

[Home](#) > ... > [Court Procedures](#) > [Videoconferencing](#) > [Taking Evidence By Videoconference](#) > [Spain](#)

Taking evidence by videoconference



Content provided by:



European Judicial Network
(in civil and commercial
matters)

As a general rule, if the national law of the Member State in which the proceedings take place provides for the recording of hearings in civil or commercial matters, the same rules apply to hearings held by videoconference or other distance communication technology. In this case, the parties should be informed of these provisions and, where appropriate, of the possibility of objecting to the recording. Recordings should be made and stored securely and it should be guaranteed that they will not be publicly disseminated.

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 use of videoconferencing or distance communication technology is optional. Videoconferencing is intended to facilitate oral hearings in civil, commercial and also in criminal proceedings (these hearings are regulated by Article 6 of the Digitalisation Regulation) with a cross-border dimension.

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 July 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 it 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:

1. the object or purpose of the cooperation requested is contrary to public order;
2. the process giving rise to the request for cooperation falls under the exclusive competence of the Spanish jurisdiction;
3. 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;
4. the request for international cooperation does not meet the content and minimum requirements required by Law 29/2015 in order to be processed;
5. the government establishes by royal decree that the Spanish authorities will not cooperate with the authorities of a foreign state that has repeatedly refused requests for cooperation or legally prohibits provision of cooperation by the authorities of that state.

In civil or commercial proceedings where one of the parties or their representative is present in another Member State, the competent authority determines the participation of the parties and their representatives in a hearing by videoconference or by means of other distance communication technology, taking into account:

1. the availability of such technology;
2. the opinion of the parties to the proceedings on the use of such technology; and
3. the appropriateness of the use of such technology in the specific circumstances of the case.

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.

The competent authority holding the hearing ensures accessibility for all parties and their representatives, including persons with disabilities.

Where a child is involved in proceedings in civil or commercial matters, in particular as a party, under national law, the child should be able to participate in the hearing through videoconferencing or other distance communication technology, taking into account their procedural rights. If the child is involved in the proceedings for the purpose of taking evidence in civil or commercial matters, for example when the child is to be heard as a witness, the child could also be heard by videoconference or other distance communication technology, in accordance with Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between Member States' courts in the taking of evidence in civil or commercial matters (taking of evidence)

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

The restrictions – which are always exceptional and must be established by a reasoned judicial decision that takes into account the proportionality of the restriction – concern cases where the direct taking of evidence requested would be 'contrary to fundamental principles of law in its Member State' (Article 19(7) of Regulation (EU) 2020/1783).

The procedure for initiating and conducting a hearing through videoconferencing or other distance communication technology should be governed in civil and commercial matters by the national law of the Member State where the proceedings take place. In order to decide whether the participation of the parties and their representatives in a hearing via videoconference is allowed, the competent authority should choose an

appropriate method for examining the views of the parties in accordance with national procedural 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?

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 are no restrictions regarding the location of the person who is to take part in the proceedings by videoconferencing 'or other distance communications technology provided that such technology is available to the court and the court considers the use of such technology to be appropriate in the specific circumstances of the case' (final part of Article 20(1) of Regulation (EU) 2020/1783). The registrar (*Letrado de la administración de justicia*) at the court 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. Indeed, they *must* be recorded, subject to the qualification in the previous question (final part of Article 20(1) of Regulation (EU) 2020/1783).

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.

Without prejudice to the specific provisions on the use of videoconferencing set out in Regulations 861/2007, 655/2014 and 2020/1783, the procedure for holding a hearing by videoconference is governed by the national law of the Member State in which the hearing is held.

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?

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 (Galician, Catalan, Valencian and Basque) of certain regions of the country may be accepted in the event that the persons being questioned by videoconference know and want to use those languages.

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 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.

Article 22 of Regulation (EU) 2020/1783 provides for the possibility for the requested court to request reimbursement of fees or costs, including those 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 (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?

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.

Without prejudice to the specific provisions on the use of videoconferencing set out in Regulations 861/2007, 655/2014 and 2020/1783, the procedure for holding a hearing by videoconference is governed by the national law of the Member State in which the hearing is held.

Where an authority requests the participation of a person for the purpose of taking evidence in civil or commercial matters, the participation of such person in the hearing through videoconferencing or other distance communication technology should be governed by the Taking of Evidence Regulation.

Videoconferencing or other distance communication technology used in proceedings in civil, commercial or criminal matters should allow the use of interpretation.

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.

Article 22 of Regulation (EU) 2020/1783 provides for the possibility for the requested court to request reimbursement of fees or costs, including those of interpreters.

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?

Videoconferencing or distance communication technology should allow the competent authority to authenticate the identity of the persons to be heard, and should enable visual, audio and oral communication during the

hearing. The technology used should meet applicable standards for the protection of personal data, of the confidentiality of communications and of data security, irrespective of the type of hearing for which it is used.

A mere phone call should not be considered to be appropriate distance communication technology for oral hearings.

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 Articles 19 to 21 of the Taking of Evidence Regulation?

It is necessary to distinguish between the following cases:

1. 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.
2. 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.
3. 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 to ensure that the taking of evidence runs as smoothly as possible, using the forms set out in the Annex.

Last update: 30/10/2024

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability

whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.