EUROPEAN EXPERTISE AND EXPERT INSTITUTE

EGLE – European guide to legal expertise in Europe

Plenary Conference

Civil legal expertise in the European Union

Friday 29 May 2015, 9.30 am

Italian Court of Cassation

Aula Magna

ROME

Welcoming address by Mr GIORGIO SANTAROCE,

First President of the Italian Court of Cassation.

On behalf of the Court of Cassation and on my own behalf, it is a great pleasure to welcome the Plenary Conference for "*Civil legal expertise in the European Union*" to this solemn and austere Palace of Justice, which represents the pinnacle of Italian law – a conference organised by the European Expertise and Expert Institute and supported by the Directorate-General for Justice of the European Commission.

I would like to warmly welcome and give deepest thanks to Mr Jean-Raymond Lemaire, the President of the *European Expertise and Expert Institute.* I have had a close and productive working relationship with him since the start of my mandate as President of the Rome Court of Appeal. As part of the debate on good practice followed in the proceedings of different European States, we have tried to emphasise the common factors underlying the discipline of expertise and the important role played by the judge, as recipient of the conclusions.

I would also like to warmly welcome and give deepest thanks to Mr Alain Nuée, First Honorary President of the Versailles Court of Appeal and President of the *European Guide to Legal Expertise in Europe*; and to Mr Philippe Jacquemin, Vice-President of the *European Expertise and Expert Institute.* I thank you all for your participation in this important symposium.

The declared purpose of this conference is to prepare some "pointers" and "general criteria for guidance" in the use of expertise, with the aim of bringing the diversity of legal processes in the European Union's Member States into line with one another. This will enable us to eliminate the barriers that hamper the specialised legal expert's participation in civil cases. With the help of the report drawn up at the end of the day, we aim, therefore, to identify shared good practice in this area with a view to improving the quality of expert investigation, especially where experts have to choose the subject of the question being examined.

In fact, the project begun by the Institute presided over by Mr Lemaire is much more ambitious and seeks to attain several objectives (or means) to enhance the quality of expertise. One of the project's objectives is to define appropriate and adequate criteria for selecting experts according to their professional qualifications; another is to create a unified professional list on the basis of national registers in the various countries of the Union. And yet another aims to develop a common procedure to ensure that experts have the professionalism required. Monitoring should preferably be periodical, to make certain not only that legitimate and qualified experts are represented in specialised disciplines and that there is a useful and proper rotation, but also that control of the quantity and quality of their activity is carried out; and that respect for the principles of impartiality and independence which should inspire the activity of every expert, together with observance of the rules of professional ethics belonging to any professional association, are guaranteed. Methods of selecting experts should therefore be sought which are based on strict rules of good character and competence and also on total reciprocal trust. That being said, account should be taken of the fact that the expert's scientific contribution may affect – and often influence – the judge's decision with regard to the precise reconstruction of the events in question and his assessment of the parties' opposing points of view. In the context of Italian legal theory and jurisprudence, it is emphasised that expertise (*rectius*: the opinion of the expert appointed by the Court) is not a means of proof and does not serve to redress a lack of real evidence. On the contrary, it is designed to obtain a technical or at least useful opinion for assessing the evidence that has already been filed in court. In other words, it is designed to resolve issues requiring specialised technical knowledge, in accordance with the role and name of "technical adviser" who – expressly in civil and implicitly in criminal cases – is called upon to perform the function of the judge's *auxiliary* (Article 61 c.c.p.[1]) by helping him build up the evidence which will motivate his decision. These auxiliary functions – I have to say it – are currently on the increase because of the particular nature of certain trials and the technical and scientific impact of the subjects involved (think of DNA analysis).

Legal theory rightly and effectively defines the expert as "the judge's spectacles", expressing the fact that judges increasingly feel the need to choose their collaborators with care. The codes of procedure do not settle this question; instead they leave the choice of expert to the judge's discretion. The judge often confines himself – especially in large courts – to following the criteria for allocation or distribution which incline him to choose an expert who can assure him that the required expertise will be quickly filed in court.

[1] C.C.P.: Code of Civil Procedure.

The adoption of guidelines at European level can therefore allow procedures involving the maintenance and review of professional lists to be redefined. It can create common protocols for strict observance of the rule that both parties shall be heard, as well as for the compiling of the report and its filing in court as quickly as possible. These protocols will also extend to very close control over the allocation of tasks and requests for damages, for which assessment is often very different on account of the particular nature of the events.

However, it would seem we should not underestimate the need to constantly monitor the expert's work, particularly with regard to the time period for filing expert reports, observance of the rules protecting the principle that both parties shall be heard and the zeal and care the expert must show in carrying out the allotted task. Nevertheless, it should not be forgotten that, for the judge, the expert's report represents an objective basis for the evidence. It enables him to decide the case without carrying out other forms of investigation, in spite of the fact that the expert's assessment is not binding. The judge therefore avoids having to justify at length why he is in agreement with the expert's conclusions, provided there are no opposing submissions by the parties or unless the arguments are not specific, based on very detailed reasoning.

I will stop here so as not to take up the time of the rapporteurs. I would just like to say once more that I see this initiative as having the great merit of furthering the promotion, at community level, of rules and practices shared by all Member States of the European Union. Its aim is to find and choose experts with a high level of professionalism and to establish shared rules in a field whose delicate nature and practical importance are understood by all.

Translation intended for publication. I give my consent to publication on the *EEEI – European Expertise & Expert Institute* – website.

Rome, 9 July 2015.

Translator of the State Counsel's Office attached to the Court of Cassation.

Mrs Maria Giuseppina Cesari.