

## Compensation of the loss suffered by indirect victims of a cartel

In a decision published in the *Bulletin* on June 4, 2025<sup>[1]</sup>, the Commercial Chamber of the *Cour de Cassation* (French Supreme Court) reaffirmed a fundamental principle of contract law: The determination of the price lies exclusively with the will of the parties or, where applicable, a third party designated by them - but never with the judge.

This decision highlights the importance of complying with Articles 1591 and 1592 of the French Civil Code, which respectively provide that the price must be determined and identified by the parties, or left to the determination of a third party expressly designated for that purpose.

This article outlines the key rules governing price determination in a sales contract, in order to avoid the risk of nullity.

*Article authored in collaboration with Mirabelle Ly, trainee*

### **A price that is determined or objectively determinable: A condition for the validity of the contract**

Article 1591 of the French Civil Code provides that “the sale price must be determined and identified by the parties”. In other words, a sales contract is only valid if it provides for a fixed price or, failing that, a price that is objectively determinable without external interference, in particular from the judge.

This principle applies to any contract transferring ownership, such as a conventional standard sale, a in-kind payment by substitution<sup>[2]</sup>, or even a letter of intent for the acquisition of shares <sup>[3]</sup>.

However, some contracts fall outside this regime – such as consignment agreements, where the price is set at a later stage based on the outcome of the sale.

Case law accepts that the price need not be expressly stated in the contract, so long as it can be determined on the basis of objective criteria<sup>[4]</sup>. As such, the price may be determined by reference to a pricing schedule, an official market quotation, or a market price – as illustrated in the December 14, 2004 decision of the First Civil Chamber of the *Cour de Cassation* concerning potato prices based on official quotations<sup>[5]</sup>.

On the other hand, any price based solely on the will of one party, or subject to a future agreement that has not yet been defined, is deemed unlawful.

In practice, a price that depends on a future event may be valid, provided that the event is not entirely under the control of one of the parties<sup>[6]</sup>.

Trial judges have full discretion to assess the validity of the price stipulated in a sales contract. They may annul the contract if the price is deemed ridiculously low or devoid of seriousness<sup>[7]</sup>.

As such, a sale may be annulled for inadequacy of price where the agreed amount is ridiculously low compared to the actual value of the good – for instance, a plot of land sold for €2.03/m<sup>2</sup> while its actual value at the time of sale was €37/m<sup>2</sup><sup>[8]</sup>.

An exception is made, however, where the low price is justified by the seller's donative intent. In such cases, courts may recharacterize the transaction as an indirect gift, provided doing so does not misrepresent the true intent of the parties<sup>[9]</sup>.

Ultimately, price determination in a sales contract reflects the balance between contractual freedom and judicial oversight, aimed at preventing abuse and ensuring legal certainty in transactions.

## **Price determination by a third-party: A possibility governed by Article 1592 of the French Civil Code**

Article 1592 of the French Civil Code provides that the price may be “*left to the determination of a third party*”. This provision expressly authorizes the parties to a sales contract to delegate to a third party the task of determining the price of the thing being sold.

### **Validity of price determination by a third-party**

Case law has confirmed the validity of this method, provided that the sale price has not yet been set and that the third party is either designated in the contract or can be designated based on contractually defined terms and conditions.

If the third party is unable or unwilling to carry out the assignment, the sales contract is not formed, and the transfer is void for lack of a determined price<sup>[10]</sup>, unless the parties have provided for the appointment of

another expert. Furthermore, if the price cannot be determined, the nullity of the price determination clause renders the entire agreement null and void.

In this context, the third party's engagement letter is of critical importance. Too often overlooked, it must clearly and precisely define:

- the third party's assignment (which must involve determining the price, not merely providing an indication);
- the valuation method(s) to be used;
- the completion timeline; and
- the procedures for challenging or replacing the third party.

It should also be emphasized that the judge may never substitute the defaulting third party, as doing so would breach the principle that the price may be set only by the parties or a third party designated by them.

### **The limited role of the third-party appraiser: Neither arbitrator nor judge**

The third party designated to determine the price of a good does not act in a judicial or arbitral capacity, nor as a mediator. He/she does not serve as a judge or arbitrator, but rather as a neutral appraiser tasked with objectively assessing the value of the good in question. As such, he/she must determine an exact price, not merely provide an indicative range<sup>[11]</sup>.

In the absence of any specific provisions to the contrary, the third-party appraiser may interpret the contract, provided such interpretation does not distort its meaning<sup>[12]</sup>.

The determination provided by the third-party appraiser is not immune from challenge. It may be contested or disregarded in case of:

- a serious breach of duty (e.g., misappropriation, manifest error);
- a mistake as to substance<sup>[13]</sup>, fraud, or duress<sup>[14]</sup>;
- a gross error, such as a double valuation of the same asset<sup>[15]</sup>.

The Law of July 19, 2019<sup>[16]</sup> regulates the appointment of a new appraiser in the event the first one failed to fulfil his/her assignment.

A gross error is characterized by clear inconsistencies that a reasonably diligent professional would not have committed. The *Cour de Cassation* has acknowledged the existence of such an error, for example, where an expert relied on a date imposed by a court without regard for economic realities<sup>[17]</sup>. Conversely, an appraisal carried out in accordance with accounting standards and in compliance with the *audi alteram partem* principle, cannot be set aside<sup>[18]</sup>.

Finally, it is important to reiterate that the judge may never substitute the third-party appraiser in determining

the price, as doing so would contravene Articles 1591 and 1592 of the Civil Code. This principle was firmly reaffirmed by the Commercial Chamber of the *Cour de Cassation* in its June 4, 2025 decision<sup>[19]</sup>.

## Securing your contracts: practical recommendations

The validity of a sales contract largely depends on how the price is determined. Whether set by the parties themselves or by a third party, the price must neither be arbitrary nor subject to unilateral discretion. Legal precision in drafting price clauses and in defining the third party's role is, therefore, essential to prevent disputes.

To ensure legal certainty and avoid litigation, it is recommended to:

- always include clear provisions on the method for determining the price;
- expressly provide for the appointment of a third-party appraiser in case the price is undetermined; and
- detail the terms for appointment, replacement, and scope of intervention of the third-party appraiser in a clear engagement letter.

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[1] [Commercial Chamber of the \*Cour de Cassation\*, June 4, 2025, No. 24-11.580](#) (in French only)

[2] [Third Civil Chamber of the \*Cour de Cassation\*, October 7, 1998, No. 97-11.448](#) (in French only)

[3] [Commercial Chamber of the \*Cour de Cassation\*, November 6, 2012, No. 11-26.582](#) (in French only)

[4] [Third Civil Chamber of the \*Cour de Cassation\*, September 26, 2007, No. 06-14.357](#) (in French only)

[5] [First Civil Chamber of the \*Cour de Cassation\*, December 14, 2004, No. 01-17.063](#) (in French only)

[6] [Commercial Chamber of the \*Cour de Cassation\*, April 7, 2009, No. 07-18.907](#) (in French only)

[7] [Third Civil Chamber of the \*Cour de Cassation\*, March 26, 1969, No. 67-12.733](#) (in French only)

[8] [Third Civil Chamber of the \*Cour de Cassation\*, May 25, 2011, No. 10-14.875](#) (in French only)

[9] [First Civil Chamber of the \*Cour de Cassation\*, January 6, 1969, No. 67-10.401](#) (in French only)

[10] [Commercial Chamber of the \*Cour de Cassation\*, May 24, 2017, No. 15-20.213](#) (in French only)

[11] [Commercial Chamber of the \*Cour de Cassation\*, May 29, 1972, No. 70-13.104](#) (in French only)

[12] [Commercial Chamber of the \*Cour de Cassation\*, April 4, 1995, N° 92-22.020](#); [Commercial Chamber of the \*Cour de Cassation\*, December 19, 2006, No. 05-10.198](#) (in French only)

[13] Since the 2016 reform of French contract law, the concept of “*mistake as to substance*” has been replaced



by “mistake as to the essential qualities”.

[14] [Commercial Chamber of the Cour de Cassation, November 12, 1962, Bull. civ. No. 444](#) (in French only)

[15] [Commercial Chamber of the Cour de Cassation, February 4, 2004, No. 01-13.516](#) (in French only)

[16] [Article 37 of the Law No. 2019-744 on the Simplification, Clarification and Modernization of Corporate Law](#) (in French only)

[17] [Commercial Chamber of the Cour de Cassation, May 3, 2012, No. 11-12.717](#) (in French only)

[18] [Court of Appeals of Paris, May 29, 2008, No. 07/00506](#) (in French only)

[19] [Commercial Chamber of the Cour de Cassation, June 4, 2025, No. 24-11.580](#) (in French only)



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We are pleased to announce that two of our partners have again been recognized in the 2026 edition of **The Best Lawyers in France™**:

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Congratulations to our teams and warmest thanks to our clients and colleagues for their trust and recognition.

**The European regulatory landscape on sustainability is entering a new phase. Following the adoption of the Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive, the European Commission introduced a legislative simplification package in February 2025, known as the “Omnibus” package, aimed at adjusting the scope and timeline of these landmark legislative acts.**

**Stated objective: Enhancing the competitiveness of European businesses while reducing their administrative burden, particularly for SMBs. According to European Commission estimates, the proposed measures could generate €6.3 billion in savings and unlock up to €50 billion in additional investments.**

This article provides an overview of the two main pillars of the European Union’s ESG framework, and highlights the key elements of the proposed “Omnibus” package.

## **I. Two Foundational Directives: CSRD and CSDDD**

### **1. The Corporate Sustainability Reporting Directive (CSRD)**

Adopted on December 12, 2022, the CSRD<sup>[1]</sup> significantly strengthens sustainability reporting requirements, and replaces the previously applicable Non-Financial Reporting Directive (NFRD), which was widely seen as insufficient.

It requires companies to publish sustainability reports based on the European Sustainability Reporting Standards (ESRS), addressing environmental, social, and governance (ESG) issues under the principle of double materiality – financial materiality and impact materiality.

#### **Implementation timeline:**

- **2023:** Entry into force;
- **2025-2028:** Gradual rollout in four waves:
  - **2025:** Large companies already subject to the NFRD;
  - **2026:** Large companies not yet subject to the NFRD;
  - **2027:** Listed SMBs, with an optional two-year postponement;

- 2028: Non-EU companies with EU turnover > €150 million via a branch or subsidiary.

## 2. The Corporate Sustainability Due Diligence Directive (CSDDD)

Adopted on April 12, 2024, the CSDDD<sup>[2]</sup> introduces mandatory due diligence obligations for large companies, covering their entire value chain. Its purpose is to prevent, identify, and remedy adverse human rights and environmental impacts.

Key obligations include:

- Risk mapping;
- Development of a corrective action plans;
- A complaints notification procedure developed in consultation with employee representatives;
- Monitoring and reporting on the effectiveness of implemented measures.

Key dates:

- **July 26, 2026:** Transposition deadline;
- **2027-2029:** Phased entry into force:
  - 2027: Companies with >5,000 employees and >€1.5 billion turnover;
  - 2028: Companies with >3,000 employees and >€900 million turnover;
  - 2029: Companies with >1,000 employees and >€450 million turnover, including non-EU companies operating in the EU.

## II. The “Omnibus” Package: Toward targeted simplification

In response to concerns about complexity and implementation costs, the European Commission presented the “Omnibus” package<sup>[3]</sup> on February 26, 2025, aiming to ease regulatory burdens while preserving the core objectives of the European Green Deal.

### 1. Proposed adjustments to the CSRD

- **Narrowing the scope of application:** Only companies with more than 1,000 employees (with financial thresholds unchanged) would remain subject to the CSRD. Nearly 80% of companies would thus be exempted.
- **Creation of a voluntary ESG framework for SMBs:** Simplified standards would be offered to small and medium-sized businesses wishing to adopt ESG reporting, on a voluntary basis.
- **Revision of the ESRS:**
  - Reduction of data requirements (revision expected by October 31, 2025, from the European Financial Reporting Advisory Group);
  - Sector-specific standards: The initially planned sector-specific standards would be dropped.

**The double materiality principle is maintained:**



- Financial materiality (Outside-In): The impact of ESG issues on the company's performance;
- Impact materiality (Inside-Out): The company's impact on the environment and society.

## 2. Proposed adjustments to the CSDDD

- **One-year postponement:** Transposition postponed to July 26, 2027; the first companies will not be subject to the CSDDD before 2028.
- **Narrowing the scope of due diligence:** Due diligence requirements would be limited to "*direct business partners*". However, in the presence of "*plausible information*" on human rights violations, a broader obligation may apply.
- **Less frequent assessments:** Assessment would be required every five years instead of annually.
- **Relief measures for SMBs:** The amount of information they may be required to provide as part of value chain mapping would be limited.

## III. Current state of implementation?

The "Stop the Clock" Directive<sup>[4]</sup>, published in the Official Journal of the European Union on April 16, 2025, entered into force on April 17, 2025. It formalizes, in particular, the postponement of implementation timelines.

In France, the CSRD-related provisions were transposed through Law No. 2025-391 of April 30, 2025, known as the "DDADUE 5" Law<sup>[5]</sup>. The transposition of the CSDDD must be completed by July 26, 2027.

However, the substantive changes proposed in the "Omnibus" package have not yet been adopted. They are currently under discussion within the European Parliament and the Council. Until they are adopted and transposed, the current versions of the directives remain in force.

## Conclusion: Pragmatism or Step Back?

With the "Omnibus" package, the European Commission is taking a pragmatic turn, seeking to reconcile regulatory ambition with operational reality. This shift has been welcomed by part of the business community but raises questions as to whether the original level of ambition will be maintained.

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<sup>[1]</sup> [Directive \(EU\) 2022/2464 of the European Parliament and of the Council of December 14, 2022 amending Regulation \(EU\) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting](#)

<sup>[2]</sup> [Directive \(EU\) 2024/1760 of the European Parliament and of the Council of June 13, 2024 on corporate sustainability due diligence and amending Directive \(EU\) 2019/1937 and Regulation \(EU\) 2023/2859](#)

<sup>[3]</sup> [Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC,](#)



[2013/34/EU, \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements and Proposal for a Directive of the European Parliament and of the Council amending Directives \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements](#)

[\[4\] Directive \(EU\) 2025/794 of the European Parliament and of the Council of April 14, 2025 amending Directives \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements](#)

[\[5\] Law No. 2025-391 of April 30, 2025, on various provisions for the adaptation of French law to European Union law in matters of economy, finance, environment, energy, transport, health, and the movement of persons](#)

**The latest summit of the [World Law Group](#), of which our firm is a member, was held in Riga at the invitation of the outstanding law firm [Sorainen](#), which operates in Latvia, Lithuania, and Estonia.**

The economic success of these three Baltic States is remarkable. Their unwavering commitment to democratic values largely explains this outstanding achievement.

The threats posed by Russia and the erosion of democratic values across much of the world prompted concerned discussions among delegates from every corner of the globe.

I grew up in a world where the fight against corruption was seen as an absolute necessity, where freedom of opinion was regarded as sacred, and where the free movement of people and goods was guaranteed by major international institutions. The OECD, the Council of Europe, the European Union, the World Trade Organization, and the International Monetary Fund were the guarantors of nearly a century of prosperity.

The temptation to turn inward, selfishness, and abdications are gaining ground everywhere. *“Nationalism means war! War is not only our past; it may be our future”* declared President François Mitterrand in a speech before the European Parliament in 1995. We may well be very close to that future.

Let us take inspiration from the Baltic States!



We are pleased to announce that, for the eighth consecutive year, our firm is recommended in the *Legal 500 Europe, Middle East and Africa* rankings the “**Environment**” practice area.

Excerpt from the Legal 500 EMEA 2025:

*“Soulier Avocats’ environment and regulatory department is headed by the firm’s managing partner Jean-Luc Soulier and has in-depth expertise in environmental matters relating to chemicals and phytopharmaceutical products, as well as associated health risks. The firm regularly provides environmental advice to clients in the life science, energy, and automotive industries.”*

Soulier Avocats expresses its warmest thanks to its clients, partners, and teams.

**From world-renowned manufacturers of sophisticated machinery to modest businesses hiring a contractor to install air conditioning in their premises, any company may one day face a dispute involving complex technical issues requiring court-ordered expert**

**investigations.**

**Such preparatory inquiries are, in fact, almost unavoidable in this type of litigation.**

**Companies must therefore understand how court-ordered expert investigations work to ensure they are conducted in a manner that respects their procedural rights.**

### **1. Court-ordered expert investigations: When are they used?**

When the judge lacks the technical knowledge necessary to rule on a dispute in full awareness of the facts, he/she may appoint a qualified specialist in the relevant field registered on a list established by a Court of appeals or the *Cour de cassation* (French Supreme Court) and entrust him/her with an assignment to clarify the technical aspects of the case.

The court-appointed expert will assist the judge in determining whether one or more of the parties is at fault, apportioning liability among them, and/or assessing the damage suffered by the aggrieved party.

It should be noted, however, that expert investigations may only be ordered when the judge deems it essential for obtaining technical information that is unknown to him/her<sup>[1]</sup>.

Moreover, they are of critical importance to the parties involved, as the judge ruling on the case will necessarily rely on the findings of the appointed expert to make his/her decision, even though, from a legal standpoint, he/she is not formally bound by the expert's report<sup>[2]</sup>.

To understand better the types of situations where expert investigations are necessary, let us consider the common scenario of a company operating in the mass retail industry that has commissioned the installation of a cold storage unit for its perishable goods and later discovers that the system is malfunctioning. The company, as the aggrieved party, may then seek to have the equipment replaced or refunded, and possibly claim damages for the damage caused by the cold storage unit malfunction.

This would raise the issue of liability for this malfunction.

Is the installer responsible for errors made during the installation process? Could the manufacturer be at fault for supplying a defective product? Might the maintenance provider have failed to follow essential precautions specified by the manufacturer? Could the malfunction stem from an external cause (such as a damaged electrical system)? Or could several parties have contributed to the malfunction, and if so, to what extent is each one liable?

It is to answer such purely factual questions - that require specific technical knowledge and expertise - that the judge may appoint an expert.

## 2. Court-ordered expert investigations: Key principles

To guarantee the parties' right to a fair trial<sup>[3]</sup>, court-ordered expert investigations are strictly regulated, reflecting the crucial role they play in the outcome of the cases in which they are ordered.

Below is an overview of the key principles that govern this type of preparatory inquiries.

### a) The expert must fulfill his/her assignment conscientiously, objectively, and impartially

This principle is enshrined in Article 237 of the French Code of Civil Procedure<sup>[4]</sup>.

The duty to act conscientiously means that the expert must handle his/her assignment seriously and with integrity. He/she must act honestly, ethically, and responsibly, thus living up to the trust placed in him/her by the judge (and, by extension, the French judicial system).

The duty to act objectively stems directly from duty to act conscientiously: The expert must conduct his/her investigations and present his/her work in a faithful and unbiased manner.

The duty to act impartially requires the expert to maintain strict neutrality, refraining from allowing any personal inclination or reservations he/she may have toward one of the parties. He/she must maintain impartiality avoid any bias or preconceived notions that could affect his/her conclusions. Impartiality also means that the expert's relationship with the parties must never give rise to legitimate doubt about his/her neutrality.

This duty to perform the entrusted assignment conscientiously, objectively, and impartially is reinforced by the requirement that all experts registered with courts of appeal or the *Cour de Cassation* (French Supreme Court) must swear an oath to fulfill their assignment and prepare their reports conscientiously and honorably<sup>[5]</sup>.

### b) The expert has a duty of independence

independence means the absence of any economic, legal, or financial ties<sup>[6]</sup> with the parties that could influence the expert. There must be no connection between the expert and the parties that could compromise his/her objectivity.

More precisely, independence is a prerequisite to performing an expert assignment. The expert must not be subject to any external influence that could bias his/her judgment.

The independence of the expert - not only in relation to the parties but also with respect to the judge and any third party involved in the proceedings - derives directly from the overarching principle of judicial

independence. The court-appointed expert is indeed a court officer, appointed by a court decision to assist the judge by providing insight into factual matters.

Any situation likely to give rise to a conflict of interest must be disclosed before the expert investigations begin. In such a case, the expert may be challenged and disqualified by the judge<sup>[7]</sup>.

Finally, independence also means the expert is free to fulfill his/her assignment in the manner he/she deems most appropriate, provided he/she complies with the core principles governing court-ordered expert investigations. The expert is likewise free to determine the content of his/her report and the conclusions he/she draws.

### **c) The expert has the obligation to personally fulfill the assignment**

This obligation is set forth in Article 233 of the French Code of Civil Procedure<sup>[8]</sup>.

The judge appoints the expert based on his/her individual qualifications and specific technical expertise. Accordingly, the expert is required to fulfill the assignment personally and may not delegate it to third parties.

According to consistent case law, the expert's obligation to personally fulfill his/her assignment implies that he/she may not confine himself/herself to reaching his/her conclusions by referring the parties to the dispute to an analysis carried out by a third-party<sup>[9]</sup>.

The *Cour de Cassation* has also logically ruled that meetings conducted by the expert's spouse in the expert's absence are illicit<sup>[10]</sup>.

Similarly, while the expert may delegate purely material tasks to an assistant – provided the assistant offers adequate guarantees<sup>[11]</sup> – he/she may not delegate technical implementing actions that are inherent to the expert's assignment without exercising direction, control, or supervision<sup>[12]</sup>.

In addition, insofar as the expert is appointed for his/her expertise in a given technical field, he/she may not “subcontract”, even partially, the performance of his/her actions/tasks to another technician<sup>[13]</sup>.

However, the expert may call on the assistance of another, more specialized technician, referred to as a specialist advisor (*sapiteur* in French)<sup>[14]</sup>, when confronted with a technical issue outside his/her own field of expertise.

### **d) The expert must act diligently: Compliance with deadlines set by the court**

The expert is required to comply with the deadlines set by the judge for completing the assignment<sup>[15]</sup>.

If difficulties arise, the expert must request an extension of time from the judge responsible for supervising court-ordered expert investigations. The judge may grant the extension if the expert “*encounters difficulties that prevent the performance of the assignment or if an extension of the scope of the assignment proves to be*

necessary.”<sup>[16]</sup>

Failure to meet court-imposed deadlines without good cause may result in sanctions, including a reduction in fees, replacement, removal from the list of registered experts, and/or liability claim if the delay has caused a damage to one of the parties.

#### **e) Professional Confidentiality**

The expert is prohibited from disclosing information that infringes upon the parties’ privacy or any other legitimate interest (such as trade secrets or confidential business documents) outside the proceedings, unless authorized by the judge or with the consent of the concerned party<sup>[17]</sup>.

#### **f) Duty to report and to share the expert report with the parties**

The expert must give his/her opinion on all matters falling within the scope of the assignment entrusted by the court, without exceeding that scope or making legal determinations<sup>[18]</sup>.

It should be noted, however, that the judge may, at any time, amend the expert’s assignment, either at the request of the expert or at the request of the parties. Moreover, the judge is paradoxically permitted to adopt the expert’s opinion even if the expert has exceeded the scope of the entrusted assignment.

The expert must deliver the final report to each party<sup>[19]</sup> and to their respective attorneys<sup>[20]</sup>.

#### **g) Compliance with the adversarial principle**

Compliance with the adversarial principle (*principe du contradictoire*) is a fundamental requirement of court proceedings and must be strictly observed throughout the expert investigations.

As a court officer, the expert must adhere to the guiding principles governing court proceedings, including the adversarial principle enshrined in Article 16 of the French Code of Civil Procedure<sup>[21]</sup>.

This principle is often considered the cornerstone of the right to a fair trial. It ensures that parties are aware of the factual and legal arguments upon which the case will be decided and that they have the opportunity to respond to these arguments.

With respect to court-ordered expert investigations, the adversarial principle requires the expert to keep the parties informed of all actions taken, to systematically summon them to attend any meetings, and to allow them to submit comments and observations on the conduct and progress of the investigations (such comments and observations are set forth in a document or series of documents called “Statements to the expert”, *Dires à expert* in French). The expert is required to consider these comments and observations or, if he/she elects to disregard them, he/she must clearly set out the reasons for doing so in his/her final report.

In accordance with the adversarial principle, the expert may not solely make a documentary review of the materials produced by the parties: He/she must make his/her own findings. If the expert relies on materials



produced by one party or a private expert report, he/she must share these materials with the other parties so they have an opportunity to review and, if necessary, discuss them in an adversarial manner.

The expert is also required to issue a pre-report to the parties prior to delivering his/her final report, in order to allow them to express any potential comments or objections.

The expert's report must be well-reasoned and unambiguous. It must set out the actions taken, the factual findings, and the technical analyses underlying the expert's conclusions. This reasoning enables the parties to challenge the conclusions if necessary, and ensures that the judge can make an informed decision.



## Guiding Principles Applicable to Court-Appointed Experts



### 3. Sanctions for breach of the fundamental principles governing court-ordered expert investigations

Any breach of the above obligations may expose the expert to disciplinary or civil sanctions.

The judge may also order the expert's replacement and/or reduce his/her fees.

Most importantly, from a procedural standpoint, the judge may declare the expert report null and void if the

expert's breaches are likely to have caused harm to the party seeking its annulment[22]. It should be noted that any motion to annul an expert report must be filed before the parties present their arguments on the merits of the case, failing which the motion will be inadmissible[23].

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SoulieR Avocats stands ready to assist you throughout the course of court-ordered expert investigations, no matter how technically complex they may be, in order to safeguard your interests and, where appropriate, seek the annulment of expert investigations conducted in breach of the applicable fundamental principles.

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[1] Article 263 of the French Code of Civil Procedure: *"Expert investigations shall be ordered only where findings or a consultation would not be sufficient to enlighten the judge."*

[2] Article 246 of the French Code of Civil Procedure: *"The judge is not bound by the expert's findings or conclusions."*

[3] The right to a fair trial is *inter alia* guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[4] Article 237 of the French Code of Civil Procedure: *"The expert shall fulfill his/her assignment conscientiously, objectively, and impartially."*

[5] Article 6 of Law No. 71-498 of June 29, 1971 on court-appointed experts: *"When first registered on a list drawn up by a court of appeals, experts shall take an oath before the court of appeals having territorial jurisdiction over their place of residence to fulfill their assignment, draft their report, and express their opinion conscientiously and honorably. The oath must be renewed upon re-registration following removal from the list. Experts who are not registered on a list shall take the oath set out in the first paragraph each time they are appointed."*

[6] Article 248 of the French Code of Civil Procedure: *"The expert is prohibited from receiving any payment directly from a party, in any form whatsoever, including reimbursement of expenses, unless authorized by a decision of the judge."*

[7] Article 234 of the French Code of Civil Procedure: *"Experts may be challenged on the same grounds as judges. Where the expert is a legal entity, the challenge may concern either the legal entity itself or the individual(s) approved by the judge. A party wishing to challenge the expert must do so before the judge who appointed them, or before the judge responsible for supervising court-ordered expert investigations, either before the commencement of the expert investigations or as soon as the ground for the challenge becomes known. If the expert considers that grounds for a challenge exist, he/she must immediately inform the appointing or supervising judge."*

[8] Article 233 of the French Code of Civil Procedure: *“The expert, empowered by the judge because of his/her expertise, must personally fulfill the assignment entrusted to him/her. If the appointed expert is a legal entity, its legal representative shall submit to the judge for approval the name of the individual(s) who will fulfill the assignment within the legal entity and on its behalf.”*

[9] Second Civil Chamber of the *Cour de Cassation*, January 11, 1995, No. 93-14697

[10] Second Civil Chamber of the *Cour de Cassation*, April 27, 200, No. 98-13.361

[11] Article 278-1 of the French Code of Civil Procedure: *“The expert may be assisted in the performance of his/her assignment by a person of his/her choice, who acts under his control and responsibility”.*

[12] Second Civil Chamber of the *Cour de Cassation*, June 10, 2004, No. 02-15129

[13] Third Civil Chamber of the *Cour de Cassation*, April 8, 1999, No. 96-21.897

[14] Article 278 of the French Code of Civil Procedure: *“The expert may take the initiative of seeking the opinion of another technician, but only in a specialty distinct from his/her own.”*

[15] Article 239 of the French Code of Civil Procedure: *“The expert shall comply with the deadlines set for the performance of the assignment.”*

[16] Article 279 of the French Code of Civil Procedure: *“If the expert encounters difficulties that prevent the performance of the assignment or if an extension of the scope of the assignment proves necessary, the expert shall so report to the judge. The judge may then, when ruling on the matter, extend the deadline within which the expert must submit his/her opinion.”*

[17] Article 247 of the French Code of Civil Procedure: *“The opinion of the expert may not be used outside the proceedings if its disclosure would infringe upon the privacy of individuals or any other legitimate interest, unless authorized by the judge or with the consent of the concerned party.”*

[18] Article 238 of the French Code of Civil Procedure: *“The expert shall give an opinion on the issues for which he/she was appointed. He/she may not address other issues unless the parties have given their written consent. The expert shall not make any legal determinations.”*

[19] Article 173 of the French Code of Civil Procedure: *“Copies of minutes, opinions, or reports prepared in connection with or following the conduct of preparatory inquiries shall be delivered or sent to each party, either by the clerk of the court that prepared them or by the expert who drafted them, as the case may be. A note of such delivery shall be inserted on the original.”*

[20] Second Civil Chamber of the *Cour de Cassation*, November 24, 1999, No. 97-10.572

[21] Article 16 of the French Code of Civil Procedure: *“The judge must, in all circumstances, ensure compliance with, and personally observe, the adversarial principle. He/she may base his/her decision only on*

*arguments, explanations, and documents submitted by the parties if they have had the opportunity to discuss them in an adversarial manner. He/she may not rely on legal grounds raised on his/her own initiative without first inviting the parties to present their observations.”*

[22] Article 175 of the French Code of Civil Procedure: *“The nullity of decisions and enforcement measures relating to preparatory inquiries is subject to the rules governing the nullity of procedural actions/documents.”*

[23] Article 112 of the French Code of Civil Procedure: *“The nullity of procedural actions/documents may be invoked as and when they are issued/performed; however, it shall be deemed waived if the party invoking it subsequently enters a defense on the merits or raises a procedural bar without first raising the nullity.”*

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