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Find an expert

Luxembourg

## I. Lists and registers of experts

The Ministry of Justice holds a register of judicial experts. The register distinguishes between experts in 12 areas. It is available to all professionals and the public [here](#). While the register was designed for criminal and administrative matters, it is also used for civil and commercial matters. Courts are not obliged to appoint experts appearing on the register, but they typically do so.

Professionals apply to the Ministry of Justice to be listed. A complete file (including a diploma in the field in question, evidence of professional experience, a CV and the extract of the criminal records) is sent to the Ministry of Justice, which then starts a procedure of verification i.a. of the trustworthiness of the expert. The ministry decides whether to register the expert by checking the candidate's qualification (including degrees in the field and further education) and experience. If admitted to the register, experts have to swear an oath in court.

Once designated by the Ministry of Justice and sworn in by a court, the content of the register is published in the official Journal of Luxembourg. Once listed, experts have no particular obligation. They do not need to send any activity report to the ministry. They are not under any obligation to follow continuing education. The register is updated [\[AF1\]](#) at regular intervals.

Experts may be revoked if they violate their obligations or professional ethic rules or for other serious reasons. Such reasons occur if they no longer fulfil the required qualification, have been found neglective of their duty or no longer present the trustworthiness required, e.g. they have been found guilty of a crime.

An expert is dismissed by decision of the minister after having taken the advice of the public prosecutor and having heard the concerned expert. The dismissal will take the form of a revocation by ministerial decree. The revocation can be challenged before the administrative court. There is no specific code of conduct or ethics applicable to experts. However, ethic or other professional codes that apply to the expert's specific profession have to be complied with.

## II. Experts' qualifications

Experts have to obtain a certain educational level in their specialised discipline in order to call themselves experts. Such degrees will be essential for them to be registered in the register of experts held by the Ministry of Justice. Experts neither have to be a member of a professional body to practise as an expert, nor to improve their skills regularly (there is no system of continuing legal education, but experts may follow training on a voluntary basis).

## III. Remuneration of experts

The remuneration of experts is fixed by a regulation. In specific cases, especially if the expert's mission is particularly complex, the court can decide to not apply the legal tariff. In practice, experts usually request the parties to agree to paying a higher amount than the legal tariff. In civil matters, when appointed by the court, one party is obliged to pay the expert in advance. Experts can receive advance payment on their fees that exceed the legal tariff. But at the end of the proceedings, in the judgment on the merits, the court decides who has to bear the final burden of costs. The burden of costs may be shared between the parties. The parties may obtain legal aid with regard to the expert's remuneration with prescribed rates.

In criminal matters the advance on costs is always paid by the state. The defendant only has to pay the expert's remuneration if the defendant is sentenced. Experts requested by the prosecutor can also be paid by the State.

## IV. Liability of experts

There is no specific rule applicable to the liability of experts. Their action is thus governed by general tort and contractual rules. Such rules do not provide for any cap of liability. There is no obligation to cover the expert's possible liability via professional indemnity insurance.

## V. Additional information about expert proceedings

The appointment of experts is regulated by a specific statute of 7 July 1971, the "Loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés et complétant les dispositions légales relatives à l'assermentation des experts, traducteurs et interprètes". This law pertains only to criminal and administrative matters. No specific law exists in civil matters. Certain provisions of the codes of criminal or civil procedure are relevant, as well as the general statute on administrative procedure of 21 June 1999, the "loi du 21 juin 1999 portant règlement de procédure devant les juridictions administratives".

There are no fundamental differences between the appointment procedures in civil, administrative and criminal matters. However, in criminal matters, the defendant has more extensive rights than in other matters. The vast majority of judicial experts is appointed in preliminary proceedings, prior to trial. At least half of the requests for appointment of an expert are initiated in preliminary proceedings. Appointment of experts during main proceedings are not very common.

### 1. Appointment of experts

In Luxembourg, judicial experts are appointed by courts or hired by the parties. Only judges can appoint experts with the status of judicial experts, either upon request of the parties or on their own motion. In criminal matters, the investigating judge, the "juge d'instruction", often appoints the expert, either upon request by the defendant or the prosecutor. The investigating judge can also appoint the expert on his own motion. Since the decision of the investigating judge is a preliminary decision, the principle of adversarial proceedings does not apply.

In criminal law, there are special rules for co-experts or counter-experts who are at the disposal of the defendant.

In civil, commercial and administrative matters, an expert can be appointed prior to trial if there is a special urgency.

#### a) Appointment by a court

During the main proceedings, a court appoints a judicial expert when it needs advice on technical matters arising in the course of the proceedings. Courts may do so on request of the parties or on their own motion. Experts must report any conflict of interest with a party.

A pre-trial appointment of an expert is possible if the matter is urgent or the expertise is required in view of an upcoming litigation on the merits. The appointment of the expert at this preliminary stage is the sole purpose of the proceedings, requiring that the parties file a specific application. Generally, these proceedings cannot be started without the defendant having the opportunity to be heard by the judge. However, in cases of extreme urgency, judicial experts may be appointed immediately, but in this case, the respondent has to have an opportunity to be heard at a later stage.

When applying for the appointment of a judicial expert or commenting on the suggestion by the court to appoint one, the parties may propose names and agree on a specific expert. If a court decides to appoint a judicial expert on its own motion, it should give notice of this to the parties and seek their comments before making such decision. Courts are not obliged to appoint experts appearing on the register of experts, although it is typically their practice.

## **b) Appointment by the parties**

While the parties [AF2] never appoint judicial experts, the parties can be involved in the appointment of an expert by the court. They might agree on the mission of the expert, on the burden of the costs and even on a specific expert. They would then send a common letter of appointment to the chosen expert. If both parties agree, the judge can allow that expert to be appointed. This happens very often in preliminary proceedings.

## **2. Procedure (Civil)**

Once appointed, the judicial expert will convene the parties to discuss the case with them. Experts usually communicate through the lawyers with the parties and also inform the court of the developments. There are no specific rules on how this is managed except for the requirement to respect the principal of adversarial proceedings at all times: each party has the right to express its view on all aspects of the case at all times.

There are two attenuations of this principle. These concern the expert's examinations of pure factual aspects and investigations invading the private sphere (i. e. medical examination). But in these cases, the expert has to present the results of the investigations to the other parties before finalizing his report.

The progress of the expert's investigations is monitored by the competent court. Where petitioned to that effect, the court can agree that the expert is not sufficiently qualified and designate a different expert. As, in the vast majority of cases, only one expert is appointed, there is no procedure whereby an expert meets before trial to narrow down the issues.

### **a) Expert report**

The expert delivers his or her report in writing. There is no particular structure that the expert has to follow in his or her report. The expert has the obligation to execute his mission loyally and in the respect of the principle of adversarial proceedings. He has to address all factual questions contained in his mission but is not allowed to answer legal questions. The expert's mandate will be confined by the court, except for procedures where the expert was appointed by the parties, without the intervention of the judge, where he will address the parties' concerns.

A preliminary report is not mandatory, but can be produced if required by the circumstances of the specific case. This is especially the case if new questions arise during the execution of the mission or if the parties fail to collaborate with the expert.

Cases where the expert might have to deliver an additional report are rare. This may occur where the expert did not answer all the questions included in his mission or where additional questions arise later on. The court will issue a new order stating the need for additional input and specifying the questions that need to be answered. The parties can make a request for further clarification to the judge. However, in practice, it is more likely that another expert is appointed, depending on the parties' satisfaction with the first report.

Experts' reports can be challenged both by the parties' statements and by a counter expertise. Courts are not bound by the opinion expressed in expert reports. Case law states that the court may depart from the expert's opinion if there are good reasons to do so, i.e. if one or both parties prove the expert to be wrong. Contradictory reports have the same probative value, irrespective of whether the expert was appointed by the court or by the parties. Reports initiated by one party, or contradictory reports as well as reports written without the expert having respected the principle of adversarial proceedings, may be produced and discussed in trial, but they do not have the same probative value as reports delivered in respect of this principle.

### **b) Court hearing**

Experts do not need to attend to any preliminary hearing. They should attend a hearing in order to answer questions by the court after delivering their report. They will not be cross-examined in court.

*The information presented here was gathered during the Find an Expert Project from contacts per country selected by the European Expertise Experts Institute EEEI.*

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[AF1] La liste est régulièrement mise à jour après les nouvelles assermentations.

[AF2] Suppression d'une forme passive, le texte en est plein.

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