





## Part I

**Is there a European Dimension regarding the categorization of means of evidence in civil procedure ?**



# Regulation on taking of evidence

## Form A

- Witnesses
- Documents
- Objects
  
- Experts (Art 17 para 3)

### 12. Taking of evidence to be performed

12.1. Description of the taking of evidence to be performed (in annex, where appropriate):

12.2. Examination of witnesses:

12.2.1. Name and surname:

12.2.2. Address:

12.2.3. Tel.

12.2.4. Fax

12.2.5. E-mail:

12.2.6. Questions to be put to the witness or a statement of the facts about which they are to be examined (in annex, where appropriate):

12.2.7. Right to refuse to testify under the law of the Member State of the requesting court (in annex, where appropriate):

12.2.8. Please examine the witness:

12.2.8.1. under oath:

12.2.8.2. on affirmation:

12.2.9. Any other information that the requesting court deems necessary (in annex, where appropriate):

12.3. Other taking of evidence:

12.3.1. Documents to be inspected and a description of the requested taking of evidence (in annex, where appropriate):

12.3.2. Objects to be inspected and a description of the requested taking of evidence (in annex, where appropriate):



## Small Claims Procedure

### Article 9 (Taking of evidence)

1. The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court or tribunal may admit the taking of evidence through **written statements of witnesses, experts or parties**. [...]
2. The court or tribunal may take **expert evidence or oral testimony** only if it is necessary for giving the judgment. In making its decision, the court or tribunal shall take costs into account.
3. The court or tribunal shall use the simplest and least burdensome method of taking evidence.





# Order for Payment Procedure

## Form A (Application for a European order for payment)

<b>10. Evidence available in support of the claim</b>						
Codes:		01 Written evidence	02 Oral evidence	03 Expert evidence	04 Inspection of an object or site	05 Other (please specify)
ID *	Code	Description of evidence			Date (day/month/year)	
ID *	Code	Description of evidence			Date (day/month/year)	
ID *	Code	Description of evidence			Date (day/month/year)	
ID *	Code	Description of evidence			Date (day/month/year)	



## Enforcement Directive

### Art 2 (Definitions)

13. evidence means **all types of means of proof** admissible before the national court seized, **in particular documents and all other objects containing information**, irrespective of the medium on which the information is stored



## Conclusion

References to means of evidence

No exhaustive list of means of evidence

→ National law



## Part II

# Means of evidence under the Austrian Code of Civil Procedure





## Five classical types of evidence

- production of documents ( §§ 292 et seqq ),
- examination of witnesses ( §§ 320 et seqq ),
- expert evidence ( §§ 351 et seqq ),
- inspection by the judge ( §§ 368 et seqq ) and
- the examination of the parties ( §§ 371 et seqq ).

## New means of evidence

not exhaustive

Procedural rules have to be obeyed



## Signed painting

### Document:

Emanation of thoughts  
by means of writing

What is depicted?





## Private Expert

≠ court appointed expert

Document

Expert witness

Party assertions

→ **Categorization of means of evidence shall not be strictly followed.**



## Conclusion

**No categorization of means of evidence under European Law**

**A strict categorization of means of evidence is outdated.**