

## Avalaht>Kohtumenetlused>Videokonverentsid>Tõendite kogumine videokonverentsi vahendusel

### Taking evidence by videoconference

The European Judicial Network in civil and commercial matters (EJN civil) has produced a set of factsheets that provide practical information on rules, procedures and technical facilities for videoconferencing between courts in different EU countries.

Council Regulation (EC) No 1206/2001, which covers cooperation between courts in different EU countries on the taking of **evidence in civil and commercial cases**, provides a general legal framework for the taking of evidence in another country than that of the court. However, each EU country has its own procedural laws in this area, so the details of the process vary according to the law of the country receiving a request for cooperation.

To make it easier for judicial authorities in different EU countries to work together and make full use of videoconferencing for the taking of evidence in another EU country, the [European Judicial Network in civil and commercial matters](#) (EJN civil) has produced a set of **factsheets**. These provide practical information on rules, procedures and technical facilities in different EU countries.

**Please select the relevant country's flag to obtain detailed national information.**

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### Taking evidence by videoconferencing - 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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### **Taking evidence by videoconferencing - Czech Republic**

#### **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?**

Following an amendment to Act No 99/1963, the Code of Civil Procedure, as amended, in effect since September 2017, the use of videoconferencing equipment in civil proceedings is governed directly by the Act. Section 102a of the Code of Civil Procedure expressly stipulates that a court may perform tasks using videoconferencing equipment at the request of a party or when it is deemed useful. Videoconferencing may be used in particular for enabling the presence of a party or an interpreter at a hearing or for examining a witness, expert or party.

The matter is further governed under Section 10a of Instruction of the Ministry of Justice No 505/2001 issuing internal and clerical rules for district, regional and high courts.

#### **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?**

The act expressly provides for the examination of witnesses, experts and parties. However, it does not in any way restrict the category of persons in advance; it is possible to link other persons to a hearing by videoconference, for example interpreters. Videoconferencing is restricted by its usefulness, or at the request of a party.

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

There are no general restrictions in the text of the law. However, a restriction may ensue from the specific circumstances of a case (technical feasibility etc.).

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

If the presiding judge (a judge sitting alone) performs tasks by videoconference, the summons must also state the place and time of the videoconference.

Therefore, the use of any suitable premises for the task, for instance places where experts or witnesses are located (e.g. hospitals, laboratories), is not precluded.

However, it is important for court employees entrusted with performing such tasks by the presiding judge (a judge sitting alone) to verify the identity of the person whom the task concerns. It is envisaged that a person is usually examined at court, in prison or at healthcare facilities.

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

The Act stipulates that an audio-visual recording be taken whenever a task is performed by videoconference. If a report is drawn up alongside a recording, the person whom the task concerns does not have to sign the report.

#### **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?**

If the witness does not speak the language of the proceedings, he or she has the right to an interpreter under Article 37(4) of Constitutional Act No 2/1993 (the Charter of Fundamental Rights and Freedoms). According to Section 18(2) of the Code of Civil Procedure, the court must appoint an interpreter for any party whose first language is not Czech, whenever the need arises in the proceedings.

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

According to Section 18(1) and (2) of the Code of Civil Procedure, the court is required to provide the parties with equal opportunities to exercise their rights and is required to appoint an interpreter for any party whose first language is not Czech, whenever the need arises in the proceedings.

It can be arranged for an interpreter to be present via videoconferencing equipment. It is therefore not required for the interpreter to be physically present in the same location as the person being examined.

#### **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?**

The court must summon a person in accordance with Section 51 of the Code of Civil Procedure. Except where this act or special legislation concerning summoning requires further particulars, the summons must contain the following information: the name of the case to which the person is summoned, the purpose, location and starting time of the court proceedings, the reason for the summons, the role in which the person is being summoned in the proceedings, the obligations of the person summoned and, if necessary, the expected duration of the proceedings. When videoconferencing equipment is used at a hearing, the person summoned is notified about when and where they should present themselves.

The summons may be served on paper or by electronic means and, in urgent cases, by telephone or fax.

If the witness or expert is to be examined by videoconference and the person to be examined is required to present themselves in a district under the jurisdiction of a different court, that court will be responsible for the summons; the requesting court will ask the other court to carry out this task. According to Section 115(2) of the Code of Civil Procedure, the summons must be served upon parties in a manner that allows them sufficient time to prepare; generally this is at least 10 days before the date of the hearing, unless a preparatory hearing has been held.

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

The use of videoconferencing entails data transfer costs. These costs should be covered by the requesting court which initiated the videoconference.

#### **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?**

According to Section 126(1) of the Code of Civil Procedure, any natural person who is not a party to the proceedings is required to attend court when summoned and to give a witness statement. The witness may refuse to testify only in cases where such testimony would give rise to the risk of criminal prosecution of the witness or their relatives. Witnesses are always informed before the hearing of the significance of their testimony, of their rights and obligations and of the criminal consequences of a false testimony.

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

At the start of the hearing the court is required under Section 126(2) of the Code of Civil Procedure to verify the identity of the witness. This is generally done by requiring the presentation of an identity card or passport.

Where an examination is conducted using videoconferencing equipment, a court employee entrusted with performing this task by the presiding judge (a judge sitting alone) must verify the identity of the person to be examined using the videoconferencing equipment. With the consent of the presiding judge (a judge sitting alone), the person verifying identity at the premises where the person being examined is located may also be an employee of the court or prison or detention institution holding sectioned persons, provided that this person has been entrusted with that task.

#### **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?**

Under Section 104(1) of Act No 91/2012 on private international law, witnesses, experts and parties may – if so requested by an authority in another country – be heard under oath. For witnesses and parties to proceedings, the oath reads: ‘I swear on my honour that I will answer every question asked by the court fully and truthfully and that I will withhold nothing.’ For an expert, the oath reads: ‘I swear on my honour that the opinion I will give will be according to the best of my knowledge and belief.’ If there is a subsequent oath, the wording of the oath will be modified accordingly.

**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?**

Specific arrangements are agreed upon during preparations for the videoconference and are based on the needs of the requesting and requested courts.

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

Specific arrangements are agreed upon during preparations for the videoconference and are based on the needs of the requesting and requested courts.

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**Taking evidence by videoconferencing - Germany**

**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?**

The taking of evidence by videoconference is permitted in German civil proceedings under the first sentence of Section 128a(2) of the Code of Civil Procedure (ZPO *Zivilprozessordnung*) where the parties so agree. The examination must be transmitted simultaneously in video and audio form to the place in which a witness or expert is located during the examination and to the courtroom. Where parties, legal representatives or advisors have been authorised to be in another place, the examination must also be simultaneously transmitted in video and audio form to that place. For video examinations by a German court on the basis of an incoming request in accordance with Regulation (EC) No 1206/2001 (‘active’ judicial assistance), Section 128a of the ZPO may have to be applied with some modifications, because the court taking evidence is not the same as the court hearing the proceedings, which is interested in the direct impression given. Where the requesting court asks to take evidence directly under Article 17 of the Regulation (‘passive’ judicial assistance), in principle all requests for the direct taking of evidence using communications technology must be granted, and the taking of evidence over and above Section 128a of the ZPO is also possible. Requests may be refused only for the reasons listed in Article 17(5). However, the central body may lay down conditions for the direct taking of evidence in accordance with German law.

**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?**

Witnesses, experts and parties can be examined by videoconference (first sentence of Section 128a(2) ZPO).

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

Under German civil procedure law, evidence may be taken by examining witnesses, experts and parties via videoconferencing technology (Section 128a(2) ZPO). The taking of other evidence (documents and visual inspection) by videoconference is not specifically permitted.

**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 law does not specify in what place the person to be examined must be. However, under German civil procedure law the place from where transmission to the courtroom is carried out must be in Germany.

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

The first sentence of Section 128a(3) ZPO prohibits the recording of videoconference hearings. This prohibition also covers evidence taking in the course of judicial assistance with the direct taking of evidence under Article 17 of the Regulation, since it is a fundamental principle of German procedural law.

**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) For requests under Articles 10 to 12, the hearing must be in German. Where the proceedings involve persons who do not have a command of German, an interpreter must be used. The services of an interpreter may be dispensed with where all the persons involved have a command of the foreign language concerned.

b) In the case of judicial assistance with the direct taking of evidence, the requesting court determines the language of examination. However, the authorisation under Article 17(4) can be used by the central body to lay down conditions for the direct taking of evidence such as the language of the hearing or examination.

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

In the case of ‘active’ judicial assistance, the German court providing the assistance is responsible for conducting proceedings and taking evidence. An interpreter must be used for the taking of evidence by German courts even when only one of the persons involved does not have a command of German. Whether the person has the required knowledge of German must be checked by the court whether or not the parties so request. The court is free to choose the interpreter. In the case of the ‘passive’ taking of evidence under Article 17, whether interpreters are required and which interpreters are selected is decided by the requesting court. Under Article 17(4) the central body may grant authorisation under certain conditions: it may for example require that interpreters be used. As part of those conditions, the central body may also order that the evidence be taken in German.

**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?**

In the case of active judicial assistance, witnesses and experts are summoned informally by the administrative office of the requested court unless the requested court decides that formal service is to be made. Where the court orders the examination to be conducted by videoconference, the persons whose testimony is to be transmitted must be summoned to appear at the premises from where the transmission is to take place. The summons must specify the parties, the subject of the examination, the date of the examination and the consequences of failure to appear. The summons must include precise details of the location and time of the examination. No specific period of advance notice is laid down.

Where evidence is to be taken directly by the requesting court under Article 17 of the Regulation, the person to be examined must be informed about the time and place of the examination by the requesting court. Time and place generally depend on the situation in the German courts (where the system is located and when it can be used). The time and place of the examination are therefore closely linked to authorisation from the central body. In principle, there is no fixed deadline; however the fact that international deliveries by post take longer should be taken into consideration.

There is no provision for a special procedure relating to planning the actual videoconference. In practice, the central body routinely nominates a contact person at the court where the videoconference is to take place. This person is then able to answer any practical questions.

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

The use of videoconferencing technology entails the cost of purchasing, maintaining and operating the facilities. These costs cannot be charged to those involved in civil proceedings. Telecommunications fees are also incurred. The requested court may request reimbursement of the telecommunications fees under Article 10(4) in conjunction with Article 18(2) of the Regulation.

**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?**

Under Section 63(2) of the Regulation on Judicial Assistance in Civil Cases (ZRHO *Rechtshilfeordnung für Zivilsachen*) the requesting court must inform the person to be examined that the examination is being conducted on a voluntary basis.

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

Where there are doubts as to the identity of the person to be examined the court is required to verify this at any stage of the proceedings.

**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?**

Where a German court is requested to take evidence for the requesting court by videoconference, this, and therefore also the taking of oaths, is done in accordance with the procedural rules of the requesting court. Since the cooperation of the person providing the information in the direct taking of evidence and therefore their cooperation in the taking of an oath is in any case voluntary (and the person must be formally so advised), it is not possible for the requested State to lay down further requirements for the taking of oaths. However, the central body must in any event ensure compliance with any prohibition from giving testimony or being examined which the person providing the information is not entitled to waive (under German law). Examples of this are the bans on examining German public servants without the prior approval of the authority for which they work, or examining doctors without their being released from their duty of confidentiality.

Whether it is possible to take an oath and what information is needed from the requesting court is determined by the relevant central body. In deciding on authorisation, the central body must ensure that any prohibition from giving testimony imposed on the person providing the information is not circumvented. For that reason, the central body may for example ascertain the circumstances in which the person providing the information is supposed to have acquired it. For example, German law makes the testimony of German public servants subject to the prior approval of the authority for which they work.

**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?**

The judicial system is organised federally and is the responsibility of the relevant *Land's* judicial administration. This means that there are no standard rules on this issue at national level and that the evidence-taking procedure is conducted and implemented by the relevant *Land's* judicial administration. The procedures may therefore vary considerably between *Länder*. In practice, the procedural rules are drawn up by the Higher Regional Court in whose jurisdiction the requested court is located.

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

Requests for the taking of evidence received from abroad and communications in accordance with Regulation (EC) No 1206/2001 must be in German or be accompanied by a translation into German (Section 1075 ZPO).

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**Taking evidence by videoconferencing - Estonia**

**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, it is possible for evidence to be taken by videoconferencing. Article 10(4) of Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters provides for the right to request the use of videoconferencing.

Videoconferencing may also be used in the taking of evidence under Article 17 of the Regulation; the central body or the competent authority are required to encourage the use of communications technology, such as videoconferences and teleconferences. Estonian courts have the necessary facilities for videoconferencing. Under Section 15(6) of the Code of Civil Procedure (available online [here](#)), the provisions of this Code apply to assistance for taking evidence in Estonia on the basis of requests by courts of the Member States of the European Union in so far as not otherwise provided by the provisions of Council Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

According to Section 15(5) of the Code, unless otherwise provided by law or an international agreement, an Estonian court will provide procedural assistance in the performance of a procedural act at the request of a foreign court if, pursuant to Estonian law, the requested procedural act falls within the jurisdiction of the Estonian court and is not prohibited by law. A procedural act may also be performed pursuant to the law of a foreign state if this is necessary for the conducting of proceedings in the foreign state and the interests of the participants in the proceeding are not thereby prejudiced. Court sessions held in the form of a procedural conference are regulated by Section 350 of the Code. No specific provisions or restrictions apply to performing a videoconference under Regulation 1206/2001, including a procedural conference performed directly by the requesting court of another Member State under Article 17 of the Regulation.

**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?**

In accordance with Section 350(1) of the Code of Civil Procedure, a participant in a court session in the form of a procedural conference has the opportunity to perform the procedural acts in real time, i.e. he or she may give a statement under oath or a statement not given under oath in a proceeding on petition; according to Section 350(2), a witness or expert may also be heard in the form of a procedural conference.

That is to say, a participant in a proceeding can give a statement under oath or, in a proceeding on petition, a statement not given under oath by way of a procedural conference, and a witness or expert can also be heard by way of a procedural conference.

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

See the reply to the previous question.

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

Under Section 350(1) of the Code of Civil Procedure, a court may organise a session in the form of a procedural conference such that a participant in the proceeding or his or her representative or adviser has the opportunity to be in another place at the time of the court session and perform the procedural acts in real time at that place.

That is to say, a court may organise a procedural conference in such a way that a person does not have to be in a court when examined.

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

Yes, it permitted to record court sessions. Recording is to be performed according to the procedure provided in Section 52 or Section 42 of the Code of Civil Procedure. The remote hearing technology used in courts enables hearings to be recorded under Section 52 of the Code.

**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?**

Under Section 32(1) of the Code of Civil Procedure, the language of judicial proceedings and court procedure is Estonian. Pursuant to Section 32(2) of the Code of Civil Procedure, the minutes of court sessions and other procedural acts are prepared in Estonian. A court may also record any testimony or statement given in a court session in a foreign language in the minutes in the language in which it is given in addition to the translation thereof into Estonian if it is necessary for an accurate presentation of the testimony or statement. The Estonian Code of Civil Procedure does not include any specific provisions on the language regime for taking testimony or a statement at the request of a court of another Member State under Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, including on the language regime for the taking of evidence under Article 17 of the Regulation.

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

According to Section 34(1) of the Code of Civil Procedure, if a participant in a proceeding is not proficient in Estonian and he or she does not have a representative at the proceeding, the court involves, if possible, an interpreter or translator in the proceeding at the request of such a participant in the proceeding or at the initiative of the court. An interpreter or translator need not be involved if the statements of the participant in the proceeding can be understood by the court and the other participants in the proceeding. If it is unable to immediately involve an interpreter or translator, the court will make a ruling whereby the participant in the proceeding who needs the assistance of an interpreter or translator is required to find an interpreter, translator or representative proficient in Estonian for himself or herself within a time limit set by the court (Article 34(2) of the Code). The Estonian Code of Civil Procedure includes no specific provisions on the location of an interpreter or translator used in the taking of evidence under the Regulation.

**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?**

According to Section 343(1) of the Code of Civil Procedure, in order to notify the time and place of a court session, the court serves summonses to the participants in the proceeding and other persons to be invited to the court session. According to Section 343(2) of the Code, the interval between the date of serving summonses and the date of the court session must be at least ten days. The interval may also be shorter if the participants in the proceeding agree thereto.

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

The costs applying to the taking of evidence under Regulation 1206/2001 are specified in Article 18 of the Regulation. Under Section 15(4) of the Code of Civil Procedure, the requesting court does not cover the costs of the procedural act. The court that performs the procedural act informs the requesting court of the costs, and such costs are deemed to be expenses relating to the matter being heard. As costs essential to the proceeding, the costs of taking evidence are to be paid in accordance with Section 148(1) of the Code, which states that unless the court rules otherwise, the costs essential to proceedings are paid in advance, to the extent ordered by the court, by the participant in the proceeding who filed the petition to which the costs are related. If a petition is filed by both parties or if a witness or expert is summoned or an inspection is conducted at the initiative of the court, the costs are shared equally by the parties. As the courts have videoconferencing facilities, no costs should apply to their use.

**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?**

Article 17(2) of the Regulation applies to informing persons that being examined directly by a requesting court is voluntary.

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

Under Section 347(2)1) of the Code of Civil Procedure, at the beginning of a court session the court ascertains which of the persons summoned are present at the session and their identities. The Code does not provide a specific procedure for identity verification at a court session. The court is required to ascertain the identity of the persons summoned. For that purpose, it checks, for example, a photo identification document of the person summoned. The identity of a person participating through a videoconference can, for instance, be determined on the basis of a copy of a document submitted to a court in advance.

**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?**

Under Section 269(2) of the Code of Civil Procedure, a participant in a proceeding must take the following oath before giving testimony:

"I, (name), swear by my honour and conscience that I shall disclose the whole truth about the matter without concealing, adding or changing anything." A participant in a proceeding takes the oath orally and signs the text of the oath.

According to Section 36(1) of the Code, a person who is not proficient in Estonian must give the oath in a language in which he or she is proficient; according to Section 36(2), a signature is given on the Estonian text of the oath, which is translated directly to the person before he or she signs it.

The second sentence of Section 262(1) of the Code provides that before giving testimony, the court must explain the obligation of a witness to tell the truth and the contents of Sections 256-259 of the Code to the witness. Under Section 303(5) of the Code, the provisions concerning the hearing of witnesses also apply to the hearing of experts. An expert who is not a forensic expert or an officially certified expert is cautioned, before he or she submits the expert opinion, against knowingly providing an incorrect expert opinion, and the expert confirms this by signing the court minutes or the text of the caution. The signed caution is submitted to the court together with the expert opinion.

**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?**

According to Section 350(3) of the Code of Civil Procedure, in a court session organised in the form of a procedural conference, the right of every participant in the proceeding to file petitions and applications and to formulate positions on the petitions and applications of other participants in the proceeding must be guaranteed and other conditions of the court session met in a technically secure manner during the real time transmission to the court of image and sound from the participant in the proceeding not present in court premises and vice versa.

Every court has a Centre of Registers and Information Systems employee working as an inhouse IT specialist, who ensures that the videoconferencing facilities are functioning and resolves any technical problems.

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

The required information is shown on the application form. Any additional information required depends on the specific circumstances of each court case.

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## Taking evidence by videoconferencing - Ireland

**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?**

It is possible for evidence to be taken by videoconference in the courts of Ireland either with the participation of a court in another Member State or directly by a court of that Member State. Procedures include High Court Practice Direction "HC45 - Use of video conferencing link for taking evidence in civil cases."

**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?**

There are no restrictions of the kind suggested on the type of person who can be examined.

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

There are no restrictions on the type of evidence that can be obtained.

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

There are no restrictions, subject to the acquiescence of the judge.

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

There is a facility to record videoconference hearings in Ireland. Access to such a recording would have to be ordered by the court.

**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?**

The hearing should be conducted in English or Irish if conducted in Ireland. However, in the case of a hearing outside Ireland there are no restrictions as to language.

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

If the court is in Ireland the interpreter will be provided by the court authorities in Ireland if the matter relates to a Family Law or criminal matter. In a civil matter it is the responsibility of the parties to arrange interpretation.

If the requesting court cannot understand English or Irish it is the responsibility of that court to provide for its own interpretation.

There are no restrictions on where the interpreter should be located.

**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?**

All arrangements will be agreed between the two courts. Testing prior to the court is recommended to ensure the link operates adequately.

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

Costs will vary depending on a number of circumstances including the place of the videoconference (i.e. whether it is a court or another premises); the time of the hearing (i.e. if it is out of normal court hours staff will be required to stay longer); whether any special procedures are required; and whether any costs arise through the use of the equipment. The requested court will inform the requesting court of the costs. Payment should be made in Euro.

**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?**

It is a matter for the requesting court to inform the witness.

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

It is for the court to satisfy itself as to the identity of the person being examined.

**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?**

The oath should be made under the normal procedures for courts in Ireland.

**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?**

This is a matter to be agreed between the two courts.

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

None except if there are any special requests (e.g. sign language, wheelchair access, special religious requirements for the oath etc.).

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## Taking evidence by videoconferencing - Greece

**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, but (for the time being) only in the Athens Court of First Instance.

**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?**

There are no restrictions. All participants in the proceedings may be examined by videoconference.

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

There are no restrictions on the oral examination of witnesses, parties, experts, etc.

**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 may take place in specially designed rooms in a court or a Greek consular authority abroad.

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

It is permitted to record videoconference hearings, and the registrar of the court or secretary of the Greek consular authority abroad draws up minutes.

**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?**

The hearing has to be conducted in Greek; if necessary, an interpreter will be present.

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

If a party to the proceedings asks the court to examine a witness, a party or an expert who is to testify via videoconference but who does not speak Greek, the responsibility for finding interpreters and paying their fees lies with that party. Interpreters must be in the same room as the judge who conducts the video conference or the secretary of the Greek consular authority abroad.

**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?**

According to Article 3 of Presidential Decree 142/2013: 'The court shall decide of its own motion or at the request of a party whether a videoconference should be held for a specific case. It is in the power of the court to decide whether to accept such a request or not, after determining whether the use of this technology is necessary for the effective conduct of the proceedings. Having regard to the circumstances of each case, the court may approve the request for a videoconference while requiring additional guarantees for the proper conduct of the proceedings. (a) At the request of a party: The party concerned must file with the registrar of the court where the case is being heard a request for a hearing by videoconference (Article 270(7) of the Code of Civil Procedure) or for questioning by videoconference or for testimony to be given by videoconference (Article 270(8) of the Code of Civil Procedure). The request shall indicate the court or the consular authority of the remote location, the names of the persons who are to participate in the videoconference, their addresses (including email addresses) and the phone and fax numbers at which they may be found, the procedural step for which the videoconference is requested, the planned duration, and any special equipment required. It shall also include any special conditions set by the parties for conducting the videoconference. The request may be filed at any time and at any stage of the proceedings, provided that accepting it would not exceed the time-limits for the procedural step set out in the Code of Civil Procedure. The request and all the related supporting documents may also be submitted electronically in accordance with the applicable provisions. Communication with a view to the planning and conduct of the videoconference shall be the responsibility of the officials of the court and the remote location, and may take place by any appropriate means, such as telephone, email or fax. The request shall be approved or rejected by court decision. The decision shall be communicated by the registrar to the requesting party by any appropriate means. If the request is accepted, the requesting party shall inform the other parties that the procedural step is to take place by videoconference. (b) Of the court's own motion: The decision to conduct a videoconference may be taken by the court trying the case and communicated to the parties of its own motion'.

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

If a party to the proceedings asks the court to examine a witness, a party or an expert who is to testify via videoconference but who does not speak Greek, the responsibility for finding interpreters and paying their fees lies with that party. The party pays the fee directly to the interpreter.

#### **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 person is informed by the court.

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

The judge conducting the proceedings has to verify the identity of the person to be questioned. In order to identify a person appearing in the remote room, the judge is assisted by the registrar or secretary at the remote location, or by another person there who has been authorised by the consul.

#### **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?**

The witness, expert etc. examined is asked by the judge conducting the proceedings whether he or she prefers to swear a religious or a civil oath. The same applies to interpreters before they embark on their duties.

#### **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?**

The responsible court officials must be present before and during the videoconference.

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

None.

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### **Taking evidence by videoconferencing - Spain**

#### **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?**

This can be done in two ways.

Rules and regulations:

- Article 177 of the Law on Civil Procedure (Ley de Enjuiciamiento Civil (LEC)) in accordance with Law 29/2015 of 30 April 2015 on international legal cooperation in civil matters;
- Article 229 of the Organic Law on the Judiciary (Ley Orgánica del Poder Judicial, (LOPJ)) with regard to videoconferences; Article 229(3) of the Organic Law on the Judiciary allows for statement-taking, questioning, taking of evidence, confrontations of witnesses, examinations, reports, ratification of expert opinions and proceedings to be conducted by videoconference, in the presence of the judge or court, and in the presence or with the involvement of, where appropriate, the parties. It ensures in all cases that is possible for each party to question and counter the other party's evidence and safeguards the right to defence. These are public proceedings, apart from in exceptional cases.
- Regulation No 1/2018 on international judicial assistance and international judicial cooperation networks.

#### Cases where Spain requires the cooperation of a foreign authority

In these cases, Law 29/2015 is subsidiary in accordance with the principle of primacy of EU law, which gives priority in this field to the application of European Union rules and the international treaties and agreements to which Spain is a party. In the field of international legal cooperation in civil matters, the Spanish authorities may cooperate with foreign authorities; although reciprocity is not required, the Government may, by Royal Decree, stipulate that the authorities will not cooperate with the authorities of a foreign state if there is a repeated refusal of cooperation or a legal prohibition on the provision of cooperation by the authorities of that State.

#### Should the Spanish courts be able to establish direct judicial communication:

The laws in force in each State are always respected. Direct judicial communication occurs between national and foreign courts without any intermediary. Such communication does not affect or compromise the independence of the courts involved or the rights to defence of the parties.

#### The Spanish authorities refuse requests for international legal cooperation in civil matters if:

- a) the object or purpose of the cooperation requested is contrary to public order;
- b) the process giving rise to the request for cooperation falls under the exclusive competence of the Spanish jurisdiction;
- c) the content of the intended act does not correspond to the powers of the requested Spanish court. Where appropriate, the Spanish court may send the request to the competent authority and inform the requesting authority thereof;
- d) the request for international cooperation does not meet the content and minimum requirements required by Law 29/2015 in order to be processed;
- e) the government establishes by royal decree that the Spanish authorities will not cooperate with the authorities of a foreign state that has repeatedly denied requests for cooperation or legally prohibits provision of cooperation by the authorities of that State.

**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?**

There are no restrictions regarding the involvement of parties to the proceedings or of any other person giving evidence, whether they are witnesses or experts. Assessment of the suitability of the evidence and of the information supplied to experts is at the court's discretion.

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

Restrictions, which are always exceptional and must be established by a reasoned judicial decision that takes into account the proportionality of the restriction, affect the protection of fundamental rights or the protection of the best interests of minors.

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

It must take place at the court where the proceedings are held and before which the evidence is taken at a public hearing or, in exceptional cases, a restricted hearing. There is no restriction concerning the location of the person taking part in the proceedings by videoconference. The registrar at the court (Letrado de la administración de justicia) before which the proceedings are conducted must establish, in the court itself, the identity of the persons taking part by videoconference, through the prior submission or direct presentation of documents or through personal knowledge.

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

Yes. Furthermore, they must be recorded.

In accordance with Article 147 of the Law on Civil Procedure, oral proceedings, hearings and appearances must be recorded on a medium suitable for recording and reproducing sound and image. All courts in Spain have audiovisual devices to record trials and hearings. The recordings are archived in DVD format by the court registrar. A copy can be issued to the parties, at their expense.

**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?**

Where a Spanish court is involved, it would appear to be essential for the proceedings and related documents to be in Spanish, although one of the other official languages of certain regions of the country may be accepted (Galician, Catalan, Valencian and Basque) in the event that the persons being questioned by videoconference know and want to use those languages.

In the case of Article 17, there is no objection to using the language of the requesting country since giving evidence is performed on a voluntary basis.

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

In civil cases, interpreters may be used both during the proceedings and afterwards in order to document the proceedings; if they are not provided by the party that requires interpretation, they will be provided by the court services, which have been decentralised in the case of some autonomous communities. In other cases, such services are provided by the Ministry of Justice. The cost of providing these services may be attributed to the party that has been ordered to bear the costs, with due regard to cases of entitlement to free legal assistance.

In order to effectively guarantee further questioning and countering of evidence during the proceedings, the interpreter may be located either at the court or with the person who will appear at the hearing by videoconference.

In all cases, the interpreter will be required to take an oath or swear to tell the truth and act with the greatest possible objectivity in the performance of his or her duties.

**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?**

The internal procedure for questioning, in the case provided for by Article 10 of the Regulation, is laid down in Articles 301 et seq of the LEC with regard to questioning the parties; in Articles 360 et seq with regard to questioning witnesses; and in Articles 335 et seq with regard to issuing reports and submitting them for examination and cross-examination at public hearings by experts.

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

In principle, videoconferencing is free, but if interested parties wish to obtain a copy of the recording, they must provide the appropriate medium or pay the corresponding cost.

**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?**

This is done under the direction of the Spanish court.

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

See answer to Question 4 above.

The registrar at the court before which the proceedings are conducted must establish, in the court itself, the identity of the persons participating by videoconference, through the prior submission or direct presentation of documents or through personal knowledge.

**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?**

It is necessary to distinguish between the following cases:

- a) The parties are not required to take an oath or swear during questioning, although in the notification for verification, the party concerned must be informed that in the event of an unexcused failure to appear, the court may consider the facts in which this party was personally involved as having been recognised; establishment of these facts as certain is highly detrimental to the party.
- b) Witnesses: before giving evidence, each witness is required to take an oath or swear to tell the truth, under threat of the penalties established for the crime of perjury in civil cases. The court will inform the witness of these penalties if the witness is unaware of them. Witnesses under the age of criminal responsibility are not required to take an oath or swear to tell the truth.
- c) Experts: when submitting their opinion, experts must declare under oath or swear to tell the truth, and declare that they have acted and, where appropriate, will act as objectively as possible, taking into consideration both the factors that may favour and those likely to be detrimental to either party, and that they are aware of the criminal sanctions that could be incurred if they fail to fulfil their duty as experts. This oath or promise is reiterated during the hearing when the opinion is submitted for the adversarial proceedings between the parties and the court.

**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?**

Arrangements for the audiovisual media are made in advance. The Senior Judge's office (Secretaría del Decanato) or the court staff set the date, time and place where the videoconference will take place, ensuring that a sufficient number of staff will be present for it to take place. Tests are usually performed in advance to ensure that connections and equipment are functioning properly.

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

Any information considered appropriate for the taking of evidence to run as properly and as smoothly as possible.

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#### **Taking evidence by videoconferencing - Croatia**

### **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 the Republic of Croatia, the taking of evidence by examining a witness, a party or an expert can be performed by videoconference in accordance with Articles 10 to 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 (hereinafter referred to as 'Regulation') in such a way that when the taking of evidence has to be performed according to the Regulation, the court in the Republic of Croatia may:

1. request taking of evidence directly from a competent court of another Member State, or
2. in accordance with the assumptions in Article 17 of the Regulation request direct taking of evidence in another Member State.

Taking of evidence according to the Regulation referred to above is laid down in Articles 507d to 507h of the Civil Procedure Act (*Zakon o parničnom postupku*) ('*Narodne novine*' (NN; Official Gazette of the Republic of Croatia) Nos 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14; hereinafter referred to as 'ZPP').

### **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?**

Videoconference can be used to examine witnesses, as well as for taking evidence from specialists / experts and parties.

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

The Republic of Croatia has no special restrictions on the type of evidence that can be obtained by videoconference. The court conducting the proceedings decides what type of evidence will be taken, and how, in order to establish a certain fact. The court decides at its own discretion which of the facts it will consider as proven following a conscientious and careful assessment of each particular piece of evidence and of all pieces of evidence together, based on the outcome of the entire process. However, videoconference is generally used for taking evidence by hearing the parties and witnesses, as there are certain factual and technical obstacles to taking evidence by inspecting a document or performing an inquiry on the spot.

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

As a rule, a hearing is performed at a court, but there are no special legal restrictions regarding locations where the party has to be examined by videoconference.

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

There are no legal provisions specifically requiring taping or recording of videoconference hearings, but Articles 126a to 126c of the ZPP provide a legal basis for voice recording of hearings. Voice recording is determined by the court with a formal decision either *ex officio* or at the request of the parties. The methods of storage and transmission of voice recordings, technical requirements and modes of recording are prescribed by the Court Rules (*Sudski poslovnik*) (NN Nos 37/14, 49/14, 08/15, 35/15, 123/15 and 45/16).

### **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?**

If a request is made in accordance with Articles 10 to 12 of the Regulation, the hearing is typically carried out in Croatian, while the use of minority languages in civil proceedings is regulated by a special law (civil proceedings are to be conducted in the Croatian language unless some other language is prescribed by law for specific courts). Furthermore, pursuant to Article 102 of the ZPP, if the proceedings are not conducted in the language of the party or other participants in the proceedings, interpreting into their language will be provided of what is presented at the hearing and of the documents used at the hearing for presenting the proof.

In the case of direct taking of evidence in accordance with Article 17 of the Regulation, the taking of evidence by the hearing can be performed in a foreign language as it is performed directly by the court which requested the hearing, although adequate translation must be ensured into a language understood by the parties or other participants in the proceedings.

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

In principle, the requested court will provide a certified court interpreter for the needs of hearings under Articles 10 to 12 of the Regulation. Under certain conditions (Article 251 referring to Article 263 of the ZPP), the court may decide that interpreting will be done by court interpreters suggested by the party. Equally, the use of an interpreting service may be agreed between the court which requested the taking of evidence and the requested court, and the interpreter may be provided by one or the other court. In practice, court interpreters are assigned to the place of the person who needs interpreting or of the requested court, if the requesting court conducts the hearing in its own language in accordance with Article 17 of the Regulation, or to the place of the requesting court, if the hearing is performed by the requested court in line with Articles 10 to 12 of the Regulation.

### **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?**

Pursuant to Article 242 of the ZPP, witnesses receive a written summons specifying, among other things, the time and the place of the hearing. The summons for the hearing at which evidence will be taken by examining the party must be served to this party in line with the rules of personal delivery. If the party has a representative, the latter will hand over the summons for the hearing at which evidence will be taken by examining the parties to the party or the person to be examined in respect of the party (Article 268 referring to Articles 138 and 142 of the ZPP). Witnesses who are not in a position to appear at the court for reasons of old age, illness or serious physical disability may be examined at their home. The ZPP does not stipulate how much time in advance witnesses must be summoned; however, parties must be given sufficient time to prepare for the hearing (at least 8 days before the hearing).

In the case of hearings under Articles 10 to 12 of the Regulation, the requested court notifies the witness/the party of the time and place of the hearing, while for the hearings under Article 17 of the Regulation, the serving of summons is carried out by the requesting court.

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

Pursuant to Article 153 of the ZPP, the party that requests the taking of evidence is obliged by court order to deposit in advance the amount required to cover the costs expected in taking the evidence. If the taking of evidence is proposed by both parties or ordered by the court *ex officio*, the court will request that both parties deposit equal shares of the required amount.

As regards the costs related to videoconference, Article 18 of the Regulation applies.

In the Republic of Croatia, the taking of evidence by videoconferencing is free of charge.

### **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 person will be informed thereof in the summons, but the ZPP does not set out additional requirements.

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

Before witnesses are examined, they are asked their name and surname, personal identification number, the name of their father, occupation, address, place of birth, age and their relationship to the parties (Article 243(3) of the ZPP).

### **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?**

Pursuant to Article 246 of the ZPP, the court may decide that the witness take an oath on the declarations provided, but in the case under Article 17 of the Regulation, the rules of the requesting state could apply under certain conditions, also if, before the hearing, such state informs the competent authority or the central body of the requested state of its intention to take testimony from witnesses under oath.

Pursuant to Article 270 of the ZPP, examination of the parties is carried out without the taking of an oath.

### **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?**

The ZPP does not contain any provision in this respect, but in practice, the technical staff and the necessary judicial staff must be present before and during the videoconference in order to meet all the technical requirements for the holding of a videoconference.

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

There is no prescribed rule to be followed when requesting additional information, but while arranging the date of the hearing, the requesting and the requested court may find it necessary to seek a solution to some technical issues in order to secure successful performance of the hearing. In practice, these issues are usually addressed by judges via e-mail.

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## **Taking evidence by videoconferencing - Italy**

### **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?**

There is no specific reference in the Italian legal system and in particular, in the Code of Civil Procedure (*Codice di Procedura Civile*) to the taking of evidence by videoconferencing.

However, videoconferencing is in fact a feature of our legal system.

Article 202 of the Code of Civil Procedure envisages that the examining judge, when providing for the taking of evidence, should 'establish the time, place and method of evidence taking'. In compliance with Council Regulation (EC) No 1206/2001, the methods of evidence taking that the judge may use include videoconferencing.

Article 261 of the Code of Civil Procedure envisages that the judge may use filmed material that requires the use of mechanical means, tools or procedures. Videoconferencing is explicitly provided for in the Code of Criminal Procedure (*Codice di Procedura Penale*) (e.g. Article 205-ter).

So, as regards the procedure governed by Articles 10 et seq. of the Regulation, the limitation referred to in Article 10(4), consisting of 'incompatibility' with our legal system, can be ruled out.

The only limitation that might apply to a request for videoconferencing would be if significant practical difficulties existed.

With regard to the method of taking the various types of evidence, the EU regulation and the Italian Code of Civil Procedure are applied, as well as the corresponding implementing legislation.

As for the procedure governed by Article 17, after verifying that the requirements envisaged by paragraph 5 have been met and then authorising the direct taking of evidence, the requested Member State should 'encourage' the use of videoconferencing which, simply as a method of evidence taking, should be verified with the requested judicial authority on a case-by-case basis.

Therefore, except in the case of significant practical difficulties arising when the requested judicial authority cannot use this means of communication, all evidence can be taken through videoconferencing on the basis of a legitimate request under Article 10 et seq. or authorised under Article 17,

### **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?**

Videoconferencing is a useful tool for questioning witnesses and parties involved in proceedings. In this respect, there are no problems of compatibility with Italian law which, on the contrary, provides for the taking of witness evidence, informal questioning of the parties and the questioning of the parties under oath.

As regards the questioning of experts, the root cause of the problem concerning the admissibility of an expert opinion should be addressed, especially in relation to direct evidence taking (Article 17).

In Italian law, expert testimony is governed by Article 61 and Articles 191-201 of the Code of Civil Procedure. Experts normally draw up a written opinion (Article 195(2) of the Code of Civil Procedure) but the court may also request clarification. Once the opinion has been admitted there should, therefore, be no obstacles to questioning the experts through videoconferencing. Indeed, the Italian Code of Civil Procedure provides that 'when the President deems it appropriate he or she shall invite the expert to take part in the discussion in the presence of the panel of judges and to express his or her opinion in closed session in the presence of the parties, who may clarify and set out their case through their defence counsel'.

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

In practical terms, it seems that videoconferencing is an effective tool for taking evidence, questioning witnesses face to face, and taking statements from the parties.

However, the rules do not directly address the question of the type or obligatory nature of the evidence and practical problems could arise with respect to expert advice, for example handwriting evidence, genetic data or telephone evidence.

### **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 evidence is usually taken in a territorially competent judicial or police structure of the requested Member State, where both the necessary equipment and registry support staff are available. As things stand at present, however, there is no 'case history' of the use of videoconferencing in civil proceedings.

When videoconferencing is used in criminal proceedings, one of the available venues with the appropriate facilities located in the district of the Court of Appeal of the requested judicial authority is normally used (chamber of the court, security-protected court or room in prison premises).

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

There are no legislative obstacles to the recording of hearings, where this is allowed by the legislation of the requesting State.

However, for taking evidence pursuant to Article 4 et seq., Article 126 of the Code of Civil procedure and Article 46 of the implementing provisions of the same Code concerning the drafting of the record of the proceedings, are applied.

## **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?**

This aspect is not governed directly by the rules.

Article 5, which states that requests and communications should be drawn up in the official language of the requested Member State, could provide an indication as to which language the hearings are to be conducted in.

In the case of requests submitted under Article 10 et seq., where domestic law applies the hearing must be held in Italian.

Article 122 of the Code of Civil Procedure provides that 'throughout the trial, the use of the Italian language is mandatory. When a person who does not speak Italian is to be questioned, the judge may appoint an interpreter'.

In the proceedings referred to in Article 17 however, the law of the requesting State applies. This provision could also have consequences regarding the language in which the evidence is taken. The language should again be that of the requesting State. In this case, interpreters could be required.

The authority with competence to authorise the direct taking of evidence could also provide guidance as to the conditions for taking the evidence; these could include the the language to be used.

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

The rules do not include any particular provisions on this aspect.

In the proceedings referred to in Article 10 et seq., the law of the requested State is applied.

In any case, Article 122(2) of the Code of Civil Procedure applies.

The Code provides for the appointment of an interpreter when a person who does not speak Italian is to be questioned. The assumption, therefore, is that the language of the trial (and of the trial judge) is Italian.

Costs for interpreters' fees should be reimbursed and are charged to the requesting judicial authority (see Article 18).

As for the procedure under Article 17, see point 6. The language of the hearing should be that of the requesting State. Therefore, reference should be made to the law of the requesting State to determine who is responsible for appointing the interpreter(s). In this case, the competent authority for authorising the direct taking of evidence could ask for information regarding the appointment of the interpreter.

## **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?**

Article 250 of the Code of Civil Procedure provides that the court officer, at the request of the interested party, should inform the witnesses that they must appear at a certain place, on a certain date and at a certain time and inform them of the judge who will be taking the evidence and the trial in which they will be questioned. Article 103 of the implementing provisions of the Code of Civil Procedure states that witnesses must be informed at least seven days before the hearing for which they have been summoned to appear.

The rules governing the questioning of witnesses are envisaged by Articles 244-257 *bis* of the Code of Civil Procedure and by Articles 102-108 of its implementing provisions.

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

The costs of videoconferencing performed under Article 4 (indirect evidence), as provided for by Article 10(4), are reimbursed at the request of the requested authority, as envisaged by Article 18(2).

This obligation concerning reimbursement is not envisaged for the direct taking of evidence through videoconferencing by the foreign authority, under Article 17.

## **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?**

It is the responsibility of the requesting authority to inform the person being questioned that the evidence will be taken on a voluntary basis; under Article 17 this condition is one of the factors on which the authorisation for the direct taking of evidence is based.

However, the rules do not provide for any similar obligation on the part of the requested judicial authority.

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

In general, the requesting authority carrying out the videoconferencing is responsible for verifying the identity of the witness under Article 17. In the case of indirect evidence, where the hearing of witnesses is concerned, the verification of the witness's identity is governed by Article 252 of the Code of Civil Procedure, according to which: 'The examining judge shall ask the witness to state their name, surname, father's name, age and occupation and shall invite the witness to state whether they have any family relationship [...] with the parties, or an interest in the trial'. Identification takes place after the taking of the oath, governed by Article 251 of the Code of Civil Procedure. In practice, the examining judge also asks the witness for an identity document and has the details entered in the record of the proceedings.

As regards the parties to be questioned, if a special attorney is involved then a special power of attorney is also required.

## **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?**

As regards the procedure referred to in Article 17, no specific rule is envisaged. It might be useful to receive information regarding the criminal relevance (for the legal system of the requesting State) of perjury or omission, which depends on the requesting State's legislation governing judicial proceedings.

## **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?**

The Italian Prison Administration Department, which is responsible for videoconferencing links, carries out compatibility checks with the foreign technical staff in the immediate run-up to the videoconference.

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

Along with the application for international judicial assistance, the requesting judicial authority should also provide – if they have it – technical information regarding the videoconferencing system used in their country and the name and phone number of a contact person, preferably a specialist technician, and the language to be used during these activities.

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## **Taking evidence by videoconferencing - Cyprus**

**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?**

Evidence can be taken by video-link either with the participation of a court in the requesting State or directly. The legal basis for this is provided under national law by Article 36A of Chapter 9 of the Evidence Act, as amended by Act 122(I)/2010. According to Article 36A, the court may, at its discretion, impose any terms deemed necessary for taking evidence, provided that these terms are not incompatible with the Republic of Cyprus's international commitments.

**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?**

There are no such restrictions. Any person whose evidence is deemed necessary may be examined provided that the request for taking evidence falls under the scope of Regulation (EC) No 1206/2001 and is not incompatible with national law.

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

There are no restrictions on the type of evidence that can be taken by video-link, provided that the request for taking evidence is not incompatible with national law and the taking of the evidence requested is practicably feasible.

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

There are no restrictions.

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

Only the minutes of the proceedings are recorded.

**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?**

The evidence is taken in the mother tongue of the person who is testifying and is then translated by an interpreter into the official language of the court, i.e. Greek.

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

The registry office of the court that hears the case for which the person concerned is to be examined is responsible for making the necessary arrangements for the use of interpreters.

**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?**

A witness summons is issued to the person to be examined and the date set for hearing the case is such that the person concerned can be notified in a timely manner.

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

The costs incurred in connection with the interpreters are borne by the State in which the court conducting the proceedings is located, and the costs incurred for the provision of technical support on the day of the examination are borne by the State in which the witness is located.

**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?**

A witness summons is issued for that purpose.

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

An oath is taken or an affirmation made, and the particulars of the person to be examined are declared.

**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?**

The requesting court must provide the particulars of the person to be examined. During the taking of oath, the person to be examined will swear by the Bible or the Koran, depending on their religious affiliation, or will make an affirmation.

**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 trial connection is made on a date prior to the day of the examination, following prior coordination between the competent authorities (the Court registration departments).

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

No additional information is required.

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**Taking evidence by videoconferencing - Latvia**

**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?**

A judge shall decide on the participation of representatives of the second country in a videoconference in a timely manner before the videoconference, contacting the applicant individually.

The judge shall decide all matters in accordance with the Law on Civil Procedure (*Civilprocesa likums*).

**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?**

Pursuant to Section 122(1) of the Law on Civil Procedure, an expert may also be examined by using a video conference.

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

They are for the court to decide.

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

Each matter, each request for legal assistance shall be decided on individually assessing all aspects.

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

Pursuant to Section 152(3) of the Law on Civil Procedure, photography, filming or videotaping at a court hearing shall be allowed only with the permission of the court.

**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) A court hearing shall take place in the official language - Latvian. A Latvian interpreter shall be provided by the country requesting a videoconference.

b) if the direct taking of evidence is taking place, then upon mutual agreement of the parties.

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

An interpreter shall be provided by the party requesting a videoconference. The interpreter shall be located in a court room.

**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?**

A request for legal assistance shall be submitted in a timely manner, at least 60 days before the planned videoconference.

Time should be laid down before the planned videoconference for making a test connection.

When submitting a videoconference request, the technical parameters shall be indicated.

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

Pursuant to Section 716 of the Law on Civil Procedure, the costs incurred shall be covered from the funds of the state budget.

A court that executes the request of a foreign country for the taking of evidence shall notify the Ministry of Justice regarding the following costs of implementing the abovementioned request:

1) the amount of expenses to be disbursed to experts and interpreters;

2) the costs incurred when executing the request of a foreign country for the taking of evidence in accordance with the procedural procedures of the foreign country in the cases provided for in the law;

3) the costs incurred if the request of a foreign country for the taking of evidence upon a request of the competent authority of the foreign country has been carried out by use of technical means.

(3) The Ministry of Justice may request the competent authority of the foreign country to cover the costs provided for in the second paragraph of this Section.

**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?**

A foreign country shall prepare the relevant information on informing the person.

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

A court shall verify the identity of the person pursuant to the provisions of the Law on Civil Procedure.

**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?**

Such a procedure is not provided for by the Law on Civil Procedure. However, a foreign country may request the court to decide on the oath.

**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?**

Before the date of a videoconference and before a test videoconference the parties concerned shall exchange their technical parameters and the details of their contact persons (the person located in the court and the person at the institution providing the technical assistance).

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

Technical information, the technical specification data are required.

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**Taking evidence by videoconferencing - Luxembourg**

**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, both procedures are possible. Most of the requests addressed to Luxembourg come from a court in another Member State that wishes to examine a witness by videoconference.

There are no specific provisions on videoconferencing. Therefore, the rules governing the examination of witnesses, personal verification by the judge and appearance in person of the parties are the ordinary rules of the New Code of Civil Procedure. At present there is no case law on videoconferencing.

**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?**

Videoconferences can be used to hear witnesses, and in some cases the parties and the court experts. However, to date, the only requests received have been to hear witnesses.

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

The only restriction is that the hearing of witnesses is carried out on a voluntary basis. If a witness refuses to attend a hearing, the Luxembourg authorities have no means of obliging him or her to do so.

**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 evidence must be evidence that can be taken on court premises possessing the necessary technical equipment.

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

If the requesting State wishes to record the videoconference, it must obtain the express consent of the witness heard in Luxembourg. Luxembourg, as the requested State, does not record the videoconference because recording is prohibited by Luxembourg law.

**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) French, German.

b) All languages.

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

The Luxembourg court, as the court of the requested state, arranges for an interpreter whenever necessary, either to communicate with the authorities of the requesting state or with the person to be examined.

**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?**

The Luxembourg authorities, and more specifically the court responsible for taking evidence, will contact the authorities of the requesting state to agree on the date and time of the videoconference. The summons is served at least 15 days before a hearing. The Luxembourg authorities are responsible for summoning the participants.

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

In accordance with the EU Regulation, the requested state authorises the videoconference and the requesting state deals with all the formalities and organisational and technical matters, which includes informing the persons concerned.

The use of videoconferencing and the witness's expenses are paid for by the Luxembourg State. In principle, interpreting costs are borne by the requesting state.

**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 person will be informed in the summons and by the judge or the registrar before the videoconference.

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

The Luxembourg court, as the court of the requested state, checks the identity documents at the beginning of the hearing.

**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?**

Witnesses and experts must take an oath to tell the truth. They are informed that they risk a fine or imprisonment if they commit perjury.

The oath is taken before the requesting court.

In the case of Article 17 the requesting state applies its own conditions. The Luxembourg judge present during the videoconference, as the judge of the requested state, intervenes only if there is a problem.

**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?**

On the day and at the time set for a videoconference, a judge, a registrar, a technician and, if necessary, an interpreter are present.

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

In order to arrange a videoconference a number of technical issues have to be clarified. The success of a hearing by videoconferencing therefore depends on sound prior preparation and effective collaboration between contact points.

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**Taking evidence by videoconferencing - Hungary**

**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?**

Act CXXX of 2016 on the Code of Civil Procedure ('Act CXXX of 2016') provides the option for the court, either at the proposal of a party or acting of its own initiative, to examine a party, other participants in the court proceedings, a witness or an expert, and – provided the owner of the item to be inspected agrees – to conduct an inspection via an electronic communications network. A hearing via an electronic communications network may be ordered if it is practical, for example to speed up the proceedings or where a hearing at the venue where the case is heard would be difficult to organise or disproportionately expensive, or if the protection of a witness so requires.

The rules on examinations via an electronic communications network can be found in Act CXXX of 2016 and Decree 19/2017 of 21 December 2017 of the Minister for Justice on the use of electronic communications networks in civil action hearings and examinations ('Decree 19/2017 of 21 December of the Minister for Justice').

**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?**

There are no restrictions in respect of the persons who can be examined via an electronic communications network. This method can be used to examine the parties and other participants in the court proceedings, witnesses, experts and owners of items to be inspected.

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

A hearing, examination or inspection using an electronic communications network can be used to examine the parties, witnesses and experts, or to conduct an inspection.

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

Examinations via an electronic communications network can take place at the premises of the court or another body, in separate rooms set up for videoconferencing, provided the conditions necessary for the operation of the electronic communications network are provided.

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

Under Act CXXX of 2016, the court may order at the trial stage – upon the request of either party or of its own initiative – that the minutes of hearings, examinations or inspections conducted via electronic communications network be prepared using continuous and simultaneous video and audio recordings. If the minutes are not taken in this manner, the judge hearing the case at the venue where the case is heard may order the video and audio recording of the events at the venue of the hearing and separate premises during an examination or inspection using an electronic communications network.

**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?**

In the case of requests made under Articles 10 to 12 of Council Regulation (EC) No 1206/2001, the provisions of Act CXXX of 2016 must be applied in accordance with Article 10(2). Under Act CXXX of 2016 court proceedings are conducted in Hungarian, but no one may be placed at a disadvantage because of a lack of knowledge of the Hungarian language. In the course of the court proceedings, everybody has the right to the oral use of their mother tongue, or regional or minority language where provided for in international conventions. Where necessary, the court has an obligation to use an interpreter. In the case of requests made under Article 17, the hearing is conducted by the requesting court under Article 17(6) in accordance with the laws of its Member State.

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

In the case of requests made under Articles 10 to 12, if it is necessary to ensure the use of mother tongue or a regional or minority language, the requested court has an obligation to use an interpreter.

Act CXXX of 2016 does not contain specific provisions on where the interpreter should be located in the event of a hearing via an electronic communications network. It does ensure, however, that interpreters are present in the rooms set up for such hearings. On the basis of Decree 19/2017 of 21 December 2017 of the Minister for Justice, the interpreter must be shown on the transmitted recording.

In the case of requests made under Article 17, the provisions of Article 17(4) and (6) apply.

**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?**

The order for a hearing via an electronic communications network is served on the persons summoned at the same time as the summons for the hearing, examination or inspection. The order for a hearing via an electronic communications network is sent by the court without delay to the court or other body providing the dedicated facilities for the hearing via electronic communications network.

Act CXXX of 2016 has no special provision concerning summons for hearings via electronic communications network. The summons to attend a hearing must be sent so as to allow for the receipt confirming service in accordance with the law to be returned to the court prior to the hearing.

The first hearing must be scheduled so as to ensure that the summons is served on the parties, as a general rule, at least fifteen days before the date of the hearing. The court may shorten that period in urgent cases.

In the case of requests made under Article 17, the provisions of Article 17(4) and (6) apply.

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

The costs vary and are to be paid by the requesting court.

#### **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?**

Under Article 17(2), the requesting court must inform the person concerned that the hearing is voluntary.

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

The identity of the person to be examined via an electronic communications network is verified on the basis of:

- the information provided by the person in question in order to verify his or her identity and address, and
- the presentation through technical equipment specified by law of his or her official identification document or residence document.

If the court ordered the confidential treatment of a witness's data, it must be ensured during the presentation of the witness's official identification document or residence document through the technical equipment specified by law that only the presiding judge (or the registrar, in case the hearing or inspection is conducted by a registrar) can see it.

The court also uses electronic means or direct database queries to confirm that:

- the information provided by the person examined via an electronic communications network in order to verify his/her identity and address matches the records; and
- the official document and residence document presented by the person as proof of identity is valid and matches the records.

#### **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?**

Act CXXX of 2016 does not provide for oaths in court proceedings.

#### **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?**

Act CXXX of 2016 provides for the presence of a person responsible for ensuring the functioning and operation of the necessary technical equipment for hearings via electronic communications network at the dedicated facilities.

The operator must ensure that the technical equipment for the hearing is fully functional before the start of the hearing. If there is any obstacle to the normal operation of the technical equipment, the operator reports the malfunction to the judge present at the premises of the hearing without delay and ensures that the problem is eliminated. The technical problem and the measures taken are then reported in writing to the operator's line manager. The hearing via an electronic communications network cannot be started or continued until the problem is eliminated. The procedural step underway when the problem or malfunction of the technical equipment used for the hearing via an electronic communications network occurred must be repeated if necessary.

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

In general, no other information is required.

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#### **Taking evidence by videoconferencing - Malta**

##### **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?**

If Malta is the requesting state, videoconferencing will be used as a last resort.

##### **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?**

No there are no restrictions on the type of persons that can be examined; witnesses, experts and parties can all be examined.

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

It is up to the Court to determine what is admissible as evidence.

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

If Malta is the requested state a person has to be examined in Court.

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

Yes it is permitted to record videoconference hearings and the facility is available.

##### **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) If Malta is the requested state, hearing requests under Articles 10 to 12 are conducted in Maltese or English;

(b) If Malta is the requesting state, requests under Article 17 will be made in Maltese or English language.

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

If Malta is the requested state and therefore it is going to hear the evidence, Article 596 (1) of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta holds that *'If the court does not understand the language in which the evidence is given, it shall appoint a qualified interpreter at the provisional expense of the party producing the witness'*. The interpreter in this case must be in the location where the witness is situated.

If Malta is the requesting state under Article 17 and where there is direct taking of evidence, the location of the interpreter depends on the circumstance of the case.

##### **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?**

Where evidence is taken under Article 10 and 12 and if Malta is the requested state, Article 568 (1) of the Code of Organisation and Civil Procedure holds that *'Witnesses shall be summoned to appear by means of a subpoena to be issued on the application of the party interested'*. A month should be left between one sitting and another so there will be enough time to notify the witness.

Under Article 17 when Malta is the requesting state, it is up to the Court to decide which means are to be used in order to notify the person that is to be examined about the time and place. A month should be left between one sitting and another so there will be enough time to notify the witness.

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

A €100 fee must be paid that covers up to the first two hours of the conference;

A €50 fee per hour must be paid for any subsequent hours;

An hourly technician fee of €58 is also applicable.

#### **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?**

Before giving his or her evidence, the witness is warned by the Court that if s/he does not feel comfortable to give evidence then he should inform the requesting Court of such a fact.

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

The person to be examined may be requested by the Court to show his passport or identity card before giving his testimony. The witness will be notified prior to the sitting that he has to bring with him one of these 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?**

According to Article 111 of the Code of Organisation and Civil Procedure *'A witness professing the Roman Catholic faith shall be sworn according to the custom of those who belong to that faith; and a witness not professing that faith shall be sworn in the manner which he considers most binding on his conscience.'*

#### **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?**

The following are the contact persons:

**Charles Calleja**, Audio Visual Senior Technical Office

This person is responsible to connect, test and assist technically during the video conference

Contact +356 25902375 - Office 4th floor in the Law Courts in Valletta

[✉ charles-george.calleja@gov.mt](mailto:charles-george.calleja@gov.mt)

**Maria Ruth Ciantar**, Video Conference availability

Contact +356 25902391 - Office 4th floor in the Law Courts in Valletta

[✉ maria.a.ciantar@gov.mt](mailto:maria.a.ciantar@gov.mt)

**Alan J. Darmanin**, Clerk

Contact +356 25902211 - Office 4th floor in the Law Courts in Valletta

[✉ alan.a.darmanin@gov.mt](mailto:alan.a.darmanin@gov.mt)

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

Prior to the date of the hearing the following is required from the requesting court:

- a. Time zone
- b. Appointment for testing (date and time)
- c. Fixed IP
- d. Details of its technical contact person

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#### **Taking evidence by videoconferencing - Netherlands**

##### **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?**

There are no general regulations on this subject under Dutch civil procedural law. However, videoconferencing is not precluded and consequently is possible in these cases under the law.

Under civil law, videoconferencing is used regularly as an alternative to letters rogatory.

##### **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?**

If a person can be examined under civil procedural law, this is also possible in principle by videoconference. There are no specific provisions under civil procedural law.

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

There are no rules on specific restrictions. The national rules of civil procedure apply.

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

No specific rules apply to examination by videoconference. The national rules of civil procedure apply. The rule is that persons must be examined in court. Exceptions may be made if a witness is ill or otherwise unable to travel to court (Article 175 of the Code of Civil Procedure (Rv)).

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

Examination of a witness by a Dutch court by videoconference is deemed equivalent to a live transmission of an ordinary hearing. By law, a court transcript is made of witness hearings by an examining magistrate. The same rules apply to hearings by videoconference and therefore they must also be recorded by a court transcript. The law does not prohibit an image or sound recording being made in addition to the court transcript, but this recording is not to be equated with the court transcript.

Under future law, the judge may decide to make an image or sound recording of the oral hearing to replace the paper court transcript. On that basis, a recording can also be made, if required, of the court transcript of a witness 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?**



If the requested court is in the Netherlands, the hearing takes place in Dutch. No special rules apply in this respect.

The Dutch implementing legislation does allow for a competent authority to impose conditions for the direct taking of evidence which it considers useful or necessary for reasons of due process.

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

Dutch civil procedural law makes no provision for special arrangements for interpreters. In civil cases in the Netherlands, the parties must in principle provide their own interpreters.

**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?**

Under the Dutch implementing legislation the requested court can determine which of the parties is responsible for summons resulting from a request to take evidence.

Summons not carried out by one of the parties are undertaken by the registrar of the requested court. Under Dutch civil procedural law, witnesses must be summoned at least one week (under future law, at least 10 days) before the hearing.

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

The costs for the special form and communications technology are not payable by the parties. These costs are not passed on under Dutch law. They are borne by the State, from which reimbursement can be requested pursuant to Article 18(2), read in conjunction with Article 10(4), of the Regulation.

**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?**

Under Article 17(2) of the Regulation, where the direct taking of evidence implies that a person is heard, the requesting court informs that person that the performance takes place on a voluntary basis. No further requirements apply.

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

Under Dutch civil procedural law, it is for the judge to check identity (Article 177 Rv).

The judge asks witnesses to state their surname, first name, age, profession and place of residence. They are also questioned about any relationship to the parties (consanguinity or affinity, employment).

**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?**

Under Dutch civil procedural law, the oath or affirmation is given before the judge prior to the hearing. The witness states that his or her testimony will be the truth and nothing but the truth. Witnesses who deliberately do not speak the truth are committing perjury. Direct taking of evidence is performed 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?**

An international request for legal assistance in which videoconferencing is used is arranged with the ICT support staff of the jurisdiction (SPIRIT). They implement the technical and logistical arrangements.

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

The competent authority will be able to request this information.

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**Taking evidence by videoconferencing - Austria**

**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?**

Both types of evidence-taking via videoconference are possible and permitted in Austria. Austrian civil procedure law is regulated by the Code of Civil Procedure (ZPO – *Zivilprozessordnung*) for contentious proceedings and the Non-Contentious Proceedings Act (AußStrG – *Außerstreitgesetz*) for non-contentious proceedings. The provisions relating to the taking of evidence can be found in the ZPO (Sections 266 to 389), and the AußStrG (Sections 16, 20, and 31 to 35, with partial reference to the ZPO) as well as in the individual provisions regulating specific types of proceedings, such as in Section 85 on the duty of participation in paternity proceedings. The relevant national procedures and legal rules are described in detail in the answers to the following questions and in the factsheet 'Taking of evidence – Austria'.

**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?**

In accordance with Section 277 of the ZPO (contentious proceedings) and Section 35 of the AußStrG in conjunction with Section 277 of the ZPO (non-contentious proceedings), videoconferencing can be used for the taking of evidence and therefore also for the examination of parties and witnesses and for expert witness testimony.

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

In accordance with Section 277 of the ZPO (contentious proceedings) and Section 35 of the AußStrG in conjunction with Section 277 of the ZPO (non-contentious proceedings) videoconferencing can be used for the taking of evidence. However, factual impediments may preclude this, for instance when certificates or visual inspection are to be used in the taking of evidence.

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

Any person can be summoned by his/her local court and examined there by videoconference. All courts, public prosecutor's offices and prisons in Austria are equipped with at least one videoconferencing system. There is no rule in Austrian law according to which videoconferencing for the taking of evidence is permitted only in court buildings.

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

In civil matters there are no general data protection provisions in Austrian law for the recording of examinations via videoconference. The agreement of all persons involved in the videoconference is therefore required for the recording. This applies to the indirect taking of evidence, which, under Article 10(2) of Regulation (EC) No 1206/2001 on cooperation between the courts in the Member States in the taking of evidence in civil or commercial matters ('the Regulation'), is to be carried out in accordance with the law of the requested State.

A request for direct taking of evidence, however, is made in accordance with the law of the requesting State (Article 17(6) of the Regulation). Should that law provide for the recording of videoconferences without the agreement of the persons concerned, this is admissible from Austria's point of view.

In principle, examinations via videoconference can be recorded on all videoconferencing systems. In locations where court proceedings are generally recorded (in many criminal courts) the existing technical equipment can be used to record the examination via videoconference. The examination can be recorded in all other locations by simply installing a relevant storage medium.

**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) Under Article 10(2) of the Regulation, evidence is to be taken in accordance with the law of the requested State. The examination must therefore be carried out in German (in some Austrian courts Croatian, Slovenian or Hungarian are also permitted). The requesting court can apply to use its own official language (or any other language) as part of a special procedure for executing its request for the taking of evidence. However, the requested court can reject this if it is not possible due to major practical difficulties (Article 10(3) of the Regulation).

(b) Under Article 17(6) of the Regulation, the requesting court is to carry out the direct taking of evidence in accordance with the law of its own Member State, and thus in one of the official languages permitted by that law. However, as the requested Member State, Austria is entitled under Article 17(4) to require the use of its language as a condition for the taking of evidence.

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

With regard to the indirect taking of evidence, regardless of any reimbursement made in accordance with Article 18(2) of the Regulation, the responsibility for providing interpreters lies primarily with the requested court. The courts involved should, however, cooperate in a constructive manner (here as in other areas).

With regard to the direct taking of evidence, according to Article 17 of the Regulation the responsibility for providing interpreters lies primarily with the requesting court. Article 17 does not require the requested Member State to provide assistance with this, but it does not preclude such assistance either. Section 39a(4) of the Court Jurisdiction Act (JN *Jurisdiktionsnorm*) requires a court providing judicial assistance to give practical help with the taking of evidence upon request from the foreign court. This would include finding a suitable interpreter, for instance.

The decision on the State from which interpreters are to come has to be made on the basis of what is appropriate in the individual case.

**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?**

The person to be examined is summoned to an examination by videoconference in Austria in the same way and subject to the same periods of notice as would apply if they were being called before the court trying the case.

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

There are no call charges for using videoconferencing via Internet Protocol (IP). For videoconferencing via ISDN, callers will incur charges, just as they do for a telephone call. These charges vary depending on the location of the installation being called.

**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?**

This is primarily the responsibility of the requesting court, which is bound by Article 17(2) of the Regulation and which in most cases itself invites the persons concerned to attend the videoconference. If the Austrian central authority or an Austrian court notices that Article 17(2) of the Regulation may have been breached while the direct taking of evidence is being prepared or carried out, the authority or the court must, in cooperation with the requesting court, ensure compliance with this provision in an appropriate manner. Employees of the court in Austria are trained in the application of Regulation (EC) No 1206/2001, and they also have access to the European 'Guide on videoconferencing in cross-border proceedings' via the intranet of the Ministry of Justice.

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

Photographic identification is used to verify the person's identity. The person's identity is also checked as part of the examination (Section 340(1) ZPO).

**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?**

The provisions pertaining to oath-taking for parties are in Sections 377 and 379 of the ZPO and those for witnesses can be found in Sections 336 to 338 of the ZPO.

Parties and witnesses are both obliged to take an oath. While parties cannot be legally forced to take an oath, witnesses can be penalised for unlawfully refusing to take an oath (Sections 325 and 326 of the ZPO; punishments are the same as those for refusing to testify and include fines or up to 6 weeks' imprisonment).

According to Section 288(2) of the Criminal Code (StGB – *Strafgesetzbuch*), giving or confirming false evidence under oath or otherwise falsely taking an oath provided for in the relevant legislation are punishable by a term of imprisonment of between six months and five years.

False evidence given by a party to the proceedings who has not taken an oath is not considered a punishable offence. But a witness who has not taken an oath and who gives false evidence can be sentenced to up to three years' imprisonment (Section 288(1) of the StGB).

In accordance with Article XL of the Introductory Act to the Code of Civil Procedure (EGZPO – *Einführungsgesetz zur Zivilprozessordnung*) the provisions of the Act of 3 May 1868, Imperial Law Gazette (RGI.) No 33 (Wording of the oath and other formalities) must be observed (see <http://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=18680004&seite=0000067>).

According to Section 336(1) and Section 377(1) of the ZPO, persons who have previously been convicted of giving false testimony, or who are under the age of fourteen, or who have an insufficient understanding of the nature and meaning of the oath as the result of a lack of maturity or because of an intellectual disability, are unable to take an oath, and may therefore not be put under oath.

The aforementioned provisions relating to the examination of a witness or a party under oath cannot be applied in cases pursuant to the Non-Contentious Proceedings Act (Section 35 AußStrG).

**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?**

At all locations with videoconferencing facilities owned by the Ministry of Justice one employee is in charge of looking after the videoconferencing equipment. This person can operate the videoconferencing equipment and make minor adjustments to the settings. All videoconferencing equipment is linked to a central unit in the IT department of the Federal Ministry of Justice (BMJ – *Bundesministerium für Justiz*). From there, IT administrators can fine-tune all videoconferencing systems located across Austria.

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

The following information is required from the requesting court:

IP address and/or ISDN number with the dialling code

Name, telephone number and email address of an employee at the requesting court who is responsible for the technical aspects of the remote equipment.

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### **Taking evidence by videoconferencing - 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<sup>1</sup>(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.

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### **Taking evidence by videoconferencing - Portugal**

#### **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?**

Under Portuguese law, the judge of the requesting court must take the evidence of persons heard by videoconference directly, without the intervention of the judge from the requested court. This is the rule for internal cases in which there is examination by videoconference. The same procedure applies in cross-

border cases where the court of the requesting Member State asks for the examination to take place by videoconference under Article 17 of Regulation (EC) No 1206/2001 of 28 May 2001.

Alternatively, in cross-border cases, the court of the requesting Member State may ask for the examination to take place by videoconference under Articles 10 to 12 of Regulation (EC) No 1206/2001 of 28 May 2001.

The main national procedural rules governing the collection of evidence by videoconference from experts, witnesses and parties are as follows:

#### Experts

*Article 486 of the Code of Civil Procedure (Código de Processo Civil)*

*Appearance of **experts** at the final hearing*

*1 - When requested by one of the parties or ordered by the judge, experts shall appear at the final hearing in order to provide, on oath, any clarifications requested of them.*

*2 - Experts from establishments, laboratories or official services shall be heard by teleconference at their workplace.*

#### Witnesses

*Article 502 of the Code of Civil Procedure*

*Examination by teleconference*

*1 - **Witnesses** residing outside the district or, in the case of the Autonomous Regions, outside the island concerned shall be presented by the parties in accordance with Article 507(2), where they have made a declaration to this effect on offering to be witnesses, or shall be heard by teleconference during a specific hearing and from the district court in the area in which they reside.*

*2 - The court hearing the case shall set the date of the hearing after consulting the court where the witness is to give evidence and shall summon the witness to appear.*

*3 - On the date of the examination, witnesses shall identify themselves to the official of the court where the evidence is given, but from that point onwards the examination shall be conducted by the court hearing the case and by the counsel for both parties, via teleconference, without the need for intervention by the judge of the court where the evidence is given.*

*4 - Witnesses residing overseas shall be examined by teleconference whenever the necessary technical means are available at the place where they reside.*

*5 - In cases being heard in courts in the metropolitan areas of Lisbon and Porto, there shall be no examination by teleconference if the witness is a resident of the respective district, with the exception of cases provided for in Article 520.*

*Article 520 of the Code of Civil Procedure*

*Direct communication between the court and the person giving evidence*

*1 - Where it is impossible or extremely difficult for the person who must give evidence to appear in court in good time, the judge may determine, with the agreement of the parties, that any clarification needed in order to make a proper decision on the case be given by telephone or other means of direct communication between the court and the witness, as long as the nature of the facts to be investigated or clarified are compatible with the procedure.*

*2 - The court must ensure, through the means available to it, that the evidence is given truthfully and freely, in particular by determining that the witness is accompanied by a court official during the giving of evidence and that the content of the evidence and the circumstances in which it was given are placed on record.*

*3 - The provisions of Article 513 [oath and preliminary questioning by the judge] and the first part of paragraph 4 of the previous article [the judge may order evidence to be given again before him in person] shall apply to cases falling under this article.*

#### Parties

*Article 456 of the Code of Civil Procedure*

*Time and place of giving evidence*

*1 - Evidence must, as a rule, be given in the final hearing, unless it is urgent or the witness is unable to appear in court.*

*2 - The rules for the giving of evidence by teleconference laid down in Article 502 shall apply to **parties** residing outside the district or, in the case of the Autonomous Regions, outside the island concerned.*

*3 - Evidence may also be given at the preliminary hearing, in which case the provisions of the previous paragraph shall apply with the necessary adjustments.*

**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?**

No specific restrictions are laid down. Portuguese law allows witnesses, parties and experts to be heard by videoconference, as provided for by the legal rules cited above.

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

See the reply given to the previous question.

**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 general rule is that the person must be heard by videoconference in court. However, experts from official services may be heard by videoconference at their workplace. Exceptionally, in the circumstances provided for in Article 520 of the Code of Civil Procedure (cited in the reply to question 1), the court may hear a person by videoconference who is in a place other than the court.

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

Yes, hearings by videoconference are always recorded by the court's audio recording system, in accordance with the provisions of Article 155 of the Portuguese Code of Civil Procedure

**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?**

When Portugal is the requested Member State, the language of the hearing will vary, depending on the circumstances:

(a) When requests are made pursuant to Articles 10 to 12 of Regulation (EC) No 1206/2001 of 28 May 2001, the Portuguese language is used. If foreign nationals need to be heard, they may speak in a different language if they do not speak Portuguese. In this instance the requesting court must inform the requested court of the fact, so that the latter can call an interpreter to be present at the requested court.

(b) When requests are made pursuant to Article 17 of Regulation (EC) No 1206/2001 of 28 May 2001, the language used is that provided for in the national legislation of the Member State to which the requesting court belongs. If persons who do not speak that language need to be heard, the requesting court may, in accordance with its national legislation, call an interpreter to be present at the requesting court. Alternatively, the requesting court may ask the (requested) Portuguese court to call an interpreter to be present at the requested court.

In any of the cases mentioned at (a) and (b) in which there is a need to call an interpreter to be present at the court of the requested Member State, the requested court will ask the court of the requesting Member State to pay the fee due to the interpreter, as provided for in Article 18(2) of Regulation (EC) No 1206/2001 of 28 May 2001.

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

This information has already been given in the answer to question 6.

## **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?**

In Portuguese law, the procedure applicable to the process of hearing and summoning a person to appear in court is essentially laid down in Articles 7(3), 172(5) and (6), 220, 247(2), 251(1), 417, 507, 508 and 603 of the Portuguese Code of Civil Procedure.

In general, it is the responsibility of the court registry to notify, on its own initiative, witnesses, experts, parties and their representatives when they are required to appear in judicial proceedings pursuant to a court order. Specifically, when the party requires the examination of a witness by videoconference, the court registry is responsible for summoning the witness.

Notifications for the purpose of summoning witnesses, experts and other incidental persons (e.g. an interpreter or a technical advisor) to court are sent by registered post, stating the date, place and the purpose of the appearance at court. Notifications are deemed to have been served even if the recipient refuses to accept the letter; the distributor of the postal service must keep a record to that effect.

Notifications for the purpose of summoning a party to appear in judicial proceedings or to give evidence are sent by registered post and addressed to the party concerned, stating the date, place and the purpose of the appearance at court. In this case, if the party has appointed a barrister, or if it is represented simultaneously by a barrister and a solicitor, both the barrister and the solicitor also have to be notified.

Representatives of the parties are notified electronically, pursuant to Article 25 of Ministerial Implementing Order (*Portaria*) No 280/2013 of 26 August 2013.

The IT system certifies the date on which the notification is issued.

The law does not expressly lay down how far in advance of the hearing the notification must be given. In any of the above cases, the notification is deemed to have been served on the third day after its registration or of it having been issued electronically. If the third day is not a working day, the notification will be deemed to have been served on the first subsequent working day. For practical reasons, it is therefore necessary to comply at least with this period of notice in relation to the hearing date, so that the notification can be deemed to have been duly served.

In urgent cases, witnesses, experts, other incidental persons, the parties or their representatives can be summoned (or their summons cancelled) by telegram, telephone or other similar means of telecommunication. Contact by telephone is always documented in the case record and is followed by confirmation in writing of some form.

If a person who should have been present fails to appear, that person must justify his or her absence in the hearing itself or within a period of five days (calendar days, but if the last day is not a working day, the deadline is extended to the next working day).

Portuguese law lays down the following coercive measures for cases of non-appearance. Where a witness fails to appear, having been duly notified and having failed to justify his or her absence within the legal deadline, he or she is sentenced to a fine and the judge may order his or her appearance under custody. These penalties do not apply if the trial is adjourned for reasons other than the non-appearance by the witness. Where an expert or another incidental person fails to appear, having been duly notified and having failed to justify his or her absence within the legal deadline, he or she is sentenced to a fine. Where one of the parties fails to appear, having been duly notified and having failed to justify his or her absence within the legal deadline, he or she is sentenced to a fine and his or her refusal may be freely interpreted by the court for evidential purposes. In addition, if the court deems that the party's refusal to appear makes it impossible to discharge the burden of proof, it may invert the burden of proof.

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

No costs are charged for the use of videoconferencing.

## **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?**

When a Portuguese court is the requesting party of a request pursuant to Article 17 of Regulation (EC) No 1206/2001 of 28 May 2001, it summons the person to be heard to appear in the named court in the other (requested) Member State by post, using one of the methods mentioned in response to question 8, depending on the case. This possibility of notification by post is provided for in Article 14 of Regulation (EC) No 1393/2007 of 13 November 2007. The person to be heard is informed in the notification that his or her appearance is on a voluntary basis.

When the Portuguese court is the requested party, it is the responsibility of the requesting court to notify the persons to be heard and to inform them that appearance is on a voluntary basis.

By mutual agreement between the requesting and requested courts, notification of the person to be heard and the information that this is on a voluntary basis can be carried out by the court of the requested Member State. This can happen in practice regardless of whether the Portuguese court is the requesting or the requested party.

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

At the appointed time for the examination, the court official checks that the person to be examined is present and informs the judge who will conduct the examination or the requesting court if the latter is conducting the examination directly.

Where the examination is conducted by a Portuguese judge, once proceedings have started and before the person starts giving evidence as such, the following steps are taken: (i) the person giving evidence, witness or expert takes an oath before the judge; (ii) the judge asks preliminary questions to identify the person being heard.

It is up to the judge to conduct the preliminary questioning, in order to identify the person being heard, by asking his or her name, profession, address, marital status and other details the judge may deem necessary for identification purposes.

The judge also asks the person being heard whether he or she is a relative, friend or enemy of any of the parties and whether he or she has a direct or indirect interest in the case, in order to assess the credibility of the evidence.

If, during the preliminary questioning, the judge establishes that a witness is unfit or is not the right person to be examined, he or she will not allow them to give evidence. A witness is unfit if, despite not being hindered by a psychological anomaly, he or she does not have a natural capacity (physical or mental aptitude) to give evidence.

The preliminary questioning also allows the judge to check for the following cases in which, according to the Portuguese Code of Civil Procedure, the witnesses or parties may refuse to give evidence.

The following persons may refuse to give evidence as witnesses (except in actions intended to verify the birth or death of children):

- Relatives in the ascending line in cases involving their descendants, adoptive parents in cases involving their adopted children and *vice versa*;
- A father-in-law or mother-in-law in a case involving their son-in-law or daughter-in-law and *vice versa*;
- Spouses or ex-spouses in cases involving the other spouse or ex-spouse;
- Anyone who is cohabiting, or has cohabited in a similar way to married couples, with any of the parties to the case.

It is the judge's duty to advise the persons mentioned in the above points that they are entitled to refuse to give evidence.

Persons who are bound by professional secrecy, secrecy as public officials or State secrets must be excused from giving evidence in relation to facts covered by such secrecy. In those instances, the judge will verify the legitimacy of the excuse and, should he or she deem it necessary, waive their duty to secrecy.

Parties may only give evidence in relation to personal facts. In a civil action it is not admissible for the evidence of a party to focus on criminal or wrongful acts in respect of which the party is a defendant in a criminal case.

### **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?**

Under Portuguese law:

Before evidence is taken, the judge warns the person being examined of the moral importance of the oath that he or she is about to take, of the duty to be faithful to the truth and of the penalties for making false statements.

The judge then asks the witness to take the following oath: *"I swear on my honour that I will speak the whole truth and nothing but the truth."*

Refusing to take the oath is equivalent to a refusal to give evidence; both are punishable as contempt of court unless justified, should the judge charge the person accordingly.

Where a court in another Member State is taking evidence directly from Portugal by videoconference in accordance with Article 17 of Regulation (EC) No 1206/2001 of 28 May 2001, the court of the requesting Member State must inform the (requested) Portuguese court of the following identification details of the person who will give evidence: name, profession, address, marital status and other information it deems necessary for the purposes of identification, as well as the capacity in which the person will be heard (e.g. as party, witness, expert, technical advisor), the language the person speaks and whether it is necessary to call an interpreter to the requested court.

These details are necessary so that the (requested) Portuguese court can, on the one hand, take steps to call an interpreter and, on the other hand, verify the presence of the person to be examined at the appointed time for the videoconference.

However, as the Portuguese judge does not intervene in the proceedings, the oath must be taken by videoconference before the judge of the court of the requesting Member State. The same applies to the preliminary questioning, if this takes place, and to matters of fitness or refusal to give evidence or the excusing of witnesses from giving evidence, which are dealt with under the authority of the judge of the requesting court, in accordance with the civil procedural law of the requesting Member State, as provided for in Article 17(6) of Regulation (EC) No 1206/2001 of 28 May 2001.

### **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?**

The requesting and the requested courts (once the latter has been identified by the central authority) should establish direct contact with each other to schedule a videoconference and should also arrange a date for a prior test.

For practical reasons, whenever possible, it is preferable to undertake the test before the witness has been notified; to that end, the date of the test should be scheduled far enough in advance to allow the witness to be notified in time.

On the day of the test and on the date of the videoconference hearing, an IT technician, a telecommunications technician or a court official with appropriate knowledge should be present in each of the courts.

In Portugal, the Institute of Financial Management and Justice Infrastructure (*Instituto de Gestão Financeira e Estruturas da Justiça* or 'IGFEJ') has a dedicated team available for videoconferencing in courts.

For organisational reasons, whenever possible, the IGFEJ should be notified of the date of the test and of the hearing with three days' notice. This allows the IGFEJ to check that the necessary technical conditions for videoconferencing are in place, to intervene immediately in the event of any communication difficulties between the courts and to monitor the videoconference tests.

#### **Scheduling of a videoconference in another Member State at the request of a Portuguese court**

The (requesting) Portuguese court must first ask the IGFEJ to create the necessary technical conditions for the videoconference, to intervene to overcome any communication difficulties between the courts and to monitor the videoconference tests.

In order to overcome technical difficulties, the Portuguese court asks the court of the requested Member State also to appoint someone responsible in their videoconferencing service to monitor the test and/or to provide the necessary technical assistance in collaboration with the Portuguese technicians.

When the Portuguese courts are the requesting party, they often seek the assistance of the EJM-civil (European Judicial Network in civil and commercial matters) contact point in Portugal, which gets in touch with the requested courts directly in order to schedule the test and videoconference. When technical difficulties are brought to its attention, the contact point liaises directly with the teams responsible for the videoconference in each one of the Member States involved, requesting the necessary connections, information or technical adjustments and informing the courts involved accordingly. This allows the language barrier to be overcome and the videoconference to be conducted successfully.

#### **Scheduling of a videoconference in a Portuguese court on request from another Member State**

In Portugal, the Directorate-General for the Administration of Justice (*Direcção-Geral da Administração da Justiça*, or DGAJ) is the central authority responsible for receiving and accepting requests from another Member State pursuant to Article 17 of Regulation (EC) No 1206/2001 of 28 May 2001. Once the request has been accepted, the DGAJ indicates to the court of the requesting Member State the (requested) Portuguese court where the videoconference will take place. Once this has been done, the requesting and requested courts must agree with each other directly on the dates for conducting first the test and then the videoconference hearing.

The DGAJ, as a central authority, facilitates the direct contact between the requesting and requested courts, as well as contact with the IGFEJ videoconferencing support team, so as to overcome any technical difficulties. In addition, the EJM-civil contact point in Portugal can also facilitate the necessary contacts, should it be asked to do so.

Through direct contacts the courts book the videoconference room and appoint the staff to set up the technical connections and monitor the videoconference at the requesting and requested courts, respectively. In Portugal, as a rule, a court official with appropriate knowledge is chosen, preferably accompanied by the IT technician of the Portuguese court.

When the videoconference is conducted by IP, it must necessarily be done from Portugal. To that end, the Portuguese court asks the IGFEJ in advance for the opening of an external connection.

Where videoconferences are conducted via a telephone line (ISDN), the connection to the Portuguese courts can be made from courts in other Member States.

Whenever there are technical difficulties, the IT technician of the Portuguese court or an IGFEJ technician can provide the necessary assistance.

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

When making a videoconferencing request, the following details must be entered in field 12 of form I in the annex to Regulation No 1206/2001 of 28 May 2001, or as an annex to that form.

1. Technical details of the videoconferencing equipment used by the requesting court, namely:

Communication protocol used (e.g. H.323, H.320)  
Video protocols (e.g. H.261, H.263 and H.264)  
Audio protocols (e.g. G.711a, G.711u, G.722, G.729)  
Content sharing protocol, if necessary [e.g. H.239 or BFCP (SIP)]  
Security: H.235 and the respective encryption supported  
Maximum bandwidth supported  
Standalone, MCU or Gateway equipment  
In the case of MCU or Gateway, whether it has IVR.

2. ISDN and/or public IP connection details of the court.

3. Request for scheduling of a videoconference test before the giving of evidence.

4. Name and direct contact details (telephone, fax and email) of the person who will provide support for the videoconference (preferably a court official together with an IT or telecommunications technician that provides support for the court).

5. If the court wishes to hold a videoconference using Skype (for Business), it is necessary to create a contact. There are no communication restrictions with the standard protocol used by Skype.

In any event, a connection test should always be requested in advance to ascertain whether technical intervention is required.

The technical details for the videoconference are as follows:

Communication protocol used: H.323

Security: H.235 AES

Maximum bandwidth supported: 256kbps

#### **NB:**

**The information contained in this form is not binding on the EJM-civil contact point, the courts or other entities and authorities. Nor does it dispense with the need to consult the applicable legal texts. The information is subject to regular updating and to the evolving nature of case law.**

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#### **Taking evidence by videoconferencing - Romania**

**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. In this case, Law No 189/2003 on international legal assistance in civil and commercial matters is applicable, more specifically Article 25(1) and (3) and Article 35(3).

The Romanian judicial authority referred to may consider using a special procedure, at the request of the requesting judicial authority, provided that it is not contrary to Romanian law. The Romanian court informs the requesting judicial authority of the date and place of the letters rogatory procedure and it may allow the participation of foreign magistrates. Under Article 3(3) of Council Regulation (EC) No 1206/2001 of 28 May 2001, the Ministry of Justice fulfils duties relating to decisions on requests submitted under Article 17 of the same Regulation.

The videoconference should take place in the presence of the judge from the District Court with jurisdiction where the evidence is to be taken, assisted by an interpreter, where necessary. He/she must verify the identity of the person to be examined and must ensure compliance with the fundamental principles of Romanian law.

**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?**

No. The letters rogatory procedure allows the hearing of witnesses or other persons involved (Article 17 of Law No 189/2003 on international legal assistance in civil and commercial matters).

Nevertheless, under Article 26(2) of Law No 189/2003 on international legal assistance in civil and commercial matters, the letters rogatory procedure may be denied if the person to be examined may not testify due to some interdictions under Romanian law or when the documents to be transmitted or examined may not be circulated.

Furthermore, under Articles 315, 316 and 317 of the New Code of Civil Procedure, the following may not be examined as witnesses: relatives and in-law relatives up to and including the third degree, spouses, former spouses, fiancés or cohabittees, persons who are in hostile relations or have a particular interest with regard to one of the parties, persons declared as lacking legal capacity, and persons convicted for perjury. However, the parties may agree, either expressly or tacitly, that the following may also be examined as witnesses: relatives and in-law relatives up to and including the third degree, spouses, former spouses, fiancés or cohabittees, and persons who are in hostile relations or have a particular interest with regard to one of the parties.

In court cases concerning parentage, divorce and other family relations, the relatives and in-law relatives up to and including the third degree may also be examined, except for the descendants.

The following persons are exempt from testifying:

1. clerics, doctors, pharmacists, lawyers, notaries public, bailiffs, mediators, midwives and nurses, and any other professional bound by law to confidentiality or professional secrecy on the facts they have become aware of at work or in the exercise of their professional activities, even after they have ceased their activity;
2. judges, prosecutors and public officials, even after they have ceased their duties, regarding secret circumstances they became aware of during their term of office;
3. those who, through their answers, are likely to expose themselves, their relatives or in-law relatives up to and including the third degree, or their spouses, former spouses, fiancés or cohabittees to criminal penalty or to public contempt.

These persons, except for the clerics, may testify however if they are released from confidentiality or professional secrecy by the party interested in keeping that secret, except where the law provides otherwise. Judges, prosecutors and public officials may also testify if the authority or institution with which they work or have worked, as applicable, issues an approval in this respect.

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

No, there are no restrictions. Pursuant to Article 17 of Law No 189/2003 on international legal assistance in civil and commercial matters, the letters rogatory procedure allows for hearing of witnesses or other persons involved, obtaining documents, drawing up expert opinions, and carrying out an investigation or obtaining other necessary documents or information for the settlement of a specific case.

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

No, there are no restrictions. Nevertheless, under Articles 16, 261(1) and 314 of the New Code of Civil Procedure, evidence is obtained by the court trying the case. If, for objective reasons, evidence can only be obtained outside the locality where the court has its seat, evidence may be obtained through the letters rogatory procedure by a court of the same level or even a lower court if there is no court of the same level in that locality. The court entrusted under the letters rogatory procedure takes evidence in the presence of the parties, or even in the absence thereof, if they have been lawfully summoned, and has the same duties as the court of referral, as regards the procedure to be followed. At the same time, the witness who, by reason of illness or other serious hindrance, cannot appear before the court may be heard at his/her location, subject to the parties' summoning procedure.

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

Yes, this is permitted under Article 13 of Law No 304/2004 on judicial organisation, republished.

**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 Romanian.

b) in Romanian, because the Romanian requested court should draw up a hearing report recording the date and place of the hearing, the identity of the person heard, information on oath taking, the technical conditions of the hearing, etc.

**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 is responsible for providing interpreters in accordance with Article 27 of Law No 189/2003 on international legal assistance in civil and commercial matters. The Romanian requested court may facilitate, where applicable, access to an interpreter from Romania, by providing a list of interpreters for the requesting court.

**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?**

At least one month and not more than three months.

In this case, Law No 189/2003 on international legal assistance in civil and commercial matters is applicable, more specifically Article 25(3). The Romanian court informs the requesting judicial authority of the date and place of the letters rogatory procedure. In accordance with Article 261(4) of the New Code of Civil Procedure, the court entrusted under the letters rogatory procedure takes evidence in the presence of the parties, or even in the absence thereof, if they have been lawfully summoned, and has the same duties as the court of referral, as regards the procedure to be followed.

However, given that there are two procedures in relations with foreign bodies (the communication procedure in the course of taking evidence), we consider that the time limit should be, in practice, at least one month and not more than 3 months subject to the existing provisions on:

- the fulfilment of the request for service provided for in Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, more specifically it should include at least the one-month period required for the actual fulfilment of the request for service by mail with acknowledgement of receipt;

- the obligations of the requesting court to fulfil the requests of the requested court concerning the provision of additional information or the payment of the advance/deposit, etc., as indicated in 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.

The reasons would be those related to the time allocated for any translations of correspondence with the requesting court or the witness and the time allocated for mailing abroad, the high workload and not least the videoconferencing schedule.

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

The costs cannot be estimated because they vary depending on time and country. They should be settled by bank transfer to the account of the court of appeal, as the secondary authorising body, or to the account of the district court, as the third authorising body. The expenses incurred with the video connection, with making the connection available in the requesting State, the remuneration of interpreters and the allowances paid to witnesses and experts, as well as the expenses incurred with travelling to the requested State are reimbursed by the foreign requesting court to the Romanian requested court.

**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 person who is to be examined should be summoned also in accordance with the provisions of the Romanian New Code of Civil Procedure. This person should be informed that the hearing will take place on a voluntary basis in the summons issued by the Romanian requested court, through the decision approving the taking of evidence by the requesting court or in any other document.

Under Article 261(4) of the New Code of Civil Procedure, the court entrusted under the letters rogatory procedure takes evidence in the presence of the parties, or even in the absence thereof, if they have been lawfully summoned, and has the same duties as the court of referral, as regards the procedure to be followed.

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

In accordance with Article 318 of the New Code of Civil Procedure, before taking a statement, the President asks the witness to state his/her surname, first name, profession, domicile and age, whether he/she is a relative or an in-law relative of one of the parties and to what degree, and whether he/she is in the service of one of the parties. Then, the President draws the witness's attention to the duty to take an oath and the significance of the oath.

**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?**

Under Articles 319 and 320 of the Romanian New Code of Civil Procedure, before being heard, the witness takes the following oath: "I swear that I shall tell the truth and that I shall not conceal anything from what I know. So help me God!"

The witness takes the oath while keeping his/her hand on the cross or the Bible. As regards the divinity invoked in the wording of the oath, it is changed according to the witness's religious faith. The above-mentioned provisions are not applicable to the witness whose religion is other than the Christian religion. The witness who does not belong to any faith takes the following oath: "I swear on my honour and conscience that I shall tell the truth and that I shall not conceal anything from what I know."

Witnesses who do not take an oath, for reasons of conscience or faith, utter the following words before the court: "I undertake to tell the truth and not to conceal anything from what I know."

Literate mute and deaf-mute persons take the oath by transcribing the text of the oath and by signing it, hearing impaired persons utter the oath, and illiterate persons take the oath using signs with the assistance of an interpreter.



After the witness has taken the oath, the President draws his/her attention to the fact that, if he/she does not tell the truth, he/she commits the offence of perjury.

All of these are noted in the written statement.

Children who have not reached the age of 14 and do not have the capacity to make decisions at the time of the hearing, may be heard without an oath and without being prohibited to do so, but the court draws their attention to the fact that they should tell the truth, and takes into account their special position when judging their deposition.

**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?**

Contact persons may be IT specialists from courts of appeal, the clerk of the court or the judge. About 144 out of the 244 courts have videoconferencing facilities. Each of those 144 courts has 2 videoconferencing facilities.

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

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**Taking evidence by videoconferencing - Slovenia**

**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?**

It is possible for evidence to be taken by videoconference with the participation of a court in the requesting Member State or directly by a court of that Member State. In all civil and commercial matters, Article 114a of the Civil Procedure Act (*Zakon o pravdnem postopku*; hereinafter: ZPP) applies, which provides that a court may, with the consent of the parties, allow parties and their legal representatives to be at different locations during the hearing and conduct procedural activities there, provided that there is voice and image transfer from the place where the hearing is held to the place or places where parties and representatives are located and vice versa (videoconference). Subject to these conditions, a court may decide also to take evidence by examining parties and witnesses, and by taking evidence from experts.

**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?**

Videoconference can be used to examine parties and witnesses, as well as for taking evidence from an expert. Parties and representatives (for example attorneys-at-law) may conduct all procedural activities by videoconference.

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

Generally, parties and legal representatives may conduct all procedural activities from a remote location. The ZPP restricts the possibility to take evidence by videoconference to exhaustively listed evidence (examining parties and witnesses, taking evidence from an expert). Therefore, it is not possible to use videoconference for taking evidence by inspecting a location or taking evidence by examining documents.

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

Generally, parties and legal representatives may conduct all procedural activities from a remote location. There are no restrictions regarding locations where the other party is outside the court.

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

Article 125a of the ZPP provides the legal basis for voice and image recording of a hearing. In accordance with this provision, a president of the senate may order voice and image recording of a hearing. This means that the president of the senate, before whom proceedings are being conducted, has a discretionary right to decide whether a voice and image recording of the hearing will be made. In accordance with Article 114a, a party does not have a right to demand that the court allow a videoconference. The petition for a videoconference may be also initiated by the court, in which case the consent of the parties is required. A decision by which a court orders a videoconference must be issued in sufficient time before the intended hearing, taking into account the time for technical preparation, and the parties must be informed sufficiently in advance of whether they must appear before the court.

Since 2011, at least one court room at every district court (11 locations) in Slovenia has been supplied with all the necessary equipment for a videoconference and for recording such connections. It is possible to record only voice or image or both at the same time. There are also three mobile videoconference equipment sets available which courts can use at local or other courts. Since a videoconference is set up through a centrally accessible point, every videoconference may be recorded upon a judge's order.

**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?**

Pursuant to Articles 10 to 12 of the Regulation, examinations may be conducted by a requested court, specifically in the language which is the official language of the court (in Slovenian and the languages of national communities which are in official use by the courts in the areas of these national communities, namely in Italian or Hungarian) and, when necessary, through a translation into the language which a party or other participant in the proceedings understands, when suggested by them, or when the court determines that the party or another participant in the proceedings does not understand Slovenian.

Pursuant to Article 17 of the Regulation, examination is conducted directly by the requesting court. In such a case, examination may be conducted in a foreign language if a suitable translation is provided into the language understood by the party or the other participants in the proceedings.

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

When court interpreters are used this can be arranged by either the requested or the requesting court (depending on the agreement between the courts). Additionally, court interpreters may be at the location of the requested or the requesting court, or at a third location.

In practice, court interpreters are at the location of the person in need of interpretation, namely at the location of the requested court, if the court requesting the examination is examining in its language, pursuant to Article 17 of the Regulation, or at the location of the requesting court if the examination is conducted by the requested court, pursuant to Articles 10 to 12 of the Regulation.

**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?**

A person who is to be examined must be summoned in person and in writing to appear before the court. The summons states, among other things, the time and place where the person will be examined. Certain witnesses may be examined at their home in cases of old age, illness or serious physical disability. The Civil Procedure Act does not stipulate how much time in advance witnesses must be summoned; however, parties must be given enough time to prepare for the hearing - at least 15 days from the time the summons for the hearing is served. This time limit does not apply when a person is summoned as a witness.

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

In accordance with Article 153 of the ZPP, a party petitioning evidence to be taken deposits money to cover the costs incurred in taking the evidence. If the evidence to be taken is proposed by both parties, the court can decide that both parties are to deposit equal shares of the amount. The costs are reimbursed according to the outcome of the matter.

In the Republic of Slovenia, videoconference is free.

## **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 ZPP does not set out additional conditions.

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

Before witnesses are examined, they are asked their name and surname, the name of their father, occupation, address, place of birth, age and their relationship to the parties (third paragraph of Article 238 of the ZPP).

## **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?**

The ZPP does not stipulate taking an oath. In accordance with Article 238, a court warns witnesses before the start of examination that they must speak the truth and must not conceal anything, after which they are warned about the consequences of giving a false deposition.

## **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?**

The ZPP does not contain such a provision.

In practice, at least one week before a videoconference, the connection is tested to check that it works and that it is of satisfactory quality and to correct any deficiencies. This ensures that the technician who is present during the hearing can operate the videoconference equipment without difficulties, since testing will have been carried out in advance. The courts, either in the actual request or subsequently, exchange contact details of the persons who will be responsible for the technical aspects of the videoconference.

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

The ZPP does not contain such a provision.

In practice, the requesting court sends the requested court, together with the request, a form with all technical information on the videoconference system and the contact details of the expert who will be responsible for the technical aspects of the videoconference. Both courts need information about the videoconference systems, connection type (ISDN, IP), connection speed, address (phone number), language to be used for testing, date and time of testing, any time difference and contact details of the technician responsible for technical matters.

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## **Taking evidence by videoconferencing - Slovakia**

### **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?**

Although Slovak law does not contain specific rules allowing evidence to be taken with the court in the requesting Member State participating, there are no provisions preventing this. According to the procedural rules, courts take evidence at a hearing, and also, where practicable, outside hearings (Section 122 of the Code of Civil Procedure (*Občianský súdny poriadok*)). With the parties' consent, the court may hold an oral hearing by videoconference or another communications technology (Section 116(6) of the Code of Civil Procedure). In principle, the parties have the right to be present while evidence is being taken.

There are no specific procedures for taking evidence by videoconference (apart from those described above). Therefore, only the Regulation on Taking Evidence (*Nariadenie o výkone dôkazu*), the Code of Civil Procedure and the Administrative and Secretarial Rules for Courts (*Spravovací a kancelársky poriadok pre súdy*) apply (in 2015, Slovak Justice Ministry Decree No 543 of 11 November 2005 on Administrative and Secretarial Rules for district courts (*okresné súdy*), regional courts (*krajské súdy*), the special court (*Špeciálny súd*) and military courts (*vojenské súdy*)).

All other issues must be resolved by agreement between the courts in question with the aid of the EJM.

### **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?**

There are no restrictions in Slovak law on the type of person who may be examined via videoconference. Pursuant to Section 125 of the Code of Civil Procedure, all means that can be used to establish the facts of a case may be used in evidence. Parties, witnesses and experts may be examined in particular.

Pursuant to Section 124 of the Code of Civil Procedure, the obligation to keep classified information confidential must be observed when evidence is taken. Pursuant to Section 100(3), if a court decides to take into consideration the opinion of a minor, the opinion is ascertained through the child's representative or the relevant authority in charge of the welfare and legal protection of children and social care, or by examining the minor even without the child's parents being present. Specific restrictions would clearly depend on the child's age and the method selected by the court for the examination.

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

None, apart from those restrictions associated with the very nature of videoconferencing (the fact that it is impossible to conduct a premises search by videoconference, etc.).

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

Evidence is usually taken at a hearing (Section 122 of the Code of Civil Procedure) and hearings usually take place at a courthouse (Section 25 in conjunction with Section 35 of the Administrative and Secretarial Rules for Courts). For technical reasons it would be difficult to conduct an interview elsewhere.

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

The videoconferencing equipment is also capable of recording videoconferences. Nevertheless, under the terms of Section 116(6) of the Code of Civil Procedure, an oral hearing via videoconference may only take place with the parties' consent. Without the parties' consent, the general provisions of Section 44a of the Code of Civil Procedure apply, according to which a hearing may also be recorded using audio recording equipment. Such an audio recording is stored on a data carrier, which is part of the case file.

### **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?**

This question is not specifically about taking evidence abroad or via videoconference. Under the general rules, Slovak court hearings are always held in the official language and interpreters are provided if required.

If a court is involved in taking evidence, we would expect that the court receiving the request would conduct the hearing and that the evidence would therefore be taken in the language of that court. If a court takes evidence directly pursuant to Article 17, it does so in its own language.

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

Slovak law does not contain any provisions on this issue. Interpreters are provided on an ad hoc basis by agreement between the courts in question.

**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?**

Slovak law does not contain specific provisions governing these issues. The general rules on conducting hearings and summoning witnesses and parties apply. Courts usually take evidence at hearings (Section 122 of the Code of Civil Procedure) and a court summons must be served long enough in advance to comply with the statutory deadline for preparing a court hearing (Section 46/3 of the Administrative and Secretarial Rules for Courts), which is 'usually at least five days prior to the date on which the hearing is due to take place' (Section 115(2) of the Code of Civil Procedure).

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

The Slovak courts do not apply charges for videoconferencing.

**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?**

Slovak law does not contain specific provisions governing these issues. In general, a court is supposed to instruct a person of their procedural rights and obligations at the start of a hearing. This does not apply when such persons are represented by a lawyer (*advokát*). (Section 5 of the Rules of Civil Procedure).

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

Slovak law does not contain specific provisions governing these issues. The specific procedure will be decided by ad hoc agreement between the courts concerned. The general provisions on verifying the identity of the person being examined evidently apply. These provisions establish that at the start of a hearing, a witness' identity must be established as well as any circumstances that could impact on the witness' credibility (family relationships etc., Section 126(2) of the Code of Civil Procedure).

**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?**

Slovak law only contains specific provisions governing these issues in criminal proceedings, not in civil proceedings.

However, pursuant to Section 126(2) of the Code of Civil Procedure, courts instruct witnesses at the start of each hearing about the significance of witness statements and the witnesses' rights and obligations (to tell the truth and not conceal anything) and about the criminal consequences of perjury. Note that this legal provision (perjury) does not apply to parties to proceedings.

**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?**

All Slovak courts have an administrator who can be approached to plan the testing of the video link, the date of the hearing, etc. The administrator is trained in operating the videoconferencing facilities. In the event of any problems, the administrator can contact the court technician and may arrange for the technician to be present on the day of the hearing.

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

The technical information necessary for establishing a link with the requesting court's equipment is required.

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**Taking evidence by videoconferencing - Finland**

**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?**

Both procedures are possible. A request should clearly state which procedure the requesting court means.

Where requests are made under Articles 10 to 12 of the Regulation, the provisions of the Code of Judicial Procedure relating to the presentation of evidence apply to the hearing.

**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?**

There are no such restrictions in civil or commercial law cases. Experts and parties can also be examined by video conference.

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

None.

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

No.

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

The recording of video-conference hearings is not prohibited, but the requisite equipment is not available in all courts. A separate enquiry to this effect should be made when the request is submitted.

**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?**

Where requests are made under Articles 10 to 12, the hearing is conducted in Finnish or Swedish. In the case of a direct hearing under Article 17, the requesting court selects the language to be used.

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

Where requests are made under Articles 10 to 12, the provision and location of interpreters is a matter to be agreed between the requesting court and the receiving court. Where requests are made under Article 17, the requesting court is responsible for obtaining interpreters and deciding where they should be located.

**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?**

Where requests are made under Articles 10 to 12, the receiving court sends a written summons to the person to be examined. Ideally, there should be at least two to three weeks between the service of notice and the date of the hearing. Where requests are made under Article 17, the requesting court is responsible for the service of notice and for making the necessary arrangements.

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

When a person is examined pursuant to Articles 10 to 12 of the Regulation in a video-equipped court, the use of video conferencing equipment does not usually generate separate costs. When a person is examined pursuant to Article 17 in a place other than a court, the requesting court takes responsibility for videoconferencing costs.

#### **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?**

A court which has submitted a request under Article 17(2) of the Regulation must inform the person in question that evidence is taken on a voluntary basis.

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

Where requests are made under Articles 10 to 12, the receiving court establishes the identity of the person to be examined and checks it, if necessary, against the person's identity card or passport. Where requests are made under Article 17, the requesting court is required to verify the identity of the person to be examined.

#### **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?**

No particular requirements for taking oaths apply during direct taking of evidence under Article 17. An oath is sworn in accordance with the legislation governing the court that is examining the witness.

#### **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?**

The receiving court provides the name of such a contact person.

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

- The requesting court should ideally provide the names of contact persons for both technical arrangements and case-specific (legal) issues.
- The request should contain contact details (email addresses and/or telephone numbers) of the contact persons that allow them to be reached also during the court hearing in case there are problems with the video link or other similar issues.
- If the states are located in different time zones, the request should specify whether the times mentioned are the times of the requesting state or the receiving state.

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### **Taking evidence by videoconferencing - Sweden**

#### **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 by videoconference either with the participation of a court in the requesting Member State or directly by a court of that Member State.

Under Section 5 of the Act (2003:493) on the EC Regulation on the taking of evidence in civil or commercial matters ('the Taking of Evidence Regulation'), evidence is to be taken by district courts (*tingsrätter*). The court will apply the rules on the taking of evidence outside the main hearing that are laid down in Chapter 35 Sections 8-11 of the Code of Judicial Procedure (*rättegångsbalken*), except where otherwise provided in the Regulation.

It should be noted that in cases in which the Taking of Evidence Regulation is not applicable, provisions exist in other acts, for example the Act (1946:816) on the taking of evidence for a foreign court.

#### **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?**

Any party who is to be examined in a case can be examined by videoconference.

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

No particular restrictions have been imposed.

#### **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 taking of evidence is carried out by district courts. Otherwise, no particular restrictions have been imposed.

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

Yes, it is permitted and the facilities are available.

#### **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) The hearing must be conducted in Swedish but the court may employ an interpreter.

(b) That depends on the rules of the requesting state.

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

If an examination takes place in Sweden it is the Swedish court that decides on interpreters.

#### **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?**

The requested court issues a summons to the person who is to be examined. The summons specifies the time and place. There are no regulatory requirements as to the amount of time that must be allowed when deciding on the date of the hearing.

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

If the Swedish court requests it, the requesting court must meet the cost of experts and interpreters, costs arising as a result of the request for enforcement in accordance with a special procedure, and the cost of communications technology such as videoconferencing and teleconferencing (cf. Article 18(2) and Article 10(3) and (4) of the Taking of Evidence Regulation).

#### **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?**

It is for the requesting court to inform the person concerned that the taking of evidence in accordance with Article 17 of the Taking of Evidence Regulation is on a voluntary basis.

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

There is no specifically regulated procedure for verifying identity in this connection.

## **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?**

As a general rule the national rules on oaths apply, and no specific conditions or information requirements have been laid down for the application of Article 17.

## **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?**

Staff who are able to operate the videoconferencing facilities are available at all courts.

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

No additional information is normally required.

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### **Taking evidence by videoconferencing - England and Wales**

#### **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?**

It is possible for evidence to be taken by videoconference in the courts of England and Wales either with the participation of a court in another Member State or directly by a court of that Member State. The procedures for obtaining evidence are found in [Part 32 of the Civil Procedure Rules](#). Rule 32.3 states that a court may allow a witness to give evidence through a video link or by other means. Further information can be found in [Practice Direction 32, Annex 3](#).

#### **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?**

There are no restrictions of the kind suggested on the type of person who can be examined when requests are made under either Articles 10 to 12 or 17.

Provided that the request falls properly within the scope of Regulation 1206/2001 and is compatible with the law of England and Wales any relevant person can be examined.

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

Provided that the request for evidence complies with the law of England and Wales and it is practicable to obtain the evidence via videoconference there are no restrictions on the type of evidence that can be obtained.

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

When a request is made under Articles 10 to 12 it is usual, but not compulsory, for the examination to take place in a court. A videoconference for a request made under Article 17 can be held anywhere although the court with facilities nearest to the witnesses will be suggested to the requesting Member State's court.

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

At present there is no facility to record videoconference hearings in England and Wales. If a recording is required the parties to the claim must arrange for a recording to be made either at the point at which the evidence is given or the point at which it is viewed.

#### **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?**

- Where requests are made under Articles 10 to 12 the hearing should be conducted in English or, if the hearing is being conducted in Welsh, then in Welsh.
- There is no language requirement for hearings where there is direct taking of evidence although the requesting Member State must provide interpretation for witnesses who do not understand the language in which the hearing is to be conducted.

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

Where a request is made under Articles 10 to 12 and the witness requires an interpreter to understand English the interpreter will be provided by the court authorities in England and Wales. If the witness does not require interpretation but the requesting court cannot understand English it is the responsibility of that court to provide for its own interpretation. The location of an interpreter in such circumstances is not subject to any restrictions although for practical reasons it would probably be easier for the interpreter to be at the requesting court.

The requesting court is responsible for providing interpretation for requests made under Article 17. Again there are no restrictions on where the interpreter should be located.

#### **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?**

Where a request is made under Articles 10 to 12 all arrangements will be made by the requested court. Under Article 17, where the Central Body for England and Wales has authorised direct taking of evidence it shall notify the requesting court of the nearest court with videoconferencing facilities to the person to be examined. It is then the responsibility of the requesting court to liaise direct with the court suggested to make the necessary arrangements. The Central Body will notify the court with videoconferencing facilities that it should expect contact from the requesting court.

The requesting court should ascertain when the videoconferencing facilities are available and then liaise with the person to be examined to find a mutually available time. It is sensible to allow at least a month to make the necessary arrangements.

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

Costs will vary depending on a number of circumstances including the place of the videoconference (i.e. whether it is a court or another premises); the time of the hearing (i.e. if it is out of normal court hours staff will be required to stay longer); whether any special procedures are required; and whether any costs arise through the use of the equipment. The requested court will inform the requesting court of the costs. Payment should be made in UK Pounds either by cash, bankers draft or electronically where such facilities are available.

#### **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?**

Where a request for direct taking of evidence under Article 17 is granted by the Central Body for England and Wales the order which is given will stipulate that the requesting court must inform the person being examined that his/her attendance at a hearing is voluntary and that he/she is entitled to leave the hearing at any point in the proceedings. The requesting court is asked to send a copy of this order to the person being examined when arrangements for the videoconference are being made.

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

Where a person is examined by a court in England and Wales with the participation of a requesting court under Articles 10 to 12 that person will be required to take an oath or make an affirmation as part of which he/she must confirm his/her identity. Where a requesting court takes evidence directly under Article 17 it will be for that court to use whatever means it considers necessary to verify the identity of the person being examined.

**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?**

Where a request is made under Articles 10 to 12 the oath or affirmation will be made under the normal procedures for courts in England and Wales. Where a request is made under Article 17 the requesting court should notify the requested court of the requirements for any oath so that appropriate books are provided.

**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?**

Where a request is made under Articles 10 to 12 the requested court will make the necessary arrangements. Where the Central Body for England and Wales authorises a request under Article 17 it will inform the court with videoconferencing facilities to expect contact from the requesting court and that it should cooperate with the requesting court to ensure there is someone available to operate the videoconferencing facilities and deal with any technical problems at the time of the hearing.

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

Where requests are made under Article 17 the requesting court should notify the requested court if the person being examined has any special requirements – e.g. wheelchair access or a loop system where a hearing aid is used.

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**Taking evidence by videoconferencing - Northern Ireland**

**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?**

It is possible for evidence to be taken by videoconference in the courts in Northern Ireland either with the participation of a court in another member state or directly by a court of that member state. The procedures for obtaining evidence are found in Order 38 of the Court of Judicature Rules [\[1\]](#) ([The rules of the Supreme Court \(Northern Ireland\) \(Amendment No.2\) 2005](#)).

**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?**

There are no restrictions of the kind suggested on the type of person who can be examined when requests are made under either Articles 10 to 12 or 17, provided that the request falls properly within the scope of the Regulation 1206/2001 and is compatible with the law of Northern Ireland, any relevant person can be examined.

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

Provided that the request for evidence complies with the law of Northern Ireland and it is practicable to obtain the evidence via videoconference there are no restrictions on the type of evidence that can be obtained.

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

When a request is made under Articles 10 to 12 it is usual, but not compulsory, for the examination to take place in a court. A videoconference for a request made under Article 17 can be held anywhere although the court with facilities nearest to the witnesses will be suggested to the requesting Member State's court.

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

Video conferencing is digitally audio recorded in respect of all High Court proceedings as these are courts of record.

**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) Where requests are made under Articles 10 to 12 the hearing should be conducted in English.

b) There is no language requirement for hearings where there is direct taking of evidence, although the requesting Member State must provide interpretation for witnesses who do not understand the language in which the hearing is to be conducted.

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

Where a request is made under Articles 10 to 12 and the witness requires an interpreter to understand English the interpreter will be provided by the court authorities in Northern Ireland. If the witness does not require interpretation but the requesting court cannot understand English it is the responsibility of that court to provide for its own interpretation. The location of an interpreter in such circumstances is not subject to any restrictions although for practical reasons it would probably be easier for the interpreter to be at the requesting court.

The requesting court is responsible for providing interpretation for requests made under Article 17. Again there are no restrictions on where the interpreter should be located.

**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?**

Where a request is made under Articles 10 to 12 all arrangements will be made by the requested court. Under Article 17, where the Central Body for Northern Ireland has authorised direct taking of evidence it shall notify the requesting court of the nearest court with videoconferencing facilities to the person to be examined. It is then the responsibility of the requesting court to liaise direct with the court suggested to make the necessary arrangements. The Central Body will notify the court with videoconferencing facilities that it should expect contact from the requesting court.

The requesting court should ascertain when the videoconferencing facilities are available and then liaise with the person to be examined to find a mutually available time. It is sensible to allow at least a month to make the necessary arrangements.

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

Costs will apply to the rental of equipment and the duration of the call. Payment should be made in UK Pounds either by cash or bankers draft.

**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?**

Where a request for direct taking of evidence under Article 17 is granted by the Central Body for Northern Ireland the order which is given will stipulate that the requesting court must inform the person being examined that his/her attendance at a hearing is voluntary and that he/she is entitled to leave the hearing at any point in the proceedings. The requesting court is asked to send a copy of this order to the person being examined when arrangements for the videoconference are being made.

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

Where a person is examined by a court in Northern Ireland with the participation of a requesting court under Articles 10 to 12 that person will be required to take an oath or make an affirmation as part of which he/she must confirm his/her identity. Where a requesting court takes evidence directly under Article 17 it will be for that court to use whatever means it considers necessary to verify the identity of the person being examined.

#### **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?**

Where a request is made under Articles 10 to 12 the oath or affirmation will be made under the normal procedures for courts in Northern Ireland. Where a request is made under Article 17 the requesting court should notify the requested court of the requirements for any oath so that appropriate books are provided.

#### **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?**

The Northern Ireland Courts and Tribunals Service will provide a business contact who will liaise with the requesting court and will be available for the day of the hearing. Some days prior to the hearing date a number of technical tests will be conducted. These tests will also be conducted early on the morning of the hearing date. Technical support will be available on the hearing date.

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

No further information is required at present.

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### **Taking evidence by videoconferencing - Scotland**

#### **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. Provision exists at 38 court locations in Scotland.

Articles 10-12 and 17 apply to all applications received in terms of Regulation 1206/2001. No other local procedures are applied in these cases.

#### **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?**

There are no restrictions on the type of person who can be examined.

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

There are no statutory restrictions. There may be practical restrictions (for example, reference to physical objects held by the requesting court to which the witness does not have access).

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

Again there are no statutory restrictions. Courtrooms and other rooms have been used in the past. Appropriate accommodation will be determined by the Sheriff and Sheriff Clerk at the court where the application is received.

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

It is possible to record hearings.

In any event, since proceedings could be recorded at either end of a videoconferencing link, it may be more appropriate for the requesting court to record proceedings direct.

#### **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?**

In both cases, the default language is English.

If the requesting court desires a different language then an interpreter would be required to translate proceedings into English for the benefit of those parties present who do not speak the language of the requesting court.

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

In accordance with Article 18 of Regulation 1206/2001 the requested court should make arrangements for the attendance of an interpreter locally.

#### **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?**

Notification to the parties would be made by the local court in terms of Article 11(4) of Regulation 1206/2001. This would normally be done by first class, recorded delivery letter.

In general, the existing rules regarding notification apply – i.e. a minimum of 48 hours notice would be required. In practice, however, a longer period of notice would be given since the hearings are usually fixed a few weeks in advance.

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

Generally any cost to the Scottish Courts and Tribunals Service for the use of videoconferencing facilities is not passed on to other parties.

#### **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?**

Appropriate notice is given by the requesting court in Form A. It would be normal practice to copy that information over to Form F which is subsequently served on the witness. No further requirements are imposed by the local court.

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

There is no set procedure. The requesting court may stipulate such things as the production of a Passport or Driving Licence and such requirements would be passed on to the witness. Any documentary evidence of identity would be checked on the day in a manner which satisfies the requesting court.

#### **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?**

If an oath is required by the requesting court then the local court would need to know what procedures are to be applied by the requesting court (the provision of a holy book, for example, or the form of words to be used).

It may be that the local court would wish, additionally, to administer the Scottish oath but that is a matter which would be at the discretion of the presiding Sheriff.

**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 part of the preparatory work, the local court would obtain details of a contact at the requesting court and pass those details to the Electronic Service Delivery Unit (ESDU) of the Scottish Courts and Tribunals Service.

ESDU would then liaise with the requesting court staff to arrange a time and a place for a test of the equipment. ESDU would also attend on the day to operate the local equipment and deal with any technical problems.

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

Any particular access requirements or information about medical conditions which may affect the choice of location or time of the hearing.

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**Taking evidence by videoconferencing - Gibraltar**

**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?**

It is possible for evidence to be taken by videoconference in the Supreme Court of Gibraltar either with the participation of a court in another Member State or directly by a court of that Member State. The procedures for obtaining evidence are found in [Part 32 of the Civil Procedure Rules of England and Wales](#) which apply to Gibraltar. Rule 32.3 states that a court may allow a witness to give evidence through a video link or by other means. Further information can be found in [Practice Direction 32, Annex 3](#).

**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?**

There are no restrictions of the kind suggested on the type of person who can be examined when requests are made under either Articles 10 to 12 or 17. Provided that the request falls properly within the scope of Regulation 1206/2001 and is compatible with the law of Gibraltar any relevant person can be examined.

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

Provided that the request for evidence complies with the law of Gibraltar and it is practicable to obtain the evidence via videoconference there are no restrictions on the type of evidence that can be obtained.

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

When a request is made under Articles 10 to 12 it is usual, but not compulsory, for the examination to take place in a court. A videoconference for a request made under Article 17 can be held anywhere.

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

At present there is no facility to record videoconference hearings in the Supreme Court of Gibraltar. If a recording is required the parties to the claim must arrange for a recording to be made either at the point at which the evidence is given or the point at which it is viewed.

**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) Where requests are made under Articles 10 to 12 the hearing should be conducted in English.
- b) There is no language requirement for hearings where there is direct taking of evidence although the requesting Member State must provide interpretation for witnesses who do not understand the language in which the hearing is to be conducted.

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

Where a request is made under Articles 10 to 12 and the witness requires an interpreter to understand English the interpreter is to be provided by the parties. If the witness does not require interpretation but the requesting court cannot understand English it is the responsibility of that court to provide for its own interpretation. The location of an interpreter in such circumstances is not subject to any restrictions although for practical reasons it would probably be easier for the interpreter to be at the requesting court.

The requesting court is responsible for providing interpretation for requests made under Article 17. Again there are no restrictions on where the interpreter should be located.

**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?**

Where a request is made under Articles 10 to 12 all arrangements will be made by the requested court. Under Article 17, where the Central Body for Gibraltar has authorised direct taking of evidence it shall notify the requesting court of the arrangements. It is then the responsibility of the requesting court to liaise to make the necessary arrangements.

The requesting court should liaise with the person to be examined to find a mutually available time. It is sensible to allow at least a month to make the necessary arrangements.

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

Costs will vary depending on a number of circumstances including the place of the videoconference (i.e. whether it is in court or another premises); the time of the hearing (i.e. if it is out of normal court hours staff will be required to stay longer); whether any special procedures are required; and whether any costs arise through the use of the equipment. The Gibraltar Courts Service will inform the requesting court of the costs. Payment should be made in UK Pounds either by cash or card if paid in person at the Supreme Court Registry or electronically.

**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?**

Where a request for direct taking of evidence under Article 17 is granted by the Central Body the order which is given will stipulate that the requesting court must inform the person being examined that his/her attendance at a hearing is voluntary and that he/she is entitled to leave the hearing at any point in the proceedings. The requesting court is asked to send a copy of this order to the person being examined when arrangements for the videoconference are being made.

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



Where a person is examined by the Supreme Court of Gibraltar with the participation of a requesting court under Articles 10 to 12 that person will be required to take an oath or make an affirmation as part of which he/she must confirm his/her identity. Where a requesting court takes evidence directly under Article 17 it will be for that court to use whatever means it considers necessary to verify the identity of the person being examined.

**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?**

Where a request is made under Articles 10 to 12 the oath or affirmation will be made under the normal procedures for courts in Gibraltar. Where a request is made under Article 17 the requesting court should notify the requested court of the requirements for any oath so that appropriate books are provided.

**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?**

Where a request is made under Articles 10 to 12 the requested court will make the necessary arrangements. Where the Central Body authorises a request under Article 17 it will inform the Supreme Court to expect contact from the requesting court and that it should cooperate with the requesting court to ensure there is someone available to operate the videoconferencing facilities and deal with any technical problems at the time of the hearing.

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

Where requests are made under Article 17 the requesting court should notify the requested court if the person being examined has any special requirements – e.g. wheelchair access or a loop system where a hearing aid is used.

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