
EuroExpert Symposium 2007 in Berlin: European Justice needs Expertise

Content:

EuroExpert: Its standards, achievements and its importance for the future of Experts in Europe	3
European civil law: convergence and future scheduled steps – evaluation of the Practices of Austria, France, Germany, Portugal, Spain and UK	10
Interessenkonflikt und Befangenheit von Sachverständigen – Gründe und Folgen	12
Questionnaire Session: “Conflict of Interests” – causes and consequences Responses Austria	14
Interessenkonflikt und Befangenheit von Sachverständigen – Gründe und Folgen, Antworten Österreich	16
Questionnaire Session: “Conflict of Interests” – causes and consequences Responses France	18
Questionnaire Session: “Conflict of Interests” – causes and consequences Responses Germany	21
Interessenkonflikt und Befangenheit von Sachverständigen – Gründe und Folgen, Antworten Deutschland	24
Questionnaire Session: “Conflict of Interests” – causes and consequences Responses Portugal	27
Questionnaire Session: “Conflict of Interests” – causes and consequences Responses Spain	29
Questionnaire Session: “Conflict of Interests” – causes and consequences Responses UK	30
The EuroExpert finder – New opportunities for experts	33
Remuneration of Experts in Europe – Report on the Leipzig research study by EuroExpert	37
Comparative analysis of EuroExpert on key issues relating to the use of expert evidence in litigation	49
Code of Practice for Experts within EuroExpert	60
Association Standards within EuroExpert	61
Report Standards	62
EuroExpert standard for Mediation training	64

EuroExpert: Its standards, achievements and its importance for the future of Experts in Europe

(Prof. Matthias Rant, President of EuroExpert)



EuroExpert: Its Standards, achievements and its importance for the future of Experts in Europe

**Gemeinsame Standards, gemeinsame Chancen
EuroExpert als Plattform
für das europäische Sachverständigenwesen**

**Prof. Dr. Matthias Rant
President of EuroExpert**



EuroExpert - Its Standards and achievements

- **Why are Standards for Experts required?**
- **Standards and EuroExpert**
- **Opportunities for Experts**



Why are Standards for experts required?

- No legal protection of the term "Expert"
- Cross border business requires adequate and high qualified dispute resolution
- Standards create transparency for justice and consumers
- Standards built confidence in Expert services
- Standards ease the access to global markets



Standards and EuroExpert

The Organisation EuroExpert - Current full members

- Hauptverband der allg. beeid. u. ger. zert. Sachverst., Austria
- FNCEJ, France
- BVS, Germany
- Associação Portuguesa de Avaliações de Engenharia, Portugal
- Asociación Española de Peritos Tasadores Judiciales, Spain
- The Academy of Experts, United Kingdom
- Associations from the Czech Republic and Hungary join in 2007



Standards and EuroExpert

The Organisation EuroExpert - Objectives

The development, promotion and convergence of

- **education**
- **common ethical**
- **professional standards for experts**

within the European Union, based upon the principles of high qualification, personal integrity, independence, impartiality, objectivity and respect for confidentiality.



Standards and EuroExpert

The Organisation EuroExpert

The provision of a point of contact

- **between experts and the European Commission**
- **the European Parliament**
- **the European Court**
- **other institutions of the European Union**
- **any other institution that deals at European or international levels with tasks and issues concerning the type of work which experts do**



Standards and EuroExpert

- **Code of Practice**
- **Association Standards**
- **Standards for Mediation Training**
- **Report Standards**



Standards and EuroExpert

Code of Practice

- **high standard of technical knowledge and practical experience**
- **“Fit and proper person” unblemished, not previously convicted**
- **development process (e.g. further training)**
- **personal integrity, independence, impartiality, objectivity, confidentiality**
- **maintaining confidentiality**
- **obligation to notify conflicts of interests**
- **liability insurance**
- **publicity**



Standards and EuroExpert

Association Standards

- **appropriate qualifications (education), experience, a satisfactory knowledge of the requirements of the scope to be carried out as expert**
- **sufficient practical experience**
- **demonstration of the competence by submitting a proper documentation (e.g. copies of certificates, work experience and experience as expert, referees, reports, training)**
- **giving evidence of the competence as expert to a committee or instructed specialist with appropriate knowledge and experience in the field of the applying candidate**



Standards and EuroExpert

Association Standards

The association shall have adopted policies which

- **maintain confidentiality of all information concerning membership**
- **define a development process (e.g. further training, continuing professional development) to monitor member's compliance to the actual technical and ethical standards**
- **define policies and procedures for granting, maintaining, renewing, suspending or withdrawal of membership**



Standards and EuroExpert

Standards Mediation Training

- General understanding of the methods of Dispute Resolution
- Knowledge of Mediation principles and philosophy
- Understanding the mediation process and the techniques
- Qualified and experienced trainers/tutors to run the courses
- Compliance with any standards in force
- Courses must comply with appropriate EU-Standards
- Minimum Training and assessment: 40 hours
- 8 practical Role plays
- Practical assessment of 3 hours
- Assessors should not normally have taught participants to be assessed



Standards and EuroExpert

Report Standards

Requirements, particularly:

- recording the instructions in respect of the assignment, the basis and purpose of the report, and the analysis and reasoning that have led to the opinion and conclusion arrived at by the expert
- 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
- formal data
- conclusions in the expert opinion must be presented clearly and intelligibly so that they may be readily understood by a non-expert.
- summary



EuroExpert – Opportunities for Experts

- Common standards encourage cross border appointment
- Increase of competitiveness
- Cooperation with European Partners at the same level
- Competitive advantage enhances profitability



Home

About us

- Objectives
- Formation and History
- Code of Practice
- Statuses

Membership

- Officers
- Members

Events

- Past Events

Making Contact

Useful Links

Downloads

Members Only

ABOUT US

EuroExpert - The Organisation for European Expert Associations

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...[\[more\]](#)

DOWNLOADS

Download our latest documents...[\[more\]](#)

EVENTS

Future events page

All EE member organisations cordially invite members of all other EE organisations to their open events. Please check if there are any specific booking requirements by following any web link for further details...[\[more\]](#)



Further questions?



www.euroexpert.org

European civil law: convergence and future scheduled steps – evaluation of the Practices of Austria, France, Germany, Portugal, Spain and UK**Questionnaire Session****Conflict of Interests – causes and consequences**

The EuroExpert code of practice constitutes, that experts shall not do anything in the course of practicing as an Expert, in any manner which compromises or impairs or is likely to compromise or impair the Expert's independence, impartiality, objectivity and integrity or the Expert's duty to maintain confidentiality.

This especially includes, that the expert avoids any matter where there is an actual or potential "Conflict of Interests". For example, an Expert should not accept instructions, unless full disclosure is made to the judge or those appointing him – in appropriate cases the expert can then 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.

The causes and consequences of "Conflict of Interests" is subject of the EuroExpert study "European Civil Law – convergence and future scheduled steps – evaluation of the Practices of Austria, France, Germany, Portugal, Spain and UK.

The following questions were answered by the members of EuroExpert:

1. Is "Conflict of Interest" recognised by:

- a. Law?
- b. Practice?
- c. Are all professions dealt with identically in this respect? If not, which professions have different constraints?]

2. Is there a definition of "Conflict of Interests"?

If so say:

- a. What is the definition?
- b. Is the definition given by law, jurisdiction or other institutions (e.g. professional associations, expert organizations) or
- c. is the definition generally accepted?

3. In which cases can a "Conflict of Interests" be approved? Please give examples!**4. Where there is a relationship that causes a "Conflict of Interests" , who has the responsibility to disclose it and to whom?**

- a. The judge?
- b. The Expert?
- c. The parties?
- d. All of them?

5. What are the consequences, if it is noticed that the Expert is or has been in an "Conflict of Interests" while preparing his Expert opinion?

- a. Can his expert opinion be used as basis for a judgment?
- b. Can/shall the Expert be replaced by another - impartial – Expert?
- c. Can the Expert claim the remuneration in case he did not disclose a "Conflict of Interests"?

6. An Expert accepts an appointment to act an expert witness in court. He does not mention to the judge or any of the parties that in an unrelated case which was heard in private by a commercial arbitrator, the arbitrator commented in his written decision (which is a confidential document between the parties to the arbitration) that his evidence was “completely unfounded and irrational” and that the Expert appeared to be “partisan”.

- a. Would this be considered to be a breach of duty?
- b. Would it be considered a conflict of interests?

Interessenkonflikt und Befangenheit von Sachverständigen – Gründe und Folgen

Fragebogen

Der “code of practice”, den die Mitglieder von EuroExpert beschlossen haben, gibt vor, dass Sachverständige Ihre Tätigkeit so ausüben müssen, dass Sie insbesondere nicht die Unabhängigkeit, Unparteilichkeit, Objektivität und Integrität des Sachverständigen in irgendeiner Weise schädigen oder beeinträchtigen oder schädigen oder beeinträchtigen könnten.

Insbesondere müssen Sachverständige alles vermeiden, was einen Interessenkonflikt und die sich daraus ergebende Befangenheit hervorrufen könnte. Sachverständige, die in einem strittigem Verfahren beauftragt oder eingesetzt werden, dürfen weder Vereinbarungen treffen, die ihre Unparteilichkeit gefährden könnten, noch darf ihr Honorar vom Ausgang des Verfahrens abhängen noch dürfen sie außer ihrem Honorar und Spesen andere Vergünstigungen annehmen.

Sachverständige dürfen zudem in einer Angelegenheit, in der ein tatsächlicher oder potentieller Interessenskonflikt besteht, keine Aufträge entgegennehmen. Abweichend von dieser Regel können Sachverständige bei völliger Offenlegung dieser Tatsache gegenüber dem Richter oder dem sonstigen Auftraggeber in entsprechenden Fällen Aufträge annehmen, wenn die Beauftragenden diese Situation ausdrücklich anerkennen. Sollte es nach Erhalt der Beauftragung zu einem tatsächlichen oder potentiellen Konflikt kommen, so hat der Sachverständige sofort alle Betroffenen davon zu unterrichten und in entsprechenden Fällen von seiner Beauftragung zurückzutreten.

Im Rahmen der EuroExpert- Studie “Die Rechtsstellung der Sachverständigen im Zivilprozess – ein europäischer Vergleich” haben die Mitglieder von EuroExpert nachfolgende Fragen beantwortet:

1. Gründen die Themen Interessenkonflikt und Befangenheit auf:

- a) Gesetz?
- b) Praxis?
- c) Werden Sachverständige aller Fachrichtungen gleich behandelt oder gibt es für bestimmte Bereiche besondere Bedingungen?

2. Gibt es eine Definition für Interessenkonflikt bzw. die Befangenheit von Sachverständigen?

Wenn ja:

- a.) Wie lautet die Definition?
- b.) Stammt diese Definition aus der Rechtsprechung oder ist sie von Sachverständigenverbänden- oder Organisationen entwickelt worden?
- c.) ist diese Definition allgemeingültig?

3.) In welchen Fällen kann ein Interessenkonflikt und damit eine Befangenheit von Sachverständigen gegeben sein? Bitte nennen Sie Beispiele!

4. Wenn Sachverständige sich in einem Interessenkonflikt befinden, wer muss dann die mögliche Befangenheit offen legen?

- a) Das Gericht?
- b) Der/die Sachverständige?
- c) Die Parteien?
- d) Alle?

5. Was sind die Folgen, wenn Sachverständige bei der Erstattung von sachverständigen Leistungen befangen waren?

- a) Kann das Gutachten im gerichtlichen Verfahren noch verwendet werden?
- b) Kann oder muss der/die Sachverständige in diesem Fall durch einen anderen (unparteilichen) Sachverständigen ersetzt werden?
- c) Können Sachverständige ihren Vergütungsanspruch geltend machen, wenn er mögliche Befangenheitsgründe verschwiegen hat?

It depends. If the expert acts deliberately or wantonly negligent, he can not claim the remuneration. In this case he loses his complete claim of remuneration.

If the expert does negligent not disclose a "Conflict of Interests", he can claim the remuneration till the time he is replaced, even if his expert opinion can not be used in the litigation.

6. Fall: Ein Sachverständiger nimmt einen gerichtlichen Gutachtenauftrag an. Er verschweigt dabei, dass er in einem anderen Fall in einem Schiedsgerichtsverfahren von dem Schiedsrichter als parteiisch bezeichnet worden ist. Außerdem führte der Schiedsrichter in seiner Entscheidung aus, dass das Gutachten als Beweismittel vollkommen unbrauchbar war.

- a. Kann dies als Verstoß gegen die Pflichten von Sachverständigen eingestuft werden?
- b.) Kann dieses Verhalten einen Befangenheitsgrund darstellen?

**Questionnaire Session: “Conflict of Interests” – causes and consequences
Responses Austria**

**(Prof. Matthias Rant, Hauptverband der allg. beeideten und gerichtlich
zertifizierten Sachverständigen Österreichs)**

1. Is “Conflict of Interest” recognised by:

- a. Law?
- b. Practice?
- c. Are all professions dealt with identically in this respect? If not, which professions have different constraints?]

When taking the definition of “conflict of interest”, given in 2., as a basis, then there are statutory regulations. For example, experts may be challenged in court proceedings for the same reasons as may be advanced when challenging a judge. The court examines whether the challenge is justified. A negative decision on a challenge may be appealed and reviewed. In case of expert witnesses it does not matter what profession the expert witness has.

2. Is there a definition of “Conflict of Interests”?

If so say:

- a. What is the definition?

“Conflict of interest” is defined as a situation in which the objectiveness, impartiality and independence, which must be required of experts, appears to be affected.

- b. Is the definition given by law, jurisdiction or other institutions (e.g. professional associations, expert organizations) or

- c. is the definition generally accepted?

The case law in connection with the challenges mentioned in the answer to Question 1. has given a more precise interpretation to this abstract definition in a number of cases. Both the code of ethics of the individual professional groups and the common code of ethics for all expert witnesses contain the obligation to disclose possible conflicts of interest and not to accept an assignment in case of a conflict of interest. These principles are largely uncontested.

3. In which cases can a “Conflict of Interests” be approved? Please give examples!

Sometimes a conflict of interest must be admitted; otherwise, no decision at all can be taken. If a certain physician was the only one who examined a patient – deceased in the meantime – during the patient’s lifetime, then his findings must be used anyhow, although this physician must not be called in as an expert witness otherwise, because of a conflict of interest that may arise between the obligations of curative medicine and the strict objectiveness requirement applying to expert witnesses.

4. Where there is a relationship that causes a “Conflict of Interests” , who has the responsibility to disclose it and to whom?

- a. The judge?
- b. The Expert?
- c. The parties?
- d. All of them?

The judge must discuss with the parties and the expert all grounds of bias known to him. However, it is primarily the expert's obligation, deriving from the code of ethics, to indicate possible grounds of bias. The parties do not have this obligation.

5. What are the consequences, if it is noticed that the Expert is or has been in a "Conflict of Interests" while preparing his Expert opinion?

a. Can his expert opinion be used as basis for a judgment?

The expert opinion of an expert, who was successfully challenged, must not be used any further.

b. Can/shall the Expert be replaced by another - impartial – Expert?

Yes, in every case.

c. Can the Expert claim the remuneration in case he did not disclose a "Conflict of Interests"?

If he/she was at fault regarding the non-disclosure, then he/she is not entitled to claim remuneration.

6. An Expert accepts an appointment to act an expert witness in court. He does not mention to the judge or any of the parties that in an unrelated case which was heard in private by a commercial arbitrator, the arbitrator commented in his written decision (which is a confidential document between the parties to the arbitration) that his evidence was "completely unfounded and irrational" and that the Expert appeared to be "partisan".

a. Would this be considered to be a breach of duty?

b. Would it be considered a conflict of interests?

It is not possible to imagine such a case happening in Austria.

Interessenkonflikt und Befangenheit von Sachverständigen – Gründe und Folgen, Antworten Österreich

**(Prof. Matthias Rant, Hauptverband der allg. beeideten und gerichtlich
zertifizierten Sachverständigen Österreichs)**

1. Gründen die Themen Interessenkonflikt und Befangenheit auf:

- a. Gesetz?
- b. Praxis?
- c) Werden Sachverständige aller Fachrichtungen gleich behandelt oder gibt es für bestimmte Bereiche besondere Bedingungen?

Geht man von der unter 2. angeführten Umschreibung des Begriffs „Interessenskonflikt“ aus, so gibt es dafür gesetzliche Regelungen. So können Sachverständige in gerichtlichen Verfahren aus denselben Gründen abgelehnt werden, die zur Ablehnung des Richters berechtigen. Die Berechtigung der Ablehnung wird vom Gericht geprüft. Eine negative Entscheidung über die Ablehnung kann im Rechtsmittweg überprüft werden. Bei Gerichtssachverständigen kommt es dabei nicht auf die Berufsgruppe an.

2. Gibt es eine Definition für Interessenkonflikt bzw. die Befangenheit von Sachverständigen?

Wenn ja:

- a.) Wie lautet die Definition?

Unter „Interessenskonflikt“ soll eine Situation verstanden werden, durch welche die vom Sachverständigen zu verlangende Objektivität, Unparteilichkeit und Unabhängigkeit gefährdet erscheint.

- b.) Stammt diese Definition aus der Rechtsprechung oder ist sie von Sachverständigenverbänden- oder Organisationen entwickelt worden?

- c.) ist diese Definition allgemeingültig?

Die Rechtsprechung zu den bei Beantwortung der Frage 1. erwähnten Ablehnungsfällen hat diese abstrakte Umschreibung in zahlreichen Einzelfällen konkretisiert. Sowohl die Landesregeln einzelner Berufsgruppen als auch die gemeinsamen Landesregeln aller Gerichtssachverständigen enthalten die Verpflichtung, mögliche Interessenskonflikte offen zu legen und bei gegebenen Konflikten nicht tätig zu werden. Diese Grundsätze stehen weit gehend außer Streit.

3.) In welchen Fällen kann ein Interessenkonflikt und damit eine Befangenheit von Sachverständigen gegeben sein? Bitte nennen Sie Beispiele!

Manchmal müssen Interessenkonflikte in Kauf genommen werden, weil sonst gar keine Erkenntnis möglich ist. Hat der behandelnde Arzt den mittlerweile verstorbenen Patienten als Einziger zu Lebzeiten untersucht, so muss sein Befund trotzdem verwertet werden, obwohl der behandelnde Arzt sonst nie als Sachverständiger tätig werden darf, weil ein Konflikt zwischen den Pflichten aus der kurativen Medizin und dem strengen Objektivitätsgebot für Sachverständige entstehen könnte.

4. Wenn Sachverständige sich in einem Interessenkonflikt befinden, wer muss dann die mögliche Befangenheit offen legen?

- a. Der Richter?
- b. Der Sachverständige?
- c. Die Parteien?
- d. Alle Beteiligten?

Der Richter hat ihm bekannte Befangenheitsgründe mit den Parteien und dem Sachverständigen zu erörtern. Es ist aber vor allem standesrechtliche Pflicht des Sachverständigen, auf mögliche Befangenheitsgründe hinzuweisen. Die Parteien trifft eine solche Pflicht nicht.

5. Was sind die Folgen, wenn Sachverständige bei der Erstattung von sachverständigen Leistungen befangen waren?

- a) Kann das Gutachten im gerichtlichen Verfahren noch verwendet werden?

Das Gutachten eines mit Erfolg abgelehnten Sachverständigen darf nicht verwertet werden.

- b) Kann oder muss der/die Sachverständige in diesem Fall durch einen anderen (unparteilichen) Sachverständigen ersetzt werden?

Ja, auf jeden Fall.

- c) Können Sachverständige ihren Vergütungsanspruch geltend machen, wenn er mögliche Befangenheitsgründe verschwiegen hat?

Wenn ihn ein Verschulden daran trifft, stehen ihm keine Gebühren zu.

6. Fall: Ein Sachverständiger nimmt einen gerichtlichen Gutachtenauftrag an. Er verschweigt dabei, dass er in einem anderen Fall in einem Schiedsgerichtsverfahren von dem Schiedsrichter als parteiisch bezeichnet worden ist. Außerdem führte der Schiedsrichter in seiner Entscheidung aus, dass das Gutachten als Beweismittel vollkommen unbrauchbar war.

- a. Kann dies als Verstoß gegen die Pflichten von Sachverständigen eingestuft werden?
- b.) Kann dieses Verhalten einen Befangenheitsgrund darstellen?

Dieser Fall ist in Österreich nicht vorstellbar.

Questionnaire Session: "Conflict of Interests" – causes and consequences Responses France

**(Peter James, Fédération Nationale des Compagnies d'Experts de Justice,
Frankreich, Expert to the Angers Appeal Court,
Member of the France National Committee)**

France is in full agreement with the EuroExpert Code of Practice which states that "Experts shall not do anything in the course of practicing as an expert, in any manner which compromises or impairs or is likely to compromise or impair the Experts independence, impartiality, objectivity and integrity or the Expert's duty to maintain confidentiality."

Experts in France come from all the different professions. Doctors, Architects, Engineers, and even Maritime Experts and Translators - like me. Appointments to the Court are rare events and usually only one in ten expert finally gets appointed.

French Experts in Justice who are admitted to a list of Experts have the right to use the title "Expert to the Court of ..." and anyone who falsely uses this title can be prosecuted under Article 259 of the Criminal Code.

Experts in Justice are appointed for a five-year period by the Courts and are frequently described as the "eyes and ears" of the Judge. We are the Judges servant and are there to provide him with answers to technical questions.

Every five years, each Expert is required to submit a new application to the Court for his reappointment. These applications are considered by a Commission of Judges and Experts established by Law.

An Expert who is no longer up to the job, or is no longer the real Expert that he formerly was, will not be reappointed. I sit as member of such a Commission and can confirm that I have seen Accountants and even Doctors have their renewal applications *refused*.

You will understand that Experts and Expertise are regulated by Law.

The law dated 11/02/2004 Article 6-2 states -

"Any infringement of the laws 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 for a maximum period of three years,
- 3° Permanent Striking-Off from National or Appeal Court lists and the withdrawal of the Honorary Title, which can be awarded to an Expert after the age of 65..

These remarks are to set the scene for the consideration of Conflicts of Interest.

The first French Experts Code of Practice was drawn up in 1978.

The most recent version December 2006 states that it has tried to "clarify the relationships of Experts in Justice with organisations that give work to Experts, especially insurance companies and other influential groups."

It goes on to say "that the basic principle is that an Expert must never find himself in a position of subordination or under the influence of someone or something, which would inevitably lead to his loss of all impartiality."

1 can confirm that experts who do most of their work for insurance companies and who apply to become Court Experts are *frequently turned down*.

An expert who has worked privately for a client and is subsequently invited by the Court to undertake an expertise for the Court concerning that client, would be very well advised to inform the Judge immediately.

Lawyers and Parties can equally object to the appointment of an Expert to a case because the Expert plays golf or goes shooting with the client, or is a member of the clients family even though he has a different name.

If the case gets to Court and Parties and Lawyers discover some close link with the Expert, then the Expert runs a serious risk of being called before the Disciplinary Commission of Judges.

To answer the questions previously set to us

1. Is "Conflict of Interest" recognised by:

- a. Law?
- b. Practice?
- c. Are all professions dealt with identically in this respect? If not, which professions have different constraints?]

"Conflicts of Interest" are recognised by French Law and while not easy to define, measures have been taken to try to distance the Expert from them. The Expert also knows his duty.

2. Is there a definition of "Conflict of Interests"?

The answer was included in my response to the previous question. However we may add "that the basic principle is that an Expert must never find himself in a position of subordination or under the influence of someone or something, which would inevitably lead to his loss of all impartiality."

3. In which cases can a "Conflict of Interests" be approved? Please give examples!

Sometimes a conflict of interest must be admitted; otherwise, no decision at all can be taken. If a certain physician was the only one who examined a patient – deceased in the meantime – during the patient's lifetime, then his findings must be used anyhow, although this physician must not be called in as an expert witness otherwise, because of a conflict of interest that may arise between the obligations of curative medicine and the strict objectiveness requirement applying to expert witnesses.

4. Where there is a relationship that causes a “Conflict of Interests” , who has the responsibility to disclose it and to whom?

The judge must discuss with the parties and the expert all grounds of bias known to him. However, it is primarily the expert’s obligation, deriving from the code of ethics, to indicate possible grounds of bias. The parties do not have this obligation.

5. What are the consequences, if it is noticed that the Expert is or has been in an “Conflict of Interests” while preparing his Expert opinion?

- a. Can his expert opinion be used as basis for a judgment?
- b. Can/shall the Expert be replaced by another - impartial – Expert?
- c. Can the Expert claim the remuneration in case he did not disclose a “Conflict of Interests”?

It is for the Judge to decide, based upon the case for his dismissal presented to him by the Parties.

The Expert may be "Dismissed" by the Court and another Expert appointed in his place. His report will be ignored. He will normally not be paid for his work accomplished.

6. An Expert accepts an appointment to act an expert witness in court. He does not mention to the judge or any of the parties that in an unrelated case which was heard in private by a commercial arbitrator, the arbitrator commented in his written decision (which is a confidential document between the parties to the arbitration) that his evidence was “completely unfounded and irrational” and that the Expert appeared to be “partisan”.

- a. Would this be considered to be a breach of duty?
- b. Would it be considered a conflict of interests?

This would be considered as a serious breach of duty by the Court. The Experts chances of reappointment as a Court Expert would be slim. The risk of being called before the Disciplinary Commission of Judges would be serious.

No private client would ever consider giving work to a French Expert who had been struck-off by the Disciplinary Commission of Judges. Experts realise this and should always distance themselves from situations of "Conflicts of Interest".

**Questionnaire Session: “Conflict of Interests” – causes and consequences
Responses Germany**

(Dr. Günter Schäffler)

1.) Is “Conflict of Interest” recognised by:

a) Law? or b) Practice?

Yes, The subject “Conflict of interest” is recognized by law. § 406 chapter 1 S. 1 of the German Code of Civil Procedure (Zivilprozessordnung – ZPO) reveals that an expert can be removed for the same reasons as judges. These reasons are regulated in § 42 ZPO: if there is a “Conflict of Interest” or the potential of a “Conflict of Interest”, the judge can be removed.

“Conflict of Interests” especially becomes important when the Expert is appointed by court. As assistant of the judge Experts shall not do anything which compromises or impairs or is likely to compromise or impair the Expert’s independence, impartiality, objectivity and integrity. Therefore the parties have the right to challenge an expert and the court has to remove an Expert in case there is a justifiable reason.

“Conflict of Interests” is also recognized in cases a publicly certified expert is not appointed by court but by a private party. The regulations for publicly certified experts demand the independence and impartiality of the expert in every case he is appointed.

c) Are all professions dealt with identically in this respect? If not, which professions have different constraints?

Yes. There are no differences between professions. The reasons that could cause a “Conflict of Interest” are the same.

2.) Is there a definition of “Conflict of Interests”?

Yes.

If so say:

a.) What is the definition?

A “Conflict of Interests” is given, when – from the viewpoint of the person concerned - there is a reason that could compromise the Expert’s impartiality or independence. A Conflict of Interest must be proved, pure subjective sensation can not cause a “Conflict of Interests”.

b.) Is the definition given by law, jurisdiction or other institutions (e.g. professional associations, expert organizations) or

The Definition follows legal practice.

c.) is the definition generally accepted?

Yes. The definition is accepted by courts, lawyers, parties and experts.

3.) In which cases can a “Conflict of Interests” be approved? Please give examples!

An expert can be challenged because of “Conflict of Interests”.

Reasons could be:

- : the Expert is related to a party or is friend of a party
- : the Expert is financially dependent of one party (e.g. employer-employee-relationship)
- : antagonism between the Expert and a party
- : partial contact to only one party
- : On-site inspection with only one party
- : prior activity as a party appointed expert in the same issue
- : derogative statements about a party

4.) Where there is a relationship that causes a “Conflict of Interests”, who has the responsibility to disclose it and to whom?**a) The judge?**

No. Especially in civil procedures the parties have to introduce any facts that prove their claim. The ascertainment of those facts is no duty of the judge. He shall not disclose any “Conflict of Interest” of an Expert.

b) The Expert?

Yes. The court appointed Expert has to disclose any reasons that could cause a “Conflict of Interests”. He can not reclude himself; he just can be challenged on application by court.

c) The parties?

Every party has the right to request the reclude of an Expert because of “Conflict of Interests”. The party must accredit objective reasons that raise doubts of his impartiality, neutrality or the Expert’s independence. The judge decides if this request is reasonable or not. If the court agrees it appoints another Expert.

d) All of them?

No.

5.) What are the consequences, if it is noticed that the Expert is or has been in an “Conflict of Interests” while preparing his Expert opinion?**a) Can his expert opinion be used as basis for a judgment?**

No. When the Expert was removed because of a “Conflict of Interests”, his appointment expires. His expert opinion can not be basis for a judgment anymore.

b) Can/shall the Expert be replaced by another - impartial – Expert?

Yes. In case the expert has been in a “Conflict of Interests” while preparing his expert opinion, he has to be replaced if one party applies and “Conflict of Interests” is reasonably proved.

c) Can the Expert claim the remuneration in case he did not disclose a “Conflict of Interests”?

It depends. If the expert acts deliberately or wantonly negligent, he can not claim the remuneration. In this case he loses his complete remuneration.

If the expert acts negligently, he can claim the remuneration till the time he is replaced, even if his expert opinion cannot be used in the litigation.

6.) An Expert accepts an appointment to act an expert witness in court. He does not mention to the judge or any of the parties that in an unrelated case which was heard in private by a commercial arbitrator, the arbitrator commented in his written decision (which is a confidential document between the parties to the arbitration) that his evidence was “completely unfounded and irrational” and that the Expert appeared to be “partisan”.

a.) Would this be considered to be a breach of duty?

No. The expert is not obliged to disclose, that an arbitrator in an unrelated case criticised his expert opinion as unusable and partial. Normally the expert does not know the decision anyway, so that he often does not notice, if his expert opinion has been the basis for a decision.

b.) Would it be considered a “Conflict of Interests”?

No, because of the same reasons that were mentioned before. A different matter would be, if the expert would not disclose, that he was partisan in a related former proceeding. In this case there could be a “Conflict of Interests”.

Interessenkonflikt und Befangenheit von Sachverständigen – Gründe und Folgen, Antworten Deutschland

(Dr. Günter Schäffler)

1. Gründen die Themen Interessenkonflikt und Befangenheit auf:

- a) Gesetz?
- b) Praxis?

Ja. Die Befangenheit ist geregelt in § 406 Abs. 1 S. 1 der Zivilprozessordnung – ZPO. Hier ist geregelt, dass ein Sachverständiger aus denselben Gründen abgelehnt werden kann wie ein Richter. Diese Gründe sind in § 42 ZPO festgeschrieben: wenn ein Interessenkonflikt vorliegt, kann der Richter (oder der Sachverständige) wegen Befangenheit abgelehnt werden. Dabei ist es ausreichend, dass die Gefahr oder die Besorgnis der Befangenheit besteht.

Interessenkonflikte und Befangenheit von Sachverständigen gewinnen besonders bei gerichtlich bestellten Sachverständigen an Bedeutung. Es muss sicher gestellt sein, dass kein Interessenkonflikt oder ein Befangenheitsgrund Einfluss auf die unparteiische sachverständige Leistung hat. Daher haben auch die Parteien das Recht, einen gerichtlich bestellten Sachverständigen wegen Besorgnis der Befangenheit abzulehnen und einen Antrag auf Ersetzung des Sachverständigen zu stellen, wenn ein begründeter Ablehnungsgrund vorliegt.

Bei öffentlich bestellten und vereidigten Sachverständigen können aber auch im außergerichtlichen Bereich Interessenkonflikte eine Rolle spielen. Da öffentlich bestellte und vereidigte Sachverständige zusätzlich zu den allgemeinen Gesetzen einer Sachverständigenordnung unterliegen, müssen sie auch bei privater Beauftragung jeglichen Anschein der Befangenheit vermeiden. Denn nach der Sachverständigenordnung gehört es zu ihren Pflichten, ihre Tätigkeit stets unabhängig, weisungsfrei, gewissenhaft und unparteilich zu erledigen.

- c) Werden Sachverständige aller Fachrichtungen gleich behandelt oder gibt es für bestimmte Bereiche besondere Bedingungen?

Ja. Es gibt keine Unterschiede zwischen den Berufen oder Fachrichtungen der Sachverständigen. Die Gründe, die einen Interessenkonflikt und damit eine Ablehnung des Sachverständigen rechtfertigen können, sind dieselben – unabhängig von dem Fachbereich.

2. Gibt es eine Definition für Interessenkonflikt bzw. die Befangenheit von Sachverständigen?

Ja.

- a.) Wie lautet die Definition?

Ein Interessenkonflikt und damit ein Befangenheitsgrund liegt vor, wenn aus Sicht der betroffenen Partei ein Grund vorliegt, der zu der Annahme führen könnte, der Sachverständige könnte parteiisch oder voreingenommen sein. Diese Gründe müssen durch objektive Kriterien nachgewiesen werden; rein subjektive Empfindungen können keinen Ablehnungsgrund begründen.

b.) Stammt diese Definition aus der Rechtsprechung oder ist sie von Sachverständigenverbänden- oder Organisationen entwickelt worden?

Die Definition ist von der Rechtsprechung entwickelt worden.

c.) Ist diese Definition allgemeingültig?

Ja. Diese Definition wurde im Laufe der letzten Jahre entwickelt und wird grundsätzlich anerkannt durch Gerichte, Rechtsanwälte Parteien und Sachverständige. Andererseits gibt es unterschiedliche Rechtsprechung zu der Frage, wann ein Interessenkonflikt vorliegt und wann ein solcher zu einer Ablehnung des Sachverständigen führen kann.

3.) In welchen Fällen kann ein Interessenkonflikt und damit eine Befangenheit von Sachverständigen gegeben sein? Bitte nennen Sie Beispiele!

Ein Sachverständiger kann abgelehnt werden, wenn ein Interessenkonflikt seine Unvoreingenommenheit gefährdet.

Solche Gründe können sein:

- der Sachverständige ist mit einer Partei verwandt oder befreundet
- der Sachverständige ist wirtschaftlich abhängig von einer Partei (z.B. Arbeitnehmer-Arbeitgeber-Verhältnis)
- Feindschaft zwischen dem Sachverständigen und einer Partei
- einseitiger Kontakt zu nur einer Partei
- Durchführung der Ortsbesichtigung mit nur einer Partei
- frühere Tätigkeit als Privatgutachter für eine Partei in derselben Angelegenheit
- sprachliche Entgleisungen gegenüber einer Partei

4. Wenn Sachverständige sich in einem Interessenkonflikt befinden, wer muss dann die mögliche Befangenheit offen legen?

a) Das Gericht?

Nein. In Zivilverfahren haben die Parteien die Pflicht und das Recht, alle entscheidungserheblichen Tatsachen in den Prozess einzuführen. Die Feststellung von Tatsachen ist nicht Aufgabe des Gerichts, es gilt insoweit kein Amtsermittlungsgrundsatz. Daher ist es auch nicht Aufgabe des Gerichts, auf mögliche Interessenkonflikte des Sachverständigen oder Gründe für eine Ablehnung offen zu legen.

b) Der Sachverständige?

Ja. Der gerichtlich bestellte Sachverständige hat alle Gründe darzulegen, die eine mögliche Befangenheit begründen könnten. Unterlässt er dies vorsätzlich oder grob fahrlässig, kann er sogar seinen Vergütungsanspruch verlieren.

c) Die Parteien?

Ja. Jede Partei hat das Recht, den gerichtlich bestellten Sachverständigen wegen Besorgnis der Befangenheit abzulehnen. Die betroffene Partei muss darlegen, dass objektive Gründe vorliegen, die die Besorgnis der Befangenheit begründen und Zweifel an seiner Unabhängigkeit, Unparteilichkeit und Neutralität des Sachverständigen bestätigen. Das Gericht entscheidet dann, ob die Ablehnung des Sachver-

ständigen gerechtfertigt ist. Ist das Gericht hiervon überzeugt, beauftragt es einen anderen Sachverständigen.

d) Alle der Aufgeführten?

Nein.

5. Was sind die Folgen, wenn Sachverständige bei der Erstattung von sachverständigen Leistungen befangen waren?

a) Kann das Gutachten im gerichtlichen Verfahren noch verwendet werden?

Nein. Wenn der Sachverständige wegen Besorgnis der Befangenheit erfolgreich abgelehnt worden ist, erlischt seine gerichtliche Beauftragung. Das Gutachten kann in diesem Verfahren nicht mehr verwendet werden.

b) Kann oder muss der/die Sachverständige in diesem Fall durch einen anderen (unparteilichen) Sachverständigen ersetzt werden?

Ja. Ist der Sachverständige bei der Erstattung seiner sachverständigen Leistung befangen, wird er auf Antrag einer Partei durch einen anderen Sachverständigen ersetzt, wenn der Antrag begründet ist.

c) Können Sachverständige ihren Vergütungsanspruch noch geltend machen, wenn er mögliche Befangenheitsgründe verschwiegen hat?

Das kommt darauf an. Wenn der Sachverständige vorsätzlich oder grob fahrlässig seine Befangenheit verschweigt, verliert er seinen Vergütungsanspruch. Handelt der Sachverständige dagegen nur fahrlässig, kann er seine Vergütung bis zu dem Zeitpunkt geltend machen, bis zu dem er durch einen anderen Sachverständigen ersetzt wird. Dies gilt auch, wenn sein Gutachten wegen seiner Ablehnung nicht mehr verwertet werden kann.

6. Fall: Ein Sachverständiger nimmt einen gerichtlichen Gutachtenauftrag an. Er verschweigt dabei, dass er in einem anderen Fall in einem Schiedsgerichtsverfahren von dem Schiedsrichter als parteiisch bezeichnet worden ist. Außerdem führte der Schiedsrichter in seiner Entscheidung aus, dass das Gutachten als Beweismittel vollkommen unbrauchbar war.

a. Kann dies als Verstoß gegen die Pflichten von Sachverständigen eingestuft werden?

Nein. Sachverständige sind nicht verpflichtet, eine in einem anderen Verfahren festgestellte Unverwertbarkeit seines Gutachtens offen zu legen. Normalerweise erfährt ein Sachverständiger nicht einmal, ob sein Gutachten als Grundlage der gerichtlichen Entscheidung verwendet wurde.

b.) Kann dieses Verhalten einen Befangenheitsgrund darstellen?

Nein, aus den bereits unter a. dargestellten Gründen. Anders ist der Fall zu beurteilen, wenn der Sachverständige in derselben Sache verschweigt, dass er in einem vorangegangenen Verfahren wegen Besorgnis der Befangenheit abgelehnt worden ist.

**Questionnaire Session: “Conflict of Interests” – causes and consequences
Responses Portugal**

(António Louro, Associação Portuguesa de Avaliações de Engenharia)

1. Is “Conflict of Interest” recognised by:

a. Law?

Yes it is recognized by Law. In accordance with CPC article 571 to the Experts it is applicable the same impediments as for a Judge. So all the legal impediments (conflict of interests included) applicable to any judge are equally applicable to the Experts.

Impediments:

1. If he (Expert) has a direct interest in the Dispute and as such could take part in such a dispute as a party, or as a representative of any of the parties;
2. Whenever any of his relatives (up to the 2nd degree relationship) are involved in the dispute either as parties or as their representatives or advisors;
3. If the Expert prior to his appointment either verbally or in writing has expressed any judgment, decision or opinion related with the subject matter of the Dispute;
4. If the Expert is asked to express his opinion upon a report produce by any of his relatives (up to the 2nd degree relationship).

b. Practice?

The practice follows the applicable law.

c. Are all professions dealt with identically in this respect? If not, which professions have different constraints?]

Yes, the applicable law does not consider any exceptions i.e. all experts (and as such professions) are treated the same way.

2. Is there a definition of “Conflict of Interests”?

In the CPC we cannot find a direct definition of "Conflict of Interests"!

If so say:

a. What is the definition?

We have no direct definition!

b. Is the definition given by law, jurisdiction or other institutions (e.g. professional associations, expert organizations) or

Some professional organizations have definitions in there code of ethic.

c. is the definition generally accepted?

The principals established in the CPC are in fact generally accepted. They do address most if not all the reasons behind any conflict of interests, and are well respected and accepted by all.

3. In which cases can a “Conflict of Interests” be approved? Please give examples!

As far as the Portuguese Law and general practice we cannot foresee any cases where conflict of interests could be in any case acceptable.

4. Where there is a relationship that causes a “Conflict of Interests” , who has the responsibility to disclose it and to whom?

- a. The judge?
- b. The Expert?
- c. The parties?
- d. All of them?

The Expert! And he should report such a situation to the Judge.
If he (Expert) does not (Disclose) or cannot any other party can disclose it to the Judge which will deal with the case.

5. What are the consequences, if it is noticed that the Expert is or has been in an “Conflict of Interests” while preparing his Expert opinion?

- a. Can his expert opinion be used as basis for a judgment?
- b. Can/shall the Expert be replaced by another - impartial – Expert?
- c. Can the Expert claim the remuneration in case he did not disclose a “Conflict of Interests”?

In accordance with the CPC, anytime during the procedures the parties involved including the Judge can request the replacement of the Expert. If it is noticed that the Expert is or has been in an "Conflict of Interests" such situation will deem an immediate replacement of the Expert

6. An Expert accepts an appointment to act an expert witness in court. He does not mention to the judge or any of the parties that in an unrelated case which was heard in private by a commercial arbitrator, the arbitrator commented in his written decision (which is a confidential document between the parties to the arbitration) that his evidence was “completely unfounded and irrational” and that the Expert appeared to be “partisan”.

- a. Would this be considered to be a breach of duty?
- b. Would it be considered a conflict of interests?

In accordance with Portuguese Law CPC such a situation cannot be considered a breach of duty!

Once again CPC does not address this specific situation!

**Questionnaire Session: "Conflict of Interests" – causes and consequences
Responses Spain**

(Cástor Iglesias Sanzo, Asociación Española de Peritos Tasadores Judiciales)

1. El "conflicto de intereses" está recogido en:

a) La ley bajo la denominación de "tacha (art. 343) y RECUSACIÓN Y ABSTENCION (en correspondencia con los articulo 219 y 220 Lev Organica del Poder judicial).

2.- Hay una deflnición de "Conflicto de Intereses"?

C. Está aceptada.de manera generalizada la definición?
El Experto designado ha de ser imparcial, objetivo e independiente.

3. En qué casos puede un "Conflicto de Intereses" ser aprobado? Por favor indique un ejemplo.

Tener amistad intima o enemistad manifiesta con cualquiera de las partes.

4.-Cuándo hay una relación que cause un "Conflicto de Intereses" quién tiene la responsabilidad de revelarlo y a quién?

Todas ellos, según el articulo 125.2 y 125.3 de la Ley de Ejuciamiento Civil.

5. Cuales son tas consecuencias, si se llega a conocer que un Experto está o ha estado en un Conflicto de intereses durante la preparación de su Informe pericial?

Debera ser reemplazado por otro Experto imparcial.

6.- Un perito acepta asistir como testigo experto a un Tribunal

b) Podría ser considerado un conflicto de intereses.

Informe Pericial del Perito Judicial dirimente (art. 339.3). Se podría considerar conflicto de intereses, cuando las partes aportan con la demanda o contestación de la demanda informe pericial y siendo contradictorios o habiendo discordancia de los mismos, se propone un tercer Perito dirimente.

Questionnaire Session: “Conflict of Interests” – causes and consequences Responses UK

(Philip Newman, Academy of Experts)

The EuroExpert code of practice constitutes, that experts shall not do anything in the course of practicing as an Expert, in any manner which compromises or impairs or is likely to compromise or impair the Expert’s independence, impartiality, objectivity and integrity or the Expert’s duty to maintain confidentiality.

This especially includes, that the expert avoids any matter where there is an actual or potential “Conflict of Interests”. For example, an Expert should not accept instructions, unless full disclosure is made to the judge or those appointing him – in appropriate cases the expert can then 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.

The causes and consequences of “Conflict of Interests” is subject of the EuroExpert study “European Civil Law – convergence and future scheduled steps – evaluation of the Practices of Austria, France, Germany, Portugal, Spain and UK”.

1. Is “Conflict of Interest” recognised by:

a.) Law?

Yes.

For expert witnesses see the case of *Toth v Jarman* [2006] EWCA Civ 1028 (19 July 2006) where the court said:

“The obligation to disclose the existence of a conflict of interest in our judgment stems from the overriding duty of an expert, to which we have already referred and which is clearly laid down in CPR 35.3, and also from the duty of the parties to help the court to further the overriding objective of dealing with cases justly (CPR 1.3). The court needs to be assisted by information as to any potential conflict of interest so that it can decide for itself whether it should act in reliance on the evidence of that expert.”

b.) Practice?

Yes. For example corporate governance guidelines; guidance from professional bodies; experts individually being mindful of possible conflicts and acting in such a way as to avoid them.

c.) Are all professions dealt with identically in this respect? If not, which professions have different constraints?

The general aim of avoiding and/or disclosing actual or potential conflicts is found in many professional bodies’ guidance and also in their regulatory regimes. Some professional bodies (for instance those regulating solicitors, barristers and accountants) issue their own guidance specifically designed to assist their members on the question of how to deal with conflicts of interest.

2.) Is there a definition of “Conflict of Interests”?

If so say:

a.) What is the definition?

It is: “any situation where personal or financial interests conflict or potentially may conflict with or cause prejudice to the performance by an expert of any duty owed to the Court or to any party.

b.) Is the definition given by law, jurisdiction or other institutions (e.g. professional associations, expert organisations)?

It is based on law and also practice or guidance from professional bodies or

c.) Is the definition generally accepted?

In the England & Wales – yes – although it will be explained in a variety of different ways.

3.) In which cases can a “Conflict of Interests” be approved? Please give examples

This is fact-specific. The gravity of the conflict or potential conflict may be such that mere disclosure is sufficient. Any such disclosure should be made at the earliest possible stage.

One example would be an expert being instructed by a publicly quoted company in which he has a small shareholding worth, say, £1,000.

If the conflict is significant, it cannot be dealt with appropriately by mere disclosure – or even agreement with all parties. What is or is not significant is a matter of judgment for the Expert – and ultimately that judgment made by the expert may be scrutinised by the judge or tribunal.

4.) Where there is a relationship that causes a “Conflict of Interests”, who has the responsibility to disclose it and to whom?

a.) The judge?

b.) The Expert?

c.) The parties?

d.) All of them?

It depends on who had knowledge of the conflict. It also depends on who (if anyone) is responsible for the conflict.

As an example – if the judge hearing a case has a shareholding in one of the parties, he would have to disclose it. If it is sufficiently significant he would probably recuse himself.

If the judge knows the expert as a personal friend, then many would say that both the judge and the expert have duties to disclose. The context will be important. For instance it may only be at the hearing that it is ascertained that the judge and the expert know each other. In that situation the primary duty will be on the judge to make disclosure and only if he fails to do so would a secondary duty arguably arise for the expert. However, if the expert is told of the name of the judge in advance of the hearing his duty to provide disclosure to those instructing him will arise at that. If the expert has acted for a client (who is a party in the current case) on numerous previous occasions it is likely he will be under a duty to disclose this. The key obligation of disclosure is that of the expert. However, when for instance a party asks for

permission to appoint a named expert, he is likely to be under a duty to the court to disclose any known or perceived conflict or potential conflict of interest when making that application so as to enable the court to exercise its discretion properly in deciding whether or not to grant permission for the appointment.

5.) What are the consequences, if it is noticed that the Expert is or has been in an “Conflict of Interests” while preparing his Expert opinion?

a.) Can his expert opinion be used as basis for a judgment ?

Yes but it is likely to be given less weight. The greater the conflict the less reliance will be placed upon it.

b.) Can/shall the Expert be replaced by another - impartial – Expert ?

Yes – but only with permission of the court under CPR Part 35. The first expert could be made liable for the wasted costs.

c.) Can the Expert claim the remuneration in case he did not disclose a “Conflict of Interests”?

Yes – but he is likely to find that the client will decline to pay and if the dispute goes to court it is likely that a court will say he breached his duty at common law and/or under contract (express or implied) and that he is thereby deprived of his right to claim his fees.

6.) An Expert accepts an appointment to act an expert witness in court. He does not mention to the judge or any of the parties that in an unrelated case which was heard in private by a commercial arbitrator, the arbitrator commented in his written decision (which is a confidential document between the parties to the arbitration) that his evidence was “completely unfounded and irrational” and that the Expert appeared to be “partisan”.

a.) Would this be considered to be a breach of duty?

Possibly. However this would depend on the nature of his engagement by a party and any representations which he has made. For instance, he could be found to have misled the court as to his expertise through failing to disclose the problem (suitably anonymised to preserve the confidentiality of the arbitration process). Also the client may have asked for details of any criticisms made of him in the course of his expert witness work – his failure to disclose this could therefore cause his representations (for instance in his CV) to be false or misleading and so he could have breached his duty to the appointing party.

The question of whether an expert is under a legal (as opposed to moral) duty to disclose information in the above circumstances is open to serious debate in England & Wales. Some consider that there may be such a duty, whereas others consider that whatever may be best practice, there is no duty of self-disclosure by an expert of such matters, as that would create a duty of the utmost good faith on the part of the expert.

b.) Would it be considered a conflict of interests?

No – there is no conflict of interests.

The EuroExpert finder – New opportunities for experts

(Nicola Cohen, Academy of Experts and
Bernard Floter, Secretary General EuroExpert)



The EuroExpert finder – New opportunities for experts

Sachverständige in Europa finden
Die neue Suchplattform EuroExpert

Nicola Cohen, Bernhard Floter



The EuroExpert finder – New opportunities for experts

- The Importance of EuroExpert finder
- How does the finder work?
- Whom does the EuroExpert finder help?



The Importance of EuroExpert finder

- Global business involves transnational dispute resolution
- European Justice needs qualified experts
- EuroExpert as one stop agency
- Network of over 50,000 qualified experts
- EuroExpert a global association network

How does the finder work? 

EuroExpertFinder

EuroExpertFinder is an excellent resource for those seeking an Expert within Europe and beyond. EuroExpert as the Organisation for expert associations provides access to an expert network of more than 50,000 qualified experts. Would you please fill in the following fields giving details of your request or you can use this EuroExpert service by Fax. Please click [here](#) to download the form. The Fax number is indicated on the header of the form. This service is free of charge. If you need further support please do not hesitate to contact us per [mail](#).

Name: * Tel.: *

Organisation: Fax:

Case Ref.: Email: *

Address:

Country: *

* indicates required fields

Details for Expert required

Expert required for: Litigation Arbitration Report

Date Expert required by:

General Field of Expertize:

Specific Knowledge:

Additional Skills (eg languages):

Geographic Location including country: Austria



How does the finder work?

- Request directly forwarded to required member country
- Monitoring by EuroExpert
- Email System
- Structured, standardized request



Whom does the EuroExpert finder help?

- Courts and judges
- Private Clients and companies
- Nominating bodies
- Experts



EuroExpert

Further Questions?

www.euroexpert.org

ABOUT US

EuroExpert - The Organisation for European Expert Associations
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... [\[more\]](#)

DOWNLOADS

Download our latest documents... [\[more\]](#)

EVENTS

Future events page
All EE member organisations cordially invite members of all other EE organisations to their open events. Please check if there are any specific booking requirements by following any web link for further details... [\[more\]](#)

Navigation menu (left):
Home
About us
EuroExpertFinder
Objectives
Information and History
Statistics
Standards
Code of practice
Association Standards
Report Standards
Education training
Standards
Membership
Officers
Members
News
Contact
Useful Links
Downloads

Remuneration of Experts in Europe – Report on the Leipzig research study by EuroExpert

(RA Katharina Bleutge, IfS)

Within the framework of growing legal and economic cross-frontier relationships between the European States, the field of activities for experts is expanding. The demand for well-qualified, international working experts is growing as well.

Next to many other important aspects of this development, e.g. questions of contract law, liability and quantum there is one subject, that is surely of especial interest for the experts - the system and the measurement of the remuneration of an expert in the member states.

For this reason, EuroExpert carried out a study to compare similarities and differences between the systems and delineated important points. With this in mind a questionnaire was produced and answered by members of EuroExpert (Austria, Czech, France, Germany, Hungary, Portugal, Slovakia, Slovenia, Spain & the UK). On the basis of these responses to identical questions it is possible to evaluate, where the systems are comparable and where they are different –in particular the amount and the system of remuneration.

The analysis has shown, that the deviations of the systems are slight. It follows, that the situation in the different states is more similar than expected. For example it can be detected that the remuneration of court appointed experts or experts appointed by public authorities is primarily based on a legally prescribed scale of charge. When privately appointed experts (Party Appointed Expert) are used they are paid on basis of the contract between the parties.

Another similarity is, that the compensation of the experts is normally calculated on an hourly rate – moreover, in all countries there does exist the interdiction of the fee being based on or dependent on the outcome of the case. This shows, that in every member state of EuroExpert, principles of the expert's work, like independence, impartiality, objectivity and integrity, are also rooted in the remuneration systems.

There are many other similarities such as the process to get paid or questions of additional payments. In some points there are also differences between the states, e.g., different average compensation rates (fees). For example, the average compensation for an expert in Germany lies between € 50 and € 150 per hour whereas in Great Britain the majority of experts earn about € 150 per hour and can possibly earn up to € 750 per hour.

The following shows the questions asked and the responses given by each country. They give a detailed synopsis of similarities and differences of the remuneration-systems of the EuroExpert member states.

Comparative Analysis of the Remuneration-Systems of the EuroExpert Member States of the European Union.

The questions and responses

1.) Is there a legally prescribed scale of charges for experts in your country for

- a. court appointed experts**
- b. experts appointed by public authorities or**
- c. experts appointed by a private client?**

Austria

a. Yes. The charges of court appointed experts are prescribed in the 1975 Fee Entitlement Act. It also includes the procedure for claiming and quantifying the fees and the different elements the expert can claim.

b. Yes. The expert appointed by a public authority in an administration proceeding is equal to an expert in court proceedings with his regard to his entitlement to charges. Many administrative regulations have interpreted the provisions of the Fee Entitlement Act to be also applicable to administration proceedings.

Experts who are staff members of an authority ("ex officio experts") can not claim a remuneration. They have to provide their services in the framework of their service duties.

c. The remuneration normally depends on the contract between the parties; if the agreement is lacking, an adequate remuneration is owed. There are regulations in certain professions (doctors, civil engineers), that contain specific provisions regarding fees.

Often, fee scales, guidelines or recommendations of professional bodies are basis for the determination of which fees are commensurate.

Czech

a./b. Yes. The fees for court appointed experts and experts appointed by public authorities are prescribed in the decree of the ministry of justice.

c. The fees can be based on the same decree but also be agreed differing by the parties.

France

a. No. But there are recommendations and guidelines of each of the "Cour d'Appel", that are strictly applied all over France.

b. Yes. The authorities have prescribed scales, that can differ from ministry to ministry.

c. The remuneration is based on the agreement between the expert and the client. Usually it is three or four times higher than the fee for an CAE.

Germany

a. Yes. There does exist a legally prescribed scale of charge for the CAE since 1931. It was just amended and is called "Justizvergütungs- und Entschädigungsgesetz".

b. Yes. In most of the administrative Proceedings where an expert is appointed, he is paid on the basis of the JVEG (like a CAE). Either this law regulates the applicability in these cases or there are administrative regulations that relegates to the JVEG. If the expert is part of the authority, he does not get an additional fee when he is acting in compliance with his duties of work.

c. Normally the remuneration depends on the contract between the expert and his client. But there are some professions where there is a scale of charge (e.g. architects and engineers).

Hungary

a./b. Yes. The fees are based on a prescription of the ministry of justice.

c. No. The compensation is based on the agreement between the parties. The prescription of the ministry of justice can be the basis for this contract.

Portugal

a. Yes. There is a special code (Código de Custas, CdC) that determines the remuneration of CAE.

b. Yes. If the expert is part of a panel of experts, he is paid on the basis of the CdC as well as the CAE. If the expert is acting as an expert witness, the remuneration is based on the agreement between the expert and the authority.

c. Yes. The PAE is also remunerated on the basis of the CdC. If he is working as an advisor or an expert witness there are no objections to agree the compensation.

Slovakia

a./b./c. Yes. In all cases the expert's remuneration is based on § 3 of the "Act on Experts, Interpreters and Translators" that was decreed by the ministry of justice. In private cases it is possible, too, to make an agreement with the appointing party.

Slovenia

a. Yes.

b. No.

c. No.

Spain

a. No. The fees are fixed by the expert, based on schedules established by Professional Associations or fixed by jurisdictional bodies. Article 423 of the LECiv/1881 defines, that the fees of experts shall be ruled by the persons who are concerned in a detailed and signed statement of fees. The definition of the fees shall correspond to the persons who are concerned, on their own or subject to the regulations established by their Professional Associations. These Professional Associations shall regulate the minimum fees of professions.

b. Dito.

c. No. The fees of a PAE as an independent professional is freely convenanted between the parties. In some cases the fee is conditioned by the labour relations between the expert and the company that engages his services.

UK

a. No. Moreover the CAE is not found too often. Although there are attempts to control fees, there is no prescribed tariff.

b. No.

c. No.

2. What are the criteria for calculating the compensation?

a. hourly rate?

b. Based on value of the claim/amount of damage?

c. Based on outcome of case?

Austria

There are two different types of calculating the remuneration.

One is, to determine the compensation by the income that the expert would customarily obtain for the same or a similar professional activity outside of court.

In other areas, where the payment of the charges is in the responsibility of the state (e.g. legal aid, penal cases, social-law cases) the fee for the expert is only a fair approximation of the income outside the court. In this area the most important services by experts are compensated on the basis of a scale of lump-sum remunerations contained in a catalogue of services.

- a. Yes. It contains the time input, the compensation of effort in simple cases and for taking part in hearings. Hourly rates are also used when the income of experts outside of court is also measured in hourly rates.
- b. Value-based charges are only found for valuating vehicles and real estate. When taking the incomes outside of court as a basis, the amounts indicated in fee scales are also decisive.
- c. No. This is not contained in the Fee Entitlement Act. Aside from this it would not be compatible to there code of ethics

Czech

- a. Yes. The fee can be advanced or decreased. Only in criminal proceedings the experts get a fixed charge.
- b. No.
- c. No.

France

- a. Yes. The hourly rate is between 80,- € and 100,- € for CAE or public appointed experts. The hourly rate for a PAE is about 300,- €.
- b. Usually no. For CAE it is forbidden to claim a compensation based on the value of claim or the amount of damage. This does not apply to private experts, who belong to a judiciary expert company.
- c. The same answer as b.

Germany

- a. Yes. For CAE the hourly rate is prescribed in the JVEG and is distinguished by the different professions of the experts. The hourly rate of a PAE can be free agreed and is oriented on the profession and the severity of the expertise.
- b. Yes. In some areas (e.g. experts for automobiles) it is usual to measure the compensation by the value of the claim or the amount of damage. But there does not exist any legal scale of charges.
- c. No. it is not possible to base the remuneration of the expert on the outcome of the case. This would be a contradiction to the expert's neutrality and objectivity.

Hungary

- a. Yes. The expert is payed per hour. Only in cases of medical analyses he gets a fixed compensation.
- b. No.
- c. No.

Portugal

- a. Yes, but only for experts that are not appointed by court. In these cases the remuneration is normally agreed on a hourly rate.
- b. Yes. The remuneration of the CAE is based on the amounts of the dispute prescribed by the regulations of the CdC. There are only rarely cases, where an expert that is not appointed by court, is compensated on the basis of the claim amount.
- c. No. It is not allowed to base the compensation on the basis of the outcome of the case. This is exceptionally possible, when the expert is acting as an expert advisor.

Slovakia

a. Yes. The expert has to define the number of hours that were necessary to produce the expert opinion.

b. Yes. The remuneration can be defined by a share from the outcome value.

Slovenia

a. No.

b. No.

c. No.

The compensation is divided in several sections. The experts get a certain amount for sections, e.g.:

- study of the file
- collecting and studying extra materials
- examination (person) or viewing (location)
- written report of the expert opinion
- comment on the expert opinion in a hearing

Spain

a. Yes.

b. Yes.

UK

a. Yes. The normal fee basis is on hourly rate for preparation and daily rate for court appearance.

b. No.

c. No. It is strictly forbidden for an expert to work on a payment by result basis.

3. Are there differences in the scale of payment between the various specialisations (e.g. medical, IT, construction) of the expert? If the answer is “yes”, which criteria are used?

Austria

Yes. The Fee Entitlement Act distinguishes charges for different types of activities, e.g. doctors, anthropologists, vehicle matters valuation of buildings etc. The law refers in this case to the income for work outside of court.

Czech

No. There are no differences between the specialisations.

France

Yes. The CAE are submitted to a non-prescribed, but indicative scale of charges of each “Cour d’ Appel”. There are three differences:

Translators and Interpreters are paid less than the other experts

Experts by the “Cour de Cassation” have a compensation that is 20%-30% higher than the usual hourly rate

In difficult cases it is possible for the court to double the hourly rate. It is necessary – but normally no problem - to get the permission of the Ministry of finance or the controllers in charge of their budget

Germany

Yes. There are broad differences between the various specialisation of PAE as well as the CAE. Usually the craft-experts get a lower compensation as an academic-expert.

The CAE gets a remuneration based on the scale of charges that is legally prescribed in the JVEG. The hourly rate depends on what profession the expert is acting in.

Hungary

No. There are no differences in the scale of charges for the different scopes of expert opinions. In spite of this the level of compensation is conditioned by the subject of the expert.

Portugal

Based on the principle, that the court should appoint a public body as an expert, the remuneration is paid as cost. So the difference depends on what costs the public body (e.g. a forensic institute) expends.

Slovakia

Yes. There are differences in the remuneration, depending on the scope of the expert. The minimum fee defined in the Ordinance 491/2004 Coll. is about € 20. An expert in medicine and an expert in law can charge about € 15 for every started hour.

Slovenia

No.

Spain

The experts are usually academic persons (with the exception of car-experts) – there fees are normally fixed by agreement.

UK

Yes. There are differences between disciplines and individual experts. The criteria are primarily market forces.

4. Is the degree of difficulty to formulate an expert opinion a reason for a different compensation? If the answer is “yes”, which criteria are used?**Austria**

Yes. This is also prescribed in the Fees Entitlement Act and plays a role e.g. in the charges established in the FEA with medical examinations or expert opinions on vehicle technology.

Czech

Yes. It depends on the degree of difficulty and the required expertise.

France

Generally not. But there can be reasons for a higher compensation, e.g. a drastically increase of the necessary time because of high technical difficulties. It is also thinkable in cases, where it is difficult to find an expert that corresponds to the criteria of the court.

Germany

Not for CAE. The compensation is only based on the profession and the necessary time he had to invest. But a difficult case normally increases the time the expert needs, so that his remuneration is accordingly higher.

Hungary

Yes. It depends on the complexity and the methods.

Portugal

The degree of difficulty is a reason for a different compensation for experts that are not appointed by the court. For latter, this is no reason, unless you are a public body appointed as expert.

Slovakia

Yes. In difficult cases the remuneration of the expert can increase at most 30 % over the base fee.

Slovenia

Yes. The experts defines the degree of difficulty of his expert opinion.

Spain

Yes. The higher the degree of difficulty is the higher will be the contracted fee.

UK

Yes. But this is also depending on the market forces.

5. Are there additional payments (beyond the fee proper) permitted – for example an expense allowance? If “yes”, what can be claimed for the following, for example:

travel costs
photocopies
software
tests
equipment
others

Austria

Yes. All variable expenses necessarily incurred with the work of an expert can be claimed, other than fixed overheads. The expert can claim:

travel costs
costs for auxiliary staff
other expenses
remuneration for time input
compensation for effort

Czech

Yes. All of the mentioned expenses can be charged. The expert can also claim the expenses for his loss of profit and the transcription of his expertise.

France

Yes. All the mentioned items can be compensated.

Germany

Yes.

The PAE can charge all the mentioned expenses, when he agreed this in the contract with his client. The CAE can charge the expenses that are prescribed in the "JVEG"; these are those mentioned above.

Hungary

Yes. The additional expenses can be reclaimed by the expert. They are part of the complete charge.

Portugal

Yes. When the expert is a public body, these payments are paid as cost.

The PAE can only charge the costs for travelling, if his domicile is outside the court circle.

Slovakia

Yes. All reasonable expenses according to the order can be charged. Next to the mentioned points he can also reclaim the costs for loss of time.

Slovenia

Yes. The expert can also get additional payments for expenses for food, lodging and loss of wage.

Spain

Yes. All expenses that results from the commission can be reimbursed.

UK

Yes. All of the above can be claimed plus other legitimate expense that are reasonable.

6. Are you permitted to have assistance when preparing expert opinions? If so, are there any requirements and are you able to reclaim the costs?**Austria**

These expenses are refundable when the auxiliary staff was indispensable and necessary, in line with the line of scope of the expert's activities. The amount of the costs for the assistance depends on the actual expense. The fee scales can also be used as a guidance.

Czech

Yes. The costs for this assistance can be reclaimed if the court or the public authority agreed with the usage of this assistance.

France

In cases that deal with the subject area of the expert, it is not allowed to have assistance. In other fields of competence the court has to decide if this is necessary and can be accepted. The cost may be (?) compensated separately.

Germany

Yes.

Although the CAE expert has the duty to make his expertise "in person", he is allowed to have assistance. Premise is, that he controls and supervises his auxiliary staff. He is responsible for the work of this personal,, that is only allowed to assist.

This applies also to the PAE. But it is possible to make an agreement allowing the auxiliary staff to have more competence and responsibility than just assistance. In every case the expert has to signify type and extend of the assistance.

Hungary

Yes. If the expert has no special knowledge in some parts of the expertise he can call in another expert. The costs for this assistance can be charged.

Portugal

Yes.

But the extend and type of assistance has to be signified.

The PAE can not claim the costs of this assistance.

Slovakia

Yes. For partial questions the expert can call in a professional consultant. The court decides about this additional cost; normally these expenses can be charged when they were reasonable.

Slovenia

No.

Spain

Yes. The costs for the assistance are included in the fee of the expert.

UK

Yes.

It should be discussed with those appointing and instructing the expert. In any event it should be clearly shown on the face of the report. Secretarial assistance is normally expected to be included within the expert's fees, but other assistance, if approved, is claimable.

7. What is the average compensation (fee) for an expert (between...and)?**Austria**

It can not be given an average fee, because it depends on the income earned by the expert outside of court appointment and there are no surveys on this subject.

Czech

There is no presentable average compensation. The basic fee can be defined in between three and eleven Euro per hour.

France

The average hourly compensation for a CAE can be estimated between 80,- and 105,- Euro.

Germany

The remuneration of a PAE is between 50,- and 150,- Euro per hour plus tax.

The CAE compensation fee lies between 50,- and 95,- Euro plus tax.

Hungary

The compensation defined in the fee decree is between € 8 and € 40 per hour. It is difficult to define an average compensation out of this, but it can be fixed about € 400.

Portugal

The average compensation for a CAE depends on the value of claim. E.g.: if the value of claim is 25.000 € the daily rate of the expert is between 95,- and 190,- €; if it is 50.000,- €, it is between 135,- and 270,- per day.

The expert witness or the expert advisor gets a hourly rate that is rarely lower than 40,- €

Spain

Because the fees are freely fixed, it can't be given an average compensation.

Slovakia

Because of the differences in remuneration of experts it is hard to define an average compensation. It can be fixed between € 100 and € 380 and depends on the complexity and circumstances of the case.

Slovenia

The average compensation fee is between € 450 and € 1.000.

UK

The average fee is hard to specify, because there are differences between professions, regions of the country, inexperienced or world-known experts.

The majority of experts earns about 150,00 € per hour. The lowest is in the region of 75,00 € and the highest about 750,00 € per hour.

8. Can there be deviations from any fee tariff that is in force? If so, what? How does the expert ensure that he is paid and what remedies are available to him if he is not?**Austria**

The PAE can make contract-agreements about the height of his compensation. But he has to heed the codes of ethics.

The CAE can get a higher fee based on the consent of the parties. It is also possible – in discretion of the court – to reduce the fee up to one fourth for the expert's effort, when he is culpable of delay or deficiencies in his work as an expert.

The claim of the expert against the state is ensured by rule. If he wants to get the full amount of his income outside of court, he has to waive the state-compensation and collect his fee from the parties. This can be risky, unless advance payments were made to cover the costs.

Normally the compensation is fixed as a fair approximation to the income obtained outside of court.

Czech

Next to the base fee the expert can assert additional value in cases of "express" – work (50 %) or a night shift or weekend shift premium. He can charge 10 % over the base fee for proving another's expert opinion and 20 % for an expertise with a high difficulty.

The expert has got legal remedies to claim his charge either against the court or the public body or against the party of the contract.

France

Usually you can not deviate from the guidelines of the "Cour d'Appel", except the cases, where the court cannot take the expert up on his promise.

The expert has to ask for a "taxation ordinance", that the court has to sign. The court can evaluate the tax in its discretion.

If the parties contest this ordinance, the dispute is solved by the president of the Court of Appeal. It's decision can only be discussed by the "Cour de Cassation". It is possible and suggestive to ask for the deposit of his estimated costs to ensure his claim.

Germany

Irrespective architects and engineers there are no tariffs for the remuneration of PAEs. In the former case it is not possible to deviate from the prescribed tariffs; it is only allowed to claim additional costs next to the fee.

A deviation from the fee tariff of CAEs is not allowed. If the expert is not listed in this legal tariff, he can request the court to fix a remuneration. Against this assessment the expert can enter caveat.

The PAE has to sue to enforce his claim.

Hungary

Yes. If the expert has to pass an expert opinion that is very difficult, he has got the possibility to charge two and a half times of the base fee.

In private cases the party that requires the expert opinion has to make a payment in advance to make sure that the expert's fee is covered. In criminal cases the state has to pay this advancement. The fee is then fixed by the court. Against this decision the expert can appeal.

Portugal

For the remuneration of a CAE the court is responsible and has the duty to compensate the expert-opinion. The PAE has to enforce his claim by the common law.

Slovakia

Yes. If there is an agreement between the parties, the remuneration can be fixed different from the defined tariff.

The court decides about the expert fee. This decision may be appealed by the expert and also by the parties.

Slovenia

It exists no possibility for any deviations from the fee tariff that is in force.

There are neither legal remedies available for the expert to claim his remuneration. His fee is ensured by the court which orders the party to advance the necessary amount to cover the expert's costs. If this amount is not paid the expert opinion shall not be produced.

Spain

The expert can claim the fees derived from his procedural actions from the party that is obligated to compensate the experts costs, without waiting for the end of the proceeding. When the decision which party has to pay the costs is firm, the expert should submit a detailed and justified statement of his fees and expenses at the office of the court clerk, so these costs can be included in the appraisal of costs. These fees can be challenged, according to the General Standards. In this case the affected party and the Professional Association are heard to come to a conclusion.

UK

There do not exist any fee tariffs – most things are negotiable. To ensure that the expert gets his compensation it is recommended, that he has an effective contract with his client. The Client and the lawyer are responsible for payment of the entire fees.

The expert can sue them for breach of contract, when the client and/or the lawyer don't pay the agreed compensation.

9. Can the expert receive either fees in advance or stage payments?

Austria

Yes. It must be paid an adequate amount in advance, if the expert applies it. There is also the possibility to apply multiple advance payments, when the work of the expert takes a longer period of time.

Although the Fee Entitlement Act prescribes, that there should be only one single decision about the expert's fee to cover his remuneration, the case law of first-instance courts allow the settlement of fees in several stages.

Czech

Yes. In reasonable cases, especially to compensate his cash expenditures.

France

Yes. They can be claimed in penal cases in amount of ca. 30%, when payments are justified by costs and technical advances. Otherwise the payment is not anticipated.

Germany

Yes. The CAE as well as the PAE can claim fees in advance and stage payments. The CAE has to request the advanced payments, especially when the work takes a long time.

The PAE has to make an agreement with his client. If he doesn't, he only can claim the compensation after he finished his expert opinion.

Hungary

No. When the expert opinion is submitted to the court, the compensation of the expert is defined by the court. Then the expert gets the complete charge.

Slovakia

Yes. The expert may require an adequate advance payment from the party that appointed him. In particular cases the expert is authorized to refuse the appointment for an expert opinion, if he doesn't get an advance payment.

Slovenia

No. The expert can neither receive fees in advance nor stage payments.

Spain

Yes. The expert may request whatever financial cover he considers is necessary. This will be on account of the final settlement. The party that proposed the expertise evidence, has to deposit the specified amount in the "Court's Deposits and Consignment Account."

UK

Yes, either or both. In some sectors of the market, for example construction, this is more common than others.

List of abbreviations:

CAE: Court appointed expert

PAE: Private appointed expert

FEA: Fee Entitlement Act

JVEG: Justizvergütungs- und -entschädigungsgesetz

CdC: Código de Custas

e.g.: for example

Comparative analysis of EuroExpert on key issues relating to the use of expert evidence in litigation

Within the European Union (EU) there are many approaches to the application of law, whether based on Common Law or Civil Law traditions. Europe has two basic systems of law operating within it. The UK with its various jurisdictions England & Wales being the principal jurisdiction and Ireland are the countries with Common Law jurisdictions. The remaining countries of continental Europe, currently 23 in number, have Civil Law jurisdictions. Civil Law is often referred to a Roman Law or Roman Dutch Law.

There are variations between countries within each of the systems of law. For example France and Germany do not have a common approach on all matters in much the same way as England differs from Ireland. More surprisingly there are similarities between Common Law and Civil Law Countries, for example the German and English approach to some problems is closer than the Franco German approach.

The object of this study was to take a limited number of key issues involving Experts and their use and to examine how each of 6 countries (Austria, France, Germany, Portugal, Spain & the UK) dealt with them. A questionnaire was produced so that each respondent could answer identical questions. This would aid understanding and give clear indicators of similarities and differences.

Surprisingly it would appear that there is much more that we do in a similar manner than stark differences. The divider did not appear to be Common or Civil Law.

It is hoped that after this initial study further questions will be added and the work will be extended to include more EU member countries. Whether we will achieve 25 remains to be seen.

We hope that the studies will point the way to convergence in a number of areas thereby bringing together the best of all systems. EuroExpert seeks a standard of excellence for all practising as Experts within the EU irrespective of their nationality or jurisdiction. Experts should be able to operate in both Civil and Common Law countries.

The questions and responses

1. Is there a statement/definition of the Expert's legal role and responsibilities?

Austria

Yes. Under Austrian procedural law, the expert is meant to provide the court with the knowledge of experience obtained in his/her particular field and/or to help determine relevant facts to a litigation, or draw conclusions from such facts. The Expert provides the court with important evidence based on his/her findings and expert opinions.

France

No. Although recognized generally as "one of the most qualified person(s) in a given field of knowledge," such a definition of an expert covers only the technical competence of the Expert, and has nothing to do with courts and cases. A judge may, at his discretion, nominate an Expert to investigate a case for him, and make decisions based on the results of the technical investigation found in the expert's report.

Germany

Yes. The definition is found in the German Code of Civil Procedure (ZPO) §§ 402-416, § 1049, the law regulating the course of civil cases. These functions, however, apply to the courts of arbitration, criminal cases and cases before specialised courts as well.

Portugal

No. There is no precise statement of the Expert legal role and responsibilities in the Portuguese Civil Code, although one may deduce the role and responsibilities through analysis of the code. The Expert has the duty to cooperate with the Court or Tribunal, to find facts, and comment upon said facts in order to find the truth, while acting with diligence, competence, and impartiality. Judges may fine Experts for breaches of diligence and non-compliance with the rules of independence and impartiality.

Spain

Yes. It is on the "fringe" of the present definition of the Court Appraiser Expert in the Spanish Code of Civil Procedure. The Expert is a Professional of Justice and expert in his specialty. He is a figure to give an opinion, and is required to provide professional competence, impartiality, and specialisation, (According to Art. 340 L.E.C.) Experts may be appointed from lists supplied by professional associations, scientific entities, etc.

UK

1.1 There is no universally accepted definition or statement of the role and responsibilities of an Expert. There are references in various places but nothing that is so all embracing as to make other references unnecessary. The most comprehensive definition is to be found in the Civil Procedure Rules (CPR). These Rules consist of Rules (which are called Parts) and Practice Directions (PD), which have the same practical effect as a Rule. Part 35 and the PD attached to it lay down the essential requirements. Copies of these two documents are attached to this Response as Appendix 'A' and 'B' respectively. CPR now incorporates what are known as the Ikarian Reefer Rules which were laid down in a case and which were affirmed by the House of Lords which is the Final Court of Appeal. The 'CPR Code of Guidance for Experts and those instructing them' does not have the same technical authority as the Rules but is the commonly accepted advisory document that is referred to by Experts, lawyers and Judges. This is attached as Appendix 'C'.

1.2 The essence of the Expert's responsibilities can be found in Part 35.3, which defines the Expert's duty as to help the court which duty is **OVERRIDING**. It overrides any obligation to anybody who has instructed or paid the Expert.

1.3 Part 35.5 states that the Expert's evidence is to be given in a written Report unless the court otherwise directs. This it seldom does. The basis is that the Expert's Report contains his opinions and is put into evidence. The Expert may also be cross-examined in open court on any aspect of the Report or other matters within his expertise. The general rule is that if there is no written report or it is found inadmissible, the Expert cannot give evidence.

1.4 The instructions he is given by the lawyers of the party or parties who are instructing him define the Expert's role in each case. He may be asked to investigate and 'find' facts, carry out tests or research in addition to giving his opinion.

2. What role does the Expert play in civil proceedings for the ascertainment of facts and opinions?

Austria

Experts provide their assistance to judges, put their knowledge at the court's disposal. They become directly active in the determination of facts and may also conduct investigations independently.

France

The Expert, working within the financial amount set by the judge, is empowered as the "investigative power of the judge," and may ask questions to the parties and request documents from them, within the limits of the terms of his "mission."

Germany

The court or a party may request an Expert to prepare an Expert opinion to clarify opposing allegations. The commission of an expert is referred to as an "order to take 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.

Portugal

The Expert's role is primarily fact finding. The expert explains his findings in precise and concise terms in order to fulfil his duty towards the Court and Tribunal. The primary duty is aiding the judge(s) and parties in understanding the facts and their impact upon the case.

Spain

Experts give opinions on specific questions, and the Expert often participates decisively in the judicial sentence. The expert fixes with precision the fact that is the subject of the judicial matter.

UK

It is not possible to give a simple answer, as it will depend largely upon the nature of the case before the court. The Expert will where appropriate investigate the facts, for example, measuring and testing. In all cases he will consider those matters that are within both his expertise and his instructions and will opine on them.

3. Is the Expert a “finder of facts?”**Austria**

No. The “consideration of the evidence” is reserved to judges. The role of the Expert is an “ascertainer,” and the limitation of their activities is the evaluation of facts.

France

To some degree an “Expert by the court” may be regarded as a “finder of facts.” The Expert may question parties and request documents from each party. The parties may send the Expert written statements known as “DIREs” to which the expert is legally forced to answer in writing within his final report. The written final report is issued to the judge.

Germany

Yes, 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 take evidence. Additionally he can, also be instructed to draw consequences out of the found facts.

Portugal

Yes. The Expert’s primary role is a “finder of facts.” The Expert report must be properly substantiated and it must address in detail all the issues laid out by the judge in his request.

Spain

To some degree and Expert may be regarded as a “finder of facts.” The Court Appraiser Expert provides the Judge/Court with evidence on the fact that is in dispute, and it is the Expert who observes and defines the evidence of the litigation. It is the Judge/Court however, that has absolute freedom and discretion (following its best judgment) to apply the Expert’s findings in its final conclusion.

UK

The short answer is ‘no’. The judge is the finder of facts. The Expert may present his opinion on the facts for the judge to adopt or reject.

4. If “yes” –

- a. Are the facts challengeable by the parties?
- b. Does the position vary if the expert is appointed by the court or by the parties?
- c. Who bears the cost of the expert’s findings?
- d. Does the judge have to follow the facts determined by the expert or may he ignore or only partially follow them?
- e. Does the judge have to take into account or follow the expert’s opinion (as distinct from the facts) or may he adopt a contrary view?
- f. In either case if he does not allow the expert, is he under an obligation to say why he has not done so?

Austria

- a. No. The parties may challenge by means of legal remedy, the decision of the court based on the determination of the facts, however, there are no provisions to independently challenge the findings of the Expert. Parties may comment on the results, ask for explanations, and in the oral hearing ask questions of the Expert.
- b. Yes. The CAE (i.e. Court Appointed Expert¹) enters into a public-law relationship to his contracting party (the state represented by the court). The PAE (i.e. Party Appointed Expert) may be commissioned on behalf of a party to render an Expert opinion, falling within the framework of a private-law relationship.
- c. Austrian civil proceedings are primarily dominated by the “principle of success,” therefore it is ultimately the losing party that must eventually pay the costs. In a case of partial defeat, the costs may be split between the parties. Costs paid by a party to a private expert, under some circumstances, may be claimed as costs of the litigation, and will be treated accordingly.
- d. Judges must carefully review the results obtained from the evidence and assess which facts need to be taken as proven. The judge may base his decision partly on the facts determined by the Expert, or not at all.
- e. Judges are not bound by the opinion of the Expert and as a result of their independent consideration of the evidence, judges may also arrive at the conclusion that the Expert opinion need not be followed.
- f. Judges must provide detailed reasons why they chose not to follow the Expert.

France

- a. The parties may effectively “challenge” facts by submitting DIRES to the Expert, which he must address and answer in his report.
- b. Yes. CAEs are the Investigative Power of the judge, whereas PAEs act as advisors to a party, and may never be in contact with the judge. Both CAE and PAE, however, are subject to the same “Code of Practice.”
- c. The CAE is paid through a taxation court ordinance. The PAE is paid by the party.
- d – f. The judge may either make a decision purely on a legal basis, without taking into consideration any technical explanations, or nominate an Expert by the court to investigate for him, and deliver to him the results of his technical investigations in a final report. The relationship of the CAE is a very close tie with the judge. The report of the PAE may be communicated to the judge during the procedure but normally does not carry the evidential weight of the CAE report.

¹ To be distinguished from Spain’s Court *Appraiser* Expert

Germany

- a. Parties may challenge the facts to be untrue, but must prove that the facts determined by the Expert are incorrect.
- b. Yes. The CAE must adhere to the order to take evidence when preparing his Expert opinion. The Expert is an assistant to the court and must accept instructions from the court only. The court can only give instructions on what work is to be undertaken but not on how it is to be done. Parties may strengthen their position, however, by consulting with a PAE, but this opinion is not regarded as a court Expert opinion, but is rather viewed as an argument of one party.
- c. Where the Expert is commissioned by the court, the loser pays the costs of the legal dispute (If a party does not win the dispute completely but only a 60% share, it must bear 40% of all costs, including the costs of the CAE's opinion). The costs for an Expert opinion commissioned by one party must normally be paid by this party. However, it is possible to declare these costs as party of the cost of the entire legal dispute if the PAE opinion played a major role in determining the legal dispute. There are also cases, where the costs of a PAE can be refunded by the loser. This is exceptionally possible, when the enlistment of an Expert is necessary for an adequate enforcement of a legal title.
- d. 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.
- e. No. If the court believes the opinion does not clarify the legal issues in dispute, it has the option to request supplemental information, or commission additional Experts.
- f. There is no explicit statutory requirement to substantiate the decision of the court to not base its decision on the result of the Expert opinion. But there does exist a statement in the German Code of Civil Procedure (§ 313 ZPO) that prescribes, that the court generally has to substantiate the adjudication. In addition to that the jurisdiction postulates, that the court has to justify, why it did not follow the Expert opinion. Consequently the court does address this issue as the absence of such substantiation almost always constitutes a reason to challenge the judgment of the court by appeal.

Portugal

- a. Yes. The parties may question any imprecisions, obscurities, or lack of proper conclusions in the Expert's report, and can, within 10 days after receiving the report, ask the Court for a second expertise. The request must clearly list the reasons why the party disagrees with the findings.
- b. Yes. The CAE must address in detail all the issues laid out by the judge in his request. The parties, at any time, may appoint a PAE to act as a witness or advisor.
- c – f. Requires more information from the Portuguese EuroExpert representative which is not available at the time of the preparation of this paper.

Spain

- a. Yes. The parties may determine whether they consider it necessary for the Expert to attend proceedings in order to provide explanations or clarifications to the opinion rendered by the expert. Additionally, there are a number of grounds for challenging and objecting to the facts provided by the Expert, including: blood relation or by affinity within the fourth civil degree or the expert to the parties or lawyers, direct or indirect interests in the lawsuit, association or conflictive interests, friendship with any of the parties or lawyers, or if the Expert has previously given a contrary opinion on the same matter, provided Expert services to the other party in the litigation in the past, or if the Expert has an interest in the partnership, establishment, or company that is party to the litigation.
- b. An Expert may be appointed by the court or by the parties (according to L.E.C.) or

a party may request appointment of an expert from the court.

c. When a party requests appointment of an Expert, the report will be paid for by the party who has requested it, without prejudice to what it is agreed in the court costs.

d. The judges are not bound to the Expert opinion. Judges may consider the Expert opinion in order to decide, but they are totally independent to perform.

e.-f. By the principle of freedom and independence the judge may or may not follow the Expert opinion. They have the final decision and there does not exist any obligation to explain why they do or don't follow the Expert opinion.

UK

(Although the answer is 'no' and therefore this part is inapplicable some comments are included where it thought they would be helpful.)

a. Where there are PAE, each party can challenge the other.

b. Where there is an SJE (i.e. Single Joint Expert)², either or both parties can challenge him.

c. The party appointing has the underlying responsibility for costs of the expert. In the case of the SJE, both are responsible and normally pay half each. However, when the case has been finally determined, it is usual for the Court to order that the losing party reimburse the winner's costs.

d. It is the judge's choice and decision.

e. It is the judge's choice and decision. However, if the judge does not reach his decision judicially, he may be overturned on appeal to a higher court.

f. English judge's decisions (known as judgments) virtually always include their reasons so that it is possible to see – and hopefully understand – how they have reached their decision.

5. How do Judges assess the value of the Expert's opinion?

Austria

The views of the CAE are generally followed. The CAE enjoys high prestige because CAEs are independent appointees of the judiciary bound by objectiveness and impartiality, whose opinion has special authority. The value of the PAE is not held in such high esteem. The PAE's opinion is classified as a party submission evidenced by documents. When PAEs have differing views, the court looks to the CAE, so it is evident that the CAE carries more weight.

France

CAEs are literally empowered as the "investigative power of the judge" and a high value is placed on the judge-Expert relationship. PAE, however, acts as an advisor to the party.

Germany

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.

Portugal

Because it seems rather easy to challenge the Expert, and request a second Expert, it seems as though less value is placed on the expert than can be found in the other Legal Systems.

² A SJE is a form of expert used in England and Wales and which has been created by the Civil Procedure Rules. A SJE is not a CAE but is appointed by the parties jointly, such appointment having been previously permitted or ordered by the Court.

Spain

It seems as though the weight to be given to expert evidence is determined on a case by case basis. The court may rule a sentence requiring the presence of the expert at the proceedings or trial for a better understanding and valuation of the opinion delivered.

UK

The arcane workings of a judge's mind are just that. They have to use their experience and knowledge to reach their assessment having listened to the evidence and to the arguments put by the lawyers. They have to decide 'judicially'.

- 6. Are there prescribed requirements for –**
- a. the qualifications that an expert must have?**
 - b. form and presentation of the expert's report?**
 - c. the expert's relationship with the judge (the court) or parties?**
 - d. Is the expert permitted to meet with others (including the representatives of the parties?) If so, for what purposes?**

Austria

- a. According to Austrian Private Law, every person may be regarded as an Expert who has special knowledge and skills regarding that particular field. Procedural Law, however, requires a certified Expert be appointed. These persons must have successfully passed a certification procedure.
- b. The Expert report may be given in oral or written format. The written format is essentially an outline of the court instructions which is a presentation of the established findings, describing all the facts of relevance, methods applied, auxiliary findings, assisting staff involved, etc. The Expert must describe his/her conclusions.
- c. The position of the Expert is as an auxiliary body of the court, with a primary obligation to closely cooperate with the judge.
- d. Yes, the expert may enlist the cooperation of the parties and they must invite them when establishing the findings in the absence of the judge, in order to ensure that they are heard lawfully. They will meet with party representatives, however, establishing contacts with only one side or meeting only one party would be inadmissible.

France

- a. Simply one of the most qualified persons in a given field or knowledge.
- b. The form of the expert's report must be a written account of his findings.
- c. The CAE's relationship to the judge (court) is the Investigative Arm of the court. The PAE, however, is an advisor to the party, and/or may supplement the CAE's investigation.
- d. Yes, the CAE may request documentation from and question both parties.

Germany

- a. Civil case law does not provide any definition or description of the qualifications of an Expert. However, § 404 (ZPO) states that publicly certified Experts are to be given preference by the court for the preparation of an expert opinion over experts not publicly certified. Technically, anyone with a particularly high level of expertise in a specific area, who has integrity, and is objectively independent and neutral, may be appointed by the court to provide an opinion. Publicly certified experts, however, are sworn in by the Chambers of Industry and Commerce or on the basis of § 91 Crafts Regulation Ordinance (Handwerksordnung) after the successful conclusion of an appropriate examination procedure.

- b. They arise solely from the questions posed and the basic logical structure of an Expert opinion. The relevant expert-opinions in literature developed, however, requirements for a logical configuration of the Expert's Report, that are accepted and required in professional circles.
- c. The Expert is an assistant to the court. His sole "partner" is the court. PAE, however, are viewed as part of the respective party to the action.
- d. The expert may only meet the parties if this meeting takes place, for example, to view the subject matter of the Expert opinion. The parties are entitled, but not obliged, to attend. Neutrality obliges the expert to invite all parties in dispute to the appointment.

Portugal

- a. The Expert must comply with the rules of independence and impartiality applicable to Judges and Magistrates.
- b. The Expert report must properly substantiate and address in detail all the issues laid down by the Judge in his request.
- c. The Expert is a finder of facts and aids the judges and parties in understanding the facts and their impact upon the case itself.
- d. Any of the parties can demand the presence of the Experts during the trial, in order that they answer under oath to any and all the clarifications deemed fit by the parties' lawyers.

Spain

- a. In January each year, different professional associations, cultural, scientific, and academic entities, are asked to submit a list of their members or associations who are willing to act as Experts.
- b. The Expert who is appointed to the court will deliver his opinion in writing to the court within the period that he has been notified.
- c. The Expert observes and defines the evidence of the litigation, and the Judge/Court, following its best judgment, applies the rule in its final conclusion.
- d. The Expert can request judicial aid in some cases in order to clarify the object of the trial. In some cases the expert could be requested by the parties or the court to clarify the facts.

UK

- a. Although there are no legally prescribed qualifications there is a fairly general agreement on what is required. The qualifications for an Expert include having appropriate qualifications and experience within the expertise in question. In addition the Expert should be a 'fit and proper' person with high standards of integrity. He should be properly trained and be independent, impartial and objective.
- b. This is laid down in CPR with the primary requirements showing in the PD. These can be seen in the Appendix B. In addition The Academy has a Model Form of Experts Report that was prepared by its Judicial Committee. This consists of senior judges who represent the major jurisdictions in the UK. The Model Report is currently being revised to take into account Rule changes and practice. It is not thought that the changes will be more than minor. A copy of the current Model Form is attached as Appendix 'D'.
- c. There are no rules about the relationship between the judge and the Expert. However the basic requirement is absolute independence between them. Each has his own role and the Rules of Natural Justice prescribe this separation. This having been said there are some practical points that need to be considered.
 - When the Expert prepares his report he is unlikely to know who the trial judge will be. This means that any relationship that there may be with the trial judge is unlikely to have influenced the report.

- If any Expert becomes aware of any relationship that he may have with the judge he should immediately communicate this to those instructing him. The lawyers would communicate the information to the judge.
 - It is unwise for an Expert to have a relationship with any party to the action as this may distort or be perceived to distort his independence. In any event the existence of any relationship should be disclosed at the earliest possible to those instructing him. It should also be clearly and transparently stated in his Report.
 - The expert should disclose anything that might give rise to questions about his ability to be independent.
- d. A PAE will meet and work the party instructing him. He would not normally meet with the other party and would only do so with the clearest of instructions, an example of this could be a medical examination of the Claimant by the Defendant's medical expert. The Expert should not meet or discuss any matter with the other side's Expert or others unless there are clear instructions from the party or an Order from the Court. There is no objection to the SJE meeting the parties when they are together but it is not good practice to meet them or their advisers individually. There is a process known as Discussions between Experts (Part 35.12) or meetings of Experts, where the parties have a PAE. The PAE is normally Ordered by the Court to meet the PAE from the other party. The object of this meeting is to narrow the technical issues by preparing a memorandum showing what they agree and what they do not agree and why they disagree.

7. Is there any limitation on the number of Experts in a case?

Austria

The number of experts is usually 1, however, it is the sole discretion of the court to determine the number necessary in any given case.

France

The number is limited by reasonableness and practicality. Additionally, a CAE may not be nominated based on the cost versus the amount in contention.

Germany

No, but the party requesting the CAE must pay the fees to the court.

Portugal

No. There are usually between 1 and 7, however, the number rarely exceeds more than 3.

Spain

No, there is no limit on this.

UK

The technical answer is 'no'. However the court has a duty to restrict Expert evidence to that that is reasonably required (Part 35.2) and the court has to give specific permission for each Expert (Rule 35.4). These Rules have the effect of limiting the number of Experts, usually to one per discipline per party.

8. Can a party appoint their own Expert Witness where there is a Court appointed Expert?

Austria

Yes, but ultimately, a convincing court-commissioned expert opinion cannot be rebutted by a private Expert opinion.

France

Yes. The PAE may act as a party advisor, or help supplement the CAE's investigation.

Germany

Yes, but the PAE act in the capacity of party advisors, and will not be Experts of the court.

Portugal

It is quite usual to have Expert advisors.

Spain

Not stated in the Spanish EuroExpert representative responses at the time of the preparation of this paper.

UK

The answer to this question is not known because Court Appointed Experts (CAE) are not in use in England. There is in fact doubt as to whether the court has the power to appoint an Expert. However, in many ways the SJE is similar to the CAE. They are not the same but similar. The court can give permission for a PAE to be appointed when there is an SJE. It is not the norm, but equally it is not rare. There is of course, nothing except expense, to stop a party from appointing their own Expert (usually known as an Expert Advisor or Shadow Expert) to advise them. However, this expert would not give evidence and is therefore not an Expert Witness.

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 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 instruction 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 Practice, 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:

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.

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).

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:

maintain confidentiality of all information obtained in the process of its activities concerning membership.

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.

define policies and procedures for granting, maintaining, renewing, suspending or withdrawal of membership

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 sub-contractors 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.

EuroExpert standard for Mediation training

One of EuroExpert's objectives is 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; integrity; independence; impartiality; objectivity and respect for confidentiality.

EuroExpert has, therefore, developed a standard for Mediation training in order to promote experts as highly qualified mediators in the field of Alternative Dispute Resolution (ADR).

The Requirements

A) Courses complying with the EuroExpert standard for mediation training shall enable participants to meet technical and personal requirements as a mediator.

Technical requirements include:

- : General understanding of the methods of Dispute Resolution
- : Knowledge of Mediation principles and philosophy
- : Understanding the mediation process and the mediator's techniques

Personal Requirements include in addition to interpersonal skills, the ability

- : to listen
- : to communicate
- : to inspire confidence and trust

B) The standard specifies minimum requirements which ensure that organizations offering training schemes for mediators operate in a consistent, comparable and reliable manner. To provide this assurance,

1) The training organization shall ensure that it

- : uses qualified and experienced trainers/tutors to run the courses
- : it complies with any standards in force
- : only uses Courses that comply with appropriate EU-Standards

2) The training organisation shall adopt course requirements which include

- : A Minimum Training and assessment of 40 hours
- : 8 practical Role plays
- : Practical assessment of 3 hours
- : That Assessors should not normally have taught participants to be assessed