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Shaping Expertise across European Justice Systems

## EGLE Plenary Conference– Rome – 29 May 2015 Italian Court of Cassation

### Speech given by Alain NUEE, Honorary First Président of the Court of Appeals of Versailles

I have been asked to close these sessions,

I have no authority to do so, since it is up to tomorrow's jury to bring to a close this consensus conference.

However, I would like to remind you that following the Brussels conference, I had offered to submit to a consensus conference recommendations that followed four axes that I will briefly outline again:

The first is **the creation – if not a of genuine status of the expert – of a set of rules defining the expert's rights and obligations,**

*Competence, independence, impartiality and loyalty will obviously be required of them* if only because they are accepting a mission from a jurisdiction.

The following will then be required:

The need for continuous training,

A mandatory insurance

As well as the respect for deadlines set by the judge.

We could also add to them the need to ensure that his or her remuneration is proportional to the litigation's value.

The second axis would be **the creation of a common baseline for experts** established by national organisations and based on the elements present in all the national lists.

Registration on these lists – which presupposes competence – would be subject to a procedure allowing the organisations to monitor the candidate's quality.

Moreover, a European guide should be published to help establish common accreditation criteria for all countries in the Union,



The third axis would be to **reinforce the vetting role and powers of the judge** when it comes to monitoring the deadlines and quality of the expertise, the scope of the mission and the different issues that may arise during the mission, as well as setting the fees.

Reinforcing the judge's prerogatives would on the other hand mean that he would need to consult with the parties before every decision.

Finally, the last axis would be to **improve the quality of the expertise report by structuring it**, which would allow any judge in the Union to be able to expect a report with the same elements in it, no matter who the expert is, and whether this mission was carried out for him or for another judge.

Simultaneously, with these recommendations – and their adoption and implementation by all the countries in the Union may seem rather far off – we suggest, as I have already mentioned, the creation of a European expertise which – just like the European payment injunction procedure – would be meant to replace the expertises regulated by national rules in cross-border litigations or in expertises which can have cross-border consequences.

Obviously, the rules to be applied to these expertises would echo all the recommendations put forth.

This is notably the case for all the expert's obligations, for the reinforced role and powers of the judge, and the structure of the expertise reports.

However, in the absence of a European list or of a register of existing lists, one should specify that the experts chosen by the judge must comply with the competence and certification criteria presented in the recommendations themselves.

Let us recall that having seen the work carried out during our conference in Brussels, this certification can be the result of one (or all) of the following

- An appointment or certification of the expert by peers in his or her own speciality.
- An accreditation issued according to a specific procedure by a public organisation or a higher jurisdiction.
- A prior debate in front of the jurisdiction where the case has been filed.

This idea that the expert's quality should be acknowledged allows us to cover all the ways to appoint experts in Europe and allows us to implement rules on European expertise without having to wait for the recruitment procedure to be harmonised.

The conclusion we can come to from our discussions today is that the consensus conference has broadly endorsed the recommendations we made and once more asserted several requirements.



I would point out a few important aspects:

1) a unanimous stance has emerged for technical experts and expert witnesses to be subject to the same rules and ethical requirements.

This is important since it would be a shame to neglect the contribution of experts such as the ones in the UK. This harmonisation presupposes the drafting of a code of ethics (still to be written) but whose items are already present, even if they are scattered among the reports of the different groups, since ethical issues underpin all the topics that we've broached.

2) the other powerful aspect of this conference is the assertion that a list of European experts and national lists need to be created, even if the judge is allowed to pick an expert that is not on these lists, as long as he explains his choice.

3) The third point is the implementation of an ambitious quality assurance system which presupposes regular review by an independent organisation (yet to be created).

4) The fourth point is the reinforcement of the judge's control which must be able to rule on all the expertise incidents, extend or limit the scope of the limit, control de deadlines and the cost of the fees.

5) The fifth point is the reinforcement of the legibility and scientific value of the expertise reports, which notably go through the inventory of items on which the expert has built his opinion and the description of the method and reasoning that they've followed.

One point however seems unarguable: it is vital to respect the adversarial principle which is the responsibility of the expert and the judge in systems in which the judge appoints the expert and only of the just in the other systems.

This tough issue could be circumvented by creating a European expertise procedure which could be applied to cross-border expertises.

**The rules of this expertise have yet to be written, and the members of IEEE will do so, but the directing principles of this procedure have been found through a common consensus, and that is the key point to remember.**

**Alain Nuée**