

#### 4.2. The Legal Framework in Civil and Commercial Matters

74. The relevant legal framework for taking of evidence via videoconferencing in civil and commercial matters is Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. There are two possible contexts in which videoconferencing may be used in the cross-border taking of evidence under the regulation. These are the taking of evidence by a requested court under Articles 10 to 12 and the direct taking of evidence under Article 17.

75. Under Articles 10 to 12, the parties and their representatives may be present when evidence is taken by the requested court, if this is provided for by the law of the Member State of the requesting court. The requested court determines the conditions under which parties and their representatives may participate in accordance with Article 10. The requested court notifies them when and where the proceedings will take place. Under Article 11 the requested court may also ask parties and their representatives to be present at, or be involved in the taking of evidence, if the possibility is provided for by the law of its Member State. Representatives of the requesting court may also choose to be present when evidence is taken by the requested court, if this is allowed by the law of the Member State of the requesting court. If participation of the representatives of the requesting court is requested when evidence is taken, the requested court shall determine conditions for participation in accordance with Article 10.

76. In order to facilitate the presence or participation of the parties or the requesting court, the requesting court may ask the requested court to use communications technology, such as videoconferencing, at the performance of the taking of evidence. The requested court must comply with this request unless it is incompatible with its law or by reason of major practical difficulties. In case of non-compliance the requested court has to inform the requesting court.

If there is no access to the technical means, technical means may be made available by the courts by mutual agreement.

77. Except in case of a request for a special procedure by the requesting court, the requested court executes the request in accordance with the law of its Member State. It chairs the hearing and the hearing will normally be held in the official language of the requested court. The requested court is also in charge of arranging the hearing and summoning the witness. If required, coercive measures are applied in accordance with the law of the requested court. The witness may claim a right to refuse to give evidence under the law of the Member State of the requested or the requesting court.

78. Under Article 17, the court may request to take evidence directly in another Member State and submits a request to the central body or competent authority in the other Member State. Direct taking of evidence must occur on a voluntary basis without use of coercive measures. The requesting court must inform persons being heard that direct taking of evidence is voluntary.

Following the request, the central body or competent authority of the requested Member State informs the requesting court if the request is accepted and any conditions that may be required according to the law of its Member State (for example a court of the requested Member State may be assigned to take part in the taking of evidence). The requesting court executes the request in accordance with the law of its Member State, though conditions according to the law of the requested Member State must be respected. As with Article 10, Article 17 encourages the use of videoconferencing. The request may be refused by the central body or competent authority if the request does not fall within the scope of the 2001 Taking of Evidence Regulation, if it does not contain all the necessary information or if direct taking of evidence is contrary to fundamental principles of law in its Member State.

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