



Find an Expert II : The consensus conference

Presentation and public debates WP2-WG1

Definition of Criteria for Judicial Experts

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Cologne, Germany

Official project partners



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Team Working Group 1

Who are we?

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...with support from the Secretariat.



What is our task?

Definition, who?

*What?
Define criteria
to be assessed*

Definition of Criteria for Judicial Experts

In terms of:

- General Technical Competence
- Procedural knowledge
- Ethical Criteria

Team Working Group 1

how did the work

Gather + check + update
Relevant documentation

Review Find an Expert I
project (EEEI)
& e-justice documentation

Review EGLE project -
European Guide
for Legal Expertise (EEEI)
& CEPEJ documentation

EC documentation

The EuroExpert Standards
(accepted in all member
countries of EuroExpert), e. g.

+

Fill out and gather Questionnaires*

*WG1: Belgium, Cyprus, Estonia, Germany, Latvia,
Luxembourg, Poland, Portugal, Sweden.

Team Working Group 1

how did we gather information

Goal:

To gather specific information about requirements experts have to adhere to, remuneration and liability of experts, as well as information about the conduct of expert proceedings. What are the minimum criteria that must be ensured?

Sources:

- National factsheets, compiled by the European Expert and Expertise Institute (EEEI) within the Find an Expert I project (2017-2019), partly funded under the Justice Programme of the European Commission.
- A survey with a questionnaire on general information, criteria for judicial experts, criteria to be met by bodies in charge of expert directories and the requirements for experts to be registered was conducted in the Member States.
- Information from the European Expert and Expertise Institute (EEEI) and EuroExpert.
- The requirements for practising experts in the EU Member States.

Result:

- After a comprehensive inventory, generally applicable criteria regarding "What are the Qualifications of an Expert"? can be laid down.

Judicial expert: either Technical Expert, Expert Witness or Legal Expert,

For Judicial Experts who provide this service across national borders throughout Europe, it must be ensured that the Experts meet **sufficient quality standards,**

Impartiality, Objectivity, Independence and **Integrity,** are implemented differently by individual countries,

ECHR case law: principle of fair trial and equality of arms, laid down in Art. 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

23 Member States have **official registration systems** for judicial experts. The bodies responsible for the registration are either Courts, Ministries of Justice or other mandated Bodies, as well as private institutions.



The following **main Criteria** for Experts were observed in the Member States:

Competence

**Knowledge on procedural
rules**

**Ethics/Ethical behaviour:
Experts as “fit and proper
persons”**

Initial Profession / Qualification / Education

-The survey showed that 12 out of 21 Member States require a judicial expert to **have an academic background** (BE, BG, HR, CY, FR, IT, MT, PT, RO, SK and SL).

-It should be noted that training and education systems in the different countries of the EU vary greatly.

Recommendation:

-Judicial experts shall possess initial professional qualifications and/or professional education to guarantee a necessary level of theoretical knowledge.

-In order to learn a profession, in some countries it may be necessary to complete a course of study at a university or polytechnic institution, while in other countries an apprenticeship may be sufficient.

Criteria for Experts – Competence

- **Experience/Experience in expertise:** 10 out of 21 Member States consider professional experience to be a basic requirement for inclusion of experts on a registry (AT, BG, HR, CZ, DK, FR, DE, IE, RO, SK). Most of those countries require three to five years of practical professional experience
- Conversely, 7 countries answered **not** to impose such a requirement on experts (BE, CY, IT, MT, PL, PT and ES). Finally, 3 countries gave no opinion on the issue (FI, LT and LU).
- HR and DE => mandatory to give evidence of experience in expertise in order to be accepted for registration as judicial expert in some area. This experience may be proven by expert work outside of courts (for example, for insurance companies or as expert adviser). The other Member States do not require this criterion.

Recommendation:

Experts shall have professional practical experience of several years in their field of expertise (with exceptions). To give evidence of expertise experience as judicial expert shall not be mandatory to apply for registration.

Criteria for Experts – Competence, further Recommendations

Recommendation:

Experts shall be able to present the results of their assessment in a comprehensible manner and in a structured way, in writing and orally to a court, i.e., to persons without specific knowledge in this field.

Recommendation:

Experts shall follow continuous professional development (CPD): While knowledge of civil procedures generally has a fairly long half-life, technology and scientific methods develop faster and faster. Experts constantly shall be prepared to adapt their working methods when professional environments are rapidly changing.

Knowledge on procedural rules

- 9 out of 21 Member States consider **procedural knowledge** is needed regarding the registration of experts (AT, HR, CZ, FR, DE, IT, NL, RO, SK). Some countries require no procedural knowledge at all.
- Knowledge of the legal system is of significant value and shall therefore belong to the knowledge of judicial experts.

Recommendation:

According to the Working Group, experts should have knowledge of procedural aspects at least regarding their rights and obligations and their function within the legal system, since (i) an independent and functioning legal system is the backbone of a constitutional state and of the rule of law and (ii) the experts should globally know how the results of their work will be used in order to deliver results that are of use for courts.

Knowledge on procedural rules

Recommendation:

Experts shall possess at least basic knowledge about civil / criminal / administrative procedures:

- 2.1 Codes and Rules of Practice,
- 2.2 Justice System,
- 2.3 Procedure Rules applicable to experts,
- 2.4 Role & Responsibilities of the expert,
- 2.5 Alternatives to the Court Process.

Impartiality:

-Out of 21, 15 Member States considered **impartiality to be an essential and necessary quality** for the qualification of a judicial expert (AT, BE, HR, CY, CZ, DK, FR, DE, IT, LU, NL, PL, PT, RO and SK).

Independence:

- Out of 21 Member States, 12 responded that **independence was an indispensable ethical criterion** for the qualification of a judicial expert (AT, BE, HR, CZ, FR, IT, LU, NL, PL, PT, RO and SK).
- 7 out of 21 countries mentioned the importance of an expert **notifying any conflicts of interest**. This requirement contributes to the respect of the independence of the expert (AT, BE, BG, HR, DK, DE and LU). Existing European codes of practice for judicial experts mention the requirement of independence.

Criteria for Experts – Ethics / Ethical behaviour

- **Independence:** act independently from a biased approach, from any opinion which is not based on relevant scientific, technical, or professional information or based on skills, expertise, or knowledge.
- Independence exists in multiple forms: economic independence, legal independence, financial independence, scientific independence, personal independence.
- external/internal Independence

Recommendation:

Judicial Experts shall not do anything in the course of practising as an expert, in any manner which compromises or impairs or is likely to compromise or impair the expert's impartiality.

Criteria for Experts – Ethics / Ethical behaviour

- **Objectivity/Integrity:** The proposal that the expert should be unprejudiced was not directly addressed in the country questionnaires. On the other hand, other requirements were formulated that come close to it.
- For example, 14 out of 21 countries refer to the notion of **duty to the court** (AT, BE, Croatia, CZ, DK, DE, IE, IT, LU, NL, PL, PT, RO and SK). => takes up the requirement of absence of prejudice.
- Existing codes of practice and various recommendations refer to objectivity.

Criteria for Experts – Ethics / Ethical behaviour

- **Objectivity** is assessed when experts apply their scientific or technical knowledge.
- **Be able to separate their private opinions from their professional point of view** => purely fact-based.
- **Not be influenced by unreasonable fears or dislikes** of something or somebody and must be prepared to revise prior understandings that are refuted by new scientific findings.
- **Professional integrity values honesty, honour, and trustworthiness.**
- In concrete terms, this respect expected from the expert implies a firm condemnation of all **racist, sexist and homophobic remarks.**

Criteria for Experts – Ethics / Ethical behaviour

- **Notification of conflicts of interest:** The expert's independence, impartiality, objectivity and integrity have to be intact.
- Means being free of conflicts of interests, which is synonymous of a situation in which, because of other activities or relationships, impartiality in performing expertise services is or could be compromised.

Duty to the court: Out of 21 Member States, 14 considered that the duty to the court requirement is fundamental (AT, BE, HR, CZ, DK, DE, IE, IT, LU, NL, PL, PT, RO and SK).

This also generally corresponds to Article 6 of the European Convention of Human Rights, the “Right to a fair trial”.

- There is an overriding duty to the court to provide truthful, independent and impartial expert evidence.
- This duty, however, should not be misunderstood as an anticipatory obedience for state authorities or as a recipient of politically driven orders.

Confidentiality: 13 out of 21 countries responded that it is necessary for a judicial expert to **respect the confidentiality of the cases** handled (AT, BE, BG, HR, CZ, DK, DE, IT, LU, NL, PL, PT and SK).

Recommendation:

Judicial Experts shall not do anything in the course of practicing as an Expert, in any manner which compromises or impairs or is likely to compromise or impair the expert's duty to maintain confidentiality.

Criteria for Experts – Ethics / Ethical behaviour

Transparency of expert opinion: 11 out of 21 Member States referred to the "**proper standard of work**" requirement (AT, BE, HR, CZ, DE, IT, LU, NL, PL, PT and SK).

Duty for on-Time delivery: Out of 21 answering Member States, 10 considered the **timely delivery** of expert reports to be an important requirement for experts to comply with (AT, BE, HR, DE, IT, LU, NL, PT, RO and SK).

No criminal record: question not directly addressed in the questionnaire. Several countries spontaneously replied that the **absence of any criminal record** would be a condition for registration (HR, BG, BE, IT, RO, NL, FR, SL, DE and HR).

Age:

- Several countries impose **age limits** for judicial experts => FR and DK: no registration in case of being older than 70 years.
- On the other hand, PL imposes a minimum age of 25 years. BE and EL where the registration as judicial expert is only possible from being older than 21 years.
- In some countries like DE, however, this practice is considered **an illegal discrimination of age**.

Recommendation:

we do not recommend an age limit for experts.

- This paper should be regarded as a **basis for discussion on common standards** in the field of experts working for courts.
- It should also **improve transparency and understanding between parties and experts**, as well as mutual trust between European jurisdictions.
- After all, it is not only the EU-wide freedom of movement that makes common quality standards necessary. This also seems relevant in view of the **lack of young talents** in many European countries and the increasing number of **cross-border court proceedings**.
- The ideas in this paper, however, are not exhaustive and can be supplemented or be revised in the course of the project.
- It should also be noted that this paper was produced with the cooperation of different countries, which have different preconditions in education, judicial proceedings and society.
- It is precisely against this background that we regard the proposals set out as an absolute prerequisite for the work of experts for courts in Europe.

Merci !
Thank you!



Tack

Bedankt

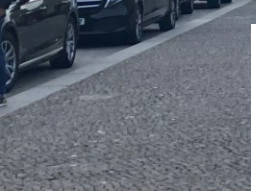


Danke



Obrigado

Ευχαριστώ



Gracias



Hvala

Grazie



Merci /Thank you !

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