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Taking evidence by videoconference

 Netherlands

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European Judicial Network
(in civil and commercial
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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.

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 (*Wetboek van Burgerlijke Rechtsvordering*)).

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.

6 In what language should the hearing be conducted: (a) where requests are made under Articles 12 to 14 of the Taking of Evidence Regulation; and (b) where there is direct taking of evidence under Articles 19 to 21 of the Taking of Evidence Regulation?

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 and where should they be located (a) where requests are made under Articles 12 to 14 of the Taking of Evidence Regulation; and (b) where there is direct taking of evidence under Articles 19 to 21 of the Taking of Evidence Regulation?

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 (a) where requests are made under Articles 12 to 14 of the Taking of Evidence Regulation; and (b) where there is direct taking of evidence under Articles 19 to 21 of the Taking of Evidence Regulation? For both options, 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 the 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 1 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 borne 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) and Article 10(4) of Regulation (EC) No 1206/2001.

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 Regulation (EC) No 1206/2001, where the direct taking of evidence entails a person being 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 of the Code of Civil Procedure).

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 Articles 19 to 21 of the Taking of Evidence Regulation?

Under Dutch civil procedural law, the oath or affirmation is administered by the judge before the hearing. The witness states that his or her testimony will be the truth and nothing but the truth. Witnesses who deliberately do not tell 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 Dutch judiciary's ICT support staff (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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