Probation in Europe

Luxembourg

Daniel Biancalana
Guy Schmit
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Daniel Biancalana
Service Central d’Assistance
Sociale/ Parquet Général
Galerie Kons
24-26 Place de la Gare
L-1616 LUXEMBOURG
Luxembourg
Daniel.Biancalana@justice.etat.lu

Guy Schmit
Advisor in Criminal Justice
Reform
Luxembourg
schmitgn@gmail.com
Skype: schmitg

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Edited by:
Anton van Kalmthout
Ioan Durnescu


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1. Introduction

1.1 Probation organizations

The Luxembourg Probation Service is part of the Central Service for Social Assistance (Service Central d’Assistance Sociale, SCAS), a national and public agency. The SCAS is an integral part of the General prosecution service (Parquet Général) run by the General public prosecutor (Procureur général d’Etat) under the authority of the Minister of Justice. The SCAS is an umbrella organization under which “all services dealing with social inquiry reports and assistance to persons under judicial control, such as the youth protection service, the Probation Service and the services dealing with pre-sentence reports have been united.”

The General public prosecutor has appointed one of his Advocate generals (Avocats généraux), the so-called General public prosecutor’s Delegate for the implementation of sentences (Délégué du Procureur général d’Etat à l’exécution des peines), to be responsible for the country’s penitentiary establishments and for decisions regarding probation and prison matters. He appointed another member of the General public prosecution service for all staff-related, internal and organizational matters of the SCAS. The fact that the General public prosecutor is in charge of 1) the prosecution during court trials, but also 2) the implementation of prison sentences, is most definitely a peculiarity of the Luxembourg criminal justice system that deserves further attention.

Given the relatively small size of Luxembourg, there is only one Probation Service. Probation officers work with national adult offenders, psychiatric offenders and foreign nationals. Probation work is determined by the two paradigms of help and coercion (aide-contrainte). Probation staff is thus not part of the prison administration.

1.2 Probation activities in a nutshell

Probation is delivered by two entities within the SCAS: a) the Probation Service (Service de probation), dealing with offenders whether in prison or on probation, and b) the Unit for community service (Section des travaux d’intérêt général), in charge of community service. Both services are grouped under the heading of Service for sanctions and measures in the community (Service des sanctions et mesures appliquées dans la communauté).

The main activities and core tasks of both services are to a) provide counselling, support and assistance to people in detention and their families; b) provide free legal aid to all offenders and non-offenders, if requested; c) provide reports to the different judicial authorities about the accused and convicted person’s situation; d) organize prison leave and other aspects of prison sentence implementation; e) carry out accompanied prison leave; f) provide social support plans to the General public prosecutor’s Delegate and to several committees; g) guide and control people under

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1 Loi du 25 juillet 1977 sur l’organisation judiciaire, Art. 47bis
2 Throughout this paper, the word “offender” refers to both male and female offenders.
3 This denomination has been adopted following the Council of Europe’s Recommendation Rec(2000)22 of the Committee of Ministers to member states on improving the implementation of the European rules on community sanctions and measures.
supervision and monitor conditions of conditional release, electronic monitoring, conditional sentence and community service; h) liaise with the other public agencies accepting offenders on community service; i) provide small financial aids to offenders on early release and to former offenders; j) provide assistance to former prisoners who are at risk of re-offending; k) follow up discharged prisoners who have requested or are willing to accept aftercare, social and psychological assistance; l) liaise with specialized public or private agencies in the field of drug use, alcohol related problems and psychiatry; m) maintain contact with volunteer prison visitors.

1.3. General remarks about the implementation of European Probation Rules

The Luxembourg Ministry of Justice is aware of the European Probation Rules (hereafter, “the EPR”). While the principles and values stemming from the EPR have to a large extent been respected and implemented in daily probation practice in Luxembourg, the Rules as such have not yet been formally introduced into national legislation, also due to the absence of a national Law on probation in Luxembourg. Awareness of the EPR, as well as of probation activities in general are still lacking both in the media and especially in the general public.

Within the Probation Service, the EPR nevertheless have triggered a vivid discussion. Following the approval of the EPR in 2010, the Probation Service has initiated an internal critical reflection on its own philosophy and intervention methodology, as well as its policy and practice. The EPR were used to question the practices currently in place and the related institutional and organizational arrangements. Following a thorough analysis of the Rules, the Probation Service drafted a document resuming the philosophy of intervention and the methodology of the Service. The foreseen drafting of a mission statement and its implementation will provide the Probation Service with a clearer position towards the multiple actors in the criminal justice system that have different aims and objectives.

In the light of the two upcoming laws on the implementation of sentences and the law reforming the prison administration, the debate within the Probation Service focused on how the Probation Service will define its probation work, as of the moment, where it will cease to intervene inside of prison. In other words, with the end of the “continuous treatment model”\(^4\), how can probation policy and practice of the Probation Service be revisited? Given the fact that the preparation by probation staff of an offender for release and/or probation is likely to cease to exist in a not too distant future, will the current trust-based professional relationship between Probation officers and offenders (which had been initiated by the Probation officer, together with the offender during incarceration), be replaced by a predominantly control-focused approach? In short, the transition management, between prison and probation, remains an issue that needs to be addressed in much greater detail at institutional level.

\(^4\) This model, where the Probation officer supervised an inmate from pre-trial detention, throughout his sentence, until e.g. conditional release, has made its proofs in Luxembourg for over 30 years, but ceased to exist in 2001.
An additional area to be tackled in the future is the fact that pre-sentence reports (which are currently still very much underused), should be used to a much larger extent in order to contribute to a greater individualization of punishment for the offender.

Moreover, research on probation in Luxembourg is sorely lacking. To date, there seems to be neither a serious interest, nor available and capable governmental human resources in the field of criminal justice, nor from academia.

2. Historical Development of the Probation System

2.1 History from the origins to 2008

At the beginning of the 19th century, male offenders who had been sentenced to punitive prison labor (travaux forcés) in Luxembourg had to serve their sentence abroad: they were first sent to Vilvorde (Belgium) and from there on to the penal colonies. Those sentenced to a prison sentence served their sentence in Bicêtre (France). It is only since the Belgian Revolution of 1830 that all Luxembourg offenders serve their prison sentences in Luxembourg.5

The first statutory regulation on post-release care in Luxembourg is a decree from 1855.6 In a rather innovative way given its historic context, this regulation, provides for the creation of committees for released prisoners in each of Luxembourg’s twelve cantons (Comités cantonaux pour le patronage des condamnés libérés). The aim of these committees was to “prevent sentenced prisoners from the dangers of recidivism, to facilitate their moral improvement and their productive occupation”.7 Its members were chosen among the well-to-do and well-intended persons (so-called “patrons”) in each canton.8

A decree from 1884 transferred the responsibility of care of discharged prisoners from the cantonal committees to the Luxembourg prison administration committee, in charge of the surveillance, control and management of the prisons and the jail for beggars (dépôt de mendicité). This important shift evidences a first important transition in offender care in Luxembourg: a) from outside of prison care (provided by the cantonal committees) to intra muros care (provided by the prison administration committee) and b) from a partially voluntary care (the members of the cantonal committees mostly being lay members from the community) to a professional care by the prison administration.

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6 Arrêté royal grand-ducal du 21 février 1855, instituant des comités cantonaux pour le patronage des condamnés libérés
7 Idem Art. 2.
8 Arrêté royal grand-ducal du 22 octobre 1884 portant réorganisation du patronage des condamnés libérés
Members of the Catholic Church were involved in the care of both male and female offenders during and after their sentence. In 1851, the government put the Franciscan sisters in charge of the women’s prison. As of the middle of the 19th century, the Luxembourg state prison administration delegated part for part of the caretaking and assistance provision to prisoners to members of the clergy.

The first time, to our knowledge, that word “probation” appears in a legal text in Luxembourg is in a ministerial decree from 1950. This decree provides for the creation of a Social Defense Service (Service de Défense Sociale). The creation of the Social Defense Service, in spite of its somewhat Lombrosian tendencies, can reasonably be considered as the predecessor of today’s Probation Service and as such, as a landmark in Luxembourg’s probation history.

In addition, on 10th April 1951, a National Action Committee against Crime and Delinquency (Comité National d’Action contre le Crime et la Délinquance) was created. Since 1958, a social worker from the prison service - on a voluntary basis and financed by limited private funds - had been running a hostel for young delinquent adults in Bertrange (from 1958 to 1960), then in a private house (from 1960 till 1965) in Contern. In 1967, the National Social Defense Committee (Comité National de Défense Sociale, CNDS), a non-profit organization, involved in the care of discharged prisoners, was created.

A major change in the Luxembourg criminal justice system, however, occurred in 1964, when the General public prosecutor (Procureur général d’Etat) became responsible for both the general management and control of Luxembourg’s prisons. Since 1964, the Luxembourg sentencing policy, especially with regard to the use of community sanctions (alternative measures and sanctions to incarceration), strongly depended on the person occupying this position.

A decree from 1967 provides for a detailed description of the composition and organisation of this new Social Defense Service, which comprises a Social Defense Commission for penitentiary establishments and for detention centres of juveniles and a Social Defense Institute. It is important to notice that the decree, for the first time, provided a detailed description of the tasks of the Probation officers working with offenders.

In 1977, a Central Service of Social Assistance (Service Central d’Assistance Sociale, SCAS) under the General public prosecutor’s office, was created. Hence, as of 1977, probation was no longer under the authority of the prison administration but under that of the prosecution service. This emancipation of the Probation Service from the prison was a radical change. Until today, the Probation Service is part of the SCAS.

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9 Until 1851, the correctional staff of the women’s prison had exclusively been composed of male staff
10 Loi du 21 mai 1964 portant 1. réorganisation des établissements pénitentiaires et des maisons d’éducation ; 2. création d’un service de défense sociale
Until the mid 1980s, the premises of the Probation Service were inside Luxembourg’s main prison of the Grund (part of Luxembourg-city). When the Grund prison was closed down because of the dilapidated state of its premises, offenders (both male and female) were resettled into new premises outside the city of Luxembourg in Schrassig, the SCAS moved its premises out of the prison to the city centre of the capital in November 1984.\(^\text{12}\)

While the National Social Defense Committee (www.cnds.lu), a non-profit organization, has been running hostels for released prisoners and juveniles since 1967, the state-run Probation Service has little experience of halfway hostels: the only hostel for released prisoners ever run and managed directly by the SCAS since 1981 had to be closed down in 1989 due to staff shortages.

All probation staff works with all types of offenders, since the relative small numbers of offenders and in consequence the limited number of Probation officers does not really leave the possibility to work with special groups of offenders.

### 2.2 Recent history from 2008 to 2011

Following the 2009 parliamentary elections, the new government has shown intentions eventually leading to major reforms. Two bills were presented in Parliament: one concerning the reform of the prison administration\(^\text{13}\), based on the European Prison Rules and the other on the reform of the enforcement of sentences\(^\text{14}\), introducing a new jurisdiction in charge of the application of sentences.

The underlying philosophy of the reform of the prison administration will likely change the scope of intervention of the Probation Service, namely the work with inmates in both Luxembourg prisons and will end the “continuous treatment model” which provided continuous assistance from pre-trial detention until the end of a sentence, even conditional release, or electronic monitoring. This model greatly facilitated the transition from prison to life outside of prison and contributed to a very low recidivism rate.

Having many prisoners released conditionally and probationers who live just over the border (France, Belgium, Germany),\(^\text{15}\) but who work in Luxembourg, the Probation Service has intensified its contacts and cooperation with neighbouring probation services. In October 2009,\(^\text{16}\) the legal provisions on conditional release have been slightly modified. Conditional release can now be subject to specific terms.

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12 Luxembourg currently has two prisons: 1) the Centre Pénitentiaire de Luxembourg (CPL) in Schrassig, a medium security establishment which has a total capacity of 597 bed space. On 1\(^{st}\) October 2011, its prison population was 545 (517 men and 28 women), i.e. its occupation rate was 91%. Out of the 545, 249 were on remand (236 men and 13 women) and 294 were sentenced (279 men and 15 women) and 2 juveniles were kept in the disciplinary section. In short, this means that 46 % of its prison population were on pre-trial detention, awaiting their final sentence and; 2) the Centre Pénitentiaire de Givenich (CPG), initially conceived as an agricultural penitentiary and now functioning as a low-security establishment. The CPG has a total capacity of 113 bed space (104 for male and 9 for female offenders). On 1\(^{st}\) October 2011, its prison population was 89 men and 5 women, i.e. its occupation rate was 83 %.

13 Projet de loi (6581) portant réforme de l'exécution des peines et (...)

14 Projet de loi (6582) portant réforme de l'administration pénitentiaire et (...)

15 On a daily basis, 150,000 commuters come to Luxembourg for work.

16 Loi du 6 octobre 2009 renforçant le droit des victimes d’infractions pénales et (...)

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and conditions that relate to the protection of society or the victim. In granting conditional release, the offender’s attitude towards the victim should be considered.

Currently, several specific laws entrust the Probation Service with missions of monitoring and control in terms of sanctions and measures in the community. Probation as such, at its policy and practices, is not disputed. Nevertheless, to date, no national law defines probation, its philosophy, mission or goals. In 2010, in light of the declaration of probation values adopted by the CEP, the European Probation Rules and probation practices from other European countries, the Probation Service has started drafting a position paper highlighting its philosophy of intervention and its standards.

3. Legislative Basis of the Probation System

The Luxembourg Probation Service aims to reduce reoffending, contributes to community safety and the fair administration of justice, as laid down in Rule 1 of the EPR. No major criminal incidents happened during the implementation of community measures and sanctions over the last 25 years. In the absence of statistics of e.g. recidivism, the work of the Probation Service can unfortunately not be described as evidence-based. To date, the absence of a national law on probation has not proven to be a hindrance for adequate implementation of community sanctions and measures in Luxembourg.

Within the SCAS, a well-functioning victim support scheme (Service d’Aide aux Victimes) has been operational since 1994. Nevertheless, a proper restorative justice process is currently still lacking. Probation expertise and experience has not yet led to any crime reduction strategies at national level. Hereafter, some of the previously mentioned points are addressed in some more detail.

3.1 Legislative Basis

Given the size of Luxembourg (2586 square km) and its population (524,900 on 1st January 2012) one single Probation Service is sufficient to cover the whole country. Created in 1977 the SCAS is part of the judicial organizational structure, as defined by article 77 of the Law of 7th March 1980. As it belongs to the judiciary, the third power of the State, the SCAS is constitutionally independent from the executive and legislative powers.

The SCAS comprises different services in charge of providing assistance to and social enquiry reports on people under judicial supervision, such as the Child Protection Unit, the Probation Service and the Department in charge of establishing pre-sentence reports (dossiers de la personnalité) which was created in 2002. Probation staff is part of the judicial administration and part of the general prosecution service,
and therefore ultimately accountable to the Ministry of Justice. Statutes regulating the civil service apply to all members of the Probation Service.

A number of decision-makers and committees are consulted and involved in the sentencing decision-making process. These are the Grand Duke of Luxembourg, the General public prosecutor or his Delegate, and a committee currently referred to as the Penitentiary Commission (Commission Pénitentiaire).

The Grand Duke takes into consideration the opinion of the Pardon Commission (Commission des grâces) and decides by way of decree whether pardon shall be granted or not. The General prosecution service is responsible for the implementation of penal sentences. The General public prosecutor can delegate the control of penal establishments and correctional centres for minors and the enforcement of penalties and treatment of prisoners to one of his Advocate generals (Avocats généraux) or to one of his subordinates. For prison sentences of more than 2 years decisions are taken by the Penitentiary commission comprising the General public prosecutor or his Delegate, a magistrate from the Bench and a magistrate from the Prosecution Service.

There are four advisory bodies, two statutory (the Social Defence Commission and the Pardon Commission) and two non-statutory (the Advisory Commission for the penological treatment of offenders sentenced to long prison sentences (Commission consultative pour le traitement pénologique du condamné à une longue peine de prison, CTP) and the more recent Guidance committee (comité de guidance). The latter has been created by law in 1997 both in the closed prison of Schrassig (CPL) and in the semi-open prison of Givenich (CPG).

The CTP puts forward its views about the offender’s penological treatment to the Penitentiary commission. The Guidance Committee proposes a penological treatment for the offender to the General public prosecutor’s Delegate or to the Penitentiary Commission. It has been created in 1997 at the CPL and the CPG, also following a high staff turnover within the Probation Service, with Probation officers leaving for other state administrations. Rather than adequately staffing the SCAS’s Probation Service, the then Minister of Justice decided to reinforce the staff of both SPSE, inside both prisons.

Probation is available for offenders of all ages, and for all types of offenders and offences. In case of a prison sentence, the offender is allocated a Probation officer.

3.2 Mission and Mission statement
Probation work, both in a prison setting and in the community, has two inextricably linked core aims: the first is to protect society by working to avoid recidivism, and the second is to undertake initiatives to enable offenders to lead a law-abiding life. To date, however, neither the Probation Service nor the General prosecution service has issued a written mission statement.

19 Created by Law of 26th July 1986 regarding the enforcement of certain penalties
20 Loi du 27 juillet 1997 portant réorganisation de l’administration pénitentiaire
Currently, several specific laws entrust the Probation Service with monitoring and control missions for sanctions and measures in the community. Probation as such, or its policy and practices, is not disputed. No single national law defines probation, its philosophy, mission and/or goals.

The Luxembourg Probation Service has not yet identified priority areas for work. The Probation Service, with its small amount of Probation officers, does not organize group sessions aimed at specific kinds of offences or particular forms of offending. At this stage, a very close and regular collaboration takes place with specific agencies in charge of group session (drug use, sexual abuse, violence especially domestic violence).

In autumn 2012 the Probation Service will have an official mission statement, with goals and objectives. The amount of prisoner’s wages make it difficult for probation to organize the gradual paying a given victim compensation, fine(s), prosecution fees, as well as personal debts.

### 3.3 Crime prevention
The Probation Service has no mandate for primary crime prevention activities. Probation works as a secondary prevention mechanism, i.e. preventing re-offending. Hence, there is no specific cooperation in the field of crime prevention. Nevertheless, punctual intervention in schools, with the media and at the national Police Academy give the Probation Service the opportunity to present its working philosophy.

### 3.4 Victim assistance
While victim assistance as such does not fall under the direct mandate of the Probation Service, a Victim Support Service (Service d’Aide aux Victimes, SAV) has been integrated by law into the SCAS in 1994\(^2\) and became operational in 1998.

The SAV can also assist a victim in preparing for the court case, accompany the victim to court, provide assistance with regard to introducing a claim for financial compensation at the Ministry of Justice.\(^2\)

The Probation Service is not involved in restorative justice processes, nor in victim offender mediation. Nevertheless, on an ad hoc basis, in certain given cases, informal consultations take place between SAV and the Probation Service. In 2009, a law\(^3\) reinforcing the victim’s rights throughout the criminal justice procedure has been voted and entered into force on 1\(^{st}\) January 2010.

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\(^2\) Modification of Art. 77 of the Law on the judicial organisation (Loi du 7 mars 1980 sur l’organisation judiciaire)

\(^2\) For further information, please refer to the Ministry of Justice’s webpage: [http://www.mj.public.lu/functions/faq/indemnisation/index.html](http://www.mj.public.lu/functions/faq/indemnisation/index.html)

\(^3\) Loi du 6 octobre 2009 renforçant le droit des victimes d’infractions pénales
3.5 Volunteers involvement
Although the law provides for volunteers to work as part of the SCAS, this has never been implemented.

There are today only four volunteers (agents bénévoles) working for the Probation Service. The aim of the work of these volunteers is to provide a minimum of social contacts for prisoners who otherwise would have visit from outside at all. Volunteers receive no basic training and no ongoing supervision. Once they have been granted the status of volunteer visitor, they are more or less completely left to themselves. At their request, they may keep contact with the offender’s Probation officer.

However, regular contacts between the Probation Service and the Association of prison visitors (Association Luxembourgoise des Visiteurs de Prison, ALVP) take place.

4. The Organization of Probation Services
All probation staff are civil servants and as such subject to civil service rules and regulations. Formal staff assessment is foreseen to be introduced in the future in Luxembourg, but has not yet been formally introduced in the Probation Service. In addition to mandatory training (required for reasons of career advancement) organised by the National Institute of Public Administration (Institut National d’Administration Publique, INAP, all probation staff can attend in-service training. The request by staff to participate in the latter has, however, in recent years, been relatively low.

Given the relatively limited number of probation staff, all of them work with all types of offenders. Networking in the area of housing, provision of employment and drug support is taking place. Pre-sentence reports are still very much under-used. Probation staff works with foreign national offenders. Very little is known about Luxembourg offenders abroad; they are dealt with on a case by case basis. Hereafter, some of the previously mentioned points are addressed in some more detail.

4.1 Main characteristics
With the creation of the Central Service for Social Assistance, SCAS in 1977, services dealing with people subject to judicial supervision were grouped together. The organigram (below) shows that two different sections of the SCAS are involved in probation work.

- The Probation Service (formerly called Social Defense Institute) working primarily with offenders in prison and those conditionally released, since 2003 with suspension of conviction, suspension of pronouncement and since 2006 with electronic monitoring.

- A section dealing with community service for adults and juveniles
4.2 Internal organization
Hierarchical structure in the Luxembourg Probation Service is provided for by national civil service regulations which differentiate between the careers of the psychologist, the criminologist and the one of the social worker (Probation officer). Career promotions are automatic and regulated by civil service regulations.

4.2.1 Probation officers
All members of the Probation Service are fully qualified social workers, psychologists or criminologists. They work full time (40 hours per week) or part-time (30 or 20 hours per week). The Probation Service (as of 1\textsuperscript{st} January 2012) includes 1 criminologist, Head of the Service for sanctions and measures applied in the community; 6 full-time Probation officers; 3 part-time Probation officers (30h); 4 part-time Probation officers (20h) and 2 part-time secretaries. The section dealing with community service includes 1 part-time criminologist; 1 part-time psychologist; 1 part-time Probation officer; 1 part-time Probation officer and 1 full-time secretary. There are also 2 skilled workmen who assist those organizations that accept an offender on community service and supervise specific workshops.\textsuperscript{24}

Within the SCAS, internal transfers to another section e.g. dealing with child protection, victim support, community service or guardianships, are sometimes possible. It is also possible to change within the civil service career structure to

\textsuperscript{24} cf. the explanatory memorandum of the Law of 13\textsuperscript{th} June 1994 on the penalty regime.
another Ministry. However, in reality this is a complicated process. Probation officers who leave their job to work for non-statutory organizations often lose their civil servant status. In total, the SCAS employs eighty civil servants.

In 2011, the average daily caseload of a Probation officer was 76. The average number of offenders a Probation officer was dealing with per year was 118. This numbers include offenders in prison and those who have been granted any type of early release. They do not include figures on community service.

Table 1. The staff structure

<table>
<thead>
<tr>
<th>Total number of staff</th>
<th>21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management staff</td>
<td>1</td>
</tr>
<tr>
<td>Executive staff (Probation officers)</td>
<td>17</td>
</tr>
<tr>
<td>Administrative support staff</td>
<td>3</td>
</tr>
</tbody>
</table>

4.2.2 Education, training requirements and opportunities

All Probation officers are civil servants. In addition to the formal requirements listed hereafter, being a Luxembourg national and having a sound knowledge of Luxembourgish (Lëtzebuergesch, the national language), German and French (the two administrative languages, are two additional requirements. Most Probation officers are social workers. Until the creation of the Bachelor in Social and Educational Sciences (BSSE) at the University of Luxembourg in 2006, all Luxembourg students had to study social work abroad. Students mainly studied in Belgium, Germany or France.

Until 2012, social work studies and access to the profession of social worker in Luxembourg had been regulated by a decree from 1979. The latter is currently being revised and is anticipated to be adopted by Parliament in 2013.

Once hired by the SCAS, the candidates for the position of Probation officers have to undergo a 24-month mandatory in house training (stage de fonctionnaire d’État), as foreseen by the civil service statutes. During this period, the trainee is supervised by an experienced senior staff member. At the beginning of this civil servant’s training period, candidates have to undergo a written entrance examination (examen concours). Upon completion of this period, they have to undergo a written end of placement examination (examen de fin de stage). Once the candidates have successfully passed this final exam, they are sworn in and are fully-fledged Probation officers.

http://www.uni.lu/formations/lshe/bsse/bsse_elementen_bachelor_en_sciences_sociales_et_educatives_professionnel
26 Règlement grand-ducal du 29 août 1979 portant réglementation des études et des attributions de la profession d’assistant social
The National Institute of Public Administration (INAP)\textsuperscript{28} offers mandatory trainings courses for civil servants on a variety of subjects. In addition, Probation officers can attend seminars and workshops on subjects which are relevant to their professional field of practice and usually, costs are being reimbursed. Several members of the Probation Service have undergone training organized by the German probation service (\url{www.dbh-online.de}). Since 2009, one Probation officer has introduced animal-assisted therapy in Luxembourg’s main prison, providing individual intervention with her dog to adult offenders.

All Probation officers deliver the same type of service to service users. Experienced Probation officers, however, tend to work with people on life sentences. The Probation Service does not run any kind of groups or training sessions for probationers which is largely due to the lack of staff and appropriate premises.

Regarding the management of staff, there is nowadays more formal hierarchical control of staff performance than in previous years. Nevertheless, members of the Probation Service still have a high degree of autonomy in their work. They are individually responsible for the content of their reports and the organization of their weekly schedule, e.g. prison and office duties, home visits and weekly staff meetings. An internal board gives the daily overview of the number of offenders per Probation officer, the number of reports written to the judicial authorities and the different probation measures.

Challenging issues are dealt with during the weekly staff meeting (internal supervision). Informal contact and discussion between staff members about particular cases undoubtedly contributes to the efficient running of Probation Service. Guidelines for good practice or good conduct have not been written down yet, but are undoubtedly transmitted from experienced to less experienced probation workers.

The SCAS receives an annual allocation of 12000 € for staff supervision and 20000 € for attending workshops and training courses.

In a December 2011 SWOT\textsuperscript{29} analysis made within and by the Probation team, several strengths and weaknesses have been issued and stated. Short, mid and long term priorities have been set. A major issue pointed out concerns the Probation officer’s profile embedded between social work and risk management, and his professional approach that could remain that of a “generalist” or a “specialist”.

\begin{footnotesize}
\textsuperscript{28} \url{http://www.fonction-publique.public.lu/fr/structure-organisationnelle/inap/index.html}
\textsuperscript{29} Strengths - Weaknesses – Opportunities - Threats
\end{footnotesize}
4.2.3 Other organizations involved in probation work

Probation workers liaise with care institutions with regard to substance abuse i.e. drugs and alcohol, and with the only psychiatric hospital in the country. Some prisoners are allowed to serve part of their sentence in one of these institutions, in which case regular meetings between probation and specialist staff take place. Probation officers dealing with community service orders liaise with a large number of organizations that accept offenders on community service. The majority of these institutions are charities, institutions for people with disabilities, youth hostels and the animal pound. Probation staff works closely with the SCAS’ Child Protection Unit and with the SCAS’ Victim Support Unit.

While probation per se is delivered exclusively by SCAS’s probation staff, there are a number of organisations dealing with former offenders and probationers, with which the Probation Service cooperates. Often, such organisations operate with a broader client group, but are familiar with the behaviour patterns of ex-offenders. They can roughly be grouped into the areas of drug related assistance, labour market integration initiatives and housing assistance. Often, the only housing possibility for former offenders is a shelter or a hostel (with long waiting lists), as run by several of the organization mentioned above. Renting a flat on the Luxembourg flat marked is hardly affordable for former prisoners or probationers.

The very fact that the Luxembourg Probation Service forms part of the General prosecution service largely shapes the nature of its work. The more controlling aspects of probation work with offenders are unfamiliar to many hostels, agencies, and organizations. Some hostels are reluctant to accommodate clients who are still under some form of supervision. Many agencies are reluctant to implement court-based control measures or to report to probation if, for example, an offender breaches conditional release conditions. The National Social Defense Committee would be covering all three areas previously mentioned. The CNDS is currently running six hostels, two job centres, a centre for drug users based on harm reduction principles (www.cnls.lu/structures/tox-in), as well as a restaurant (www.vollekskichen.lu). While historically, discharged prisoners constituted the bulk of their clients, the target population nowadays has enlarged itself to persons in need.

A professional organization of probation staff does not exist per se, but civil service law gives the scope of the creation of staff representations within the public sector. The aim of these representations is to defend the professional interest of civil servants stemming from the same career and their mission is defined by law. On 23 February 1996, the members of the SCAS founded the SCAS’ Staff Association (Délégation du Personnel du S.C.A.S. a.s.b.l.).

In the field of violence-related assistance, cooperation takes place with a counselling and assistance agency for violent persons in Luxembourg (Rićhe raus, Centre de consultation et d’aide pour auteurs de violence au Grand-Duché de Luxembourg) and the Centre for Mental Health (Centre de Santé Mentale).

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30 Loi du 16 avril 1979 fixant le statut des fonctionnaires de l’Etat, Chapitre 11, Art. 36
31 www.richteraus.lu
32 www.llhm.lu/haupt.html
4.3 Probation and offenders abroad
Inside the prison the demographic situation is as follows: 75% of offenders are foreign nationals and 25% are Luxembourgish nationals. Among all inmates, 56% are residents and 44% are non-residents. 47% of people on probation are Luxembourg nationals and 53% foreign nationals. In 2011, the Luxembourg Parliament has adopted national legislation implementing the Framework Decision 2008/909 on the transfer of custodial sentences. Given the high number of non-resident inmates, this new provision will be reflected positively and therefore might be widely used. Currently, the Probation Service provides, particularly with respect to conditional release and probation, the supervision of sentenced commuters: they work in Luxembourg and live across the border. Occasionally, an exchange and collaboration with neighbouring territorial competent probation service takes place. This is primarily a non-institutionalized and informal contact.

5. Different Stages of the Criminal Justice Process

Article 22 §2 of the Penal Code stipulates that the offender’s consent is required for community service (Rule 7 of the EPR).

The Probation Service has regular contacts with various public services or services with a framework agreement with the Luxembourg state. These services are likely to be employment agencies, housing agencies, job training agencies, social supervision agencies, medical and therapeutic (residential or ambulant) centres, hospitals or therapy centres. Occasionally, contacts are also set up with independent professionals (psychologists, psychiatrists, psychotherapists). In addition to individual contacts between professionals, bilateral meetings are held between services to work together on a common approach to monitor the probationer. (Rule 12 of the EPR)

In its daily work, the Probation Service combines aid, support and control. Close cooperation is always held with other specialized services to assist the probationer. During the supervision, whenever a positive or negative report is prepared by the Probation officer, the content of the report also reflects the view of the probationer. In all circumstances, this report also reflects the verbal information provided by the offender. In a spirit of transparency, the Probation officer always clarifies and explains the rights and duties of the probationer. (Rule 44 & 46 of the EPR)

The data on the evolution of the defendant is currently one of the cornerstones of the work of the Probation Service. As the sentenced prisoner is supervised by the Probation officer as of his the moment his sentence became final, until his release on conditions, the Probation officer is able to consider several aspects: elements stemming from custody and the requirements of society, its protection and the general and specific conditions needed for resettlement. (Rule 45 of the EPR)
With the reform of the prison administration, this component may be lost because the Probation officer will no longer intervene in custody. The conditions are always discussed with the defendant in a transparent and explaining the legal and judicial mandate. The consequences for non-compliance and breach are also discussed. The vision of the probationer on the conditions and his expectations are discussed. (Rule 86 of the EPR)

Under the Penal Code, community service is defined as a manual or intellectual work to be provided for a public institution. Mostly, the work done is of manual nature. In practice, individuals are integrated into the teams of the receiving institution. In this way, no stigma should take place. In this context, the Probation Service considers the diversity of individuals and tries to match their needs with that of the institution. This is a challenge which is not always feasible and depends primarily on the probationer and also on the institution’s offer. In addition, Probation officers often find that individuals using alcohol and drugs can hardly do the work because of their substance-related problems (punctuality, working capacity, resilience ...). (Rule 47 & 52 of the EPR)

For many years, the Probation officer used to advise the family of the defendant. This approach is common for the service. In this way, the Probation officer has the opportunity to learn the probationer’s environment, the way the family copes with the crime committed by their family member, their sufferings and fears, their questions (about prison life) and their expectations. The Probation officer also explains the different steps of the penological treatment. (Rule 56 of the EPR)

Since its introduction in 2006, electronic monitoring has been seen as a way to avoid incarceration by supporting the social, professional and family ties of the offender. These three components as stabilizing factors, together with the probationer gradually taking over responsibility for his own life, are central to the intervention of the Probation Service. (Rule 57 of the EPR)

Concerning aspects of secondary and tertiary prevention, this principle was set in the 1964 Law on the establishment of the Institute of Social Defense (which later became the Probation Service). Even so that this law has been repealed, the philosophy of intervention has been maintained. Several former prisoners and probationers have benefitted from this type of aid, consultancy and guidance. (Rule 61, 62 & 85 of the EPR)
5.1 Pre-trial/remand/trial stage

Table 2. *Sanctioning system and probation involvement in the pre-trial/trial stage*

<table>
<thead>
<tr>
<th>Sanctions/Measures/ Penalties/Conditions attached to a conditional decision or sentence</th>
<th>Provision in Legislation</th>
<th>Probation service involvement</th>
<th>Main characteristics of the probation activity (e.g. supervision, coordination, reporting, referral, help &amp; support)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unconditional waiver by the public prosecutor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditional waiver by the public prosecutor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditional suspension of the pre-trial/remand detention</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre-trial/remand detention</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police custody</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bail</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Caution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surety</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House arrest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electronic monitoring</td>
<td>x</td>
<td>x</td>
<td>The current bill on the reform of sentence enforcement provides that electronic surveillance is a prerequisite for judicial control.</td>
</tr>
<tr>
<td>Community service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treatment order</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training/learning order</td>
<td>x</td>
<td></td>
<td>In terms of bail or judicial control, a condition may be for the offender to actively seek employment or training or to register at a job centre.</td>
</tr>
<tr>
<td>Drug/alcohol treatment program</td>
<td>x</td>
<td>x</td>
<td>The defendant must report monthly to the Probation Service and provide evidence certifying his monitoring and treatment.</td>
</tr>
<tr>
<td>Sanctions/Measures/ Penalties/Conditions attached to a conditional decision or sentence</td>
<td>Provision in Legislation</td>
<td>Probation service involvement</td>
<td>Main characteristics of the probation activity (e.g. supervision, coordination, reporting, referral, help &amp; support)</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>Compensation to the victim</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mediation</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semi-detention</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attending a day centre</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberty under judicial control</td>
<td>x</td>
<td>x</td>
<td>The judicial control was introduced in 2006. The monitoring is ensured by the police or the probation service based on the mandate given by the investigating judge.</td>
</tr>
<tr>
<td>Interdiction to leave the country</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interdiction to enter different cities/places</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Interdiction to carry out different activities</td>
<td>x</td>
<td>x</td>
<td>These three interdictions as part of judicial control, although difficult to monitor by the Probation Service. In terms of drug use, violent crime or assault, the offender can be obliged to keep away from certain specific private and public places (pubs, public places,..). Contacts with his accomplices and/or the victim are strictly forbidden.</td>
</tr>
<tr>
<td>Interdiction to contact certain persons</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Psychiatric treatment</td>
<td>x</td>
<td></td>
<td>The defendant must report monthly to the Probation Service and provide a certificate of consultation. The Probation officer is in regular contact with the psychiatrist or public health institution.</td>
</tr>
<tr>
<td>Deferment of sentence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fine</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
In the field of judicial control, the Probation officer supervises the conditions imposed on a person by the investigating magistrate. The Probation officer regularly report to the judiciary on the evolution of a provisionally liberated person (liberty under judicial control). This report particularly describes the respect of the imposed conditions which often are drug treatment programmes or psychiatric treatment.

5.1.1 Pre-trial/pre-sentence reports
Article 620 of the CCP gives scope for the Probation Service (or since 2002 for the Service of Personality Files) to become involved in the trial phase. Probation officers may be asked to provide pre-sentence reports to the judiciary. This pre-sentenced report can also be requested by the defendant. Unfortunately, this has happened extremely rarely in recent years and pre-sentence reports are still largely underused. The report consists in reflecting the defendant’s behaviour, his view on the committed crime and his social background.

5.2 Enforcement stage
During the enforcement stage the decision-making for e.g. conditional release, day leave, semi-liberty, transfer from the closed to semi-open prison, suspension of sentence, anticipated release, takes place as follows: if the prison sentence is less or equals two years, the decision is taken by the General public prosecutor or his Delegate. For prison sentences higher than two years, it is the Penitentiary Committee (Commission Pénitentiaire), comprising the Attorney General or his delegate, a sentencing judge and a representative from the prosecution service, that takes the decision. The following decision-making criteria are laid down by law: “the personality of the sentenced person, his evolution, the danger of recidivism and his attitude towards the victim of the crime for which he has been sentenced.”

Both decision-making instances (referred to hereafter as “the General public prosecutor’s Office”) take their decision based on the reports from the Guidance Committee (Comité de Guidance), comprising the Probation officer, a representative from the prison internal social service (Service Psycho-Socio-Éducatif, SPSE), the Director of the prison, the prison doctor (general practitioner), a representative of the uniformed correctional staff, a representative of the programme TOX34 (ad hoc and only at the CPL) and a secretary from the prison administration. Prior to giving an opinion, Committee members evaluate the prisoner’s evolution with specific regard to his behaviour, his deficits, his strengths, the progress achieved, his collaboration

33 Art. 13, Law from the 26 July 1986 regarding certain modalities of implementing sentences depriving a person of his liberty
34 Drug support programme run by the only national psychiatric clinic, the Centre Hospitalier Neuro-Psychiatrique (www.chnp.lu)
with the SCAS and SPSE and any disciplinary sanctions inside the prison. The Committee’s task is a) to facilitate the decision-making process for offender’s requests (e.g. day leave, semi-liberty, conditional release) and b) to define the general penological treatment, contributing as such to the penitentiary policy-making.

During its sessions, an information exchange on the prisoner takes place, which contributes to forming the best possible overview of his behaviour and personality. The Guidance Committee convenes at the CPL and the CPG on a weekly basis. Meetings take place in the absence of prisoners.

Probation Officers generally are not going to court hearings, with the exception of breaches in case of a conditional sentence and community service, where they systematically appear as witnesses in front of the judge.

The role of the Social Defense Commission 35 has lost in importance over the last years. Nowadays it convenes only in order to provide an opinion regarding individual pardon requests (grâces). Large parts of the work formerly done by the CDS has now been taken over by the Guidance Committee.

General amnesties take place vary rarely in Luxembourg. Introduced by a law from January 195536, they are granted by the Grand-Duke to offenders who threatened the national security. Amnesties, compared to pardon, erase all the offences written down in the criminal record.

Table 3. Sanctioning system and probation involvement in the enforcement stage

The following table provides the main elements of probation during the enforcement stage. Several of the elements listed in the below table are addressed in greater detail after the table, in separate headings.

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35 It comprises representatives of the general prosecution service, the prosecution service, the Bar, trade unions, the Probation Officer, a representative from the SPSE, and a representative of the prison administration.

36 Loi du 12 janvier 1955 portant amnistie de certains faits punissables et commutation de certaines peines en matière d’attentat contre la sûreté extérieure de l’État ou de concours à des mesures de dépossession prises par l’ennemi et instituant des mesures de clémence en matière d’épuration administrative.
<table>
<thead>
<tr>
<th>Sanctions/Measures/ Penalties/Conditions attached to a conditional sentence</th>
<th>Provision in legislation</th>
<th>Probation service involvement</th>
<th>Main characteristics of the probation activity (e.g. supervision, coordination, reporting, referral, help and support)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imprisonment</td>
<td>X</td>
<td>X</td>
<td>Reporting, referral, help and support</td>
</tr>
<tr>
<td><strong>Conditional sentence (suspension probatoire)</strong></td>
<td>X</td>
<td>X</td>
<td>Assistance and supervision of court-imposed conditions.</td>
</tr>
<tr>
<td><strong>Suspended sentence (sursis probatoire)</strong></td>
<td>X</td>
<td>X</td>
<td>Supervision, reporting and support</td>
</tr>
<tr>
<td>Affidimento in prova</td>
<td>-¹</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>House arrest</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Electronic monitoring</td>
<td>²</td>
<td>X</td>
<td>Probation officers assess potential candidates for electronic monitoring (EM) and report to the Attorney General who will decide whether EM will be applied.</td>
</tr>
<tr>
<td><strong>Community service as sanction</strong> (imposed by judicial or admin authority)</td>
<td>X</td>
<td>X</td>
<td>Probation officers assist and supervise the person on community service and maintain close contact with the receiving institution.</td>
</tr>
<tr>
<td>Semi-liberty</td>
<td>X</td>
<td>X</td>
<td><strong>Supervision, reporting and support</strong> Probation officers maintain close contact with the probationer and his employer;</td>
</tr>
<tr>
<td>Semi-detention</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Treatment order</td>
<td>X</td>
<td>X</td>
<td>Can be imposed by a judge as one of several conditions in a variety of sanctions and measures</td>
</tr>
<tr>
<td>Training/learning order</td>
<td>X</td>
<td>X</td>
<td>Can be imposed by a judge as one of several conditions in a variety of sanctions and measures</td>
</tr>
<tr>
<td>Sanctions/Measures/ Penalties/Conditions attached to a conditional sentence</td>
<td>Provision in legislation</td>
<td>Probation service involvement</td>
<td>Main characteristics of the probation activity (e.g. supervision, coordination, reporting, referral, help and support)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Drug/alcohol treatment program</td>
<td>X</td>
<td>X</td>
<td>Probation officer maintains close contact with the offender who is undergoing treatment in a residential drug and/or alcohol residential treatment centre in Luxembourg or abroad.</td>
</tr>
<tr>
<td>Educational measures</td>
<td>X</td>
<td>X</td>
<td>Probation officers dealing with minors supervise children who undergo an educational assistance (assistance éducative) and work closely with the family and the primary social network.</td>
</tr>
<tr>
<td>Compensation to the victim</td>
<td>X</td>
<td>X</td>
<td>Control of payment of victim compensation</td>
</tr>
<tr>
<td>Mediation</td>
<td>X</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Attending a day centre</td>
<td>X</td>
<td>X</td>
<td>Such a condition can be one of several conditions, e.g. of a conditional release order or a conditional sentence.</td>
</tr>
<tr>
<td>Interdiction to leave the country</td>
<td>X</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Interdiction to enter different cities/places</td>
<td>-</td>
<td>X</td>
<td>Although not mentioned as such in the penal law, such an interdiction can be part of a sentence or part of a conditional release order.</td>
</tr>
<tr>
<td>Interdiction to carry out different activities</td>
<td>X</td>
<td>-</td>
<td>This can be one of several conditions of a sentence.</td>
</tr>
<tr>
<td>Interdiction to contact certain persons</td>
<td>X</td>
<td>-</td>
<td>This can be one of several conditions, e.g. of a conditional release order.</td>
</tr>
<tr>
<td>Fine</td>
<td>X</td>
<td>X</td>
<td>Probation officers monitor whether offenders in or outside of prison pay their fine, as part of a general supervisory programme (e.g. conditional release, conditional sentence ...)</td>
</tr>
<tr>
<td>Day fine</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sanctions/Measures/ Penalties/Conditions attached to a conditional sentence</td>
<td>Provision in legislation</td>
<td>Probation service involvement</td>
<td>Main characteristics of the probation activity (e.g. supervision, coordination, reporting, referral, help and support)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Other financial penalties</td>
<td>X</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>In/out patient order (psychiatric treatment)</td>
<td>X</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Security measures</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Combined order</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Community punishment</td>
<td>X</td>
<td>X</td>
<td>Probation officers assist and supervise the person on community service and maintain close contact with the receiving institution.</td>
</tr>
<tr>
<td>Conditional release / Parole</td>
<td>X</td>
<td>X</td>
<td>Probation officers monitor the conditions of conditional release orders and report to the Attorney General’s office</td>
</tr>
<tr>
<td>Automatic release</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Open prison</td>
<td>X</td>
<td>X</td>
<td>Probation closely collaborates with the Psycho-Socio-Educational Service (Service Psycho-Socio-Éducatif, SPSE) of the semi-open prison in Givenich.</td>
</tr>
<tr>
<td>Penitentiary program outside the prison</td>
<td>X</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Suspension of the pronouncement of sentence (Suspension du prononcé de la condamnation)</td>
<td>X</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Split execution (exécution fractionnée)</td>
<td>X</td>
<td>X</td>
<td>Probation officers see offenders serving a split execution very rarely, given the very limited time they actually spend mostly in the semi-open prison.</td>
</tr>
<tr>
<td>Prison leave (congé pénal)</td>
<td>X</td>
<td>X</td>
<td>Probation officer either report directly to the Attorney General’s office or provide their reasoned opinion in the frame of the Guidance Committee.</td>
</tr>
</tbody>
</table>
Sanctions/Measures/Penalties/Conditions attached to a conditional sentence

<table>
<thead>
<tr>
<th>Provision in legislation</th>
<th>Probation service involvement</th>
<th>Main characteristics of the probation activity (e.g. supervision, coordination, reporting, referral, help and support)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early release (libération anticipée)</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

**Imprisonment**

Since 2001, probation interventions do not cover pre-trial detainees anymore, thereby ending a well established and efficient “continuous treatment model”. As general practice nowadays (this is not defined as such by law), probation intervention starts once the offender’s sentence has become definite, i.e. once the appeal period has expired. The work of Probation officers consists of assessing as of when and under which conditions, an offender could possibly leave the prison prior to the end of his sentence and reporting this to the General public prosecutor’s Office or the Penitentiary Commission. It also encompasses assistance in job search and identification of post-release accommodation, together with the offender. In parallel to probation work, the SPSE is also providing a follow up during the whole incarceration period. As such, every prisoner will be assigned one Probation officer and one SPSE staff member. Furthermore, the SPSE also ensures the monitoring of convicted foreign national prisoners.

Probation work with sentenced offenders in custody focuses first of all on the offender’s attitude towards the crime for which they have been sentenced. Work may focus on whether the offender is admitting, minimizing, rationalizing or negating the facts of the case; attention is given to analysing the vocabulary the offender uses to describe his criminal behaviour, by working through his or her life story and assessing his capacity for victim empathy. Probation workers assess the offender’s behaviour in prison by interviewing all the professionals the offender is in contact with e.g. psychologists, social workers, correctional staff, workshop supervisors, sports instructors, prison teachers and tutors.

On a more administrative level, the Probation officer helps the offender to monitor his financial situation such as the payment of fines, the prosecution fees, victim compensation and personal debts. By meeting the offender’s family and/or close friends, the offender’s release can be prepared for in the best possible way.

Occasionally probation workers meet with representatives of agencies working with ex-offenders in the area of substance abuse, or they discuss accommodation problems with hostel managers. There are specific prison programmes for drug users but not
yet for sexual abusers. For the latter, external therapists are often required. A specific programme for drug users, the “Programme Tox”, has been implemented in both prisons.

**Conditional Sentence (suspension de peine or suspension probatoire)**

As a preparatory measure for conditional release, usually after a series of successful day leaves, a suspension of sentence can be granted by the General public prosecutor’s Office based on a guidance plan (plan de guidance) prepared by the Guidance Committee. The period of suspension counts as an integral part of the sentence. Following the granting of the suspension of sentence to the offender, the Probation officer reports to the General public prosecutor’s Office every three months or more often, if required by the situation.

**Suspended sentence = Suspension of enforcement combined with probation (sursis probatoire)**

This point refers to suspension of enforcement combined with probation (sursis probatoire), which has become an increasingly popular alternative incarceration in recent years in Luxembourg (150 in 2001; 657 in 2010). Probation work here consists of ensuring that the offenders sentenced to a partial or complete suspension of enforcement combined with probation comply with the Court’s conditions.

**Electronic monitoring**

Electronic monitoring has been piloted in Luxembourg since July 2006. A new draft Law which has yet to be approved by Parliament will finally provide a legal basis for this supervisory activity.37 Probation officers assess potential candidates for electronic monitoring and report to General public prosecutor’s Delegate or the Penitentiary Commission who will decide whether Electronic monitoring will be applied. Electronic monitoring can be used 1) for persons sentenced to a prison sentence of two years or less and 2) for prisoners whose remainder of sentence is less than two years. The technical infrastructure is located inside prison premises.

**Community service as sanction**

Community service as sanction is regulated by Act of 13 June 1994 on the regime of penalties. The General public prosecutor is in charge of community service enforcement. Community service may be used as a principal sentence if the Court considers that the offence will not lead to a prison sentence of more than six months (Article 22 of the Penal Code). The offender must complete unpaid community service of between 40 and 240 hours with a public or philanthropic organization or society, community association or hospital. The offender’s consent and presence at court is required. He or she may refuse to do community service. If the offender accepts to do community service, it has to commence within 18 months of the date of the court order. In case of breach of the community service order, a prison sentence of between two months and two years may be enforced (§ 23). Community service has to be manual or intellectual and has to be adapted to the offender’s natural abilities and aptitudes. The social usefulness of the community service order and the perspectives of social and professional reintegration it offers to the offender have to

be taken into account. The General public prosecutor in co-ordination with the SCAS
determines in each individual case the nature of the community service.

In practice, there are several community service options available to the judicial
authorities:

a) Community service is almost systematically implemented in case of a pardon
request made by offenders sentenced to prison;
b) the General public prosecutor’s Delegate increasingly uses community service
to avoid the enforcement of prison sentences of less than 6 months;
c) the Courts use community service as an auxiliary penalty or as a principal
penalty.

As outlined above, community service is one of the options in cases where:
suspension of the *pronouncement* of sentence is combined with a probation order,
and in cases where the suspension of *enforcement* of a penalty is combined with
a probation order. Offenders who have their community service orders revoked
(generally drug users) due to breach of the conditions, can be sentenced to a four to
six month prison sentence.

A tendency over the last years evidences that more and more non-completed and
revoked community service orders (as a principal penalty) are transformed by Courts
to one of several conditions of a suspension of enforcement of a penalty (that lasts
minimum three to maximum five years). In this context, although incarceration is
avoided, undoubtedly a paradox remains: the offender who wasn’t able to begin his
community work within 18 months (following his sentence) now has “five” years to
carry out his sanction.

**Semi-liberty**
During semi-liberty, imprisonment is limited to night-time and spare time. It can also
be used to pursue education outside the prison, to undergo professional training or
for medical treatment. Where the sentence is less than 12 months, it can be applied
right from the beginning. If the sentence is longer than 12 months, it can be granted
after six months. Semi-liberty is almost exclusively enforced in the semi-open prison
of Givenich. Semi-liberty is considered as a stage in the gradual preparation of the
offender for life outside prison. It requires a great degree of autonomy on the part of
the offender because they leave the prison in the morning, taking public transport or
using their own car, and come back to the prison at night. While the offender is on
semi-liberty, Probation officers closely monitor the completion of the work and stay
in close contact with the offender’s employer.

**Compensation to the victim**
Probation officers control whether the offender (in prison and/or in the community)
pays the compensation to the victim. Occasionally, for instance, a judge can add the
complete compensation of the victim as a condition in a conditional sentence (*sursis
probatoire*). If the offender does not pay pack the victim, he may be at risk of losing
the benefit of the conditional sentence.
Conditional release (Article 100 of the Penal Code)
The guiding principle is that all offenders can be granted conditional release (CR) and that the revocation of CR is not an obstacle for it being granted again.

First time offenders must have served at least half of their sentence. If their sentence is less than six months, CR can be granted after three months. Recidivists can be granted CR if they have served at least two-thirds of their sentence. If the total sentence is less than nine months CR can be granted after 6 months. Offenders subject to a life sentence can be granted CR if they have served at least 15 years. To be granted CR offenders must present “sufficient evidence of good conduct and serious grounds for believing them capable of social resettlement” (§ 4). CR can be run in conjunction with certain support and control measures, intended to assist and supervise the rehabilitation of the discharged prisoner (§ 6). In the case of a sentence between eight days and five years (peine correctionnelle), the probationary period must cover at least the remainder of the sentence to be served, or at most extend 12 months after the end of the sentence. In case of a penalty with a minimum of five years and maximum of life sentence (peine criminelle) the probationary period is between 5 and 10 years (§ 7 & 8). When CR conditions are breached, the General public prosecutor or his Delegate decides whether or not to revoke the measure (§ 10).

Section 100 of the Penal Code does not, however, explicitly mention the probation service. The law does not provide for any procedure for CR and the nature of supervisory measures are not statutorily defined. Although the offender’s consent for CR is not specifically required, it is widespread practice for the Probation officer to discuss the conditions of parole with the offender, to thoroughly explain the exact meaning of CR and the consequences in case of breach. The Probation officer periodically submits a report on the client’s progress to the General public prosecutor’s Office and also makes proposals to maintain, to modify or to revoke the imposed measures (with regard to the prisoner’s work situation, his professional training and job orientation or housing situation). In case of non-compliance, the Probation officer immediately reports this breach to the Attorney or his delegate. Frequency of contact between the Probation officer and the offender on CR can be weekly or monthly. It varies with regard to the need for support and the monitoring required. Where the CR of an offender serving a life sentence is revoked, the initial life sentence is reinstated.

A recent amendment in Article 100 of the Penal Code, incorporating the Law from 6 October 2009 on strengthening the rights of the victims of crime, specifically mentions the protection and the interest of the victim during conditional release.

Prison leave (congé pénal)
Prison leave allows prisoners to leave the prison during part of the day, or for 24-hour periods. This measure is very widely used for prisoners who permanently reside in Luxembourg. Time spent outside the prison is counted as part of the prison sentence. Prison leave may be granted for family reasons, to prepare for rehabilitation, to find a job or as a form of probation with a view to future conditional release. Probation officers check the purpose of the request e.g. family visit, job search, search for accommodation. If an offender becomes eligible for semi-liberty, he or she is usually
granted a series of separate days of prison leave until a work contract has been secured. First time offenders may be granted prison leave after serving one-third of their sentence, recidivists after half of their sentence and a prisoner sentenced to a life sentence after 10 years. In exceptional circumstances, the Penitentiary Commission may make exceptions to these periods because of the offender’s personality or their family situation. In most cases, during prison leave, the offender leaves the prison on his own, but in some cases (often when it is the first prison leave after a long period of incarceration, or when the probation officer and the offender that it would be more appropriate) the Probation officer (sometimes it can also be a correctional officer) spends the prison leave together goes with better if offender.

**Early release (libération anticipée)**

Early release means that a non-resident foreign national offender may be granted early release without the application of conditional release if he or she has already served the portion of sentence which makes him eligible for CR. Early release includes a territorial ban. If the offender enters Luxembourg after having been granted early release, the remaining sentence will be enforced without further hearings or formalities. The conditions set by the General public prosecutor’s Office for early release are usually as follows: the offender has to pay his travel expenses back to his country of residence and pay his court costs. Furthermore, he is banned from the territory of Luxembourg for a period of up to 10 years and has to pay a minor amount of his fine, (usually 10% of the total fine).

**Split execution (exécution fractionnée)**

Split execution applies to custodial sentences of up to 12 months and is therefore a penalty for minor offences. The sentence can be served in instalments if this manner of implementation guarantees the offenders’ social rehabilitation and in particular, allows them to keep their jobs and maintain family relationships. A sentence of up to three months may even be served on a daily basis at weekends, during holidays and annual leave.

Split execution enforcement takes place almost exclusively in the open prison at Givenich. Probation Officers have little contact with this category of offenders because they have often been discharged (serving a two week instalment, for instance) before the Probation officer has had the opportunity to make contact.
### Table 4. Other probation activities in the enforcement stage

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Providing support to the families of the offenders/detainees</td>
<td>It is part of the core mandate of the Probation Service to provide counselling, support and assistance to people in detention and their families; ensure that individuals discharged from prison and released on probation, and their families, benefit from the necessary practical and psychological support;</td>
</tr>
<tr>
<td>Coordinating volunteer prison visitors</td>
<td>Although the law makes provision for volunteers to work as a part of the SCAS to date, this has never really been implemented. The only volunteers are prison visitors, whose work is rather unregulated. They have no basic training and no ongoing supervision. Once they have been granted the status of volunteer visitor, they are left completely to their own devices. At their request, they may keep contact with the offender’s Probation officer.</td>
</tr>
<tr>
<td>Preparing offenders for (conditional) release</td>
<td>This forms an integral part of a probation officer’s work and has been described in the previous section.</td>
</tr>
<tr>
<td>Preparing prisoners for home leave and/or providing support during home leave</td>
<td>This forms an integral part of a probation officer’s work and has been described in the previous section.</td>
</tr>
<tr>
<td>Providing support to persons that have been pardoned or amnestied</td>
<td>This may happen on a voluntary basis, if wished for by the offender, but as such, there is no legal mechanism foreseen for supervision here.</td>
</tr>
<tr>
<td>Providing advisory report with respect to amnesty or pardon</td>
<td>Occasionally, a former offender may ask for assistance to file a pardon request, regarding an outstanding fine or a driving ban.</td>
</tr>
</tbody>
</table>

### 5.3 Care and after-care outside the criminal justice system

At the offender’s request, Probation officers may continue to assist the offender during the aftercare phase, i.e. after discharge or after the expiry of any previous supervision conditions. Such type of aftercare takes only very rarely place. The motives for this type of contact are mostly urgent financial need, accommodation or employment related issues. In other instances, the former offender may ask his former probation officer to assist him in filing a pardon request, regarding an outstanding fine or a driving ban. In order to do so, the Probation officer works in close co-operation with social services and other specialised agencies to organize help for the offender in the most efficient way and avoiding any duplication of efforts. Voluntary contact with the probation officer may also cover the rehabilitation procedures which enables the offender to have his criminal record erased after a given period of time depending on the gravity of the offence. Although the Probation Service does not interfere at all in this procedure, probation workers can advise ex-offenders on how to proceed.
6. Probation methodology

Probation work, both in a prison setting and in the community, has two inextricably linked core aims. The first is to protect society by working to avoid recidivism, and the second is to undertake initiatives to enable offenders to lead a more decent life. Given the absence of a mission statement, the Probation Service, since 2011 has started to work on a draft mission statement, entitled “Philosophy and methodology of the Probation Service” which eventually is anticipated to be officially endorsed by the Attorney general’s Office. In this draft paper, the Probation Service describes its intervention methodology as follows:

“In their daily work, the Probation Service contributes to the development and the orientation of person under their care/responsibility by:

- Providing assistance to integration (through personalised social assistance, *Einzelfallhilfe*), counselling, encouraging offenders to address their criminal behaviour and to respect the rules of life in society;

- Assisting offenders in the development of their personality in order to facilitate their social integration;

- Intervening in the individual development of the offender and his social environment;

- Helping the offender to envisage new perspectives through the development of a plan for their future life (*project de vie*);

- Motivating the offenders to pursue this established plan;

The “informed consent” of an offender is required by law only for community service (Art. 22 §2, Penal Code). Art. 22 (2) sets two conditions: the offender needs to be physically present during the court hearing and “the president of the court informs the accused that he has the right to refuse the community service and receives his answer.” Strictly speaking, one could argue that this is not an “informed consent”, but the result is nevertheless the same: community service is only taking place when an offender agrees to it. For all other community sanctions, professional practice shows that the consent of the offender is a pre-requisite prior to any measure or sanction. It would be unheard of that e.g. prison leave or conditional release would be imposed on an offender, if the offender would not agree to it. (Rule 6 of the EPR)

An ongoing assessment is taking place in line with the offender’s evolution. During its weekly meetings both at the CPL and the CPG, the Guidance Committee agrees on regular reports with regard to the evolution of the offender and progress made that are submitted to the General public prosecutor’s Office. Periodical evolution and information reports (*rapport d’évolution et d’information*) and a final report (*rapport de clôture*) are being drafted and submitted to the General public prosecutor’s Office. Through the Guidance Committee, the General public prosecutor’s Office is regularly informed about the offender’s progress and the extent of his compliance with court conditions. Risk assessment is also made during discussions in the weekly staff meetings of the Probation Service. No formal tools or
forms are used here. (Rule 66, 81 and 91 of the EPR)
The offender’s point of view is systematically reflected in the assessment report and
he is made aware of the outcome of the assessment (Rule 67 & 68 of the EPR).

The situation of the offender is periodically reviewed and re-assessed by the
Probation officer and/or by the Guidance Committee (Rule 69 of the EPR), as laid
in Rule 70 of the EPR. While probation staff did not receive any specific training on
how to carry out assessments, it is part of the professional training that all Probation
officers have undergone during their social work studies (which is the academic
background of all Probation officers). (Rule 71 of the EPR)

At the moment of writing, no formal “work plan” for the offender is in place yet.
Nevertheless, a so-called voluntary integration contract (contract volontaire
d’intégration) is foreseen in the upcoming law reforming the prison administration.38
(Rule 73 of the EPR)

All interventions of the Probation Service are individual interventions; no group
activities are carried out by the Probation Service. Elements of risk, needs, strengths
and weaknesses of the offender are taken into consideration. Regarding the nature of
the Probation officer’s interventions, it has to be emphasised that they are never more
restrictive than required by the conditions of the court decision. By respecting this
principle, court conditions are considered as a means of help in view of the offender’s
reintegration and his desistance.

Probation interventions do aim at rehabilitation and desistance and are constructive
and proportionate, in most cases. Community service orders, however, are often
given to offenders who are not capable of carrying out any type of regular work,
often due to their drug use. In this case, the aim of the sentencing judge is certainly
desistance, but it is sometimes just not realistically feasible.

Probation officers work in a holistic way and have adopted a multi-disciplinary
approach. Their listening skills, sense of initiative and team work are highlighted as
cornerstones of their work. Individual interviews with offenders in view of providing
guidance and evaluation are carried out. Probation officers define their position as
halfway between the judiciary and the offender under judicial control (Rule 76 of the
EPR). Basic principles of probation intervention are defined as follows:

- **An empowering approach** (approche émancipatrice) and a and **pro-
  active approach**: aiming at the development of the competencies of the
  offender

- **Accountability** (responsabilisation): in a clear and transparent way, the PO
  explains the functioning of criminal justice system to the offender and the
  consequences of a breach of court conditions. The Probation service is bound
  by an obligation of means (as opposed to an obligation of results). This clearly
  aims at the offenders’ informed consent and co-operation.

38 Bill *Projet de loi 6382 portant réforme de l’administration pénitentiaire*
Non-normativity (non-normativité) : the Probation Officer helps the offender in adopting his own position with regard to the judicial intervention. This entails working on the criminal behavior, its motives and motivations, in short, understanding the offender’s vision of the world, his perceptions and beliefs. The aim here is to lead a law-abiding life.

Non-substitution (La non-substitution) : This refers to the fact that the Probation Officer does not take action for or instead of the offender, but rather helping the latter to use the means given to him in order to lead a life without re-offending.”

There is a diversity of approaches in the work of Probation officers. Traditional counselling remains the main method in individual casework. There has been very little development in approach over the last ten years in the Probation Service. There has been a high staff turnover since the nineties. The frequency of meetings (individual meetings, home visits…) between a Probation officer and the offender is decided on an ad hoc basis, as required by the needs of the situation.

The process of supervision delivered by the Probation Service is a combination of supervision and assistance, decided according to the needs of the client and the situation. The priority areas for material help for offenders are accommodation deposits, rents, clothes, public transport and food. (Rule 77 of the EPR)

Probation methodology is influenced by a series of factors, the staff tasked with its implementation, being one of the key factors. In the mid-nineties, the Probation Service of the SCAS was blatantly understaffed, with an average case-load of over a hundred offenders per Probation Officer. For reasons which have yet to be examined further and which would go well beyond the limited scope of the article at hand, the legislator - rather than strengthening the human resources of the existing functioning Probation Service - decided in 1997 to start developing the internal social service of both prisons, the internal psycho-social and socio-educative services (services psycho-sociaux et socio-éducatifs), commonly referred to as Psycho-Socio-Educative Service (Service psycho-socio-éducatif, SPSE). By doing so, a well-established “through-care” model, that other EU member states and/or entities within countries (e.g. Bundesländer in Germany) are nowadays trying to introduce, is gradually being abolished in Luxembourg.

The role and scope of work of Probation officers, who used to provide assistance to offenders from pre-trial detention until the end of e.g. conditional release, has been significantly affected by this shift. A look at the staff table provides an even clearer picture: while until 1999, one single educator was in charge of the entire prison population at Luxembourg’s main prison, the CPL. Today, the CPL’s SPSE nowadays has a total of 18 staff and the CPG’s SPSE counts 8 staff members. In

39 Law from 27 July 1997, Art 10 (IV) (Loi du 27 juillet 1997 portant réorganisation de l’administration pénitentiaire)
40 4.5 psychologists, 7 graduate educators (éducateurs gradués), 4 social workers, 2 educators (éducateurs diplômés, seconded by the Ministry of Family and Integration) and 5 sports instructors (moniteurs sportifs) and 1.5 administrative assistants
41 1 psychologist, 2 social workers, 2 social pedagogues, and 1 sports educator and 1 educator
the meantime, the SCAS’ staff table has remained unchanged over the last 10 years with 10 Probation Officers. Nowadays Probation officers are in charge of offenders only once they have been sentenced.

Probation work, both in a prison setting and in the community, has two inextricably linked core aims. The first is to protect society by working to avoid recidivism, and the second is to undertake initiatives to enable offenders to lead a more decent life. Given the fact that there are only seventeen Probation officers in Luxembourg, the need to have so-called case-managers is rather limited; a case management approach has been discussed internally but not formally adopted (Rule 80 of the EPR). Given the relatively small size of the Luxembourg Probation Service, there is no specialization for certain tasks. Pre-sentence reports are carried out by the SCAS’ Unit of personality files (Service des dossiers de la personnalité) which is poorly manned (2 part-time workers). Judges or prosecutors are only seldomly asking for pre-sentence reports, probably also due to the fact that this unit has been understaffed for years.

Accurate record and file-keeping is one of the corner stones of probation work in Luxembourg. (Rule 88 of the EPR)
As a state agency under the General prosecutor’s office, the Probation Service is accountable to the General public prosecutor. No independent monitoring from an outside agency is taking place. (Rule 103 of the EPR)

7. Finances, Accounting, Registration Systems and Evaluation Procedures

7.1 Finances
The Luxembourg Probation Service is exclusively financed by the state budget which is annually approved by Parliament. It specifies the funds allocated to the jurisdictions and penitentiary establishments. Funds allocated to the SCAS funds are earmarked in the Ministry of Justice’s budget. The Probation Service’s annual budget for basic material aid for 2012 is 120,000 € (2006: 120,000 €). Material support is allocated to discharged prisoners whether on probation or not. Priority areas for material help are accommodation deposits, rents, clothes, public transport and food. In general, staffing, human and financial resourcing of the Probation Service are rather good (Rule 10, 21 & 33 of the EPR). As a state agency, the Probation Service is also subject to the administrative reform that all state agencies have undergone in Luxembourg since the creation of the Ministry of Civil Service and Administrative Reform (www.fonction-publique.public.lu).

The Probation Service is not allowed to receive any income from private sources. Also, the Probation Service cannot raise its own funds. In 2011, the SCAS has been allocated an amount of 312,000 € which is used for the support of discharged prisoners and offenders in probation (120,000 €); for the child protection unit (65,000 €), for the community work service (25,000 €) and for the Victim support service (90,000 €) and for supervisory activities for probation staff (12,000 €)
Table 5. Prison / Probation expenditure

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td>Total current yearly expenditure</td>
<td>4.810.087 € (staff only)</td>
<td>47.395.454 €</td>
</tr>
<tr>
<td>Average number of employed staff</td>
<td>20 probation staff</td>
<td>24 SPSE staff; in total the CPL has 504,75 staff</td>
</tr>
<tr>
<td>Daily average number of offenders/clients dealt with</td>
<td>4,4 clients</td>
<td>2,8 clients</td>
</tr>
</tbody>
</table>

7.2 Accounting
The Head of the SCAS is accountable by decree, via the Ministry of Justice, to the General Inspection of Finances (*Inspection Générale des Finances*) and to the Court of Auditors (*Cour des Comptes*) for spending its annually allocated fund for discharged offenders. This Court of Auditors (provided for under Article 105 of the Luxemburgish Constitution), as an auxiliary body of the Parliament, monitors all State accounts in the Grand-Duchy of Luxembourg. On a daily basis, the SCAS is also accountable to the financial controller of the Ministry of Justice. (Rule 15 of the EPR)

7.3. Registrations Systems and Evaluation Procedures
There is no systematic registration of Probation officers’ activities, such as prison and home visits, telephone calls etc. Nevertheless, in 2005 a database has been created where Probation officers’ reports, number of client contacts and accompanied prison leaves are registered. The only available data to measure the effectiveness and efficiency of the Probation Service are the statistics in the SCAS’s Annual Report which forms an integral part of the Ministry of Justice’s annual report. The existing studies and research on probation in Luxembourg are few, some are out of date (Rule 16 of the EPR). One was realized in 2003 concerning the penological approach to conditional release, another one in 2007 concerning the implementation of electronic monitoring (as a tool of public policy).

Information on offenders is well stored in individual manual files, but at the same time some are also kept in an electronic database. The files of discharged offenders are stored in the Probation Service’s archives. Since 2001, the Probation Service has access to the German computer programme called “BASIS”. This links the Prosecution Service with the two prisons and the Probation Service and gives a multiplicity of information about the offender that can be accessed online. In addition to this database, an outdated software named “penal chain”, dating from the seventies, has been updated and renamed JUCHA. This software may be used by the Prosecution service, the investigating magistrates, the SCAS and Luxembourg’s first instance courts. In addition, Luxembourg nowadays, with its Ministry of Justice, public prosecutors and judges is associated to the ongoing effort to realize the interconnection of the European criminal records.

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42 Buchungs- und Abrechnungssystem im Strafvollzug (BASIS)
43 Penal chain: development of a JAVA application regarding the treatment of a criminal case from its beginning to the end (criminal record of a person, interconnection with European countries, management of criminal case, court hearings...)
In 2002 the Probation Service had to build up its own internal database concerning offenders released on conditional release, on semi-liberty, on suspension of the sentence, on probation and on electronic monitoring. The Probation Service has also instant access to another database (national) of the entire population of Luxembourg called RPNI\textsuperscript{44} which enables the Probation officer to access information not only on the place of residence, but also on the composition of the household of the offender, on the last change of address, the date of birth etc. Access to RPNI data is registered and monitored.\textsuperscript{45}

8. Societal Support and Clients’ Views

In July 2007, a general debate on national security took place in Luxembourg’s Parliament. To this effect, the Parliament’s Judicial Commission has met with members of the police, the penitentiary and judicial services, including representatives from the SCAS, the Probation Service and the Prosecution Service. This method enabled the Commission to gather the necessary data regarding the state of the prisons, the implementation of sentences and the benefits and difficulties of probation.

An account of the Probation Service’s work is provided for in the annual activity report of the Ministry of Justice which comprises statistics of the judiciary, the penitentiary and Probation Service (Rule 107 of the EPR). Unfortunately, every of the previously mentioned administration presents its statistics separately, and by using different methods of data gathering: while some are more elaborate, others are solely limited to figures. The resulting heterogeneity of approaches makes a dynamic analysis close to impossible. Therefore a transversal and longitudinal study in order to determine a tendency on a criminal political level is for the moment difficult to achieve as there is a lack of homogeneity in numbers. Furthermore, in spite of the potential richness of the information in Ministry of Justice’s annual report, it is read very little.

In addition to the annual report of the Ministry of Justice, little additional information is provided to the media or to the general public. (Rule 106 & 107 of the EPR)

Activities in the legal field, such as parliamentary questions (\textit{questions parlementaires}) e.g. questions asked by members of parliament to ministers on relevant topics, provide only little and rarely information on probation. Also, probation is completely absent in the national media (Rule 106 of the EPR).

This is very different for prison which is often at the heart of parliamentary questions by various political parties. Prison also hits the headlines when there is a suicide of a prisoner, an escape, a visit of the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) or after the

\textsuperscript{44} Répertoire National des Personnes
\textsuperscript{45} This data is submitted to the regulations of the Law of 2nd August 2002 regarding the protection of persons concerning the treatment of data of personnel nature.
national Ombudsman has visited one of the two prisons in his functions under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Regarding both major reform bills recently introduced to parliament, the Probation Service, in addition to a number of other state and non-state bodies has given its opinion, by emphasizing its primary function of “service in charge of alternatives to detention”. By doing so, the Probation Service has positioned itself with regard to its own mission, with regard to the reform of the prison administration and with regard to the implementation of penalties.

8.1 Societal support and public opinion
Regarding media coverage, audio-visual and written media have on various occasions contacted the Probation Service, in order to report on its functioning and its intervention methodology.

To date, no single research has been performed on probation in Luxembourg. There have nevertheless been final papers of university students who during their internship at the Probation Service have reflected upon the work of Probation officers and the Probation Service.

In 2009, an international colloquium and a conference organized by the Luxembourg Society of Criminology (Association Luxembourgoise de Criminologie), has allowed, inter alia, to reflect on probation in Luxembourg.

Given the fact that a statement by the Probation Service on policy and practice is currently being developed, it has not yet been made public (Rule 108 of the EPR). On the official website of the Ministry of Justice, the missions of the Probation Service are clearly outlined.

8.2 Clients’ Views
Unfortunately, there is no data available on how the clients of the probation system view the work of the Probation Service. The Luxembourg Probation Service doesn’t carry out any kind of promotional activity regarding its work. No academic research has been carried out at this specific level.

9. Probation Clients Rights
The rights of client’s specifically dealing with the Probation Service are not statutorily regulated. While all clients of the Probation Service are free to address written complaints to the Head of the SCAS, to the General public prosecutor or the Minister of Justice, there is no formal complaints procedure foreseen – yet (Rule 14, 100 and 101 of the EPR).

In practice, the most frequent complaint is when a client has an issue with his Probation officer and requests a change. In these circumstances, once the issue has been thoroughly discussed with both the Head of Service and the staff member an internal decision is taken on a case by case basis. In the case of recidivist offenders,
a change of Probation worker gives them an opportunity to start afresh with a new relationship.

However, there is an external monitoring of complaints that deal with clients’ complaints: the actual national ombudsman (www.ombudsman.lu) who is also in charge of the control of places of deprivation of liberty (prison and police cells, hospitals, psychiatric institutions). A prisoner or probationer may introduce a written complaint to the Ombudsman. So far, for probation, this hasn’t happened yet.

All foreign nationals, whether in detention, on probation or non-offenders, who have been given notice by the Ministry of Foreign Affairs – Department of Immigration to leave Luxembourg, may appeal against this decision at the Administrative Court of Luxembourg (Tribunal administratif).

Article 458 on professional secrecy of the Penal Code is legally binding for Probation officers. However, within the framework of professional secrecy or confidentiality, relevant information on the offender may be shared with professionals from other agencies. Furthermore, Section 10 of the modified Act of 16th April 1979, on the status of civil servants of the Grand Duchy states that “civil servants are forbidden to reveal any information pertaining to their job”. In addition, as civil servants, Probation officers have to report any information given to them by a client regarding their intention e.g. to commit further crimes or to escape from prison, and any admission of previous crimes.

The data collected and recorded by the Probation Service falls under the existing legislation concerning data protection and is not public. (Rule 41 & 89 of the EPR). Free legal aid is statutory regulated (Act of 18th August 1995; decree of 18th September 1995). Access to free legal aid is granted on the basis of income and material possessions. Free legal aid is provided to all nationals and all foreign nationals without sufficient financial means, whether in detention or not. People who have been granted the services of a state lawyer also have free access to the services of interpreters and bailiffs.

A member of the Probation Service will assist those who are unable to fill out the form for free legal aid, which has been developed by the SCAS. In prison, defendants, offenders and people in administrative detention have access to an interpreter paid for by the State. In reality, due to a lack of available interpreters and to complicated and time-consuming procedures to access them, Probation officers often use prisoners as interpreters when they are available.

Independent monitoring of persons deprived from their liberty could be carried out by the Ombudsman’s institution (www.ombudsman.lu) in both prisons. There is currently no monitoring or external quality insurance system of the Probation Service’s activities.

Luxembourgish legislation does not foresee for offenders to have access to their records kept by the Probation Service (Rule 92 of the EPR). Having said this, offenders have of course access to their court file prior court proceedings, as foreseen by law.
10. Developments to be expected

10.1 Developments in coming years

**Reform of the prison administration and enforcement of sentences**
Recently, two bills were presented in Parliament and will have an impact on Probation: one concerns the reform of the prison administration (based upon the European Prison Rules) and the other tends to introduce the reform of the enforcement of sentences through the introduction of an application chamber of sentences.

The underlying philosophy (of the reform of the prison administration) will likely change the scope of intervention of the Probation Service, namely the monitoring held by the Probation Service in both prisons and will make end to the model of “continuous treatment model”, as mentioned in previous chapters.

This new approach in Luxembourg, implemented by the Ministry of Justice assisted by a Swiss expert, will follow a model in place in many other European countries with a strict separation between prison and probation. It is true that Luxembourg was envied for its system made possible by the small size of the country. The very few institutions concerned were always able to choose the shortest way to intervene. Hence, the transition between intra- and extra-muros must be redesigned; interventions reshaped and reviewed and certainly bare some significant risks.

Obviously, Luxembourg is taking a new direction which other European countries took long before, but in the light of the experiences made, they decided to come back to a more close cooperation between prison and probation. At a European expert level, this new approach is not quite understood the actual system baring a lot of advantages which greater, especially neighbouring, countries envy.

With the introduction of a chamber of enforcement of sentences, a new court will be created and with it a judicialization of the enforcement of sentencing. This model, which improves the defence of human rights (claimed for many years by the Ombudsman), also provides a loss in flexibility in quick taking decisions, which is an advantage of the actual system.

The bill in question states that the chamber may mandate the Probation Service to provide any necessary information it considers necessary for a decision. It is thus conceivable that the Probation Service under a different statute and with another mandate, will access prison with a specific mission: provide information gathering to the chamber.

Upon the request of the General public prosecutor, the Probation Service drafted an opinion regarding these two bills and sent it to the Judicial Commission of the Parliament in charge of the dossier.
A stark increase of suspended sentences combined with probation since 2007 has

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48 *Projet de loi 6382 portant réforme de l’administration pénitentiaire*
49 *Projet de loi 6381 portant réforme de l’exécution des peines*
seriously increased the workload of Probation officers. This has been brought to the attention of the Minister of Justice in a letter by the Probation Service in April 2012.

**The construction of a third prison “Ueschterhaff” for pre-trial detention (maison d’arrêt) in Sanem**

Because of the current overpopulation present in Luxembourg, which distinguishes itself by a growing number of pre-trial detainees, the Ministry of Justice has stated its intention to have a third prison built for 2017. This would alleviate the prison of Schrassig but with a possible new risk of increasing the prison population. This project is embedded in the current reform of the prison administration.

At the same time, the Luxemburgish Minister of Justice points out that on a daily basis at least 120 people should be under electronic monitoring. It’s the first time that a “community sanction” is quantified, although the Government hasn’t bought nor leased 120 devices.

**Judicial control**

The Law of March 6th, 2006, introducing a simplified investigation and judicial control states in its Article 107 that judicial control may be ordered by the investigating magistrate if the inculpated person is susceptible of a correctional imprisonment or a more severe sentence whose maximum is equal or superior to two years of imprisonment.

Judicial control is an alternative to pre-trial detention. During provisional release, the person under judicial control has to respect a catalogue of conditions.

By the intermediary of the Probation Service, the SCAS may be designated (together to the police service or any other judicial or administrative service) by the investigating magistrate in order to control the respect the imposed conditions. To this effect, the SCAS can summon or visit the person charged with an offense. The SCAS may also refrain to every other measures and investigations which may be of utility to its mission (Article 108).

In this context, it has to be mentioned that recourse on judicial control is rarely used. National coherent criminal justice statistics, apart those from probation, are lacking. The new reform states that electronic monitoring (run by the Probation Service) could be a new condition of judicial control. This gives the Probation Service the opportunity to work more on a pre-trial phase.

**Pre-sentence reports**

If the light of the reform of the prison administration and enforcement of sentences, the component of pre-sentence reports will become more important and could be further used by public prosecution and courts in collaboration with the probation service.

**A law on probation?**

While Luxembourg has a long tradition of probation (institutionalized since 1855), as previously mentioned, Luxembourg has no law that defines probation, its missions, its goals and values. Several pieces of legislation refer to the Probation Service in its capacity as body in charge of executing judgments and probation measures.
Faced with this gap, largely inspired by recent European Probation Rules and the CEP declaration on values and standards of probation, the Probation Service found necessary to have a document as reference to position itself on the spectrum of criminal justice. The drafting of a document highlighting its philosophy and methodology took place. A look was also raised, as inspiration, the probation policy and practice in place in Germany, France, Belgium and Austria. A law on probation, once the reform of the prison administration and enforcement of penalties enforced, would be a logical next step to be undertaken by the Ministry of Justice.

10.2 Implementation of EU Framework Decision 947
Luxembourg has been an active partner in regard of implementing the Framework Decisions on a legislative and practical level. Under Belgian Presidency of the Council of the European Union (second half of 2010), several consultation rounds took place in order to shape a common approach at UE level. In terms of the Framework Decision 2008/947 regarding the transfer of probation measures and alternative sanctions, the government might soon submit a bill; the issue at stake, however, is not seen as a priority. At the time of writing the following contribution, the Ministry of Justice had not yet presented its bill to the Parliament. It’s still in writing and waiting for first approval by the Government’s Council before making its way to the MPs.

11. Important Publications

*Actes du colloque de l’Association Luxembourgeoise de Criminologie, Journée d’étude (9 mars 2010), La politique pénitentiaire au Luxembourg : approche multidisciplinaire et état de la question.*
This publication provides a full account of the proceedings of a one-day meeting in March 2009 in Luxembourg, organized by the Luxembourg Association of Criminology. The topic of the meeting was “Penitentiary policy in Luxembourg: multidisciplinary approach and taking stock”. Speakers comprised both key people from the criminal justice field in Luxembourg, as well as keynote speakers Sonja Snacken (Belgium) and Philippe Combessie (France).

The annual report of the Ministry of Justice comprises the annual of all agencies of the Luxembourg criminal justice system, i.e. all courts, prison, as well the Probation Service. It is the only official public record of the activities of the Probation Service that provides a thorough overview of the evolution of all community sanctions over the last years.
The internet web page of Statec, the national statistic’s portal of the Grand-Duchy of Luxembourg ([www.statistiques.public.lu/en/index.html](http://www.statistiques.public.lu/en/index.html)) provides an excellent overview of all aspects of life on Luxembourg, as well as some historic comparative perspective regarding criminal justice issues.50

**Biancalana, D., (2003), *La libération conditionnelle entre ancienne et nouvelle pénologie. Etat de la question au Luxembourg, Université catholique de Louvain-la-Neuve, 185p.***
This publication analyses if the new penology has a notable influence and impact upon the conditional release discourse and practice in Luxembourg. By interviewing probation officers, the author provides a range of statements showing that in Luxembourg the individual treatment of offenders (old penology) is at the core of the probation interventions. The classic model of rehabilitation is at the heart of their everyday philosophy of conditional release practice.

**Council of Europe, SPACE II, Luxembourg, 2009 et 2010**
“The Council of Europe Annual Penal Statistics, better known as SPACE (*Statistiques Pénales Annuelles du Conseil de l’Europe*), include two related projects. SPACE I provides data on imprisonment and penal institutions in Council of Europe Member States. Information on non-custodial sanctions and measures are collected under the project SPACE II. Figures for 2012 are available online.”51

**State budget for 2013 (Projet de loi concernant le budget des recettes et des dépenses de l’Etat pour l’exercice 2012 et 2013), Ministry of Finance**
The yearly national state budget provides for a detailed account of funding of both prison and probation services.

This chapter provides for an earlier version of the probation situation in Luxembourg in 2000, in the publication “Probation and Probation Services. A European Perspective”.

**List of five books from authors from abroad**

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51 [http://www3.unil.ch/wpmu/space/2012/07/new-figures-for-2012-available](http://www3.unil.ch/wpmu/space/2012/07/new-figures-for-2012-available)

**12. Main Addresses, Phone & Fax Numbers, E-mail Addresses, Home Pages.**

**Probation Service:** *(Service Central d’Assistance Sociale)*
Galerie Kons
24-26, Place de la Gare
L-1616 Luxembourg
Tél. 352/47 58 21-607
Fax. 352/ 22 39 54
Daniel.Biancalana@justice.etat.lu

**Luxembourg Prison** *(Centre Pénitentiaire de Luxembourg, CPL)*
Um Kuelebierg
L-5299 Schrassig
Tél. 352/ 35 96 21-1
Fax. 352/ 35 02 17

**General public prosecutor’s Delegate for the implementation of sentences** *(Délégué du Procureur général d’Etat à l’exécution des peines)*
Cité judiciaire/Plateau du St-Esprit
L-2229 Luxembourg
Tél. 352/47 59 81-348 or 391
Fax : 352/ 47 59 81-395
Executionpeines@justice.etat.lu
www.justice.public.lu

**Givenich Prison** *(Centre Pénitentiaire de Givenich, CPG)*
Maison n°9
L-6666 Givenich
Tél- 352/74 04 60-1
Fax. 352/ 74 86 44
www.spse.etat.lu/givenich.htm

**Ministry of Justice** *(Ministère de la Justice)*
Centre administratif Pierre Werner
13, rue Erasme
L-1468 Luxembourg
Tél. 352/ 478-4506
Fax. 352/ 225296
www.mj.public.lu
ANNEX 1

SUMMARY INFORMATION ON PROBATION IN LUXEMBOURG

General Information
- Number of inhabitants: 511,800 (2011)
- Prison population rate per 100,000 inhabitants: 137.6 (SPACE I, Survey 2009)
- Link to Probation Service: www.justice.public.lu
- Links to websites: www.mj.public.lu
- Member of the CEP in: 1983

Characteristics of the Probation Service
The Central Service of Social Assistance (SCAS) forms part of the General prosecution service run by the General public prosecutor under the authority of the Minister of Justice. The SCAS is a centralized non-private organization.

Within the SCAS, different units dealing with people under judicial supervision are grouped together.

The Service for sanctions and measures in the community consists of two different sections:
- the Probation Service working primarily with offenders in prison and those conditionally released and with suspension of conviction and suspension of pronouncement;
- the Unit for community service for adults and juveniles.

The only volunteers involved in probation work are volunteer prison visitors, whose work is completely unregulated. Their aim is to visit prisoners and provide them with a minimum of social contact from outside of the prison. Voluntary prison visitors receive no induction training and they are not regularly supervised. At their request, they may keep contact with the offender’s probation officer.

The Probation Service works regularly with the Psycho-Social and Socio-Educational Service (SPSE) which is an internal social service for penitentiary establishments, responsible for pre-trial, as well as sentenced prisoners.

Tasks
A person kept in pre-trial detention is not allocated to a Probation officer any more, but to an SPSE officer right from the beginning of his/her stay in prison. The SPSE provides support and assistance during pre-trial detention, takes care of free legal aid and contacts the defendant’s family.
The task of the Probation Service is to supervise the conditions imposed on a person by the investigating magistrate. Within the trial and enforcement phase Probation officers may be asked to write a pre-sentence report. When community service is imposed, the Probation Service together with the General public prosecutor or his Delegate determines the nature of the community service on a case by case basis.

Regarding sentenced prisoners, probation work focuses on the offender’s attitude towards the crime for which they have been sentenced. They assess the offender’s behaviour in prison, but also provide support and assistance. Furthermore, Probation officers check the purpose of a person who requests to leave prison (for a family visit, job search etc), they write a monthly report to the General public prosecutor’s Delegate in case of suspension of a sentence and keep in close contact with the offender’s employer when he/she is on semi-liberty. Moreover at the offender’s request, the Probation officers deal with aftercare work. The Probation Service has then a close contact to the offender’s family.

**Number of staff (average numbers in 2012)**

- Probation officers: 17
- Probation Managers, all grades: 1
- Administrative support staff, all grades: 3
- Community Service Supervisors: 4
**Total:** 25

- Daily average number of offenders dealt with: 4.4
  (average caseload on 31.12.2011: 76 offenders/Probation officer)

**New developments**

- Bill on the reform of the prison administration (based on the European Prison Rules)
- Bill on the reform of the enforcement of sentences through the introduction of a chamber for enforcement of sentences (*chambre d’application des peines*).
- The construction of a third prison for pre-trial detention (*maison d’arrêt*) operational by 2017
- Increased involvement and use of probation in “judicial control” as an alternative to pre-trial detention
- Increased use of Pre-sentence reports
- A law on probation
- Probation during the different stages of the criminal procedure
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<tr>
<th>Activity</th>
<th>Pre-Trial Phase</th>
<th>Trial and Enforcement Phase</th>
<th>Post Release Phase</th>
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<td>Preparing pre-sanction report</td>
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<td>Supervising etc. sanction of probation</td>
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<td>Supervising etc. conditional sentence</td>
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<td>Supervising etc. special measures drug addicts</td>
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<td>Supervising etc. community service</td>
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<td>Supervising training or learning projects</td>
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<td>Interventions with young offenders</td>
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<td>Supervising etc. suspended sentence</td>
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<td>Assistance/support of offenders in prison/detention</td>
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<td>Preparing pre-release reports, prisoners</td>
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<td>Supervising conditional release/parole</td>
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<td>Supervising post custody, sex offenders</td>
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<td>Preparing victim impact reports</td>
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(Footnotes)

1. Not Available
2. Electronic monitoring has been piloted in Luxembourg since July 2006. A new draft Law which has yet to be approved by Parliament, will finally provide a legal basis for this supervisory activity (« Projet de loi portant réforme de l'exécution des peines et modifiant: le Code d'instruction criminelle; le Code penal; la loi modifiée du 7 mars 1980 sur l'organisation judiciaire, et la loi modifiée du 29 avril 1999 portant creation d’un droit à un revenue minimum garanti »).
4. 1 criminologist, 17 Probation officers, 2 secretaries
5. 4.5 psychologists, 7 graduate educators, 4 social workers, 2 educators (seconded by the Ministry of Family), 1.5 administrative assistants and 5 sports instructors
6. Figures from 2008-2009
7. Average of 74 interviews/ month per SPSE staff member, figures from 2010-2011