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## Taking evidence by videoconference

Belgium

### 1 Is it possible for evidence to be taken by videoconference either with the participation of a court in the requesting Member State or directly by a court of that Member State? If yes, what are the relevant national procedures or laws that apply?

Yes, evidence can be taken in both of these ways. Procedures have been developed ad hoc; Belgian legislation contains no provisions on videoconferencing, but it does not prohibit it.

### 2 Are there any restrictions on the type of person who can be examined by videoconference – for example, is it only witnesses or can others such as experts or parties also be examined in this way?

Evidence can be taken from both witnesses and experts. In practice, evidence was already taken from parties under Article 17.

### 3 What restrictions, if any, are there on the type of evidence that can be obtained by videoconference?

The national legislation of the requesting court has to be applied in this regard. The taking of evidence requested must not infringe fundamental principles of Belgian national law (Article 17(5)(c)).

### 4 Are there any restrictions on where the person should be examined by videoconference – i.e. does it have to be in a court?

The examination by videoconference does not have to take place in a court.

### 5 Is it permitted to record videoconference hearings and, if so, is the facility available?

The requesting court determines in accordance with its own rules whether the hearing is to be recorded and makes the necessary arrangements.

### 6 In what language should the hearing be conducted: (a) where requests are made under Articles 10 to 12; and (b) where there is direct taking of evidence under Article 17?

a) in Dutch, French or German only (Belgian law).

b) no language requirements.

### 7 If interpreters are required, who is responsible for providing them under both types of hearing and where should they be located?

The requesting court arranges for an interpreter and bears the interpretation costs. Normally, the interpreter provides his/her services at the requesting court when the videoconference takes place. However, there is no reason why the interpreter cannot be physically present with the witness.

### 8 What procedure applies to the arrangements for the hearing and to notify the person to be examined about the time and place? How much time should be allowed when arranging the date of the hearing to enable the person to receive sufficient notification?

This is determined in accordance with the national law of the requesting court.

### 9 What costs apply to the use of videoconferencing and how should they be paid?

The costs are paid by the requesting court.

The telephone connection is initiated by the requesting court. Any travel costs must also be paid by the requesting court. The central body points this out to the requesting court when it acknowledges receipt of the request.

### 10 What requirements, if any, are there for ensuring that the person examined directly by the requesting court has been informed that the performance shall take place on a voluntary basis?

The foreign court informs the witness of the letter of invitation, which specifies the voluntary nature of his/her cooperation.

The central body asks the requesting court to send it the letter of invitation before Form J is sent. This letter must clearly show that the person was informed that attendance at the hearing is voluntary.

### 11 What procedure exists for verifying the identity of the person to be examined?

By means of identity documents.

### 12 What requirements for taking oaths apply and what information is needed from the requesting court when an oath is required during direct taking of evidence under Article 17?

This is done in accordance with the law of the requesting state.

### 13 What arrangements are there for ensuring that there is a contact person at the place of the videoconference with whom the requesting court can liaise and a person who is available on the day of the hearing to operate the videoconferencing facilities and deal with any technical problems?

A member of the central body's staff temporarily assumes the role of coordinator for the purpose of agreeing practical matters such as the date and time of a test hearing and the actual hearing.

An administrator/clerk is responsible for switching the system on and off.

### 14 What, if any, additional information is required from the requesting court?

Requests for additional information are submitted to the requesting court by the central body before the hearing.

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