

EuroExpert Symposium

**1st November 2007
Prague**



THE ORGANISATION
FOR EUROPEAN
EXPERT ASSOCIATIONS

EuroExpert Symposium 2007 in Prague: European Justice needs Expertise

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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

**Prof. Matthias Rant
President of EuroExpert**



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

- **The Organization EuroExpert**
- **Objectives and Aims of EuroExpert**
- **Standards and EuroExpert**
- **Perspectives**



The Organization EuroExpert

- Formed in 1998
- Founders:
 - BVS, Germany
 - The Academy of Experts, United Kingdom
 - Conseil National des Compagnies d'Experts de Justice, France
- Seat in Luxemburg
- Office of Secretary General in Cologne



The Organization EuroExpert

- Current members
 - BVS, Germany
 - The Academy of Experts, United Kingdom
 - Conseil National des Compagnies d'Experts de Justice, France
 - Asociación Española de Peritos Tasadores Judiciales, Spain
 - Associação Portuguesa de Avaliadores de Engenharia, Portugal
 - Hauptverband der allg. beeid. u. ger. zert. Sachverst., Austria
 - Komora soudních znalců ČR, o.s., Czech
 - Magyar Igazságügyi Szakértői Kamara, Hungary



The Organization EuroExpert

- **Membership categories**

Full Membership

- One representative organisation or one association of organizations (box) for each member state of the European Union

Associate Membership

- European member states (not EU)
- European professional associations
- International organisations
- African organisations



Objectives and Aims of EuroExpert

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.



Objectives and Aims of 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



Objectives and Aims of EuroExpert

Co-operation and relations with

- judicial and legal authorities
- government departments
- official and private bodies
- organisations for the purposes of accreditation and certification of experts

The provision of a forum for experts worldwide



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



Perspectives

- intensified contact to the EU-Institutions
- admission of further members
- progressing of the networking of European experts

A screenshot of the EuroExpert website homepage. The page has a light blue background. At the top right is the EuroExpert logo. On the left is a vertical navigation menu with links: Home, About us (with sub-links: Objectives, Formation and History, Code of Practice, Statues), Membership (with sub-links: Officers, Members), Events (with sub-link: Past Events), Making Contact, Useful Links, Downloads, and Members Only. The main content area is divided into three sections: 'ABOUT US' with a sub-header 'EuroExpert - The Organisation for European Expert Associations' and a paragraph of text; 'DOWNLOADS' with a link to download documents; and 'EVENTS' with a sub-header 'Future events page' and a paragraph of text. A European Union flag is displayed in the center of the page.

The use of Experts in Russia – an introduction to practise, procedures and problems

Dr. Ing. Sergey Zakharov

In case any questions requiring special professional knowledge in various fields of science, technology, art, craftsmanship occur in a course of legal proceedings, the court assigns judicial expertise. The expertise may be committed to the state or non-governmental expert institution, some specific expert or several experts. In any case the expert is an individual person issuing expert opinion his (her) expert advice on behalf of his (her) name, and the expert organizations appointed by court perform simple administrative functions.

Procedure of assignment and order of the expertise in civil, arbitration or criminal trial is governed by different laws (Arbitral proceedings Code, Civil Proceedings Code, Criminal Proceedings Code), while the nature of the process remains the same. Russia has a law in force named "About the state judicial expertise". This law also provides for non-governmental judicial experts. To conduct judicial expertise neither expert nor his organization should have any special licenses or permits. In fact, only "special knowledge" is required. The fact that this "special knowledge" is actually in place has to be defined by the court as the case may be. And there are no any other forms of regulation with regard to judicial expertise activities.

Each of the parties as well as any third parties engaged in legal proceedings are entitled to submit to the court any questions subject to be settled through the expertise procedure. Final scope of questions subject to be resolved basing on expert devise, subject to be determined by the court. The court must substantiate any dismissal with regard to the issues offered for expertise. Parties to the trial, as well as any third parties engaged have the right: to ask the court to assign the expertise in any specific judicial expertise institution, or to commit this to any specific expert; to except specific expert; to formulate the issues to be resolved by the expert; to examine court decision with regard to assignment of the expertise and the issues to be resolved by such an expertise; examine expert advices; to apply for assignment of repeated, additional integrated or commission-conducted expertise.

The expert is obliged to accept for processing the expertise committed by court and to complete full examination of materials and documents submitted to him in this relation; to provide reasonable and impartial advice with regard to the questions addressed to him and to submit such an advice to the court which has assigned the expertise; to come to the court subject to personal participation in the trial in question and to answer to all questions in relation with the examination and expertise conducted and with regard to his expert advice submitted to the court.

Provided the issues addressed by the court are beyond of the scope of special knowledge of the expert, or any materials and documents are inappropriate or insufficient for giving an expert advice, the expert should provide the court which has assigned the expertise with reasonably substantiated notification in written stating impossibility to make expert advice.

The expert is not authorized to collect independently any materials necessary for expertise; to contact personally any part to the trial in case this would impeach his disinterestedness in court decision; to disclose any information which has been made available to him in connection with the expertise, or to disclose to any parties results of the expertise conducted, except to the court which has assigned this expertise.

As it is necessary for issuing of the expert advice the expert is entitled to examine court records relating to the subject of his expertise; to request the court to provide additional materials and documents required for expert examination; to address questions to the parties to the trial and to the witnesses during court proceedings; to apply for engagement of other experts.

The expert must provide his expert advice in written.

Expert advice must contain detail description of the study completed, conclusions made upon completion of expert examination, answers to the questions addressed to the expert by the court. In case the expert in a course of his expert examination has detected any circumstances significant for court proceedings of the case, and with regard to which no questions have been addressed by the court, he should be entitled to include his opinion with regard to such circumstances to his expert advice. Expert advice is not obligatory to the court and has to be considered together with all other evidences regarding the case. The dissent of the court with regard to the expert opinion should be motivated and included into the court decision.

Procedural relationship on the subject of forensic expertise execution between court and expert are based on judicial definition. This consists of court and expert rights and duties. Such court' rights and duties are as follows:

- : Determine and appeal an expert (or expert organization);
- : Requirement to execute an investigation and set up expert's tasks and questions (are fixed in judicial definition);
- : Discovery of expert opinion , expert judgment, finding out evidences (are fixed in judicial decision);
- : Notice to appear (subpoena) to session in order to receive expert explanation details in expert opinion;
- : Hearing of expert witnesses.

Expert's rights and duties are also statute-established. An expert:

- : Learns case papers;
- : Requires (if necessary) additional documents;
- : Takes part in assize;
- : Takes the initiative (if an expert during investigation finds evidences important for the case, he can include those evidences even though this question or task hasn't been set up);
- : Gives unprejudiced opinion on set up questions in statute-established form.

To understand merits of judicial (forensic) expertise it is important to understand such concepts as "special knowledge" (skill in the art) and "special investigation" ("advanced study"). "Special" means that an expert uses his professional knowledge, not common or general.

Expertise isn't just usage of special knowledge in any form, but in a form of special investigation. This investigation is supposed to give information the court doesn't have, and this information cannot be received from other sources (for example hearing of witnesses).

A very important specialty which gives much work to lawyers is:

Expert actions (such as choosing special methods or scientific techniques, using such methods and techniques for learning the investigated object (site), information analysis, professional appraisal) are not regulated and cannot be regulated by proceedings law since the process of expertise is not rule making activity.

Special investigation goal is to give professional appraisal and expert opinion. Temporary information discovered during investigation is not considered as evidence since in order to make a conclusion one needs special knowledge. Court has no such right as to use temporary information because one does not agree with experts conclusions. Otherwise this will lead to unauthoritative (incompetent) evaluation and court unwillingly will take some functions of an expert which is unsound – since the law doesn't give right to combine procedural functions. Only a professional expert opinion is actual data for the court to be evaluated as evidence.

Russian law provides opportunity to execute pretrial procedural expertise. Such expertise is executed on the ground of Notary Decision for getting special information in case of initiation of proceedings in court or administrative authority if giving evidence later will be impossible or difficult.

Such situation may occur in following cases:

1. damage real estate object (pounding and other flat apartment or house damages);
2. accident on construction site;
low-grade or failure to comply building and assembly jobs if reconstruction completion of construction exigent;
3. necessity to freeze technical state real estate object before beginning of construction (reconstruction, restoration) of neighboring houses, buildings, construction sites in order to identify further availability or absence of cause-and-effect

Executing such expertise has some advantages:

Expertise is assigned by the notary charged by the law to assign expertise in order to provide evidence; expertise is executed in accordance with Civil Proceedings Code in other words the procedure is the same as judicial expertise; experts are noticed of responsibility of giving expert opinion, for denying or evading of giving expert opinion. In this case disclaimer of opinion can cause civil or criminal responsibility.

All above-mentioned gives an opportunity to dispose of real estate object damages, defect attack and completion of construction before judicial expertise.

Nevertheless such expertise has its constraints:

In accordance with the law notary doesn't provide evidences for court, which on the moment of initiation of proceedings in court or administrative authority.

In such cases the expertise is executed within Judicial Decision (judicial expertise) or within Administrative authorities Decision.

The main problem in Russia in expertise is that an expert doesn't have statute-established documents. In such condition state-operated organizations constantly attempt to establish monopoly of state-operated organizations to execute judicial expertise. Such attempts are especially common in Arbitral proceedings since dispute costs are great.

In 2006 it was discussed if Russian Federation will preserve existing practice of experts' assignment by arbitrage executed by nongovernmental expert organization.

Through many years state-operated organizations and courts insist on assigning only state-operated organizations to execute judicial expertise. This opinion is based on Russian Federation Law "Concerning state-operated judicial expertise in Russian Federation" (2001). It was submitted that judicial expertise can be entrusted only nongovernmental expert, particularly, natural person, but not an organization. In other words the right of nongovernmental expertise to appoint an expert is contested. August 24th of 2006 There was a Supreme Arbitrage Presidium in Moscow in order to consider two possible draftings concerning the matter.

First – the law does not enable to adjudicate expertise execution in nongovernmental expert organization.

Second – the law does not ban to adjudicate expertise execution in nongovernmental expert organization.

In past hot disputes nongovernmental expert organizations asserted their rights to execute judicial expertise. Moreover this right is settled by the law:

Supreme Arbitrage Plenum of Russian Federation governed by article 13 of Federal Constitutional Law "Concerning arbitrage in Russian Federation" gave explanations issuing on December 20th of 2006 "Concerning some questions of administration of judicial expertise legislation by arbitrage"

Statutory power of state-operated expert organizations to choose experts for executing expertise was limited.

Plenum decided that in accordance with part 1 article 83 of Arbitral Proceedings Code of Russian Federation (hereinafter APC RF, the Code) expertise is executed under appointment of state-operated expert organization top manager and other experts having special knowledge. This is the law. Then – expertise can be provided by state-operated expert organization as well as nongovernmental expert organization,

or other experts who obtain special knowledge can be appointed. This is a particularly important explanation.

Expert opinion of nongovernmental expert organization cannot be challenged the validity of just because this judicial expertise can be executed only by state-operated expert organization. It is important to know that many courts avoided appointing nongovernmental expert organizations to execute judicial expertise since there were state-operated expert organizations. Now there is no such legal cause.

Plenum gave other important issues in this Decision.

It was already said that Plenum limited state-operated expert organizations statutory power to appoint experts independently. Today Court when issuing its Decisions on appointing judicial expertise must be governed by law requirements and APC RF concerning support of procedural rights of all parts. Thereafter if judicial expertise is to be executed by state-operated expert organization, court in order to provide parts it right to challenge an expert (article 23 APC RF), as well as right to solicit for appointing indicated experts (part 3 article 82 of APC RF). It should be indicated in Judicial Definition what organization will execute expertise as well as state judicial expert's last and first name.

This important innovation works for nongovernmental expert organizations too.

Thereby court when appointing a governmental expert should indicate last and first name, his/her education, specialty, work experience and job as well as in case of appointing a nongovernmental expert.

Definitely it was quite convenient for expert organizations to appoint experts independently often hide (screen, disguise) this information from parties in controversy. It is known that experts often signed expert investigation results executed by other experts who did not want to sign them or were dismissed or any other reasons. Consequently sometimes it was impossible to understand who executed expertise. From the view of objectivity legal procedure and receiving hard data this innovation is positive. When these regulations will join into force an expert will have more importance and the most important organizational role of expert organizations will be preserved. When this Decision was carried out the main subject that was discussed was expert's fee. Since monetary means for an expert executing expertise are paid from arbitrage deposit, an expert cannot demand prepayment for expertise and expenses payment for his/her appearance. This law restrains expert's work. Construction expertise often requires raw material intensive investigation (amounts can soar up to 50000 – 100000 Euros, and sometimes even more). Such works cannot be fund by expert organizations.

It was important to particularly determine category "when executing expertise". Now experts receive money only after issuing Judicial Decision. Terms between expertise executed and issuing Judicial Decision can be a year. Such procedures can lead to expert organizations bankruptcy. Therefore expert organizations either deny executing expertise or receive money from one of the parties under the table. This creates unhealthy atmosphere around expertise when we hear that it is possible to get any kind of expert opinion for money. Thereafter this gives even more work to state-operated expert organizations where you can find huge queues for years. Or special disputes are produced without expertise. This lowers expertise quality and ruins confidence.

It is necessary to transfer money to arbitrage deposit for expertise payment when additional or second expertise is appointed. Now de facto expert organizations execute second expertise without receiving money for the first one with no explanations. Therefore judicial document concerning executing expert's duties is of high importance. This particular document can show that an expert failed to comply with experts tasks set up by the court and therefore he/she has no right for money. And this document (decision) can be disputed in court. Unfortunately such issues are not found in Plenum Decision.

In conclusion it is important to say that together with arbitrage, expertise is produced in Civil and criminal cases. The problems are still the same. Since the law concerning expertise should be integrated, professional society has the right to expect that the law will be better regulated in this area too.

Status of experts in Russia

1. What is an Expert (definition)?

An expert is a person who has special professional knowledge in various fields of science, technology, art and so on. There are no formal criteria in Russia for experts and he does not need any permission from the state (license, certificate) to act as an expert.

2. For each case who selects the Expert(s) and who appoints him?

Only the court can appoint forensic expertise. The court appoints forensic expertise in case any questions requiring special professional knowledge in various fields of science, technology, art, craftsmanship occur in a course of legal proceedings. The expertise may be committed to the state or non-governmental expert institution, some specific expert or several experts. In any case the expert is an individual person issuing expert opinion his (her) expert advice on behalf of his (her) name, and the expert organizations appointed by court perform simple administrative functions.

3. What is the Expert's duty as an Expert?

The expert is obliged to accept for processing the expertise committed by court and to complete full examination of materials and documents submitted to him in this relation; to provide reasonable and impartial advice with regard to the questions addressed to him and to submit such an advice to the court which has assigned the expertise; to come to the court subject to personal participation in the trial in question and to answer to all questions in relation with the examination and expertise conducted and with regard to his expert advice submitted to the court.

Provided the issues addressed by the court are beyond of the scope of special knowledge of the expert, or any materials and documents are inappropriate or insufficient for giving an expert advice, the expert should provide the court which has assigned the expertise with reasonably substantiated notification in written stating impossibility to make expert advice. The expert is not authorized to collect independently any materials necessary for expertise; to contact personally any part to the trial in case this would impeach his disinterestedness in court decision; to disclose any information which has been made available to him in connection with the expertise, or to disclose to any parties results of the expertise conducted, except to the court which has assigned this expertise. As it is necessary for issuing of the expert advice the expert is entitled to examine court records relating to the subject of his expertise; to request the court to provide additional materials and documents required for expert examination; to address questions to the parties to the trial and to the witnesses during court proceedings; to apply for engagement of other experts. The expert must provide his expert advice in written. Expert advice must contain detail description of the study completed, conclusions made upon completion of expert examination, answers to the questions addressed to the expert by the court. In case the expert in a course of his expert examination has detected any circumstances significant for court proceedings of the case, and with regard to which no questions have been addressed by the court, he should be entitled to include his opinion with regard to such circumstances to his expert advice.

4. Is there any official listing for experts in your country?

No.

5. What training general and continuing professional development (CPD) is available for Experts as Experts in your country? Is a training mandatory and if so what?

No general training and no continuing professional development is prescribed for Experts in our country it depends only on every expert.

The EuroExpert finder – New opportunities for experts
Nicola Cohen and Bernard Floter



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

Print details of the page



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

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The European Expert – Questions and Answers

Questionnaire

1. Role of Experts and Expert Evidence

- 1.1 Is there a statement/definition of the Expert's legal role and responsibilities?
- 1.2 What role does the Expert play in civil proceedings for the ascertainment of facts and opinions?
- 1.3 Is the Expert a "finder of facts?"
If "yes" – How do Judges assess the value of the Expert's opinion?
- 1.4 Are there prescribed requirements for:
 - 1.4.1 the qualifications that an Expert must have?
 - 1.4.2 the form and presentation of the Expert's report?
 - 1.4.3 the Expert's relationship with the judge (the court) or parties?
 - 1.4.4 Is the Expert permitted to meet with others (including the representatives of the parties?)
If so, who and for what purposes?
- 1.5 Is there any limitation on the number of Experts in a case?
- 1.6 Can a party appoint their own Expert Witness where there is a Court appointed Expert?
- 1.7 Can an Expert be replaced?
 - 1.7.1 by a party
YES / NO
If the answer is "yes"
In what circumstances eg the Expert is not impartial or is not competent in the specific area of the dispute?
What is the procedure for replacement?
 - 1.7.2 by the court
YES / NO?
If the answer is "yes"
Can the court on its own initiative replace an Expert?

If so in what circumstances eg the Expert is not impartial or is not competent in the specific area of the dispute?
What is the procedure for replacement?

2. Status of Experts

- 2.1 What is an Expert (definition)?
- 2.2 For each case who selects the Expert(s) and who appoints him?
- 2.3 What is the Expert's duty as an Expert?
- 2.4. Is there any official listing for experts in your country?
 - 2.4.1 If so, what are the lists (e.g. court, chambers, associations) and what are the requirements for each listing (including the period for which an Expert is listed)?
 - 2.4.2 Is it possible to remove an Expert from the list?
 - 2.4.3 If so, for what reason and by whom can an Expert be removed?
 - 2.4.4 Can the Expert appeal against removal and if so to whom?
- 2.5 What training general and continuing professional development (CPD) is available for Experts, as Experts, in your country?
Is an training mandatory and if so what?

3. Conflict of Interests

- 3.1 Is "Conflict of Interest" recognised by:
 - 3.1.1 Law?
 - 3.1.2 Practice?

- 3.1 3 Are all professions dealt with identically in this respect? If not, which professions have different constraints?]
- 3.2 Is there a definition of “Conflict of Interests”?
If so say:
- 3.2.1 What is the definition?
- 3.2.2 Is the definition given by law, jurisdiction or other institutions (e.g. professional associations, expert organizations) or
- 3.2.3 is the definition generally accepted?
- 3.3 In which cases can a “Conflict of Interests” be approved? Please give examples!
- 3.4 Where there is a relationship that causes a “Conflict of Interests”, who has the responsibility to disclose it and to whom?
- 3.4.1 The judge?
- 3.4.2 The Expert?
- 3.4.3 The parties?
- 3.4.4 All of them?
- 3.5 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?
- 3.5.1 Can his expert opinion be used as basis for a judgment?
- 3.5.2 Can/should the Expert be replaced by another - impartial – Expert?
- 3.5.3 Can the Expert claim the remuneration in a case in which he did not disclose the existence of a “Conflict of Interests”?
- 3.6 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”.
- 3.6.1 Would it be considered a conflict of interests?
- 3.6.2 Would this be considered to be a breach of duty?

4. Liability

Is the Expert liable for an incorrect expert opinion?

YES / NO

If the answer is “yes”

- 4.1 Is there a special procedure for establishing a claim against the Expert (or is it the normal legal process)?
- 4.2 Who can claim against the expert (the court / the party commissioning the report/ any of the parties in the case?)
- 4.3 is there a possibility to exclude or limit liability?
- 4.4 is there a possibility to limit the amount for which the Expert would be responsible?
- 4.5 If so is there a formula eg the Expert’s fees?

5. Advertising

5.1 Is the Expert allowed to advertise his expert activities in litigation and other dispute resolution for example, arbitration?

YES / NO

If the answer is “yes”

- 5.2 What restrictions (if any) are there on the Expert’s advertising and other activities?
- 5.2.1 Do any restrictions apply to all professions or only to some eg doctors? If so give details.
- 5.2.2 What restrictions (if any) are there on the Expert’s advertising and other activities?

- 5.2.3 Do any restrictions apply to all professions or only to some eg doctors? In which case give details.

6. Remuneration

- 6.1 Is there a legally prescribed scale of charges for Experts in your country for:
- 6.1.1 court appointed Experts
 - 6.1.2 Experts appointed by public authorities or
 - 6.1.3 Experts appointed by a private client?
- 6.2 What are the criteria for calculating the compensation/remuneration?
- 6.2.1 Hourly rate?
 - 6.2.2 Based on value of the claim/amount of damage?
 - 6.2.3 Based on outcome of case?
- 6.3 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?
- 6.4 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?
- 6.5 Are there additional payments (beyond the proper or agreed fee) permitted – for example an expense allowance?
If “yes”, what can be claimed for the following, for example:
- 6.5.1 travel costs
 - 6.5.2 photocopies
 - 6.5.3 software
 - 6.5.4 tests
 - 6.5.5 equipment
 - 6.5.6 others
- 6.6 Is the Expert permitted to have assistance when preparing expert opinions?
If so, are there any requirements and is the Expert able to reclaim the costs of the assistance?
- 6.7 What is the range for Expert’s fees (between...and)?
Is there an average or usual fee for an Expert?
- 6.8 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?
- 6.9 Can the Expert receive either fees in advance or stage payments?

Responses

1. Role of Experts and Expert Evidence

1.1 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

a. 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'.

b. 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.

c. 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.

d. 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.

1.2 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.

1.3 Is the Expert a “finder of facts?” If “yes” – How do Judges assess the value of the Expert's opinion?

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. 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

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.

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

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.

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

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.

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.

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.

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 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.

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'.

1.3.1 Are the facts challengeable by the parties?

Austria

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.

France

The parties may effectively “challenge” facts by submitting DRES to the Expert, which he must address and answer in his report.

Germany

Parties may challenge the facts to be untrue, but must prove that the facts determined by the Expert are incorrect.

Portugal

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.

Spain

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.

UK

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

1.3.1.1 Does the position vary if the expert is appointed by the court or by the parties?**Austria**

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.

France

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.”

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

Germany

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.

Portugal

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.

Spain

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.

UK

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

1.3.1.2 Who bears the cost of the expert's findings?

Austria

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.

France

The CAE is paid through a taxation court ordinance. The PAE is paid by the party.

Germany

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.

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.

Portugal

Requires more information from the Portuguese EuroExpert representative which is not available at the time of the preparation of this paper.

Spain

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.

UK

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.

1.3.1.3 Does the judge have to follow the facts determined by the expert or may he ignore or only partially follow them?**Austria**

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.

France

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.

Germany

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.

Spain

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.

UK

It is the judge's choice and decision.

1.3.1.4 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?

Austria

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.

Germany

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.

Spain

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

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.

1.3.1.5 In either case if he does not allowed the expert, is he under an obligation to say why he has not done so?

Austria

Judges must provide detailed reasons why they chose not to follow the Expert.

Germany

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.

UK

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.

1.4 Are there prescribed requirements?

for:

1.4.1 the qualifications that an expert must have?

Austria

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.

France

Simply one of the most qualified persons in a given field or knowledge.

Germany

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.

Portugal

The Expert must comply with the rules of independence and impartiality applicable to Judges and Magistrates.

Spain

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.

UK

Although there are no legally prescribed qualifications there is 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.

1.4.2 form and presentation of the expert's report?

Austria

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.

France

The form of the expert's report must be a written account of his findings.

Germany

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.

Portugal

The Expert report must properly substantiate and address in detail all the issues laid down by the Judge in his request.

Spain

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.

UK

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'.

1.4.3 the expert's relationship with the judge (the court) or parties?

Austria

The position of the Expert is as an auxiliary body of the court, with a primary obligation to closely cooperate with the judge.

France

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.

Germany

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.

Portugal

The Expert is a finder of facts and aids the judges and parties in understanding the facts and their impact upon the case itself.

Spain

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.

UK

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.

1.4.4 Is the expert permitted to meet with others (including the representatives of the parties?) If so, for what purposes?**Austria**

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

Yes, the CAE may request documentation from and question both parties.

Germany

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

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

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 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.

1.5 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.

1.6 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.

1.7 Can an Expert be replaced?

1.7.1 by a party

YES / NO

If the answer is “yes”

1.7.1.1 In what circumstances eg the Expert is not impartial or is not competent in the specific area of the dispute?

Austria

1.7.1 Yes, an expert may be rejected.

France

1.7.1 In France, the expert is nominated by the judge and can only be replaced by him, and not by a party.

There is practically no way to stop the expert from going to the end of the case for which he has been nominated by the judge, even if he is incompetent. However, if partiality may be demonstrated while the expert is operating, one can make an incident of procedure, go to the court to have it discussed, and may eventually have the expert replaced as the case is ongoing.

Germany

1.7.1 Yes.

Portugal

1.7.1 Yes.

The Expert can be replaced if he breaches in any way the rules of independence and impartiality applicable (Similar to the judges and Magistrates).

UK

The answer once again is neither a straight yes or no. A party is not obliged to continue with an expert witness but cannot adduce evidence from a replacement expert witness without the permission of the court. This is not a formality. Permission can be refused completely or could be granted on condition that, for example, the other expert's report or draft report is disclosed to the court and to the other side (as it may be that the reason for replacing the first expert was because he gave an adverse opinion) but cannot replace the expert without the permission of the court. This is not a formality.

1.7.1.1 In what circumstances, e.g. the Expert is not impartial or is not competent in the specific area of the dispute?

Austria

It is not possible to reject an expert without giving any reason.

If the expert himself/herself is a party, a representative of a party or a relative or in-law relative of a party, as well as in cases pertaining to foster relatives, then he/she cannot assume an activity for the court. The parties may reject an expert who is nevertheless appointed by the court.

Moreover, an expert may be rejected – just like a judge – if there is sufficient ground to doubt his/her full impartiality.

Examples in this respect are to side with one party (one-sided, non-objective conduct), prejudice, a close relationship to one of the parties, conflicts with one of the parties, or the expert's own material, legal or other interests of social relevance in the outcome of the litigation.

Germany

The expert can be refused by both parties if there is a reason for this refusal.

The expert can be refused for the following reasons:

- : friendship or animosity or also business relations with one party;
- : taking up contact with only one party when preparing the expert opinion;
- : inspection of site with only one party;
- : preparation of a private expert opinion before court proceedings;
- : inappropriate choice of expression when making comment on views of the parties;
- : giving of advice to only one party after commissioning;
- : acceptance of (pecuniary) gifts.

Portugal

The Expert can be replaced if he breaches in any way the rules of independence and impartiality applicable. (Similar to the judges and Magistrates).

UK

It can be for any reason. – but for the court's permission be granted there would need to be good grounds.

1.7.1.2 What is the procedure for replacement?

Austria

First, one of the parties submits a motion of rejection, or the expert himself/herself may report the situation. After making inquiries or obtaining opinions, as to whether the expert should be relieved of his/her duty, the court will take a decision.

Germany

The party rejecting the expert must give reasons for the rejection. This must happen before the expert opinion is prepared unless the reason for the rejection is derived from the expert opinion itself. The court decides on replacement.

Portugal

The party must bring to the Judge attention the fact, and he will discharge the Expert

UK

Application has to be made to the court.

**1.7.2 by the court
YES / NO?**

Austria

Yes.

France

Yes.

Germany

Yes.

Portugal

Yes.

UK

No. The court does not have the ability to replace an expert.

1.7.2.1 Can the court on its own initiative replace an Expert?

Austria

Yes.

France

In France, sometimes, it happens that the court extends the expertise to more than one expert, creating thereby a "Group of experts" which includes the first one, but thereby diminishes his influence on the issue of the case.

Germany

Yes.

Portugal

Yes.

1.7.2.2 If so in what circumstances eg the Expert is not impartial or is not competent in the specific area of the dispute?**Austria**

In case of preclusion and under circumstances that also entitle a party to reject an expert.

Germany

a. Pursuant to §§ 404 (1), (2), 408 (1) of the German Code of Civil Procedure (ZPO) the court may decide at its own discretion to appoint a different expert to replace the first and also to release an expert from the duty to prepare an expert opinion if there are substantial reasons so to do (e.g. due to excessive work load).

b. The court may also replace the expert if he fails to prepare the expert opinion after a lengthy period of time despite reminder.

Portugal

Not competent and diligent.

1.7.2.3 What is the procedure for replacement?**Austria**

The expert is relieved of the appointment and another expert is appointed – both steps are taken by court decision.

Germany

The replacement is effected by amending the court decision (order to take evidence) and appointing a new expert.

Portugal

The Judge will discharge the Expert.

2. Status of Experts

2.1 What is an Expert (definition)?

2.2 For each case who selects the Expert(s) and who appoints him?

2.3 What is the Expert's duty as an Expert?

2.4. Is there any official listing for experts in your country?

2.4.1 If so, what are the lists (e.g. court, chambers, associations) and what are the requirements for each listing (including the period for which an Expert is listed)?

2.4.2 Is it possible to remove an Expert from the list?

2.4.3 If so, for what reason and by whom can an Expert be removed?

2.4.4 Can the Expert appeal against removal and if so to whom?

What training general and continuing professional development (CPD) is available for Experts, as Experts, in your country?

Is an training mandatory and if so what?

2.1 What is an Expert (definition)?

Austria

As a matter of principle, everybody is an expert who can evaluate a matter on account of his/her educational background and professional experience.

The term "generally sworn and court-certified expert", though, is based on a statutory definition in Austria, it falls under legal guidelines and is protected by law.

Court experts are specialists who have been admitted to the "List of Court Experts". Court experts must take an examination before an examination board, which establishes the candidate's integrity and aptitude, following the statutory guidelines. After having passed the examination, the candidate must take the "oath of the court expert". Then, he/she will be entered into the court's list of experts and may carry the title "generally sworn and court-certified expert" in connection with his/her work as an expert, irrespective of whether the expert opinion is prepared for a court or a private party. As court experts must not engage in any advertising activities, they must not use their title for any of their other business activities. Court experts are auxiliaries of the courts; they make available their expertise to the courts. Impartiality, independence and reliability are prerequisites for their work.

In contrast to the legislation in several other European states, where specialists provide evidence like all other witnesses, Austrian procedural law stipulates that experts provide autonomous judiciary evidence. In comparison to the other evidence in court, evidence by experts has more probative, conclusive force.

As a result, experts play a major role in helping judges to state the facts of a case.

Czech

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

France

An expert belonging to a company member of the National Council of Judicial Experts in France is defined as, an "experienced person in an art, science, technique or a profession enrolled on a list established according to the law, to whom a judge gives a mission to obtain information and provide technical advice for the resolution of a case." (Vademecom de l'Expert Judiciaire -P45).

Experts in France come from all the different professions. Doctors, Accountants, Architects, Engineers, and even Maritime Experts and Translators - like me.

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.

Germany

The term "expert" is not legally protected, so generally every person can call himself an expert. However, jurisdiction has developed standards for the competence of experts: an expert must have a specific knowledge and practical experience in the area he works in as an expert.

Following these guidelines the expert can be defined as

An independent and impartial person with integrity, who maintains a high standard of technical knowledge and practical experience in his sector of expertise.

German law describes the use of experts in the civil and criminal procedure law. Although having these two different Acts, they provide the same guidance for the use of experts. The responsibilities and duties for experts are the same as well as their importance.

The German legislator provides for public certification as a way of distinguishing between the "real" experts and the rest. Publicly certified experts assure trustworthiness and personal integrity. They are publicly certified by a state appointed certification body (e. g. chamber of industry and commerce, chamber of crafts, chamber of architects, chamber of engineers).

Hungary

An independent and incorruptible person of integrity who has special expertise, legal and practical knowledge and experience in one or more particular fields, participating in a continuous education. Carrying out appointments and assignments, the expert responds to professional questions belonging to its particular field with concrete answers. He is able to give a comprehensible, well-founded opinion of his assessment of facts in speech and writing. He investigates and evaluates facts which are independent of him. "

Portugal

In the Portuguese Civil Code one cannot find a precise Statement of the Expert legal role and responsibilities.

It is necessary to search the contents of the Civil Code to deduce the role and responsibilities of the Expert.

The role

- Duty to cooperate with the Court or Tribunal
- Find facts, comment upon, in order to find the truth.

Responsibilities

- Diligence
- Competence
- Impartiality

So the Portuguese Association have adopted the Expert definition approved by EuroExpert and contain in the Code of Practice.

UK

A working definition would be that an expert is someone who possesses knowledge or skill in a specialist, scientific or technical subject or activity. He will usually have professional, scientific or technical qualifications and sufficient experience to equip him to provide expert opinions on problems or disputes upon which he is requested to advise.

An expert may be categorised an *expert adviser* or an *expert witness* depending on the nature of his appointment and instructions.

There is not a legal definition of an Expert - which word is generally used as an abbreviation for 'expert witness'.

2.2 For each case who selects the Expert(s) and who appoints him?

Austria

In Austria, "generally sworn and court-certified experts" are solely appointed by admission to the list of experts maintained by the presidents of the different courts of first instance (*Landesgericht*). The Austrian Court Experts and Court Interpreters Act governs the admission requirements and standards.

Czech

Minister of Justice or the president of the Regional court nominates persons to a post of Expert. Proposal for the nomination can be presented by a registrant, state bodies, scientific institutions, universities and other institutions.

Appointed Experts are registered into the list of Experts. Experts are appointed for particular process from the list of Experts by the court or other state organ.

France

In each case, the Expert is appointed by the Judge.

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.

Germany

In court litigation the court selects and appoints the expert for giving evidence in each case ("Single Joint Expert"). The party can also commission an expert to substantiate its own position ("Expert advisor").

Hungary

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

The register is public, the relevant expert will be chosen according to it.

Portugal

For each case the Court will appoint one Expert who becomes the President and each party appoints one Expert. So normally the expertise will be done by a panel of three experts.

UK

Generally in England and Wales a party's lawyer in a case selects his side's expert(s). The permission of a judge is required to appoint and rely upon the evidence of an Expert in court litigation and this is provided for under the English Civil Procedure Rules of 1998 ("the CPR"). Sometimes an Expert is appointed by the parties jointly (having obtained permission from the Court to do so), in which event he is called "a Single Joint Expert" (or an "SJE" for short). It is possible (but very rare) for an Expert in proceedings in England and Wales to be appointed directly by a Court or Tribunal.

2.3 What is the Expert's duty as an Expert?

Austria

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

The most salient provisions are:

Court experts undertake by their oath to carefully examine the subject matter under evaluation, to give a faithful and complete account of the observations made, as well as to establish the findings and to draw up the expert opinion to the best of their knowledge and belief, and according to the acknowledged rules of the trade or science.

Court experts undertake to observe the obligations, which they accepted on the basis of their oath, carefully and conscientiously in every assignment as an expert, irrespective of who commissions the assignment.

Court experts are independent auxiliaries of the court, obliged to act impartially and neutrally. In consequence, they are an element of the administration of justice.

Court experts undertake to inform their clients immediately, and at any stage of their work on an assignment, of any reason that may jeopardize their appearance as independent, impartial and neutral persons.

Any involvement and participation in questionable, unlawful and immoral transactions and activities is unethical.

Court experts must neither demand nor accept gifts or benefits - neither for themselves nor for third parties - in connection with their work as experts.

Court experts undertake to maintain confidentiality regarding their activities as experts.

Court experts undertake to observe the principles of commercial and procedural economies when obtaining their findings and drawing up expert opinions.

Court experts undertake not to use the term "generally sworn and court-certified expert" for any purposes of advertising and competition.

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

The certification body, namely the respective competent court president, can initiate action on the basis of a decision by the disciplinary committee. The most severe sanction is the removal of the expert from the court's list of experts.

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

Czech

Every Expert is obliged

- to take a vow into the hands of the Minister of Justice or the president of the Regional court who nominated him to a post of Expert
- to exercise his expert activity personally, work well and within the time of deadline
- to sign the engrossment of his expert's report and to add the signet
- to diarize the carrying out of the expert evidence

France

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."

I 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 can do some work for Insurance Companies and he can also work for private clients, however "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." (Vademecom de l'Expert Judiciaire)

Germany

The duties of experts are defined in the German Civil Procedure Law and the German Criminal Procedure Law. For publicly certified experts there are additional rules in the code of practice of the state appointed certification bodies.

These are mainly:

- the duty to the court
- the duty to act independent, impartial, objective and with integrity
- the duty to be a fit and proper person
- the duty to have and maintain a high standard of technical knowledge and practical experience
- the duty to keep the knowledge up to date both in his expertise and as expert and undertaking appropriate continuing professional developments and training
- the duty to maintain confidentiality
- the duty not to accept instructions in any matter where there is an actual or potential conflict of interests

Hungary

The duty of the Expert is to assist the establishment of facts and the decision of factual issues with its expertise made on the basis of appointments and assignments of the court, of the public prosecutor, of the police or of other authority determined in legal regulation, based on the results of sciences and technical developments.

Portugal

The duties are as follow:

The role

- Duty to cooperate with the Court or Tribunal
- Find facts, comment upon, in order to find the truth.

Responsibilities

- Diligence
- Competence
- Impartiality

UK

The overriding duty of an Expert is to assist a Court or other Tribunal in reaching a just decision by means of providing unbiased, independent, objective and well-researched opinions on matters within his expertise. This duty overrides any obligations to those instructing or paying the Expert and so the duty that he owes to his appointing party or parties is secondary to his duty to the Court or Tribunal.

For an *expert adviser* (who does not give testimony to the court), his duty is owed to his client and is to provide objective and diligent opinions on matters within his expertise on which he is asked to advise.

2.4 Is there any official listing for experts in your country?

Austria

Yes.

Czech

Yes.

France

Yes.

Germany

Yes.

Hungary

Yes. The register will be kept by the Minister of Justice.

Portugal

We do not have overall and unified Expert Listings. Nevertheless we do have official listings for Valuation Experts (Expropriations, Property Valuations etc.) This list is prepared and maintained by the Ministry of Justice.

UK

No. However The Academy of Experts, which is the major accrediting, training and representative body for Experts in the UK, does maintain lists. The Academy has over 1,500 members in a wide range of disciplines and through its "Expert Search" facility can usually provide details of suitable Experts.

Various Trade and Professional Associations maintain lists of their members.

2.4.1 If so, what are the lists (e.g. court, chambers, associations) and what are the requirements for each listing (including the period for which an Expert is listed)?

Austria

The courts in Austria maintain an electronic list of the generally sworn and court-certified experts and interpreters, which is freely accessible on the Internet.

www.sdgliste.justiz.gv.at.

The required standards, which also govern the admission procedure, are laid down in the Austrian Court Experts and Court Interpreters Act.

Candidates must submit to the competent court a written application for admission to the list of court experts. The applicants have to meet the following requirements:

: They must have worked in a position of responsibility in their special field for a period of ten years immediately before applying for admission. Whenever candidates have graduated from a university or a secondary higher-level vocational school in

preparation for their profession or occupation, five years of work experience are enough.

- : They must have expertise, i.e. an excellent knowledge of their special field, but must also be impartial, independent and reliable.
- : They must know the regulations contained in procedural law, the system of court experts, how to obtain findings, and how to structure an expert opinion.
- : They must have physical and mental aptitude, full legal capacity, integrity and live in orderly economic conditions.
- : They must have the adequate equipment to draw up an expert opinion in their respective special fields.

When the competent court president has established, in principle, a candidate's aptitude, the candidate must take a comprehensive examination before an examination board. This board consists of a judge, who acts as chairman, and two examiners for the special field of the candidate. All courts have set up several examination boards for all specialties which are selected by rotation, so as to ensure optimum impartiality.

When candidates have passed their examination, they will be sworn in by the court as court experts.

Before being admitted to the courts list of experts, every court expert must prove to the court that he/she has taken out third-party liability insurance for a minimum amount of EUR 400,000, for an unlimited period of secondary liability.

Court experts are entered into this list according to subject areas and - within the different subject areas - according to their specific scope of activities. Court experts can also enter their own data into this list – against paying a certain fee – regarding their educational background and professional career, on the infrastructure for their work as court experts (especially the number of cases to which they have been assigned and the topics of their experts opinions), which they can amend at any time. Court experts can also use this option to enter a link to their own homepage as generally sworn and court-certified experts in order to provide further information on these matters.

The first admission to the list of court experts is limited to five years. The registration may then be renewed for periods of ten years each, upon application by the court expert. The expiry dates are marked both in the court lists and the identity cards of court experts.

The continuous compliance with the originally applicable requirements for admission is checked at these intervals. The number and the quality of the actually prepared expert opinions and the further training which an expert has obtained are decisive for re-certification.

Czech

The lists of Experts are administered by Regional courts in whose region the Experts have their permanent address. The central list of Experts is administered by the Ministry of Justice. All lists of Experts are available to the public. There exists no time limit for which an Expert is registered into the list of Experts.

France

Someone who considers himself as a potential expert in his field and who has some understanding of law may make an application to become considered as a potential Judicial Expert in a specific field.

The application includes his or her CV, his diplomas and university records, details of any special work carried out and anything else which might be useful. These must be submitted by the 1st March

The Public Prosecutor then examines each application. The Judicial Police from the Gendarmerie and the Police National assist in the assessing of the suitability of each candidate.

The Public Prosecutor will make a number of discreet contacts with the professional world and then make his report to the Court.

During the month of November the Court sitting in General Assembly will be presented with the list of candidates and will hear a Report on them.

It will then pronounce the names of the candidates whose applications are successful. They will be summoned to the Swearing-in Ceremony at the Appeal Court in early January and the Probationary Experts will take Oath.

Appointments to the Court are very few and usually only one in ten applicants finally gets appointed.

The Experts name will then be enrolled upon the List held by the Appeal Court.

Each Appeal Court jurisdiction has a list of experts who usually become members of "The Company of Experts of the Court". All the Companies of Experts of the different jurisdictions form the "National Federation of Companies of Judicial Experts".

Most French Appeal Courts have a college of about 250 experts who are appointed to the list. There are about 30 Appeal Courts jurisdictions in France

While there are a number of smaller jurisdictions which also appoint experts, I will talk in general terms about Appeal Court Experts of which there are about 10,000 in France and who make up the bulk of French experts.

Germany

4.2.1 Lists from chambers and lists from expert-associations

The lists are published by state appointed certification bodies (e.g. Chambers of Industry and Trade, Chambers of crafts, Chambers of architects, Chambers of engineers), that register the Experts that are publicly certified. There are also lists from expert-associations (e.g. the Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e. V., BVS) which contain members who are publicly certified experts. These lists are available for courts and public.

4.2.2 Requirements for listing

To be listed, experts have to be publicly certified. State appointed certification bodies and expert-associations (e. g. BVS) keep a constantly updated list of publicly certified experts.

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

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

1.) He has appropriate qualifications, training, experience and a satisfactory knowledge of the requirements of the scope to be carried out as expert. This includes that the applicant has sufficient practical experience in his field of activity and in his scope of expertise.

2.) He has demonstrated his competence by submitting a proper documentation (e.g. CV, copies of certificates for all relevant Academic and Professional qualifications, work experience and experience as expert, referees, reports, training).

3.) He has given evidence of his competence as expert by oral, written, practical, a combination of the before mentioned methods, or other assessment, to a committee or instructed specialists with appropriate knowledge and experience in the field of activity of the applying candidate.

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

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

Hungary

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

The duration is unspecified, but the fulfillment of requirements ruled in legal regulation will be occasionally examined.

Portugal

The list (the one mentioned above) is prepared and maintained by the Ministry of Justice. The requirements are set down by the Decree Law 15/98 published in July 1998, but still not enforced, because the list of official and recognized courses have not been published.

UK

To be on The Academy of Experts list it is necessary to be an Academy accredited Expert. The requirements of Associations vary.

Additionally there are many directories of Experts published by commercial companies who charge for the entries.

2.4.2 Is it possible to remove an Expert from the list?

Austria

Yes.

Czech

Yes.

France

Yes.

Germany

Yes.

Hungary

Yes, in cases determined by the law.

Portugal

Yes.

UK

If for any reason a person ceases to be an accredited Expert his name will be removed from the list. The Academy has a disciplinary process to deal with Complaints against its members. They can have their accreditation removed if a Complaint is proved against them.

2.4.3 If so, for what reason and by whom can an Expert be removed?**Austria**

The president of the Courts of first instance maintaining the list of experts can remove an expert from the list.

If the requirements for remaining in the list are no longer met, the court president responsible for maintaining the list of court experts must initiate a procedure for the withdrawal of the court expert's authorization. An important factor is the continuous validity of a third-party liability insurance policy. The insurance company must undertake in writing - in a statement confirming the insurance coverage, which must be submitted to the court - to report at its own instigation any circumstance that leads to a termination or restriction of the insurance coverage.

A termination or restriction of the third-party liability insurance coverage would lead to the immediate deletion of a court expert from a court's list of experts.

Insufficient knowledge or violations of a court expert's duties may lead to a procedure for the withdrawal of his/her appointment and to a deletion from the list of court experts. According to the Austrian Court Experts and Court Interpreters Act, the courts and public prosecutors are actually required to report any incident.

Czech

An Expert can be removed from the list of Experts by the authority who nominated him to a post of Expert in following cases:

- a) it is proved additionally the nonfulfilment of conditions for the nomination to a post of Expert or these conditions abstained
- b) an Expert cannot exercise activities due to new actualities
- c) an Expert despite of warning fails to perform his obligation or breaches his duties

- d) the employer gives proof that the expert activity of an Expert prevents further action in Expert's employment
- e) an Expert asks himself for the strike from the list of Experts

France

Every five years, each Expert is required to submit a new application to the Court for his re-appointment. 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 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.

Germany

In case the expert is no longer publicly certified he is removed from the list.

Reasons may be:

- : the expert has reached the age limit
- : the public certification has not been extended
- : the public certification has been revoked because the expert has breached with his duties
- : complaints about the work of an expert or his integrity
- : the expert do no longer come up to current standards

Publicly certified experts are removed from the list by the state appointed registration/certification bodies.

State appointed registration/certification bodies are responsible for checking and monitoring the duties of the experts. If the certification is revoked – e. g. because the expert breached with his duties, he is removed from the official list.

Hungary

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

The Minister of Justice decides on the withdrawal from the register.

Portugal

In accordance with the above mentioned Decree Law (still not enforced) it is necessary to start an enquire and investigation of the alleged faults by the Experts. Upon the conclusion of such process and depending on the findings the Expert can be removed of the listings by the Ministry of Justice representative.

UK

This would normally be for professional misconduct or gross incompetence in cases which are found proved and considered by a disciplinary panel to be sufficiently serious. Judges can and do report Experts whom they consider to have seriously misconducted themselves; these occurrences are always investigated and, where appropriate, disciplinary action follows.

2.4.4 Can the Expert appeal against removal and if so to whom?

Austria

In case of the deletion from the list of court experts by the president maintaining the list the expert has the possibility to file a protest against this decision at the Court of Appeal (Oberlandesgericht – second instance) and finally at the Supreme Court (Verwaltungsgerichtshof – last instance).

Czech

No.

Germany

The Expert who is revoked from the list, because he is no longer publicly certified can file an objection against this decision. If the state appointed registration body does not renew the public certification, the expert can claim at the first instance court.

Hungary

It is a non-appealable resolution, but the Expert can ask 30 days from the date of delivery for review at court. The court decides in out-of-court proceeding.

Portugal

The expert can appeal under his general law rights.

UK

Yes - there is a formal Appeals procedure.

2.5 What training general and continuing professional development (CPD) is available for Experts, as Experts, in your country? Is an training mandatory and if so what?

Austria

The further training for Experts is mandatory in Austria and is mentioned in the Austrian Court Experts and Court Interpreters Act. The dimension depends on the specific fields and is not specified.

The Hauptverband as well as the judiciary take a keen interest in an ongoing and high-quality further training of the admitted court experts. A "training pass" serves as evidence for the further-training activities. It is maintained by the Hauptverband and shown to the respective certification body or the competent court president in case of re-certification. All further-training events must be entered into this training pass, which serves as proof of the relevant further training activities in the specific special field of the expert. An independent evaluation commission, consisting of a judge and two specialists, assesses whether the reported further-training activity in question qualifies for entry in the training pass.

Czech

No general training and no continuing professional development (CPD) is prescribed for Experts in our country. CPD depends only on every Expert.

Germany

The German legislative system does not have a general law to regulate training for experts - neither in general nor in specific - which are essential to practise as an expert.

However, the code of Practice of state appointed certification bodies regulate the duty of continuing professional development (CPD) for publicly certified experts. This is important because publicly certified experts have and maintain a high standard of technical knowledge and keep the knowledge up to date both in their expertise and as experts. This assures that they can duly prepare usable expert opinions for the courts and judicial authorities and for business or private clients.

CPD is mandatory for publicly certified experts and is monitored by the state appointed certification bodies. The code of practice neither contains special subjects of CPD.

Therefore the Institute of Expert Affairs (IfS) developed Standards for assessment and appropriate CPD. As public certified experts are preferential selected and appointed by courts, CPD is in particular available in general subjects (role, duties, remuneration and legal status of court appointed experts). Additionally IfS provides CPD in the main professional fields of experts (e.g. real estate valuation).

Hungary

According to the newest legal provisions, the Expert has to report on his training and further vocational training every five year, and has to obtain the necessary professional development points.

The education of legal knowledge is organized and carried out by the Ministry of Justice, the professional basic and further education is organized and carried out by the Judicial Chamber with the collaboration of the professional chambers.

Portugal

As we have mentioned before we do not have an unified Expert List operating in our Country, equally so we do not have a unified general training or CPD program. This overall reality does not apply to some specific sectors of Expertise like the Experts Valuers (mentioned before). This Sector does have general training programs and CPD's operating both by Universities, Professional Schools and by Professional Associations. As mentioned before we are still waiting for the official approval of some or all of the current running Courses in order to finally enforce DL 15/98.

UK

There is no mandatory training of Experts in this Country. However the value and importance of expert witness training has been emphasised by senior Judges. The Academy offers a wide range of training courses including:

- : Role & Responsibilities of the Expert;
- : Report Writing;
- : Going to Court and giving evidence;
- : Foundation Course;

- : Day in Court;
- : Expert Determination;
- : Understanding the Civil and Criminal Procedure Rules.

3. Conflict of Interests

3.1. Is “Conflict of Interest” recognized?

by:

3.1.1 Law?

3.1.2 Practice?

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

Austria

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.

France

"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.

Germany

3.1.1 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.

3.1.2 “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.

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

Portugal

3.1.1 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.³

3.1.2 The practice follows the applicable law.

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

UK

3.1.1 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 in 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.”

3.1.2 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

3.1.3 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.

³ 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).

3.2 Is there a definition of “Conflict of Interests”?**3.2.1 What is the definition?****3.2.2 Is the definition given by law, jurisdiction or other institutions (e.g. professional associations, expert organizations) or****3.2.3 is the definition generally accepted?****Austria**

“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.

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.

France

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."

Germany

3.2 Yes. 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”.

3.2.1 The Definition follows legal practice.

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

Portugal

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

3.2.1 We have no direct definition!

3.2.2 Some professional organizations have definitions in there code of ethic.

3.2.3 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.

UK

3.2.1 The definition 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.

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

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

3.3 In which cases can a “Conflict of Interests” be approved?

Please give examples!

Austria

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.

France

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.

Germany

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

Portugal

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

UK

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.

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

3.4.1 The judge?

3.4.2 The Expert?

3.4.3 The parties?

3.4.4 All of them?

Austria

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.

France

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.

Germany

3.4.1 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.

3.4.2 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.

3.4.3 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.

3.4.4 All of them?

No.

Portugal

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.

UK

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 stage.

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.

3.5 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?

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

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

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

Austria

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

3.5.2 Yes, in every case.

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

France

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.

Germany

3.5.1 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.

3.5.2 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.

3.5.3 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.

Portugal

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.

UK

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

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

3.5.3 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.

3.6 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”.

3.6.1 Would it be considered a conflict of interests?

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

Austria

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

France

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".

Germany

3.6.1 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”.

3.6.2 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.

Portugal

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”.

3.6.1 Once again CPC does not address this specific situation!

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

UK

3.6.1 No – there is no conflict of interests,

3.6.2 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.

4. Liability

Is the expert liable for an incorrect expert opinion?

YES / NO

Austria

Yes.

France

Yes, we have cases of experts who have been sued because of that.

Germany

Yes. The expert is liable for an incorrect expert opinion when commissioned by private persons and courts alike.

Portugal

The answer is yes. The judge can fine or destitute the Expert if he/she does not perform with diligence and competence.

UK

Introduction

The United Kingdom is not a single legal jurisdiction in the way that, for example, Austria appears to be. The following are the principal jurisdictions:

- : England & Wales (This is a single jurisdiction)
- : Scotland
- : Northern Ireland.
- : Other jurisdictions also exist – Isle of Man, Channel Islands which is split into Guernsey and Jersey.

Although there are similarities between each of the jurisdictions there are also differences and it can therefore be misleading or even wrong to assume that what pertains to one will also apply to another. This Response addresses the jurisdiction of England & Wales, which administers English Law. Throughout these notes 'expert' means 'expert witness' unless otherwise specified.

Questions are numbered 9 – 11 as they follow on from those of the Leipzig Symposium.

It is not possible to answer this yes **or** no as the answer will depend upon the status of the expert and possibly the work that was being undertaken. In simple terms an expert witness has immunity from suit and cannot be sued. This raises the question of who is an expert witness. Unlike the Civil Law system the Common Law only recognises an expert witness for a specific case. Furthermore there is a problem with knowing when an expert who may be researching and preparing actually can be termed an expert witness.

It is generally agreed that when the expert wrote his report and gave evidence he cannot be sued should he have been negligent. It should also be noted that in English Law there is no duty to be right or correct, only a duty to take proper care with the work. What is being provided by an expert is his opinion based on his expertise and experience – as opposed to a guarantee that the judge will accept his opinion. As an alternative to being an expert witness an expert may be an expert adviser. The expert advise does not appear before the court or tribunal and his duty is solely to the party appointing him. Accordingly he is fully liable should he be negligent (fail to take proper care) with his opinion or advice.

These questions are answered on the assumption that the expert has a liability.

4.1 Is there a special procedure for establishing a claim against the expert (or is it the normal legal process)?

Austria

The liability on expert witnesses appointed by the court does not differ from the liability under general private law and may therefore be claimed in the same manner. In particular, the activities of expert witnesses in court proceedings do not trigger any official liability of the state.

France

There is a special procedure to establish a claim against the experts in the specific case of an incorrect expert opinion. In that case, the claim of perjury is brought against the expert and the case goes to the Court of Assises, which may be considered as normal legal process, but on a high level.

Germany

4.1.1 If the expert working for the courts prepared an incorrect expert opinion with wilful intent or gross negligence and this incorrect expert opinion forms the basis of a court decision, the party suffering damage due to the subsequent (incorrect) judgement must take legal action against the expert in ordinary proceedings for compensation of this damage (§ 839 a of the German Civil Code, BGB).

4.1.2 In the area of private law there is also no special procedure to assert claims against an expert. Giving instructions to prepare an expert opinion constitutes a "normal" contract for work and services between client and expert so that the general provisions on contractual liability and/or liability in tort and the assertion in court apply.

Portugal

No this is to be done by the Judge (only).

UK

The normal legal process.

4.2 Who can claim against the expert (the court / the party commissioning the report / any of the parties in the case?)**Austria**

As a rule, the state – in which jurisdiction is vested – cannot raise a claim, because the state usually does not suffer any damage from an incorrect expert opinion. However, incorrect expert reports have disciplinary consequences. It is a well-established fact that the parties in a litigation may file claims regarding the damage that is caused by an incorrect opinion/report by an expert appointed by the court. To what extent third parties, who have suffered a damage, are entitled to submit claims is a question that causes difficulties as to the applicable limits, but which also crops up in connection with general legislation on damages.

France

Any party in the case can claim against the expert, and the court will deal with the case.

Germany

The party suffering damage from the demonstrably incorrect expert opinion can always bring action, whether this damage results from a decision based on the incorrect expert opinion or from a breach of contractual duties under private contract law. The court itself cannot assert damage claims against the expert. Under certain circumstances a third party may have his own liability claim against an expert. Liability of an expert towards any such third party comes into consideration if the expert opinion was also recognisably prepared for submission to third parties by the client (e.g. the buyer of a plot of land, an insurance company or the bank) and if he then suffers damage as a result of the incorrect expert opinion.

Portugal

The Judge e.g. the Court

UK

Definitely the commissioning party. There is a possible argument that other parties in the case might have a claim but we have no experience if this and it seems unlikely to succeed. It is however possible for an expert witness to be liable for what is known as 'wasted costs' to any party. This would involve a court order.

4.3 Is there a possibility to exclude or limit the liability?

Austria

It is not possible to do so in case of an expert appointed by court. Experts commissioned by parties may exclude their liability within the general limits (i.e. as a rule not for deliberate actions, and only to a limited extent with regard to gross negligence).

France

No, there is no possibility to exclude or limit the liability of the expert.

Germany

4.3.1 The expert has no possibility to rule out liability or restrict liability when commissioned by a court. However, the law restricts his liability to wilful intent and gross negligence (§ 839 a German Civil Code - BGB).

4.3.2 If the expert receives his instructions from a private person it is possible to limit liability to a certain extent: it may be ruled out for gross and simple negligence in cases of individual agreement, whereby the limits of unconscionability (§ 138 German Civil Code - BGB) and law infringement (§134 German Civil Code - BGB) must be observed. Liability cannot be ruled out for wilful intent. By contrast, publicly certified experts may not rule out liability for gross negligence in individual agreements according to the rules of the bodies responsible for them (refer, for example, to § 14 of the Specimen Code of Practise for Experts of the Federation of German Chambers of Industry and Commerce).

4.3.3 With respect to contractual clauses in a specimen contract (General Terms of Business) it is only usually possible to rule out liability for slight negligence of an accessory contractual duty. The amount of liability in this case can be limited to typical damage foreseeable when entering into the contract.

Portugal

No but the liability is limit to the fine, in accordance with the Law.

UK

Yes there is a possibility however any such attempt would have to be 'reasonable' in the eyes of the law. It is not normal for an expert to try to limit or exclude his liability. It is interesting that Barristers have recently been advised by the Bar Council that for them to do so in their opinions may be professional misconduct – this is also a small risk for an expert should he seek to limit his liability for his opinions.

4.4 Is there the possibility to limit the amount for which the expert would be responsible?**Austria**

Again, experts appointed by the court do not have this possibility. General rules apply to experts commissioned by the parties.

France

No, there isn't.

Germany

Yes. There is a possibility to limit the amount for which the expert would be responsible; in addition to the case explained under point c, this (only) applies to individual agreements. In this respect the amount of liability can be restricted for every type of negligence.

Portugal

No.

UK

The same answer as 4.3.

4.5 Is there a formula, e.g. the expert's fees?**Austria**

No.

Germany

No. The general statutory provisions apply.

Portugal

No.

UK

No.

5. Advertising

5.1 Is the Expert allowed to advertise his expert activities in litigation and other dispute resolution for example, arbitration?

YES / NO

Austria

Yes, on a limited scale.

France

No.

Germany

Yes. Experts may advertise but are subject to certain restrictions.

Portugal

Yes.

UK

Yes.

5.2 What restrictions (if any) are there on the expert's advertising and other activities?

Austria

Court-appointed experts are subject to a ban under their code of ethics to engage in advertising activities. He/She may refer to this function only (and without any advertising emphasis) when there is a need for information regarding this function, i.e. in connection with an activity as a court-appointed expert, but also when acting as an expert for a party. Any linkage to a possibly maintained commercial undertaking is prohibited.

Germany

There is no special law regulating the possibilities of and limits to advertising by experts.

Whether advertising activities are admissible or not is generally determined by the German Act on Unfair Competition (§§ 3, 5 UWG) which is applicable to all parties. Accordingly, misleading or unconscionable advertising activities are forbidden.

Greater constraints are placed on the advertising activities of publicly appointed and certified experts. Owing to their special position of trust with courts and consumers the regulations of the respective certification bodies apply (rules of procedure for experts) in that special attention must be given to serious, objective and restrained advertising activities. Advertising using the public certification and the official stamp of the publicly certified expert is only admissible in the area for which the certification has been granted. It is even a punishable offence to advertise a public certification if none exists (§ 132 a (1) No. 3 German Criminal Code).

Portugal

There are no restrictions.

UK

There are no restrictions. However The Academy of Experts Code of Practice requires:

“An Expert shall not publicise their practice in any manner that may reasonably be regarded as being in bad taste. Publicity must not be inaccurate or misleading in any way.”

5.3 Do any restrictions apply to all professions or only to some eg doctors? If so give details.**Austria**

The advertising ban applies in general and not only to some groups of occupations/professions.

Germany

Irrespective of his professional activities every expert is subject to the provisions of the German Act on Unfair Competition (UWG) and (in the case of public certification) the corresponding rules of procedure for experts. However, differences exist in the case of publicly certified experts for craft trades in that these are merely restricted to pure information advertising and that in all cases advertising must be separated from other commercial activities. Furthermore, the publicly certified expert for the craft trades may only form partnerships with other publicly certified experts, whilst publicly certified experts from other areas may also form partnerships with experts having no public certification.

Portugal

No.

UK

The answer given to Question 3.1 applies to all experts irrespective of their profession. However each expert also has to comply with the regulations of his primary profession. These vary. Some are without restriction whilst others, for example medical doctors do have restrictions. The restrictions are less onerous now than they were a few years ago.

6. Remuneration

6.1 Is there a legally prescribed scale of charges for experts in your country? for

6.1.1 court appointed experts

6.1.2 experts appointed by public authorities or

6.1.3 experts appointed by a private client?

Austria

6.1.1 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.

6.1.2 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.

6.1.3 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

6.1.1/6.1.2 Yes. The fees for court appointed experts and experts appointed by public authorities are prescribed in the decree of the ministry of justice.

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

France

6.1.1 No. But there are recommendations and guidelines of each of the “Cour d’Appel”, that are strictly applied all over France.

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

6.1.3 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

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

6.1.2 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.

6.1.3 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

6.1.1/6.1.2 Yes. The fees are based on a prescription of the ministry of justice. In case of not ex officio procedures the expert can use a fee announced 1 year in advance and to be kept compulsory.

6.1.3 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

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

6.1.2 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.

6.1.3 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

6.1.1/6.1.2/6.1.3 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

6.1.1 Yes.

6.1.2 No.

6. 1.3 No.

Spain

6.1.1 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.

6.1.2 Dito.

6.1.3 No. The fees of a PAE as an independent professional is freely convened 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

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

6.1.2 No.

6.1.3 No.

6.2 What are the criteria for calculating the compensation?

6.2.1 hourly rate?

6.2.2 Based on value of the claim/amount of damage?

6.2.3 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.

6.2.1 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.

6.2.2 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.

6.2.3 No. This is not contained in the Fee Entitlement Act. Aside from this it would not be compatible to there code of ethics.

Czech

6.2.1 Yes. The fee can be advanced or decreased. Only in criminal proceedings the experts get a fixed charge.

6.2.2 No.

6.2.3 No.

France

6.2.1 Yes. The hourly rate is between 80,- € and 100,- € for CAE or public appointed experts. The hourly rate for a PAE is about 300,- €

6.2.2 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.

6.2.3 The same answer as b.

Germany

6.2.1 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.

6.2.2 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.

6.2.3 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

6.2.1 Yes. The expert is payed per hour. Only in cases of medical analyses and object expertises he gets a fixed compensation.

6.2.2 No.

6.2.3 No.

Portugal

6.2.1 Yes, but only for experts that are not appointed by court. In these cases the remuneration is normally agreed on a hourly rate.

6.2.2 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.

6.2.3 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

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

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

Slovenia

6.2.1 No.

6.2.2 No.

6.2.3 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

6.2.1 Yes.

6.2.2 Yes.

UK

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

6.2.2 No.

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

6.3 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. In particular difficult cases an increased scale of charge can be used (maximal 2.5).

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.

6.4 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. In case of the cooperation of several experts an increased scale of charge can be used.

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. The greater the complexities of the matter the fewer will be the number of Experts qualified to opine this in turn has the effect of increasing fees.

6.5 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, but for the use of its own tools the expert can't charge extra fees.

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.

6.6 Is the Expert 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. The use is permit bound in advance.

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 theses expenses can be charged when the 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.

6.7 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 inbetween 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 € 300 - 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

The average hourly rate for expert reports submitted by forensic experts is € 12 in most fields of expert opinion. In cases of medicine, pharmacy and foreign law the remuneration is € 18 per hour. 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.

6.8 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. Its 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. However, the Legal Services Commission which controls public funding (legal aid) has the equivalent of a tariff. 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.

6.9 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.

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.

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- : 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