

Pro Bono Practices and Opportunities in Luxembourg

***Excerpt from: A Survey of Pro Bono Practices and
Opportunities in Selected Jurisdictions***

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Luxembourg enjoys solid economic growth, low inflation, a low unemployment rate, and an unusually high standard of living. Its GDP per capita ranks first in the world. Considering these statistics, and that there are few indigent people among its 502,066 inhabitants,¹ it seems unnecessary for law firms based in Luxembourg to do any local *pro bono* work.

Moreover, Luxembourg has an expansive and well-implemented legal aid system. The system is managed nationally by the *Conseil de l'Ordre* of the Luxembourg Bar. This efficient state-run legal aid system reduces the need for *pro bono* work in Luxembourg.

Finally, the Luxembourg Bar Association and its corresponding internal regulations strictly limit advertising in the legal profession.² As such, law firms in Luxembourg are largely unable to advertise their involvement in, or offering of, any type of *pro bono* work. These limitations block any real possibility for exploiting the marketing potential of *pro bono* work. Taken together, it appears there is little need, or incentive, for *pro bono* legal services in Luxembourg.

I. *Legal Services and the Legal Profession in Luxembourg*

As the smallest independent state in the European Union (“EU”), the Luxembourg Bar does not count more than 1,800 members.³

Luxembourg City is home to Luxembourg’s most important local courts: the *Cour de Cassation* and the *Cour d’Appel*. Both courts are part of the *Cour Supérieure de Justice* of Luxembourg. The capital city also houses the Court of Justice of the European Free Trade Association and the key EU judicial organ of the Court of Justice of the European Union, which comprises (i) the Court of Justice; (ii) the General Court; and (iii) the Civil Service Tribunal.

The Luxembourg legal market is buoyant, and law firms are growing – many through the hiring of foreign lawyers from France, Belgium, and Germany. Since 2007, foreign lawyers are no longer required to pass oral tests in Luxembourg’s three national languages: French, German, and Luxembourgish.⁴ Indeed, in 2006, the Court of Justice ruled that the Bar’s requirement that attorneys be able to speak Luxembourgish was discriminatory, and that the requirement is not a valid ground for refusing admission to the Bar.⁵

A. Legal Aid

It is the mission of the *Conseil de l'Ordre* to provide legal aid to persons who are unable to find an attorney for their defense or to those who cannot afford to pay the costs of their defense.⁶ A person’s ability to pay the costs of their defense is determined by assessing his or her total gross income and capital and the gross income and capital of any other member of the household.⁷

¹ Population statistics as of January 2010. See www.statistiques.publiques.lu.

² Clause 6.2 (Publicity) of the “*Règlement Intérieur de l’Ordre des Avocats du Barreau de Luxembourg*”, effective on 12 September 2007.

³ Members of the Luxembourg Bar are divided between the Attorneys-at-law, Attorneys and lawyers practising under their home-title professional title.

⁴ Law of 21 June 2007.

⁵ Court of Justice of 19 September 2006, *Commission/Grand-Duché de Luxembourg*, C-193/05.

⁶ Clause 37 (1) of the Law of 10 August 1991 on the attorney profession, as subsequently modified.

⁷ Clause 37-1 (1) of the Law of 10 August 1991.

Unlike other European countries offering legal aid, the Luxembourg rules do not impose a strict monetary threshold above which a person cannot apply for legal aid.

Persons with insufficient means can obtain legal aid provided they are either (i) Luxembourg nationals; (ii) foreigners authorized to take up residence in Luxembourg; (iii) nationals of a Member State of the EU; (iv) foreigners placed on the same footing as Luxembourg nationals for legal aid purposes by virtue of an international agreement; or (v) any other foreigner in a proceeding relating to his or her rights of asylum, entry, residence, establishment, and/or expatriation from Luxembourg.⁸ In June 2009, the benefit of legal aid has been extended to minors, irrespective of the financial resources of their parents or of the people they live with. In those cases, the State retains the right to a refund of the expenses from parents who have sufficient means.

Legal aid in Luxembourg is, therefore, available to a large population because the geographic and financial requirements to obtain such aid are very wide. The scope of work covered by legal aid is also very diverse. Legal aid can be granted to both plaintiffs and defendants, in contentious or non-contentious cases, whether handled in or out of court. Moreover, legal aid is available for all cases brought before ordinary or administrative courts. Legal aid can be granted to those who are seeking declaratory and precautionary court orders and to those involved in enforcement actions.⁹

Still, legal aid is not available in all situations: it is not available to owners or drivers of motor vehicles for disputes resulting from the use of such motor vehicles. Likewise, legal aid is not available to traders, manufacturers, artisans, or professional persons involved in disputes relating to their commercial or professional activity except in cases of “proved rigour,” or for persons involved in disputes arising from speculative activity.¹⁰

This legal aid system is more user-friendly than most comparable systems set up in other member states of the EU, since, under this system, the *Bâtonnier* (Chairman of the Bar) in the applicant’s district of residence automatically appoints the lawyer chosen by the applicant. Where the applicant has not chosen a lawyer, or the *Bâtonnier* considers the applicant’s choice inappropriate, the *Bâtonnier* appoints the lawyer of his choice.¹¹ Once appointed, legal counsel cannot refuse this appointment, except for reasons of impediment or conflicting interests.¹² While this system of “forced” volunteer work may shock outside observers, it is widely accepted by local lawyers who have been trained to work on a “charitable basis” from the outset of their legal career.

B. Training Requirements in Luxembourg and “Commissions d’Office”

The Luxembourg educational system does not offer a full legal education, and its legal studies system is adapted to neighbor countries’ university programs. After a two-year “first cycle” offered by Luxembourg’s *Center Universitaire*, Luxembourg’s law students spend up to four years in Belgium or France completing their legal studies.

⁸ *Id.*

⁹ Clause 37-1 (2) of the Law of 10 August 1991.

¹⁰ *Id.*

¹¹ Clause 37-1 (5) of the Law of 10 August 1991, Clause 2.6 (*Commissions et désignations d’office*) règlement intérieur de l’ordre des avocats du Barreau du Luxembourg.

¹² *Id.*

Through their experiences in civil law countries such as Belgium or France, nations that strongly emphasize the role of lawyers as representatives of “*those without resources in criminal and civil proceedings as part of their role as the guardians of civil rights and liberties.*”¹³ young Luxembourgish law students are trained to serve indigent clients.

Most Luxembourg law students return to Luxembourg at the end of their legal studies to seek admittance to the Luxembourg Bar. It is at this point that their practical involvement in charitable work culminates, since the Bar requires that each applicant complete a yearly quota of “*commissions d’office*” during his or her two-year traineeship.¹⁴ “*Commissions d’office*” are contentious cases where lawyers are paid a statutory minimum fee by the State. The system ensures that legal assistance is provided to indigents in need of representation. Most cases concern political asylum, divorce, or drug-related crime. As a result of the bar’s requirement, a large part of individual *pro bono* work is done by trainee lawyers seeking to fulfill the bar requirements.

Other mandatory requirements for trainee lawyers in Luxembourg include: providing free legal advice on behalf of the Luxembourg Bar, 24-hour legal advice in police stations, and “*cabinet d’instruction*” in the Luxembourgish courts.

As seen above, the Luxembourg state-managed legal aid system is unique as far as the extent of its generosity is concerned, and mainly populated by dynamic and highly skilled lawyers, freshly out of law school, and hence trying to gain as much contentious and noncontentious experience as possible by offering legal services to those most in need.

The extensive legal aid system raises the question as to whether there is a role to be played by *pro bono* work on a private basis in Luxembourg.

II. *Pro Bono Opportunities in Luxembourg*

A handful of large law firms located in Luxembourg mention *pro bono* initiatives on their external websites. For example, some firms are involved with, and provide legal counsel for, Luxembourgish nonprofit organizations, such as the Luxembourg Association against Multiple Sclerosis.

For instance, Linklaters has engaged in a *pro bono* project providing *pro bono* legal assistance for the creation of microfinance accreditation (“LuxFLAG”) by the Luxembourg Fund Labeling Agency in July 2006. The accreditation scheme is a collaborative initiative of the public, private, and NGO sector in Luxembourg. The Agency aims to promote the raising of capital for microfinance by awarding a recognizable label to eligible Microfinance Investment Vehicles (MIVs). Its objective is to reassure investors that the MIV actually invests, directly or indirectly, in the microfinance sector. Elvinger, Hoss & Prussen is also regularly involved in a range of *pro bono* work, providing free legal services to nonprofit organizations and individuals in need. In the emerging sector of microfinance – where Luxembourg has developed into a premier actor – Elvinger, Hoss & Prussen is regularly rendering services, either on a purely *pro bono* basis or at significantly reduced rates.

¹³ See Pro bono Practices and Opportunities in France, Introduction.

¹⁴ Clause 2.9 (*Obligations du stage judiciaire*) *Reglement interieur de l’ordre des avocats du Barreau de Luxembourg*.

Although the legal aid system in Luxembourg is extensive, there is still room for *pro bono* work. Given that opportunity, specialized lawyers (notably in the banking, corporate finance, litigation, and capital markets sectors) working in international law firms have adopted creative and innovative approaches to *pro bono* work. They have used their top-end technical skills and expertise to propose cost-savings solutions and/or problem-solving approaches to help indigent people, in Luxembourg or elsewhere (through NGOs, charities, etc). This appears to be a departure from most EU countries, where the legal aid systems occupy the entire market for free legal services.

III. *Prohibition Against Advertising*

Pursuant to Clause 6 of the Luxembourg Bar's internal regulations, canvassing is forbidden, and advertisements are regulated. Specifically, advertisements are limited to objective facts, must be done with "dignity, delicacy and probity," must be sincere, and must comply with a lawyer's professional obligation of independence and secrecy. Moreover, advertisements may not identify the clients represented, or the matters being handled, by the lawyer or law firm. All advertisements are susceptible to review by the *Conseil de l'Ordre* or the *Bâtonnier*, the regulatory authorities of the Luxembourg Bar.

Since it is forbidden, in any personal advertisement, to identify either the clients of the lawyer or of his or her law firm, or any matter handled by such lawyer, it may be difficult to reconcile the severity of these advertising rules with the well-deserved need to publicize any *pro bono* work undergone by a law firm based in Luxembourg. As such, it appears difficult for Luxembourg law firms to enhance their professional reputations or create goodwill by conducting *pro bono* work.

Still, the Luxembourg Bar seems to have partially understood this inherent need for recognition. The Bar allows lawyers to disclose information about exceptional matters or clients, in order to answer an information request emanating from a professional magazine or publication. However, the lawyer or firm must have obtained prior informed consent from the necessary clients in order to do so.

IV. *Conclusion*

Given Luxembourg's exceptional and extensive state legal aid system, Luxembourg does not appear to be a country in urgent need of *pro bono* legal services. However, there is a niche for sophisticated *pro bono* work, done by highly specialized and technically skilled commercial, banking and litigation lawyers based in Luxembourg, who can provide innovative and cost-efficient solutions, locally or internationally.