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Taking evidence by videoconference

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European Judicial Network
(in civil and commercial
matters)

 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 20(1) of Council Regulation (EU) No 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (recast) provides that the requesting court takes evidence using videoconferencing or other communications technology, provided that such technology is available to the court and the court considers the use of such technology to be appropriate given the specific circumstances of the case. Estonian courts have the necessary facilities for videoconferencing. Under Section 15(6) of the Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*, available online [here](#)), the provisions of this Code apply to assistance in the taking of 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 for by the provisions of Council Regulation (EU) No 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (recast). According to Section 15(5) of the Code, unless otherwise provided by law or treaty, an Estonian court provides judicial assistance for performing a procedural operation at the request of a foreign court if, under Estonian law, the requested operation is within the subject matter jurisdiction of the Estonian court and is not prohibited by law. A procedural operation may also be performed according to foreign law, provided this is needed for proceedings in the foreign State and does not harm the interests of the parties to the proceedings. Trials or hearings with distance participation are governed by Section 350 of the Code. No specific provisions or restrictions apply to the organisation of a videoconference under Regulation 2020/1783, including, where a trial or hearing with distance participation is concerned, the organisation of a video conference directly by the requesting court of another Member State pursuant to Article 20 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 party to a trial or hearing with distance participation has the opportunity to perform procedural operations in real time, i.e. they may give a statement under oath or, in a proceeding on petition, a statement not given under oath; under Section 350(2), a witness or expert may also be heard in a trial or hearing with distance participation.

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 trial or hearing with distance participation, and a witness or expert can also be heard by way of a trial or hearing with distance participation.

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 trial or hearing with distance participation such that a party to the proceeding or their representative or adviser may be in another place at the time of the court session and perform the procedural operations in real time at that place.

That is to say, a court may organise a trial or hearing with distance participation in such a way that a person does not have to be in court when examined.

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

Yes, it is 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 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?

Under Section 32(1) of the Code of Civil Procedure, the language of judicial proceedings and court procedure is Estonian. Under Section 32(2) of the Code of Civil Procedure, the minutes of court sessions and other procedural operations are drafted 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, together with an Estonian translation thereof, 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 language arrangements for the taking of testimony or a statement at the request of a court of another Member State under Council Regulation (EU) No 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (recast).

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?

According to Section 34(1) of the Code of Civil Procedure, if a party to a proceeding is not proficient in Estonian and does not have a representative at the proceeding, the court, where possible, brings an interpreter into the proceeding, either at the request of that party or at the initiative of the court. An interpreter need not be brought in if the statements of the party to the proceeding can be understood by the court and the other parties. If the court is unable to immediately bring in an interpreter, it issues a ruling whereby the party to the proceeding who needs the assistance of an interpreter is required to find an interpreter 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 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 (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?

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 parties to 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 10 days. The interval may also be shorter if the parties to 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 2020/1783 are specified in Article 22 of the Regulation. Under Section 15(4) of the Code of Civil Procedure, the requesting court does not cover the costs of the procedural operation. The court performing the procedural operation 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 involved in proceedings are paid in advance, to the extent ordered by the court, by the party to 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 19(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 Articles 19 to 21 of the Taking of Evidence

Regulation?

Under Section 269(2) of the Code of Civil Procedure, a party to 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 verbally 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 a registered private expert is cautioned, before submitting their expert opinion, against knowingly providing an incorrect expert opinion, and the expert confirms this by signing the court record 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 as a trial or hearing with distance participation, the right of every party to the proceeding to file petitions and applications and to formulate positions on the petitions and applications of other parties to the proceeding must be guaranteed, and other conditions of the court session must be met, in a technically secure manner, during the real-time transmission to the court of image and sound from the party to the proceeding not present in court premises and vice versa.

Every court has a Centre of Registers and Information Systems employee working as an in-house 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.

Under Section 32(1) of the Code of Civil Procedure, the language of judicial proceedings and court procedure is Estonian. Under Section 32(2) of the Code of Civil Procedure, the minutes of court sessions and other procedural operations are drafted 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, together with an Estonian translation thereof, if it is necessary for an accurate presentation of the testimony or statement. The Estonian Code of Civil Procedure contains no specific provisions, pursuant to Regulation (EU) 2020/1783 of the European Parliament and of the Council on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (recast), on the language arrangements for the taking of testimony or statements.

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