

17. The nature of the request for using videoconferencing in mutual legal assistance or taking of evidence is different in civil and criminal matters and details are given in Annex III.

Forms are available in both civil and criminal matters and are sent by the requesting court to the requested court in another country (in criminal matters the use of forms is not obligatory). The forms include information used to contact the parties involved and representatives and details of the court. In some cases, information about payment for the use of equipment and the language to be used in the videoconference may also be given.

18. In civil matters, the 2001 Taking of Evidence Regulation provides for two possibilities for the use of videoconferencing in cross-border taking of evidence: Under Articles 10 to 12 the requesting court may request the requested court in another Member State to enable it or the parties to be present or participate by means of a videoconference in the taking of evidence by the requested court. Such a request may only be refused if it is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties. Article 13 then provides for coercive measures for the execution of the request. However, under Article 14 the witness may claim the right to refuse to give evidence in accordance with the law of the Member State of the requesting or the requested court.

Under Article 17 the requesting court itself takes evidence directly in another Member State with the consent of the central body or competent authority of this Member State. Under Article 17(4) the central body or competent authority is obliged to encourage videoconferencing for this purpose. Article 17(2) specifies that direct taking of evidence may only take place if it can be performed on a voluntary basis.

Apart from the possibility of coercive measures the main differences between the two methods are the court in charge of the taking of evidence and the applicable law.

19. The requesting court will send the request for videoconferencing and the required information together with a request form A or I from the 2001 Taking of Evidence Regulation to the requested court.

The reply to the request is also made using standard forms. If a request to a court in another Member State for participation by means of videoconference is refused, the court uses form E. In case of direct taking of evidence, the central body or the competent authority is obliged to inform the requesting court within 30 days (using form J) whether the request is accepted or not. If a request is accepted the requesting court may obtain the evidence within a timescale it decides.

20. In criminal matters, the requested Member State has to agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing.

Coercive measures may be ordered in the execution of a mutual assistance request (e.g. summons to appear with a sanction in the event of non-appearance) if the offence described in the request is also punishable in the requested state.

21. Where the videoconferencing equipment to be used is not supplied by the requesting court, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by the authority requesting the videoconference.

In accordance with the 2001 Taking of Evidence Regulation the general principle is that the execution of the request for indirect taking of evidence shall not give rise to any claim for any reimbursement of taxes or costs. However, if the requested court so requires, the requesting court should ensure the reimbursement of costs occasioned by the use of videoconferencing.

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