

# ADR needs Experts

Fachtagung: Allgemeines Sachverständigenwesen

EuroExpert Symposium Friday, 18<sup>th</sup> March 2011 Berlin



hosted by:

**Deutscher Sachverständigentag (DST) and Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e.V. (BVS)**

**Venue: Hilton Berlin Hotel, Mohrenstraße 30, 10117 Berlin**

10:30 **Registration**

11:00 **Welcome to Berlin**

**Begrüßung**

Wolfgang Jacobs, BVS

Nicola Cohen, President of EuroExpert

11:10 **What is ADR?**

**Außergerichtliche Konfliktlösung – Ein internationaler Einblick**

Charles Gardner

11:50 **ADR (Alternative Dispute Resolution), The German perspective**

**Außergerichtliche Konfliktlösung – Wo steht Deutschland?**

Michael Plassmann

12:30 **ADR - New opportunities for Experts**

**Außergerichtliche Konfliktlösung – Wo liegen die Chancen für Sachverständige?**

Karl F. Brandt

13:00 **Lunch/Mittagspause**

14:00 **Don't talk mediation – Mediate!**

**Nicht reden, handeln! Praxisworkshop Mediation**

Nicola Cohen, Charles Gardner

15:30 **Tea/coffe break/Kaffeepause**

16:00 **EuroExpert Roundup on European matters**

**EuroExpert im Dialog**

16:20 **Closing/ Ende der Veranstaltung**

**ADR - New opportunities for Experts  
Außergerichtliche Konfliktlösung – Wo  
liegen die Chancen für Sachverständige?**



**Karl F. Brandt**

THE ORGANISATION  
FOR EUROPEAN  
EXPERT ASSOCIATIONS

## Global Business and international ADR

- New opportunities for Experts -

- Übersicht und Beispiel -

Deutscher Sachverständigentag 18.03. 2011 Berlin

Karl F. Brandt, ö.b.v. Sachverständiger Landwirtschaft;  
BusinessMediator

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## Inhalt

Experten/Sachverständige

– Aufgabengebiet- Aufgabenstellung

Konfliktlöser – ADR

– Aufgabengebiet - Aufgabenstellung

>> Unterschiedliche Arbeitsfelder

>> Unterschiedliche Aufträge



**Globaler Markt - Chancen** – Verdrängungsmarkt

Gerichtskosten – Diskretion – Geschwindigkeit- Kontakterhaltend

==> Qualifikation

==> Erkennen der kulturellen Unterschiede

ADR-Methoden: Schiedsgutachten- etc. Mediation

Umsetzung der EU Richtlinie

NEU: PKH für ADR vor Gerichtsverfahren

Ausbildungsangebote: staatlich - IHK/Uni  
privat - Institute

Kooperationen



## 2 Schulen und Lehrmeinungen

Experte in dem Sachgebiet mit Mediations (ADR) Kenntnissen

Experte in den ADR Methoden mit/ohne Sachgebietskenntnissen

Anforderungen von Parteien – Gerichten – Beratern/Juristen



**Mediationsausbildung** = Investition in Sozialwissenschaft

Dauer : 90 – 250 Std.

Inhalte: Methodenlehre + Übungen

Was steht hinter dem Konflikt ??

Neutralität – Allparteilichkeit

Entschleunigung – aktives Zuhören

Fortbildung – Üben- Fortbildung

Mediation ist eine Haltung/Einstellung im Umgang mit Konflikten

Titel Mediator nicht geschützt

Verbände/Institute z.B. ifs –HK- Gerichtsmediation

Eigene Vermarktung: 30 – 400 €/Std



## 20 Milionen- 3 Kulturen- 1 Lösung

Sachverständigen Gutachten technischer Aspekte vs.  
Konfliktlösung

A – F/D

„ Deutsch- Französisches MediationsCentrum Paris/Hamburg „

Kunststoff Presswerkzeug

Auftrag – Entwicklung oder Lieferung ?

Konflikt in Technik

Konflikt in Abschlagszahlungen

Konflikt in gerichtlicher Zuständigkeit

Konflikt in Imageverlust

Konflikt in Streitwertermittlung



## Lösung

30 Std. 1 Mediator

Paris ( IHK/CMAP) + Telefon/Pendelmediation

11 Teilnehmer Parteien- Anwälte-Technische Experten

Was ist der wahre Konflikt – für beide ??

- Neuer Auftrag
- Verlustbeitrag
- Kooperation
- Interne Schulung in Mediation
- Ergänzung der ADR mit Mediationsklausel
- Veröffentlichung
- Preisträger D-A-CH



**Diskussion:**

Aussichten- zukünftige Streitentwicklung – incl. Bürgerbeteiligungen  
Wo liegen zusätzliche Arbeitsfelder durch/mit Mediation ?

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**Remuneration of Experts in Europe**  
**Comparative study**  
**of remuneration systems in Europe**

**Update 2010**



THE ORGANISATION  
FOR EUROPEAN  
EXPERT ASSOCIATIONS

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## Remuneration of Experts in Europe

Within the framework of growing legal and economic cross-frontier relationships between the European States, the field of activities for experts is expanding. The demand for well-qualified, experts able to work internationally is growing as well.

Next to many other important aspects of this development, e.g. questions of contract law, liability and quantum there is one subject, that is surely of especial interest for experts - the system and the measurement of the remuneration of an expert in the member states.

For this reason, EuroExpert carried out an updated study to compare similarities and differences between the systems and delineated important points. With this in mind a questionnaire was produced and answered by the following countries: Austria, Czech, France, Germany, Hungary, Portugal, Slovakia, Slovenia, Spain & the UK. On the basis of the responses to identical questions it is possible to evaluate, where the systems are comparable and where they are different –in particular the amount and the system of remuneration.

The analysis has shown, that the deviations of the systems are slight. It follows, that the situation in the different states is more similar than expected. For example it can be detected that the remuneration of court appointed experts or experts appointed by public authorities is primarily based on a legally prescribed scale of charge, except for the UK. When privately appointed experts (Party Appointed Expert) are used they are paid on basis of the contract between the parties.

Another similarity is, that the compensation of the experts is normally calculated on an hourly rate – moreover, in all countries there does exist a prohibition of the fee being based on or dependent on the outcome of the case. This shows, that in every member state of EuroExpert, principles of the expert's work, such as independence, impartiality, objectivity and integrity, are also rooted in the remuneration systems.

There are many other similarities such as the process to get paid or questions of additional payments. In some cases there are also differences between the states, e.g., different average compensation rates (fees). For example, the average compensation for an expert in Germany ranges between € 50 and € 150 per hour whereas in England the majority of experts earn about € 213 per hour in civil matters; in criminal matters the average fee is 178,00 €. The expert can possibly earn up to € 750 per hour.

The following updated report shows the questions asked and the responses given by each country. They give a detailed synopsis of similarities and differences of the remuneration-systems of the EuroExpert member states.

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## Questionnaire

1. **Is there a legally prescribed scale of charges for Experts in your country for:**
  - 1.1 Court appointed Experts
  - 1.2 Experts appointed by public authorities or
  - 1.3 Experts appointed by a private client?
2. **What are the criteria for calculating the compensation/remuneration?**
  - 2.1 Hourly rate?
  - 2.2 Based on value of the claim/amount of damage?
  - 2.3 Based on outcome of case?
3. **Are there differences in the scale of payment between the various specialisations (e.g. medical, IT, construction) of the Expert? If the answer is “yes”, which criteria are used?**
4. **Is the degree of difficulty to formulate an expert opinion a reason for a different compensation? If the answer is “yes”, which criteria are used?**
5. **Are there additional payments (beyond the proper or agreed fee) permitted – for example an expense allowance? If “yes”, what can be claimed for the following, for example:**
  - 5.1 travel costs
  - 5.2 photocopies
  - 5.3 software
  - 5.4 tests
  - 5.5 equipment
  - 5.6 others
6. **Is the Expert permitted to have assistance when preparing expert opinions? If so, are there any requirements and is the Expert able to reclaim the costs of the assistance?**
7. **What is the range for Expert’s fees (between...and)? Is there an average or usual fee for an Expert?**
8. **Can there be deviations from any fee tariff that is in force? If so, what? How does the Expert ensure that he is paid and what remedies are available to him if he is not?**
9. **Can the Expert receive either fees in advance or stage payments?**
10. **Do Experts charge cancellation fees? If yes, on what basis?**
11. **Are Expert fees the same for criminal and civil matters? If no, please show the differences.**

## **Comparative Analysis of the Remuneration-Systems of the EuroExpert Member States of the European Union.**

### **The questions and responses**

#### **1. Is there a legally prescribed scale of charges for experts in your country for**

##### **1.1 court appointed experts**

##### **1.2 experts appointed by public authorities or**

##### **1.3 experts appointed by a private client?**

#### **: Austria**

**1.1** Yes. The charges of court appointed experts are prescribed in the 1975 Fee Entitlement Act. It also includes the procedure for claiming and quantifying the fees and the different elements the expert can claim.

**1.2** Yes. The expert appointed by a public authority in an administration proceeding is equal to an expert in court proceedings with his regard to his entitlement to charges. Many administrative regulations have interpreted the provisions of the Fee Entitlement Act to be also applicable to administration proceedings.

Experts who are staff members of an authority ("ex officio experts") can not claim remuneration. They have to provide their services in the framework of their service duties.

**1.3** The remuneration normally depends on the contract between the parties; if the agreement is lacking, an adequate remuneration is owed.

#### **: Czech**

**1.1/1.2** Yes. The fees for court appointed experts and experts appointed by public authorities are prescribed in the decree of the ministry of justice.

**1.3** No. It depends only on the agreement between the expert and a private client.

#### **: France**

**1.1** No. But there are recommendations and guidelines of each of the "Cour d'Appel", that are strictly applied all over France.

**1.2** Yes. The authorities have prescribed scales, that can differ from ministry to ministry.

**1.3** The remuneration is based on the agreement between the expert and the client. Usually it is three or four times higher than the fee for an CAE.

#### **: Germany**

**1.1** Yes. There does exist a legally prescribed scale of charge for the CAE since 1931. It was amended 2004 and is called "Justizvergütungs- und Entschädigungsgesetz - JVEG".

**1.2** Yes. In most of the administrative proceedings where an expert is appointed, he is paid on the basis of the JVEG (like a CAE). Either this law regulates the applicability in these cases or there are administrative regulations that relegate to the JVEG. If the expert is part of the authority, he does not get an additional fee.

**1.3** No. The remuneration depends on the contract between the expert and his client.

**: Hungary**

**1.1** Yes. The measure of fees is based on a prescription of the ministry of administrative and justice, partly regulated by a fee regulation, in case of ex officio procedures.

**1.2** Yes. The measure of fees is based on a prescription of the ministry of administrative and justice, partly regulated by a fee regulation, in case of ex officio procedures.

**1.3** No. The compensation is based on the agreement between the parties.

**: Portugal**

**1.1** Yes. There is a special code (Código de Custas, CdC) that determines the remuneration of CAE.

**1.2** Yes. If the expert is part of a panel of experts, he is paid on the basis of the CdC as well as the CAE. If the expert is acting as an expert witness, the remuneration is based on the agreement between the expert and the authority.

**1.3** Yes. The PAE is also remunerated on the basis of the CdC. If he is working as an advisor or an expert witness there are no objections to agree the compensation.

**: Slovakia**

**1.1/1.2/1.3** Yes. In all cases the expert's remuneration is based on § 3 of the "Act on Experts, Interpreters and Translators" that was decreed by the ministry of justice. In private cases it is possible, too, to make an agreement with the appointing party.

**: Slovenia**

**1.1** Yes.

**1.2** No.

**1.3** No.

**: Spain**

**1.1** No. The fees are fixed by the expert, based on schedules established by Professional Associations or fixed by jurisdictional bodies. There are no rules or scales of charges for expert reports. Even if you are in the "judicial list", prices are free, and parties will be obliged to pay the expert: The part solicitor of the report, or the party condemned to pay the expenses of the judicial process will be forced to pay the expert. Nevertheless, the parties can ask the judge to declare that the honorarium of the expert is excessive or some items of his invoice are undue. For expert reports involved in cases under legal aid or in cases under Criminal law, where Judges can ask for an expert report by themselves, there are normally a reduced fees (public prices). Private associations and professional bodies can only give a suggestion of a scale of charges.

**1.2** Dito.

**1.3** No. The fees of a PAE as an independent professional is freely convenanted between the parties. In some cases the fee is conditioned by the labour relations between the expert and the company that engages his services.

**: UK**

**1.1** No. Moreover the CAE is not the norm nor is it used very often.

**1.2** No.

**1.3** No. Although there are no prescribed scales of charges for Experts there are currently attempts to control fees particularly those publically funded. At present there is a government consultation on the subject.

**2. What are the criteria for calculating the compensation?**

**2.1** hourly rate?

**2.2** Based on value of the claim/amount of damage?

**2.3** Based on outcome of case?

**: Austria**

There are two different types of calculating the remuneration.

One is, to determine the compensation by the income that the expert would customarily obtain for the same or a similar professional activity outside of court.

In other areas, where the payment of the charges is in the responsibility of the state (e.g. legal aid, penal cases, social-law cases) the fee for the expert is only a fair approximation of the income outside the court (reduction of 20%). In this area the most important services by experts are compensated on the basis of a scale of lump-sum remunerations contained in a catalogue of services.

If income outside of court cannot be proved, a framework of charges based on the necessary qualification of the expert is applied (€ 20 - € 60; € 50 - € 100; € 80 - € 150 per hour). The fee within the mentioned scopes is determined by the concrete qualification, the severity of the expertise and the necessary detailed statements.

**2.1** Yes. It contains the time input, the compensation of effort in simple cases and for taking part in hearings. Hourly rates are also used when the income of experts outside of court is also measured in hourly rates.

**2.2** Value-based charges are only found for valuating vehicles and real estate.

**2.3** No. This is not contained in the Fee Entitlement Act. Aside from this it would not be compatible to the code of ethics.

**: Czech**

**2.1** Yes. Remuneration for work of Court Appointed Experts or experts appointed by public authorities is calculated on an hourly rate. Remuneration including compensation of costs for expert opinions connected with autopsy in criminal matters has been fixed by lump-sums.

**2.2** No.

**2.3** No.

**: France**

**2.1** Yes. The hourly rate is between 80,- € and 100,- € for CAE or public appointed experts. The hourly rate for a PAE is about 300,- €.

**2.2** Usually no. For CAE it is forbidden to claim a compensation based on the value of claim or the amount of damage. This does not apply to private experts, who belong to a judiciary expert company.

**2.3** The same answer as 2.2.

**: Germany**

**2.1** Yes. For CAE the hourly rate is prescribed in the JVEG and is distinguished by different professional tasks of the experts. The hourly rate of a PAE can be free agreed and is oriented on the profession and the severity of the expertise.

**2.2** Yes. In some areas (e.g. experts for automobiles) it is usual to measure the compensation by the value of the claim or the amount of damage. But there does not exist any legal scale of charges.

**2.3** No. it is not possible to base the remuneration of the expert on the outcome of the case. This would be a contradiction to the expert's neutrality and objectivity.

**: Hungary**

**2.1** Yes. The expert is payed per hour. In cases of some special fields (for example: criminology, physicist, medical analyses) the expert gets a fixed compensation.

**2.2** No. But in case of a mandate this is possible.

**2.3** No.

**: Portugal**

**2.1** Yes, but only for experts that are not appointed by court. In these cases the remuneration is normally agreed on a hourly rate.

**2.2** Yes. The remuneration of the CAE is based on the amounts of the dispute prescribed by the regulations of the CdC. There are only rarely cases, where an expert that is not appointed by court, is compensated on the basis of the claim amount.

**2.3** No. It is not allowed to base the compensation on the basis of the outcome of the case. This is exceptionally possible, when the expert is acting as an expert advisor.

**: Slovakia**

**2.1** Yes. The expert has to define the number of hours that were necessary to produce the expert opinion.

**2.2** Yes. The remuneration can be defined by a share from the outcome value.

**: Slovenia**

**2.1** No.

**2.2** No.

**2.3** No. The compensation is devided in several sections. The experts get a certain amount for sections, e.g.:

- study of the file
- collecting and studying extra materials
- examination (person) or viewing (location)
- written report of the expert opinion
- comment on the expert opinion in a hearing

**: Spain**

**2.1** To quantify the honorarium in any matter, the expert will have to bear the following criteria in mind, principally:

- a) The time dedicated to work (hours).
- b) The difficulty and/or complexity of the order.
- c) The intensity of the dedication.
- d) The urgency and specialisation demanded.

e) The use of specific material.

**2.2** Though the amount of damage is not a factor to bearing in mind, we think the expert could consider in some cases this value of the claim under the idea of assumption of more or big responsibility. Nevertheless, the expert also has to consider this circumstance when the amount of damage is low, in order to reduce his invoice.

**: UK**

**2.1** Yes. The normal fee basis is on hourly rate for preparation and daily rate for court appearance. There are pressures for Experts to accept a fixed fee for the case.

**2.2** No.

**2.3** No. It is strictly forbidden for an expert to work on a payment by result basis.

**3. Are there differences in the scale of payment between the various specialisations (e.g. medical, IT, construction) of the expert? If the answer is “yes”, which criteria are used?**

**: Austria**

Yes. The Fee Entitlement Act distinguishes charges for different types of activities, e.g. doctors, anthropologists, vehicle matters valuation of buildings etc. The law refers in this case to the income for work outside of court.

**: Czech**

No. There are no differences between the specialisations. Only in forensic medicine (autopsy) are fixed rates for various operations.

**: France**

Yes. The CAE are submitted to a non-prescribed, but indicative scale of charges of each “Cour d’ Appel”. There are three differences:

Translators and Interpreters are paid less than other experts

Experts by the “Cour de Cassation” have a compensation that is 20%-30% higher than the usual hourly rate

In difficult cases it is possible for the court to double the hourly rate. It is necessary – but normally no problem - to get the permission of the Ministry of finance or the controllers in charge of their budget.

**: Germany**

Yes. There are broad differences between various specialisations of PAE as well as the CAE. Usually craft-experts get lower compensation than an academic-expert. The CAE gets a remuneration based on the scale of charges that is legally prescribed in the JVEG. The hourly rate depends on what professional task the expert is acting in.

**: Hungary**

No. There are no differences in the scale of charges for the different scopes of expert opinions. In cases of long scientific investigations, evaluation of the opinion of other experts and complex and difficult calculations an increased scale of charge can be used (maximal 2.5).

**: Portugal**

Based on the principle, that the court should appoint a public body as an expert, the remuneration is paid as cost. So the difference depends on what costs the public body (e.g. a forensic institute) expends.

**: Slovakia**

Yes. There are differences in the remuneration, depending on the scope of the expert. The minimum fee defined in the Ordinance 491/2004 Coll. is about € 20. An expert in medicine and an expert in law can charge about € 15 for every started hour.

**: Slovenia**

No.

**: Spain**

The experts are usually academic or technic persons (with the exception of car-experts) – their fees are normally fixed by agreement. Nevertheless, it is known that some associations have different scales of payment according to specialisations.

**: UK**

Yes. There are differences between disciplines and individual experts. The criteria are primarily market forces. In publically funded cases there are guidelines for various professions.

**4. Is the degree of difficulty to formulate an expert opinion a reason for a different compensation? If the answer is “yes”, which criteria are used?****: Austria**

Yes. This is also prescribed in the Fees Entitlement Act and plays a role e.g. in the charges established in the FEA with medical examinations or expert opinions on vehicle technology.

**: Czech**

Yes. It depends on the degree of difficulty and the required expertise.

**: France**

Generally not. But there can be reasons for a higher compensation, e.g. a drastically increase of the necessary time because of high technical difficulties. It is also thinkable in cases, where it is difficult to find an expert that corresponds to the criteria of the court.

**: Germany**

Not for CAE. The compensation is only based on the professional task and the necessary time he has to invest. But a difficult case normally increases the time the expert needs, so that his remuneration is accordingly higher.

**: Hungary**

Yes. It depends on the complexity and the methods.

**: Portugal**

The degree of difficulty is a reason for a different compensation for experts that are not appointed by the court. For latter, this is no reason, unless you are a public body appointed as expert.

**: Slovakia**

Yes. In difficult cases the remuneration of the expert can increase at most 30 % over the base fee.

**: Slovenia**

Yes. The Expert defines the degree of difficulty of his expert opinion.

**: Spain**

Yes. The higher the degree of difficulty is the higher will be the contracted fee.

**: UK**

Yes. But this is also dependent on market forces. The grater the complexities of the matter the fewer will be the number of Experts qualified to opine this in turn has the effect of increasing fees.

**5. Are there additional payments (beyond the fee proper) permitted – for example an expense allowance? If “yes”, what can be claimed for the following, for example:**

- **travel costs**
- **photocopies**
- **software**
- **tests**
- **equipment**
- **others**

**: Austria**

Yes. All variable expenses necessarily incurred with the work of an expert can be claimed, other than fixed overheads. The expert can claim:

- travel costs
- costs for auxiliary staff
- other expenses
- remuneration for time input
- compensation for effort

**: Czech**

Yes. The expert has the right to claim travel costs and other expenses, among them photocopies and tests. He can claim also compensation for the consultant's assistance but only in case if the judge agreed with him in advance. Usually it is not possible to claim costs consisted in software and equipment.

**: France**

Yes. All the mentioned items can be compensated.

**: Germany**

Yes. The PAE can charge all the mentioned expenses, when he agreed this in the contract with his client. The CAE can charge the expenses that are prescribed in the “JVEG”, when they are necessary; these are those mentioned above.

**: Hungary**

- Travel costs: Yes.
- Photocopies: Yes.
- Software: No.
- Tests: Yes.
- Equipment: No.
- Others: possible on weekend and holidays

**: Portugal**

Yes. When the expert is a public body, these payments are paid as cost. The PAE can only charge the costs for travelling, if his domicile is outside the court circle.

**: Slovakia**

Yes. All reasonable expenses according to the order can be charged. Next to the mentioned points he can also reclaim the costs for loss of time.

**: Slovenia**

Yes. The expert can also get additional payments for expenses for food, lodging and loss of wage.

**: Spain**

Yes. All expenses that result from the commission can be reimbursed.

**: UK**

Yes. All of the above can be claimed plus other legitimate expense that are reasonable. In publically funded cases travel costs are subject to a fixed scale and travel time is capped at £40 per hour.

**6. Is the Expert permitted to have assistance when preparing expert opinions? If so, are there any requirements and are you able to reclaim the costs?****: Austria**

These expenses are refundable when the auxiliary staff was indispensable and necessary, in line with the line of scope of the expert's activities. The amount of the costs for the assistance depends on the actual expense.

**: Czech**

Both the CAE and the PAE are obliged to exercise their activity in person. The CAE is entitled to co-opt a consultant for checking of special or partial questions. He has the right of compensation of costs connected with the co-option of a consultant only after the acceptance of the consultant in advance by the court or by the public authority.

**: France**

In cases that deal with the subject area of the expert, it is not allowed to have assistance. In other fields of competence the court has to decide if this is necessary and can be accepted. The cost may be compensated separately.

**: Germany**

Yes. Although the CAE expert has the duty to make his expertise "in person", he is allowed to have assistance, providing that he controls and supervises his auxiliary staff. This applies also to the PAE. But it is possible to make an agreement allowing the auxiliary staff to have more competence and responsibility than just assistance. In every case the expert has to disclose type and extend of the assistance.

**: Hungary**

a) Yes. If the expert has to claim in some parts of his expertise the specialized knowledge of another expert belonging to another special field he can call in. The costs for this assistance can be charged.

b) A panel of experts can be created from experts belonging to the same special field, if the appointing party is asking for it, these costs can be charged.

**: Portugal**

Yes. But the extend and type of assistance has to be disclosed. The PAE can not claim the costs of this assistance.

**: Slovakia**

Yes. For partial questions the expert can call in a professional consultant. The court decides about this additional cost; normally these expenses can be charged when they were reasonable.

**: Slovenia**

No.

**: Spain**

It depends on the assistance. In Spain, the act of expertising is a personal act, and nobody can participate in the investigation. If the expert needs another expert, the Judge or the Court can consider him to be not totally prepared to do this work. Nevertheless, if a very complicated case, if the expert needs assistance (secretary) these costs can be added to the final invoice, but has to be indicated and justified before starting his work.

**: UK**

Yes. It should be discussed with those appointing and instructing the expert. In any event it should be clearly shown on the face of the report. Secretarial assistance is normally expected to be included within the expert's fees, but other assistance, if approved, is claimable.

**7. What is the average compensation (fee) for an expert (between...and)?****: Austria**

It can not be given an average fee, because it depends on the income earned by the expert outside of court appointment and there are no surveys on this subject.

**: Czech**

The basic hourly rate is between 100 and 350 CZK + VAT, i.e. between 4 and 14 Euro + VAT.

**: France**

The average hourly compensation for a CAE can be estimated between 80,- and 105,- Euro.

**: Germany**

The remuneration of a PAE is between 50,- and 150,- Euro per hour plus tax. The CAE compensation fee ranges from 50,- to 95,- Euro plus tax.

**: Hungary**

The compensation defined in the fee decree is rounded off between € 8 and € 40 per hour. It is difficult to define an average compensation out of this, but it can be fixed about € 400 per appointment.

**: Portugal**

The average compensation for a CAE depends on the value of claim. E.g.: if the value of claim is 25.000 € the daily rate of the expert is between 95,- and 190,- €; if it is 50.000,- €, it is between 135,- and 270,- per day.

The expert witness or the expert advisor gets a hourly rate that is rarely lower than 40,- €

**: Spain**

Because the fees are freely fixed, an average compensation can't be given. Price per hour depends on all the criteria described and the specialisation. But for a judicial report, a minimum between 500 and 600 € (plus taxes) can be indicated.

**: Slovakia**

The average hourly rate for expert reports submitted by forensic experts is € 12 in most fields of expert opinions. In cases of medicine, pharmacy and foreign law the remuneration is € 18 per hour. Because of the differences in remuneration of experts it is hard to define an average compensation. It can be fixed between € 100 and € 380 and depends on the complexity and circumstances of the case.

**: Slovenia**

The average compensation fee is between € 450 and € 1.000 per expert opinion.

**: UK**

The average fee is hard to specify, because there are differences between professions, regions of the country, inexperienced or world-known experts. Furthermore criminal and civil produce different answers. In civil matters the average fee is 213,00 € per hour. The lowest is 55,00 € and the highest about 750,00 € per hour. In criminal matters the average fee is 178,00 €, the lowest is 55, 00 € and the highest about 410,00 €

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**8. Can there be deviations from any fee tariff that is in force? If so, what? How does the expert ensure that he is paid and what remedies are available to him if he is not?**

**: Austria**

The PAE can make contract-agreements about the height of his compensation. But he has to heed the code of ethics.

The CAE can get a higher fee based on the consent of the parties. It is also possible – in discretion of the court – to reduce the fee up to one fourth for the expert's effort, when he is culpable of delay or deficiencies in his work as an expert.

The claim of the expert against the state is ensured by rule. If he wants to get the full amount of his income outside of court, he has to waive the state-compensation and collect his fee from the parties. This can be risky, unless advance payments were made to cover the costs. To avoid this risk, the expert can claim against the state only the mentioned tariffs of the FEA or the hourly rate - based on the income outside of court – with a reduction of 20%.

**: Czech**

The basic hourly rates can be increased up to 20% in extraordinary difficult cases, up to 10% in cases of audit opinion and up to 50% in cases of express delivery or nightwork.

According to law the judges or the public authorities are obliged to decide about the remuneration of the CAE without unreasonable delay after the submitting of the expert opinion. Remuneration must be paid out by 2 months after the decision had the force of res judicata.

Czech experts had a lot of problems with courts in civil proceedings due to the delay in paying the survey fees. According to law with effect from 1<sup>st</sup> July 2009 the judge is obliged to provide that the juristic persons paid a deposit in the amount of expected expert's remuneration. In case the deposit is not paid the CAE is not obliged to elaborate his report.

The CAE has the right to ask the president of the Regional court or the Minister of Justice for making good.

**: France**

Usually you can not deviate from the guidelines of the "Cour d'Appel", except the cases, where the court cannot take the expert up on his promise.

The expert has to ask for a "taxation ordinance", that the court has to sign. The court can evaluate the tax in its discretion.

If the parties contest this ordinance, the dispute is solved by the president of the Court of Appeal. Its decision can only be discussed by the "Cour de Cassation". It is possible and suggestive to ask for the deposit of his estimated costs to ensure his claim.

**: Germany**

A deviation from the fee tariff of CAEs is not allowed. If the expert is not listed in this legal tariff, he can ask the court to fix a remuneration. Against this assessment the expert can enter caveat. The PAE has to sue to enforce his claim.

**: Hungary**

- a) Yes, in the case of ex officio procedures. If the expert has to pass an expert opinion that is very difficult, he has got the possibility to charge two and a half times of the base fee.
- b) In the case of not ex officio procedures: the expert specifies the fee himself.
- c) In the case of a private mandate the agreement of the parties is decisive.

In private cases the party that requires the expert opinion has for example to make a payment in advance to make sure that the expert's fee is covered. In civil matters the party that requires the expert opinion has to make a deposit payment. In criminal cases the state has to pay the expert's fee. The fee is fixed by the court. The expert and the party that requires the expert opinion can appeal against this decision. In case of ex officio procedures the fee regulation of the ministry of administrative and justice is decisive. In case of not ex officio procedures the expert specifies the fee. The appointing court or the authority adopts the fee list by a decree.

**: Portugal**

For the remuneration of a CAE the court is responsible and has the duty to compensate the expert-opinion. The PAE has to enforce his claim by the common law.

**: Slovakia**

Yes. If there is an agreement between the parties, the remuneration can be fixed differently from the defined tariff.

The court decides about the expert fee. This decision may be appealed by the expert and also by the parties.

**: Slovenia**

There is no possibility for any deviations from the fee tariff that is in force. There are neither legal remedies available for the expert to claim his remuneration. His fee is ensured by the court which orders the party to advance the necessary amount to cover the expert's costs. If this amount is not paid the expert opinion shall not be produced.

**: Spain**

The expert can claim the fees derived from his procedural actions from the party that is obligated to compensate the expert's costs, without waiting for the end of the proceeding. When the decision which party has to pay the costs is firm, the expert should submit a detailed and justified statement of his fees and expenses at the office of the court clerk, so these costs can be included in the appraisal of costs. These fees can be challenged, according to the General Standards. In this case the affected party and the Professional Association are heard to come to a conclusion.

**: UK**

Fee tariffs do not exist – most things are negotiable. However, the Legal Services Commission which controls public funding (legal aid) has guideline tariffs but these are not fixed and can be negotiated. To ensure that the expert gets his compensation it is recommended, that he has an effective contract with his client. The Client and the lawyer can be made responsible for payment of the entire fees. The expert can sue them for breach of contract, when the client and/or the lawyer do not pay the agreed compensation.

**9. Can the expert receive either fees in advance or stage payments?****: Austria**

Yes. It must be paid an adequate amount in advance, if the expert applies it. There is also the possibility to apply multiple advance payments, when the work of the expert takes a longer period of time.

Although the Fee Entitlement Act prescribes, that there should be only one single decision about the expert's fee to cover his remuneration, the case law of first-instance courts allow the settlement of fees in several stages.

**: Czech**

Yes, especially to compensate his cash expenditures, i.e. in cases of travel and other costs, among them photocopies, tests and costs related to the cooperation with a consultant.

**: France**

Yes. They can be claimed in penal cases in amount of ca. 30%, when payments are justified by costs and technical advances. Otherwise the payment is not anticipated.

**: Germany**

Yes. The CAE as well as the PAE can claim fees in advance and stage payments. The CAE has to request the advanced payments, especially when the work takes a long time.

The PAE has to make an agreement with his client. If he doesn't, he only can claim the compensation after he finished his expert opinion.

**: Hungary**

No. When the expert opinion is submitted to the court, the compensation of the expert is defined by the court. Then the expert gets the complete charge.

**: Slovakia**

Yes. The expert may require an adequate advance payment from the party that appointed him. In particular cases the expert is authorized to refuse the appointment for an expert opinion, if he doesn't get an advance payment.

**: Slovenia**

No. The expert can neither receive fees in advance nor stage payments.

**: Spain**

Yes. The expert may request whatever financial cover he considers is necessary. This will be on account of the final settlement. The party that proposed the expert evidence, has to deposit the specified amount in the Court's Deposits and Consignment Account. The civil procedure law (2000), gives the possibility to the expert designated from the judicial list (once started a judicial case) to ask for advanced fees when in the moment he is asked to accept the work in front of the Court. This previous amount of money should have to be paid by the party who requests the judicial report in the delay of 3 days. If it is not paid, the expert is free and there is no obligation to take the case. When the expert delivers the report in the indicated term, he has to present his final invoice.

**: UK**

Yes, either or both. In some sectors of the market, for example construction, this is more common than others.

**10. Do Experts charge cancellation fees? If yes, on what basis?****: Austria**

The CAE cannot claim cancellation fees. If the expert's work cannot be finished without his fault, he can claim charges for the services provided and executed. The PAE can charge cancellation fees if it is agreed.

**: Czech**

No. The CAE do not charge cancellation fees. In case of PAE it depends only on the agreement between the PAE and parties.

**: Germany**

The CAE can not claim cancellation fees. However, if the expert's opinion is no more needed, because litigation ends up without a final decision of the court (e.g. a settlement between the parties) the expert can partially claim the fees and additional payments by the time his appointment ends. If his expert opinion is not usable because of the expert's fault (e.g. he acted grossly negligent by not disclosing a conflict of interest) he can lose the whole remuneration. The PAE can charge cancellation fees if it is agreed.

**: Hungary**

The expert can charge a fee for the quotation or in the case of the withdrawal of an appointment for his work done until then, but the appointing party can decide whether to award it or not. The expert can't charge a stand by/all night service fee.

**: UK**

Most Experts include a cancellation provision in their terms of appointment. These are sometimes specified as a percentage of the fee depending upon when the cancellation takes place. Experts tend to be flexible about these charges which are generally disliked by lawyers and clients. In publically funded cases cancellation charges are not payable except in exceptional circumstances.

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**11. Are Expert fees the same for criminal and civil matters? If no, please show the differences.****: Austria**

In criminal matters in which mostly the state has to pay the fees, primarily the expert can claim tariffs, listed in a catalogue of standard services (e.g. doctors, vehicle matters). If there are no tariffs or it is not a prescribed standard service, the expert can claim a fee according his income outside of court reduced by 20 %. As any tariffs (e.g. for doctors) are not cost effective the remuneration in criminal matters is inferior to civil matters.

**: Czech**

Yes. The CAE fees are the same for criminal and civil matters.

**: Germany**

Yes. In civil and criminal matters, where an expert is appointed, he is paid on the basis of the JVEG.

**: Hungary**

In a case of criminal matters the fees are determined in a regulation. In civil matters the expert can adopt it, but can also deviate from it, his fee will be specified by himself according to the latest regulation. The expert informs the judge about the fee to be expected, he informs the parties and afterwards the appointment will be confirmed or withdrawn. It is also custom, that the judge makes them do a deposit and the expert declares about the deadline and the fee of the expert opinion. Depending on them, a decision will be made on the appointment of the expert.

**: UK**

No. See answers to 7 (above).

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