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**EGLE**  
***European Guide to Legal Expertise***

**CONSENSUS CONFERENCE**  
**on**  
**Civil judicial expertise**  
**in the European Union**



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## Working Group themes



*Shaping Expertise across European Justice Systems*

- 1. Appointing an expert: mission and expectations**
- 2. Expert proceedings and the expert's report,**
- 3. Qualifications, Competence, and the evaluation of experts,**
- 4. The status and ethics of experts: free exercise and liability.**



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## Members of Working Group 4



*Shaping Expertise across European Justice Systems*

Nom	Fonction	Pays
Sergio Cassia	Judge	Italy
Daniel Dessard	Lawyer-Juge suppléant	Belgium
Pierre Garbit	Judge	France
Dominique Heintz	Lawyer	France
Philippe Jacquemin	Expert	France
Viviane Lèbe-Dessard	Judge	Belgium
Alexander Mackay	Expert	United Kingdom
Eduardo Martin	Expert	Spain
François Nivet	Judge	France
Pol Van Iseghem	Judge	Belgium



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## Timeline of research and meetings



- **July 9 2014: Brussels:** acquainting ourselves with the EGLE project and creation of workgroups.
- **September 24 2014: Gand:** first exchanges and distribution of the work depending on the topics chosen by each person.
- **December 19 2014: Paris:** exchanging opinions – progress of the work.
- **January 26 2015: Paris:** exchanging opinions – progress of the work.
- **February 16 2015: Paris:** exchanging opinions – discussing the reports written so far.
- **March 20 2015:** forwarding the provisional combined report for the Rome conference.
- **April 6 2015:** forwarding the combined report for the plenary conference.



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## Issues considered



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- Cornerstone?
- Keeping the different types of experts?
- Rights and obligations?
- What kind of code of conduct?
- How important is the oath?
- Is a register essential, and if yes, who or what kind of organisation should create it and supervise it?
- The expert's payment?
- Sanctions?
- Evaluation?
- Discrepancies encountered – different results in terms of status and codes of conduct?
- The intervention of the expert – total or partial – its impact on the code of conduct or the status?



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**Consensus**



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- Article 6 of the European Convention of Human Rights: the cornerstone.
- The oath is essential.
- The code of conduct is ruled by the tenets of independence and impartiality.
- Obligations and rights given to the expert.
- The expert's payment – criteria.
- Essential sanctions.
- Organised evaluation.



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## Debates



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- Survey of different types of experts: experts appointed by the judge (judicial experts), experts appointed or chosen by the parties, technical experts, expert witnesses, legal experts... Implications?
- What code of conduct for the expert: the same as the magistrate? As the commercial court judge or the social judge? As the lawyer? As the arbitrator?...
- What rights and what obligations for the expert?
- Criteria to be used to determine payment
- What sanctions? Who has the authority to apply them?
- A register of experts? How should it be established? How should it be supervised?
- Evaluation: tenets and implementations?



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## Themes



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1. The judicial expert – expert appointed by the parties.
2. The obligations and rights of the expert.
3. Expert registers.
4. Sanctions.
5. Evaluation.





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# Expert appointed by the Judge and Expert appointed by the parties.



## 1. Definition of terms.

- **Expert:** person specialising in a scientific, technical, medical, economic, artistic or any other field..., whose competence has been established.
- **Justice expert:** the expert who is registered with the judicial authorities (or with a public or semi-public authority) which manages the register and is in charge of making sure the code of ethics is respected.
- **Judicial expert:** the expert appointed by a jurisdiction, given a specific expert's mission within a determined case (also called "technical expert" by CEPEJ).
- **Private expert:** the expert who is consulted by a person on a specific point of their competence and who carries out their work being paid by the client: outside of any litigation (consultant) or within the context of a case, whether it is before a trial or during a litigation procedure; in this situation, the expert will be referred to as "**expert of a party**." The experts of the parties are also called "**expert witness**", by CEPEJ for example, who defines them as experts who, upon the request of the parties, provide their expertise to support their arguments in front of the jurisdiction.



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## Expert appointed by the Judge and Expert appointed by the parties.



### 2. Differences to keep in mind.

Countries in which the expertise is ordered by the jurisdiction:

What is the place, role and code of conduct of the « expert of the party »?

Distinction between:

- system in which the title of justice expert is reserved for experts registered on an official list,
- systems in which there is no official register for experts drawn up by the judicial authority, and therefore in which the title is not protected.

The countries in which the judge does not appoint an expert to assist the court, but in which the information on a technical point required to resolve the dispute is presented as an adversarial debate between the experts of the parties, chosen and paid by each party.



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## Countries in which the expertise is ordered by the judge.

Two different systems:

- either the expert appointed by the judge is, in principle, someone enrolled on the official register of justice experts (established by the judicial authority) and where the title of justice expert is acknowledged and protected (e.g. Austria, France, Italy...).
- or there is no official justice expert register and the title is therefore neither acknowledged nor protected (e.g. Belgium).



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## Countries in which the title of justice expert is acknowledged and protected



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- No title: no specific code of conduct.
- Title: The following tenets have to be applied:
  - Loyalty,
  - Good conduct,
  - Independence,
  - Objectivity and Impartiality.



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## Countries in which the title of expert is not protected

- Experts can be from any discipline
- However, all experts are subject to Court rules designed to ensure the following:
  - Loyalty,
  - Good conduct,
  - Independence,
  - Objectivity and Impartiality.



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**Loyalty**



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- Practical rules of good conduct.
  - Example: specify in your report the evidence on which it is based, and share it with the opposing party.



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## Impartiality and objectivity



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- Creation of a mandatory code of conduct for all the types of experts.
- A common code of conduct for all the judicial systems in the countries of the European Union.
- Framework for minimum obligations of loyalty, impartiality and objectivity.



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## The obligations of the expert in the broad sense

- The "continuous" competence
- Personal commitment
- An oath
- Impartiality and independence
- Respect for the code of conduct
- Obligation to appear in front of the court
- Retention obligation
- Professional secrecy
- Insurance.





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## The expert's rights in the broad sense



- To accept or refuse the mission.
- The right to information upstream and downstream.
- The right to a justified and supervised payment.
- Criteria:
  - the difficulty and duration of the work generated;
  - the quality of the expert;
  - the value of the dispute;
  - the moral and physical liability encountered.



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## Expert registers



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- Need for registration criteria
- Judges have to be involved in its creation and supervision,
- Each national jurisdiction defines its own requirements,
- The register acts as a quality certification,
- Register and code of conduct no matter who the expert is,
- Unregistered expert: allowed,
- Same principles: written or oral procedure.



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## Sanctions



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No immunity for the expert in terms of common law (civil and criminal liabilities).

Links between the obligations that were not met and the sanctions:

- Depending on the mission's author
- Depending on the person who files a complaint: any concerned party.
- Depending on the person they complain to:
  - The expert being criticised
  - All the other parties
  - An independent authority

Author of the sanction: an independent authority. Which one?

Appointed – depending on - the author of the mission?

- the person filing a complaint?
- the type of violation ?



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## Independent authority



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- Mission :

evaluate:           the reality of the fault  
                          the seriousness of the fault  
                          the fate of the expertise:  
                          interests of the parties...

- Complete or partial elimination, retaining: conditions?
- Most fitting sanctions for the expert and for the parties?
- Publicity.



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## Sanctions in Great-Britain



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- Concept: removing any protection the expert has against lawsuits.
- Makes civil liability insurance necessary (pros and cons)
- Comments of the judge during the court proceedings or during the decision.  
Implications.



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## Evaluation



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- Necessary,
- Each country has the responsibility for its own organisation and its supervision.



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## Conclusions



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- The same code of conduct rules can be applied to the European expert, no matter how they are appointed.
- Respecting the main tenets: competence, probity, loyalty, independence and impartiality, with reference to national law for practice issues.
- A code of conduct which the expert agrees to follow.
- Requiring a declaration of independence.
- Ineligibility without subscribing to the code of conduct and the declaration of independence,
- Applicable sanctions can be adapted for each country (legal and procedural traditions). Disciplinary decision taken by an independent organisation (respecting the adversarial process).
- Right to fair payment. The terms and conditions will depend on national law.
- Evaluation and supervision are essential. Their terms and conditions are set by national law.



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## Notes



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## Contact

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