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Shaping Expertise across European Justice Systems

EN

Guide to Good Practices in Civil Judicial Expertise in the European Union

EGLE

European Guide for Legal Expertise



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to Good Practices
in
Civil Judicial Expertise
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EGLE

European **Guide** for Legal Expertise

Foreword

As president of the European Expertise and Expert Institute, I am proud to introduce this **Guide to Good Practices in Civil Judicial Expertise in the European Union**.

It stems from over ten years of research, debates and discussions between stakeholders across Europe to improve judicial procedures and to ensure that citizens and companies increase their trust in justice, whether it be in their own Member States or when they are living or working in a host country and have to deal with cross-border issues.

For close to two years, with the financial support of the Directorate General Justice of the European Commission, under the name of EGLE - *European Guide for Legal Expertise* - a large community of judges, lawyers, judicial experts, academics and students of law regularly came together to discuss the essential aspects of civil judicial expertise, find ways of improving the various existing systems and to provide a working basis of the best practices in Europe.

The method of the consensus conference proved to be an extremely useful tool in building a consensus on the heterogeneous realities of judicial expertise and judicial experts. It made it possible to bring together in a participatory process the various practices and experiences from very different systems, from common law and civil law, and to draw out the best of these practices in order to propose a common foundation to improve civil judicial expertise.

The EGLE project took place around 25 organized meetings in 10 European countries, but also by email, conference calls and through the sharing of documents. Informally, the discussions that took place outside of meetings also paved the way for reflection by enabling the members of the working groups to discover other systems, other experiences and other practices.

The project was carried forward by the members of the working groups, the participants of the EGLE plenary conference, organized at the Italian Court of Cassation in Rome on 29th May 2015, who shared their reactions and input, and last but not least, by the Jury of 9 European figures who discussed, debated, and managed to draw from all these exchanges the essential practices from each country and experience.

The Jury met in camera for the first time in Rome and then for two more intense work sessions of which the last took place in Lisbon in September. They highlighted the best of the various civil judicial expertise systems and in this Guide they put forward the outcome of their work, the points of convergence between the various expert proceedings, namely of common law and civil law, of the EU States, whether older or more recent Members.

The Jury's conclusions contain many recommendations and ideas, as much for the countries where the recruitment, appointment and monitoring of the quality of experts are very organized as for countries where this is not yet the case.

They also offer actual points of convergence between technical experts appointed by judges and expert witnesses, which is an unexpected but very important aspect of this project.

In sum, the **Guide to Good Practices in Civil Judicial Expertise in the European Union** is the result of work led by European professionals whose main aim is to improve and harmonize very different practices, based on a will to determine a strong, democratic, European model, at the service of the citizens and companies of the European Union. This consensus was reached in spite of current procedural and cultural differences and of any remaining wariness.

Participants learned to know and trust each other, and this is one of the successes of this project, and not the least.

Acknowledgements

We would like to thank very warmly all the members of the Jury, with a special mention for its President, Alain Nuée, as well as all the members of the Working groups (Cf page 39), the interpreters and translators, our partners (Cf page 41), and the hosts of the meetings in Europe, for all their time and involvement, for their hard work and for their belief in the project.

Our most respectful thanks also go to President Giorgio Santacroce, First President of the Italian Court of Cassation, who encouraged and welcomed us in the institution that he presides. We would also like to thank the Directorate General Justice of the European Commission for its financial support, but also for its precious advice and encouragement throughout the project.

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Guide to Good Practices in Civil Judicial Expertise in the European Union

Object

- 01- The good practice recommendations in this Guide aim to strengthen the trust that judges, litigation parties and their counsels and, more generally, European Union citizens have in the opinions provided by Judicial Experts in Europe, to improve the quality of judicial decisions and to ensure the interoperability between Member States, in particular as regards cross-border litigation. In order to achieve these goals, these recommendations intend to ensure the recognition in all the European Union of Judicial Expert opinions provided by Judicial Experts from the Member States and to harmonize the standards applicable to judicial expertise and to the status of the Expert.
- 02- Most of the recommendations may be immediately implemented, others require the creation of ad hoc bodies, and others still, in certain Member States, may require the adaptation of civil procedure rules.
- 03- Their rapid generalization in all Member States would doubtless be facilitated by the creation of an independent civil procedure specific to cross-border litigation. Like the European Payment Order, this procedure would be applied alongside existing procedures in the Member States. It would also make it easier to appoint Judicial Experts from any of the European Union States, by requiring that Experts who wish to work beyond the borders of their own States be familiar with only two procedures, that of their State of origin and this “Pan-European” Expert procedure.

Chapter I

Definitions and limits

- 1.1 The following overarching principles should be applied to all Judicial Experts, be they appointed by the Court, by both parties, or by one or other of these parties with the aim of informing the judge on particular technical points.
- 1.2 They can therefore be applied, under certain conditions, to the three following categories of Experts, whose existence has been noted by the European Commission for the Efficiency of Justice (CEPEJ)¹
 - **Technical Experts**, who put their scientific and technical knowledge on issues of fact at the court's disposal.
 - **Expert Witnesses**, who provide opinions from their expertise in technical matters to clarify the parties' arguments.
 - **Legal Experts** who can be consulted by the judge on specific issues regarding the rules, practices and rights applicable in foreign law, and more particularly on the law of a non-EU Member State.
- 1.3 Experts appointed and paid by the parties are specifically required to follow the good practices defined below as they are bound by law or oath, such as in Spain² or in the United Kingdom³, to certain obligations towards the judge and the court which override their obligations towards the party which has appointed them.
- 1.4 In the absence of any oath or legal provision ensuring that the interests of justice prevail over those of the party that has appointed them, experts who are then referred to as Private Experts and not as Judicial Experts, are not concerned by the provisions laid out in this text. Indeed, as their exclusive purpose is to provide technical help to the parties consulting them, their opinions can be recorded as evidence like any other procedural documents, but are at the very least affected by a lack of objective impartiality which rules out any assimilation with Judicial Experts.
- 1.5 However, when these Private Experts are registered on Judicial Expert lists and have sworn an oath either before or upon registration on these lists, they must abide by their duty to the judge and the court and must at all times show proper consideration of all the evidence of which they are aware. They should at all times uphold the truth owed to Justice and should thus be required to follow the rules of good conduct recommended in this Guide.
- 1.6 Experts can be individuals or legal entities (public or private laboratories, universities, etc.) as long as, for the latter, at least one private individual within the legal entity is a Judicial Expert and takes on the responsibility for the report and as long as the

¹ CEPEJ [2014 Report on European Judicial Systems, Edition 2014, (2012 Data): efficiency and quality of justice, Section 15.1, page 441]

² Article 335-2 of the Spanish civil procedure law thus states that "when presenting his report, the expert will have to swear or vow to tell the whole truth, and that he has acted or will act, as the case may be, with the greatest possible objectivity, taking into account anything that could benefit a party as well as what could be detrimental to it, and that he knows the criminal sanctions he may incur if he does not carry out his duty as an expert".

³ In the United Kingdom the rules are determined by reference to CPR 35, PD 35 and the Protocol for the instruction of experts for civil cases and Crim PR 33 for Criminal cases.

organisation of the legal entity guarantees the independence of the expert who is signing the report.

- 1.7 The Technical Expert's or Expert Witness's instructions are limited to the determination of the facts and to technical conclusions and/or to a professional opinion stemming from his⁴ knowledge and/or research. Neither of the above will be expected or required to give a legal opinion. A Legal Expert can, when allowed by the domestic law of a Member State, provide help to the court in researching the law.
- 1.8 For convenience, the term "Expert" will be used hereafter instead of that of Judicial Expert as it has just been defined.

⁴ Throughout this guide, all references to *he*, *his* or *him* are understood to extend to and comprise *she* and *her*.

Chapter II

Conditions regulating when one should resort to judicial expertise

- 2.1 The Expert's opinion is required when the judge, provided he has this power under the law of the Member State, is unable to take a balanced and detailed decision because he finds the available evidence to be inconclusive, or considers it necessary to have the Expert's opinion on technical issues (financial, scientific, medical, artistic, linguistic, etc.).
- 2.2 On questions of law, only Legal Experts can, when allowed by the law of a Member State, advise the court. In all cases the power to decide and interpret the law remains within the judge's exclusive jurisdiction.
- 2.3 An Expert should only be considered when there are no easier or more expedient means of proof to resolve the dispute.
- 2.4 The cost of the action should not be a barrier to its implementation. However, the judge and the Expert have to ensure that it remains proportionate to the value of the litigation matter in hand.
- 2.5 It should be noted in this regard that the value of the litigation may result not only from the monetary value of the case in relation to the amount of the claim and related compensatory damages but also of the importance of the case for a wider community, for the industry involved, or as regards the interpretation of the law in that it may lead to a precedent or new case law.

Chapter III

Appointment of the Expert

Section I – Eligibility criteria to be appointed Expert

§ 1 Registration on a National or Regional list, and/or on a list of European Experts

- 3.1 In absolute terms, concerns for transparency and for the efficiency of justice in a unified European judicial space as well as for the quality of expert opinions would be well-served by the creation by all Member States of lists of Judicial Experts, that would be easily accessible to citizens over the internet, as well as of a list of European Experts, mainly for cross-border disputes, that would allow judges in the member states of the European Union to easily find the most appropriate Expert for a given case. These lists should be established based on a harmonised nomenclature of the fields of competence and identical criteria.
- 3.2 Far from limiting the free market and the free exercise of the Experts' activity within the EU, these lists, since they are public, would help foreign judges and parties appoint Experts in countries other than that in which they usually work. These lists would also put an end to the obstacle created by the practice noted in many Member States of making discretionary choices from obscure lists drawn up according to unknown criteria.
- 3.3 Due to the quality guarantees inherent to these lists, which are designed not as mere directories but as the public acknowledgement of competence, morality and reputation, the judge, who retains complete freedom of choice, would have to justify this choice when appointing an Expert outside these lists, when the case referred to him is a cross-border dispute or has cross-border consequences.
- 3.4 These lists, and especially the list of European Experts, which would comprise experts who are already registered on a national list, should include the Expert's past experience and his working languages. They could also usefully mention the countries in which the candidate has had additional experience which may enable him to carry out his work there usefully. Indeed, in a small number of specialities such as psychiatry or psychology, knowledge of the cultural idiosyncrasies of the population to which the person who is the focus of the expertise belongs may be useful in order to issue a qualified opinion⁵.
- 3.5 It is also possible to set up a European directory of all Experts by bringing together existing national lists under certain conditions of harmonisation. This could form a database of about 85,000 to 120,000 names of Experts. Such a database associated with a powerful search engine could be a useful tool for European Union judges and citizens by making it possible to publish all existing lists. However, it is important to keep in mind that most expert advice is sought in local or regional disputes and thus does not require looking for an Expert geographically further afield as this may be less cost effective due to higher travel expenses.

⁵ In application of the Peñarroja ruling, registration on a national list will dispense the Expert from justifying his qualifications to be registered on the list of another Member State provided the registration criteria are similar. In any event, the choice of an Expert cannot be subject to his registration on a national or regional list of the Member State to which the court belongs.

- 3.6 Supervised by Member States, the creation of a more limited list of European Experts made up of National Experts who have volunteered to work in cross-border litigation and already have a substantial amount of experience in acting as an Expert at national level is likely to foster the emergence of a single nomenclature and of common registration criteria for the establishment of national lists.
- 3.7 This list of European Experts for cross-border litigation could naturally also be used for litigation within a Member State. Namely, this may be when the national judge finds that there is no sufficiently qualified Expert in his jurisdiction due to the extreme technical sophistication of the case, or when he fears that the National Experts will lack objectivity due to being directly or indirectly linked to the parties or to state organisations in charge of monitoring the implementation of standards regulating the activity investigated in the case. By appointing a foreign Expert, the judge may thus wish to guarantee the impartiality of the panel of Experts that has been set up, or, when faced with very costly investigations, may wish to put several Experts in competition to obtain the fairest price.
- 3.8 However, in view of the potential costs of such a proposal, the requirements for the creation of a list of European Experts must in fact be analysed further. If its usefulness in cross-border matters is more sufficiently proved by studies and statistics allowing to precisely determine the needs and better determine the number of experts necessary, paragraphs 3.9 to 3.16 below would apply:
- 3.9 The creation of a list of European Experts would doubtless require the creation of a specific body at European level to manage this list. The organisation and character of this body would require further discussion. The authorities in charge of drawing up national lists could be represented in this body.
- 3.10 This body in charge of registrations and re-registrations on the list of European Experts could be invested with the power of supervising the correct application of the registration criteria in the Member States.
- 3.11 To be registered on these lists, for a maximum and renewable period of five years, the Expert should prove that he meets certain requirements which are set out in more detail in Chapter VI on the Status of the Expert below, which can be assessed either by a national judicial or administrative authority, or by specific private institutions that comply with national rules and regulations (such as professional orders, if they exist) or by a European body if it is created.
- 3.12 With regard to registration on the list, the competent organisation at European level, and national organisations insofar as it concerns them, must at the very least check the Expert's technical competence by seeing proof of (i) the Expert's qualifications, (ii) professional curriculum, (iii) knowledge of investigative techniques, (iv) his legal knowledge of the standards governing the exercise of his main activity and the rules relating to Experts' obligations and rights, as well as of the guiding principles of fair trial. These bodies must also ensure that the Expert has taken out sufficient civil liability insurance to cover, without any territorial limits, his activity as a Judicial Expert. This insurance coverage must be sourced from a credit-worthy insurance company.

- 3.13 Even if the organisation that is competent to compile the list, particularly if it is a court, cannot replace universities in judging the Expert's qualifications, it can nevertheless proceed to verify the Expert's knowledge and skills by referring to the following points in particular:
- university degrees
 - professional experience listed on his CV,
 - professional reputation,
 - membership of professional associations,
 - references,
 - the Expert's professional qualifications, together with initial and continuous training,
 - relevant publications,
 - prizes obtained,
 - courses and teaching experience.
- 3.14 These organisations will have to regularly ascertain, for example every five years, that the registered Expert still satisfies the criteria which allowed him to register, and check that he has fulfilled his obligation of continuous training both in his core profession as well as in his work as an Expert and in his judicial knowledge in terms of proceedings.
- 3.15 Registration on the list and periodic renewals on these lists should be subject to the adherence to and endorsement of a Code of Ethics of the European Expert, of which a draft is presented as an annex to this document and which guarantees in particular but not only, the Expert's impartiality and objectivity, and the lack of any criminal record or professional breach of conduct.
- 3.16 Experts whose candidacies are rejected by the authority in charge of establishing the list, either upon first request or upon their renewed registration the list, should be entitled to all the avenues of appeals before an independent authority whose decisions will themselves be subject to judicial review.

§ 2 Oath and Endorsement of the Guide to Good Practices

- 3.17 The Expert should be held to the swearing of an oath before the competent judicial authority at the time of his registration on the national list and/or on the list of European Experts. If a judge in charge of a dispute chooses to appoint an Expert who is not registered on one of these lists, he will hear the Expert's oath directly.
- 3.18 By taking this oath, the Expert would be swearing to put his skills at the service of the law with probity, objectivity, loyalty, independence and impartiality, and to respect the recommendations of this Guide to Good Practices and appended Code of Ethics.
- 3.19 When the Expert is appointed by a party in court proceedings, he should also have to swear that, both in preparing his report and in his oral testimony, his duty to the judge and to the law has taken or will take precedence over any obligation towards the party which appointed and/or paid him, that he has abided by this duty and will continue to abide by it.

Section II – Appointment Procedure

- 3.20 Ideally, the Expert should be chosen directly or allowed to make a statement by the judge hearing the case, having heard all the parties involved, rather than by any

other body. However, when the parties agree on the choice of the Expert or Experts, the judge should respect this choice.

- 3.21 The judge should ensure that there is an adequate number of Experts in each field and should try to avoid appointing the same expert again while excluding others who have the same qualifications. In each instance, the judge must make sure to appoint the most suitable Expert for the circumstances considered.
- 3.22 Before appointing an Expert, the judge or party should be able to call or write to him in order to verify that he has the necessary competence to carry out the instructions for which he is approached, that he is available, and that there is no conflict of interest, or where one potentially exists, that it has been declared.
- 3.23 As for the Expert, before accepting the assignment, he must disclose any information that could preclude or be considered as a conflict of interest, and more generally, must ensure that his appointment does not place him in a conflict of interest. To this end, he should spontaneously provide the court with a statement of independence and disclose any relation he has or has had with one or more parties in the litigation that could cast suspicion on his impartiality. If a conflict of interest appears during the expertise operations, for example if the expertise operations are extended to another party than the ones present when the Expert was appointed, he will again need to inform the appointing judge or party. They can then decide either to disqualify the Expert, or allow him to carry on with the expertise after having received the agreement of the judge having heard all the parties involved.
- 3.24 Finally, the Expert will have to show proof of specific Professional Indemnity liability insurance to cover his work as an Expert.

Section III – Challenging the Experts’ appointment

- 3.25 The parties must always have the right to challenge the appointment of an Expert on the grounds of lack of independence, lack of impartiality or any other admissible legal grounds provided for by the law of the country in which the procedure is taking place, as well as for lack of competence in the field of knowledge which is required to properly inform the judge.
- 3.26 When a request for a challenge is brought before the court, the judge should decide within a reasonable time after having heard the Expert.
- 3.27 The judge should also be able to, on his own initiative, at the parties’ request, or at the Expert’s substantiated request, replace the Expert, especially for delays in the fulfilment of the instructions, but only after having heard the parties and, if necessary, the Expert.
- 3.28 In all cases, the decisions taken following the challenge and replacement of an Expert’s appointment should be substantiated and appealable.

Chapter IV

The expertise procedure

Section I – Guidelines of the proceedings and the judge’s office

§ 1 The adversarial principle

- 4.1 The evidence submitted to the Expert and the assumptions on which his conclusions are established will be shared with all the parties, unless the judge, having heard the parties, decides otherwise, or if the parties have agreed on the fact that there is sufficient reason for the evidence to remain confidential. If it is decided it is to remain confidential then the judge should determine the conditions in which the Expert will be able to carry out his instructions in a non-adversarial manner.
- 4.2 In all other cases, under the judge’s supervision, the Expert should ensure that the evidence for the case is available to all the parties, thus respecting the principle of equality of arms.
- 4.3 Prior to the hearing before the judge, unless otherwise decided by the court or if prohibited by law, the Expert appointed by the judge will share a pre-report with the parties which contains his technical conclusions, ensuring that they are understandable to laymen so that the parties can discuss them in a useful manner and ask the Expert any questions that can help to understand and use the report. A simple reminder of the conclusions cannot here be considered sufficient. The Expert appointed by a party will have the same obligations, but only towards the party who appointed him.
- 4.4 If no pre-report has been made available, the parties should nonetheless still be able to send the Expert their technical questions and observations on his findings before being heard by the judge.

§ 2 Judicial supervision of the Expert appointed by the judge

- 4.5 The independence of the Expert does not exclude the judicial supervision of the progress of the proceedings to ensure swiftness and efficiency.
- 4.6 The judge appointing the Expert must be able to supervise the progression of the Expert input to the pre-trial process (including resolving issues relating to the choice of Expert and any changes to the instructions) and ensure a fair trial during the expertise (e.g.: approving a reasonable timeline, checking adversarial access to the evidence provided to the Expert and ensuring reasonable costs).
- 4.7 Therefore, either ex officio or at the request of one of the parties, the judge should be allowed, after having heard the parties and the Expert if he deems it necessary, to limit or extend the scope of the Expert’s instructions, to modify the deadline given for the Expert to carry out his instructions and to order the Expert to be replaced, providing a substantiated explanation.
- 4.8 As for the Expert, provided he keeps the parties informed, he should have the right to seek written directions from the court on any procedural matters that may assist him in carrying out his instructions.

- 4.9 Unless local law or the judge formally decide against it, the judge should ensure that the Expert draws up a pre-report which will be shared either with all the parties in the litigation, or with the party who appointed the Expert, allowing the parties enough time to phrase their observations before the final report is drafted.

Section II – Progression of the proceedings

§ 1 Definition and duration of the Expert's instructions

- 4.10 The instructions must be defined as precisely as possible and as tailored as necessary to resolve the dispute, either by the judge after an exchange between the parties, or by the party's counsel. As often as possible, the instructions should be set as a (series of) question(s).
- 4.11 In no case should the Expert's instructions include the negotiation of a settlement between the parties, nor should they include the possibility to negotiate with anyone and much less with the other party's expert when each litigation party has appointed one.
- 4.12 Before starting work, the Expert when appointed by the judge shall, if necessary, have the opportunity to discuss the instructions with the judge. The parties shall be informed of such exchanges and, if necessary, an oral hearing shall be held to take note of their comments. The final version of the instructions shall be defined after such exchanges.
- 4.13 Where a legal entity is appointed as an Expert as mentioned in paragraph 1.6 above, the following must be ensured:
- the legal entity must have integral management of the case.
 - one individual person working as an Expert within the organization must take personal responsibility for any written or oral evidence collected and for the conclusions, as well as for the drafting of the report to the judge.
- 4.14 The judge will set and closely monitor the timeline of the mission to ensure that the deadlines are respected.
- 4.15 From the outset, the appointed Expert must, after ensuring that his workload allows him to respect the deadlines set, agree to the provisional timelines as established by the judge and/or the stages to complete his report.

§ 2 Extension of the Mission

- 4.16 Since the judge has the power to extend or restrict the timeline and to extend or restrict the scope of the mission, even ex officio after having heard the parties, the Expert should be able to apply to the judge for an extension of his instructions where (i) in the course of the mission, he notices that the time frame will not be sufficient and/or (ii) when in the course of the investigations, due to technical reasons, additional investigative steps are needed or further technical questions should be examined.
- 4.17 The parties shall be informed of any such application for an extension and have an opportunity to be heard on the subject, at their request.
- 4.18 The parties may also apply to the court for an extension of the mission of the Expert to address additional issues.

§ 3 Experts' meetings and supplemental reports

- 4.19 Where the Expert is appointed by the judge or in cases of a Single Joint Expert, the cost of any expert's meeting with the parties, which all parties must have the option to attend, will encourage the Expert to limit the number of these meetings to what is strictly required, and when necessary, all the participants in a trial should use all available resources provided by new technologies (videoconference, e-summons, emailing of documentary evidence and report), if necessary after procedural rules have been adapted.
- 4.20 Moreover, in instances where there is more than one expert appointed to the case, the judge may order a meeting of experts where the experts will identify the areas where they agree and those on which they disagree as well as their reasons for disagreement in a "without prejudice" discussion.
- 4.21 When new arguments arise or additional evidence is made available to the court or the Expert, it may become necessary for the Expert to write a Supplemental Report. Application for a Supplemental Report may be made by the judge, a party or by the expert and its acceptability will in any event be determined by the judge. If all elements of an Expert's report are provided in the first report or in the main report, there is no requirement to repeat them, and a reference to the main report should suffice. However, if further documentation or evidence has been referenced to then these new sources should be specified.

§ 4 The return and conservation of documentary evidence that the Expert has held throughout the proceedings

- 4.22 At the end of his mission and in case of settlement between the parties or if the judge or party have ended his appointment, the Expert must be prepared to return any and all non-public or confidential documents that were entrusted to him by the parties.
- 4.23 For as long as he may be liable, the Expert will keep any and all other documents that he may have acquired or held during the course of his investigations.

Section III – Oral Hearing

- 4.24 After delivery of his report, the Expert may be heard by the judge in an oral hearing, ex officio or at the parties' request, in order to sustain and explain his conclusions and answer the parties' and the judge's questions. The oral hearing may be held as a videoconference in accordance with domestic legal provisions.

Section IV – Simplified Proceedings

- 4.25 For small claims (to be adapted as a parallel to the EU Small Claims Regulation (EC) N° 861/2007) or for simple technical questions, the judge may ask the Expert to answer one or two questions as part of a simplified procedure (shorter timeframe, only written exchanges, reduced costs, oral proceedings during a simple on-site visit...). In such instances, it may be more appropriate for the Expert to describe his findings verbally.

- 4.26 In small claims cases it may also be decided that the Expert will be appointed jointly by the parties as a Single Joint Expert and, if they cannot agree, by the judge.
- 4.27 During an “installation meeting” the Expert may also suggest a simplified procedure, aimed, with the parties’ agreement, at limiting or eliminating adversarial meetings. Any contact or communication with the parties during the course of the Expert’s investigation should be recorded in the written pre-report or referred to during the oral pre-report.

Chapter V

Expert report

Section I – Preliminary report

- 5.1 As mentioned in paragraph 4.3 above, a preliminary report, also called pre-report, should be written, unless the judge or the law provides otherwise.
- 5.2 Where a pre-report is submitted, the final report should have the same structure, and show changes from the pre-report.
- 5.3 If the pre-report is given orally, it should have the same structure and elements of information as the written report described below.

Section II – Structure of the Report

- 5.4 The report should consist of subsections in a specific order, in order to make it easier for the judge to analyse reports from several sources. It must be absolutely clear in any Expert's report which matters are factual and what assumptions the Expert has made. The expert's opinions should be expressed in a clear and concise way.
- 5.5 The report must compulsorily include the following information:

I – INTRODUCTORY SECTION:

- a) Name of the Court and number of the case;
- b) Identity of the authority who ordered the expertise or of the party who appointed the Expert;
- c) Date of the report, date of appointment or mandate and date agreed as the deadline to submit the report;
- d) Parties involved, their lawyers and/or other representatives with mention of the parties who were present or represented during the expertise operations;
- e) Expert(s) in charge, with a Curriculum Vitae mentioning titles, qualifications and past experience;
- f) Declaration of independence and impartiality;
- g) Expert's insurance certificate;
- h) Names and specific tasks of any assistants or Technical Experts who contributed;
- i) List of documents that were received and used as the basis of the Expert's opinion or to reply to questions, drawing a distinction between the documents provided by the parties and those collected by the Expert, as well as the bibliography related to the topic in question;
- j) Questions asked by the judge or the party who appointed the Expert and specific guidelines, if any;
- k) Particularities of the investigation and actions taken;
- l) Specifics regarding the procedure (e.g. Right of inspection and blocking law in medical cases);

- m) Procedure followed to ensure that the adversarial principle is followed during the whole period of the Expert investigation.

II - BODY OF THE REPORT

Investigation, discussion and Expert's analysis

- a) Background information/contextual elements;
 - b) The facts, their origins and established causes and the parties' declarations regarding these;
 - c) All relevant scientific or practical facts in relation to the case and questions asked with reference to appropriate scientific literature;
 - d) The findings/results of the Expert's investigation or research;
 - e) Observations and or challenges made by the parties on the pre-report (if any);
 - f) If a range of findings/results, opinions is possible, an indication of the likely range and source of each;
 - g) Expert's reaction to all requests and answers to all questions asked by the Parties;
 - h) Record of all discussions with the Parties.
- 5.6 The report may also include any other aspects concerning the Expert's investigation, that are specific to the procedure that are applicable due to rules of local Law, to the ethics of the specific field of expertise or to any professional rule or guidelines of the Expert.

III – CONCLUSIONS

- a) A justified and logically presented opinion and/or answer to the questions
- b) Information on the degree of reliability of the findings, and
- c) Signature of the Expert preceded by a "Statement of Truth" along the following lines:

"I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer."

ANNEXES

- Any documents that were not in the evidence provided by the parties but has been used by the Expert;
- Documents that are referred to in the Report.

Section III – Effect

- 5.7 The judge shall always decide freely whether or not he will take the Expert's opinion into consideration in the final judgement.

Chapter VI

Remuneration of the Expert

- 6.1 The Expert is entitled to a fair remuneration which, even if the Expert has been appointed by a party, must be monitored by the judge whose decision will be subject to the right of appeal.
- 6.2 As mentioned in paragraph 2.4 above, the Expert and the judge will need to ensure that the cost of the expertise remains proportionate to the value of the case.
- 6.3 The remuneration should be set depending on the difficulty and duration of the work carried out, of the quality of the Expert and the moral, professional, and material liability incurred. Under no circumstances should his fees be assessed and set depending on the amounts in dispute or the results of the trial for one of the parties.
- 6.4 The Expert must inform the judge and the parties about the calculation method of his fees as soon as possible and communicate to them the closest possible estimate of the costs and fees to come.
- 6.5 To this effect, when the Expert is appointed by the judge, except under urgent circumstances as determined by the court, the following procedure shall be applied:
- The court shall request an initial down payment to pay for the Expert's processing fee and estimate of the cost of the expert investigation. ("calculation fee"/"registration fee"). The judge should also decide which party or parties shall pay such initial down payment to the court.
 - After having received the files, the Expert shall make a first estimation of his fees before starting his work. This estimate, which must be as close as possible to the estimated overall cost of the whole expertise proceedings, is subject to the judge's approval. The judge shall also determine which party or parties will make this down payment.
 - If the Expert notices that the costs will be higher than initially estimated, he should promptly warn the parties and the judge, who is in charge of authorizing the increased cost and may order a supplementary down payment.
- 6.6 The Expert shall deliver his report subject to receipt of the payment of the deposit set by the judge. The remainder of the fees shall only be paid to the Expert after delivery of his report. However, if he has had to pay a third party in the course of the expertise proceedings (such as a laboratory or a specialist) or if the expertise takes longer than three months, the Expert can receive a down payment levied on the sums deposited for reimbursement by presenting proof of the expenses incurred, and as remuneration for his diligence, as long as his invoices mention precisely the period for which the remuneration is claimed.
- 6.7 The court may make exceptions to this rule under urgent circumstances.

Chapter VII

Status of Experts

Section I – The rights of the Expert

- 7.1 In addition to fair remuneration detailed above, the Expert must have the right to accept or refuse the mission. However, if he is registered on a list, the Expert will need to justify by an objective reason his refusal to the person appointing or instructing him.
- 7.2 The Expert is also entitled to information before and after he has carried out his instructions.
- 7.3 The Expert must be able to address the judge and/or the party who appointed him to obtain clarifications on his instructions and, while carrying them out, to receive help from the judge to overcome any difficulties encountered. To this end, the Expert should be able to ask for the parties to be summoned before the judge. After the trial, the Expert is entitled to receive feedback from the parties and from the judge on how his findings were used including in the ruling, as well as on any comments or assessments that may have been made during the court proceedings on the quality of his reports.
- 7.4 Due to possible pressures on Experts, since their opinions are central in helping to resolve a dispute, they should be under specific protection from the Member States, similar to that given to judges or to people with public authority. This protection could go so far as the creation of a specific criminal offence or aggravating circumstance for certain misdemeanours (blackmailing, threats, violence, or attempted bribery) of which Experts may be the victims due to their work.

Section II – The expert's ethics

- 7.5 Identical ethical rules should be applied to the European Judicial Expert regardless of how he has been appointed: Expert appointed by the court or Expert appointed and paid for by a party or parties and subject to obligations with regards to the judge since he is authorised to give his opinion before a court.
- 7.6 The ethical rules of the European Expert should cover the major principles on which the Expert's legitimacy and authority is based: competence, probity, objectivity, loyalty, independence and impartiality.
- 7.7 Even when the Expert has been appointed by a party, the Expert should show himself loyal to the court as much as to the parties, since by giving his opinion within the context of a court proceeding, he takes part in establishing the truth and in the implementation of justice. This loyalty to the court should lead the Expert not to conceal anything, even by omission, of any evidence that could possibly be detrimental to the party who appointed and is paying him.
- 7.8 The Expert should be able to swear to the following:
 - 1 His overriding duty is to the court, both in preparing reports and in giving oral evidence, and that this duty overrides any obligation to the party from whom he has received instructions and/or paid him, that he has complied and will continue to comply with that duty;

- 2 He is aware of the requirements of civil procedure rules in the appropriate jurisdiction;
- 3 He has set out in his report what he understands from those instructing him to be the questions in respect of which his opinion as an Expert is required.
- 4 He has drawn to the attention of the court all the issues and facts, of which he is aware, which might adversely affect his opinion.
- 5 That, where he has no personal knowledge, he has indicated the source of factual information.
- 6 That he has endeavoured to consider material facts and to include in his report those matters which he had previous knowledge of or of which he has been made aware and which could have weakened his definitive opinion, but that he has clearly ascertained that there are no reservations as regards his conclusions.
- 7 He has not included anything in his report which has been suggested to him by anyone, including the lawyers of the parties instructing him, without forming his own independent view of the matter.
- 8 Where, in his view, there is a range of reasonable opinion, he has indicated the extent of that range in the report.
- 9 At the time of signing the report he considers it to be complete and accurate, but will notify those instructing him if, for any reason, he subsequently considers that the report requires any correction or qualification.
- 10 That the Expert understands that this report will be the opinion that he will give under oath, subject to any correction or qualification he may make before swearing to its veracity.
- 11 That attached to this report is a statement setting out the substance of all facts and instructions given to him, which are material to the opinions expressed in this report or upon which those opinions are based.

The above oath may be amended for any national requirements as long as it does not diminish the guarantees provided.

- 7.9 Whether appointed by the court or by a party, the Expert should carry out his instructions personally, even if he is authorised, under his exclusive responsibility, to be assisted by colleagues and to receive the opinion of another Expert in a different field of expertise. This requirement means that the Expert is fully and entirely liable for all the actions carried out by or for him during the mission, as well as for his findings, and it is essential in order to ensure respect for strong ethics and the credibility of the opinion.
- 7.10 The European Expert's ethical rules should be identified in a Code of Ethics and the Expert should be required to respect it.
- 7.11 The European Expert's Guide to Good Practices should require the Expert to make a statement or declaration of independence in relation to any possible links with the parties that could cast doubt on his independence and objectivity.
- 7.12 Should the Expert not endorse the Code of Ethics and the Guide to Good Practices, in particular regarding the declaration of independence referred to above, then the Expert's opinion would not be receivable by the court.

- 7.13 The applicable sanctions if ethical rules are not respected should be adapted by each country depending on judicial traditions and rules of proceedings, as long as the disciplinary decision is handed over to a jurisdiction or an independent body, and as long as it respects the adversarial principle.
- 7.14 Assessments and reviews are essential. Their practical implementation is left to national legislation.

Section III – Quality Assurance

§ 1 General principles

- 7.15 The appointment of an individual Judicial Expert or a legal entity (henceforth called Judicial Expert Service Provider) should be based on a legal framework that includes a quality assurance system based on shared and uniform rules including both accreditation and certification.
- 7.16 The quality assurance system should include a judicial procedure allowing the candidate to challenge any decision when the accreditation of a legal entity or the certification of an individual is denied.
- 7.17 The quality assurance system should include a number of essential elements: competence, professional and judicial qualifications and training, and a permanent system of checks and assessments of quality.
- 7.18 The quality assurance system should provide for criteria for certification and accreditation⁶ since the Expert must meet the following requirements:
- 1 Knowledge and competence in the field of expertise**
An Expert must have the necessary knowledge and the required experience in his field of expertise. He must maintain his competence through continuous training.
 - 2 Practical knowledge and competence**
An expert must be capable of understanding the judge's or the litigation party's instructions and of communicating with the judge and the party about the proceedings and its relevant legal aspects.

An expert must also be capable of communicating his findings (orally and in writing) in a well-argued and verifiable report that can be understood by the judge and the parties. Language skills and knowledge of the law and proceedings in the various legal systems are of significant value.
 - 3 Ethics and professional attitude**
An expert must act independently, impartially and in accordance with the established code of ethics and professional conduct.
 - 4 Efficiency**
An expert must work efficiently and submit his report in time and within the agreed budget.
- 7.19 The quality assurance system should provide for a system of feedback from the courts to the Judicial Experts as proposed by a Working Group on Quality Assurance⁷. Thus, the judge deciding the case could provide a brief appraisal of the Expert's work. In

⁶ See EEEI EGLE, Final Report of the Working group 3 on the quality assurance, 2015

⁷ Ibid.

this appraisal, the judge should comment on his impression of the Expert's knowledge, skills, ethics and professional conduct, as well as efficiency. After having been notified of this appraisal the Expert should have the opportunity to provide comments and explanations.

- 7.20 The quality assurance system should provide for funding that would allow for the independence of the body or bodies established to implement it.
- 7.21 An individual Judicial Expert should be certified and a Judicial Expert Service Provider should be accredited by one or several national judicial or administrative or even private body or bodies financed and organized in such a way that its/their independence cannot be called into question.
- 7.22 The national authorities of the EU Member States should develop an accreditation method for the legal entities recognised as Experts. However, in order to prevent individuals whose certification was refused by the competent authority from circumventing the refusal by being certified by a legal entity, it is probably best for Judicial Expert Providers not to have any certifying authority.

§ 2 National Certification Bodies

- 7.23 Each EU Member State should establish or appoint one or several judicial, administrative, or private body or bodies that meet the required criteria of independence mentioned above, and which would deal with the transparency, the admissions, the training and the quality of Judicial Experts and judicial expertise.
- 7.24 Each State or any specific body established or appointed by this State should be able to delegate parts of its remits to other entities such as Expert associations, provided these have the necessary structure and facilities. Each State or any body established by the State shall supervise the work of the entity in an appropriate and effective way.
- 7.25 Any decision to reject an application submitted to these national or regional body or bodies - to which as the final recipients of the Expert's opinions it would be beneficial to associate judges - would be subject to judicial remedy.
- 7.26 These bodies should:
 - Promote the quality of evidence in judicial expertise;
 - Set basic quality standards applicable for all judicial Experts;
 - Set basic standards for certification of individual judicial Experts;
 - Set basic standards for accreditation for Judicial Expert Service Providers;
 - Set quality standards for specific fields of expertise;
 - Hold and maintain a register of certified individual judicial Experts and accredited Judicial Expert Service Providers;
 - In addition to general CEN/ISO⁸ standards, where possible, set quality standards that include specified best practices and competences that are required for each field of expertise;
 - Set the basic curriculum for the judicial training of Judicial Experts;
 - Set procedures for the assessment and re-assessment of Judicial Experts and Judicial Expert Service Providers; and

⁸ CEN (European Committee for Standardization) /ISO (International Organization for Standardization)

- Set a Code of Conduct which applies to all Judicial Experts.
- 7.27 The overarching bodies should involve in their work individual Judicial Experts, Judicial Expert Service Providers, professional bodies, judges, lawyers and other directly involved stakeholders, such as universities and researchers.
- 7.28 The EU should promote the harmonization of the national lists of Judicial Experts in relation to:
 - the information provided and recorded on the national lists;
 - the basic quality standards applicable to all Experts;
 - the basic standards for certification of Individual Judicial Experts;
 - the basic standards for accreditation for Judicial Expert Service Providers;
 - the quality standards for specific fields of expertise;
 - the basic curriculum for the judicial training of Judicial Experts; and
 - a Code of Conduct which applies to all Judicial Experts.

§ 3 List of European Experts and European body in charge of managing this list

- 7.29 A list of European Experts could be established and maintained as soon as the need for one and its scope are more clearly determined by further reflection and statistical research.
- 7.30 The list of European Experts should be open to certified Judicial Experts and to accredited legal entities who work or wish to work on cross-border disputes.
- 7.31 Registration on this list would not preclude an activity as a Judicial Expert on the national or international level (International Criminal Court, International Court of Justice, etc.).
- 7.32 The EU should be in charge of proposing the suitable standard for individual Judicial Experts and for Judicial Expert Service Providers who want to be registered on the list of European Experts.
- 7.33 The body created and funded by the European Union to manage the list of European Experts (§ 3.09, 3.10, & 3.11) shall be responsible for:
 - developing the List of European Experts and harmonising the national registers of Judicial Experts;
 - promoting within the EU a recognition of training courses for Judicial Experts as well as of refresher courses and improvement courses in general;
 - Improving the quality of expert opinions; and
 - Developing a statistical tool to gain better knowledge of the activity of Experts and to compare timeframes from one judicial system to another.

Conclusions

This Guide of Good Practices is intended to evolve with future social, economic and legal developments, in particular the ongoing progress of legal harmonisation. Meeting such new requirements will be essential to improve the interoperability of the different European legal systems and to reinforce the trust of judges, litigation parties and their solicitors and, more widely, that of all citizens in the value of Experts appointed in any one of the judicial systems of the European Union.

Now, even before a text from the European Union, and unless otherwise provided for in national laws of procedure, Experts can adopt some of the practices recommended, and namely: the declaration of independence at the beginning of each expert evaluation, the purchase of insurance covering their specific expert liability, the practice of drafting a pre-report presenting the Expert's provisional conclusions to the critical evaluation of the parties prior to the oral hearing before the judge, and of writing a structured report, based on the recommendations found in this text.

In the long term, the creation in each Member State of independent national or regional certification and accreditation bodies in charge of establishing public lists of Judicial Experts after verifying the competence and morality of the candidates would most certainly be the cornerstone of a quality assurance system. It would be conducive to reinforcing mutual trust in the value of the Experts appointed in each Member State even if judges remain free to appoint an Expert who is not on an existing list, provided they explain their choice.

In this context, the Jury considers, without overlooking the work that has been carried out by a Working Group on quality assurance, that the potential cost of creating a List of European Experts requires further studies, in particular statistical research, into the volume and likely future development of cross-border litigation. These studies would make it possible to clearly establish the economic interest of this list and to define its scope according to the needs identified.

However, the Jury believes that the observance by Experts of a common code of ethics would substantially contribute to improving legal processes and would help courts issue high quality rulings in all cross-border litigations.

Annex

Introduction

The Code of Ethics of European Judicial Experts lays down the obligations of all Judicial Experts who are asked to give their opinion in court whatever the means of their appointment. This Code describes the Judicial Expert's obligations with regard to the judge or the court, to the parties, to public authorities and to other Experts. More limited than the Guide to Good Practice, which also makes recommendations for judges, for the legislators of the Member States and for the European Union, this Code sets out, in a different form, the recommendations intended more specifically for Judicial Experts. These recommendations are of a more binding nature, insofar as, by taking an oath before the judge or court, Experts would undertake to respect this Code or would be subject to penalties and to the inadmissibility of their opinion, at the discretion of the Member States.

CODE OF ETHICS OF EUROPEAN JUDICIAL EXPERTS (Proposal)

Article 1:

This Code applies to all the Experts required to give their opinion in a judicial setting and to help the judge resolve a dispute, whether they are appointed by the judge, by each of the parties or by both parties jointly.

It applies to Technical Experts who provide the court with their scientific knowledge on questions of fact, to Expert Witnesses who provide their Expertise to support the party's line of argument and, when they exist, to Legal Experts who can be called upon to provide the judge with knowledge in foreign law.

It also applies to legal entities when they have the status of Expert.

Experts appointed and paid by the parties are specifically required to follow the good practices defined below as they are bound by law or oath to certain obligations towards the judge and the court which override their obligations towards the party which has appointed them.

If there is no such oath or no such legal provisions according to which the interest of justice overrules the interest of the party appointing them (and often paying them), the Experts chosen by the parties are not concerned by the provisions laid out in this text.

However, when these Private Experts or Experts of the parties are registered on a list of Judicial Experts and have taken the oath to respect this code in order to register (or following their registration) on these lists, they must follow its rules and cannot ignore the truth they owe the court and the judicial system; they will have to bear witness of it with a special mention above the signature on the report which they submit so that it can be produced during the proceedings.

TITLE 1: THE JUDICIAL EXPERT'S INSTRUCTIONS

Article 2:

The Expert's opinion is required when the judge is unable to take a decision based on the evidence provided because he considers it necessary to have the Expert's opinion on technical issues (financial, scientific, medical, artistic, linguistic, etc.) to have an accurate interpretation of the facts. In the cases provided for by the domestic law of the Member States, the Expert can provide the judge with knowledge of foreign law whose interpretation remains the exclusive competence of the judge.

In no case will the Expert's mission be to conciliate the parties, let alone to negotiate with the Expert of the other party when each party appoints an Expert.

Article 3:

The Expert must draw up a report of his or her work in which he or she answers the questions asked.

TITLE 2: THE EXPERT'S DUTIES

Chapter 1: General Rules

Section 1: Personal Rules

Article 4:

No matter how the Expert was appointed, he or she must show competence, probity, loyalty, independence and impartiality.

Article 5:

The Expert must nurture and improve his or her competence by undergoing continuous training both in his or her field, in the techniques of the Expert, in the laws regulating his or her professional activity and in the Expertise procedure.

Article 6:

All Experts should offer their help to public interest actions in order to improve the quality and efficiency of the Expertise procedures and the judicial system.

Article 7:

The Expert should personally carry out the mission that he or she was given by the judge or the parties. However, if necessary, he or she can work with collaborators or request the opinion of another Expert working in a different field from his or her own; in this case, the Expert is the sole person bearing full liability for the progression of the Expertise and for the opinion provided at the end of it.

Article 8:

In no case can the Expert who has not taken part in the Expertise operation sign a report and claim remuneration for it. Signatures of convenience are forbidden.

Article 9:

When the Expert carries out different activities, they should be perfectly distinct, independent and of public knowledge. Any confusion between activities, duties, and responsibilities whose ambiguity could lead to misunderstandings, deception, or any simple doubt about the Expert's independence and impartiality is forbidden. Any fraternising between the Expert and another person is forbidden.

Article 10:

In no case can the Expert be in charge of implementing the solutions he or she has advised at the end of his/her report.

Article 11:

The Expert can only accept a case after ensuring that his or her appointment does not create a conflict of interests or after disclosing any such conflict of interest or that his appointment does not contravene those of any professional bodies of which he is a member. The Expert must provide a declaration of independence for each case and disclose at that point any information which could be a sign of a conflict of interest, especially any relation he or she may have or may have had with one or more parties involved in the case which could lead to doubt about his or her impartiality. If a potential conflict of interest comes to light during the operations, especially following the enlargement of the scope of the mission to other parties, the Expert must immediately inform the judge or the party who appointed him or her; the latter can either replace the Expert or allow him or her to continue his or her work after having received the agreement of all the parties concerned.

Section 2: Duties towards the Judge and the parties

Article 12:

Even when he or she is appointed by a party, the Expert should be as loyal to the judge as he or she is to the parties since by giving his or her opinion in a court proceeding, he or she is taking part in the establishment of truth and the implementation of justice. The Expert should not keep anything from the judge, even by omission, especially elements which could affect in an adverse manner the party who appointed him or her and is paying him or her.

Article 13:

No matter how the Expert is appointed, he or should take an oath, when being registered with an official and public list or, if there is no list, when being appointed by the judge or during a hearing with the judge, to respect the duties listed in Article 4 above, and the more detailed ones presented in this code.

The Expert appointed by the party should be able to swear before the judge receiving his opinion that:

- 1.1 his overriding duty is to the court, both in preparing reports and in giving oral evidence, and that this duty overrides any obligation to the party from whom he has received instructions and/or paid him, that he has complied and will continue to comply with that duty;
- 1.2 he is aware of the requirements of civil procedure rules in the appropriate jurisdiction;
- 1.3 he has set out in his report what he understands from those instructing him to be the questions in respect of which his opinion as an Expert is required.
- 1.4 he has drawn to the attention of the court all the issues and facts, of which he is aware, which might adversely affect his opinion.
- 1.5 that, where he has no personal knowledge, he has indicated the source of factual information.

- 1.6 he has endeavoured to consider material facts and to include in his report those matters which he had previous knowledge of or of which he has been made aware and which could have weakened his definitive opinion, but that he has clearly ascertained that there are no reservations as regards his conclusions.
- 1.7 he has not included anything in his report which has been suggested to him by anyone, including the lawyers of the parties instructing him, without forming his own independent view of the matter.
- 1.8 where, in his view, there is a range of reasonable opinion, he has indicated the extent of that range in the report.
- 1.9 at the time of signing the report he considers it to be complete and accurate, but will notify those instructing him if, for any reason, he subsequently considers that the report requires any correction or qualification.
- 1.10 that the Expert understands that this report will be the opinion that he will give under oath, subject to any correction or qualification he may make before swearing to its veracity.
- 1.11 attached to this report is a statement setting out the substance of all facts and instructions given to him, which are material to the opinions expressed in this report or upon which those opinions are based.

Article 14:

When appointed, the Expert must immediately ensure that he or she has the competence, means and time necessary to carry out the mission that has been given to him or her within the deadlines set. He or she will avoid any negligence, will do his or her utmost for his or her opinion to be given within a reasonable deadline, and will immediately inform the judge or the party who appointed him or her of any difficulty obstructing the progression of the operations.

Article 15:

The Expert who refuses to carry out the mission which has been given to him or her must explain his or her refusal and be able to defend it.

Article 16:

The Expert should respect the terms of the mission he or she was given and answer the questions asked with precision.

Article 17:

The Expert should take out insurance covering his or her liability for the specific risks linked to his or her activity as an Expert and prove that it covers the risk linked to the Expertise for which he or she has been appointed.

Article 18:

During the Expertise procedure, the Expert will ensure that the adversarial principle is applied correctly in accordance with the Guide to Good Practices.

Article 19:

The Expert should ensure only to carry out the investigations necessary to resolving the dispute.

Article 20:

During the Expertise, the Expert, especially if he or she has been appointed by the judge, will show the necessary authority for the diligences required of the parties to

be carried out immediately and so that the debates remain constructive and calm. The Expert will keep a dignified attitude and avoid any behaviour towards the parties or their lawyers which could nurture any doubt about his or her impartiality. The Expert will not show any condescendence towards the parties who do not have his or her technical knowledge.

Article 21:

The Expert bound by professional secrecy should not disclose any confidential information acquired during his or her operations.

Article 22:

The Expert will need to keep the documents linked to the Expertise that he or she did not have to hand back to the parties at the end of the operations for a time period at least equal to the period during which he or she may be liable.

Section 3: Duties towards the other Experts

Article 23:

The Experts should speak to their colleagues with moderation.

Article 24:

The competition between Experts should only be based on the competence and the quality of the services provided to the judicial system.

Article 25:

The Expert must not take part in any Expertise whose conditions go against this Code.

Article 26:

If an Expert is called upon to take up the Expertise of a deceased Expert, he or she should protect the interests of the beneficiaries for the operations that were already carried out and that he or she will continue.

Article 27:

The Expert called upon to give an appraisal of another Expert or another Expert's work should only speak out with full knowledge of the facts and with impartiality. Any such review should exclude any discriminatory attitude. The opinions or appraisals should always be clearly expressed and motivated and their author should eschew any personal views.

Section 4: Duties towards the public authorities

Article 28:

The Expert must comply with the laws and regulations in place within the EU and those of any professional bodies of which he is a member.

Article 29:

The Expert must immediately notify the relevant public authorities of any serious risks for the health and safety of persons which may come to light during the Expertise.

Article 30:

The Expert must comply with the evaluation procedures before his or her appointment. More specifically, he or she must spontaneously provide all the elements that will verify that his or her technical competence matches the degrees held, as well as verify his or her professional background and his or her experience

in the field, his or her knowledge of investigation techniques, his or her knowledge of the norms regulating the practice of his or her main activity, of the rules relating to the rights and duties of the Experts as well as the governing principles of fair trial.

Article 31:

When he or she is registered on a public list, the Expert must similarly submit himself/herself to the evaluation procedure each time the list is being renewed, and provide evidence that he or she has undertaken continuous training which has allowed him or her to stay up-to-date in the knowledge relevant to his or her core profession, in his or her practice of Expertise as well as in the legal matters regulating his or her profession and his or her activity as an Expert. If the domestic law of the Member State does not provide for shorter delays, the Expert must then provide an account of his or her activity as an Expert, notably specifying the number of cases in which he or she was appointed, the number of reports handed in and the number of cases that are still ongoing, highlighting any difficulties he or she may have encountered.

CHAPTER 2: Rules specific to each of the manners of practice

Article 32:

When the Expert is a private person, he or she has sole liability for the Expertise operations and the opinion he or she presents at the end of the Expertise, and must thus be insured for any damage he or she could cause the parties while carrying out this specific activity.

Article 33:

When the Expert is a legal entity, they must manage the entirety of the Expertise. They must have within them one or more private individuals working as Experts. The latter will personally assume the liability for the oral and written evidence gathered, the written conclusions as well as the drafting of the report which will be handed over to the judge.

CHAPTER 3: Rules relating to remuneration

Article 34:

The Expert is entitled to a fair remuneration which, even when he or she has been appointed by a party, will be supervised by the judge whose decision can be appealed.

Article 35:

The remuneration should be set depending on the difficulty and duration of the work accomplished, on the quality of the Expert and the moral and material liability incurred. In no case can his or her fees be assessed and set depending on the disputed amounts or the outcome of the trial for one of the parties.

Article 36:

The Expert must inform the judge and the parties of the method used to calculate his or her fees as soon as possible.

Article 37:

After receiving the file, the Expert, before starting the Expertise, will draw up a first estimate of the costs which should be as close to the final cost as possible. As soon as he or she notices that he or she will go over this estimate of costs, the Expert must warn the parties and the judge, who can order for an additional advance to be paid to the Expert.

Article 38:

The Expert will only send his or her report when the parties have paid the deposits ordered by the judge.

Article 39:

The Expert's fees will only be paid to the Expert after he or she has handed over the report – However, if he or she has had to pay a third party during the Expertise (such as a laboratory or a specialist) or if the Expertise lasted more than three months, the Expert can receive a down payment deducted from the sums deposited as reimbursement on presentation of evidence of the costs incurred and as payment for his diligences, as long as the invoices clearly mention the time period for which the remuneration is requested.

FINAL PROVISIONS

Article 40:

For anything additional and for the practical matters, the Experts will comply with domestic legislation as long as they do not undercut the obligations imposed by this code which are guarantees offered to the judges and individuals of the EU.

If the Expert does not subscribe to this Code of ethics and to the phrasing of the declaration of independence provided in Article 11, the Expert's opinion will not be admissible.

The provision of sanctions which can be applied if the rules of this code are not followed will be adapted in each country depending on the legal traditions and rules of procedure, as long as the disciplinary decision is in the hands of a jurisdiction or independent organisation, and as long as it complies with the adversarial principle.

The evaluation to which the Expert has to submit and the supervision of the competence of the Experts and the quality of the Expertise are essential. The conditions of these evaluations are left in the hands of the national law pending the creation of an ad hoc EU-wide body.

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EEEI factsheet

The **European Expertise and Expert Institute (EEEI)** was established in 2006 to contribute to the convergence on core principles of the EU's national systems of judicial expertise, and to guarantee the legal certainty of court rulings across the European judicial area by ensuring the high quality of court-ordered expert examinations.

It brings together from each Member State of the European Union contributors from high courts, bar associations, expert organizations, and universities and other professionals with a stake in these issues. A think-tank at European judicial scale, it is also a cross-professional, cross-border platform for debate and by no means a representative body for experts. The EEEI is completely independent of all public authorities and its work contributes to forming consensual solutions that are to be ultimately transposable to the various European law systems.



In 2010-2012, with the contribution of the Network of the Presidents of the Supreme Courts of the European Union and the financial support of the European Union, the EEEI made a detailed, comparative inventory of existing procedures as regards expert examinations in civil matters. The EUREXPERTISE study was concluded by an International Symposium held in Brussels on 16th and 17th March 2012 on "**The Future of Civil Judicial Expertise in the European Union**".

Since then, the EEEI has continued its work as a major stakeholder in these issues, and in 2013, was granted Observer status at the GT-QUAL of the CEPEJ.



In 2014, with the continued support of the DG Justice of the European Commission and co-funded by the European Union, the EEEI undertook new research to create a guide to best practice in European civil judicial expertise within a project called **EGLE**, for **European Guide for Legal Expertise**.

Chosen for the **EGLE** project, the method of the **consensus conference** is based on the competence and cooperation of professionals and the sharing of comparative experience. The method appears well-suited to drawing up a common practice directly inspired by the rules of fair trial laid down by European legislation and case law.

This work culminated in the public, plenary **conference on May 29th 2015** in the Aula Magna of the Italian Supreme Court in Rome, which by all accounts was a great success. Judges, lawyers, experts and academics, as well as representatives from Supreme Courts and other European and international institutions, in all, 160 people from 22 countries contributed to the consensus conference.

Based on the preparatory work and on the debates during the plenary conference, a Jury of key European figures met at regular intervals to draw up this Guide to Good Practice.

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