

**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 is no specific reference in the Italian legal system and in particular, in the Code of Civil Procedure (*Codice di Procedura Civile*) to the taking of evidence by videoconferencing.

However, videoconferencing is in fact a feature of our legal system.

Article 202 of the Code of Civil Procedure envisages that the examining judge, when providing for the taking of evidence, should 'establish the time, place and method of evidence taking'. In compliance with Council Regulation (EC) No 1206/2001, the methods of evidence taking that the judge may use include videoconferencing.

Article 261 of the Code of Civil Procedure envisages that the judge may use filmed material that requires the use of mechanical means, tools or procedures. Videoconferencing is explicitly provided for in the Code of Criminal Procedure (*Codice di Procedura Penale*) (e.g. Article 205-ter).

So, as regards the procedure governed by Articles 10 et seq. of the Regulation, the limitation referred to in Article 10(4), consisting of 'incompatibility' with our legal system, can be ruled out.

The only limitation that might apply to a request for videoconferencing would be if significant practical difficulties existed.

With regard to the method of taking the various types of evidence, the EU regulation and the Italian Code of Civil Procedure are applied, as well as the corresponding implementing legislation.

As for the procedure governed by Article 17, after verifying that the requirements envisaged by paragraph 5 have been met and then authorising the direct taking of evidence, the requested Member State should 'encourage' the use of videoconferencing which, simply as a method of evidence taking, should be verified with the requested judicial authority on a case-by-case basis.

Therefore, except in the case of significant practical difficulties arising when the requested judicial authority cannot use this means of communication, all evidence can be taken through videoconferencing on the basis of a legitimate request under Article 10 et seq. or authorised under Article 17.

**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?**

Videoconferencing is a useful tool for questioning witnesses and parties involved in proceedings. In this respect, there are no problems of compatibility with Italian law which, on the contrary, provides for the taking of witness evidence, informal questioning of the parties and the questioning of the parties under oath.

As regards the questioning of experts, the root cause of the problem concerning the admissibility of an expert opinion should be addressed, especially in relation to direct evidence taking (Article 17).

In Italian law, expert testimony is governed by Article 61 and Articles 191-201 of the Code of Civil Procedure. Experts normally draw up a written opinion (Article 195(2) of the Code of Civil Procedure) but the court may also request clarification. Once the opinion has been admitted there should, therefore, be no obstacles to questioning the experts through videoconferencing. Indeed, the Italian Code of Civil Procedure provides that 'when the President deems it appropriate he or she shall invite the expert to take part in the discussion in the presence of the panel of judges and to express his or her opinion in closed session in the presence of the parties, who may clarify and set out their case through their defence counsel'.

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

In practical terms, it seems that videoconferencing is an effective tool for taking evidence, questioning witnesses face to face, and taking statements from the parties.

However, the rules do not directly address the question of the type or obligatory nature of the evidence and practical problems could arise with respect to expert advice, for example handwriting evidence, genetic data or telephone evidence.

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

The evidence is usually taken in a territorially competent judicial or police structure of the requested Member State, where both the necessary equipment and registry support staff are available. As things stand at present, however, there is no 'case history' of the use of videoconferencing in civil proceedings.

When videoconferencing is used in criminal proceedings, one of the available venues with the appropriate facilities located in the district of the Court of Appeal of the requested judicial authority is normally used (chamber of the court, security-protected court or room in prison premises).

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

There are no legislative obstacles to the recording of hearings, where this is allowed by the legislation of the requesting State.

However, for taking evidence pursuant to Article 4 et seq., Article 126 of the Code of Civil procedure and Article 46 of the implementing provisions of the same Code concerning the drafting of the record of the proceedings, are applied.

**6 In what language should the hearing be conducted: (a) where requests are made under Articles 10 to 12; and (b) where there is direct taking of evidence under Article 17?**

This aspect is not governed directly by the rules.

Article 5, which states that requests and communications should be drawn up in the official language of the requested Member State, could provide an indication as to which language the hearings are to be conducted in.

In the case of requests submitted under Article 10 et seq., where domestic law applies the hearing must be held in Italian.

Article 122 of the Code of Civil Procedure provides that 'throughout the trial, the use of the Italian language is mandatory. When a person who does not speak Italian is to be questioned, the judge may appoint an interpreter'.

In the proceedings referred to in Article 17 however, the law of the requesting State applies. This provision could also have consequences regarding the language in which the evidence is taken. The language should again be that of the requesting State. In this case, interpreters could be required.

The authority with competence to authorise the direct taking of evidence could also provide guidance as to the conditions for taking the evidence; these could include the the language to be used.

## **7 If interpreters are required, who is responsible for providing them under both types of hearing and where should they be located?**

The rules do not include any particular provisions on this aspect.

In the proceedings referred to in Article 10 et seq., the law of the requested State is applied.

In any case, Article 122(2) of the Code of Civil Procedure applies.

The Code provides for the appointment of an interpreter when a person who does not speak Italian is to be questioned. The assumption, therefore, is that the language of the trial (and of the trial judge) is Italian.

Costs for interpreters' fees should be reimbursed and are charged to the requesting judicial authority (see Article 18).

As for the procedure under Article 17, see point 6. The language of the hearing should be that of the requesting State. Therefore, reference should be made to the law of the requesting State to determine who is responsible for appointing the interpreter(s). In this case, the competent authority for authorising the direct taking of evidence could ask for information regarding the appointment of the interpreter.

## **8 What procedure applies to the arrangements for the hearing and to notify the person to be examined about the time and place? How much time should be allowed when arranging the date of the hearing to enable the person to receive sufficient notification?**

Article 250 of the Code of Civil Procedure provides that the court officer, at the request of the interested party, should inform the witnesses that they must appear at a certain place, on a certain date and at a certain time and inform them of the judge who will be taking the evidence and the trial in which they will be questioned. Article 103 of the implementing provisions of the Code of Civil Procedure states that witnesses must be informed at least seven days before the hearing for which they have been summoned to appear.

The rules governing the questioning of witnesses are envisaged by Articles 244-257 *bis* of the Code of Civil Procedure and by Articles 102-108 of its implementing provisions.

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

The costs of videoconferencing performed under Article 4 (indirect evidence), as provided for by Article 10(4), are reimbursed at the request of the requested authority, as envisaged by Article 18(2).

This obligation concerning reimbursement is not envisaged for the direct taking of evidence through videoconferencing by the foreign authority, under Article 17.

## **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?**

It is the responsibility of the requesting authority to inform the person being questioned that the evidence will be taken on a voluntary basis; under Article 17 this condition is one of the factors on which the authorisation for the direct taking of evidence is based.

However, the rules do not provide for any similar obligation on the part of the requested judicial authority.

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

In general, the requesting authority carrying out the videoconferencing is responsible for verifying the identity of the witness under Article 17. In the case of indirect evidence, where the hearing of witnesses is concerned, the verification of the witness's identity is governed by Article 252 of the Code of Civil Procedure, according to which: 'The examining judge shall ask the witness to state their name, surname, father's name, age and occupation and shall invite the witness to state whether they have any family relationship [...] with the parties, or an interest in the trial'. Identification takes place after the taking of the oath, governed by Article 251 of the Code of Civil Procedure. In practice, the examining judge also asks the witness for an identity document and has the details entered in the record of the proceedings.

As regards the parties to be questioned, if a special attorney is involved then a special power of attorney is also required.

## **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 Article 17?**

As regards the procedure referred to in Article 17, no specific rule is envisaged. It might be useful to receive information regarding the criminal relevance (for the legal system of the requesting State) of perjury or omission, which depends on the requesting State's legislation governing judicial proceedings.

## **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 Italian Prison Administration Department, which is responsible for videoconferencing links, carries out compatibility checks with the foreign technical staff in the immediate run-up to the videoconference.

## **14 What, if any, additional information is required from the requesting court?**

Along with the application for international judicial assistance, the requesting judicial authority should also provide – if they have it – technical information regarding the videoconferencing system used in their country and the name and phone number of a contact person, preferably a specialist technician, and the language to be used during these activities.

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