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the Civil Justice  
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*Shaping Expertise across European Justice Systems*

JUST/2013/JCIV/AG/4664

**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*

**WG1: Appointing an expert: mission and expectations**

**WG2: Expert proceedings and the expert's report**

**WG3: Qualifications, Competence, and the evaluation of experts**

**WG4: The status and ethics of experts: free exercise and liability**



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## Working Group contributors



*Shaping Expertise across European Justice Systems*

### Members of WG2

- |                              |                 |                       |
|------------------------------|-----------------|-----------------------|
| ◦ <b>Arnadouva, Galina</b>   | <b>Judge</b>    | <b>Bulgaria</b>       |
| ◦ <b>Beaudout, Michel</b>    | <b>Judge</b>    | <b>France</b>         |
| ◦ <b>Bianchetti, Carlo</b>   | <b>Judge</b>    | <b>Italy</b>          |
| ◦ <b>Demoulin, Anne</b>      | <b>Judge</b>    | <b>Belgium</b>        |
| ◦ <b>Grandjean, Patricia</b> | <b>Judge</b>    | <b>France</b>         |
| ◦ <b>Hirson, Allen</b>       | <b>Expert</b>   | <b>United Kingdom</b> |
| ◦ <b>Keijser, Nico</b>       | <b>Expert</b>   | <b>Netherlands</b>    |
| ◦ <b>Lodomez, Julie</b>      | <b>Lawyer</b>   | <b>Belgium</b>        |
| ◦ <b>Simain, Franklin</b>    | <b>Academic</b> | <b>Belgium</b>        |



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# Chronology of research & Meetings



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Prior knowledge EGLE project

**9th July 2014**

Collective investigation and research  
Preparations for meetings

Kick-Off meeting

Brussels (BE)

Presence  
7/9

**3rd September 2014**

Relevant investigation and research

Meeting

Paris (FR)

9/9

**19th November 2014**

Relevant investigation and research

Meeting

Paris (FR)

8/9

**14th January 2015**

Relevant investigation and research  
Final deliberations

Meeting

Milan (I)

8/9

**30th March 2015**

Presentation of our final report



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## Themes



*Shaping Expertise across European Justice Systems*

### Eurexpertise 2011 / 2012 themes

- I. Judge's control over the work of the Expert**
- II. Requirements for a fair trial**
- III. The Report**

*WG2 discussed on Eurexpertise 2011 / 2012 recommendations*

*In total 12 recommendations in three themes*

*Add value to Eurexpertise project*

*In EGLE project we looked again at the exact wording of the recommendations*

*Transformed into Statements to which a binary response was requested*

*Statements presented via Internet Questionnaire*



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# EGLE Project



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## Internet Questionnaire EGLE project

*Add value to Eurexpertise findings by 'recalibrating' questions  
Involvement of more more appropriate respondents  
369 respondents – 15 countries*

Occupation:	Judge	Lawyer	Reg.Expert	NonReg.Expert	Other
Austria	1	-	-	-	-
Bulgaria	4	4	-	-	1
Belgium	26	18	106	13	4
Croatia	5	-	1	1	1
United Kingdom	-	1	3	-	-
Finland	1	-	-	-	1
France	52	2	8	-	1
Germany	4	-	-	-	1
Greece	1	-	-	-	-
Italy	21	-	11	-	-
Lithuania	-	-	-	-	1
Poland	2	1	-	-	-
Portugal	22	-	-	-	-
Spain	1	3	13	1	-
Netherlands	4	4	19	3	3
<b>Total</b>	<b>144</b>	<b>33</b>	<b>161</b>	<b>18</b>	<b>13</b>



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# EGLE Project



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## Internet Questionnaire EGLE project

*Most agreed with the Statements.*

agree	Total		% agree	% don't agree
	Yes	No		
Statement				
I.1	357	12	96.7 %	3.3 %
I.2	350	19	94.9 %	5.1 %
I.3a	336	33	91.1 %	8.9 %
I.3b	339	30	91.9 %	8.1 %
I.4	319	50	86.4 %	13.6 %
I.5	260	109	70.5 %	29.5 %
II.1	358	11	97 %	3 %
II.2	348	21	94.3 %	5.7 %
II.3	275	94	74.5 %	25.5 %
II.4	278	91	75.3 %	24.7 %
III.1	291	78	78.9 %	21.1 %
III.2	349	20	94.6 %	5.4 %

### **WG2 work:**

*Why do respondents not agree to the statement?*

*What is the remark or exception given?*

*In what way can the remarks and exceptions given with disagreements help in better understanding and enhancing the statement.*

*How do remarks and exceptions given with agreements enhance our understanding?*

*The rationale for considering this detail was even though only a small percentage may disagree with a particular statement, this dissent may be soundly based.*



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## EGLE Project



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### Working Group 2 work:

*Exceptions given with "I agree" consistent with remarks given with "I disagree" answers, but with a reverse formulation.*

*We found that there were in general no differences between the nature of the remarks originating from different countries.*

*Expert's seem to be generally dealing with matters in many cases in the same way, taking small differences in applicable law and local rules into consideration.*

*Judges and lawyers in general appeared to take the same view on most issues, but naturally with a more legal perspective than that of Experts.*

*Arguments to modify the statement.*

*In our discussions on the results of the questionnaire we frequently discussed whether matters were applicable "more or less". Many respondents gave examples of exceptions that at first made us extend the statements in our effort to be inclusive. In many instances, we later simplified the proposition after realizing that change did not equally affect different legal systems, or by accommodating the exceptions, the generality of the proposition was lost, and eroded its application as 'Best Practice'. For each statement we aimed to retain the main subject and goal in defining it. Corrections were also made where it was found that the wording of the statement had unwanted or unnecessary meanings that might conflict with the relevant law or legal system.*





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## Theme I



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### I. Judge's control over the work of the Expert

#### Example

##### Original statement:

*The Judge, on his/her own initiative, having heard the Parties or at the Parties' request should be able to replace the Expert.*

##### After consultation and debate changed into:

*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.*

##### Reasoning:

- *Experts request for replacement was not in statement before, but should be possible*
- *Must be motivated as for reasons of transparency*
- *Parties must always be heard, expert only as necessary, not in the case of his own request*
- *Judge must give reasons in all cases of replacement for reasons of transparency*



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# Suggested statements



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## Section I. Judge's control over the work of the Expert

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).
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.
3. From the outset, the appointed Expert should agree with the Court's preliminary timeframe and/or stages for completion of the report.
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.
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.
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.
7. There should be a preliminary report disclosed to the Parties, unless the Judge or the Law dictates otherwise.

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).
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.
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.
4. Le juge peut, après avoir consulté les parties et l'expert si nécessaire, modifier le délai accordé pour réaliser l'expertise.
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.
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.
7. Un pré-rapport sera établi et diffusé aux parties, sauf si la loi locale ou le juge en dispose autrement.



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## Theme II



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### II. Requirements for a fair trial Example

#### Original statement:

*The evidence submitted for expert analysis and the grounds upon which conclusions will be drawn are disclosed to each Party.*

#### After consultation and debate changed into:

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

#### Reasoning:

- "are drawn" is a necessary linguistic change.
- Judge might rule by motivated request of one party that not all evidence is disclosed, but is investigated by independent, trusted expert; e.g. Intellectual Property or Copyright infringement cases
- During expert's investigation Parties can agree that investigation by an independent, trusted expert is sufficient



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## Theme II



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### II. Requirements for a fair trial Example

#### Original statement:

*There should be a preliminary report disclosed to the Parties in all cases.*

#### After consultation and debate statement split up:

##### *I. Judge's control over the work of the Expert*

*There should be a preliminary report disclosed to the Parties, unless the Judge or the Law dictates otherwise.*

##### *II. Requirements for a fair trial*

#### Missing in fair trial section:

*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.*

#### Reasoning:

- Preliminary in order to repair obvious mistakes and typographical errors.
- Not necessarily in all jurisdictions/countries.
- Sometimes hearing before the Judge functions for that matter.



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## Suggested statements



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### Section II. Requirements for a fair trial

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

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.
2. L'expert communiquera ses conclusions aux parties, avant le débat devant le juge.
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.
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.



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## Theme III



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### III. The Report

- *Respondents reactions and debate about the use of a Model Report: No model can fit all sorts and types of Expert Reports or Opinions.*
  - *We chose to further define subsections with mandatory subjects as well as other subjects that may be addressed when required by local law or the deontology of the field of expertise.*
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 be made up of subsections in a specific order, which would facilitate analysis of reports from different sources by the judge.*



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# Suggested statements



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## 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;**

**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.

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 ordonnés 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 ;
- Éléments 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.**

### Annexes

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



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## EGLE Themes WG2



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### EGLE Themes for Working Group 2

Theme A - Defining the judge's role

Theme B - Determining the structure of the expert's report

Theme C – Establishing a common European procedure for civil experts

Putting the statements in relation to the themes leads to the following matrix:

Statements		Theme A	Theme B	Theme C
<b>I</b>	1	V		V
	2	V		V
	3	V		V
	4	V		V
	5	V		V
	6	V		V
	7	V		V
<b>II</b>	1		V	V
	2		V	V
	3	V	V	V
	4			V
<b>III</b>	1		V	V
	2		V	V





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## Contact



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# EUROPEAN EXPERTISE AND EXPERT INSTITUTE

## INSTITUT EUROPEEN DE L'EXPERTISE ET DE L'EXPERT

*(Not for profit organisation)*

### Contact details:

Jean-Raymond LEMAIRE  
92, rue Anatole France – 92300 Levallois-Perret – France  
Tel: +33 (1) 41 49 07 60 – Fax: +33 (1) 41 49 02 89

[egle.conference@experts-institute.eu](mailto:egle.conference@experts-institute.eu)  
[contact@experts-institute.eu](mailto:contact@experts-institute.eu)

[www.experts-institute.eu](http://www.experts-institute.eu)

EEEI

s/c Cour d'Appel de Versailles  
5, rue Carnot – 78000 Versailles – France