

Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast)

CHAPTER II

**TRANSMISSION AND EXECUTION OF REQUESTS**

*SECTION 1*

***Transmission of requests***

*Article 5*

**Form and content of requests**

- 1 Requests shall be made using form A or, where appropriate, form L in Annex I. Each request shall contain the following details:
- a the requesting and, where appropriate, the requested court;
  - b the names and addresses of the parties to the proceedings and their representatives, if any;
  - c the nature and subject matter of the case and a brief statement of the facts;
  - d a description of the taking of evidence requested;
  - e where the request is for the examination of a person:
    - the name and address of the person to be examined,
    - the questions to be put to the person to be examined or a statement of the facts about which that person is to be examined,
    - where appropriate, a reference to the right to refuse to testify under the law of the Member State of the requesting court,
    - any requirement that the examination be carried out under oath or affirmation instead of an oath, and any special form to be used for such oath or affirmation,
    - where appropriate, any other information that the requesting court deems necessary;
  - f where the request is for any form of taking of evidence other than that mentioned in point (e), the documents or other objects to be inspected;
  - g where appropriate, any request pursuant to Article 12(3) or (4), or Article 13 or 14 and any information necessary for the execution thereof.
- 2 The request and all accompanying documents shall be exempt from the need for authentication or any equivalent formality.
- 3 Documents which the requesting court considers necessary to enclose for the execution of the request shall be accompanied by a translation of the documents in the language in which the request was written.

## *Article 6*

### **Language**

Requests and communications made pursuant to this Regulation shall be drawn up in the official language of the requested Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where the requested taking of evidence is to take place, or in another language which that Member State has indicated it will accept.

Each Member State shall communicate to the Commission any official language of the Union other than its own in which the forms set out in Annex I may be completed.

## *Article 7*

### **Transmission of requests and other communications**

1 Requests and communications made pursuant to this Regulation shall be transmitted through a secure and reliable decentralised IT system with due respect for fundamental rights and freedoms. That decentralised IT system shall be based on an interoperable solution such as e-CODEX.

2 The general legal framework for the use of qualified trust services set out in Regulation (EU) No 910/2014 shall apply to the requests and communications transmitted through the decentralised IT system.

3 Where requests and communications referred to in paragraph 1 of this Article require or feature a seal or handwritten signature, qualified electronic seals or qualified electronic signatures as defined in Regulation (EU) No 910/2014 may be used instead.

4 Where transmission in accordance with paragraph 1 is not possible due to the disruption of the decentralised IT system or to the nature of the evidence concerned, or due to exceptional circumstances, the transmission shall be carried out by the swiftest, most appropriate alternative means, taking into account the need to ensure reliability and security.

## *Article 8*

### **Legal effects of electronic documents**

Documents that are transmitted through the decentralised IT system shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form.

## SECTION 2

### **Receipt of requests**

#### *Article 9*

### **Receipt of requests**

1 Within 7 days of the receipt of a request, the requested competent court shall send an acknowledgement of receipt to the requesting court using form B in Annex I. Where the request does not comply with the conditions laid down in Articles 6 and 7, the requested court shall enter a note to that effect in the acknowledgement of receipt.

2 Where the requested court does not have jurisdiction to execute a request, made using form A in Annex I, which complies with the conditions laid down in Article 6, that court shall forward the request to the competent court of its Member State and shall inform the requesting court thereof using form C in Annex I.

#### *Article 10*

### **Incomplete requests**

1 If a request cannot be executed because it does not contain all of the necessary information referred to in Article 5, the requested court shall inform the requesting court thereof without delay and, at the latest, within 30 days of receipt of the request using form D in Annex I, and shall request the requesting court to send the missing information, specifying the information missing as precisely as possible.

2 If a request cannot be executed because a deposit or advance has been requested in accordance with Article 22(3), the requested court shall inform the requesting court thereof without delay, at the latest within 30 days of receipt of the request using form D in Annex I, and shall inform the requesting court how the deposit or advance is to be made. The requested court shall acknowledge receipt of the deposit or advance without delay, at the latest within 10 days of receiving the deposit or the advance, using form E in Annex I.

#### *Article 11*

### **Completion of the request**

1 If the requested court has noted on the acknowledgement of receipt pursuant to Article 9(1) that the request does not comply with the conditions laid down in Articles 6 and 7 or has informed the requesting court pursuant to Article 10 that the request cannot be executed because it does not contain all of the necessary information referred to in Article 5, the time limit laid down in Article 12 shall begin to run when the requested court has received the duly completed request.

2 Where the requested court has asked for a deposit or advance in accordance with Article 22(3), the time limit laid down in Article 12 shall begin to run when the deposit or the advance is made.

### SECTION 3

#### ***Taking of evidence by the requested court***

##### *Article 12*

#### **General provisions on the execution of a request**

1 The requested court shall execute the request without delay and, at the latest, within 90 days of receipt of the request.

2 The requested court shall execute the request in accordance with its national law.

3 The requesting court may call for the request to be executed in accordance with a special procedure provided for in its national law, using form A in Annex I. The requested court shall execute the request in accordance with the special procedure unless doing so would be incompatible with its national law or it is unable to do so because of major practical difficulties. If the requested court does not comply with the call for the request to be executed in accordance with a special procedure for one of those reasons, it shall inform the requesting court using form H in Annex I.

4 The requesting court may ask the requested court to use specific communications technology in the taking of evidence, in particular by using videoconferencing or teleconferencing.

The requested court shall use the communications technology specified pursuant to the first subparagraph unless doing so would be incompatible with its national law or the requested court is unable to do so because of major practical difficulties.

If the requested court does not use the specified communications technology for one of those reasons, it shall inform the requesting court using form H in Annex I.

If the communications technology referred to in the first subparagraph is not available in the requesting or in the requested court, those courts may make such communications technology available by mutual agreement.

##### *Article 13*

#### **Taking of evidence with the presence and participation of the parties**

1 If the law of the Member State of the requesting court so provides, the parties and their representatives, if any, shall have the right to be present at the taking of evidence by the requested court.

2 In its request, the requesting court shall inform the requested court, using form A in Annex I, that the parties and their representatives, if any, will be present and, where appropriate, that their participation in the taking of evidence is requested. This information may also be given at any other appropriate time.

3 If the participation of the parties and their representatives, if any, is requested in the taking of evidence, the requested court shall determine the conditions under which they may participate, in accordance with Article 12.

4 The requested court shall notify the parties and their representatives, if any, of the time and the place where the taking of evidence will take place and, where appropriate, of the conditions under which they may participate in the taking of evidence, using form I in Annex I.

5 Paragraphs 1 to 4 are without prejudice to the ability of the requested court to request the parties and their representatives, if any, to be present at or to participate in the taking of evidence if provided for by the law of its Member State.

#### *Article 14*

### **Taking of evidence with the presence and participation of representatives of the requesting court**

1 Where compatible with the law of the Member State of the requesting court, representatives of the requesting court shall have the right to be present in the taking of evidence by the requested court.

2 For the purposes of this Article, the term ‘representative’ includes judicial personnel designated by the requesting court in accordance with its national law. The requesting court may also designate any other person, such as an expert, in accordance with its national law.

3 In its request, the requesting court shall inform the requested court, using form A in Annex I, that its representatives will be present and, where appropriate, that their participation in the taking of evidence is requested. This information may also be given at any other appropriate time.

4 If the participation of the representatives of the requesting court is requested in the taking of evidence, the requested court shall determine, in accordance with Article 12, the conditions under which they may participate.

5 The requested court shall notify the requesting court of the time and the place where the taking of evidence will take place and, where appropriate, of the conditions under which its representatives may participate in the taking of evidence, using form I in Annex I.

#### *Article 15*

### **Coercive measures**

Where necessary, in executing a request the requested court shall apply the appropriate coercive measures in the instances and to the extent as are provided for by the law of the Member State of the requested court for the execution of a request made for the same purpose by its national authorities or one of the parties concerned.

#### *Article 16*

### **Refusals to execute requests**

1 A request for the examination of a person shall not be executed where the person concerned invokes the right to refuse to give evidence or is prohibited from giving evidence:

- a under the law of the Member State of the requested court; or
- b under the law of the Member State of the requesting court, and such right or prohibition has been specified in the request, or, if necessary, at the instance of the requested court, has been confirmed by the requesting court.

2 The execution of a request may only be refused on grounds other than those referred to in paragraph 1, where one or more of the following grounds applies:

- a the request does not fall within the scope of this Regulation;
- b the execution of the request does not fall within the functions of the judiciary under the law of the Member State of the requested court;
- c the requesting court does not comply with the request of the requested court to complete the request for the taking of evidence pursuant to Article 10 within 30 days of the requested court asking it to do so; or
- d a deposit or advance asked for in accordance with Article 22(3) is not made within 60 days of the requested court asking for such a deposit or advance.

3 A requested court shall not refuse to execute a request solely on the ground that under its national law another court of that Member State has exclusive jurisdiction over the subject matter of the case or that the law of that Member State would not admit the right of action on the subject matter.

4 If the execution of a request is refused on one of the grounds referred to in paragraph 2, the requested court shall notify the requesting court thereof within 60 days of receipt of the request by the requested court using form K in Annex I.

#### *Article 17*

#### **Notification of delay**

If the requested court is not in a position to execute the request within 90 days of receipt of the request, it shall inform the requesting court thereof using form J in Annex I. When it does so, it shall give the grounds for the delay as well as the estimated time it expects it will need to execute the request.

#### *Article 18*

#### **Procedure after the execution of the request**

The requested court shall send to the requesting court the documents confirming the execution of the request, without delay and, where appropriate, shall return the documents received from the requesting court. Those documents shall be accompanied by a confirmation of execution using form K in Annex I.

### *SECTION 4*

#### ***Direct taking of evidence by the requesting court and taking of evidence by diplomatic agents or consular officers***

#### *Article 19*

#### **Direct taking of evidence by the requesting court**

1 Where a court requests the taking of evidence directly in another Member State, it shall submit a request to the central body or to the competent authority of that Member State, using form L in Annex I.

2 The direct taking of evidence may only take place if it can be carried out on a voluntary basis without the use of coercive measures.

Where the direct taking of evidence implies that a person has to be examined, the requesting court shall inform that person that the taking of evidence shall take place on a voluntary basis.

3 The direct taking of evidence shall be carried out by a member of the judicial personnel or by any other person, such as an expert, who is designated in accordance with the law of the Member State of the requesting court.

4 Within 30 days of receiving the request for the direct taking of evidence, the central body or the competent authority of the requested Member State shall inform the requesting court as to whether the request has been accepted and, if necessary, shall inform the requesting court of the conditions under which the direct taking of evidence is to be carried out according to the law of its Member State, using form M in Annex I.

The central body or the competent authority may assign a court of its Member State to take part in the direct taking of evidence in order to ensure that this Article is properly applied and that the conditions under which the direct taking of evidence is to be carried out are complied with.

5 Where the requesting court has not received information within 30 days of acknowledgement of receipt of the request for the direct taking of evidence as to whether the request has been accepted, it may send a reminder to the central body or competent authority of the requested Member State. If the requesting court does not receive a reply within 15 days of the acknowledgement of receipt of the reminder, the request for the direct taking of evidence shall be considered accepted. However, in extraordinary circumstances where the central body or competent authority was prevented from reacting to the request within the deadline following the reminder, grounds for the refusal of direct taking of evidence may exceptionally still be invoked at any time after the expiration of that deadline until the moment of the actual direct taking of evidence.

6 The central body or the competent authority of the requested Member State may assign a court of its Member State to provide practical assistance in the direct taking of evidence.

7 The central body or the competent authority of the requested Member State may refuse a request for direct taking of evidence only if:

- a it does not fall within the scope of this Regulation;
- b it does not contain all of the necessary information referred to in Article 5; or
- c the direct taking of evidence requested is contrary to fundamental principles of law in its Member State.

8 Without prejudice to any conditions laid down in accordance with paragraph 4, the requesting court shall conduct the direct taking of evidence in accordance with the law of its Member State.

## *Article 20*

### **Direct taking of evidence by videoconferencing or other distance communications technology**

1 Where evidence is to be taken by examining a person who is present in another Member State, and the court requests the taking of evidence directly in accordance with Article

19, that court shall take evidence using videoconferencing or other distance communications technology provided that such technology is available to the court and the court considers the use of such technology to be appropriate in the specific circumstances of the case.

2 A request for the direct taking of evidence using videoconferencing or other distance communications technology shall be made using form N in Annex I. The requesting court and the central body or the competent authority of the requested Member State or the court assigned to provide practical assistance in the direct taking of evidence shall agree on the practical arrangements for the examination.

Upon request, the requesting court shall be provided with assistance in finding an interpreter if necessary.

#### *Article 21*

### **Taking of evidence by diplomatic agents or consular officers**

Member States may provide in their national law for their courts to be able to request their diplomatic agents or consular officers in the territory of another Member State and within the area in which they are accredited to take evidence at the premises of the diplomatic mission or consulate, except in exceptional circumstances, without the need for a prior request, by hearing, on a voluntary basis and without the use of coercive measures, nationals of the Member State which they represent in the context of proceedings pending in the courts of the Member State which they represent. The requested diplomatic agent or consular officer shall execute the request in accordance with the law of his or her Member State.

#### *SECTION 5*

#### **Costs**

#### *Article 22*

#### **Costs**

1 The execution of a request for the taking of evidence in accordance with Article 12 shall not give rise to any claim for the reimbursement of taxes or costs.

2 By way of derogation from paragraph 1, the requested court may require the reimbursement of taxes or costs. If the requested court so requires, the requesting court shall ensure that the following are reimbursed without delay:

- the fees paid to experts and interpreters, and
- the costs occasioned by the application of Article 12(3) and (4).

The obligation of the parties to bear such fees or costs shall be governed by the law of the Member State of the requesting court.

3 Where the opinion of an expert is required, before executing the request for the taking of evidence, the requested court may ask the requesting court for an adequate deposit or advance towards the anticipated costs of the expert opinion. In all other cases, a deposit or advance shall not be a condition for the execution of a request for the taking of evidence.

The deposit or advance shall be made by the parties if that is provided for by the law of the Member State of the requesting court.