

## KEY STEPS FOR USING VIDEOCONFERENCING IN CROSS-BORDER PROCEEDINGS

### 6. ANNEX III - KEY STEPS FOR USING VIDEOCONFERENCING IN CROSS-BORDER PROCEEDINGS

Step	Videoconferencing – Civil and commercial matters	Videoconferencing -Criminal matters
1. Request for taking evidence		
1.1. The actors involved	<p><b>Court sends the request</b></p> <p>Requests are transmitted directly by the court where proceedings have commenced (the 'requesting court') to the court of another Member State taking evidence (the 'requested court'). A request to take evidence directly (under Article 17) is submitted by the requesting court to the central body or the competent authority in the requested state.</p>	<p><b>Court, prosecutor or other competent judicial authority sends the request</b></p> <p>Requests are transmitted directly by the court (the 'requesting court') or other competent judicial authority (e.g. public prosecutors or Mutual Legal Assistance Centres) to the competent authority of the requested state.</p>
1.2. Form of request	<p><b>Standard forms in the 2001 Taking of Evidence Regulation</b></p> <p>The request must be made using the standard forms which are annexed to the 2001 Taking of Evidence Regulation. The request must contain details, such as the name and address of the parties to the proceedings, the nature and subject matter of the case, a description of the taking of evidence to be performed, etc. The relevant forms to be used are: Form A: request for the taking of evidence (under Articles 10 to 12);; Form I: request for direct taking of evidence (under Article 17).</p>	<p><b>Standard form (not obligatory): Request for mutual legal assistance in criminal matters.</b></p> <p>Requests for a hearing by videoconference shall contain, in addition to information concerning the authority making the request, the object of and the reason for the request, where possible, the identity and the nationality of the person concerned, and where necessary, the name of the judicial authority and of the persons who will be conducting the hearing.</p> <p>In addition, it has to include the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the person who will be conducting the hearing.</p>
1.3. Sending the request		

	<p>Forms are found on the website of the European Judicial Atlas (<a href="#">↗ European Judicial Network in civil and commercial matters↗</a> )</p> <p>Request may be sent by post, courier, fax (in all Member States) or e-mail (only in 13 Member States).</p>	
<p>1.4. Reply to request</p>	<p><b>1. (Indirect) Taking of evidence by a requested court:</b></p> <p><b>Acknowledgement of receipt:</b> In requests made under Articles 10 to 12 (i.e. indirect taking of evidence requests) within seven days of receipt of the request, the requested court shall send an acknowledgement of receipt to the requesting court using form B in the Annex.</p> <p><b>Form:</b> The reply is made using form F, which is annexed to Regulation 1206 /2001. It includes notification of the date, time, place of performance of the taking of evidence and the conditions for participation.</p> <p><b>Time:</b> Within thirty days the requested court must inform the requesting court if the request cannot be accepted or further information is required. The notification is made using Form C which is annexed to the Taking of Evidence Regulation. If accepted, the request must be executed within ninety days of receipt. If a delay occurs, form G should be used to notify the requesting court. Where a request is refused (form H), the requested court must notify the requesting court within sixty days of receipt of the request.</p> <p><b>Refusal to use videoconferencing:</b> The requested court shall comply with such a requirement unless this is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties.</p>	<p>The court responsible for handling the request will acknowledge receipt of the request as soon as possible. However, there is no obligation for the requested court to acknowledge the receipt of the request according to the 2000 MLA Convention.</p> <p><b>Acknowledgement of receipt</b> will be sent to authority of the requesting Member State and it will contain the name, address, telephone and fax number of the court and, if possible, the judge responsible for processing it.</p> <p>The requested Member State shall execute the request for assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the requesting Member State. The requesting Member State shall explain the reasons for the deadlines.</p> <p><b>Refusal to use videoconferencing:</b> The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing.</p>
	<p><b>Article 17 direct taking of evidence requests:</b></p> <p>Within 30 days of receipt of the request the central body or the competent authority shall inform the requesting court, by filling in form J, if the request is accepted or not and of any conditions</p>	

	<p>under which the evidence may be taken. If it is accepted the central body or the competent authority may assign a court of its Member State to take part in the performance of the taking of evidence in order to ensure the proper application of this Article and the conditions that have been set out.</p>	
<b>1.5. Access to the VC equipment</b>	<p>If there is no access to the technical means referred to above in the requesting or in the requested court, such means may be made available by the courts by mutual agreement.</p>	<p>If the requested Member State has no access to the technical means for videoconferencing, such means may be made available to it by the requesting Member State by mutual agreement.</p>
<b>1.6. Practical arrangements prior to VC</b>	<p><b>1. (Indirect) Taking of evidence by a requested court:</b></p> <p>Requested court: notification to the requesting court and/or the parties of the date, time, place of performance of the taking of evidence and the conditions for participation.</p> <p>-summoning of the witness Requesting and requested courts:</p> <p>-booking of court room</p> <p>-activation of VC equipment (including testing of connections)</p> <p>-booking of interpreters and technical staff</p> <p><b>2. Direct taking of evidence:</b></p> <p>Requesting court:</p> <p>-notification to the witness of the date, time, place of performance of the taking of evidence</p> <p>Requesting court or videoconferencing facility (with the assistance of the central body or competent authority): -booking of court room or videoconferencing facility - activation of VC equipment (including testing of connections) -booking of interpreters and technical staff</p>	<p>The court or other judicial authority of the requested Member State serves a summons on the person to appear in accordance with its law.</p> <p>Requesting and requested courts or videoconferencing facility:</p> <p>-booking of court room or videoconferencing facility</p> <p>-activation of VC equipment (including testing of connections)</p> <p>-booking of interpreters and technical staff</p>
<b>1.7. Languages and interpretation</b>	<p><b>1. (Indirect) Taking of evidence by a requested court:</b></p> <p><b>The language</b></p> <p>The language of the requested court will be used.</p> <p><b>Use of interpreter</b></p>	<p><b>The languages</b></p> <p>In the request, the requesting court informs the requested court of the language to be used.</p> <p>The requesting and requested courts may, if appropriate, decide that proceedings are to take place wholly or partly in a foreign</p>

	<p>At the request of the requesting court or the person to be heard the requested court ensures that the person to be heard is assisted by an interpreter, if necessary.</p> <p><b>2. Direct taking of evidence:</b></p> <p><b>The language</b></p> <p>Subject to conditions imposed by the central authority or competent authority, the language of the requesting court will be used.</p> <p><b>Use of interpreter</b></p> <p>The requesting court ensures that the person to be heard is assisted by an interpreter, if necessary.</p>	<p>language.</p> <p><b>Use of interpreter</b></p> <p>At the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary.</p>
<p><b>2.1. Running the hearing using videoconferencing</b></p>	<p><b>The law of the requested state is applied</b></p> <p>The use of videoconferencing is arranged according to the law of the requested state. However, the requesting court may call for the request to be executed in accordance with a special procedure provided for by the law of its Member State. The requested court complies with this unless this procedure is incompatible with the law of its Member State or by reason of major practical difficulties.</p> <p><b>In the direct taking of evidence</b> under Article 17 by the requesting court, the requesting court shall execute the request in accordance with its national law.</p>	<p><b>The law of the requesting state is applied</b></p> <p>The use of videoconferencing is arranged according to the law of the requesting state. The requested state shall comply with the formalities and procedures expressly indicated by the requesting state, provided that such formalities and procedures are not contrary to the basic principles of law in the requested state.</p>
	<p><b>The refusal to witness</b></p> <p>The person to be heard is entitled to refuse if there is support for this in either the legislation of the requested state or in the legislation of the requesting state.</p> <p>Requests for direct taking of evidence under Article 17 can only be performed on a voluntary basis without the need for coercive measures.</p>	<p><b>The refusal to witness</b></p> <p>The person to be heard is entitled to refuse if there is support for this either in the legislation of the requested state or in the legislation of the requesting state.</p> <p><b>The presence of the judicial authority of the requested state</b></p> <p>A judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State.</p>
<p><b>2.2. Who is in charge of the hearing by VC</b></p>	<p><b>1.(Indirect)Taking of evidence by a requested court:</b></p>	<p>The court or prosecutor of the requesting state</p>

	<p>The requested court (the court of the requested state under Articles 10-12 of the 2001 Taking of Evidence Regulation)</p> <p><b>2.Direct taking of evidence:</b></p> <p>The requesting court (the court of the requesting state, under Article 17 of the 2001 Taking of Evidence Regulation).</p>	
<b>2.3. Costs of video-conferencing</b>	<p>The requesting court shall ensure the reimbursement of the fees paid to experts and interpreters, and of the videoconferencing arrangements. The execution of the request for indirect taking of evidence should not give rise to any claim for any reimbursement of taxes or costs. However, if the requested court so requires, the requesting court should ensure the reimbursement of costs occasioned by the use of videoconferencing.</p>	<p>The requesting court shall ensure the reimbursement of the fees paid to experts and interpreters, and of the videoconferencing arrangements. The requested court can waive the refunding of all or some of these expenses.</p>
<b>3. Measures after the VC session</b>	<p><b>1. In indirect taking of evidence</b></p> <p>requests (i.e. those under Articles 10 to 12 of the Regulation) the requested court shall send without delay to the requesting court the documents establishing the execution of the request and, where appropriate, return the documents received from the requesting court. The documents are to be accompanied by a confirmation of execution using form H in the Annex of the 2001 Taking of Evidence Regulation.</p> <p><b>2. Direct taking of evidence:</b></p> <p>Unless otherwise imposed in conditions by the central body, no measures are required after the videoconference session.</p>	<p>The judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.</p>

This page is maintained by the European Commission. The information on this page does not necessarily reflect the official position of the European Commission. The Commission accepts no responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice with regard to copyright rules for European pages.

Last update: 18/01/2019