

# EUROPEAN DIMENSION OF TAKING EVIDENCE IN CIVIL PROCEDURE

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# **Administration of evidence**

**Ensuring the integrity of evidence,  
Private international issues. European  
regulations and Hague conventions**

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From an Austrian perspective

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# Overview

- Basics according to Austrian Law
  - Mixed regime: ex officio and request
  - Free deliberation of evidence
  - Categories of evidence
- Cross-border issues
  - Ways to receive evidence from abroad
  - Law applicable (forum or requesting state)
  - Some indispensable issues according to Austrian Law
  - Whom to address as requested Authority
- The taking of evidence-Regulation
  - Not an exclusive avenue
  - Classical active help
  - Direct taking of evidence
  - Videoconferences
- Austria as a non-party of the Hague Convention

# Basics according to Austrian Law

- Mixed regime: ex officio and request
- Theory (§ 183 ZPO)
  - The judge may take evidence *ex officio* regarding to examination of objects, experts and the parties
  - The judge may take evidence *ex officio* regarding to documents or witnesses, **only if not** both parties object
- In praxi
  - Ex officio taking of evidence seldom occurs

# Basics according to Austrian Law

- Rights of the parties
  - To be informed about the hearing
  - To attend the hearing
  - To ask (the judge to ask) additional questions
  - To comment the outcome (in particular: to add statements and/or further requests)
  - To contest the authenticity and/or the verity of documents

# Basics according to Austrian Law

- Free deliberation of evidence
- See § 272 ZPO: The judge has to deliberate the worth of evidence with respect of all the outcome of the entire proceeding
- In the reasoning of the judgement, grounds have to be given for the deliberation of evidence
- The appeal can contest the judges deliberation; the High Court may review the deliberation (after a renewed hearing) or dismiss the appeal

# Basics according to Austrian Law

- Thus, parties are able (their Lawyers are obliged) to ask critical questions and to give all statements to raise doubts against the evidence shown by the other party



# Basics according to Austrian Law

## 5 Categories of evidence

- Documents
- Witnesses
- Experts
- Parties
- Evidential objects

# Basics according to Austrian Law

Further information  
available on

[https://e-justice.europa.eu/content\\_taking\\_of\\_evidence-76-at-en.do?member=1](https://e-justice.europa.eu/content_taking_of_evidence-76-at-en.do?member=1)

# Cross-border issues

## Ways to receive evidence from abroad

- “importing” evidence
  - Document sent, witness coming ...
  - Protocol produced by the Lawyer (§ 283 ZPO)
- Taking evidence by the requested judge abroad (“classical” active help)
- Taking evidence by the requesting judge “directly”

# Cross-border issues

Law applicable (forum of the t e or requesting state)

Rule: lex fori

Exemption: special request for specific ways of taking evidence  
public policy exemption

# Cross-border issues

## Some indispensable issues according to Austrian Law

- Due process of Law (*audiatur et altera pars*)
- No physical coercion
- Respecting non disclosure provisions
  - Doctors, dentists, psychologists, psychotherapists
  - Bankers
  - Civil servants
  - Priests and
  - mediators

# Cross-border issues

## Whom to address as requested Authority

- Diplomatic avenue
- Consular avenue
- Central Authority
- Direct judicial communication

In cases of request, please deliver the ZIP-Code (to check the District Court having jurisdiction)

# The taking of evidence-Regulation

- Regulation (EC) No 1206/2001 on the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

## ➤ See Practical Guide

[https://e-justice.europa.eu/content\\_taking\\_of\\_evidence-76-en.do](https://e-justice.europa.eu/content_taking_of_evidence-76-en.do)

[https://e-justice.europa.eu/content\\_taking\\_of\\_evidence-76-sl.do](https://e-justice.europa.eu/content_taking_of_evidence-76-sl.do)

- **This document has been drawn up by the Commission Services in consultation with the European Judicial Network in Civil and Commercial Matters (<http://europa.eu.int/civiljustice>)**

# The taking of evidence-Regulation

Not an exclusive avenue

➤ CJEU Rs C-170/11; C-332/11

The te-Reg only regulates HOW, not WHETHER request have to be done



# The taking of evidence-Regulation

## – Classical active help

- Direct communication (Court to Court)
- Forms
- Tools

# The taking of evidence-Regulation

- Forms
  - See
  - [https://e-justice.europa.eu/dynform\\_intro\\_form\\_action.do?idTaxonomy=160&plang=en&init=true&refresh=1](https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=160&plang=en&init=true&refresh=1)
- [Form A - Request for the taking of evidence](#)
- [Form B - Acknowledgement of receipt of a request for the taking of evidence](#)
- [Form C - Request for additional information for the taking of evidence](#)
- [Form D - Acknowledgement of receipt of the deposit or advance](#)  
[Form E - Notification concerning the request for special procedures and/or for the use of communications technologies](#)

# Form cntd

- Form F - Notification of the date, time, place of performance of the taking evidence and the conditions for participation
- Form G - Notification of delay
- Form H - Information on the outcome of the request
- Form I - Request for direct taking of evidence
- Form J - Information from the central body/competent authority

# The taking of evidence-Regulation

## – Direct taking of evidence

- Permission (sovereignty issue): Art 17 te-Reg: Form
- Acting as a judge in an other country
- In particular cases asking for
  - Room
  - Interpretation

# The taking of evidence-Regulation

– Videoconferences

- **Using videoconferencing**
  - to obtain evidence in civil and commercial matters under Council Regulation (EC) No 1206/2001 of 28 May 2001
  - A practical guide
- See [https://e-justice.europa.eu/content\\_taking\\_of\\_evidence-76-en.do?init=true](https://e-justice.europa.eu/content_taking_of_evidence-76-en.do?init=true)

# The taking of evidence-Regulation

- **Information on national facilities**
- **Many courts in Member States are now equipped with videoconferencing facilities in the courtroom or in special hearing rooms for witnesses and experts.**
- To make it easier for judges, prosecutors and court staff to find the practical information they need to conduct a hearing by videoconference in cross-border proceedings, the Member States' Justice Ministries have provided details on the location and type of videoconferencing facilities available in courts. That information is given on the right hand side - to view it please select one of the flags. No details are given of equipment installed in ministries or prisons.
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# Austria as a non-party of the Hague Convention

## With other parties of Conventions

- CONVENTION ON CIVIL PROCEDURE (*Concluded 1 March 1954*)
  - See [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=33](http://www.hcch.net/index_en.php?act=conventions.text&cid=33)
- Other bilateral Conventions, eg
  - österreichisch-jugoslawischer Rechtshilfevertrag, BGBl. 224/1955, HPÜ 1954, BGBl. 91/1957
  - Österreichisch-britischer Rechtshilfevertrag, BGBl. 45/1932 ...

## With non parties of any Convention Austria is party

- Common use
- On a case-to-case-basis

Thank you for your attention  
[hvala lepa!](#)

