La lettre

May 2013
n°12

European Expertise and Expert Institute
Institut Européen de l'Expertise et de l'Expert

EDITORIAL,

Dear friends, members of the Institute,

The first 4 months of 2013 were particularly eventful: ten new memberships from European institutions, a presentation ceremony at the Appeal Court of Cologne, an application for an operating grant from the European Commission, and the Institute's General Assembly which was held for the first time in Brussels.

1. Membership ceremony organised in Liège: March 1st, 2013

AGENDA

May / June, 2013:

Visit to the high Italian Magistrates: Rome and Brescia, meeting if possible with the First President of the Appeal Court of MILAN

May 28, 2013:

Meeting with the President of the Appeal Court of DEN BOSCH in NETHERLANDS thanks to Mr John Coster Van Voorhout and together with Mr CLAES

May 24, 2013:

Visit in VILNIUS (Lithuania) where a delegation is going to meet the President of the Regional Court of VILNIUS, the President of the Regional Court of PANAVEZYS and the Director of the Forensic Science Centre of Lithuania.

We are waiting for an answer from the Faculty of law of VILNIUS

May 22, 2013:

Meeting with The President of the bar of Nanterre, Benoit OLIVIER

April 25, 2013:

Meeting with Sylvie GILLAUME, Member of the European Parliament

April 25, 2013:

Meeting with Andrea VENEGONI, Magistrate, European Commission and representative of the First President of the Appeal Court of Rome

Mailing address:
Jean-Raymond LEMAIRE – 17 rue Louise Michel – 92300 – LEVALLOIS PERRET
Tel : +33(0)1 41 49 07 60 Fax : +33 (0)1 41 49 02 89
e-mail : contact@experts-institute.eu Internet : www.experts-institute.eu

This ceremony took place at the Appeal Court of Liège where we were warmly welcomed by its First President, Mr Marc Dewart.

Our President Jean Raymond Lemaire presented a review of the Institute‘s work since the Brussels Eurexpertise Symposium of March 2012, and outlined the Institute’s main objectives, namely that of harmonizing the statute of experts across Europe (approximately 120,000 experts).

The Institute currently has 150 individual members and 40 institutional members, representing 8 countries.

The main reason for changing the Institute’s statutes, as proposed during the Assembly of April 12th, 2013, is to ultimately give it European governance.

4 areas of work are currently in progress: research, collection of documents, organisation of events to allow meetings and projects with the E.C.

A meeting will also take place in May / June 2013 in Brescia, where a workgroup on experts in Italy is being set up - a visit to the Appeal Court of Milan is being considered.

Lastly, several projects are in progress: a special issue of Revue Experts, a consensus conference on civil expertise, another one on criminal expertise, and a European training program.

Mr Georges De Leval, Professor at the Faculty of Law of Liège, member of the Bar of Liège and Judge at the Commercial Court of Marche-en-Famenne, gave us a presentation on the theme ‘*Expertise: between efficiency and quality’.* This presentation was greeted with deep applause. A summary is inserted in the second part of this letter.

Mr Jean-François Marot, President of the Court of First Instance of Huy and a member of the Committee for admissions and evaluation of judicial experts for the Appeal Court of Liège then intervened on the theme: ‘The current ‘reforms’ relative to experts in Belgium’.

After a short break, the debates started again, led by First President Mr Marc Dewart.

Mr Alain Nuée, First President of the Appeal Court of Versailles, closed the proceedings by identifying some forward-looking reflections for the Institute.

The ceremony continued with the signing of the memberships of the institutional candidates; each made a short presentation of their institutions.

So joined:

- Appeal Court of Cologne, represented by its President;
- Appeal Court of Liège, represented by its First President and the General prosecutor;

- Labour Court of Liège, represented by its President;
- Commercial court of Ypres and Veurne, represented by its President;
- Nederlands Register Gerechtelijk Deskundingen (NRGD), represented by its President;
- Landelijk Register van Gerechtelijk Deskundigen (LRGD), represented by its President);
- Bar of Liège, represented by its President;
- French Order of Lawyers of the Bar of Brussels;
- Delegation of Lawyers of the Bar of France in Brussels which represents:
    - National Council of Bars;
    - Bar of Paris;
    - Conference of Bar Presidents;
- The National Company of Experts of Justice in Computing and Associated Techniques - CNEJITA (France).

The meeting ended with a cocktail party.

2. Meeting of presentation and work at the Appeal Court of Cologne, March 4th, 2013

On the initiative of President Johannes Riedel a meeting to present the Institute to several German institutional representatives concerned by expertise was organized in the Appeal Court of Cologne.

The Institute's work was presented to Mr Riedel, President of the Appeal Court of Cologne, Mr Flöter, President of the German Institute of expertise (Institute für Sachverständigenwesen), Madam Kress, magistrate at the Court of Appeal (representing Mr Göbel, the magistrate in charge of experts at the Court).

Maître Martin Huff Director of the Chamber of Lawyers of Cologne was excused.

The Institute was represented by Alain NUEE, Jean-Raymond LEMAIRE, Béatrice DESHAYES and Philippe JACQUEMIN.

Mr Riedel noted as a reminder that the Appeal Court of Cologne was appointed by the Conference of the Presidents of the Appeal Courts of Germany to represent all the German Appeal Courts at the Institute.

Mr Riedel is able on a case by case basis to identify individual interlocutors able to answer our questions and participate in our work, especially within the Chambers of Commerce and Industry, and among judges and lawyers.

He is a member of the Consultative Council of European Judges (CCJE) and a member of the working group in charge of preparing the draft opinion on relations between judges and lawyers.

In German civil proceedings, registers of experts are established by the Chambers of Trade, Commerce and Industry according to each specialisation. Admissions criteria are two-fold: skills in the specialised field and skills as an expert.

The activity of experts is not formally followed-up. The magistrates do not have a right of veto for the experts' registration or re-registration, but nor do they have to appoint a registered expert and they do not have to explain their choice.

The German Institute of expertise includes a very large number of chambers of commerce and industry (250 members including 170 institutional); it proposes a rather wide training program; it writes notes on major principles (business ethics, independence).

Mr Riedel confirmed his interest for the objectives and work of the Institute, concretized by his decision to join the Institute.

3. The General Assembly in Brussels. April 12th, 2013

This assembly was held at the Appeal Court of Brussels. It took place in three parts: an ordinary assembly, an extraordinary assembly and a conference by the Magistrate Mr Thomas Cassuto.

President Jean Raymond Lemaire presented the moral report, annual accounts for the financial year 2012 and a draft budget for the financial year 2013.

After these presentations the Assembly gave full discharge to the President and to the Treasurer.

It also validated the appointment of the institutional members who joined during the Liège meeting.

On the agenda of the extraordinary assembly: amendment to the Institute statutes; this reform had been prepared by a workgroup conducted by Jean-Michel ROMERO and Philippe JACQUEMIN. The project was sent to all institutional members and their remarks taken into account.

The main lines of the new governance are the following: the members of the association are grouped in five colleges:

- **Active Institutional members** with the legal capacity to contribute to the administrative and managerial decisions by their vote at the assemblies and to the functions of the statutory organs and with the capacity to participate financially in the association's activities,
- **Institutional Members** who participate in the Institute's work, but not in its funding nor in its administrative and managerial decisions. They have a consultative capacity in the association's various authorities,
- **Individual Members** who participate in the Institute's work, in its funding in the form of an annual contribution and possibly of an entrance fee; they have a voice by country effectively present or represented at the assemblies,
- **Corporate Members** who participate in the Institute's work and in the association's funding; they attend assemblies in a consultative capacity.
- **Partner Members** who contribute effectively to the association's activities but, as a transitional measure, have not yet defined which of the four previous colleges they would like to join.

The operational, legal and accounting functioning of the Institute is carried out by the **Executive Committee** consisting from 6 to 30 members; Committee members are elected for 3 years by thirds.

The **Executive Board** consists of eight Members chosen within the Committee.

The functional organisation necessary for the development of the Institute's activities is assured as follows:

- **Orientation Committee**: its function is to propose to the Executive Committee the internal and external fundamental strategies of functioning and development; its President is elected by the General Assembly, the other members are appointed by the Executive Committee.
  The Orientation Committee supervises two committees:
- **Scientific Council**: open structure, composed of leading figures, members or non-members of the Institute. It determines and proposes to the Executive Committee the essential activities of the associative object.
- **Admissions Committee**: it is in charge of examining the applications of members as well as those concerning their participation in the diverse councils and committees. It speaks prior to the decisions of the statutory organs. Its very first mission will be to identify the required criteria and procedures.

On the initiative of this executive committee, different groups can be created. The Committee will appoint the persons in charge.

Workgroup by theme (or Commission): created by type of question to manage by the Institute; the Executive Committee fixes its composition and assigned tasks.

These Groups or Commissions are open but chaired by a member of the association (Research works commission, Web site commission, Expansion commission, Funding commission, Communications commission)

Working groups by project (ad hoc commissions): they are in charge of preparing the execution of projects and Executive Board decisions (Eurexpertise commission, ECCE commission, other…)

Regional delegates: they are appointed among members of the considered Region to be information relays between the Executive Committee and regional structures.

After numerous exchanges the statutes project was put to the vote of the Assembly members.

The statutes were unanimously adopted by present and represented members.

Mr Alain Nuée, First President of the Appeal Court of Versailles is unanimously elected by the Assembly as the President of the Orientation Committee.

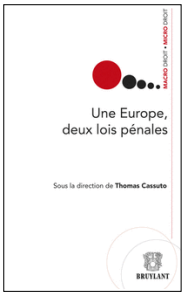
There were 15 prospective members for the Executive Committee; they were unanimously elected.

According to the statutes providing a renewal of the members of this Committee by thirds, a random draw was conducted to fix the term of every elected representative to one, two or three years.

The Executive Committee so constituted then elected its President. Mr Jean Raymond Lemaire was elected President; he proposed to the Committee the constitution of an executive board of seven members including three Vice-presidents, two General Secretaries and two Treasurers (see detail at the end of this letter).

Mr Thomas Cassuto, Vice-president of the Nanterre Court of First Instance, then intervened on the theme 'the future of criminal expertise in Europe in the perspective of the mutual admissibility of evidence'.

An abstract of his presentation, which enthralled his audience, is inserted at the end of this letter.



Mr Thomas Cassuto is the author of a recent work entitled
« Une Europe, deux lois pénales éd. BRUYLANT »

The **Executive Committee**

Etienne CLAES	2 ans	Philippe JACQUEMIN	1 an
Jean-Christophe CARON	1 an	Nico M. KEIJSER	1 an
Béatrice DESHAYES	3 ans	Jacques LAUVIN	3 ans
Claude DUVERNOY	3 ans	Jean Raymond LEMAIRE	3 ans
Sylvain FAURIE	2 ans	Jacques MELIN	1 an
Robert HAZAN	3 ans	David PIOT	2 ans
Jean Michel ROMERO	2 ans	Antoine VALDES	2 ans
Robert PAILLOT	1 an		

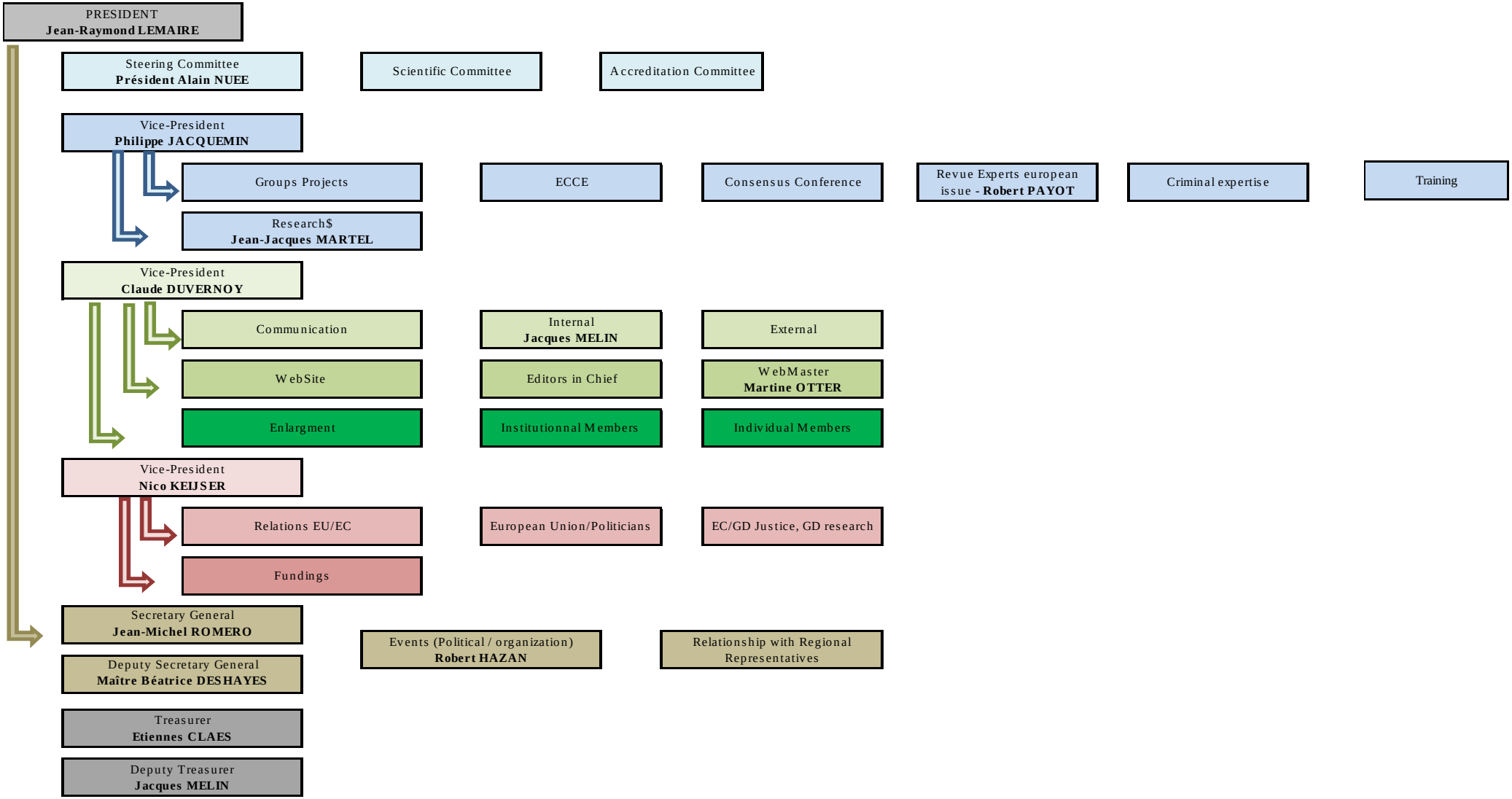
4. Request for a European operating grant

The European Commission offers the possibility to legal entities, on production of a technical and financial report, to ask for a European operating grant for the year 2013.

Our accounts were thus audited and certified for the financial years 2011 and 2012 by an independent audit firm (Tourville Finances in Paris. We submitted to the European Commission's DG Justice a request for a budget that should allow us to pursue our development in Europe with institutional members and to publish a special bilingual (English and French) issue of the *Revue Experts* on the Institute. This issue will be published during the first half of 2014.

The request was submitted at the end of February 2013 and we are looking forward to a reply in the next few days.

ORGANIZATION CHART of EEEI (avril 17,2013)



Website audience overview dashboard

The figures presented here are extracted from the statistics provided by Google Analytics.
Probes are installed since initial site design to produce
global or very subtle analyses of our website visitors.
We publish only monthly figures in order to make comparisons.
The tool is structured to eliminate visits from search engines constantly scanning websites.

	January 2013		February 2013		March 2013	
Visitors						
Visits	**613**		**607**		**655**	
New Visits	**481**		**491**		**522**	
Avg. Visit Duration	**1min39**		**1min26**		**1min30**	
Bounce Rate	**70%**		**71%**		**70%**	
Visitors location, only top3 locations are listed (country / visits)						
Top 1	**France**	**384**	**France**	**387**	**France**	**399**
Top 2	**Belgium**	**37**	**Belgium**	**32**	**Belgium**	**55**
Top 3	**Ivory Coast**	**19**	**Ivory Coast**	**16**	**Ivory Coast**	**30**
Pageviews						
Pageviews	**1612**		**1467**		**1463**	
Pages / Visit	**2,63**		**2,42**		**2,23**	
Page Top1	**Home page in French**	**214**	**Home page in French**	**180**	**Home page in French**	**182**
Page Top2	**Civil legal expert examination in France**	**131**	**Civil legal expert examination in France**	**170**	**Civil legal expert examination in France**	**158**
Page Top 3	**Directory**	**51**	**Directory**	**62**	**Directory**	**61**
Page Top 4	**Psychiatric expertise**	**49**	**Psychiatric expertise**	**50**	**Psychiatric expertise**	**59**

Judicial expertise between efficiency and quality
Summary of the presentation by Georges De Leval, Law Professor

Both at the European level and at the level of its Member States, the subject of expertise fuels many reflections, meetings, contributions, proposals, and resolutions that are sometimes concretized by best practices or legislative interventions.

The CEPEJ's 2012 report dedicated a special chapter to experts: *Experts contribute to improving judicial efficiency by bringing to the judges clear and well-documented answers on the specific and complex problems for which they are consulted*.

There is neither European consensus nor standard to define experts. Three types of experts exist within Member States: technical experts who put their scientific and technical knowledge at the judge's disposal, expert witnesses who share their expertise to support the parties' reasoning, and legal experts who can be consulted by the judge to clarify specific questions of law.

During the Eurexpertise Symposium in March 2012, the President of the Supreme Court of Austria, Ms Griss, had pointed out that '*Experts ascertain facts and draw conclusions based on these facts. On the contrary, witnesses have no right to draw conclusions. They have to testify to what they saw or heard*'.

In a communication on April 13th, 2012, First President Lamanda specified that '*expertise must be an effective and diligent contribution to the process of elaboration of a decision rendered within a reasonable amount of time'*. In other words, the expertise procedure and the report which closes it must be valid (respect the applicable legal rules) and effective. They must produce the expected effect; the efficiency is technical (the scientific quality of the report) and practical (educational quality of the report and its real usefulness). Finally the cost must be reasonable considering the stake of the lawsuit.

The success of expertise proceedings is easily explained by the increasing number of technically complex disputes that are often by nature inaccessible to the judge: '*By appointing an expert, the judge signifies that he feels uncertain when dealing with the facts - for lack of sufficient technical knowledge to be able to judge in complete safety. Thus the expert opinion introduces a disruptive element into the role of judging, because it leads the judge to temporarily remove and delegate to the expert a part of the assessment of the facts, without wholly abandoning it to him because he is monitoring the expert's work and remains free to follow his opinion or not*'.

So the expert is both a representative of the law and even a partner of the judge to find a solution to the dispute. However, the (French) Code of Civil Procedure as well as the (Belgian) Legal code specify that the judge is not bound by the expert's opinion.

A-European Area

The study of European comparative law can be fruitful to foster mutual loans through transpositions, adaptation, or even "interbreeding" - for example, depending on the circumstances, by combining the Anglo-Saxon model and the continental model.

A1/Free movement of judicial experts

The CJEU ruling of March 17th, 2011 (Penarroja Case, N C-372 / 09 and C-373 / 09), even if limited to the case of translators, is crucial in that it criticises the decision of refusing registration for not substantiating it as regards the professional qualification of the concerned party. Indeed, the party has no possibility to lodge an actual jurisdictional appeal to dispute the decision on this point, and this is at variance with the 'principle of transparency'; it moreover establishes a potential discriminatory power and prevents the candidate from verifying if his qualifications acquired in another member states are recognized. So the registration procedure of judicial experts has just been modified by the French judgment N 2012-1451 of December 24th, 2012 on expertise.

The Court of Justice of the European Union considered that missions entrusted to an expert translator constituted services in the sense of Article 57 TFEU, *without participating in the exercise of public authority in the sense of Article 51 TFEU*, and without corresponding to a regulated profession.

A2/A European judicial expertise ?

We shall just refer to the recommendations stemming from the proceedings of the EUREXPERTISE symposium on the future of judicial expertise in Europe (Brussels, March 16th, 2012) on the establishment of a European expertise which, just like the European order for payment procedure, would have the authority to substitute itself to the expert appraisals governed by national rules in cross-border disputes or in the expert appraisals which can have cross-border repercussions.

Altogether it would be a question of 'killing two birds with one stone' since the rules governing this expertise would essentially summarize the recommendations whose integration in national legislations and implementation by all European Union countries could require time (choice of the expert, experts obligations in

particular obligation for the expert to sign from the beginning of this procedure a declaration of independence, and the judge's active role in the operations.

As regards the status of judicial experts as connected with the functioning of the justice system, it seems that the most realistic harmonisation method is, as a first step, to coordinate national laws on a voluntary basis.

A3/Lesson of wisdom and humility

In 1990 a group of experts was invited by the European Commission to draft a study on procedural law in Member states. The convictions expressed in the introduction to their report remain topical except for taking into account not only economic partners but also citizens and consumers :

1. The disparities noticed between the civil procedures of Member States constitute a serious obstacle in the establishment and functioning of the Union for at least three reasons :

- The differences engender a total defect of transparency of the considered procedures so that it is extremely difficult to undergo a trial 'away from home',

- Real competition cannot exist on the internal market if the economic partners are not in situation of even approximate equality when facing charges against them;

- To ensure that competition on the internal market is not distorted, it is essential that the procedural systems of Member states provide citizens with comparably performing tools.

2. The identified obstacles cannot be levelled without an intervention of the Union. In short, the authorities of the European Union are the only ones able to take the right initiatives and decisions in this area.

3. The least of difficulties was certainly not the differences of spirit, technique and tradition which oppose continental law systems and Common Law systems. The members of this workgroup added that their proposals had to consider as inviolable all matters affecting the organization of the jurisdictions and the status of people contributing to their functioning. They also had to be realistic and not focus on solutions which could have been unbearable in one place or another.

The three facts remain valid; European judicial law continues to grow. That is a very precious asset for Europe which benefits from the impulse and relay of various professional associations with a European dimension in the areas of justice.

B-The status of the court expert

In general, all aspects relating to the appointment, education and training, lists of court experts, evaluation of them, duties, obligations and the discipline of the expert are controlled and lead to a valuable comparative law that can contribute to the improvement of some national legal systems.

The function of court expert - where it exists - is an occasional activity and not a profession, writes Professor Perrot: "The judge shall appoint such renowned technician for its expertise in a given specialty for a particular case". That is why being "court expert" is not a profession; it is a title and nothing more.

Currently ethical standards are essentially legal standards of an ethical nature (disqualification and replacement of the expert, timeliness, judge's power of control and supervision ...). In addition, many professions have their code and rules of ethics and it is common that these regulations contain provisions applicable to these professionals when they are acting as court experts.

Ethical rules established by profession are likely to apply in an 'adoptive and residual way', that is to say, under the reserve of an ethical or legal standard governing especially the fulfillment of the mission of the Justice auxiliary.

Harmonization is possible because the main focus of ethics can be found in all professions related to Justice. It is basically: independence and impartiality; professional secrecy; competence and the need for specialized training, sufficient availability, guarantees offered when liability is incurred...

C-The contribution of consensus conferences

It is "a standardized method for driving a process of collective reflection to discuss controversial issues raised by a legitimate authority, called "promoter" and lead to public recommendations.

In the area of expertise, there is at least one consensus conference in France and one in Belgium.

The first, held in the French Supreme Court on 15th November 2007. All recommendations should be analyzed and possibly adopted immediately. Often their statement is self-evident but so far it had not yet been formulated with the same legitimacy.

Here are six illustrations:

- *Opponents in the trial versus partners in finding a solution. It is good practice to offer mediation, when the conditions are met, on the occasion of a request for measures of inquiry, in appointing a technician,*
- *From previous contact between the judge and the expert to verify its ability given the proposed mission: It is good practice to establish prior contact with the expert about general issues and not on the species.*
- *In complex cases, it must be organized contradictorily at the beginning of the inquiry,*

– - *The Declaration of Independence: It is good practice to have the expert sign, in all cases, a declaration of independence, in the form of a prepared statement that will be sent by the Registry with Notice of appointment,*

– *Modeling standard assignments and expert report: it is recommended after census by the appellate courts of their jurisdiction practices, to model-type missions and broadcast these nationally.– On the time: it is good practice in the complex scheme, for the judge to ask the expert to go, if necessary, to the premises where the expertise operations will be held, in order to - respecting the adversarial principle - assess the specific challenges and propose a schedule of operations, and thereby the deadline he wishes to get to submit his final report.*

– *The cost of expertise, informing the parties: the recommendation suggests including this information at the end of the order appointing the expert and setting the deadline, the amount of the provision, and the party that must pay the consigned amount:*

1. the final cost of expert proceedings will only be determined at the end of the procedure,

2. “The party who is invited by the judge’s ruling to pay the expert’s advance fees is not necessarily the one that will bear the final burden of the cost at the end of the trial”.

Note that in Belgium the National College of court experts of Belgium also held a consensus conference focused on the expert’s status in Belgium. It made recommendations on the expert’s role, mission, methodology (to relate to the modeling), basic legal training, the adversarial nature of expertise, the expert’s responsibility, independence, and impartiality, on the creation of an expert professional organization, the Belgian expert’s role on an international level as well as recommendations on ethics.

D- Compliance with the adversarial principle and the finalist concept of procedural formalism or the European impact of the ECHR

Just as the status of the expert is to some extent modeled on that of the judge, it makes sense to consider the adaptation of the rules of civil procedure for the conduct of fair legal expertise which must therefore respect the principle of equality of arms, the principle of reasonable duration and the principle of contradiction whereby the expert must involve all stakeholders during the investigation.

D1 / The jurisprudence of the ECHR

The adversarial principle should not be sanctuarised, even if it is a fundamental requirement of a fair trial. However, the European Court adopts a more result-focused view of this fundamental guarantee by only punishing violations thereof if the breach of the adversarial principle indeed creates an adverse effect.

D2 / The recent case law of the Court of Cassation of France

In this context, there is not much difference between the party that has not been invited to participate in the expertise and the third party that has become a party after the expert has already given his opinion (not adversary expertise).

This result-oriented conception of the respect of the adversarial proceedings now seems to be that of the French Supreme Court.

The French Supreme Court case law must be understood in connection with the case law of the European Court of Human Rights, which assesses the impact of non-compliance with the procedural formalism during expert operations depending on the important or even crucial role of the expert's report for the dispute resolution.

In complex litigation cases, expertise has and will increasingly have a role in judicial or extrajudicial litigation resolution. Its growing importance is balanced by an increase in the requirements for becoming and remaining an expert. Professional associations have in this regard an important role, particularly when working within the European Community.

Note on the establishment of an organization for the appointment and evaluation of Court experts within the jurisdiction of the Appeal Court of Liège

Summary of the presentation by Jean-François Marot, President of the Court of First Instance of Huy

A-The findings

Most courts hold informal expert lists based on varying criteria; some courts operate without a list. The appointment of experts therefore suffers from a clear lack of objectification.

Expert monitoring is also unsatisfactory since there is no update of data relating to them and most importantly, no assessment is made.

This operating mode is particularly lacking in transparency and the absence of assessment procedures may result in the deregistering of an expert without the expert being made aware of it.

Based on these observations, the Conference of the Presidents of the first level jurisdiction under the chairmanship of Mr. Marc DEWART, first president of the Appeal Court of Liège, decided to initiate a reflection on the question of whether it was not necessary to agree on a minimum set of requirements that are likely to increase the quality of court expertise, in the light of the change in the law of 15th May 2007 reforming the expertise process.

B-methodology adopted

All expert lists were collected, and the whole has resulted in a new list of about 900 experts in various specialties.

A selection was made to dismiss the experts who were no longer active. A file has been established for each expert; it identifies for each candidate: their **training** including on matters of legal expertise rules, **professional experience**, **financial terms**, availability and any **inconsistencies** that might hinder their **appointment** for a specified case.

The file also includes contact information for the expert, the nature of their school and university education and expertise training, professional experience, the approximate number of previous appointments as an expert, their current professional activities, functions as technical consultant or as expert on a regular principal or accessory basis for insurance companies, private companies or public administrations, the area in which application is made, fees, availability, the districts in which they wish to be appointed and languages spoken.

Based on records that were received and reviewed by the Working Group a new list was drawn with about 300 experts.

The resulting list has been made available to all judges of the area who may have access to the expert MSDS.

An admission procedure for new experts was established as well as a procedure for evaluating those already listed.The regulation was adopted and defined within the Conference of Presidents of Courts within the jurisdiction of the Appeal Court of Liège.

To date, the Ad Hoc Committee met five times. 16 experts have been approved by the Commission (for more than 30 candidates invited). The refusals are mostly motivated by a lack of training in forensics. For the same period, six experts were automatically admitted.

The validity of the approach will be under more comprehensive assessment within a year. The Public Prosecutor has recently partnered with the process so that experts appointed in civil or criminal cases are both listed.

Commercial courts will shortly be associated with our work. In a second step, it is also expected that labour courts, justices of the peace and police courts will l join in the work.

> In addition, two bills have been filed recently in the chamber on the expert lists. The first, filed on May 24, 2011, recommends the creation of a national register of Court experts.
>
> The second, filed June 30, 2011, provides that courts establish expert lists in general meetings by secret ballot.

The High Council of Justice shares the concerns of parliamentarians and issued a notice of motion on March 30, 2011, in which it recommends in the medium term the creation of a national list of court experts incorporating only certified experts accredited by professional associations. The national list is managed by a federal body comprised primarily of judges representing the different jurisdictions. The courts could in principle only appoint the experts on this list.

In the medium term, the Supreme Council recommends grouping lists of experts to create a single list by Appeal Court, as it is currently the case at the Appeal Court of Liège.

In conclusion, we are well aware of the need to use official expert lists, based on transparent and consistent criteria and the need to create a legal status for experts.

Expertise in criminal matters - European perspective

Summary of the presentation by Mr. Thomas Cassuto, magistrate, national expert seconded to the European Commission (DG Justice)

Expertise is a tool to assist in decision-making. The European Union wants to strengthen the quality of expertise. For legal professionals, Court expertise is also a major component of the trial.

The work carried out by different organizations, including the EEEI, has demonstrated the importance of expertise and its place in the European judicial framework. They highlighted the coexistence of two systems: the expert of the judge and the expert of the parties.

The two systems have a point in common: the importance of the adversarial principle to validate and integrate the expert's work into the decision. However, the question of the expert's role in criminal matters is still pending. In addition to the judge's expert / parties' expert distinction, which is also valid in criminal law, a further distinction must be taken into account in the production of evidence. Two systems coexist in Europe: systems where the evidence is clear and where it is called legal (admissibility is previously approved by the judge).

Mr. Thomas Cassuto proposes to touch on the matter through a series of questions.

- ***What are the relevant instruments to evoke the place of the expert ?***

The place of expertise in criminal proceedings is marginally mentioned in different instruments of the Council of Europe, UN, bilateral agreements, and European Union.Expertise is only addressed in terms of procedure or of hearing and compensation; the expert is placed on the same level as the witness.

This allows national laws relating to experts to be neutral as regards the expertise procedure itself.

Matters relating to the appointment, the powers relating to the fulfillment of the mission, and to the expert's obligations are not addressed and are implicitly deferred to national law.

- ***What is the case law?***

The case law of the European Court of Human Rights in civil expertise is widely replicable to criminal matters (fair trial – respect of the adversarial principle, equality of arms, and access to an independent and impartial tribunal) The jurisprudence of the Court of Luxembourg is not significant. What legal basis is applicable to experts and expertise in criminal matters ? Two legal bases are available: Articles 82.1a, 82.2a and 86. This dual legal basis is important. The legal basis of Article 82.1 is used for the

draft Directive on the European Investigation Order, which aims to achieve mutual recognition of all requests for cross-border investigations.

The legal basis of Article 82.2 is idle. That of Article 86 relating to the European Public Prosecuting Service should see new developments in the short term. Bringing together the laws of the Member States for the mutual recognition of investigation will promote the mutual admissibility of evidence.

- ***What is the mutual admissibility of evidence ?***

The mutual admissibility of evidence is a principle that has two points: the evidence is legal or the evidence is questionable.

The principle of 'mutual' recognition is derived from mechanisms in the UK to circulate decisions between its four member countries.

By contrast, the admissibility of evidence is progressive and provisional until a final and reasoned decision establishes a causal link between an offense and the person designated as criminally responsible.

The notion of evidence implies ambivalence; an element of proof becomes meaningful once built by the judge into the substance of the decision at the end of an adversarial debate.

Without harmonizing the definition of evidence, it is difficult to clearly answer the question of recognition or mutual admissibility of evidence.

- ***How are experts treated ?***

In order not to create a distinction between the Judge's expert and the party's expert, the expert is a witness, because he is neither compared nor comparable to a judicial authority or to a party. By being summoned, the expert's existence and specificity are recognized.

- ***Why look to the expert in the field of European criminal law (Criminal Procedure)?***

Article 82.2 TFEU in its very general wording mainly refers to the free movement of evidence in criminal matters; physical evidence, but also and especially the free movement of service provision through the service provided by the expert. This issue will be crucial.

Article 86 of the TFEU provides for the creation of a European Public Prosecuting Entity that remains to be organized.Thus it may be necessary to demonstrate a criminal operation in a State to demonstrate that it is based on fraudulent transactions in another state. The European Public Prosecuting Entity should be based on national experts in line with the reality on the field.

- ***Are there any difficulties with the free flow of experts and criminal expertise ?***

  The expert can freely circulate. The expert party can be heard in a state that has implemented the mechanism of expert judges. The expert judge may move freely. His work can lead to being heard as a witness or as amicus curia.

  The evidence can move freely, but with the risk of tampering.

  Expertise as an offer of service must be able to freely circulate.

- ***Does this distinction affect the admissibility of the expert and the expert opinion ?***

  In a system of law of evidence as in a system of freedom of the evidence, the answer seems to be negative.

  The free movement of the expert in terms of the admissibility of evidence does not carry any real difficulty. However, the free flow of expertise is more complex.

  Moreover, both the expertise and the expert have a different relation to the judge depending on whether it is a single national framework or a plurilateral case.

  Can we promote the free flow of criminal expertise, that is to say to foster mutual recognition as a means of evidence or proof without harmonizing or at least establishing minimum rules on experts and expertise ?

- ***The question is crucial. Can the expert become a simple witness? Can the expert witness become a judge's expert ?***

  These issues must be addressed in light of the fundamental principles of criminal procedure.

- ***Is the mutual recognition of decisions as regards expertise at stake ?***

  If a judge appoints a foreign expert, the public policy of the State of residence of the expert would not normally be affected.

  The question might arise, however, when the legality of the evidence would be questioned, or when expertise is likely to undermine the public order, that is the national interests of the state where the expert lives.

- ***What remedies under international criminal expertise framework ?***

  Thomas Cassuto postulates that the appointment of an expert by the judge in criminal proceedings does not affect as such fundamental rights and that European public order cannot prevent in principle to use such a mechanism. Rather, it is clear that this mechanism must be consistent with the right to a fair trial, to the widespread implementation of the adversarial principle.

- ***What are the benefits for the judge's expert in criminal matters ?***

  The judge's expert does not preclude the party's expert. This flexibility provides guarantees:

The general security for the judge to have an independent, impartial opinion from a competent person, the warranty for any part of the obligation for the parties to be treated on an equal footing by the judge's expert.

Systems in which the mechanism of experts of the judge does not exist feel the need for a judge lacking knowledge on a technical issue to be able to rely on a trusted technician and may use the mechanism of the amicus curia.

This system demonstrates its permeability to the principle of the judge's expert, but do not have all its guarantees. When there is an imbalance between the parties, there is a risk that the party's expert comes to weigh too heavily on the dispute.

The progress of criminal law in the area of expertise is undeniable. However, the free movement of experts and expertise raises many complex issues that are just beginning to be addressed.

The effectiveness of justice in Europe is also based on the sharing of expertise. In the presence of different legal systems, mutual recognition of expertise must be evaluated to avoid weakening procedures and also to avoid unnecessary fees.