

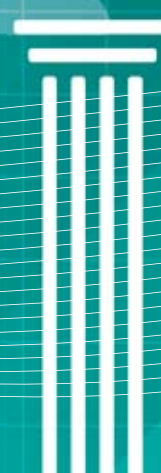
Using videoconferencing

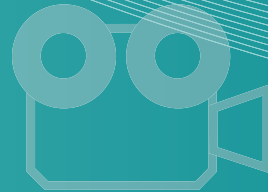
to obtain evidence in civil and commercial matters under Council Regulation (EC) No 1206/2001 of 28 May 2001

A practical guide



European Judicial Network
in civil and commercial matters







This document has been drawn up by the Commission Services and the European Judicial Network in Civil and Commercial Matters (<http://ec.europa.eu/civiljustice>).

Recognising the advantages that videoconferencing can bring to obtaining evidence in cross-border cases, the European Judicial Network in Civil and Commercial Matters has produced this guide to provide practical information to assist judges to make greater use of videoconferencing to obtain evidence in civil and commercial matters under Council Regulation (EC) No 1206/2001 of 28 May 2001.

Furthermore, in the framework of the European e-Justice action plan, the Member States of the European Union have agreed to work together to promote the use of videoconferencing and to exchange experiences and best practices. Such work takes place within the existing legal framework and respects the procedural safeguards in place at both Member State and European Union level.

As a result, a manual and a booklet covering the use of videoconferencing equipment in cross-border court proceedings in the European Union have been completed.

This document is meant to complement that information.

Introduction

Where a case is contested, it is often necessary for a court to obtain evidence in order for a claim to be proved. Evidence can be provided in a number of ways and sometimes it is necessary to hear from people such as witnesses or experts. The process of obtaining evidence becomes more complicated when it has to be obtained from another country. Barriers can be created by the physical distance between the court and the person to be examined and differences between the rules and laws in each jurisdiction.



It was for that reason that one of the first civil judicial cooperation instruments to be adopted by the Council of the European Union was Regulation (EC) No 1206/2001 on the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. While this leaflet concentrates on Regulation (EC) No 1206/2001 it is important

to note that provisions on evidence exist in other instruments as well. For example, under Article 9 of Regulation (EC) No 861/2007, which established a European Small Claims Procedure, a court or tribunal determines the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. It may admit taking of evidence through written statements of witnesses, experts or parties and, importantly, may also admit taking of evidence through videoconference or other communication technology if the technical means are available.

In recognition of the advantages that videoconferencing can bring to obtaining evidence in cross-border cases, the European Judicial Network in civil and commercial matters (EJN civil) has produced this leaflet to provide practical information to assist judges to make greater use of videoconferencing. ●

Regulation 1206/2001

This Regulation lays down procedural rules to make it easier to take evidence in another Member State. The Regulation has been applicable since 1 January 2004 throughout the Union in all Member States except Denmark. Between the Member States concerned it replaces the Hague Convention of 1970.

A Practice Guide which gives more details of the Regulation can be found at:

http://ec.europa.eu/civiljustice/publications/docs/guide_taking_evidence_en.pdf

The Regulation itself can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:174:0001:0024:EN:PDF>

The Regulation applies to only civil and commercial cases and cannot be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated. It provides two main channels for providing the necessary evidence. The first, under Article 10, is where the court in one

Member State requests the court in another Member State to obtain the evidence. The second, under **Article 17**, allows a court in one Member State, with the permission of the requested Member State, to obtain the evidence directly in that Member State.

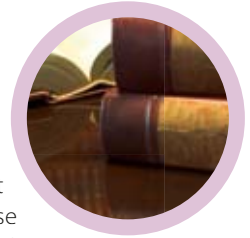
Details of the competent courts in each Member State and the requirements of each jurisdiction can be found on the European Judicial Atlas at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/te_information_en.htm

Where a requested court undertakes to obtain evidence on behalf of a requesting court under **Articles 10 to 12**, that evidence is obtained in accordance with the law of the requested Member State and can be subject to coercive measures.

Where a requesting court wishes to obtain evidence directly under **Article 17** it must apply to the requested Member State's central body or competent authority. There are only

limited grounds on which such a request can be refused. These are – that the request does not fall within the scope of the Regulation; that it does not contain all necessary information; or, that the request is contrary to the fundamental principles of law in the requested Member State. In deciding whether to allow a request under Article 17, the central body of the requested Member State may specify conditions under which the evidence can be obtained. When such a request is accepted, it is the responsibility of the requesting court to designate and provide the person or persons to obtain the evidence. An important distinction that applies to direct taking of evidence is that it can only be performed on a voluntary basis and coercive measures cannot be used. Where a request includes the hearing of a person it is the responsibility of the requesting court to inform that person of these rights. ●



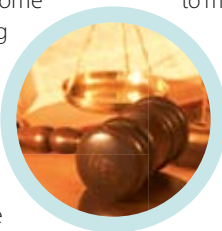
Using videoconferencing

The Regulation encourages the use of communications technology at the performance of the taking of evidence, in particular via videoconference and teleconference. The EJM civil has also promoted the use of videoconferencing both through practical demonstrations at its annual meeting in Lisbon in 2006 and by providing members with the details of the videoconference facilities in the Member States. Information on which courts are equipped with videoconferencing facilities can also be found on the European Judicial Atlas.

Since June 2007 the Justice and Home Affairs Council has been considering developments in the field of e-justice which have included the use of videoconferencing. Representatives of all Member States and EU institutions have expressed support for the development of videoconferencing in cross-border cases. Within the Council, the Working Party on e-justice has produced a

manual and a booklet covering the use of videoconferencing equipment in cross-border court proceedings in the European Union. This practical guide is meant to complement this work.

Despite this encouragement and the work done so far to promote its use, it is clear that there is inconsistent use of videoconferencing in the Member States. In recognition of the advantages that videoconferencing can bring to obtaining evidence in cross-border cases, the EJM civil has produced this leaflet to provide practical information to assist judges to make greater use of videoconferencing.



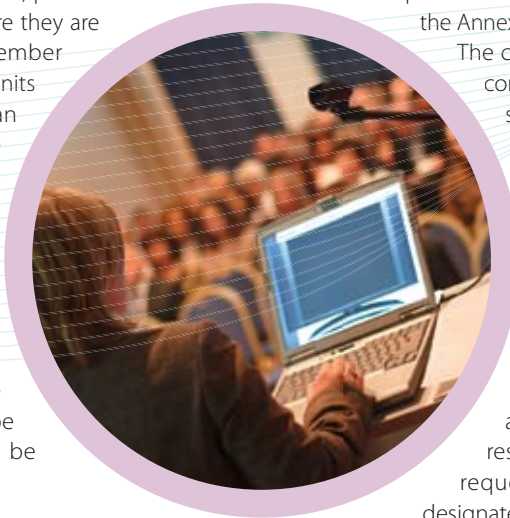
Although a political decision has been made to apply different considerations to the way evidence is handled depending on whether it has been obtained by a requested court on behalf of a requesting court or directly by the requesting court, it is clear that Regulation (EC) No 1206/2001 envisages greater use of modern technology

to facilitate taking of evidence. Recital 8 states that "the efficiency of judicial procedures in civil or commercial matters requires that the transmission and execution of requests for the performance of taking of evidence is to be made directly and by the most rapid means possible between Member States' courts".

The most efficient way to obtain evidence directly is via videoconference. Otherwise, it will be necessary for the witness to travel to the requesting court in another country or for officials from the court to travel to see the witness. This obviously adds time and expense to the procedure. Videoconferencing is a cheap and effective solution to these problems. Although sensitive issues might arise in some family cases where the use of videoconferencing might not be appropriate, in the vast majority of cases within the scope of the Regulation the use of videoconferencing for hearings should not create any barriers.

Videoconferencing facilities are not installed in all civil courts in each Member State but in

some Member States it might be possible to use installed facilities in other local premises such as criminal courts, prisons or in private facilities where they are available. Some Member States have mobile units and equipment can often be hired. As time progresses, it is likely that more and more courts will have the necessary facilities. Of course, the more demand there is for videoconferencing from local courts, the more likely it will be that equipment will be made available.



A court that wishes to obtain evidence directly from a witness in another Member State can do so under **Article 17** of the Regulation. The advantage of such a request is that the evidence can be obtained under the law of the

requesting State. A request needs to be made to the requested Member State's central body or competent authority using Form I in the Annex to the Regulation.

The central body or the competent authority should, within 30 days, inform the requesting court if the request is accepted and, if so, under what conditions. When a request for direct taking of evidence is accepted, it is the responsibility of the requesting court to designate and provide the person or persons to obtain the evidence. It is also the responsibility of the requesting court to inform the witness that the evidence can only be provided on a voluntary basis.

Videoconferencing is also possible under **Articles 10 to 12** of the Regulation where a court requests a court in another Member State to obtain evidence for it. The requested court is required to execute the request within 90 days of receipt. It will do so in accordance with the law of its Member State. The requesting court can ask for the request to be executed in accordance with a special procedure provided that it is not incompatible with the law of the Member State of the requested court or because of reasons of major practical difficulties. In such cases, the parties and/or representatives of the requesting court can be present at the hearing and participate, either in person or via videoconference, provided such participation is allowed under the law of the Member State of the request. It is for the requested court to determine the conditions under which they may participate. ●

Practical considerations

A number of questions arise when deciding whether and how to obtain evidence by videoconference. These questions, together with answers, are provided below. Further information on the situation in each Member State can be found in factsheets on the European Judicial Atlas in Civil Matters¹

1

How do I know whether a Member State will allow either participation in a videoconference or direct taking of evidence via a videoconference?

Check the information given in that Member State's factsheet on the Judicial Atlas website.

2

Are there any restrictions as to the type of evidence that can be obtained or the place where the hearing should be held via videoconference in a particular Member State?

Check the information given in that Member State's factsheet on the Judicial Atlas website.

3

Where can the details of the competent courts under the Regulation be found?

The courts that have been designated by the Member States can be found on the European Judicial Atlas at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/te_searchmunicipality_en.jsp#statePage0

4

How do I find the contact details for the central body or competent authority of another Member State?

These can also be found on the European Judicial Atlas at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/te_centralbody_en.htm

5

If a central body or a competent authority authorises a request to take evidence directly under Article 17 by way of videoconference, how can I

identify the nearest court or other premises to the person to be examined that has videoconferencing facilities?

This information can be found on the European Judicial Atlas at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/te_centralbody_en.htm

6

How do I know in what language the request should be made?

The answer can be found in the section on Communications of the Member States, again on the European Judicial Atlas at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/te_otherinfo_en.htm

7

Which forms do I use to make the request?

Where a request is to be made under **Articles 10 to 12** to participate in taking of evidence via a videoconference, Form A should be completed. Requests for direct taking of evidence under **Article 17** should be made on Form I. These, and all the other forms under the Regulation, can also be found, completed and translated on the European Judicial Atlas at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/te_filling_en.htm

8

How do I know whether costs will be charged by the other Member State?

Check the information given in that Member State's factsheet on the Judicial Atlas website.

9

Who is responsible for notifying the person to be examined that he/she should attend?

Generally, when the request is made to participate in a hearing under **Articles 10 to 12**, the requested court will make the necessary arrangements. Where a request for direct taking of evidence is accepted by a Member State under **Article 17**, that Member State will usually leave the requesting Member State to make the necessary contacts and arrangements. Check the details for each Member State on the Judicial Atlas website.

10

How can the identity of the person to be examined be proved?

Check the information given in that Member State's factsheet on the Judicial Atlas website.

11

Is it possible or allowed to record the hearing?

Check the information given in that Member State's factsheet on the Judicial Atlas website.



12

Which law applies to the execution of the request?

Where a court requests to participate in a videoconference under **Articles 10 to 12**, the law that is applied is the law of the requested Member State. However, the requesting court may ask for a special procedure provided by its law and the requested court will comply with such a requirement unless that procedure is incompatible with its law or for reason of major practical difficulties.

When a request is accepted for direct taking of evidence under **Article 17**, the requesting court executes the request in accordance with the law of its Member State, subject to the fact that no coercive measures may be applied.

13

How do I know in what language the hearing should be conducted and, if interpreters are necessary, who is responsible for providing them?

In general, where a requested court obtains evidence under **Articles 10 to 12**, the hearing will be conducted in the language of that court.

For further information about the use of interpreters and the language that should be used for direct taking of evidence under **Article 17**, check the relevant Member State's section on the Judicial Atlas website.

14

What additional information will the other Member State require?

Check the relevant Member State's factsheet on the Judicial Atlas website.







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