



**CONSEIL NATIONAL
DES COMPAGNIES D'EXPERTS DE JUSTICE**

REPORT

**ACCESS TO JUDICIAL EXPERTISE
IN CRIMINAL MATTERS
IMPLYING MORE THAN ONE MEMBER STATE,
ESPECIALLY IN SERIOUS CASES
AND ORGANISED CRIME**



AGIS 2005

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Freedom and Security

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INTRODUCTION

The AGIS programme adopted by the European Commission on 22 July 2002 aids police, customs and judicial cooperation in criminal matters and supports the efforts of the professionals, while contributing to the development of European policy in this field.

The National Federation of Companies of Experts appointed to the Appeal Courts and Administrative Jurisdictions, which then became the National Council of Companies of Judicial Experts (CNCEJ), made an application for a grant concerning “reflections on the needs in judicial expertise and the implementation of projects on a European scale to facilitate the use of expertise, especially in cases implying several member states” (art. III 1. 1.g of the AGIS Programme).

Following the signing of a grant agreement on the 27 July 2006, the CNCEJ held meetings with the Liaison Judges on detachment to the Ministry of Justice in Paris, and also with a number of associations of experts in Europe, some of whom were members of “EuroExpert”.

The associations are situated in 12 Member States, of which two recently entered the European Union. The states are Austria, Belgium, The Czech Republic, Eire, France, Germany, Hungary, Luxembourg, The Netherlands, Portugal, Spain, and the Jurisdiction of England and Wales.

Almost half of the European Member States were covered in the study. It seemed initially more appropriate to concentrate on those countries who had co-operated in the past.

The study commenced with a survey of expert practice in these States, which included the possible establishment of lists, methods of appointment and the instructing of experts, their status....

The study sought to discover how an expert based in one Member state might work on a question, of an international nature, at the request of a Judge from another Member State. In particular, how could this expert benefit from the authority and powers necessary for him to carry out his mission and what procedural rules should apply? In what form and in what way should he report and in what language?

The study also included a questionnaire to be completed by the 12 participating countries. Their responses allowed the identification of problems, the collection of suggestions and their regrouping and analysis in order to propose recommendations.

The questions were the following :

- 1/ What are the needs and requests concerning language ?
- 2/ Who appoints experts in each Country ?
- 3/ What are the criteria for selection and inscription on an official list ?
What is the process ?
- 4/ How long is an expert appointed for ?
- 5/ Who does an expert report to ?
- 6/ Who is responsible for the discipline of experts and who can strike them off ?
- 7/ What authority does an expert have ?
- 8/ What authority should a European Judicial Expert need ?
- 9/ Any other comments ?

In annexe to this report one will find the contributions of the national associations participating:

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The content of this report, based upon the answers to the questions posed both to the judges and experts is as follows :

- the survey of expert practice in 12 European countries,
- a résumé of propositions made during the survey,
- conclusions and propositions.

CHAPTER I

THE SURVEY OF EXPERT PRACTICE IN THE EU

The following table summarises the responses to the questions concerning expert practice in the 12 countries of the European Union in lines 2 to 6. These answers give rise to the following comments.

All the countries questioned use experts to advise judges concerning evidence.

Expert practice is divided into two groups according to whether they practice in a Romano-Germanic legal tradition or those of Common Law Countries.

In the countries with a Romano-Germanic tradition, the expert is the judges expert (this not being generally considered as an obstacle in that the parties themselves are assisted by private experts) ; most experts who offer to undertake judicial expertise are submitted, according to the state, to a more or less rigorous selection process, then procedural training, following which their name is placed upon a regional or national list, or the judiciary is otherwise informed.

In Common Law Countries, the expert is generally appointed by the parties. The well known English case of the *Ikarian Reefer* laid down guidelines for expert witnesses which have been adopted in many countries throughout the common law world and have effectively been incorporated into the Part 35 Civil Procedure Rules Practice Direction which is applied by the civil Courts in England & Wales. These include obligations to be impartial and objective. Under the Criminal Procedure Rules (CrPR) which apply in England & Wales (and just the same as in civil practice) an expert has a duty to help the court to achieve the overriding objective of dealing with cases justly, by providing objective, unbiased opinion on matters within his expertise – and this is a duty which *overrides* any duty that he owes to the person from whom he receives instructions or by whom he is paid. It should be noted that in criminal cases the advance and express permission of the court for a party to appoint an expert (as required in civil cases) is not required in criminal cases.

The approved expert may intervene in private consultations with a party, so long as they respect a Code of Practice such as those developed by EuroExpert and applicable to all experts who are members of associations belonging to EuroExpert. These rules are similar to those established by the CNCEJ for French Experts, although they are in a more condensed form.

The Code of Practice is the common denominator of all experts in the different countries of the European Union who replied to the survey. They are based upon conditions of objectivity, independence, impartiality, and competence, in accordance with the rules for a fair trial as covered by the European Convention on Human Rights.

The other common denominator is the need felt by judicial experts to regroup themselves in associations so as to, assure the very best initial and continuous training of their members and to act as their interlocutor with judicial institutions. In certain countries, such as France, the associations are consulted concerning enrolment on lists and more generally for the amendment of legislation covering matters of procedure and the status of the Expert.

Question	France	Austria (A)	Belgium (B)	The Czech Republic (CZ)	Germany (D)
1	French + 1 other major Euro language. Report to be in French and translated by technical translator	Foreign court language plus one other major Euro language	Foreign court language and translation if necessary	English + Czech	Home language plus translation
2⁽¹⁾	(a) Official List (b) Court	(a) No Official List (b) Court from Publicly Certified Experts	(a) No Official List (b) Court or Public Prosecutors	(a) No Official List (b) Court	(a) No Official List (b) Court from Publicly Certified Experts
3	3 I's ⁽²⁾ Judicial discretion High Competence	3 I's ⁽²⁾ Public Certification High competence	3 I's ⁽²⁾ 5 Years Experience + preferred ISO EN 17024 Compliance	3 I's ⁽²⁾ Judicial discretion High competence	3 I's ⁽²⁾ Public Certification High competence
4	2 years then 5 years	5 years then 10 years	Case by Case	No time limit	3 years then 5 years
5	Court	Court	Court	Court	Court
6	Court/ Public Prosecutor/ Prof Assoc	Court/ Public Prosecutor/ Prof Assoc	Court	Court/ Ministry of Justice	Court/ Public Prosecutor/Prof Assoc
7	Court	Court	Court	State	Court
8	Powers Rogatory/ European Judicial Instruction to Expert	It depends	None	Rogatory/ Investigative powers	All necessary authority – but not investigation unless Court approved
9	Common Code Art 6 Compliance Expedition		Who pays the fees when expert in foreign arena?	Independent verification of standards by Professional body	

(1) The answers under (a) relate the general point as to whether there is or is not an official list of experts (i.e. it being mandatory to appoint from that official list save in exceptional circumstances).

The answers under (b) relate to the appointment or engagement of an expert for a specific case..

(2) Independance, impartiality, integrity

Question	England & Wales (GB)	Hungary (H)	Ireland (IRL)	Luxemburg (L)	Netherlands (NL)	Portugal (P)
1	Foreign court language and translation if necessary		English	French + German+ English	English + 1 other language	
2 ⁽¹⁾	(a) No Official List (b) Parties (with permission from Court)	(a) Official List (b) Court	(a) No Official List (b) Parties	(a) No Official List (b) Court	(a) No Official List (b) Public Prosecutor	(a) No Official List (b) Court or Parties
3	3 I's ⁽²⁾ Judicial discretion High competence	3 I's ⁽²⁾ + 5 Yrs + Chamber m'ship High Competence	3 I's ⁽²⁾ Judicial discretion High Competence	3 I's ⁽²⁾ + Diploma + High Competence	3 I's ⁽²⁾ + CPD compliance High Competence	3 I's ⁽²⁾ High Competence
4	Case by Case	5 years	Case by Case	Case by Case	Case by Case	Case by Case
5	Parties directly and ultimately to the Court		Parties	Public Prosecutor/ Court	Public Prosecutor/ Court	Court
6	Professional body – may sometimes be initiated by judicial criticism	Ministry of Justice		Court	Court/ Prof Assoc	Court
7	None	Min		Court	Court	Court
8	None	Mutual Recognition between States for the provision of expert evidence			ID Card needed. The expert had no direct authority	EuroExpert should be invited to answer this question
9	Have regard to civil law and common law system convergence			Domestic Court + European certification	Judicial Presumptions to be made in respect of a party not co-operating with an expert	

(1) The answers under (a) relate the general point as to whether there is or is not an official list of experts (i.e. it being mandatory to appoint from that official list save in exceptional circumstances).

The answers under (b) relate to the appointment or engagement of an expert for a specific case.

(2) Independence, impartiality, integrity

CHAPTER II

RÉSUMÉ OF PROPOSALS

An analysis of the responses to the survey by each association, indicates the origins of law applicable in the country.

1. LANGUAGE

Several associations considered that the report should be written directly by the expert in the language of the instructing judge or party. However, frequently this will not be possible and therefore it will need to be translated by a competent certified translator. Some suggested that it might be helpful for experts to have good oral English for general communication purposes with a foreign judge, in the same way that airline pilots and sea captains are also required to speak English.

Certain countries insisted that measures be taken so that the translation did not corrupt the experts thoughts, especially in highly technical matters. They also spoke of the additional costs involved.

The Irish experts considered that the opinion of an expert carried more weight if it was in English.

2. THE STATUS AND CONDITIONS OF INTERVENTION

The responses considered the various practical aspects of an expert undertaking his investigation under the best possible conditions.

The Dutch Register (Holland) suggested that some form of European Experts Identity Card might be useful.

The Association from the Czech Republic suggested that an “expert” should be granted the authority of an agent of the Ministry of Justice or Government Agent.

The Academy of Experts (England & Wales) stated that until the definition of a European Judicial Expert is formulated, it would not be appropriate to consider other issues, which in any case, should take into consideration the two legal systems existing within the European Union and must take their convergence properly into account

The CNCEJ (France) suggested that a “European Rogatory Commission” or a “European Justice Order” addressed to the expert would be very useful. This would allow the expert to carry out his mission unhindered and if necessary under Police protection. The expert having been chosen from a list, having a common nomenclature, in all countries.

Rogatory Commissions already exist for Judges and the Police at an international level, but French experts feel that these could be extended to cover European Judicial Experts.

One remark should be considered from a purely legal position. A Dutch Judge suggested that if an expert encounters non-cooperation from a party whom the expert should hear, the expert notes this in his report and the judge should be authorised to draw any appropriate conclusions.

3. ETHICS AND COMPETENCE OF EXPERTS

The German Association (BVS) suggested that at a European level of expertise, experts should comply with the “EuroExpert” minimum standards especially the “Code of Practice”.

The Association from the Czech Republic suggested that verification of expertise should be carried out by a professional association to guarantee standards.

The Hungarian Chamber of Juridical Experts which represents all Experts of the professional sector in Hungary went further. One of their conditions of the registration of juridical experts is compulsory chamber membership.

The CNCEJ of France considered that European Experts should have a Common Code of Practice in order to assure the objectiveness, independence and impartiality of all experts. This will be in conformity with Article 6 of the European Convention on Human Rights.

For the CNCEJ the Expert must have first class professional experience and must respect the requirements of fair procedures.

4. OTHER MATTERS

The Belgian Association (ABEX) suggests that the costs and expenses of experts should be paid by the European partner that has requested it.

The Luxembourg Association noted that the Instructing Country should cover the costs involved in the instruction and that the expert should receive an advance on expenses.

Note

For further details concerning the responses summarised above, consult the Reports by Country in the annex, which includes the EuroExpert “Code of Practice”. They usually include a profile of each national association.

CONCLUSIONS AND PROPOSITIONS

The reflections and studies which were undertaken concerning access to cross-border expertise in criminal matters in the European Union lead the CNCEJ to make propositions at different stages of an expertise.

- the choice of the expert,
- the instructions and the expert's mission
- undertaking the mission
- the report and conclusion of the mission

Several associations stated that as a preliminary agreement on the definition of a European Judicial Expert was essential. The CNCEJ considers that even without such a definition, it is possible to put in place the practical rules, as developed below, which will be the subject of collaboration between states, while leaving open the question of the principle of a European Judicial Expert.

Nevertheless, the adoption of a Code of Practice as presented by the German Association, and existing for the members of EuroExpert in a simplified form and for the CNCEJ in a more complete form, should be the object of a further specific study, which will become an element in the definition of the European Judicial Expert.

1. THE CHOICE OF THE EXPERT

A magistrate in a country would be able to identify an expert having a specialist technique in another country of the European Union, if and only if, each country adopts a list having a nomenclature of expert's specialities which are common within the Union. Such a nomenclature is proposed as follows.

A – AGRICULTURE – AGRO-FOOD BUSINESS – ANIMALS – FORESTS

- A.1. Agriculture
- A.2. Agro-Food business
- A.3. Rural development and facilities
- A.4. Animals other than Livestock
- A.5. Aquaculture
- A.6. Biotechnologies
- A.7. Stock breeding
- A.8. Horticulture
- A.9. Snow and avalanche
- A.10. Agricultural pollution and management, nuisances
- A.11. Fishing – Hunting – Wildlife
- A.12. Forestry
- A.13. Viticulture and oenology
- A.14. Veterinary health

B – ARTS, CULTURE, COMMUNICATIONS AND MEDIA

- B.1. Hand writing
- B.2. Genealogy
- B.3. Work of Art and
- B.4. Cultural productions and communication
- B.5. Copyright
- B.6. Sport

C – BUILDING – PUBLIC WORKS – PROPERTY MANAGEMENT

- C.1. Building
- C.2. Building equipment
- C.3. Civil engineering
- C.4. Public works
- C.5. Topometry

D – ECONOMY AND FINANCE

- D.1. Accounting
- D.2. Business evaluation and social rights
- D.3. Finance
- D.4. Business management
- D.5. Social management (*Industrial disputes*)
- D.6. Taxation

E – INDUSTRY

- E.1. Electronics and computing
- E.2. Energy and utilities
- E.3. Pollution
- E.4. Mechanics
- E.5. Metallurgy
- E.6. Industrial products
- E.7. Transport (Equipment)
- E.8. Transport (Use and users)
- E.9. Patent rights

F – HEALTH

- F.1. Medecine
- F.2. Psychiatry
- F.3. Surgery
- F.4. Medical imagery and biophysics
- F.5. Medical biology and pharmacy
- F.6. Odontology (dental surgery)
- F.7. Psychology
- F.8. Midwives and medical auxiliaries

G – LEGAL MEDICINE, CRIMINAL AND FORENSIC SCIENCES

- G.1. Medical forensics
- G.2. Scientific Investigations and techniques
- G.3. Weapons – Ammunition - Ballistics

H – INTERPRETATION – TRANSLATION

- H.1. Interpretation
- H.2. Translation
- H.3. Sign Language

National lists using the nomenclature proposed should include the experts name and note the foreign languages understood by “read”, “spoken”, “written”.

There is the question of whether one should go further in setting up not just state lists, but a common European list? This proposition today appears to be premature. It would indeed require the definition of the status of a European Expert capable of cross-border interventions. In addition the constitution of such a list and its updating would imply heavy administrative measures.

However, the existence of national lists, with a common nomenclature and their setting up and maintenance by each Member State, should, without administrative constraints, answer the need expressed.

2. INSTRUCTIONS AND MISSION

Prior to instructing the selected expert, it seems necessary that the judge should make contact with the expert, so as to check his availability and also if the mission is within his competence.

The instructions of the judge should be made in the form of a European Rogatory Commission or a European Instruction Order and written in the language of the country of the judge, and translated into the language of the expert.

These instructions should include a time limit, fix an advance on the costs and fees of the expert and also state who will be liable for this sum, as well as instructing the expert to look for proof and to study the case.

3. EXECUTION OF THE MISSION

A European Rogatory Commission or a European Instruction Order should allow the expert to take instructions and be able to undertake his mission. However a question remains concerning the procedural rules to be applied by the expert, whether they should be those of his own country or those of the judge who issued the instructions.

The proposal made is to retain the procedural rules of the country of the expert, as one cannot imagine how an expert from a state having a Romano-German tradition could know and thus act in respect of Common Law and vice-versa.

4. THE REPORT AND THE CONCLUSION OF THE MISSION

The CNCEJ proposes that the report should be written in the language of the instructed expert and translated by a translator of the country of the judge who issued the instructions. The translator appointed by the instructing judge should be sworn-in and have the required competence for the faithful translation of technical documents employing specialist language. A proposition that could be considered, is of appointing a translator-interpreter who was himself a Judicial Expert.

It is at this point that an additional recommendation should be made concerning language. Indeed, while it is necessary that instructions and reports should be written in the language of the requesting country, and equally that of the expert, it would be most useful if the expert had a good understanding of spoken English, which is generally understood.

In cases where the report would be discussed in the presence of the expert at a hearing, the same translator should be present to assist him.

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France

The origins of the National Council of Experts in Justice in France date back to just over 75 years. The first Company of Experts of the Bordeaux Appeal Court was founded in 1931.

In 1947 France re-published “The Professional Code of Conduct of Experts”. In 1964 the organisation was known as the National Federation of Companies of Appeal Court Experts. In 2007, at the suggestion of the Council of State, the name became “The National Council of Companies of Experts in Justice”.

The National Council draws its members from all Jurisdictions in France including the Appeal Courts and Administrative Courts. Its members belong to multi-disciplinary regional Companies and some are also members of National Companies of the same profession such as expert Accountants or Doctors. There are about 80 Companies in all.

The National Council represents about 8500 Experts from all the different professions.

The French Answers

What language requirements will be needed? When an expert provides a report for use in foreign legal proceedings or gives oral testimony in a foreign court :

- a) *should he do so in his own language with an official translation being provided.*
- b) *or should he do so in the language of the foreign court?*

The French Experts stated that a European Judicial Expert needs to speak at least two languages. French plus another major European language. This could be Spanish, English or perhaps German, however they accepted that English was probably the language most spoken in Brussels.

An expert is expected to communicate clearly in his own language and should be able to communicate reasonably in another. An expert who is called to Court, should be able to communicate in English in most courts in Europe.

Their report would normally be written in French and then translated by a professional translator. There was some debate concerning the quality of translation.

Might it be better to have an expert from the requesting country come to France and undertake the expertise with a French Expert? Once again the question of the two experts ability to understand one another was crucial.

There was also the question of who should be the leading expert? It was generally agreed that co-experts appointed in cases in France frequently lead to difficult situations. Therefore, it was felt that under these circumstances, two experts from two different countries was possibly a recipe for disaster.

The system of using a technical translator was the preferred choice of French Judicial Experts.

Who appoints experts in each Country?

In France, the Judges of the Appeal Court meet each year as a College in a General Meeting and pre-select future experts for use in both civil and criminal matters. Usually about one-in-ten applicants are chosen by the Court. The process is long and the candidate will be subject to a police inquiry. Those chosen will be called to be sworn-in as the Court's Expert.

Those who are sworn-in are appointed as a novice expert for a period of two years after which they re-apply and are usually then admitted to the Courts Official list of Experts for a period of five years. At the end of five years all experts come up for review.

This renewal procedure is important, as it makes sure that all experts on the Court Lists, remain at the top of their profession.

Judicial experts in France are therefore the Court's expert and are frequently described as the Judge's "eyes and ears".

The Court will appoint an expert that it has selected from the List to work on a case. Occasionally a judge may appoint an acknowledged specialist who is not on the List, but this is exceptional and the Judge is required to explain his choice.

What are the criteria for selection and inscription on an official list? What is the process?

As was previously stated, French Experts are considered as the "Courts Expert". Judges in both Civil and Criminal matters cannot be expected to be knowledgeable on every subject. The Expert is therefore considered as the very best technician available to the Judge.

The process begins with the candidate writing to the Public Prosecutor of the County Court, submitting an application to become an Expert. The candidate will include copies of all their professional and academic diplomas, as well as some personal information. Their CV will be studied closely. Only the top specialists are accepted.

An expert is expected to be an honourable and respectable person. Therefore the Court will ask the Police to carry out an investigation and submit a report.

The complete file on each candidate is transferred to Chief Prosecutor of the Appeal Court, who after verification, submits the application to the President of the Appeal Court. Finally the President presents the application to the General Assembly of Judges which sits once a year to consider applications. Usually about one-in-ten applicants are chosen by the Court. If the General Assembly finds the application acceptable, the Expert will be called to be "sworn-in" shortly after.

During the probationary period the Expert has a duty to learn the different legal procedures that are involved and undertake some legal training, as applied to expertise. This is usually provided by the Company of Experts of the Appeal Court.

It should make clear that an expert who is appointed by the Court initially as a novice, is only a novice in procedural matters. The expert will be already considered as a top specialist and able to act as the “eyes and ears” of the Judge.

It is generally accepted that judges look for competence. They look for real experience in specific fields. A young doctor may have first class diplomas and be setting out on what people expect to be a promising career, however he remains a young doctor.

A candidate must therefore have acquired some real professional experience prior to applying to the Court. It seems generally accepted that normally a person will practice as an expert in addition to their usual professional activity. An analysis of ages in one Company of Experts noted a Gauss curve commencing at about the age of 40 and reaching a peak at the age of about 55.

The Courts prefer their Experts to be independent of insurance companies, as this may create possible conflicts of interest. There is some tolerance on this question, but an insurance company expert will usually have little chance of becoming appointed a Court Expert.

How long is an expert appointed for?

Initially an Expert is appointed as a novice for two years, after which their situation is subject to assessment. Following this, an expert will normally be appointed to the List as a full expert for a period of five years.

Every expert must reapply formally to the Court submitting a file for re-examination every five years. Failure to reapply is considered as resignation as a Court Expert.

While an expert is on the List, they are entitled to use the legally protected title of “Judicial Expert to the Appeal Court”. If an expert resigns before retirement they will lose the right to use this title.

Who does an expert report to?

In criminal cases the Expert is appointed by the Judge of the Criminal Court. The Expert therefore submits his report to the Judge who has appointed him. However in the interests of respecting contradictory procedure a copy of the pre-report is submitted to all parties involved.

Who is responsible for the discipline of experts and who can strike them off?

The President of the Appeal Court or the Chief Prosecutor is responsible for the control of Experts in most cases.

Article 6-2 of the law dated 11/02/2004 states :- “Any infringement of the laws and rules relating to their profession or mission as an expert, any failings in integrity, or honour, even if concerning matters outside the missions which were entrusted to him, expose the expert , who is the author to disciplinary procedures”.

The withdrawal or striking-off of the expert will not prevent further proceedings if the matters in question were committed while he was exercising his functions.

The disciplinary measures provided for are :

1/ A warning

2/ The temporary standing down of an Expert for a maximum of three years.

3/ The Permanent Striking – Off from a National or Appeal Court List and withdrawal of the Honorary Title, which may be awarded to an Expert after the age of 65.

In other Jurisdictions it is usually the President who is responsible for discipline and the same sanctions will apply.

What authority does an expert have?

The Expert in Criminal cases always carries out his mission under the authority of a Judge.

Should the Expert encounter difficulties or obstacles he may call upon the Judge for assistance. This can include the Judge and Police Officers accompanying the Expert.

However an Expert should have a degree of what one might call “natural” authority. Perhaps it is for these reasons that most experts appointed to the Court are mature and frequently in their forties.

If an Expert, for example, is refused entry to a building or is refused access to a document, then he should inform the Judge (probably the Investigating Judge) immediately. The Judge will then be able to take the appropriate measures.

What authority should a European Judicial Expert need?

The French Experts suggested that a European Rogatory Commission or a European Justice Order addressed to the expert would be very useful. This would allow the expert to carry out his mission unhindered and if necessary under Police protection.

We are aware that Rogatory Orders already exist for Judges and the Police at an international level, but French experts feel that these could be extended to cover European Judicial Experts.

Other comments

It is considered that European Experts should have a Common Code of Conduct in order to assure the objectiveness, independence and impartiality of all experts. This will be in conformity with Article 6 of the European Convention on Human Rights.

The Expert must have first class professional experience and must respect the requirements of contradictory procedure.

Finally a European Judicial Expert in Criminal matters must deal with the expertise rapidly.

The List

The National Council thought it might be useful to include the official list of the different specialities of experts. This is the basic simplified version, which covers the different professions.

It should be noted that, for example, that the category C1 which deals with building and public works, has 30 sub-sections covering disciplines such as geology, project management and architecture.

SIMPLIFIED LIST OF EXPERT SPECIALITIES "REVISED"

A – AGRICULTURE – AGRO-FOOD BUSINESS – ANIMALS – FORESTS

- A.1. Agriculture
- A.2. Agro-Food business
- A.3. Rural development and facilities
- A.4. Animals other than Livestock
- A.5. Aquaculture
- A.6. Biotechnologies
- A.7. Stock breeding
- A.8. Horticulture
- A.9. Snow and avalanche
- A.10. Agricultural pollution and management, nuisances
- A.11. Fishing – Hunting – Wildlife
- A.12. Forestry
- A.13. Viticulture and oenology
- A.14. Veterinary health

B – ARTS, CULTURE, COMMUNICATIONS AND MEDIA

- B.1. Hand writing
- B.2. Genealogy
- B.3. Work of Art and
- B.4. Cultural productions and communication
- B.5. Copyright
- B.6. Sport

C – BUILDING – PUBLIC WORKS – PROPERTY MANAGEMENT

- C.1. Building
- C.2. Building equipment
- C.3. Civil engineering
- C.4. Public works
- C.5. Topometry

D – ECONOMY AND FINANCE

- D.1. Accounting
- D.2. Business evaluation and social rights
- D.3. Finance
- D.4. Business management
- D.5. Social management (*Industrial disputes*)
- D.6. Taxation

E – INDUSTRY

- E.1. Electronics and computing
- E.2. Energy and utilities
- E.3. Pollution
- E.4. Mechanics
- E.5. Metallurgy
- E.6. Industrial products
- E.7. Transport (Equipment)
- E.8. Transport (Use and users)
- E.9. Patent rights

F – HEALTH

- F.1. Medicine
- F.2. Psychiatry
- F.3. Surgery
- F.4. Medical imagery and biophysics
- F.5. Medical biology and pharmacy
- F.6. Odontology (dental surgery)
- F.7. Psychology
- F.8. Midwives and medical auxiliaries

G – LEGAL MEDICINE, CRIMINAL AND FORENSIC SCIENCES

- G.1. Medical forensics
- G.2. Scientific Investigations and techniques
- G.3. Weapons – Ammunition - Ballistics

H – INTERPRETATION – TRANSLATION

- H.1. Interpretation
- H.2. Translation
- H.3. Sign Language

CODE OF CONDUCT

The membership of a Company, itself a member of The National Federation of the Companies of Judicial Experts, implies the undertaking to respect the following Code of Conduct.

The companies, members of the Federation may, according to the discipline practiced and if considered necessary, adopt provisions which are stricter than those stated herein.

I – THE PERSONAL DUTIES OF THE EXPERT

I – 1) – An expert being a member of a Company, itself a member of the Federation, is a person who is experienced in an art, science, technique or a profession, entered on one of the lists provided by the law or regulatory texts, who the judge instructs to examine details and provide a professional opinion necessary to resolve a case.

An expert entered on the official list or an honorary expert, during the period for which he is under instruction, participates in the public service of justice. He therefore has the status of Judicial Expert.

I – 2) – An expert entered on an official list does not practice, as such, a profession, but within the defined limits of their competence, an activity corresponding to the mission for which they are appointed.

An expert called and having accepted his mission undertakes to respect the texts which are applicable to the activities of experts.

I – 3) – An expert appointed, should not conceive solutions in the place of the parties, or supervise the undertakings thereof; within the limits of his instructions, he can give his opinion on propositions made by the parties to resolve the cause of the dispute.

An expert can, in urgent cases or in cases of danger noted by himself, propose to the judge that the party concerned be authorised to carry out, all rights and means of the parties being reserved, under the direction of any qualified professional of the choice of the concerned party, works or undertakings that they consider necessary.

When an expert notes a danger or risk, he should warn the party or parties concerned while respecting fair procedures and reserves, and should the case so require it, respect professional secrets. If necessary, he will inform the instructing judge.

I – 4) - An expert who has accepted a mission has the duty to fulfil it until complete execution.

When he is unable for a legitimate reason to continue with the case, the expert should, as soon as possible, inform the Judge and give the reasons for the impediment,

I – 5) - An expert has the duty to maintain the technical and procedural understanding necessary for the satisfactory accomplishment of his activities as an expert.

I – 6) - An expert should carry out his mission with impartiality. He should proceed with dignity and correctness while ignoring any opinion or subjective appraisal.

I – 7) - An expert should remain absolute independent, not yielding to any pressure or influence of whatever nature.

He should not accept any private mission as consultant or arbitrator, at the request of any of the parties, which is linked directly or indirectly to the judicial instructions that he has received.

I – 8) – In civil matters when, in the fulfilment of his mission, the expert finds himself confronted with a question that is beyond his competence:

- take the advise of another competent technician in the speciality concerned, after
- consultation with the parties.

* request the judge to appoint the nomination of a co-expert,

* request the judge to separate that part of the mission which is outside of his competence

In administrative or penal matters when the difficulty belongs to a speciality distinct from his own, the expert requests the judge to designate a qualified person.

I – 9) - An expert writes a clear, precise and complete report, including a short conclusion answering all the points in the case, and should have annexed everything that is necessary for the full appreciation and comprehension of his report.

In a case of disagreement of principle or in technical matters, the expert should note this and indicate the solution(s) that he used in formulating his opinion.

An expert cannot modify the deposited report. Nevertheless, he should communicate as soon as possible any material errors made, in a note to all those who received the report.

I – 10) - An expert should carry out his mission in the minimum amount of time compatible with the type of the case and respect any time limit. If this is impossible, he should contact the judge and request more time.

I – 11) - An expert must carry out his investigations personally.

Nevertheless, for some practical matters he can be assisted by collaborators or outside organisations, under his supervision.

Except by prior agreement of the parties, or because of technical necessity, his presence is obligatory.

In all cases he will give in his report the names and qualifications of these collaborators or outside organisations, as well as their entrusted tasks.

I – 12) – Within the limits of the mission and the obligations of the Code of Conduct of his own profession, the expert is not bound by any professional secret with regard to the instructing judge.

The professional secrecy which binds the expert also binds his collaborators, the temporary assistants and other persons whom he may consult, after they have been informed of this.

It is advisable that all collaborators from outside his office and non enrolled on lists, undertake in writing to respect the confidentiality of the expert (Articles 244 and 247 of the NCPC).

I – 13) - An expert must not advertise that he is a judicial expert. Mention of his inscription on the list can be used on a letter heading and on his business cards in accordance with the terms set out in Article 3 of the Law of the 29th June 1971, amended 11th February 2004.

If he belongs to a Company, a member of the Federation, he can mention this.

II – DUTIES OF THE EXPERT TOWARDS JUDGES AND JUDICIAL AUXILIARIES

II – 14) - An expert defers to judges and is courteous towards judicial auxiliaries.

II – 15) – He remains entirely independent and gives his opinion with honesty and professional integrity, without concern for any comments that may be forthcoming.

II – 16) – The technical advice expressed by the expert does not bind the judge and the report may be freely discussed and criticised. If the expert is called by the judge to explain his opinion, he does so in total independence, and if it is subsequently shown that his opinion was partially or totally wrong, he will accept this and will provide, if needs be, the information or documents that were the cause of error.

II – 17) – The nomination of the expert is the absolute right of the judge. The expert must refrain from prospecting or making proposals with regard to obtaining instructions.

III - DUTIES OF THE EXPERT TOWARDS THE PARTIES

III – 18) - An expert should be correct and courteous to all parties.

III – 19) - An expert should desist if he is appointed in a case where one of the parties has already consulted him, and in all cases where he feels that he is not totally independent or does not appear independent.

If in doubt; the expert should inform the parties of possible difficulties and should desist if at least one of them considers that the problem is real.

III – 20) – When a party raises an objection to the judge concerning the expert and provides supporting documentation, the expert will not show any resentment towards the party who requested his desistment, and will place himself at the disposition of the judge, and may offer any observations.

III – 21) - An expert reminds the parties at the beginning of the instructions of his mission. He proceeds using clear language and adapted to his interlocutors. He explains, as far as possible, the anticipated order of his operations.

III – 22) – Except in emergencies, parties should be called with sufficient time for them to prepare for the meeting.

If one of the parties requests a delay, the expert alone will consider the motives submitted, and according to requirements, will set another date immediately.

III – 23) – When an expert believes that he should proceed with certain verifications in the parties absence, he may do so, but he must immediately inform them of the verifications made, and mention it in his report.

III – 24) – If a person consulted refuses to supply a document or information, the expert should notify the judge if this act is of a nature which will form an obstacle to the continuation of the mission.

III – 25) – Excepting special provisions applicable to certain jurisdictions, or in the cases where secrecy is imposed, the expert will respect the principles of a fair procedure and remind the parties and their advisors of this obligation.

III – 26) – If the expert believes that he should accept a request from the parties to carry out a constatation or specific verification, he may do so, under the double condition, that this request is relative to the instructions that he received and that they may be useful. If the expert does not accept the request and the request is repeated in writing, he must give his reasons in his report.

III – 27) – When he is appointed in civil matters, while not delaying the execution of his instructions, the expert should do nothing which might impede any possible agreement between the parties,

In such a case, and after having verified that the agreement of the parties covers all the points in his instructions, he must advise the judge.

III – 28) – Before the deposit of his report, the expert must inform the parties of his general opinion, it being their responsibility to make any observations, to which the expert will reply in his final report covering his instructions. The use of a Pre-report is recommended.

III – 29) – After the deposit of his report, the expert returns all stamped documents which were addressed to him according to a list provided by the parties. He may require a receipt for the return of the documents.

III – 30) - An expert appointed may receive no sum or other advantage, in any form whatsoever, that is not specified in his instructions or covered in the texts.

IV - DUTIES OF THE EXPERT TOWARDS HIS COLLEAGUES

IV – 31) – When several experts are appointed in college for the same case, they should work conjointly, except if otherwise instructed.

However, when experts with different specialities are involved, they can operate separately if they wish, and if the parties accept by common agreement, on the condition that they present a report together at a general meeting of experts.

The usual custom is that it is the first appointed in the case, or the one who has been entered on the list for the longest time, who will normally take charge of matters.

The expert report is a joint document, but when an expert does not believe that he should accept the advice of the others, then he must formulate his own advice in the report.

IV – 32) – In the case where a dispute occurs between two or more expert members of the same Company affiliated to the Federation, they should accept to present the matter to the President of the Company concerned who will try to reconcile them and they will accept his council and opinion.

If the dispute occurs between members of different Companies affiliated to the Federation, they will refer to the Presidents of the Companies concerned, who will themselves, if required refer to the President of the Federation.

IV – 33) - An expert member of a Company, itself member of the Federation, at the request of the President of the Company, within the conditions given by the President, undertakes to give any assistance to one of his colleagues who is temporarily indisposed or to his family without seeking any personal profit.

V – PRIVATE CONSULTATIONS OF EXPERTS RECORDED ON THE LISTS

Introduction

Under Article 6-1 of the European Convention on Human Rights and Fundamental Liberties, all citizens have a right to a fair hearing.

It can therefore be useful for him to be advised by an expert entered on the judicial list, who is technically and procedurally competent.

In this context, one should consider the conditions under which enrolled experts may technically assist parties.

V – 34) - The expert consulted will have the duty to give his opinion freely and without compromising either truth or honour

He will avoid all forms of economic dependence, all risks of appearing dependent and will state clearly the conditions of his appointment within his report.

V – 35) - An expert member of a Company itself a member of the Federation is prohibited from accepting, except in exceptional circumstances and outside any context of dependence and permanence, instructions of any nature from insurance bodies acting as insurers.

Moreover he undertakes to comply with the strictest rules of the Company of which he is a member or of the Jurisdiction to which he is attached.

V – 36) – Experts entered on the official Courts list can be called for consultation on a private level under the following circumstances:

- * before the beginning of a case,
- * after the beginning of a case and before the designation by a judge,
- * during the judicial expertise,
- * after the deposit of the report of the appointed judicial expert.

V – 37) – If no proceedings have begun or before an expert is instructed, it is recommended that the expert consulted states his opinion concerning the state of matters which were brought to his attention, at the date which he declares. This opinion should be given objectively and in total independence.

The opinion should state the list of documents which were consulted.

In all cases, the expert consulted privately cannot subsequently accept judicial instructions concerning the same matter.

V – 38) – If the case concerns assisting a party while an expert instructed by the judge has not yet finished his investigations, he can only in exceptional circumstances accept to act as private consultant. In this case, the consultation will take place in an attitude of replying objectively and in a spirit of loyalty and confraternity with regard to the judicially instructed expert, whom he will inform prior to any intervention.

A privately consulted expert should follow the Code of Conduct.

He cannot, in the absence of the party or the lawyer who consulted him, assist at any investigations of the judicially instructed expert, unless he previously produces papers confirming his appointment.

His private observations cannot be used in the observations of the party who consulted him, unless they are reproduced in full.

V – 39) – If a judicial expert has already deposited his report, the private consultant who gives a written opinion to the party, concerning the investigations made by his colleague, should do so in a polite form avoiding any personal criticism that is hurtful or not useful.

He will obtain confirmation in writing from his principal, that the documents made available to him were produced to the judicial expert; if he is obliged to use new documents, the private consultant may do so, but should mention this in his report.

The private consultations undertaken under the above conditions should only be in exceptional circumstances. It is, in any case, imperative that they are neither sought or solicited.

V – 40) - A privately consulted expert will limit himself to the production of an opinion for the party who consulted him.

He should, in the case of discovery of new documents or information of which the judicial expert had no knowledge, indicate their importance in the solution of the case in a polite form avoiding any personal criticism that is hurtful or not useful.

In cases of material errors revealed in the report of a judicial expert, or in the case of a divergence of opinion, he will limit himself to revealing it and explain the resulting consequences.

The opinion of a consultant expert can only concern technical or scientific matters.

VI - SANCTION

VI – 41) – All breaches of the Code of Conduct will be sanctioned by the Companies, members of the Federation, following their statutory provisions, excepting appeal to the National Federation, according to the conditions set in the Internal Regulations.

EUROEXPERT

EuroExpert

c/o Institut für Sachverständigenwesen e.V.

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EuroExpert

The Organisation for European Expert Associations

Formation and History

EuroExpert was formed as a not for profit organization in 1998 by 'The Academy of Experts' (TAE), United Kingdom The 'Fédération Nationale des Compagnies d'Experts Judiciaires' (FNCEJ), France and the 'Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e.V.' (BVS), Germany as the founders. It was registered in Luxembourg, home of the European Court and its logo registered at the EU Registry in Alicante, Spain.

For many years national organisations involving Experts and specialist expertise have sought contacts in other countries. Over recent years most organisations involving Experts and specialist expertise have tended to look beyond their national boundaries and have sought cross-frontier co-operation and recruitment. Co-operation has quite properly been growing, and this has resulted in the exchange of views and information between the organisations.

Apart from the need to co-operate and the desire to improve the quality and standards of Experts, the principal drive for progress is based on the belief that it is only a matter of time before the EC will seek to impose regulation on Experts across the EU. The philosophy of EuroExpert is that it would be better if there were self-regulation by experts and the establishment of agreed common professional standards.

EuroExpert (EE) is a membership organisation. The EE member for each State is an organisation representing a substantial body of Experts in that State and the member has to demonstrate to EE that it has appropriate standards for Experts.

Non EU countries and organisations are not forgotten. There are special facilities and membership categories to enable proper participation in the work to attain the objectives of EuroExpert. Membership categories include 'Associate', 'Correspondent' and 'Observer'. EuroExpert is a practical multi-disciplinary organisation representing European Experts.

Objectives of EuroExpert

EuroExpert, is a not for profit organization, which shall not pursue any party political objectives.

Its aims are :

1. The development, promotion and convergence of and education in common ethical and professional standards for experts within the European Union, based upon the principles of high qualification; personal integrity; independence; impartiality; objectivity and respect for confidentiality.
2. The provision of a point of contact between experts and the European Commission; the European Parliament; the European Court and other institutions of the European Union

as well as any other institution which deals at European or international levels with tasks and issues concerning the type of work which experts do.

3. Cooperation and relations with judicial and legal authorities, government departments, official and private bodies and other appropriate tribunals and organisations for the purposes of accreditation and certification of experts and other matters relevant to the work which experts do.
4. The provision of a forum for experts worldwide.

Members

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Standards of EuroExpert

For the convergence of common ethical and professional standards for experts within the European Union, based upon the principles of high qualification ; personal integrity ; independence ; impartiality ; objectivity and respect for confidentiality, EuroExpert has introduced several important standards which were adopted by its members. These are (see attachments) :

- 1.) The code of practise
- 2.) Association Standards
- 3.) Report Standards
- 4.) Mediation training standards

Code of Practice for Experts within EuroExpert

Preamble

This Code of Practice shows minimum standards of practice that should be maintained by all Experts.

It is recognized that there are different systems of law and many jurisdictions in Europe, any of which may impose additional duties and responsibilities which must be complied with by the Expert.

There are in addition to the Code of Practice, General Professional Principles with which an Expert should comply.

These include the Expert :

- ❖ Being a “fit and proper” person
- ❖ Having and maintaining a high standard of technical knowledge and practical experience in their professional field
- ❖ Keeping their knowledge up to date both in their expertise and as Experts and undertaking appropriate continuing professional developments and training

The Code

1. Experts shall not do anything in the course of practising as an Expert, in any manner which compromises or impairs or is likely to compromise or impair any of the following :
 - a) the Expert’s independence, impartiality, objectivity and integrity,
 - b) the Expert’s duty to the Court or Tribunal,
 - c) the good repute of the Expert or of Experts generally,
 - d) the Expert’s proper standard of work,
 - e) the Expert’s duty to maintain confidentiality.
2. An Expert who is retained or employed in any contentious proceeding shall not enter into any arrangement which could compromise his impartiality nor make his fee dependent on the outcome of the case nor should he accept any benefits other than his fee and expenses.
3. An Expert should not accept instructions in any matter where there is an actual or potential conflict of interests. Notwithstanding this rule, if full disclosure is made to the judge or to those appointing him, the Expert may in appropriate cases accept instructions when those concerned specifically acknowledge the disclosure. Should an actual or potential conflict occur after instructions have been accepted, the Expert shall immediately notify all concerned and in appropriate cases resign his appointment.
4. An Expert shall for the protection of his client maintain with a reputable insurer proper insurance for an adequate indemnity.
5. Experts shall not publicise their practices in any manner which may reasonably be regarded as being in bad taste. Publicity must not be inaccurate or misleading in any way.

Association Standards within EuroExpert

Within the European Union and the member associations of EuroExpert the acceptance of individual members as experts is characterised by different **procedures and designations**.

- In some countries experts are accepted by demonstrating their competence in an application procedure by the association
- other experts are registered by the courts and have to demonstrate their qualification to these authorities
- others accept members through a third party certification by private or public authorities

The experts are then called recognized, accredited, certified, registered etc.

One of the aims of EuroExpert is the

- Development,
- Promotion,
- Convergence

of and education in common ethical and professional standards for experts within the European Union, based upon the principles of high qualification. The code of Practise, adopted within EuroExpert in 2000, includes the expert being a "fit and proper" person, having and maintaining a high standard of technical knowledge and practical experience in their professional field.

To assure these high standards the associations of EuroExpert shall have the following requirements for the acceptance and maintaining of individual membership as expert:

To be registered in a EuroExpert member association the applicant has to demonstrate to the association or the relevant authorities that:

- 1.) He has appropriate qualifications, training, experience and a satisfactory knowledge of the requirements of the scope to be carried out as expert. This includes that the applicant has sufficient practical experience in his field of activity and in his scope of expertise.
- 2.) He has demonstrated his competence by submitting a proper documentation (e.g. CV, copies of certificates for all relevant Academic and Professional qualifications, work experience and experience as expert, referees, reports, training).
- 3.) He has given evidence of his competence as expert by oral, written, practical, a combination of the before mentioned methods, or other assessment, to a committee or instructed specialists with appropriate knowledge and experience in the field of activity of the applying candidate

The association shall have adopted policies which :

- a) maintain **confidentiality** of all information obtained in the process of its activities concerning membership.
- b) define a **development process** (e.g. further training, Continuing professional development) to monitor members' compliance to the actual technical and ethical standards required in the field of their expert activity.
- c) define **policies and procedures** for granting, maintaining, renewing, suspending or withdrawal of membership

AUSTRIA

HAUPTVERBAND

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Austrian Central Association of the Generally Sworn and Court-Certified Experts

Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen Österreichs

The *Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen Österreichs* (Austrian Central Association of the Generally Sworn and Court-Certified Experts) –

Hauptverband in the following – is the organization that represents the interests of all court experts in Austria. It is the umbrella organization of the 4 Austrian provincial associations of the Generally Sworn and Court-Certified Experts. Membership in the association is voluntary. Approximately 75% of all experts registered with the courts have become members of the association of their own free will. The association certainly has the highest organizational density in Europe. This applies not only to the percentage of experts that have become members but also to the uniformity of the organization which covers all special areas.

As a result, the *Hauptverband* has the best-possible basis for an excellent cooperation with the judiciary. On account of this system, the association is also well prepared to provide its members with efficient services. This situation also explains why the *Hauptverband* is in such a leading position - being THE one association for all experts in Austria.

On account of developments in Europe, especially with regard to certification and quality assurance procedures, the judiciary and the *Hauptverband* also felt that it would be of major significance to adapt quality assurance to experts, with an adequate and contemporary structure, which would help to secure the future of court-certified experts.

The *Hauptverband* works in close cooperation with the judiciary. In this connection, the *Hauptverband* is mentioned in the law on certification procedures. When the competent Court president has established, in principle, a candidate's aptitude, the candidate must take a comprehensive examination by an examination board. This board consists of a judge, who acts as Chairman, and two examiners for the special field of the candidate. The association sends one member to the certification board as examiner for the specialty in question, and it handles all the administrative work (including the administration of a group insurance policy) required for the registration process, as well as the re-certification procedure. The *Hauptverband* is therefore closely associated with these procedures.

The *Hauptverband* has drawn up a code of ethics, which the judiciary examined and approved. These rules constitute a very strict basis for the work of generally sworn and court certified experts and are binding upon experts.

Members of the *Hauptverband* are also subject to disciplinary regulations, in addition to having to observe the code of ethics. A disciplinary committee deals with and, if necessary, decides on violations of, or the non-compliance with, the provisions of the code of ethics that are brought to its attention.

Non-members must also comply with the code of ethics, because the code of ethics is binding upon all experts. Violations of the code ethics, for example committed for reasons of competition may become the subject of a legal action regarding unfair trade practices.

The *Hauptverband* as well as the judiciary take a keen interest in an ongoing and high-quality further training of the admitted court experts. A "training pass" serves as evidence for the further-training activities. It is maintained by the *Hauptverband* and shown to the respective

certification body or the competent court president in case of re-certification. All further training events must be entered into this training pass, which serves as proof of the relevant further training activities in the specific special field of the expert. An independent evaluation commission, consisting of a judge and two specialists, assesses whether the reported further-training activity in question qualifies for entry in the training pass.

Answers from Austria :

What language requirements will be needed by a European Judicial Experts?

When an expert provides a report for use in foreign legal proceedings or gives oral testimony in a foreign court :

a) **should he do so in his own language with an official translation being provided.**

b) **or should he do so in the language of the foreign court?**

Normally in a Court the communication between the Court, the Parties and other persons involved is valid only in one or several official (defined) languages and it would be preferable that the expert carries out his order in this (or these) language(s). If the Court is dependent on the specific expertise of an expert and this expert is not able to use this official language in an adequate extent it will be permissible to deliver the report and the oral testimony in the foreign court in his mother tongue by involving of a certified interpreter

A generally sworn and Court-certified expert must have a good command of the official language of the court. One further important foreign language would be eligible.

We would note that the Croatian language, is regarded as minority language but nevertheless is official in certain areas of Austria.

Who appoints experts in each country?

Generally sworn and Court-certified experts are solely appointed by the presidents of the competent local Courts of first instance. This president also maintains the list of courts's experts.

What are the criteria for selection and inscription on an official list? What is the process?

The candidate must take a comprehensive examination by an examination board, where his expertise in the relevant special field, his work experience, knowledge of the procedural law, methodology of expert opinion and his general aptitude will be examined. When the candidate has passed this examination he will be sworn in by the Court as Court expert.

How long is an expert appointed for?

The first admission to the list of court experts is limited to five years. It may then be renewed for periods of ten years each, upon application by the court expert. The continuous compliance with the originally applicable requirements for admission is checked at these intervals.

Who does the expert report to?

The expert is auxiliary of the Court, he is appointed by the Court and has to fulfil this assignment.

Who is responsible for the discipline of experts and who can strike them-off.?

The presidents of the local Courts of first instance, responsible for admission to the list of Court experts is also responsible for the discipline of experts. Only this president can delete a Court expert from the Court's list of experts. Members of the provincial associations of the Hauptverband are also subject to disciplinary regulations, in addition to having to observe the code of ethics.

What authority does the expert have (in his own country)?

The expert is auxiliary of the Court and derives his authority from the Court. The expert himself has no sovereign authority and therefore he has to contact the Court if he needs sovereign authority – i.e. for the citation of witnesses

What authority should a European Judicial Expert need ?

This question depends on the standardisation of the national codes of procedure.

Do you have any other comments ? If so please add them.**Could each country consider submitting an initial list.**

Yes, there is an official list of generally sworn and Court certified experts, see:
<http://www.sdgliste.justiz.gv.at/>

BELGIUM

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Association Belge des Experts
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FEBEX

FEBEX is a Belgian federation of expert associations who have their head offices in Belgium. It was created in 2003 as a non profit making association with its head office at 76, rue de Nord at 1000 – Brussels. Its statutes were published in the Belgian Press on the 30th June 2003.

FEBEX is made up of the following Associations :

1. **ABEX** (Association of Belgian Experts), a multi disciplinary association of experts and consultants.
2. **ARSON CLUB SUD**, an association of expert examiners.
3. **BAMTES**, an association of maritime experts and technicians.
4. **CEJA-KGSO**, a multi disciplinary association of experts responsible for judicial assignments and arbitration.
5. **CIBEX**, the Chamber of Belgian property experts.
6. **CNEAB-NCDAB**, the National College of expert Belgian architects.
7. **GABCAI**, a multi disciplinary association of experts for insurance companies.
8. **ISACA**, an international organisation whose name in English is "Information Systems Audit and Control Association; a group of IT auditors
9. **KRID**, a Chamber of Dutch speaking civil engineering experts, registered with K.VIV.
10. **U.B.G.-B.U.L.**, the association of Belgian property surveyors.
11. **ARGVS**, the association for art and antiques.

The aims of the Federation are as follows :

- 1 – to bring together all the professional organisations whose members practise the profession of expert ;
- 2 – to defend and promote common ethical and other interests of all the member organisations ;
- 3 – to investigate means of resolving problems affecting their activities ;
- 4 – to examine the professional, economic and social problems concerning the business of experts ;
- 5 – to promote the initial and continuous training of experts ;
- 6 – to promote the common certification of experts ;

- 7 – to obtain the recognition for the title expert ;
- 8 – to harmonise the qualification of the members of the expert associations while respecting the special nature of the professions which they represent ;
- 9 – to represent member organisations, at a regional, community, federal and international level, to public bodies, other organisations, international bodies and in a more general way, to any organisation, public or private which may be interested in the members activities ;
- 10 – to harmonise activities of member organisations ;
- 11 – to create and/or participate with any body having professional or common interests ;
- 12 – and generally to promote at a regional, community, federal and international level the common aims of member organisations ;
- 13 – each member organisation will keep, within its speciality, all resources concerning their own interests.

Within the framework of its activities, FEBEX has harmonised the criteria for the admission of experts within member associations and established a list of technical specialities.

Concerning the Certification of competences, an independent organisation was created on the initiative AEXEA and several Belgian associations. See www.EUROCERTICE.org.

For more information concerning member associations and the list of experts within their technical specialities and their fields of activity, consult the site www.FEBEX.be.

Questions posed and responses which concern the situation in Belgium

1 – What linguistic skills are necessary for a European Judicial Expert?

When an expert provides a report for use in foreign legal proceedings or gives oral testimony in a foreign court :

- c) should he do so in his own language with an official translation being provided.
- d) or should he do so in the language of the foreign court?

Experts work in the language of the country where the proceedings are held. Statements made in a language other than that of the proceedings, are translated by sworn translators or experts fulfilling this role. We do not have any knowledge of Belgian experts being involved in foreign proceedings.

2 – Who appoints Experts in each country?

In criminal matters, experts are appointed by the Examining Judges sitting in the District Courts or by the Public Prosecutor. There is one prosecution department per judicial district.

3 – What are the criteria for selection and inscription on an official list? What is the procedure?

The procedure for appointing experts in criminal matters is laid down by Articles ... of the Judicial Code.

No official list of experts exists in Belgium. The applicable laws in Belgium do not define their status. Unofficial lists are drawn up by the administrative secretariats of the District Courts based on individual applications. Experts should have no criminal record. The Prosecution Departments undertake an investigation into this matter. No investigation is made concerning the technical competence and procedural knowledge of experts.

Different approaches were undertaken by FEBEX (A Belgian Federation made up of 12 Expert Associations) to legislators in order to firstly include, in the Judicial Code, regulations for the constitution of the lists of experts including a verification of competence, and secondly, to obtain recognition of the title of Expert. These approaches were not conclusive.

FEBEX recommends the verification of competence either by means of an examination by the representative professional associations, or otherwise by a certificate issued by an independent organisation based on ISO-EN 17024. One such organisation is EUROCERTICE which was established in Brussels. For more information see the FEBEX web site www.FEBEX.be and the EUROCERTICE site www.EUROCERTICE.org. The principal criteria for competence proposed by these organisations are as follows:

- possession of a university degree or higher education diploma in a specialist subject relating to the criminal action concerned
- proof of a minimum of 5 years experience in the said speciality (reference lists)
- proof of a minimum of 5 years procedural experience or otherwise training relating to this subject
- signing the Rule of Ethics
- proof of regular training in technical and procedural matters

4 – How long is an Expert appointed for?

An Expert is appointed for the duration of each case to which he has been assigned.

5 – Who does the Expert report to?

The Experts report is addressed exclusively to the judge who appointed him. This report is added to the case file. All parties can consult this report at the Clerk of the Courts offices according to the provisions laid down by the Judicial Code (Articles ...)

6 – Who is responsible for the discipline of experts and who can strike them off?

In cases of serious negligence or blatant incompetence, an Expert will be withdrawn from the unofficial list drawn up by the court and the examining judges of the jurisdiction concerned. Other Courts are not informed of this "striking off".

7 – What authority does the Expert have?

The Expert does not have any particular authority. He will carry out the duties with which he has been entrusted and will carry out the required investigation while referring if necessary to the Judge who appointed him.

8 – What authority should a European Judicial Expert need?

It is not certain that any particular authority should be conferred to the Expert intervening in possible proceedings at a European level.

9 – Who would pay the fees of a European Expert?

It is normally the Minister of Justice of the country in which the proceeding are taking place that pays the costs and fees of the Expert after assessment by the Judge concerned. The Examining Judges and the Prosecutors do not have any powers to settle the costs and fees of Experts.

In Belgium, the payment of legal expenses in criminal cases (Royal Decree of 28/12/1950) is provided for by an official scale of applicable costs and fees. This very restrictive scale is readjusted periodically. The fixed fee rates do not correspond to economic reality and are as a result very dissuasive.

The settlement of costs and fees remains dependant on their examination by a commission set up to do this by the Minister of Justice. This procedure is unpredictable and payments can sometimes be received months late. This situation as well as the inadequate applicable scale does not incite Experts to propose their services to the courts concerned.

10 -Does a list of European Judicial Experts exist?

A list of European Judicial Experts does not exist. Several Association of Experts such as AEXEA and INTEREXPERT, publish a list of Experts in various specialities, who reside in different countries of the EEC and often speaking several languages. These Experts can be assisted by sworn translators.

These Associations who have a European vocation, have their own entrance requirements, which are based notably on the level of training and required experience, on language skills, and on signing the Code of Ethics.

Moreover, an Institute for the certification of Experts known as EUROCERTRICE was established in Brussels. The certification of competence can perhaps be acquired by the application of ISO-EN 17024. This organisation was certified following ISO 9001 and is run by ESCEM (Luxcontrol). In the absence of an obligation for verification of competence, the requests for certification remain few.

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General information about the Czech Organisation

In January 1990, a group of experts authorized in several fields gathered in Prague in order to try to establish a professional organisation, in which all experts nominated according to the law No. 36/1967 of the Law Digest as amended could become members in the case of being interested in such a membership.

After few weeks, hundreds of experts from all over the Czech Republic applied for, so we had 949 members at the end of the year 1990. The preparation of the Statutes and the creation of the organizational structure took only few weeks. The Registration of the Association was made by Ministry of Internal Affairs already on May 4th, 1990, i.e. the fourth day after the law No 83/1990 of the Law Digest, about citizen associations entered into force. The Association was consequently the first citizen association of experts registered in the territory of the Czech Republic.

At the congress, which was held on September 25th, 1993, the name was changed into the Chamber. At the end of the year 1993, the membership base already numbers 2096 members. Since then, the number of members has not been overly changed any and nowadays is round about 2400. The members of the Chamber are active especially in the fields of building industry, economy, transportation, machine building, engineering and in addition about ten further fields.

The experts do most of all expertises assigned in the Czech Republic, though the total number of the experts in the Czech Republic in 49 fields is about from 11 to 12 thousands. There are even such expert fields, in which an expertise is requested only seldom, so that those experts don't feel any necessity to become a member of an expert organisation. Except for the Chamber, 3 or 4 associations of experts are registered in the Republic, however the number of their members ranges round about from few tens to maximally about 300. Many members of those other associations are simultaneously the members of the Chamber as well.

It is absolutely clear that the Chamber is the most significant organization that represents the most number of experts. The Chamber organizes training for its members and cooperates with government authorities in creating new legislation and with the regional courts in the verification of knowledge of candidates for the post of the authorized expert and in the examinations of any possible complaint about the work of an expert.

Code of practice. Code of ethics. Code of professional principles.

- 1 The authorized expert is obliged to execute the expert activity properly and in the agreed time period.
- 2 The authorized expert is obliged to execute his expert activity by himself. For the estimation of an unique partial question, the authorized expert is entitled to ask for a consultant .
- 3 The authorized expert is not allowed to present an expert evidence, if there could be a doubt about his impartiality, because of his relation to a case, to a participant or his/her deputy.
- 4 The authorized expert has to follow the legal regulations accurately.
- 5 The authorized expert has to exercise the expert activity detachedly and according to his/her best ability.
- 6 The authorized expert has fully to make use of all his/her knowledge in his/her expert activity
- 7 The authorized expert has to keep the secrecy of matters he learned about during the practise of his expert activity.
- 8 The authorized expert has to keep his/her expert knowledge on the competent level through a continuous adequate education.

Definition of the term “expert”

An expert is a person of integrity who has practical and required knowledge, extensive skill, appropriate qualification and experience in one or more particular fields. Carrying out instructions, the expert makes statements of general validity on given facts or facts determined by him. Likewise he is able to give a comprehensible opinion of his assessment of facts in speech and writing.

“The Requirements for European Judicial Experts in Criminal Matters”

The questions we need to answer are for each country :-

What language requirements will be needed by a European Judicial Experts? When an expert provides a report for use in foreign legal proceedings or gives oral testimony in a foreign court :

e) should he do so in his own language with an official translation being provided.

f) or should he do so in the language of the foreign court?

Own language with foreign translation, but some might be able to express themselves in other languages such as English.

Who appoints experts in each country?

Minister of Justice and the presidents of regional courts.

What are the criteria for selection and inscription on an official list? What is the process?

Only a person possessing necessary qualification can be appointed a forensic expert. The candidates can be proposed by public authorities and organizations, scientific institutions, universities and other institutions. The candidates can also ask themselves for the appointment. The presidents of regional courts can establish a special body for the verification of the knowledge of proposed persons but the final decision depends only on the president of regional court or the Minister of Justice.

How long is an expert appointed for?

Forensic experts are appointed without any time limitation.

Who does the expert report to?

Forensic experts are registered by regional courts and by the Ministry of Justice.

Who is responsible for the discipline of experts and who can strike them-off.?

Presidents of regional courts and Minister of Justice are responsible for the discipline of experts and they can also strike them off.

What authority does the expert have (in his own country)?

The authority of forensic experts is defined by the law No 36/1967. Forensic experts are not governmental agents. Every expert possesses authority to exercise his activity through the Czech Republic.

What authority should a European Judicial Expert need ?

In some branches of activity (especially in criminal matters) the authority of a governmental agent could be very desirable.

Do you have any other comments ? If so please add them.

The power of verification of the knowledge of proposed persons should be conferred to a professional association, e.g. Chamber of Forensic Experts. Only such an association can guarantee expert knowledge.

Could each country consider submitting an initial list.

www.aeptj.com

GERMANY

BUNDESVERBAND

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A. About Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e.V. – BVS -

I. Structure

As an umbrella organisation founded in 1961, the BVS represents 12 regional associations and 12 professional associations with a total of more than 4.800 experts working in some 250 specialised areas and is therefore an organisation representing a substantial body of experts both numerically and by discipline. Its experts draw up expert opinions for courts, public prosecution offices and authorities, the business sector, trade and industry and in particular for private consumers, and offer them qualified advice when important decisions need to be made.

The experts in the member associations of the BVS are publicly certified, otherwise recognised by official bodies or institutions with the requisite statutory authority, or certified by an accredited certification body which complies with the international standard ISO/IEC 17024.

II. Responsibilities

The BVS has set itself the goal to publicly represent the professional status and interests of the experts grouped in its member associations. This includes involvement in the preparation of legislation having a direct effect on experts and of specialised laws relating to their specialised work in over 250 different fields in which expert opinions are given.

The BVS supports the further training of its members and the training of future experts through its own specialised seminars and in co-operation with reputable training institutes.

III. Specialised departments

The specialised departments set up in the BVS provide an opportunity for the exchange of experience and further training. These departments arrange seminars and information events throughout Germany with the organisational support of the BVS headquarters and in co-operation with the regional and professional associations linked with the BVS.

IV. BVS list of experts and Internet database

The BVS publishes a directory in book form which lists the experts in its member associations. This directory is placed at the disposal of courts, public prosecution offices and other judicial bodies, and also business customers, such as insurance companies and banks, as a means to find qualified experts to prepare opinions on individual areas of expertise.

V. German Congress of Experts (Deutscher Sachverständigentag)

The BVS is the initiator of the German Congress of Experts – DST - which generally takes place every year. With its specialised full day events and the political plenary session the DST serves as a discussion forum for specialised and scientific examination and for dialogue with representatives from politics, certification bodies, judicial, business and private customers commissioning expert opinions and services.

VI. Co-operation at national, European and international level

At the initiative of the BVS, together with associations of experts from France and the United Kingdom, the European umbrella association EuroExpert has been established to meet the challenges presented by a united Europe.

The BVS also represents the interests of its experts as a member of the TEGoVA – The European Group of Valuers’ Associations and at the IVSC – International Valuation Standards Committee.

The BVS and the representatives of its member associations belong to all sectoral committees of the Trägergemeinschaft für Akkreditierung - TGA – which deal with the elaboration of normative documents for the areas of personal certification of experts in a broad range of specialised fields.

B. QUESTIONS AND ANSWERS

1. What language requirements will be needed by a European Judicial Experts?

Besides their native language the knowledge of further languages is not mandatory but helpful.

2. Who appoints experts in each country?

Publicly certified experts are nominated by state appointed registration bodies (in Germany primarily the chambers of architects, the chambers of crafts, the chambers of industry and commerce, the chambers of engineers, the chambers of agriculture).

The term »expert« is not protected by law in Germany. As a result anyone can call himself an expert and operate on the market under this heading even if he is not adequately qualified for the job. The German legislator provides for public certification as a way of distinguishing between the “real” experts and the rest.

The court, a prosecution or a party may appoint an Expert to prepare an Expert opinion to clarify opposing allegations. The commission of an expert is referred to as an “order to give evidence”, and it is in this order that the expert is given defined tasks and the questions of evidence, which are to be answered in his expert opinion.

3. What are the criteria for selection and inscription on an official list? What is the process?

To be listed, experts have to be publicly certified. State appointed registration bodies keep a constantly updated list of publicly certified experts.

Public certification attests that an expert is exceptionally qualified in a particular field. Only experts with outstanding qualifications are publicly certified. In order to obtain public certification they are required to undergo an extensive examination and monitoring procedure by a state appointed registration body.

To be registered (certified) the applicant has to demonstrate that:

- 1.) He has appropriate qualifications, training, experience and a satisfactory knowledge of the requirements of the scope to be carried out as expert. This includes that the applicant has sufficient practical experience in his field of activity and in his scope of expertise.
- 2.) He has demonstrated his competence by submitting a proper documentation (e.g. CV, copies of certificates for all relevant Academic and Professional qualifications, work experience and experience as expert, referees, reports, training).
- 3.) He has given evidence of his competence as expert by oral, written, practical, a combination of the before mentioned methods, or other assessment, to a committee or instructed specialists with appropriate knowledge and experience in the field of activity of the applying candidate.

Publicly certified experts are also sworn to act independently and impartially. This means that their expert opinions can be relied on. What is more, anyone commissioning a publicly certified expert strengthens his own reputation and position by freeing himself from the suspicion of bias. It is precisely because publicly certified experts are independent and impartial that the rules of procedure require German courts to call them to the witness box when they are in need of an expert opinion.

4. How long is an expert appointed for?

Publicly certified experts are normally registered for 5 years – the first period can be shorter. After 5 years they have to prove their competence, integrity and further training to be registered for another 5 years.

The certification can not be extended when the expert is older than 68 years. Only as an exception he can be registered for another 3 years once.

If there are complaints about the work of an expert or his integrity the registration can be revoked.

5. Who does the expert report to?

Publicly certified experts are preferentially consulted by court. This is manifested in the German Criminal and Civil Procedure Law. Experts also report to official bodies or private clients.

Publicly certified experts do not just prepare expert opinions of facts and causes. They advise and are also responsible for regular inspections and monitoring; they analyse and evaluate. And they act as arbitrators or e.g. expert determiner if two contracting parties have agreed to recognise the decision of an expert as binding. Also mediation is included. This ensures that legal certainty is achieved quickly. Such as when it comes to deciding whether the quality of a delivery or service meets with the terms of a contractual agreement or whether a plant has been installed in working order. In view of the broad range of specialised areas there is no uniform fee schedule. Private clients and experts freely negotiate their contracts.

An opinion from a publicly certified expert will lend certainty to entrepreneurial, court and private decisions. This is precisely what motivated the German legislator to introduce public certification. The fact that the state recognises the special qualifications of a particular expert and the special quality of his work makes it easier for companies, courts and consumers to make their choice and guarantees that an expert opinion will meet the high requirements placed on it.

6. Who is responsible for the discipline of experts and who can strike them-off?

Publicly certified experts are subjected by supervision by the official body that made the public certification. Any complaints about an expert are proved and if necessary prosecuted. Their work is constantly subject to supervision by the state appointed registration bodies. Experts who have already received public certification can lose this status if they no longer come up to current standards. The trustworthiness and personal integrity of publicly certified experts also comes under scrutiny.

The certifying bodies especially control, if “their” experts follow the rules that are manifested in the code of practice of each certification body. If experts break with these rules this body can strike them off.

7. What authority does the expert have (in his own country)?

The Expert is an assistant to the court - his sole “partner” is the court. Private appointed experts, however, are viewed as part of the respective party to the action. Of the five forms of evidence provided for in German civil law cases, Expert opinion bears great significance and has the greatest value as evidence.

Publicly certified Experts are to be given preference by the court for the preparation of an expert opinion over experts not publicly certified.

The Expert may be a fact finder, depending if he is so ordered by the court. The role of “fact finder” may be a task issued from the order of the court to give evidence. Additionally he can also be instructed to draw consequences out of the found facts.

As the Expert is an assistant to the court he must only accept instructions from the court. The court can only give instructions on what work is to be undertaken but not on how it is to be done.

The principle of free, i.e. independent assessment of the evidence by the judges applies, and the court is free to follow the expert’s facts in whole, part, or ignore them completely.

If the court believes the opinion does not clarify the legal issues in dispute, it has the option to request supplemental information, or instruct additional Experts.

8. What authority should a European Judicial Expert need ?

As the expert opinion is the most important evidence in litigation, experts should have all authority to prepare an impartial, independent and objective expert opinion.

9. Do you have any other comments ? If so please add them.

European judicial experts should all comply with comparable standards of personal and professional qualification. The international expert-organisation “EuroExpert” already developed important standards that are adopted by the members of “EuroExpert”. Currently these are France, England, Germany, Austria, Spain, Portugal, the Czech Republic and Hungary.

We consider that pan-European standards are important and we suggest that this should be developed for European Judicial Experts.

Qualification Standards

To ensure a high standard of cross-border practice of European Judicial Experts they should all maintain generally comparable standards of professional qualification and conduct. The developed standards of the international expert organisation "EuroExpert" should be adopted as basic minimum standards for European Judicial Experts.

These standards are:

1.) The code of practise

Preamble

This Code of Practice shows minimum standards of practice that should be maintained by all Experts.

It is recognized that there are different systems of law and many jurisdictions in Europe, any of which may impose additional duties and responsibilities which must be complied with by the Expert.

There are in addition to the Code of Practice, General Professional Principles with which an Expert should comply.

These include the Expert :

- Being a "fit and proper" person
- Having and maintaining a high standard of technical knowledge and practical experience in their professional field
- Keeping their knowledge up to date both in their expertise and as Experts and undertaking appropriate continuing professional developments and training.

The Code

1. Experts shall not do anything in the course of practising as an Expert, in any manner which compromises or impairs or is likely to compromise or impair any of the following :
 - a) the Expert's independence, impartiality, objectivity and integrity,
 - b) the Expert's duty to the Court or Tribunal,
 - c) the good repute of the Expert or of Experts generally,
 - d) the Expert's proper standard of work,
 - e) the Expert's duty to maintain confidentiality.
2. An Expert who is retained or employed in any contentious proceeding shall not enter into any arrangement which could compromise his impartiality nor make his fee dependent on the outcome of the case nor should he accept any benefits other than his fee and expenses.
3. An Expert should not accept instructions in any matter where there is an actual or potential conflict of interests. Notwithstanding this rule, if full disclosure is made to the judge or to those appointing him, the Expert may in appropriate cases accept instructions when those concerned specifically acknowledge the disclosure. Should an actual or

potential conflict occur after instructions have been accepted, the Expert shall immediately notify all concerned and in appropriate cases resign his appointment.

4. An Expert shall for the protection of his client maintain with a reputable insurer proper insurance for an adequate indemnity.
5. Experts shall not publicise their practices in any manner which may reasonably be regarded as being in bad taste. Publicity must not be inaccurate or misleading in any way.

2.) Association Standards

To be registered in a EuroExpert member association the expert has to demonstrate to the association or the relevant authorities that:

- a) He has appropriate qualifications, training, experience and a satisfactory knowledge of the requirements of the scope to be carried out as expert. This includes that the applicant has sufficient practical experience in his field of activity and in his scope of expertise.
- b) He has demonstrated his competence by submitting a proper documentation (e.g. CV, copies of certificates for all relevant Academic and Professional qualifications, work experience and experience as expert, referees, reports, training).
- c) He has given evidence of his competence as expert by oral, written, practical, a combination of the before mentioned methods, or other assessment, to a committee or instructed specialists with appropriate knowledge and experience in the field of activity of the applying candidate.

The association shall have adopted policies which:

- a) maintain **confidentiality** of all information obtained in the process of its activities concerning membership.
- b) define a **development process** (e.g. further training, Continuing professional development) to monitor members' compliance to the actual technical and ethical standards required in the field of their expert activity.
- c) define **policies and procedures** for granting, maintaining, renewing, suspending or withdrawal of membership.

3.) Report Standards

General Requirements for experts reports

A Report is a document that records (i) the instructions in respect of the assignment, (ii) the basis and purpose of the report, and (iii) the analysis and reasoning that have led to (iv) the opinion and conclusion arrived at by the expert.

The type, content and length of a report will vary according to the intended user, legal requirements and the nature and complexity of the assignment.

Expert reports should have a logical structure and a clearly organised layout with objective and verifiable justification for all opinions and conclusions expressed. The report should demonstrate clarity, impartiality, and consistency of approaches.

Prior to accepting an appointment as an expert, an expert must satisfy himself that he does not have any conflict of interests and carefully identify the issues to be addressed and be satisfied that he has the experience, knowledge and expertise to complete the assignment competently and with required expedition.

Expert evidence shall be restricted to that which is reasonably required to assist e.g. the court or tribunal in resolving the proceedings. Expert evidence shall be given in a written report unless the expert is instructed otherwise or unless the court directs otherwise.

The expert shall perform his role at all times competently and diligently and this shall include (but shall not be limited to) compliance with any relevant procedural rules and any applicable code of practice or guidance pertaining to matters such as ethics, professional principles, competence, disclosure and reporting.

Further Requirements

It is recognised that the different states within Europe have different laws, procedures and practices, any of which may impose additional or different requirements which must be complied with by experts providing services within or for use within any such jurisdiction.

An expert's report shall, unless otherwise agreed, instructed or legally required :

- specify the expert's name, his firm's name, his qualifications, expertise and comprehensive contact details.
- Identify the purpose and intended use of the report.
- Identify the client or clients.
- contain a statement setting out the substance of the instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based.
- give comprehensive details of any inspection, site visit, or tests undertaken by the expert, which shall include (but not limited to) the date and time and duration and the names of those present.
- give comprehensive information as to any staff and/or assistants and/or subcontractors involved in the production of the report and set out their contribution to the same.
- give details of any literature or other material which the expert has relied on in making the report. Sketches and photos should be used in particular where they provide useful illustrations or aid the understanding of the report.
- make clear which of the facts stated in the report are within the expert's own knowledge; descriptions based on the expert's own findings or tests must be clearly distinguished from those based on his instructions or derived from statements made by third parties.

- where tests of a scientific or technical nature have been carried out, experts should state the methodology used and by whom the tests were undertaken and under whose supervision, summarising their respective qualifications and experience.
- where there is a range of opinion on the matters dealt with in the report - the expert shall summarise the range of opinion, and give reasons for his own opinion. The basis for making qualified statements (e.g. as to certainty, possibility, range of probability or impossibility) and the inclusion of any restrictions, limitations or caveats in respect of expressed opinions in the expert's report should be clearly explained and justified.
- state those facts (whether assumed or otherwise) upon which the expert opinions are based. Experts must distinguish clearly between those facts which they know to be true and those facts which they assume or have received.
- contain a summary of the conclusions reached. The summary should give the reader of the report an overview of all significant opinions contained within the report. The conclusions in the expert opinion must be presented clearly and intelligibly so that they may be readily understood by a non-expert.
- be signed. When reports are transmitted electronically, an expert shall take reasonable steps to protect the integrity of the data/text in the report.

**ENGLAND
&
WALES**

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The Academy of Experts

Experts serving the Legal Community

The Organisation

The Academy of Experts (formerly the British Academy of Experts) was founded in 1987 with the objective of providing, for the first time, a professional body for experts to establish and promote high objective standards.

Since its establishment The Academy (TAE) has become an international centre of excellence for experts with a substantial multi-disciplinary membership. It acts as both an accrediting and a professional body.

As well as acting as a representative voice for experts The Academy publishes guidance of a technical nature on a number of issues for experts in both Civil and Criminal cases. For example, The Academy's 'Model Form of Report' and 'Guidelines for Forensic Scientists' are widely used by both members of The Academy and other experts and recognised by the legal profession.

The promotion of 'cost efficient dispute resolution' is extremely important to The Academy. This has led to the establishment of the Faculty of Mediation & ADR. The Academy is now a leading proponent of the development of Alternative Dispute Resolution (ADR) in the UK working with the Civil Mediation Council of which it is a member.

The Academy works strongly to liaise with other institutions in both the UK and internationally. In particular it was instrumental in the foundation of EuroExpert, the European Union Organisation for Expert Associations which was formed in 1998. The Academy of Experts now represents the UK and has held the presidency of EuroExpert.

Accreditation of Expert Witnesses

All applicants to The Academy who wish to become Accredited Practising Expert Witnesses undergo a rigorous vetting procedure to ensure standards of excellence are maintained. This leads to the officially recognised full accreditation as a Practising Expert. Those achieving it are awarded the designatory letters MAE.

Ethical and professional standards are governed by Codes of Practice and enforced by disciplinary procedures.

Commercial Mediation

The Academy is also a training and accreditation body for ADR Neutrals, including Mediators, Conciliators and Expert Determiners. It publishes and maintains the Register of Qualified Dispute Resolvers and awards the designatory letters QDR to those on the register.

Standards are enforced in the same way as for experts.

Working with the Judiciary

The Academy has a Judicial Committee which is chaired by a Law Lord, and consists of Lords Justice of Appeal and other Senior Judges from the UK and other jurisdictions. The committee was responsible for:

- The Model Form of Expert's Report (commended by Rt Hon Lord Woolf)
- Guidance Notes on The Meetings of Experts
- Guidance Notes on Contingency Fees

Application for Membership

An application for membership (by a suitably qualified individual) as a practising expert is judged on the basis of an applicant's experience as an Expert Witness. The Academy recognises that the skills of an expert are separate from those required by an applicant's primary profession and awards different grades of membership:

- Associate Membership is for those starting out their Expert Witness careers.
- Full Membership is awarded to experienced Expert Witnesses who show an appropriate level of skill and understanding of the work of an expert.
- Fellows are those experts who demonstrate an exceptional level of skill and experience as an Expert Witness and must be Full Members of at least two years standing. There are currently fewer than 60 Fellows.

Training & Development

The Academy offers a comprehensive range of training programmes to enable members and non-members to develop their expert skills, and undertake Continuing Professional Development (CPD).

Courses range from the basic role and responsibilities of the Expert Witness through to the requirements of appropriate legislation (eg the CPR) and the giving of evidence in the witness box.

The questions we need to answer are for each country :

What language requirements will be needed by a European Judicial Experts? When an expert provides a report for use in foreign legal proceedings or gives oral testimony in a foreign court :

- a) should he do so in his own language with an official translation being provided.
- b) or should he do so in the language of the foreign court?

If the term "European Judicial Expert" means an expert who is accredited to give evidence in any court within the European Union and may be called to so do, the theoretical answer would presumably be: any one of the EU languages. This is because we understand that individuals have the choice of which of the EU languages to use.

However, without first formulating a definition of “European Judicial Witness” it is not possible to give a direct answer to this question.

It may be that if an expert witness is not fluent or indeed has little if any capacity in the language of the State in which he is providing evidence it can be dealt with by suitably skilled translators.

However, there are real dangers of mistranslation (especially in technical fields) and also there is the significant downside of increased costs being incurred and time being wasted (particularly during court hearings).

It would therefore be preferable for the expert witness in question at least to have a good working knowledge of the language of the State in which he is providing his expert evidence and it may be prudent for him to take care to ensure he is aware of the correct translation of particular specialist terminology which is liable to arise in relation to the case in question, in order properly to assist the Court when providing his evidence.

If a “European Judicial Expert” is defined as an expert witness based in one European State providing expert evidence in a different European State the comments immediately above will still apply, however, it will depend on the particular circumstances relating to each case. Translation may be necessary, for instance, if the expert in question is an internationally respected leader in his or her specialist field where that level of expertise is perceived as required to assist in the case.

Who appoints experts in each country?

Normally the parties.

What are the criteria for selection and inscription on an official list? What is the process?

There is no official list.

How long is an expert appointed for?

Usually (but not invariably) from the time the expert is first instructed on the case until he or she provides expert testimony and is formally “released” by the court.

Who does the expert report to?

To those instructing him. Normally this will be one or more of the parties. The Expert's report is, however, ultimately for the court.

Who is responsible for the discipline of experts and who can strike them-off.?

Experts will often be members of professional bodies. Those professional bodies may be the institutes or associations who are in control of the expert's primary profession or they may be expert bodies. Those professional bodies will generally have disciplinary powers in respect of their members and may, in serious cases, expel them or strike them off. Unless the organisation is an expert body such as The Academy of Experts, the expulsion is from their primary profession and would not relate solely to their expert work.

The Court also may become tangentially involved in the discipline of experts either by criticising their conduct in judgments and reporting them to their professional bodies.

What authority does the expert have (in his own country)?

The strict answer is "none" - the expert is not a part of the court or the legal profession and cannot bind the parties. The only "authority" of the expert is based upon his or her professional standing. An expert's overriding duty is to the Court and this overrides any duty that he or she has to the party or parties who appointed him. What the expert does in a case will normally have to be (a) relevant to the issues in the case and (b) within the parameters laid down in the instructions received from the appointing party or parties. The expert's instructions are normally in writing in the first instance, but may include oral instructions as well. He or she generally ought not to be involved in any form of negotiations in relation to the case and must not act as an advocate for his appointing party or parties. The expert must only ever give expert evidence which is within his or her own expertise.

What authority should a European Judicial Expert need?

The answer will be dependant upon the definition of a European Judicial Expert but it is likely that the key elements of the answer to the last question will apply with equal force here.

Do you have any other comments? If so please add them.

Until the definition of European Judicial Expert is formulated it would not be sensible to consider other issues. Judging by the wording of the questions there appears to be a possible suggestion the Civil Law system for experts would be in operation throughout the European Union. This cannot properly be an assumption at least without proper detailed discussion. The answer must take properly into account convergence and also the position of well-established Common Law system jurisdictions within the European Union such as England and Wales, Northern Ireland and the Republic of Ireland.

Could each country consider submitting an initial list.

Please see the comment provided immediately above.

HUNGARY

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"The Requirements for European Judicial Experts in Criminal matters"

The questions we need to answer for each country : HUNGARY

GENERAL INFORMATION ABOUT THE ORGANISATION

The Hungarian Chamber of Juridical Experts has been established since 1996 with the aim of protecting the interests of the Hungarian forensic experts and to represent its members and bodies.

The Chamber undertakes to control the expert's professional and ethical standards, initiates the preparation work for law regulations concerning the expert activities and expresses its opinion on the regulations under preparation.

The Chamber provides general information and information on scientific activities, cooperates with national professional chambers and represents the Hungarian experts within the international professional organizations.

The Chamber has approximately 3500 members, represents 200 professions, and performs its work in 7 regional chambers, which belong to the Hungarian Chamber of Forensic Experts. The bodies of the Hungarian Chamber of Forensic Experts are the following: the General Assembly, the Chairmanship, the Ethical Committee, the Audit Committee, the Education Committee, the Committee for Representation of Interests, Special Committees (Engineering Sciences, Environmental Sciences, Committee of other Sciences).

As the European Union borders opened they became easily accessible to the Hungarian Experts.

One of the main aims of the Chamber is to make worldwide contact with the professional-public body chambers to organise exchanges of experience and to create closer cooperation.

The Hungarian Chamber of Juridical Experts represents all Experts of the professional sector in Hungary. One of the conditions of the registration of juridical experts is compulsory chamber membership.

What language requirements will be required by a European Judicial Expert? When an expert provides a report for use in foreign legal proceedings or gives oral testimony in a foreign court :

- a) **should he do so in his own language with an official translation being provided.**
- b) **or should he do so in the language of the foreign court?**

He should do so in his own language and have a translator

Concerning Hungary, most Judicial Experts speak German or English.

Who appoints experts in each country?

The Minister of Justice puts the Judicial Expert, who meets the determined requirements, on the register (generally on the recommendation of the professional chambers, based on the opinion of the Judicial Chamber).

The register will be kept by the Minister of Justice.

What are the criteria for selection and inscription on an official list? What is the process?

Judicial Expert can be a person, who has no criminal record, has a relevant qualification according to their given specialist field, has a practical experience of at least five years, is member of the professional chamber, commits himself to fulfilling the official appointment and has taken the law exam corresponding to the regulations.

How long is an expert appointed for?

The duration is unspecified, but according to the newest legal provisions, the Expert has to report on his training and further vocational training every five year, and has to obtain the necessary professional development points.

Who does the expert report to?

The expert is bound by confidentiality, he can report on the facts and data of the case only to the acting authority or the relevant organisation. Taking into account personal rights, the results of the investigation can be used for educational purposes.

Who is responsible for the discipline of experts and who can strike them off?

The Judicial Expert can to be removed from the register, at the Expert request, if the conditions of the registration have expired, if he did not announce any changes of data, because of health reasons, he did not accomplish the official mission, has no qualifications, or if his professional chamber membership has expired.

If he does not meet the requirements, the Minister of Justice decides on the withdrawal from the register.

What authority does the expert have (in his own country)?

Judicial supervisory competence will be exercised by the Minister of Justice, within the framework of the activity of the Judicial Expert. He can be examined at any time by the Minister of Justice at the request of the professional chamber.

What authority should a European Judicial Expert need?

The process of becoming an expert and the appointment can be made under different conditions by each nation, but these differences should be respected mutually and in a given case the expert of an other country should be accepted in his capacity as expert.

The fulfilment of a request coming from an other country could require the acquiring of a certification of an organisation between nations.

As example we can mention the membership in the EVU (European Association for Accident Research and Analysis) and the EVU-Zert certificate obtained in the framework of it.

When carrying out expertise activity we should emphasize, that the expert's opinion should not be qualified by the principal, but by the professionalism of the opinion.

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Ireland

Irish independence from the United Kingdom came in stages. In 1921 following the “Treaty of London” the Irish Free State of 26 counties was born. It remained a Member of the British Commonwealth until 1949.

In 1933 the Irish Government abolished the oath of allegiance to the British Sovereign and in 1937 “Bunreacht na hEireann”, the Irish Constitution established the republic of Ireland.

The history of these two islands has meant that the Irish legal system bears some similarity to that of the United Kingdom in that they are both common law systems. Since 1937 however, when the Constitution was enacted, the Irish legal system developed very much independently of the UK. In 1924 a separate court system was established. Much of how the Irish legal system has developed since then has been influenced by constitutional law.

Ireland, in a similar way to the UK, does not have a system of experts being appointed, accredited or approved by the institutions of state such as The Courts Service or the Courts as in commonly found in continental Europe.

The system for appointing experts in Ireland is that the parties in the case, Plaintiff and Defendant in civil actions and Prosecution and Defence in criminal actions, select experts of their own choosing. The experts are chosen on the basis of their expertise in a field relevant to the case. If the parties decide to have their expert appear as a witness the Court is not obliged to accept the expert. Their expertise must be “proved” and is open to being tested both by the Court and through the process of cross-examination. In that way both the expert’s expertise and opinion are “court tested” through the adversarial process.

In European criminal matters, Ireland actively co-operates usually via tools such as European mutual assistance legislation which is implemented through their own policing authorities.

There is no formal Irish Court Experts Register. Lawyers generally source their experts through word of mouth, meeting them in court, references from other lawyers or through La Touche Training, the only company in Ireland who provide training for expert witnesses.

Consensus is that becoming a member of a European network such as “EuroExpert” would be useful as well as the establishment of an Experts Register.

The following report covers the meeting held on 27th April 2007. Several people “excused” were called away urgently no doubt by a murder investigation.

European Judicial Experts Study

Meeting at: La Touche Training offices, Suite 511, The Capel Building, Mary's Abbey, Dublin 7.

In attendance:

Peter James – reporter to the AGIS programme
 Caroline Conroy – MD La Touche Training
 Ms. Shalom Binchy, Solicitor, Law Society
 Mr. Paul O'Higgins S.C. ,Vice Chairman of Bar Council
 Patrick James McCarthy, Senior Counsel
 Mr. Brendan Lynch, The Society of Actuaries in Ireland
 Mr. Joseph O'Neill, Chartered Engineer & Toxicologist
 Dr. Louise McKenna, Forensic Science Laboratory
 Dr. Michael Curtis, State Pathology Service
 Ms. Catherine Almond, Garrett Sheahan & Co. Solicitors
 Mr. Barry Robinson, Assistant Manager, Forensics Department
 Ms. Suzanne Hill, Director Of Training , La Touche Training
 Ms. Rioghnach Corbett, Programme Developer, La Touche Training

Apologies:

Detective Superintendent Dominic Hayes National Bureau of Criminal Investigation, Harcourt Street

Detective Superintendent Eugene Gallagher GBFI, Harcourt Street

Ms. Siobhain Stokes, The State Laboratory

Minutes of Meeting of the 27th April 2007

The following was the outcome of the discussion at the meeting concerning the study currently underway under the AGIS programme which is addressing the following questions:

- What language requirements will be necessary for such a panel
- Who will appoint the Experts in each member state
- What will the criteria be for the selection and training of Experts on the panel & what will the procedure be in this regard
- What period of time will an Expert serve on the Panel
- Who will the Expert report to
- Who will be responsible for the discipline of Experts and their removal if necessary from the panel
- What qualifications should an expert hold before they will be eligible for the Panel
- How will the Expert be remunerated for their services

1. In relation to the question of language requirements the consensus was that that more weight would be attached to expert evidence in Ireland if the evidence was presented in English as opposed to being translated. The lawyers present noted that they had never seen an expert from another jurisdiction give evidence in their own language and that would rarely occur.

In relation to the question of an Irish expert presenting evidence in other European courts, it was agreed that most Irish experts would more than likely need a translator.

2. In relation to the question of the appointment of experts, great concerns were expressed at the prospect of having experts appointed by either the Court or by the Department of Justice. It was agreed that in our common law system it would not be appropriate for the parties in a case to be fettered or curtailed in any way when choosing their own experts, particularly in criminal proceedings where the prosecution team are appointed by the State.

3. The main area of concern in relation to the selection and appointment of experts to a panel was the difficulty in assessing the quality of such experts.

It was suggested in relation to quality control that perhaps references from lawyers, training for experts, and previous experience in court cases could be assessed before a person would be appointed to an expert panel.

In terms of assessing experts for a panel it was suggested that certain criteria would have to be met such as: a minimum number of years working in their expert area, recognition by their professional body in that field, a thorough evaluation of the proposed experts court experience as a witness, and further criteria might also be required depending on the applicant experts field.

It was mentioned that if criteria were being used to assess experts, there was a possibility that an expert could contest the fact that they were not appointed to the panel.

It was agreed that it would be useful to have one central body or organisation establish a register or panel of experts with some system for ensuring the experts meet certain standards. One of the experts involved in a similar organisation currently working at a European level raised the question of the difficulty of setting the standards for experts and how such standards are applied in practice.

4. It was acknowledged that currently difficulties are experienced in Ireland in sourcing reliable and trustworthy experts that one would have confidence in.

It was also acknowledged that many “experts” have more than sufficient qualifications on paper but are lacking when it comes to actual hands on experience in their field. It was argued that only those experts with the necessary qualifications and experience should be included on a panel.

Due to the size of the Irish Jurisdiction it was noted that very often lawyers have to seek experts from outside Ireland to give opinions particularly in the medical field.

5. The experts at the meeting agreed that it would be very useful for them if a panel of experts existed in terms of being able to network and have more contact with other experts as many of them work in isolation.

6. The question of who would authorise experts required to work outside their own jurisdiction was also discussed.

As regards Court orders from another jurisdiction empowering non Irish experts to carry out investigations in Ireland or even appear as an expert in an Irish court, it was agreed that the practice is currently done through official channels, ie the Gardai. It was also noted that the European Evidence Warrant currently in place seems adequate. It was agreed therefore that the provisions already in place here are sufficient in this regard, and further orders would not be required. There was reluctance to grant a “foreign” expert more powers than an Irish expert.

7. In relation to the question of an Irish organisation being set up to establish a register of experts it was suggested that it would include representatives from perhaps the Law Society, the Bar Council, training bodies and representatives from various professional bodies covering the key areas which cover expert evidence.

8. It was noted that the Law Reform Commission are currently examining the issue of expert witnesses and that Caroline Conroy has been asked to meet with the Commission to talk about her experience in training of experts. She said that she would also advise the Commission about the discussions at this meeting. Judge Catherine McGuinness and another member of the Commission had hoped to be able to attend the meeting but were unable to.

LUXEMBURG

Chambre des Experts du Grand Duché du Luxembourg ASBL

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Chambre des Experts du Grand-Duché de Luxembourg ASBL

The Chamber of Experts of the Grande Duchy of Luxembourg was created in 1998 and is a non-profit making Association.

Historically, it is the result of a fusion between the Chamber of the National Association of Experts of the Grande Duchy of Luxembourg, which had existed already for 26 years, and the National Institute of Real Estate Experts of Luxembourg (INEIL), which had 8 years existence.

The Chamber of Experts of the Grande Duchy of Luxembourg (CEL) is not an official professional body, but is a private association which according to its statutes has as object :

- “ a) The protection and preservation of the interests of its members in the accomplishment of their duties,
 b) To assist members in the accomplishment of their missions,
 c) To study questions of common interest affecting all or certain categories of experts,
 d) To assist communities, organisations, or interested parties in the appointment of experts, arbitrators, or mediators,
 e) To encourage the use of expert’s opinions and the use of studies, research and opinions of experts,
 f) To draw up a Code of Conduct, covering the obligations and rights of experts,
 g) To co-operate with international organisations.”

The Chamber regroups its members by speciality, or by creating appropriate sections. On the 1st March 2007, the Chamber was composed of the following sections:

1. Building, Civil Engineering and associated activities (70 active members, 1 probationary member, 5 associated members and 7 honorary members)
2. Medical (25 active members)
3. Transport and Traffic (17 active members, 4 honorary members)
4. Finance, Arts, Sciences and Technologies (27 active members)

The Chamber is administrated by a Council consisting of the President, the Secretary, the Treasurer, and a representative from each section.

In the same way, each section has at its head a Committee with a President, a Secretary, a Treasurer, etc.

The Chamber, in the interests of efficiency, has a Code of Conduct and a Disciplinary Committee, an Admissions Committee and Professional Committees all of whom contribute to the proper co-ordination of its various branches.

In addition the CEL, within its four principal sections, organises, meetings, conferences and debates in relation to its activities, it organises the publication and circulation of articles, brochures and membership lists. With regard to State, Judicial or other bodies, it represents the general and specific interests of its members.

Chambre des Experts du Grand-Duché de Luxembourg ASBL

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Programme AGIS

What language requirements will be needed? When an expert provides a report for use in foreign legal proceedings or gives oral testimony in a foreign court :

a) should he do so in his own language with an official translation being provided.

b) or should he do so in the language of the foreign court?

In Luxembourg experts speak Luxembourgish and are usually fluent in French, German, English. Otherwise an official translation should be provided.

Who appoints experts in each Country?

In Luxembourg, Judicial Experts are appointed by the different Courts

What are the criteria for selection and inscription on an official list? What is the process?

A Judge may appoint whom he wishes, so long as he is sworn-in

How long is an expert appointed for?

An Expert is appointed on a case-by-case basis and his mission is well defined

Who does an expert report to?

He addresses his Report to the Court, the High Court or the Public Prosecutors Office

Who is responsible for the discipline of experts and who can strike them off?

For the Court it is the Judge. The Expert should respect the Code of Practice.

What authority does an expert have?

The expert enjoys the powers, which are granted to him for his mission. In the case of problems he should refer back to the Judge.

What authority should a European Judicial Expert need?

A national, but also European mandate

Who will settle the fees of a European Expert?

The requesting country, and he should receive his expenses in advance.

Any other comments?

-

Could each country consider submitting an initial list?

Yes via the Chamber

NETHERLANDS

REGISTER

The Secretary of the Register

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Report of meeting held at the Faculty of Law, University of Leiden, Holland on 30th March 2007

The meeting was held shortly after the founding of the new “Register of Legal Experts” in Holland.

This was the direct result of meetings held with Mark Vos of “The Bureau of Coordination of Experts” and NIVRE in October 2006 and other meetings over a 5 year period.

Originally Mark Vos a Chartered Loss Adjuster and I made contact at the suggestion of the Dutch Embassy in Paris as being someone who understood Judicial Expertise in Holland. Loss Adjusters are involved in the settlement of insurance claims and frequently carry out investigations into why the claim arose. They are frequently used as Experts by the Dutch Courts.

This “Register” has been established partly in response to a major Court case in Holland, where it was seen that the system in place concerning expertise was failing and that a new system was required. The newly created Register is a part of the response to this situation.

The qualification for new Experts to join the “Register” is to have obtained the new Diploma in Law relating to Expertise granted by the University of Leiden. This course of study is validated by examination and is available to previously professionally qualified persons who wish to become Judicial Experts.

The Committee is also examining a system so that experienced and recognised experts could be admitted to the Register directly. The Diploma being for new experts.

The meeting was attended by a newly appointed Committee Member of the Register, Professor Peter Vos (no relation) who is a specialist in Law relating to Insolvency. He is the person who runs the University programme relating to Expertise. He also teaches several months a year at Montpellier University in France.

The new Secretary is an IT specialist. Mr B. W. SLIJK. The new President was excused as he was away on holiday.

The Ministry of Justice and the Judges were represented by Mme Th. W.H.E. Schmitz of the Court of Appeal of the Hague. She is greatly involved with Experts.

For the moment Judges in the different Courts have their own lists of Experts which they use. There are no national lists established or in use.

The questions that we put to the group on behalf of Agis were considered fundamental, and were considered very helpful for the development of answers relating not only to Europe but also to Holland internally.

It is expected that the “Register” will have over 50 members within a short time and that the number will grow quite rapidly.

The whole meeting was held in English, which I found extraordinary.

The Present Situation

Normally in Criminal Cases the Dutch Police Forensic Institute takes the lead as Experts in Ballistics, DNA and most other Police investigation procedures. The Staff at the National Forensic Institute are all Civil Servants or Members of the Police.

However this Institute does not have all types of Expertise available and therefore the Dutch Police Forensic Institute and the Public Prosecutor must appoint professionals from outside their ranks.

Under the Agis Programme we were asked to study “The requirements needed to establish European Judicial Experts in Criminal Matters”.

We considered the following questions -

What language requirements will be needed? When an expert provides a report for use in foreign legal proceedings or gives oral testimony in a foreign court :

- a) **should he do so in his own language with an official translation being provided.**
- b) **or should he do so in the language of the foreign court?**

A Dutch Expert should write his report in his own language and it should be formally translated. For the purposes of communication, English was obviously a natural choice. Given the remarkable conversation that I was hearing in English, I have no hesitation in confirming that in Holland this is possible.

However the new Secretary Mr B. W. SLIJK pointed out that while professional spoken English did not present a problem, he stated that in his experience a report written in English would not be so good as a report written in his mother tongue. This appeared to be generally accepted and gave rise to a short debate.

Should an “European Judicial Expert” write his report assisted by an expert from the other country or should his report be translated?

A French Accountant would be appointed to look into a matter of fraud in France by a Dutch or European Judge as a Dutch Accountant would not know the French system, especially concerning taxation. Today he would no doubt be required to write his report and possibly answer verbal questions in Court in English.

It appeared to be generally accepted, that any professional man appointed as a “European Judicial Expert in a Criminal Matter” should write his report in his mother tongue and then have it translated.

Who appoints experts in each country?

In Holland it is always the Public Prosecutor who appoints Experts in Criminal matters. In Civil cases it is the lawyers and the Judge confirms the choice.

The Dutch noted the approximately 200 different professions recognised in the French list giving the Nomenclature used for the appointment of Experts in the French Courts and found this helpful.

The creation of a List of “European Judicial Experts in Criminal Matters” would theoretically make things easier for a Dutch Public Prosecutor.

What are the criteria for selection and inscription on an official list. What is the process?

Being a young institution “The Register” does not have a great deal of experience. However the procedure agreed on at the moment is as follows.

A candidate must be professionally qualified. Most professions in Holland require continuous professional development for Members of their body to remain in their profession.

Having had a number of years practice in the profession, a candidate will then apply to the University to study for the Diploma in Law relating to Expertise. Once this is obtained the candidate may then apply to be listed on “The Register”.

As was said earlier the Committee is also examining a system so that experienced and recognised experts could be admitted to the Register directly.

The Diploma will be for new experts. The Expert will then be free to apply to Courts and make contact with Lawyers to become appointed as Expert in cases.

However, for the moment Judges in the different Courts have their own lists of Experts, which they use. This means that some Experts are busy and others are not.

It is hoped that “The Register of Experts” will eventually replace these private lists .

How long is an expert appointed for?

Again this question has not yet arisen.

In Holland an Expert is considered as such on a “case by case” basis. Their position is closer to the English system. An Expert is not approved by the Court for a period of five years as in France.

Continuous professional development is an important aspect of being a professional person in Holland. Taken seriously it is intended that people stay at the highest level in their profession. Failure to apply such standards and invest in CPD could give rise to a person becoming excluded from their profession.

Who does the expert report to?

In Holland an Expert will report to the Public Prosecutor. Dutch Law still is greatly influenced by the Code Napoleon. The position of an Expert is similar to that of an Expert in France. He is the Judge's Expert in Criminal matters.

In Court the Public Prosecutor may prohibit the use of private experts reports in Criminal matters. His decision is final.

Who is responsible for the discipline of experts and who can strike them-off?

For the moment, the question has not arisen. However, it is the Court that appoints an Expert at the suggestion of the lawyers in Civil Cases and the Public Prosecutor in Criminal matters.

At present an expert who is inadequate (late or obviously deficient reports etc.) may have his report rejected and may be struck-off the Judge's private list of Experts.

In the case of questions of integrity, the Judge will obviously have some power of action, but it will be the duty of the Disciplinary Committee of each profession to act appropriately.

What authority does the expert have?

An Expert has no direct authority, but he is appointed by a Judge. He can only talk to people and undertake the investigations necessary for him to make his report.

It was very clearly stated that if a party does not co-operate with the Expert, the Judge is authorised to draw any appropriate conclusions. This appears to be a point of law and is well understood by Dutch Experts and Judges.

What authority should a European Judicial Expert need ?

The attitude was that the authority of an Expert in European Criminal Matters should be the same as in the home state (in this case Holland).

There remains however the question of Jurisdiction. An expert who crosses a frontier in a criminal case may be challenged when he is outside his jurisdiction.

It might be useful if the Expert had some form of formal identity, perhaps issued by the Brussels Authorities, by Agis for example.

Again they stated that it would be good on a European level, for the Judge to be authorised to draw any appropriate conclusions, in cases where a party does not co-operate with the Expert,

Finally, the group clearly stated that Experts must know their own limits.

If a matter arose during the investigations for the report which appeared to be outside the Expert's field of competence, he should say so and inform the Judge. This should not be considered as a dishonour. The Judge will find an appropriate solution.

Conclusion.

With regard to the original question.

Under the Agis Programme we were asked to study the requirements needed "To establish European Judicial Experts in Criminal Matters".

We have noted the following three points for future reflection.

1/ It might be useful if the Expert had some form of formal identity, perhaps issued by a Brussels Authority, by Agis for example.

2/ Again they stated that it would be good if on a European level, for the Judge to be authorised to draw any appropriate conclusions, in cases where a party does not co-operate with the Expert,

3/ Should a “European Judicial Expert” write his report assisted by an expert from the other country or should his report be translated?

Answers to the above questions will ultimately have to be given by Brussels in collaboration with Ministers of Justice of the Member States.

The National Council of Companies of Judicial Experts wish to thank their partners in Holland for their help and assistance.

Peter V.James, french judicial expert

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“The Requirements for European Judicial Experts in Criminal Matters”

The questions we need to answer are for each country :-

In Portugal all those involved in the legal area and the Portuguese Society in general are at the moment discussing and reviewing the main Legal Code – Código do Processo Civil. There are many concerns and many areas to be address in this review, which we all hope to be a profound and steady step into a better legal and justice system in Portugal. Therefore all we can say today about this very interesting subject will be certainly different in the near future. Nevertheless please find herewith the Portuguese contribution based solely in the CPC (Código do Processo Civil).

What language requirements will be needed by a European Judicial Experts?

Since the language used by the Portuguese Courts is of course Portuguese the Expert will be required to speak the Court and Country language ie: Portuguese.

Who appoints experts in each country?

The court and, or the Parties.

What are the criteria for selection and inscription on an official list? What is the process?

In accordance with the CPC (Código de Processo Civil) there are no official lists. The criteria and selection is based solely upon the expertise.

How long is an expert appointed for?

The duration is determined by the Court (judge), since the Expert’s main duty is to help the Court, the Expert will remain in duty, as long as the Court determines.

Who does the expert report to?

The Expert reports to the Court.

Who is responsible for the discipline of experts and who can strike them-off.?

The judge is responsible for the discipline and for an eventual strike off, even if the complaints are originated by any of the parties.

What authority does the expert have (in his own country)?

The authority is that of the Court.

What authority should a European Judicial Expert need ?

We Portugal (APAE) believe that this question should be answer by EuroExpert, since the content warrants a fully coordinated and united position.

Do you have any other comments ? If so please add them.

No

Could each country consider submitting an initial list.

Yes