

### 1. 2. Données budgétaires relatives au système judiciaire

#### 1. 2. 1. Budgets (tribunaux, ministère public, aide judiciaire, frais)

##### 6) Budget public annuel approuvé pour le fonctionnement de l'ensemble des tribunaux, en €(si possible sans le budget du ministère public et de l'aide judiciaire) :

TOTAL du budget public annuel approuvé pour le fonctionnement de l'ensemble des tribunaux (1 + 2 + 3 + 4 + 5 + 6 + 7)	<input checked="" type="checkbox"/> Oui	7 789 169 914
1. Budget public annuel alloué aux salaires (bruts)	<input checked="" type="checkbox"/> Oui	4 758 375 002
2. Budget public annuel alloué à l'informatisation (équipements, investissements, maintenance)	<input checked="" type="checkbox"/> Oui	161 650 654
3. Budget public annuel alloué aux frais de justice (frais d'expertise, d'interprètes, etc.), sans l'aide judiciaire. NB: ne concerne pas les taxes et frais à payer par les parties.	<input checked="" type="checkbox"/> Oui	1 712 187 748
4. Budget public annuel alloué aux bâtiments des tribunaux (maintenance, budget de fonctionnement)	<input checked="" type="checkbox"/> Oui	315 904 319
5. Budget public annuel alloué à		

l'investissement en nouveaux bâtiments (tribunaux)	<input checked="" type="checkbox"/> Oui	65 625 004
6. Budget public annuel alloué à la formation	<input checked="" type="checkbox"/> Oui	56 770 990
7. Autres (Veuillez préciser)	<input checked="" type="checkbox"/> Oui	718 656 197

**7) Dans le cas où vous ne pouvez pas distinguer le budget du ministère public et de l'aide judiciaire du budget alloué à l'ensemble des tribunaux, veuillez l'indiquer clairement. Si "autres", veuillez le préciser :**

Baden-Württemberg:

The figures above also include the expenditure of the public prosecution offices, which is not separately recorded. Expenditure on legal aid has been removed from the calculation.

Bavaria:

Ordinary courts:

The budget of the public prosecution offices cannot be presented separately.

Social and labour courts:

The figures on the public annual budget for basic and further training consist exclusively of further training costs. The training costs cannot be shown separately.

Finance courts:

Legal aid cannot be shown separately, and is included in the court costs (estimation: roughly € 4,000 per year).

Administrative courts:

The expenditure for legal aid cannot be separated from the budget approved for the Bavarian administrative courts.

Brandenburg:

For information on the approved annual budget for all courts (not including the budget for the public prosecution office and legal aid), the data have been estimated unless shown separately in the budget plan. Item 6 No. 3 shows amongst other things all expenditure for experts, interpreters, witnesses, legal advice, disbursements in insolvency proceedings and legal matters, accommodation of juveniles in homes in order to avoid remand detention, compensation and damages paid to third parties, as well as remuneration for guardians and custodians. Item 6 No. 7 covers all other budget items, such as costs for official trips, expendables, appliances and facilities, vehicles, benefits in accordance with the Rehabilitation Act (RehaG), etc.

Bremen:

Other personnel expenditure (honorary, as well as in an auxiliary profession, aid benefits, etc.), material administrative expenditure (supplies, postal services, working clothes, equipment, etc.).

Hamburg:

The amount at "Other" includes expenditure for central directorship; central further training and training, as well as expenditure for the office and business equipment, including the libraries. The staff costs for trainee jurists, as well as for the examination offices, are included in item 1.

Hesse:

The information above does not include the budget for the public prosecution office and legal aid. "Other" includes the non-monetary resources and investments not stated at Nos. 2 to 6.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

No information.

North Rhine-Westphalia:

The expenditure for the public prosecution offices is estimated together with the expenditure of the courts. It is not possible to show it separately.

Regarding "Other":

Rent and lease of official buildings 134,716,300 €

Refund of expenses, remuneration

for guardians, curators and custodians 188,300,000 €

Communication (largely service/postal costs 46,956,800 €

expenditure for temporary accommodation 10,290,000 €

Other personnel expenditure (e.g. honorary

judges, compensation of the bailiffs, etc.) 59,072,000 €

Other administrative expenditure (supplies, books pp) 40,980,600 €

Rhineland-Palatinate:

Cannot be separated.

Saarland:

Only estimates for the staffing and materials expenditure budget can be shown separately for the chief public prosecution office and the public prosecution office (i.e. not including statutory expenditure), cf. enclosure

The assessment of legal aid takes place in "Expenditure on legal matters" for the courts and public prosecution offices in Chapter 02 60 item 532 01. The total estimate for 2010 was € 16.6 million; total "as is" expenditure was 17,575,341.60 €.

The estimate for sub-item 532 01 A "Legal aid" was € 9 million, whereas "as is" expenditure in 2010 was € 8,965,691.72.

Saxony-Anhalt:

It is not possible to separate for 2010 the budget estimates assessed for the courts and public prosecution offices. It will however be possible to show and make available corresponding data in future with the introduction of output-orientated budgeting in all ordinary courts and public prosecution offices from the budget year 2012.

It is not possible to show the expenditure for legal aid estimated in the budget plan separately because of the budget system (item structure).

Re No. 7. Other

This contains all expenditure the of main group 4 (personnel expenditure, including pension expenditure), 5 (material administrative expenditure), 6 (allocations and subsidies), 8 (investments) and 9 (special expenditure on financing – pension fund), which are estimated in the court chapters in individual plan 11 unless they are already separately shown at Nos. 1 to 6.

Saxony:

Items where "NA" is stated in Question 6 cannot be shown separately by the public prosecution offices.

Re "Other": Compensation to honorary judges and lay judges; compensation to honorary staff in the social service of the judiciary; remuneration for overtime and additional work by staff; separation allowance and remuneration of moving costs;

compensation to enforcement agents; supplies, items of equipment (not including computer equipment); letter and parcel fees, other telecommunication fees; supplies and post fees; running of official vehicles; personal items of equipment and expendables; running of official vehicles and expendables; management of the plots of land, buildings, rooms; rents and leases; maintenance of the plots of land and buildings; refunding of travel expenses; travel costs; moving and transfer costs of offices; third-party services; mixed administrative expenditure; expenditure on items deposited; refund of administrative expenditure to Länder; allocation to the generation fund; compensation (also ex bono) to accused persons in criminal matters; acquisition of official vehicles;

Acquisition of appliances, items of equipment.

Schleswig-Holstein:

The information refers to the ordinary courts, administrative, social, financial and labour jurisdiction, incl. legal aid and not including management costs of buildings, construction and IT expenditure.

Other: in particular materials costs budgets, remuneration of civil servants in the enforcement service.

Thuringia:

No information.

Re Other Federation:

Payments prescribed by law are to be made to a fund to form reserves for the pensions of civil servants and judges.

**8) Existe-t-il une règle générale selon laquelle une personne doit payer une taxe ou des frais pour intenter une procédure devant une juridiction de droit commun :**

en matière pénale ?

en matière autre que pénale ?

Si oui, existe-t-il des exceptions à la règle de payer une taxe ou des frais ? Veuillez préciser ces exceptions:

**9) Montant annuel des taxes ou frais judiciaires perçus par l'Etat (en €)**

3 515 706 357

**10) Budget public annuel approuvé et alloué à l'ensemble du système de justice, en €(ce budget n'inclut pas seulement le budget approuvé pour le fonctionnement de l'ensemble des tribunaux comme défini à la question 6, mais aussi le système pénitentiaire, la protection judiciaire de la jeunesse, le fonctionnement du ministère de la Justice, etc.)**

NA

13 320 680 442

**11) Veuillez préciser les éléments composant le budget de l'ensemble du système de justice. Si "autre", veuillez préciser dans la case "commentaire" ci-dessous.**

Système des juridictions	Oui
Aide judiciaire	Oui
Ministère public	Oui
Système pénitentiaire	Oui
Service de probation	Oui
Conseil de la justice	Oui
Protection judiciaire de la jeunesse	Oui
Fonctionnement du ministère de la justice	Oui
Services des demandeurs d'asile et réfugiés	Oui
Autres	Oui

Commentaire :

Court system 1 Yes 0 No 1NA 0NAP

Legal aid 1 Yes 0 No 0NA 0NAP

Public prosecution services 1 Yes 1 No 1NA 0NAP

Prison system 1 Yes 1 No 1NA 0NAP

Probation services 1 Yes 1 No 1NA 0NAP

Council of the judiciary 1 Yes 1 No 1NA 0NAP

Judicial protection of juveniles 1 Yes 1 No 1NA 0NAP

Functioning of the Ministry of Justice 1 Yes 1 No 1NA 0NAP

Refugees and asylum seekers services 1 Yes 1 No 1NA 0NAP

Other 1 Yes 1 No 1NA 0NAP

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. Information for Bavaria is available on the

individual jurisdictions, which diverges with regard to various items. The respective responses from the Federal Länder on the individual budget items emerge from the Table enclosed re Question 11. The Yes and No answers are combined in the overview below.

Yes No

Court system BY (social courts/labour courts/administrative courts)\*, BB, HH, HB, HE, NI, NW, RP, SL, ST, BE, SH, Federation  
Legal aid BW, BY (ordinary courts/finance courts/social courts/labour courts/administrative courts)\*, BB, HH, HB, HE, NI, NW, RP, SL, ST, SN, BE, SH, Federation

Public prosecution services BW, BB, HH, HB, HE, NI, NW, RP, SL, ST, SN, BE, SH BY (ordinary courts/finance courts/administrative courts)\*

Prison system BW, BY (ordinary courts/finance courts)\*, BB, HH, HB, HE, NI, NW, RP, SL, ST, SN, BE, SH, Federation BY (administrative courts)\*

Probation services BW, BY (ordinary courts/finance courts)\*, BB, HB, HE, NI, NW, RP, SL, ST, BE, SH, BY (administrative courts)\*, HH, Federation

Council of the judiciary BY (ordinary courts/finance courts)\*, BE BW, BY (administrative courts)\*, HB, NI, SL, SH, Federation

Judicial protection of juveniles BW, NI, BE, SH BY (administrative courts)\*, HH, HB, RP, SL, ST, Federation

Functioning of the Ministry of Justice BW, BY (ordinary courts/finance courts)\*, BB, HH, HB, HE, NI, NW, RP, SL, ST, SN, BE, SH, Federation BY (administrative courts)

Refugees and asylum seekers services BW BY (ordinary courts/finance courts/administrative courts)\*, BB, HH, HB, NI, NW, RP, SL, ST, BE, SH, Federation

Other HH, HB, NI, NW, SL, ST, SN BY (administrative courts)\*, BB, HE, RP, Federation

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If "other", please specify:

Bavaria:

With regard to legal aid in the finance courts cf. information at Question 7.

Bremen:

Judicial examination office.

Hamburg:

The costs for the Hamburg Data Protection Commissioner and the Equality Office are also estimated in the overall judicial budget in Hamburg.

Lower Saxony:

Northern German College for the Administration of Justice.

North Rhine-Westphalia:

Basic and further training facilities for the judiciary, expenditure on pensions for the judicial civil servants of the Land and their surviving dependents, general approvals (e.g. medical expenses payments, pension payments and the like).

Saarland:

Saarland Clinic for Forensic Psychiatry (SKFP), estimated in Chapter 02 59:

The Clinic is a facility of the Land which is managed in the shape of a Land Agency in accordance with section 26 of the Land Budget Code (LHO). The facility is responsible for accommodating and treating criminal offenders in the entire Land who have no or diminished criminal responsibility by reason of psychological illness or addiction.

Saxony-Anhalt:

The remit of the MJ includes the Land Commissioner for the Documents of the State Security Service of the Former GDR. The expenditure for this is estimated in Chapter 1114.

Saxony:

cf. note re No. 13 and Annex 2.

**12) Budget public annuel approuvé et alloué à l'aide judiciaire, en €- Si une ou plusieurs données ne sont pas disponibles, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Total du budget public annuel approuvé et alloué à l'aide judiciaire (12.1 + 12.2)	12.1 Budget public annuel alloué à l'aide judiciaire en matière pénale	12.2 Budget public annuel alloué à l'aide judiciaire en matière autre que pénale
Montant (en €)	382382576	85 822 785	296 559 791

**13) Budget public annuel approuvé et alloué au Ministère public (en €). Veuillez ajouter dans la boîte "commentaire" ci-dessous toute information utile à l'interprétation des données.**

Montant

479 916 106

Commentaire :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. To the extent that the other Federal Länder have provided data, these were added to the total. Since individual Länder were unable to provide data (NA), the information also remains incomplete in this regard.

Data provided by: BE, BB, HB, HH, HE, NI, SN, SH (NA stated by: BW, BY, NW, RP, SL, ST).

The following are accounted for by the Federation (included in the calculations above): 15,374,219

Baden-Württemberg:

The expenditure of the public prosecution offices is not collected separately.

Berlin:

Incl. personnel, materials and administrative expenditure, investments.

Brandenburg:

A small amount of other income may also be covered in Question 9. Question 10 contains the entire judicial budget, including planned surface construction expenditure for court buildings of individual plan 12. Information at Question 13 partly estimated, since not shown separately.

Hamburg:

Re 9.: The income does not include criminal and regulatory fines.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Re Question 9.: No information can be provided since the court fees are posted together with criminal and regulatory fines in one item (112 01/112 10).

North Rhine-Westphalia:

The expenditure for the public prosecution offices is estimated together with the expenditure for the courts. This cannot be shown separately.

Saarland:

cf. Annex at No. 7.

Saxony:

Apart from the reply to Question 9, which shows both the estimates in the budget plan and the actual income, in each case only the estimates in the budget plan are stated. The amount stated re Question 10 contains all expended funds that were available in 2010 within the remit of the Saxon State Ministry of Justice and for Europe. Its competence goes beyond the courts and public prosecution offices and the prison system, and includes for instance the areas of Europe, modernisation of the State and computer services for the state administration. In addition to the estimates contained in the relevant individual plan 06, the above amount also contains the expenditure carried over from the previous year in 2010. The same applies to the planned expenditure to be attributed to the remit of the Ministry for building activities and building maintenance of properties, which is shown with the corresponding expenditure for the entire state administration in individual plan 14, which is managed by the Saxon State Ministry of Finance and the Saxon State Agency for Real Property Services, which reports to it.

It should be pointed out with regard to the Question 11 that individual plan 06 is sub-divided into a total of 15 Chapters which do not tally with the categories contained in the question. A detailed breakdown of the funds approved in the budget plan and expended in the budget year among individual areas, e.g. courts of ordinary jurisdiction or public prosecution offices, is not possible since some of the expenditure (e.g. for further training or for information technology) is estimated in general chapter 06 02, and is centrally managed in some cases. The expenditure for investments on construction (major building activities) estimated in individual plan 14 can be attributed to individual items of property, and hence to the courts or public prosecution offices.

Expenditure on the maintenance of the buildings, renting of buildings, etc., cannot however be broken down.

Saxony-Anhalt:

Re Question 9: The court costs cannot be shown separately.

Re Question 10: All expenditure from the main group 4 is included (personnel expenditure, including pensions expenditure), 5 (material administrative expenditure), 6 (allocations and subsidies), 8 (investments) and 9 (Special finance expenditure – pension fund) for the units estimated in the entire individual plan 11.

General remarks: Cf. information re Question 7.

Thuringia:

No information.

Federation:

Operating budget of the Office of the Federal Public Prosecutor General according to Question 6

#### 14) Instances formellement responsables des budgets alloués aux tribunaux (réponses multiples possibles) :

	Préparation du budget global des tribunaux	Adoption du budget global des tribunaux	Gestion et répartition du budget entre les tribunaux	Evaluation de l'utilisation du budget au niveau national
Ministère de la justice	Oui	Oui	Oui	Oui
Autre ministère	Oui	Oui	Oui	Oui
Parlement	Oui	Oui	Oui	Oui
Cour Suprême	Oui	Non	Oui	Oui
Conseil Supérieur de la Magistrature	Non	Non	Non	Non
Tribunaux	Oui	Oui	Oui	Oui
Organisme d'inspection	Oui	Oui	Oui	Oui
Autre	Non	Non	Non	Oui

#### 15) Si autre ministère et/ou organisme d'inspection et/ou autre, veuillez préciser (au regard de la question 14) :

Baden-Württemberg:

The competence of the Ministry of Finance is shown by the constitutional provisions of the Land Baden-Württemberg.

Bavaria:

Ordinary courts/Other ministry:

State Ministry of Finance.

Finance courts/Other agency:

Bavarian Supreme Court of Audit.

Social and labour courts:

The labour and social courts in the Free State of Bavaria are subordinate to the Bavarian State Ministry of Labour and Social Affairs, Family and Women.

Administrative courts:

Bavarian State Ministry of the Interior.

Brandenburg:

Ministry of Finance is involved in the drafting of the overall Land budget, submission to Parliament, return of the adopted budget plan to the departments.

Berlin:

Senate Administration of Finance.

Hamburg:

Other Ministry is the revenue authority; other agency is the Court of Audit.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Supervisory authorities: Higher Regional Courts, Regional Labour Court, Higher Administrative Court, Regional Social Court.

North Rhine-Westphalia:

The supreme jurisdiction for the budget of the Land lies with the Ministry of Finance of the Land North Rhine-Westphalia. The latter hence has competences when it comes to the drawing up and implementation of the budget, as well as in the subsequent accounting. A distribution of the funds among the courts is however not carried out by the Ministry of Finance. This task is within the sole remit of the Ministry of Justice as well as of the superior courts in the respective jurisdictions.

Saarland:

"Other ministry":

The Ministry of Finance estimates the amount of the staffing budget.

"Management of the budget":

A staff costs budget (i.e. reciprocal eligibility as cover of the personnel item of groups 422 to 429) and a materials costs budget (i.e. reciprocal eligibility as cover of the available titles of group 5) were estimated in the "judicial budgets portraying activities performed", in the remit of the courts and public prosecution offices (Chapters 02 60 to 02 65). Moreover, the items of main groups 4 and 5 were declared reciprocally eligible as cover. These expenditure items can furthermore unilaterally strengthen the items of group 8, as well as items 511 61 and 812 61.

Decentralised budgetary responsibility enables the authorities within the budget prescribed by the Ministry of Justice to manage the available expenditure largely independently. Furthermore, a carrying over of the available expenditure remainder was agreed.

A further reciprocal eligibility as cover of the statutory expenditure items – spanning several chapters – makes it possible to delay any unplanned expenditure as long as possible and to identify the additional requirement using extrapolations as precisely as possible.

Saxony-Anhalt:

Other ministry = Ministry of Finance.

Inspection body = Regional Court of Audit.

The Regional Court of Audit has to supervise and examine the entire budget and economic governance of the Land administration, including its special assets and Land Agencies. To this end, the Regional Court of Audit pays particular attention to financial impact, lawfulness and economic viability, and for instance also makes statements on aspects of financial policy with regard to the draft budget plans.

Saxony:

See also remarks under item 13 re budget plan 14 (building activities/maintenance of the buildings). The Saxon Court of Audit is regarded as the inspection body.

Thuringia:

No information.

Federation:

Other ministry: Federal Ministry of Finance

Other agency which examines the use of funds: Federal Court of Audit

## A.2

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système budgétaire et les réformes majeures mises en œuvre au cours des deux dernières années**

**- si possible un organigramme avec une description des compétences des différentes instances responsables des procédures budgétaires**

Baden-Württemberg:

Characteristics of the budget system: cameralistic budget.

Major reforms in the last two years: None

Organisational charts: Not available.

Hamburg:

The budget of the justice system in Hamburg has been drawn up in accordance with the rules of the business invoicing system.

North Rhine-Westphalia:

A reform of the budget system is currently being introduced with the NRW EPOS project. Integrated combined accounting ("Integrierte Verbundrechnung") is gradually being introduced in order to implement the modernisation of the budget and accounting system in the Land administration of North Rhine-Westphalia, with the components "statement of government income and expenditure", "statement of results", "cost and performance accounting", as well as "financial accounting" forming the basis for product-orientated budget management. The blanket expansion in the Land administration is planned to be carried out by 2016.

Re Question 6 No. 2: Expenditure for computerisation is centrally estimated. The budget plan does not provide for a distribution of the expenditure among the individual fields of the judiciary.



Re Question 6 No. 3: The fees to be paid by the parties are included in the amount since these are collected elsewhere and cannot be separately recorded.

Re Question 6 No. 5: The Land's own property is owned by the Construction and Property Agency of North Rhine-Westphalia (BLB) and is rented by the occupying administrations. The judicial budget therefore does not provide for investments in new court buildings.

Re Question 6 No. 6: These are only costs of training in the courts and public prosecution offices. The costs of the basic and further training facilities of the judiciary are estimated separately. This also applies to the costs of further training.

Saarland:

Reference is made to the information provided re No. 15.

Re No. 12: The assessment for the ordinary courts is carried out in Chapter 02 60 Item 532 01 "Disbursements in legal matters" with a total estimate of € 16.6 million. Of these, sub-item A "Fees and expenses of solicitors in accordance with the Act on Legal Aid" accounts for € 9 million; the "as is" expenditure for sub-item A was € 8,965,691.72.

Re Question 8:

The court is not to serve the action on the opposing party in civil disputes until the fee for the proceedings in general has been paid (procedural fee). As a matter of principle, therefore, the proceedings do not become pending through service of the action until the payment has been received. If the motion contained in the action is expanded, no activities are to be carried out by the court prior to payment of the procedural fee; this also applies to the appeal instance (section 12 subs. 1 of the Court Costs Act [GKG])

### **Veillez indiquer les sources des réponses aux questions 6, 9, 10, 11, 12 et 13.**

Baden-Württemberg:

State budget plan of the Land Baden-Württemberg for the budget years 2010/2011 in the version of the 4th addendum to the 2011 state budget plan and evaluations related to questions.

Bavaria:

Social and labour courts:

Central accounting of the Bavarian State Ministry of Labour and Social Affairs, Family and Women of the budget year 2010 regarding the income and expenditure of individual plan 10. Records of the competent Regional Labour Courts, of the Regional Social Court and of the specialist departments at the Bavarian State Ministry of Labour and Social Affairs, Family and Women.

Brandenburg:

2010 Budget Act, 2010 budget plan, individual plan 04, individual plan 12.

Berlin:

Land budget plan 2010/2011, ProFiskal specialist electronic budget application.

Hamburg:

Budget plan of individual plan 2 of the Free and Hanseatic City of Hamburg, as well as the SAP planning and management systems deployed.

Hesse:

The answers are provided on the basis of the budget plan and, with regard to legal aid, by an evaluation from the local accounting system.

Lower Saxony:

6.: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

9.: -

10: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

11: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

12: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

13: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

North Rhine-Westphalia:

Budget plan of the judiciary for 2010.

Saarland:

Budget 2010 and budget accounting of the Saarland for the accounting year 2010

1) Individual plan 02 "Minister-President, State Chancellery and Ministry of Justice"; Chapter 02 51 – 02 65

2) Chapter 17 02 "Central services within the remit of the Minister-President, the State Chancellery and the Ministry of Justice"

3) Chapter 20 02 "State surface construction within the remit of the Minister-President, the State Chancellery and the Ministry of Justice"

4) Chapter 04 12 "Land Office for Central Services – Office for Construction and Property"

The construction expenditure is estimated in the business plan of the "ABL" Land Agency

Retrievable at [http://www.saarland.de/haushalt\\_finanzen.htm](http://www.saarland.de/haushalt_finanzen.htm).

Saxony-Anhalt:

Budget plan 2010/2011 for individual plan 11 (MJ) and individual plan 19 (IT) and 20 (construction/property).

Saxony:

- Budget plans and transaction overviews of the main judicial treasury, as well as of the Land judicial treasury

- Saxon Budget Code

- Administrative regulation on the Saxon Budget Code

Schleswig-Holstein:

2011/2012 budget

## 2. Accès à la justice et à l'ensemble des tribunaux

### 2. 1. Aide judiciaire

#### 2. 1. 1. Principes

#### 16) L'aide judiciaire concerne-t-elle :

	Affaires pénales	Affaires autres que pénales
Représentation devant les tribunaux	Oui	Oui
Conseil juridique	NAP	NAP

#### 17) L'aide judiciaire prévoit-elle la couverture ou l'exonération des frais de justice?

- Oui  
 Non

Si oui, veuillez préciser:

Civil cases:

If legal aid is approved, the party also no longer needs to pay advance court costs, cf. section 122 of the Code of Civil Procedure. The court may order that the recipient of legal aid has to pay (some of the) proceedings costs in instalments.

#### 18) Est-il possible de bénéficier de l'aide judiciaire pour des frais relatifs à l'exécution des décisions de justice (par exemple : honoraires d'un agent d'exécution) ?

- Oui  
 Non

Si oui, veuillez préciser:

Civil cases:

Legal aid in compulsory enforcement is granted for the entire enforcement proceedings and not for individual enforcement measures.

#### 19) L'aide judiciaire peut-elle être allouée pour d'autres frais (différents de ceux indiqués aux questions 16 à 18, par exemple honoraires d'un conseiller technique ou expert, honoraires d'autres professionnels de la justice (notaires), frais de voyage, etc.) ? Si oui, veuillez préciser dans la boîte "commentaire" ci-dessous.

	Affaires pénales	Affaires autres que pénales
	NAP	Oui

Commentaire :

Civil cases:

The approval of legal aid also includes the costs for the taking of evidence (witnesses, experts), as well as travel expenses of the recipient to attend a court hearing if personal attendance at the hearing is necessary. If a solicitor is appointed to the recipient, the appointed solicitor cannot charge any fees to the recipient, but only to the Treasury. Expenditure for the preparation of the proceedings, such as costs for expert witnesses, interpreters or private detectives, may be refundable as necessary expenditure of the appointed solicitor.

#### 20) Nombre d'affaires portées devant les tribunaux et ayant bénéficié de l'aide judiciaire. Veuillez préciser dans la boîte "commentaire" ci-dessous, le cas échéant. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

[Cette question porte sur le nombre annuel de décisions octroyant l'aide judiciaire aux justiciables qui ont saisi un tribunal. Elle ne concerne pas le conseil juridique fourni pour des affaires qui ne sont pas portées devant un tribunal.]

	Nombre
Total	705029
en matière pénale	NA
en matière autre que pénale	705029

Commentaire :

The information includes approvals of legal aid with instalment payments.

**21) En matière pénale, les personnes n'ayant pas les moyens financiers suffisants peuvent-elles bénéficier de l'assistance gratuite (ou financée par un budget public) d'un avocat ? Veuillez préciser dans la boîte "commentaire" ci-dessous.**

Personnes mises en cause	Non
Victimes	Non

Commentaire :

**22) Si oui, ont-elles le libre choix de l'avocat dans le cadre de l'aide judiciaire?**

- Oui  
 Non

**23) Votre pays procède-t-il à un examen des revenus et/ou des biens (patrimoine) du demandeur avant d'octroyer l'aide judiciaire ? Veuillez ajouter dans la boîte "commentaire" ci-dessous les informations utiles à l'interprétation des données fournies.**

**Si un tel système existe, mais que les données ne sont pas disponibles, veuillez indiquer NA. Si un tel système n'existe pas, veuillez indiquer NAP.**

	montant du revenu (si possible pour une personne) en €	valeur des biens (patrimoine) en €
en matière pénale		
en matière autre que pénale ?		

Commentaire :

Civil cases:

The amounts and allowances to be deducted from income and assets emerge from section 115 of the Code of Civil Procedure. To put it simply: First of all housing and heating costs, a personal allowance of Euro 411 and – if the income is made from gainful employment – a working person's allowance of Euro 187 are to be deducted from the net income of an applicant who is unmarried (version: from 1 January 2012). From the remaining amount, instalments according to the table in section 115 of the Code of Civil Procedure are payable towards the proceedings costs. The applicant does not have to use up assets that are exempt from income testing from his/her assets, these including a suitable owner-occupied plot of land for a house and a small amount of cash up to approx. Euro 2,500.

**24) En matière autre que pénale, est-il possible de refuser l'aide judiciaire pour absence de bien-fondé de l'action (par exemple pour caractère abusif de l'action en justice ou en raison de l'absence d'un éventuel succès) ?**

- Oui  
 Non

Si oui, veuillez expliquer les critères concrets pour refuser l'aide judiciaire :

Civil cases:

Legal aid is rejected if the right intended to be pursued or defended has no sufficient prospects for success or appears to be frivolous. It is deemed to be frivolous if despite existing prospects for success a party which would have to fund the process itself would refrain from pursuing the proceedings in the applicant's concrete situation, for instance because there is a more favourable path to pursue or defend the right or because subsequent execution vis-à-vis the defendant appears to be devoid of prospects in the long term.

**25) La décision d'accorder ou de refuser l'aide judiciaire est-elle prise par :**

- le tribunal ?  
 une instance extérieure au tribunal ?  
 une instance mixte (tribunal/organe externe)?

**26) Existe-t-il un système privé d'assurance protection juridique permettant aux personnes physiques (cela ne concerne pas les entreprises ou autres personnes morales) de financer une action en justice ?**

Oui Non

Le cas échéant, veuillez donner des indications sur le développement actuel de ce type d'assurance dans votre pays; s'agit-il d'un phénomène grandissant ?

**27) La décision judiciaire peut-elle porter sur la manière dont les frais de justice payés par les parties au cours de la procédure seront partagés:**

en matière pénale ?	No
en matière autre que pénale ?	Yes

**B.1**

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système d'aide judiciaire et les réformes majeures mises en œuvre au cours des deux dernières années**

Relating to criminal cases only:

16. What legal aid applies to

**Accused persons**

The participation of defence counsel may be necessary under certain circumstances. In cases of necessary defence, defence counsel is appointed to an accused person who does not yet have defence counsel.

**Aggrieved persons**

Aggrieved persons, particularly victims of acts of aggression, are entitled in accordance with the list contained in section 395 the Code of Criminal Procedure (Strafprozessordnung – StPO) to join the public charge as a private accessory prosecutor. As private accessory prosecutors, it is possible for counsel for the victim to be appointed to them under certain preconditions regardless of their economic circumstances, or they have a right to approval of legal aid if they are unable to adequately defend their interests themselves, or it is not reasonable to expect them to do so.

17. Does legal aid include the coverage of or the exemption from court fees?

Each judgment, each penal order and each ruling discontinuing an investigation must determine who is to pay the costs of the proceedings. The costs of the proceedings also include court costs.

**Accused persons**

Where the accused is acquitted, the initiation of the main proceedings against them is rejected or the proceedings against them are discontinued, the expenditure that is incurred by the Treasury, and the necessary expenditure of the accused, is incurred by the Treasury.

The defendant has to pay the costs of the proceedings where they arose through the proceedings because of an offence in respect of which they were convicted or a measure of reform and prevention is ordered against them. This applies regardless of whether or not a case of necessary defence applies. Outside of the competence of division R B 2, it is pointed out that the obligation of a person who has been convicted, and who is without means, to pay is ultimately unlikely to have any effect in a large number of cases since the costs are abated (in accordance with Land provisions?).

**Aggrieved persons**

Where legal aid has been granted to aggrieved persons as private accessory prosecutors, this also includes court costs.

19. Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?

**Accused persons**

The accused person does not have to pay costs advance.

The principle of official investigations applies in criminal proceedings:

The court must include in the investigation of the truth, the taking of evidence ex officio for all facts and evidence which are of significance for the ruling.

Moreover, the accused person can lodge motions for the taking of evidence which the court is only able to reject within narrowly-defined limits.

The costs of the taking of evidence are initially advanced by the Treasury; this applies regardless of the financial circumstances of the accused person.

**Aggrieved persons**

With private accessory prosecutors – depending on their economic situation – legal aid may also be granted for their necessary expenses, such as the fees for a solicitor. The approval of legal aid entails the costs of the fees for a solicitor initially being advanced by the Treasury.

21. In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer?

Accused persons

As stated above, the assistance of defence counsel is necessary under certain conditions. In cases of necessary defence, defence counsel is appointed for an accused person who does not yet have defence counsel. The incomes and assets of the accused person are immaterial.

Aggrieved persons

Reference is made to the answer re Question 16.

22. If yes, are individuals free to choose their lawyer within the framework of the legal aid system?

Accused persons

Prior to appointing defence counsel, the accused person should be afforded the opportunity to name counsel of their choice within a determined period. The presiding judge appoints counsel if no important reasons stand in the way.

Aggrieved persons

The same provisions on the free selection of solicitor apply to private accessory prosecutors as apply to accused persons.

23. Does your country have income and assets evaluation for granting legal aid to the Applicant. If you have such a system but no data available, please indicate NA. If you do not have such a system, please indicate NAP.

Accused persons

As stated above, the question of necessary defence does not depend on income and assets. Necessary defence is regulated in sections 140 et seqq. of the Code of Criminal Procedure.

Aggrieved persons

Whether an income and assets evaluation of the applicant is carried out is in line with the preconditions stated in section 397a of the Code of Criminal Procedure.

In accordance with section 397a subs. 1 of the Code of Criminal Procedure, counsel for the victim may be appointed to victims of particularly serious crimes who have joined the proceedings as private accessory prosecutors under the preconditions named therein free of charge and with no income and assets evaluation.

In accordance with section 397a subs. 2 of the Code of Criminal Procedure, legal aid is to be granted to the other private accessory prosecutors upon application for the appointment of a solicitor under the preconditions named therein, their economic means being tested and the extent of the approval of legal aid being in line with the financial situation of the private accessory prosecutors.

27. Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared, in?

The decision on who is to pay the necessary expenses is taken by the court in the judgment or in the order concluding the proceedings.

### **Veillez indiquer les sources des réponses aux questions 20 et 23:**

re 20: Federal Statistical Office:

Fachserie 10 Reihe 2.1 "Zivilgerichte 2010"  
 Fachserie 10 Reihe 2.2 "Familiengerichte 2010"  
 Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2010"  
 Fachserie 10 Reihe 2.5 "Finanzgerichte 2010"  
 Fachserie 10 Reihe 2.7 "Sozialgerichte 2010"  
 Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 23:

Sections 115 of the Code of Civil Procedure, 166 of the Code of Administrative Court Procedure, 73a of the Act on Social Court Procedure; 142 of the Code of Finance Court Procedure

## **2. 2. Usagers des tribunaux et victimes**

### **2. 2. 1. Droit des usagers et victimes**

**28) Existe-t-il des sites/portails Internet officiels (ex: ministère de la Justice, etc.) à partir desquels le public a accès gratuitement :**

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**Les sites internet mentionnés pourraient figurer notamment sur le site internet de la CEPEJ. Veuillez préciser dans la boîte "commentaire" ci-dessous quels documents et informations sont inclus aux adresses concernant "autres documents" :**

aux textes

juridiques

(codes, lois,

règlements,

etc.) ? adresse

Internet:

Oui

- à la jurisprudence des hautes juridictions ?  
adresse Internet:
- Oui
- :www.bundesverfassungsgericht.de  
www.bundesgerichtshof.de  
www.bundesverwaltungsgericht.de  
www.bundesfinanzhof.de  
www.bundesarbeitsgericht.de  
www.bundessozialgericht.de  
www.bundespatentgericht.de  
www.justiz.de  
appearing soon: online forms  
and via the websites of the judiciary in the Länder, for instance
- à d'autres documents (par exemple le téléchargement de formulaires, l'enregistrement en ligne) ?
- Oui
- www.justiz.bayern.de, www.justizportal-bw.de, www.justiz.saarland.de  
http://www.berlin.de/sen/justiz/gerichte/kg/formularserver/formularserver.html  
www.service-bw.de  
www.hmdj.hessen.de  
www.justiz.schleswig-Holstein.de  
www.justiz.hamburg.de  
www.justiz.sachsen.de  
www.amt24.de  
http://www.sachsen-anhalt.de/index.php?id=2959  
A summary can be retrieved via the link  
http://www.justiz.de/bundlaender/index.php;jsessionid=0087EDFE19862EA593048F0FDBF679CF  
Information can also be retrieved via the websites of the individual courts.

Commentaire :

The following information, inter alia, can be retrieved via the above website via links:

- Forms: applications retrievable via the judicial portals (demand for payment, insolvency application).
- Brochures: brochures on legal topics, retrievable via links (e.g. on custodianship proceedings, deaths, payment demand proceedings and legal advice aid).
- The following online services are described or offered:
  - Payment demand proceedings online (application, etc.)
  - Register online (for-a-fee, password-protected search)
  - Land registry online (for-a-fee, password-protected inspection)
  - Link to the information portal [www.insolvenzbekanntmachungen.de](http://www.insolvenzbekanntmachungen.de)
  - Specialist legal information:
    - Legal dictionary (statements on many circumstances and topics)
    - Procedural information regarding the course of criminal and civil proceedings
  - Information regarding ongoing legislative proceedings
  - Current laws
  - Information regarding victim protection and witness care
  - List of videoconferencing systems
  - Forms and information regarding various circumstances

**29) Votre système prévoit-il une obligation d'informer les parties concernant les délais prévisibles de la procédure judiciaire?**

- Oui  
 Non

Si oui, veuillez préciser:

**30) Existe-t-il un système d'information spécifique, public et gratuit, pour informer et aider les victimes d'infractions?**

- Oui  
 Non

Si oui, veuillez préciser:

Crime victims are to be informed as quickly as possible, as a rule in writing and where possible in a language which they understand, of their powers and rights in criminal proceedings, as well as of potential support and further claims. As a rule, crime victims are provided on their first contact with public agencies (such as when filing a charge) with a leaflet informing them of their rights and powers, as well as further contact points offering assistance. The leaflet has been translated into many languages.

**31) Existe-t-il des modalités favorables particulières applicables aux catégories de personnes vulnérables suivantes, au cours des procédures judiciaires. Si "autres personnes vulnérables" et/ou "autres modalités particulières", veuillez le préciser dans la boîte "commentaire" ci-dessous.**

**[Cette question ne concerne pas la phase d'investigation par la police et elle ne concerne pas l'indemnisation des victimes d'infractions traitée aux questions 32 à 34.]**

	Dispositif d'information	Modalités particulières pour les audiences	Autres
Victimes de viol	Oui	Non	Non
Victimes du terrorisme	Oui	Non	Non
Enfants (témoins ou victimes)	Oui	Non	Non
Victimes de violence domestique	Oui	Non	Non
Minorités ethniques	Non	Non	Non
Personnes handicapées	Non	Non	Non
Délinquants mineurs	Oui	Oui	Oui
Autres (par exemple, les victimes de la traite des êtres humains)	Oui	Non	Non

**Commentaire :**

The answer only refers to criminal cases. All aggrieved persons who are victims of criminal offences – regardless of the nature of the crime – are informed of their rights and powers. The special hearing modalities are however not primarily in line with the crime, but with the respective individual vulnerability of the victim in the respective specific hearing situation, where special protective measures can be taken. This question can therefore not be answered schematically. There is no information specifically for ethnic minorities or persons with a disability as such – regardless of their status as aggrieved persons. They are also informed of their rights, as aggrieved parties of criminal offences as other aggrieved parties, albeit it is to be ensured that it is possible to communicate with them. For juvenile criminal offenders the Youth Courts Law (Jugendgerichtsgesetz – JGG) contains both special provisions on the legal consequences of a criminal offence, on the jurisdiction of special youth courts and on other fields, as well as many special procedural provisions which do justice to the development situation and the vulnerability of minors in criminal proceedings (e.g. holding the main hearing in camera; rights of the statutory representative and legal guardian to be present and to participate; participation of the youth courts assistance service, which in addition to educational advice of the court is also to take care of the juvenile during the entire proceedings; avoidance of remand detention through alternative measures).

**32) Votre pays dispose-t-il d'une procédure d'indemnisation des victimes d'infractions ?**

- Oui  
 Non

Si oui, pour quels types d'infractions

Compensation in accordance with the Act on Compensation for Victims of Violent Acts (OEG) is not contingent on the nature of the criminal offence. It is also not conditional on the offenders being prosecuted. It is, rather, conditional on a person having suffered harm to their health by an intentional, unlawful violent act within German state territory. Equally, surviving dependants of persons who died as a result of the health damage also have a right to benefits. Medical and healthcare benefits are provided, as are pensions to compensate for the health and economic consequences of the damage to health caused by the violent act, as well as benefits to ensure a person's livelihood. Pension payments are made if the damage to health is permanent and reaches a certain minimum level. Psychological damage is recognised as constituting health damage. Additionally, (restricted) benefits have also been provided since 1 July 2009 for damage caused by violent acts committed abroad.

The criminal offences which are normally connected with an intentional, unlawful violent attack and can cause damage to health, for instance include grievous bodily harm, murder/intentional manslaughter, rape and sexual coercion. Also, deprivation of liberty may constitute a physical attack.

According to the law, the following are deemed to be equivalent to a physical attack

- the intentional application of poison,
- the at least negligent bringing about of a risk to life and limb of another by virtue of a felony committed with means that pose a danger to the public (e.g. arson, explosives attack).

**33) Si oui, cette procédure d'indemnisation consiste-t-elle en:**

- un dispositif public ?
- des dommages et intérêts à payer par la personne responsable (par décision du tribunal) ?
- un dispositif privé ?

**34) Existe-t-il des études permettant d'évaluer le taux de recouvrement des dommages et intérêts prononcés par les juridictions pour les victimes ?**

- Oui
- Non

Si oui, veuillez préciser le taux de recouvrement, le nom des études, la fréquence des études et l'organe responsable :

**35) Le procureur a-t-il un rôle spécifique au regard des victimes (protection et assistance) ?**

- Oui
- Non

Si oui, veuillez préciser :

The guidelines for criminal proceedings and the regulatory fine proceedings, which primarily are to be complied with by public prosecutors, contain considerable discussion as to how the interests and needs of the aggrieved persons of criminal offences are to be taken into consideration in the proceedings where appropriate. The public prosecution office must inform the aggrieved persons in accordance with section 406d subs. 1 of the Code of Criminal Procedure on application of the discontinuation of the proceedings. Also, the public prosecution office must grant inspection of the files to the solicitor of an aggrieved person in accordance with section 406e of the Code of Criminal Procedure or provide information and duplicates from the files. Moreover, the public prosecution office is obliged in accordance with section 406h of the Code of Criminal Procedure to inform aggrieved persons who are victims of a criminal offence of specific entitlements and about victim assistance facilities.

**36) Les victimes d'infractions peuvent-elles contester une décision du procureur de classer une affaire?**

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**Veillez vérifier la cohérence de votre réponse avec celle de la question 105 qui traite de la possibilité pour un procureur "de classer une affaire sans suite, sans avoir besoin d'obtenir une décision du tribunal".**

- Oui
- Non
- NAP (le procureur ne peut pas décider de classer une affaire de son propre chef. Une décision judiciaire est nécessaire)

Le cas échéant, veuillez préciser :



If the public prosecution office does not comply with an application to prefer public charges, or if it orders the discontinuation of the proceedings after conclusion of the investigations (section 170 subs. 2 sentence 1 of the Code of Criminal Procedure), it must notify the applicant, stating the reasons. In the notice, the applicant, who is at the same time the aggrieved person, is to be informed of the possibility of challenge and of the deadline provided for this (section 172 subs. 1 of the Code of Criminal Procedure) (section 171 sentences 1 and 2 of the Code of Criminal Procedure).

If the applicant is at the same time the aggrieved person, they have a right to complain against the notice in accordance with section 171 of the Code of Criminal Procedure within two weeks of notification to the superior official at the public prosecution office (section 172 subs. 1 sentence 2 of the Code of Criminal Procedure). The applicant can request a court ruling (proceedings to enforce an action) against the rejection notice of the superior official of the public prosecution office, within one month of the notification. They are to be informed of this and of the form provided for this; the deadline does not run if the information has not been provided (section 172 subs. 2 sentences 1 and 2 of the Code of Criminal Procedure).

The application is not admissible if the proceedings refer exclusively to a criminal offence which can be pursued by the aggrieved person by means of a private action, or if the public prosecution office has refrained from prosecuting the offence for reasons of discretionary prosecution (for instance in accordance with section 153 et seqq. of the Code of Criminal Procedure and 45 subs. 1 of the Youth Courts Act). The Higher Regional Court has jurisdiction to rule on the application (section 172 subs. 4 sentence 1 of the Code of Criminal Procedure). Youth court proceedings can also be discontinued (decision by means of diversion) if adequate supervisory measures have already been taken outside of the criminal proceedings, or if the juvenile, who must have admitted guilt, has voluntarily complied with instructions or conditions of the youth court judge which were proposed by the public prosecution office (section 45 subs. 2 and 3 of the Youth Courts Act). Proceedings to enforce an action are also not admissible against such discontinuation.

## 2. 2. 2. Confiance des citoyens dans leur justice

### 37) Existe-t-il un système d'indemnisation pour les usagers dans les circonstances suivantes :

- durée excessive de la procédure ?
- non exécution des décisions de justice?
- arrestation injustifiée ?
- condamnation injustifiée ?

Le cas échéant, veuillez fournir des renseignements concernant la procédure d'indemnisation, le nombre d'affaires, le résultat des procédures et le dispositif actuel permettant de calculer le montant de l'indemnisation (par exemple, le tarif journalier pour une arrestation ou une condamnation injustifiée) :



The law of state liability is only partly regulated by national law (a). There are in addition provisions of Land law (b), as well as common and judges' law.

(a) Provisions of federal law

If the parties to a legal dispute suffer damage because of excessive length of proceedings, a damage claim may ensue from section 839 of the Civil Code in conjunction with Article 34 of the Basic Law if a case of culpable refusal or delay of execution of the office in breach of duty applies, section 839 subs. 2 sentence 2 of the Civil Code. However, the manner in which a judge pursues the proceedings within the scope of section 839 subs. 2 sentence 2 of the Civil Code may only be examined for justifiability because of the constitutional principle of judicial independence.

A creditor's first port of call in procedural terms against the non-execution of court decisions by a bailiff is to lodge a reminder in accordance with section 766 subs. 2 of the Code of Civil Procedure. The execution court rules on the reminder. If a senior judicial officer of the execution court rejects a creditor's motion completely or in part to issue a compulsory enforcement measure, the creditor may lodge an immediate complaint (section 567 subs. 1 number 2 of the Code of Civil Procedure). If the execution organ has culpably delayed compulsory enforcement, there may be a compensation claim under section 839 subs. 1 of the Civil Code in conjunction with Article 34 of the Basic Law.

A claim may also exist under section 839 of the Civil Code in conjunction with Article 34 of the Basic Law in the case of wrongful arrest if the acting official can be accused of a culpable breach of official duty. With rulings of the judge responsible for matters of custody, as well as with discretionary decisions of the public prosecution office in the investigation proceedings, the decision may only be examined for its justifiability.

In the case of wrongful condemnation, there is an official liability claim under section 839 of the Civil Code in conjunction with Article 34 of the Basic Law if the breach of duty consists of a criminal offence, section 839 subs. 2 sentence 1 of the Civil Code.

The claim under section 839 of the Civil Code in conjunction with Article 34 of the Basic Law is to be asserted in the courts of ordinary courts.

Distinct from these claims are compensation claims under provisions of special statutes, which as a rule are not intended to compensate for the entire damage, but provide lump sums.

Section 2 subs. 1 of the Act on Compensation for Criminal Prosecution Measures (Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen – StrEG) provides in cases of acquittal, discontinuation of the proceedings or refusal to initiate the main proceedings for compensation for the damage suffered by remand detention or temporary arrest that have been carried out. Where the proceedings are discontinued in accordance with a discretionary provision, compensation can be granted ex bono, section 3 of the Act on Compensation for Criminal Prosecution Measures. The subject of the compensation is the property damage caused by the criminal prosecution measure, in the case of deprivation of liberty on the basis of a court ruling also immaterial damage, section 7 subs. 1 of the Act on Compensation for Criminal Prosecution Measures. The immaterial compensation is € 25 for each day of deprivation of liberty commenced.

The decision on the fundamental obligation to provide compensation is taken by the court in the judgment or in the order which closes the proceedings, so-called fundamental ruling in accordance with section 8 and 9 of the Act on Compensation for Criminal Prosecution Measures. If the public prosecution office discontinues the proceedings, the court takes the fundamental ruling on application of the accused persons, who must lodge this within one month of service of the discontinuation ruling with information on the application deadline, its right to apply and the court with jurisdiction. After the fundamental ruling has gained legal force, the claim must be lodged with the investigating public prosecution office within six months. If the deadline is missed, the claim is ruled out. When examining the compensation claim, there is no official investigation. Rather, applicants must explain and substantiate their claims. The Land administration of justice, which however may delegate the powers to the public prosecution offices or the chief public prosecutor rules on the application.

Anyone who has suffered damage from a criminal conviction is refunded by the Treasury if the conviction is quashed or reduced in the resumption proceedings or otherwise in criminal proceedings after having taken on legal force, section 1 subs. 1 Act on Compensation for Criminal Prosecution Measures. The same applies a measure of reform and prevention or an ancillary measure has been ordered if without a conviction, section 1 subs. 2 of the Act on Compensation for Criminal Prosecution Measures. The above information applies accordingly in other respects. The implementation of the Act is incumbent on the Länder.

The "Act to Protect against Excessive Length of Court Proceedings and Criminal Investigation Proceedings" came into force on 3 December 2011. No information is yet available regarding case numbers and the outcome of proceedings.

- The Act makes provision for a claim to compensation in cases of excessive length of court proceedings.
- Special provision for criminal proceedings to take account of the specific aspects applying to such proceedings.
- Compensation can be claimed only by those who, in the original proceedings, have previously complained about the delay in question. The court dealing with the case can then act to redress the matter, in response to this complaint.
- If no redress is forthcoming, a court action for compensation can even be brought while the delayed original proceedings are still pending.
- The highest federal courts and the Federal Constitutional Court will be included in such provision.

(b) Provisions of Land law

Yes 1)

excessive length of proceedings? BE, BY, BB, HB, NI, NW

non execution of court decisions? 2) NI

\*) not including information from Mecklenburg-Western Pomerania and Thuringia.

1) Where the Federal Länder specified in the overview have answered "Yes", the other Federal Länder have accordingly answered "No".

2) BB: No, not in criminal law.

Where appropriate, please give details on the compensation procedure, the number of cases, the result of the procedures and the existing mechanism for calculating the compensation (e.g. the amount per day for unjustified detentions or convictions):

Saxony-Anhalt:

As far as it could be established, only one set of proceedings was brought against Saxony-Anhalt in 2010 before a civil chamber in which property and non-property damage of approx. € 3 million was claimed for excessive length of proceedings. The plaintiff was awarded payment of € 10,000; the action was rejected in other respects.

Wrongful arrest / wrongful condemnation

Baden-Württemberg:

265 sets of compensation proceedings under the Act on Compensation for Criminal Prosecution Measures were pending with the public prosecution offices of the Land in 2009, this figure being 307 in 2010. No statistics are kept on the outcomes of the proceedings.

Bavaria:

No statistics or overviews are kept on the number of cases in Bavaria in which cases proceedings are pursued in accordance with the Act on Compensation for Criminal Prosecution Measures for wrongful arrest or wrongful condemnation. The same applies with regard to the amount of any compensation payments. There are also no statistics on the number of cases in which fundamental decisions are taken in accordance with the Act on Compensation for Criminal Prosecution Measures.

Brandenburg:

Reference is made to Annex 1 with regard to the case numbers.

Bremen:

Sets of proceedings in accordance with Act on Compensation for Criminal Prosecution Measures

Received Rulings Rejections Payments in €

2007 60 64 36 18,361.76

2008 60 54 28 25,102.73

2009 81 70 39 27,134.46

Hamburg:

In 1994, the last time when nationally-uniform statistics were gathered, all the Federal Länder together had made a total of an equivalent of € 2.74 million in compensation payments in accordance with the Act on Compensation for Criminal Prosecution Measures. 1,851 compensations were paid in one year.

Hesse:

The total amount of compensation paid in Hesse in accordance with the Act on Compensation for Criminal Prosecution Measures in the calendar year 2010 for a total of 120 compensation cases was € 224,551.35. Compensation for wrongful imprisonment after wrongful arrest or condemnation was granted in 54 cases (total: € 121,025.00).

Lower Saxony:

With regard to compensation in accordance with the Act on Compensation for Criminal Prosecution Measures, information is only available on the separate procedures. 262 sets of proceedings were received in the public prosecution offices in accordance with the Act on Compensation for Criminal Prosecution Measures in Lower Saxony in 2010 (cf. Fachserie 10, Reihe 2.6 of the Federal Statistical Office 2010, table 1.2.2). There were

258 sets of such proceedings at the chief public prosecution offices in Lower Saxony (Table 5.2 in the above publication). A more detailed breakdown of the measures for which compensation was applied for is not provided in the statistics. Nor is there any statistical analysis of the compensation already made in the court ruling closing the proceedings (section 8 subs. 1 of the Act on Compensation for Criminal Prosecution Measures).

Schleswig-Holstein:

Compensation was paid as follows for wrongful deprivation of liberty on the basis of a court ruling, in Schleswig-Holstein in 2010 on the basis of the Act on Compensation for Criminal Prosecution Measures:

- in 21 cases of refund in each case on application
- for 1,959 days of wrongful remand detention
- compensation payments totalling € 48,975

Saxony:

The applications were rejected in more than 43 % of sets of proceedings for compensation for wrongful imprisonment in 2010. € 88,329.12 was disbursed in accordance with the Act on Compensation for Criminal Prosecution Measures. 39 sets of proceedings related to compensation because of remand detention suffered.

Saxony-Anhalt:

Compensation totalling € 58,615.00 in accordance with section 7 subs. 3 of the Act on Compensation for Criminal Prosecution Measures was paid in 2010 in the Land Saxony-Anhalt in 24 cases (including 23 cases of remand detention with a compensation amount of € 43,465.00 € and a case of interim custody with compensation of € 15,150.00). The cases on which the payments were based are likely not to have all taken place in 2010, but the compensation proceedings were each concluded in 2010.

**38) Votre pays a-t-il mis en place des enquêtes auprès des professionnels de la justice et des usagers des tribunaux pour mesurer leur confiance dans la justice et leur degré de satisfaction par rapport au service rendu ? (plusieurs options possibles)**

- enquêtes (de satisfaction) auprès des juges
- enquêtes (de satisfaction) auprès du personnel des tribunaux
- enquêtes (de satisfaction) auprès des procureurs
- enquêtes (de satisfaction) auprès des avocats
- enquêtes (de satisfaction) auprès des parties
- enquêtes (de satisfaction) auprès d'autres usagers des tribunaux (par exemple jurés, témoins, experts, interprètes, représentants des agences gouvernementales)
- Enquêtes (de satisfaction) auprès des victimes

Si possible, veuillez préciser leurs titres, objets et sites internet où elles peuvent être consultées :

**Baden-Württemberg:**

The members of the judiciary are regularly asked as to their level of satisfaction using questionnaires. The results are evaluated by an independent institute. Solicitors and parties to the proceedings are regularly asked as to their satisfaction with the judiciary; examples can be found here:

<http://www.justiz-intern.bwl.de/servlet/PB/show/1213338/Presseerklrung-RA-Befragung.pdf>

[http://www.justiz-intern.bwl.de/servlet/PB/show/1213339/OLG\\_Anwaltsbefragung-Fragebogen.pdf](http://www.justiz-intern.bwl.de/servlet/PB/show/1213339/OLG_Anwaltsbefragung-Fragebogen.pdf)

Bavaria (not incl. administrative courts):

None.

Bavaria (administrative courts):

Staff questionnaire every five years; implemented by the Bavarian Land Office for Statistics and Data Processing.

Bremen:

Virtually all Bremen courts, as well as and Bremen public prosecution office, have taken part in the national and Lower Saxony comparison groups since 2007;

AgIL Performance of the Local Courts compared

LiVe Performance of the Regional Courts compared

OLiVe Performance of the Higher Regional Courts compared

BenStA Benchmarking of the public prosecution offices

ArbPR Quality management of the Northern German labour courts

LOS Performance and organisation comparison in the social courts

VERGIL Administrative Courts in a comparison between the Länder.

The goal of the performance comparisons is to optimise workflows within the courts and public prosecution offices, as well as to improve cooperation with solicitors. To this end, questionnaires have been implemented to ascertain the level of satisfaction and identify potential improvements. The results were intended for internal quality management, but cf. the publications for instance at [www.arbeitsgericht.bremen.de](http://www.arbeitsgericht.bremen.de), [www.landessozialgericht.niedersachsen.de](http://www.landessozialgericht.niedersachsen.de) and [www.verwaltungsgericht.bremen.de](http://www.verwaltungsgericht.bremen.de)

Hesse:

Nothing.

Hamburg:

There are only individual questionnaires on the topic of confidence placed in the German judiciary. See for instance

<http://de.statista.com/statistik/daten/studie/167505/umfrage/vertrauen-in-die-deutsche-justiz/>.

Moreover, studies exist which devote themselves to the abstract topic of institutional confidence or trust in the judicative, for instance <http://www.nccr-democracy.uzh.ch/publications/workingpaper/pdf/WP28.pdf>.

Lower Saxony:

In the projects "Performance of the Local Courts compared (AGIL)" and "Performance of the Regional Courts compared (LiVe)", the staff of the judicial authorities were asked how satisfied they are with their jobs. The procedure also exists for Higher Regional Courts ("OLiVe") and for public prosecution offices ("BenStA"). Public prosecutors and solicitors are also questioned in each case. Enquiries here relate amongst other things to satisfaction with cooperation with superiors and colleagues, as well as with working conditions, and to identification with the task area. The results were discussed in specialist groups and workshops, and proposals for improvements were worked out.

North Rhine-Westphalia:

As far as can be seen here, there have been such studies. Concrete information is however not available here. These are above all staff and "customer" questionnaires in court comparison groups.

Schleswig-Holstein: ./.

Saxony:

- In the social courts:
- questionnaire among honorary judges
- discussions with solicitors

- In ordinary courts:

project "Local and Regional Courts in a comparison" and "Higher Regional Courts in a comparison". Information can be obtained on the website [www.justiz.sachsen.de/olg](http://www.justiz.sachsen.de/olg) under the keyword "Quality management".

Saxony-Anhalt:

OLiVe – Performance of the Higher Regional Courts compared,

LiVe – Performance of the Regional Courts compared,

AGIL – Performance of the Local Courts compared,

BenStA – Benchmarking of the public prosecution offices,

ArbOR – Comparison of the labour court organisation.

These are all internal comparison groups which are not publicly accessible. Continuation and review take place in each case according to sector-specific establishments. The group of individuals included over and above the justice staff can deviate in the individual comparison groups.

**39) Si possible, veuillez préciser :**

	Enquêtes systématiques (par exemple annuelles)	Enquêtes occasionnelles
Enquêtes au niveau		

national	Non	Non
Enquêtes au niveau des tribunaux	Non	Non

**40) Existe-t-il un dispositif national ou local permettant de déposer une plainte concernant le fonctionnement du système judiciaire (par exemple le traitement d'une affaire par un juge ou la durée d'une procédure)?**

- Oui  
 Non

**41) Veuillez préciser l'autorité compétente pour traiter de telles plaintes et informer si l'autorité doit ou ne doit pas respecter un délai pour répondre et/ou un délai pour traiter la plainte (plusieurs réponses possibles). Veuillez donner des informations sur l'efficacité de cette procédure de plainte dans la boîte "commentaire" ci-dessous.**

	Délai pour répondre (par exemple pour accuser réception de la plainte, pour informer des suites qui lui seront données, etc.)	Délai pour traiter la plainte	Pas de délais
Tribunal concerné	Non	Non	Oui
Instance supérieure	Non	Non	Oui
Ministère de la Justice	Non	Non	Oui
Conseil supérieur de la magistrature	Non	Non	Oui
Autres organisations extérieures (ex. médiateur)	Non	Non	Oui

Commentaire :

cf. Question 37 on excessively-long court proceedings

### 3. Organisation des tribunaux

#### 3. 1. Fonctionnement

##### 3. 1. 1. Tribunaux

**42) Nombre de tribunaux considérés comme entités juridiques (structures administratives) et implantations géographiques. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Nombre total
42.1 Tribunaux de droit commun de 1ère instance (entités juridiques)	777
42.2 Tribunaux spécialisés de 1ère instance (entités juridiques)	256
42.3 Tous les tribunaux (implantations géographiques) (ce chiffre inclut les tribunaux de droit commun de 1ère instance, les tribunaux spécialisés de 1ère instance, tous les tribunaux de seconde instance et cours d'appels et toutes les cours suprêmes)	1 126

**43) Nombre (entités juridiques) de tribunaux spécialisés (ou ordre judiciaire spécifique) de 1ère instance. Si "autres tribunaux spécialisés de 1ère instance", veuillez donner des précisions dans la boîte "commentaire" ci-dessous. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

Total (il doit correspondre au nombre indiqué à la question 42.2)	256
Tribunaux commerciaux	NAP
Tribunaux du travail	119
Tribunaux des affaires familiales	NAP
Tribunaux des affaires locatives (tribunaux des baux)	
Tribunaux de l'exécution des sanctions pénales	NAP
Tribunaux administratifs	51
Tribunaux des assurances et/ou de la sécurité sociale	68
Tribunaux militaires	NAP
Autres tribunaux spécialisés de 1ère instance	18

Commentaire :

Depending on the value at dispute, commercial cases are dealt with at Local or Regional Courts, on application in a chamber established at the Regional Court for commercial cases. There are no separate commercial courts, nor are there any independent rent courts, execution courts or courts for insurance cases. Depending on the caseload, special panels of judges are established for this purpose at the Local and Regional Courts. Family cases are dealt with at first instance in special departments of the Local Courts. The Federal Armed Forces do not have any military courts of their own; its members are subject to civil jurisdiction.

**44) Une réforme dans la structure des tribunaux est-elle envisagée (par exemple une diminution du nombre de tribunaux (implantations géographiques) ou une réforme de la compétence des tribunaux) ?**

Oui

Non

Si oui, veuillez préciser :

The possibility of combining courts of individual Federal Länder is being considered in order to reduce costs.

**45) Nombre de tribunaux de 1ère instance (implantations géographiques) compétents pour les affaires**



suivantes. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.

	Nombre de tribunaux
le recouvrement d'une petite créance.	661
le licenciement	119
le vol avec violence	661

**Veuillez préciser la définition d'une petite créance et indiquer le montant financier en dessous duquel une créance est considérée comme telle :**

Claims up to € 600 are regarded as "small claims" (section 495a of the Code of Civil Procedure).

\*If a penalty of up to four years' imprisonment is anticipated, a robbery is charged at the Local Court, and at the Regional Court if a longer sentence is anticipated. Germany has a total of 116 Regional Courts.

**Veuillez indiquer les sources utilisées pour les réponses aux questions 42, 43 et 45 :**

The data are published by the Federal Ministry of Justice.

### 3. 1. 2. Juges et personnels non-juges

**46) Nombre de juges professionnels siégeant en juridiction (si possible au 31 décembre 2010) (veuillez fournir l'information en équivalent temps plein et pour des postes permanents effectivement occupés, pour tous les types de juridictions confondus – droit commun et spécialisées). Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

**Veuillez ajouter dans la boîte "commentaire" ci-dessous toute information utile à l'interprétation des données ci-dessus.**

\*\*\*\*\*

**[Veuillez vous assurer que les procureurs et leurs personnels sont exclus des réponses suivantes (ils sont concernés par les questions 55-60). Si la distinction entre personnels attachés aux juges et personnels attachés aux procureurs n'est pas possible, merci de l'indiquer clairement.]**

**Veuillez indiquer le nombre de postes effectivement pourvus à la date de référence et non pas les effectifs budgétaires théoriques.]**

	Total	Hommes	Femmes
Nombre total de juges professionnels (1 + 2 + 3)	19831,61	NA	NA
1. Nombre de juges professionnels de première instance	14861,13	NA	NA
2. Nombre de juges professionnels dans les cours d'appel (2ème instance)	4055,58	NA	NA
3. Nombre de juges professionnels dans les cours suprêmes	914,90	NA	NA

Commentaire :

The information relates to job shares. There are no absolute figures for the number of persons. The information on the job shares counts a judge working full-time as 1. A judge working part-time is counted as a fraction of 1 which corresponds to the proportion of his/her working hours to full-time (e.g. 0.5 for a judge working half the usual number of hours).

The information from personnel deployment has been used as a basis re 1 and 2. Personnel deployment is ascertained according to a complex calculation scheme as an annual average of the actual personnel deployed.

The total staff from the two-year statistics on judges as per 31 December 2010 has been used as a basis re 3.

The personnel on file of judges at the end of the year, which does not permit a breakdown to be made by first instance and appeal court, shows the following total result in job shares:

A total of: 20,410.45, of which: Male 12,562.19, Female 7,848.26.

**47) Nombre de présidents de tribunaux (juges professionnels). Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Total	Hommes	Femmes
Nombre total de juges professionnels (1 + 2 + 3)	NA	NA	NA
1. Nombre de président(e)s de tribunaux de première instance	NA	NA	NA
2. Nombre de président(e)s de	NA	NA	NA

cours d'appel (2ème instance)			
3. Nombre de président(s) de cours suprêmes	NA	NA	NA

**48) Nombre de juges professionnels exerçant à titre occasionnel et rémunérés comme tel (si possible au 31 décembre 2010). Si nécessaire, veuillez indiquer dans la boîte "commentaire" ci-dessous toute information utile pour l'interprétation de la réponse à la question 48.**

Donnée brute NA  
Si possible, donnée en équivalent temps plein NA

Commentaire :

There are no figures available for this question. Number of professional judges includes the number of part-time occasional judges.

**49) Nombres de juges non professionnels, non rémunérés, percevant, le cas échéant, un simple défraiement (si possible au 31 décembre 2010) (y compris les "lay judges" et juges consulaires ; les arbitres et les jurés sont exclus de cette donnée).**

Donnée brute  Oui 98 107

**50) Votre système judiciaire prévoit-il un jury de jugement avec une participation des citoyens ?**

- Oui  
 Non

Si oui, pour quel(s) type(s) d'affaire(s) ?

There are no jurors in German criminal procedure, but lay judges participate in a large share of the trial courts (court with lay judges in the Local Courts, grand and small criminal chambers, as well as youth chambers in the Regional Courts). They exercise their honorary judicial office (section 31 of the Courts Constitution Act – [Gerichtsverfassungsgesetz – GVG]) in the main hearing in full and with the same voting rights as professional judges (section 30 subs. 1 of the Courts Constitution Act). Professional judges and honorary judges rule together on the guilt of the defendant and the amount of the sentence. In accordance with section 240 subs. 2 of the Code of Criminal Procedure (StPO), they have the right to directly question defendants, witnesses and experts in the main hearing. They deliberate on the judgment together with the professional judges (section 260 of the Code of Criminal Procedure).

**51) Veuillez indiquer le nombre de citoyens ayant participé à de tels jurys pour l'année de référence :**

NAP

**52) Nombre de personnel non-juge travaillant dans les tribunaux (si possible au 31 décembre 2010) (cette donnée ne devrait pas inclure le personnel travaillant pour les procureurs, voir question 60) (répondre en équivalent temps plein et pour les postes permanents effectivement occupés). Si « autres personnels non juges », veuillez le préciser dans la boîte "commentaire" ci-dessous.**

Nombre total de personnel non juge travaillant dans les tribunaux (1 + 2 + 3 + 4 + 5)  Oui 53649

1. Rechtspfleger (ou organes équivalents) chargés de tâches juridictionnelles ou para-juridictionnelles, ayant des compétences autonomes et dont les décisions peuvent être susceptibles de recours.  Oui 8460

2. Personnels non juges chargés d'assister les juges à l'instar des greffiers (préparation des dossiers, assistance à l'audience, tenue des procès verbaux, aide à la préparation de la décision)  Oui 29143

3. Personnels chargés de tâches relatives à l'administration et la gestion des tribunaux (gestion des ressources humaines, gestion des moyens matériels y compris de l'informatique, gestion financière et budgétaire, gestion de la formation)  Oui 7477

4. Personnels techniques  Oui 1280

5. Autres personnels non juges  Oui 7285

Commentaire :

The information relates to job shares of employees

- who were released for training and further training with no remuneration claim,
  - who were released to work in staff representations and representations of persons with serious disabilities, and as equality commissioners,
  - in a special facility,
  - in the entry and security service,
  - in telephone exchanges,
  - in the car pool,
- in the area of cleaning and other wage-earners.

**53) S'il existe dans votre système la fonction de Rechtspfleger (ou organes équivalents), veuillez décrire brièvement leur statut et leurs fonctions:**

Senior judicial officers are civil servants of the executive judicial service who have completed three years of legal training at a university of applied sciences and have passed the state senior judicial officers' examination. As the "second pillar of the third power", they primarily take on tasks in the field of "voluntary jurisdiction" (including in inheritance cases, care cases, parent-and-child and adoption cases, land registry cases, commercial, cooperative and partnership register cases, insolvency cases, cases related to associations, cases related to the marriage property register, ship register cases, etc.), but are also responsible for a large number of further court activities, e.g. in the field of the court payment demand proceedings, legal aid, compulsory enforcement, forced sales and coercive administration, in the field of cost setting, execution of penalties, in the proceedings before the Federal Patent Court, as well as in international legal transactions. The number of senior judicial officers in the Local Courts is already higher today than the number of judges. The scope of the activities of senior judicial officers is regulated in the Act on Senior Judicial Officers (RPfG). Senior judicial officers are factually independent and bound only by law and order in performing their tasks and in their rulings in the same way as judges (section 9 of the Act on Senior Judicial Officers). Admissible appeals exist (section 11 of the Act on Senior Judicial Officers) against their decisions in accordance with the general rules of procedure.

**54) Les tribunaux ont-ils délégué certains services, relevant de leur compétence, à un service privé (par exemple, la maintenance informatique, la formation continue du personnel, la sécurité, les archives, le nettoyage)**

Oui

Non

Si oui, veuillez préciser :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. Bremen was the only Land to answer "No"; all other Federal Länder answered "Yes".

#### Baden-Württemberg:

The judiciary in Baden-Württemberg has outsourced information and communication hardware and standard software since 1998, and has taken part in national calls for tender, which were implemented by the general administration.

The Ministry of Justice signed the currently-running outsourcing contract with "T-Systems GmbH" in 2009 on the basis of such a call for tender with roughly 8,200 workstations for the courts/public prosecution offices, as well as for the Ministry of Justice (185 workstations) and for the prison system (2,350 workstations). "Electronic Data Services (EDS - an HP company)" was the courts' outsourcing partner of the judiciary in the years before that.

The contracts encompass the provision of hardware and standard software, a user helpdesk, the active network components (incl. maintenance), as well as the entire data backups.

The outsourcing partners of the Land and the judiciary provide the information and communication infrastructure for the operation of the specialist judicial applications. Staff further training in information and communication remains in the hands of the judiciary, the support of private companies being bought in for the individual measures.

#### Bavaria:

Ordinary courts/finance, labour and social courts:

Firstly, this concerns security tasks such as guarding court buildings over night and at weekends/on bank holidays, as well as cleaning services. Secondly, this relates to data processing: provision and operation of the judicial network; delivery, installation and operation – including maintenance and error processing – of all IT jobs, of infrastructure servers and active components for local networks; care of IT users via a User Help Desk when it comes to problems in the fields of hardware, standard software and network.

Administrative courts:

Cleaning, security, further training, IT maintenance, health management.

Brandenburg:

Cleaning, security.

Berlin:

Partly archiving, janitor services, cleaning.

Hamburg:

Cleaning is very largely entrusted to private companies.

Guarding of the court buildings is partly entrusted to private companies.

Hesse:

Private service-providers work in the security services and in cleaning.

Lower Saxony:

Security: individual courts have commissioned security companies to carry out night patrols (Note: No information can be provided on the other private service-providers mentioned above).

North Rhine-Westphalia:

The cleaning services are provided by external cleaning firms. These contracts are however not put out to tender and awarded by the courts, but by Construction and Property Agency (BLB), since the Land Government has centralised this task at the BLB. Furthermore, entry security at courts is provided by individual private services which can also be found in some areas of the technical maintenance of appliances.

Saarland:

Completely or partly:

- building cleaning
- postal delivery
- occupational healthcare
- security
- maintenance of technical equipment

Saxony:

In various courts, differing individually:

- building cleaning
- postal delivery
- teaching activities in further training
- occupational healthcare
- security
- maintenance of technical equipment
- security service
- operation of mail rooms
- transport of files
- messenger services
- archiving of documents
- storage and administration of forms and office material
- copying
- janitor activities

Saxony-Anhalt:

The cleaning of the courts has been assigned to external cleaning companies almost without exception. Moreover, there are contracts with external service-providers for winter clearing and driving services amongst other things (framework contracts with taxi companies). Furthermore, the implementation of entry checks has been transferred to

external providers in pilot projects.  
Schleswig-Holstein:  
further training.

### C.1

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile à l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système judiciaire et les réformes majeures mises en œuvre au cours des deux dernières années**

re No. 52: The information relates to job shares for employees without a judicial office from personnel deployment. The information in personnel deployment is not collected according to key dates. The annual average of four quarters is formed. There are no absolute figures for the number of persons. The information on the job shares counts a judge working full-time as 1. A judge working part-time is counted as the fraction of 1 which corresponds to the proportion of his/her working hours to full-time (e.g. 0.5 for a judge working half the usual number of hours). Figures for the Federal Courts are not included.

Baden-Württemberg:

Major reforms in the past two years:

#### 1. Reform of the land registry system in Baden-Württemberg

On 21 July 2008, the Council of Ministers adopted the fundamentals of a comprehensive reform of the Baden-Württemberg land registry system on the basis of a submission by the Ministry of Justice. In line with the structure that has become the national norm, the management of the land registries is to be assigned successively to the land registry departments of eleven selected Local Courts of the Land from 2011 to 2018. The local authorities are to be relieved of the burden of managing the land registries. In place of the previously predominant extremely small-scale structure, this will enable modern, efficient units to be created with optimum technical equipment. For the citizens, as well as in particular for industry, this promises to shorten the processing times and to bring about a further improvement in the range of services.

A major element of the reform concept is also to keep all services relating to the land registry available at grassroots level despite the centralisation plans. This is to be ensured through the complete digitisation of the contents of the land registry and the establishment of land registry viewing units at all notaries and local authorities who so wish.

A further aspect of the reform of the land registries is the introduction of electronic justice. The legal framework has recently been created at federal level to enable applications to be submitted in electronic form with the Act on the Introduction of Electronic Justice and the Electronic Title Deed in Land Registry Proceedings (Gesetz zur Einführung des elektronischen Rechtsverkehrs und der elektronischen Grundakte im Grundbuchverfahren) – similar to that existing in the registers of companies. Against this background, the Ministry of Justice would like to implement a register concept in which newly-arriving parts of files are stored electronically from a key date onwards and the old stock remains stored in paper form.

Where for procedural or information purposes it is necessary to access paper documents, these documents would be digitised on request, and also provided in electronic form. Since with this kind of "hybrid filing", the existing paper-stored parts of applications are needed less and less frequently as time advances due to electronic submissions, it is planned to retain the paper files at a central location in the Land, in cooperation with the Land archive administration, and to provide them from there when they are needed. This obviates the need for Local Courts which manage land registers in future to put considerable effort into creating space for registers which will no longer be needed in the long term for land registry processing after electronic justice has been introduced. At the same time, the historically-significant documents are placed in the hands of specialists in order to conserve them for the long term.

The organisational aspects of the reform process, in which the currently 667 land registry offices of the Land are to be centralised in the eleven future locations within six years, are a major challenge for the justice system. To implement the project, working parties have been established in the Ministry of Justice with the involvement of the Higher Regional Courts and associations of the local authorities. The aim is to guarantee a trouble-free transition to the new land registry office structure. The burdens on the staff affected by the restructuring process are to be minimised.

#### 2. Electronic land registry

The introduction of the electronic land registry is one of most significant, largest projects in the Land's justice system. The digital recording of the total of roughly 5.8 million land registry sheets is progressing well in the Württemberg legal territory and in the eleven state land registry offices of Baden.

The digitisation of the contents of the land registry is to be pushed in future with a view to the coming comprehensive reform of the land registry system. The Ministry of Justice would like to support the ongoing recording by the staff of the land registry offices, as well as the collection teams, by establishing collection centres which are exclusively responsible for the digitisation of the land registries, and hence are able to work particularly efficiently. A first collection centre started operations at Stuttgart Local Court in January 2009. On the basis of the experience collected here, it is to be examined whether this collection method should be expanded and whether the paper land registries remaining in the local land registry offices in the Baden legal territory can also be included by these means in the course of the reform of the land registry system after they have been taken over by the Land.

All land registries in the country will be recorded in electronic form at the latest on completion of the reform of the land registry system at the end of 2017.

#### 3. Assistance for judges

The working conditions and the working methods in the field of the administration of the law are changing apace. A large number of young judges and public prosecutors in particular are carrying out more and more tasks themselves on their PCs. The rapid technical developments in the IT field, and above all the automatic specialist procedures and the work savings which these bring, will lead in the medium and long term to lower staff requirements in the service area. Further reductions in workload in the service area can be anticipated to ensue in the years from the introduction of electronic justice and the electronic file. On the other hand, necessary staffing increases among judges and public prosecutors cannot be achieved in the coming years due to the budgetary situation. In order to retain the functionality of the administration of justice and to avoid a loss of quality, therefore, a fair and optimal division of tasks in terms of workflow organisational aspects is necessary between judges, senior judicial officers and service personnel. This is to be achieved with the project entitled "Assistance for judges/senior judicial officers".

The Länder Baden-Württemberg, North Rhine-Westphalia and Saxony, under the management of Baden-Württemberg, therefore agreed in the spring of 2008 to further develop the topic "Assistance for judges of the service units" together – which had initially been restricted to ordinary courts. In a workshop held in the summer of 2008, a nationwide project group was commissioned with representatives of judicial practitioners to take stock of the typing conduct of judges and to delegate assistant-type tasks to the service staff, and building on this to name potential other tasks that were suitable for assigning.

In carrying out this task, the project group implemented and evaluated a full survey of judges and service staff of the Local, Regional and Higher Regional Courts of the three Länder in the spring of 2009.

The tasks which judges can assign to the service staff in the view of the respondents were summarised in a list. Ten pilot courts in Baden-Württemberg have been trialling the delegation of these tasks since April 2011, so that the proposals come "from practitioners for practitioners". Corresponding projects are running at the public prosecution offices and in the specialist courts.

Moreover, it is currently being examined whether tasks can also be assigned to senior judicial officers by judges and to service staff by senior judicial officers. This might, firstly, offer service staff a broader range of tasks, and compensate for activities removed. Secondly, assistance for judge/senior judicial officers could enable senior judicial officers to take on tasks from judges which do not fall within core judicial activities, ultimately also reducing burdens on the judges.

Hamburg:

There have been no major reforms of the legal system or reorganisations in the judicial field in the last two years.

### **Veillez indiquer les sources utilisées pour les réponses aux questions 46, 47, 48, 49 et 52**

Source regarding Questions 46 and 52:

Federal Office of Justice, staffing overviews of ordinary courts and the specialist jurisdictions 2010, as well as judges' statistics (version: 31 December 2010)

#### 3. 1. 3. Procureurs et personnel

**55) Nombre de procureurs au 31 décembre 2010 (veuillez fournir l'information en équivalent temps plein et pour des postes permanents effectivement occupés, auprès de tous les types de juridictions confondus – droit commun et spécialisées). Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP. Veuillez ajouter dans la boîte "commentaire" ci-dessous toute information utile à l'interprétation des données.**

	Total	Hommes	Femmes
Nombre total de procureurs (1 + 2 + 3)	5 245	3 093	2 152
1. Nombre de procureurs auprès des tribunaux de première instance	4 769	2 755	2 014
2. Nombre de procureurs auprès des cours d'appel (2ème instance)	375	263	112
3. Nombre de procureurs auprès des cours suprêmes	100	75	25

Commentaire :

The information relates to the number of job shares for public prosecutors. There are no absolute figures for the number of persons. The information on the job shares count a judge working full-time as 1. A judge working part-time is counted as the fraction of 1 which corresponds to the proportion of his/her working hours to full-time (e.g. 0.5 for a judge working half the usual number of hours).

**56) Nombre de chefs des ministères publics. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP. Veuillez ajouter dans la boîte "commentaire" ci-dessous toute information utile pour l'interprétation des données.**

	Total	Hommes	Femmes
Nombre total de chefs de ministères publics (1 + 2 + 3)	NA	NA	NA
1. Nombre de chefs de ministères publics auprès de tribunaux de première instance	NA	NA	NA
2. Nombre de chefs de ministères publics auprès des cours d'appel (2ème instance)	NA	NA	NA
3. Nombre de chefs de ministères publics auprès des cours suprêmes	NA	NA	NA

Commentaire :

The total number of heads of the public prosecution offices is at least the number of Regional Courts (116) plus the number of Higher Regional Courts (24) at which the chief public prosecution offices are located.

**57) D'autres personnes ont-elles des fonctions comparables à celles des procureurs ?**

Oui

Non

Nombre (en équivalent temps plein)  
935

**58) Si oui, veuillez préciser leurs noms et fonctions :**

Officials of the public prosecution office:

The office of the public prosecution office at the Local Courts can also be exercised by officials of the public prosecution office with a right of audience before the local courts (section 142 subs. 2 of the Courts Constitution Act). The jurisdiction of the officials of the public prosecution office does not encompass preparing public charges in local court proceedings in criminal matters falling under the jurisdiction of courts other than the local courts. In accordance with the Order regarding the Organisation and Service Operations of the Public Prosecution Offices (Anordnung über Organisation und Dienstbetrieb der Staatsanwaltschaft – OrgStA) issued by some Land administrations of justice, officials of the public prosecution office are only assigned criminal matters in which the criminal court judge rules, and then only the criminal matters designated in a list.

Trainee jurists:

Responsibility may be assigned to trainee jurists for discharging the duties of an official of the public prosecution office with a right of audience before the local courts and, in an individual case, for discharging the duties of a public prosecutor under the latter's supervision (section 142 subs. 3 of the Courts Constitution Act).

Civil party to criminal proceedings:

Under certain preconditions, some criminal offences can be prosecuted by aggrieved persons by means of a private charge without needing to first call on the public prosecution office. A private charge can also be filed by someone who is entitled to file a request to prosecute in addition to or in place of the aggrieved person.

Revenue authorities:

Tasks comparable to those of the public prosecution office are performed by the revenue authorities in the fiscal criminal proceedings: If the revenue authority conducts the investigation independently in accordance with section 386 subs. 2 of the Fiscal Code (AO), it has the same rights and obligations as the public prosecutor's office has in an investigation (section 399 subs. 1 of the Fiscal Code).

**59) Si oui, est-ce que leur nombre est inclus dans le nombre de procureurs que vous avez indiqué à la question 55 ?**

Oui

Non

**60) Nombre de personnels (non procureurs) rattachés au ministère public (si possible au 31 décembre 2010) (sans le nombre de personnels non juges, v. question 52) (répondre en équivalent temps plein et pour les postes permanents effectivement pourvus)**

Nombre  Oui 10 322

**C.2**

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile à l'interprétation des données indiquées dans ce chapitre
- les caractéristiques de votre système judiciaire et les réformes majeures mises en œuvre au cours des deux dernières années

**Veuillez indiquer la source des réponses aux questions 55, 56 et 60**

Federal Office of Justice:

re 55: judicial statistics (version: 31 December 2010) – information in job shares

re 55, 56, 57, 60: staffing overviews of the Länder on the staff of the public prosecution offices at the Regional Courts and on the staff of the public prosecution offices at the Higher Regional Courts in 2010 - information in job shares -, figures at federal level are only available re Question 55.

**3. 1. 4. Budget du tribunal et nouvelles technologies**

**61) Quelles instances possèdent des compétences budgétaires au sein des tribunaux ? Si "autre", veuillez le préciser dans la boîte "commentaire" ci-dessous.**

	Préparation du budget	Arbitrage et répartition du budget	Gestion quotidienne du budget	Evaluation et contrôle de l'utilisation du budget
Conseil d'administration	Non	Non	Non	Non
Président du tribunal	Oui	Oui	Oui	Oui
Directeur administratif du	Oui	Oui	Oui	Oui

tribunal				
Greffier en chef	Oui	Non	Oui	Non
Autre	Oui	Oui	Oui	Oui

Commentaire :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. Information for Bavaria is available on the individual jurisdictions, which diverges with regard to various items.

Bavaria

Labour and social courts:

The precise jurisdictions are defined in the respective business schedule of a court.

Other: The budget processing is as a rule a matter for civil servants of the executive level working in court administration.

Administrative courts:

Commissioners for the budget.

Brandenburg:

If a commissioner for the budget is appointed who is not the head of the court.

Bremen:

The court management is as a rule supported by a budget official.

Hamburg:

The responsibility for the planning, arbitration and allocation of the budget lies with the Authority for Justice and Equality as the competent ministerial level. It is carried out in close coordination with the courts.

The evaluation and verification of the use of the budget is carried out on the basis of the budget accounting by the Court of Audit and Parliament.

North Rhine-Westphalia:

Specially-commissioned staff of the court.

Saxony:

A budget commissioner is appointed for each court in accordance with section 9 of the Saxon Budget Code (SäHO) unless the Court President personally carries out the task. Individual tasks (cf. above table) of budget management can be transferred to other staff of the court by the Court President or the budget commissioner via the business schedule regardless of their function.

Saxony-Anhalt:

Other persons are the party empowered to issue orders and fund managers in the units.

**62) Pour l'assistance directe au travail du juge/du greffier, quelles sont les possibilités offertes par le système informatique existant dans les juridictions ?**

Traitement de texte	100% of courts
Base de données électronique pour la jurisprudence	100% of courts
Dossiers électroniques	-10% of courts
E-mail	100% of courts
Connexion internet	100% of courts

**63) Pour l'administration et la gestion, quelles sont les possibilités offertes par le système informatique existant dans les juridictions ?**

Enregistrement des affaires	100% of courts
Système d'information sur la gestion du tribunal	+50% of courts
Système d'information financière	100% of courts
Vidéoconférence	-50% of courts

**64) Pour la communication entre le tribunal et les parties, quelles sont les possibilités offertes par le système informatique existant dans les juridictions ?**

Formulaire électronique	+50% of courts
Site internet	100% of courts
Suivi électronique des affaires	100% of courts
Registres électroniques	100% of courts
Recouvrement électronique d'une petite créance	0 % of courts
Recouvrement électronique d'une	0 % of courts



créance non contestée	
Dépôt d'un recours depuis un poste informatique	-50% of courts
Vidéoconférence	-50% of courts
Autres moyens de communication électronique	100% of courts

**65) L'utilisation de la vidéoconférence dans les tribunaux (détails de la question 65). Veuillez indiquer dans la boîte "commentaire" ci-dessous toute précision sur le cadre juridique et le développement de la vidéoconférence dans votre pays.**

	65.1 En matière pénale, les tribunaux et les parquets ont-ils recours à la vidéoconférence pour des auditions de prévenus ou de témoins ?	65.2 Ces auditions par le juge / le procureur peuvent-elles avoir lieu dans les services de police ou/et les établissements pénitentiaires ?	65.3 Existe-t-il une législation spécifique sur les conditions d'utilisation de la vidéoconférence par les tribunaux ou les parquets, en particulier pour préserver les droits de la défense ?	65.4 La vidéoconférence est-elle utilisée en matière autre que pénale ?
	Oui	Oui	Oui	Oui

Commentaire :

All in all, the courts, public prosecution offices, prisons and the judicial administration have approx. 160 systems at their disposal. The number has increased considerably in recent years. Essentially, all major judicial locations are adequately equipped. It is also used in the administrative and finance courts.

The use of the systems is regulated in the respective codes of procedure. The basis for use in the civil and criminal proceedings is defined in section 247a of the Code of Criminal Procedure and section 128a the Code of Civil Procedure. There is now a considerable amount of case-law on the named provisions, including from the supreme courts.

Questioning of undercover investigators can be carried out in a secret location in criminal proceedings by disguising the voice and face.

Child victims and witnesses of violent crime are increasingly questioned in specially-equipped questioning rooms. These questioning rooms are for instance also used in custody cases, particularly if one parent is abroad.

The use of video conferencing has however not yet become implemented across the board in court practice. This is, firstly, because most courts, judicial authorities and law firms do not yet have the requisite equipment, but secondly also because of the codes of procedure requiring the consent of those concerned to the use of video conferencing.

The strict linking of the codes of procedure to the consent of those concerned is to be abolished by a Bill which is based on the Bundesrat initiative of Hesse to increase the use of video conferencing technology in court and public prosecution proceedings, and the use of video conferencing technology is to be largely placed at the duty-bound discretion of the court. This is also achieved for these jurisdictions by virtue of an amendment of section 128 a of the Code of Civil Procedure and via the reference provisions contained in the codes of procedure of the specialist jurisdictions. In addition, the provisions on interpreters and, in criminal proceedings, the provisions on the questioning of experts, accused persons and of the chair of the Bar, as well as of the defendant in questioning regarding a charge and the questioning of witnesses foregoing their personal presence have been newly regulated in the Courts Constitution Act. The Bundesrat has approved the draft, which has now been presented to the Bundestag. The Bill brings all the codes of procedure in line with the high-quality technology currently available, whilst at the same time setting the stage in normative terms for the future. The advantages of the intensified use of video conferencing technology in court and public prosecution office proceedings are plain to see:

Where the judicial administration provides this technology, above all lawyers, but also other parties to the proceedings are offered the opportunity, in suitable cases, to attend court proceedings without travelling from their own offices or from video conferencing studios provided by the judicial administrations. The little time required for all concerned and the court makes it easier to schedule oral hearings and discussion appointments, thus helping to accelerate proceedings and increase efficiency, not lastly among professional defence counsel.

The aspect of availability in time is of great importance with examinations, hearings, deliberation and questioning for the rapid processing of the proceedings and the more efficient employment of those concerned by the proceedings. The savings in travel expenses and reduced time spent will make the process cheaper overall. A further positive aspect can be seen in the possible reduction of prisoner transportation: The risk of prisoners escaping can be minimised by using video transmission technology; transport and surveillance become largely unnecessary.

The increased support of video conferencing at EU level is proving to be helpful. A corresponding proposal is also logical, given that the European Commission categorised the use of video conferencing as a vital pillar in eJustice efforts in Europe at the meeting held in the Slovenian Presidency.

The connection of the technical equipment via ISDN is currently being converted to IP in some Länder.

Increasing use is being made of the possibilities offered by video conferencing technology to reduce travel expenses and to accelerate workflows by the judicial administrations, including the use of desktop video conferencing.

### C.3

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre
- les caractéristiques de votre système judiciaire et les réformes majeures mises en œuvre au cours des deux dernières années

re Question 64: The electronic court and administration pigeon hole (EGVP). Faxing and e-mail (if not ruled out by opposing formal provisions).

The equipment with networked computers has taken place across-the-board. The hardware and software are being gradually renewed at intervals (refresh).

Specialist procedures have now been developed for almost all applications in the judiciary.

Preparations are currently being made for the introduction of electronic justice and the electronic file. A schedule has already been drawn up.

### 3. 2. Performance et évaluation

#### 3. 2. 1. Performance et évaluation

#### 66) Existe-t-il une institution centralisée responsable de la collecte de données statistiques concernant le fonctionnement des tribunaux et du système judiciaire ?

- Oui  
 Non

Si oui, veuillez préciser le nom et les coordonnées de cette institution:

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges with regard to the respective individually-stated jurisdictions: "No" was stated for Bavarian ordinary courts; "Yes" was stated for the Bavarian specialist jurisdictions. The other Federal Länder all answered "Yes".

Baden-Württemberg: Ministry of Justice Baden-Württemberg, Schillerplatz 4, 70173 Stuttgart  
 Bavaria: Ordinary courts: It should be pointed out in general terms that judicial business statistics are kept in the courts and public prosecution offices, with which statistical data on civil cases, family cases, criminal and regulatory fine proceedings, as well as public prosecution office investigation proceedings are recorded. The figures that are recorded permit evaluations to be carried out which however in our view are not to be considered as performance control within the meaning of Questions 66 to 69, 78, 79 and 83. Bavaria: Finance, administration, labour and social courts: Bavarian Land Office for Statistics and Data Processing <https://www.statistik.bayern.de/>.  
 Berlin: Senate Administration of Justice, division I B (e-mail: : statistik@senjust.berlin.de). Brandenburg: Ministry of Justice of the Land Brandenburg, Heinrich-Mann-Allee 107, 14473 Potsdam. Bremen: Senator of Justice and Constitution, Richtweg 16/22, 28195 Bremen. Hamburg: <http://www.statistik-nord.de>. Hesse: Hesse Land Statistical Office in Wiesbaden. Lower Saxony: Lower Saxony Land Agency for Statistics and Communication Technology (LSKN) North Rhine-Westphalia: All Land administrations of justice rely on authoritative, topical data on proceedings and caseloads; verification of the rulings handed down is prohibited here for constitutional reasons. The Ministry of Justice of North Rhine-Westphalia is supported in carrying out its tasks by a data evaluation centre at Hamm Higher Regional Court, which at the same time also has to perform local tasks within the remit of the judiciary. Saarland: Ministry of Justice. Saxony: e.g. legal aid, type of proceedings, type of resolution, number of (main) hearings. Saxony-Anhalt: Land Statistical Office of Saxony-Anhalt, Merseburger Str. 2, 06110 Halle (Saale). Schleswig-Holstein: Statistical Office for Hamburg and Schleswig-Holstein ([www.statistik-nord.de](http://www.statistik-nord.de)). Federation: Federal Statistical Office, Wiesbaden ([www.destatis.de](http://www.destatis.de)), [rechtspflegestatistik@destatis.de](mailto:rechtspflegestatistik@destatis.de). cf. also C 4 below

#### 67) Les tribunaux individuels doivent-ils établir un rapport annuel d'activités (qui présente par exemple le nombre d'affaires traitées, d'affaires en instance, le nombre de juges et de personnels administratifs, les objectifs à atteindre et un bilan d'évaluation) ?

- Oui  
 Non

#### 68) Existe-t-il dans les tribunaux un système de suivi régulier des activités des tribunaux concernant:

-----  
 Le système de suivi des activités vise à contrôler l'activité quotidienne des tribunaux (en particulier la production des tribunaux) notamment au travers de collectes de données et d'analyses statistiques (v. aussi les questions 80 et 81).

- le nombre de nouvelles affaires ?  
 le nombre de décisions rendues ?

- le nombre d'affaires faisant l'objet d'un renvoi ?
- la durée des procédures (délais)?
- autre ?

Si autre, veuillez préciser :

\*) Not including information from Mecklenburg-Western Pomerania, Thuringia, Rhineland-Palatinate, Saarland and Schleswig-Holstein.

Bavaria:

labour and social courts:

Statistical collections according to the nationally-uniform order.

Administrative courts:

e.g. verification of the deadlines for the drafting of judgments.

Berlin:

Federal uniform statistics.

Brandenburg:

Figures are also collected on the stock of proceedings at the end of the period under report and on the changes in the number of new cases, with proceedings that have been dealt with and the numbers in comparison with the previous year/previous quarter, as well as on the ratio of finished proceedings as against new cases.

Hamburg:

In addition to the above data, statistics on the nature of resolution are kept (e.g. in civil cases: dealt with by contentious judgment/by acknowledgement/by settlement, etc.).

Within self-administration, the verification of the court's activities is a matter of the Presidiums of the courts, the Presidents of the courts, as well as the Land administration of justice. Judicial independence and the specialist independence of senior judicial officers form constitutional and legal boundaries which naturally are always to be respected.

Hesse:

Allocated among staff (caseload quota).

North Rhine-Westphalia:

cf. also answer re Question 66.

Saxony-Anhalt:

Finance benchmarks, e.g. item costs; standardised deployment of person hours related to product.

In other respects:

Provision of the business statistics at the courts for an overall evaluation by all units carrying out service supervision. The compilation of the individual items of data available differs for the individual areas of the proceedings.

Federation:

The collections of proceedings stated at Question 66 cover for each procedure included the number of incoming cases, the nature of the proceedings, the nature of the approach taken and the length of the proceedings. Moreover, information is collected on further characteristics of the proceedings (legal aid, value at dispute, field, appeals, etc.). All this information can be related to the evaluation. The regular evaluations can be found in the publications of the Federal Statistical Office. Because these are manual statistics, the data of the business overviews on the case-load as a rule do not contain any further information, particularly not on the duration of the proceedings.

**69) Existe-t-il un système d'évaluation régulière de l'activité (en termes de performance et de rendement) de chaque tribunal ?**

**Le système d'évaluation concerne la performance des systèmes judiciaires, incluant une vision à plus long terme et utilisant des indicateurs et des objectifs. Cette évaluation peut avoir une nature plus qualitative (v. questions 69-77). Elle ne concerne pas l'évaluation globale du (bon) fonctionnement des tribunaux (v. question 82).**

- Oui
- Non

Veuillez préciser :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BB, HB, HE, ST stated "Yes"; the Länder answered "No" in other respects. The information for Bavaria differs with the respectively individually-stated jurisdictions: "Yes" was stated for the Bavarian Finance courts, "No" for the other Bavarian jurisdictions.

Bavaria

Finance courts:

Nationwide statistics ("Saxonstatistik").

Brandenburg:

The evaluation only covers the figures stated on incoming cases, cases dealt with, length of the proceedings, number of court staff working, etc., which may be used as indicators for evaluating the performance and/or the quality standard of the courts.

Bremen:

Benchmarking by code numbers.

Hesse:

Judicial statistics with comparison at Länder level.

Lower Saxony:

A regular check on the activities of the courts and public prosecution offices is carried out by service supervision. A system for a uniform view of the court activities is gradually being established in the shape of "JuMIS". A similar system already is already in operation ("InforMIS") at the public prosecution offices.

A qualitative evaluation of court activities is not possible with the introduced statistics, and is also not planned, given the constitutionally-guaranteed judicial independence.

North Rhine-Westphalia:

There is an extensive system of internal business tests; furthermore, there are "management information systems" in some areas with management-relevant statistical core data on incomings, durations of sets of proceedings and numbers of cases dealt with. Verification of the rulings handed down is also prohibited in this respect for court constitutional reasons; cf. in this respect answer re Question 66.

Rhineland-Palatinate:

Data are collected, but not evaluated.

Saarland:

Such an evaluation system would in our view not be compatible with judicial independence, which is protected by the Basic Law.

Saxony-Anhalt:

The tool of operative and strategic management of the courts is the management report. This has been orientated in line with the addressee – relating to the special information interests of the management of the authorities, and, within the meaning of the balanced scorecard approach, contains both monetary and process- and customer-orientated code numbers on the basis of judicial products. In a further aggregation level, these code numbers are introduced into the budget plan in output-orientated budgeting on the basis of judicial products/services, and support strategic political planning.

The unit comparison was defined as a central criterion in the conceptual (content) design of the management reports. According to this approach, firstly, a comparison is carried out of the individual unit with the average of all units and, secondly, in compliance with the basic concept of benchmarking, with the average of the best three units.

Concrete measures are agreed with calculable target values in agreed goals that are established between the Ministry of Finance and the Ministry of Justice and Equality, and are shaped within the units respectively budgeted. The foundation for this is formed amongst other things by the indicators of the management reports.

The following applies all over Germany at the level of the Federal Länder:

The statistics collected serve the purposes of the personnel requirements calculation of the judiciary according to "PEBB§Y" in each Federal Land. On the basis of the caseload, an evaluation is carried out according to nationally-uniform base figures. This demand is then compared to the posts and to the average staff deployment in the workload calculation. The judicial activities are depicted by products in "PEBB§Y". Each product has a specific base number expressed in minutes. The performance and output of each court can be established by this system at any time, making it possible to compare one court with another.

**70) Concernant l'activité des tribunaux, avez-vous défini des indicateurs de performance et de qualité (si non, veuillez passer à la question 72) :**

- Oui  
 Non

**71) Veuillez préciser les 4 principaux indicateurs de performance et de qualité qui ont été définis :**

- nouvelles affaires  
 durée des procédures (délais)  
 affaires terminées  
 affaires pendantes et stocks d'affaires

- productivité des juges et des personnels des tribunaux
- pourcentage d'affaires traitées par un juge unique
- exécution des décisions pénales
- satisfaction du personnel des tribunaux
- satisfaction des usagers (au regard des services rendus par les tribunaux)
- qualités judiciaire et organisationnelle des tribunaux
- coûts des procédures judiciaires
- autre

Si autre, veuillez préciser :

**72) Existe-t-il des objectifs quantitatifs de performance (par exemple un nombre d'affaires à traiter par mois) pour chaque juge ?**

- Oui
- Non

**73) Veuillez préciser qui fixe les objectifs individuels des juges :**

- pouvoir exécutif (par exemple Ministère de la justice)
- pouvoir législatif
- pouvoir judiciaire (par exemple un Conseil supérieur de la Magistrature ou une instance supérieure)
- Autre

Si autre, veuillez préciser :

**74) Existe-t-il des objectifs de performance au niveau des tribunaux (si non, veuillez passer à la question 77)?**

- Oui
- Non

**75) Veuillez préciser qui fixe les objectifs des tribunaux :**

- pouvoir exécutif (par exemple Ministère de la justice)
- pouvoir législatif
- pouvoir judiciaire (par exemple un Conseil supérieur de la Magistrature ou une instance supérieure)
- autre

Si autre, veuillez préciser :

**76) Veuillez préciser les principaux objectifs appliqués aux tribunaux:**

**77) Quelle est l'autorité chargée d'évaluer la performance des tribunaux (v. questions 69 à 76) (réponses multiples possible):**

- Conseil Supérieur de la Magistrature
- Ministère de la justice
- organe d'inspection
- Cour Suprême
- organe d'audit extérieur
- autre

Si autre, veuillez préciser :

Note: An evaluation within the meaning of section 3.5 is understood as a provisional estimate of the judicial procedures. Because of the constitutionally-guaranteed independence of the judiciary, it is not permissible to attempt to evaluate or influence judicial activities.

**78) Existe-t-il des standards de qualité définis pour l'ensemble du système judiciaire (existe-t-il un système de qualité et/ou une politique de qualité de la justice) ?**

- Oui  
 Non

Si oui, veuillez préciser :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BB, NI and SH answered "Yes"; the other Federal Länder stated "No".

Baden-Württemberg:

The performance levels achieved by the courts are compared with regard to the number of sets of proceedings and their durations. Benchmarks are formed as to the performance of the courts, and these are compared at Land level.

Brandenburg:

Quality assurance in the judiciary is the part of quality management which is to guarantee that statutory quality requirements set by the judiciary itself are met, as well as those demanded by the plaintiff, whilst making optimum use of resources. A large number of strategies are currently being trialled and implemented in the Länder for quality assurance in the judiciary. Tools of quality assurance are the cost and performance accounting, judicial controlling, staff cost budgeting, benchmark proceedings, the Balanced Scorecard, the EFQM model, various tools of personnel and organisation development, personnel requirements calculation, business process optimisation, questionnaires among lawyers, citizens and staff, as well as evaluation tools both for the individual judicial and public prosecution work, and for the courts and public prosecution offices as organisational units. The increased use of modern technology (e.g. the Internet) enables the judiciary to reach a large number of citizens, and hence to offer to plaintiff an optimum service (register queries, downloads of information and applications or court rulings, information regarding addresses and directions, etc.). Also the ongoing expansion of electronic justice offers new possibilities to improve the quality of the judiciary with regard to the performance characteristics of proximity to citizens and service to citizens.

These developments and models are however not uniform in all Länder. This relates both to the methods used and to the intensity with which they are trialled or used.

Lower Saxony:

There is a quality strategy which was developed from the surveys "Local Courts in the performance comparison (AGIL)" and "Regional Courts in a comparison (LiVe)". This is based on the presumption that a comparison can be made between the courts by the collection of data. The comparison is followed by an analysis of the reasons why better figures are achieved at one court location than at another. This is then discussed in specialist groups, and measures are developed which can promote promising methods for dealing with tasks at all court locations. The surveys serve not to evaluate individual staff, but are intended to uncover performance-enhancing structures which can then be transferred. This quality management concept is carried out in cooperation with the judicial councils and the personnel representations.

Schleswig-Holstein:

A blanket quality management system has been introduced in the courts and public prosecution offices of the Land Schleswig-Holstein. The subject of the quality management can be all fields that are amenable to court administration. Judicial independence and the de facto independence of the senior judicial officers form constitutional and statutory boundaries which are always to be complied with as a matter of course. The quality objectives are defined by the court management itself in mission statements.

**79) Existe-t-il des personnels spécialisés dans les tribunaux responsables de ces standards de qualité ?**

- Oui  
 Non

**80) Existe-t-il une procédure d'évaluation permettant de mesurer le stock d'affaires en instance et de repérer les affaires non traitées dans un délai raisonnable :**

- en matière civile  
 en matière pénale  
 en matière administrative

**81) Disposez-vous d'une procédure d'évaluation permettant de mesurer les temps morts durant les procédures judiciaires ?**

- Oui

Non

Si oui, veuillez préciser :

**82) Existe-t-il un système d'évaluation globale du (bon) fonctionnement des tribunaux basé sur un plan d'évaluation (calendrier de visites) convenu a priori?**  
-----

**Cette question ne concerne pas l'évaluation spécifique d'indicateurs de performance.**

Oui

Non

Veuillez préciser la fréquence de l'évaluation:

**83) Existe-t-il une procédure régulière de suivi et d'évaluation de l'activité du ministère public ?**

Oui

Non

Si oui, veuillez préciser:

\*) Not including information from Mecklenburg-Western Pomerania, Thuringia and Lower Saxony. BW, BE, BB, HB, HE, NW, ST, SN stated "Yes"; the other Federal Länder stated "No".

**C.4**

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre  
- les caractéristiques du système de suivi et d'évaluation des tribunaux**

Re question 67

not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BE, BB, NI, NW, SH stated "Yes"; the Länder answered "No" in other respects. The information for Bavaria diverges with regard to the respective individually-stated jurisdictions: the answer "Yes" was given for the Bavarian finance and administrative courts, for the Bavarian labour, social and ordinary courts, the answer was "No".

Re question 79

not including information from Mecklenburg-Western Pomerania and Thuringia. Only BW and BB answered "Yes"; "No" was stated in other respects.

Re Question 83:

There is no regular procedure for monitoring and evaluating the activities of the public prosecution offices within the meaning of a normed, and institutionalised procedure with a content-specific testing regime that is to be repeated at certain intervals. The activities of the public prosecution offices are however subject to supervision and direction in accordance with section 147 of the Courts Constitution Act

1 of the Federal Minister of Justice in respect of the Federal Prosecutor General and the federal prosecutors; 2. of the Land agency for the administration of justice in respect of all the officials of the public prosecution office of the Land concerned; 3. of the highest-ranking official of the public prosecution office at the higher regional courts and the regional courts in respect of all the officials of the public prosecution office of the given court's district.

Supervision encompasses how business is dealt with in formal and de facto terms, and is given concrete form in orders of the supreme service supervisory authorities, reports of the public prosecution offices particularly in significant matters to the supreme service supervisory authorities, the implementation of business tests, including the evaluation of business statistics and case-files in particular by the first civil servant of the public prosecution office at the Higher Regional Courts and the Regional Courts, and in the evaluation of the results of the business tests by the supreme service supervisory authorities.

Baden-Württemberg:

The chief public prosecution offices regularly carry out a review of the public prosecution offices in accordance with No. 10 of the Order regarding the Organisation and Service Operations of the Public Prosecution Offices (Anordnung über Organisation und Dienstbetrieb der Staatsanwaltschaft – OrgStA). These obtain for themselves an overview of the state and the development of the service circumstances in the respective public prosecution office, individual investigation proceedings also being subject to checks.

Berlin:

Public prosecution office statistics.

Brandenburg:

Business tests are carried out at intervals of two years in the public prosecution offices of the Land by the chief public prosecutor of the Land Brandenburg. In addition to the evaluation of the business tests carried out by the chief public prosecutor, the result is also passed to the Ministry of Justice for evaluation.

Bremen:

Reports on major investigation proceedings (BeStra).

Hesse:

Examination of the progress of each set of proceedings after six months.

North Rhine-Westphalia:

Regular business tests are implemented at the public prosecution offices.

Saxony:

Yes, with regard to "regular proceedings for testing" within the meaning of Question 68 (incoming, dealt with, cases pending, duration of proceedings, etc.); No with regard to "evaluation" within the meaning of Question 69; but there is no single procedure to test and evaluate the activities of the public prosecution offices.

Saxony-Anhalt:

Management report, cf. on this the information regarding the courts.

In other respects: evaluation of business statistics in the ongoing performance of service supervision, business tests (cf. also Question 68 for courts)

Lower Saxony:

Re Question 67: The statistics stated at Question 66 are recorded in all courts and public prosecution offices.

North Rhine-Westphalia:

Re Question 67: for comparisons cf. answer re Question 66.

Rhineland-Palatinate:

re Questions 66-68: The data are collected to record the "as is" state, but no activity reports are requested; no controlling takes place.

Saxony-Anhalt:

The information regarding Questions 68 to 77 and 80 to 82 relates to the ordinary courts.

Federation:

The Conference of Ministers of Justice launched a nationwide Committee for Judicial Statistics for structured data collection and to ensure comparability back in 1965. The standing chair is held by the Bavarian Land administration of justice. The voting members of the Committee include all Land administrations of justice. Representatives of the Federal Office of Justice, of the Federal Statistical Office and of the Land Statistical Offices of Bavaria, Baden Württemberg, Lower Saxony and North Rhine-Westphalia are invited as guests.

The Committee is responsible for introducing and revising the judicial business statistics. These are surveys coordinated nationwide of statistical data of the ordinary courts, of the public prosecution offices and of the special courts. The data collected from the statistics are used for allocating business, personnel requirements calculation, service supervision, Bills, verifying efficiency after legal amendments and public relations work. Against this background, it is necessary for the Committee to regularly verify the content of the justice business statistics and adjust them in line with the above concerns and with current information requirements. This hence simultaneously ensures that the statistical surveys are comparable at federal level.

The judicial statistics are nationally uniform. The following are kept as surveys of sets of proceedings:

the survey of statistical data in criminal and criminal fine cases (StP/OWi statistics),

the survey of statistical data in public prosecution offices and lower prosecution authorities (Amtsanwaltschaften) (StA statistics),

the survey of statistical data in family cases (F statistics),

the survey of statistical data in civil cases (ZP statistics),

the survey of statistical data in the administrative courts (Administrative Courts statistics),

the survey of statistical data in the finance courts (FG statistics),

the survey of statistical data in the social courts (SG statistics), and

the survey of statistical data in the labour courts (labour courts statistics).

The survey documents are completed by the courts and public prosecution offices. The evaluation is carried out centrally by the respective Land Statistical Office. The Federal Statistical Office summarises the principal results of the statistics and publishes them annually in Fachserie 10, Reihen 2.1 to 2.8.

In addition to the abovementioned surveys, the case-load of voluntary jurisdiction is collected in the nationwide business overview. The Länder compile the results for the Land in question. The Federal Office of Justice summarises the Länder results at federal level.

All courts and public prosecution offices prepare nationwide personnel overviews. In these, as a fixed-date survey as per 31 December the personnel present is listed by career path, gender and job share. Additionally, personnel deployment in the major branches of the justice system is collected as an average survey. The annual results are compiled by the administrations of justice of the Länder. The Federal Office of Justice creates an overall view of the principal results of the Länder overviews.



## 4. Procès équitable

### 4. 1. Principes

#### 4. 1. 1. Informations générales

**84) Pourcentage de jugements par défaut de première instance en matière pénale (affaires dans lesquels le suspect n'est ni présent ni représenté par un professionnel juridique durant l'audience) ?**

NAP

**85) Existe-t-il une procédure permettant la récusation effective d'un juge si une partie estime qu'il n'est pas impartial ?**

- Oui  
 Non

Si possible, nombre de récusations qui ont abouti (en une année):

**86) Nombre d'affaires relatives à l'Article 6 de la Convention Européenne des Droits de l'Homme (durée et non-exécution). Si la donnée n'est pas disponible, veuillez indiquer NA.**

	Affaires déclarées irrecevables par la Cour	Règlements amiables	Jugements constatant une violation	Jugements constatant une non violation
Procédures civiles - Article 6§1 (durée)	NA	1	17	0
Procédures civiles - Article 6§1 (non-exécution)	NA	0	0	0
Procédures pénales - Article 6§1 (durée)	NA	0	1	0

**Veuillez préciser les sources :**

„Analysis of statistics 2011“ of the European Court of Human Rights;  
 Report of the German Federal Government on the Case-Law of the European Court of Human Rights and on the Execution of its Judgments in cases against the Federal Republic of Germany in 2011

#### D.1

**Vous pouvez indiquer ci-dessous tout commentaire utile à l'interprétation des données indiquées dans ce chapitre**

North Rhine-Westphalia:

Re Question 85: Yes, however information cannot be provided on the number of successful rejections because of a lack of corresponding statistical collections.

The figures re No. 86 relate to proceedings against the Federal Republic of Germany before the European Court of Human Rights in 2011. The precise number of applications declared inadmissible focussing on Article 6 is not known. The ECHR declared a total of 1,095 applications in proceedings against Germany inadmissible in 2011 or removed them from its register. Only seven of these rulings were served on the Federal Government. Most rulings of inadmissibility in cases related to Germany are carried out without the involvement of the Federal Government and are not reasoned in detail, nor are they published. Hence, no information is provided on the number of cases declared by the Court to be inadmissible which relate to Article 6 of the ECHR.

### 4. 2. Durée des procédures

#### 4. 2. 1. Généralités

**87) Existe-t-il des procédures spécifiques pour les affaires urgentes :**

- en matière civile ?  
 en matière pénale ?  
 en matière administrative ?  
 il n'y a pas de procédure spécifique

Si oui, veuillez préciser:

Civil cases:

Arrest and injunction in accordance with sections 926 to 945 of the Code of Civil Procedure

Criminal cases:

The principle of acceleration applies to each set of criminal proceedings.

Administrative cases:

Emergency rulings in the injunction proceedings

### 88) Existe-t-il des procédures simplifiées :

- en matière civile (petits litiges) ?
- en matière pénale (petites infractions) ?
- en matière administrative ?
- il n'y a pas de procédure simplifiée

Si oui, veuillez préciser:

Civil cases:

Proceedings in accordance with section 495a of the Code of Civil Procedure with a value at dispute of up to € 600; proceedings for small claims in accordance with Regulation (EC) No 861/2007

Criminal cases:

Proceedings with penal orders

In proceedings before the criminal court judge and in proceedings which belong to the jurisdiction of the court with lay judges, on written application of the public prosecution office the legal consequences of the offence with misdemeanours may be settled by a written penal order without a main hearing (not admissible when criminal law relating to young people is applied to juveniles and adolescents). The public prosecution office lodges such an application if it does not consider a main hearing to be necessary according to the outcome of the investigations. The application is to target specific legal consequences. It serves to prefer public charges.

Only the following legal consequences of the offence, solely or together, may be imposed by penal order:

1. warning with sentence reserved, a driving ban, forfeiture, confiscation, destroying or making an item unusable, announcement of the decision, and imposition of a regulatory fine against a legal person or an association,
2. withdrawal of permission to drive, where the bar does not exceed two years, as well as
3. dispensing with punishment.

Where the indicted accused has defence counsel, imprisonment not exceeding one year may also be imposed, provided its execution is suspended on probation.

In case of an admissible objection being lodged in good time, the main hearing is scheduled.

Accelerated proceedings

In the proceedings before the criminal court judge and the court with lay judges the public prosecution office makes in writing or orally the application for a ruling in accelerated proceedings if the case is suited for an immediate hearing because the facts are simple or the evidence is unambiguous. No greater penalty than imprisonment of one year or a measure of reform and prevention may be imposed in such proceedings. The deprivation of the right to drive is permissible. Accelerated proceedings are not permissible against juveniles.

Simplified youth proceedings

In the simplified youth proceedings against juveniles, in the interest of simplification and accelerated proceedings, as well as proceedings suited to young people, it is permissible to deviate from the general procedural provisions if this does not impair the search for the truth and only sanctions below youth custody are anticipated.

Administrative cases:

The court can rule by court order without an oral hearing if the case does not show any particular difficulties and the facts are clarified (section 84 of the Code of Administrative Court Procedure).

### 89) Les tribunaux et les avocats ont-ils la possibilité de conclure des accords sur les modalités de traitement des affaires (présentation des dossiers, fixation des délais accordés aux avocats pour soumettre leurs conclusions et des dates d'audience) ?

- Oui
- Non

Si oui, veuillez préciser :

**Criminal cases:**

The court can agree with those concerned by the proceedings regarding the continuation and the outcome of the proceedings in suitable cases. The obligation of official investigations remains unaffected.

The agreement may only relate to the legal consequences which may form the content of the judgment and of the concomitant orders, other procedural measures in the underlying trial proceedings, as well as the procedural conduct of the parties to the proceedings. An element of any agreement is to be a confession. The guilty verdict, as well as measures of reform and prevention, may not be the subject of an agreement.

#### 4. 2. 2. La gestion des flux d'affaires et la durée des procédures judiciaires

**90) Note:**

**Les correspondants nationaux sont invités à faire particulièrement attention à la qualité des réponses aux questions 91 à 102 concernant la gestion des flux d'affaires et la durée des procédures judiciaires. La CEPEJ a convenu que les données correspondantes ne seront traitées et publiées que dans la mesure où un nombre significatif d'Etats membres – tenant compte des données présentées dans le précédent rapport – y aura répondu, permettant une comparaison utile entre les systèmes.**

**91) Tribunaux de 1ère instance : nombre total d'affaires "autres que pénales". Si la donnée n'est pas disponible, indiquer NA. Si la situation n'est pas applicable dans votre pays, indiquer NAP.**

**Note 1: les affaires des catégories 3 à 5 (exécution, registres foncier et du commerce) doivent être présentées séparément dans le tableau. Les affaires de la catégorie 6 (administratives) doivent aussi être mentionnées séparément pour les pays disposant de tribunaux spécialisés, ayant des procédures spécifiques de droit administratif ou capables de distinguer affaires administratives et affaires civiles.**

**Note 2: vérifier la cohérence horizontale et verticale des données fournies. La cohérence horizontale des données signifie: "(affaires pendantes au 1er janvier 2010 + nouvelles affaires) – affaires terminées" doit correspondre au nombre d'affaires pendantes au 31.12.2010. La cohérence verticale des données signifie que la somme des catégories 1 à 7 doit correspondre au total des affaires "autres que pénales".**

	Affaires pendantes au 1 janvier 2010	Nouvelles affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires "autres que pénales" (1+2+3+4+5+6+7)*	3 248 143	15 069 925	10 175 609	3 660 699
1. Affaires civiles (et commerciales) contentieuses (si possible sans les affaires administratives, v. catégorie 6)*	803 757	1 581 762	1 586 654	798 865
2. Affaires civiles (et commerciales) non contentieuses, par exemple des créances incontestées, de requêtes en changement de nom, etc. (si possible sans les affaires administratives ; sans les affaires relatives à l'exécution et/ou à un registre et/ou autres affaires, v. catégories 3-7)*	NA	NA	NA	NA
3. Affaires relatives à l'exécution	NA	NA	3 183 807	NA
4. Affaires relatives au registre foncier**	NA	NA	5 832 858	NA
5. Affaires relatives au registre du commerce**	NA	NA	580 801	NA
6. Affaires administratives (contentieuses et non contentieuses)	658 466	693 913	668 664	683 715
7. Autres affaires (par exemple affaires relatives au registre d'insolvabilité)	1 785 920	1 587 688	1 489 900	1 883 708

**92) Si les tribunaux traitent des "affaires civiles (et commerciales) non contentieuses", veuillez indiquer les catégories incluses :**

The value entered was calculated by deducting the contentious judgments from of all sets of proceedings that were resolved before the Local and the Regional Court in civil cases (not including those passed on within the court). Those sets of proceedings that are resolved other than by contentious judgment were particularly resolved by default, acknowledgement or waiver judgments (369,185), settlements (259,591), withdrawal of the charge or of the motion (182,384), staying of the proceedings or non-pursuance (73,392) and orders in accordance with section 91a of the Code of Civil Procedure (53,604).

**93) Si "autres affaires", veuillez indiquer les catégories incluses :**

This includes family-court jurisdiction, labour courts and guardianship and custodianship courts. The figures do not include 1,983,931 new legal matters related to registry office cases, declarations of death, inheritance cases, custody, agriculture, legal aid, deposit cases, public notice and insolvency proceedings with regard to which resolution or the number of cases pending at the beginning and at the end of the year are not recorded.

**94) Tribunaux de 1ère instance : nombre d'affaires pénales. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

**Note : Veuillez vérifier que les données fournies sont cohérentes (horizontalement et verticalement). La cohérence horizontale des données signifie que : "(affaires pendantes au 1er janvier 2010 + nouvelles affaires) – affaires terminées" doit correspondre au nombre d'affaires pendantes au 31 décembre 2010. La cohérence verticale des données signifie que la somme des catégories 8 et 9 en matière pénale doit correspondre au nombre total d'affaires pénales.**

	Affaires pendantes au 1 janvier 2010	Nouvelles affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires pénales (8+9)	353 672	1 181 995	1 196 095	339 572
8. Affaires pénales (infractions graves)	253 504	790 535	804 053	239 986
9. Petites infractions	100 168	391 460	392 042	99 586

**95) La classification entre affaires pénales graves et petites infractions peut être difficile. Certains pays peuvent connaître d'autres voies de traitement des petites infractions (par exemple par la procédure administrative).**

**Veuillez indiquer, si possible, les catégories d'affaires comprises dans la catégorie infractions graves et les affaires à inclure dans la catégorie petites infractions :**

The category "severe criminal cases" (line 8) includes proceedings in accordance with the Criminal Code and ancillary criminal laws. The category "minor criminal cases" (line 9) includes the regulatory offence proceedings pursued by the administrative authorities.

**96) Commentaires relatifs aux questions 91 à 95. Vous pouvez indiquer par exemple une situation particulière dans votre pays, expliquer vos réponses NA ou NAP ou expliquer le calcul du total d'affaires « autres que pénales » ou la différence au niveau de la cohérence horizontale etc.**

re Question 91:

\*) Not shown are 1,762,104 legal matters dealt with regarding Labour Court payment demand proceedings and legal advice aid cases on which new cases, cases pending at the beginning of the year and those at the end of the year are not covered.

**97) Tribunaux de 2ème instance (appel) : Nombre total d'affaires « autres que pénales ». Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

**Note: le nombre total d'affaires « autres que pénales » inclut tous les catégories d'affaires présentés (chiffre 1 à 7).**

	Affaires pendantes au 1 janvier 2010	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires "autres que pénales" (1 + 2 + 3 + 4 + 5 + 6 + 7)	NA	NA	202 419	NA
1. Affaires civiles (et commerciales) contentieuses (si possible sans les affaires administratives, v. catégorie 6)*	NA	NA	31 167	NA
2. Affaires civiles (et commerciales) non contentieuses, par exemple des créances incontestées, de requêtes en changement de nom, etc. (si possible sans les affaires administratives ; sans les affaires relatives à l'exécution et/ou à un registre et/ou autres affaires, v. catégories 3-7)*	NA	NA	79 430	NA
3. Affaires relatives à l'exécution	NA	NA	NA	NA
4. Affaires relatives au registre foncier	NA	NA	NA	NA
5. Affaires relatives au registre du commerce	NA	NA	NA	NA
6. Affaires administratives (contentieuses et non	48 524	41 727	41 057	49 194

contentieuses)				
7. Autres affaires (par exemple affaires relatives au registre d'insolvabilité)	21 427	52 077	50 765	22 739

**98) Tribunaux de 2ème instance (appel) : Nombre total d'affaires pénales. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Affaires pendantes au 1 janvier 2010	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires pénales (8+9)	20 787	68 684	68 837	20 634
8. Affaires pénales (infractions graves)	20 053	57 888	58 074	19 867
9. Petites infractions	734	10 796	10 763	767

Commentaire :

The category "severe criminal cases" (line 8) includes proceedings in accordance with the Criminal Code and ancillary criminal laws. The category "minor criminal cases" (line 9) includes the regulatory offence proceedings pursued by the administrative authorities.

**99) Cours suprêmes : nombre total d'affaires "autres que pénales". Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

**Note: le nombre total d'affaires « autres que pénales » inclut tous les catégories d'affaires présentés (chiffre 1 à 7).**

	Affaires pendantes au 1 janvier 2010	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires "autres que pénales" (1 + 2 + 3 + 4 + 5 + 6 + 7)	9 560	12 812	13 506	8 866
1. Affaires civiles (et commerciales) contentieuses (si possible sans les affaires administratives, v. catégorie 6)	NA	NA	784	NA
2. Affaires civiles (et commerciales) non contentieuses, par exemple des créances incontestées, de requêtes en changement de nom, etc. (si possible sans les affaires administratives ; sans les affaires relatives à l'exécution et/ou à un registre et/ou autres affaires, v. catégories 3-7)	NA	NA	2 608	NA
3. Affaires relatives à l'exécution	NA	NA	NA	NA
4. Affaires relatives au registre foncier	NA	NA	NA	NA
5. Affaires relatives au registre du commerce	NA	NA	NA	NA
6. Affaires administratives (contentieuses et non contentieuses)	4 240	7 232	7 534	3 938
7. Autres affaires (par exemple affaires relatives au registre d'insolvabilité)	1 673	2 401	2 580	1 494

**100) Cours suprêmes : Nombre total d'affaires pénales. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Affaires pendantes au 1 janvier 2010	Nouvelles d'affaires	Affaires terminées	Affaires pendantes au 31 décembre 2010
Nombre total d'affaires pénales (8+9)	554	3 534	3 584	504
8. Affaires pénales (infractions graves)	554	3 530	3 583	501
9. Petites infractions	0	4	1	3

Commentaire :

1) The category "severe criminal cases" (line 8) includes the proceedings in accordance with the Criminal Code and ancillary criminal laws.

The category "minor criminal cases" (line 9) includes the regulatory offence proceedings pursued by the administrative authorities.

2) Total number of criminal law rulings of the Federal Court of Justice in 2010, including submission and regulatory offence cases in accordance with the Act on Regulatory Offences (OWiG)

3) Overview of the cases in the criminal senates of the Federal Court of Justice in 2010 columns 22, 45a, 58 in regulatory offences in accordance with the Act Against Restraints of Competition (GWB) and the Energy Act (EnWG)

**101) Nombre d'affaires de divorces contentieux, licenciements, vols avec violence et homicides volontaires reçues et traitées par les tribunaux de 1ère instance. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Affaires pendantes au 1er janvier 2010	Affaires nouvelles	Affaires terminées	Affaires pendantes au 31 décembre 2010
Divorces contentieux	NA	NA	189 015	NA
Licenciements	NA	NA	172 015	NA
Vols avec violence	NA	NA	7 381	NA
Homicides volontaires	NA	NA	798	NA

**102) Durée moyenne des procédures, en jours (à partir de la date de saisine du tribunal). Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

**[La durée moyenne des procédures est calculée à partir de l'introduction du recours jusqu'au prononcé du jugement, sans tenir compte de la phase d'exécution. Nouveau : elle concerne la première, la deuxième et la troisième instance.]**

	% des décisions ayant fait l'objet d'un appel	% d'affaires pendantes de plus de 3 ans	Durée moyenne en 1ère instance (en jours)	Durée moyenne en 2ème instance (en jours)	Durée moyenne en 3ème instance (en jours)	Durée moyenne de la procédure complète (en jours)
Divorces contentieux	0.46	4.9 (1)	310	NA	NA	NA
Licenciements	3.77	2.1 (1)	96	4.5	NA	NA
Vols avec violence	NA	NA	NA	NA	NA	NA
Homicides volontaires	NA	NA	NA	NA	NA	NA

**103) Le cas échéant, veuillez préciser les procédures propres au divorce (contentieux et non contentieux) :**

The family court has exclusive jurisdiction for marriage cases and other family cases. The family court is a department of the Local Court.

Anyone wishing to bring a marriage case to court, that is anyone wishing to divorce, must be represented by a solicitor. Also the respondent needs representation by lawyer if motions are to be lodged. As a rule, the spouses are to pay half the court costs of the divorce case and the ancillary cases; plus, each spouse pays their own legal costs.

It is possible to apply for legal aid. Spouses wishing to divorce can reduce the costs of the proceedings by the respondent agreeing to the divorce for the record of the court registry or in the oral hearing without appointing a solicitor.

The family court deliberates on the divorce application and the ancillary cases to the divorce made pending in good time together, and also rules on them as a matter of principle at the same time (comprehensive divorce proceedings). The divorce is hence as a rule not to be issued until clarity has been reached regarding all the ancillary cases. The purpose of the comprehensive divorce proceedings is to ensure for those concerned that nothing remains unresolved or uncertain after the divorce. The advantage of this is that those concerned are informed of all the consequences entailed by the divorce, particularly of the economic consequences. This is particularly significant for the economically weaker spouse, given that their rights are to be safeguarded before the divorce is granted. By virtue of the fact that all proceedings are placed in the hands of one single judge and dealt with at the same time, the family court also obtains a more profound insight into the situation of the marriage and the family and is able to help to bring about proper, coordinated rulings. Aspects that are deliberated on and ruled on by the family court in the comprehensive divorce proceedings include: pension settlement cases, maintenance cases, spousal home and budget cases, as well as property cases and parent-and-child cases.

In order to agree on an arrangement of the family relationships, mediation proceedings offer an alternative to court proceedings. In mediation, the persons concerned attempt with the aid of a neutral person who is not called on to make a decision – the mediator – to reach an agreed solution of their conflict for which they can take responsibility themselves. Unlike in court proceedings, the real interests and needs of those concerned can thus be worked out and used to form the basis of a solution that is tailor made to the respective conflict. Such a solution can do better justice to the respective interests of those concerned than a court ruling. The parties therefore find it easier to accept this, and it is as a rule more sustainable. For instance, contractual agreements can be reached on the maintenance, assets, property, on parental responsibility or on access to the children.

**104) Comment est calculé le délai de procédure pour les quatre catégories d'affaires ? Veuillez décrire la méthode de calcul.**

The judicial business statistics include in each case the day of the receipt of the proceedings and the date on which they are dealt with, recorded in the DD.MM.YYYY format.

On the basis of this information, the duration of the proceedings is calculated as follows:

duration of proceedings =

1  
+ [date on which processed (number of days + (number of months \* 30) +  
(year \* 360))]  
- [date of receipt (number of days + (number of months \* 30) + (year  
\* 360))]

**105) Veuillez décrire le rôle et les attributions du procureur dans la procédure pénale (plusieurs choix possibles) :**

- diriger ou superviser l'enquête policière
- mener des enquêtes
- quand cela est nécessaire, saisir le juge pour qu'il ordonne des mesures d'enquêtes
- porter une accusation
- soumettre l'affaire au tribunal
- proposer une peine au juge
- faire appel
- superviser la procédure d'exécution
- classer l'affaire sans suite, sans avoir besoin d'obtenir une décision du tribunal (observer la cohérence avec la question 36!)
- clore l'affaire par une sanction ou une mesure imposée ou négociée sans décision d'un juge
- autre attribution significative

Si "autres attributions significatives", veuillez préciser :







- to conduct or supervise police investigation
- to conduct investigations

Unless otherwise provided by law (for instance in accordance with section 153 and section 153a of the Code of Criminal Procedure), the public prosecution office is obliged to intervene with regard to all prosecutable criminal offences where sufficient factual indications apply (section 152 subs. 2 of the Code of Criminal Procedure). As soon as the public prosecution office receives suspicion of a criminal offence by means of a charge or by other means, it must research the facts for its decision on whether a public charge is to be lodged (section 160 subs. 1 of the Code of Criminal Procedure).

To this end, the public prosecution office is entitled to demand information from all authorities and to carry out investigations of any kind, either itself or to have them performed by the authorities and officers of the police service unless other statutory provisions particularly regulate their powers. The authorities and officers of the police service are obliged to comply with requests or applications from the public prosecution office, and in this case are entitled to obtain information from all authorities (section 161 subs. 1 of the Code of Criminal Procedure).

- when necessary, to request investigation measures from the judge

If the public prosecution office considers it to be necessary for the court to carry out investigation measures, it makes an application prior to lodging of the public charge to the Local Court in the district in which it or its branch office making the application is located. If, additionally, it considers it to be necessary to issue an arrest or custody order, it can, regardless of section 125 and section 126a, lodge such a motion with the court referred to in sentence 1 (section 162 subs. 1 sentences 1 and 2 of the Code of Criminal Procedure). Once the public charge has been preferred, the court has jurisdiction which is seized of the case (section 162 subs. 2 sentence 1 of the Code of Criminal Procedure).

- to charge
- to present the case in the court

It is the public prosecution office which is called on to file the public charge (section 152 subs. 1 of the Code of Criminal Procedure). The written charge, which the public prosecution office has to present to the court which has jurisdiction for the main hearing, contains the application to open the main proceedings. The files are presented to the court (section 199 subs. 2 of the Code of Criminal Procedure) with the written charge.

- to discontinue a case without requiring a judicial decision (ensure consistency with question 36!)

In accordance with section 153 subs. 1 sentence 2 of the Code of Criminal Procedure (dispensing with prosecution of petty offences), section 153c of the Code of Criminal Procedure (non-prosecution of offences committed abroad), section 153d of the Code of Criminal Procedure (dispensing with court action on political grounds) and section 153f of the Code of Criminal Procedure (dispensing with prosecution of criminal offences under the Code of Crimes against International Law), the public prosecution office can discontinue the proceedings without a court ruling. The same applies in accordance with section 154 subs. 1 of the Code of Criminal Procedure with minor secondary criminal offences, and in accordance with section 154a subs. 1 sentence 1 of the Code of Criminal Procedure with individual severable parts of an offence or some of several violations of the law committed as a result of the same offence if these are not particularly significant in addition to a penalty or measure of reform and prevention that is anticipated or has already been imposed with binding effect.

Moreover, the public prosecution office may dispense with preferment of public charges if the accused is extradited to a foreign government because of the offence or is transferred out of the area of application of the Code of Criminal Procedure (section 154b subs. 1 and 2 of the Code of Criminal Procedure). The same applies if he/she is to be extradited to a foreign government or transferred to an international criminal court of justice because of another offence and the penalty or the measure of reform and prevention which might be the result of the domestic prosecution is negligible in comparison to the penalty or measure of reform and prevention which has been imposed on him with binding effect abroad or which he may expect to be imposed abroad (section 154b subs. 2 of the Code of Criminal Procedure).

If coercion or extortion (sections 240 and 253 of the Criminal Code) was committed by threats to reveal a criminal offence, the public prosecution office may dispense with prosecuting the offence, the disclosure of which was threatened, unless expiation is imperative because of the seriousness of the offence (section 154c subs. 1 of the Code of Criminal Procedure). If the victim of coercion or extortion (sections 240 and 253 of the Criminal Code) files charges in respect thereof (section 158) and if as a result a misdemeanour committed by the victim comes to light, the public prosecution office may dispense with prosecution of the misdemeanour unless expiation is imperative because of the seriousness of the offence (section 154c subs. 2 of the Code of Criminal

Procedure).

If the preferring of public charges for a misdemeanour depends on the evaluation of a question which must be determined according to civil law or administrative law, the public prosecution office may set a time limit to decide the question in civil proceedings or in administrative court proceedings. The person who reported the criminal offence shall be notified thereof. After this time limit has expired without any result, the public prosecution office may terminate the proceedings (section 154d of the Code of Criminal Procedure).

Public charges are not to be preferred for an erroneous suspicion or insult (sections 164 and 185 to 188 of the Criminal Code) as long as criminal or disciplinary proceedings are pending for the reported or alleged offence (section 154e subs. 1 of the Code of Criminal Procedure). If the absence of the accused or some other personal impediment prevents the opening or conduct of the main proceedings for a considerable time, and if public charges have not yet been preferred, the public prosecution office may provisionally terminate the proceedings after it has clarified the facts so far as possible and secured the evidence so far as necessary (section 154f of the Code of Criminal Procedure).

In accordance with section 45 subs. 1 of the Youth Courts Act, section 153 of the Code of Criminal Procedure is also applicable in criminal proceedings against juveniles (14 to under 18 years old at the time of the offence). Section 153 of the Code of Criminal Procedure applies either directly or via section 45 subs. 1 of the Youth Courts Act to adolescents (18 to under 21 years old at the time of the offence) if criminal law relating to young people applies to them. The other possibilities of ending the proceedings stated above are, by contrast, generally applicable in proceedings against juveniles and adolescents (cf. section 2 subs. 2 of the Youth Courts Act).

As a special feature, the public prosecution office dispenses with prosecution in the field of criminal law relating to young people in accordance with section 45 subs. 2 of the Youth Courts Act if a supervisory measure has already been enforced or initiated on the juvenile elsewhere and if it considers neither the participation of the judge pursuant to section 45 subs. 3 of the Youth Courts Act, nor the bringing of charges to be necessary. Supervisory measures are to encourage juveniles to gain an insight into the wrong which they have done, and can for instance be initiated by the youth welfare office, the school, the legal guardian or the trainer. Unlike section 45 subs. 1 of the Youth Courts Act and section 153 of the Code of Criminal Procedure, this arrangement applies not only to misdemeanours, but also to felony, and to juveniles in general, to adolescents (cf. previous paragraph for age limits) if the adolescent by his/her development on committing the offence was still equivalent to a juvenile or the offence is deemed to constitute youth misconduct (section 105 subs. 1 and section 109 subs. 2 of the Youth Courts Act).

to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision

In a case involving a misdemeanour, the public prosecution office may, with the consent of the court which has jurisdiction for the opening of the main proceedings and of the accused, dispense with preferment of public charges and concurrently impose conditions and instructions upon the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle (section 153a subs. 1 sentence 1 of the Code of Criminal Procedure). In particular, the following conditions and instructions may be applied:

1. to perform a specified service in order to make reparations for damage caused by the offence;
2. to pay a sum of money to a non-profit-making institution or to the Treasury;
3. to perform some other service of a non-profit-making nature;
4. to comply with duties to pay a specified amount in maintenance;
5. to make a serious attempt to reach a mediated agreement with the aggrieved person (perpetrator-victim mediation) thereby trying to make reparation for his offence, in full or to a predominant extent, or to strive therefor; or
6. to participate in a course pursuant to section 2b subs. 2 second sentence, or section 4 subs. 8 sentence 4, of the Road Traffic Act (Straßenverkehrsgesetz) (section 153a subs. 1 sentence 2 of the Code of Criminal Procedure).

The consent of the court is not required in cases covered by section 153a subs. 1 sentence 2 Nos. 1 to 5 of the Code of Criminal Procedure in case of a misdemeanour which is not subject to an increased minimum penalty and where the consequences ensuing from the offence are minimal (section 153a subs. 1 sentence 7 in conjunction with section 153 subs. 1 sentence 2 of the Code of Criminal Procedure).

The public prosecution office sets a time limit within which the accused is to comply with the conditions and instructions, and which, in the cases referred to in numbers 1 to 3, 5 and 6 of the second sentence, is a maximum of six months and, in the cases referred to in number 4 of the second sentence, a maximum of one year. The public prosecution office may subsequently revoke the conditions and instructions and may extend the time limit once for a period of three months; with the consent of the accused it may

subsequently impose or change conditions and instructions. If the accused complies with the conditions and instructions, the offence can no longer be prosecuted as a misdemeanour. If the accused fails to comply with the conditions and instructions, no compensation is given for any contribution made towards compliance (section 153a subs. 1 sentences 3 to 5 of the Code of Criminal Procedure).

Section 153a of the Code of Criminal Procedure is regarded as being partly supplanted by the special provisions of section 45 subs. 2 and 3 of the Youth Courts Act in youth court proceedings (cf. on this the information already provided on the above, as well as on the following item).

Supervisory measures on the discontinuation of proceedings against juveniles or adolescents in accordance with section 45 subs. 2 of the Youth Courts Act can in accordance with the Guidelines of the Länder to the Youth Courts Act also be introduced (disputed) by the public prosecution office themselves. It is thus considered that they themselves carry on a supervisory talk with the juvenile, reprimand him/her or for instance suggest compensation in the context of perpetrator-victim mediation. Here, however, the public prosecutor only has the power to suggest, but not to order. This is conditional on the accused person not seriously challenging the offence of which they are accused, being willing to comply with the suggestion made by the public prosecution office and that the legal guardian and statutory representative do not oppose this.

to propose a sentence to the judge

After the taking of evidence has been concluded, the public prosecutor is also afforded the opportunity to present his/her arguments in the main hearing (section 258 subs. 1 of the Code of Criminal Procedure). In its final pleading, it discusses the overall result of the main hearing and evaluates it in legal and factual terms (No. 138 subs. 1 sentence 1 of the Guidelines for Criminal and Administrative Fines Proceedings – RiStBV). If the public prosecutor considers the guilt of the defendant to be proven, he/she makes a statement on the penalty and other legal consequences which in his/her view should be imposed.

In proceedings before the criminal court judge and in proceedings within the jurisdiction of a court with lay judges, the legal consequences of the offence may, in the case of misdemeanours, be imposed, upon written application by the public prosecution office, in a written penal order without a main hearing. The public prosecution office files such an application if it does not consider a main hearing to be necessary given the outcome of the investigations. The application must refer to specific legal consequences. The application constitutes preferment of the public charges (section 407 subs. 1 of the Code of Criminal Procedure). Where criminal law relating to young people is applied against adolescents and across the board against juveniles, no penal order proceedings may be conducted (section 79 subs. 1 and section 109 subs. 2 of the Youth Courts Act).

If criminal law relating to young people is applied, the public prosecutor may in accordance with section 45 subs. 3 of the Youth Courts Act propose to the youth court judge to issue a reprimand, as well as conditions and instructions, if the accused admits his/her guilt and if the public prosecutor considers that the ordering of such a judicial measure is necessary but the bringing of charges not apposite. The background to this possibility is that the involvement of the judge in the informal ending of proceedings may have greater educational benefit. If the youth court judge agrees to the proposal, and if the juvenile complies with instructions or conditions, the public prosecutor dispenses with the prosecution. Compliance with such instructions or conditions cannot be enforced with coercive means since this is not sanctioning in the judgment after a charge and a main hearing. The youth court judge is also not bound to follow the proposal of the public prosecution office, but decides in exercise of his/her duty-bound discretion. Here, he/she may also impose another instruction or condition than the one proposed. Then, in turn, the public prosecutor must decide whether this is considered sufficient or whether to file charges after all. It is furthermore conceivable that the youth court judge does not consider the case to be suited to informal conclusion, whereupon the public prosecutor then files a charge. The described proceedings are also applicable to adolescents, subject to the preconditions of section 109 subs. 2 of the Youth Courts Act.

to appeal

The appellate remedies admissible against court decisions (also an appeal on points of fact and law) are open both to the public prosecution office and to accused persons. The public prosecution office can also make use of them for the benefit of the accused (section 296 subs. 1 and 2 of the Code of Criminal Procedure).

to supervise the enforcement procedure

The sentence in criminal cases against adults and adolescents sentenced according to general criminal law is executed by the public prosecution office as the executing authority (cf. section 451 subs. 1 of the Code of Criminal Procedure). In criminal proceedings against juveniles and – where criminal law relating to young people is applied to them – also against adolescents, the execution of the sentence is incumbent

on the youth court judge as the enforcement officer (section 82 subs. 1 sentence 1 and section 110 of the Youth Courts Act).

**106) Le procureur a-t-il également un rôle dans les affaires civiles et/ou administratives ?**

- Oui  
 Non

Si oui, veuillez préciser :

An application by the aggrieved person or his heir making a property claim against the accused with the effect of joining criminal proceedings (section 403 of the Code of Criminal Procedure) can be lodged with the public prosecution office at the same time as the criminal charge, i.e. before the case is pending with the court (cf. Meyer-Goßner, StPO, 54th ed., section 404 marginal No. 4).

In accordance with No. 173 of the Guidelines for Criminal and Administrative Fines Proceedings, the public prosecutor must therefore inform the aggrieved person or his/her heir as a rule and as early as possible of the possibility to assert a compensation claim in accordance with sections 403 et seqq. of the Code of Criminal Procedure. Here, the aggrieved person is informed of the possibility of legal aid (section 404 subs. 5 of the Code of Criminal Procedure), the form and content of the application (section 404 subs. 1 of the Code of Criminal Procedure) and of the right to attend the main hearing (section 404 subs. 3 of the Code of Criminal Procedure). Also he/she is to be informed that it is recommended as a rule to make the application as soon as possible, that he/she may assert the claim, if it is not awarded to him/her, in the civil courts (section 406 subs. 3 of the Code of Criminal Procedure) and that the court may dispense with a decision on the application for specific reasons (section 406 subs. 1 of the Code of Criminal Procedure).

In accordance with No. 174 subs. 1 of the Guidelines for Criminal and Administrative Fines Proceedings, the public prosecutor only makes a statement on the compensation application if this is necessary in order to award sufficient attention to the offence under criminal law or in order to prevent a delay in the criminal proceedings. In accordance with No. 174 subs. 2 of the Guidelines for Criminal and Administrative Fines Proceedings, the public prosecutor must rapidly transmit any compensation application which it receives to the court because the legal impact of the application (section 404 subs. 2 of the Code of Criminal Procedure) does not begin to apply until it has been received by the court.

**107) La gestion des affaires par le procureur: ombre total des affaires pénales en 1ère instance. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Reçues par le procureur	Classées sans suite par le procureur (v. 108 ci-dessous)	Terminées par une sanction ou par une mesure imposée ou négociée par le procureur	Portées par le procureur devant les tribunaux
Nombre total d'affaires pénales de 1ère instance	4 615 485	2 493 032	199 144	1 081 255

**108) Total des affaires classées sans suite par le procureur. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Nombre
Total des affaires classées sans suite par le procureur (1 + 2 + 3)	2 493 032
1. Classées sans suite par le procureur parce que l'auteur de l'infraction n'a pas pu être identifié	
2. Classées sans suite par le procureur en raison d'une impossibilité de fait ou de droit	
3. Classées sans suite par le procureur pour raison d'opportunité	

**109) Est-ce que ces données incluent le contentieux routier ?**

- Oui  
 Non

**D.2****Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système concernant la durée des procédures et les réformes majeures mises en œuvre au cours des deux dernières années**

Re Question 89: The dates and deadlines are determined by the court according to the statutory requirements. It is however customary and expedient in individual cases in particular to coordinate the dates for the oral hearing with the parties and with counsel. Re Question 97: The total number does not include Nos. 3 to 5. Re Question 99: This includes the contentious and non-contentious civil and commercial cases which are not covered in accordance with Nos. 1 and 2. Re Question 103: The Act to Reform the Procedure in Family Cases and in the Matters of Non-Contentious Litigation (Gesetz zur Reform des Verfahrens in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit – FGG-Reformgesetz) came into force on 1 September 2009 (Federal Law Gazette Part I 2008, page 2586). The Act on the Procedure in Family Cases and in the Matters of Non-Contentious Litigation (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit - (FamFG), which hence came into force, regulates proceedings before the family court, amongst other things.

Re Question 102

- (1) The percentage relates to legal matters pending for more than 24 months.  
 (2) The information regarding the average duration is stated in months.

Re Question 107

The information includes first-instance criminal cases at the public prosecution offices at the Regional Courts (proceedings against accused persons known by name) and the public prosecution offices at the Higher Regional Courts (proceedings against unknown).

not incl. proceedings against unknown. Investigation proceedings against unknown have not been shown since the year under report 2010.

**Veillez indiquer les sources pour les réponses aux questions 91, 94, 97, 98, 99, 100, 101, 102, 107 et 108.**

re 91:

Federal Office of Justice: business overviews of the Local Courts for 2010;

Federal Statistical Office (ed.):

Fachserie 10 Reihe 2.1 "Zivilgerichte 2010"

Fachserie 10 Reihe 2.2 "Familiengerichte 2010"

Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2010"

Fachserie 10 Reihe 2.5 "Finanzgerichte 2010"

Fachserie 10 Reihe 2.7 "Sozialgerichte 2010"

Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 94 and 98:

Federal Statistical Office (ed.): Fachserie 10 Reihe 2.3 "Strafgerichte 2010"

re 97:

Federal Statistical Office (re):

Fachserie 10 Reihe 2.1 "Zivilgerichte 2010"

Fachserie 10 Reihe 2.2 "Familiengerichte 2010"

Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2010"

Fachserie 10 Reihe 2.7 "Sozialgerichte 2010"

Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 99:

Federal Statistical Office (re):

Fachserie 10 Reihe 2.1 "Zivilgerichte 2010"

Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2010"

Fachserie 10 Reihe 2.5 "Finanzgerichte 2010"

Fachserie 10 Reihe 2.7 "Sozialgerichte 2010"

Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 100: Federal Statistical Office: Fachserie 10 Reihe 2.3 "Strafgerichte 2010";

Overview of the workload at the criminal senates of the Federal Court of Justice 2010

re 101 and 102:

Federal Statistical Office (re):

Fachserie 10 Reihe 2.2 "Familiengerichte 2010"

Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 107 and 108:

Federal Statistical Office (re):

Fachserie 10 Reihe 2.6 "Staatsanwaltschaften 2010"

## 5. Carrière des juges et procureurs

### 5. 1. Recrutement et promotion

#### 5. 1. 1. Recrutement et promotion

##### 110) Comment les juges sont-ils recrutés ?

- Principalement par concours (par exemple après un diplôme universitaire en droit)
- Principalement par une procédure de recrutement spécifique pour des professionnels du droit ayant une longue expérience professionnelle dans le domaine juridique (par exemple des avocats)
- Une combinaison des deux (concours et expérience professionnelle)
- Autres

Si autres, veuillez préciser:

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges with regard to the individual jurisdictions.

Bavaria:

Finance courts:

The posts in the finance courts are not occupied externally. Especially well-suited civil servants of the tax administration are selected to work as a judge in a finance court after an unspecified period spent working in the administration. There is hence no special appointment procedure.

##### 111) Autorité(s) responsable(s): les juges sont-ils recrutés et nommés, initialement, en début de carrière, par :

**[Cette question ne concerne que l'autorité qui est responsable de la décision de recrutement (elle ne touche pas l'autorité formellement responsable de la nomination si elle est différente de la première).]**

- Une instance composée seulement de juges?
- Une instance composée seulement de non juges?
- Une instance composée de juges et de non juges?

Veuillez indiquer le nom de l'autorité responsable de la procédure globale de recrutement et de nomination des juges. S'il existe plusieurs autorités impliquées, veuillez décrire leurs rôles respectifs :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges with regard to the individual jurisdictions.

Baden-Württemberg:

Ministry of Justice and Presidial Council: The Minister of Justice decides on the appointment of judges on probation. Their employment beyond a period of 24 months must be approved by the Presidial Council, which is a judicial co-determination body. The Minister of Justice decides on life tenure in agreement with the Presidial Council. If no agreement is reached, a decision is taken by the Judicial Election Committee to which Landtag delegates as well as judges belong.

Bavaria:

Labour and social courts: Bavarian State Ministry of Labour and Social Affairs, Family and Women and respective "Chief President".

Administrative courts: appointment by the Bavarian State Ministry of the Interior, judicial career path however only with the consent of the President of the respective Administrative Court (= 2 interviews).

Brandenburg:

Ministry of Justice, as well as right of proposal by the President of the Brandenburg Higher Regional Court for ordinary courts. The election is carried out by the Judicial Election Committee.

Berlin:

Senator for Justice and Judicial Election Committee.

Bremen:

Senator for Justice and the Constitution, prepared by the President of the Superior Court.

Hesse:

Nominated by the Minister of Justice after consultation of the Judicial Election Committee, which is made up of judges and non-judges.

Lower Saxony:

Lower Saxony Ministry of Justice, Selection Commission with representatives of the intermediate authorities.

North Rhine-Westphalia:

President of the Higher Administrative Court for the Land North Rhine-Westphalia,

President of the Higher Regional Court,

President of the Regional Social Court of North Rhine-Westphalia,

President of the Finance Court,

President of the Regional Labour Court

(respectively for the remit in question).

Rhineland-Palatinate:

As a rule judges are seconded for a time to the Ministry of Justice and have a right of co-determination in personnel selection.

Saxony-Anhalt:

Ministry of Justice and Equality in agreement with the President of the respective Higher Court.

Schleswig-Holstein:

Ministry of Justice, Equality and Integration of the Land Schleswig-Holstein.

### 112) La même instance est-elle compétente pour la promotion des juges ?

Oui

Non

Si non, quelle instance est compétente pour la promotion des juges ?



\*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BY, BE, BB, HB, HH, NI, ST, SN, SH stated "Yes"; the other Federal Länder answered "No".

Baden-Württemberg:

The same procedure applies to promotion as to the award of life tenure.

Bavaria:

Finance courts:

In accordance with Art. 15 para. 1 sentence 2 first clause of the Bavarian Judiciary Act (BayRiG) in conjunction with Art. 2 second clause of the Implementing Act to the Code of Finance Court Procedure (AGFGO), the Bavarian State Minister of Finance is responsible for the nomination of judges at the finance courts. In accordance with Art. 15 para. 1 sentence 1 of the Bavarian Judiciary Act in conjunction with Art. 2 first clause of the Implementing Act to the Code of Finance Court Procedure, the Presidents of the finance courts are nominated by the State Government.

Brandenburg:

The President of the Brandenburg Higher Regional Court, but only within the meaning of a right of proposal.

Hesse:

The promotion of judges falls within the sole jurisdiction of the Hesse Ministry of Justice.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Lower Saxony Ministry of Justice.

North Rhine-Westphalia:

Ministry of Justice of North Rhine-Westphalia.

Rhineland-Palatinate:

Minister of Justice and Judicial Election Committee.

Saarland:

The Council of Ministers.

Schleswig-Holstein:

Ministry of Justice, Equality and Integration of the Land Schleswig-Holstein in cooperation with a Judicial Election Committee.

Thuringia:

No information.

### **113) Quels critères et procédures sont utilisés pour promouvoir les juges ? Veuillez préciser:**

Baden-Württemberg:

The selection decision is taken in line with the constitutional principle of the selection of the best. In doing so, the requirements of promotion offices are detailed in requirement profiles.

Bavaria:

Ordinary courts:

The promotion of judges is based on the criteria of aptitude, qualifications and achievements. The corresponding posts are advertised within the respective remit. In accordance with Art. 35 of the Bavarian Judiciary Act, the Presidial Council is to be involved in each assignment of a judicial office with a higher final basic salary than that of a starting office.

Finance courts:

The principle of performance applies (Art. 33 of the Basic Law and Art. 94 para. 2 in conjunction with section 71 of the German Judiciary Act (DRiG) and Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with 9 of the Civil Servant Status Act, as well as Art. 16 of the Performance Career Path Act [Leistungslaufbahngesetz]). Accordingly, the most suitable person is to be selected, relevant consideration being given to the official assessment.

Labour and social courts:

Advertisement, decision according to the principle of performance.

Administrative courts:

Aptitude, qualifications and achievements (assessment)

Berlin:

Principle of performance, selection of the best on the basis of current official assessments

Brandenburg:

Selection proceedings in accordance with Article 33 para. 2 of the Basic Law, Article 21 para. 2 of the Constitution of the Land Brandenburg. Further, the General "Trialling for Promotion Offices" Ordinance and specific requirement profiles apply.

Bremen:

Art. 33 of the Basic Law.

Hamburg:

Promotion office advertised, selection among the applicants on the basis of assessments and statements by the court presidents concerned.

Hesse:

Promotions are effected exclusively according to performance and aptitude criteria (selection of the best).

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Principle of performance; based on assessments

North Rhine-Westphalia:

Promotion offices are advertised in the Gazette of the Ministry of Justice for the Land North Rhine-Westphalia. Decisions on their occupation are taken acc. to the report of the President of the Higher Court with jurisdiction, the selection being made among several applicants according to aptitude, qualifications and professional achievements (Art. 33 para. 2 of the Basic Law).

Rhineland-Palatinate:

Aptitude, qualifications and achievements.

Saarland:

Selection of the best according to aptitude, qualifications and professional achievements.

Saxony:

Aptitude, qualifications and professional achievements.

Saxony-Anhalt:

Criteria: aptitude, achievements, qualifications, proven in each case by recent (ad hoc) assessments (Art. 33 para. 2 of the Basic Law).

Procedure:

- promotion post advertised.
- applicants' ad hoc assessment drawn up by the President of the respective Higher Court if no sufficiently recent assessment available.
- report of the respective President to the Ministry of Justice and Equality on occupation of the post.
- vote by the Ministry of Justice and Equality.
- vote forwarded to the respective Presidial Council for approval (if not approved, first of all an attempt is made to reach an oral agreement between the Ministry and the Presidial Council. If this does not lead to an agreement, the arbitration unit can be called upon. This body rules by issuing an order. Within one month after the order of the agreement agency, the Minister-President may be seized with a request to make a decision.).
- Once the Presidial Council has approved, with promotions to remuneration group R2 the successful applicant is nominated by the Ministry of Justice and Equality. In case of promotions higher than R2Z, a personnel proposal is made to the Minister-President for approval.
- After the approval of the latter has been given, the nomination is made by the Ministry of Justice and Equality. Should the Minister-President refuse to consent, a new vote must be taken.

Schleswig-Holstein:

Selection of the best acc. to aptitude, qualifications and professional achievements.

Thuringia:

No information.

#### 114) Existe-t-il un système d'évaluation individuelle qualitative de l'activité professionnelle du juge ?

- Oui  
 Non

#### 115) Le statut du ministère public est-il:

- Indépendant?  
 Sous l'autorité du ministre de la Justice?  
 Autre?

Veuillez préciser:

\*) not including information from Mecklenburg Western Pomerania and Thuringia.  
 Saxony-Anhalt was the only Federal Land to enter a cross at "independent"; the other Federal Länder all stated "subject to the Minister of Justice".  
 Baden-Württemberg: The Minister of Justice exercises service supervision over the public prosecution offices. However, no individual instructions which relate to the public prosecution office activities are as a rule made in established practice.  
 Bremen: cf. sections 141 et seqq. of the Courts Constitution Act, esp. section 147 No. 2 of the Courts Constitution Act  
 Hamburg: The Authority for Justice and Equality carries out service supervision over the public prosecution offices.  
 Mecklenburg-Western Pomerania: No information.  
 North Rhine-Westphalia: The public prosecution offices are subject to the service and specialist supervision of the Ministry of Justice, but they are factually independent with regard to performance of their concrete procedures.  
 Saarland: Bound by instructions in accordance with sections 146 and 147 of the Courts Constitution Act.  
 Saxony-Anhalt: The chief public prosecutor is not a politically-appointed civil servant in Saxony-Anhalt. He/she is therefore not bound by instructions with regard to the investigation activities carried out in his/her district. In other respects reference is made to sections 147 and 150 of the Courts Constitution Act.  
 Schleswig-Holstein: Bound by instructions in accordance with sections 146 and 147 of the Courts Constitution Act.  
 Thuringia: No information.

#### 116) Comment sont recrutés les procureurs ?

- Principalement par concours (par exemple après un diplôme universitaire en droit)  
 Principalement par une procédure de recrutement spécifique pour des professionnels du droit ayant une longue expérience juridique (par exemple des avocats)  
 Une combinaison des deux (concours et expérience professionnelle)  
 Autres

Si "autres", veuillez préciser:

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW and SH were the only Federal Länder to enter a cross at "a combination of both"; the other Federal Länder stated "mainly through a competitive exam".

Baden-Württemberg:

The Ministry of Justice does not distinguish in appointments between judges and public prosecutors since beginners are deployed both at the public prosecution office and at the court.

**117) Autorité(s) responsable(s): les procureurs sont-ils recrutés et nommés, en début de carrière, par :**

**[Cette question ne concerne que l'autorité qui est responsable de la décision de recrutement (elle ne touche pas l'autorité formellement responsable de la nomination si elle est différente de la première).]**

- Une instance composée seulement de procureurs ?
- Une instance composée seulement de non procureurs?
- Une instance composée de procureurs et de non procureurs?

Veillez indiquer le nom de l'autorité responsable de la procédure globale de recrutement et de nomination des procureurs. S'il y a plusieurs autorités impliquées, veuillez décrire leurs rôles respectifs :

\*) not including information from Mecklenburg-Western Pomerania And Thuringia. Baden-Württemberg: Appointments and nominations are made by the Minister of Justice. With appointment to life tenure, the main council of public prosecutors, which is a co-determination body of public prosecutors, is involved. The main council of public prosecutors does not have any right of veto, but in practice nominations are made in agreement with the main council of public prosecutors. Berlin: as answer re Question 111. Brandenburg: The chief public prosecutor of the Land Brandenburg within the meaning of a right of proposal. Selections are effected by the judicial selection committee, and nominations are carried out by the Ministry of Justice. Bremen: Senator for Justice and the Constitution, prepared by the chief public prosecutor. Hamburg: Authority for Justice and Equality, together with a judicial selection committee. Hesse: cf. answer re Question 111 analogously. Lower Saxony: Lower Saxon Ministry of Justice, selection commission with representatives of the chief public prosecution offices. North Rhine-Westphalia: Chief public prosecutor. Rhineland-Palatinate: Ministry of Justice. Public prosecutors are as a rule seconded to the Ministry for a time, where they have a right of co-determination in personnel selection. Saarland: Ministry of Justice. Saxony-Anhalt: Ministry of Justice and Equality in agreement with the chief public prosecutor. Schleswig-Holstein: Ministry of Justice, Equality and Integration of the Land Schleswig-Holstein.

**118) La même instance est-elle compétente pour la promotion des procureurs ?**

- Oui
- Non

Si non, veuillez préciser quelle instance est compétente pour la promotion des procureurs

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BY, BE, BB, HB, HH, NI, RP, SN, ST, SH stated "Yes"; the other Federal Länder answered "No".

Brandenburg:

The chief public prosecutor of the Land Brandenburg within the meaning of a right of proposal. Jurisdiction lies with the Ministry of Justice.

Hesse:

The promotion of public prosecutors falls in the exclusive jurisdiction of the Hesse Ministry of Justice.

Lower Saxony:

Lower Saxony Ministry of Justice.

North Rhine-Westphalia:

Ministry of Justice of North Rhine-Westphalia

**119) Quels critères et procédures sont utilisés pour promouvoir les procureurs? Veuillez préciser:**

Baden-Württemberg:

The selection decision is in line with the constitutional principle of the selection of the best. The requirements of promotion offices are detailed in requirement profiles.

Bavaria:

The promotion of public prosecutors is based on the criteria of aptitude, qualifications and achievements. The corresponding posts are advertised within the area of the authority. In accordance with Art. 48 of the Bavarian Judiciary Act, the main council of public prosecutors is to be involved when any office of public prosecutor is conferred with a higher final basic salary than that of a starting office.

Berlin:

as answer re Question 111.

## Brandenburg:

Selection procedure in accordance with Article 33 para. 2 of the Basic Law and Article 21 para. 2 of the Constitution of the Land Brandenburg. Further, the General Order on "Probation for Promotion Offices" (Allgemeine Verfügung "Erprobung für Beförderungsämtter") and specific requirement profiles apply.

## Bremen:

Art. 33 para. 2 of the Basic Law.

## Hamburg:

Promotion office advertised, selection among the applicants on the basis of assessments and statements from the public prosecution offices involved.

## Hesse:

Promotions are carried out exclusively according to performance and aptitude criteria (selection of the best).

## Mecklenburg-Western Pomerania:

No information.

## Lower Saxony:

Performance principle, based on assessments.

## North Rhine-Westphalia:

Promotion offices are advertised in the Ministry of Justice Gazette for the Land North Rhine-Westphalia. Decisions on occupation posts are taken acc. to the report of the competent chief public prosecutor, the selection being made among several applicants according to aptitude, qualifications and professional achievements (Art. 33 para. 2 of the Basic Law).

## Rhineland-Palatinate:

Aptitude, qualification and performance.

## Saarland:

Selection of the best according to aptitude, qualifications and professional achievements.

## Saxony:

Aptitude, qualifications and professional achievements.

## Saxony-Anhalt:

cf. Question 113.

## Schleswig-Holstein:

Selection of the best according to aptitude, qualifications and professional achievements

## Thuringia:

No information.

**120) Existe-t-il un système d'évaluation individuelle qualitative de l'activité professionnelle du procureur ?**

- Oui  
 Non

**121) Le mandat des juges est-il à durée indéterminée (à savoir "à vie" = jusqu'à l'âge officiel de la retraite) ?**

- Oui  
 Non

Si oui, existe-t-il des exceptions ? (ex: la révocation comme sanction disciplinaire) ? Veuillez préciser :

In accordance with section 64 subs. 2 of the German Judiciary Act, only the disciplinary measure of removal from office can be imposed on a judge of one of the supreme courts of the Federation. This ends the service relationship, cf. section 10 subs. 1 sentence 1 of the Federal Disciplinary Act (Bundesdisziplinargesetz). The respective provisions of Land law apply to judges in the service of a Land.

**122) S'il existe une période probatoire pour les juges (par exemple avant d'être nommé "à vie"), quelle en est la durée ? Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Durée de la période probatoire (en années)
	5

**123) Le mandat des procureurs est-il à durée indéterminée (à savoir « à vie » = jusqu'à l'âge officiel de la retraite) ?**

- Oui  
 Non

Si oui, existe-t-il des exceptions (la révocation comme sanction disciplinaire) ? Veuillez préciser :

The employment relationship of a public prosecutor ends for instance  
 – on a criminal judgment gaining legal force by means of which the public prosecutor has been sentenced to at least one year's imprisonment because of an intentional criminal offence (section 41 subs. 1 of the Federal Public Service Act (Bundesbeamtengesetz) and section 24 subs 1 of the Civil Servant Status Act),  
 – if the disciplinary measure of removal from civil service employment is imposed on the public prosecutor because of a serious offence committed in office (section 10 of the Federal Disciplinary Act [Bundesdisziplinargesetz] and the corresponding provisions of the Land Disciplinary Acts [Landesdisziplinargesetze]),  
 – as a matter of principle also on changing into a public law employment relationship with another employer (section 31 of the Federal Public Service Act and section 22 of the Civil Servant Status Act).

**124) S'il existe une période probatoire pour les procureurs, quelle en est la durée? Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

	Durée de la période probatoire (en années)
	5

**125) Si le mandat n'est pas à durée indéterminée pour les juges (voir question 121), est-il renouvelable ? Quelle est la durée du mandat (en années)?**

NAP

**126) Si le mandat n'est pas à durée indéterminée pour les procureurs (voir question 123), est-il renouvelable ? Quelle est la durée du mandat (en années)?**

NAP

### E.1

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système de sélection et de nomination des juges et des procureurs et les réformes majeures mises en œuvre au cours des deux dernières années**

Bremen:

Re Question 114: cf. Article 97 of the Basic Law (apart from the assessment system).

Hamburg:

The probationary period of a public prosecutor is served as a judge on probation. Judicial appointments are proposed to the Senate by a judicial selection committee.

Hesse:

Re Question 122: In accordance with section 10 subs. 1 of the German Judicial Act, the judicial probationary period is fundamentally three years, but was extended by six months to three years and six months by a Hesse circular from 2003 for all judges on probation.

Re Question 122: Not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges with regard to the respective individually-stated jurisdictions: "No" was stated for the Bavarian Finance Courts; for the Bavarian administrative courts "Yes" was stated, with 2 - 5 years.

Lower Saxony:

re Questions 122 and 124: incl. probation as a judge.

North Rhine-Westphalia:

In all jurisdictions, as well as at the public prosecution offices, appointments are made on the basis of a structured selection procedure which is closely orientated towards the requirement profiles for the starting offices of a judge of the respective jurisdiction or of a public prosecutor which were governed by a general order of the Ministry of Justice from 2005. The concrete design of the selection procedure differs depending on the competent appointment authority or jurisdiction.

Rhineland-Palatinate:

The basis for the selection decision is formed by the assessments made by the immediate superiors.

Saxony-Anhalt:

To appoint judges and public prosecutors, interviews take place with the applicants in the shape of identically-structured selection talks with the involvement of the President of the superior court involved in each case or of the chief public prosecutor and the equality commissioner.

The appointment as well as formal nomination is carried out by the Ministry for Justice and Equality.

Re Question 124: not including information from Mecklenburg-Western Pomerania and Thuringia.

## 5. 2. Formation

### 5. 2. 1. Formation

**127) Formation des juges**

Formation initiale (par exemple	Compulsory
---------------------------------	------------

fréquentation d'une école de la magistrature, stage dans un tribunal)	
Formation continue générale	Optional
Formation continue pour des fonctions spécialisées (ex. juge pour les affaires économiques ou administratives)	Optional
Formation continue pour des fonctions spécifiques de gestion (ex. présidence d'un tribunal)	Optional
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Optional

### 128) Fréquence de la formation continue des juges:

Formation continue générale	Regular (e.g. every 3 months)
Formation continue pour des fonctions spécialisées (ex. juge pour les affaires économiques ou administratives)	Regular (e.g. every 3 months)
Formation continue pour des fonctions spécifiques de gestion (ex. présidence d'un tribunal)	Regular (e.g. every 3 months)
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Regular (e.g. every 3 months)

### 129) Formation des procureurs

Formation initiale	Compulsory
Formation continue générale	Optional
Formation continue pour des fonctions spécialisées (ex. procureur spécialisé en crime organisé)	Optional
Formation continue pour des fonctions spécifiques de gestion (ex. Procureur Général, administrateur)	Optional
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Optional

### 130) Fréquence de la formation continue des procureurs :

Formation continue générale	Regular (e.g. every 3 months)
Formation continue pour des fonctions spécialisées (ex. procureur spécialisé en crime organisé)	Regular (e.g. every 3 months)
Formation continue pour des fonctions spécifiques de gestion (ex. Procureur Général, administrateur)	Regular (e.g. every 3 months)
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	Regular (e.g. every 3 months)

### 131) Disposez-vous d'(une) institution(s) publique(s) chargée(s) de la formation des juges et des procureurs?

Si oui, quel est le budget de cette (ces) institution(s) ?

Si vos institutions de formation judiciaire ne répondent pas à ces critères, veuillez le préciser.

	Formation initiale seulement	Formation continue seulement	Formation initiale et continue
Une institution pour les juges	Non	Non	NAP

Une institution pour les procureurs	Non	Non	NAP
Une institution commune pour juges et procureurs	Non	Non	Oui

Commentaire :

€ 4 million (Federation)

\*) Not including information from Mecklenburg-Western Pomerania, Thuringia, North Rhine-Westphalia and Bremen.

In addition to the German Judicial Academy, which is funded jointly by the Federation and the Länder, some Länder maintain their own judicial academies.

Baden-Württemberg:

Training until the conclusion of the "First Examination in Law" takes place at the Universities. The preparation period for the Second State Examination in Law is carried out in courts, public prosecution offices, solicitors' offices, authorities and other facilities, and is organised by the Higher Regional Courts.

The further training of judges and public prosecutors is carried out nationally by the German Judicial Academy. In other respects, the further training is organised at Land level by the Ministry of Justice and the courts and public prosecution offices of the Land. For all judicial officials (not including prisons and without the contribution towards the funding of the Judicial Academy) an amount of € 1,167,300 is available for this in 2010. The budget for training courses in the IT field was € 1,373,600 for all judicial officials (not including prisons). A breakdown by judges and public prosecutors on the one hand and other judicial officials on the other cannot be provided.

The further training on the use of IT applications is obligatory in some cases and optional in others. It is optional with regard to office communication. Training in specialist applications is however obligatory (but does not entail sanctions).

Brandenburg:

Re Question 131:

Only the material costs for training (costs of the trainee jurist working parties at Higher Regional Courts and KG) and further training (speakers' fees and board and lodging costs for participants at Joint Legal Training Office of the Länder Berlin and Brandenburg) are stated. Including the remuneration of the staff of the court and Senate administrations participating in basic and further training, as well as the speakers themselves, which are not included in the figures above, would lead to a much higher amount.

Hamburg:

The Federation and the Länder operate the Judicial Academy jointly. The finance share of the Free and Hanseatic City of Hamburg in this is € 21,000. In other respects, local further training is offered as needed.

Lower Saxony:

Budget information cannot be provided since the individual basic and further training activities are paid for from different budget areas and no separate statistics on them are kept.

North Rhine-Westphalia:

In North Rhine-Westphalia the further training of all judicial officials, in other words not only that of judges and public prosecutors, is a matter for the Judicial Academy of the Land North Rhine-Westphalia. The share of the budget which is expended only on the further training of judges and public prosecutors is not recorded.

Saxony-Anhalt (from E.2):

An institution for the further training of judges and public prosecutors is the German Judicial Academy, which is jointly funded by the Federation and the Länder. Judges and public prosecutors from all over Germany receive further training at the Academy, with its two conference centres in Trier and Wustrau. The share of the costs for the Land Saxony-Anhalt is € 56,500 (2010). These conferences are organised by the Federal Länder and the Federation.

At Land level, the basic and further training division of the Ministry of Justice and Equality organises further training for judges and public prosecutors, as well as conferences for the other officials at the courts and public prosecution offices. Family law conferences have taken on a special focus in recent years through the reforms in the pensions settlement and in the Act on the Procedure in Family Cases and in the Matters of Non-Contentious Litigation. A one-day conference took place on European human rights protection in 2010. The conference provided an overview of European human rights protection in accordance with the ECHR, in particular on Art. 6 (excessive length of proceedings).

There is no separate budget for judges' further training (cf. 1.2 Budget data on the Judiciary Question 6.6).

## E.2

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre
- des commentaires sur l'attention portée dans les curricula à la Convention européenne des Droits de l'Homme et à la jurisprudence de la Cour
- les caractéristiques de votre système de formation des juges et des procureurs et les réformes majeures mises en œuvre au cours des deux dernières années

Re Question 127:

not including information from Mecklenburg-Western Pomerania and Thuringia.

The information for Bavaria diverges with regard to the respective individually-stated jurisdictions: Labour and social courts: 2-month familiarisation at the beginning of the second instance; Finance Courts: completion of familiarisation period in accordance with section 5 subs. 2 of the Finance Officials Training Act (Steuerbeamten-Ausbildungsgesetz).

Legal preparatory service.

Re Question 128:

not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges in some cases with regard to the respective individually-stated jurisdictions.

Re Question 129:

not including information from Mecklenburg-Western Pomerania and Thuringia. Bremen has also not provided any information, but refers in this context to the remarks made re E.2.

Re Question 130:

not including information from Mecklenburg-Western Pomerania and Thuringia.

Brandenburg:

The Joint Legal Training Office of the Länder Berlin and Brandenburg is responsible for the further training of judges and public prosecutors in the Länder Berlin and Brandenburg. The basic training ("Referendariat") takes place separately, for Brandenburg at Brandenburg Higher Regional Court and for Berlin at Berlin Court of Appeal; it is only the Second State Examination in Law after completion of the Referendariat for which the Joint Legal Training Office of the Länder Berlin and Brandenburg is responsible.

Re Questions 128 and 130:

The range of further training is regular in the sense that more than 120 of the Land's own further training events are offered annually for judges and public prosecutors. In 2010, a total of 1,730 participants from among judges and public prosecutors from Berlin and Brandenburg attended on a total of 2,626 days of the Land's own further training events which were organised and implemented by the Joint Legal Training Office of the Länder Berlin and Brandenburg.

Bremen:

German legal training is characterised by the fundamental concept of the "uniform lawyer". Anyone passing the Second State Examination has qualification for judicial office and can immediately become a judge, public prosecutor, solicitor or administrative official. Guidance by a "training judge", as well as mentoring programmes (help in departmental work) and "intervision" (collegial mutual support in everyday work) are obligatory for judges on probation in the Land Bremen. Moreover, monthly events take place on specific specialist topics for those starting off in the profession. Furthermore, younger officials may attend further training events in the "Northern Association". Further training for judges in special panels of deciding judges takes place primarily at the German Judicial Academy or at related facilities such as the Federal Finance Academy. Additionally, special further training is provided for administrative tasks, including supervisory tasks, and for IT tasks by the events organised by the Bremen judiciary itself and by the basic and further training centre of the Free and Hanseatic City of Bremen. Beginners at the public prosecution office have to present all completed work to an appointed experienced public prosecutor for countersigning during their familiarisation period. The chief public prosecutor offers specific further training courses twice monthly on topics such as "emergency public prosecution service", "dealing with items of evidence", "telecommunication surveillance" and "the law on appeals on points of law".

### 5. 3. Exercice de la profession

#### 5. 3. 1. Exercice de la profession

#### 132) Salaires des juges et des procureurs.

	Salaire annuel brut (€), en €, au 31 décembre 2010	Salaire annuel net (€), en €, au 31 décembre 2010
Juge professionnel de 1ère instance au début de sa carrière	41 127	
Juge de la Cour suprême ou de la dernière instance de recours (veuillez indiquer le salaire moyen d'un juge de ce niveau, non pas le salaire du président de la cour)	73 679	
Procureur au début de sa carrière	41 127	
Procureur auprès de la Cour suprême ou de la dernière instance de recours (veuillez indiquer le salaire moyen d'un procureur de ce niveau, non pas le salaire du Procureur Général).	73 679	

Commentaire :

- 1) average annual gross salary.
- 2) No information on annual net salary is available on the basis of the personal circumstances of judges and public prosecutors. The federal average was calculated here unweighted; this means that the annual salaries of the Federal Länder were added and divided by the number of Länder, regardless of how many judges work in the respective Federal Land. This is because it is unknown how many individuals draw the respective salary per Land.
- 3) The salary tables of the Federal Länder with remuneration group R1 - basic salary starting level (unmarried), no children, tax class I) in 2010 (as per year end) were included. Unweighted federal average (cf. Note 1).
- 4) The salary tables of the Federal Länder with remuneration group R2 - basic salary starting level (unmarried), no children, tax class III) in 2010 (as per year end) were included. Unweighted federal average (cf. Note 1).

#### 133) Les juges et les procureurs bénéficient-ils des avantages complémentaires suivants :



	Juges	Procureurs
Imposition réduite	Non	Non
Retraite spécifique	Oui	Oui
Logement de fonction	Non	Non
Autre avantage financier	Oui	Oui

**134) Si autre avantage financier, veuillez préciser:**

Berlin:

Benefits towards medical expenses.

Mecklenburg-Western Pomerania:

No information.

North Rhine-Westphalia:

not applicable, cf. No. 133.

Saxony-Anhalt:

Re "Special pension": Unlike employees, judges and public prosecutors acquire a claim to pensions in accordance with the Civil Service Benefits Act (Beamtenversorgungsgesetz) and are not insured in the statutory pensions insurance. Re "Other financial benefit": Unlike employees, judges and public prosecutors acquire a claim to benefits towards medical expenses

and do not have to take up statutory health insurance. Pensions and benefits towards medical expenses in the Land Saxony-

Anhalt largely correspond to the claims to which federal officials are entitled.

Thuringia:

No information.

**135) Un juge peut-il cumuler son travail avec les autres fonctions suivantes :**

	Rémunéré	Non rémunéré
Enseignement	Oui	Oui
Recherche et publication	Oui	Oui
Arbitrage	Oui	Oui
Consultant	Oui	Oui
Fonction culturelle	Oui	Oui
Fonction politique	Oui	Oui
Autre fonction	Oui	Oui

**136) Si des règles existent dans votre pays (par exemple, une autorisation est exigée pour exercer une fonction), veuillez les préciser. Si « autre fonction », veuillez préciser :**

With regard to the obligation to have ancillary activities approved, section 46 of the German Judiciary Act, sections 65 and 66 of the Federal Public Service Act and the Ordinance on the Ancillary Activities of Judges in the Federal Civil Service (Verordnung über die Nebentätigkeit der Richter im Bundesdienst) apply to federal judges. Sections 71 subs. 1 of the German Judiciary Act and section 42 of the Federal Civil Service Framework Act (Beamtenrechtsrahmengesetz) in conjunction with the provisions of the respective Land law apply to judges in the service of a Land. If no exceptional arrangement applies, non-remunerated ancillary activities do not have to be approved. Taking over care for someone other than a family member is for instance excepted from this. The following are furthermore not subject to approval: writing, artistic, academic or lecturing activities, administration of own property or of property that is at the disposal of the judge, as well as independent activity as an expert witness by academic staff of universities connected with teaching or research teaching and research connected with independent activity as an expert witness by judges at public universities and academic institutes and facilities, as well as activities in defence of professional interests in trade unions or professional associations or in judges' self-help facilities. All other ancillary activities are subject to approval.

Baden-Württemberg:

Ancillary activities of judges must be reported, and some must be approved. Approval is refused if there is reason for concern that the ancillary activity will impair official interests, or if the ancillary activity will impede the proper performance of official duties.

Bavaria:

Ordinary courts/finance, labour and social courts:

Other tasks can be carried out with or without remuneration if official interests are not impaired. Official interests are impaired particularly if the judge's working capacity is excessively burdened by the nature and the extent of the activity (criteria: remuneration and time) or the exercise of the tasks is harmful to the reputation of the public administration. For the exercise of such tasks there is as a matter of principle a requirement for approval in accordance with Art. 2 para. 1 of the Bavarian Judicial Act in conjunction with Art. 81 of the Bavarian Public Service Act (BayBG), unless referring to ancillary activities not requiring approval in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 82 of the Bavarian Public Service Act or if the activity is carried out at the request of the employer.

Administrative courts:

An application for approval/report of an ancillary activity is to be lodged in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 81 and 82 of the Bavarian Public Service Act and sections 6 and 7 of the Bavarian Ancillary Activities Ordinance (Bayerische Nebentätigkeitsverordnung).

Brandenburg:

Judges' Ancillary Activities Ordinance (Richternebentätigkeitsverordnung), Land Public Service Act.

Berlin:

Ancillary activities must be approved.

Bremen:

Arbitration: A judge may as a matter of principle act additionally as an arbitrator or conciliator if this was approved in advance. As to (non-)remuneration, no more detailed information is available on this (cf. section 40 of the German Judiciary Act).

Adviser: Judges may not draw up expert legal opinions, nor may they give legal advice for remuneration outside the course of their official duties. However, a professor of law or of political science who has civil servant status and who is also a judge may draw up expert legal opinions and give legal advice with the permission of the highest public authority administering the courts (cf. section 41 of the German Judiciary Act).

Hamburg:

Ancillary activities may be generally carried out if they do not run counter to official interests and are compatible with judicial office. They must however be reported as a matter of principle.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Remunerated, non-official ancillary activities must be reported, and are subject to a reserve of approval, as are some non-remunerated ancillary activities; judges may not draw up expert legal opinions outside the course of their official duties (section 41 subs. 1 of the German Judiciary Act).

North Rhine-Westphalia:

First of all, the provisions of the German Judiciary Act apply, above all: sections 4 subs. 2 and 39 et seqq. In other respects, via the provision on references contained in section 4 subs. 1 sentence 1 of the Land Judiciary Act of North Rhine-Westphalia - LRiG NRW - the Land Public Service Act North Rhine-Westphalia (Landesbeamtengesetz NRW) and the North Rhine-Westphalia Ancillary Activities Ordinance apply accordingly to judges as a matter of principle. Ancillary activities subject to approval are regulated in section 49 of the North Rhine-Westphalia Land Public Service Act. Prior approval is accordingly necessary in the following example cases: to take on a guardianship, custodianship or execution of a will; to take on an ancillary office; to take on ancillary employment for a fee, to engage in a commercial activity, to help out in a commercial operation or to exercise a liberal profession; to take up a place on the Board, Supervisory Council, Administrative Council or other body of a corporation or enterprise operated in another legal form if the latter pursues an economic purpose, as well as to take on a trusteeship. Moreover, approval is to be refused if the ancillary activity may impair official interests. This depends on the individual case (e.g. possible influencing of impartiality or independence; excessively high burden on working capacity by the nature and the extent of the ancillary activity; possible damage to the reputation of the public administration).

More conclusive details on "other function" cannot be provided. These include highly varying individual case constellations (e.g.: permissible: deputy honorary mayor; not permissible: honorary activity in an ethics commission of the Chamber of Physicians; activities in commercial bodies of local authority enterprises operating under private law)

Rhineland-Palatinate:

Academic activities must be reported; other ancillary activities must be approved. Approval is only given if the performance of the office is not impaired.

Saarland:

Section 4 of the Saarland Judiciary Act in conjunction with sections 84 et seqq. of the Saarland Public Service Act.

Saxony:

Via section 3 of the Saxon Judiciary Act (SächsRiG), provisions regulated for civil servants on the law on ancillary activities apply mutatis mutandis. A requirement of approval may emerge from section 82 subs. 1 of the Saxon Public Service Act (SächsBG) for activity as an adviser.

Saxony-Anhalt:

On activity as an adviser: A judge may not draw up expert legal opinions or give legal advice for remuneration outside of court (section 41 subs. 1 of the German Judiciary Act). He/she may give unremunerated legal advice if this does not constitute an expert legal opinion.

re political activities: With regard to political activities, judges must conduct themselves in and outside office in such a manner that confidence in their independence will not be endangered (section 39 of the German Judiciary Act). Remunerated activity as a professional politician is hence not possible in addition to exercising judicial office. A function as a parliamentarian or member of the Government is ruled out in accordance with the principle of the separation of powers.

On the obligation to obtain approval: section 17 subs. 2 and 3 of the Judiciary Act of the Land Saxony-Anhalt (Landesrichtergesetz - LRiG) of 28 January 2011 (GVBl. LSA 2011, 30) regulate the obligation to obtain approval as follows: "(2) The following shall be subject to an obligation to obtain prior approval

1. the following unremunerated ancillary activities:

- a) ancillary offices which the judge is not obliged to hold in accordance with subs. 1,
  - b) guardianships or custodianships of other persons than family members, but not a custodianship in accordance with section 26 subs. 4,
  - c) execution of wills,
  - d) commercial activities, the exercise of liberal professions or working in one of these activities, and
  - e) taking up membership of a body of a company, with the exception of a cooperation, as well as taking on a trusteeship,
2. all other ancillary activities not covered by subs. 3.

(3) Obligation for approval shall not be subject to

1. taking up ancillary activities which the judge is obliged to perform in accordance with subs. 1,
2. the administration of own assets or assets at the disposal of the judge,
3. writing, academic, artistic or lecturing activities of the judge,
4. activities as an examiner in the obligatory state specialist examination of the First Examination in Law, as well as in the first or second State Examination in Law or in a career path examination, as well as giving lessons for basic and further training in the public service,
5. activities to defend professional interests in trade unions or professional associations or in self-help facilities of the public service,
6. unremunerated ancillary activities, unless otherwise determined in subs. 2 No. 1, and
7. activity as a custodian in accordance with section 26 subs. 4."

Schleswig-Holstein:

Section 6 subs. 1 of the Land Judiciary Act and sections 70 et seqq. of the Public Service Act in conjunction with the Ancillary Activities Ordinance.

Thuringia:

No information.

**137) Un procureur peut-il cumuler son travail avec les autres fonctions suivantes :**

	Rémunéré	Non rémunéré
Enseignement	Oui	Oui
Recherche et publication	Oui	Oui
Arbitrage	Oui	Oui
Consultant	Oui	Oui
Fonction culturelle	Oui	Oui
Fonction politique	Oui	Oui
Autre fonction	Oui	Oui

**138) Précisions s'il existe des règles particulières (par exemple autorisation nécessaire pour exercer tout ou partie de ces activités). Si « autre fonction », veuillez préciser :**

Baden-Württemberg:

Ancillary activities of public prosecutors must be reported, and some must be approved. Approval is refused if there is reason for concern that the ancillary activity will impair official interests, or if the ancillary activity will impede the proper performance of official duties.

Bavaria:

Other tasks can be carried out with or without remuneration if official interests are not impaired. Official interests are impaired particularly if the judge's working capacity is excessively burdened by the nature and the extent of the activity (criteria: remuneration and time) or the exercise of the tasks is harmful to the reputation of the public administration. For the exercise of such tasks there is as a matter of principle a requirement for approval in accordance with Art. 2 para. 1 of the Bavarian Judicial Act in conjunction with Art. 81 of the Bavarian Public Service Act, unless referring to ancillary activities not requiring approval in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 82 of the Bavarian Public Service Act or if the activity is carried out at the request of the employer.

Administrative courts:

An application for approval/report of an ancillary activity is to be lodged in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 81 and 82 of the Bavarian Public Service Act and sections 6 and 7 of the Bavarian Ancillary Activities Ordinance.

Brandenburg:

Land Public Service Act.

Berlin:

Ancillary activities must be approved.

Bremen:

The exercise of ancillary activities by public prosecutors falls under the Civil Servant Status Act (BeamStG). In accordance with section 40 of the Civil Servant Status Act, an ancillary activity must be reported as a matter of principle. It must be placed under a reserve of approval or prohibition insofar as it is likely to impair official interests.

Additionally, because of Federalism there are separate Public Service Acts of the Federal Länder which regulate the nature and the extent of the ancillary activity in detail.

Hamburg:

Ancillary activities may be generally carried out if they do not run counter to official interests and are compatible with judicial office. They must however be reported as a matter of principle.

Hesse:

No information.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Remunerated, non-official ancillary activities must be reported, and are subject to a reserve of approval, as are some non-remunerated ancillary activities.

North Rhine-Westphalia:

The provisions of the North Rhine-Westphalia Land Public Service Act - LBG NRW - and the North Rhine-Westphalia Ordinance on Ancillary Activities (Nebentätigkeitsverordnung NRW) are applicable. Ancillary activities subject to approval are regulated in section 49 of the North Rhine-Westphalia Land Public Service Act. Prior approval is accordingly necessary in the following example cases: to take on a guardianship, custodianship or execution of a will; to take on an ancillary office; to take on ancillary employment for a fee, to engage in a commercial activity, to help out in a commercial operation or to exercise a liberal profession; to take up a place on the Board, Supervisory Council, Administrative Council or other body of a corporation or enterprise operated in another legal form if the latter pursues an economic purpose, as well as to take on a trusteeship. Moreover, approval is to be refused if the ancillary activity may impair official interests. This depends on the individual case (e.g. possible influencing of impartiality or independence; excessively high burden on working capacity by the nature and the extent of the ancillary activity; possible damage to the reputation of the public administration). Additionally, the provisions of the German Judiciary Act apply in some cases. In particular section 41, in accordance with which the drawing up of expert legal opinions and the giving of legal advice are not permitted, is also to be applied mutatis mutandis to public prosecutors, section 122 of the German Judiciary Act.

Rhineland-Palatinate:

Academic activities must be reported; other ancillary activities must be approved. Approval is only given if the performance of the office is not impaired.

Saarland:

In accordance with sections 84 et seqq. of the Saarland Public Service Act, the performance of the ancillary activity of the public prosecutor falls under the Civil Servant Status Act. In accordance with section 40 of the Civil Servant Status Act, an

ancillary activity must be reported as a matter of principle. It must be placed under a reserve of approval or prohibition insofar as it is suited to impair official interests.

Additionally, because of Federalism there are separate Public Service Acts of the Federal Länder which regulate the nature and the extent of the ancillary activity in detail.

Saxony:

Via section 3 of the Saxon Judiciary Act (SächsRiG), provisions normed for civil servants on the law on ancillary activities apply mutatis mutandis. A requirement of approval may emerge from section 82 subs. 1 of the Saxon Public Service Act for activity as an adviser.

Saxony-Anhalt:

The right of public prosecutors to exercise an ancillary activity is not in line with the provisions of the law on judges, but with the provisions of civil service law handed down for civil servants:

Civil Servants' Status Act (Beamtenstatusgesetz)

Public Service Act of the Land Saxony-Anhalt (Land Public Service Act - LBG LSA) of 15 December 2009 (GVBl. LSA 2009, 648), most recently amended by Act of 6 October 2011 (GVBl. LSA pp. 680 and 683).

The ancillary activities of public prosecutors are hence not subject to an obligation to obtain approval, but must largely be reported, and are placed under a reserve of prohibition where they may impair official interests:

Section 40 of the Civil Servant Status Act – Ancillary activity

An ancillary activity shall be subject to reporting as a matter of principle. It shall be placed under a reserve of approval or prohibition where it may impair official interests.

Section 75 LBG LSA - Ancillary activities exempt from reporting

(1) The following shall not be subject to a duty to report in accordance with section 40 sentence 1 of the Civil Servants' Status Act

1. ancillary activities which the civil servant is obliged to perform in accordance with section 74,
2. the administration of own assets or assets at the disposal of the civil servant,
3. activities to defend professional interests in trade unions or professional associations or in self-help facilities of civil servants, and
4. unremunerated ancillary activities, excepting:
  - a) performance of an ancillary office not falling under number 1,
  - b) taking over execution of a will or of any guardianship or custodianship other than as designated in section 73 subs. 4,
  - c) commercial or freelance activities or working in one of these activities, or
  - d) to take up a place on the Board, Supervisory Council, Administrative Council or similar body of an enterprise, with the exception of a cooperative.

(2) The civil servant shall on request provide information on an ancillary activity carried out which is exempt from reporting, in particular on its nature and extent, as well as on the remuneration and advantages equivalent to money resulting therefrom.

Section 76 LBG LSA - Prohibition of an ancillary activity

(1) An ancillary activity shall also be prohibited after it has been taken up if it may impair official interests. An impairment to official interests shall particularly be deemed to exist if an ancillary activity

1. by its nature and extent burdens the working capacity to such a degree that the proper performance of official duties may be hindered,
2. may bring the civil servant into conflict with the official duties,
3. is exercised in a manner in which the authority to which the civil servant belongs is active or may act,
4. may influence the impartiality of the civil servant in official activities,
5. may lead to a major restriction of the future official useability, or
6. may damage the reputation of the administration.

The prerequisite of sentence 2 No. 1 applies as a rule if the time required per week to perform one or several ancillary activities exceeds one-fifth of the weekly working hours in accordance with section 63 subs. 1 sentence 1.

(2) Writing, academic, artistic or lecturing activities, as well as independent activity as an expert witness by academic staff of universities connected with teaching or research may only be prohibited where a specific risk exists that their performance will breach official duties.

re advisory activities:

A remunerated advisory activity may be considered likely to influence the impartiality of the civil servant or public prosecutor in official activities, and is hence to be prohibited as a rule.

re political activities:

A remunerated political activity – as a professional politician – is also likely to influence the impartiality of the civil servant or public prosecutor in official activities, and is hence to be prohibited as a rule. There are specific rules such as on parliamentary mandates of civil servants (sections 34 et seqq. of the Lower Saxony Parliamentarians Act [AbgG LSA]) or on ministerial office (section 5 of the Lower Saxony Ministers Act [MinG LSA]).

Schleswig-Holstein:

Section 6 subs. 1 of the Land Judiciary Act and sections 70 et seqq. of the Public Service Act in conjunction with the Ancillary Activities Ordinance.

Thuringia:

No information.

**139) Prime de productivité : les juges ont-ils droit à des primes en fonction du respect d'objectifs quantitatifs de production de décisions (par exemple nombre de jugements rendus pour une période donnée) ?**

Oui

Non

Si oui, veuillez préciser les conditions et éventuellement les montants:

## 5. 4. Procédures disciplinaires

### 5. 4. 1. Procédures disciplinaires

#### 140) Qui peut engager des procédures disciplinaires contre les juges (choix multiples possibles) ?

- Citoyens
- Tribunal concerné ou supérieur hiérarchique
- Cour suprême
- Conseil Supérieur de la Magistrature
- Tribunal ou autorité disciplinaire
- Médiateur
- Parlement
- Pouvoir exécutif
- Autre ?
- Ceci n'est pas possible

Si "pouvoir exécutif" ou/et "autre", veuillez préciser :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia

- 1) Saxon State Ministry of Justice and for Europe as the highest official authority.
- 2) Citizens can lodge a service supervision complaint, which may lead to the initiation of disciplinary proceedings. The highest disciplinary authority – as a part of the executive – is the Ministry of Justice.
- 3) The immediately superior President, as possibly the next higher service superior the President of the superior court and the Ministry of Justice, can initiate disciplinary proceedings against judges.
- 4) The higher (President of the Higher Regional Court) or the highest service authority (Hesse Ministry of Justice, Integration and Europe) may take over the disciplinary proceedings at any time.
- 5) The competent disciplinary authority for the initiation of disciplinary proceedings against judges at the finance court is the Bavarian Land Office for Tax in accordance with section 4 of the Ordinance on Jurisdictions to Implement the Disciplinary Act and to Represent the Free State of Bavaria in Disciplinary Matters (Verordnung über die Zuständigkeiten zur Durchführung des Bayerischen Disziplinalgesetzes und zur Vertretung des Freistaates Bayern in Disziplinarsachen). In exceptional cases, in accordance with Art. 67 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 2 of the Bavarian Disciplinary Act, it is possible that a judge applies for the initiation of disciplinary proceedings against him/herself in order to eliminate the suspicion of an official misdemeanour.
- 6) The prosecution office at the Bavarian Administrative Courts is the disciplinary authority (section 2 of the Ordinance on Jurisdictions to Implement the Disciplinary Act and to Represent the Free State of Bavaria in Disciplinary Matters). "Other": the person concerned may also initiate disciplinary proceedings against themselves.
- 7) Judicial service court (cf. sections 40 et seq. of the Bremen Judiciary Act [BremRiG]).
- 8) Ministry of Justice as the highest disciplinary authority.

#### 141) Qui peut engager des procédures disciplinaires contre les procureurs (choix multiples possibles) :

- Citoyens
- Chef de l'unité organisationnelle ou supérieur hiérarchique
- Procureur Général/Procureur d'Etat
- Conseil Supérieur de la Magistrature
- Tribunal ou autorité disciplinaire
- Médiateur
- Organisme professionnel
- Pouvoir exécutif
- Autre?
- Ceci n'est pas possible

Si "pouvoir exécutif" ou/et "autre", veuillez préciser :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia.

- 1) The head of the immediate superior agency, as possibly the next highest service superior of the chief public prosecutor and the Ministry of Justice, may initiate disciplinary proceedings against public prosecutors.
- 2) Citizens can lodge a service supervision complaint, which may lead to the initiation of disciplinary proceedings. The highest disciplinary authority – as a part of the executive – is the Ministry of Justice.
- 3) Saxon State Ministry of Justice and for Europe as the highest official authority.
- 4) Ministry of Justice as the highest official authority.
- 5) The higher (chief public prosecutor) or the highest service authority may take over the disciplinary proceedings at any time.

**142) Quelle autorité détient le pouvoir disciplinaire à l'encontre des juges? (plusieurs options possibles)**

- Tribunal
- Cour suprême
- Conseil Supérieur de la Magistrature
- Tribunal ou autorité disciplinaire
- Médiateur
- Parlement
- Pouvoir exécutif
- Autre?

Si "pouvoir exécutif" ou/et "autre", veuillez préciser :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia.

- 1) The agencies empowered to initiate disciplinary proceedings (see above) can impose a reprimand by means of a disciplinary order. All further disciplinary measures (including fines, reduction of remuneration, demotion, removal from judicial office) first and foremost require the lodging of a disciplinary action by the Ministry of Justice, on which the judicial service courts then rule.
- 2) The highest disciplinary authority – as a part of the executive – is the Ministry of Justice.
- 3) Saxon State Ministry of Justice and for Europe as the highest official authority (imposition of a reprimand possible).
- 4) Ministry of Justice as the highest official authority.
- 5) The court is a service court within the meaning of section 77 of the German Judiciary Act, Art. 67 subs. 1 of the Bavarian Judiciary Act and Art. 42 et seqq. of the Bavarian Discipline Act (BayDG) as a part of the administrative courts
- 6) Service superior
- 7) Reprimand: service superior, section 60 subs. 3 in conjunction with section 37 subs. 2 of the Hesse Discipline Act (HDG); other disciplinary measures: The highest service supervision authority decides on lodging a disciplinary action, section 60 subs. 4 of the Hesse Judiciary Act (HRiG), the service court rules on the action and on the measures to be imposed, section 50 No. 1 of the Hesse Judiciary Act.
- 8) judicial service court (cf. sections 40 et seqq. of the Bremen Judiciary Act).

**143) Quelle autorité détient le pouvoir disciplinaire à l'encontre des procureurs ? (plusieurs options possibles)**

- Cour suprême
- Chef de l'unité organisationnelle ou supérieur hiérarchique
- Procureur Général/Procureur d'Etat
- Conseil Supérieur de la Magistrature
- Tribunal ou autorité disciplinaire
- Médiateur
- Organisme professionnel
- Pouvoir exécutif
- Autre ?

Si "pouvoir exécutif" ou/et "autre", veuillez préciser :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia.

1) Disciplinary power lies partly with the bodies also empowered to initiate disciplinary proceedings (including reprimand, fines, reduction in salary [only by the Ministry of Justice], in some cases – after the disciplinary action has been lodged by the Ministry of Justice – in the judicial service courts (including demotion, removal from the civil service).

2) The highest disciplinary authority – as a part of the executive – is the Ministry of Justice.

3) Saxon State Ministry of Justice and for Europe as the highest official authority (imposition of a reprimand possible).

4) Ministry of Justice as the highest official authority.

5) Reprimand and fines: service superior (head of the public prosecution office), section 37 of the Hesse Discipline Act; reduction in salary: highest service authority (Ministry of Justice) or chief public prosecutor, section 37 subs. 3 and 5 of the Hesse Discipline Act; demotion, removal from the civil service: disciplinary action by chief public prosecutor, section 38 subs. 1 and 2 of the Hesse Discipline Act; decision on the measure taken by the service court for judges, section 76 subs. 1 of the Hesse Judiciary Act.

**144) Nombre de procédures disciplinaires intentées à l'encontre des juges et des procureurs. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP. Si "autre", veuillez le préciser dans la boîte "commentaire" ci-dessous.**

**[Si la procédure disciplinaire est intentée sur la base de plusieurs manquements, veuillez ne compter ces procédures qu'une seule fois, pour le manquement principal.]**

	Juges	Procureurs
Nombre total (1+2+3+4)	17	3
1. Faute déontologique	1	2
2. Insuffisance professionnelle	10	0
3. Délit pénal	4	1
4. Autre	0	0

Commentaire :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia. Brandenburg: information only for Qs 1 and 2 of 2010.

Data provided by: BW, BY, BB, RP (NA stated by: BE, HB, HH, HE, NI, NW, SL, SN, ST, SH; BB has not provided the total broken down, and has stated NA on items 1 to 4.).

**145) Nombre de sanctions prononcées à l'encontre des juges et des procureurs. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

**Si « autre », veuillez le préciser dans la boîte "commentaire" ci-dessous. S'il existe une disparité entre le nombre de procédures disciplinaires intentées et le nombre de sanctions prononcées, veuillez préciser les raisons dans la boîte "commentaire" ci-dessous.**

	Juges	Procureurs
Nombre total (total 1 à 9)	10	3
1. Réprimande	8	2
2. Suspension	0	0
3. Révocation	0	1
4. Amende	0	0
5. Diminution de salaire temporaire	1	0
6. Rétrogradation de poste	0	0
7. Mutation dans un autre tribunal géographiquement	0	0
8. Démission	0	0
9. Autre	1	0

Commentaire :

\*) not including information from Mecklenburg-Western Pomerania and Thuringia.

Data provided by: BW, BY, RP (NA stated by: BE, BB, HB, HE, NI, NW, SL, SN, ST, SH; HH has stated NA on items 1 to 6 stated and NAP on items 7 to 8).

Baden-Württemberg:

re item 9 (Other): Baden-Württemberg Land law provides for deprivation of pension as a sanction against judges who are already retired. This is the most serious sanction imposable on retired judges; it corresponds to the removal from service of judges who are still in active service. This sanction was imposed once in 2010.

Re Questions 144 and 145: The imbalance between the number of sets of proceedings initiated in 2010 (Question 144) and the proceedings concluded in the same year (Question 145) is explained by the fact that the recorded disciplinary proceedings were not completed in the year in which they were initiated.

Lower Saxony:

Disciplinary proceedings are subject to short-term deletion; no authoritative data are available.

### E.3

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système de procédures disciplinaires pour les juges et les procureurs et les réformes majeures mises en œuvre au cours des deux dernières années**

Baden-Württemberg:

re Questions 140 to 143: In Baden-Württemberg the service superiors of the civil servants are empowered to initiate disciplinary proceedings against judges and public prosecutors. These are as a rule the president of the court or public prosecution office to which the judge or the public prosecutor belongs, furthermore the presidents of the higher courts and the offices of the chief public prosecutor, as well as, finally, the Ministry of Justice as the highest service authority. These "disciplinary authorities" can issue a reprimand. They only in have disciplinary powers in this sense. Serious disciplinary measures can only be imposed by the service court for judges ruling independently, which in this respect has jurisdiction for disciplinary proceedings against judges and public prosecutors.

Bavaria (administrative courts):

There is no separate judicial service court for the administrative courts, but a general one.

North Rhine-Westphalia:

No information is available.

Saxony-Anhalt:

Depending on the judge/public prosecutor concerned, the power of initiation lies with the authority employing the person concerned.

The term "disciplinary power" is understood in this context as the power to take decisions on the imposition of a sanction and the nature of the sanction to be imposed. Depending on the sanction intended to be imposed, this lies with the respective higher Regional Court (in the case of judges), with the chief public prosecution office (in the case of public prosecutors) or with the administrative court as the disciplinary court for the imposition of specific sanctions.

No statistics are kept regarding the number of sets of disciplinary proceedings initiated and the sanctions imposed, so that no information can be provided on this.

### **Veillez indiquer les sources aux questions 144 et 145**

Baden-Württemberg:

Internal statistics of the Ministry of Justice of Baden-Württemberg

Lower Saxony:

Lower Saxony Disciplinary Act, Lower Saxony Judiciary Act

Rhineland-Palatinate:

Higher Regional Courts and chief public prosecution offices



## 6. Avocats

### 6. 1. Statut de la profession et formation

#### 6. 1. 1. Statut de la profession et formation

**146) Nombre d'avocats exerçant dans votre pays.**

155 679

**147) Ce nombre inclut-il la catégorie « conseiller juridique » (« solicitor/in-house counsellor ») qui ne peut pas représenter en justice ?**

- Oui  
 Non

**148) Nombre de conseillers juridiques qui ne peuvent pas représenter en justice**

NA

**149) Les avocats ont-ils le monopole de la représentation en justice ? (plusieurs options sont possibles) pour les :**

- Affaires civiles  
 Affaires pénales - Défendeur  
 Affaires pénales - Victime  
 Affaires administratives  
 Il n'y a pas de monopole

En cas d'absence de monopole, veuillez préciser les organismes ou personnes pouvant représenter les clients devant un tribunal (par exemple une ONG, un membre de la famille, un syndicat, etc....) et pour quelles affaires :

## Civil cases:

Representation by a lawyer is not obligatory before the Local Courts. The parties may either pursue the process themselves there, or may be represented by a solicitor or by one of the agents named in section 79 subs. 2 sentence 2 number 1. Agents can hence be persons employed by the party, adult family members, consumer advice centres and publicly-recognised consumer associations, as well as collection services.

## Criminal cases:

## Accused persons

Solicitors and law lecturers at German universities within the meaning of the Framework Act for Higher Education (Hochschulrahmengesetz) with qualification for judicial office can be selected as defence counsel.

Other individuals may only be selected with the approval of the court. If the person selected in the case of necessary defence is not one of the persons who may be appointed as defence counsel, they may also only be admitted as optional defence counsel together with a party who may be admitted.

## Aggrieved parties

The provisions on the group of individuals to be selected as defence counsel apply mutatis mutandis to counsel of the private accessory prosecutor.

## Administrative cases:

1. Employees of the party or of an enterprise affiliated with them (section 15 of the Companies Act [Aktengesetz]); authorities and legal entities under public law, including the associations formed by them to perform their public tasks, can also be represented by employees of other authorities or legal entities under public law, including the associations formed by them to perform their public tasks,

2. adult family members (section 15 of the Tax Code and section 11 of the Lifetime Partnership Act [Lebenspartnerschaftsgesetz]), persons with qualification for judicial office and joined parties if the representation is not connected with a remunerated activity,

3. tax advisors, tax representatives, certified public accountants, sworn auditors, persons and associations within the meaning of section 3a of the Tax Advice Act (Steuerberatungsgesetz), as well as companies within the meaning of section 3 Nos. 2 and 3 of the Tax Advice Act acting via persons within the meaning of section 3 No. 1 of the Tax Advice Act, in tax-related matters,

4. professional agricultural associations for their members,

5. trade unions and associations of employers, as well as combinations of such associations for their members or for other associations or combinations with a comparable orientation and their members,

6. associations whose statutory tasks largely encompass joint representation of interests, advice and representation of benefit-recipients in accordance with social compensation law or persons with disabilities and which, taking account of the nature and the extent of their activities, as well as of the group of their members, offer an assurance of proper representation in the proceedings, for their members in matters of welfare of victims of war and of the law on persons with serious disabilities, as well as the concomitant matters,

7. legal entities whose shares are all in the economic ownership of one of the organisations designated in numbers 5 and 6 if the legal entity exclusively provides legal advice and representation in proceedings of this organisation and of its members or of other associations or combinations with a comparable orientation and their members in accordance with their statutes, and if the organisation is liable for the activity of the agents.

There are special arrangements before social courts and finance courts.

**150) La profession d'avocat est-elle organisée à travers (plusieurs réponses possibles):**

- un barreau national ?  
 un barreau régional ?  
 un barreau local ?

**151) Existe-t-il une formation initiale ou un examen spécifique pour accéder à la profession d'avocat ?**

- Oui  
 Non

Si non, veuillez indiquer s'il existe d'autres exigences spécifiques en matière de diplôme ou de niveau universitaire :

There is no special training for lawyers. Solicitors have the same training as the other classical legal professions of judge and public prosecutor (section 4 of the Federal Code of Lawyers: [Bundesrechtsanwaltsordnung – BRAO] - qualification for judicial office in accordance with section 5 of the German Judiciary Act). Qualification for judicial office is acquired by anyone who completes law studies at a university (at least four years) with the First Examination and a subsequent preparatory service (two years) with the second State Examination (sections 5, 5a and 5b of the German Judiciary Act). The training in the studies and in the preparatory service encompasses the requirements of the profession of lawyer.

**152) Existe-t-il un système de formation continue générale obligatoire pour les avocats ?**

- Oui  
 Non

**153) La spécialisation dans certains domaines est-elle liée à certaines formations, à un certain niveau de compétence, à un certain diplôme ou à certaines autorisations ?**

- Oui  
 Non

Si oui, veuillez préciser :

Solicitors who have acquired special knowledge and experience in a field of law may be empowered to use a specialist lawyer's designation (section 43c of the Federal Code of Lawyers). The Bar decides on the application after they have examined the documentation which the lawyer must present. There are currently 20 different specialist lawyer's designations. The total number of specialist lawyer's titles was 41,569 on 1 January 2011, although it should be taken into account that a solicitor may acquire up to three specialist lawyer's designations. Anyone who is a specialist lawyer must prove to the Bar on an annual basis that they have attended at least ten hours of further training events; otherwise the specialist lawyer's designation can be withdrawn.

Even solicitors who have not acquired a specialist lawyer's designation can specialise and indicate this in their advertising (cf. section 7 of the Solicitors' Professional Code [Berufsordnung der Rechtsanwälte]).

**F.1****Veillez indiquer les sources aux questions 146 et 148 :****-----  
Commentaires utiles à l'interprétation des données indiquées dans ce chapitre :**

source re Question 146: <http://www.brak.de/fuer-journalisten/zahlen-zur-anwaltschaft>  
(as on 1 January 2011)

Re Question 147: All solicitors in Germany are empowered to plead before court. No distinction is made between different groups of lawyers in Germany, such as between solicitors and barristers. The number of 155,679 solicitors stated re Question 146 does not include employee legal advisers. These are those solicitors who in addition to the profession of solicitor are active as a lawyer in a secondary profession with a non-legal employer (cf. section 46 of the Federal Code of Lawyers). In addition to solicitors, certain other individuals may also appear in court as "legal advisers" (cf. on this answer to Question 149); there are no statistical data on these individuals.

Re Question 150: Each solicitor is a member of a Bar. There are 28 Bars at the level of the Higher Regional Courts, as well as a Bar at the Federal Court of Justice. This total of 29 Bars form the Federal Bar.

Re Question 152: Each solicitor is obliged to undergo further training (section 43a subs. 6 of the Federal Code of Lawyers). For specialist solicitors, moreover, strict requirements apply, cf. answer to Question 153.

**6. 2. Exercice de la profession****6. 2. 1. Exercice de la profession****154) Pour le justiciable, existe-t-il une transparence sur les honoraires prévisibles des avocats (à savoir, est-ce que les usagers peuvent aisément obtenir des informations préalables sur le montant des honoraires prévisibles, sont-ils transparents et loyaux) ?**

- Oui  
 Non

**155) Les honoraires des avocats sont-ils librement négociés ?**

- Oui  
 Non

**156) La loi ou les règlements du Barreau contiennent-ils des règles sur les honoraires des avocats (même s'ils sont librement négociés) ?**

- Oui, la loi contient des règles

- Oui, les règlements du Barreau contiennent des règles
- Non, ni la loi ni les dispositions du Barreau ne contiennent de règles

## F.2

### Commentaires utiles à l'interprétation des données indiquées dans ce chapitre :

Re Question 154:

The amount of the fees of a solicitor is fundamentally defined in the Lawyers' Remuneration Act (Rechtsanwaltsvergütungsgesetz – RVG), and, in line with section 2 of the Lawyers' Remuneration Act, is orientated to the value of the subject of the professional activity (value fee system). The fee regulations in the Lawyers' Remuneration Act thus enable those involved in court proceedings to calculate in advance the legal costs likely to be incurred. Moreover, the solicitor is obliged to inform clients if the fees are in line with the value of the subject-matter prior to accepting the mandate (section 49b subs. 5 of the Federal Code of Lawyers).

Re Question 155:

Solicitors' statutory remuneration can be dispensed with under certain conditions by the solicitor's fee also being freely agreed, such as in the shape of a time fee measured by hours (section 3a of the Lawyers' Remuneration Act). However, it is not permitted to agree on a remuneration in court proceedings that is lower than the statutory fee (section 4 of the Lawyers' Remuneration Act). In accordance with German law, the agreement of a success-only fee is only possible subject to strict preconditions (section 4a of the Lawyers' Remuneration Act). The solicitor is however as a matter of principle to endeavour to agree on a fee for the giving of oral or written advice or information, for drafting a written opinion and for work as a mediator (section 34 of the Lawyers' Remuneration Act).

Re Question 156:

In accordance with the statutory provisions contained in the Federal Code of Lawyers, as a matter of principle a lower fee than that provided for in accordance with the Lawyers' Remuneration Act may only be agreed if the Lawyers' Remuneration Act specifically permits this. Equally, agreements by means of which a remuneration or its amount depends on the outcome of the case or on the success of the solicitor's actions or agreements in accordance with which the solicitor receives a part of the amount obtained as a fee (success-based fee) are only permissible to the extent stipulated in the Lawyers' Remuneration Act (section 49b of the Federal Code of Lawyers).

## 6. 3. Standards de qualité et procédures disciplinaires

### 6. 3. 1. Standards de qualité et procédures disciplinaires

#### 157) Des normes de qualité ont-elles été formulées pour les avocats ?

- Oui
- Non

Si oui, quels sont les critères de qualité utilisés?

Fundamental professional obligations are regulated by the Federal Code of Lawyers, which is a state statute. Supplementary regulations are contained in the Solicitors' Professional Code, which is issued on a statutory basis (sections 59b and 191a-e of the Federal Code of Lawyers) by the Statutory Assembly at the Federal Bar as a binding set of regulations. One should also point to the strictly-defined liability law for solicitors, as well as to the possibility to have the quality management of the office organisation certified in accordance with ISO 9001, which is also taken up by law firms.

#### 158) Si oui, qui est responsable de la formulation de ces normes de qualité:

- le Barreau ?
- le législateur ?
- autre ?

Si "autre", veuillez préciser :  
cf. information re Question 157.

#### 159) Existe-t-il une possibilité de déposer une plainte concernant :

- la prestation de l'avocat ?
- le montant des honoraires ?

Veuillez préciser :

It is possible to lodge both civil actions and complaints with the Bar, whose job it is to supervise compliance with the professional duties by solicitors. If certain professional duties are violated, criminal prosecution can also be considered, for instance in case of breaches of lawyers' obligation of confidentiality (section 203 of the Criminal Code [StGB] violation of private secrets) or in case of demanding excessive fees (section 352 of the Criminal Code); those concerned can then prefer a criminal charge.

**160) Quelle est l'autorité compétente pour traiter des procédures disciplinaires?**

- le juge  
 le ministère de la justice  
 une instance professionnelle  
 autre

Si autre, veuillez préciser :

Breaches of professional duty are sanctioned by lawyers' courts in the proceedings before the lawyers' court. The initiation of the proceedings is the job of the public prosecution office (sections 113 et seq. of the Federal Code of Lawyers).

**161) Procédures disciplinaires initiées à l'encontre des avocats. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP. Si « autre », veuillez spécifier dans la boîte "commentaire" ci-dessous.**

**[Si la procédure disciplinaire est intentée sur la base de plusieurs manquements, veuillez ne compter ces procédures qu'une seule fois, pour le manquement principal.]**

	Nombre total de procédures disciplinaires initiées (1 + 2 + 3 + 4)	1. Faute déontologique	2. Insuffisance professionnelle	3. Délit pénal	4. Autre
Nombre	NA	NA	NA	NA	NA

Commentaire :

**162) Sanctions prononcées à l'encontre des avocats. Si la donnée n'est pas disponible, veuillez indiquer NA. Si la situation n'est pas applicable dans votre pays, veuillez indiquer NAP.**

**Si "autre", veuillez le spécifier dans la boîte "commentaire" ci-dessous. S'il existe une disparité entre le nombre de procédures disciplinaires initiées et le nombre de sanctions, veuillez indiquer les raisons dans la boîte "commentaire" ci-dessous.**

	Nombre total des sanctions (1 + 2 + 3 + 4 + 5)	1. Réprimande	2. Suspension	3. Révocation	4. Amende	5. Autre (par exemple exclusion du barreau)
Nombre	NA	NA	NA	NA	NA	NA

Commentaire :

**F.3**

**Vous pouvez indiquer ci-dessous tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

## 7. Mesures alternatives au règlement des litiges

### 7. 1. Mesures alternatives au règlement des litiges

#### 7. 1. 1. Mesures alternatives au règlement des litiges

**163) Existe-t-il des procédures de médiation dans le système judiciaire ? Si non, veuillez aller à la question 168**

[Médiation judiciaire : dans ce type de médiation, il y a toujours l'intervention d'un juge ou d'un procureur qui facilite, conseille, décide ou/et approuve la procédure. Par exemple, dans des litiges civils ou des cas de divorce, les juges peuvent diriger les parties vers un médiateur s'ils estiment que des résultats plus satisfaisants peuvent être obtenus pour les deux parties. En matière pénale, le procureur peut se proposer en tant que médiateur entre un délinquant et une victime (par exemple pour établir un accord d'indemnisation).]

- Oui  
 Non

**164) Veuillez préciser, par type d'affaires, l'organisation de la médiation judiciaire :**

	Médiation annexée au tribunal	Médiateur privé	Instance publique (autre que le tribunal)	Juge	Procureur
Affaires civiles et commerciales	Oui	Oui	Oui	Oui	Non
Affaires familiales (ex. divorce)	Oui	Oui	Oui	Oui	Non
Affaires administratives	Oui	Oui	Non	Oui	Non
Licenciements	Oui	Oui	Non	Oui	Non
Affaires pénales	Non	Non	Non	Non	Non

**165) Est-il possible de bénéficier de l'aide judiciaire lors des procédures de médiation ?**

- Oui  
 Non

Si oui, veuillez préciser :

Legal aid covers court annexed mediation in full when other requirements are fulfilled. In criminal conciliation cases legal aid concerns legal advice but usually not the representation in conciliation proceedings.

**166) Nombre de médiateurs accrédités ou enregistrés qui exercent la médiation judiciaire :**

NAP

**167) Nombre total de procédures de médiation judiciaire**

**Veuillez indiquer la source dans la boîte "commentaire" ci-dessous:**

Nombre total (1+2+3+4+5)	NAP
1. les affaires civiles	NAP
2. les affaires familiales	NAP
3. les affaires administratives	NAP
4. les affaires de licenciements	NAP
5. les affaires pénales	NAP

Commentaire :

**168) Votre système judiciaire connaît-il les formes d'ADR suivantes.**

**Si "autres mesures", veuillez le spécifier dans la boîte "commentaire" ci-dessous.**

la médiation autre que la médiation judiciaire?	Oui
l'arbitrage?	Oui
la conciliation?	Oui
d'autres mesures alternatives au	Oui

règlement des litiges?

Commentaire :

All forms of out-of court conflict resolution are possible as a matter of principle.

Arbitrational jurisdiction; arbitrational conflict resolution is possible in civil and commercial cases and also in family cases; provisions on arbitrational jurisdiction can be found in sections 1025 et seqq. of the Code of Civil Procedure.

#### **G.1**

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système de mesures alternatives au règlement des litiges et les réformes majeures mises en œuvre au cours des deux dernières années**

re Question 167: Federal statistics are available only for intra-court mediation. Intra-court mediation was implemented in 2010 in civil, family, administrative, labour, social and finance courts. Judges working in intra-court mediation are however not entitled to hand down rulings, unlike the notes on Question 163. The federal statistics however do not record any cases in which the parties are referred to an out-of-court mediator.

Arbitrational conflict resolution in civil and commercial cases has considerably increased in recent years in terms of their number and of the values at dispute recorded. This kind of alternative conflict resolution is still rare in family cases, and is only selected for special reasons.

**Veillez indiquer les sources des réponses à la question 166**

the Ministry of Justice

## 8. Exécution des décisions de justice

### 8. 1. Exécution des décisions civiles

#### 8. 1. 1. Fonctionnement

#### 169) Existe-t-il dans votre système judiciaire des agents d'exécution ?

- Oui  
 Non

#### 170) Nombre d'agents d'exécution

5 862

#### 171) Les agents d'exécution sont-ils (plusieurs choix possibles):

- des juges ?  
 des huissiers de justice exerçant en profession libérale réglementée par les autorités publiques ?  
 des huissiers de justice attachés à une institution publique ?  
 d'autres agents d'exécutions ?

Veuillez préciser leur statut et leurs compétences (pouvoirs):

The enforcement agents are a public facility, namely bailiffs who are tied to the judicial administration of the Länder.

The bailiff is responsible for coercive enforcement of monetary claims in moveable property (by pledging and public auction (section 808 et seqq. of the Code of Civil Procedure), as well as for compulsory enforcement because of other acts or omissions, namely the surrender of moveables and real estate (sections 883-885 the Code of Civil Procedure).

The enforcement court (a department of the Local Court) is responsible for the coercive enforcement of monetary claims in moveable property insofar as these are rights against third-party debtors. Coercive enforcement takes place in this case by means of pledging and transfer for seizure or instead of payment in accordance with sections 829 et seqq. and 835 et seqq. of the Code of Civil Procedure.

The land registry office (a department of the Local Court) is responsible for coercive enforcement of monetary claims on immovable property if an equitable mortgage is to be entered (section 867 of the Code of Civil Procedure).

Compulsory enforcement of monetary claims on immovable property by forced auctioning or forced administration is carried out by the enforcement court (a department of the Local Court) in accordance with the provisions contained in sections 15 et seqq. or 146 et seqq. of the Forced Sale Act (Zwangsvorsteigerungsgesetz).

As a rule senior judicial officers act at the enforcement court and at the land registry office. These are not enforcement agents in the strict sense of the word, but special court bodies which carry out special court tasks as the "second pillar of the third power" in addition to judges, largely in the field of "voluntary" jurisdiction (including in inheritance cases, custodianship cases, parent-and-child and adoption cases, in land registry cases, commercial, cooperative and partnership register cases, in insolvency cases, association-related cases, cases related to the marriage property register, ship register cases, etc.). Moreover, they carry out a large number of other judiciary activities, such as in the field of court payment demand proceedings, legal aid, setting of costs, execution of penalties, etc., and in proceedings for which the enforcement court has jurisdiction (pledging of receivables, forced auctioning, forced administration). The field of activity of senior judicial officers is regulated in the Act on Senior Judicial Officers (RPfG). Just like judges, senior judicial officers are factually independent and only bound by law and order in carrying out their tasks and in their decisions (section 9 of the Act on Senior Judicial Officers). In this respect, they are not subject to any content-related instructions. The appeals that are admissible against their decisions apply as a matter of principle in accordance with the general provisions of procedural law (section 11 of the Act on Senior Judicial Officers).

#### 172) Existe-t-il une formation initiale ou un examen spécifique pour accéder à la profession d'agent d'exécution ?

- Oui  
 Non

#### 173) La profession d'agent d'exécution est-elle organisée par :



- une instance nationale ?
- une instance régionale ?
- une instance locale ?
- NAP (la profession n'est pas organisée)

**174) Pour le justiciable, existe-t-il une transparence sur le coût prévisible des frais d'exécution ?**

- Oui
- Non

**175) Est-ce que les frais d'exécution sont librement négociés ?**

- Oui
- Non

**176) Est-ce que la loi stipule des règles sur les frais d'exécution (même s'ils sont librement négociés) ?**

- Oui
- Non

**Veillez indiquer la source de la réponse à la question 170 :**

(of whom senior judicial officers: 1,181.16)

Federal Office of Justice:

Personnel overviews of the ordinary courts and of the public prosecution offices for 2010 – information in job shares

#### 8. 1. 2. Efficacité des services d'exécution

**177) Existe-t-il un système de supervision et de contrôle de l'activité des agents d'exécution ?**

- Oui
- Non

**178) Quelle est l'autorité chargée de superviser et de contrôler les agents d'exécution :**

- une instance professionnelle ?
- le juge ?
- le ministère de la justice ?
- le procureur ?
- autre ?

Si autre, veuillez préciser :

The bailiffs are subject to the service supervision of the Presidents and the Directors of the Local Courts. They are examined, both announced and unannounced, by the service superiors or examination officials of the Land administrations of justice who are appointed to do so.

Senior judicial officers are also subject to the service supervision of the Presidents and Directors of the Local Courts. Senior judicial officers however work factually independently, and are only bound by law and order (section 9 of the Act on Senior Judicial Officers). Factual control is guaranteed by the appeals under procedural law. Reference is made to the answer re Question 171 for more details.

**179) Des normes de qualité sont-elles formulées pour les agents d'exécution ?**

- Oui
- Non

Si oui, quels sont les critères de qualités utilisés ?

To guarantee uniform enforcement, national uniform provisions of the Länder were created for the bailiff system in the shape of the Bailiffs Code (Gerichtsvollzieherordnung – GVO) and the Procedural Instructions for Bailiffs (Geschäftsweisung für Gerichtsvollzieher – GVGA), which in each case are supplemented by arrangements specific to the Länder. Both sets of regulations contain clear instructions to the enforcement agents regarding the structure of the employment relationship, competence arrangements, dealing with enforcement requests, performing business operations, files, accounting and cash management, statistics to be kept (Bailiffs Code) and explicit provisions on the service activities which are incumbent on the bailiffs and the procedures they have to comply with (Procedural Instructions for Bailiffs).

In particular, the Procedural Instructions for Bailiffs contain regulations which serve to standardise the procedure and quality assurance.

Senior judicial officers work factually independently, and are only bound by law and order (section 9 of the Act on Senior Judicial Officers). The de facto control of their work is guaranteed by the appeals under procedural law, cf. answer to Question 171.

In general terms, the Federal Ministry of Justice is the final authority for the assurance of the quality standards relating to provisions of federal law. Land-specific provisions fall in the competence of the Land administrations of justice.

**180) Qui est chargé de formuler ces normes de qualité ?**

- un organisme professionnel  
 le juge  
 Ministère de la Justice  
 autre

Si "autre", veuillez préciser :  
 cf. answer to Question 179

**181) Disposez-vous d'un mécanisme spécifique pour l'exécution des décisions de justice rendues contre des autorités publiques, y compris pour assurer le suivi de cette exécution?**

- Oui  
 Non

Si oui, veuillez préciser :

In accordance with section 882a the Code of Civil Procedure, unless rights in rem are being pursued, compulsory enforcement for a monetary claim against the Federation or against a Land may commence only four weeks following the time at which the creditor has given notice, to the public authority authorised to represent the debtor, of his/her intention to pursue compulsory enforcement and, to the extent such compulsory enforcement is to be effected against assets managed by another public authority, to the responsible Minister of Finance. Upon this being demanded, the receipt of the notice is to be confirmed to the creditor. Insofar as compulsory enforcement is to be implemented by the court-appointed enforcement officer in such cases, the enforcement officer is to be determined, upon the creditor filing a corresponding petition, by the court responsible for execution.

Compulsory enforcement is not permissible with regard to matters which are indispensable for the performance of public tasks of the debtor or where their sale is not in the public interest. Whether the prerequisites of sentence 1 apply is to be decided in accordance with section 766 of the Code of Civil Procedure in the event of a dispute. The competent Minister is to be heard before the decision is taken.

These provisions are to be applied to compulsory enforcement against corporations, facilities and foundations under public law on condition that the statutory representatives take the place of the authority. The above restrictions to not apply to public-law banks and credit agencies.

The announcement of compulsory enforcement and compliance with a waiting period in accordance with the procedure described is not needed when it comes to the enforcement of an injunction.

**182) Disposez-vous d'un système de contrôle de l'exécution ?**

- Oui  
 Non

Si oui, veuillez préciser :

There is a system for monitoring the activity. Creditors, debtors and third-party debtors have the procedural appeals at their disposal.

**183) Quelles sont les principales plaintes des usagers concernant les procédures d'exécution ?**

**Veillez n'en indiquer que 3 au maximum**

- absence de toute exécution ?
- non exécution des décisions judiciaires rendues contre des autorités publiques ?
- manque d'information ?
- durée excessive ?
- pratiques illégales ?
- supervision insuffisante ?
- coût excessif ?
- autre ?

Si autre, veuillez préciser:

All other items contained in the questionnaire also occur, but do not constitute the majority of complaints. The above information is based on experience. In particular, no statement is made on whether the complaints are justified in individual cases.

**184) Votre pays a-t-il préparé ou adopté des mesures concrètes pour changer la situation concernant l'exécution des décisions de justice – en particulier les décisions rendues contre les autorités publiques?**

- Oui
- Non

Si oui, veuillez préciser :

No need for change is considered to exist as to the enforcement of court decisions against authorities. The keeping and administration of the register of debtors, as well as of the property registers, has been newly regulated by the Act to Reform the Clarification of Facts in Compulsory Enforcement (Gesetz zur Reform der Sachaufklärung in der Zwangsvollstreckung) of 29 July 2009 (Federal Law Gazette Part I, p. 2258). This mandates the Länder to appoint one Local Court each as a central enforcement court for the administration of the property registers (section 802k subs. 3 of the Code of Civil Procedure) and the keeping of the registry of debtors (section 882h subs. 2 of the Code of Civil Procedure) by a legal ordinance of the Land Government. Furthermore, the Act provides bailiffs with expanded powers to ascertain the whereabouts of the debtor, as well as rights to information for the bailiffs in the submission of information on assets. The amendments will come into force as per 1 January 2013.

**185) Existe-t-il un système mesurant la durée des procédures d'exécution :**

- pour les affaires civiles ?
- pour les affaires administratives ?

**186) Pour un jugement concernant un recouvrement de créances, pouvez-vous estimer le délai de notification aux parties habitant dans la ville du siège de la juridiction ?**

- entre 1 et 5 jours
- entre 6 et 10 jours
- entre 11 et 30 jours
- plus

Si plus, veuillez préciser

**187) Nombre de procédures disciplinaires initiées à l'encontre des agents d'exécution. Si "autre", veuillez le préciser dans la boîte "commentaire" ci-dessous.**

**[Si la procédure disciplinaire est intentée sur la base de plusieurs manquements, veuillez ne compter ces procédures qu'une seule fois, pour le manquement principal.]**

Nombre total de procédures disciplinaires initiées (1+2+3+4)	<input checked="" type="checkbox"/> nombre :	17
1. pour faute déontologique	<input checked="" type="checkbox"/> nombre :	1
2. pour insuffisance professionnelle	<input checked="" type="checkbox"/> nombre :	13
3. pour délit pénal	<input checked="" type="checkbox"/> nombre :	3

4. Autre

NA

Commentaire :

\*) Not including information from Mecklenburg-Western Pomerania, Lower Saxony and Thuringia.

1) information provided by: BW, BY, HE, RP, SH (NA stated by: BE, HB, NW, SL, SN, ST)

2) information provided by: HE

3) information provided by: BW, BY, HE, RP, SH

"Other":

North Rhine-Westphalia:

No information is available.

4) information provided by: BW, HE, RP

**188) Nombre de sanctions prononcées à l'encontre des agents d'exécution.**

**Si "autre", veuillez le spécifier dans la boîte "commentaire" ci-dessous. S'il existe une disparité entre le nombre de procédures disciplinaires initiées et le nombre de sanctions, veuillez indiquer les raisons dans la boîte "commentaire" ci-dessous.**

Nombre total de sanctions (1+2+3+4+5)	<input checked="" type="checkbox"/> nombre :	7
1. Réprimande		NA
2. Suspension		NA
3. Révocation		NA
4. Amende	<input checked="" type="checkbox"/> nombre :	2
5. Autre	<input checked="" type="checkbox"/> nombre :	8

Commentaire :

\*) Not including information from Berlin, Mecklenburg-Western Pomerania, Lower Saxony and Thuringia.

1) information provided by: BW, BY, RP, SH (NA stated by: HB, NW, SL, SN, ST)

2) information provided by: BY, HE, RP

3) information provided by: RP, SH

4) information provided by BW, HE, SH

"other":

Baden-Württemberg:

re No. 5: Baden-Württemberg Land disciplinary law facilitates discontinuation of disciplinary proceedings with the consent of the civil servant subject to conditions if the proceedings relate to a minor or medium-serious breach of official duty and the guilt of the civil servant is slight. Conditions that can be considered here include the restitution of the damage or the payment of an amount of money to a charity or to the employer (cf. section 37 subs. 2 of the Land Disciplinary Act [LDG]). This possibility of concluding the proceedings was employed on enforcement agents in two cases in 2010. Disciplinary proceedings were discontinued in a further case because the civil servant was dismissed from the service at his own request.

The imbalance between the number of sets of proceedings initiated in 2010 (Question 187) and the proceedings completed in the same year (Question 188) is explained from the fact that the disciplinary proceedings recorded were not completed in the year in which they were initiated.

Hesse:

1 set of proceedings discontinued; 2 sets of proceedings not yet complete; 1 discontinuation

North Rhine-Westphalia:

No information is available.

Rhineland-Palatinate:

One set of disciplinary proceedings was initiated in 2010 and not completed until 2011, with a sanction (suspension).

Schleswig-Holstein:

Other = here: issuing of a reprimand

**H.1****Vous pouvez indiquer ci-dessous :****- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre****- les caractéristiques de votre système d'exécution des décisions civiles et les réformes majeures mises en œuvre au cours des deux dernières années**

Re Question 186:

Civil court judgments are served in accordance with sections 166 et seqq. of the Code of Civil Procedure. In the many cases in which a party is represented by a lawyer, as a rule by being served on the solicitor in accordance with section 172 of the Code of Civil Procedure.

Major reform of the enforcement of rulings in civil cases:

1. Act Reforming the Account Garnishment Act (Gesetz zur Reform des Kontopfändungsschutzrechts) of 7 July 2009 (Federal Law Gazette Part I, p. 1707).

- introduction of a garnishment protection account on which the debtor receives basic protection against pledging ensuring participation in cash-free payment transactions.

2. Act to Reform the Clarification of Facts in Compulsory Enforcement (Gesetz zur Reform der Sachaufklärung in der Zwangsvollstreckung) of 29 July 2009 (Federal Law Gazette Part I, p. 2258).  
- cf. answer to Question 184.

Saxony-Anhalt:

There are no special characteristics of the system to enforce rulings in civil cases. It has not yet been agreed which Local Court in Saxony-Anhalt is to become the central enforcement court.

No statistics are kept as to the number of sets of disciplinary proceedings initiated and the sanctions imposed, so that no information can be provided on this matter.

**Veillez indiquer les sources pour les réponses aux questions 186, 187 et 188 :**

Federal Office of Justice acc. to Länder information

Baden-Württemberg:

Internal statistics of the Ministry of Justice of Baden-Württemberg.

North Rhine-Westphalia:

No information is available.

Schleswig-Holstein:

Collected by the Ministry of Justice using available data.

## 8. 2. Exécution des décisions pénales

### 8. 2. 1. Exécution des décisions pénales

**189) Qui est chargé de l'exécution des décisions pénales? (plusieurs options possibles)**

- Juge  
 Procureur  
 Services pénitentiaire et de probation  
 Autre autorité

Veillez préciser ses fonctions et compétences (ex. fonctions d'initiative ou de contrôle). Si "autre autorité", veuillez préciser :

In adult criminal cases and cases involving adolescents sentenced in accordance with general criminal law the penalty is enforced by the public prosecution office as the enforcement authority. In criminal proceedings against juveniles, and against adolescents where youth criminal law is applied to them, the enforcement of the penalty is incumbent on the youth court judges as the enforcement officer (section 82 subs. 1 sentence 1 and section 110 of the Youth Courts Act); cf. at Question 105 with regard to the age limits relevant for juveniles and adolescents.

**190) En matière d'amendes prononcées par une juridiction pénale, existe-t-il des études permettant d'évaluer le taux de recouvrement effectif ?**

- Oui  
 Non

**191) Si oui, quel est le taux de recouvrement ?**

- 80-100%  
 50-79%  
 moins de 50%  
 ne peut être estimé

Veillez indiquer la source ayant permis de répondre à cette question:

## H.2

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système d'exécution des décisions pénales et les réformes majeures mises en œuvre au cours des deux dernières années**

## 9. Notaires

### 9. 1. Notaires

#### 9. 1. 1. Notaires

#### 192) Existe-t-il des notaires dans votre pays ? Si non allez à la question 197

- Oui  
 Non

#### 193) Les notaires ont-ils un statut :

-----  
**Si "autre", veuillez le préciser dans la boîte "commentaire" ci-dessous.**

- privé (sans contrôle d'une autorité publique)?  nombre  
de profession libérale réglementée par les  
pouvoirs publics ?  nombre  
public?  nombre 7 934  
autre ?  nombre

Commentaire :

number of notaries on 1 January 2011 (source: <http://www.bnotk.de/Notar/Statistik/index.php>).

#### 194) Le notaire exerce-t-il une fonction (plusieurs réponses possibles):

- dans le cadre de la procédure civile ?  
 dans le domaine du conseil juridique ?  
 pour authentifier les actes/certificats ?  
 autre ?

Si "autre", veuillez préciser :

The duties of a notary are set out in section 20 of the Federal Notarial Code (Bundesnotarordnung – BNotO), which is a state statute, namely to carry out authentication of all kinds, as well as to certify signatures, initials and duplicates. With authentication, which in particular are provided for real estate transactions and certain legal transactions under company law, the authentication is inseparably connected with impartial legal advice for the parties by the authenticating notary.

Further, notaries also carry out other tasks in the field of preventive administration of justice, cf. sections 20-24 of the Federal Notarial Code. e.g. in accordance with section 21 subs. 1 of the Federal Notarial Code they issue certificates of power to represent vis-à-vis a public register and mediate in certain legal matters.

#### 195) Existe-t-il un système de supervision et de contrôle de l'activité des notaires ?

- Oui  
 Non

#### 196) Quelle est l'autorité chargée de superviser et de contrôler les notaires :

- une instance professionnelle ?  
 le juge ?  
 le ministère de la justice ?  
 le procureur ?  
 autre ?

Si "autre", veuillez préciser :

The supervision of notaries is carried out by the Land administrations of justice and the court presidents of the Higher Regional Courts and the Regional Courts which report to them.

#### I.1

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données indiquées dans ce chapitre**

**- les caractéristiques de votre système notarial et les réformes majeures mises en œuvre au cours des deux dernières années**

The requirement of German nationality as a precondition for appointment as a notary (section 5 BNotO) was abolished at the end of 2011 as a result of ECJ judgment 22 May 2011, C-54/08.

## 10. Interprètes judiciaires

### 10. 1. Interprètes judiciaires

#### 10. 1. 1. Interprètes judiciaires

**197) Le titre d'interprète judiciaire est-il protégé?**

- Oui  
 Non

**198) La fonction d'interprète judiciaire est-elle régulée par des normes juridiques?**

- Oui  
 Non

**199) Nombre d'interprètes judiciaires accrédités ou enregistrés :**

10 554

**200) Existe-t-il des critères relatifs à la qualité de l'interprétation dans les tribunaux ?**

- Oui  
 Non

Si oui, veuillez préciser (par exemple avoir passé avec succès un examen particulier) :

**201) Les tribunaux sont-ils responsables de la sélection des interprètes judiciaires ? Si non, veuillez indiquer dans la boîte "commentaire" ci-dessous quelle autorité est responsable de la sélection.**

- Oui  pour les recruter et/ou les nommer pour un mandat d'une certaine durée  
Oui  pour les recruter sur une base ad hoc en fonction des besoins d'une procédure spécifique  
-  Non

Commentaire :

#### J.1

**Vous pouvez indiquer tout commentaire utile à l'interprétation des données indiquées dans ce chapitre**

Re Question 199: information according to survey [www.justiz-dolmetscher.de](http://www.justiz-dolmetscher.de) as to interpreters whose swearing/authorisation/appointment took place (version 22 December 2011).

**Veuillez indiquer la source pour répondre à la question 199 :**

[www.justiz-dolmetscher.de](http://www.justiz-dolmetscher.de)



## 11. Experts judiciaires

### 11. 1. Experts judiciaires

#### 11. 1. 1. Experts judiciaires

**202) Dans votre système, les experts interviennent-ils durant la procédure judiciaire comme (choix multiple possible):**

- "Experts témoins" à qui les parties demandent d'apporter leur expertise pour soutenir leur argumentation
- "Experts techniques" qui mettent à la disposition du tribunal leurs connaissances scientifiques et techniques sur des questions de fait
- "Experts juristes" qui peuvent être consultés par le juge pour des questions de droit spécifiques ou qui ont pour tâche de soutenir le juge dans la préparation du travail judiciaire (mais qui ne participent pas au jugement)

**203) Le titre d'expert judiciaire est-il protégé ?**

- Oui
- Non

**204) La fonction d'expert judiciaire est-elle régulée par des normes juridiques?**

- Oui
- Non

**205) Nombre d'experts judiciaires (experts techniques) accrédités ou enregistrés.**

NA

**206) Existe-t-il des critères relatifs à l'exercice de la fonction d'expert judiciaire dans le cadre des procédures judiciaires ?**

- Oui
- Non

Si oui, veuillez préciser, notamment les délais impartis pour présenter un rapport technique au juge :

In accordance with section 411 subs. 1 of the Code of Civil Procedure, the court sets the experts a deadline within which the written opinion signed by him/her is to be transmitted to the court.

**207) Les tribunaux sont-ils responsables de la sélection des experts judiciaires ?**

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**Si non, veuillez indiquer dans la boîte "commentaire" ci-dessous quelle autorité est responsable de la sélection des experts judiciaires?**

- Oui  pour les recruter et/ou la nommer pour un mandat d'une certaine durée
- Oui  pour les recruter sur une base ad hoc en fonction des besoins d'une procédure spécifique
- Non .

Commentaire :

#### **K.1**

**Vous pouvez indiquer tout commentaire utile à l'interprétation des données indiquées dans ce chapitre**

**Veuillez indiquer la source pour répondre à la question 205 :**

## 12. Réformes envisagées

### 12. 1. Réformes envisagées

#### 12. 1. 1. Réformes

**208) Veuillez fournir des informations sur le débat actuel dans votre pays sur le fonctionnement de la justice. Des réformes sont-elles en préparation ou envisagées. Si possible, respectez les catégories suivantes:**

**1. Programmes de réforme généraux**

**2. Budget**

**3. Tribunaux et Ministère Public ( par exemple pouvoir et organisation, modifications structurelles -par exemple la réduction du nombre des tribunaux-, gestion et méthodes de travail, technologies de l'information, arriéré judiciaire et efficacité, frais de justice, rénovation et construction de nouveaux bâtiments)**

**4. Conseil supérieur de la Magistrature**

**5. Professionnels de la justice (juges, procureurs, avocats, notaires, agents d'exécution, etc.) : organisation, formation, etc.**

**6. Réformes en matière civile, pénale et administrative, de conventions internationales et d'actes de coopération**

**7. Exécution des décisions de justice**

**8. Médiation et autres ADR**

**9. Lutte contre la criminalité et système pénitentiaire**

**10. Autres**

3. Discussion of combining the specialist jurisdictions that are governed by public law, discussion of strengthening electronic legal transactions with the courts