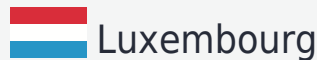


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# Taking evidence by videoconference



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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?**

Yes, both procedures are possible. The majority of requests sent to Luxembourg involve the examination of a witness by a court of the requesting Member State by videoconference.

There are no specific provisions on videoconferencing, so the articles of the New Code of Civil Procedure relating to the hearing of witnesses, personal checks by the judge and personal appearances of the parties are applicable. 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 must be carried out on a voluntary basis. If a witness refuses to be heard, the Luxembourg authorities have no means of obliging them 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?**

It must be evidence which can be obtained at the premises of the courts with 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 requested State, does not record the videoconference.

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?

a) French, German

b) all 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?

The court in Luxembourg, as requested State, is responsible for providing an interpreter whenever necessary in order to communicate effectively either with the authorities of the requesting State or with the person to be heard. The interpreter must be present at the court carrying out the taking of evidence.

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 Luxembourg authorities, more specifically the court with jurisdiction to take evidence, liaises with the authorities of the requesting State in order to arrange a date and time for the video conference. 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?

The use of videoconferencing and the witness's expenses are paid for by the Luxembourg State. 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 court in Luxembourg, as the requested State, carries out an identity check by verifying 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 Articles 19 to 21 of the Taking of Evidence Regulation?

Witnesses must swear to tell the truth. They are informed that they risk a fine or imprisonment if they commit perjury.

The oath is taken at the requesting court.

As regards Article 19, the requesting State applies its own conditions. The judge present at the videoconference in Luxembourg, as the requested State, intervenes only in the event of 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 proceed with videoconferencing, a number of technical issues need to be clarified. The success of a hearing by videoconferencing depends on sound prior preparation and effective cooperation between contact points.

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