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**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

**EXPLANATORY NOTE TO THE SCHEME
FOR EVALUATING JUDICIAL SYSTEMS**

2016 - 2018 Cycle

EXPLANATORY NOTE

I. Introduction

Background

At their 3rd Summit, organised in Warsaw on 16 and 17 May 2005, the Heads of State and government of the member states of the Council of Europe "[decided] to develop the evaluation and assistance functions of the European Commission for the Efficiency of Justice (CEPEJ)".

The CEPEJ decided, at its 28th plenary meeting, to launch the seventh evaluation cycle 2016-2018, focused on 2016 data.

The CEPEJ wishes to use the methodology developed in the previous cycles to get, with the support of the national correspondents, a general evaluation of the judicial systems in the 47 member states of the Council of Europe as well as the two States observers wishing to participate to the evaluation exercise, Israel (for the second time) and Morocco (for the first time). This will enable policy makers and judicial practitioners to take account of such unique information when carrying out their activities.

The present Scheme was adapted by the Working group on evaluation (CEPEJ-GT-EVAL) in view of the previous evaluation cycles and considering the comments submitted by CEPEJ members, observers, experts and national correspondents. The Scheme's adaptation was restricted to strengthening the corpus of data collected at regular intervals and to making it easier to draw comparisons and assess trends.

The CEPEJ adopted this new version of the Scheme at its 28th plenary meeting (6-7 December 2016).

General recommendations

The aim of this study is to compare the functioning of judicial systems in their various aspects, to have a better knowledge of the trends of the judicial organisation and to suggest reforms to improve the efficiency of justice. The evaluation Scheme and the analysis of the outcoming results should become a genuine tool in favour of public policies on justice, for the sake of the European citizens. All data collected by the CEPEJ will be integrated in the interactive database CEPEJ-STAT (accessible on the CEPEJ website: <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT/default.asp>).

Most probably, all states will not be able to answer every question, because of the diversity of the judicial systems in the member states concerned. Therefore the objective of the Scheme is also to stimulate the collection of data by the states in those fields where such data are still not available.

The CEPEJ Guidelines on judicial statistics - GOJUST (CEPEJ(2008)11) should help national correspondents answer the questionnaire and facilitate the collection of homogenous judicial statistics from all member states.

It must be noted that the Scheme neither aims at including an exhaustive list of indicators nor aims at being an academic or scientific study. It contains indicators which have been considered relevant for states who wish to assess the judicial systems' situation and better understand the functioning of their own systems. At the same time, the data collected will enable to contribute to the on-going works regarding the improvement of the quality and efficiency of justice.

In order to make the data collection and data processing easier, the Scheme has been presented in an electronic form, accessible to national correspondents entrusted with the coordination of the data collection in the member states in a new data collection tool, CEPEJ-COLLECT.

II. Comments concerning the questions in the Evaluation Scheme

This note aims to assist the national correspondents entrusted with replying to the questions in the Evaluation Scheme.

a. General remarks (alphabetical order)

Check: please always check the data inserted. Check, in particular, the figures inserted (for instance the number of zeros!) and compare your answers with the previous evaluation rounds to ensure reliability and comparability of your answers (see "Variations from previous evaluation rounds" below).

Civil law cases: for the purpose of this Scheme, and unless specified otherwise in a specific question (see for instance questions 91 and 149), "civil law cases" refer to other than criminal law cases and include namely family law cases, commercial law cases, employment dismissal cases and administrative law cases.

Consistency (horizontal and vertical): in a table having different subcategories and a total, the latter must equal the sum of the different sub-categories (see for example, questions 6 or 46).

Subcategories:

If the answers of one or more sub-categories are **NA** (not available), the total cannot be equal to the sum of the other sub-categories for which the answers are quantitative data.

- if one category is NA, the total will necessarily be NA;
- if several subcategories are NA, the total can be a quantitative data (which will necessarily be greater to the sum of the quantitative data of the different sub-categories);
- on the other hand, if one or more subcategories are **NAP** (not applicable), they do not impact on the total which can be equal to the sum of the quantitative data.

Horizontal consistency for question 91 to 102 is subject to specific rules (please see the explanatory note for these questions).

Examples of vertical consistency using different kinds of situation in question 6:

Question 6: *Annual (approved and implemented) public budget allocated to the functioning of all courts, in € (without the budget of the public prosecution services and without the budget of legal aid). If you cannot separate the budget allocated to the courts from the budgets of public prosecution services and/or legal aid, please go to question 7. If you are able to answer this question 6, please answer NAP to the question 7.*

Example no. 1 - one subcategory is NA:

| | Approved budget (in €) | Implemented budget (in €) |
|--|------------------------|---------------------------|
| TOTAL - Annual public budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7) | NA | NA |
| 1. Annual public budget allocated to (gross) salaries | 1000 | 1000 |
| 2. Annual public budget allocated to computerisation (equipment, investments, maintenance) | NA | NA |
| 3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties. | 1000 | 1000 |
| 4. Annual public budget allocated to court buildings (maintenance, operating costs) | 2000 | 2000 |
| 5. Annual public budget allocated to investments in new (court) buildings | 5000 | 5000 |
| 6. Annual public budget allocated to training | 2000 | 2000 |
| 7. Other (please specify) | 1000 | 1000 |

Example no. 2 - several subcategories are NA:

| | Approved budget (in €) | Implemented budget (in €) |
|---|------------------------|---------------------------|
| TOTAL - Annual public budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7) | 10000 | 10000 |
| 1. Annual public budget allocated to (gross) salaries | 1000 | 1000 |
| 2. Annual public budget allocated to computerisation (equipment, investments, maintenance) | NA | NA |

| | | |
|--|------|------|
| 3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties. | NA | NA |
| 4. Annual public budget allocated to court buildings (maintenance, operating costs) | 2000 | 2000 |
| 5. Annual public budget allocated to investments in new (court) buildings | NA | NA |
| 6. Annual public budget allocated to training | 1000 | 1000 |
| 7. Other (please specify) | 1000 | 1000 |

Example no. 3 - one subcategory is NAP:

| | Approved budget (in €) | Implemented budget (in €) |
|--|------------------------|---------------------------|
| TOTAL - Annual public budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7) | 8000 | 8000 |
| 1. Annual public budget allocated to (gross) salaries | 1000 | 1000 |
| 2. Annual public budget allocated to computerisation (equipment, investments, maintenance) | 1000 | 1000 |
| 3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties. | 1000 | 1000 |
| 4. Annual public budget allocated to court buildings (maintenance, operating costs) | 2000 | 2000 |
| 5. Annual public budget allocated to investments in new (court) buildings | NAP | NAP |
| 6. Annual public budget allocated to training | 2000 | 2000 |
| 7. Other (please specify) | 1000 | 1000 |

Comments: in the "comments" area, space is given the possibility to specify after each question the answers and to give detailed information on the specificity of the domestic judicial system for the ongoing cycle. The specific comments under each question are different from the general comments which apply to all evaluation cycles. Such comments will be helpful when analysing the replies and processing data. It is not required to fill in this area systematically. These comments should be as precise and as concise as possible.

Cut and paste: when an answer and/or a comment to a specific question remains unchanged from one evaluation process to the other, it is possible to "cut and paste" from the previous evaluation round.

Euros: all financial amounts have to be given in Euros. This is essential to avoid any misinterpretations or problems of comparability. For countries outside the euro zone, the exchange rate, on 1st January of the reference year +1, has to be indicated in question 5.

Gross figures and full-time equivalent of posts: the posts in gross figures concerns the total number of persons working, independently of their working hours. The posts in full-time equivalent, on the other hand, aims at quantify the posts according to the effective attendance rate (taking as reference the full time).The indication of the full-time equivalent implies that the number of part time working persons has to be converted: for instance, one half-time worker should count for 0.5 of a full-time equivalent, two people working half the standard number of hours count for one "full-time equivalent".

Help desk: Should you have any question regarding this Scheme and the way to answer it, please send an e-mail to Christel SCHURRER (christel.schurrer@coe.int) or Lidija NAUMOVSKA (lidija.naumovska@coe.int).

NA and NAP: when answering questions, it may not always be possible to give a number or to choose between different types of answers (Yes or No). You can also use NA or NAP.

NA (not available) means that the concept/category referred to in the question exists in your system, but that you do not know the answer (eg, administrative law cases exists in your system, but you cannot quantify the number of these administrative law cases).

NAP (not applicable) means that the question is not relevant in your judicial system (for example, because the category of judicial staff or the type of dispute that constitutes the question does not exist in your system).

The answers NA or NAP are very different from each other, please observe these rules, any mistake will lead to wrong interpretations.

Numbers: The indication of a numerical data should comply with strict rules. For example, the data 1000 (one thousand) should be provided 1000 **without** a blank (1 000), a point (1.000), a comma (1,000) or an apostrophe (1'000). For some numerical data where one decimal is allowed, it should be used a point and not a comma (e.g. 0.5 and not 0,5). Please always check the figures inserted (especially the number of zeros!).

Rules and exceptions: Please give answers, if possible, according to the general situation in your country and not according to exceptions. You may indicate exceptions to the rules in the comments.

Sources: please indicate the sources of your data, if possible. The "source" concerns the institution which has provided the information to answer the question (e.g. the National Institute of the Statistics or the Ministry of Justice). This will help check the reliability of the data.

Variations from previous evaluation rounds: Please compare the data indicated for the year of reference with the ones provided for the previous evaluation rounds and to explain significant variations from one cycle to another. For numerical data, the system of collect will warn you in case of there is a significant variation.

Example with quantitative data:

Question 42: Number of first instance courts of general jurisdiction (legal entities)

| First instance courts of general jurisdiction (2004) [q33] | First instance courts of general jurisdiction (2006) (q45) | First instance courts of general jurisdiction (2008) (q45) | First instance courts of general jurisdiction (2010) | Diff 2004-2006 (%) | Diff 2006-2008 (%) | Diff 2008-2010 (%) |
|--|--|--|--|--------------------|--------------------|--------------------|
| 1138 | 1130 | 1130 | 484 | -1 | 0 | -57 |

The 2008-2010 differentiel can be explained by the structural reform or by a difference of interpretation of the question by the national correspondent.

Example no. 1 - Comment: "Reduction of courts on 1st January 2009 according to the reorganisation plan adopted by Parliament on 21 June 2008." → 2010 figures and comments are reliable and can be validated.

Example no. 2 - Comment: "The 2008 figure included, unlike to the 2010 figure, all first instance courts (not only first instance courts of general jurisdiction)." The 2010 data is not any more comparable with the 2004, 2006, 2008 data

Year of reference: the year of reference for this Scheme is **2016**.

b. Comments question by question

1. Demographic and economic data

These data will enable to determine ratios allowing comparative analysis.

Question 1

The number of inhabitants should correspond as of 1 January of the reference year +1.

Question 2

The total annual amount of *public expenditure* includes all expenses made by the (federal) state or (federal) public bodies, including public deficits.

For federal states, please indicate separately the total public expenditure at regional or federal level.

Question 3

Please indicate the Gross domestic product (GDP) at current prices per capita. Gross domestic product (GDP) at current prices is GDP at prices of the current reporting period; also known as nominal GDP.

Gross Domestic Product (GDP) is an indicator of economic activity which is the most commonly used and is usually measured on an annual or quarterly basis to determine the economic growth of a country from one period to another. GDP is a measure of total consumption, investment, government spending and the value of exports minus imports. This GDP shall be stated in current prices per capita on an annual basis.

Question 4

Please indicate the average *gross* annual salary and not the *net* salary in your country. The gross salary is calculated before any social expenses and taxes have been deducted. This data must be indicated in Euros.

Question 5

The exchange rate at 1 January of the reference year + 1 should be provided for this question. The exchange rate should be expressed as number of units of national currency required to obtain 1 Euro for all countries outside the Euro zone.

Note: UK-England and Wales, UK-Northern Ireland and UK-Scotland should indicate the same exchange rate.

Question 6

The annual, approved and implemented, budget allocated to the functioning of all courts has been defined by the CEPEJ (see categories below) and may differ from the member states' definitions. For comparability reasons, please observe the CEPEJ categories.

This budget includes:

Categories 1 to 7:

1. (Gross) salaries are those of all judicial and non-judicial staff working within courts, excluding, if appropriate, the public prosecution system (and the staff working for the prosecution services). This amount should include the total salary costs for the employer: if, in addition to the gross salary proper, the employer also pays insurances and/or pensions, these contributions should be included.

2. Computerisation includes all the expenses for the installation, use and maintenance of computer systems (including the expenses paid to the technical staff).

3. Justice expenses borne by the state (or by the justice system) refer to the amounts that the courts should pay out within the framework of judicial proceedings, such as expenses paid for expert opinions or court interpreters. Any expenses to be paid by the parties (court fees and taxes; see questions 8, 8.1, 8.2 and 9) or aimed at legal aid should not be indicated here (see question 12).

4. Court buildings' budget includes all the costs that are related to the maintenance and operation of court buildings (costs for rental, electricity, security, cleaning, maintenance etc.). It does not include investments in new buildings.

5. Investments in new court buildings include all the costs that are connected with investments in new court buildings.

6. The annual public budget allocated to **training** includes the training directly covered by the courts. It does not include the specific budget of a separate public training institution for judges and / or prosecutors (see Q131).

7. Other includes all figures that you cannot subsume under categories listed above.

This budget does not include:

- the budget of the prosecution system (see question 13);

- the budget for legal aid (see question 12).
- the budget for the prison and probation systems;
- the budget for the operation of the Ministry of Justice (and/or any other institution which deals with the administration of justice);
- the budget for the operation of other institutions (other than courts) attached to the Ministry of Justice;
- the budget of the judicial protection of youth (social workers, etc);
- the budget of the Constitutional courts;
- the budget of the High Council for the Judiciary (or similar body);
- the annual income of court fees or taxes received by the state (see questions 8 and 9),

The **approved** budget is the budget that has been formally approved by the Parliament (or another competent public authority).

The **implemented** budget corresponds to the observed expenditures during the reference year.

Where appropriate, the annual budget allocated to the functioning of all courts must include both the budget at national level and at the level of regional or federal entities.

If you cannot separate the budget of the public prosecution services and / or the budget of legal aid from the budget allocated to the functioning of all courts, please indicate "NA" and answer to question 7

Question 7

If you have answered to question 6, please fill in with "NAP" for this question.

If you answer to this question, please note that the **approved** budget is the budget that has been formally approved by the Parliament (or another competent public authority) and the **implemented** budget corresponds to the observed expenditures during the reference year.

Question 8

This question is relevant knowing that a portion of the budget of courts can be financed by an income resulting from the payment by the parties of such court taxes or fees.

These court taxes or fees do not concern lawyers' fees.

For the purposes of this question, *courts of general jurisdiction* are those courts which deal with civil and criminal law cases.

Question 8.1

As regards the method for calculating the court fees or taxes due upon introduction of court proceedings (question 8-1), in certain countries this can be a set sum whereas in others it can consist of a percentage of the contested amount or of an amount determined by the nature of the proceedings.

Questions 12 and 12.1

The total amount should include only the sums to be paid to those benefiting from legal aid or their lawyers (excluding administrative costs resulting from such procedures).

The **approved** budget is the budget that has been formally approved by the Parliament (or another competent public authority).

The **implemented** budget corresponds to the observed expenditures during the reference year.

Question 13

The *Public Prosecutor* should be understood according to the following definition contained in Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system: "(...) authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system".

If there is a single budget for judges and public prosecutors, please indicate, if possible, the proportion of this budget intended for public prosecutors. If part of the public prosecution's budget is allocated to the police budget, or to any other budget, please indicate it.

The **approved** budget is the budget that has been formally approved by the Parliament (or another competent public authority). The **implemented** budget corresponds to the observed expenditures during the reference year.

Questions 14 and 15

The aim of these questions is to identify the bodies involved in the various phases of the process regarding the global budget allocated to the courts. This question does not concern the management of the budget at the level of each individual court, to be addressed under question 61. Various answers are possible, because, in certain countries, the management and the allocation of the budget to the courts is, for example, a combined responsibility of the Ministry of Justice and a Council for the Judiciary. Where applicable, please give a brief description on the way responsibilities related to the allocation of court budgets are organised.

Questions 15.1, 15.2 and 15.3

This question takes into account the budget allocated to the whole justice system (contrary to question 6 which concerns only the court system).

The **approved** budget is the budget that has been formally approved by the Parliament (or another competent public authority).

The **implemented** budget corresponds to the observed expenditures during the reference year.

The annual public budget allocated to the whole justice system should include, in particular the budget of the judicial systems (in accordance with the CEPEJ definition) i.e.:

- the budget for courts
- the budget for legal aid;
- the budget for the public prosecution services;

And other elements:

- the budget for prison system;
- the budget for probation services
- the budget for High councils for the judiciary;
- the budget for the Constitutional Court
- the budget for the judicial management body
- the budget for Advocacy State (i.e. the budget referring to a lawyer representing the State's interests)
- the budget for enforcement services
- the budget for notariat
- the budget for forensic services
- the budget for the judicial protection of juveniles (i.e. the budget referring to the youth protection, mainly the budget allocated to social workers and not the budget for juvenile courts)
- the budget for the functioning of the Ministry of Justice
- the budget for refugees and asylum seekers services
- the budget for immigration service
- the budget for some police services (i.e. judicial police, prisoners' transfer, security in courts, etc.)
- other etc. (please specify the other possible elements) this category can include the budget allocated to training if there is no training institutions (as mentioned in question 131) and if this formation is not financed by the courts (question 6).

Note: for these questions, the answers "No" and "NAP" are equivalent.

Regarding the High councils for the judiciary, this name is already used by the Consultative Council of European Judges (CCJE) in its Opinion No. 10 and by the European Network of Councils for the Judiciary (ENCJ) and. This single term reflects the diversity of European systems and evokes the High Council for the Judiciary or another equivalent independent body.

1. *Access to justice and to all courts*

As the European Convention on Human Rights (ECHR) guarantees legal aid in criminal matters, the questionnaire distinguishes legal aid in criminal matter from legal aid in other than criminal matters.

According to article 6 of the ECHR (fair trial) any accused individual who does not have sufficient financial means has the right to be assisted by a free of charge (or financed by public budget) lawyer in criminal cases. For the purposes of this Scheme, *legal aid* is defined as the aid provided by the state to persons who do not have sufficient financial means to defend themselves before a court. For more information on the characteristics of legal aid, please refer to Resolution Res(78)8 of the Committee of Ministers of the Council of Europe on Legal Aid and Advice.

Question 17

Certain States consider as "legal aid", the coverage or the exemption from court fees (which, in certain countries can consist of a fixed amount, whereas in others this can consist of a percentage of the contested amount or of an amount determined by the nature of the proceedings).

Question 20

This question which concerns the number of cases should be linked to questions 12 and 12-1 regarding the budgets allocated to legal aid. This question requires counting the number of cases for which legal aid has been granted and not the number of decisions to grant legal aid. These two figures can be different in the case where a same decision concerns several cases.

Question 21

Does the possibility for the accused individuals to be assisted by a free of charge lawyer as stated by article 6 of the ECHR (fair trial) also apply to victims?

Question 22

Regarding legal aid, according to the different systems, lawyers can be appointed *ex officio*, proposed on a list or freely chosen by the parties.

Question 23

It is possible that legal aid is limited to people with a standard of living that is deemed modest. According to the amount of revenues and/or assets of the parties, the threshold below which legal aid is granted may be partial or full.

Question 26

The private insurance system might concern for instance bearing court taxes or fees, lawyers' fees and other services related to the settlement of the dispute.

Question 27

Judicial costs include all costs of legal proceedings and other services related to the case paid by the parties during the proceedings (taxes, legal advice, legal representation, travel expenses, etc).

Question 29

This question can apply to all types of cases.

A mandatory provision of information to individuals on the foreseeable timeframe of the case to which they are parties is a concept to be developed to improve judicial efficiency. It can be a simple information transmitted to the parties of pilot projects or the parties of a procedure requiring the relevant court and the parties concerned. This information may consist of an agreement on a jointly determined time-limit, to which both sides would commit themselves through various provisions. Where appropriate, please give details on the specific situations and existing specific procedures.

Question 30

The question aims to specify if the state has established structures which are known to the public, easily accessible and free of charge, for victims of criminal offences. It may be the setting up of on calls of professionals, the provision of documents, the introduction of a telephone line or websites dedicated to information and / or assistance to victims of offences.

Question 31

This question aims to learn how states protect the groups of people who are particularly vulnerable in judicial proceedings.

It does not concern the police investigation phase of the procedure nor compensation mechanisms for the victims of criminal offences, which are addressed under questions 32 to 34.

Definitions of different categories of offences (sexual violence/rape, terrorism, domestic violence etc.), should be in accordance with national legislation of each State.

Ethnic minorities must be addressed in line with the Council of Europe's framework convention for the protection of national minorities (CETS N° 157). It does not concern foreigners involved in a judicial procedure. Special measures for these groups can be, for instance: language assistance during court proceedings or special measures to protect the right to a fair trial and to avoid discrimination.

Information mechanisms might include, for instance:

- a public, free of charge and personalised information mechanism, operated by the police or the justice system, which enables the victims of criminal offences to get information on the follow-up to the complaints they have launched;
- the obligation to inform beforehand the victim of sexual violence/rape, in case of the release of the offender,
- the obligation **of the judge** to inform the victims of all his/her rights.

Special arrangements in court hearings might include, for instance,

- the possibility for a minor to have his/her first declaration recorded so that he/she does not have to repeat it in further steps of the proceedings;
- live audio or videoconferencing of the hearing of a vulnerable person so he/she is not obliged to appear before the accused,
- in camera hearing, excluding the public, of a victim of sexual violence/rape,
- the obligation (or the right to request) that statements of a vulnerable person (e.g. minor) are made in the presence of a probation counsellor,
- the testimony of minors under 16 cannot be received under oath.

The *other specific modalities* can consist in, for instance,

- the possibility of an *in camera* proceeding, excluding the public,
- the language assistance during a court proceeding for ethnic minorities or disabled persons,
- the obligation to hear the opinion of an association protecting the interest of a minor accused of a crime,
- the right for a woman who is a victim of family violence to enjoy the use of the common house,
- the physical protection during the time of the judicial proceeding,
- the right of an association protecting and defending the interest of a group of vulnerable person to exercise the civil rights granted to the plaintiff,
- the prohibition on publishing personal details and photographs of minor defendants and witnesses,

Question 31.1

The aim of this question is to ascertain if minors can participate in court proceedings in their own name and if such participation is of a direct nature (without the intervention of a legal representative), if yes, how.

Question 35

The purpose of this question is to identify the role of the prosecutor in relation to victims. In some countries the role of the prosecutor is focused on the prosecution of perpetrators and its role is non-existent or of little importance in relation to victims of an offence. On the contrary, in certain countries, the public prosecutor can play a role in the assistance to victims of crime (for example, by providing them with information or assisting them during judicial proceedings, etc). If this is the case, please specify it.

Question 36

This question is related to situations where public prosecutors can discontinue a case, for example due to the lack of evidence, when a criminal offender could not be identified or, in some legal systems, for discretionary reasons. It aims to know whether victims of crime may have the possibility to dispute such a decision – i.e. to appeal or to

initiate a recourse to a higher authority - , in order to 'force' the public prosecution services to carry on with a criminal case.

This question does not concern countries where the public prosecutors can not decide whether to discontinue the case without needing a decision by a judge. Anyway, in such countries, victims can dispute the court decision. This is why the correct answer for such countries is NAP ("not applicable").

Please verify the consistency of your answer with that of question 105 regarding the possibility (or impossibility) for a public prosecutor "to discontinue a case without needing a decision by a judge".

Question 38

These questions concern the surveys aimed at persons who were in direct contact with a court and who were directly involved in proceedings. It does not concern general opinion surveys.

For each user category, please specify, for the reference year, the frequency of these surveys both at the national and court levels.

Your answers can refer to different specific surveys but also to a comprehensive survey including several categories.

Questions 40, 41 and 41.1

These questions refer to the existence of a procedure enabling every user of the justice system to complain about a fact that he/she thinks is contrary to the good functioning of the judicial system such as for example the excessive length of proceeding or the lack of impartiality of a judge or prosecutor or even the corruption of a judge, a public prosecutor or the court staff and public prosecution offices. If there are such situations known in your country (underlined in particular in the reports published by the Group of States against Corruption – GRECO), please specify.

Questions 41 and 41.1 allow you to mention some aspects of this procedure: authority responsible for dealing with the complaint, the existence or not of a time limit for dealing with the complaint and finally the compensations amounts granted.

3. Organisation of the court system

For the purposes of this Scheme, a *court* means a body established by law appointed to adjudicate on specific type(s) of judicial disputes within a specified administrative structure where one or several judge(s) is/are sitting, on a temporary or permanent basis.

Questions 42 and 43

A court can be considered either as a legal entity or a geographical location. Therefore it is required to number the courts according to both concepts, which allow in particular to give information on the accessibility of courts for the citizens.

For the number of legal entities (administrative structure), the possible different divisions of a court shall not be counted individually (for instance it is not correct to indicate "3" for the same court which includes one civil division, one criminal division and one administrative division. The correct answer is "1"). The different sites where the courts are not counted (contrary to the question regarding the number of courts on a geographic location point of view, see below).

For the purpose of this question, a *court of general jurisdiction* is a court which deals with all the issues which are not attributed to specialised courts owing to the nature of the case.

Please, count as *specialised courts* only the courts which are indeed considered as such in your system. **Are not considered here as specialised courts**, for instance:

- chambers responsible for "family cases" or "administrative law cases" that are under the authority of the same court of general jurisdiction,
- a Supreme Court or a High Court dealing with all types of cases; they belong to the ordinary organisation of the judiciary.

The number indicated in question 42.2 must correspond to the total of question 43.

Courts (geographic locations) (42.3): For the purposes of this question, please indicate the total number of geographical locations (geographic sites where are the courts) where judicial hearings are taking place, numbering the courts of first instance of general jurisdiction, the specialised courts of first instance, second instance and appeal courts, as well as the Supreme Court or High Courts. Please count the different sites, including courtrooms, of the same court (for example, if the same court is split into two buildings, indicate "2").

Examples:

- **Estonia:** Estonia has 17 courthouses of county courts, 4 courthouses of administrative courts, 2 courthouses of appellate courts and 1 courthouse of the Supreme Court. Some of the courts are situated in the same house. In addition, the Pärnu County Court has a courthouse that is divided between two locations. There are in fact 22 actual geographic locations of Estonian courts.

| | Number of courts (geographic locations) | First instance general jurisdiction (legal entities) | First instance specialised jurisdiction (legal entities) |
|------|---|--|--|
| 2010 | 22 | 4 | 2 |
| 2012 | 22 | 4 | 2 |
| 2013 | 22 | 4 | 2 |
| 2014 | 22 | 4 | 2 |
| 2015 | 22 | 4 | 2 |

- **Ireland :** In Ireland, there are only 3 first instance courts (as legal entities) exercising general jurisdiction for the entire State (the High Court, the Circuit Court and the District Court). The number of geographic locations refers to physical locations serving as seats or venues for the 3 jurisdictions.

| | Number of courts (geographic locations) | First instance general jurisdiction (legal entities) | First instance specialised jurisdiction (legal entities) |
|------|---|--|--|
| 2010 | 119 | 3 | 1 |
| 2012 | 105 | 3 | 1 |
| 2013 | 100 | 3 | 1 |
| 2014 | 94 | 3 | 1 |
| 2015 | 94 | 3 | 1 |

Please note that questions 42.1, 42.2 and 43 (unlike question 42.3) relate only to the courts of first instance. Question 42.3 concerns geographical sites, regardless of the instance level.

Question 43

Courts should be included only if they are actually specialised courts. For example, if family law cases are dealt with by ordinary courts, the answer to the 4th row of the table should be: "NAP" (not applicable).

This question concerns only the courts of first instance.

The total of question 43 should correspond to the number indicated under question 42.2.

Question 44

This question allows measuring the judicial map developments and the organisation of courts. These reforms should also be provided under question 208 point 3.

Questions 45, 45.1 and 45.2

The question 45 aims to compare the number of courts for some specific categories of cases (geographic locations). It should enable a comparison of member states despite the differences regarding judicial organisation.

Definition of a **small claim**: it is a civil case where the financial value of the claim is relatively low.

However, this notion of "small claim" does not prevent from taking into account the differences in the living conditions in European states. For this reason, please specify on the one hand, if the definition used in your country is different from this definition (question 45.1) and on the other hand, the maximum amount included, in your country, within the definition of a "small claim" (question 45.2), which is generally used as criteria for procedural jurisdiction.

Questions 46 to 52

These questions aim at numbering all persons entrusted with the task of delivering or participating in a judicial decision. Please make sure that public prosecutors and their staff are excluded from these figures (if it is not possible, please indicate this clearly).

Please indicate the number of posts that are actually filled (at 31 December of the reference year) and not the theoretical budgetary posts.

For the purposes of this Scheme, a *judge* must be understood according to the case law of the European Court of Human Rights. In particular, the judge decides, according to the law and following an organised procedure, on any issue within his/her jurisdiction. He/she is independent from the executive power.

Therefore, **judges deciding in administrative or financial matters (for instance) must be counted** if they are included in the above mentioned definition.

Questions 46 and 47

For the purposes of this question, *professional judges* are those who have been recruited, trained and who are paid as such. The information should be given for permanent posts that are actually filled (not the theoretical number included in the budget) and in full-time equivalent.

The **court president** must be understood as a judge (or non-judge) who is in charge of the organisation and the management of a court (legal entity). Regarding the countries such as Spain and Turkey where one judge is considered as one legal entity, this definition could be interpreted as a person which receives the title of "President" for the entire court (and not the president of a chamber or a section of a chamber) and who is, for example, responsible for coordinating the work of all the judges of his/her court.

Please note that court presidents (question 47) are also accounted under question 46 if they practise as judges.

Full-time equivalent indicates the number of persons working the standard number of hours (whereas the *gross figure* of posts includes the total number of persons working independently of their working hours). The indication of the full-time equivalent implies that the number of part time working persons has to be converted: for instance, one half-time worker should count for 0.5 of a full-time equivalent, two people that work half the standard number of hours count for one "full-time equivalent".

The data concerns all general jurisdictions and specialised courts.

In order to better understand gender issues in the judiciary, please specify the number of women and men who practice in the different court levels and specify the number of women and men who practice as court presidents.

When judges sit at different levels of jurisdiction, they must be assigned according to their main activity. On this basis, first instance judges are those who know a case for the first time; second instance judges can be defined as those who control the first decision that has been made.

If it is not possible for you to distinguish the main activity of a judge, please provide the data in full time equivalent (FTE) for each instance to which the judge is attending.

Questions 48 and 48.1

This question concerns *occasional professional judges* who do not perform their duty on a permanent basis but who are paid for their function as a judge.

At first, the *gross data* could be indicated. Secondly, in order to compare the situation between member states, the same indication could be given, if possible, in *full-time equivalent*.

Question 48.1 allows measuring to what extent part-time judges participate in the judicial system.

Questions 49 and 49.1

For the purposes of this question, **non-professional judges** are those who sit in courts (as defined in question 46) and whose decisions are binding but who do not belong to the categories mentioned in questions 46 and 48 above. This category includes namely lay judges and the (French) "*juges consulaires*". Neither the arbitrators, nor the persons who have been sitting in a jury (see question 50) are subject to this question.

The "echevinage" is a system of judicial organisation in which cases are heard and decided by jurisdictions that are composed of both, professional magistrates (who preside the jurisdiction), and persons who do not belong to the professional magistrates.

Firstly, the gross figure could be provided. Secondly, in order to compare the situation between member states, the same indication could be given if possible in *full-time equivalent*.

Question 50

This category concerns for instance the citizens who have been drawn/selected to take part in a jury entrusted with the task of judging serious criminal offences. It may be a jury composed for one case or several cases.

To differentiate between *misdemeanour / minor offenses* and *serious offenses* (question 50.1) and ensure the consistency of the responses between different systems, the CEPEJ invites you now to classify as ***misdemeanour / minor all offenses for which it is not possible to pronounce a sentence of privation of liberty***. Conversely, should be classified as ***severe offenses all offenses punishable by a deprivation of liberty (arrest and detention, imprisonment)***. If you cannot make such a distinction, please indicate the categories of cases reported in the category "serious offenses" and cases reported in the category "minor offenses".

If you tick the box "other cases", please specify in comment to which types of cases does it refer.

Question 52

The whole non-judge staff, working in all courts, must be counted here in full-time equivalent for permanent posts. In order to better understand gender issues in the judiciary, please specify the total number of female staff working in courts as well as the number of female staff for each category. Please make sure that the figures presented exclude staff working for the public prosecution services (otherwise mention the situation in the comment).

The *full-time equivalent* is an indicator of the number of persons working for a standard rate of hours (whereas the gross figures concerns the total number of persons working, independently of their working hours). The indication of the full-time equivalent implies that the number of part time working persons has to be converted: for instance, one half-time worker should count for 0.5 of a full-time equivalent, two people that work half the standard number of hours count for one "full-time equivalent".

The different categories are:

1. The **Rechtspfleger** is defined as an independent judicial body according to the tasks that were delegated to him/her by law. Such tasks can be connected to: family and guardianship law, law of succession, law on land register, commercial registers, decisions about granting a nationality, criminal law cases, enforcement of sentences, reduced sentencing by way of community service, prosecution in district courts, decisions concerning legal aid, etc. The *Rechtspfleger* has a quasi-judicial function.

2. **Non-judge (judicial) staff** directly assist a judge with judicial support (assistance during hearings, (judicial) preparation of a case, court recording, judicial assistance in the drafting of the decision of the judge, legal counselling - for example court registrars). If data has been given under the previous category (*Rechtspfleger*), please do not add this figure again under the present category.

3. **Administrative staff** are not directly involved in the judicial assistance of a judge, but are responsible for administrative tasks (such as the registration of cases in a computer system, the supervision of the payment of court fees, administrative preparation of case files, archiving) and/or the management of the court (for example a head of the court secretary, head of the computer department of the court, financial director of a court, human resources manager, etc.).

4. **Technical staff** are staff in charge of execution tasks or any technical and other maintenance related duties such as cleaning staff, security staff, staff working at the courts' computer departments or electricians.

5. **Other non-judge staff** include all non-judge staff that aren't included under the categories 1-4.

The total number indicated in the first column must absolutely correspond to the total of categories 1 to 5 in accordance with the following rules:

Consistency (horizontal and vertical): in a table having different subcategories and a total, the latter must equal the sum of the different sub-categories (see for example, questions 6 or 46).

Subcategories:

If the answers of one or more sub-categories are **NA** (not available), the total cannot be equal to the sum of the other sub-categories for which the answers are quantitative data.

- if one category is NA, the total will necessarily be NA;

- if several subcategories are NA, the total can be a quantitative data (which will necessarily be greater to the sum of the quantitative data of the different sub-categories);

- on the other hand, if one or more subcategories are **NAP** (not applicable), they do not impact on the total which can be equal to the sum of the quantitative data.

For examples, please see part II.a. "General remarks" of the explanatory note.

Question 53

The Rechtspfleger is defined as an independent judicial body according to the tasks that were delegated to him/her by law. Such tasks can be connected to: family and guardianship law, law of succession, law on land register, commercial registers, decisions about granting a nationality, criminal law cases, enforcement of sentences, reduced sentencing by way of community service, prosecution in district courts, decisions concerning legal aid, etc. The Rechtspfleger has a quasi-judicial function.

Questions 54 and 54.1

The aim of this question is to know if courts delegate or outsource certain services to private providers and comparing this issue with the number of court staff.

Question 54.1 gives a list of services examples that can be outsourced.

Questions 55 and 56

The *Public Prosecutor* should be understood according to the following definition contained in Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system: "(...) authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system".

For the purposes of this question, a **head of public prosecution office** should be understood as a prosecutor (or non-prosecutor) who is in charge of the organisation and management of a prosecution office (legal entity).

For the countries as Serbia where in one prosecution office there is one prosecutor and all other are deputy prosecutors, the "prosecutor" is considered as a head of prosecution office and the deputy prosecutors as prosecutors (whose number should be reported in question 55).

Please note that the heads of prosecution office (question 56) are also accounted under question 55 if they practise as prosecutors.

The information should be given in full-time equivalent for permanent posts that are actually filled (not the theoretic number which appears in the budget) (see note on questions 46 and 47).

The *full-time equivalent* is an indicator of the number of persons working for a standard rate of hours (whereas the gross figures concerns the total number of persons working, independently of their working hours). The indication of the full-time equivalent implies that the number of part time working persons has to be converted: for instance, one half-time worker should count for 0.5 of a full-time equivalent, two people that work half the standard number of hours count for one "full-time equivalent".

In order to better understand gender issues in the judiciary, please specify the number of female and male staff working at different levels of jurisdiction as well as the number of female and male staff who are heads of public prosecution offices.

All prosecutors must be accounted, including those having specialised functions (e.g. public prosecutor specialised on organised crime, terrorism, economic crime, etc.)

In the case where prosecutors serve at several levels of jurisdictions, they should be assigned according to their main activity. In this respect, first instance prosecutors are those who know for the first time of a case. Second instance prosecutors are those performing prosecution functions in cases for which a first decision has been made.

If it is not possible for you to distinguish the main activity of a prosecutor, please provide the data in full time equivalent (FTE) for each instance to which the judge is attending.

Questions 57 and 59

In some countries, there are *persons who are specifically entrusted with duties similar to those exercised by public prosecutors*, for instance police officers that are able to bring a case before court or to negotiate sentences. This excludes lawyers that bring charges to a criminal hearing and victims who can go directly to the judge without having the public prosecution services intervene.

Please specify if in your country exist persons having similar duties to public prosecutors. If this is the case, please provide these data in FTE

The *full-time equivalent* is an indicator of the number of persons working for a standard rate of hours (whereas the gross figures concerns the total number of persons working, independently of their working hours). The indication of the full-time equivalent implies that the number of part time working persons has to be converted: for instance, one half-time worker should count for 0.5 of a full-time equivalent, two people that work half the standard number of hours count for one "full-time equivalent".

Please also specify whether these persons are included in the data concerning the number of public prosecutors (question 55) and give information on these categories (status, number, duties) in comment of question 59.

Question 59.1

In this question please indicate the training (initial or continuous professional development) available to address certain crimes relating to domestic violence and sexual violence in order to evaluate how different judicial systems take these issues into account.

Question 60

For the purposes of this question, please number the non-prosecutor staff working for the prosecution system, even when this staff appears in the budget of the court. This figure should not include the number of staff working for judges. The information should be given in full time equivalent for posts which are actually filled (not the theoretic number included in the budget).

The *full-time equivalent* is an indicator of the number of persons working for a standard rate of hours (whereas the gross figures concerns the total number of persons working, independently of their working hours). The indication of the full-time equivalent implies that the number of part time working persons has to be converted: for instance, one half-time worker should count for 0.5 of a full-time equivalent, two people that work half the standard number of hours count for one "full-time equivalent".

Question 61

Contrary to question 14 which concerns the elaboration of the budget before it is actually allocated between the courts, this question concerns those persons within the courts who enjoy specific powers as regards the budget. Multiple answers are possible. If available, please give a description of the responsibilities of the various actors regarding the individual court budget.

If you tick the box "other ", please specify in comment to which instance does it refer and describe its jurisdictions.

Questions 62 to 65.4

For these questions, please refer to the specific explanatory note CEPEJ-GT-EVAL(2015)7.

Questions 66 to 83.1

Various court activities (including judges and administrative court staff) are nowadays subject, in numerous countries, to monitoring and evaluation systems.

The *monitoring system* aims to assess the day-to-day activity of the courts, and namely what the courts produce, thanks in particular to data collections and statistical analysis.

The *evaluation system* refers to the performance of the court systems with prospective concerns, using indicators and targets. This evaluation can have a more qualitative nature.

In this section, the questions relating to both national policies in courts and public prosecutors (Q 66 to 69), court performance and evaluation (Q 70 to 82.1), and performance and evaluation of judges (Q83 and 83.1).

Questions 66 to 69 – National policies applied in courts and public prosecution services

Questions 66 and 67

It is important to identify the countries who have implemented at a national level a quality systems in courts (for example in the Netherlands (rechtspraak) and in Finland (Court of appeal of Rovaniemi) and to see if specialised staff working in the courts are also specially responsible for the quality policy within courts (whether or not it is solely responsible).

See also the reference material on the CEPEJ website concerning court quality such as for example the Checklist for promoting the quality of justice and the courts (CEPEJ(2008)2) or the document Measuring the quality of justice (CEPEJ(2016)12).

Questions 68 and 68.1

This question concerns the overall evaluation of the (smooth) functioning of the court but does not concern the specific evaluation of performance indicators.

The supervision of the courts may be done here thanks to inspection visits. These visits might be organised by making use of programmed inspection rounds, where courts or groups of courts in a certain region are regularly visited, annually, bi-annually or at any other frequency, this plan of visits being known in advance.

Whatever is the type of evaluation system of the functioning of the courts implemented in your country, please indicate the frequency (question 68.1).

Question 69

Please note that this procedure concerns the activity, the monitoring and the evaluation of the public prosecution services and not that of the courts.

Questions 70 to 82.1 – Performance and evaluation of courts

The aim of questions 70 to 82.1 is to be able to reflect the situation in your country regarding the implementation of performance measurement tools and evaluation of the courts. Therefore, if such tools are implemented, for example, in one or more (pilot) courts, please answer no. You can, however, explain the situation in your country and the projects that are carried out in the comment box.

Question 71

Backlogs are composed of filed cases which have not yet been decided. Please give details concerning your system to measure backlogs.

Question 72

Waiting time means time during which nothing happens in a procedure (for instance because the judge is waiting for an expert's report). It is not the general length of the procedure.

Question 76

The purpose here is to indicate who sets the objectives of the courts as defined in questions 74 and 75. Several answers are possible for this question. If "other" please specify in comment.

Questions 77 and 78

The question here is whether there are any performance and quality indicators for the courts to measure whether the objectives set (questions 74 and 75) have been met.

For question 78, several answers are possible. If "other" please specify in comment.

Questions 80, 80.1, 81, 81.1 and 81.2

The questions 80 to 81.2 aim to establish if the final statistics and annual reports of activities concerning each court are available to the public via the internet and to which frequency. This gives an idea of the degree of transparency of each court.

Question 82.1

The question 82.1 concerns the electronic pre-trial phase (*mise en état*) of files and not the agreements that might be concluded between lawyers and the courts in order to facilitate the dialogue between the main persons involved in the proceeding (question 89).

Questions 83 and 83.1

The questions 83 and 83.1 address here only quantitative targets to measure the individual work of each judge, participating in the work of the whole court, e.g. a defined number of cases to be handled per month or per year. They do not cover a possible more general assessment of the judge, which may include elements such as qualitative indicators and / or behaviour (question 114).

4. Fair trial

Question 84

The question 84 refers to situations in which a judgment is given with not effective defence. This may occur – in some judicial systems – when a suspect has absconded or does not show up for trial and is not represented by lawyer during the court session. The aim of this question is to find out if the right to an adversarial trial is respected, in particular in criminal cases at first instance.

The right to an adversarial trial means the opportunity for the parties to have knowledge of and comment on the observations filed or evidence adduced by the other party (see amongst others Ruiz-Mateos vs. Spain, judgment of the European Court of Human Rights of 23 June 1993, Series A no. 262, p.25, para. 63).

Question 85

The question 85 aims to provide information on procedures which allow guaranteeing for the court users that the principle of judges' impartiality is respected, in accordance with Article 6 of the European Convention on Human Rights. Please also indicate the number of cases successfully challenged within the year of reference.

Question 86

This question 86 concerns the monitoring system implemented in a State after the European Court of Human Rights recognise a violation by the State related to Article 6 of the European Convention on Human Rights, specifying civil (including commercial and administrative law cases) and criminal cases.

European Convention on Human Rights – Article 6 – Right to a fair trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice

This monitoring system can consist on violations recognised at state and/or court levels (such as for example the implementation of a condemnations dashboard), the implementation of an internal system to remedy the established violation (for example the setting up of a review procedure), the implementation of internal systems to prevent other violations that are similar (for example the establishment of an effective remedy).

Question 87

Such a *procedure for urgent cases* (accelerated) can be used in order for the judge to take a provisional decision (e.g. decision on the right to control and care for a child) or when it is necessary to preserve evidence or when there is a risk of imminent or hardly repairable damage (for instance emergency interim proceedings).

Questions 88 and 88.1

Such a *simplified procedure* can be used in civil matters for instance when it concerns the enforcement of a simple obligation (e.g. payment order).

For criminal matters, the question aims to know whether petty offences (for instance minor traffic offences or shoplifting) can be processed through administrative or simplified procedures. These offences are considered as subject to sanctions of criminal nature by the European Court of Human Rights and shall therefore be processed in respect of the subsequent procedural rights.

Question 88-1 aims to establish how the requirement to reason judgements (see article 6-1 European Convention of Human Rights) is put into practise when a simplified procedure is used.

Question 89

This question refers to agreements between lawyers and the courts which can be entered into in order to facilitate the dialogue between the main actors of the proceeding and, in particular, to improve lengths of proceedings (conversely to question 82.1 which concerns the electronic pre-trial phase (*mise en état*) of files.

Questions 91 to 109

The national correspondents are invited to pay special attention to the quality of the answers to questions 91 to 102 regarding case flow management and lengths of judicial proceedings. The CEPEJ agreed that the subsequent data would be processed and published only when answers from a significant number of member states – taking into account the data presented in the previous report – are given, enabling thus a useful comparison between the systems.

The member states are asked to provide information on the **caseload of the courts** (from first instance courts to the highest instance courts).

Incoming cases are all cases submitted to court (first instance, second instance or Supreme Court) for the first time within the reference year. Cases which have already been submitted to a court at the same instance level (after an appeal for example) should be counted again.

Pending cases are cases which have not been completed within a given period. Please provide both the number of pending cases within the previous year (pending cases on 1 January of the reference year) and within the reference year (pending cases on 31 December of the reference year).

Resolved cases include all the procedures which have come to an end at the level considered (first instance, appeal or Supreme Court if applicable) during the year of reference, either through a judgment or through any other decision which ended the procedure (provisional decisions or decisions regarding the proceeding should not be counted here).

Pending cases older than 2 years are cases that on 31st December of the reference year have not been completed yet and the duration from their first arrival in the court is more than two years.

For this new category, you can answer NA if your statistical system does not allow measuring pending cases older than 2 years.

For questions 91, 97 and 99, this data may not be reported for the category "non-litigious cases". Therefore, you can specify NA in this column for this category (category 2).

Litigious cases are cases for which the judge decides on disputed case whereas **non-litigious cases** are undisputed cases which are brought to court or for which a registration is made by an individual.

As referred to in question 99, Supreme Courts belong to 3rd instance courts.

Categories included in "other than criminal law cases"

1. Litigious civil (and commercial) cases are for instance litigious divorce cases or disputes regarding contracts. In some countries *commercial cases* are addressed by special commercial courts, whilst in other countries these cases are handled by ordinary (civil) courts. Bankruptcy proceedings must be understood as litigious proceedings. Despite the organisational differences between countries in this respect, all the information concerning civil and commercial cases should be included in the same figures. If appropriate, litigious civil (and commercial) cases do not include administrative law cases (see category 3). Enforcement litigious cases (for example judicial appeal against deeds processed by a bailiff) are included in this category.

2.1 General non-litigious civil (and commercial) cases concern for example uncontested payment orders, request for a change of name, non-contentious cases related to enforcement, divorce cases with mutual consent (for some legal systems), etc. **If courts deal with such cases, please indicate the different case categories included.** Are excluded from this category, non-contentious register cases and/or other cases.

2.2 (including 2.2.1, 2.2.2 and 2.2.3) In certain member states, *registration tasks (business registers and land registers)* are dealt with by special units or entities of the courts. These are non-litigious civil cases. Activities related to business registers could be the registration of new businesses or companies in the business register of the court or the modification of the legal status of a company. Changes in the ownership of immovable goods (like land or houses) may be a part of court activities which are related to the land register.

3. Administrative law cases (litigious or non-litigious) concern disputes between citizens and (local, regional or national) authorities, for instance: asylum refusals or refusals of construction permit applications. Administrative law cases are in some countries addressed by special administrative courts or tribunals, whilst in other countries they are handled by the ordinary civil courts. **If countries have special administrative courts/tribunals or separate administrative law procedures or are anyway able to distinguish between administrative law cases and civil law cases, these figures should be indicated separately under "administrative law cases".** If the data is not available, please indicate **NA** (see 2nd example below). Other countries should answer **NAP** (not applicable; see 1st example below).

It should be noted that for some countries, administrative cases do not fall under the jurisdiction of the Ministry of Justice (e.g. Italy or Belgium).

4. The category "**other**" can be related to some administrative tasks in court.

For countries where the courts do not deal with civil law cases enumerated under categories 2-7, the correct answer is **NAP** (= not applicable). The answer is **NA** (= not available) if the courts deal with a civil law case enumerated under categories 2 to 4 but the data is not available. **If appropriate, please don't forget to comment on the specific situation in your country (including answers NA and the calculation of the total of "other than criminal law cases").**

Please check that the data provided are consistent (horizontally and vertically).

Horizontal consistency data means that: "(pending cases on 1 January of the reference year + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December of the reference year. If this horizontal consistency is not possible due to joined cases, please specify. If this is not the case, please correct your data or provide an explanation of this difference in comment.

For these tables, some small horizontal inconsistencies can be accepted, if they are due to the specificity of the system.

Two examples regarding horizontal consistency:

1. Non litigious enforcement cases: Pending cases on 31 December 2014 = (pending cases on 1 January 2014 + incoming cases) – resolved cases = (100 + 30) – 70 = **60**

2. Non litigious business register cases and other cases related to registers: you have no figures about pending cases on 1 January 2014, but you have figures on incoming and resolved cases in 2014. The correct answers for pending cases on 1 January 2014 and on 31 December 2014 are therefore **NA** (= "not available").

| | | | | |
|--|----------------------------|----------------|----------------|-----------------------------|
| | Pending cases on 1 Jan.'14 | Incoming cases | Resolved cases | Pending cases on 31 Dec.'14 |
|--|----------------------------|----------------|----------------|-----------------------------|

| | | | | | | | |
|---------------------------------------|-----|---|-----|---|-----|---|----|
| Non litigious land register cases | 100 | + | 30 | - | 70 | = | 60 |
| Non litigious business register cases | NA | | 150 | | 200 | | NA |
| Other cases related to registers | NA | | 500 | | 600 | | NA |

Vertical consistency data means that in a table with different sub-categories and a total, the latter must be the sum of the different sub-categories.

Subcategories:

If one or more answers are **NA** (not available), the total cannot be equal to the sum of the other categories for which the answers are quantitative data.

- if one answer is NA, the total will necessarily be NA;

- if several answers are NA, the total can be a quantitative data (which will necessarily be greater to the sum of the quantitative data of the different categories);

- on the other hand, if one or more answers are NAP (not applicable), they do not impact on the total which can be equal to the sum of the quantitative data.

Vertical consistency (example no.1):

In your country, 1st instance courts are responsible for civil (and commercial) litigious cases, civil (and commercial) non-litigious cases and land register cases. They aren't responsible for any activities related to business register or cases related to other registers. Administrative cases are handled by the courts of general jurisdiction and do not have a separate procedure. Courts do not deal with "other" cases. The correct answers for 2.2.2 to 4 are **NAP**. The appropriate answers to categories 2.2.2, 2.2.3, 2.3, 3 and 4 are NAP

The total of *other than criminal law cases* is calculated out of categories 1 to 4. In that case, as answers to categories 3 and 4 are NAP, the total of cases "*other than criminal law cases*" equals to the sum of categories 1 and 2.

When the answer is NAP for a case category, the answer will be NAP for all types of cases in this category (pending cases, incoming cases, resolved cases, pending cases older than two years).

| | Pending cases on 1 Jan.‘ | Incoming cases | Resolved cases | Pending cases on 31 Dec.‘ | Pending cases older than 2 years |
|---|--------------------------|----------------|----------------|---------------------------|----------------------------------|
| Total of other than criminal law cases (total 1+2+3+4+5+6+7) | 1300 | 3700 | 2850 | 2150 | 100 |
| 1. Civil (and commercial) litigious cases (including enforcement cases, if possible without administrative cases, see category 3) | 250 | 600 | 700 | 150 | 80 |
| 2. Non-litigious cases (2.1 + 2.2 + 2.3) | 1050 | 3100 | 2150 | 2000 | 20 |
| 2.1. General civil (and commercial) non-litigious cases , for example uncontested claims, request for a change of name, enforcement non-litigious cases etc. (if possible without administrative cases, see category 3; without non-litigious register cases and/or other cases, see categories 2.2 and 2.3) | 1000 | 3000 | 2000 | 2000 | |
| 2.2. Cases related to registers | 50 | 100 | 150 | 0 | 0 |

| | | | | | |
|---|-----|-----|-----|-----|-----|
| (2.2.1+2.2.2+2.2.3) | | | | | |
| 2.2.1. Non-litigious land register cases | 50 | 100 | 150 | 0 | 0 |
| 2.2.2. Non litigious business register cases | NAP | NAP | NAP | NAP | NAP |
| 2.2.3. Other cases related to registers | NAP | NAP | NAP | NAP | NAP |
| 2.3. Other non-litigious cases | NAP | NAP | NAP | NAP | NAP |
| 3. Administrative cases | NAP | NAP | NAP | NAP | NAP |
| 4. Other cases (for example insolvency register cases) | NAP | NAP | NAP | NAP | NAP |

Vertical consistency (example no. 2):

In your country, 1st instance courts are responsible for civil (and commercial) litigious cases, general civil (and commercial) non-litigious cases non-litigious land register cases and other litigious cases. For these two last categories, incoming cases and resolved cases are not available; the appropriate answer is therefore NA. Besides, courts do not deal with non-litigious business registry cases (2.2.2), other registry cases (2.2.3), and cases “other than criminal cases” (4). The appropriate answer for these categories is NAP (not applicable).

Courts of general jurisdiction deal with administrative cases, for which a separate procedure exists. However these figures are included in the number of litigious civil and commercial cases. In this case, the appropriate answer for litigious administrative, civil and commercial cases is NA (not available).

The total of cases “other than criminal cases” corresponds to the sum of categories 1, 2, 3 and 4. This total cannot be calculated for Pending cases on 1 January 2014 and Pending cases on 31 December 2014 due to the lack of information on category 3 (administrative cases). The appropriate answer for these two categories is NA. Thus, the total for Pending cases on 1 January and Pending cases on 31 December cannot correspond to the sum of the existing digital data due to the answer NA (category 3). However, regarding incoming cases and resolved cases, a total can be indicated in spite of the several answers NA (categories 2 and 3) because it is higher than the indicated digital data (category 1).

The total of “non-litigious” cases must correspond to the sum of categories 2.1, 2.2 and 2.3. for the number of incoming cases and resolved cases is not available for categories 2.2 and 2.3; the appropriate answer for these categories is NA. The total in this example is NA but could also be a number if it is higher than the value mentioned in category 2.1.

The total of “registry cases” must correspond to the sum of categories 2.2.1, 2.2.2 and 2.2.3. This total cannot be determined for incoming cases and resolved cases due to the lack of information on category 2.2.1 (NA); the appropriate answer for the categories 2.2.2 and 2.2.3 is NAP which does not have any impact on the total. Regarding pending cases on 1 January and pending cases on 31 December, the total can correspond to the digital data indicated in category 2.2.1 due to the answers NAP for the other sub-categories (2.2.2 and 2.2.3) which do not affect the total.

Please comment this situation.

| | Pending cases on 1 Jan' 14 | Incoming cases | Resolved cases | Pending cases on 31 Dec' 14 | Pending cases older than 2 years |
|--|-----------------------------------|-----------------------|-----------------------|------------------------------------|---|
|--|-----------------------------------|-----------------------|-----------------------|------------------------------------|---|

| | | | | | |
|---|-----------|-------------|-------------|-----------|-----------|
| Total of “other than criminal law cases” (1 + 2 + 3 + 4) | NA | 5000 | 4000 | NA | NA |
|---|-----------|-------------|-------------|-----------|-----------|

| | | | | | |
|--|-----|-----|-----|-----|----|
| 1. Civil (and commercial) litigious cases (including enforcement cases, if possible without administrative cases, see category 3) | 250 | 600 | 700 | 150 | 20 |
|--|-----|-----|-----|-----|----|

| | | | | | |
|---|-------------|-----------|-----------|-------------|----------|
| 2. Non-litigious cases (2.1 + 2.2 + 2.3) | 2000 | NA | NA | 1500 | 0 |
| 2.1. General civil (and commercial) | 1000 | 200 | 400 | 800 | 0 |

| | | | | | |
|--|-----|-----|-----|-----|-----|
| non-litigious cases; for example uncontested claims, request for a change of name, enforcement non-litigious cases etc. (if possible without administrative cases, see category 3; without non-litigious register cases and/or other cases, see categories 2.2 and 2.3) | | | | | |
| 2.2. Register cases (2.2.1+2.2.2+2.2.3) | 500 | NA | NA | 300 | 0 |
| 2.2.1. Non-litigious land register cases | 500 | NA | NA | 300 | 300 |
| 2.2.2. Non litigious business register cases | NAP | NAP | NAP | NAP | NAP |
| 2.2.3. Other cases related to registers | NAP | NAP | NAP | NAP | NAP |
| 2.3. Other non-litigious cases | 500 | NA | NA | 400 | 0 |
| 3. Administrative cases | NA | NA | NA | NA | NA |
| 4. Other cases (for example insolvency register cases) | NAP | NAP | NAP | NAP | NAP |

Criminal law cases:

Are considered here as **criminal cases**, all cases for which a sanction may be imposed by a judge, even if this sanction is foreseen, in some national systems, in an administrative code (e.g. fines or community service). These can include, for example, some anti-social behaviour, nuisance or some traffic offenses.

Warning: if these cases are included in the responses to questions 94, 98 and 100, then they should not be counted a second time as "administrative cases" in the responses to questions 91, 97 and 99.

The offenses sanctioned directly by the police or by an administrative authority, and not by a judge, should not be counted (e.g. penalty for parking in a closed area not contested before a judge, or failure to comply with an administrative formality not contested before a judge).

To differentiate between *misdemeanour / minor offenses* and *serious offenses* and ensure the consistency of the responses between different systems, the CEPEJ invites you now to classify as *misdemeanour / minor* all offenses for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, should be classified as *severe offenses* all offenses punishable by a deprivation of liberty (arrest and detention, imprisonment). If you cannot make such a distinction, please indicate the categories of cases reported in the category "serious offenses" and cases reported in the category "minor offenses".

Please check that your figures are *horizontally* and *vertically* consistent (the total of the criminal cases includes the cases of categories 1 and 2). **If appropriate, please don't forget to comment on the specific situation in your country (including answers NA and the calculation of the total of criminal law cases).**

Example of vertical consistency: your country is unfortunately not able to distinguish figures for severe criminal offences and misdemeanour and/or minor offences cases. The correct answers for these two categories are therefore **NA**.

| | Pending cases on 1 Jan. '14 | Incoming cases | Resolved cases | Pending cases on 31 Dec. '14 | Pending cases older than 2 years |
|---|-----------------------------|----------------|----------------|------------------------------|----------------------------------|
| Total of criminal cases (5+6) | 10 | 40 | 45 | 5 | 1 |
| 5. Severe criminal cases | NA | NA | NA | NA | NA |
| 6. Misdemeanour and / or minor criminal cases | NA | NA | NA | NA | NA |

Question 99.1

A manifestly inadmissible case is an affaire where the facts have not yet been examined and which is refused immediately following a simplified procedure, generally presided by a single judge, because the claimant has not respected a mandatory rule of procedure and therefore loses their right to bring an action before the judge (for example if they have not paid a fee or if they have not provided all the documents necessary in due time).

Questions 101, 101.1 and 102

Please refer to the **CEPEJ Guidelines on judicial statistics – GOJUST (CEPEJ(2008)11)** and the **SATURN Guidelines on judicial time management (CEPEJ(2014)16)** and to their shared appendix: **EUGMONT**, which invite all the member states to be able, through the organisation of their statistic system, to give detailed data on the timeframes of judicial proceedings for four specific case categories.

The total must absolutely equal the sum of amounts indicated under the different categories (see below).

Vertical and horizontal consistency: in a table with different sub-categories and a total, the latter must be the sum of the different sub-categories.

Subcategories:

If the answers of one or more sub-categories are **NA** (not available), the total cannot be equal to the sum of the other sub-categories for which the answers are quantitative data.

- if one category is NA, the total will necessarily be NA;
- if several subcategories are NA, the total can be a quantitative data (which will necessarily be greater to the sum of the quantitative data of the different sub-categories);
- on the other hand, if one or more subcategories are **NAP** (not applicable), they do not impact on the total which can be equal to the sum of the quantitative data.

For examples, please see part II.a. "General remarks" of the explanatory note.

The **five case categories**, which are (mostly) common in Europe, can be defined as follows:

1. **Litigious divorce case:** i.e. the dissolution of a marriage contract between two persons, following a judgment of a competent court. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its consequences (procedure of mutual consent, even if they are processed by the competent court) or ruled through an administrative procedure. If your country has a totally non-judicial procedure as regards divorce or if you cannot isolate data concerning adversarial divorces, please specify it and give the subsequent explanations. Furthermore, as regards divorce, if there are in your country compulsory mediation procedures or fixed timeframes for reflection or if the conciliation phase is excluded from the judicial proceeding, please specify it and give the subsequent explanations.
2. **Employment dismissal case:** cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). It does not include dismissals of public officials, following a disciplinary procedure for instance.
3. **Bankruptcy:** Legal status of a person or an organisation that cannot repay the debts owed to creditors. Data should encompass bankruptcy declaration by a court, as well as all procedures connected with bankruptcy (recovery of credits, liquidation of assets, payment of creditors, etc.).
4. **Robbery** concerns stealing from a person with force or threat of force. If possible these figures should *include* muggings (bag-snatching, armed theft, etc) and *exclude* pick pocketing, extortion and blackmail (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts. The case should be counted here when the robbery is either the only offence concerned or the main offence concerned in the case.
5. **Intentional homicide** is defined as the intentional killing of a person. Where possible the figures should *include* assaults leading to death, euthanasia, infanticide and *exclude* suicide assistance (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts. The case should be counted here when the intentional homicide is either the only offence concerned or the main offence concerned in the case.

Two other categories of cases have been added so that they can be quantified in the different participating countries:

6. *Cases relating to asylum seekers (refugee status under the 1951 Geneva Convention and the protocol of 1967¹):* in this category are counted cases for which an appeal has been lodged or a decision of a judge has been issued against the decision whether or not to grant the refugee status to a person.
7. *Cases relating to the right of entry and stay for aliens*

The percentage (%) of cases pending for more than 3 years is the ratio between
- the number of cases pending for more than three years (cases which at 31 December of the reference year have not been completed within three years or more since the date of their introduction before the court)
- and all pending cases at 31 December of the reference year.

The average length of cases corresponds to the average length of resolved cases at this instance within the reference year.

If the *average length of proceedings* is not calculated from the lodging of court proceedings, please specify the starting point for the calculation. The average length of proceedings has to be presented in days. If you only have information on the length of proceedings in months (or years), please recalculate the length of proceedings in days.

Question 103

The information requested will enable to explain and to take into account the differences between the member states as regards divorce procedures, and in particular the mandatory timeframes prescribed by the legislation of some countries.

Question 106

In civil matters, the public prosecutor can, in some member states, be entrusted for instance with the responsibility of safeguarding the interest of children or persons under guardianship. In administrative matters, he/she can, for instance, represent the interests of children against the state or one of its bodies.

For example the public prosecutor can give their opinion regarding a proposal to buy a business that has been declared bankrupt, as well as the guaranties given to the buyer and even oversee the procedure to ensure that the law is respected, to avoid any conflict of interest and to prevent any abuse of power.

This issue is addressed by the Consultative Council of European Prosecutors (CCPE) in its Opinion N° 3 (2008) on the "Role of prosecution services outside the Criminal Law Field" (www.coe.int/ccpe).

Questions 107, 108 and 109

Discontinued criminal cases are cases received by the public prosecutor, which have not been brought before the court and for which no sanction or any other measure has been taken. Please indicate the number of cases discontinued because the case could not be processed, either (i) where no alleged offender was identified or (ii) due to the lack or absence of an established offence or a specific legal situation (e.g. amnesty) or (iii) for discretionary reasons, where the legal system allows it.

The column 'Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor' should contain information regarding proceedings which have not been brought before a judge (for example all transactions not approved by a judge).

¹ 1951 Convention and 1967 protocol relating to the status of refugees: Article 1 - definition of the term "refugee" A. For the purposes of the present Convention, the term "refugee" shall apply to any person who: (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section; (2) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

The procedures (including guilty pleas, see question 107-1) in which the judge takes the final decision (including if the decision is simply an approval of a previous agreement concluded between the prosecutor and the accused) must appear in column 4.

Traffic cases represent a large volume of cases, please specify whether the data indicated includes or not such cases. Relevant analyses based on a comparison of states or entities can be done only by considering clusters of states or entities which have or have not included traffic offences.

5. Career of judges and public prosecutors

Questions 110 to 113.1 and 116 to 119.2

In order to better understand the question of gender issues in the judiciary, new more specific questions are asked as regards the rules put in place to favour sexual equality in judicial and prosecutorial recruitment and promotion procedures.

Regarding the promotion criteria for judges, it is necessary to refer to Opinion No. 17 (2014) of the Consultative Council of European Judges (CCJE) on the evaluation of judges' work, the quality of justice and respect for the judicial independence.

Question 111

This question strictly concerns the authority entrusted with the decision to recruit (not the authority formally responsible for the nomination if different from the former).

Questions 114 and 120

Contrary to question 83, individual assessments of the professional activities of judges and public prosecutors may involve qualitative aspects. They might have an influence on judges' and public prosecutors' careers and may have an impact on disciplinary issues. The answer to this question is interesting to make a relevant analysis of the answers to questions 144 and 145.

Such an evaluation does not seem to be in accordance with systems where judges or prosecutors are elected.

This is not a recommendation by the CEPEJ. The aim of the question here is only to assess the current situation in the member states.

Question 115

This question aims at getting information on the status of public prosecutors, which may vary fundamentally from one member state to another. In several member states, there is a debate to determine where prosecution services stand, sometimes between the executive and the judicial powers; public prosecutors can be subject to instructions of general nature, to specific instructions on given cases or are not subject to any instructions (exempted, or not, from instructions from a higher authority within the prosecution services).

Question 117

This question concerns the authority entrusted with the responsibility to recruit only (not the authority formally responsible for the nomination if different from the former).

Questions 121, 122, 123 and 124

A mandate for an undetermined period means that judges and public prosecutors are appointed for 'life' (until their official age of retirement) and cannot be removed from office (unless severe disciplinary proceedings/sanctions against a judge or a public prosecutor are ordered, knowing that the highest sanction is a dismissal). It is possible for judges/public prosecutors to be appointed for life after a probation period.

Question 121.1

This question aims to better understand the status of judges in different member states by identifying the reasons for transferring a judge without their consent as well as the procedural guarantees in place.

Questions 131 and 131.1

This question only concerns member states that have public bodies specifically entrusted with the training of judges and/or prosecutors (schools, academies). The latter can be trained together (in a single institution) or separately. Training can be only initial, only continuous or both initial and continuous. Several institutions can therefore co-exist.

The budgets to be indicated should only correspond to the single budget of those bodies, and not to the total public budget for the training of judges and prosecutors (in particular if part of the training is provided by a University or private institutes or financed by the court for example). The total budget for training (without the budget of these private training institutes) must be indicated under question 6.

If your country does not have public schools or institutions specifically responsible for training judges and prosecutors and consequently you haven't completed the table in question 131, please complete question 131-1.

Question 132

Two different indicators are analysed: the salary at the beginning of the career (at a first instance court for a judge/public prosecutor; starting salary at his/her salary scale) and the salary at the end of the career (at the Supreme Court or the Highest Appellate Court). They represent the salary at full-time equivalent. If a bonus given to judges significantly increases their income, please specify it and, if possible, indicate the annual amount of such bonus or the proportion that the bonus takes in the judge's income. This bonus does not include the bonus mentioned under question 129.

The *gross* salary is calculated before any welfare costs and taxes have been paid (see question 4).

The *net* salary is calculated *after* the deduction of welfare costs (such as pension schemes) and taxes (for those countries where they are deducted beforehand and automatically from the sources of income; when this is not the case, please indicate that the judge has to pay further income taxes on this "net" salary, so that it can be taken into account in the comparison).

If it is not possible to indicate a determined amount, please indicate the minimum and maximum annual gross and net salary.

Questions 135 and 137

Teaching includes for instance practising as a University professor, participating in conferences, participating in educational activities in schools, etc.

Research and publication includes for instance publishing articles in newspapers, participating in drafting legal norms, etc.

Cultural function includes for instance performing in concerts and theatre plays, selling his/her own paintings, etc.

Questions 140 and 141

The power to "initiate a complaint" against a judge or a prosecutor must be understood in a wide sense, as the purpose of the question is to identify who can be at the origin of a disciplinary proceeding, and not the body formally responsible for opening the disciplinary file.

Questions 144 and 145

These questions, which appear as tables, specify the number of disciplinary proceedings against judges or public prosecutors and the sanctions actually decided against judges or public prosecutors. If a significant difference between those two figures exists in your country and if you are aware of the reasons, please specify.

Breach of professional ethics (e.g. rude behaviours against a lawyer or another judge), *professional inadequacy* (e.g. systematic slowness in delivering decisions), *criminal offence* (offence committed in the private or professional framework and open to sanction) refer to some mistakes made by judges or public prosecutors which might justify disciplinary proceedings against them. Please complete the list where appropriate. The same applies to the type of possible sanctions (e.g. *reprimand, suspension, dismissal, fine, withdrawal of a case, transfer of the file to another court or department, temporary reduction of salary*).

If the disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.

Specific comments could in particular be developed, where appropriate, as regards the procedures initiated and the sanctions pronounced in the case of corruption of judges and public prosecutors, namely by taking into account the reports by the Group of States against Corruption (GRECO) and possibly by *Transparency International*.

6. Lawyers

Question 146

For the purposes of this chapter, *lawyers* refer to the definition of the Recommendation Rec(2000)21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer, as follows: a person qualified and authorised according to national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters.

Questions 147 and 148

Legal advisors (for instance some solicitors) are legal professionals who give legal advice and prepare legal documents but have no competence to represent users in courts.

Questions 149 and 149.2

This question aims to measure the scope of the "monopoly of lawyers" and/or to get information concerning other persons entitled, according to the type of cases, to represent clients before courts and to obtain details on their status. In some countries a legal representation by a lawyer is mandatory for criminal cases, whilst in other countries this might not be the case (a representation, by for example, a family member is possible). A similar principle can be found in civil law cases. In certain countries for civil cases with a small financial value there may not be the obligation to hire a lawyer to defend such cases before the court.

Self-employed lawyer: a lawyer practicing in a private practice (associate lawyer for example).

Staff lawyer: a lawyer employed by a law firm (e.g. a collaborator).

In-house lawyer: he/she has the lawyer status but practises within a company, exclusively on behalf of a company.

The answer to this question might vary whether first or second instances are considered. If appropriate, please specify it.

Question 153

Specialisation in some legal fields refers to the possibility for a lawyer to use officially and publicly this specificity, such as "lawyer specialised in real estate law".

Questions 157 and 158

Similar to courts or other lawyers might use quality standards, as developed by (national, regional or local) bar associations. If this is the case, please specify which quality standards and criteria are used.

Question 159

A complaint about the performance of lawyers: it might be introduced by clients who are not satisfied with the performance of the lawyer responsible for their case. The complaint can concern for instance delays in the proceeding, the omission of a deadline, the violation of professional secrecy. Where appropriate, please specify.

Please specify also, where appropriate, which body is entrusted with receiving and addressing the complaint.

Questions 160 to 162

The question refers to *disciplinary proceedings* which are generally introduced by other lawyers or judges. Disciplinary proceedings can be within the competence of bar associations, a special chamber at a court, the ministry of justice or a combination of some of them.

The terms: *breach of ethical standards, professional inadequacy and criminal offence* refer to acts susceptible to lead to disciplinary proceedings being brought against the lawyer. Please complete the list if appropriate. Idem regarding the different types of sanction possible (for example *reprimand, suspension, removal, fine*).

If the disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.

Where appropriate, please complete the list of reasons for disciplinary proceedings and the type of sanctions mentioned in the second column.

If there is a significant difference between the number of disciplinary proceedings and the number of sanctions, please specify its reasons.

7. Alternative Disputes Resolutions

Question 163

Mediation: this is a voluntary, non-binding private dispute resolution process in which a neutral and independent person assists the parties in facilitating the discussion between the parties in order to help them resolve their difficulties and reach an agreement. It exists in civil, administrative and criminal matters.

Judicial mediation: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).

Conciliation: the conciliator's main goal is to conciliate, most of the time by seeking concessions. She/he can suggest to the parties proposals for the settlement of a dispute. Compared to a mediator, a conciliator has more power and is more proactive.

Arbitration: parties select an impartial third party, known as an arbitrator, whose (final) decision is binding. Parties can present evidence and testimonies before the arbitrators. Sometimes there are several arbitrators selected who work as a court. Arbitration is most commonly used for the resolution of commercial disputes as it offers higher confidentiality.

Question 163.1

For certain types of disputes or certain legal areas, it is possible that the procedure codes require that a mandatory mediation is conducted beforehand in order to be able to go to court. Furthermore, certain procedures give the possibility to the judge to whom a case is addressed to order a mediation procedure at the beginning of judicial proceeding or during this proceeding. If this is the case, please specify in which situations apply such rules.

Question 164

Court annexed mediation: this is a particular kind of mediation, based on the American model of mediation and which takes place in a court-annexed place. The mediation may be conducted by private mediators or by judges and court employees specially trained and accredited.

Private mediators: for example lawyers who are accredited mediators or psychologists with a mediation specialisation.

For the purposes of this specific question, "*civil cases*" exclude family cases and employment dismissal cases, to be addressed in the specific rows below in the table.

Question 166

Please indicate the number of accredited or registered mediators, either by the court or by another national authority or a NGO. The aim of this request is to have an objective basis for counting the number of mediators.

Question 167

The interest of this question is to understand in which field judicial mediation is more used and considered as a successful procedure.

For the purposes of this specific question, "*civil cases*" exclude family and employment dismissal cases, to be addressed specifically below.

8. Enforcement of court decisions

Question 169

In accordance with the definition contained in Recommendation Rec(2003)17 of the Committee of Ministers of the Council of Europe on enforcement of court decisions: the *enforcement agent* is a person authorised by the state to carry out the enforcement process irrespective of whether that person is employed by the state or not.

Please note that questions 169 to 183 only concern the enforcement of decisions in *civil matters* (which include commercial matters or family law issues for the purpose of this Scheme).

Question 171

Regarding activities that can be exercised by enforcement agents, it is necessary to refer to "Guidelines for a better implementation of the Council of Europe's Recommendation on enforcement" adopted by the CEPEJ during its 14th plenary meeting and particularly articles 33 and 34.

Questions 174 and 175

These questions aim to provide information on the way enforcement fees are determined and on the possibility for users to have easy access to prior information on the foreseeable amount of fees requested by an enforcement agent to execute the judicial decision.

Questions 177, 178 and 179

Enforcement agents are entrusted with public duties. It is therefore important to know who supervises them, even if their status can be very different. In addition it is important to know if specific quality criteria are used in the profession of the enforcement agents and which criteria are defined.

Question 182

Taking into account the amount of cases brought before the European Court of Human Rights regarding, in particular, the non-execution of court decisions rendered against public (national, regional or local) authorities, it might be interesting, in order to better assess the situation in the member states, to comment specifically on this situation, if you consider it as a major issue in your country.

Question 183

The previous evaluation rounds have proven that all the countries that answered provided in their legislation for complaints which can be filed by users against enforcement agents. The answers should provide more information on the reasons of such complaints and if a quality policy has been defined for the enforcement agents.

Question 184

Please indicate, where appropriate, which are the items that your country wishes to improve on, which are the foreseen or the adopted measures undertaken to improve the situation and, where appropriate, which are the difficulties in this field. In other words, please evaluate the situation in the country concerning the enforcement procedures.

Question 185

This question refers to the implementation of a statistical system enabling to indicate, in number of days for example, the length of the enforcement procedure as such, from the time the parties receive the decision. One of the reasons for the difficulty to keep a statistical data base in this field can be that, in civil matters, the execution of the decision depends on the wish of the winning party.

Question 186

The aim of this question is to compare the situation between countries concerning the notification of the judicial decision enabling the enforcement procedure to begin.

Question 187

The terms: *breach of ethical standards, professional inadequacy and criminal offence* refer to acts susceptible to lead to disciplinary proceedings being brought against the lawyer. Please complete the list if appropriate. Idem regarding the different types of sanction possible (for example *reprimand, suspension, removal, fine*).

9. Notaries

A notary is a legal official who has been entrusted by the public authority with the safeguarding of the freedom of consent and the protection of the rightful interests of individuals. A signature by the notary confers authenticity to legal acts. As a guarantor of legal security, the notary has an important role to play in limiting litigation between parties. Thereby, he/she is a major actor in preventive justice.

It is important to make a distinction between the Latin notaries and the “public notaries”, who do not have the same competencies. The Latin notaries are public officers who are tasked by the state authority to authenticate legal deeds. They practice their profession as liberals. The public notaries, for their part, are officials who are not authorized to authenticate legal deeds and can only certify signatures (the concept of authentication of legal deeds is specific to the Latin system).

Question 192

In addition to the differentiation between the public and the private status of the notaries, this question aims to differentiate those countries where the notary practices a fully private function, with no public nature (first choice), those where, while exercising an independent profession, the notary is entrusted with a public power (second choice), under the supervision of a public authority (for instance the public prosecutor or the judge) and countries where notaries execute their duties as public agents paid by the public authority (third choice). Please indicate only one possibility.

10. Court interpreters

Questions 197 to 201

Court interpreters play a major role in guaranteeing access to the judge for the court users who do not have the ability to understand and/or speak the official language of the court. For some countries, quality criteria were defined and interpreters are certified.

To get a better understanding of the role of court interpreters in court proceedings four general questions have been asked. Some questions are derived from the report Hertog e. and van Gucht J. (2008), *Status Quaestionis: questionnaire on the provision of legal interpreting and translation in the EU*, Intersentia (Antwerp, Oxford, Portland).

Question 197

"Protected title" means that a person cannot claim the title of interpreter of his/her own, without the benefit of an agreement or another form of official recognition, which may be given by the court or by an administrative body, for example on the basis of diploma or tests, and sometimes of an oath.

Question 199

Please indicate the number of accredited or registered interpreters, either by the court or by another authority. The objective of this request is to have an objective basis for counting the number of interpreters.

Question 200

It should be noted that for this question, the criteria mentioned concern the quality of the interpretation that is given and not the quality of the interpreters.

Question 201

The interpreters can be recruited and/or appointed by the court, either for a long term of office (for instance, they can be registered on a list on which the judge can choose the interpreter for given proceedings) or on a case by case basis, according to the specific needs in a given proceeding.

11. Judicial experts

Question 202

The role and function of experts are very different depending on their position within the procedure, which varies especially between continental and common law systems.

There is a need to differentiate several types of experts:

- the "expert witnesses", mainly used in adversarial systems (in particular in common law countries), who are requested by the parties to bring their expertise to support the parties' argumentation,
- the "technical experts" who put at the judge's disposal their scientific and technical knowledge on issues of fact (for instance in forensic medicine, psychiatry, criminal sciences, biology, architecture, arts)
- the "law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision).

Question 203

"Protected title" means that a person cannot claim the title of expert of his/her own, without the benefit of an agreement or another form of official recognition, which may be given by the court or by an administrative body, for example on the basis of diploma or tests, and sometimes of an oath.

Question 205

Please indicate the number of accredited or registered experts, either by the court or by another authority. The objective of this request is to have an objective basis for counting the number of judicial experts.

Question 207

The judicial experts can be recruited and/or appointed by the court, either for a long term of office (for instance, they can be registered on a list on which the judge can choose the experts for given proceedings) or on a case by case basis, according to the specific needs in a given proceeding.

| |
|-----------------------------|
| 12. <i>Foreseen reforms</i> |
|-----------------------------|

Question 208

As a conclusion, this question offers the possibility to indicate general or more specific information on the on-going and planned reforms to be undertaken to improve the quality and the efficiency of justice. Please try to classify the presented reforms in the proposed categories.

Thank you very much for your valuable co-operation!