

## EuroExpert e-bulletin



v Prof Dipl-Ing Dr Matthias Rant - the new Chairman of EuroExpert

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EuroExpert Finder



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**Seasons Greetings  
from all at EuroExpert!**

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](mailto:editor@euroexpert.org)

## Changes at EuroExpert

At the General Assembly, which was held in Madrid in July, Matthias Rant was elected as the Chairman of the Council of EuroExpert succeeding Nicola Cohen who was the first Chairman.

Matthias Rant has been a very active supporter of EuroExpert and we wish him well in this new role. At the meeting France (represented by Marc Taccoen) was also elected to the Council joining representatives from Croatia, Germany and Spain.

The General Assembly as always provided an opportunity for the exchange of ideas and the opportunity to update our knowledge on the different practices in the European jurisdictions.

These forums also allow for discussions as to future developments which given the ever changing environment that experts work in is very important.

This year we welcomed Serbia to the table and we look forward to learning more from them. The latter half of the year has provided further opportunities for discussion with conferences in Prague and Leipzig.

The General Assembly also took the opportunity to reflect on its past work and as a result re-affirmed EuroExpert's Code of Practice which firmly addresses the fundamental principles of being an expert namely; independence, impartiality and integrity

## Code of practice within EuroExpert

### Preamble

This Code of Practice shows minimum standards of practice that should be maintained by all Experts.

It is recognized that there are different systems of law and many jurisdictions in Europe, any of which may impose additional duties and responsibilities which must be complied with by the Expert. There are in addition to the Code of Practice, General Professional Principles with which an Expert should comply.

### These include the Expert:

- Being a "fit and proper" person
- Having and maintaining a high standard of technical knowledge and practical experience in their professional field
- Keeping their knowledge up to date both in their expertise and as Experts and undertaking appropriate continuing professional developments and training.

### The Code

1. 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 any of the following:
  - a. the Expert's independence, impartiality, objectivity and integrity,
  - b. the Expert's duty to the Court or Tribunal,

- c. the good repute of the Expert or of Experts generally,
  - d. the Expert's proper standard of work,
  - e. the Expert's duty to maintain confidentiality.
2. An Expert who is retained or employed in any contentious proceeding shall not enter into any arrangement which could compromise his impartiality nor make his fee dependent on the outcome of the case nor should he accept any benefits other than his fee and expenses.
  3. An Expert should not accept instructions in any matter where there is an actual or potential conflict of interests. Notwithstanding this rule, if full disclosure is made to the judge or to those appointing him, the Expert may in appropriate cases accept instructions when those concerned specifically acknowledge the disclosure. Should an actual or potential conflict occur after instructions have been accepted, the Expert shall immediately notify all concerned and in appropriate cases resign his appointment.
  4. An Expert shall for the protection of his client maintain with a reputable insurer proper insurance for an adequate indemnity.
  5. Experts shall not publicise their practices in any manner which may reasonably be regarded as being in bad taste. Publicity must not be inaccurate or misleading in any way.



## Central Association of the Austrian generally sworn and certified Court Experts - 25 year review

The Central Association of the Austrian generally sworn and certified Court Experts (Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen Österreichs) has seen an important development in the past 25 years. A short review of this quarter of a century will make this development clear and demonstrate how the Association has changed under the chairmanship of Matthias Rant.

At the start of Matthias Rant's chairmanship in 1993 the Hauptverband counted approximately 4.000 members. Today, with 9,000 experts, the number of the members that belong to the Association on a voluntary basis has more than doubled. The Hauptverband is not a "chamber" with the corresponding chamber functionaries but an active association that has in the meantime become one of the biggest Court Expert Associations in Europe.

What characterises the Association and distinguishes it from similar interest groups is the fact that in Austria all types of court experts are gathered in an interdisciplinary way under the roof of the Central Association. Thus the judiciary has a point of contact for all matters concerning court experts as more than 80 percent of the experts from all branches are represented by the Association.

By this type of central and competent representation it was possible to implement a complete certification for all experts in all fields and to regulate legally the quality assurance of their performance by means of the Court Experts and Interpreters Statute. All experts have to undergo a re-certification every five years in order to maintain these standards and to guarantee their professional development. This is done i.a. by the training pass which is equally regulated by law and serves to prove the ongoing professional training of the expert which is a precondition for the re-certification.

In Austria there exists a good cooperation of the Federal Ministry of Constitution, Reform, Deregulation and Justice and the Central

Association of Court Experts which was further expanded during the chairmanship of President Rant. So it was possible to establish a fair but realistic remuneration system for the experts' work that enables the judiciary to find and employ for nearly all matters and all kinds of court proceedings the qualified court experts that are required for the court case at hand – and also to afford them. The fees are calculated so as to follow the expert's income in his or her other profession but are reduced by 20 percent when it is work for the courts.

Thus it was made possible in the past 25 years to create, based upon the law, a system of court experts and experts' fees that is essentially practical and enables the judiciary to fulfil its duties towards the public.

In these past 25 years the Court Experts and Interpreters Statute was amended eleven times, not least at the instigation of the Experts' Association. But of course there remain also in Austria here and there matters concerning the court experts that need to be improved.

In the European context it should be pointed out that from the beginning Austria committed itself within the frame of EuroExpert and has become an active member that strongly supports the concerns of EuroExpert in order to achieve further improvements in the European sector. And of course Austria will continue to do this, in particular as Matthias Rant is currently chairman of EuroExpert.

In this context Austria will take great care to keep the European court experts systems on a high level and to avoid any downward levelling in the course of the Europeanisation process of the court systems.

This will be no easy task but an important and worthwhile one as only a high-quality court experts system will ensure that the judiciary functions on a high level.

## EuroExpert Symposium during the German Expert Day in Leipzig

The Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e.V. (BVS) hosted the EuroExpert Symposium on the 22<sup>nd</sup> November 2019 in Leipzig. At the Symposium members of 8 countries presented current expert practices in their countries.

The German Expert Day is held every other year to assemble stakeholders in the Expert sector. Organised by the BVS about 400 participants joined the different events in Leipzig in this year. One was the EuroExpert Symposium. Every participating country was invited to present their input on questions about national practices of experts. These questions dealt, for example, with the status of experts giving evidence as well as their duties. The participants of the Symposium got also information about the procedures to be accepted as experts on lists in those countries where they exist. A lively discussion started about fees of experts in Europe. At the end of the Symposium the Chairman of the Symposium, Wolfgang Jacobs, asked the representatives of the EuroExpert member countries to give a report about the progress of E-Justice and the involvement of experts.

The following tables give a short report on answers given by the representatives:

**Table 1: Legally prescribed scale of charges for Experts?**

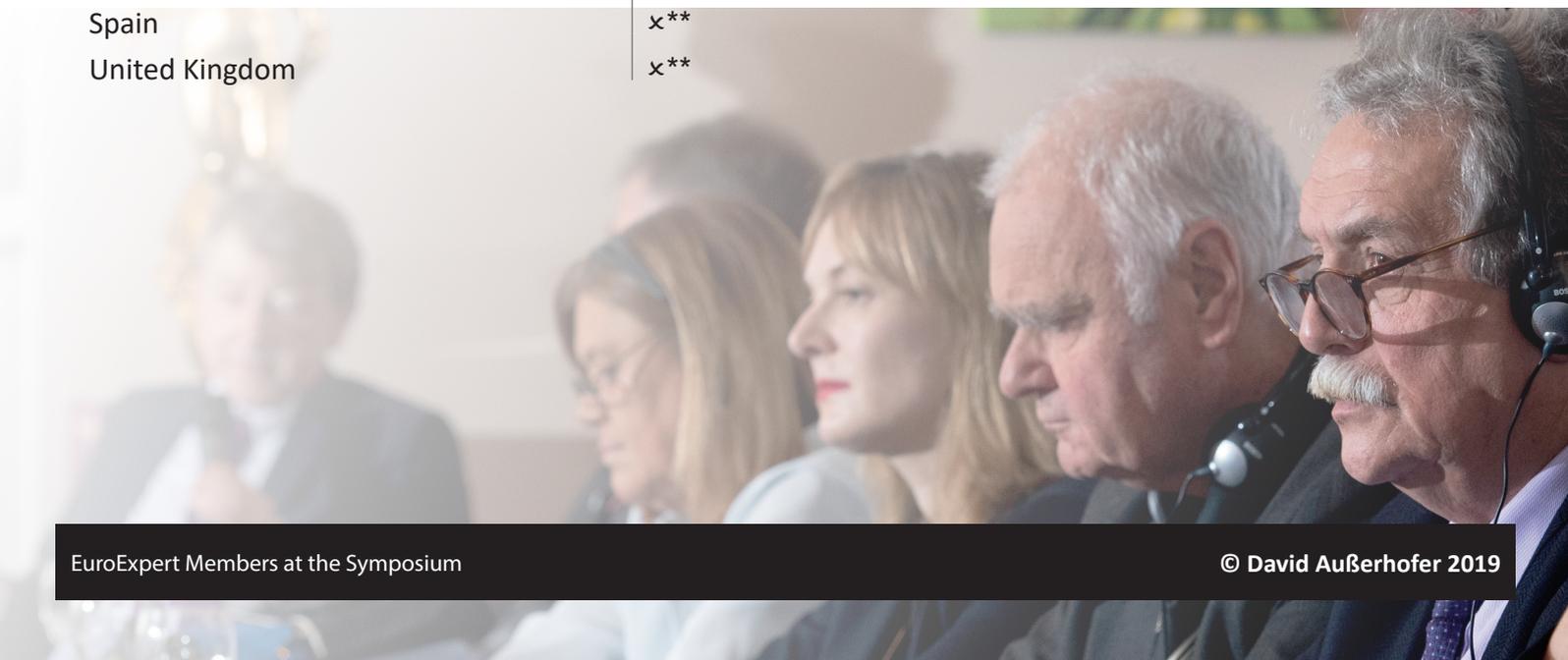
	*only in Criminal Cases	** only in legal aid Cases
Austria	✓	
Croatia	✓	
Czech Republic	✓	
France	x*	
Germany	✓	
Russia	x	
Spain	x**	
United Kingdom	x**	

**Table 2: Criteria for calculating the remuneration**

	HOURLY RATE	VALUE OF CLAIM
	* in limited circumstances "Yes"	
Austria	✓	x
Croatia	✓	x*
Czech Republic	✓	x
France	✓	x
Germany	✓	x
Russia	✓	x
Spain	✓	x*
United Kingdom	✓	x*

**Table 3: Current Possibility of sending reports electronically to courts**

	ELECTRONICALLY	MANDATORY
	* possible in future	
	**depending on the Region	
	*** Experts do not normally send their reports to the court, this is done by the lawyers for the parties. It is likely that a system will be introduced in the future	
Austria	✓	✓
Croatia	✓	x
Czech Republic	x*	x
France	✓	x
Germany	✓	x
Russia	x*	x
Spain	✓**	x**
United Kingdom	x***	x***





## Changes to Criminal Procedure Rules in England & Wales

On 1st April 2019 new Rule changes came into force in England & Wales.

These clarify and set standards for Best Practice for all Experts irrespective of discipline and court. For those in the criminal arena it is more than Best Practice – it is mandatory and therefore compliance is not optional.

In simple terms, Experts are now required to disclose anything which may be capable of:

- Undermining the reliability of the Expert's opinion
- Detracting from the credibility or impartiality of the Expert

### Summary of changes which came into effect 1st April 2019

The full guide to the changes can be found on the Ministry of Justice Website.

The note states:

#### Information about an expert witness

Rule 19.2 (Expert's duty to the court) and rule 19.3 (Introduction of expert evidence) of the Criminal Procedure Rules require the disclosure of anything 'which might reasonably be thought capable of detracting substantially from the credibility of' an expert witness.

Rule 6 of the Amendment Rules changes those rules to require the disclosure of anything 'which might reasonably be thought capable of (i) undermining the reliability of the expert's opinion, or (ii) detracting from the credibility or impartiality of the expert'.

The Rule Committee made rules 19.2 and 19.3 in their current terms in 2014, in response to recommendations by the Law Commission in its report on 'Expert Evidence in Criminal Proceedings in England and Wales', Commission report 325.3.

In 2018 the Forensic Science Regulator wrote to the Committee raising concerns that some expert witnesses on occasion have failed to provide those who commission them, or the courts, with fair and accurate accounts of their qualifications and expertise. She asked the Committee to review how the rules are expressed. Having done so, the Committee concluded that the current rules allow for uncertainty about what should be disclosed, and by whom. It received reports from its members of, on the one hand, experts who recognised no obligation to disclose serious criticism by the Court of Appeal and, on the other, experts who thought that they were required to disclose, in one case, fixed penalty notices for parking infractions and, in another, details of matrimonial proceedings, where neither was in any way material to the evidence that they were due to give. The Committee decided to amend the rules accordingly. It has asked the Lord Chief Justice by means of the Criminal Practice Directions made by him to give examples of matters that ought to be disclosed.

#### Withholding in the public interest information that an expert witness could give

Rule 6 of the Amendment Rules also adds a new rule 19.9 to the Criminal Procedure Rules to supply a procedure where the court is asked for permission to withhold in the public interest information that expert evidence otherwise might include, for example information about criminal investigative techniques. The judgement of the Court of Appeal in *R v Kelly* [2018] EWCA Crim 18934 was about the extraction of messages from an

electronic device despite the encryption used. The prosecution did not want their expert witness to give details of how that had been done, and argued that in that particular case the technique was irrelevant to what was in dispute. The Court of Appeal held that courts have a power to allow a party who introduces expert evidence to withhold some of the information that otherwise might be revealed, if it is in the public interest to do so and, where that party is the prosecutor, as long as that is not unfair to the defendant. At present there is no prescribed procedure for making such an application to a trial court. The Rule Committee decided that a procedure should be supplied.

The primary change is the introduction of 19.2 (d).

“to disclose to the party for whom the expert’s evidence is commissioned anything—

- (i) of which the expert is aware, and
- (ii) of which that party, if aware of it, would be required to give notice under rule 19.3(3)(c).”, and
- (iv) after paragraph (3)(d) insert—

“[Note. The Practice Direction lists examples of matters that should be disclosed under this rule

In addition there are amendments to 19c which are:

“serve with the report notice of anything of which the party serving it is aware which might reasonably be thought capable of—

- (i) undermining the reliability of the expert’s opinion, or
- (ii) detracting from the credibility or impartiality of the expert;”

A new 19.9 has been added after rule 19.8 and there has been a subsequent renumbering so that rule dealing with the court’s power to verify requirements becomes 19.10. The new rule states

Application to withhold information from another party  
19.9.—

- (1) This rule applies where—
  - (a) a party introduces expert evidence under rule 19.3(3);
  - (b) the evidence omits information which it otherwise might include because the party introducing it thinks that that information ought not be revealed to another party; and
  - (c) the party introducing the evidence wants the court to decide whether it would be in the public interest to withhold that information.
- (2) The party who wants to introduce the evidence must—
  - (a) apply for such a decision; and

- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the other party, but only to the extent that serving it would not reveal what the applicant thinks ought to be withheld.
- (3) The application must—
  - (a) identify the information;
  - (b) explain why the applicant thinks that it would be in the public interest to withhold it; and
  - (c) omit from the part of the application that is served on the other party anything that would reveal what the applicant thinks ought to be withheld.
- (4) Where the applicant serves only part of the application on the other party, the applicant must—
  - (a) mark the other part, to show that it is only for the court; and
  - (b) in that other part, explain why the applicant has withheld it from the other party.
- (5) The court may—
  - (a) direct the applicant to serve on the other party any part of the application which has been withheld;
  - (b) determine the application at a hearing or without a hearing.
- (6) Any hearing of an application to which this rule applies—
  - (a) must be in private, unless the court otherwise directs; and
  - (b) if the court so directs, may be, wholly or in part, in the absence of the party from whom information has been withheld.
- (7) At any hearing of an application to which this rule applies—
  - (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the applicant and then by the other party, in both parties’ presence, and then
    - (ii) further representations by the applicant, in the absence of the party from whom information has been withheld; but
  - (b) the court may direct other arrangements for the hearing.”;

## Comment

The changes in the Rules reflect what is an increasing global trend to ensure that the experts have a duty of candour which will protect the vital role that experts play in the justice system

## Court Appointed Experts in Germany will be paid higher fees in the future

The last increase in the remuneration of court appointed experts in Germany occurred during 2013.

The Federal Ministry of Justice and Consumer Protection is planning another increase from 2021 onwards. Experts, who deliver expert opinions for German courts and other judicial authorities, are paid a remuneration of 65 to 120 € per hour plus value added tax (VAT). Their specific hourly fees are calculated according to the average payment they earn while working for private contractors in their respective fields. There is a ten percent deduction from this fee, the remaining amount is classified according to thirteen different pay levels between 65 and 125 €. For example, an expert for real estate valuation will be paid a fee of 90 € per hour, an expert for damages concerning buildings a fee of 85€.

During a nationwide survey of all publicly certified experts in 2018, the average amounts of hourly fees while working for a private contractor were determined for more than 150 different fields of expertise. During the survey it was found out that the difference

between payment as a court appointed expert and payment while working for private contractors had risen to more than thirty percent. Accordingly, the legislator is obligated to adjust the payment of court appointed experts. In the future there shall be no difference between the payment of a court appointed expert and the payment of the same expert through a private contractor.

The Federal Ministry of Justice and Consumer Protection is expecting additional spending in the field of court expertise in the range of about 150 million € per year.

Here it is important to consider that more than half of the costs paid for expert opinions commissioned by the courts or other judicial authorities, have to be paid by the state, because this is either a legal requirement for certain judicial proceedings or because the parties involved are unable to pay for an expert themselves.

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