

## REGULATION (EU) N. 2020/1783 – KEY POINTS

1. Regulation (EU) 2020/1783 repealed and replaced, as of 1<sup>st</sup> July 2022, Regulation (EC) No 1206/2001. It is aimed at improving and simplifying judicial cooperation among EU Member States with reference to the taking of evidence in judicial proceedings in civil and commercial matters before national State courts. The Regulation shall not therefore apply in case of evidence to be taken in arbitral proceedings as well as in other alternative dispute resolution proceedings.
2. The Regulation governs the cooperation between Member States providing that one MS carries out, through its organs, a procedural activity in the interest of another Member State, thereby facilitating the performance of the public judicial function of the latter. In particular, It applies where the court of a Member State:
  - (i) requests the competent court of another EU country to obtain evidence; or
  - (ii) requests permission to directly gather evidence itself in another EU country.
3. The use of the Regulation is not mandatory. Courts may decide to apply their own national rules for taking of evidence in cross-border cases whereby these provisions are more favourable and ensure a more efficient functioning of judicial proceedings.
4. The Regulation does not contain a definition of what is meant for «*evidence*». That concept includes, in any case and for instance, hearings of witnesses and/or of the parties, inspection of places and/or goods carried out by court appointed experts, collection of documents. The Regulation does not apply where the evidence is not intended to be used in connection with a judicial proceedings already started or which is about to start. In the latter case, taking of evidence is allowed to prevent the risk that the evidence will no longer available when the proceedings start.
5. Member States must draw up a list of authorities that exercise judicial functions which are competent under national law to take evidence for the purposes of judicial proceedings in civil or commercial matters and indicate their territorial or special jurisdiction. Requests are directly transmitted by the court before which the proceedings are taking place or are planned (the '**requesting court**') to the court of the EU country where evidence shall be taken (the '**requested court**').
6. Each Member State must also designate a central authority responsible for supplying information to the courts and seeking solutions to any difficulties regarding transmission. Just in exceptional cases, the Central Body is competent to forward request to the competent court.
7. The request must be transmitted using the form annexed to the regulation. It must contain certain information, such as:
  - (i) the name and address of the parties to the proceedings,
  - (ii) the nature and subject matter of the case,
  - (iii) a description of the taking of evidence to be performed.
8. When the request is for the taking of evidence in the form of hearing a witness or a person, request must contain:
  - (i) the name and address of the person to be examined,
  - (ii) 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,

- (iii) where appropriate, a reference to the right to refuse to testify under the law of the Member State of the requesting court,
- (iv) any request that the examination shall be carried out under oath, with indication of the form to be used for such oath.

Where the request is for taking of evidence in the form of an inspection, it must contain an indication of the documents, other objects and/or of places to be inspected.

**9.** Requests must be drafted in the official language of the Member State of the requested court or in any other language which that country indicates it can accept.

**10.** The requested Court shall send an acknowledgement of receipt to the requesting court, within 7 days. If a request cannot be executed because it does not contain all the necessary information, the requested court shall inform the requesting Court without delay and invite the requesting court to send the missing information, specifying the information missing as precisely as possible.

**11.** The requests are executed and, therefore, the evidence is taken in accordance with the national law of the requested Court, within 90 days of receipt. The requesting court may ask that the evidence be taken in accordance with a special procedure provided for in its national law, but the requested court shall comply with such request unless doing so would be incompatible with its national law or it is unable to do so because of major practical difficulties.

**12.** The execution of a request may be refused only if:

- (i) the request does not fall within the scope of the regulation (if, for instance, it concerns criminal and not civil or commercial proceedings),
- (ii) the execution of the request does not fall within the functions of the judiciary,
- (iii) the request is incomplete,
- (iv) a person of whom a hearing has been requested claims a right to refuse, or a prohibition, from giving evidence.

Where a request is refused, the requested court must notify the requesting court within 60 days of receipt of the request.

**13.** If and to the extent it is permitted by the national procedural law of the member State of the requesting court, parties and their representatives (if any) may be present at the taking of evidence, as well as representatives of the requesting court. The requesting court shall inform the requested court that the parties and their representatives, if any, will be present and that their participation in the taking of evidence is requested. The requested court shall then 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.

**14.** Where necessary, in executing a request the requested court shall apply the appropriate coercive measures to the extent these are provided for by the law of its Member State for the execution of a request made for the same purpose by its national authorities. For instance, applying fines to witness who do not show up even if correctly and properly summoned.

**15.** Instead of requesting the court in another member state the taking of evidence on its behalf, a court may submit to the central body of another Member State a request for taking of evidence directly in another Member State.

**16.** 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 and it 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. In principle, the requesting court shall conduct the direct taking of evidence in accordance with the law of its Member State. Where evidence consists of examining a person who is present in another Member State, the court may request that the evidence was taken using videoconferencing or other distance communications technology.