EuroExpert

December 2017

EuroExpert *e*-bulletin

The world of Experts has as ever been both an interesting and busy one. As the year closes it provides an opportunity to review changes that have happened to working practices over the last year. Some of these are as a result of formal regulation and others by 'industry' reviewing its own working practices and looking to other jurisdictions to see what is considered best practice.

I have been reminded this year that there is an ever-increasing need to have common terminology as so many of the problems we experience appear to start with misunderstandings of terminology and concepts. Experts rely on words as the tools of their craft and it is essential that they are as clear and concise as possible.

It is a growing trend to want to reduce costs. One area that is often targeted is restricting the use of expert evidence whether it be limiting what evidence can be heard or the amount available to the parties to fund experts. There are a number of options being considered which include limiting the costs which can be recovered by the winning party. This has the potential to artificially reduce expert fees as well as limit those who are willing to offer their services. Court appointed experts do not appear to have their fee structure regularly reviewed whilst expenses continue to rise. Expert evidence has an essential role in the justice system whether it be a Civil or a Common law jurisdiction. EuroExpert and its members have a vital role to play in ensuring that the role of the expert is properly understood and valued.

This year we held our General Assembly in Vienna. It provided an invaluable opportunity for Members to exchange and share information on how developments are impacting on experts and their associations as well as to consider what changes may come in the coming months. It was therefore very pleasing to welcome participants from Austria, Croatia, Czech, Germany, Italy, Netherlands, Portugal, Poland, Russia and the UK each bringing a different perspective to the meeting.

The change in EuroExpert Statutes means that the Presidency now rotates every 6 months which provides a further opportunity for us to enhance our knowledge of the different systems. In Vienna, the Presidency passed from Austria to Portugal and will soon pass to the UK where we plan to explore further both the differences and the similarities between the Civil and Common

continued on **page 2**

Featured this issue

VIENNA SYMPOSIUM p3

POLISH CONGRESS p6

EXPERT FINDER p8

EuroExpert Finder

The e-Bulletin is published periodically. It provides useful information for those who are either acting as an expert, who use their services or are in charge of setting standards for experts. EuroExpert (EE) is a point of contact between national and European judicial and legal authorities, government departments, official and private bodies and other appropriate tribunals.

Contributions are received in English from across Europe. For many of the authors English is a second language. Whilst some editing does take place it is kept to a minimum in order to best reflect and reproduce the original intentions of the author.

If you would like to submit a contribution for consideration please email: editor@euroexpert.org

EuroExpert
December 2017

continued from **page 1**

law systems making it easier for experts to offer their services in the international arena.

Irrespective of the jurisdiction that the Expert operates in, there is a common theme to which those practising need to adhere:

- To be properly qualified to give expert evidence. This means not just having relevant qualifications but also acquiring and maintaining a high standard of technical knowledge and practical experience within their speciality.
- To avoid any actual or potential conflicts of interest.
- To prepare their evidence or reports thoroughly and properly.
- To give their evidence honestly.
- To stay within the areas of their expertise.
- To assist the court when giving evidence to a court or tribunal.
- To maintain confidentiality about their work.

The political and economic challenges and changes within the EU environment will have to be met. The coming year will undoubtedly bring new challenges and opportunities for us all to embrace.

I should like on behalf of EuroExpert to wish you all the very best for the festive season and for a successful 2018.

Nicola Cohen is Chairman of EuroExpert and Chief Executive of The Academy of Experts in the United Kingdom

A note from Czech Republic on Experts' Payments

In the Czech Republic the work of experts is set by down in an Act.

The Act stipulates that the judge is obliged to discuss the case with an expert in advance.

This must undoubtedly mean:

- whether an expert is able to solve this problem
- in what time is he able to elaborate the expert opinion
- what about will be the estimated price of the expert opinion.

The Act also provides that, in civil proceedings, the judge must first select from the parties a cash advance in the expected amount of the expert's remuneration. If the judge fails to do so and the parties do not pay the deposit, the Act does not allow an expert report.

The chairmen of the courts are obliged to inspect placing a duty on participants to pay in advance on a price of the expert opinion.

The Act also stipulates that the judge is obliged to decide on the remuneration of the expert at the latest within two months of receiving the report and, after the decision has become final, to pay the fee within 30 days at the latest.

But the reality is often different and there are unresolved problems relating to experts with the courts.

For decades problems have persisted with paying the fees. The delays of payment by courts are many months or can even be years. This is in contrast to the short 30 or 60 day deadline often requested by judges for elaborating the expert opinion.

At the same time the judges are not able to fill out a blank required to pay the expert witness. The judges should realize that they would not be motivated for good work if their salary would delayed by as much time as the time of delay of paying fees of experts.

It is exclusively their problem to ask participants to submit the deposit for the fees.

It would appear that some of the provisions are not always respected and as a result there are late payment of expert fees - which are often low.

It is of concern that the quality of expert evidence may be affected as late payment and low-level fees may deter professionals from acting as experts.

This is at a time when the need for high standards for experts with both knowledge of court processes and their expertise is so important.

Ing. Jindřich Kratěna, CSc., is a Member of the EuroExpert Council and Vice-Chairman of the Chamber of Judicial Experts of the Czech Republic (Komory soudních znalců ČR).

EuroExpert
December 2017

Großer Schwurgerichtssaal des Landgerichts für Strafsachen Wien
Regional Criminal Court Vienna

EuroExpert met in Austria for the annual symposium and a presentation on E-Justice

Vienna Symposium

In June it was my pleasure to welcome delegates to the symposium hosted by Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen Österreichs which was entitled E-Justice in the European Union. The event was attended by over 100 delegates who came from (to name a few) Austria, Croatia, Czech, Poland, Germany, Italy, Russia, Portugal and the United Kingdom.

As ever the environment in which Experts operate is changing to keep pace with developments in the legal arena. Technology is playing an increasing role in the court process whether it be what is known as e-disclosure or online courts. All these changes will undoubtedly have an impact on Experts. It was, with this in mind, that EuroExpert recently undertook a study looking at E-Justice and the effect that it may have on those offering their services as Experts both now and in the future. It will undoubtedly bring new challenges and opportunities for all.

When considering the study and its results it is important to recognise that the study is not for lawyers and how they manage 'online' justice. It really focuses on current practice for the transmission of documents and with particular emphasis on experts in the legal process.

As we are all no doubt aware there are difference between how the civil and common law systems deal with experts and their duties and obligations. However, in general and overly simplistic terms there are less formal codification requirements for experts in the common law system than there are for those operating in the civil law system.

It would not be surprising therefore if this difference was reflected in any requirements for the transmission of documents and other aspects of E-Justice. In the civil system, the expert is primarily court selected and appointed. This allows the court or tribunal to have a greater control of both the expert and the process making it easier to establish a due process which is formally set down.

In the common law system, where there is no court appointed expert it is more difficult. The parties with the court's permission appoint their own expert. The parties have more responsibility for their experts and their conduct. This does not however mean that there are not formal requirements that experts must comply with because there are for example in England & Wales they are enshrined Part 35 of the Civil Procedure Rules. It is also interesting to note that in many of the common law jurisdictions the basic principles for the expert's conduct come from the Ikarian rules (see below) which have been often been incorporated into procedure rules.

The study did not seek to look at the whole process of the trial and how it is run but merely considers the format and transmission of documents. Some aspects may already have been imposed and set down. For example, in the English rules there has been for some considerable time a stipulation about both font size and line spacing to be used in documents for the court process. The requirement is for font size 10 and double line spacing. One question that should be asked is should this requirement

apply irrespective of whether the documents are to be served in paper or electronic format. For simplicity, I personally believe that the minimum requirements should be the same irrespective of the medium.

Should the courts specify and have an agreed format for the documents and what risks are there in using different formats. If for example word is used does it make the document more vulnerable to being altered? Is a pdf a secure format and what can be done to ensure the integrity of the documents and the process. As always, the speed at which technology changes brings new challenges and raises issues that need to be considered both in the short and longer term.

In most legal processes, there is already a clearly defined process for how a traditional paper document is served. Is this the same for electronic documents and if not, should there be such a protocol? As you might expect there will be many areas that will need to be addressed. Such as any necessary requirements for dealing with proof of sending? Is it sufficient to assume safe delivery by email? Will this be accepted by the courts? Should the protocol cover such areas as the time an email is sent and therefore when it is taken to be received. Such matters can have a massive impact on the admissibility of the documents and therefore the ultimate outcome of the case. It is important for all those involved to understand and respect the perimeters in the changing environment.

These are some general comments on what will no doubt over the coming years, be a changing landscape both in terms of technology, the users and their expectations.

Eleven countries (Austria, Croatia, Czech, Germany, Italy, Netherlands, Poland, Portugal, Spain, Switzerland and the United Kingdom) participated in the study. It is clear from the results that there is a wide difference in both the practice and approach taken. It is hoped that by undertaking such studies EuroExpert can help to lead the way in creating common standards and processes to be used by all.

As is often the way as changes emerge, facts are limited in this area and therefore some of the answers appear to be assumptions or expectations. This is demonstrated for example by the fact that one country has responded that there are currently no plans to introduce electronic communications but if they do then they would be mandatory for experts.

It is interesting to note that it would appear that only 2 of the 11 responding have been invited to participate in the establishment and development of standards and protocols to be used. This is both disappointing and encouraging.

Personally, I think it is fundamental that experts and their associations are consulted and involved in any future discussions. More importantly they need to be involved in the implementation of any proposals if they are to be easily adopted and used successfully.

Expert Associations should consider becoming proactive in trying to become involved during the planning stages rather than just on implementation. This is when change can more easily be influenced and it should help to ensure that systems adopted are more expert friendly.

I think it is very clear from the study that there is no one consistent approach. However, it is clear that there is an increasing trend to use electronic communications in a move to both manage and save costs which are an increasing burden in the legal process. In the long run this change may be used to reduce the number of physical courts and the costs associated with maintaining them.

We have certainly seen in several jurisdictions an increasing number of online courts primarily at this time being used for small claims. This ranges from the Netherlands, to British Columbia in Canada and Victoria in Australia not to mention England and Wales. This trend will undoubtedly impact on how documents are transmitted and the role of the expert.

Whenever the role of the expert changes those involved need to be updated and trained. The study interestingly shows that only one country appears to have any training requirement and opinion is divided as to whether there is a need for formal training. This extends also to what safeguards might be needed and again there appears to be little information available.

As one respondent stated "Unfortunately the administration doesn't take experts into account which means a complete lack of awareness in legal responsibilities in how to manage the information."

Information management must be the key to the successful development of the use of technology in the legal process. I think the one thing that is certain is that there will be a number of changes and developments in this arena over the coming years.

Already since the study was undertaken changes have been introduced in England & Wales which directly impact on electronic transmission. In the Business and Property Courts, part of

the High Court, this will mean electronic service for all documents. Paper documents are no longer accepted and everything must be served in a CE- File (Compulsory Electronic Working File).

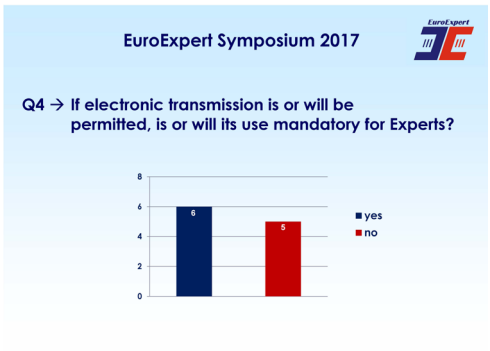
It is fair to say that there was some resistance to its introduction. However, users are already commenting that the system is working faster and more efficiently. This will bring changes for Experts as they will only have their documents electronically including in the Witness Box. This will undoubtedly cause some problems in the short term as users become familiar with the technology.

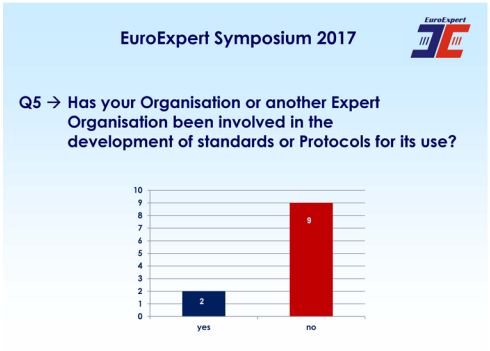
Experts will need to adapt learn their methods of work and come to grips with new technology whilst not losing sight of their role. Whilst the study itself focuses on the electronic transmission of documents, changes are likely to be far more widespread from the development of online courts to the fully digital courtroom.

In a book called *The Go Between* it opens with the quote "the past is a different country, they do things differently there". I think we can safely say the future will be like a different country. Things will definitely be done differently.

Experts must learn to adapt and to embrace the changes and challenges that come.

Nicola Cohen is Chairman of EuroExpert and Chief Executive of The Academy of Experts in the United Kingdom





EuroExpert
December 2017


Auditorium Maximum
University of Warsaw

Idea for Integration of Judicial Experts in Poland

Congress of Court Sciences

There are about 12,000 court experts registered by presidents of district courts in Poland.

On one hand, unlike a number of countries represented in the EuroExpert organization, there is no legal requirement for Polish court experts to be mandatory linked to a professional court experts' association. On the other hand, voluntary associating or participation in the work of selected organizations is not prohibited for the court experts.

As a result, there are many organizations in Poland that bring together judicial experts. These organizations are either typical professional associations for experts of a given discipline or sections for court experts operating within larger professional organizations which cover broader spectrum of the given profession.

For all those reasons, the idea for integration of the judicial experts in the form of the Congress of Court Sciences is being developed in Poland.

The Congress is a periodically arranged discussion forum for all the major organizations of judicial experts. They are framed as a one-day meetings, where various stakeholders address the most important problems of the court-experts in Poland.

So far, three Congresses of Court Sciences have been organized and all took place in the Auditorium Maximum building of the University of Warsaw, which is the biggest and the best ranked Polish university.

First Congress

The inaugural Congress, which took place in November 2010, gathered representatives of 36 various types of organizations such as associations, federations of associations, professional self-governments, experts' organizations operating in the NGO formula and other organizations grouping court experts.

One of the topics discussed during the first Congress were the results of the survey conducted among the court experts. The conclusions of the survey stated that the court experts in Poland are aware of the problem of a dispersion of their professional environment and all the negative consequences resulting from it.

Thus, the Congress' participants called for keeping the Congress as the way of their professional integration.

Second Congress

The Second Congress of Court Sciences was held in June 2015 and focused on two important topics.

The first was the introduction into the Code of Criminal Procedure of an adversarial model of criminal trial, which significantly changed the way the expert evidence was used, e.g. by allowing the possibility of introducing private opinions.

The second key problem was the draft law on court experts prepared in parallel by the Ministry of Justice.

Therefore, the experts' organizations decided to present their position on these topics to the government, the parliament and the general public. Eventually, as many as 27 organizations of court experts took part in the Congress.

The organizers wanted

to include the opinion of all expert stakeholders, therefore they also invited to the Congress the experts registered in the district courts, as well as persons who appear in criminal and civil cases as ad hoc experts and all other persons interested in the functioning of experts in the administration of justice.

Third Congress

The 3rd Congress of Court Sciences took place on 18th November 2017 and was devoted to the discussion on the legal status of court experts in Poland and the changing regulations related to the accountability of the experts in terms of the quality of their work.

This year's Congress was organized by 33 expert organizations and over five hundred participants took part in it.

During the morning session of the Congress they discussed in detail the issues such as the legal basis for the functioning of experts, their criminal and civil liability, as well as the proposals for the experts' insurance.

In the second session, the discussion was devoted to the issues of professional training for experts and the development of their competences.

EuroExpertFinder

Between the sessions, the keynote presentation was given by the honorary guest of the Congress – Mr Bernhard Floter, the EuroExpert Secretary General. Mr Floter explained the goals and achievements of his organization and the opportunities deriving from international practical cooperation.

This process within EuroExpert organization is supported by the EuroExpertFinder – the online tool, which Mr Floter also encouraged Polish court experts to use.

The presentation on that matter was welcomed with a great interest of the Congress' participants.

Due to the fact that there is no association of the court experts in Poland that could be a representative of the whole court experts' society, from 1st January 2018 Poland will be represented in EuroExpert by the Correspondent Member – the EFIC Foundation, which will at the same time play a role as the liaison organization in Poland.

Paweł Rybicki is Chairman of EFIC - European Forensic Initiatives Centre

EuroExpert
December 2017

European Expert Witness Resource

EuroExpert extends its Expert finding service

In 2007 EuroExpert introduced the EuroExpertFinder service. Since then more and more courts and lawyers have used this unique tool. At the last EuroExpert symposium in Vienna in June Secretary General Bernhard Floter introduced a new service on the EuroExpert website.

This site offers a first overview of how experts are registered in lists in the different countries of the EU and gives some advice as to where to find those experts on the web.

Finding the right expert abroad

Experts play a vital role in dispute resolution and the mainstream commercial environment both within the European Union and internationally. Experts are increasingly used in legal cases which involve cross border disputes. The main reasons for needing an expert from another country are:

- Expertise is not available in the home country
- Conflicts of interest of experts (especially in small countries)
- Object in dispute is in another country

Finding the right Expert, even in one's own country is often very difficult. However, when looking for an Expert from another country the problems become even greater. The terminology and qualifications may not be properly understood in addition the requirements for Experts are very different from country to country. Other challenges occur for example in different languages and also procedural differences. These include differences in the requirements of experts' reports.

To get a first idea of the expert systems in the countries of the EU EuroExpert has put together a lot of information about expert lists and possible organisations and associations which could help in a country. Via links it is often possible to search experts from databases and lists in several countries. Even if the requester is not familiar with the language of the country, it is possible e.g. with Google translator to identify whether there are experts with a special expertise. Having not found the right expert via this service, EuroExpertFinder is the next step.

EuroExpertFinder – simple and reliable

The process of finding an expert with the EuroExpertFinder is very simple. It can be done via the EuroExpert website. Complete the short 'Request for an Expert', submit your request and receive details of an expert within 7 days. The request will be submitted to the appropriate Association for assistance. EuroExpert monitors the process to ensure that all users are provided with a consistently high level of service. EuroExpertFinder provides an easy solution to difficult problems as it uses the local knowledge and expertise in the

http://www.euroexpert.org/find-an-expert/finding-an-expert-in-the-eu.html

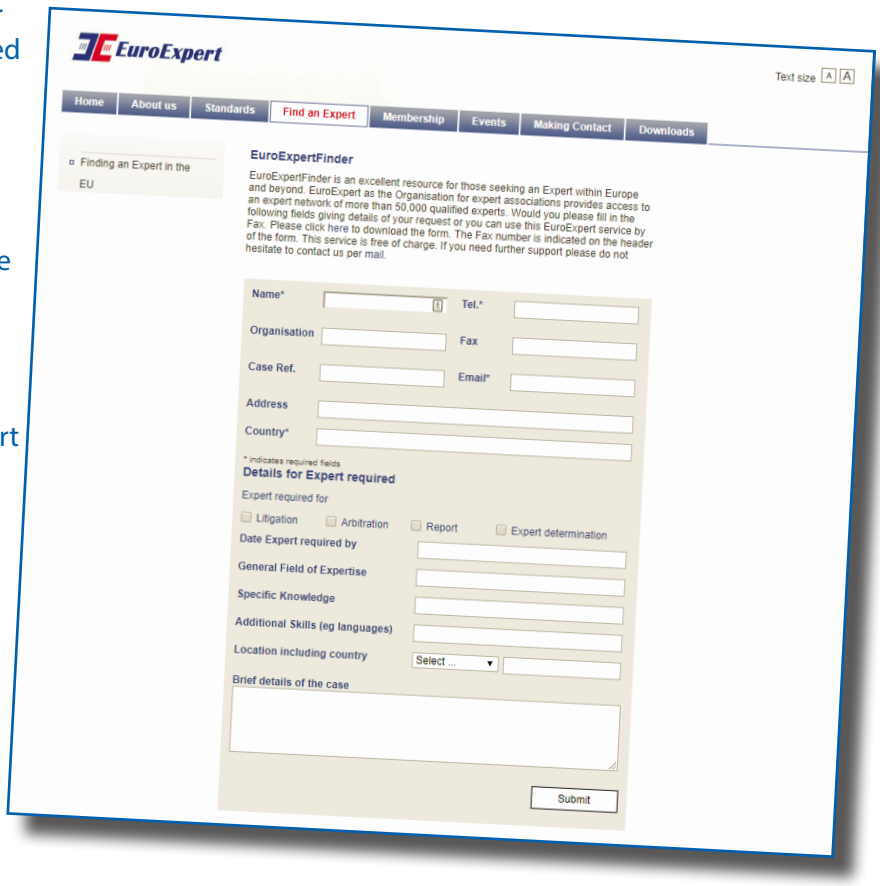
country from where the Expert is required.

Who can use it?

Anyone can use EuroExpertFinder. It can be used by any individual or institution needing the services of an Expert - the service is particularly designed to assist:

- Judges needing to appoint an Expert
- Procurators and Prosecutors who need assistance when operating outside their local area
- Lawyers representing parties involved in a dispute

EuroExpertFinder has been designed by Experts to facilitate the use of local experts in locating the right Expert. Those responsible for locating the Experts in a country are normally the appropriate Expert Organisation in that country. This removes the risk of just picking a name from a list or directory.



Members of EuroExpert

Austria
Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen Österreichs

Croatia
Hrvatskog društva sudskih vještaka i procjenitelja

Czech Republic
Komora soudních znalců ČR

Germany
Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e. V.

Portugal
Associação Portuguesa dos Avaliadores de Engenharia

Spain
Asociación Española de Peritos Tasadores Judiciales

United Kingdom
The Academy of Experts

Associate Members

Italy
Federazione Italiana tra le Associazioni dei Periti Assicurativi e Danni

Russia
Российская Палата Строительных Экспертов

Switzerland
Swiss Chamber of Technical & Scientific Forensic Experts

Secretary General:
Bernhard Floter
+49 (0)221 9127710
secretary-general@euroexpert.org

Chairman:
Nicola Cohen CAE
+44 (0)20 7430 0333
chairman@euroexpert.org

www.EuroExpert.org
For further information about the *e*-bulletin or EuroExpert