



This project is co-funded by the Civil Justice Programme of the European Union



Shaping Expertise across European Justice Systems

JUST/2013/JCIV/AG/4664

EGLE PROJECT
DATA STUDY GROUP
FINAL REPORT (Draft 27 April 2015 GC)

European Guidelines on Judicial Expertise

Chapter I – Definitions and Scope

For the purpose of the present Guidelines, experts include both experts appointed by courts and experts appointed by the parties **for the purpose of assisting a court**. Experts may be individual experts or organizations (Judicial Expert Service Providers).

The task of expert shall be limited to fact findings and drawing technical conclusions and/or give a professional opinion out of his/her findings. He/she shall never give legal opinions. **Expert may assist courts for the determination of foreign law.**

Note: most guidelines use the term "expert" rather than "judicial expert". I therefore define the term found throughout the guidelines. However, the vast majority of rules are concerned with court appointed experts. It might therefore be an option to focus on court appointed expert only, and to label them "judicial expert" in this definition.

Chapter II – Requirements for Use of Expert Evidence

A court may appoint an expert in civil proceedings when it is necessary, indispensable or relevant for the court in order to resolve the dispute.

The assistance of an expert is needed when the court would not be able to make an accurate and detailed decision without taking his opinion, with respect to any technical issue (scientific, medical artistic, linguistic, etc).

The estimated costs of the intervention of an expert are not a condition to accept or reject a judicial expertise, unless in extraordinary cases.

An expert shall only be appointed when no simpler or faster means of evidence is available.

Chapter III – Expert Appointment

Section I – Eligibility for Appointment

§ 1 – Registration on European List

For transparency reasons, a European list of experts qualified in particular technical fields should be created.



In principle, experts should be chosen from that European list. In exceptional situations though, the expert might be chosen out of such a list by a motivated decision, or with the agreement of the parties.

The list should be available on the internet. It should include a harmonized list of competence fields allowing the judge to find out the most appropriate expert to assist him in a given case.

The list should enclose the past experience and working languages of experts.

In order to be registered on such list, experts shall prove to meet certain criteria (**to be defined by WG3**), which shall be verified either by a national judicial/administrative authority, or by specific private institutions in accordance with national rules and regulations (as recognized professional orders, as the case may be), or by a yet to be determined European entity. The fulfilment of these criteria should be subject to a periodical review by the same entities.

For the inscription on the list and the periodical reviews, the competent entity shall verify the technical competence of the expert, his/her knowledge of the directing principles of a fair trial, as well as the existence of sufficient civil liability insurance covering the activity as a judicial expert. Before registration, experts will have to undersign a "charter of European expertise". Additionally, the expert has to meet a European "Code of ethics".

The inscription of the list and the periodical reviews shall be subject to the adherence and an observance of a code of ethics that guarantees, in particular but not limited to, their impartiality and objectivity, the absence of criminal record and disciplinary breaches, ...

The use of the European list is intended for cross-border disputes but may be used in domestic cases.

A Central Authority should be created in order to resolve any issues related to judicial experts. Such Central Authority should establish a list of specialties needed (nomenclature), as already done in some Member States.

In order to increase mutual trust of courts in the different Member States, the inscription of experts on national lists should be made on similar criteria.

§ 2 – Oath and Endorsement of the Charter of European Expertise

In exceptional cases where an expert who is not registered on the list is appointed, he shall take an oath before the court and undersign a "charter of principles of European expertise" which he then will have to respect.

Section II – Appointment Process

The expert should preferably be selected directly by the court in charge of the proceedings, after having heard the parties, rather than by another entity.

The court should be allowed to call or to write to the expert before appointing him in order to check whether the expert is competent for the intended mission, whether he/she is available and whether he/she has any conflict of interest.

Experts appointed by the parties may be admitted in civil proceedings under certain conditions of independence, oath, competence, etc.

When the expert accepts the file, he/she must make a statement of independence and disclose any links he has with any of the parties.



Section III – Challenges of Experts

The parties should have the right to challenge the appointment of an expert on grounds of lack of independence, conflict of interests, relationship to the parties or any other admissible legal ground, and to apply to the court for disqualification of the expert. The court should decide in a reasonable time after having heard the expert.

The court, on his/her own initiative, or at the parties or the expert's motivated request, having heard the parties and the expert if necessary, should be able to replace the expert, giving reasons for so doing.

Chapter IV – Expert Proceedings

Section I – Overarching Principles

§ 1 – Fairness of Proceedings

The evidence submitted for expert analysis and the grounds upon which conclusions are drawn, will be disclosed to all parties, unless the court, after hearing the parties, rules otherwise, or the parties agree that there are compelling grounds for nondisclosure.

The expert will provide his/her opinion to the parties prior to the hearing before the court.

The expert, under the supervision of the court, must ensure that the expert's evidence is made available to all parties, respecting equality of arms.

If no preliminary report is presented, parties shall have the opportunity to give their opinion before the Expert, before a final ruling by the court.

Judicial experts must declare that they are not aware of any conflict, objection or any other reason to prevent their acting independently and impartially or they must not accept the appointment.

§ 2 – Judicial Supervision

The court should manage the case (including dealing with incidents relating to the Expert's person, or changes to his/her instructions) and ensure a fair trial during the course of the Expert's work (such as agreeing a reasonable timeframe, allowing access to appropriate materials, and reasonable costs).

The Expert should have the right to seek directions in writing from the court, informing the parties in any procedural matters that may assist him/her carrying out his/her function.

Section II – Scope of Proceedings

§ 1 – Definition of the Mission of the Expert

The mission must be defined as precisely as possible regarding the scope and the requirements of the proceedings, i.e. when possible and appropriate, the court should ask specific questions which exactly address the relevant issues of the case.

The court shall set up a time frame for conducting the mission. Such time period shall not exceed 6 months or, as the case may be, 12 months for complex cases.

Before starting to work, the expert shall, if necessary, have the opportunity to have exchanges with the judge about the definition of the mission; the parties should be informed about such exchanges in writing and, if necessary, an oral hearing shall be held. The final version of the mission shall be defined after such exchanges.



If the mission includes the conciliation of the parties, this shall be indicated expressly and the court should provide for an accurate judicial framework.

Where a Judicial Expert Service Provider is appointed as an expert, there must be assurance of:

- An integral management of the case
- That individual persons within the organization take personal responsibility for the written or oral evidence and report to the Court

§ 2 – Extension of Mission

The court should, on its own initiative or at a party's request, after hearing the parties, be able to restrict or extend the Expert's instructions.

The expert may apply to the court for an extension of his/her mission where

- 1) in the course of the mission, he/she notices that the time frame will not be sufficient, or
- 2) in the course of the investigations, due to technical reasons, he/she notices that additional investigative steps are needed or further technical questions which are relevant for the case and within the scope of the proceedings, should be raised.

The parties shall be informed about such application for extension and have an opportunity to be heard about it.

The parties may also apply to the court for an extension of the mission of the expert to additional issues.

Section II – Oral Hearing

After delivery of the report, upon request of the parties or ex officio, the expert shall be heard by the judge in an oral hearing, in order to sustain and explain his opinion and answer the questions the parties or the judge may raise. The oral hearing may be held as a videoconference in accordance with domestic legal provisions.

Section III – Timing of Proceedings

From the outset, the expert should agree with the Court's preliminary timeframe and/or stages for completion of the report.

The court should, after consulting with the parties, and the expert if appropriate, be able to change the timeframe.

Section IV – Simplified Proceedings

For small claims (to be adapted as a parallel to the EU Small Claims Regulation) or simple questions, the court may be able to ask the expert one or two single questions in the frame of a simplified procedure (shorter time frame, only exchanges in writings...).

The expert may suggest such simplified procedure during the "installation meeting".

Chapter V – Expert Report



Section I – Preliminary Report

The expert should write a preliminary report, unless the court rules or the law provides otherwise. The preliminary report must be disclosed to the parties.

Where a preliminary report was written, the final report should have the same structure, and show changes from the preliminary report.

Section II – Content

The report should be made up of subsections in a specific order, which would facilitate analysis of reports from different sources by the court.

The report must include the following information:

Procedural and administrative

- Parties involved, their lawyers and/or other representatives;
- Expert(s) responsible, declaration of independence and impartiality;
- Names and specified tasks of any assistants or technical experts used ;
- List of documents that were received and used as the basis of expert's opinion or answers to questions;
- Questions asked by the appointing party and Expert's instructions;
- Particularities of the investigation and actions taken;
- Specifics regarding the procedure (e.g. Right of inspection and blocking law in medical cases);
- Procedure followed due to adversarial principle during the full period of the investigation;

The report may also include the following information:

- Any other procedural and administrative subject that is applicable due to rules of local Law, the deontology of the specific field of expertise or any professional rule or guideline of the Expert;

Investigation, discussion and expert's analysis

- The facts, their origins and established causes and the parties' declarations regarding these;
- Relevant scientific or practical facts in relation to the case and questions asked;
- Expert's findings regarding the investigation;
- Observations and or challenges made by the Parties on the preliminary Report (if any);
- Reaction of the Expert to all requests and answers to all questions asked by the Parties;
- A considered, well-motivated and logically presented technical opinion and/or answer to the questions, which is the result of the investigation;
- Report on discussion with the Parties;
- Any other subject concerning the investigation, discussion or expert's analysis that is applicable due to rules of local Law, the deontology of the specific field of expertise or any professional rule or guideline of the Expert;

In this section subjects may be omitted if not relevant for the field of expertise /or not obligated by Law or statute.

Appendices

- Documents that were not in the dossier but have been used by the Expert;
- Documents that are referred to in the Report.

Section III - Effect

The court shall always decide freely whether it will take the expert's opinion in consideration in the final judgement.



Chapter VI – Expert Compensation

The expert is entitled to a fair remuneration. Even if already set up by his/her domestic law, he/she has to inform the court and the parties about the calculation method of his/her fees as soon as possible.

The court shall request an initial down payment for compensating the expert's preliminary analysis of the case. ("calculation fee"/"registration fee"). The court should decide which party shall pay such initial down payment to the court. The available documents and materials shall only be sent to the expert after such payment has been made.

After conducting a preliminary analysis of the case, the expert shall make a first estimation of his fees before starting his/her work. The court may then order a complementary down payment which should be as close as possible to the estimate overall cost of the whole expertise proceedings.

If the expert realises that the costs will be higher than initially estimated, he/she has to warn the court, which may order a supplementary down payment.

The expert shall only deliver his report when the parties have made the down payment ordered by the court on its account.

The expert's fees shall only be paid to the expert after delivery of his/her report – unless he has to pay third parties in the course of the expertise proceedings (as labs or other third organisms).

Chapter VII – Status of Experts

Section I – Experts' Ethics

Des règles déontologiques identiques doivent être applicables à l'expert européen, quel que soit son mode de désignation : expert nommé par le tribunal (expert judiciaire) ou expert de partie (également dénommé expert-témoin).

Les règles déontologiques de l'expert européen doivent porter sur les grands principes : compétence, probité, loyauté, indépendance et impartialité, et renvoyer pour les questions pratiques aux législations nationales sous réserve qu'elles n'amointrissent pas les garanties exigées.

Les règles déontologiques de l'expert européen doivent être recensées dans une charte déontologique et l'expert doit déclarer accepter cette charte et s'engager à la respecter.

La charte de l'expert européen doit imposer à l'expert de faire une déclaration relative à ses liens éventuels avec les parties de nature à jeter un doute sur son indépendance et objectivité.

En l'absence d'adhésion à la charte déontologique et de déclaration d'indépendance, l'avis de l'expert ne sera pas recevable.

Le régime des sanctions applicables en cas de non-respect des règles doit être adapté pour chaque pays en fonction des traditions juridiques et des règles de procédure, sous condition que la décision disciplinaire soit confiée à une juridiction ou à un organisme indépendant et sous réserve du respect du principe du contradictoire.

L'évaluation et le contrôle sont indispensables. Leurs modalités sont laissées aux législations nationales.



Section II – Quality Assurance

§ 1 General Principles

The appointment of an individual judicial expert or a Judicial Expert Service Provider should be based on a legal framework that includes a quality assurance system based on a shared and uniform framework including both accreditation and certification.

The quality assurance system should include a judicial procedure for review to legally challenge any decision when accreditation and/or certification is denied and the individual or body objects.

The quality assurance system should include a number of essential elements: competence, professional and judicial education and training, and a system of repeated ongoing quality assessment reviews.

The quality assurance system should provide for criteria for certification and accreditation as specified in the annex to these guidelines.

The quality assurance system should provide for a system of feedback from the courts to the judicial experts as specified in the annex to these guidelines.

The quality assurance system should provide for an adequate and structured (EU) public funding.

§ 2 National Certification Bodies

An individual judicial expert should be certified and a Judicial Expert Service Provider should be accredited by a national legally based and public financed judicial or administrative body or bodies.

A method for accrediting Judicial Expert Service Providers should be developed by EU Member national authorities to give them authority to authenticate and certify individual judicial experts.

Each EU member state should establish an independent legally based and public financed judicial or administrative body that deals with the transparency, admission, quality and training of judicial experts and judicial expertise.

The judicial or administrative bodies should:

- Promote the quality of the judicial expert evidence
- Set basic quality standards applicable for all judicial experts
- Set basic standards for certification of individual judicial experts o 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/ISO standards, where possible, set quality standards that should 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
- Set a Code of Conduct which applies to all judicial experts

The overarching judicial or administrative 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 scientists.



The EU will promote the harmonization of the national registers of judicial experts in relation to:

- The information provided and recorded in the national registers
- 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
- A Code of Conduct which applies to all judicial experts

§ 3 EU Register of Experts

An EU register of judicial experts should be established and maintained.

The EU Register of judicial experts must be open to certified judicial experts who deliver reports dealing with cross-border issues.

The EU should set standards for individual judicial experts and for Judicial Expert Service Providers who want to be registered in the EU Register of Judicial Expertises.

An independent EU Advisory Committee for Judicial Expertise should be established and EU-funded in order to

- Develop the EU Register of judicial experts and to harmonize the national registers of judicial experts
- Promote within the EU a recognition of training courses for judicial experts as well as updating courses, and refresher courses in general

For the Data Study Group,

Prof. Gilles Cuniberti



ANNEX

Working Groups Recommendations

WG1'S FINAL RECOMMENDATIONS "APPOINTING AN EXPERT: MISSION AND EXPECTATIONS"

- **Content of judicial expertise:**

1. Both experts appointed by the court and experts appointed by the parties are included in the general definition of "judicial experts".
2. Experts appointed by the parties can be admitted in a civil process under certain conditions of independence, oath, competence, etc.
3. The judge shall always decide freely whether he will take the expert's opinion in consideration in the final judgement.

- **Conditions for appointing an expert. Principles governing the use of judicial expertise**

4. Judicial expertise may be ordered in civil procedure when it is necessary, indispensable or relevant for the judge in order to solve the dispute.
5. An expert will be needed in a civil process when the judge would not be able to make an accurate and detailed decision without taking his opinion, as far as technical issue (scientific, medical artistic, linguistic, etc), are concerned.
6. The framework of the judicial expertise may include any technical topic not related to the legal field, except foreign law.
7. The estimated costs of the expertise are not a condition to accept or reject a judicial expertise, unless in extraordinary cases.
8. Subsidiarity: a judicial expert shall only be appointed when there are no simpler or faster means of evidence.

- **Conditions and tools available to select an expert:**

Creation of a European List of experts:

9. For transparency reasons, a European wide-frame of reference should be created, with qualified persons (experts) in given technical specifications.
10. If there is such list, in principle, experts should be chosen from that European list. In exceptional situations though, the expert might be chosen out of such a list by a motivated decision, or with the agreement of the parties.
11. If the expert is not on the list, he shall take an oath before the court and undersign a "charter of principles of European expertise" which he then will have to respect.
12. The list should be available on the internet and should content a harmonized list of competence fields allowing the judge to find out the expert most appropriate to handle the case.
13. The list should enclose the past experience of the expert in order for the judge to check if the case fits to his special competence.
14. The working languages of the expert should be mentioned.
15. In order to be registered on such list, experts shall prove to meet certain criteria (to be defined by WG3), which shall be verified either by a national



- judicial/administrative authority, or by specific private institutions in accordance with national rules and regulations (as recognized professional orders, as the case may be), or by a yet to be determined European entity. The fulfilment of these criteria should be subject to a periodical review by the same entities.
16. For the inscription on the list and the periodical reviews, the competent entity shall verify the technical competence of the expert, his/her knowledge of the directing principles of a fair trial, as well as the existence of sufficient civil liability insurance covering the activity as a judicial expert. Before registration, experts will have to undersign a "charter of European expertise". Additionally, the expert has to meet a European "Code of ethics".
 17. In exceptional cases where an expert is appointed without being on the list, he/she has to undersign the "charter of European expertise".
 18. The inscription of the list and the periodical reviews shall be subject to the adherence and an observance of a code of ethics that guarantees, in particular but not limited to, their impartiality and objectivity, the absence of criminal record and disciplinary breaches, ...
 19. The European-wide list is intended for cross-border disputes but may be used in domestic cases.
 20. A Central Authority should be created in order to solve any issues related to judicial experts. Such Central Authority should establish a list of specialties needed (nomenclature), as already done in some Member States.
 21. In order to increase mutual trust of courts in the different Member States, the inscription of experts on national lists should be made on similar criteria.

Who will choose the expert from the list?

22. The expert should preferably be selected directly by the judge in charge of the proceedings, after having heard the parties, rather than by a third entity at court.
23. The judge should be allowed to call or to write to the expert before appointing him in order to check if the expert is competent for the intended mission, if he/she is available and if he/she has no interest conflict.
24. When the expert accepts the file, he/she has to make a statement of independence and to mention any links he has with any of the parties.
25. The parties should have the right to refuse the expert on the grounds of lacking independence, conflict of interests or relationship to the parties. They then should have the right to request for disqualification of the expert before the judge, who has to decide in a reasonable time after having heard the expert.
26. Additionally, the parties have the right to refuse him/her if any of the legal refusal grounds is met.

Remuneration of experts:

27. The expert has a right to fair remuneration. Even if already set up by his/her domestic law, he/she has to inform the court and the parties about the calculation method of his/her fees as soon as possible.
28. The judge shall request a provisional fee in order for the expert to have a first look into the file ("calculation fee"/"registration fee").
29. The judge should decide which party(ies) shall pay such preliminary provision to the court. The file shall only be sent to the expert when the preliminary provision has been consigned.



30. After receiving the file, the expert shall make a first estimation of the costs before starting the expertise. After such estimation, the judge may order a complementary down payment which should be as close as possible to the estimate overall costs of the whole expertise.
31. As soon as he notices that the cost estimation will be exceeded, the expert has to warn the court, which may order a supplementary down payment in order to ensure that the expert will get paid.
32. The expert shall only deliver his report when the parties have deposited the down payments ordered by the court on a Court's account.
33. The expert's fees shall only be paid to the expert after rendering his report – unless he has to pay third parties in the course of the expertise (as labs or other third organisms).
34. Oral hearing: After the report of the expert, upon request of the parties or ex officio, the expert shall be heard by the judge in an oral hearing, in order to sustain and explain his opinion and answer the questions the parties or the judge may raise. The oral hearing may be held as a videoconference in accordance with domestic legal provisions.

- **Type, content and form of the mission.**

35. The mission must be defined as precisely as possible regarding the scope and the requirements of the proceedings, i.e. when possible and appropriate, the judge should ask specific questions which exactly address the relevant issues of the case.
36. The task of the expert shall be limited to fact findings and drawing technical conclusions and/or give a professional opinion out of his/her findings. He/she shall never give legal opinions.
37. The judge shall set up a time frame for conducting the mission. Such time period shall not exceed 6 months or, as the case may be, 12 months for complex cases.
38. If, in the course of the mission, the expert notices that the time frame will not be sufficient, he shall apply for an extension of time by giving the reasons why the mission cannot be achieved in the time frame. The parties shall be informed about such application for extension and be able to give their input about such extension.
39. Before starting to work, the expert shall, if necessary, have the opportunity to have exchanges with the judge about the definition of the mission; the parties should be informed about such exchanges in writing and, if necessary, an oral hearing shall be organized. The final version of the mission shall be set up after such exchanges.
40. If, in the course of the investigations, due to technical reasons, the expert notices that additional investigative steps shall be made/ further technical questions relevant for the case, within the scope of the proceedings, should be raised, he may suggest such steps to the judge.
41. The parties also have the right to suggest additional questions. The judge should always, having heard the parties, decide if the additional questions are to be answered.
42. Simplified expertise: for small claims (to be adapted as a parallel to the EU Small Claims Regulation) or simple questions, the judge may be able to ask the expert one or two single questions in the frame of a simplified procedure (shorter time frame, only exchanges in writings...).
43. The expert may suggest such simplified procedure during the "installation meeting".
44. If the mission includes the conciliation of the parties, this shall be indicated expressly and the judge should provide for an accurate judicial framework."

CONCLUSIONS WG 2



Suggested statements in Section I. Judge’s control over the work of the Expert

<p>1. The Judge should manage the case (including dealing with incidents relating to the Expert’s person, or changes to his/her instructions) and ensure a fair trial during the course of the Expert’s work (such as agreeing a reasonable timeframe, allowing access to appropriate materials, and reasonable costs).</p> <p>2. The Expert should have the right to seek directions in writing from the Judge, informing the parties in any procedural matters that may assist him/her carrying out his/her function.</p> <p>3. From the outset, the appointed Expert should agree with the Court’s preliminary timeframe and/or stages for completion of the report.</p> <p>4. The judge should, having consulted with the parties, and the expert if appropriate, be able to change the timeframe for the expert’s work.</p> <p>5. The Judge should, on his/her own initiative or at the Party’s request, having heard the Parties, be able to restrict or extend the Expert’s instructions.</p> <p>6. The judge, on his/her own initiative, or at the parties or the expert’s motivated request, having heard the parties and the expert if necessary, should be able to replace the expert, giving reasons for so doing.</p> <p>7. There should be a preliminary report disclosed to the Parties, unless the Judge or the Law dictates otherwise.</p>	<p>1. Le juge doit contrôler l’expertise (y compris régler des incidents relatifs à la personne de l’expert et au changement de ses instructions) et assurer un procès équitable au cours de l’expertise (tel que : approuver un calendrier raisonnable, vérifier l’accès contradictoire aux éléments soumis à l’expert et veiller à un coût raisonnable).</p> <p>2. L’Expert peut, en tenant les parties informées, demander des instructions écrites au juge pour tout sujet relatif à la procédure, susceptible de l’aider à accomplir sa mission.</p> <p>3. Dès le début de l’expertise, l’expert nommé doit approuver le calendrier prévisionnel établi par le juge et/ou les étapes pour l’achèvement de son rapport.</p> <p>4. Le juge peut, après avoir consulté les parties et l’expert si nécessaire, modifier le délai accordé pour réaliser l’expertise.</p> <p>5. Le juge peut d’office ou à la demande d’une partie, après avoir entendu les parties restreindre ou étendre la mission de l’expert.</p> <p>6. Le juge peut d’office, ou à la demande motivée des parties ou de l’expert, après avoir entendu ces dernières et l’expert si nécessaire, ordonner le remplacement de l’expert, en le motivant.</p> <p>7. Un pré-rapport sera établi et diffusé aux parties, sauf si la loi locale ou le juge en dispose autrement.</p>
---	---

Suggested statements in Section II. Requirements for a fair trial

<p>1. The evidence submitted for expert analysis and the grounds upon which conclusions are drawn, will be disclosed to all parties, unless the judge, having heard the parties rules otherwise, or the parties agree that there are compelling grounds for nondisclosure.</p> <p>2. The expert will provide his/her opinion to the parties prior to the hearing before the judge.</p> <p>3. The expert, under the control of the judge, must ensure that the expert’s evidence is made available to all parties, respecting equality of arms.</p> <p>4. If no preliminary report is presented, parties shall have the opportunity to give their opinion before the Expert, before a final ruling by the Judge.</p>	<p>1. Les éléments fournis à l’expert et les motifs sur lesquels reposent ses conclusions de l’expert, sont diffusés aux parties, sauf si le juge décide, après avoir entendu les parties, ou les parties acceptent qu’il existe des raisons valables de ne pas les divulguer.</p> <p>2. L’expert communiquera ses conclusions aux parties, avant le débat devant le juge.</p> <p>3. L’expert, doit s’assurer, sous le contrôle du juge, que les pièces de l’expertise sont communiquées à toutes les parties, dans le respect de l’égalité des armes.</p> <p>4. S’il n’y a pas eu de pré-rapport, les parties doivent pouvoir exprimer leur opinion à l’expert, avant que le juge rende une décision finale.</p>
---	---

Suggested statements in section III. The Report



1. The final report which must be disclosed to all parties should have the same structure as the preliminary report if there is one, showing what has been changed.

2. The Report should comprise:

The report should be made up of subsections in a specific order, which would facilitate analysis of reports from different sources by the judge.

Procedural and administrative

- Parties involved, their lawyers and/or other representatives;
- Expert(s) responsible, declaration of independence and impartiality;
- Names and specified tasks of any assistants or technical experts used ;
- List of documents that were received and used as the basis of expert's opinion or answers to questions;
- Questions asked by the appointing party and Expert's instructions;
- Particularities of the investigation and actions taken;
- Specifics regarding the procedure (e.g. Right of inspection and blocking law in medical cases);
- Procedure followed due to adversarial principle during the full period of the investigation;

The subjects above in this section are mandatory.

- Any other procedural and administrative subject that is applicable due to rules of local Law, the deontology of the specific field of expertise or any professional rule or guideline of the Expert;

Investigation, discussion and expert's analysis

- The facts, their origins and established causes and the parties' declarations regarding these;
- Relevant scientific or practical facts in relation to the case and questions asked;
- Expert's findings regarding the investigation;
- Observations and or challenges made by the Parties on the preliminary Report (if any);
- Reaction of the Expert to all requests and answers to all questions asked by the Parties;
- A considered, well-motivated and logically presented technical opinion and/or answer to the questions, which is the result of the investigation;
- Report on discussion with the Parties;
- Any other subject concerning the investigation, discussion or expert's analysis that is applicable due to rules of local Law, the deontology of the specific field of expertise or any professional rule or guideline of the Expert;

1. le rapport final doit être divulgué à toutes les parties. Si un rapport préliminaire a été rédigé, les deux rapports doivent présenter la même structure, le rapport final soulignant ce qui a été modifié.

2. Contenu du rapport:

Le rapport doit être composé de sections ordonnées de façon spécifique, de sorte que le juge puisse l'analyser aisément quel que soit son auteur.

Déroulement de l'expertise

- Parties concernées, leurs avocats et/ou leurs représentants ;
 - Expert(s) responsable et déclaration d'indépendance et d'impartialité;
 - Noms et missions spécifiques de tout assistant ou experts techniques consultés ;
 - Liste des documents reçus et utilisés par l'expert comme base de son avis ou pour répondre aux questions;
 - Questions posées dans le jugement de désignation de l'expert et instructions données à l'expert;
 - Détails des mesures recherches et opérations faites;
 - Points particuliers de procédure (par exemple pour les expertises médicales) ;
 - Procédure de respect du contradictoire pendant toute la durée de l'expertise ;
- Les points listés ci-dessus sont obligatoires.**

- Autres aspects spécifiques de la procédure applicables en vertu de la loi locale, de la déontologie dans le secteur de l'expertise ou de toute règle professionnelle de l'expert ;

Recherches, discussion et analyse de l'expert

- Les faits, leurs origines et causes établies et les déclarations des parties à cet égard ;
 - Eléments scientifiques ou factuels en relation avec le cas et les questions posées ;
 - Résultats des recherches de l'expert ;
 - Observations et remarques des parties sur le pré-rapport, s'il y a lieu ;
 - Réactions et réponses de l'expert à toutes les questions et réponses des parties ;
 - Présentation des conclusions de l'expert, des réponses aux questions posées et de leur motivation ;
 - Restitution des discussions avec les parties ;
 - Tout autre sujet relatif aux recherches, discussions ou analyses de l'expert qui est applicable en vertu de la loi locale, de la déontologie dans le secteur de l'expertise ou de toute règle professionnelle de l'expert.
- Les points ci-dessus peuvent être omis s'ils ne sont pas significatifs pour le domaine d'expertise, ou non imposés par le droit local.**



In this section subjects may be omitted if not relevant for the field of expertise /or not obligated by Law or statute.

Appendices

- Documents that were not in the dossier but have been used by the Expert;
- Documents that are referred to in the Report.

Annexes

- Documents non inclus dans le dossier, mais utilisés par l'expert ;
- Documents évoqués dans le rapport.

CONCLUSIONS WG 3

The purpose of these guidelines is to provide a fundament for a plan of action to establish a quality assurance system for judicial expertise. These guidelines are applicable to judicial experts who are court appointed individuals (individual judicial experts) or organizations (Judicial Expert Service Providers) who provide expert opinion in any court case (see Chapter 2).

5.1 At the member state level

- An individual judicial expert should be certified and a Judicial Expert Service Provider should be accredited by a national legally based and public financed judicial or administrative body or bodies.
- There should be developed an agreed method of accrediting Judicial Expert Service Providers by EU Member national authorities to give them authority to authenticate and certify individual judicial experts.
- Each EU member state should establish an independent legally based and public financed judicial or administrative body that deals with the transparency, admission, quality and training of judicial experts and judicial expertise.
- The judicial or administrative bodies should:
 - o Promote the quality of the judicial expert evidence
 - o Set basic quality standards applicable for all judicial experts
 - o Set basic standards for certification of individual judicial experts
 - o Set basic standards for accreditation for Judicial Expert Service Providers.
 - o Set quality standards for specific fields of expertise
 - o Hold and maintain a register of certified individual judicial experts and accredited Judicial Expert Service Providers
 - o In addition to general CEN/ISO standards, where possible, set quality standards that should include specified best practices and competences that are required for each field of expertise
 - o Set the basic curriculum for the judicial training of judicial experts
 - o Set procedures for the assessment and re-assessment of judicial experts and Judicial Expert Service Providers
 - o Set a Code of Conduct which applies to all judicial experts
- The overarching judicial or administrative 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 scientists.
- In every case where a Judicial Expert Service Provider is appointed as an expert, there must be assurance of:
 - o An integral management of the case
 - o That individual persons within the organization take personal responsibility for the written or oral evidence and report to the Court
- In all cases judicial experts must declare that they are not aware of any conflict, objection or any other reason to prevent their acting independently and impartially or they must not accept the appointment.



- The appointment of an individual judicial expert or a Judicial Expert Service Provider should be based on a legal framework that includes a quality assurance system based on a shared and uniform framework including both accreditation and certification.
- The quality assurance system should include a judicial procedure for review to legally challenge any decision when accreditation and/or certification is denied and the individual or body objects.
- The quality assurance system should include a number of essential elements: competence, professional and judicial education and training, and a system of repeated ongoing quality assessment reviews.
- The quality assurance system should provide for criteria for certification and accreditation as specified in the annex to these guidelines.
- The quality assurance system should provide for a system of feedback from the courts to the judicial experts as specified in the annex to these guidelines.
- The quality assurance system should provide for an adequate and structured (EU) public funding.

5.2 At the EU level

- The EU will promote the harmonization of the national registers of judicial experts in relation to:
 - o The information provided and recorded in the national registers
 - o The basic quality standards applicable to all experts
 - o The basic standards for certification of Individual judicial experts
 - o The basic standards for accreditation for Judicial Expert Service Providers
 - o The quality standards for specific fields of expertise
 - o The basic curriculum for the judicial training of judicial experts
 - o A Code of Conduct which applies to all judicial experts
- A EU register of judicial experts should be established and maintained.
- The EU Register of judicial experts must be open to certified judicial experts who deliver reports dealing with cross-border issues.
- The EU should set standards for individual judicial experts and for Judicial Expert Service Providers who want to be registered in the EU Register of Judicial Expertises.
- An independent EU Advisory Committee for Judicial Expertise should be established and EU-funded in order to
 - o Develop the EU Register of judicial experts and to harmonize the national registers of judicial experts
 - o Promote within the EU a recognition of training courses for judicial experts as well as updating courses, and refresher courses in general

CONCLUSIONS WG 4

Les principes majeurs retenus.

- Des règles déontologiques identiques doivent être applicables à l'expert européen, quel que soit son mode de désignation : expert nommé par le tribunal (expert judiciaire) ou expert de partie (également dénommé expert-témoin).
- Les règles déontologiques de l'expert européen doivent porter sur les grands principes : compétence, probité, loyauté, indépendance et impartialité, et renvoyer pour les questions pratiques aux législations nationales sous réserve qu'elles n'amointrissent pas les garanties exigées.



- Les règles déontologiques de l'expert européen doivent être recensées dans une charte déontologique et l'expert doit déclarer accepter cette charte et s'engager à la respecter.
- La charte de l'expert européen doit imposer à l'expert de faire une déclaration relative à ses liens éventuels avec les parties de nature à jeter un doute sur son indépendance et objectivité.
- En l'absence d'adhésion à la charte déontologique et de déclaration d'indépendance, l'avis de l'expert ne sera pas recevable.
- Le régime des sanctions applicables en cas de non-respect des règles doit être adapté pour chaque pays en fonction des traditions juridiques et des règles de procédure, sous condition que la décision disciplinaire soit confiée à une juridiction ou à un organisme indépendant et sous réserve du respect du principe du contradictoire.
- L'expert a droit à une juste rémunération. Les modalités de fixation de son montant et de son paiement relèvent des législations nationales.
- L'évaluation et le contrôle sont indispensables. Leurs modalités sont laissées aux législations nationales.