

ANNEX 40

- Country Report LUXEMBOURG

CONTRACT
JLS/2006/C4/007-30-CE-0097604/00-36

IMPLEMENTED BY



DEMOLIN, BRULARD, BARTHELEMY

- HOCHÉ -

FOR



COMMISSION EUROPEENNE

*- DG FOR JUSTICE, FREEDOM
AND SECURITY -*

**Study on the Transparency of Costs of Civil Judicial
Proceedings in the European Union**

Jean ALBERT
Team Leader

- COUNTRY REPORT -

- LUXEMBOURG -

Submitted by Mario Di Stefano
Country Expert

DECEMBER 30, 2007

COUNTRY REPORT	6
Introduction	7
Executive Summary.....	8
1 Summary of the main sources of costs.....	8
2 Level of transparency in the sources of costs	8
3 Determination of the amounts of costs.....	9
4 Level of transparency in determining the actual costs.....	9
5 Proportion of each identified cost in the overall volume of activity.....	10
6 Proportion of each identified cost in the value of disputed claim	11
7 Specificities in relation to EU cross-border disputes	11
8 Proportion of each identified cost in the overall cost of civil judicial proceedings ...	11
9 Recommendations for EU action/national action	12
10 Relationship between the costs of justice, the transparency in the costs of justice and access to justice	12
Detailed Draft Report	13
1 General Questions	13
1.1 Level of information on the transparency of fees and costs of justice.....	13
1.2 Transparency perception.....	14
1.3 Solutions to improve transparency	14
1.4 Fairness of costs	14
2 Court fees.....	14
2.1 General	14
2.2 Cost of bringing an action to the courts	15
2.3 Other proceeding costs	15
2.4 Costs of legal recourse (Appeals...)	15
2.5 Costs of ADR	15
2.6 Payment	16
2.7 E-justice	16
2.8 Impact of the number of hearings on costs.....	16
2.9 Transcription costs	16
3 Lawyers' consulting and representation fees.....	18
3.1 General	18
3.2 Fees depending on the nature of the litigation	20
3.3 Fees depending on the type of lawsuit or proceedings	20
3.4 Fees depending on the value of the claim	20

3.5	Fees depending on the jurisdiction	21
3.6	Payment	21
3.6.1	Retainer	23
4	Bailiff fees	23
4.1	General	23
4.2	Ante judgment.....	24
4.3	During proceedings	25
4.4	Post proceedings.....	25
4.5	Payment	26
4.5.1	Retainer	26
5	Experts	27
5.1	General	27
5.2	Fees	27
5.3	Payment	28
5.4	Legal aid cases.....	29
5.5	Reimbursement of experts' fees.....	29
5.6	Practical questions	29
6	Translation and interpretation.....	30
6.1	General	30
6.2	Translation fees	31
6.3	Interpretation fees	31
6.3.1	Retainer	31
6.4	Payment	32
6.5	Practical questions	32
6.6	Legal aid	33
6.7	Reimbursement	33
7	Witness Compensation	33
7.1	General	33
7.2	Fees	34
7.3	Payment	34
7.4	Practical questions	34
8	Pledges and security deposits.....	34
8.1	General	34
8.2	Fees	35
8.3	Payment	35
8.4	Practical questions	35

9	Court decisions	36
9.1	Cost of notification	36
9.2	Cost of obtaining an authenticated decision	37
10	Legal aid	37
10.1	General.....	37
10.2	Conditions of grant.....	38
10.3	Strings attached	40
10.4	Practical questions.....	40
11	Personal experience.....	41
12	Case studies -.....	42
	Case study 1	42
	Case Study number 1 - Family law - Divorce (excluding division of matrimonial property)	42
12.2	Case Study 2.....	45
	Case Study number 2 - Family law - Custody of the children (excluding alimony questions)	45
12.3	Case Study 3.....	49
	Case Study number 3 - Family law - Alimony.....	49
12.4	Case Study 4.....	52
	Case Study number 4 - Commercial law - Contract	52
12.5	Case Study 5.....	55
	Case Study number 5 - Commercial law - Responsibility.....	55
13	Insurance.....	58

ANNEXES:

- ANNEX 1** Questionnaire completed for the implementation of this study
- ANNEX 2** Contact information table
- ANNEX 3** List of applicable laws and regulations (followed by same)
- ANNEX 4** List of miscellaneous provisions and documents (followed by same)

COUNTRY REPORT

Preliminary notes

Given the size and centralized nature of Luxembourg, our methodology consisted generally of telephone surveys in lieu of sending out questionnaires.

The State covers all legal aid expenses, thus there are no legal aid organizations *per se*. Rather, the Luxembourg Bar Chair evaluates the requests that are submitted and grants legal aid to individuals that qualify for it. When legal aid is granted, it is usually an “all or nothing” proposition. That is, partial legal aid or reimbursement is rarely granted.

Domestically, the most prevalent form of payment is the wire transfer. Occasionally, legal service providers such as attorneys, bailiffs, notaries and translators receive checks from foreign clients. The VAT in Luxembourg for services in the independent professions is now 15%.

Finally, all applicable laws and regulations are listed by category in Annex 3. They can be accessed on the Luxembourg legislative website (www.legilux.public.lu), or the Ministry of Justice webpage link to legilux (www.mj.public.lu).

Introduction

The Grand Duchy of Luxembourg is a country of approximately 450,000 inhabitants with a total surface area of 2.586,40 km². The country's three official languages are French, German and Luxembourgish. Legislation is drafted in French, with certain older tax laws being in German. The country's principle cities are Luxembourg (capital), Esch-sur-Alzette, Dudelange and Differdange.

Luxembourg's civil law jurisdiction is divided into two judicial districts, Luxembourg and Diekirch, for purposes of the national Bar Association and district courts. Its three lower courts (*justices de paix*) are located in Esch-sur-Alzette, the city of Luxembourg and Diekirch. The capital city of Luxembourg is also the seat of the country's Superior Court of Justice, which includes the Court of Appeals and the Court of Cassation; the Administrative Tribunal and Court; and, the country's Constitutional Court.

Executive Summary

1 Summary of the main sources of costs

There is no reliable statistical data on these costs, thus the information we provide here is based solely upon our experience (which is not representative of the entire legal profession in Luxembourg) and must be treated as such. We have found the main sources of costs to be lawyers' fees, expert fees, translation and interpretation fees, transcription fees and bailiff fees. In our experience, the three fee categories making up the largest portion of total litigation costs are: (1) lawyers' fees representing 60%-95% of the total litigation cost; (2) expert fees representing 6%-30% of the total litigation cost; and (3) translation and interpretation fees representing 3%-10% of the total litigation cost.

2 Level of transparency in the sources of costs

The sources of the costs are reasonably easy to identify; however, the amounts themselves are difficult to calculate with the information available to the general public.

3 Determination of the amounts of costs

As stated above, the amounts of the costs are difficult to calculate, or estimate, with the information generally available to the public. Much of this difficulty can be attributed to the fact that lawyers' fees are not subject to a fee scale, and that where the legislation may provide fee scales, those fee scales are sometimes indexed and thus periodically updated but that updated information is diffused to the relevant professionals, not to the general public.

For example, the statutory fees for experts are indexed on an ongoing basis, the current fees are not in the legislation, but rather are updated through Ministry of Justice circulars. Moreover, professionals such as attorneys, experts, translators and interpreters determine their own private-sector fees, and those fees change over time according to market forces.

If we were to estimate the costs of a proceeding that could range from EUR 1.000 to 1.000.000, we would break it down in the proportions identified below. Those portions, in turn, are based upon estimates of the range of the cost. The estimates are composed of the following elements: court fees at €0 (there are none in Luxembourg); bailiff fees running from €100-€300; lawyers' fees running from 60%-95% of the total litigation cost; expert fees running from €1500-€6000; witness fees running from €60-€300 (at the national and international levels, respectively); and, translation and interpretation costs running from €1000-€3000.

According to STATEC, the Luxembourg governmental statistic agency, the average monthly salary in Luxembourg is EUR 3.939 for men, and EUR 3.168 for women.

4 Level of transparency in determining the actual costs

In principle, bailiff fees are determined by a flat fee and governed by Grand-Ducal regulation (*Règlement grand-ducal du 24 janvier 1991 portant fixation du tarif des*

huissiers de justice, as amended), but in practice, the process is more complex and internal to the bailiff profession. The same holds true for lawyers as their statutory litigation fees (governed by *Règl. Gd. 21 mars 1974 concernant les droits et émoluments alloués aux avoués et aux avocats; Décret 16 février 1807 relatif à la liquidation des dépens, as amended; Article 38 of the law of 10 August 1991; and, Section 2.4.5 (Honoraires) of the Luxembourg Bar Rules of 12 September 2007*) are but a small portion of the fees and honorariums attorneys charge.

Likewise, the statutory fees for experts, witnesses, translators and interpreters (all governed by *Règlement grand-ducal du 23 décembre 1972 portant nouvelle fixation des indemnités à allouer en toutes matières aux témoins, experts et interprètes, as amended*) are in fact updated by Ministry of Justice circulars, thus requiring one to call the professional one would consider hiring. And, as mentioned above, professionals such as experts, translators and interpreters also charge their own private-sector fees.

With the exception of court fees, of which there are none significant in Luxembourg, having to call the professionals which one is contemplating hiring to request an estimate may result in an onerous burden on the party facing these costs. And, given that, within certain limits, judges have the discretion to allocate a certain level of fees at the end of the litigation, the information on the costs that an individual may have collected might not be reliable.

5 Proportion of each identified cost in the overall volume of activity

As we have not been able to precisely calculate all of the costs, we give our best estimate here. It appears that lawyers' and experts' fees could amount to at least two-thirds of the volume of activity, with notary and bailiff fees taking another quarter, or third, and the remaining volume taken up by translators and interpreters. This estimate, however, would vary widely according to the case at hand.

COURT FEES - 0%

BAILIFF FEES - <1%-10%

LAWYER FEES - 60%-95%

EXPERT FEES - 6%-30%

WITNESS COMPENSATION - <1%-2%

TRANSLATION/INTERPRETATION - 3%-10%

6 Proportion of each identified cost in the value of disputed claim

We are unable to provide exact figures as to this particular proportion, but rather give an estimate. The actual proportion would vary according to the case at hand.

COURT FEES - 0%

BAILIFF FEES - <1%-10%

LAWYER FEES - 60%-95%

EXPERT FEES - 6%-30%

WITNESS COMPENSATION - <1%-2%

TRANSLATION/INTERPRETATION - 3%-10%

7 Specificities in relation to EU cross-border disputes

Luxembourg has virtually no legislative provisions specific to costs in cross-border disputes.

8 Proportion of each identified cost in the overall cost of civil judicial proceedings

As we have not been able to precisely calculate all of the costs, we give our best estimate here. It appears that lawyers' and experts' fees could amount to approximately one half to two-thirds of the overall cost of civil judicial proceedings, with notary and bailiff fees attributed to another quarter, or third, and the remaining costs attributed to translators and interpreters. This estimate, however, would vary according to the case at hand.

COURT FEES - 0%

BAILIFF FEES - <1%-10%

LAWYER FEES - 60%-95%

EXPERT FEES - 6%-30%

WITNESS COMPENSATION - <1%-2%

TRANSLATION/INTERPRETATION - 3%-10%

9 Recommendations for EU action/national action

On the national level, Luxembourg would benefit from a centralised legal cost information service and/ or website. The existing legal information centers give no comprehensive information on costs.

The EU could gather and provide the information on a website.

10 Relationship between the costs of justice, the transparency in the costs of justice and access to justice

The lack of transparency is a problem on a theoretical level; however, for the time being it appears that in practice legal professionals in Luxembourg know where to locate the information they need. This may be an advantage of a small country. Moreover, the highly centralized legal aid mechanism allows access to justice for those of limited resources with little impediment.

In contrast, the disparity between the statutory and private sector fees for experts, translators, interpreters and other professional service providers is causing some of these professionals - in general the more senior professionals - to stop working in situations where statutory fees will apply. While this may not in itself limit an individual's access to justice, it may limit the choice and quality of the services available to the court, and thus, indirectly negatively impact an individual's access to justice.

Detailed Draft Report

1 General Questions

1.1 Level of information on the transparency of fees and costs of justice

The fees and costs of justice are found almost exclusively on public governmental websites, but the information is not complete or up to date because it is periodically reindexed. The updated statutory fees and costs for notaries, attorneys, bailiffs, experts, translators, interpreters and witnesses are diffused through Ministry of Justice circular memorandums. One must also call professionals for an estimate. The information from all of these sources is free.

While the country has three legal information service centers, the information that they provide does not include fee and cost information for professionals such as attorneys (apart from the statutory fees), translators, bailiffs and notaries.

The centers are at the following locations:

Legal Information Service (Service d'accueil et d'information juridique)

- Luxembourg : 12, Côte d'Eich, L-2010 Luxembourg, Tél: 22 18 46
- Diekirch : bei der Aler Kiirch, B.P.66 L-9201 Diekirch, Tél: 80 23 15
- Esch-sur-Alzette : place de la Résistance, L-4002 Esch/Alzette, Tél: 54 15 52.

1.2 Transparency perception

The general perception is that there is insufficient transparency with respect to legal fees and costs, outside of the information on legal aid provided by the legal information services, the Luxembourg and Diekirch Bar Associations and the integrated social services center (*Service Central d'Assistance Sociale, SCAC*). No information is provided for legal and other relevant services in cross-border disputes.

1.3 Solutions to improve transparency

A centralised service that provides information on the costs of all aspects of the judicial system could be an improvement.

1.4 Fairness of costs

In general, the costs of access to justice are perceived as fair. In 1980, the government enacted legislation repealing filing fees, thus making justice more accessible to populations that might not otherwise be able to afford access to Luxembourg's judicial system.

2 Court fees

2.1 General

There are no court filing fees in Luxembourg.

2.2 Cost of bringing an action to the courts

In 1980, Luxembourg repealed all court filing fees and costs. (*Règl. Gd. 27 décembre 1980 portant abrogation des dispositions accordant de droits et émoluments aux greffiers*).

2.3 Other proceeding costs

There are none.

2.4 Costs of legal recourse (Appeals...)

There are none.

2.5 Costs of ADR

Mediation and arbitration are both available in Luxembourg. In partnership with the Grand Duchy of Luxembourg's Chamber of Metiers and the Luxembourg Chamber of Commerce, the Luxembourg Bar Association houses a Mediation Center that resolves all types of disputes. The Luxembourg Chamber of Commerce Arbitration Center is primarily used in commercial disputes. Neither center has any specific provisions for cross-border disputes, the Mediation Center treats all the parties as if they were from Luxembourg.

The costs for mediation are a function of the amount of the dispute. For amounts up to 15.000€, the cost is 600€ (filing fee of 150€ and mediator's fee of 450€). For amounts over 15.000€, the cost depends on whether the contract contains a mediation clause and the number of hours required to resolve the dispute (filing fee is 150€ if the contract contains a mediation clause and 300€ if not; the Mediator's hourly rate is 230€, of which 30€ are Center administrative fees).

Arbitration costs are calculated using the Paris International Chamber of Commerce's fee scale. Arbitrators submit a proposal for their fees based on the complexity of the case and the amount in question. The proposed fees are included in the global statement of costs submitted to and reviewed by the Luxembourg Chamber's Arbitration Council. At the beginning of the process the Council sets the amount of the deposit for the sum likely to

cover arbitration costs. The deposit is generally shared by the parties, but one of the parties is free to pay it entirely.

2.6 Payment

Payment is made exclusively by wire transfer. The Luxembourg Bar Association Mediation Center and the Arbitration Center both apply the VAT of 15% - that used for lawyers' fees, but the Arbitration Center jurist interviewed had not yet seen the VAT applied.

2.7 E-justice

Luxembourg has no form of e-justice proceedings.

2.8 Impact of the number of hearings on costs

Hearings are not limited *per se*, but judges have the power to limit hearings, especially when the attorneys involved have repeatedly not met the deadlines for their motions. Lawyers' fees may depend on the number of hearings if they are calculated on a time spent basis.

2.9 Transcription costs

In certain cases, i.e., civil status, divorce, real property rights, a court decision will require transcription in a public register. For example, if a commercial lease agreement must be produced in court, it will normally have to be transcribed, or registered, with the The Recording and Estates Administration (*Administration de l'Enregistrement et des Domaines*) (the "Administration"). However, as there is no obligation to pass such a contract before a notary, the transcription need not be done by a notary, but rather directly with the Administration de l'Enregistrement et des Domaines. The fees associated with those transcriptions are largely governed by the Law of 7 August 1920, increasing registration, stamp and inheritance taxes, as amended (*Loi du 7 août 1920, portant majoration des droits d'enregistrement, de timbre, de succession, etc., telle que modifiée*). Otherwise, these issues are regulated by the various laws relevant for each such

situation. When not paid by legal aid, the party requiring transcription pays the transcription costs at the time of transcription.

In general, these costs will not be in excess of transcription costs for similar registrations effectuated for reasons other than a court decision. If the client has recourse to a professional’s services to support him in the transcription process, the professional’s fees will indirectly increase the costs linked to the transcription.

Transcription fees with the Administration are either flat or proportional depending on the nature of the deed or the transfer in question. The flat fee of EUR 12 is charged on all deeds for which there is no exchange or activity dealing with securities or assets. The Administration levies proportional fees on deeds and contracts regarding the movement or activity of securities or assets.

The transcription costs according to the main types of deeds are as follows:

Type of deed	Costs
1. Any deed not dealing with the transfer, exchange or movement of securities or assets	€ 12
2. Lease	0,50% + 2/10 surcharge (total 0,60%)
3. Manufacturing on services contract	2% + 2/10 surcharge (total 2,40%)
4. Real Estate Exchange	Normal: 4% + 2/10 surcharge (total 4,8%); Reduced: 0,25 + 2/10 surcharge (total 0,30%)
5. Real Estate Sale and Sale by Auction	Normal: 5% + 2/10 surcharge (total 6%); Purchase to Resell: 6% + 2/10 surcharge (total

<p>6. Gifts, endowments, donations</p> <p>7. Morgages and Liens</p>	<p>7,2%)</p> <p>1,5%-12% + 2/10 surcharge (total 1,8%- 14,4%)</p> <p>1% in most cases (0,50% for certain deeds from the agricultural sector, and 0% when the individual has received a tax credit</p>
---	---

Dematerialization of proceedings does not exist in Luxembourg.

3 Lawyers' consulting and representation fees

3.1 General

The information provided in the legislation applicable to lawyers' fees is only a partial indication of the fees for litigation. Lawyers charge fees (*honoraires*) in addition to those listed in the legislation..

According to the rules of the bar associations, the lawyers shall determine their fees (*honoraires*) (see below). Thus, lawyers determine their own reasonable fees.

The statutory fees (*frais et emoluments*) are found on the Luxembourg legislative website at www.legilux.public.lu, and the Ministry of Justice public website provides information on the legal professions in general. Apart from the reimbursement of expenses, the statutory fees provide first for a flat rate of 8,92 EUR, that is reduced by half if the litigation amount is not greater than 743,68 EUR, or the complaint is not contested. Secondly, the statutory fees generally provide for a percentage that is based upon the amount in question. The percentage ranges from 3% to 0,10%.

A certain number of other criteria are relevant in the determination of the statutory fees, so that in practice their calculation may become relatively complex. In general, statutory fees represent only a small portion of the aggregate amount of lawyers' fees.

Lawyers do not list their fees on their websites, thus potential clients would have to call a law firm to request a fee estimate for a particular set of legal services. However, this may vary from firm to firm and lawyer to lawyer, some sole practitioners and small firms may charge less.

Representation by a registered lawyer is required for all litigation before the *Cour de cassation* and the *Cour d'appel*, except for criminal, Small Claims Court (*Justice de Paix*) and summary (urgent) matters. A lawyer is generally required before the District Courts (*Tribunaux d'Arrondissement*) unless the law provides for an exception as in the case of commercial or summary matters, in which case the parties can represent themselves *pro se*.

In Luxembourg, a non-member of the Luxembourg Bar must request the assistance of a Luxembourg Bar member to obtain a certificate of introduction from the Bar Association Chair (*Bâtonnier*), which he will present to the Chief Judge of the competent jurisdiction.

Contingency fees (*pacte de quota litis*) for the totality of the lawyer's fee are prohibited by Luxembourg Bar Rule 2.4.5.3, of 12 September 2007. However, this does not prevent a lawyer and his client from entering into agreements under which, for example, the client and lawyer agree to a maximum or minimum for a portion of the lawyer's fees, or a supplementary fee calculated on the basis of the results obtained or services provided.

In transactions, lawyers determine the entirety of their own reasonable fees based on criteria furnished by article 38 of the law of 10 August 1991, and section 2.4.5 (*Honoraires*) of the Luxembourg Bar Rules of 12 September 2007. Generally, the criteria include the time spent, the urgency, the sum involved, the degree of difficulty, the result obtained and the client's financial situation, but this may not be the case if only fees based on an hourly rate have been agreed on.

However, under section 2.4.6 of the Luxembourg Bar Rules, the Bar Chair may pass judgment on the reasonableness of the fees through an assessment evaluation procedure. The client may petition the Bar Chair if he deems the fees unreasonable, or the attorney may petition the Bar Chair to defend the reasonableness of his fees. In either case, a Bar representative will evaluate the fees charged against the services provided by the attorney and render an opinion on the reasonableness of the fees. If the Bar representative deems

the fees unreasonable, the attorney shall reduce them in accordance with the representative's opinion. In contrast, if the representative deems the fees to be reasonable, the client may continue to dispute them.

In case of a dispute over a lawyer's fees brought before a court, the judge is not bound by the ruling of the Bar and may himself determine the fee level he deems to be reasonable in the case at hand.

3.2 Fees depending on the nature of the litigation

Generally, this depends on the law firm. Some firms simply charge on a time-spent basis. The hourly rates range from 100 EUR to 650 EUR.

The attorneys' statutory fees will vary with the nature of litigation and type of proceedings. For example, in commercial litigation, the attorney's statutory fees are one half of the fixed rate and one quarter of the proportional rate allotted to the attorney in civil litigation.

3.3 Fees depending on the type of lawsuit or proceedings

Generally, this depends on the law firm. Some firms simply charge on a time-spent basis. The hourly rates range from 100 EUR to 650 EUR.

The attorneys' statutory fees will vary with the nature of litigation and type of proceedings. For example, in commercial litigation, the attorney's statutory fees are one half of the fixed rate and one quarter of the proportional rate allotted to the attorney in civil litigation.

3.4 Fees depending on the value of the claim

Generally, this depends on the law firm. Some firms simply charge on a time-spent basis. The hourly rates range from 100 EUR to 650 EUR.

The attorneys' statutory fees will vary with the nature of litigation and type of proceedings. For example, in commercial litigation, the attorney's statutory fees are one half of the fixed rate and one quarter of the proportional rate allotted to the attorney in civil litigation..

Contingency fees (*pacte de quota litis*) for the totality of the lawyer's fee are prohibited by Luxembourg Bar Rule 2.4.5.3, of 12 September 2007. However, this does not preclude a lawyer and his client from entering into agreements under which, for example, the client and lawyer agree to a maximum or minimum for a portion of the lawyer's fees, or a supplementary fee calculated on the basis of the results obtained or services provided. Contingency fees may only represent a limited addendum to the regular fees.

3.5 Fees depending on the jurisdiction

Generally, this depends on the law firm. Some firms simply charge on a time-spent basis. The average hourly rates range from 100 EUR to 650 EUR.

The attorneys' statutory fees will vary with the nature of litigation and type of proceedings. For example, in commercial litigation, the attorney's statutory fees are one half of the fixed rate and one quarter of the proportional rate allotted to the attorney in civil litigation.

3.6 Payment

Lawyers' fees are payable generally by each party to its own lawyer. There is no general rule according to which the losing party will have to bear the prevailing party's lawyer's fees. Other costs (bailiff costs, witness and expert costs, etc) must generally be borne by the losing party.

With respect to the fees owed by the client to his lawyer, a final assessment will generally be made after the judgment or sentence has been issued. However, a lawyer usually requests a retainer from his client.

However, the law of 18 April 2004 on the time allowed for payments and on interest on late payments (*Loi du 18 avril 2004 relative aux délais de paiement et aux intérêts de retard*) provides that for certain claims related to commercial transactions between professionals, the creditor may seek reimbursement of all reasonable expenses for the enforcement of his claim.

If this does not apply, article 240 of the New Code of Civil Procedure empowers the judge to allocate a lump sum to the prevailing party at the expense of the losing party, as a partial cost reimbursement the amount of which is freely determined by the judge, who can also decide not to allot any reimbursement to the prevailing party if he deems this to be equitable. In most cases, any sums allotted under this provision will only cover a limited portion of the lawyer's fees.

Generally, fees are billed after the judgment or sentence has been issued. However, it is common that lawyers ask for retainers for their fees, costs and disbursements other than the statutory fees.

Expert and witness fees and indemnities must generally be advanced by the requesting party prior to the hearing.

Professionals' fees are generally subject to Luxembourg VAT at a rate of 15%. To the extent that the place of service is deemed to be Luxembourg for VAT purposes. This mostly depends on the domicile of the parties. The VAT is applicable to both private parties and taxable persons within Luxembourg. For clients established outside of Luxembourg but within the EU VAT territory, the VAT is applicable only to private parties; for taxable persons the reverse charge rule applies and the taxable person has to declare the VAT in its territory. For clients established outside the EU VAT-Territory, no VAT applies regardless of whether the client is a taxable person or not.

Services rendered to persons residing outside of the EU VAT territory will be outside of the scope of Luxembourg VAT.

Lawyers' fees are foreseeable in the event of litigation and to the extent that legal aid can be obtained, they would not necessarily be dissuasive. The public has easy access to information on lawyers' fees. Fees are generally the same in domestic and cross-border litigation.

3.6.1 Retainer

A retainer is typically required in both domestic and cross-border disputes. The amount of the retainer varies widely and depends on the legal action required, services to be provided as well as those that may already have been provided.

Under Articles 238-240 of the New Code of Civil Procedure, the court orders the losing party to pay full or partial litigations expenses, or the parties to share the expenses, this includes reimbursing a party for the costs he has already payed. The court can also order the parties to split the costs. In addition, a judge can order reimbursement for costs paid in excess, or additional payment if the funds paid were insufficient

4 Bailiff fees

4.1 General

In Luxembourg, bailiffs perform all services of process and other legal papers unless served by the court clerk's office. Documents served by the court clerk's office include those dealing with petitions to the court for certain summary or extraordinary remedies such as injunctions. The court clerk also serves documents in certain rental agreement and labor law matters. In those instances, the attorney files the petition directly with the court and the court clerk serves the hearing summons and the judgment on the parties (unless the losing party accepts the decision). Also, in conditional payment matters, in the event of a payment dispute, the court clerk serves the hearing summons, but a bailiff must serve the judgment resulting from the hearing on the payment dispute. Additionally, bailiffs must serve documents when the law does not determine the method of service..

Bailiffs also execute all judgments and other executory decisions; work with a notary in the appraisal and public sale of movable goods and effects; and, provide purely objective observations of certain conditions, without expressing any legal or factual opinions thereon.

Apart from the statutory fee information (governed by *Règlement grand-ducal 24 janvier 1991 portant fixation du tarif des huissiers de justice*, as amended), found on the public

websites at no charge, information on bailiff fees is generally found by calling the bailiff's office. The Grand Duchy of Luxembourg Chamber of Bailiffs website at www.huissiers.lu provides some information on the profession itself, and includes a list of bailiffs in Luxembourg.

The bailiff's fees are charged on a per act basis when serving documents. A bailiff's notification costs are comprised of a basic flat rate, travel expenses and any other fees that may apply. The basic flat rate is €50 for service of acts and deeds. The bailiff charges 1/5 of the flat fee for service of a deed from one lawyer to another. If the bailiff must serve several copies of a deed or writ, he charges an additional 1/4 of the flat fee. The bailiff also charges travel expenses of €0,52 per km on the round trip. However, within the City of Luxembourg the bailiff charges a flat fee of €6, and a flat fee of €3 within the Cities of Esch-sur-Alzette and Diekirch. Finally, the bailiff adds other applicable charges such as 1/10 of the flat fee for each address search, or the flat fee of €50 for drafting a petition.

Apart from costs for translation and a correspondent bailiff in the other jurisdiction, where applicable, there are no particular fees for trans-boundary service. There is no information available on the **average** amounts for bailiffs' fees.

Translation costs can be substantial, and given the small size of the country, these will apply quite often in the service of process to parties residing in other jurisdictions. However, detailed information on the fees with respect to the various documents and types of proceedings from the Luxembourg Chamber of Bailiffs was unavailable (see Chamber letter of 24 May 2007, Annex 4, document 9).

4.2 Ante judgment

The bailiff's fees are charged on a per act basis when serving documents. A bailiff's notification costs are comprised of a basic flat rate, travel expenses and any other fees that may apply. The basic flat rate is €50 for service of acts and deeds. The bailiff charges 1/5 of the flat fee for service of a deed from one lawyer to another. If the bailiff must serve several copies of a deed or writ, he charges an additional 1/4 of the flat fee. The bailiff also charges travel expenses of €0,52 per km on the round trip. However, within the City of Luxembourg the bailiff charges a flat fee of €6, and a flat fee of €3 within the Cities of Esch-sur-Alzette and Diekirch. Finally, the bailiff adds other applicable charges

such as 1/10 of the flat fee for each address search, or the flat fee of €50 for drafting a petition. There are no particular fees for trans-boundary service.

Translation costs can be substantial, and given the small size of the country, these will apply quite often in the service of process to parties residing in other jurisdictions. However, we were unable to obtain detailed information from the Luxembourg Chamber of Bailiffs (see Chamber letter of 24 May 2007, Annex 4, document 9).

Our experience has been that prejudgment bailiff's fees can run from €150 to €550.

4.3 During proceedings

The bailiff's fees are charged on a per act basis when serving documents. A bailiff's notification costs are comprised of a basic flat rate, travel expenses and any other fees that may apply. The basic flat rate is €50 for service of acts and deeds. The bailiff charges 1/5 of the flat fee for service of a deed from one lawyer to another. If the bailiff must serve several copies of a deed or writ, he charges an additional 1/4 of the flat fee. The bailiff also charges travel expenses of €0,52 per km on the round trip. However, within the City of Luxembourg the bailiff charges a flat fee of €6, and a flat fee of €3 within the Cities of Esch-sur-Alzette and Diekirch. Finally, the bailiff adds other applicable charges such as 1/10 of the flat fee for each address search, or the flat fee of €50 for drafting a petition. There are no particular fees for trans-boundary service.

Translation costs can be substantial, and given the small size of the country, these will apply quite often in the service of process to parties residing in other jurisdictions. However, we were unable to obtain detailed information from the Luxembourg Chamber of Bailiffs (see Chamber letter of 24 May 2007, Annex 4, document 9).

4.4 Post proceedings

The bailiff's fees are charged on a per act basis when serving documents. A Bailiff's notification costs are comprised of a basic flat rate, travel expenses and any other fees that may apply. The basic flat rate is €50 for service of acts and deeds. The bailiff charges 1/5 of the flat fee for service of a deed from one lawyer to another. If the bailiff must serve several copies of a deed or writ, he charges an additional 1/4 of the flat fee. The

bailiff also charges travel expenses of €0,52 per km on the round trip. However, within the City of Luxembourg the bailiff charges a flat fee of €6, and a flat fee of €3 within the Cities of Esch-sur-Alzette and Diekirch. Finally, the bailiff adds other applicable charges such as 1/10 of the flat fee for each address search, or the flat fee of €50 for drafting a petition. There are no particular fees for trans-boundary service.

Translation costs can be substantial, and given the small size of the country, these will apply quite often in the service of process to parties residing in other jurisdictions. However, we were unable to obtain detailed information from the Luxembourg Chamber of Bailiffs (see Chamber letter of 24 May 2007, Annex 4, document 9).

Our experience has been that postjudgment bailiff's fees can run from €150 to €550.

4.5 Payment

The bailiff's fees are usually paid by the party initiating service, unless the court orders otherwise. They are generally paid when the service is rendered.

If the court so orders, these costs could have to be borne, and, as the case may be, reimbursed by, the losing party to the prevailing party.

4.5.1 Retainer

Bailiffs do not typically request retainers for domestic or cross-border service. This appears to be due to the fact that usually the bailiff's services are requested through a lawyer who will cover the bailiff's fees. It is also customary that the lawyer will pay for this out of a retainer received from his client, so that the client could potentially indirectly pay a retainer for these services.

5 Experts

5.1 General

Information on experts' statutory fees is found on the Ministry of Justice (legilux link) and Legilux free, public websites. In addition, experts are represented by the Grand Duchy of Luxembourg Chamber of Experts (www.chambre-expert.lu). The Chamber's website provides reasonably complete information on its four sections (building/construction, medical, transportation/traffic and finance/arts/science/technology), explains the instances in which their services could be required and lists the hourly rates.

There are no special provisions for cross-border expert consultation in either the legislation or with the Chamber of Experts.

Given the small size of the country, and in order to have recourse to specialists in certain areas, as well as to exclude conflicts of interest, foreign experts are often consulted in Luxembourg proceedings.

5.2 Fees

Experts receive a statutory hourly fee plus travel expenses at the State functionary subsistence allowance rate. The expert's fee is based on the consumer index, and reindexed periodically. The updated fee is not in the Luxembourg legislation but is disseminated by Ministry of Justice circular memorandums. The Ministry sends the circulars primarily to the public prosecutor's office (*Parquet Général*) but sends them to other legal entities upon request. According to the Luxembourg District Court, the current statutory expert fee is 55,15 EUR per hour. Court-ordered medical visits and blood tests are charged on a per-visit and per-test basis. However, Luxembourg court-ordered autopsies are performed in Hamburg, Germany, so the statutory fee does not apply.

The Chamber of Experts provides a parallel, private-sector expert fee structure that is in extreme contrast with the existing statutory expert fee structure. The Chamber's fee structure provides for more nuanced categories of experts based on the education and

experience of the expert. Thus, a more complex case would require a more highly qualified expert and his fees would be higher than those of a lesser qualified expert.

Under the Chamber's fee structure, experts charge an hourly fee ranging from 64,81 to 120,20 EUR/hr, depending on the type of expert required (assistant, regular, confirmed or highly qualified). The fee structure includes technicians, and the personnel that accompany them (secretaries, etc.), as well as travel, copying and printing fees.

The Chamber's expert fee structure is indexed according to that of the Grand Duchy of Luxembourg's Order of Architects and Consulting Engineers. In addition, despite not having the relevant diplomas, certain extraordinarily qualified individuals can receive the higher level of expert compensation.

The marked difference between the statutory and Chamber expert fee structures has caused certain experts to stop working with the courts because the experts consider the fees too low. Thus, parties could potentially be deprived of the services of the most highly qualified experts.

No information is available as to the average fees charged by experts.

5.3 Payment

When the judge appoints the expert, he sets the amount and names the parties that must advance funds for the expert's services. The expert then begins to provide his services and, during that time, may request that additional monies be advanced. When the expert has finished his work, or drafted his report, he notifies the court. If the parties agree on the amount to be paid to the expert, or the amount the judge sets for payment to the expert, the judge authorizes payment to the expert from the funds advanced. The judge orders the reimbursement of unspent advanced funds to the paying party, or that one of the parties pay additional monies to the expert, should they be required. The expert presents his report to the court when his last invoice has been paid.

5.3.1 Retainer

Generally, a judge orders the parties to make a security deposit for the expert's fees. The judge can order reimbursement for fees paid in excess of the final amount, or additional

payment if the funds were insufficient. In addition, under Articles 238-239 of the New Code of Civil Procedure, the court orders the losing party to pay full or partial litigation expenses, or the parties to share the expenses, this includes reimbursing the party for the expert's fees he has paid. The court can also order the parties to split the expert's fees.

5.4 Legal aid cases

Legal aid covers the totality of the legal expert fees and is paid only by the State.

5.5 Reimbursement of experts' fees

Generally, a judge orders the parties to make a security deposit for the expert's fees. The judge can order reimbursement for fees paid in excess, or additional payment if the funds were insufficient. In addition, under Articles 238-239 of the New Code of Civil Procedure, the court orders the losing party to pay full or partial litigation expenses, or the parties to share the expenses, this includes reimbursing the party for the expert's fees he has paid. The court can also order the parties to split the expert's fees.

5.6 Practical questions

An expert's services are required when investigation findings or a consultation (testimony of a consultant on a technical issue not requiring a complex investigation) do not provide the judge with sufficient clarification, and when the expert's opinion does not call for written statements. Examples of instances when a report may be necessary include litigation regarding water or fire damage to a house; auto accidents; the restitution of the fruits of a good when their current local market value calculation is unavailable; the verification of the signature of a writing (if not done by other written acts or witnesses); and, the verification of false documents. Also, to expedite proceedings, the parties can designate an expert before the court does so. For example, in an auto collision case, the parties may agree on an expert who will estimate the damage to each party.

The validity of an expert's report depends on the contents of that report. For example, if a report calculates the value of fire or water damage to a house from a single incident, or the damage from a auto collision, the damage will likely remain at a fixed level, and thus

the report will be valid indefinitely. In contrast, if the report calculates the damage to a house that is ongoing, and continuing, the damage assessment will likely need to be redone and the calculation reindexed to the current market value.

In Luxembourg, accredited experts are preferred. To receive accreditation, the proposed expert sends a letter to the Ministry of Justice requesting accreditation as an expert and listing the areas and in which he/she is qualified to be an expert. The candidate attaches his/her curriculum vitae, police record extract and certified copies of the relevant diplomas. If given the accreditation, they take an oath before the Superior Court of Justice (*Cour supérieure de Justice*) to give their reports and opinions on their honor and best conscience. The Ministry of Justice keeps a list of accredited experts.

However, the Chamber of Experts considers Luxembourg's accreditation system inadequate in that it does not set forth criteria upon which to base an expert's accreditation (i.e., years of studies completed, practical experience, continuing education in the field, etc.).

As would be the case in Luxembourg, an expert's accreditation is not automatically transferable to another Member State. However, the information contained in the expert's report could be acceptable both to a Luxembourg court or another Member State's court.

6 Translation and interpretation

6.1 General

The Ministry of Justice provides a list of accredited translators and interpreters. In general, information on their fees is obtained by contacting the translation company or interpreter directly. Estimates for service are generally free.

The statutory fees for both translators and interpreters is currently 43,58 EUR per hour, plus mileage and state functionary subsistence allowance, if necessary. Luxembourg has no equivalent of a translator's association. But, as with experts, there is a parallel, public-sector fee structure for translator compensation that is better suited to the current reality of the translation industry. Thus, one translation company we contacted has stopped working with the courts.

Documents that have legal significance and will go before a court or governmental administration must be translated by an accredited translator, and, in certain instances such as the interpretation of a foreign law, by an accredited interpreter.

6.2 Translation fees

Deed translation fees depend on whether statutory or private sector fees are charged and on the length of the deed. Luxembourg has no particular legislation determining translation fees for particular deeds.

A company may charge a premium for the services of an accredited translator. While translators working with the court receive the statutory fee currently set at 43,58 EUR per hour, payment by the hour is considered to be anachronistic and inappropriate for translators because they usually charge by line of text. For example, one company we contacted bills most European languages at a standard rate of 1,34-2 EUR per line, while Slavic and Scandinavian languages are billed at a non-standard rate for which one must contact the company on a case by case basis. A line is considered to be approximately 7,5 words.

Translators' fees are generally not impacted by the complexity of the translation, even though the recourse to a specialized translator may result in a higher cost.

6.3 Interpretation fees

Information on private sector interpreting fees was unavailable. Companies appear to be reluctant to quote their private sector fees unless the party making the inquiry is truly a prospective customer who requests an estimate for a specific event. However, our experience has been that the interpreter fees range from 50 EUR to 90 EUR per hour,

6.3.1 Retainer

In general a client or law firm is invoiced for the translator's services after completion of the translation.

6.4 Payment

Translation fees for pleadings such as a summons are part of the litigation costs (expenses of a proceeding) and must be borne by the losing party. Translation fees for pieces of evidence are to be assumed by the party wishing to submit a particular document into evidence. However, should the burden of the translation fees prove too onerous, Article 240 of the New Code of Civil Procedure provides a judge with the discretion to determine on equitable grounds the amount that one party must pay to the other for expenses incurred when it would be unfair to require that party to assume those expenses and they were not counted as litigation costs. Thus, a judge could potentially order the losing party to pay a portion of those fees.

6.5 Practical questions

Accredited translators and interpreters are preferred but non-accredited translators and interpreters may be appointed when accredited translators and interpreters are unavailable due to remoteness, familial or other relationships that could give rise to a conflict of interest, or the impossibility of finding an accredited translator or interpreter that specializes in the issue at hand.

Also, a party to a proceeding may be accompanied by an individual such as a friend or family member who is not an accredited interpreter, but will take an oath at the proceeding and interpret for the party to the proceeding.

To seek accreditation, the proposed translator or interpreter sends a letter to the Ministry of Justice requesting accreditation as a translator or interpreter and listing the areas and in which he/she is qualified to be a translator or interpreter. The candidate attaches his/her curriculum vitae, police record extract and certified copies of the relevant diplomas. If given the accreditation, he/she takes an oath before the Superior Court of Justice (*Cour supérieure de Justice*).

Generally, Luxembourg does not accept another Member State's accredited translation for documents that will go before a court or governmental administration. And, a translator will not review another's work and certify it; however, a translator can easily see if the translation is well done. If so, he may edit it and certify it.

A translator can produce an accredited translation from any type of document.

Translation validity may vary but it is generally valid indefinitely. Certified translations have legal significance and may be submitted to a court or government administration.

6.6 Legal aid

Legal aid in Luxembourg covers translation and interpreting fees. Luxembourg has no legal aid organizations because legal aid is paid by the State.

6.7 Reimbursement

As mentioned above, translation fees for pleadings such a summons are part of the litigation costs (expenses of a proceeding) and must be borne by the losing party.

Translation fees for pieces of evidence are to be assumed by the party wishing to submit a particular document into evidence. However, should the burden of the translation fees prove too onerous, Article 240 of the New Code of Civil Procedure provides a judge with the discretion to determine on equitable grounds the amount that one party must pay to the other for expenses incurred when it would be unfair to require that party to assume those expenses and they were not counted as litigation costs. Thus, a judge could potentially order the losing party to reimburse a portion of those fees paid by the other party.

7 Witness Compensation

7.1 General

Information on witness compensation is available for free on www.legilux.public.lu and www.mj.public.lu (Ministry of Justice link to legilux). Judges ask the witnesses whether they would like to be compensated or witnesses ask to receive the daily compensation. There are no witness compensation provisions specific to cross-border litigation.

7.2 Fees

Witnesses are paid a minimal, flat sum of 16,58 EUR per day. They also receive a subsistence allowance applicable to functionaries.

7.3 Payment

The VAT is not applicable to witness compensation.

Under Articles 238-239 of the New Code of Civil Procedure, the court orders the losing party to pay full or partial litigation expenses, or the parties to share the expenses, this includes reimbursing a party for the witnesses' fees he has paid. The court can also order the parties to split the fees. Legal aid covers witness compensation.

7.4 Practical questions

Depending on the rules of the specific procedure, witnesses can give oral testimony or written statements in one of the three official languages (Luxembourgish, French and German, with the court having the discretion to allow documents in English); otherwise, statements will have to be translated. Anyone not a party to the case may provide witness testimony. Written testimony must be in the form of a written affidavit. The witness fills out an affidavit under oath and submits a copy of his identification. A witness authenticates his testimony by signing the document. The parties to the case may collect testimony. Witness testimony collected in one Member State is valid in another as long as the civil procedure is the same.

8 Pledges and security deposits

8.1 General

A court may require a security deposit or pledge for the amount in question in expedited and normal commercial proceedings. There are no specific requirements with regard to

cross-border litigation. In fact, Luxembourg civil procedure no longer requires foreign plaintiffs to put up a security deposit, or the *cautio judicatum solvi*, in the amount of legal expenses and court-awarded damages and interest with which they might be sanctioned. The practice of requiring such a deposit from foreign plaintiffs ended for Luxembourg with its ratification of the Hague Convention of 1 March 1954 on Civil Procedure, with regard to parties residing in jurisdictions that are a party to the Convention.

The *cautio judicatum solvi* may, however, still be required in cases where a party does not reside in a jurisdiction which is a party to the Convention. Thus, this security deposit may still be requested by the opposing party for parties from other states, the court deciding ultimately on this request. And, the court may require the amount to be provided be much lower than the amount in question.

In Luxembourg, when a party is unable to furnish a security deposit, it may furnish a pledge securitized for the appropriate amount.

8.2 Fees

The amount of the security deposit or pledge is generally the amount of liability in question. However, the judge will decide on the amount he deems appropriate.

8.3 Payment

Luxembourg internal law does not provide for avoiding the obligation to pay a security deposit or pledge.

8.4 Practical questions

Luxembourg legal aid does not cover security deposits or pledges. If the security deposit or pledge is included in the expenses of the proceeding, the court may order the losing party to pay it or reimburse the party that paid it.

9 Court decisions

9.1 Cost of notification

In Luxembourg, lower courts are allowed to notify summons and judicial decisions to the litigants, in accordance with the relevant Articles set out in the law and in some specific areas only, as is the case with labour law, rental law and orders for earnings attachment. Social security courts and administrative courts are also legally permitted to notify summons and judicial decisions to the litigants.

Since the early eighties, these notification costs are no longer charged to the litigants, except in criminal matters in which case the mailing charges are invoiced to the losing party or parties. Thus, notification costs are in principle free of charge due to the principle of a free public service of justice.

However, before the other courts, .i.e., District Courts, Courts of Appeals and the Court of Cassation, litigants are required to request bailiffs to serve the summons and judicial decisions. For costs associated with this latter case, we refer you to Section 4 on the bailiffs' fees and costs.

Also, other court-ordered enforcement measures are largely accomplished through the bailiffs. Bailiffs charge a basic hourly rate of €50 for reports/statements dealing with attachments and seizure of property. The bailiff also charges travel expenses of €0,52 per km on the round trip. However, within the City of Luxembourg the bailiff charges a flat fee of €6, and a flat fee of €3 within the Cities of Esch-sur-Alzette and Diekirch. Finally, to that the bailiff may add other applicable charges such as 1/10 of the flat fee (€50) for each address search.

The bailiff also performs collection functions on debts and can charge a fee of 3% on any sum not exceeding €1.239,47, 2% on the amount beyond that sum up to €3.718,40, 1% on the amount beyond that sum up to €7.436,81, and 0,50 on the remainder in excess of the last sum.

If partial payments are made, the bailiff can charge a instalment payment fee of 1/10 of the flat fee per instalment. If the instalment is less than €24,79, the fee is reduced to €0,62, and if the instalment is less than €7,44 the fee is not charged.

Detailed information is unavailable from the *Chambre des Huissiers de Justice du Grand-Duché de Luxembourg*. Please see attached letter of 24 May 2007 (Annex 4-9).

9.2 Cost of obtaining an authenticated decision

In the early eighties, the Luxembourg government decided to reduce the judicial costs for the litigants to the lowest possible costs. Therefore, Luxembourg courts deliver free of charge, [upon the litigants' request, the first authentic copy of the judicial decisions bearing the executory formula.](#)

10 Legal aid

10.1 General

Information on legal aid in Luxembourg is found for free on the following two websites:

Le Barreau de Luxembourg

<http://www.barreau.lu/2005/index.1024x768.php?pg=assist&bar=lu&lng=en>

The Council of Europe

http://www.coe.int/t/e/legal_affairs/legal_co-operation/operation_of_justice/access_to_justice_and_legal_aid/Luxembourg%20-%20legal%20aid%20paper.asp

In addition, Luxembourg's legal information centers and integrated social service agency provide the general public with legal aid information. The Luxembourg Bar has the form available online at <http://www.barreau.lu/2005/pages/assistance/formulairefrancais.pdf>.

The regulation itself is in the original French text however, the European Judicial Network's website on civil and commercial matters (<http://ec.europa.eu/civiljustice>) gives the best English language explanation of Luxembourg's legal aid legislation and benefits.

10.2 Conditions of grant

An individual may obtain a request form from the Luxembourg Bar, the legal information centers or the Service Central d'Assistance Sociale (Central Social Services Agency), fill it out, and submit it to the Luxembourg Bar Chair.

Legal aid covers all types of proceedings except:

1. automobile accidents;
2. unless fully justified, it does not cover litigation resulting from the commercial or professional activities of a person in business, industry, the liberal professions, or an artisan; and
3. proceedings for speculative accusations.

Legal aid covers enforcement of judgments regardless of whether the judgment is issued by a Luxembourg or foreign court. And, to the extent that mediation would be considered an extrajudicial proceeding, it would be covered by legal aid.

Legal aid does not have to be reimbursed because at the end of the proceedings, the court automatically awards legal fees and costs to Luxembourg's governmental entity that pays for legal aid (*l'Administration de l'Enregistrement et des Domaines*).

Persons with insufficient financial resources request legal aid from the Bar Board Chair (*Bâtonnier*), either at a hearing or in writing. If, at the outset of litigation, the investigating magistrate appoints an attorney for a defendant who claims eligibility for legal aid and so requests, the magistrate sends the request to the Chair.

The Bar Board Chair then verifies the alleged insufficiency of financial resources and appoints the attorney that the person making the request has freely chosen, or, if the defendant has not chosen one or the Chair considers his choice inappropriate, the attorney chosen by the Chair. Unless he has a conflict of interest, the attorney is required to accept the case. In urgent matters, the Chair may appoint temporary legal aid counsel for matters that he specifies and the legal aid is revocable should the defendant's financial resources prove to be, or become, sufficient.

An individual's resources are deemed insufficient when he receives a guaranteed minimum revenue from the State under the law of 26 July 1986, creating, *inter alia*, a guaranteed minimum revenue (RMG); is eligible for the guaranteed minimum revenue (whether considered eligible alone or as part of a household or couple without which he would be eligible); and, an individual whose financial situation alone may not make him eligible, but because of the financial burden created by the litigation and its associated costs, would become eligible.

The law provides that only "natural persons" (*personnes physiques*) may obtain legal aid. The Luxembourg Bar Chair (*Bâtonnier*) grants the legal aid. The party wishing to appeal the Bar Chair's refusal may appeal the decision before the Bar's Disciplinary Commission.

The level of insufficiency of a person's resources is assessed based on both his gross monthly earnings (periodic revenue) and other assets (personal wealth). The calculation to receive legal aid is rather complicated and made on a case-by-case basis. Thirty percent of the periodic earnings are "immune", or not taken into consideration. The same is true of certain financial obligations such as alimony. Finally, if the individual pays rent, 123,94 EUR are subtracted from the amount of the individual's monthly rent that is taken into account.

If the individual has personal assets such as property, etc., the value of these assets is converted into a monthly sum that is added to the sum to be taken into consideration for purposes of legal aid eligibility. The older an individual is, the greater the value of his or her assets. The National Social Action Service (www.snas.etat.lu) keeps the updated tables for these calculations.

In addition to the monthly gross income produced by these calculations taken into consideration for purposes of legal aid eligibility, variables such as whether the person is a single parent with several dependant children, or simply single, are factored in and the Bar Chair avoids rigidity in granting legal aid when the person's monthly income is slightly above the maximum threshold. The base figure for the minimum threshold, or Guaranteed Minimum Revenue (RMG), for one single adult is currently 1118,54 EUR. According to STATEC, the Luxembourg governmental statistic agency, the average monthly salary in Luxembourg is EUR 3.939 for men, and EUR 3.168 for women. Our experience indicates that approximately 20% of cases receive legal aid.

Legal aid covers judgment enforcement costs regardless of whether the judgment is issued by a Luxembourg or foreign court.

ADR, particularly arbitration, is usually related to business matters and very expensive. But, to the extent that mediation would be considered an extrajudicial proceeding, it would be covered by legal aid.

10.3 Strings attached

Legal aid does not cover automobile accidents. And, generally does not cover litigation resulting from the commercial or professional activities of a person in business, industry, the liberal professions, or an artisan. Neither does it cover proceedings for speculative accusations.

The recipient must request renewal of legal aid to appeal a lower court's decision.

The Bar Chair may revoke legal aid at any point at which he determines that the recipient's financial situation is no longer insufficient to cover the costs of the legal proceedings in question.

10.4 Practical questions

What are the costs covered by legal aid?

1. stamp tax and registration fees
2. court fees
3. lawyers' fees
4. bailiff fees
5. notary fees
6. technical consulting fees
7. witness compensation
8. translation and interpretation fees
9. affidavit of Law and Customs fees (*Certificat de Coutume*)
10. travel expenses
11. taxes and fees associated with document registration, mortgages, and pledges (*nantissements*)
12. newspaper publication fees

When legal aid is awarded, it generally covers the entirety of the applicable costs. Thus, contribution or partial payment is not a common practice in Luxembourg. Current hourly rates are 82,73 EUR for registered lawyers, and 55,15 EUR for unregistered lawyers or

lawyers completing their internships. Although mediation rarely comes up in the legal aid context, it would be covered to the extent that it is considered an extrajudicial matter.

The court automatically awards legal fees and costs to Luxembourg's governmental entity that pays for legal aid (*l'administration de l'enregistrement et des domaines*).

11 Personal experience

In one instance in which we were confronted with cross-border issues, a Polish national wanted to bring an action in Luxembourg, but due to the high cost of service of process, combined with the difficulty of explaining the necessary legal procedures, this proceeding could not move forward. The attempted proceeding was ultimately abandoned.

Very often one must explain to a client that the costs of proceedings abroad are unknown. We do not attempt to obtain legal aid for our clients, but rather advise the client to attempt to obtain legal aid himself and, once he has done so, to return to consult the lawyer regarding the case.

When cooperating with lawyers in other States, we ask the lawyer from the jurisdiction abroad whether he/she is competent to handle the case; approximately what the fees will be; and, whether he/she agrees to take the case.

The difficulties in cross-border litigation are that foreign jurisdiction lawyer fees in cross-border trials often at the very least double the fees. The general cost of hiring a lawyer and of trying to enforce the judgment in a foreign country is a deterrent to attempting to access justice in cross-border disputes.

12 Case studies -

Case study 1

Case Study number 1 - Family law - Divorce (excluding division of matrimonial property)

Case A - National situation: a couple gets married. Later they separate and agree to a divorce.

Case B - Transnational situation: Two nationals from a same Member State (Member State A) get married. The marriage is celebrated in Member State A. After the wedding, the couple moves to live and work in another Member State (Member State B) where they establish their residence. Shortly thereafter the couple separates with the wife returning to Member State A and the husband remaining in Member State B. The couple agrees to a divorce. Upon her return to Member State A, the wife immediately files for a divorce before the courts of Member State B¹.

Case n° 1

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type	Costs

¹ N.B : Article 3 of Regulation EC n°2201/2003 provides that: “In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there”

							of case?	
Case A	None	None						
Case B	None	None						

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	No	€2500	No	N/A	N/A	No	N/A
Case B	Yes	€2500	Yes	€150	€150	No	N/A

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	N/A	N/A	N/A	N/A	None	?
Case B		Approx.		Bailiff Service:		

	Yes	€25/pers	Possible	approx €150 - summons; approx €150 judgment	None	?
--	-----	----------	----------	--	------	---

Case	Legal Aid			Reimburse- ment			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Gross monthly earnings and assets less than RMG And case is not clearly inadmissible, unfounded or requiring funding disproportionate to claim value	Always	Gross monthly earnings and assets less than RMG And case is not clearly inadmissible, unfounded or requiring funding disproportionate to claim value	N/A	N/A	N/A	When ordered by law or when affidavits or supporting documentation is incorrect and/or client's income becomes greater than RMG
Case B		Always		Yes	Damages are less than €1000 + costs and expenses	Lawyers' fees	

Case	Translation		Interpretation		Other costs specific to cross-border	

					disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	When documents are not drafted in French, German, Luxembourgish	€100	When spouses cannot speak adequate French, German, Luxembourgish	€100?	N/A	N/A
Case B	(or English)	€100	(or English), or do not understand any of these languages	€100?	N/A	N/A

12.2 Case Study 2

Case Study number 2 - Family law - Custody of the children (excluding alimony questions)

Case A - National situation: Two persons have lived together unmarried for a number of years. They have a three year old child when they separate. A court decision grants custody of the child to the mother and a right of access to the father. The mother sues to limit the father's right of access.

Case B - Transnational situation where you are a lawyer in Member State A: Two persons have lived together unmarried in a Member State (Member State B) for a number of years. They have a child together but separate immediately after the child's birth. A court decision in Member State B gives the child's custody to the mother with a right of access to the father. The mother and the child move to live in another Member State (Member State A) as authorized to do so by the Court decision and the father remains in

Member State B. A few years later, the mother sues in Member State A to change the father's right of access².

Case n° 2

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	None							
Case B								

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	No	Approx €2500	No	N/A	N/A	No	No cost for social worker
Case B	No	Approx €2500	No	N/A	N/A	No	

² N.B : Article 8 of Regulation EC n°2201/2003 provides that : “The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized.”

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated?	Cost	Does this exist and when and how is it used?	Cost	Description	Cost
Case A	Yes	approx €25 per person	N/A	N/A	No	N/A
Case B	Yes	approx €25 per person	N/A	N/A	No	N/A

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total?	Conditions?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what percentage in general?	What costs are never reimbursed?	Are there instances where legal aid should be reimbursed to the legal organisation?
Case A	Gross monthly earnings and assets less than RMG. Add case is not clearly inadmissible, unfounded or requiring funding disproportionate to claim value.	Always	Gross monthly earnings and assets less than RMG. Add case is not clearly inadmissible, unfounded or requiring funding disproportionate to claim value.	N/A	N/A	N/A	When ordered by law or when affidavits or supporting documentation is not correct and/or client's income becomes greater than RMG.
Case B	not clearly inadmissible, unfounded or requiring funding disproportionate to claim value.	Always	clearly clearly inadmissible, unfounded or requiring funding disproportionate to claim value.	Yes	Damages are less than €1000 + costs and expenses	Lawyers' fees	When ordered by law or when affidavits or supporting documentation is not correct and/or client's income becomes greater than RMG.

Case A								
Case B		Always		Yes	Damages are less than €1000 + costs and expenses	Lawyers fees		

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	When documents are not drafted in French, German, Luxembourgish (or English)	€100	When spouses cannot speak adequate French, German, Luxembourgish (or English), or do not understand any	€100?	N/A	N/A

			of these languages			
--	--	--	-----------------------	--	--	--

12.3 Case Study 3

Case Study number 3 - Family law - Alimony

Case A - National situation: Two persons have lived together unmarried for a number of years. They have a three year old child when they separate. A court decision grants custody of the child to the mother. The only outstanding dispute relates to the amount of the alimony owed to the mother by the father for the support and education of the child. The mother sues on this.

Case B - Transnational situation where you are a lawyer in Member State A: Two persons have lived together unmarried in a Member State (State B). They have a three year old child. They separate. A court decision in Member State B gives the child’s custody to the mother. With the agreement of the father, the mother and the child move to live in another Member State (Member State A) where they establish their residence. An outstanding dispute remains. This relates to the amount of the alimony owed to the mother by the father for the support and education of the child. The mother sues on this in Member State A³.

Case n° 3

Case Study	Court			Appeals			ADR	
	Initial court	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option	Costs

³ NB Article 5 of COUNCIL REGULATION (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides that: “in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties”

	fees						open for this type of case?	
Case A	None							
Case B								

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	No	€1000 to €3000	No	€200	€150	N/A	N/A
Case B	No	€1000 to €3000	No	€300	€300	N/A	N/A

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	Yes	?	No	N/A	N/A	N/A

Case B	Yes	?	No	N/A	N/A	N/A
--------	-----	---	----	-----	-----	-----

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Yes	At the end of the trial	Revenue less than RMG	Partially	€500-€1000	Lawyers' fees	No
Case B	Yes		Revenue less than RMG	Partially	€500-€1000	Lawyers' fees	No

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A						

	When the documents must be in French or German	Depends on length of document	N/A	N/A	No	No
Case B			N/A	N/A		No

12.4 Case Study 4

Case Study number 4 - Commercial law - Contract

Case A - National situation: A company delivered goods worth 20.000 euros. The seller has not been paid because the buyer considers that the goods do not conform to what was agreed. The seller believes that the goods conform to what was agreed and asks for payment in full because he asserts that the goods were purpose made and he will not be able to sell them to someone else.

The seller decides to sue to obtain the full payment of the price.

Case B - Transnational situation: A company whose head office is located in Member State B delivers goods worth 20.000 euros to buyer in Member State A. The contract is subject to Member State B's law and written in Member State B's language. This seller has not been paid because the buyer located in Member State A considers that the goods do not conform to what was agreed. The seller believes that the goods conform to what was agreed and asks for payment in full because he asserts that the goods were purpose made and he will not be able to sell them to someone else. The seller decides to sue in Member State A to obtain full payment of the price as provided under the contract with the buyer.

Case n° 4

Case Study	Court			Appeals			ADR	
------------	-------	--	--	---------	--	--	-----	--

	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	None							
Case B								

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	No	If use a lawyer approx €3000	Yes	€500	€550	No	€1000-€3000
Case B	No		Yes	€500	€550	No	€1000-€3000

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	Yes	Court determines amount	Yes, when judgment enforcement is	Set by	Statutory fees apply but often set	

Case B	Yes	Court determines amount	provisional or requested by one of the parties	the court	by the court	
--------	-----	-------------------------	--	-----------	--------------	--

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Yes	At the end of the trial	Depends on client income; see Case Study 1	Partially	approx €500- €1000	Lawyers' fees	No
Case B	Yes			Partially	approx €500- €1000	Lawyers' fees	No

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?

Case A	When documents not in French or German	Depends on the number of lines; can run between €500-€1000	When one of the parties requests it; the requesting party pays	It depends on the amount the requesting party contributes	No	N/A
Case B	French or German	can run between €500-€1000	requesting party pays	requesting party contributes	No	N/A

12.5 Case Study 5

Case Study number 5 - Commercial law - Responsibility

Case A - National situation: A heating equipment manufacturer delivers a heater to an installer. The installer on-sells (and installs) the heater to a customer to equip his/her house. The house catches fire shortly thereafter. Every participant (heating equipment manufacturer, installer, end-customer) is insured. The origin of the fire is contested. Nobody wants to compensate the customer.

The customer decides to sue for full compensation the heating equipment manufacturer, the heating equipment installer and the insurance companies.

Case B - Transnational situation: A heating equipment manufacturer in a Member State B delivers heater to an installer in a Member State C. The installer on-sells the heater (and installs) the heater to a customer in Member State A to equip his/her house. The house catches fire shortly thereafter. Each participant (heating equipment manufacturer, installer, end-customer) is insured by an insurance company in its own Member State. The origin of the fire is contested. Nobody wants to compensate the customer.

The customer decides to sue in Member State A for full compensation the heating equipment manufacturer, the heating equipment installer and the insurance companies in Member State A.

Case n° 5

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	None							
Case B								

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	Yes, unless amount in question is less than €10.000;	€3500	Yes, unless amount in question is less than €10.000	€150	€150	No	?
Case B		€3500		€150	€150	No	?

(Case No. 5 cont'd)

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	Yes	Approx €25 per person	N/A	N/A	N/A	N/A
Case B	Yes	Approx €25 per person	N/A	N/A	N/A	N/A

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal organisation ?
Case A	Gross monthly earnings and assets less than RMG And case is not clearly inadmissible, unfounded or requiring funding disproportionate to claim value	Always	Gross monthly earnings and assets less than RMG And case is not clearly inadmissible, unfounded or requiring funding disproportionate to claim value	N/A	N/A	N/A	When ordered by law or when affidavit or supporting documentation is incorrect and/or client income becomes greater than RMG
Case B	clearly inadmissible, unfounded or requiring funding disproportionate to claim value	Always	clearly inadmissible, unfounded or requiring funding disproportionate to claim value	Yes	Damages are less than €1000 + costs and expenses	Lawyersfees	

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	When documents are not drafted in French, German,	€100	When individual cannot speak adequate French, German,	€100?	N/A	N/A
Case B	Luxembourgish (or English)	€100	Luxembourgish (or English), or do not understand any of these languages	€100?	N/A	N/A

13 Insurance

Insurance covering the risks of litigation in civil proceedings exists in Luxembourg. One could pay approximately €150 annually, but we could not say whether that is the average cost. We can say, however, that such insurance can be used to cover cross-border disputes and that it is not necessarily more expensive when used in this context.

The standard insurance policy covers the fees for the proceedings and lawyers. Some policies cover fees for experts, advancing the fees up to a specific cap, while others do not cover those fees at all. Some policies also exclude divorce proceedings. This insurance never covers court-ordered damages or fees associated with a conviction.

The government's business website provides information on litigation insurance for companies, stating that it provides legal advice via telephone as well as the management of the company's litigation and defense of the company's interest before the court. The website at which this explanation is found (in French only) is <http://www.entreprises.public.lu/content/assurances/index.php>.