



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2009

Country: Luxembourg

National correspondent

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1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants

492000

2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

	Amount
State level	13550000000
Regional / entity level	

3) Per capita GDP (in €)

80600

4) Average gross annual salary (in €)

42000

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2009

Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

1. 2. Budgetary data concerning judicial system

1. 2. 1. Budget (courts, public prosecution, legal aid, fees)

6) Total annual approved budget allocated to all courts (in €)

64300000

7) Please specify

61,4 mio ordre judiciaire
dont notamment 43,4 mio traitements des fonctionnaires, 4,5 mio indemnités des employés, 1,4 mio achats de biens, 3,3 mio frais de justice, CRI, expertises, 2,6 mio assistance judiciaire, 1,5 mio indemnités avocats -stagiaires...

2,9 mio ordre administratif dont 2,3 mio traitement des fonctionnaires, 0,2 indemnités des employés

8) Does the approved budget of the courts include the following items? Please give for

each item (or some of them) a specification of the amount concerned or indicate NA (not available) in case that the information cannot be supplied

Please provide comments to explain the data provided under question 8:

Annual public budget allocated to (gross) salaries	☒ Yes	50400000
Annual public budget allocated to computerisation (equipment, investments, maintenance)	☒ Yes	870000
Annual public budget allocated to justice expenses	☒ Yes	4000000
Annual public budget allocated to court buildings (maintenance, operation costs)	☒ Yes	505000
Annual public budget allocated to investments in new (court) buildings	☒ Yes	759000
Annual public budget allocated to training and education	☒ Yes	60000
Other (please specify):	☒ Yes	7706000

Comment :

"Other": frais de route à l'étranger, frais d'experts et d'études, contributions à des organismes internationaux, frais de gardiennage, services postaux et de télécommunication, frais de justice (commissions rogatoires CRI), indemnités avocats stagiaires...

9) Has the annual public budget of the courts changed (increased or decreased) over the last five years?

☒ Yes

☐ No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years:

Budget global de 54 mio en 2006 et de 64,3 mio en 2008.

10) In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

☐ for criminal cases?

☐ for other than criminal cases?

If yes, are there exceptions? Please specify:

11) If yes, please specify the annual income of court fees (or taxes) received by the State (in Euros)

12) Total annual approved budget allocated to the whole justice system (in €)

Please provide information concerning the budgetary elements that included in the whole justice system budget:

.	☒ Amount	64300000
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Comment :

61,4 mio ordre judiciaire

dont notamment 43,4 mio traitements des fonctionnaires, 4,5 mio indemnités des employés, 1,4 mio achats de biens, 3,3 mio frais de justice, CRI, expertises, 2,6 mio assistance judiciaire, 1,5 mio indemnités avocats -stagiaires...

2,9 mio ordre administratif dont 2,3 mio traitement des fonctionnaires, 0,2 indemnités des employés

13) Total annual approved public budget allocated to legal aid (in €)

Please provide comments to explain the figure provided under question 13:

. ☒ Amount 2600000

Comment :

Le montant de l'aide judiciaire est compris dans le montant global alloué à l'aide judiciaire.

14) If possible, please specify (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Annual public budget allocated to legal aid in criminal law cases	Annual public budget allocated to legal aid in non criminal law cases
Amount		

Comment :

15) Is the public budget allocated to legal aid included in the court budget ?

☒ Yes

☐ No

16) Total annual approved public budget allocated to the public prosecution system (in €)

Please provide comments to explain the figure provided under question 16:

. ☐ Amount

Comment :

17) Is the budget allocated to the public prosecution included in the court budget?

☒ Yes

☐ No

18) Authorities formally responsible for the budget allocated to the courts:

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the	Evaluation of the use of the budget at a national level
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			individual courts	
Ministry of Justice	Yes	No	Yes	No
Other ministry	No	No	No	No
Parliament	No	Yes	No	No
Supreme Court	No	No	No	No
Judicial Council	No	No	No	No
Courts	No	No	No	No
Inspection body	No	No	No	Yes
Other	No	No	No	No

19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

Direction du contrôle financier

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Le gouvernement élabore le projet de loi budgétaire qui est adopté par le parlement.

Please indicate the sources for answering the questions 6, 8, 11, 12, 13, 14 and 16.

Loi du 21 décembre 2007 concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2008 (legilux.lu)

2. Access to Justice and to all courts

2. 1. Legal aid

2. 1. 1. Principles

20) Does legal aid concerns:

	Criminal cases	Other than criminal cases
Representation in court	Yes	Yes
Legal advice	Yes	Yes
Other	No	No

21) If other, please specify (in regards to question 20):

22) Does legal aid foresee the covering or the exoneration of court fees?

☒ Yes

☐ No

If yes, please specify:

L'assistance judiciaire s'étend à tous les frais relatifs aux instances, procédures ou actes pour lesquels elle a été accordée et notamment aux:

- 1) droits de timbre et d'enregistrement
 - 2) frais de greffe
 - 3) émoluments des avocats
 - 4) droits et frais d'huissiers de justice
 - 5) frais et honoraires des notaires
 - 6) frais et honoraires des techniciens
 - 7) taxes de témoins
 - 8) honoraires des traducteurs et interprètes
 - 9) frais pour certificats de coutume
 - 10) frais de déplacement
 - 11) droits et frais des formalités d'inscriptions, d'hypothèques et de nantissement
 - 12) frais d'insertion dans les journaux.
- (Article 8 du Règlement grand-ducal du 18 septembre 1995)

23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

☒ Yes

☐ No

24) Number of cases granted with legal aid provided by (national, regional, local) public authorities (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

Total	3641

in criminal cases	
Other than criminal cases	

Comment :

25) In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

☒ Yes

☐ No

26) Does your country have an income and asset test for granting legal aid:

	Yes	Amount in €
for criminal cases	Oui	
for other than criminal cases?	Oui	

Comment :

(1) Sont considérées comme personnes dont les ressources sont insuffisantes les personnes bénéficiant du revenu

minimum garanti dans les limites des montants fixés à l'article 3 de la loi du 26 juillet 1986 portant a) création du droit à

un revenu minimum garanti; b) création d'un service national d'action sociale; c) modification de la loi du 30 juillet 1960

concernant la création d'un fonds national de solidarité, ainsi que les personnes qui vivent en communauté domestique d'un

tel bénéficiaire et dont les revenus et la fortune ont été pris en considération pour la détermination du revenu minimum garanti.

(2) Sont également considérées comme personnes dont les ressources sont insuffisantes les personnes qui, sans bénéficier

du revenu minimum garanti, se trouvent toutefois dans une situation de revenus et de fortune telle que, si elles remplissaient

les conditions prévues à l'article 2 (1) de la loi modifiée du 26 juillet 1986 précitée, elles auraient droit à l'attribution du revenu

minimum garanti.

(3) En cas de litige opposant entre eux des conjoints ou des personnes vivant habituellement dans le cadre d'un foyer

commun, sont considérées comme personnes dont les ressources sont insuffisantes les personnes qui, en l'absence d'une

prise en considération des revenus et de la fortune de la ou des personnes avec qui elles sont en litige pourraient prétendre à

l'attribution du revenu minimum garanti.

(4) Peuvent également être considérées comme personnes dont les ressources sont insuffisantes, les personnes qui ne

rentrent pas dans une des catégories mentionnées ci-dessus, si la situation familiale ou matérielle des personnes en question

paraît particulièrement digne d'intérêt au regard de l'objet du litige ou des charges prévisibles susceptibles d'en résulter.

(Article 1er du Règlement grand-ducal du 18 septembre 1995)

27) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the

case (for example for frivolous action)?

☒ Yes

☐ No

Please provide comments to explain the answer under question 27:

28) If yes, is the decision for granting or refusing legal aid taken by:

☐ the court?

☒ an authority external to the court?

☐ a mixed decision-making authority (court and external)?

29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?

☒ Yes

☐ No

Please specify:

Tout justiciable est libre de souscrire auprès de la compagnie d'assurance de son choix une assurance de protection juridique (souvent cette dernière fait partie du package assurance responsabilité civile qui elle est obligatoire).

30) Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:

	Yes (the decision has an impact on who bears the legal costs)
criminal cases?	Yes
other than criminal cases?	Yes

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

Please indicate the sources for answering the questions 24 and 26

Ordre des Avocats de Luxembourg et de Diekirch

2. 2. Users of the courts and victims

2. 2. 1. Rights of the users and victims

31) Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to:

☐ legal texts (e.g. codes, laws, regulations, etc.)? Internet address(es):

☒ Yes

legilux.lu

☐ case-law of the higher court/s? Internet address(es):

☒ Yes

jurad.etat.lu

☐ other documents (for examples forms)? Internet address(es):

☒ Yes

guichet.lu ;
justice.public.lu

32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

☐ Yes

☒ No

If yes, please specify:

33) Is there a public and free-of-charge specific information system to inform and to help victims of crimes?

☒ Yes

☐ No

If yes, please specify:

La loi du 6 octobre 2009 renforçant le droit des victimes d'infractions pénales impose des règles contraignantes aux autorités judiciaires en matière d'aide et d'information des victimes.

34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

	Information mechanism	Hearing modalities	Procedural rights	Other
Victims of rape	Yes	Yes	Yes	Yes
Victims of terrorism	No	No	No	No
Children/Witnesses/Victims	Yes	Yes	Yes	No
Victims of domestic violence	No	No	Yes	Yes
Ethnic minorities	No	No	No	No
Disabled persons	No	No	No	Yes
Juvenile offenders	No	Yes	Yes	Yes
Other	No	No	No	No

Comment :

35) Does your country have a compensation procedure for victims of crimes?

☒ Yes

☐ No

36) If yes, does this compensation procedure consist in:

☒ a public fund?

☒ a court decision?

☒ a private fund?

If yes, which kind of cases does this procedure concern?

Si une victime voit l'auteur des faits condamné à lui verser des dommages et intérêts et que cet auteur est insolvable, elle peut faire une demande auprès de la commission d'indemnisation des victimes de dommages corporels du Ministère de la Justice. Ne sont donc concernés que les victimes de dommages corporels.

37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?

☒ Yes

☐ No

If yes, please specify:

38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?

☒ Yes

☐ No

If yes, please specify:

Voir Question n° 33

39) Do victims of crimes have the right to contest to a decision of the public prosecution to discontinue a case?

☒ Yes

☐ No

If yes, please specify:

Voir Question n° 33

2. 2. 2. Confidence of citizens in their justice system

40) Is there a system for compensating users in the following circumstances:

☒ excessive length of proceedings?

☒ non execution of court decisions?

☒ wrongful arrest?

☒ wrongful condemnation?

If yes, please specify (fund, daily tariff):

Loi du 30 décembre 1981 sur la détention préventive inopérante

Loi du 1er septembre 1988 sur la responsabilité de l'Etat pour fonctionnement défectueux des services de la Justice.

Aucune précision ne peut être donnée sur les montants alloués, ces montants étant déterminés au cas par cas au vu des circonstances de l'espèce.

41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction (with the services delivered by the judiciary system)?

- ☐ (Satisfaction) surveys aimed at judges
- ☐ (Satisfaction) surveys aimed at court staff
- ☐ (Satisfaction) surveys aimed at public prosecutors
- ☐ (Satisfaction) surveys aimed at lawyers
- ☐ (Satisfaction) surveys aimed at citizens (visitors of the court)
- ☐ (Satisfaction) surveys aimed at other clients of the courts

If possible, please specify their titles, how to find these surveys, etc:

42) If possible, please specify:

	Yes (surveys at a regular interval: for example annual)	Yes (incidental surveys)
Surveys at national level	No	No
Surveys at court level	No	No

43) Is there a national or local procedure for making complaints about the functioning (for example the treatment of a case by a judge or the duration of a proceeding) of the judicial system?

- ☒ Yes
- ☐ No

44) If yes, please specify:

Please give elements of information concerning the efficiency of this complaint procedure:

	Time limit to respond (Yes)	Time limit for dealing with the complaint (Yes)
Court concerned	No	No
Higher court	No	No
Ministry of Justice	No	No
High Council of the Judiciary	No	No
Other external organisations (e.g. Ombudsman)	No	No

Comment :

- 1) possibilité de récusation d'un magistrat ou d'une composition du siège.
- 2) Demande de prise à partie ou en renvoi pour cause de suspicion légitime devant la Cour de cassation.
- 3) Le Ministère de la Justice ne peut intervenir dans le traitement judiciaire d'un dossier (séparation des pouvoirs)

- 4) Actuellement il n'y a pas de Conseil supérieur de la magistrature au Luxembourg, mais le programme gouvernemental prévoit la création d'un tel organisme.
- 5) Le médiateur peut intervenir en cas d'inexécution d'une décision de justice par un organisme public, mais ne peut intervenir dans le traitement judiciaire d'un dossier.

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation.

	Total number
First instance courts of general jurisdiction	5
Specialised first instance Courts (legal entities)	5
All the Courts (geographic locations) * (this includes Supreme Courts and/or High Courts)	8

46) Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

1) Jurisdiction constitutionnelle:

- 1 Cour constitutionnelle: contrôle de conformité des lois (à l'exception des lois d'approbation des traités internationaux) par rapport à la Constitution.

2) Juridictions de l'ordre judiciaire:

- 1 Cour supérieure de justice, qui est composée d'une Cour de cassation et d'une Cour d'appel
 - 2 tribunaux d'arrondissement: droit civil et commercial (valeur du litige dépassant 10.000 €) et droit pénal (crimes et délits)
 - 3 justices de paix: droit civil et commercial (valeur du litige jusqu'à 10.000 €) et droit pénal (contraventions)
 - 3 tribunaux du travail (organisés au niveau des justices de paix): droit du travail.
 - 2 juridictions sociales: 1 Conseil supérieur des assurances sociales et 1 Conseil arbitral des assurances sociales.

3) Juridictions de l'ordre administratif:

- 1 Cour administrative: juridiction d'appel en matière administrative et fiscale
 - 1 Tribunal administratif: juridiction de première instance en matière administrative (décisions administratives individuelles et actes réglementaires) et en matière fiscale (essentiellement impôts directs).

47) Is there a change in the structure in the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?

☐ Yes

☒ No

If yes, please specify:

48) Number of first instance courts competent for a case concerning (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Number
--	--------

a debt collection for small claims	3
a dismissal	3
a robbery	2 à 3

Please specify what is meant by small claims in your country (answer only if the definition has been changed since the previous evaluation cycle):

Please indicate the sources for answering the questions 45 and 48:

Loi du 7 mars 1980 sur l'organisation judiciaire

3. 1. 2. Judges, courts staff

49) Number of professional judges sitting in courts (please give the information in full time equivalent and for permanent posts; if there is no data please indicate this with NA)

Please provide comments to explain the answer under question 49:

Number . 184

Comment :

Augmentation des effectifs du tribunal d'arrondissement de Luxembourg de 5 magistrats (loi du 1er juillet 2005, plan pluriannuel Justice, article 4)

50) Number of professional judges sitting in courts on an occasional basis and who are paid as such:

	Number
gross figure	0
if possible, in full time equivalent	0

51) Please provide comments to explain the answer under question 50:

52) Is there in the legal system non-professional judges (including lay judges and excluding juries) who are not remunerated but who can possibly receive a simple defrayal of costs? (Please indicate NA if no figures are available).

Please provide comments to explain the answer under question 52:

	Yes	Number
Do you have non-professional judges?	X	NA

Comment :

On trouve les juges non-professionnels essentiellement, voire exclusivement dans les matières sociales (droit du travail et droit de la sécurité sociale) où il y a une représentation paritaire des partenaires sociaux. Ces tribunaux sont cependant généralement présidés par un magistrat professionnel.

53) Does your judicial system include trial by jury with the participation of citizens?☐ Yes☒ No

If yes, for which type of case(s)?

54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?

NA

55) Number of non-judge staff who are working in courts (in full time equivalent and for permanent posts). Please indicate NA if no figures are available.**Please provide comments to explain the answer under question 55:**Number . 246

Comment :

56) If possible, could you distribute this staff according to the 4 following categories. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

- | | | |
|---|---|-----|
| - non-judge staff (Rechtspfleger or similar bodies), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal | | NA |
| - non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars | ☒ Yes | 127 |
| - staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management) | ☒ Yes | 112 |
| - technical staff | ☒ Yes | 7 |

Comment :

Ne figurent pas au tableau précédant les personnes détachées du Centre de Technologies des Informations de l'Etat formant le Service Informatique de la Justice (3), ni des intervenants externes, notamment en matière informatique, qui assistent le SIJ. De même le personnel technique compte encore quelque 60 femmes et hommes de charge (à temps partiel) et des employés à temps en nombre variable.

57) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and functions:

NA

3. 1. 3. Prosecutors

58) Number of public prosecutors (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).

Number . 45

Comment :

59) Do any other persons have similar duties as public prosecutors?

☐ Yes

☒ No

If yes, please specify:

60) Number of staff (non prosecutors) attached to the public prosecution service (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).

Please provide comments to explain the answer under question 60:

Number . 76

Comment :

3. 1. 4. Court budget and new technologies

61) Who is entrusted with the individual court budget?

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	No	No	No	No
Court President	No	No	No	No
Court administrative director	No	No	No	No
Head of the court clerk office	No	No	No	No
Other	Yes	Yes	Yes	Yes

62) You can indicate below:

- any useful comments for interpreting the data mentioned above
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process in the court

Le budget de la Justice est élaboré et géré en pratique par les services du Parquet général. En théorie il fait partie du budget du Ministère de la Justice. Tous les budgets sont votés par le parlement et contrôlés dans leur exécution par le Ministère des Finances et après leur clôture par la Cour des comptes.

63) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Word processing	Yes	No	No	No
Electronic data base of jurisprudence	Yes	No	No	No
Electronic files	No	No	No	No
E-mail	Yes	No	No	No
Internet connection	Yes	No	No	No

64) For administration and management, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Case registration system	Yes	No	No	No
Court management information system	Yes	No	No	No
Financial information system	Yes	No	No	No

65) For the communication between the court and the parties, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic web forms	Yes	No	No	No
Special Website	Yes	No	No	No
Other electronic communication facilities	No	No	No	No

66) Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

- ☒ Yes
☐ No

If yes, please specify the name and the address of this institution:

Le Service informatique de la Justice près du Parquet général.. L'aspect statistique fait partie de tout projet informatique actuellement encours ou en voie d'élaboration.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your judicial system and the main reforms that has been implemented over the last two years

Depuis le 1er décembre 2009 a été mis en place un nouvel outil de gestion informatique des affaires pénales. Un outil spécifique à la gestion des petites affaires de recouvrement a été mis en production, de même qu'un programme gérant les affaires de recouvrement communautaires.

Un nouvel outil sera mis en développement également en matière civile en 2010. Tous ces outils comportent des modules statistiques.

Le Portail Internet commun à la justice de droit commun et aux juridictions administratives sera mis en production au printemps 2010, le site provisoire est en ligne depuis été 2008. Ce dernier comporte quelques formulaires en ligne.

3. 2. Monitoring and evaluation

3. 2. 1. Monitoring and evaluation

67) Are the courts required to prepare an annual activity report?

- ☒ Yes
☐ No

68) Do you have a regular monitoring system of court activities concerning the

- ☒ number of incoming cases?
☒ number of decisions?
☒ number of postponed cases?
☐ length of proceedings (timeframes)?
☐ other?

Please specify:

69) Do you have a regular system to evaluate the performance of each court?

- ☐ Yes
☒ No

Please specify:

70) Concerning court activities, have you defined performance indicators (if no, go to question 72)?

- ☐ Yes
☒ No

71) Please select the 4 main performance and quality indicators that is used for a proper functioning of courts:

- ☐ incoming cases
☐ length of proceedings (timeframes)
☐ closed cases
☐ pending cases and backlogs
☐ productivity of judges and court staff
☐ percentage of cases that are treated by a single sitting judge
☐ enforcement of penal decisions
☐ satisfaction of employees of the courts
☐ satisfaction of clients (regarding the services delivered by the courts)
☐ judicial quality and organisational quality of the courts
☐ costs of the judicial procedures

☐ other:

Please specify:

72) Are there performance targets defined for individual judges (if no go to question 74) ?

☐ Yes

☒ No

73) Please specify who is responsible for setting the targets:

☐ executive power (for example the ministry of Justice)?

☐ legislative power

☐ judicial power (for example a High Judicial Council or a Higher Court

☐ other

If other, please specify:

74) Are there performance targets defined at the level of the courts (if no go to question 77)?

☐ Yes

☒ No

75) Please specify who is responsible for setting the targets:

☐ executive power (for example the ministry of Justice)?

☐ legislative power

☐ judicial power (for example a High Judicial Council or a Higher Court)

☐ other

If other, please specify:

76) Please specify the main targets applied

77) Which authority is responsible for the evaluation of the performances of the courts:

☐ High Council of judiciary

☐ Ministry of justice

☐ inspection authority

☐ Supreme Court

☐ external audit body

☐ other

If other, Please specify:

78) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?

☐ Yes

☒ No

If yes, please specify:

79) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?

☐ Yes

☒ No

80) Is there a system which measures the backlogs and which detects the cases not processed within a reasonable timeframe for:

☒ civil cases?

☒ criminal cases?

☒ administrative cases?

81) Do you have a way of analysing waiting time during court procedures?

☒ Yes

☐ No

If yes, please specify:

Système des gestion Ju-Mee en matière civile

Système de gestion Ju-Cha en matière pénale

Il existe en outre, au Service de police judiciaire, un Journal Dynamique des Affaires qui permet pareillement d'identifier le stock des affaires en cours au niveau de la police judiciaire, toutes matières confondues, que ce soient des affaires en instruction ou d'enquête préliminaire. La Direction de la Police prévoit d'étendre ce système à l'ensemble des services de police (services de recherche et d'enquêtes criminelles, commissariats de proximité etc).

82) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?

☐ Yes

☒ No

Please specify (including an indication of the frequency of the evaluation):

83) Is there a system for monitoring and evaluating the functioning of the prosecution services?☒ Yes☐ No

If yes, please specify:

Voir réponse de l'exercice précédent

You can indicate below:

- ☐ **any useful comments for interpreting the data mentioned in this chapter**
- ☐ **the characteristics of your court monitoring and evaluation system**

Le projet CAF, annoncé pour 2008 dans le cadre du rapport pour 2007, n'a pas pu être réalisé en raison du déménagement de la Justice dans ses nouveaux locaux et de la charge de travail qui s'en est suivie pour les responsables concernés. Le projet n'en a pas pour autant été abandonné, et a fait l'objet d'une relance en novembre 2009, pour être lancé en 2010.

4. Fair trial

4. 1. Principles

4. 1. 1. General principles

84) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements)? If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

18,79

85) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

☒ Yes

☐ No

If possible, number of successful challenges (in a year):

0

86) Please give the following data concerning the number of cases regarding Article 6 of the European Convention of Human Rights (on duration and non-execution), for the year of reference. If there is no data available, please indicate it (NA).

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)		1	2	0
Civil proceedings - Article 6§1 (non-execution)				
Criminal proceedings - Article 6§1 (duration)			2	1

4. 2. Timeframes of proceedings

4. 2. 1. General information

87) Are there specific procedures for urgent matters as regards:

☒ civil cases?

☒ criminal cases?

☒ administrative cases?

Please specify:

civil: référé urgence

pénal: Chambre du conseil près du tribunal correctionnel

administratif: référé administratif

88) Are there simplified procedures for:

☒ civil cases (small claims)?

- ☒ criminal cases (petty offences)?
- ☒ administrative cases?

Please specify (for example if you have introduced a new law on simplified procedures):

Loi du 6 mars 2006 dite de "mini-instruction" qui permet l'exécution de certains devoirs réservés au juge d'instruction sans ouverture formelle d'une instruction judiciaire classique.

89) Do courts and lawyers have the possibility to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?

- ☒ Yes
- ☐ No

If yes, please specify:

Ces accord sont formalisés par la procédure de mise en état en matière civile et informels en matière pénale.

4. 2. 2. Penal, civil and administrative law cases

90) Total number of cases in the first instance courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non litigious)*	NA	4098	9923	NA
1 Civil (and commercial) litigious cases*	NA	3144	4378	NA
2 Civil (and commercial) non-litigious cases*	NA	NA	NA	NA
3 Enforcement cases	NA	NA	NA	NA
4 Land registry cases**	NAP	NAP	NAP	NAP
5 Business register cases**	NA	NA	NA	NA
6 Administrative law cases	NA	954	829	NA
7 Other	NA	NA	NA	NA
Total criminal cases (8+9)	NA	49441	13397	NA
8 Criminal cases (severe criminal offences)	NA	NA	4251	NA
9 Misdemeanour and / or minor offences cases	NA	NA	9146	NA

91) Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases - definition of misdemeanour cases, minor offences and severe criminal cases):

Nouvelles

affaires pénales = chiffre des nouveaux dossiers, toutes matières confondues, entrées au parquet.

Affaires pénales terminées = affaires ayant donné lieu à une décision d'un juge du fond, à l'exclusion de celles ayant donné lieu à une autre

décision du parquet (enquête complémentaire, classement, etc.)
 Affaires pénales pendantes: il n'y a pas d'affaires pendantes au niveau des juridictions pénales, où les affaires sont fixées à date déterminée, au niveau des parquets il existe un certain stock au sens commercial du terme.
 Nouvelles affaires civiles : affaires nouvellement enrôlées pendant l'année sous examen
 Affaires civiles terminées : Affaires ayant donné lieu à un jugement

92) Total number of cases in the second instance (appeal) courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations).

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 91.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases and possibly the existence of appeal rates for some case categories):

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non-litigious)*	NA	1328	1438	NA
1 Civil (and commercial) litigious cases*	NA	1019	1091	1231
2 Civil (and commercial) non-litigious cases*	NA	NA	NA	NA
3 Enforcement cases	NA	NA	NA	NA
4 Land registry cases**	NAP	NAP	NAP	NAP
5 Business register cases**	NA	NA	NA	NA
6 Administrative law cases	NA	309	347	NA
7 Other	NA	NA	NA	NA
Total criminal cases (8+9)	NA	NA	577	NA
8 Criminal cases (Severe criminal offences)	NA	NA	NA	NA
9 Misdemeanour and/or minor offences cases	NA	NA	NA	NA

Comment :

93) Total number of cases in the highest instance courts (litigious and non-litigious): please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 88.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and on possible limitations to the appeal to the highest instance court):

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases* (litigious and non-litigious)	NA	118	123	86
1 Civil (and commercial) litigious cases*	NA	118	123	86
2 Civil (and commercial) non-litigious cases*	NA	NA	NA	NA
3 Enforcement cases	NA	NA	NA	NA
4 Land registry cases**	NAP	NAP	NAP	NAP
5 Business register cases**	NA	NA	NA	NA
6 Administrative law cases	NAP	NAP	NAP	NAP
7 Other	NA	NA	NA	NA
Total criminal cases (8+9)	NA	NA	64	NA
8 Criminal cases (severe criminal offences)	NA	NA	NA	NA
9 Misdemeanour cases (minor offences)	NA	NA	NA	NA

Comment :

94) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts: please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Jan. '08
Litigious divorce cases*	NA	NA	1168	NA
Employment dismissal cases*	NA	NA	NA	NA
Robbery cases	NA	NA	127	NA
Intentional homicide	NA	NA	6	NA

95) Average length of proceeding (from the date of lodging of court proceedings) in days, number of pending cases more than 3 years and percentage of cases subject to appeal: please complete the tale. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 92:

	% of decisions subject to appeal	% pending cases more than 3 years	1st instance (average length)	2d instance (average length)	Total procedure (average total length)
Litigious divorce cases*	NA	NA	NA	NA	NA
Employment dismissal cases*	NA	NA	NA	NA	NA
Robbery cases	NA	NA	NA	NA	NA
Intentional homicide	NA	NA	NA	NA	NA

Comment :

96) Where appropriate, please specify the specific procedure as regards (litigious and non-litigious) divorce:

La procédure de divorce par consentement mutuel dure 6 mois (2 présentations de la demande et une décision formelle du tribunal). La durée d'une procédure pour faute dépend en grande partie de la diligence des parties, sur laquelle le juge n'a guère d'emprise. Une réforme de la procédure de divorce est actuellement devant le législateur.

97) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.

98) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):

- ☒ to conduct or supervise police investigation
- ☒ to conduct investigation
- ☒ when necessary, to demand investigation measures from the judge
- ☒ to charge
- ☒ to present the case in the court
- ☒ to propose a sentence to the judge
- ☒ to appeal
- ☒ to supervise enforcement procedure
- ☒ to end the case by dropping it without the need for a judicial decision
- ☒ to end the case by imposing or negotiating a penalty without a judicial decision
- ☒ other significant powers

Please specify:

99) Does the prosecutor also have a role in civil and/or administrative cases?

- ☒ Yes
- ☐ No

Please specify:

Le dossier peut/doit être communiqué au procureur d'Etat si la matière le requiert, notamment dans les matières d'état et de famille (article 181 et suivants du NCPC) aux fins de conclusions de sa part.

100) Functions of the public prosecutor in relation to criminal cases – please complete this table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 100 and indicate in particular if the data given include traffic offences:

	Received by the	Discontinued by the	Discontinued by the	Discontinued by the	Concluded by a	Charged by the
--	-----------------	---------------------	---------------------	---------------------	----------------	----------------

	public prosecutor	public prosecutor because the offender could not be identified	public prosecutor due to the lack of an established offence or a specific legal situation	public prosecutor for reason of opportunity	penalty, imposed or negotiated by the public prosecutor	public prosecutor before the courts
Total number of 1st instance criminal cases	42454	NA	NA	5246	327	11689

Comment :

You can indicate below:

- ☐ **any useful comments for interpreting the data mentioned in this chapter**
- ☐ **the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years**

Please indicate the sources for answering the questions 90 to 95 and 100:

Rapport annuel du Ministère de la Justice 2008

mj.public.lu/chiffres_cles/rapport_activite2008.pdf

5. Career of judges and prosecutors

5. 1. Appointment and training

5. 1. 1. Recruitment, nomination and promotion

101) How are judges recruited?

- ☐ Through a competitive exam (for instance after a law degree)?
- ☐ A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- ☒ A combination of both
- ☐ Other

Other, please specify:

102) Are judges initially/at the beginning of their carrier recruited and nominated by:

- ☐ An authority composed of judges only?
- ☒ An authority composed of non-judges only?
- ☐ An authority composed of judges and non-judges?

103) Is the same authority competent for the promotion of judges?

- ☐ Yes
- ☒ No

If no, please specify which authority is competent for the promotion of judges:

L'avancement se fait auprès des tribunaux de première instance selon un système de carrières. Auprès des juridictions supérieures les magistrats sont nommés sur avis conforme de leurs pairs.

"Loi sur l'organisation judiciaire:

Art. 43. Lorsqu'une place de président de la cour supérieure de justice, de conseiller à la cour de cassation, de président de chambre à la cour d'appel, de conseiller à la cour d'appel, de président, de premier vice-président ou de vice-président d'un tribunal d'arrondissement est vacante, il est procédé comme suit à l'émission de l'avis exigé par l'art. 90 de la Constitution.

La cour procède en assemblée générale convoquée sur la réquisition du procureur général d'État. Pour chaque place vacante, la cour présente trois candidats; la présentation de chaque candidat a lieu séparément.

En outre, le procureur général d'État émet un avis."

"Constitution:

Art. 90. Les juges de paix et les juges des tribunaux sont directement nommés par le Grand-Duc. Les conseillers de la Cour et les présidents et vice-présidents des tribunaux d'arrondissement sont nommés par le Grand-Duc, sur l'avis de la Cour supérieure de justice.

Art. 91. (Révision du 20 avril 1989).

Les juges de paix, les juges des tribunaux d'arrondissement et les conseillers de la Cour sont inamovibles.

Aucun d'eux ne peut être privé de sa place ni être suspendu que par un jugement.

Le déplacement d'un de ces juges ne peut avoir lieu que par une nomination nouvelle et de son consentement. Toutefois, en cas d'infirmité ou d'inconduite, il peut être suspendu, révoqué ou déplacé, suivant les conditions déterminées par la loi."

104) Which procedures and criteria are used for promoting judges? Please specify.

Voir sub 103

105) How are prosecutors recruited?

- ☐ Through a competitive exam? (for example after a law degree)
- ☐ A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- ☒ A combination of both
- ☐ Other

Other, please specify:

106) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- ☐ An authority composed of prosecutors only?
- ☒ An authority composed of non-prosecutors only?
- ☐ An authority composed of prosecutors and non-prosecutors?

107) Is the same authority formally responsible for the promotion of prosecutors?

- ☐ Yes
- ☒ No

If no, please specify which authority is competent for promoting prosecutors:

Voir sub 103

108) Which procedures and criteria are used for promoting prosecutors? Please specify:

Voir sub 103

109) Is the mandate given for an undetermined period for judges?

- ☒ Yes
- ☐ No

Are there exceptions? Please specify:

110) Is there a probation period for judges? If yes, how long is this period?

	Yes	Duration of the probation period (in years)
Probation period for judges	Oui	2

111) Is the mandate given for an undetermined period for prosecutors?

☒ Yes

☐ No

Are there exceptions? Please specify:

112) Is there a probation period for prosecutors? If yes, how long is this period?

	Yes	Duration of the probation period (in years)
Probation period for prosecutors	Oui	2

113) If the mandate for judges/prosecutors is not for an undetermined period, what is the length of the mandate? Is it renewable?

Please specify the length

for judges? ☐ Yes

for prosecutors? ☐ Yes

You can indicate below:

- ☐ **any useful comments for interpreting the data mentioned in this chapter**
☐ **the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years**

5. 1. 2. Training

114) Nature of the training of judges. Is it compulsory?

☒ Initial training

☐ General in-service training

☐ In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)

☐ In-service training for management functions of the court (e.g. court president)

☐ In-service training for the use of computer facilities in the court)

115) Frequency of the training of judges

	Annual	Regular	Occasional
Initial training	Yes	No	No
General in-service training	No	No	Yes
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	No	No	Yes
In-service training for management functions of the court (e.g. court president)	No	No	Yes
In-service training for	No	No	Yes

the use of computer facilities in the court			
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116) Nature of the training of prosecutors. Is it compulsory?

- ☒ Initial training
- ☐ General in-service training
- ☐ Specialised in-service training (specialised public prosecutor)
- ☐ In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- ☐ In-service training for the use of computer facilities in the public prosecution service)

117) Frequency of the training of prosecutors

	Annual	Regular	Occasional
Initial training	Yes	No	No
General in-service training	No	No	Yes
Specialised in-service training (specialised public prosecutor)	No	No	Yes
In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)	No	No	Yes
In-service training for the use of computer facilities in the public prosecution service)	No	No	Yes

You can indicate below:

- ☐ any useful comments for interpreting the data mentioned in this chapter
- ☐ comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court
- ☐ the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years

5. 2. Practice of the profession**5. 2. 1. Salaries**

118) Salaries of judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 118:

	Gross annual salary (€)	Net annual salary (€)
First instance professional judge at the beginning of his/her career	76607	
Judge of the Supreme Court or the Highest Appellate Court	140201	

Public prosecutor at the beginning of his/her career	76607	
Public prosecutor of the Supreme Court or the Highest Appellate Instance	140201	

Comment :

119) Do judges and public prosecutors have additional benefits?

	Judges	Public prosecutors
Reduced taxation	No	No
Special pension	No	No
Housing	No	No
Other financial benefit	No	No

120) If other financial benefit, please specify:

121) Can judges combine their work with any of the following other functions ?

	Yes with remuneration	Yes without remuneration	No
Teaching	No	No	No
Research and publication	Yes	No	No
Arbitrator	No	No	No
Consultant	No	No	No
Cultural function	No	No	No
Other function	No	No	No

122) If other function, please specify:

123) Can prosecutors combine their work with any of the following other functions ?

	Yes with remuneration	Yes without remuneration	No
Teaching	No	No	No
Research and publication	Yes	No	No
Arbitrator	No	No	No
Consultant	No	No	No
Cultural function	No	No	No
Other function	No	No	No

124) If other function, please specify:

La loi sur l'organisation judiciaire stipule :

Art. 100. Sans préjudice des incompatibilités prévues par des lois spéciales, les fonctions de l'ordre judiciaire sont incompatibles avec le mandat de député, avec toute fonction salariée publique ou privée, avec les fonctions d'avoué, de notaire, d'huissier, avec la profession d'avocat, avec l'état militaire et l'état ecclésiastique.

Art. 101. Les membres de la cour, des tribunaux d'arrondissement et des justices de paix et les membres des parquets ne peuvent être bourgmestre, échevin ou conseiller communal.

Art. 102. Les parties ne peuvent charger de leur défense, soit verbale, soit par écrit, même à titre de consultation, les juges titulaires en activité de service, les membres des parquets, les greffiers de la cour ou des tribunaux d'arrondissement en chef et les greffiers des justices de paix, même dans les tribunaux autres que ceux près desquels ils exercent leurs fonctions.

Ces magistrats et fonctionnaires peuvent néanmoins plaider, devant tous les tribunaux, leurs causes

personnelles et celles de leurs femmes, parents ou alliés en ligne directe et de leurs pupilles.

Art. 103. Les dispositions des trois articles qui précèdent ne sont pas applicables aux juges suppléants,

lesquels néanmoins ne peuvent être huissier.

Art. 104. Il est interdit, sous les peines disciplinaires, à tout membre de l'ordre judiciaire, à l'exception

des suppléants des juges de paix, d'exercer, soit par lui-même, soit sous le nom de son épouse ou par toute autre personne interposée, aucune affaire de commerce, d'être agent d'affaires, ou de

participer à la direction, à l'administration ou à la surveillance de toute société ou établissement industriel

ou financier.

125) Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?

☐ Yes

☒ No

If yes, please specify:

Please indicate the source for answering the question 118

Loi du 22 juin 1963 sur le régime de traitement de la fonction publique

5. 2. 2. Disciplinary procedures

126) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:

Procureur général d'Etat

127) Which authority has the disciplinary power on judges and prosecutors? Please specify:

Cour supérieure de Justice

128) Number of disciplinary proceedings initiated against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 128:

	Judges	Prosecutors
Total number (1+2+3+4)	0	0
1. Breach of professional ethics		
2. Professional inadequacy		
3. Criminal offence		
4. Other		

Comment :

129) Number of sanctions pronounced against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 129

	Judges	Prosecutors
Total number (total 1 to 9)	0	0
1. Reprimand		
2. Suspension		
3. Withdrawal of cases		
4. Fine		
5. Temporary reduction of salary		
6. Degradation of post		
7. Transfer to another geographical (court) location		
8. Dismissal		
9. Other		

Comment :

You can indicate below:

- ☐ any useful comments for interpreting the data mentioned in this chapter
- ☐ the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years

6. Lawyers

6. 1. Statute of the profession

6. 1. 1. Profession

130) Total number of lawyers practising in your country. If there is no data available, please indicate it (NA).

1732

131) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court? If no go to question 133.

- ☐ Yes
- ☒ No
- ☐ Not applicable

132) Number of legal advisors. If there is no data available, please indicate it (NA)

133) Do lawyers have a monopoly of representation in (multiple options are possible):

- ☒ Civil cases*?
- ☒ Criminal cases - Defendant*?
- ☐ Criminal cases - Victim*?
- ☒ Administrative cases*?

* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases:

134) Is the lawyer profession organised through?

- ☐ a national bar?
- ☒ a regional bar?
- ☐ a local bar?

Please specify:

Il y a deux barreaux pour les deux arrondissements judiciaires que comprend le Luxembourg

Please indicate the source for answering the questions 130 and 132:

Tableau de l'ordre des avocats

6. 1. 2. Training

135) Is there a specific initial training and/or examination to enter the profession of

lawyer?☒ Yes☐ No**136) Is there a mandatory general system for lawyers requiring continuing professional training?**☒ Yes☐ No**137) Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?**☐ Yes☒ No

If yes, please specify:

6. 1. 3. Fees**138) Can users establish easily what the lawyers' fees will be?**☐ Yes☒ No

Please provide comments to explain the answer under question 138

139) Are lawyers fees☒ regulated by law?☒ regulated by Bar association?☒ freely negotiated?

Please provide comments to explain the answer under question 139:

Le principe qui guide la fixation des honoraires est la libre négociation entre l'avocat et son client. Cependant la loi du 27 août 1991 sur la profession d'avocat apporte quelques tempéraments dans son article 38:

(1) L'avocat arrête ses honoraires et met en charge ses frais professionnels. Dans la fixation des honoraires l'avocat prend en compte les différents éléments du dossier, tels l'importance de l'affaire, le degré de difficulté, le résultat obtenu et la situation de fortune du client.

(2) Dans les cas où cette fixation excéderait des normes raisonnables, le Conseil de l'ordre les réduit, eu égard aux différents éléments du dossier mentionnés au paragraphe (1) précédent.

De plus le barreau, par la voie de circulaires donne des exemples de bonne pratique en matière d'honoraires aux avocats.

6. 2. Evaluation

6. 2. 1. Complaints and sanctions

140) Have quality standards been formulated for lawyers?

- ☐ Yes
☒ No

141) If yes, who is responsible for formulating these quality standards:

- ☐ the bar association?
☐ the legislature?
☐ other?

Please specify (including a description of the quality criteria used):

142) Is it possible to complain about

- ☒ the performance of lawyers?
☒ the amount of fees?

Please specify:

Les prestations de l'avocat, entendues par prestations professionnelles, peuvent donner lieu à une plainte de la part du client devant les autorités ordinaires si l'avocat, dans l'exercice de ses fonctions, a enfreint des règles déontologiques.

Toutefois, si la prestation de l'avocat a conduit à un préjudice pour son client, p.ex. par la même observation d'un délai, la responsabilité civile professionnelle qui en découle relèvera de l'appréciation des tribunaux ordinaires, non pas des instances ordinaires.

En ce qui concerne le montant des honoraires, les clients peuvent, moyennant demande dûment motivée, contester les honoraires des avocats devant le Conseil de l'Ordre.

Dans ce cas, le Conseil de l'Ordre déléguera un de ses membres pour entendre contradictoirement les arguments de l'avocat et ceux du client, avant de rendre un avis écrit et motivé fixant le montant des honoraires.

L'avocat dont les honoraires ont été réduits ne pourra exiger un montant supérieur à celui fixé dans l'avis, sous peine de s'exposer à des poursuites disciplinaires.

En revanche, l'avis n'a aucun pouvoir contraignant à l'égard du client, qui pourra refuser de le suivre.

Dans ce cas, il s'expose à des poursuites de la part de l'avocat devant les tribunaux compétents.

143) Which authority is responsible for disciplinary procedures

- ☐ the judge?
☐ the Ministry of justice?
☒ a professional authority or other?

Please specify:

L'autorité compétente est, selon les cas, soit le Bâtonnier territorialement compétent, soit le Conseil disciplinaire et administratif.

D'après l'article 26 al. 3bis de la loi du 10 août 1991 sur la profession d'avocat, « si le Bâtonnier estime, en cas d'infraction, ou de manquement à la discipline, que la sanction à prononcer ne dépasse pas la peine d'avertissement, de la réprimande ou d'une amende inférieure à EUR 500, il peut seul prononcer cette sanction.

L'avocat sanctionné peut former contredit, par requête, dans les dix jours de la notification de la décision du Bâtonnier, auprès du Conseil disciplinaire et administratif ».

Suivant l'al. 4 du même article, dans les autres cas, càd. lorsque la sanction à envisager est soit l'amende de EUR 500 à EUR 5.000, la suspension de l'exercice de la profession pour un terme qui ne peut excéder 5 ans, ou l'interdiction à vie de l'exercice de la profession, le Bâtonnier devra soumettre au Conseil de l'Ordre le résultat de son instruction préalable du dossier. Le Conseil de l'Ordre déférera l'avocat au Conseil disciplinaire et administratif s'il estime qu'il y a infraction ou manquement à la discipline.

L'appel de la décision du Conseil disciplinaire et administratif sera portée dans un délai de quarante jours devant le Conseil disciplinaire et administratif d'appel.

144) Disciplinary proceedings initiated against lawyers: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 141:

	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Annual number	4	0	0	0

Comment :

Les faits constitutifs de fautes déontologiques dans le chef de l'un des avocats sont susceptibles d'être constitutifs d'infractions pénales. La question n'a pas encore fait l'objet de débats judiciaires.

145) Sanctions pronounced against lawyers : please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 145:

	Reprimand	Suspension	Removal	Fine	Other
Annual number	0	2	1	1	0

Comment :

You can indicate below:

- ☐ any useful comments for interpreting the data mentioned in this chapter
- ☐ the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation

146) Does the legal system provide for mediation procedures? If no go to question 151

☒ Yes

☐ No

147) If applicable, please specify, by type of cases, the organisation of mediation

	Possibility for private mediation proposed by the judge or court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Prosecutor
Civil and commercial cases	No	Yes	No	No	No
Family law cases (ex. Divorce)	Yes	Yes	No	No	No
Administrative cases	No	No	No	No	No
Employment dismissals	No	Yes	No	No	No
Criminal cases	Yes	Yes	No	No	No

148) Is there a possibility to receive legal aid for mediation procedures?

☒ Yes

☐ No

If yes, please specify:

149) Number of accredited mediators. If there is no data available, please indicate it (NA)

48

150) Please Indicate the total number of judicial mediation procedures per case category. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

civil cases?	☐ Yes	1
family cases?	☐ Yes	1
administrative cases?		NA
employment dismissals?		NA
criminal cases?	☐ Yes	0

Please indicate the source for answering the question 150:

Centre de médiation du barreau de Luxembourg
www.centre-mediation.lu

7. 1. 2. Other forms of alternative dispute resolution

151) Can you give information concerning other forms of alternative dispute resolution (e.g. arbitration, conciliation)? Please specify:

NA

You can indicate below:

- ☐ **any useful comments for interpreting the data mentioned in this chapter**
- ☐ **the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years**

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

152) Do you have in your system enforcement agents (judicial officers)? If no go to question 154

- ☒ Yes
☐ No

153) Number of enforcement agents. If there is no data available, please indicate it (NA).

19

154) Are enforcement agents (multiple options are possible):

- ☐ judges?
☒ bailiff practising as private profession ruled by public authorities?
☐ bailiff working in a public institution?
☐ other enforcement agents?

Please specify their status and powers:

155) Is there a specific initial training or examination to enter the profession of enforcement agent?

- ☒ Yes
☐ No
☐ Not applicable

156) Is the profession of enforcement agent organised by?

- ☒ a national body?
☐ a regional body?
☐ a local body?
☐ not applicable

157) Can users establish easily what the fees of the enforcement agents will be?

- ☒ Yes
☐ No
☐ Not applicable

158) Are enforcement fees:

- ☒ regulated by law?
☐ freely negotiated?
☐ not applicable

Please indicate the source for answering the question 153:

Règlement grand-ducal du 25 septembre 2008

8. 1. 2. Supervision**159) Is there a body entrusted with the supervision and the control of the enforcement agents?**

- ☒ Yes
☐ No
☐ Not applicable

160) Which authority is responsible for the supervision and the control of enforcement agents:

- ☒ a professional body?
☒ the judge?
☐ the Ministry of justice?
☒ the prosecutor?
☐ other?

Please specify:

161) Have quality standards been formulated for enforcement agents?

- ☒ Yes
☐ No
☐ Not applicable

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

Les huissiers de justice sont soumis à des règles de déontologie strictes dont le non-respect est sanctionné.

162) Is there a specific mechanism for executing court decisions rendered against public authorities, including the follow up to this execution?

- ☐ Yes
☒ No

if yes, please specify

163) Is there a system for monitoring the execution?☒ Yes☐ No

If yes, please specify

Le justiciable peut saisir le tribunal en cas de contestation ou de difficultés d'exécution.

8. 1. 3. Complaints and sanctions**164) What are the main complaints of users concerning the enforcement procedure?
Please indicate a maximum of 3.**☐ no execution at all?☐ non execution of court decisions against public authorities?☐ lack of information?☐ excessive length?☐ unlawful practices?☐ insufficient supervision?☒ excessive cost?☐ other?

Please specify:

165) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?☐ Yes☒ No

If yes, please specify:

166) Is there a system measuring the timeframes of the enforcement of decisions :☐ for civil cases?☐ for administrative cases?**167) As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court sits:**☒ between 1 and 5 days☐ between 6 and 10 days☐ between 11 and 30 days

☐ more

If more, please specify

168) Number of disciplinary proceedings initiated against enforcement agents. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Total number of disciplinary proceedings	☐ number:	0
for breach of professional ethics	☐ number:	0
for professional inadequacy	☐ yes, number:	0
for criminal offence	☐ number:	0
Other	☐ number:	0

169) Number of sanctions pronounced against enforcement agents. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Total number of sanctions	☐ number:	0
Reprimand	☐ number:	0
Suspension	☐ number:	0
Dismissal	☐ number:	0
Fine	☐ number:	0
Other	☐ number:	0

You can indicate below:

- ☐ **any useful comments for interpreting the data mentioned in this chapter**
- ☐ **the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years**

Please indicate the source for answering the questions 167, 168 and 169:

8. 2. Execution of decisions in criminal matters

8. 2. 1. Functioning

170) Is there a judge who is in charge of the enforcement of judgments?

- ☐ Yes
- ☒ No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor):

Le tribunal ayant rendu une décision de justice, connaît de l'exécution. Le juge des référés est compétent pour les difficultés d'exécution.

171) As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?

☐ Yes

☒ No

If yes, please specify:

You can indicate below:

- ☐ **any useful comments for interpreting the data mentioned in this chapter**
- ☐ **the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years**

9. Notaries

9. 1. Statute

9. 1. 1. Functioning

172) Do you have notaries in your country? If no go to question 177

- ☒ Yes
☐ No

173) Is the status of notaries (if the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations):

a private one (without control from public authorities)?	☐ number	
a status of private worker ruled by the public authorities?	☐ number	
a public one?	☒ number	36
other?	☐ number	

Comment :

La loi du 9 décembre 1976 sur le notariat dispose que les notaires sont des officiers publics nommés par le Grand-Duc.

174) Do notaries have duties:

- ☒ within the framework of civil procedure?
☒ in the field of legal advice?
☒ to authenticate legal deeds?
☐ other?

Please specify:

La loi du 9 décembre 1976 sur le notariat dit que les notaires sont des officiers publics établis pour recevoir tous les actes et contrats auxquels les parties doivent ou veulent donner un caractère d'authenticité attaché aux actes de l'autorité publique, et pour en assurer la date, en conserver le dépôt, en délivrer des grosses et des expéditions.

Please indicate the source for answering the question 173

Loi du 9 décembre 1976 sur le notariat.

9. 1. 2. Supervision

175) Is there an authority entrusted with the supervision and the control of the notaries?

- ☒ Yes
☐ No

176) Which authority is responsible for the supervision and the control of the notaries:

- ☒ a professional body?
- ☒ the judge?
- ☒ the Ministry of justice?
- ☒ the prosecutor?
- ☒ other?
- ☐ not applicable

Please specify:

L'Administration de l'enregistrement et des domaines contrôle la régularité formelle des actes.

You can indicate below:

- ☐ **any useful comments for interpreting the data mentioned in this chapter**
- ☐ **the characteristics of your system of notaries and the main reforms that have been implemented over the last two years**

10. Court interpreters

10. 1. function

10. 1. 1. Statute

177) Is the title of court interpreter protected?

- ☒ Yes
☐ No

178) Is the function of court interpreter regulated?

- ☒ Yes
☐ No

179) Number of certified court interpreters. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations

288

180) Are there binding provisions regarding the quality of court interpreting in judicial proceedings?

- ☒ Yes
☐ No

If yes, please specify:

La loi du 7 juillet 1971 sur les experts, traducteurs et interprètes assermentés régule la profession.

181) Are the courts responsible for the selection of court interpreters?

- ☐ Yes
☒ No

Please provide comments to explain the answers to question 178 (in particular, if no, which authority selects court interpreters?) :

Le Ministère de la Justice désigne les interprètes qui prêtent serment devant la Cour supérieure de justice et exercent sous le contrôle du Procureur général de l'Etat.

11. Functioning of justice

11. 1. Foreseen reforms

11. 1. 1. Reforms

182) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? For example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc. Please specify:

Extraits du programme gouvernemental 2009:

"Le Gouvernement entend mettre en œuvre une politique visant à créer une justice moderne, efficace et accessible. Cet effort se fera tant sur le plan des procédures que sur celui de l'organisation judiciaire.

Afin de garantir aux citoyens un accès équitable aux juridictions, le Gouvernement s'engage à simplifier et à accélérer les procédures judiciaires, sans pour autant remettre en question la qualité des jugements. Les conditions pour bénéficier de l'aide judiciaire seront revues afin de prendre en charge une partie des frais en fonction des revenus des justiciables. Par ailleurs et toujours dans un but de simplification, le Gouvernement veillera à un recours renforcé à des moyens modernes des techniques de l'information.

Le Gouvernement prendra des mesures en vue de réduire les frais de justice. Dans ce cadre, il entend abolir le système de l'état des frais et émoluments.

Le Gouvernement mettra en place un Conseil national de la Magistrature comme garant de l'indépendance de l'appareil judiciaire. Ce nouvel organe sera composé majoritairement de magistrats.

Le Gouvernement étudiera l'introduction de la fonction de juge des affaires familiales dans l'organisation judiciaire.

Les offres de formation continue pour les magistrats seront étendues et le Gouvernement proposera des mesures de sensibilisation des juges aux situations délicates telles que l'abus des enfants, le viol ou la traite des êtres humains".

Plusieurs projets de réformes sont également prévus en matière de droit de la famille, de droit des faillites et de droit des sociétés.

Le contact des citoyens avec les instances judiciaires sera amélioré par le biais de la création d'un service d'information et de presse et de l'utilisation des moyens de communication interactifs.

Les droits des victimes seront renforcés sur base des travaux de la Commission juridique de la Chambre des Députés et ceci avant la fin de l'année 2009. Par ailleurs, l'indemnisation des victimes d'infractions fera l'objet d'une adaptation. Une attention particulière sera réservée au renforcement de la protection des victimes de délinquance sexuelle.

Le Gouvernement élaborera des mécanismes pour la protection des témoins.

Les parties civiles auront dès le début de la procédure le droit de consulter le dossier.

Le Gouvernement encouragera le développement de la médiation dans tous les domaines, y inclus dans le milieu pénitentiaire.