

Home>Court procedures>Videoconferencing>Taking evidence by videoconference

Taking evidence by videoconference

Poland

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?

In Poland, evidence may be taken by videoconference, in accordance with Articles 10–12 and Article 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, as well as in accordance with the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters [Journal of Laws (*Dziennik Ustaw*) of 2000, No 50, item 582] for other countries (which are not subject to the Regulation).

Videoconferencing is governed by Article 235(2) and (3) of the Code of Civil Procedure and the Regulation of the Minister of Justice of 24 February 2010 on the technical equipment and resources that enable evidence to be taken remotely in civil proceedings.

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?

Polish law imposes no restrictions of this kind: experts, parties and witnesses may be examined by videoconference.

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

Polish law does not lay down any particular restrictions on the type of evidence that may be obtained by videoconference.

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

Polish law does not lay down any particular restrictions on where the person should be examined by videoconference. As a rule, the examination takes place in court, subject to Article 17 of Regulation No 1206/2001 under which the place of examination is determined by the requesting court.

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

Polish law does not lay down detailed provisions on the recording of videoconference hearings; it is up to the judge taking the evidence to decide whether or not to record the videoconference hearing.

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?

As a rule, the hearing is conducted in Polish. If the person being examined does not understand Polish, an interpreter must be present.

There are no special provisions on hearings under Article 17, but when the central body agrees to the direct taking of evidence, it may require the requesting court to provide the interpreter.

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

In principle, for hearings under Articles 10–12, the requested court must provide the interpreter (as a rule, from the list of sworn interpreters). In exceptional circumstances, however, the court may accept an interpreter proposed by a party.

For hearings under Article 17, when the central body requires the requesting court to provide the interpreter, the requested court ensures that an interpreter is present.

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?

For hearings under Articles 10 – 12, the requested court notifies the witness/party of the time and place of the hearing at least 7 days before the date of the hearing. In exceptional circumstances, the requested court notifies the witness/party of the time and place of the hearing 3 days before the date of the hearing.

For hearings under Article 17, the central body notifies the witness/party that it has agreed to the hearing and that the hearing may take place only on a voluntary basis, without the use of coercive measures. It is the responsibility of the requesting court to provide notification of the time and place of the hearing.

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

Where the taking of evidence using modern technologies generates costs for the requested court, the court applies Article 1135'(3) of the Code of Civil Procedure, which provides that if the enforcement of a request from a court or other authority of a foreign country may give rise to costs associated with the use of a method other than that prescribed by Polish law, the court will not enforce the request until the court or other authority of a foreign country has made an appropriate advance payment within the time limit specified.

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 central body notifies the witness/party that it has agreed to the hearing and that the hearing may take place only on a voluntary basis, without the use of coercive measures.

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

The court verifies the identity of the person by requiring him/her to present an appropriate document, such as an identity card, passport or driving licence.

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?

For hearings under Article 17, if the requesting court informs the central body of its intention to take evidence from a witness under oath, the central body may request the text of the oath. If the oath conflicts with basic principles of the law of the requested country, the central body is entitled to refuse to agree to the hearing or to request that the text of the oath used in Polish law be employed.

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?

As a rule, every court employs someone to operate the technical equipment. If there are any problems, the Polish EJM contact point may be contacted.

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

Generally speaking, no such additional information is required under Polish law. However, in certain cases it may be needed.

Last update: 14/09/2016

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