Taking evidence by videoconference

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European Judicial Network (in civil and commercial matters)

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?

The evidence of persons heard by videoconference may be taken directly by the court of the requesting Member State pursuant to requests made under Articles 19 to 21 of the Taking of Evidence Regulation. The competent authority may assign a Maltese court to participate in the taking of evidence under Article 19(4) of the Taking of Evidence Regulation. In such cases, the Maltese court may appoint a judicial assistant for this purpose in terms of Article 97A(3) of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).

In the case of requests made under Articles 12 to 14 of the Taking of Evidence Regulation, the requested court may at its sole discretion allow for the taking of evidence to be carried out by videoconference subject to any conditions and directions it deems necessary. This is regulated by Article 622B(2) of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta). In terms of this provision, the requested court may also direct that the taking of evidence by videoconference is carried out with the participation of the requesting court where appropriate.

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 imposed. Witnesses, experts and parties may all be examined by videoconference unless this would run contrary to fundamental principles of national law. The same rules on the competence of witnesses apply, irrespective of whether the witness is examined in person or by videoconference.

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

There are no such restrictions imposed, subject to the condition that the request for the taking of evidence is not contrary to fundamental principles of national law.

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

Article 622B(2) of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) leaves it to the discretion of the requested court to set the place where the examination by videoconference is to be carried out.

In practice, the videoconference is often organised in the Court building.

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

Yes, audio-recording or video-recording of any evidence is allowed using the existing recording system at the courts in terms of Article 622B(1) of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).

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?

In the case of requests made under Articles 12 to 14 of the Taking of Evidence Regulation, the hearing is to be conducted in the Maltese language or in the English language, as the case may be according to Article 2 of the Judicial Proceedings (Use of English Language) Act (Chapter 189 of the Laws of Malta). If the person giving evidence understands neither Maltese nor English, the requested court may appoint an interpreter.

In the case of requests made under Articles 19 to 21 of the Taking of Evidence Regulation, the language of the hearing depends on whether the evidence is to be taken with the participation of a Maltese court or of an appointed judicial assistant (please refer to Question 1).

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?

In the case of requests made under Articles 12 to 14 of the Taking of Evidence Regulation, interpreters are appointed by the requested court in accordance with Article 596 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta). Interpreters are appointed at the provisional expense of the party producing the witness. The interpreters are to be located at the place where the requested court shall order the examination to occur (please refer to Question 4).

In the case of requests made under Articles 19 to 21 of the Taking of Evidence Regulation, it is for the requesting court to appoint interpreters and to decide 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 (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?

In the case of requests made under Articles 12 to 14 of the Taking of Evidence Regulation, the person to be examined is summoned to appear by means of a subpoena at the time and place therein indicated. The subpoena should be issued at least one month before the hearing is to take place to allow sufficient time for the subpoena to be served on the person to be examined.

In the case of requests made under Articles 19 to 21 of the Taking of Evidence Regulation, the person to be examined may be notified of the time and place of the hearing by the requesting court directly. Alternatively, the person to be examined shall be notified of the time and place of the hearing by the competent authority by means of electronic mail or telephone. To this effect, the requested court should provide the necessary contact details of the person to be examined.

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

The use of 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?

In such cases it is for the requesting court under Article 19(2) of the Taking of Evidence Regulation to ensure, prior to submitting its request for the direct taking of evidence, that the taking of evidence is carried out on a voluntary basis.

Where the requesting court cannot provide the contact details of the person to be examined (as referred to in Question 8) this is generally taken as an indication that the requirement of Article 19(2) of the Taking of Evidence Regulation has not been complied with, unless other means for verifying compliance with this provision can be identified by mutual cooperation of the requesting and requested courts or of the competent authorities.

Additionally, where a Maltese court or judicial assistant has been assigned to participate in the hearing under Article 19(4) of the Taking of Evidence Regulation, the court or the judicial assistant, as the case may be, may directly inform the person to be examined of the voluntary basis of the taking of evidence.

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

Where a request is made under Articles 12 to 14 of the Taking of Evidence Regulation, the requested court establishes the identity of the person to be examined and verifies it, if necessary, against that person’s identity card or passport. In practice, it is often the case that the first question asked to a witness is to state his name under oath.

Where a request is made under Articles 19 to 21 of the Taking of Evidence Regulation, it is for the requesting court 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 Articles 19 to 21 of the Taking of Evidence Regulation?

As a general rule under national law, the taking of an oath prior to testifying is regulated by the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta). 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. Witnesses swear to tell the truth, the whole truth and nothing but the truth.

However, there are no national requirements for taking oaths applicable in cases of direct taking of evidence under Articles 19 to 21 of the Taking of Evidence Regulation. It is for the requesting court to administer the oath in accordance with the law of the Member State of the requesting 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?

The following is the relevant contact person:

Nathalie Cutajar, Senior Clerk

Contact +356 25902346

nathalie.cutajar@courtservices.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 address;

d. Details of its technical contact person.

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