

Taking evidence by videoconferencing - Luxembourg

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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. Most of the requests addressed to Luxembourg come from a court in another Member State that wishes to examine a witness by videoconference.

There are no specific provisions on videoconferencing. Therefore, the rules governing the examination of witnesses, personal verification by the judge and appearance in person of the parties are the ordinary rules of the New Code of Civil Procedure. 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 is carried out on a voluntary basis. If a witness refuses to attend a hearing, the Luxembourg authorities have no means of obliging him or her 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?

The evidence must be evidence that can be taken on court premises possessing 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 the requested State, does not record the videoconference because recording is prohibited by Luxembourg law.

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?

a) French, German.

b) All languages.

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

The Luxembourg court, as the court of the requested state, arranges for an interpreter whenever necessary, either to communicate with the authorities of the requesting state or with the person to be examined.

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?

The Luxembourg authorities, and more specifically the court responsible for taking evidence, will contact the authorities of the requesting state to agree on the date and time of the videoconference. 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?

In accordance with the EU Regulation, the requested state authorises the videoconference and the requesting state deals with all the formalities and organisational and technical matters, which includes informing the persons concerned.

The use of videoconferencing and the witness's expenses are paid for by the Luxembourg State. In principle, 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 Luxembourg court, as the court of the requested state, checks 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 Article 17?

Witnesses and experts must take an oath to tell the truth. They are informed that they risk a fine or imprisonment if they commit perjury.

The oath is taken before the requesting court.

In the case of Article 17 the requesting state applies its own conditions. The Luxembourg judge present during the videoconference, as the judge of the requested state, intervenes only if there is 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 arrange a videoconference a number of technical issues have to be clarified. The success of a hearing by videoconferencing therefore depends on sound prior preparation and effective collaboration between contact points.

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