

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 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.