Universidad del País Vasco
Euskal Herriko Unibertsitatea
The University of the Basque Country

STUDY ON THE APPLICATION OF ARTICLES 3(1)(C) AND 3, AND ARTICLES 17 AND 18 OF THE COUNCIL REGULATION (EC) NO 1206/2001 OF 28 MAY 2001 ON COOPERATION BETWEEN THE COURTS OF THE MEMBER STATES IN THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL MATTERS

ANNEXES

Customer: European Commission
Directorate General for Justice Unit A1 – Civil Justice Policy

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ANNEX I - LIST OF PARTICIPANTS WHO CONTRIBUTED TO THE STUDY

1. EXPERTS' SURVEY

	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation
Austria	Christian Rauscher	Deputy Head of Department for International Private and Civil Procedure Law	Federal Ministry of Justice																		
Belgium	Ilse Couwenberg	councillor	Court of appeal Antwerp	*Van den eeden, Erik*	*County judge*	Ministry of Justice															
Bulgaria																					
Cyprus	Yioulika Hadjiprodromou	Legal Officer	Ministry of Justice and Public Order																		
Czech Republic																					
Denmark	*David Lange*	*Head of section*	*The Danish Ministry of Justice*																		
Estonia	*Piret Randmaa*	*judge*	*Harju County Court*																		
Finland	*Kenneth Svartström*	*Counsel*	*Krogerus Attorneys Ltd*																		
France																					
Germany	*Dr. Magdalena Boguslawska*	*Lawyer*	*Federal Office of Justice*	*BRAK*		*Bundesrechtsanwaltskammer / German Federal Bar*	*Dr. Maike Otten*	*Judge*	*Landgericht Bremen*	Thomas Klippstein	Judge	Federal Ministry of Justice	*Dr. Igloffstein*	*Regierungsdirektor*	*Bayerisches Staatsministerium der Justiz und für Verbraucherschutz*			*Ministerium der Justiz und für Verbraucherschutz Rheinland-Pfalz*			*Amtsgericht Hamburg (Local Court in Hamburg)*

	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation
Greece	Alkiviadis FERESIDIS	Judge	First Instance Court of Piraeus	CHRISANTHI	LAWYER										
Hungary	ms. Gyöngyi Horváth dr.	notary deputy	Hungarian Chamber of Civil Law Notaries	Szabolcs Boreczki	head of unit	Department of Private International Law, Ministry of Public Administration and Justice									
Ireland	Pat Moynan	Assistant Principal, Circuit and District Court Operations	Courts Service												
Italy	Filomena Albano	Direttore Ufficio II – DGGC - DAG	Ministero della Giustizia												
Latvia	Baiba Jugane	Legal advisor	The Ministry of Justice	Dimitrijs Zamjatins	judge	Rezekne court	Svetlana Belajeva	judge	Jurmala city court	Vladimir	Isayev	Daugavpils court	ILONA RUKE	Judge	City of Riga Vidzeme Urban Court
Lithuania	Janina Stripeikienė	Judge, President of Civil law chamber of the Supreme	The Supreme Court of Lithuania	Egidijus Baranauskas	Judge	The Supreme Court of Lithuania									
Luxembourg															
Malta	Daphne Dodebier	Committee Member	Chamber of Advocates												
Netherlands	Jeroen Nijenhuis	Judicial officer/board member	Royal Professional Organisation of Judicial Officers	Jan Ouwehand	Central Authority in cross border disputes Reg. 2003/8 EG	Raad voor rechtsbijstand	Harry Witsiers	judge	Middelburg						

	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name	Position	Organisation	Name
Poland	KAMILA DRZEWICKA	SENIOR EXPERT	MINISTRY OF JUSTICE																
Portugal	Sonia Duarte Afonso, João Arsénio de Oliveira, Assunção Reis		Direcção-Geral da Política de Justiça (DGPJ)																
Romania																			
Slovakia	Miloš Haťapka	Director, Private International and European Law Division	Ministry of Justice of the Slovak Republic	RADOVAN BARAN	counsellor	Ministry of Justice of the Slovak Republic													
Slovenia	Dr. Mateja Končina Peternel	Supreme court judge	Supreme Court	Katarina Plevčak	judge	District Court of Maribor	JANJA ROBLEK	District Court Judge	District Court Kranj				OKROŽNO SODIŠČE NA PTUJU						
Spain	JOSE GUILLERMO NOGALES CEJUDO	JUDGE	SPANISH COUNCIL FOR THE JUDICIARY	JACINTO JOSÉ PÉREZ-BENITEZ	SENIOR JUDGE	COURT OF APPEAL	Jose A Varela Agrelo	President e Audiencia Provincial de Lugo	Consejo General del Poder Judicial	Mª Luz Charco Gómez	Judge	Justice	MIGUEL-ÁLVARO ARTOLA FERNÁNDEZ	Magistrado en la Audiencia Provincial de Palma de Mallorca (Baleares)	Corresponsal en Baleares de la Red Judicial Española (REJUE)	Red Judicial Española (REJUE)	ROSA BLANCH/ JAVIER CASADO	SECRETARIO JUDICIAL	JUSTICE'S MINISTRY
Sweden	Erik Tiberg	Legal Adviser	Ministry of Justice, Division for Procedural Law and Court Issues	Henrik Wallman	Verksjurist	Kronofogdemyndigheten													
UK	Eral Knight	Contact Point of the EJN for England and Wales	Ministry of Justice	Ian Nicol	Policy Manager	The Scottish Government	Maria Kane	Contact Point for EJN for Northern Ireland	Department of Justice										

2. OUR NETWORK OF NATIONAL CORRESPONDENTS

	Name	Position	Organisation
Austria	Ulrike Frauenberger-Pfeiler	Associate Professor Mag.	Universität Wien
Belgium	Thalia Kruger and Liselot samyn	Professor Private international law - assistant private international law	University of Antwerp
Bulgaria	Irena ilieva	Assoc. prof. PhD	Institute for the state and the law, BAS
Cyprus	Anastasios A. Antoniou	Managing Advocate	ANASTASIOS ANTONIOU LLC
Czech Republic	Renáta šínová	Assistant professor	Faculty of law, Palacký university
Estonia	Carri ginter	Partner	Law firm SORAINEN
Finland	Markku Kiikeri	Senior lecturer in European law	University of Lapland
France	Nicolas Nord and Delphine Porcheron	Associates professors	University of Strasbourg
Germany	Olaf Muthorst	Junior professor of law	University of Hamburg
Greece	Anastasia Grammaticaki-Alexiou	Professor in Law	Law faculty, Aristotle university of Thessaloniki
Hungary	Csongor IStván NAgy	Associate Professor of LAw	University of Szeged, Department of Private International Law
Ireland	JOHN AHERN	ADJUNCT LECTURER	TRINITY COLLEGE DUBLIN
Italy	STEFANIA BARIATTI	PROFESSOR OF PRIVATE INTERNATIONAL LAW AND PROCEDURAL LAW	MILAN UNIVERSITY
Latvia	Valts nerets	Associate	Law firm SORAINEN
Lithuania	Rytis martinkėnas; laurynas lukošiūnas	Lawyers	Law firm SORAINEN
Luxembourg	Veronique Hoffeld	Avocats à la Cour	Law firm LOYENS & LOEFF
Malta	Gian. Caruana-Demajo	Judge	Superior Courts
Netherlands	Mirjam Freudenthal	Senior researcher	University of Utrecht
Poland	Katarzyna Bagan Kurluta	LECTURER DEPARTMENT OF LAW	UNIVERSITY OF BIALYSTOK
Portugal	Lucinda Dias Da Silva	Lecturer	University of Coimbra
Romania	Tudorel Toader	Judge at The Constitutional Court of Romania	Dean at Law Faculty, "Al.I.Cuza" University Iasi
Slovakia	Kristian Csach	Associate Professor	Pavol Jozef Safarik University Košice
Slovenia	Rajko Knez	Professor	UNIVERSITY OF MARIBOR
Spain	Juan José Alvarez	Professor in International Private Law	University of the Basque Country

Sweden	Elisabeth Lehrberg	Associate professor	Faculty of law, Uppsala university
UK	Helen Edwards & Matthew J. Homewood	Barrister, Head of Graduate Programmes, and Principal Lecturer in law, respectively	Nottingham Law School. Nottingham Trent University

3. PROFESSIONALS' SURVEY

We here present those interviewees who identified themselves when filling out the survey.

Name	Position	Organisation	Member State
AAA Advogados	Law Firm	Lawyer / Attorney	Portugal
ADALGISA FRACCON	PRESIDENTE DEL TRIBUNALE	Judge	Italy
Adam Toth	Dr	Other professions	Hungary
ADELINA PASKALEVA	LAWYER, MANAGING PARTNER	Lawyer / Attorney	Bulgaria
AGLIATA EDOARDO	AVOCAT	Lawyer / Attorney	Belgium
Alan Finlayson	Scottish Central Authority	Member of National Administration	United Kingdom
Albena Draganova	Jurist	Lawyer / Attorney	Bulgaria
Alegría Borrás	Catedrática DIPr Universidad de Barcelona	Other professions	Spain
Alpen	Richter	Judge	Germany
Alvin Aubeeluck	Team Leader	Court	United Kingdom
Amtsgericht Ratzeburg	Direktor	Court	Germany
Anastasia Grammaticaki-Alexiou	Professor	Other professions	Greece
Andrea Formica	avvocato	Lawyer / Attorney	Italy
Andrej Bukovnik	Associate	Lawyer / Attorney	Slovenia
Andrej Savin	Associate Professor	Other professions	Denmark
Andrey Mitkov Delchev	Managing partner	Lawyer / Attorney	Bulgaria
António Borges Pires	Partner	Lawyer / Attorney	Portugal
Antonio Braggion	(null)	Lawyer / Attorney	Italy
Arbeitsgericht Siegburg	Direktorin	Court	Germany
ASPERTI Matthieu	Huissier de Justice	Other professions	France
Ausra	Maliauskaite	Lawyer / Attorney	Lithuania
Avv. Giuseppe POLITO	(null)	Lawyer / Attorney	Italy
Babst Renate	Richterin am Amtsgericht	Judge	Germany
bacri	avocat	Lawyer / Attorney	Luxembourg
BAILET	Greffier	Other professions	France
Baumeister	Direktorin	Judge	Germany
Becker	Zentralstelle	Court	Germany
Befana	Avocat	Lawyer / Attorney	Luxembourg

Benjamin Knitsch	Sachbearbeiter	Member of National Administration	Germany
BERNA LUC	HUISSIER DE JUSTICE	Lawyer / Attorney	France
BERNARD	Huissier de Justice	Lawyer / Attorney	France
BOLLECKER Didier	Avocat	Lawyer / Attorney	France
Bolten	Zentralstelle für Nordrhein-Westfalen	Member of National Administration	Germany
BRECX Philippe	HUISSIER DE Justice	Other professions	Belgium
BRELIVET	HUISSIER	Other professions	France
Brulé Jean-Claude	Huissier de justice	Lawyer / Attorney	Belgium
BURDUF Ioana	LEGAL ADVISER	Member of National Administration	Romania
Burmeister	Direktor des Amtsgerichts	Court	Germany
Butzer	Sachbearbeiter	Court	Germany
Carlo Guerra	Direttore Amministrativo	Member of National Administration	Italy
Carlo Scevola	Mr.	Lawyer / Attorney	United Kingdom
Cermak	Zivilrichter	Judge	Germany
CHAPIN-TCHIBOZO	HUISSIER DE JUSTICE	Lawyer / Attorney	France
CHRISANTHI PAPASTAMOU	(null)	Lawyer / Attorney	Greece
Christian Gassauer-Fleissner	Partner	Lawyer / Attorney	Austria
Christoph Franke	Direktor des Amtsgerichts	Judge	Germany
Claus Richter Weigelt	Advokat	Lawyer / Attorney	Denmark
COATMEUR	HUISSIER DE JUSTICE	Other professions	France
Corrado De Angelis	Titolare dello studio	Lawyer / Attorney	Italy
COURBOIN	HUISSIER DE JUSTICE	Lawyer / Attorney	Belgium
Cristina Dein	Advogada	Lawyer / Attorney	Portugal
DAMOUR NICOLAS	HUISSIER DE JUSTICE	Other professions	France
Danner, Carmen	Vors.Richterin a.LG	Judge	Germany
Daskalova Yana	avocat	Lawyer / Attorney	Bulgaria
David Tonna	Dr.	Lawyer / Attorney	Malta
DEMETRIUS PAPAPHILIPPOU	(null)	Lawyer / Attorney	Greece
DEMINE Jean-François	Huissier de Justice	Other professions	Belgium
Desislava Hristova	(null)	Lawyer / Attorney	Bulgaria
Diaconescu Adela	Ms	Lawyer / Attorney	Romania
Diehl	Bezirksrevisor	Court	Germany
Diener, Jens	Referatsleiter im Ministerium der Justiz	Member of National Administration	Germany
Dimitrijs	Zamjatins	Judge	Latvia
Dmitrijus	Bogdanovas	Lawyer / Attorney	Lithuania
Dockers	Alex	Other professions	Belgium
Domas	Balandis	Lawyer / Attorney	Lithuania
dOMENICANTONIO CIARNIELLO	AVV	Lawyer / Attorney	Italy
Dr. Abraham Judit	attorney at law	Lawyer / Attorney	Hungary
Dr. Anton BAIER	Rechtsanwalt	Lawyer / Attorney	Austria

Dr. Buchkremer	zuständig für Rechtshilfeersuchen in Zivilsachen	Judge	Germany
Dr. Csongor István Nagy	associate professor of law	Lawyer / Attorney	Hungary
Dr. Fabian Reuschle	Richter und Rechtshilfedezernent	Judge	Germany
Dr. Fellner	Vizepräsident des Landgerichts Landshut	Judge	Germany
Dr. H e i n, Ekkehardt	Richter am Arbeitsgericht	Judge	Germany
Dr. Jürgen Kitzinger	Richter am Landgericht	Judge	Germany
Dr. Laszlo Agai	Avocat	Lawyer / Attorney	Hungary
Dr. Manzur Esskandari	Rechtsanwalt	Lawyer / Attorney	Germany
Dr. Miklos Udvarhelyi	Mr.	Lawyer / Attorney	Hungary
Dr. Noll	Richter	Judge	Germany
Dr. Peter Guntz	Vorsitzender Richter der 7. Zivilkammer des Landgerichts München I	Judge	Germany
Dr. Poller	Richter	Judge	Germany
Dr. Reder	Vizepräsident	Judge	Germany
Dr. Stefan Kofler	Rechtsanwalt	Lawyer / Attorney	Austria
dr. Zoltán Somogyi	Richter	Judge	Hungary
Dr.Kumme	Richter	Judge	Germany
Dr.Wittschier	weiterer aufsichtsführender Richter	Judge	Germany
Dragon Renaud	greffier	Court	France
Dulce Lopes	Mestre	Other professions	Portugal
Elsner	Auslandsrechtspflegerin	Court	Germany
emma rossi	direttore ammnistrativo	Member of National Administration	Italy
ENRIQUE DE LA CRUZ LLEDO	PROCURADOR DE LOS TRIBUNALES	Other professions	Spain
Erki Vainu	Lawyer	Association of Judges or Attorneys	Estonia
EVA MARIA SANCHEZ HERNANDEZ	GESTOR PROCESAL DE LA OFICINA DE ATENCION VICTIMAS MURCIA	Member of National Administration	Spain
Fausto Avv. Porcù	(null)	Lawyer / Attorney	Italy
Ferdinando Gattuccio	(null)	Lawyer / Attorney	Italy
Filomena Rosa	Registrar	Other professions	Portugal
FIORELLA MATTACOLA	DIRETTORE AMMINISTRATIVO	Other professions	Italy
Francisco Puig Blanes	Magistrado	Judge	Spain
Franz Hammer	Richter	Judge	Austria
friedrich graf von westphalen	Rechtsanwalt Prof. Dr.	Lawyer / Attorney	Germany
Gama Matthieu	HUISSIER DE JUSTICE	Other professions	France
GANJ	CRISTIAN	Lawyer / Attorney	Romania
Gavin	Elliott	Lawyer / Attorney	Ireland
Gebele	Direktor des Amtsgerichts	Judge	Germany
Georg Prantl	Rechtsanwalt	Lawyer / Attorney	Austria

Gerhard von Hugo	Vorsitzender Richter am Landgericht	Judge	Germany
Giacomo OBERTO	Giudice delle Terza Sezione Civile del Tribunale di Torino	Judge	Italy
Gintare	Chief Specialist, Ministry of Justice (Central Body)	Member of National Administration	Lithuania
Gintautas Bartkus	MR	Lawyer / Attorney	Lithuania
Gonçalo Malheiro	(null)	Lawyer / Attorney	Portugal
Gonzalo Ferrer Amigo	Magistrado. Miembro de la REJUE	Judge	Spain
Gonzalo Ferrer Amigo	Magistrado. Miembro de la REJUE	Judge	Spain
GORAZD ŠIFRER	NOTAR	Other professions	Slovenia
Gordon Brown	Civil Office Manager	Court	United Kingdom
Gougnard	Vice-présidente, juge de la jeunesse	Judge	Belgium
Greiner, Doris	Abteilungsleiterin der Zivilabteilung	Judge	Germany
Grimm	Verwaltungsleiter	Court	Germany
guillaume jeanne	premier avocat général	Judge	Luxembourg
Günther, Uwe	Geschäftsleiter des Amtsgerichts Delmenhorst	Court	Germany
Haldi Mäesalu	Advisor	Member of National Administration	Estonia
hamel	huissier de justice	Other professions	France
Hans-Wilhelm Müller	Vors. Richter am LG	Judge	Germany
Hansen, Arthur C.	LLM	Lawyer / Attorney	The Netherlands
Haßler, Christina	Rechtspflegerin	Court	Germany
Haviaras Andreas	Mr	Lawyer / Attorney	Cyprus
Helmut Theis	Richter	Judge	Germany
Henle, Walter	Richter am Amtsgericht	Judge	Germany
Herrmann	Rechtsanwalt	Lawyer / Attorney	Germany
Hollederer	(null)	Judge	Germany
Hon.-Prof. Dr. Irene Welser	Managing Partner	Lawyer / Attorney	Austria
Ilaria Cornetti	magistrato ordinario tribunale	Judge	Italy
Ilse Couwenberg	Mrs	Judge	Belgium
Irena Ilieva	assoc. prof.	Other professions	Bulgaria
J. Nijenhuis	board member	Other professions	The Netherlands
Jacinto J. Pérez-Benítez	Audiencia Provincial Pontevedra	Judge	Spain
Jana Novotná	(null)	Member of National Administration	Czech Republic
Jane Ching	Dr	Lawyer / Attorney	United Kingdom
Janja Roblek	District Court Judge	Judge	Slovenia
Janja Roblek	District Court Judge	Judge	Slovenia
JANJA VIHER	VIŠJI PRAVOSODNI SVETOVALEC III	Court	Slovenia

Jaschke	Richter	Judge	Germany
JAUFFRET Philippe	Gérant	Other professions	France
Jaunius Gumbis	associate professor	Lawyer / Attorney	Lithuania
JEANDEL	H.D.J.	Other professions	France
Jens-Uwe Thümer	Rechtsanwalt/lawyer	Lawyer / Attorney	Germany
Jiri Slovacek	(null)	Lawyer / Attorney	Czech Republic
Joaquim Shearman de Macedo	(null)	Lawyer / Attorney	Portugal
Jörg Scheffer	Rechtspflegeinspektor	Other professions	Germany
Jose Antonio Varela Agrelo	Presidente Audiencia Provincial de Lugo	Judge	Spain
José Francisco Lara Romero	Audiencia Provincial de Valencia	Judge	Spain
JOSE JAVIER ESCOLANO NAVARRO	NOTARIO	Other professions	Spain
Joseph Borg Bartolo	Dr	Lawyer / Attorney	Malta
Jutta Gade	Rechtspflegerin	Member of National Administration	Germany
Karel Cermak	Dr.	Lawyer / Attorney	Czech Republic
Karen Campbell	Office Manager - Administration	Court	United Kingdom
Karen Campbell	Office Manager - Administration	Court	United Kingdom
Karl J Dhunér	Partner	Lawyer / Attorney	Sweden
Katilin Popov	Mr.	Other professions	Bulgaria
Katter	Richterin, Kontaktstelle	Judge	Austria
Klaudia Azariova	JUDr.	Lawyer / Attorney	Slovakia
Koch	Richter Amtsgericht	Judge	Germany
Kristina Fagerlund	Chief Judge	Judge	Finland
Kuhne, Ruth-Hanna	Geschäftsleiterin	Court	Germany
Laidebeur	Directeur - Conseil en Propriété Industrielle	Lawyer / Attorney	Luxembourg
Landgericht Ellwangen	Rechtshilfestelle	Court	Germany
Laura Gumuliauskiene	Dr.	Lawyer / Attorney	Lithuania
Laux	RiLG	Judge	Germany
LAVAL	ASSOCIE	Other professions	France
Law Firm	"Zlioba & Zlioba"	Lawyer / Attorney	Lithuania
Le FUR Patrick	dirigeant	Other professions	France
LECA CHRISTOPHE	HUISSIER MEDIATEUR	Other professions	France
Leonardo GUARNOTTA	Presidente Tribunale Palermo	Court	Italy
lorenzo massarelli	giudice	Judge	Italy
Luca Perilli	Giudice del Tribunale di Rovereto (TN)	Judge	Italy
Luca Verzelloni	Ricercatore	Other professions	Italy
LUIGI PARENTI	Titolarevstudio legale	Lawyer / Attorney	Italy
Lutsch	Dipl.Rechtspflegerin (FH)	Court	Germany
Mª Luz Charco	Magistrada	Judge	Spain
Maarja Torga	(null)	Other professions	Estonia
magdalena.boguslawska@bfj.bund.de, klippstein-th@bmj.bund.de	Bundesministerium der Justiz und Bundeskontaktstelle	Member of National Administration	Germany

MAGNIERV 567T	&	Other professions	France
MANCIOPPI Marc	Huissier de Justice	Lawyer / Attorney	France
Mario Nicolella	avocat / avvocato	Lawyer / Attorney	France
Mariya Zheleva	Mrs	Lawyer / Attorney	Bulgaria
Martin	Canny BL	Lawyer / Attorney	Ireland
Martin FRANK	Richter des Oberlandesgerichts Wien	Judge	Austria
Mary O'Mara	Deputy Chief Clerk	Member of National Administration	Ireland
MASSART-BERTRAND	Huissiers de justice	Other professions	Belgium
MAZOYER Franck	Huissier de Justice	Lawyer / Attorney	France
Meinhof	Richter	Judge	Germany
Merja Norros	Ministerial Counsellor	Lawyer / Attorney	Finland
MERLE Alain	Huissier de Justice Associé	Lawyer / Attorney	France
Meßner Syllvia	Landgericht Prüfungsstelle Rechtshilfe	Court	Germany
METRAL	Huissier de Justice	Other professions	France
Micahel Wells-Greco	(null)	Lawyer / Attorney	United Kingdom
Michael A Seaman	notary public	Lawyer / Attorney	United Kingdom
Michael Martinek, Prof. Dr. Dr. Dr.h.c.mult.	Univ.-Prof. Direktor des Instituts für Europäisches Recht, Universität des Saarlandes, Saarbrücken	Other professions	Germany
Michael Zoeller	VRiOLG	Judge	Germany
MICHEL Jean Pierre	Huissier de Justice	Other professions	France
Mielke, Heiko	Geschäftsleiter, Rechtspfleger	Court	Germany
Mihail Romeo Nicolescu	Co-ordinating Lawyer	Lawyer / Attorney	Romania
mihela mohoric	district judge	Judge	Slovenia
Milos Hatapka	Director	Member of National Administration	Slovakia
Miroslava Jirmanová	JUDr.	Judge	Czech Republic
Mork	Richter am Amtsgericht	Judge	Germany
Muller	Huissier de Justice	Lawyer / Attorney	France
NADEZHDA GROZDEVA	(null)	Lawyer / Attorney	Bulgaria
Nadia Vella	Dr.	Lawyer / Attorney	Malta
Natércia Fortunato	Chefe de Division	Lawyer / Attorney	Portugal
Neurauter	Richter	Judge	Austria
Nina	Boteva	Lawyer / Attorney	Bulgaria
NOGALES CEJUDO. José Guillermo	Magistrado	Judge	Spain
Nord Nicolas	enseignant-chercheur	Other professions	France
Nuno Piçarra	Prof. Dr.	Other professions	Portugal
P.M. Braakman	(null)	Other professions	The Netherlands
Panayiotis Karakonstantis	Πρωτοδίκης στο Πρωτοδικείο Αθηνών	Judge	Greece
Panayiotis Karakonstantis	Πρωτοδίκης στο Πρωτοδικείο Αθηνών	Judge	Greece
pansard et associés	huissiers de jusstice	Other professions	France

paola dora magaudda	avvocato	Lawyer / Attorney	Italy
Pascal-Pedro Martínez Carrión	Abogado	Lawyer / Attorney	Spain
Patrick Desmet	bailiff	Other professions	Belgium
Paul Cachia	Dr.	Lawyer / Attorney	Malta
PERAIRE	Arnaud	Lawyer / Attorney	Luxembourg
pesquet	huissier de justice	Lawyer / Attorney	France
Petra Sjölén Kruse	Rådman	Judge	Sweden
Pierserafino Marsico	Partner	Lawyer / Attorney	Italy
Pim Albers	Dr.	Member of National Administration	The Netherlands
Prof.Dr. Reinmüller	Rechtsanwalt	Lawyer / Attorney	Germany
Pujo-Sausset	Président de chambre CA PAU	Judge	France
R Dyer	(null)	Lawyer / Attorney	United Kingdom
Rafał Kobryński	specialist	Member of National Administration	Poland
Rajko Knez	Professor, Dr.	Other professions	Slovenia
Reinhard Vötter	Richter des Landesgerichtes	Judge	Austria
Renata Berzanskiene	partner	Lawyer / Attorney	Lithuania
Renato	Costagliola	Lawyer / Attorney	Italy
Roland Gerlach	Partner	Lawyer / Attorney	Austria
ROPERS ODILE	HUISSIER DE JUSTICE	Lawyer / Attorney	France
ROSA BLANCH	SECRETARIO JUDICIAL	Court	Spain
Rytis MArtinkėnas	Assistant attorney at law	Lawyer / Attorney	Lithuania
Sartor	Vizepräsident des OLG	Judge	Germany
Schaefer	Richter am Amtsgericht	Judge	Germany
scp mariscal cesari pouzineau	HUISSIERS DE JUSTICE	Other professions	France
Sebastian Koczur	Ph.D.	Lawyer / Attorney	Poland
SIMON TATTERSALL	MR.	Judge	United Kingdom
Simona	associate	Lawyer / Attorney	Lithuania
Specht	VRLG	Judge	Germany
Spela Stebal rencelj	head of unit	Member of National Administration	Slovenia
SPRUYT FRANK	Huissier de Justice	Other professions	Belgium
Staab	Vorsitzender Richter am Landgericht	Judge	Germany
stefano papa	titolare	Lawyer / Attorney	Italy
Sten Sisselberg	Lawyer	Lawyer / Attorney	Sweden
Stephan Quaedvlieg	gerechtsdeurwaarder - Gerichtsvollzieher	Member of National Administration	The Netherlands
Susanne Pellen-Lindemann	Richterin am Amtsgericht	Judge	Germany
T O'CONNOR	MS	Association of Judges or Attorneys	United Kingdom
Tanja Tušek	university degree in law	Association of Judges or Attorneys	Slovenia
Tarja Salmi-Tolonen	Dr.	Other professions	Finland
Ted L. Badoux	Mr.	Lawyer / Attorney	The Netherlands
TENTI MARIELLA	DIRETTORE AMM.VO	Court	Italy

TERRIEUX	HUISSIER DE JUSTICE	Other professions	France
The Ministry of Justice of the Republic of Latvia	(null)	Member of National Administration	Latvia
Thomas	Richter am Landgericht	Judge	Germany
Thomas Pichler	Berater	Lawyer / Attorney	Austria
Tommaso Dilonardo	Studio Legale	Lawyer / Attorney	Italy
Ulf Johansson	Judge	Judge	Sweden
Uros Krizanec	Mr.	Lawyer / Attorney	Slovenia
Uta Herrmann	Richterin am Amtsgericht	Judge	Germany
valeria baffa	(null)	Lawyer / Attorney	Italy
Valts Nerets	Mr	Lawyer / Attorney	Latvia
VAN KEMMEL	Huissier de Justice	Other professions	France
verrezen ann	huissier de justice	Other professions	Belgium
Vesna Kovič	Trademark Attorney	Lawyer / Attorney	Slovenia
Vilja Kutvonen	Mrs	Judge	Finland
Vineta Lecinska-Krutko	Mrs	Member of National Administration	Latvia
Volker Minig	Direktor des Amtsgerichts	Judge	Germany
Vydmantas	Grigoravičius	Lawyer / Attorney	Lithuania
Winkler	Richter	Judge	Germany
Witsiers, Hendrik	mr.	Judge	The Netherlands
Zane Pētersone	Ms	Judge	Latvia
Zdenek Mach	JUDr	Lawyer / Attorney	Czech Republic
ΒΑΡΒΑΡΑ ΑΓΓΕΛΟΠΟΥΛΟΥ	ΔΙΚΗΓΟΡΟΣ	Lawyer / Attorney	Greece
ΓΕΩΡΓΙΟΣ ΚΟΥΒΕΛΑΣ	ΥΠΑΛΛΗΛΟΣ	Member of National Administration	Greece
Γιούλικα Χατζηπροδρόμου	Λειτουργός Νομικών Θεμάτων, Υπουργείου Δικαιοσύνης και Δημοσίας Τάξεως	Lawyer / Attorney	Cyprus
ΓΡΗΓΟΡΗΣ ΒΛΑΧΟΣ	PARTNER	Lawyer / Attorney	Greece
ΔΕΣΠΟΙΝΑ ΜΑΡΟΥΛΗ	ΔΙΚΗΓΟΡΟΣ	Lawyer / Attorney	Greece
δημητρης	προεδρος πρωτοδικων	Judge	Greece
ΘΕΟΦΙΛΟΣ ΤΣΑΓΡΗΣ	ΜΕΛΟΣ ΚΕΝΤΡΙΚΗΣ ΑΡΧΗΣ ΥΠΟΥΡΓΕΙΟ ΔΙΚΑΙΟΣΥΝΗΣ, ΔΙΑΦΑΝΕΙΑΣ & ΑΝΘΡΩΠΙΝΩΝ ΔΙΚΑΙΩΜΑΤΩΝ	Member of National Administration	Greece
Νίκος Νεοφύτου	PARTNER	Lawyer / Attorney	Cyprus
-	Zentralstelle für das Bundesland Mecklenburg-Vorpommern	Member of National Administration	Germany

ANNEX II - COUNTRY REPORTS

Austria

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

The Austrian legal system does not provide a definition of proof. However Austrian law distinguishes between the proof and the attestation of facts: in the latter case the party does not have to convince the court that the facts claimed are true (which means a very high grade of probability), but only has to establish the probability of the facts alleged (which means a lowergrade of probability). The attestation is not bound by the rules on the taking of evidence, and therefore is less formal. The law regulates, where an attestation is sufficient or where the court has to make inquiries; in all other cases evidence has to be taken.

I.2 ¿ARE THE MEANS OF TAKING OF EVIDENCES RATED IN YOUR MS?

In order to reach a conclusion in a civil procedure, the court has to find out if the claims and defenses brought forward by the parties are founded on provable facts and if the application of the rules of law the respective party claims is justified. Basically all the means of taking of evidences are of the same value.
Originally, the Austrian Code of Civil Procedure regarded the deposition of the parties themselves as a purely subsidiary means of finding the truth in respect to facts in controversy, but practice has shown that examination of the parties often is the most important means of evidence. The amendment of the Code of Civil Procedure in 1983 has abolished the subsidiary nature of the examination of the parties. Now the examination of the parties is treated equally from other means of evidence.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

☒Examination of the parties,;
☒Public documents;
☒Private documents;
☒Expert testimony;
☒Judicial examination;
☒Witness testimony;
☐means of reproduction of words, sounds and images;
☐Others (especify)

Please describe legal provisions:

The Austrian Law on Civil Procedure expressly enumerates five types of evidence: production of documents (public and private), examination of witnesses, inspection by the judge, expert evidence and the examination of the parties. This list is, however, not exhaustive, but only contains the most important examples. As long as the rules of the Code of Civil Procedure are obeyed, all means (requests to other government authorities, examination of informed representatives, the use of visual or audio media, electronic documents, etc.) can be used for the taking of evidence.

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?
- In cases where public documents are in public registers, is the access to these registers free?
- If not, ¿what are the conditions to have access to them?

Please describe legal provisions:

Official documents are a proof of their content; their incorrectness has to be proved. Official documents are deemed to be authentic; their authenticity has to be challenged.
The access to most public registers is free. If the party wanting to use it cannot get hold of it, the court can assist in the production of the document.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Please describe legal provisions:

The probative value of private documents is subject to the free evaluation of the evidence by the court. Private documents are considered to be authentic, if they were executed by the issuer, if not, they are forged. The respective party has to prove the authenticity of private documents only, if the opponent does not admit the authenticity of the signature.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Please describe legal provisions:

Originally, the Austrian Code of Civil Procedure regarded the deposition of the parties themselves as a purely subsidiary means of finding the truth in respect to facts in controversy, but practice has shown that examination of the parties often is the most important means of evidence. The amendment of the Code of Civil Procedure in 1983 has abolished the subsidiary nature of the examination of the parties. Now the examination of the parties is treated equally from other means of evidence.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?
- In what cases witnesses can refuse to testify?
- The person who refuses to testify can be compelled to testify or punished?
- Are witnesses paid by their participation in the judicial process? If so, how much?
- Are there people who can not testify?
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?
- What is the role of the judge and the parties in the hearing of a witness?
- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

Please describe legal provisions:

Witnesses are obliged to testify.

People who are in a particular relationship with each other can refuse to testify e.g. witnesses who are asked questions about their relatives which could endanger their reputation, their property or endanger them to criminal prosecution; lawyers who would violate their duties towards their clients; witnesses who would violate business secrets, witnesses who would divulge their state-approved secrecy, witnesses asked about their electoral behaviour, witnesses who are asked about information they received from a party as a representative of a statutory interest group or a voluntary employees' interest group entitled to enter into collective agreements in a labour or social case

People who refuse to testify can be compelled to testify. They have to pay a fine. Even jail is a possibility (under certain circumstances) to compel the witness. If witnesses fail to appear at court without reason they have to pay a fine and the costs caused by their absence. If the witness is absent a second time, the fine is doubled and an enforced attendance is possible.

Witnesses are paid the travel costs, the costs caused by the stay at the place of trial and the costs caused through the absence of time at work.

There are persons who cannot testify: Persons who are unable to express their perceptions, or who were – at the time of the happenings they should now be asked about – unable to perceive anything; clergymen as to what they learned during the confession or when providing for the spiritual needs of others; Public officials may not be used as a witness if they would have to divulge official secrets and they have not been dispensed from their obligation by their superiors; registered mediators.

The taking of evidence is – as a rule – done by the court that has to decide the case. If a direct conversation due to adverse circumstances (such as long distances, etc.) is not possible, direct taking of evidence is possible through a video conference or by other technical means.

Witnesses are first examined by the court; thereafter the parties are entitled to ask supplementary questions. There is no cross-examination in the sense of Anglo-American law. Leading or suggestive questions are forbidden.

The witness testimony is completely free. It is even possible to bring a witness to court even it was not announced.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

The parties offer means of evidence and ask for specific evidence to be taken in order to prove the facts alleged. The parties can make these applications in writing or in the course of a hearing, but there is an important distinction between the offer of evidence and the taking of evidence. The former is left to the parties, the latter is in the hands of the court: The court can – without any party applying for it and even without the parties consent – take evidence ex officio. Only if both parties object it, the court cannot summon witnesses or use legal documents on its own motion.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

There is no order to follow in conducting the taking of evidence in the trial. As stated above, the principle of free evaluation of evidence stipulates no rules as to which evidence overrules another, or what kinds or how much evidence is needed to come to the conclusion that the alleged facts are true. Therefore there is no need to follow a specific order.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

As stated above the taking of evidence by videoconference is allowed under certain circumstances (such as long distance, etc…)

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

The taking of evidence happens during the trial. Therefore the parties and representatives are present. If the taking of evidence at court is not possible (examination of specific places), the trial (or at least a part of it) is held at the place of evidence (parties and representatives are present). If this is not possible (e.g. because of long distances), the evidence is taken by another court or through video- or teleconference. In the first case the outcome of the taking of the evidence has to be discussed with the parties, in the latter one parties and representatives are present.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

There are only two types of evidence (beside witness testimony) regarding third: Inspections by the judge and production of documents. Third only need to expose evidence regarding their realm, if there is an explicit obligation (by law) or the document, or object to be examined by the judge contains information regarding the third and the party. If these conditions are not met, the third may refuse to be submitted to it. In some cases under certain conditions the third can be sued to be submitted to it.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

Both parties are responsible for paying their expenses in connection with the litigation. Most of the expenses generated are paid by an advance on costs; in some cases they are paid by public funds (e.g. If the costs are low or the party receives legal aid.)
At the end of the trial the successful party is entitled to refund the necessary costs (The unsuccessful party is ordered to pay the costs of the successful party.); these costs must be reasonable and not incurred because of over-caution. Only these costs are in the concept of legal expenses, so there is no refund of unreasonable expenses; such expenses have to be borne by the respective party regardless of the outcome of the case.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

If a party obtains evidence in an unlawful way, apart from the other legal consequences, this evidence can and may be used in a civil procedure, as long as the evidence is not declared inadmissible

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

If information is in the possession of an official authority, and the party wanting to use it cannot get hold of it, the court can assist in the production of the document. Administrative authorities are obliged to submit the requested information.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions:

The specific rules in Austria refer to international or European Union law.
Therefore it depends which country requests the taking of evidence.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

The requested court executes the request in accordance with the law of its (own) Member State.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

They are the same as in cases with national courts (production of documents [public and private], examination of witnesses, inspection by the judge, expert evidence and the examination of the parties.)

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Legal provisions

Direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures. Where the direct taking of evidence implies that a person shall be heard, the requesting court shall inform that person that the performance shall take place on a voluntary basis.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Please describe legal provisions:

As stated above direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures. Where the direct taking of evidence implies that a person shall be heard, the requesting court shall inform that person that the performance shall take place on a voluntary basis.
The taking of evidence shall be performed by a member of the judicial personnel or by any other person such as an expert, who will be designated, in accordance with the law of the Member State of the requesting court.

Belgium

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

There is no legal definition.

I.2 ¿ARE THE MEANS OF TAKING OF EVIDENCES RATED IN YOUR MS?

A distinction has to be made between civil and commercial matters. In civil matters the legislator departs from the idea of preconstituted evidence. Therefore a hierarchy in the regulated forms of evidence exists. In commercial matters the court has more autonomy in the evaluation of the evidence.

In civil matters a distinction is made between: decisive evidence, compulsory evidence and evidence with freely evaluated probative value.

An acknowledgement in the judicial context and a decisive oath are both decisive evidence. Decisive means that counter-evidence is not allowed.

Private documents and deeds, legal presumptions and not fully oral acknowledgements outside the judicial context constitute compulsory evidence. The compulsory character means that the facts are proven, unless counter-evidence is provided. Counter-evidence is only admissible through other decisive or other compulsory evidence. Moreover a private document must be provided for any contract concerning a transaction for a sum or of a value exceeding €375 (Art. 1341 CivC.).

The probative value of other documents, witness statements and factual deductions (called judicial presumptions) is freely evaluated by the court.

In commercial matters the same means of proof are used. However the judge can always admit witness testimony in commercial matters and consequently witness testimony can constitute evidence against a private document (Art. 1341 CivC. and Art. 25 ComC.). As factual deductions have the same rank as witness testimony, the admissibility also applies for factual deductions.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

Please describe legal provisions:_____

✕ Examination of the parties, Art. 994-1004 JudC.
✕ Public documents; Art. 1317-1321 CivC.
✕ Private documents; Art. 1322-1332 CivC.
✕ Expert testimony; Art. 962-991bis JudC.
✕ Judicial examination; [the judge can take evidence on his own motion; generally the initiative lies with the parties: see question I.8]
✕ Witness testimony; Art. 1341-1348 CivC. and Art. 915-961 JudC.

☒ means of reproduction of words, sounds and images; nihil
☐ Others (specify)

I.4 REGARDING PUBLIC DOCUMENTS

We understand public document as a deed executed by a public officer (e.g. notary, bailiff, registrar of births and deaths, clerk of the court…) authorised by law to edit such documents.

- **What is the probative value of public documents?**

A distinction must be made between the authentic and the non-authentic mentionings in the public document.

The authentic mentionings in the public document are the personal findings that the public officer notices *ex propriis sensibus* (e.g. the date, the presence of the parties, the identity of the parties, the fact that a party made a certain statement etc.). The correctness of these mentionings can only be challenged by the parties or by third persons through a forgery investigation (Art. 895 JudC.).

The non-authentic mentionings (e.g. the thruthfulness of the statements made by the parties) have the same probative value as private documents (see answer to question I.5).

- **In cases where public documents are in public registers, is the access to these registers free?**
- **If not, what are the conditions to have access to them?**
  Please describe legal provisions:_____

Many different types of deeds exist and many different registers exist. In view of the scope of this report, it is not possible to enumerate all the specific regulations. Generally speaking, the access to these registers is open to the public (mortgage registry, company registry and other registers kept by the commercial court,…), although some exceptions exist in order to protect the privacy (the registry of births and deaths; registry of confiscations). In the latter case the concerned citizen has a right of inspection of the information and there is a detailed regulation concerning which professionals also have access (e.g. lawyers, bailiffs,…). In the cases where access is limited in order to protect the privacy, some regulations grant third parties the right to file a request to get access to the register. Those requests are handled by the normal courts of law designated in the different regulations.
Costs are charged for consultation of the registers.

I.5 REGARDING PRIVATE DOCUMENTS

Private document is understood as a written statement by the parties, drafted by the parties themselves and signed by the parties with the intention to approve the writing and express the signer's intention in order to bestow it with legal effect.

- **What is the probative value of private documents?**
  Please describe legal provisions:_____

In civil matters private documents, as long as a party does not challenge the authenticity of his or her signature, constitute compulsory evidence. If a party challenges the authenticity of his or her signature, a documentary investigation may be ordered (883 JudC.). Evidence against private documents is only allowed through other private documents, deeds, legal presumptions

or acknowledgements (only complete oral acknowledgements outside the judicial context are inadmissible) (Art. 1341 and Art. 1353 CivC.).

In addition to the forms of taking evidence allowed for the purposes of the civil law, evidence against a private document in commercial relationships may also be given by witnesses, factual deductions and other documents (Art. 1341 CivC. and Art. 25 ComC.).

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- **What is the probative value of statements made by the plaintiff and the defendant?**

The parties are not heard as a witness. The non-existence of party testimony is compensated by the possibility for the judge to order the personal appearance of the parties. The main goal of ordering the personal appearance of a party is to get an acknowledgement in the judicial context. An acknowledgement constitutes perfect proof against the person making it.

Please describe legal provisions: Art. 1356 CivC. (acknowledgement) and Art. 992-1004 JudC. (on the procedure of the personal appearance)

I.7 REGARDING THE WITNESS TESTIMONY:

- **Are witnesses obliged by the Law of your MS to testify?**

Witnesses are obliged to testify, although the sanctions do not carry any deterring effect.

- **In what cases witnesses can refuse to testify?**

Witnesses can refuse to testify for “legitimate reasons”. The JudC. explicitly mentions legal professional privilege as a legitimate reason (Art. 929 JudC.).

- **The person who refuses to testify can be compelled to testify or punished?**

Witnesses who do not appear in court, refuse to take the oath or refuse to testify, can be condemned to pay a civil fine of 2,50 up to 250€ (Art. 925-928 JudC.).

- **Are witnesses paid by their participation in the judicial process? If so, how much?**

The witnesses receive a witness fee of 200 BEF (5,446 EUR) and a travel allowance of 0,0868 € per kilometre (Art. 1-2 Arrêté royal du 27 juillet 1972 relatif à la taxe des témoins en matière civile ainsi qu'à la perception et à la restitution des provisions prévues par l'article 953, alinéa 1, du Code judiciaire (JudC.).– Royal Decree of the 27th of July concerning witness fee in civil matters). The witness allowances are part of the legal costs charged at the parties (Art. 1017 and 1018, 4° JudC.).

- **Are there people who cannot testify?**

A minor aged under fifteen cannot be questioned under oath. Any statements he or she makes can only be used as information. In cases that concern him or her, a minor who has the capacity of discernment, can be questioned by the judge or by any person designated by the judge. The

decision to hear the minor follows from the minor's own request or an order of the court. In the latter case the minor may refuse to be questioned (Art. 931 JudC.).

Relatives in the descending line cannot be questioned when their relatives in the ascending line have opposite interests in the case (Art. 931 JudC.). Information of relatives in the descending line can only be used in such a case when the relative in the descending line was the victim of a crime.

- **Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?**

No. The impossibility of a witness to appear in court is solved differently. If a witness cannot appear in court temporarily to testify, the testimony is postponed. If a witness is in the persistent impossibility to appear in court, the judge can hear the witness *in situ* or can give an assignment to the competent judge to do so (Art. 924 JudC.).

- **What is the role of the judge and the parties in the hearing of a witness?**

The judge examines the witness. The parties are not allowed to address the witness directly (Art. 936 JudC.). A party can only request the judge to ask the witness additional questions that can clarify or complete the statement of the witness (Art. 938 JudC.).

- **Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?**
  Please describe legal provisions:_____

There is no obligation to draft a preliminary list of questions. The judgment that orders the testimony, limits the scope of the testimony by expressly stating the facts on which the witnesses will be heard (Art. 917,1° JudC.).

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

The judge can take several initiatives. The court can order disclosure of relevant, non-privileged and reasonably identified evidence in the possession or control of another party or, if necessary and on just terms, of a non-party (Art. 871 and 877 JudC.). The court can order the testimony of a witness (Art. 916 JudC.) or the personal appearance of a party in order to be heard by the court (Art. 992 JudC.). Finally the court can order an investigation *in situ* (Art. 1007 JudC.).

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

The evidence produced before the court is in most cases documentary evidence that is communicated between the parties during the instruction of the case. However, also acknowledgments and presumptions of fact are commonly used as evidence, to the extent allowed by law.

In addition, the court is free to order measures of investigation. Thus, the court is free to order a party or a third party to produce a document, to proceed to the interrogation of the parties which implies the personal appearance of the parties, to order a witness inquest or an expert investigation, …

The court is free to order the measure it deems appropriate. However, the court must limit the choice of the measure of investigation to what is sufficient to solve the dispute, and has to give preference to the most simple, rapid and inexpensive measure (Art. 875bis JudC.).

Measures of investigation are ordered by court in a judgement. For each specific measure of investigation the Judicial Code provides for a procedure according to which the evidence shall be obtained.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

Taking of evidence by videoconference or teleconference is not prohibited. However, if witnesses are not heard before the judge and according to the procedure described in the articles 915 to 961 JudC., the obtained evidence will not be accepted as witness evidence and will only have the value of a presumption.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

One of the basic rules concerning the taking of evidence is the adversarial character of the taking of evidence.

Therefore, the parties have a right to be present at the hearing of a witness (although the parties are not obliged to be present), but they are not allowed to interrupt or question the witness. Only the judge may question the witness. The parties may direct questions through the judge.

Similarly, the parties must be summoned not only to the first meeting held in an expert investigation but also to all subsequent operations, unless they have dispensed the expert of this obligation. The expert must hear the arguments of both sides before delivering his or her opinion. However, for reasons of privacy or business secrecy, the presence of the parties may be restricted.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

Witnesses are under a duty to appear. If they fail to appear, they may be fined. However, if a witness has a legitimate reason for not being heard or taking the oath, the judge rules on the issue (Art. 929 JudC.). Professional privilege or business secrecy obligations are specifically considered to be legitimate reasons.

Minor children under the age of fifteen may not be examined under oath, but their statement may be utilized as a simple piece of information. Children may not be heard as witnesses in cases where their parents have conflicting interests (Art. 931 JudC.).

According to a general principle of law coercive force that affects the physical integrity of a person is prohibited. Therefore a person may not be forced to be subject to a blood or other examination that affects the physical integrity. However, if a person refuses without any legitimate reason to be examined, this fact may serve as the basis for a presumption.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

The party who requests the hearing of a witness must deposit with the clerk a provisional fee covering the amount of the fees and expenses to be paid to the witnesses (Art. 953 JudC.). However, the fees and expenses paid to the witnesses are part of the costs of the proceedings which are taxed in the judgment on the merits, and supported by the party who loses the case (Art. 1017 and 1018, 4° JudC.).

The party who requests the production of documentary evidence may also be ordered by the judge to deposit a provisional fee with the clerk (Art. 879 JudC.).

In the case of an expert investigation, the judge may determine the provisional fee that should be deposited by each of the parties with the clerk or finance company chosen by both parties (Art. 987 JudC.). Once the expert has filed his or her report, and the parties have not declared to disagree with the statement of fees and expenses submitted by the expert, the court approves this statement that will be declared enforceable according to the agreement concluded in that respect between the parties or against the parties who deposited the provisional fee. If the parties do not agree, the court determines the fees and expenses after hearing the parties (Art. 991 JudC.). This decision will be declared enforceable against the parties who deposited the provisional fee. However, the costs of the investigation are part of the costs of the proceedings which are taxed in the judgment on the merits, and supported by the party who loses the case (Art. 1017 and 1018, 4° JudC.).

In general, all costs relating to measures of investigation are part of the costs of the proceedings which are taxed in the judgment on the merits, and supported by the party who loses the case (Art. 1017 and 1018, 4° JudC.).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

In the past, illegally obtained evidence was generally declared inadmissible.

According to recent case law however, save when the law explicitly determines otherwise, the court rules on the admissibility of illegally obtained evidence in view of articles 6 ECHR and 14 ICCPR, taking into account the circumstances of the case, including the way in which the evidence was obtained and the circumstances in which the illegality was committed.

The exclusion of illegally obtained evidence is only necessary in the following three cases: (i) in case the fulfilment of certain procedural rules is laid down in the law on penalty of nullity, (ii) in case the illegality has affected the reliability of the evidence, and (iii) in case the use of the evidence at trial would breach the right to a fair trial.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

Third parties cannot be forced to produce evidence unless the court so orders. Pursuant to Article 877 JudC. the court may order a third party to produce a document when there are serious, precise and concurring presumptions that such party is in possession of the document, and that the latter contains the proof of a relevant fact. Third parties are all persons, public and private corporate bodies that are not parties to the litigation, with the exception of the public prosecutor's office.

The production of documents by third parties is, however, subject to additional procedures. Before ordering such production the court grants the possibility to the third party to deposit the document and this third party is allowed to make observations in writing or orally in chambers. The parties are informed of the observations and may reply if they deem it appropriate.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Belgium is not bound by the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Every cross-border case concerning the taking of evidence is subjected either to the rules mentioned in the Evidence Regulation of the European Union, national rules mentioned in the Judicial Code, or the Hague Convention of 1954.

The Hague Convention of 1954 introduced an obligation upon a court to give effect to the request by the foreign court, unless specific grounds for refusal are applicable.

Article 873 JudC. specifies that the request of a foreign judicial authority for a taking of evidence by a Belgian court, is granted only after an official approval by the Minister of Justice.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

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II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

After the official approval by the Minister of Justice, the national rules (JudC.) are applicable. No such list of (means of) evidence exists in civil and commercial matters.

For criminal matters, Art. 13 of the Act of 9 December 2004 concerning mutual international assistance in criminal proceedings provides that evidence obtained illegally in another State may not be used if essential formal requirements had not been met in that other State or if the illegality taints the trustworthiness of the evidence. Moreover, if the use of evidence will infringes the right on a fair trial, such evidence may not be used.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

No such provision exists under the Hague Convention of 1954 or under national law. The only possibility that exists is provided for by the Evidence Regulation.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

No. This is not provided for by the Hague Convention of 1954, nor by national law.
Art. 11 of the Judicial Code enables a judge to send *commission rogatoires* to a foreign court, but this has to be done via diplomatic channels. The Hague Convention of 1954 does not change this.

Under the Evidence Regulation this is possible.

Bulgaria

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

NO, THERE IS NOT LEGAL DEFINITION OF "PROOFS" IN THE BULGARIA DOMESTIC LAW. THE CIVIL PROCEDURE CODE (CPC) (STATE GAZETTE, NR. 59 OF 20 JULY 2007, INTO FORCE FROM 1 MARCH 2008, LAST AMENDED NR.5 OF 14 JANUARY 2011) ENUMERATES THE PROOFS IN CHAPTER FOURTEEN "EVIDENCES": WITNESS TESTIMONY (SECTION II), EXPLANATION BY PARTIES (SECTION III), WRITTEN EVIDENCES (SECTION IV), EXPERTS WITNESSES (SECTION) V.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

In Bulgarian CPC is formulated the principle of free conviction of the judge by rating of evidences.
The exception is made for the official documents. According to Art. 179 CPC an official document, issued by an official within the official responsibilities thereof in the established form and according to the established procedure, shall constitute evidence of the statements made before the said official and of the steps performed by and before the said official. Officially authenticated duplicate copies or excerpts of official documents shall have the same evidential value as the originals.
CPC regulates expressly the consequences of obstruction of proving.

Considering the circumstances of the case, the court may hold as proved the facts in respect of which a party has created impediments to the taking of admitted evidence (Art. 161 CPC).

Where the action is established as to cause but there is no sufficient information about the amount of the said action, the court shall determine the said amount at its own discretion or shall consult the conclusion of an expert witness (Art. 162 CPC).

The evaluation of conclusion of the expert witness is regulated: the court shall not be obligated to accept the conclusion of the expert witness but shall consider the said conclusion together with the rest of the evidence in the case (Art. 202).

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties; yes
- ☐ Public documents; yes
- ☐ Private documents; yes
- ☐ Expert testimony; yes
- ☐ Judicial examination;
- ☐ Witness testimony; yes
- ☐ means of reproduction of words, sounds and images; no in the Civil process

☐ Others (especify)

Please describe legal provisions: The legal regulation of the evidences is in Chapter Fourteen "EVIDENCE" of the Civil Procedure Code.

The general rules are the following: The contested facts relevant to adjudication of the case and the links therebetween shall be subject to proving (Art. 153).

Each party shall be obligated to establish the facts upon which the demands or oppositions thereof are founded (Art. 154). Facts in respect of which a presumption established by law exists need not be proved. Refutation of such presumptions shall be granted in all cases except where a law prohibits this.

CPC stipulates the facts not to be proved. According to Art. 155 any facts of common knowledge and any facts known to the court *ex officio*, of which the court shall be obligated to inform the parties, shall not have to be proved.

Any motions by the parties for admission of evidence regarding facts which are irrelevant to adjudication of the case, as well as any untimely motions for admission of evidence, shall be denied by the court by a ruling. Where a party names multiple witnesses for the establishment of the same fact, the court may admit only some of the said witnesses. The rest of the witnesses shall be admitted if the witnesses summoned do not establish the contested fact (Art. 159. Para. 1 and 2).

The legal regulation on witness testimony is in § 1.7. In addition in the Bulgarian CPC there are special regulation on the admissibility of testimony. According Art. 164 testimony shall be admitted in all cases except where:

1. legal transactions, for the validity whereof a law requires a written instrument, have to be established;

2. the content of an official document has to be denied;

3. circumstances have to be established, for the proving whereof a law requires a written instrument, as well as for establishment of contracts to a value exceeding BGN 5,000, except where concluded between spouses or lineal relatives, collateral relatives up to the fourth degree of consanguinity and affines up to the second degree of affinity;

4. obligations, established by a written instrument, have to be extinguished;

5. written accords have to be established, wherein the party moving for the witnesses has participated, or such accords have to be modified or repudiated;

6. the content of a private document originating from the party has to be denied.

(2) In the cases referred to in Items 3, 4, 5 and 6 of Paragraph (1), testimony shall be admitted solely with the express consent of the parties.

In the cases where the law requires a written document, testimony shall be admitted if it is proved that the document has been lost or destroyed not through the fault of the party.

Testimony shall furthermore be admitted where the party seeks to prove that the consent expressed in the document is simulated, and then if there is written evidence in the case originating from the other party or attesting statements of the other party before a state body, which lend probability to the allegation of the party that the consent is simulated. This limitation shall not apply to the third parties, as well as to the heirs, where the transaction is directed thereagainst (Art. 165).

The legal regulation of the explanations by parties is in § 1.6

The legal regulation of expert witness:

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An expert witness shall be appointed either on a motion by a party or *ex officio* where special knowledge in the field of science, art, skilled crafts and other such is necessary for clarification of certain questions which have arisen in the case. The court may appoint multiple expert witnesses as well, where this is necessitated considering the circumstances of the case (Art. 195).

The provisions for the exclusion of expert witness are the same as for the judge, the public prosecutor and the court secretary. Please, see § 1.7. Each of the parties may move for the exclusion of an expert witness if any of the grounds referred to in Paragraph (1) applies. The expert witness shall be obligated to communicate to the court immediately all circumstances which may be grounds for exclusion. The expert witness shall be obligated to express an opinion on the allegations in the petition for the exclusion thereof Art. 196, Para. 2 and 3).The court shall render a ruling on the motion for exclusion of an expert witness.

The ruling whereby the court appoints an expert witness shall specify: the subject and the task of the expert examination; the materials which are provided to the expert witness; the name, education and specialist qualifications of the expert witness. The court shall allow the expert examination a suitable time for preparation of the conclusion. The expert witness shall notify the court when the said expert witness is unable to prepare the conclusion within the time limit set, and shall state the time limit that the said expert witness will need (Art. 197, Para. 1 and 2).

An expert witness as appointed shall be excused from the task assigned thereto where the said expert witness is unable to fulfill the said task for lack of qualifications, an illness or another reason beyond the control thereof, under the terms established by Article 166 herein, or where the conclusion has not been prepared in due time (Art. 198).

The expert witness shall be obligated to present the conclusion thereof at least one week before the court hearing (Art. 199).

Before the hearing of expert witness the court shall remind the expert witness of the liability incurable thereby for giving a false conclusion. The expert witness shall set forth orally the conclusion thereof. The parties may pose questions for clarification of the conclusion. Upon contestation of the conclusion, the court may appoint another or multiple expert witnesses. Contestation may be made pendent the hearing (Art. 200). An additional conclusion shall be assigned where the conclusion is not sufficiently complete and clear, and a second conclusion shall be assigned where the conclusion is not justified and gives rise to any doubt as to the correctness thereof (Art. 201). The court shall not be obligated to accept the conclusion of the expert witness but shall consider the said conclusion together with the rest of the evidence in the case (Art. 202).

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?
- In cases where public documents are in public registers, is the access to these registers free? Yes.
- If not, ¿what are the conditions to have access to them?

Please describe legal provisions: **Art. 178 stipulates a common regulation both for public and private documents.** The evidential value of documents shall be determined conforming to the law which was in force at the time and in the place where the said documents were drafted. The court shall evaluate the evidential value of the document which contains any crossings, deletions, insertions between the lines and other apparent blemishes, considering all circumstances of the case. This rule shall not apply to a signed electronic document.

The official document is binding for the court. According Art. 179 an official document, issued by an official within the official responsibilities thereof in the established form and according to the established procedure, shall constitute evidence of the statements made before the said official and of the steps performed by and before the said official. Officially authenticated duplicate copies or excerpts of official documents shall have the same evidential value as the originals.

Entries in account books shall be evaluated by the court according to the regularity of the said entries and considering the other circumstances of the case. Any such entries may serve the person or organization who or which has kept the books as evidence (Art. 182).

Where a document is filed with the case records, the said document may alternatively be presented in a duplicate copy authenticated by the party, but in such case, upon request, the said party shall be obligated to present the original of the document or an officially authenticated duplicate copy thereof. Failing this, the duplicate copy presented shall be excluded from the evidence in the case (Art. 183).

The presentation of electronic document is a new regulation in the CPC. According to Art. 184 an electronic document may be presented reproduced on a paper-based data medium in the form of a duplicate copy authenticated by the party. Upon request, the party shall be obligated to present the document on an electronic data medium. If the court does not have at its disposal technical means and experts making it possible to reproduce the electronic document and to duly verify the

electronic signature in the courtroom in the presence of the persons who appeared, electronic copies of the document shall furthermore be presented to each of the parties to the case. In such case, the truthfulness of the electronic document may be contested during the next succeeding court hearing.

Any document presented in any language other than Bulgarian shall be accompanied by an accurate translation into the Bulgarian language, authenticated by the party. If the court is unable to verify the accuracy of the translation on its own or if the accuracy of the translation is contested, the court shall appoint an expert witness to perform verification (Art. 185).

Official documents and certificates shall be presented by the parties. The court may require such documents from the relevant institution or may furnish the party with a court certificate on the basis of which the said party is to obtain the said documents. The institution shall be obligated to issue the documents required or to explain the reasons for not issuing the said documents (Art. 186).

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Please describe legal provisions: Private documents, signed by the persons who issued the said documents, shall constitute evidence that the statements contained therein were made by the said persons (Art. 180).

The valid date of private document is regulated by Art. 181: A private document shall be validly dated in respect of third parties as from the day of authentication of the said document or from the day of death, or from the occurrence of a physical incapacity of being signed by the person who signed the document, or as from the day on which the content of the document was reproduced in an official document, or as from the day on which another fact occurred, proving beyond doubt the preceding drafting of the document. To establish the date of receipts on a payment effected, the court may admit any means of proof, considering the circumstances of the case.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Please describe legal provisions: Historically and comparatively the explanations by parties is a relative new method for proving. The Bulgarian CPC set up the explanations by parties as proof and gives legal regulation in Section III, systematically after the witness testimony.

CPC states that the judicial admission of a fact is not binding for the court. According to Art. 175 an admission of a fact, made by a party or by a representative thereof, shall be evaluated by the court considering all circumstances of the case.

The Bulgarian legislator makes difference between the judicial admission of fact and the admission of demand. This regulation is strongly criticized in the specialized literature. The admission of demand is binding for the court. According Art. 237 CPC where the respondent admits the demand, the court, acting on a motion by the

plaintiff, shall terminate the trial and shall render judgment conforming to the admission. The reasoning to the judgment shall suffice to state that the said judgment is based on the admission of the demand. There are some cases where the court may not render judgment upon admission of the demand where:

1. the right admitted conflicts with the law or with good morals;

2. the right admitted is indisposable by the party.

An admission of the demand may not be withdrawn.

The court may order a party to appear in person in order to provide explanations about the circumstances of the case. The court shall communicate to the party obligated to appear in person the questions which the said party must answer, warning the said party of the consequences of non-compliance with this obligation. The court may hold as proved the circumstances for the clarification of which the party has failed to appear or has refused to answer without reasonable excuse, as well as where the party has given evasive or unclear answers (Art. 176).

Art. 176, Para 4 gives a new legal solution: where the party is unable to appear before the court owing to a hardly surmountable impediment, the explanations of the said party may be provided to a delegated court.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify? Yes

  The witness has the duty to testify. According to Article 163, Para. (1) A witness shall be obligated to appear before court in order to give testimony. If there is an important reason, the examination of the witness may be conducted even before the day assigned for the hearing, as well as outside the premises of the court. The parties shall be summoned for any such examination.(Art. 163, Para. 2).

- In what cases witnesses can refuse to testify? No one has the right to refuse to testify except:

  1. the attorneys-in-fact of the parties to the same case and the persons who were mediators in the same dispute;

  2. the lineal relatives to the parties, the siblings and the affines in the first degree of affinity, the spouse and the former spouse, as well as the de facto cohabitee with a party.

  The persons who, by the answers thereof, would incur or inflict on the persons referred to in Item 2 of Paragraph (1) any immediate damage, defamation or criminal prosecution, may not refuse to testify but may refuse to give an answer to a particular question, stating the reasons for this.

  The witnesses in the case may not be attorneys-in-fact of the parties to the same case.(Art. 166, Para. 1, 2 and 3).

- The person who refuses to testify can be compelled to testify or punished?

If a witness summoned to appear in court fails to appear without reasonable excuse, the court shall impose a fine thereon and shall decree that the attendance of the said witness during the next succeeding hearing be compelled. If a witness refuses to testify without reasonable excuse, the court shall impose a fine thereon (Art. 85, Para. 1 and 2).

According to Art. 167 any witness, who refuses to give testimony or to answer particular questions, shall be obligated to state the reasons for this in writing and to attest the said reasons before the hearing whereat the said witness is to be examined, or orally before the court (Para. 1). Any witness, who has failed to comply with the obligation thereof under Article 163 herein and has so delayed the proving:

1. shall reimburse the parties for the costs incurred as a result of non-compliance with the said obligation;

2. shall forfeit the entitlement to claim remuneration (Para.2).

- Are witnesses paid by their participation in the judicial process? If so, how much?

The regulation of the witness's remuneration is a new solution in CPC. A witness shall be entitled to remuneration and to costs for appearance in court, if claimed by the said witness before the end of the court hearing. The remuneration and the costs shall be paid from the deposit made (Art. 168).

The amount of the remuneration is determined by the court and the party which has named the person as a witness makes a preliminary deposit. The remuneration and the witness costs are not to be judged *ex officio.* The court shall inform the witness on its rights and the delay for implementation, because of lack of judicial information, this rights lapse.

- Are there people who can not testify? Yes, the judge, the public prosecutor and the court secretary cannot testify.

The regulation of Art. 22 concerning the judges is applied *mutatis mutandis* for all persons cited above.

Article 22. (1) Participation in a case as a judge shall be inadmissible for any person:

1. who is a party to the case or, together with any of the parties to the case, has entered into the contested legal relation or into a legal relation linked thereto;

2. who is a spouse of or a lineal relative up to any degree of consanguinity, or a collateral relative up to the fourth degree of consanguinity, or an affine up to the third degree of affinity, to any of the parties or to any representative of any such party;

3. who is a de facto cohabitee with any party to the case or with any representative of any such party;

4. who has been a representative or an attorney-in-fact, as the case may be, of any party to the case;

5. who has taken part in adjudication in the case in a court of another instance or who has been a witness or an expert witness in the case;

6. in respect of whom other circumstances exist which give rise to reasonable doubts as to the impartiality of the said person.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions? NO.
- What is the role of the judge and the parties in the hearing of a witness?

  Before the examination of a witness, the court shall establish the identity thereof, shall clarify the information as to whether the said witness may be interested, and shall remind the witness of the liability incurable under the law for perjury. The witness shall promise to tell the truth (Art. 170, Para. 1 and 2). The conduct of examination is the following: Each witness shall be examined separately in the presence of the parties who have appeared. Any witnesses, who have not yet given testimony, may not be present at the examination of the other witnesses. A witness may be re-examined during the same hearing or during another hearing on a motion by the said witness, on a petition by the party, or on the initiative of the court. The court, acting on a motion by a party or on its own initiative, may include in the judicial record any specific peculiarities in the behaviour of the witness under examination (Art. 171 CPC).

  The testimony is evaluated by the court considering all other information on the case. According to Art. 172 The testimony of relatives, of the tutor or of the curator of the party who has named the witness, of the adopters, of the adoptees, of those who are in a civil or criminal dispute with the opposing party or with the relatives thereto, of the attorneys-in-fact named by the principals thereof, as well as of everybody else who are interested toward or against one of the parties, shall be evaluated by the court considering all other information on the case, giving consideration to the possibility of any such persons being interested witnesses.

  The party may abandon the examination of a witness whom the said party has invoked, but the said witness shall be examined if the other party so moves or if the court determines that the examination of the said witness is necessary for clarification of the circumstances of the case (Art. 173).

  In case of discrepancy between the testimonies of the witnesses, the court may decree the conduct of a confrontation. A confrontation may furthermore be decreed between a witness and the parties (Art. 174).

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

  Please describe legal provisions: In a motion for evidence, a party shall cite the facts and the means by which the said facts will be proved. (3) A motion for admission of explanations by the other party shall formulate the questions which the other party is to answer (Art. 156, Para 1 and 3).

  A motion for admission of an expert examination shall specify the field in which special knowledge is required, the subject and the task of the expert examination (Art. 156, Para 4).

  The examination of witnesses is free, but in a motion for admission of an examination of a witness, the party shall cite the facts about which the said witness is to be examined, the forename, patronymic and surname of the said witness and the address, where the party motions for the summoning thereof.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION? YES. SOME EXAMPLES BELOW.

The court shall take all items of evidence admitted with the participation of the parties. If necessary, the court shall schedule a new hearing for taking of evidence which has not been taken for reasons beyond the control of the parties (Art. 148).

Official documents and certificates shall be presented by the parties. The court may require such documents from the relevant institution or may furnish the party with a court certificate on the basis of which the said party is to obtain the said documents. The institution shall be obligated to issue the documents required or to explain the reasons for not issuing the said documents (Art. 186).

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

The conducting of taking of evidences is in the discretion of the court. The court shall render a ruling on admission of evidence, setting thereby a time limit for the taking of such evidence as well. The said time limit shall begin to run as from the day of the court hearing during which the said time limit was set, and this beginning shall apply as well to the party who did not appear (Art. 157).

The time limit for taking of evidence is set by the court. If the taking of any item of evidence is doubtful or presents a special difficulty, the court may set a relevant time limit for the taking of the said item, after the expiry of which the case shall be heard without the said item of evidence. Upon the further examination of the case, the said item of evidence may be taken, if this does not delay the proceeding (Art. 158).

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE? NO.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

YES. Each witness shall be examined separately in the presence of the parties who have appeared. Any witnesses, who have not yet given testimony, may not be present at the examination of the other witnesses. A witness may be re-examined during the same hearing or during another hearing on a motion by the said witness, on a petition by the party, or on the initiative of the court. The court, acting on a motion by a party or on its own initiative, may include in the judicial record any specific peculiarities in the behaviour of the witness under examination (Art. 171 CPC).

Official documents and certificates shall be presented by the parties. The court may require such documents from the relevant institution **or may furnish the party with a court certificate on the basis of which the said party is to obtain the said documents.** The institution shall be obligated to issue the documents required or to explain the reasons for not issuing the said documents (Art. 186).

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

> A person may be certified solely with the consent thereof. Certification shall be performed in a manner which does not impair the personal dignity of the person certified. To this end, the judge need not attend the certification in person and may assign the performance of the certification to appropriate expert witnesses. A refusal of a person to be certified shall be evaluated according to Article 161 herein (Art. 206).
>
> Art. 161 stipulates: Considering the circumstances of the case, the court may hold as proved the facts in respect of which a party has created impediments to the taking of admitted evidence.

The only relevant legal act in the matter of the medical proofs is Regulation Nr. 38 of 20 August 2010 for the medical standard "Medical genetic", but there is a lack of legal regulation on the subject requested.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

> The principle is: the costs are to be bear by the party which has made the motion for evidences and paid finally by the loser party in the process.
>
> Where costs have to be incurred on the taking of evidence, the court shall set an amount and a time limit for depositing of the said costs. The said time limit shall begin to run as from the day of the court hearing during which the said time limit was set, and this beginning shall apply as well to the party who did not appear. The evidence shall be taken after presentation of documentary proof of making the deposit set for costs. The time limit for depositing of costs shall be interrupted by the submission of a petition for waiver of the depositing of such costs and shall not run while the said petition is examined (Art. 160).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

THE QUESTION IS NOT LEGALLY REGULATED. THERE ARE SERIOUS DEBATE IN BETWEEN THE SCHOLARS IN BULGARIA.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

> The obligation of third party to present document is regulated as following: Each party may approach the court with a written petition to obligate a person non-participating in the case to present a document in the possession thereof. A duplicate copy of the petition shall be transmitted to the third party, and a time limit shall be set thereto for presentation of the document. In addition to the liability under Article 87 herein, the third party, who groundlessly fails to present the required document, shall furthermore incur liability to the party for the damages inflicted thereon (Art. 192).

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions: In Bulgaria the legal regulation of the taking of evidence in civil and commercial processes with transnational element is in CPC, Part Seven (Effective 24.07.2007, SG No. 59/2007) SPECIAL RULES REGARDING PROCEEDINGS IN CIVIL CASES SUBJECT TO OPERATION OF COMMUNITY LAW. Part Seven is structured in three Chapters: Chapter Fifty-Six COOPERATION WITHIN THE EUROPEAN UNION IN PROCEEDINGS IN CIVIL MATTERS, Chapter Fifty-Seven RECOGNITION OF AND ADMISSION TO ENFORCEMENT OF JUDGMENTS AND JUDICIAL ACTS SUBJECT TO OPERATION OF COMMUNITY LAW, Chapter Fifty-Eight ENFORCEMENT PURSUANT TO REGULATION (EC) No 1896/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CREATING A EUROPEAN ORDER FOR PAYMENT PROCEDURE.

Chapter Fifty-Six has two section: Section I Service under Council Regulation (EC) No 1348/2000 on the Service in the Member Countries of Judicial and Extrajudicial Documents in Civil or Commercial Matters and Section II Taking of Evidence under Council Regulation (EC) No 1206/2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters. The norms of both Regulations have direct effect and are directly applied in Bulgaria since 24 July 2007. In fact the Chapter Fifty-Six reproduces the EC regulation on the matter.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Legal provisions: According Art. 614 CPC where taking of evidence must be performed under Council Regulation (EC) No 1206/2001, the court may transmit a request to take evidence to the competent authority of the other Member State or, under the terms established by Article 17 of the Regulation, the court may request to take evidence directly.

Within the scope of Council Regulation (EC) No 1206/2001, the Bulgarian court or an authorized member thereof may be present and participate in the taking of evidence by the court of the other Member State (Art. 615).

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Please describe legal provisions: Yes. Direct taking of evidence in another Member State shall be performed by members of the court or by a person authorized by the court. The parties, representatives thereof and expert witnesses may participate in this proceeding, insofar as this is permitted by Bulgarian legislation (Art.616 CPC).

Cyprus

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

The Evidence Law Cap 9, as amended by Law No 42/1978, Law No 86/1986, Law No 54(I)/1994, Law No. 94(I)/1994, Law No. 32(I)/2004 and Law No. 108(I) of 2006, ("Evidence Law") does not specifically prescribe a definition of the term evidence, although any type of evidence that is accepted pursuant to the provisions of the Evidence Law and the rules of evidence that were applicable in England on 5 November 1914 are accepted.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

The evidence rules applicable in Cyprus follow the best evidence rule. According to this rule, evidence must not simply be relevant but it must also be the best possible evidence in order to be admissible. Indirect evidence may, for example, be reasonably relevant, but it is not the best possible evidence. For example, where the document itself can be presented, it will be of greater weight than proof given by a person who has hold of such a document, but does not present it to the court. Thus, where it is possible to present a document, the courts may decide not to admit the contents of the document into proof.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties,;
- ☐ Public documents;
- ☐ Private documents;
- ☐ Expert testimony;
- ☐ Judicial examination;
- ☐ Witness testimony;
- ☐ means of reproduction of words, sounds and images;
- ☐ Others (especify)

I.4 REGARDING PUBLIC DOCUMENTS

In Cyprus, the exemptions to the rule that the original document must be presented were established by the case of Viceroy Shipping Co Ltd v Mahattos (1982) 1 CLR 170, where it was held that *'…it is well established that when primary evidence can be adduced, especially in the case of documents, secondary evidence is not admissible'*. Pursuant to the provisions of s. 34 of the Evidence Law as amended, the competent court has a discretion to admit statements contained in an original public document or a copy of a public document, if the statement is admissible as evidence. Copies of public

documents fall under the exeptions where copies can constitute admissible evidence.

Public documents in Cyprus are allocated in the various registries of the competent authority responsible for keeping such registries. As a general rule, public access to public documents is available and depending on the type of public document, payment towards accessing these and/or obtaining print-outs of same, as the case may be, may be required.

I.5 REGARDING PRIVATE DOCUMENTS

Pursuant to the provisions of s. 34 of the Evidence Law as amended, the competent court has a discretion to admit statements contained in an original private document or a copy of an original document, if the statement is admissible as evidence. A 'document' is defined by s.2 of the Evidence Law as any thing upon which any information or representation of any kind is registered or imprinted. A 'copy', in relation to a document, is defined by s. 2 as anything upon which the information or representation has been copied by use of any medium, directly or indirectly.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

Statements made by either the claimant or the defendant appearing as witnesses before the Court are evaluated in the same manner as witness statements are evaluated under the provisions of the Evidence Law.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?
- In what cases witnesses can refuse to testify?
- The person who refuses to testify can be compelled to testify or punished?
- Are witnesses paid by their participation in the judicial process? If so, how much?
- Are there people who can not testify?
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?
- What is the role of the judge and the parties in the hearing of a witness?
- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

Any party in a cause or matter who desires the issue of a summons requiring any witness or person to attend for examination, or to produce any document, shall deposit a written application for the issue thereof with the Registrar giving the full name and address of such witness or person, and if the application for the issue thereof is made fifteen days before the day on which such person is required to attend. The Civil Procedure Rules regulate the summoning of witnesses (O. 32). A witness served with such summons that require her to appear and testify is legally obliged to appear on the date and time before the Court. Not doing so would result in contempt of Court. However, witnesses can refuse to answer questions at trial on particular grounds (e.g. privilege).

Costs are applicable in relation to witnesses summoned, as may be required by the Court or the Registrar. Costs are involved on the basis of the remuneration of municipal servants or fixed costs in the case of civil servants. The Civil Procedure Rules (as amended by Procedure Rule No. 2 of 2006) determine a maximum allowance sum payable to a witness attending Court. The amount of the allowance depends upon the profession or occupation of each witness who gives evidence in Court. The party summoning a witness to attend Court must pay the latter the relevant allowances in advance. The successful litigant, who is entitled to the costs of the judicial process, has the right to claim from the other party his witnesses' costs, which include allowances for appearing in Court and disbursements. In addition, the winner of the judicial costs may reclaim all of the costs that he has paid for summoning his witnesses.

Under the Evidence Law, s. 13, all persons are competent witnesses and able to testify in civil proceedings, unless prevented by age, mental incapacity or other similar cause from knowing that such witness must testify truthfully or comprehend the questions posed during such witness' testimony. Special rules apply for spouses pursuant to s. 14 of the Evidence Law.

The adversarial system found in Common Law jurisdictions means that each party presents its case before the Court, along with its evidence. Witnesses appearing for each party are examined by the side presenting them and are subject to cross-examination by the other side, which is largely unrestricted. Questions addressed by an Advocate during examination of a witness are subject to the rules of relevance and restricted to the pleadings. The Court may address questions for clarification to the witness testifying.

Although a rare phenomenon, the Court may grant leave to a party applying for a witness to testify through videoconferencing, if the circumstances so impose and such witness cannot be present in person.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

In civil proceedings, it is the parties that select the evidence they will respectively bring before the Court, each side summoning those witnesses it deems are able to enable it to prove its case. The Court has no authority to summon witnesses on its own initiative without the parties' consent.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

The side that wishes to summon a witness addresses the Court for leave to issue a summons for such a wtiness. The issued witness summons issues same and this is served upon the witness. The Claimants present their case (evidence) first, which testimony is subject to the other side's cross-examination and/or objections to any evidence presented. The Defendants follow in presenting their case, which is equally open to the cross-examination and/or objections of the Claimants.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

Yes, if the circumstances requiring so are satisfied and the Court so orders upon the application of the party wishing for a witness to testify through these means.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

The parties are able to attend the hearings before the Court, which are open to the public unless the Court orders otherwise.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

N/A

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

Any expenses incurred in the summoning of witnesses are incurred by the party summoning such witness. Legal fees of Advocates are paid by the party defeated following judgment, subject to the Court ordering so.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

No. Evidence must be obtained within the constitutional and legislative limitations existing.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

Yes.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Cyprus is bound by the provisions of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. Cyprus is also a Contracting State to and has ratified the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

The provisions of Regulation (EC) no. 1206/2001 and the Hague Convention apply as the case may be. The rules of taking evidence if so requested by a Cyprus court will be the rules of evidence applicable under Cyprus law.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Under Regulation (EC) 1206/2001, an EU Member State court may request from a Cyprus court to take evidence or it may request for the requesting court to take evidence directly. Direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Yes, under the provisions of Regulation (EC) No. 1206/2011 and the Hague Convention, as far as the States to which the said instruments apply and as the case may be.

Czech Republic

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

Taking of evidence in civil proceedings (which cover proceedings in both, civil and commercial matters) is regulated in Act no 99/1963 Coll. Civil Procedure Code (hereafter "CPC"). The Act was prepared in the sixties and corresponded to the socialistic philosophy of civil procedure. After 1989 the legislator took the way of amendments to change the legal regulation and bring it back to democratic principles. Therefore the Act has been till nowadays amended more than 130 times. The legal regulation is rather confusing and with several lacks.

To answer the question – The CPC contains only statement that as proof can be used everything by means of which the status of the case can be determined. Then in the second sentence of this article, there is a list of means of evidence which can be used. The list is not exhaustive and anything not listed can be also used shall the law not prohibit so. In the article 125 of the CPC are listed: examination of witnesses, examination of persons in article 126 CPC, expert's report, reports and statements of bodies, natural and legal persons, notarial deeds, executionary (baillif´s) records and other instruments, examine and examination of participants.

In the theory then evidence, burden of proof and object of evidence are defined.

Evidence is understood as a process regulated by law through which the courts gain information about facts important for the decision in the merit.

Burden of proof is understood to be procedural responsibility of a party for that the means of evidence she/he offered to prove her of his statements will lead to prove the statements. i.e. responsibility for proving the facts the party stated.

Object of evidence are facts which are important for the decision in the merit (relevant) and which are disputed.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

No, in the Czech civil procedural law there is applied the principle of the so called discretionary weighing of evidence, i.e. no legal rule imposes the court what evidentiary value it has to adjudicate to individual evidence. The court weighs the evidence individually but also in the mutual context and takes into account everything what transpired during the proceedings. There is only one mean of evidence for which special legal regulation as concerns the moment where it can be used applies and that is the examination of the parties – according to the article 131 of the CPC the examination of the parties can be ordered only where there exist no other way to prove the statements and when the party, who shall give the examination, agrees. There are certain proceedings where this limitation does not apply – so called non-contentious proceedings and proceedings of divorce and annulment, cancellation and non-existence of registered partnership.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties,; YES
- ☐ Public documents; YES

- ☐ Private documents; YES
- ☐ Expert testimony; EYS
- ☐ Judicial examination; YES
- ☐ Witness testimony; YES
- ☐ means of reproduction of words, sounds and images; YES by certain conditions
- ☐ Others (specify) – special mean of evidence within the Czech law is examination of persons in the article 126a of CPC – persons who used to be statutory body of legal entities shall be examined as witness but cannot commit the crime of false testimony.

Please describe legal provisions: Means of evidence are regulated in articles 125-131 of CPC. Examination of witness - every natural person who is not a party to the proceedings can be heard as a witness. There exists general duty to come to the court and give the testimony. The testimony can be declined only where there is a risk of criminal prosecution regarding the witness or someone close to him or her. The witness has to tell the truth and cannot hide anything, otherwise can be prosecuted for the crime of the false testimony. The court must instruct the witness of his or her duties. The testimony itself is divided into two parts, the first one (ad generalia) concerns general information about the witness and his or her relations to the parties. The second part (ad specialia) is the testimony itself, i.e. the witness shall inform the court about relevant facts. Questions to the witness may be asked by the judge, members of the senate, parties (participants) and the experts. The judge may not admit question of party if it does not concern the matter of the case, if it is leading or misleading. The witness is entitled for reimbursement of costs.

For examination of persons in article 126a of CPC – see above.

Experts (hearing of an expert) – articles 127 and 127a of CPC as amended by the Act 218/2011 Coll., which entered into effect in 2011. With the intention to lower the costs of the proceedings, today when expert knowledge is required to decide the case, the knowledge shall be acquired through expert opinion given by public authority. Only when this is not possible, or the expertise can be doubted, the court shall appoint an expert (registered in the list of experts, or where there no such exists, another one).Primary the expert shall be heard in the proceedings, however the court can also be in reasonable situations satisfied with written expert opinion. Since 2011 it is also possible to recognize as expert opinion opinion worked out by an expert for one of the parties (expert not appointed by the court), if it fulfils all legal conditions (especially it contains so called expert supplement).

Judicial expertise (article 128) – the only direct mean of evidence. In the legal regulation there is only duty to submit the object of the judicial expertise to the court.

Documents (article 129) – the evidence is taken by reading of the content of the document. The documents are divided into private and public documents. There is a duty to submit the document to the court.

For the examination of parties (article 131)– see above and below.

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

  The public documents are regulated in article 134 of CPC and there probative value is different for the probative value of private documents. The public documents are regarded as authentic and in case the opposite is not proved their content is regarded as truthful.
- In cases where public documents are in public registers, is the access to these registers free?

In the Czech Republic, the public registers are land register and commercial register. In the land register (register of immovable property) there is free access to all documents in the so called collection of documents, in case you want to make a copy of the document, you have to pay certain fee. Some of the documents in the collection, such as notarial deeds or court decisions, are public documents. In the commercial register (register of commercial companies and registers of some other legal entities) some of documents concerning commercial companies (documents which are in the so called collection of documents) are freely available on the internet and can be downloaded in the pdf format. Some of these documents are public documents (in the majority notarial deeds).

Please describe legal provisions: The public documents are regulated in article 134 of CPC and public documents are documents issued by courts and other state authorities within their competence and documents declared as public by law (e.g. notarial deeds, executionary deeds etc.).The article 134 deals then only with the probative value of the public document as it was described above.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Please describe legal provisions: The probative value of private documents is different from public documents. Contrary to public documents it is sufficient to doubt the truthfulness of the private document by declaring doubts, however in case of public documents the untruthfulness has to be proved. In case of private documents the burden of proof concerning its authenticity and truthfulness lies on the party who proposed to use the document as a mean of evidence. On the other hand it is necessary to explain that there is special legal regulation concerning the probative value only for public documents so the private documents have the same probative value as all the other means of evidence.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Please describe legal provisions: The examination of parties is regulated in article 131 of CPC, the conditions upon which this evidence can be taken are described above. As concerns the probative value, as was already mentioned the only special regulation of probative value deals with public documents. Examination of the parties is understood as subsidiary mean of evidence (because of conditions upon which it can be ordered), however once it is ordered and taken, it is weighed as all other means of evidence (except public documents). The court decides freely (applying the principle of discretionary weighing of evidence) whether the examination was credible and truthful. There are situations when judgments of courts are based only upon examinations of the parties.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

Yes, they are.

- In what cases witnesses can refuse to testify?

  Only in case the testimony can put the witness or person in the risk of criminal prosecution.

- The person who refuses to testify can be compelled to testify or punished?

  If there is lawful reason for the declination of testimony, of course no punishment is allowed. In case the witness refuses to testify having no lawful reason he or she can be brought to the court by police (however in praxis the judges do not order this very often, because of the costs) or he or she can be punished by fine for obstructing court procedure (up to 50 000 Czech crowns).

- Are witnesses paid by their participation in the judicial process? If so, how much?

  The witnesses are entitled to reimbursement of cash expenses and lost earnings. The costs are reimbursed according to really expended money (the cash expenses are proved by train ticket etc., lost earnings are counted according to confirmation of the employer or taw declaration).

- Are there people who can not testify?

  Generally no, there are no limitations, however it is obvious that testimony of little children or people whose capacity to manage their affairs is limited is ordered only where it meaningful. The witness therefor has to have certain level of physical capacity to testify.

  As well it is forbidden to hear priests about information under the seal of confession.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

  It is not regulated, it is neither forbidden nor expressly allowed, however in the Czech Republic, there do not many such technologies exist. Personally I have never heard (so far) about testimony taking via these technologies. The Ministry of Justice however now works on improvement of the situation. An amendment of the CPC expressly allowing usage of technologies transferring sound and picture is being prepared. (The videoconference are however mentioned in the guide concerning the application of the Regulation 1206/2001, therefore this supports my opinion it is allowed in the national procedure as well).

- What is the role of the judge and the parties in the hearing of a witness?

  The judge is the one who is in charge with the testimony. After asking general questions (concerning name, surname, address, relations to the parties), it is the judge who leads the testimony. When the judge´s questions are finished, the parties can ask their questions. The judge can decide not to permit the question of the party shall the question not concern the subject matter of the case or shall the question be leading or misleading.

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

  No, no draft is necessary, it is completely free with limitations given by judge (as was explained above, so the judge can decide not to permit concrete question).

  Please describe legal provisions: For further information about article 126 of CPC, see above question no 1.3.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

In the Czech civil procedure, there it is necessary to distinguish between contentious and non-contentious proceedings. The so called non contentious proceedings the aim of which is not to settle down a

dispute, but to settle relations for the future (e.g. judicial care for minors, inheritance proceeding, commercial register proceeding) are based upon the investigating principle. Because in these proceedings there exists public interest on the decision, the court can investigate facts ad take evidence on his own motion. In the contentious proceedings, the aim of which is to settle a dispute, however there is applied the principle to try/hear within the civil procedure. In these proceedings the court can take only means of evidence proposed by the parties, on his own motion the court can take evidence only in case such necessity arose during the proceedings and this evidence arose from the court file (e.g. it is testimony of witness about whom the part spoke but did not propose the evidence). And furthermore it is interpreted in the praxis, that the necessity to take evidence without the party´s proposal is possible only there, where the court needs to find out the concrete fact because it is necessary to apply binding legal rule (rule which cannot be modified by will of parties). The described questions are regulated in article 120 of CPC.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

Generally there is no legally binding order to follow in conduction taking of evidence, however the praxis has developed system when the documents (written means of evidence) are usually taken as first, testimony of witnesses follow and examination of parties is last. But it depends on the procedure.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

The taking of evidence by videoconference or teleconference has not been regulated in CPC yet. However it is allowed, because it is allowed for international taking of evidence, but it is more likely not common. However as was already mentioned above there is a draft of new CPC amendment and the videoconference and teleconference (technologies allowing transport of picture and sound) shall be expressly allowed by this amendment.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Yes there is this possibility (it is regulated in article 122 of CPC). The taking of evidence is conducted during oral hearing, to which the parties have to be summoned. In case it shall be effective, the taking of evidence can be conducted either by requested court or apart from oral hearing, but in both case the parties and their representatives have to be informed about it, except they expressed their will not to be present at the evidence taking.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

There is expressed obligation to be subject of taking evidence in article 127 CPC. In case it is not fulfilled a fine for obstructing court procedure (up to 50 000 Crowns) can be used or the person can be brought to the expert by police. The duty is regulated generally without limitations (not only in relation to parties, but also to other persons, however of course there are some limitations which are obvious – the right to refuse in case it can lead to criminal prosecution, in case there is obligation to maintain secrecy, or in case constitutionally guaranteed rights should be violated (there are situation when medical examination can be refused).

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

The expenses generated by the taking of evidence are contained in the list of proceedings cost in article 137 CPC. The legal regulation is general, however the costs of taking of evidence in the praxis are generally understood the costs of witnesses and experts. These are regulated by law. It, of course, can happen that there are other expenses generated by the taking of evidence, and of course they also should be paid by the party, in whose interest the evidence was taking (but I personally have not met other than costs of witnesses and experts).
After 2009 there is duty of the court to ask a party for deposit on taking of evidence cost, in case the evidence was proposed by the party, it was order by the court to prove statements of the party or it is in the interest of the party to take this evidence. The deposit needs not to be paid in case no expenses are expected. Then, we distinguish payment of costs and reimbursement of costs. As concerns the payment, the duty is bound with the party in whose interest the evidence was taken. As concerns the reimbursement there is the principle of "success in the procedure", i.e. the party who won the case, is entitled to reimbursement of the costs, including the expenses generated by the taking of evidence. But it has to be possible to determine who won the case, e.g. it is not possible in the non-contentious proceedings. In the praxis, either, it is common the expenses are paid from the deposit and in the final decision the court decides about the right to reimbursement.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?
Generally not, but there are some decisions concerning the "illegality" of the evidence. It is necessary to judge the illegality in the context of the purpose of the law which was broken, i. e. there is discussion these days, whether e.g. record from video camera showing employees stealing money in the shop they are working at is admissible, when the video camera was placed in the shop in accordance with law (as protection from burglars, but not employees) but taking pictures of a person without his or her consent is not admissible (it is forbidden by the Civil Code). It seems right now the discussion is going to conclusion the evidence is admissible, but there has not been issued any unifying decision in the question yet.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?
Yes, they are obliged. The evidence is generally subsumed under the mean of evidence called "statements of bodies, natural and legal persons".

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions:
There is article of 57 the Act no 97/1963 Coll. on international private and procedural law, which states when taking the evidence on the request of foreigner court the court applies Czech national law, however shall the foreigner state require so, it is possible to apply foreigner procedural rules, if it is not contrary to the Czech public order. In case the foreigner authority requires so, it is possible to examine the parties, witnesses and experts under oath. The same applies shall it be necessary to submit declaration under oath about facts relevant for the claim.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

See question II.1.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

Again, see the question II.1, since generally the national Czech law applies, the article 125 of CPC is applicable (see above). In this article there is a list of means of evidence, however it is not exhaustive, and furthermore, within the Czech civil procedure there can be used everything by means of which the status of the case can be determined as proof. If we apply the national law in CPC together with the article 57 of Act no 971/963 Coll., there is applicable article 125 of CPC and as well the Member state can ask the court to take another, in the Czech legal order not regulated, mean of evidence, if it is not contrary to the public order.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Legal provisions

There is no legal regulation in the national law, only the provisions of the Regulation no 1206/2001. But I do not know about any limitation why it should not be possible.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Please describe legal provisions:

As far as I know, yes the national courts may apply for direct taking of evidence, however it is not common. Agaom I do not know about any limitation, but in the inner instruction of the Ministry of Justice of the Czech Republic, which represents a guide for the judges when dealing with international element in the procedure, there is no mention about the concrete steps which have to be taken in case of direct taking of evidence. In case of necessity to take evidence abroad, the court shall according to the inner instruction use the way of request. Therefore I assume, it is not prohibited, but there exists no national legislation concerning the direct taking of evidence and it is not perhaps not much preferable.

Estonia

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? WHAT IS THE LEGAL DEFINITION?

Yes, our legal system provides us with a definition of proof (evidence): According to subsection 1 of section 229 of the Code of Civil Procedure (hereinafter the CCP)[1], evidence in a civil matter is any information which is in a procedural form provided by law and on the basis of which the court, pursuant to the procedure provided by law, ascertains the existence or lack of facts on which the claims and objections of the parties are based and other facts relevant to the just adjudication of the matter.

I.2 ARE THE MEANS OF TAKING OF EVIDENCES RATED IN YOUR MS

According to subsection 4 of section 236 of the CCP, with the consent of both parties, the court may take evidence in a manner or form different from that provided in the Code of Civil Procedure. A party may withdraw such consent only if significant changes in the procedural situation occur.

According to the law there is no hierarchy between different types of evidence. However in practice some types tend to be more valuable. For example the documents and physical evidence may be considered more convincing than witness statements or hearing of the parties under oath.

I.3 WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS

- ✔ Examination of the parties;
- ✔ Public documents;
- ✔ Private documents;
- ✔ Expert testimony;
- ✔ Judicial examination;
- ✔ Witness testimony;
- ✔ means of reproduction of words, sounds and images;
- ✔ Others (specify):
  → *any other with the consent of both parties*

Please describe legal provisions: *According to subsection 2 of section 229 of the CCP, evidence may be the testimony of a witness, statements of participants in a proceeding given under oath, documentary evidence, physical evidence, observation or an expert opinion. The court may also deem other means of proof to be sufficient in order to prove the facts relating to a proceeding on petition.*

> [1] Code of Civil Procedure (in Estonian: Tsiviilkohtumenetluse seadustik). Available on the internet in Estonian at: https://www.riigiteataja.ee/akt/110112011006. Translations (text January 2006) available in English at: http://www.legaltext.ee/text/en/X90041.htm.

I.4 REGARDING PUBLIC DOCUMENTS

- **What is the probative value of public documents?** *The probative value of public documents is slightly higher than the probative value of private documents. However documents in general have quite high probative value compared to witness testimonies or hearing of the parties.*

- **In cases where public documents are in public registers, is the access to these registers free?** *In most of the cases the access to the registers is for free, however some of the documents might be accessible for a fee. For example registry card of an enterprise is accessible for free; access to annual reports is not.*

- **If not, what are the conditions to have access to them?** *Usually there is no need to sign a contract with the public register. However some registers might require a personal identification rather via bank or Estonian ID-card.*

Please describe legal provisions: *We do not differentiate between private and public documents in the civil proceedings, therefore the legal definition for documents generally is following - Documentary evidence is a written document or other document or data carrier which is recorded by way of photography, video, audio, electronic or other data recording, contains information on facts relevant to the adjudication of a matter and can be submitted in a court session in a perceptible form (subsection 1 of section 272 of the CCP).*

There are no legal provisions regarding the probative value of documents. It is defined by our practice at the court.

I.5 REGARDING PRIVATE DOCUMENTS

- **What is the probative value of private documents?** *See above by the public documents.*

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- **What is the probative value of statements made by the plaintiff and the defendant?** *The probative value of statements made by the plaintiff and the defendant is the lowest. Especially if other evidence overrule their arguments.*

Please describe legal provisions: *There are no legal provisions regarding the probative value of examination of the parties, therefore it's defined by our practice at the court.*

I.7 REGARDING THE WITNESS TESTIMONY:

- **Are witnesses obliged by the Law of your MS to testify?** *According to section 254 of the CCP, a person summoned as a witness is required to appear in court and give truthful testimony before the court with regard to the facts known to him or her. Therefore, the witnesses are generally obliged by law to testify unless certain circumstances stipulated by the law occur. If the court has summoned a witness, then he or she is required to appear in court and give truthful testimony before the court with regard the facts known to him or her.*

- **In what cases witnesses can refuse to testify?**

The right of witness to refuse to give testimony is stated in section 257 of the CCP. If you are one of the following persons, you can refuse to testify (basically most of the relatives can refuse):

- *the descendant and ascendant of the plaintiff or defendant*
- *a sister, stepsister, brother or stepbrother of the plaintiff or defendant, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the plaintiff or defendant*
- *a step or foster parent or a step or foster child of the plaintiff or defendant*
- *an adoptive parent or an adopted child of the plaintiff or defendant*
- *the spouse of or a person permanently living together with the plaintiff or defendant, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended*

Subsection 258 of CCP states the obligation to testify. According to this provision previously mentioned persons cannot refuse to give testimony concerning the following aspects:

- *the performance and content of a transaction which he or she was invited to witness;*
- *the birth or death of a family member;*
- *a fact related to a proprietary relationship which arises from a relationship under family law;*
- *an act related to the disputed legal relationship which the witness himself or herself performed as the legal predecessor or representative of a party.*

Furthermore subsection 2 of section 257 of the CCP states other grounds when a witness may refuse to give testimony also if it may state that he or she, or a person listed above (relatives, adoptive and step persons) have committed a criminal offence or a misdemeanour. A witness can also refuse to testify concerning circumstances to which the State Secrets Act applies. A person, who processes the information for journalistic purpose, can refuse to testify about circumstances, which might reveal the person, who gave the information. Also a person, who is in contact with previously mentioned circumstances, may refuse to testify.

- **The person who refuses to testify can be compelled to testify or punished?**

According to section 266 of the CCP, if a witness fails to appear in court upon a summons without good reason, the court may impose a fine or compelled attendance on the witness. If a witness refuses to give testimony or sign a caution without good reason, the court may impose a fine or detention up to fourteen days on the witness. The witness shall be released immediately if the witness gives the testimony or the signature on being cautioned, or if the hearing of the matter has ended or the need for the witness to be heard has ceased to exist.

- **Are witnesses paid by their participation in the judicial process? If so, how much?**

According to section 152 of the CCP, a witness shall be paid compensation. Compensation for a witness is compensation for any income loss (wages, salary, permanent income). Compensation will be paid also then, when the witness responds in a written form.

According to subsection 3 of section 152 of the CCP, the court shall determine the hourly rate of compensation for a witness within the limits of minimum and maximum hourly wages established by a regulation of the Government of the Republic. If testifying did not cause a loss of income to a witness or the witness has no source of income, compensation shall be paid to him or her according to the lowest rate.

- **Are there people who can not testify?**

  According to subsection 1 of section 256 of the CCP, it's prohibited for a minister of a religious association registered in Estonia or support staff to testify about circumstances confided to them in the context of spiritual care.

  According to subsection 2 of section 256 of the CCP, it's prohibited for persons with confidentiality clause to testify, if there is no permission of the person, who has the interests of the confidentiality clause (e.g. representative, notary, doctor pharmacists or other health care providers etc)

  According to subsection 1 of section 261, if necessary, a witness of less than 14 years of age shall be heard in the presence of a child protection official, social worker, psychologist, parent or guardian who, with the permission of the court, may also question the witness. The court may involve a child protection official, social worker or psychologist in the hearing of a minor over 14 years of age.

- **Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?**

  Yes they can. This is stated in section 350 of the CCP In this case a court will organise a session in the form of a procedural conference such that a witness, who stays at another place at the time of the court session may be heard in real time at such place.

  In this case the right of every participant in the proceeding to file petitions and applications and to formulate positions on the petitions and applications of other participants shall be guaranteed in a technically secure manner. The conditions of the court session in respect of the real time transmission of image and sound must be technically safe. The witness may be heard also by telephone in a procedural conference, if there is consent of the parties and the witness. If it is a proceeding on petition, then only the consent of a witness is requested.

  According to subsection 4 of section 350 of the CCP, the Minister of Justice may establish specific technical requirements for organising a court session in the form of a procedural conference, however currently there is no specific act regarding this.

- **What is the role of the judge and the parties in the hearing of a witness?**

  According to subsection 1 of section 262 of the CCP, a court shall ascertain the identity of a witness and his or her area of activity, education, residence, connection to the matter and relationships with the participants in the proceeding. Before giving testimony, the court shall explain the obligation of a witness to tell the truth, the prohibition to testify, the right to refuse to testify and the procedure for refusing to testify to the witness. Furthermore the court shall explain

the object of the hearing to the witness and urge the witness to disclose everything that he or she knows concerning the issue.

The participants in a proceeding have the right to ask questions from a witness. The questions need to be necessary in their opinion in order to adjudicate the matter or establish the witness's connection to the matter. A participant in the proceeding shall ask questions through the court. With the permission of the court, a participant in a proceeding may ask questions directly.

According to subsection 6 of section 262 of the CCP, a participant in a proceeding who applies for the summoning of a witness shall be the first to question the witness. Thereafter, the other participants in the proceeding will question the witness. If the witness is summoned on the initiative of the court, then the plaintiff will be the first to question the witness.

According to subsection 7 of section 262 of the CCP The court shall exclude leading and repeated questions, and the questions which are not relevant to the matter as well as the questions which are asked in order to reveal new facts which have not yet been presented before. If necessary, the court has the right to ask additional questions during the entire questioning in order to clarify or supplement the testimony, or to establish the basis for the witness's knowledge.

- **Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?**

It is not necessary to draft a preliminary list of questions in the interrogation of witnesses. However the witness testimony is also not completely free as the court needs to determine the matter in which the person is to be heard and also the object of the dispute. As the court will, according to subsection 7 of section 262 of the CCP, exclude certain questions (irrelevant, leading etc), then everything will not pass during the court hearing.

However, according to section 253 of the CCP, it is possible to make a ruling whereby a witness is required to provide written answers to the questions asked from him or her within the term prescribed by the court. A participant in a proceeding has the right to submit written questions to a witness through the court. The court shall determine the questions for which an answer by a witness is requested.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

Taking of evidence mainly requires the application of a party, as the proceedings are conducted in an action on the basis of the facts and petitions submitted by the parties. According to section 239 of the CCP, The court may propose to the parties to submit additional evidence.

However there are cases, where the judge can take evidence on his own motion. For example, according to subsection 3 of section 5 of the CCP, in matters on petition, the court itself shall ascertain the facts and take the necessary evidence unless otherwise prescribed by law.

In matters where an action is filed the evidence shall be usually submitted by the participants in the proceeding, however there are some exceptions in the law. According to subsection 3 of section 230 of the CCP, the court may take evidence on its own initiative in a matrimonial matter, filiation matter, a dispute related to the interests of a child and in simplified proceedings (i.e. monetary claim, which does not exceed the amount of 2000 EUR).

Furthermore, according to subsection 1 of section 293 of the CCP, the court may also organise an inspection or ask the opinion of an expert in legal matters in order to ascertain the law in force outside the Republic of Estonia, international law or common law at its own initiative. The court may at its own initiative hear either or both parties under oath, if the court cannot form an opinion regarding veracity of an alleged fact on the basis of the previous proceeding and filed and taken evidence. The court may also hear one party under oath at its own initiative, if the party, who has the obligation to prove a certain fact, wishes to give statements under oath, however the counter-party objects to that.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

There are some general rules to be followed in conducting the taking of evidence in the trial. According to subsection 2 of section 25 of the CCP, if the participant in the proceeding wishes, but is unable to provide evidence, then he or she may request the taking of the evidence by the court. Therefore the taking of evidence commonly starts with an application of one of the parties. It is an activity of the court performed with the aim to render evidence available and enable the examination thereof in the proceeding.

A participant in a proceeding who requests the taking of evidence must substantiate which facts relevant to the matter the participant in the proceeding wishes to prove with that evidence. A request for taking of evidence shall also set out any information which enables the taking of evidence.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

There is no general rule for taking evidence by videoconference or teleconference as it depends on the type of the evidence. Namely the hearing of a witness, hearing of participants in proceeding under oath and hearing persons with specific expertise with the aim to prove a circumstance or event which requires specific expertise in order to be correctly interpreted, can happen by videoconference or teleconference.

Documents and physical evidence will be just submitted to the court, which rules out the possibility for videoconference or teleconference. It is also not possible to conduct inspection by videoconference or teleconference as it is any direct collection by the court of data concerning the existence or nature of a circumstance, including the inspection of an area or the scene of an event.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

There is also no general rule regarding the possibility of the parties to be present in the taking of evidence. It is specific to the type of evidence. However, according to subsection 5 of section 288 of the CCP, evidence taken and reports of procedural acts performed outside of a court session shall be made public in a court session and communicated to the experts and witnesses as necessary. Thereafter the participants in the proceeding may give statements with regard to such evidence.

Hearing of a witness and of participants in proceedings under oath: There is no regulation regarding the possibility to be present in taking this type of evidence. However as those hearings commonly need to happen at the court hearing and the parties have the right to be present at the court hearing, then they also have the possibility to be present in taking this type of evidence.

However, according to subsection 2 of section 260 of the CCP, the court may remove a participant in the proceeding from the courtroom for the time the witness is heard, if a court has reason to believe that a witness is afraid or has other reason not to speak the truth before the court in the presence of that participant in the proceeding or if that participant in a proceeding leads the testimony of a witness by interference or in any other manner. After the return of such participant in the proceeding, the testimony of the witness shall be read to the participant, who has the right to question the witness.

Documental and physical evidence: According to subsection 1 of section 279, a court can order a person in possession of a document or physical evidence to submit the evidence to the court within the term set by the court. Therefore there is no need to be present at the taking of this type of evidence. There are no specific rules regarding it.

Inspection: Organisation of inspection is regulated in section 291 of CCP. Parties or their representatives have the possibility to be present at the inspection. The participants in the proceeding are informed of organising an inspection, but their absence does not prevent the conduct of the inspection. The participants in the proceeding taking part in an inspection may draw the court's attention to circumstances relevant to the completeness of the inspection and to the matter being heard.

Expert opinion: If the presence of the participants in a proceeding upon the conduct of an expert assessment is necessary and possible, the court shall so indicate in the ruling on the expert assessment. In such case, absence of the participants in the proceeding does not prevent the conduct of the expert assessment, if the expert finds that he or she is able to provide an opinion without the presence of the participants in the proceeding.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

There is no limitation on the obligation of a person to be subject to the taking of evidence.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

The expenses generated by the taking of evidence are included in the concept of legal expenses (i.e. procedural expenses). According to section 138 of the CCP, the procedural expenses are the legal costs and extra-judicial costs, whereas the legal costs are the state fee, security and the costs essential to the proceeding. The expenses generated by the taking of evidence are defined as costs essential to proceedings (costs related to witnesses, experts, interpreters and translators, costs related to obtaining documentary evidence and physical evidence, costs related to inspection, including necessary travel expenses incurred by the court).

According to subsection 1 of section 148 of the CCP, the costs essential to proceedings shall be paid, to the extent ordered by the court, by the participant in the proceedings who filed the petition to which the costs are related. The court may rule also otherwise. If both parties submit an application or if the court summons a witness or expert or requests that an inspection be conducted, the costs shall be paid by the parties in equal amounts. However, at the end of the proceedings, the court may order the loser party to pay some or all of the procedural costs back to the winning party.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

The law does not give any general restrictions about evidence obtained illegally. However there is a specific rule about evidence obtained by a criminal offence or unlawful violation of a fundamental right, whereas according to subsection 3, section 238 of the CCP, the court may, but is not obliged to refuse to accept evidence and return the evidence, or refuse to take evidence.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

If the court requests information from administrative authorities, then they are also as any other person obliged to submit the information. In maintenance matter there is even a specific obligation of the administrative authorities. According to subsection 4 of section 230 of the CCP, the court may require that a party provides data and documents on his or her income and financial status. Furthermore the court may demand the relevant information also from the Pension Board or other agency or person making payments related to old age or loss of capacity for work or the Tax and Customs Board. According to subsection 6 of section 230 of the CCP, those institutions have the obligation to provide the court with information within the term set by the court. In case of failure to perform such obligation, the court may impose a fine on the obligated person or agency.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

There are no specific rules in our MS on the taking of evidence requested by a foreign court.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

Yes, the internal rules on taking of evidence requested by national courts are applicable. However, according to subsection 6 of section, 15 of the CCP, they apply in so far as not otherwise provided by the provisions of Council Regulation 1206/2001/EC relating to co-operation

between the judicial authorities of the Member States in the taking of evidence in civil and commercial matters (hereinafter Council Regulation 1206/2001/EC).

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

The list of evidence that may be requested by foreign courts is the same as in cases with national courts.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Our legal system does not provide the direct taking of evidence by foreign courts.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Yes our national courts may apply to foreign court for the direct taking of evidence. According to subsection 2 of section 241 of the CCP, evidence shall be taken in another Member State of the European Union with the assistance of a court of the other state or directly pursuant to the procedure provided by Council Regulation 1206/2001/EC. According to subsection 4 of section 241 of the CCP, for taking of evidence elsewhere than in a Member State, the court shall request the taking of evidence through a competent authority pursuant to the Convention on the taking of evidence abroad in Civil or Commercial Matters. Furthermore, according to subsection 5 of section 241 of the CCP, the court may take evidence abroad through a competent consular authority of the Republic of Estonia, if it is not prohibited by the laws of the foreign court.

According to subsection 1 of section 241 of the CCP, evidence taken in a foreign state pursuant to the legislation of such state may be used in a civil proceeding conducted in Estonia unless the procedural acts performed in order to obtain the evidence are in conflict with the principles of Estonian civil procedure.

Finland

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

There are no definitions in provision of written law. No clear definitions deriving from scholarly works. Nearly anything can function as proof. In practice everything, which is relevant. The consideration of relevance is asked by the judges often in practice in preparation, where the evidence of mapped. Practical purposes determine judges' interest in this (saving time in main proceedings).

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?
No.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

x Examination of the parties,;
x Public documents;
x Private documents;
x Expert testimony;
x Judicial examination; Judicial inspection
x Witness testimony;
x means of reproduction of words, sounds and images;
x Others (especify); Judicial inspection

Please describe legal provisions: General doctrine of free evidence and free consideration, Code of Judicial Procedure http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf , Chapter 17.

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents? No special value
- In cases where public documents are in public registers, is the access to these registers free? Yes, to large extent
- If not, ¿what are the conditions to have access to them?

Please describe legal provisions: No special provisions

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Please describe legal provisions: Same as public documents. Depends on the issue. Free reasoning by the court.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

  They are heard not as witnesses and without oaths, but their statement is legally important and in practice very important, especially, if no written evidence presented. All the provisions regarding the witnesses apply in the process, however, they cannot be punished on the basis of the provisions regarding the witnesses (on the basis of criminal law yes).

  (1) A party may be heard for probative purposes. The provisions on the hearing of a witness in sections 33 and 41 apply, in so far as appropriate, to the hearing of the party. (690/1997) (2) In a civil case a party may also be heard under affirmation for the purpose referred to in subsection 1, on circumstances especially relevant to the resolution of the case. (3) A party may also be heard under affirmation as to the type and quantum of the damage he or she has suffered because of an offence.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify? A person may not refuse to testify.
- In what cases witnesses can refuse to testify? the following need not testify against their will: (1) a person who is or has been married or is engaged to one of the parties; (2) a person who is a direct ascendant or descendant of a party or who is or has been married to a person related to a party in said manner; and 3) the siblings or the spouses of the siblings of a party or the adoptive parents or adopted children of a party.
- The person who refuses to testify can be compelled to testify or punished? Yes
- Are witnesses paid by their participation in the judicial process? If so, how much?. A witness shall be entitled to reasonable compensation for his or her necessary travel and maintenance expenses as well as for loss of earnings. (1) A witness shall be entitled to reasonable compensation for his or her necessary travel and maintenance expenses as well as for loss of earnings. (2) A private party shall pay the compensation to a witness whom he or she has called. When the court has in a civil case called a witness on its own initiative, the parties shall be jointly and severally liable for the compensation. (1052/1991) (3) Separate provisions apply to compensation to be paid to a witness from State funds. (4) A witness called by a private party is entitled to advance compensation for his or her travel and maintenance expenses. The advance shall be paid by the person who according to subsection 2 is liable for the compensation. When the witness is subpoenaed, he or she shall at the same time be informed of the right to an advance. The court shall determine what constitutes an adequate advance. (1052/1991) (5) If the party liable to pay the advance does not pay it to the witness on request, the witness shall not be required to appear in court. In addition, the party shall not have the right thereafter to call that witness to be heard, if this would lead to a delay in the case.
  In practice, compensation varies a lot, depending on request.
- Are there people who can not testify? Anyone but a party to the case may be heard as a witness. (1) A person who has not reached the age of fifteen years or who is mentally incapacitated may be heard as a witness or for probative purposes if the court deems this appropriate and if (1) hearing him or her personally is of central significance to the clarification of the matter; and 2) hearing the person would probably not cause said person suffering or other harm that can injure him or her or his or her development. The President of the Republic may not be called as a witness. Section 23 (571/1948) (1) The following may not testify: (1) a public official or a person elected or appointed to a public function or duty, in respect of what he or she is bound to keep secret in this function; (2) any person, in respect of what is to be kept secret from a foreign state

for reasons of national security or the protection of the rights or interests of the State; (3) a physician, pharmacist or midwife or the assistant of such a person, in respect of what they have learned in the practice of their profession and what is to be kept secret because of the nature of the matter, unless the person for whose benefit the duty of confidentiality has been provided consents to such testimony; (4) an attorney or counsel, in respect of what the client has entrusted to him or her for the pursuit of the case, unless the client consents to such testimony. (2) Separate provisions apply to a priest's duty of confidentiality. (3) Notwithstanding the provisions in subsection 1(3) and 1(4) above, a person referred to therein, except the counsel of the defendant, may be ordered to testify in the case if the public prosecutor has brought a charge for an offence punishable by imprisonment for six years or more, or for an attempt of or participation in such an offence. (622/1974) (4) The provisions in subsection 1(1), 1(3) and 1(4) apply even if the witness is no longer in the position in which he or she received information on the issue on which evidence is required.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions? (1) A witness, another person to be heard for probative purposes or a party may be heard in the main hearing without his or her appearance in person with the use of a video conference or other appropriate technical means of communication, where the persons participating in the hearing have an audio and video link with one another, if the court deems that this is suitable and (1) the person to be heard cannot, due to illness or another reason, appear in person in the main hearing, or his or her personal appearance in proportion to the significance of the testimony would cause unreasonable costs or unreasonable inconvenience; (2) the credibility of the statement of the person to be heard can be reliably assessed without his or her personal appearance in the main hearing; (3) the procedure is necessary in order to protect the person to be heard or a person related to him or her in the manner referred to in chapter 15, section 10, subsection 2 of the Criminal Code, from a threat directed at life or health; or (4) the person to be heard has not reached the age of 15 years or he or she is mentally incapacitated. (2) A party shall be reserved an opportunity to put questions to the person being heard (3) In the cases referred to above in subsection 1(1) and 1(2), however, also a telephone may be used in the hearing.
  Very often, even in simple cases, used, if parties agree.
- What is the role of the judge and the parties in the hearing of a witness? (1) The questioning of the witness shall be begun by the party who has called the witness, unless the court otherwise orders. The witness shall present a continuous account of the facts on his or her own initiative and, where necessary, with the aid of questions put to him or her. (2) After the questioning referred to in subsection 1 above, the witness shall be questioned by the opposing party. If the opposing party is not present or if the court otherwise deems this necessary, the witness shall be questioned by the court. (3) Thereafter, the court and the parties may put questions to the witness. The party who has called the witness shall be reserved the first opportunity to put a question to the witness. (4) If the witness has not been called by either party or if both parties have called the witness, the questioning of the witness shall be begun by the court, unless the court deems it more appropriate that the questioning is begun by one of the parties. (5) No questions shall be allowed that, due to their content, form or manner of presentation, lead to a predetermined reply, except in questioning referred to in subsections (2) and (3) for the purpose of ascertaining the correspondence of the testimony and the true state of affairs. The court shall disallow manifestly irrelevant, confusing and otherwise inappropriate questions.
  In practice the judges quite free ask questions and specific issues unclear to them.
- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free? No, completely free.

Please describe legal provisions: Code of Judicial Procedure Chapter 17
http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION? Yes, especially in practice.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL See above

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE? Yes, in practice often done.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS? In principle, always. However, (1) A witness, another person heard for probative purposes and an injured party may be heard in the main hearing without the presence of a party or another person, if the court deems that this is appropriate and such hearing is necessary (1) in order to protect the person being heard or a person related to said person in the manner referred to in chapter 15, section 10, subsection 2 of the Criminal Code, from a threat directed at life or health; (2) if the person being heard would otherwise not reveal what he or she knows about the matter; or (3) if a person disturbs or attempts to mislead the person being heard during his or her testimony. (2) A party shall be reserved an opportunity to put questions to the person being heard (3) A witness or other person may be heard in a hearing closed to the public, as provided in the Act on the Publicity of General Court Proceedings (370/2007).

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...) (1) A witness may refuse to reveal a fact or answer a question if he or she cannot do so without incriminating himself or herself or a person who is related to him or her in the manner referred to in section 20. In addition, a witness may refuse to give a statement which would reveal a business or professional secret unless very important reasons require that the witness be heard thereon. (2) The author, publisher or broadcaster of a communication made available to the public referred to in the Act on the Exercise of the Freedom of Speech in Mass Communications (460/2003) may refuse to answer a question on the identity of the source of the information upon which the communication was based, as well as a question which cannot be answered without identifying the source of the information. The same right is vested in a person who has been informed of a fact mentioned above when in the employment of the author, publisher or broadcaster of the communication in question. (461/2003) (3) A person referred to above in subsection 2 may also refuse to answer a question on the identity of the author of a communication made available to the public, as well as a question which cannot be answered without identifying the author. (461/2003) (4) When the case referred to in subsection 2 or 3 concerns an offence punishable by imprisonment for six years or more, or to the attempt of or participation in such an offence, or information that has been given in violation of a duty of secrecy, subject to punishment under a separate provision, the person referred to in said subsection may nonetheless be ordered to answer the question. (622/1974) Section 25 (571/1948) A person who refuses to testify or to answer a question shall, at the same time, mention the grounds for the refusal and show a plausible reason for it..

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)? Loser party. Must be

requested. Not included automatically. Same regarding experts (if not requested by the court itself).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE? May have, no prohibitions or limitations, especially in practice. Very rarely contested.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY? Yes

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS). (1) The decision to obtain an expert opinion, present written evidence, arrange an judicial view and undertake other preparatory measures shall be made in the preparation, if such measures are necessary in order to ensure that the evidence is simultaneously at hand in the main hearing. (2) The decision to admit evidence outside of a main hearing may also be made in the preparation. (3) A party who wishes measures referred to in this section to be undertaken shall at once request the same in the preparation. (Code of procedure (Code on legal procedure, Chapter 5, section 25).

However, to cross border situations apply EU Regulation 1206/2001 (and Commission memorandum), Nordic agreement 28/75, The Hague agreements 1954 (2/57) and 1970 (37/76), bilateral agreements (Russia 48/1980), Law 31.12.1994/1554 (Judicial functions related to the European Union membership).

The procedural aspects are regulated by the Law on cooperation between Finnish and foreign authorities within judicial procedure and enforcement of foreign judgements 10.6.1921/171.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS? Yes, examples mentioned in law, however, substantively regulated (relating to the procedure) (Law 10.6.1921/171).

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION? Could be possible. No direct provisions, done by Finnish courts. Very rare in practice.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD? No direct provisions. Possible, but practically never in civil cases.

Please describe legal provisions See above

France

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

French codes don't provide any legal definition. Nevertheless a list of relevant evidences is given by the French civil code (article 1315-1).

French doctrine usually gives the following definition to "proof": Proof is the demonstration of the existence of a fact or a contract in the manner permitted or required by law.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

Yes, there is a classification of the different kind of evidences.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties: yes
- ☐ Public documents : yes
- ☐ Private documents: yes
- ☐ Expert testimony: yes
- ☐ Judicial examination yes
- ☐ Witness testimony : yes
- ☐ means of reproduction of words, sounds and images: yes
- ☐ Others (especify) : presumptions (fact presumptions and legal presumptions)

Please describe legal provisions:_

According to article 1315-1 Civil Code the different kind of evidences are: documentary evidence, oral evidence, presumptions, admissions of parties and oaths.

An instrument before public officers (notaires) or under private signature must be executed in all matters exceeding a sum or value fixed by decree. No proof by witness is allowed against or beyond the contents of instruments (article 1341).

On the contrary, any kind of evidences can be used to prove a fact or an instrument which is not exceeding a sum or value fixed by decree.

Exceptions exist concerning the necessity to prove by documentary evidence when an obligation exceeds a sum or value fixed by decree:

- Where there exists a commencement of proof in writing (article 1347 Civil Code);
- Where the obligation arises from a quasi-contract, an intentional or unintentional wrong (article 1348 Civil Code),
- Where one of the parties either did not have the material or moral possibility to procure a written proof of a legal transaction, or has lost the instrument which served him as written proof in consequence of a fortuitous event or of force majeure (article 1348 Civil Code).

- Where a party or a depositary has not kept the original instrument and presents a copy which is a reproduction that is not only faithful but also enduring (article 1348 Civil Code);
- With regard to traders, commercial instruments may be proven by any means unless the law specifies otherwise (article L. 110-3 Commercial Code).

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

Public documents have a special probative value. A public instrument is held to be true in so far its falsity is not proven. A special proceeding exists, with restrictive conditions. But this rule only applies to the personal findings of the public officer. For the others elements, there is no special probative value.

- In cases where public documents are in public registers, is the access to these registers free?

The principle is that all persons concerned can have access to the public registers, even in the field of family law.

- If not, ¿what are the conditions to have access to them?

Please describe legal provisions:_

Article 1317 – 1320 Civil Code_____

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

An authentic instrument is a document which has been received by public officers empowered to draw up such instruments at the place where the instrument was written and with the requisite formalities (article 1317 Civil Code).
The judge is bound by this kind of documentary evidence. An authentic instrument is held to be true in so far its falsity is not proven.

An instrument under private signature, acknowledged by the person against whom it is set up, or statutorily held as acknowledged, is, between those who have signed it and between their heirs and assigns, as conclusive as an authentic instrument (article 1322 Civil Code). A person against whom an instrument under private signature is set up is obliged to formally admit or disclaim his handwriting or his signature. In the case where the party disclaims his handwriting or

his signature, and in the case where his heirs or assigns declare that they are not aware of them, verification shall be ordered in court.
Since 2011 (loi n° 2011-331 28 March 2011), there has been a new kind of private documents which is called "acte contresigné par un avocat". This instrument is signed by the parties, on one hand, and by the parties' lawyer(s) on the other hand. In this case, a party cannot disclaim his handwriting or his signature.
Other kinds of private documents are, for instance, tallies, copies of instruments, instruments of recognition and confirmation.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Please describe legal provisions:__

An admission which is set up by the defendant against the claimant is either extra-judicial or judicial.
A judicial admission is a declaration which a party or his special agent makes in court. It is conclusive; it may not be divided; it may not be revoked, unless it is proved that it was the result of an error of fact. It might not be revoked under the pretext of an error of law (article 1356 Civil Code).
An extra judicial admission can be written or verbal. Where it is purely verbal, it is useful only when the claim is one in which oral evidence would be admissible.

According to article 1357 Civil Code, a judicial oath by the claimant or the defendant is of two kinds:
1° The one which a party tenders to the other in order to make the judgment of the case depend upon it: it is called decisive;
2° The one which is tendered by the judge of his own motion to one or another of the parties.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify? According to article 206 of Code of Civil Procedure any person summoned to testify will be bound to do so.
- In what cases witnesses can refuse to testify? Persons who present a legitimate excuse may be exempted from testifying. Parents or relatives in direct line of one of the parties or of his spouse or even divorced, may refuse to testify.
- The person who refuses to testify can be compelled to testify or punished? Defaulting witnesses and persons who, without any legitimate excuse, refuse to testify or to swear in may be sentenced to pay a civil fine of 3000 euros.
- Are witnesses paid by their participation in the judicial process? If so, how much? Witnesses

are not paid but they may receive an allowance, determined by the judge.

- Are there people who can not testify? Any person may be heard as a witness, except those people who lack the legal capacity to testify in court. Lack of legal capacity to testify may be the result of a sentence. A family link between the parties and the witness may also be obstacle. Descendants may never be heard on the grievances raised by spouses in support of a petition for divorce or judicial separation. Special rules concern persons under 18. Special rules concern persons who cannot disclose a professional secret.
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions? There is no legal provision about this topic but also no prohibition
- What is the role of the judge and the parties in the hearing of a witness? The judge carries otu the investigation. Parties neither interrupt, question nor attempt to influence the witnesses who testify, nor talk to them directly under the penalty of exclusion. The judge, if he deems it proper, ask (on behalf of the parties) the questions that the parties have submitted to him after the examination of the witness.
- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

See below: the judge is the only person who leads the interrogation: (art. 204-221 CCP)

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

The judge can take evidence on his own motion. This means that the factual circumstances upon which the resolution of the dispute depends, may, at the request of the parties or sua sponte, be subjected to any legally permissible preparatory inquiry.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

NO, THERE IS NO ORDER. THE JUDGE WILL DECIDE ON THIS PARTICULAR POINT.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

Not expressly. But another solution exists: when the remoteness of the area where the taking of evidence must be done makes the trip too difficult or too expensive, the judge may designate another court, which seems best placed in France, to conduct all or part of operations ordered.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

The one who represents or assists a party before a court that has ordered a preparatory inquiry may follow the latter's implementation irrespective of the

place, make remarks or lodge any request relating to this implementation even in the absence of the party.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

Some important principles are protected and the person concerned can refuse the taking of evidence by invoking them. For example, an examination of the genetic particulars is possible within the framework of inquiries or investigations pending judicial proceedings but the consent of the person must be obtained previously and expressly (art. 16-10 Civil code).
Nobody can be forced to produce in justice of documents relative to facts touching the intimacy of the private life of the persons

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?
The expenses are included in the concept of "costs pertaining to proceedings, processes and enforcement procedures". The losing party will have to pay, unless the judge, by a reasoned decision, imposes the whole or part of it on another party.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

NO. IN CIVIL MATTERS THEY DON'T HAVE ANY VALUE. THEY CAN ONLY BE USED IN CRIMINAL MATTERS, BUT OF COURSE, THE PARTY CONCERNED CAN BE SANCTIONED.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

Yes, there is no possibility to refuse, except for the army, when the fundamental interests of the State are concerned.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

According to the **Convention on the taking of evidence abroad in civil or commercial matters concluded on 18 March 1970**, France shall designate a Central Authority which will undertake to receive letters of request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Letters shall be sent to the Central Authority without being transmitted through any other authority of that State.

Under French domestic law, there are specific rules. According to **articles 736 – 743** of the code of civil procedure, the minister of justice will transmit to the public prosecutor, in whose jurisdiction they must be implemented, the letters rogatory transmitted to him by foreign states. They will be transmitted immediately to the court having jurisdiction to implement them.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

No. There is no real limit. French law must be applied but the foreign court can have a special request, which will be taken into account except if is contrary to the French basic principles.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Where Regulation 1206/2001 applies, the direct taking of evidence between foreign courts is possible.

Under the Convention on the taking of evidence abroad in civil or commercial matters concluded on 18 March 1970, a letter of request shall be received by a Central Authority which will transmit them to the authority competent to execute them.

Under domestic law, there is no direct taking of evidence.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Where Regulation 1206/2001 applies, the direct taking of evidence between foreign courts is possible.

Under the Convention on the taking of evidence abroad in civil or commercial matters concluded on 18 March 1970, a French judicial authority may provide the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

Under domestic law, according to **article 733** of civil procedure code, the judge may, at the request of the parties or on his own motion, command inquiries as well as other legal matters that he will deem necessary, by giving letters rogatory either to a competent judicial authority in the State concerned or to French diplomatic or consular authorities.

Germany

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?
No.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?
No, with one exception: examination of the parties is subsidiary.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties,;
  yes
- ☐ Public documents;
  yes
- ☐ Private documents;
  yes
- ☐ Expert testimony;
  yes
- ☐ Judicial examination;
  yes
- ☐ Witness testimony;
  yes
- ☐ means of reproduction of words, sounds and images;
  yes
- ☐ Others (especify)
  official information by administrative authority

Please describe legal provisions:

The German Code of Civil Procedure (Zivilprozessordnung – ZPO) regulates five means of evidence: legal inspection by the court (sec. 371-372a; the court may make use of every sense), witness testimony (sec. 373-401), expert testimony (sec. 402-414), documents (sec. 415-444), interrogation of a party (sec. 445-455; subsidiary as a mean of evidence; to be distinguished from interrogation as a mean of hearing the parties). Furthermore the Code provides that the court may request an official information of administrative authority as a mean of evidence (sec. 273 para. 2 no. 2).

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?
- In cases where public documents are in public registers, is the access to these registers free?
- If not, ¿what are the conditions to have access to them?

Please describe legal provisions:

Public documents (deeds) recording a statement of a person are ascribed full probative value for the recorded statement (sec. 415 para. 1). It rests allowed to submit evidence concerning

mistakes in the record (sec. 415 para. 2). Where public documents record an official order, full probative value for the order is ascribed and no conflicting evidence is allowed (sec. 417).
Apart from this the general rule is that it is within the discretion of the court, taking all "pros and cons" into account, whether evidence was sufficient or not (sec. 286). This rule applies in particular, if there are cancellations etc. in the document (sec. 419).
Access to public registers is, in general, free for those explaining a legitimate interest.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Please describe legal provisions:
Private documents are ascribed full probative value (sec. 416). Sec. 419 and 286 apply (see above).

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Please describe legal provisions:
It is within the discretion of the court, taking all "pros and cons" into account, whether evidence was sufficient or not (sec. 453, 286).

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?
- In what cases witnesses can refuse to testify?
- The person who refuses to testify can be compelled to testify or punished?
- Are witnesses paid by their participation in the judicial process? If so, how much?
- Are there people who can not testify?
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?
- What is the role of the judge and the parties in the hearing of a witness?
- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

Please describe legal provisions:
Witnesses are obliged to testify, unless (sec. 383, 384):

- persons with regard to family ties
- priests with regard to pastoral care (unless released, sec. 385)
- the media with regard to source protection
- persons to be sworn to secrecy by office or legislation (unless released, sec. 385)
- the answer may expose the witness or his family to danger of economic loss or prosecution
- the witness would disclose a business secret.

The witness who is obliged to testify but refuses to do so can be compelled (sec. 390), but not detained for more than six month (sec. 390 para. 2, sec. 913).

Witnesses are paid for their proven economic loss, there is no general payment.

People who can not testify are the parties and members of the deciding court; persons who are not in the condition to perceive something and to report on this in court, but there is no general limit of age.

It is within the discretion of the court whether the witness may answer a questionnaire in writing (sec. 377 para. 3) or – in consensus with the parties – whether the evidence may be submitted by videoconferencing (sec. 128a para. 2), or by phone or by e-mail or any other means (sec. 284).

In the hearing of a witness the judge has to prompt the witness to disclose his knowledge in context. Afterwards the court may ask supplementary questions (sec. 396). The parties are entitled to rise questions to be forwarded to the witness, the judge may allow them to address the witness directly (sec. 397).

The party who named the witness has to indicate the facts on which the witness shall testify (sec. 373). There is no further preparation.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

The general rule is that the party has to offer certain evidence and to indicate the facts that shall be proven by this evidence. But apart from witness testimony it is within the discretion of the court to take evidence on his own motion.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

No.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

Yes, see above.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Taking of evidence is open to the parties (sec. 357).

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

If a party requests that a person shall be examined by the court or an expert, and if the person refuses to be examined, there are two possibilities: (1) If the person who shall be examined is the opponent and if the examination is "just and reasonable", it is within the discretion of the court whether the claimant's assertion is regarded as being true or not (sec. 371 para. 3). (2) If the person is a third party the court may order that the person shall be examined (sec. 371 para. 2, sec. 144 para. 1). The person may refuse to be examined, if the examination is not "just and reasonable" (sec. 144 para. 2).

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

The expenses generated by the taking of evidence are included in the concept of legal expenses and are to be paid by the loser party (sec. 91) with two exceptions: (1) If the claimant is legal successor and has not proven the legal succession before, the expenses grounded on this

argument are to be paid by the claimant (sec. 94). (2) The court may impose expenses grounded on an unsuccessful mean of attack or defence on the winning party (sec. 96).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?
There is no legislation on this question in general. In academic writing the answer is controversial. Courts tend to take all "pros and cons" into account, such as the importance of the wrongdoing.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?
Yes, under the German Constitution administrative authorities and judicial authorities are obliged to execute legal and administrative cooperation (Art. 35 para. 1 Grundgesetz). In a civil process sec. 432 applies. Consequently the administrative authorities are obliged to submit the requested information as far as this does not breach the obligation to confidentiality or preferential private or public issues.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Taking of evidence requested by a foreign court may be governed by the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. There is no general supplementary legislation.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?
Yes.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?
They are the same.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?
No.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?
Yes. Shall evidence be taken abroad, the court may apply to the competent authority (sec. 363 para. 1: "Shall evidence be taken abroad, the chief judge has to apply to the competent authority.").

Greece

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION? **NO**

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS? **No such rating in a specific provision. Means of evidence are in principle regarded as of equal probative effect, even if consisting of presumptions. Within the process of his free evaluation, the judge enjoys a discretionary power to rely on only some of them and to reject others. Such weighing of evidence by the judge is subject to review by the Court of Appeal.**

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties,; **X**
- ☐ Public documents; **X**
- ☐ Private documents; **X**
- ☐ Expert testimony; **X**
- ☐ Judicial examination;
- ☐ Witness testimony; **X**
- ☐ means of reproduction of words, sounds and images; **Yes, at the discretion and appreciation of the court**.
- ☐ Others (especify) **X** **Pursuant to art. 339 of the Code of Civil Procedure, there are eight means of proof: Confessions, direct or tangible evidence, expert reports, documentary evidence, examination of parties, testimony, party oath, and presumptions.**

Please describe legal provisions:_**Art. 339 Code of Civil Procedure. Evidence in general is regulated by Chapter 12, arts. 335-465.**

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents? **They constitute conclusive evidence of the performance of all acts that the public official states he has performed, or of any event that this official records as having occured in his presence. Such conclusive proof can be overthrown only through an attack of falsity. No means of counterproof are admissible.**
- In cases where public documents are in public registers, is the access to these registers free? **It depends on the kind of public register.**
- If not, ¿what are the conditions to have access to them? **In most cases a lawyer instructed by an individual will have access and not the individual alone.**

Please describe legal provisions: **The relevant rules are found in the laws regulating such public registers.**

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents? **As long as their genuineness has been accepted through an actual or a presumed recognition, or has been proven, private writings which are duly signed an generally drawn up in compliance with the formalities provided, are conclusive evidence that the statements which they contain have been made by the person who appears to have signed them. This binding probative effect can be overcome by any means of counterproof.**

Please describe legal provisions: Arts. **445, 393 § 2 CCP.**

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant? **Examination of the parties is freely weighted by the court, even if they testify on oath, in contrast to party oath. Failure of the summoned party either to appear without good cause in order to give sworn or unsworn evidence, or to testify, ot to aswer the interrogatories, or, finally, any difference between the unsworn and a subsequent sworn evidence are also subject to the free evaluation of the court.**

Please describe legal provisions: **Arts 415-420 CCP.**

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify? **All persons are in principle compellable witnesses.**
- In what cases witnesses can refuse to testify? **Professionals enjoy the privilege of refusing to give evidence for all facts that come to their attention during their professional activities, even if they are not obliged to keep them secret. Relatives of one of the parties may, to a certain extent, claim the privilege not to testify. There is also a privilege against self-incrimination; witnesses may refuse to give evidence about facts which can base a criminal charge against them or their relatives, or which harm their dignity. Witnesses are also not obliged to testify about facts which convey a professional or artistic secret. Children over 14 are competent witnesses, while if they are below 14 their competence depends entirely on the existence of special reasons (determined by the court) that make their testimony indispensable. In matrimonial disputes or in disputes concerning the relations between parents and children, the children of the parties are absolutely incompetent witnesses.**
- The person who refuses to testify can be compelled to testify or punished? **If that person is unwilling to testify without reason he is condemned to pay the expenses caused by their absence and, at the discretion of the judge, an amount of money as a penalty.**
- Are witnesses paid by their participation in the judicial process? If so, how much? **No.**
- Are there people who can not testify? **Yes. a) Clergymen may not testify about what they have learned through confession. b) Persons who are excluded in all cases because of their physical or mental condition. c) Persons who are dismissed by the court only after an exception by the party against whom the witness is called.**
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions? **Yes, see I. 10.**
- What is the role of the judge and the parties in the hearing of a witness? **He directs the examination and may ask questions, but most questions are asked by the parties or their attorneys. The judge may prohibit the questions if they are obviously unecessary or**

irrelevant and declares the testimony finished when he considers that the witness has testified about all he knows about the issue.

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free? **It is free. The witness may use (at the discretion of the court) a small note to support their memory.**

Please describe legal provisions: **Arts. 393-414, 601.2, 614 § 1 CCP**

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

4. oNLY AFTER THE APPLICATION OF A PARTY.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

FIRST THE WITNESSES OF THE PLAINTIFF ARE EXAMINED AND THEN THOSE OF THE DEFENDANT.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

ACCORDING TO A VERY RECENT AMENDMENT OF THE CCP (ART. 270 §§ 7 AND 8) BY L. 3994/2011, THE COURT, FOLLOWING A REQUEST OF THE PARTIES OR PROPRIO MOTU MAY DECIDE THAT THE PARTIES AND THEIR ATTORNEYS ARE PRESENT AT A DIFFERENT VENUE AND PROCEED THERE TO PROCEDURAL ACTS. THE RELEVANT DISCUSSION IS TRANSMITTED BY SOUND AND PICTURE TO THE COURTROOM AND IN THE PLACE WHERE THE PARTIES AND THEIR ATTORNEYS ARE PRESENT. IN THE SAME MANNER THE COURT MAY DECIDE ABOUT THE EXAMINATION OF WITNESSES, EXPERTS OR PARTIES. SUCH EXAMINATION IS CONSIDERED AS TAKING PLACE BEFORE THE COURT AND HAS THE SAME PROBATIVE EFFECT WITH EXAMINATION IN THE COURT ROOM. HOWEVER, THESE NEW PROVISIONS WILL BE COME INTO FORCE ONLY AFTER A RELEVANT PRESIDENTIAL DECREE HAS BEEN ISSUED AND SUCH A DECREE HAS NOT APPEARED TO THIS DAY.

IT SHOULD BE ADDED THAT MINISTERS, ARCHBISHOPS, AMBASSADORS AND OTHER DIPLOMATIC REPRESENTATIVES OF FOREIGN STATES MAY BE EXAMINED IN THEIR HOME, UNLESS THEY PREFER TO GO TO COURT. THE SAME APPLIES TO WITNESSES PREVENTED BY ILLNESS OR OLD AGE TO APPEAR IN COURT.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Yes. Usually through their attorneys.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...) **IF A PARTY, WITHOUT SPECIAL HEALTH REASONS, REFUSES TO UNDERGO THE APPROPRIATE MEDICAL EXAMINATIONS THAT ARE REQUESTED BY THE COURT AS THE NECESSARY PROOF OF PATERNITY OR MATERNITY, THE ALLEGATIONS OF THE OTHER PARTY ARE CONSIDERED AS PROVEN (ART. 615 CCP).**

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)? **EACH PARTY PAYS FOR HIS SIDE'S EXPENSES. IN EXCEPTIONAL CIRCUMSTANCES (E.G. BLOOD TESTS IF THE PARTY CLAIMS THAT HE CANNOT AFFORD THEM) THE COSTS ARE COVERED BY**

THE OTHER PARTY. THE COURT IN ITS DECISION MAY STATE WHO WILL RECOVER EXPENSES FROM THE OTHER PARTY.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE? **NO**

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY? **NO. ONE HAS TO BE AWARE OF PERSONAL DATA RESTRICTIONS AS WELL.**

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions: **Art. 6 CCP provides as follows: Greek courts are obliged to perform certain procedural acts falling into their jurisdiction at the request of foreign authorities, without prejudice to international conventions, or unless such performance is contrary to public policy. Greek courts, in executing such requests, may proceed *proprio motu* as well, according to Greek law, unless international conventions provide otherwise.**

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS? **YES**

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS? **THEY ARE THE SAME**

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION? **YES. THE GREEK COURTS MAY EITHER REQUEST GREEK CONSULAR AUTHORITIES TO PROCEED TO PROCEDURAL ACTS OR THE COMPETENT FOREIGN AUTHORITIES. IN THE LATTER CASE THE APPLICATION IS HANDLED BY THE MINISTRY OF JUSTICE, UNLESS INTERNATIONAL CONVENTIONS PROVIDE OTHERWISE.**

Legal provisions : **Arts 5 and 5 CCP**

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD? **SEE ABOVE REPLY**

Please describe legal provisions:_____

Hungary

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

There is no statutory definition of the notion of 'proof' in Hungarian law.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

Hungarian civil procedural law follows the 'free-evidencing' principle. The court may use any legally not prohibited means of evidence. The means of evidence are not listed in an exhaustive manner. The Hungarian Code of Civil Procedure simply gives an indicative list of the means of evidence admissible before courts. According to Section 166(1) of the Hungarian Code of Civil Procedure: "[m]eans of proof shall, in particular, include witness testimonies, opinions of experts, inspections, documents and other physical evidence." Nonetheless, it is to be stressed that the examples listed here are the ones normally used in practice.

The 'free-evidencing' system is also displayed in Section 3(5) on the Hungarian Code of Civil Procedure: "[u]nless otherwise provided for by law, in civil proceedings the court shall not be bound by formal requirements relating to the taking of evidence, or to specific procedures for the performance of taking of evidence or to the use of specific means of proof, and may freely use the submissions of the parties, as well as any other evidence deemed admissible for ascertaining the relevant facts of the case. These provisions shall not effect the presumptions of law, including those regulations according to which certain circumstances are to be considered true in the absence of proof to the contrary."

Accordingly, the means of evidence are not rated and there is no order of preference. The court has to establish the facts according to its internal conviction. The pieces of evidence are to be assess and considered collectively, and the court determines the fact pattern on the basis of the internal conviction it reaches on these basis of them. According to Section 206(1) of the Hungarian Code of Civil Procedure, "[t]he court shall ascertain the relevant facts of a case upon weighing the submissions of the parties against the evidence obtained by the performance of taking of evidence. The court shall evaluate the evidence as a whole, and shall rule relying on its conviction."

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

x Examination of the parties,;
x Public documents;
x Private documents;
x Expert testimony;
x Judicial examination;
x Witness testimony;
x means of reproduction of words, sounds and images;
☐ *Others (especify)*

Please describe legal provisions: *See Chapter X of the Hungarian Code of Civil Procedure*

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

The content of a public document is to be regarded are true until the contrary is proven. Accordingly, public deeds raise only rebuttable presumptions.

According to Section 195(1) of the Hungarian Code of Civil Procedure, "[a]ny paper-based or electronic document which has been issued by a court, a notary public or another authority, or an administrative body within its sphere of authority in the prescribed form, shall be recognized as an authentic instrument that has full probative force as to the measure or decision it contains, the authenticity of the data and facts certified by the document, as well as any statements contained in the document, including when and how such statements were made. A document recognized by another piece of legislation as an authentic instrument shall have same probative force."

The presumption raised by the public deed may be rebutted, except the law restricts or excludes this. According to Section 195(6): "[c]ounter-evidence may be admitted in connection with authentic instruments only to the extent not precluded or restricted by law.

- In cases where public documents are in public registers, is the access to these registers free?

If the public document is included in a public registry, the administrative (or other) authority is to be requested to issue of a public deed on the basis of its public registry. Access to these registries is, in general, not free of charge but normal rules on service fee are applicable. Nonetheless, these costs are, normally, part of the legal costs, hence, they may be shifted on the losing party.

- If not, ¿what are the conditions to have access to them?

Not applicable.

Please describe legal provisions: *See above.*

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

In Hungarian civil procedure, only private documents with full probative value (see below) have a special status. Simple private documents do not have a special status and they are to be assessed by the court on the basis of the 'free-evidencing system'; i.e. it is up to the court what probative value it attributes to a simply private deed and how it decides if the private document conflicts with other pieces of evidence. A simply private deed is, by way of example, a document printed and signed by the person making the declaration, without the use witnesses.

The following private documents are regarded as 'private documents with full probative value' (quotations refer to Section 196(1) of the Hungarian Code of Civil Procedure):

a) holograph document: "the document was written and signed by the issuer himself";
b) private document signed by two witnessed: "the document is signed by two witnesses who certify that the issuer signed the document not written by him in front of them, or declared that the signature in front of them as his own; the document shall indicate the witnesses' permanent residence (home address) as well";
c) judicial or notarial certification of the signature: "the issuer's signature or initial has been certified on the document by a court or notary public";
d) documents issued in the business operation of economic operators: "the document issued by an economic operator in frame of its business operation was properly signed";
e) private document counter-singed by an attorney: "an attorney (legal counsel) counter-signs a document prepared by himself certifying that the issuer signed the document not prepared by the issuer in front of him, or declared in front of him the signature as his own, or that the electronic document executed by the issuer's certified electronic signature contains the same information as the electronic document made by the attorney";
f) certified electronic signiture: "the electronic document is executed by the issuer's certified electronic signature".

A private document with full probative value raises the rebuttable presumption that the declaration or expression of commitment attested in the document was made by the person indicated on the deed. It is very important to stress that, contrary to public documents, a private document with full probative value does not attest that the content (that is, the facts asserted in the document) are true. The presumption relates only to the fact that the declaration was made; and this presumption is rebuttable.

According to Section 196(1) of the Hungarian Code of Civil Procedure, "[a] private document [with full probative value] shall – until proven otherwise – have full probative value verifying that the issuer has in fact made or accepted the statement it contains, or undertakes to consider himself bound by such statement".

Although as provided by the Hungarian Code of Civil Procedure, both public and private documents may, in principle, be rebutted (refuted), in practice, it is certainly harder to rebut the presumption raised by a public deed than in case of a private document with full probative value.

Please describe legal provisions: *See above.*

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Party declarations, in themselves, have in practice normally no evidentiary value, albeit the court, due to the 'free-evidencing' system, may find the declaration of one of the parties more convincing than the declaration of the other. If the parties agree as to the existence of certain facts, the court may regard these facts as proved. Likewise, the court may also regard certain facts as proved, if one of the partiess assert a fact and the opposing party does not refuse this allegation notwithstanding the court's call.

According to Section 163(2) of the Hungarian Code of Civil Procedure, "[b]ased on the opposing party's admission, on the corresponding submissions of both parties, or on the circumstance that notwithstanding the court's call [Subsection (2) of Section 141] the opposing party did not dispute the other party's submission, the court shall recognize such facts as true, if there is no doubt as to their authenticity."

Please describe legal provisions: *See above.*

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

  Yes, there is a general obligation to testify. This obligation includes the duty to appear, the duty to testify and the duty to produce the document that are in the possession of the witness (i.e. the witness may be obliged to hand over to the court the documents he/she has in his/her possession).

- In what cases witnesses can refuse to testify?

Section 170 of the Hungarian Code of Civil Procedure deals with the cases where the witness can refuse to testify. Section 169 (see below) deals with the cases where a person cannot testify.

According to Section 170 of the Hungarian Code of Civil Procedure:

"(1) Giving testimony may be refused:
a) by any close relative of the parties referred to in Subsection (2) of Section 13;
b) any person whose testimony would implicate himself or his close relative referred to in Subsection (2) of Section 13 in the commission of a crime, to the extent covered by that subject;
c) by attorneys, doctors and other persons bound to confidentiality stemming from their profession, if their testimony would entail their having to breach the obligation of confidentiality, except if the concerned party granted an exemption from this obligation;
d) mediators and experts involved in mediation proceedings pertaining to the litigation on hand;
e) persons bound to keep business secrets in respect of the subjects if their testimony would entail their having to breach the obligation of confidentiality.
(2) If a witness is not connected to all of the litigants by way of the relationship referred to in Subsection (2) of Section 13, he may refuse to testify regarding the others if the testimony cannot be isolated.
(3) Testimony may not be refused under Paragraph a) and b) of Subsection (1) if the subject:
a) pertains to a transaction in which the witness had been involved either as a representative of either of the parties or as a witness to the transaction, or if either of the parties represented the witness, or if the witness is involved as the legal predecessor of either of the parties in the relationship in question;
b) concerns the origin, marriage, life or death of the witness' any family member, or the placement or expulsion of the witness' any family member of minor age, or to any action relating to property rights based on family status.
(4) Testimony may not be refused under Paragraph e) of Subsection (1) if:
a) the party affected granted an exemption to the persons bound to keep business secrets from this obligation;
b) if the subject is not treated as a business secret pursuant to specific other legislation on access to information of public interest or public information; or
c) the subject matter of the action lies in the decision as to whether the data in question is recognized as information of public interest.
(5) In the cases covered by Paragraphs a) and c)-e) of Subsection (1), the witness shall be notified concerning his immunity before questioning, or as soon as it is established. The notification and the witness' reply shall be shown in the records.
(6) The obligation of confidentiality referred to in Paragraphs c)-e) of Subsection (1) shall remain in force after the termination of the underlying relationship.
(7) If a witness is forced to testify in spite of his rightful assertion of immunity pursuant to this Section, or in the event of non-compliance with Subsection (5), the witness' testimony shall be inadmissible as evidence."

- The person who refuses to testify can be compelled to testify or punished?

If a person illegally refuses to testify, the court may apply coercive measures and punishment.

If the witness does not appear notwithstanding the summons (or appears but leaves without permission), the court makes him/her liable for the costs cause and imposes a financial penalty on him/her. The court may issue a warrant of apprehension (compulsory attendance); in this case, the police has to arrest the witness and take him/her before the court.

According to Section 185(1) of the Hungarian Code of Civil Procedure:

"The court of competence shall order:
a) any witness or expert who failed to appear in court despite of a writ of summons (appointment) as required, and failed to show cause beforehand, or if absent without official leave;
b) any witness who refused to testify or cooperate, as well as any expert who refused to present an opinion without just cause or in violation of the court's binding decision, upon being advised of the consequences;
c) any expert who is in delay expressing an opinion without just cause, or if failing to notify the court in advance of any anticipated delay in the completion of his assessment within the prescribed time limit;
to cover the costs incurred in consequence, and may impose a financial penalty as well. Moreover, the court may issue a bench warrant for having the witness or expert absent taken into custody."

- Are witnesses paid by their participation in the judicial process? If so, how much?

The approach of the Hungarian Code of Civil Procedure is that the witness should be compensated for all the expenses he incurs due to appearing before the court and testifying. According to Section 186(1) Hungarian Code of Civil Procedure, "[w]itnesses are to claim compensation for the costs incurred in connection with their appearance, of which they shall have to be advised after the completion of questioning."

- Are there people who can not testify?

Section 169 of the Hungarian Code of Civil Procedure determines those cases where the witness cannot testify, i.e. the witness cannot be called to testify. Section 170 (see above) deals with the cases where a person can refuse to testify.

"(1) Any person who cannot be expected to provide a correct testimony due to some physical or mental disability may not be summoned to testify.
(2) The witness, unless exempted from the obligation of confidentiality, shall not be questioned in respect of any subject that is treated as classified information.
(3) The obligation of confidentiality shall remain in force after the termination of the underlying relationship.
(4) The authority or body vested with competence to grant exemption from the obligation of confidentiality with respect to certain cases shall be decreed by the Government.
(5) The subject for which the exemption is requested shall be indicated in the request for exemption.
(6) The testimony of a witness obtained in violation of this Section shall be inadmissible."

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

The Hungarian Code of Civil Procedure does not contain provisions addressing the issue specifically. Although such methods are not expressly excluded, certain procedural requirements seem not to be easy to meet if the witness does not appear in person before the court (identification of the witness, warnings etc.). It is to be noted that the proceeding court may request another court to accomplish the interrogation of the witness (see Sections 171(2) and 202 of the Hungarian Code of Civil Procedure); in this case, the witness appears before the requested court and

the requested court acts against the witness (i.e. identification, interrogation, drawing the minutes etc.).

- What is the role of the judge and the parties in the hearing of a witness?

In principle, the witnesses are interrogated by the court. The parties may request the court to pose certain questions to the witness; the court may also authorite the parties to pose questions directly.

According to Section 173(3) of the Hungarian Code of Civil Procedure:

"The witness shall be examined by the presiding judge. Other members of the court shall also be entitled to ask questions from the witness. The parties may also propose questions. The presiding judge may authorize the parties, upon request, to address questions directly to the witness. The decision on the admissibility of the questions proposed by the parties and of the questions the parties posed directly to the witness lies with the presiding judge."

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

In principle, the interrogation is not bound by a list of pre-determined questions; the court may pose questions that are relevant from the perspective of the case, and may authorize the parties to pose questions in such issues.

Nonetheless, Section 173(1)-(2) of the Hungarian Code of Civil Procedure, contains some provisions on the interrogation of the witness, which relate mainly to the introductory part of the interrogation, furthermore, the witness is also to be examined as to the sources of his information.

"(1) Before examination, the witness shall be asked to state his name, place and date of birth, mother's name, home address, as well as his relationship to the parties, and any bias due to this or other reasons. The witness shall answer these questions also in case he can lawfully refuse to testify. If the court did not terminate the confidential handling of the witness' personal data, or if they are handled confidentially at the witness' request, the court shall ascertain the personal data of the witness from the document containing personal identification data, record them in writing and handle them confidentially.

(2) Afterwards, the witness shall be examined thoroughly, clarifying the sources of his information as well."

Please describe legal provisions: See *Sections 96, 168, 173 and 174 of the Hungarian Code of Civil Procedure*

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

In principle, the court cannot take evidence ex officio; taking of evidence is to be based on the motion of one of the parties. Nonetheless, the law may provide otherwise. According to Section 164 of the Hungarian Code of Civil Procedure, "[a]s a general principle, the facts based on which the case can be decided shall be adduced by the party bearing a vested interest in persuading the court to recognize them as true. The court shall order the taking of evidence of its own motion if permitted by law."

Accordingly, it is the parties' responsibility to produce evidence. According to Section 3(3) of the Hungarian Code of Civil Procedure, "[u]nless otherwise provided for by

law, the responsibility for producing evidence for the purposes of litigation lies with the parties. The legal consequences relating to the omission of lodging a request for the performance of taking of evidence, or if such request is presented in delay, moreover, if the taking of evidence has failed shall – unless otherwise prescribed by law – fall upon the party required to produce evidence. For the purpose of deciding the dispute, the court shall inform the parties in advance concerning the facts for which the taking of evidence is required, the burden of proof, and also on the consequences of any failure of the evidentiary procedure."

At the same moment, the court is not bound by the motions of the parties. According to Section 3(4) of the Hungarian Code of Civil Procedure, "[a] request for the performance of taking of evidence, or the court's decision ordering the taking of evidence shall not be binding upon the court. The court shall not order the taking of evidence, or the performance of taking of evidence if already ordered (seeking additional evidence or repeating the procedure), if deemed unnecessary for rendering a decision in the dispute. The court must refuse the ordering of taking of evidence, if the party has submitted the request for the performance of taking of evidence in delay for reasons within his control, or if the request is presented contrary to good faith, unless this Act contains provisions to order otherwise."

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

Due the 'free-evidencing' system, the court is not obliged to conduct the taking of evidence in any order or sequence.

According to Section 3(5) on the Hungarian Code of Civil Procedure: "[u]nless otherwise provided for by law, in civil proceedings the court shall not be bound by formal requirements relating to the taking of evidence, or to specific procedures for the performance of taking of evidence or to the use of specific means of proof, and may freely use the submissions of the parties, as well as any other evidence deemed admissible for ascertaining the relevant facts of the case. These provisions shall not effect the presumptions of law, including those regulations according to which certain circumstances are to be considered true in the absence of proof to the contrary."

The court, if it pleases, may use only documentary evidence. According to Section 193,"[i]n connection with facts for which documentary evidence is available, the court may not perform the taking of other evidence".

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

There are no express provisions excluding this (i.e. videoconferences, teleconferences) but the procedural requirements of the Hungarian Code of Civil Procedure could probably not be easily complied with if the witness were interrogated through a videoconference or a teleconference.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

As a general rule, the parties and their legal representatives may be present at the taking of evidence.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

As noted above, the duties of the witness encompass three obligations: the obligation to appear before the court, the obligation to testify and the obligation to produce the documents he has in his possession (to hand over the documents he has in his possession). The witness has no general obligation to submit himself to medical examinations or blood-test. Nonetheless, special provisions apply to lineage or paternity actions: here, any of the interested parties may be obliged to undergo a blood-test or other medical examination; if the person concerned refuses to undergo the medical examination, the same coercive measures are to be applied that may be used against persons who refuse to testify (see questions I.7.), with the exception of compulsory attendance.

Section 300 of the Hungarian Code of Civil Procedure provides as follows:

"(1) If the court has ordered a blood test and other medical (physiological) examination required for establishing paternity, any of the interested parties may be compelled to tolerate the conduct of such tests and examinations. If the court has ordered the mother's husband to submit to the said examinations, or any witness who is alleged to have engaged in sexual intercourse with the mother at the time of conception, this person shall have the legal status of a party as of the time of delivery of the court's ruling.

(2) If the interested party fails to appear at the designated expert (doctor) for the examination or blood test, or refuses to cooperate in carrying out the examination or blood test, the sanctions specified in Section 185 shall be applied, with the exception that such person may not be taken into custody. The same provision applies regarding the legal representative of a minor child if he fails to present the child for the examination or blood test, or if he refuses to allow the examination or blood test to be carried out.

(3) If the blood test conducted with the purpose of supporting the establishment of paternity of a person who has the legal status of a party under Subsection (1), the plaintiff may request this party to join the action as a defendant, even if the court has no jurisdiction concerning the new defendant. The court may, at the same time, release the original defendant, and shall order the plaintiff to bear the related costs, subject to the exception set out in Subsection (2) of Section 80."

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

In general, the costs are to be advanced by the person who has the obligation of proof; the expenses related to the taking of evidence are part of the legal costs and, hence, in principle, they are governed by the rule that the losing party has to pay them at the end of the day. Nonetheless, Hungarian civil procedure contains certain exceptions as to both rules.

According to Section 76 of the Hungarian Code of Civil Procedure, "[t]he costs for the performance of taking of evidence (witness fees, expert fees, the fees of interpreters, the cost of remote hearings and inspections etc.) shall be advanced by the party adducing evidence (Section 164), the court, however, may exceptionally order the opposing party to advance the costs for the performance of taking of evidence in full or in part where deemed justified. The court shall adopt a decision concerning prepayments at the time of occurrence of the costs, however, where there is reason to believe that the costs will be substantial beforehand, or if so justified by other reasons, the court may order the party affected to deposit the sum required with the court. Where an expert has been appointed the court shall order to have the sum estimated to cover the expert's fee deposited."

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

In Hungarian civil procedure, there is no general prohibition on the non- admissibility of evidence obtained illegally, albeit in specific cases the evidence may be excluded. For instance, if a witness who cannot be interrogated is examined, his testimony cannot be used (see Section 169(6) of the Hungarian Code of Civil Procedure).

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

The court has the power to approach administrative authorities for assistance, by way of example, requesting information and evidence. The administrative authorities are obliged to provide the requested assistance (see e.g. Section 124(4)(a) of the Hungarian Code of Civil Procedure).

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions:

In principle, there are no specific rules on taking of evidence as such. However, there are rules that are applicable to the judicial cooperation and to the handling of the requests of foreign court and administrative authorities for judicial assistance; these contain some minor supplements to the general rules on taking of evidence. The most detailed source is the 8001/2001. (IK. 4.) Ministry of Justice information on the handling of matters with an international aspect ('8001/2001. (IK. 4.) IM tájékoztató a nemzetközi vonatkozású ügyek intézéséről'), especially paragraphs 51-65.

Section 67(3) of the Hungarian Act on Private International Law provides that requests for judicial assistance are, in principle, to be performed according to Hungarian law. Nonetheless, if the requesting court so requests, the Hungarian court has to apply also foreign procedural rules, provided they are not contrary to Hungarian public policy.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

The judicial cooperation with the foreign court is not governed by the internal rules on taking of evidence requested by national courts.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

As noted above, due to Section 67(3) of the Hungarian Act on Private International Law, in principle, Hungarian procedural law is applicable to the accomplishing of the requests of foreign courts for judicial assistance. Hence, in principle, Hungarian procedural rules on the means of evidence are to be applied. Nonetheless, foreign procedural law may also come into picture, since if the foreign court so requests, the Hungarian court has to apply also foreign procedural rules, provided they are not contrary to Hungarian public policy. Accordingly, the means of

evidence known by the foreign procedural law may also be relevant, provided it is not contrary to Hungarian public policy.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

There are no provisions empowering foreign courts to directly take evidence on the territory of Hungary.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Hungarian courts may not take evidence abroad directly but indirectly, i.e. through the requested foreign court or administrative agency.

Outside the scope of EU legislation, the request for judicial assistance is normally to be made through the Ministry of Justice and Administration. Some of the international treaties concluded by Hungary enable Hungarian courts to approach the foreign court directly with the request for judicial assistance.

Please describe legal provisions: *Hungarian Act on Private International Law, 8001/2001. (IK. 4.) Ministry of Justice information on the handling of matters with an international aspect*

Ireland

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

The evidence by which a court is satisfied as to the truth of a fact.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

No

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties,;
  YES
- ☐ Public documents;
  YES
- ☐ Private documents;
  YES
- ☐ Expert testimony;
  YES
- ☐ Judicial examination;
  YES
- ☐ Witness testimony;
  YES
- ☐ means of reproduction of words, sounds and images;
  YES
- ☐ Others (especify)

Please describe legal provisions:_____

There is no specifically consolidated provision outlining the accepted forms of evidence in Ireland as it has evolved as a creature of the common law. However, the Superior and Lower Court rules are clear that the primary means of adducing evidence is by oral evidence in court. (Order 39 Rule 1 Rules of the Superior Courts, Order 23 Rule 1 Rules of the Circuit Court). While all of the above categories are allowed it is important to consider a number specifically.

Public Documents:

Such a document must:

(i) contain matters of a public nature;
(ii) have been compiled by a public official in the exercise of a duty to enquire into and record those matters;
(iii) have been intended to be retained for and be available for public inspection.

Expert testimony:

Where specialist knowledge and expertise is necessary then expert testimony may be acceptable. *AG (Ruddy) v Kenny* [1960] 94 I.L.T.R. 185;

"the nature of the issue may be such that even if the tribunal of fact had been able to make the observations in person he or they would not have been possessed of the experience or the specialised knowledge necessary to observe the significant facts, or to evaluate the matters observed and to draw the correct inferences of fact."

Judicial Examination

Order 39 Rule 4 of the Rules of the Superior Courts, and similarly Order 23 Rule 3 of the Rules of the Circuit Court provide;

The Court may, in any cause or matter where it shall appear necessary, make any order for the examination upon oath before the Court, or any officer of the Court, or any other person, and at any place, of any witness, and may allow the deposition of such witness to be adduced in evidence on such terms (if any) as the Court may direct.

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

To provide *prima facia* evidence of facts stated therein.

- In cases where public documents are in public registers, is the access to these registers free?

No, is generally an administrative fee is associated.

- If not, ¿what are the conditions to have access to them?

In order for a public document to be admissible it must have been intended to be retained for and be available for public inspection.

Please describe legal provisions:_____
_____

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Private documents are equally subject to the requirement that oral evidence is adduced in support. As such, in the absence of such evidence the probative value can be diminished.

Please describe legal provisions:_____

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

> See above. Examination of the parties in court is the primary means of adducing evidence. Described by the court, in *Phonographic Performance Ltd v Cody* [1998] 4 I.R. 504 at 521, as:

"the examination of witnesses *viva voce* and in open court is of central importance in our system of justice and…it is a rule not to be departed from lightly."

Please describe legal provisions:_____

> See above, Order 39 Rule 1 Rules of the Superior Court and Order 23 Rule 1 Rules of the Circuit Court

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

Yes, competent witnesses are obligated to testify.

Under Order 39 Rule 4 of the Rules of the Superior Courts:

> The Court may, in any cause or matter where it shall appear necessary, make any order for the examination upon oath before the Court, or any officer of the Court, or any other person, and at any place, of any witness, and may allow the deposition of such witness to be adduced in evidence on such terms (if any) as the Court may direct.

Similar provision is set out in the Circuit Court Rules under Order 23 Rule 3

- In what cases witnesses can refuse to testify?

A competent witness is a person capable of understanding the nature and implications of the oath and also capable of giving intelligible testimony.

Witnesses cannot generally refuse to testify.

- The person who refuses to testify can be compelled to testify or punished?

Persons refusing to testify may be summarily held in contempt of court and punished at the discretion of the presiding judge.

Under Order 39 Rule 7 of the Superior Court Rules:

> Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

Order 39 Rule 12 of the Superior Court Rules:

> If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed in the Central Office, and thereupon the party requiring the attendance of the witness may apply to the Court ex parte or on the notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

- Are witnesses paid by their participation in the judicial process? If so, how much?

Yes.

Order 39 Rule 8 of the Rules of the Superior Courts;

> Any person required to attend for the purpose of being examined, or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

Order 44 Rule 1(5) of the District Court Rules provides that;

Where it shall appear that the reasonable expenses of the person required to attend as a witness have not been paid or offered to him or her, the Court may set aside or disregard the service of the summons.

- Are there people who can not testify?

Witness who are not competent, see above, are not compellable.

There are other categories of persons who are competent but not compellable to testify to give evidence;

(a) a judge in respect of matters of which he or she became aware relating to, and as a result of the performance of, his or her judicial functions
(b) bankers to produce or prove the contents or bankers books.
Section 6 of the Bankers' Books Evidence Act 1879 (as amended by section 131 of the Central Bank Act 1989 (No.16 of 1989))
(c) Diplomats.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

Yes, primarily in civil actions concerning the welfare of children and commercial actions entered into the specific commercial list.

- What is the role of the judge and the parties in the hearing of a witness?

The parties are charged with the examination of a witness with the Judge assuming a primarily supervisory role assuring a proper examination of the witness.

- Is necessary the draft of a Preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

No, examination is freely conducted for the purposes of obtaining evidence that is relevant. Parties may not ask leading questions

Please describe legal provisions:_____
_____

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

A judge has a broader, inherent, discretion to direct a question to a witness but care must be taken by a judge not to overly interfere or direct in the examination of witnesses.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

Typical common law practise is that a plaintiff submit evidence followed by the respondent. Witnesses are examined-on-chief by plaintiffs, cross examined and then re-examined by the plaintiff on any issues arising from the cross examination.

When plaintiff's evidence is submitted a respondent is afforded the same opportunity to submit evidence in defence of the claim subject to the same cross examination and subsequent re-examinatino.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

See above.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Yes, under the Superior Court Rules, Order 39 Rule 10,

The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

Legal advice and litigation privilege:

A client may refuse to disclose any communications with their lawyer which was made for the purpose of giving or receiving legal advice or in relation to preparations in advance of any litigation.

Without prejudice privilege:

Communications made in furtherance of settlement are also subject to privilege on the policy justification that encouraging litigants to settle their differences rather than litigating them is desireable

Marital Privilege:

Marital privilege finds its basis in the constitution at Article 41.3.1;

"The State pledges itself to guard with special care the institution of marriage, on which the family is founded, and to protect it against attack."

Parliamentary Privilege:

Absolute privilege with respect to parliamentary and executive communications.

Article 15.10 of the Irish Constitution:

Each house shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

Article 15.12:

All official reports and publications of the oireachtas or of either house thereof and utterances made in either house wherever published shall be privileged.

Article 15.13:

The members of each house of the oireachtas shall, except in case of treason as defined in this constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either house, and shall not, in respect of any utterance in either house, be amenable to any court or any authority other than the house itself.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

Costs in litigation, including evidence, are at the discretion of the Court.

Order 99 Rule 1 (1) of the Rules of the superior Courts:

The costs of and incidental to every proceeding in the Superior Courts shall be in the discretion of those Courts respectively.

Circuit Court Rules, Order 66 Rule 1:

Save as otherwise provided by Statute, or by these Rules, the granting or withholding of the costs of any party to any proceeding in the Court shall be in the discretion of the Judge or the County Registrar as the case may be.

District Court Rules, Order 51 Rule 1 provides that:

Save as otherwise provided by statute or by Rules of Court, the granting or withholding of the costs of any party to civil proceedings in the Court shall be in the discretion of the Court.

Generally the discretion is exercised in favour of the winning party unless there is good reason otherwise..

Order 99 Rule 1 (4) of the Superior Courts:

The costs of every action, question, or issue tried by a jury shall follow the event unless the Court, for special cause, to be mentioned in the order, shall otherwise direct.

Circuit Court Rules, Order 66 Rule 5 provides that:

The award of costs in any case shall include witnesses' expenses unless disallowed in whole or in part by the Judge. Such expenses shall be measured by the Judge or where the Judge so directs by the County Registrar, subject to an appeal to the Court.

In this rule the word "expenses" shall, in the case of an expert witness, include his reasonable charges in respect of all necessary matters preliminary to the hearing.

Order 44 Rule 1(5) of the District Court Rules sets out that,

Where it shall appear that the reasonable expenses of the person required to attend as a witness have not been paid or offered to him or her the Court may set aside or disregard the service of the summons.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

There is no automatic exclusion or inclusion of illegal evidence. A discretionary approach has been outline by the Supreme Court in *People (AG) V O'Brien* [1965] I.R. 142

"it is desirable in the public interest that crime should be detected and punished. It is desirable that individuals should not be subjected to illegal or inquisitorial methods of investigation and that the state should not attempt to advance its ends by utilising the fruits of such methods. It appears to me that in every case a determination has to be made by the trial judge as to whether the public interest is best served by the admission or by the exclusion of evidence of facts ascertained as a result of, and by means of, illegal actions, and that the answer to the question depends on a consideration of all the circumstances."

Kingsmill Moore J. went on to outline the criteria which ought to be taken into account in the exercise of the discretion.

On the one hand, the nature and extent of the illegality have to be taken into account. Was the illegal action intentional or unintentional, and, if intentional, was it the result of an *ad hoc* decision or does it represent a settled or deliberate policy? Was the illegality one of a trivial and technical nature or was it a serious invasion of important rights the recurrence of which would involve a real danger to necessary freedoms? Were there circumstances of urgency or emergency which provide some excuse for the action? … The nature of the crime which is being investigated may also have to be taken into account.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

Again, a discretion of the court in which a balancing test is employed weighing up the public interest in proper administration of justice against the public interest in non disclosure.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions:_____
_____

See Rules of the Superior Courts, Order 39 Rules 39 – 44, attached.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

N/A

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

N/A

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

See Rules of the Superior Courts, Order 39 Rules 39 – 44, attached.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Please describe legal provisions:_____
_____

Yes, see SI. 13/2007 amending Order 39 Rule 5 to take account of Regulation 1206/2001, attached.

Italy

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION? NO

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS? YES

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

√Examination of the parties,;
√Public documents;
√Private documents;
√Expert testimony;
√Judicial examination;
√Witness testimony;
√means of reproduction of words, sounds and images;
√Others (especify) : ante causam expert testimony (pursuant to art. 696 of the Italian Code of Civil Procedure)
ante causam witness testimony (pursuant to art. 692 of the Italian Code of Civil Procedure)

Please describe legal provisions: Articles 251-262 of the Italian Code of Civil Procedure

Article 251-Witnesses' oath
The witnesses are examined separately [see Articles 254 ICCP].
The investigating judge warns the witness against the moral relevance of the oath as well as against the criminal consequences of false or reticent declarations [see Articles 366, third paragraph; 372 Criminal Code] and reads the formula: "aware of the liability which I assume before the people and God, if believer, by taking the oath, you swear to tell the truth, nothing but the truth." Then the witness, while standing, takes the oath pronouncing the words "I swear" [see Article 256 ICCP].

Article 252-Identification of witness
The investigating judge asks the witness his name, last name, the place and date of birth, his age and profession, and invites him to declare whether he is a relative of any of the parties [see Articles 74, 78 ICC], whether he is employed by any of the parties, or whether he has an interest in the proceeding [see Articles 246, 247 ICCP].
The parties may make comments on the witness' reliability, and the witness shall provide the necessary clarifications in this respect. The minutes of the hearing mentions the comments by the parties and the clarifications offered by the witness before the witness' examination.

Article 253-Examination and replies
The investigating judge examines the witness on the facts about which he should give the testimony. The judge may also, sua sponte, or upon the party's request, ask the witness all the questions which he deems useful to clarify the same facts. The parties and the public prosecutor

shall not directly examine the witness. Article 231 shall apply to the witness' responses. [see Article 257, second paragraph ICCP].

Article 254-Witnesses' confrontation
If there are differences among the testimonies rendered by two or more witnesses, the investigating judge, upon the party's request or, sua sponte, may order that the different witnesses confront each other.

Article 255-Witnesses' failure to appear before the judge
If the witness, duly summoned [see Article 250 ICCP; see Article 103 PICCP], does not show up, the investigating judge may order that he be summoned again, or that he be accompanied to the same hearing or to the next hearing. By the same order the judge, where the witness did not show up without any justified reason, may condemn the witness to pay a fine of not less than EUR 100 and not more than EUR 1000. If the witness fails again to appear without any justified reason, the judge orders the conveyance of the witness to the same hearing or to another bearing following that one, and condemns him to pay a fine of not less than EUR 200 and not more than EUR 1000.
If the witness cannot attend the hearing or is excused by the applicable law provisions or international conventions, the judge shall go to his house or office; and, if they are located outside Tribunale's district, the judge delegates the investigating judge of that place to examine the witness [see Article 203 ICCP; see Article 105 PICCP].

Article 256-Refusal to testify and perjury
If the witness appears before the judge and refuses to take the oath [see Article 251 ICCP] or to testify [see Article 253 ICCP] without any justified reason [see Article 249 ICCP], or where there are grounds to believe that he did not tell the truth or that was reticent, the investigating judge denounces him to the public prosecutor and sends to the latter a copy of the minutes recording the testimony.

Article 257-Admission of new witnesses and renewal of the examination
If any of the witnesses mentions other people as those informed about the facts of the case, the investigating judge may order, sua sponte, that these people be summoned to testify [see Articles 317, first paragraph; 421, second paragraph ICCP].
The judge may also order the witnesses whose testimony he previously deemed as superfluous pursuant to Article 245, or those whom he allowed to renounce to testify, to testify; similarly, the judge may order that the witnesses already examined be examined again, to clarify their testimony or correct irregularities which occurred during the previous examination.

Article 257 bis-Written testimony
Upon agreement by the parties, considering the nature of the case and any other circumstance, the judge may order the admission of the testimony requesting that the witness, also in the events under Article 203, provide the answers to the questions on which he should be examined, in writing and by the scheduled time limit.
By the decision under the first paragraph, the judge orders to the party requesting the admission of such evidence to draft the sample of the testimony consistent with the questions admitted by the judge and have such sample served upon the witness.

The witness renders the testimony by filling in the sample of testimony in each part, by answering separately to each question, and specifying which question he is not able to answer, indicating the reason for that.
The witness signs the written testimony putting his certified signature on each page of the written statement, which he shall file with or send to, by closed envelope and registered mail, the clerk office of the judge.
When the witness avails himself of the power to abstain under Article 249, he is under the obligation to fill in the sample of testimony, indicating the complete personal details and the reasons for abstaining.
When the witness does not send or does not file the written answers by the scheduled time limit, the judge may condemn him to pay the fine under Article 255, first paragraph.
When the testimony deals with documents concerning expenses, which were already filed by the parties, it may be rendered by written statement signed by the witness and sent to the counsel of the party in whose interest the evidence has been admitted, without using the sample under the second paragraph.
The judge, once having examined the answers and the declarations, may always order that the witness be called to render his testimony before the judge or before a delegated judge.

Article 258-Order of inspection
Inspection of the places, movables, real estate, or people [see Article 118, first paragraph ICCP] shall be ordered by the investigating judge, who fixes the time, place, and method of inspection [see Articles 202, first paragraph; 421, third paragraph ICCP].

Article 259-Inspection
The investigating judge personally accomplishes the inspection; however, where necessary, he may be assisted by an expert [see Articles 61, first paragraph; 191; 194 ICCP], even if the inspection should be accomplished outside Tribunale's district, unless serious needs prevent him from leaving Tribunale. In this event, the judge delegates an investigating judge of the place where the inspection should be accomplished, pursuant to Article 203.
The inspection should be recorded into minutes, where the conditions of the place and of the inspected persons or things should be described. Lacking such minutes, the inspection is null, and it will not be possible to use it in the proceeding as evidence. Where technical knowledge and expertise is required to accomplish the inspection, the judge may be assisted by an expert.

Article 260-Body inspection
The investigating judge may abstain from taking part in the body inspection and orders that only the expert proceed to the inspection [see Article 194, second paragraph ICCP].
When inspecting a body, any precaution shall be used to guarantee the person's respect [see Article 93 PICCP].

Article 262-Powers of the investigating judge
During investigations or during the experiment, the investigating judge may examine witnesses to obtain information [see Article 421, third paragraph ICCP], or make the decisions necessary for the exhibition of the good or to access to the place.
The judge may also order the access to places belonging to people that are not party to the proceeding, after hearing these people, where possible, and taking all the precautions necessary to protect their interests [see Article 118, first paragraph ICCP].

I.4 REGARDING PUBLIC DOCUMENTS

- WHAT IS THE PROBATIVE VALUE OF PUBLIC DOCUMENTS? Pursuant to Article 2700 of the Italian Civil Code, subject to an action to establish falsity (forgery claim pursuant to Article 221 Italian Code of Civil Procedure) it constitutes full proof that it was drawn by the public official attesting as having drawn it, as well as of the declaration of the parties and of the other facts which the public official attests to have taken place in his presence or to have been performed by him.

- IN CASES WHERE PUBLIC DOCUMENTS ARE IN PUBLIC REGISTERS, IS THE ACCESS TO THESE REGISTERS FREE? Yes
- IF NOT, WHAT ARE THE CONDITIONS TO HAVE ACCESS TO THEM? An application has to be filed if the document is stored in a public bureau.

PLEASE DESCRIBE LEGAL PROVISIONS: Articles 743-746 of the Italian Code of Civil Procedure. Please note, however, that – pursuant to art. 743, paragraph 2, a copy of a public will cannot be issued in a public form during the life of the testator except in case of this latter's request.

Art. 743-Copy of public deeds
Any public depositary authorized to release in a public form the deeds which he holds, shall release a certified copy, even where the movant or the authors of the deed have not been party to it, under penalty of payment of damages and expenses, save the provisions of special applicable law provisions on taxes of registration and stramp.
The copy of a public will cannot be issued in a public form during the life of the testator, except in case of this latter's request, which shall be noted on the copy of the will.

Art. 744-Copies and extracts from public registers
The court clerks and the depositaries of public registers, except in the cases determined by the applicable law provisions, shall issue a public copy of the deeds and the abstracts of the judicial acts which they hold, in favour of whomever make such request, under penalty of payment of damages and expenses.

Art. 745-Copies collation
In case of refusal or delay by the court clerks or the depositaries under the previous article, the movant may refer to Giudice di Pace or to the president of Tribunale or of the Court where the court clerk or the depositary exercises his functions.
In case of refusal or delay by the court clerks or the public depositaries under Article 743, the movant may refer to the president of Tribunale, in the district of which the depositary exercises his functions.
The president or Giudice di Pace decides by decree after hearing the public official.

Art. 746-Copies collation
Whoever has obtained the copy of a public deed pursuant to Article 743 is entitled to collate it together with the original of the same deed, before the depositary. If the latter refuses to accomplish the collation, that party may refer to Tribunale, in the district of which depositary exercises his functions. The judge, after hearing the depositary, by decree, gives the proper instructions for the collation and may accomplish himself the collation, at the depositary's office.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Legal provisions: Pursuant to article 2702 of the Italian Civil Code, subject to an action to establish falsity, a private writing constitutes full proof of the origin of the declarations set forth therein, in the person who signed such writings, if the person against whom it is asserted recognizes the signature or, if the signature is legally deemed to have been recognized, the provenance from those who subscribed them if they are recognized.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Please describe legal provisions: Statements made by the plaintiff and the defendant may be objected by the counterparty. If no such objection is made within the deadline set by the Code of Civil Procedure, the circumstances are deemed to be confirmed and not challenged by the parties in the proceedings.
Pursuant to Article 2736 of the Italian Civil Code, the judge in charge may decide the case on the basis of a "Decisory Oath" ("giuramento"), that a party may defer to the other party. The decisory oath is a declaration as to the truth of specific events, given by a party on request by the opposing party. The response given after a decisory oath has been deferred and on the basis of that is conclusive evidence, meaning that the judge and the parties are bound to consider the facts object of the decisory oath as established.

I.7 REGARDING THE WITNESS TESTIMONY:

- ARE WITNESSES OBLIGED BY THE LAW OF YOUR MS TO TESTIFY? Yes
- IN WHAT CASES WITNESSES CAN REFUSE TO TESTIFY? Pursuant to Article 249 of the Italian Code of Civil Procedure, witnesses can abstain in those cases provided forth by the Code of Criminal Procedure, particularly in case of professional privilege, office's privilege, state's privilege. Moreover, pursuant to Article 200 of the Italian Code of Criminal Procedure, also lawyers can abstain from testifying on the facts which were reported to them by their clients.
- THE PERSON WHO REFUSES TO TESTIFY CAN BE COMPELLED TO TESTIFY OR PUNISHED? Yes
- ARE WITNESSES PAID BY THEIR PARTICIPATION IN THE JUDICIAL PROCESS? IF SO, HOW MUCH? Witnesses are paid only expenses incurred for travel to the hearing
- ARE THERE PEOPLE WHO CAN NOT TESTIFY? Yes, under Article 246 Italian Code of Civil Procedure, the persons having an interest in the action which might justify their participation in the same proceeding shall not testify.
- CAN WITNESSES TESTIFY USING NEW TECHNOLOGIES SUCH AS TELEVISION OR VIDEOCONFERENCING? IF SO, UNDER WHAT CONDITIONS? Not under the provisions ruling civil proceedings.
- WHAT IS THE ROLE OF THE JUDGE AND THE PARTIES IN THE HEARING OF A WITNESS? Pursuant to Article 253 of the Italian Code of Civil Procedure, the Judge examines the witness on the facts about which he should give the testimony. The judge may also, on his own motion, or upon the parties request, ask the witness all the questions which he deems useful to clarify the same facts. Please note that the parties and the public prosecutor shall not directly examine the witnesses.
- IS NECESSARY THE DRAFT OF A PRELIMINARY LIST OF QUESTIONS IN THE INTERROGATION OF WITNESSES, OR THE WITNESS TESTIMONY IS COMPLETELY FREE? Pursuant to Article 244 of the Italian Code of Civil Procedure, the questions to pose to witnesses shall be framed separately and specifically indicate the persons that should be examined and the facts on which they should testify.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?
Italian legal system is based on the "dispositive principle" according to which the determination of what issues to raise, what evidence to introduce, and what arguments to make, is left almost entirely to the parties involved. Judges have small power to make enquires on their own motions.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL. NO

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE? NO

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?
Pursuant to Article 206 of the Italian Code of Civil Procedure, the parties and their representatives may personally attend the admission of evidence.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)
Under Italian procedural law, there is no any such obligation

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?
The loser party or the requesting party, in case the Judge decides that the parties share the judicial expenses (set off).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE? NO

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY? YES

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions: Article 204 of the Italian Code of Civil Procedure, provides the power of Italian Judges to request foreign judges to implement evidentiary measures admitted by the Italian Judge, where such measures should be implemented abroad, outside the Italian Judge's jurisdiction. Rogatories by Italian Judges to foreign authorities for the taking of evidence abroad shall be transmitted by diplomatic channels.

Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence and The Hague Convention of 18 March 1970 on the Taking Evidence Abroad also apply.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?
The rules do not include any list of evidence: Article 204 ICCP only refers to "execution of evidentiary measures admitted by the Italian Judge"

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?
The Italian Legal System does not specifically explain how the taking of evidence should be performed by foreign courts. The only specific provision in this regards is that set forth by Article 204 Italian Code of Civil Procedure paragraph 2, under which "when rogatory deals with Italian citizen residing abroad, the investigating judge delegates the competent consul, who proceeds pursuant to Consul Law".

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Yes, pursuant to the applicable international conventions and EC regulation on the taking of evidence abroad.

Latvia

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE A DEFINITION OF "PROOF"? WHAT IS THE LEGAL DEFINITION?

Section 92 of the Civil Procedure Law of Latvia prescribes that "[e]vidence is information on the basis of which a court determines the existence of non-existence of such facts that are significant in the adjudicating of the matter".

I.2 ARE THE MEANS OF TAKING OF EVIDENCES RATED IN YOUR MS?

The court admits only such kinds of evidence as provided for by law, in particular, in Chapter 17 of the Civil Procedure Law which prescribes that evidentiary means are: explanations by parties and third persons, testimony of witnesses, documentary evidence, real evidence, expert-examination and opinions of authorities. There is no hierarchy between the means of evidence.

I.3 WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

☒ Examination of the parties;
☒ Public documents;
☒ Private documents;
☒ Expert testimony;
☒ Judicial examination;
☒ Witness testimony;
☒ Means of reproduction of words, sounds and images;
☒ Others (specify)

Chapter 17 of the Civil Procedure Law prescribes that evidentiary means are: explanations by parties and third persons, testimony of witnesses, documentary evidence, real evidence, expert-examination and opinions of authorities.

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?
- In cases where public documents are in public registers, is the access to these registers free?
- If not, what are the conditions to have access to them?

Pursuant to paragraph 21 of Section 1 of the Archives Law, public record (document) is a document created or received as a result of activity of an institution. Such documents may serve as evidence at the court.
As provided in Section 10 of the Freedom of Information law, access to public documents in public registers (e.g., the Land Book, the Register of Enterprises) is for free. An institution shall provide information on its own initiative or on the basis of an application from a private person, or an institution on its own initiative shall ensure accessibility of certain types of generally accessible information. Generally

accessible information shall be provided also on the basis of an application from a private person. Such information shall be provided to anyone who wishes to receive it, subject to the equal rights of persons to obtain information. The applicant shall not be required to specially justify his or her interest in generally accessible information, and he or she may not be denied it because such information does not apply to the applicant. Generally accessible information which does not require any additional processing shall be provided free of charge.
If the party to the proceedings is not entitled to receive certain information from the public register (e.g., personal data from the State Social Insurance Agency) but this information may serve as an evidence during a court proceedings, a court or a judge is entitled to require, pursuant to a substantiated request from a participant in the matter, documentary evidence from State and local government institutions and from other natural or legal persons.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

  As prescribed in paragraph 21 of Section 1 of the Archives Law, a private record (document) is a document created or received as a result of activity of a private person. Such documents have legal force and may serve as evidence at the court if they have been drafted in accordance with provision of the Document Legal Force Law and if the document's author has the necessary capacity for drafting such document pursuant to the Civil Law.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

  As prescribed under Section 104 of the Civil Procedure Law, "[e]xplanations by parties and third persons which include information about facts on which their claims or objections are based, shall be admitted as evidence, if corroborated by other evidence verified and assessed at a court sitting. If one party admits the facts on which the claims or objections of the other party are based, a court may find such facts to be proven, if the court is not in doubt that the admission was not made due to the effects of fraud, violence, threat or error, or in order to conceal the truth".

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?
- In what cases witnesses can refuse to testify?
- The person who refuses to testify can be compelled to testify or punished?
- Are witnesses paid by their participation in the judicial process? If so, how much?
- Are there people who can not testify?
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?
- What is the role of the judge and the parties in the hearing of a witness?
- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

Persons called as witnesses shall attend at the court and give true testimony regarding facts of which they have knowledge. A witness may be questioned by means of video conference from place of location of the witness, or from place which is specially designed for such purpose. A court may question a witness at their place of residence, if the witness is unable to attend pursuant to a court summons because of illness, old age, invalidity or other justified cause.

A witness who has been called to court does not have the right to refuse to give testimony, except in the matters as prescribed under the Civil Procedure Law. For refusal to testify for reasons which the court has found unjustified, and for intentionally providing false testimony, a witness is liable in accordance with the Criminal Law. If a witness, without justified cause, fails to attend pursuant to a summons by a court or a judge, the court may impose a fine not exceeding forty lats (approx. EUR 57) on him or her, or have them brought to court by forced conveyance.

The following persons may not be summoned or examined as witnesses:

1) ministers (pastors) – regarding facts, which have come within their knowledge through hearing confessions, and persons whose position or profession does not permit them to disclose certain information entrusted to them – regarding such information;
2) minors – regarding facts that testify against their parents, grandparents, brothers or sisters;
3) persons whose physical or mental deficiencies render them incapable of appropriate assessment of facts relevant to the matter; and
4) children under the age of seven.

The following persons may refuse the duty to testify:

1) relatives in a direct line and of the first or second degree in a collateral line, spouses, affinity relatives of the first degree, and family members of parties;
2) guardians and trustees of parties, and persons under guardianship or trusteeship of the parties; and
3) persons involved in litigation in another matter against one of the parties.

The witness is entitled to compensation of the following expenses:

1) for travelling from his or her place of residence or place of work to the place where the court hearing is taken place, and back, choosing economically the most inexpensive means;
2) for lodging, if the court hearing, to which the witness is being called, lasts for two or more days in a row and if the witness must take part in the proceedings in all days of the court hearings, or if coming of the witness is concerned with flights.

If the witness is employed, he or she must be paid the average earnings. Travelling expenses from the witness' place of residence or place of work to the place where the court hearing is taken place, and back, are composed of: cost for tickets if public transport is used (except taxi) and cost for fuel (0.07 lats (approx. EUR 0.10) per km), if personal vehicle is used.

A witness shall answer questions asked by the court and participants in the matter. It is not necessary the draft of a preliminary list of questions in the interrogation of witnesses.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

The court shall clarify the circumstances of a matter, examining evidence, which has been obtained in accordance with the procedures prescribed by law. The court is not entitled to take evidence on its own motion.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL?

No, there is no specific order regarding taking of evidence in trial. Examination of evidence in the trial is carried out in the following order: parties of the proceedings submit evidence and explanations, and then the evidence is examined by the court at the court hearing. The court assesses the evidence in accordance with its own convictions, which shall be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience. A court or a judge is entitled to require, pursuant to a substantiated request from a participant in the matter, documentary evidence from State and local government institutions and from other natural or legal persons.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

Yes, taking of evidence by videoconference is allowed.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Evidence shall be submitted by the parties and by other participants in the matter. If the parties or other participants in the matter are unable to submit evidence, the court shall, at their motivated request, require such evidence.
There is no possibility for the parties or their representatives to be present in taking of evidence. In a situation if documentary or real evidence cannot be brought to the court, the court shall take, pursuant to the petition of a participant in the matter, a decision on inspection and examination of such evidence at the site where it is located. The court shall notify the participants in the matter of an inspection on site. The failure of such persons to attend shall not be an impediment to performing the inspection.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

No, there are no limitations on the obligation of persons to be subject to the taking of evidence.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

Amounts of costs which must be paid to witnesses and experts, or amounts necessary to pay the costs of examination of witnesses or conducting of inspections on-site, of the service, issue and translation of court summonses and other court documents, of publication of notices in newspapers and of security for a claim shall be paid, prior to the adjudicating of a matter, by the party who made the relevant request.
The party in whose favour a judgment is made shall be adjudged recovery of all court costs paid by such party, from the opposite party. If a claim has been satisfied in part, the recovery of amounts shall be adjudged to the plaintiff in proportion to the

extent of the claims accepted by the court, whereas the defendant shall be reimbursed in proportion to the part of the claims dismissed in the action. State fees for ancillary claims, applications regarding renewal of court proceedings and adjudicating of the matter *de novo* in a matter where a default judgment has been rendered shall not be recompensed.
If a plaintiff discontinues an action, he or she shall reimburse court costs incurred by the defendant. In this case the defendant shall not reimburse the court costs paid by the plaintiff. However, if a plaintiff discontinues his or her claims because, after they are submitted, the defendant has voluntarily satisfied them, the court shall, pursuant to the request of the plaintiff, adjudge recovery of the court costs paid by the plaintiff as against the defendant.
If an action is left unadjudicated, the court shall, pursuant to the request of the defendant, adjudge recovery of the court costs paid by the defendant as against the plaintiff, except in cases if the court leaves the claim unadjudicated in part for which it does not issue an European order for payment as provided in Article 10, paragraph 2 of the Regulation of the European Parliament and of the Council No. 1896/2006.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

No, evidence that has been obtained illegally does not have value before court.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

A court or a judge is entitled to require, pursuant to a substantiated request from a participant in the matter, documentary evidence from state and local government institutions and from other natural or legal persons, and such persons are obliged to submit the requested information.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

No, there are no specific rules on taking of evidence requested by a foreign court. Concerning taking of evidence requested by a foreign court, or means of evidence that may be requested by foreign courts, or direct taking of evidence by foreign courts, or possibility of Latvian national courts to apply to foreign court for the direct taking of evidence abroad, the court shall apply the relevant EU legal acts or international legal acts.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

There are no specific internal rules on taking of evidence other than the general provision of the Civil Procedure Law.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

N/a.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

No, Latvian legal system does not provide direct taking of evidence by foreign courts in Latvia.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

There are no provisions under the Latvian Civil Procedure Law explicitly prescribing a right for Latvian national courts to apply to foreign court for direct taking of evidence abroad.

Lithuania

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? WHAT IS THE LEGAL DEFINITION?

Yes, there is a definition of 'evidence' defined in part 1 of Article 177 of the Code of Civil Procedure of the Republic of Lithuania:

"*Evidence in a civil case is any factual data, in accordance with which, the court ascertains that there are circumstances justifying the requirements or replications of the parties, and other factors, which are important to solve the case."*

I.2 ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

According to the law there is no strict hierarchy between different types of evidence. In each case the court evaluates all evidence provided by the parties in accordance with inner conviction and law. There is no evidence that have predetermined power to the court. However, some types tend to be more valuable. For example public documents (as indicated in the answers to the questions in section 1.4 of this questionnaire) and physical evidence may be considered more convincing than private documents and witness statements or hearing of the parties under oath.

I.3 WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ✓ Examination of the parties,;
- ✓ Public documents;
- ✓ Private documents;
- ✓ Expert testimony;
- ✓ Judicial examination;
- ✓ Witness testimony;
- ✓ means of reproduction of words, sounds and images;
- ✓ Others (Inspection protocols; Protocol of factual findings made by the bailiff).

Please describe legal provisions:

Part 2 of Article 177 of the Code of Civil Procedure of the Republic of Lithuania:

"The evidentiary data can be ascertained by the following instruments: statements of the parties and third parties (either directly or through representatives), testimony of witnesses, documentary evidence, material evidence, inspection protocols and experts' examination."

Part 3 of Article 177 of the Code of Civil Procedure of the Republic of Lithuania:

"Evidence can also be photos, video and audio recordings made in accordance with the law."

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

Documents issued by state and local authorities or approved by other state authorized persons within their sphere of competence and in accordance with the relevant requirements of the form of document, have greater probative value.

- In cases where public documents are in public registers, is the access to these registers free?

It depends on the register, but usually taking extracts from the public registers is taxable (i.e., Extracts from the Real Property Register and Cadastre; The Register of Legal Entities; the Mortgage Register; the Register of Property Seizure Acts).

- If not, what are the conditions to have access to them?

Usually person, who intends to use public registers, is obliged to fill in registration form (i.e., enter his name, surname, address, sometimes personal ID number).

Please describe legal provisions:

Part 2 of Article 197 of the Code of Civil Procedure of the Republic of Lithuania:

"Documents issued by state and local authorities or approved by other state authorized persons within their sphere of competence and in accordance with the relevant requirements of the form of document, have greater probative value. Circumstances referred to in public documents are considered as fully proved, unless they will be denied by other evidence, except statements of witnesses. Prohibition to use statements of witnesses does not apply if it is contrary to the principles of fairness, justice and reasonableness."

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

The probative value of private documents is the same as other evidence.

Please describe legal provisions:

Part 1 of Article 197 of the Code of Civil Procedure of the Republic of Lithuania:

"Written evidence is documentation of business and personal correspondence, other documents that contain information about the circumstances that have significance to the case. Written evidence is divided into public (official) and private".

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

The probative value of statements made by the plaintiff and the defendant is the same as any other evidence, except public documents. Before making statements, the plaintiff and the defendant must swear to the court to tell the truth.

Please describe legal provisions:

Part 4 of Article 186 of the Code of Civil Procedure of the Republic of Lithuania:

"The statements made by the parties or third parties to the case, must be reviewed and assessed by the court".

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

A witness who has been called to court does not have the right to refuse to give testimony, except in the matters as prescribed under the Code of Civil Procedure of the Republic of Lithuania.

- In what cases witnesses can refuse to testify?

The witnesses are allowed to refuse to testify if the testimony is considered as maid against themselves, their family members or close relatives.

- The person who refuses to testify can be compelled to testify or punished?

If a witness fails to appear in court upon a summons without proper excuse, the court may impose a fine or compelled attendance on the witness. For unjustified refusal to testify the court may impose a fine of up to LTL one thousand (EUR ~289).

- Are witnesses paid by their participation in the judicial process? If so, how much?

A party, which submitted a request to call a witness, shall bear all costs incurred by the witness (i.e., travelling expenses, salary etc.).

- Are there people who cannot testify?

The following persons may not be summoned or examined as witnesses:

1) representatives in the civil or administrative cases or defenders in the criminal cases – regarding facts, which have come on the time they there representatives or defenders;
2) persons, whose physical or mental deficiencies render them incapable of appropriate assessment of facts relevant to the matter;
3) priests (pastors) – regarding facts, which have come within their knowledge through hearing confessions;
4) medics – regarding facts, which is part of their profession secret;
5) reconciliation mediators – regarding facts, which they become aware of during the conciliatory mediation
procedure;
6) other persons defined by law.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

  From the 1st of March 2013 witnesses will be able to testify using new technologies such as television or videoconferencing as the respective amendments and supplements of the Code of Civil Procedure will come into force.

- What is the role of the judge and the parties in the hearing of a witness?

  The court ascertains the identity of a witness, relationships with the participants in the proceeding and other relevant things, i. e. education, area of activity etc. Before testimony the court explains to the witness rights and duties as well as liability for perjury.

  After hearing of the witnesses, the participants and the judge have a right to ask questions. A participant (and his representative) in a proceeding, who applies for the summoning of a witness is the first to question the witness. Thereafter, the other participants in the proceeding can submit questions to the witness.

  The court shall exclude leading and repeated questions, and questions which are not relevant to the matter. If necessary, the court has the right to ask additional questions during the entire questioning in order to clarify or supplement the testimony, or to establish the basis for the witness's knowledge.

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

  The draft of a preliminary list of questions is not required. The witness testimony is not completely free as the court has the right to exclude leading and repeated questions, and the questions which are not relevant to the matter.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

Usually taking of evidence requires the application of a party, but the court has the right to propose to the parties to submit additional evidence. However, the judge can take evidence on his own initiative when there is a need to protect public interest. There is some other type of cases, where the judge can take evidence on his motion, e. g. matrimonial, maintenance, labour cases etc.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

There is no specific order in conducting the taking of evidence in the trial. The court has the right to determine the order of evidence examination. The court must also take into account the requests of the participants in the proceeding. Such requests shall be submitted in writing or verbally during the proceeding. If the participant in the proceeding is unable to provide evidence, he may request the court to take such evidence.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

The taking of evidence by videoconference or teleconference will be allowed from the 1st of March 2013 (respective amendments and supplements of the Code of Civil Procedure will come into force).

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Generally the parties and their representatives have the right to be present during hearings of a witness and of participants in the proceedings. If documentary or real evidence cannot be brought to the court, the court shall take, pursuant to the petition of a participant in the matter, a decision on inspection and examination of such evidence at the site where it is located.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

There are no limitations on the obligation of persons to be subject to the taking of evidence.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

The expenses, which occur during the process of taking the evidence, are included in the legal (litigation) expenses. Such expenses are the following: costs related to witnesses, experts, interpreters and translators (including necessary travel expenses), costs related

to obtaining documentary and physical evidence, costs related to inspection etc. Such costs usually are paid by the party who made the relevant request.

However, the party in whose favour a judgment is made has the right to recover legal expenses from the opposite party. If a claim has been satisfied in part, the recovery of amounts shall be adjudged to the plaintiff in proportion to the extent of the claim accepted by the court, whereas the defendant shall be reimbursed in proportion to the part of the dismissed claim.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

The law does not give any general restrictions regarding evidence obtained illegally. In Part 2 of Article 197 of the Code of Civil Procedure of the Republic of Lithuania it is specifically indicated that actual data can be ascertained by photos, video and audio records, which are made without violations of the law.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

A court or a judge is entitled to require, pursuant to a substantiated request from a participant in the matter, documentary evidence from state and local government institutions and from other natural or legal persons, and such persons are obliged to submit the requested information.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

There are no specific rules in our MS on the taking of evidence requested by a foreign court.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

Provisions of the Code of Civil Procedure of the Republic of Lithuania are applied.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

The list of evidence that may be requested by foreign courts is the same as in cases with national courts.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS?IF SO, IS THERE ANY LIMITATION?

No, Lithuanian legal system does not provide direct taking of evidence by foreign courts.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Yes, Lithuanian national courts may apply to foreign court for the direct taking of evidence. Evidence shall be taken in another Member State of the European Union with the assistance of a court of the other state or directly pursuant to the procedure provided by Council Regulation 1206/2001/EC. For taking of evidence elsewhere than in a Member State, the court shall request the taking of evidence through a competent authority pursuant to the Convention on the taking of evidence abroad in Civil or Commercial Matters.

Luxembourg

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

There is no legal definition of "proof" in the New Luxembourg Civil Procedure Code (hereafter NCPC). However, under section 4 "Proof", and more specifically under article 58 NCPC, *"each party must prove in the respect of the law the facts which can support its decisions".*

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

Evidence is not rated in Luxembourg, but some types of evidence will be more convincing than others, i.e. expert report.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

The following means of taking evidence are allowed in Luxembourg:

☑	Examination of the parties	article 384 and following of the NCPC
☑	Public documents	article 1319 of the Luxembourg Civil Code (hereafter Civil Code)
☑	Private documents	article 1322 of the Civil Code
☑	Expert testimony	no, but an expert examination (report)- article 461and following of the NCPC
☑	Judicial examination;	article 379 and following of the NCPC
☑	Witness testimony	article 400 and following of the NCPC
☑	means of reproduction of words, sounds and images	article 59 NCPC provides that the judge can order any legally acceptable instruction measures. The NCPC does not specify if a proof by way of image or sound is admissible as evidence. The judge has sovereign power to accept a proof as admissible or not.
☑	Others (especify)	admission (article 1354 of the Civil Code) and sworn evidence (article 1357 of the Civil Code)

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

Public documents have a particular high probative value justified by the intervention of a public officer (i.e. notary's deed). Their probative value can only be reversed by legal proceedings to challenge the authenticity of a document (article 1319 of the Luxembourg Civil Code, hereafter "Civil Code").

In cases where public documents are in public registers, is the access to these registers free?

Access to public registers is sometimes free whereas some registers require the payment of fees.

- If not, ¿what are the conditions to have access to them?

There are no specific conditions except sometimes the payment of a fee.

Please describe legal provisions:

N/A

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

A private document has, between the parties who signed the document (as well as their descendants), the same probative value as an authentic document (article 1322 of the Civil Code).

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

The probative value of a witness' statement (article 400 NCPC) made by the plaintiff or by the defendant will be considered as being the truth unless it is proven that the person making the statement is lying. In Luxembourg law, good faith is presumed (article 2268 NCPC).

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

At the request of a party, a witness is not obliged to testify. However, at the request of the judge a witness must testify.

- In what cases witnesses can refuse to testify?

At the request of a party, a witness can always refuse to testify. However, if the judge orders a witness to testify, a witness can only refuse if he has a "legitimate reason" (article 407 NCPC).

- The person who refuses to testify can be compelled to testify or punished?

A witness who refuses to testify or a witness who fails to testify without legitimate reason can be condemned by the judge to pay a fine of 50 to 2,500. - EUR (article 407 NCPC). A witness who fails to testify can be summoned to appear in court at his own expense.

- Are witnesses paid by their participation in the judicial process? If so, how much?

A witness can request payment for his participation in the judicial process (article 421 NCPC). The amount of the fee is not specified in the NCPC. The amount will be determined by the judge taking into account the domiciliation of the witness.

- Are there people who can not testify?

- A person who has an interdiction to testify, i.e.:

  - a person who has received a criminal sentence with limitation of civil and political rights (articles 7, 11, 12, 13, 14 and 24 of the Luxembourg Criminal Instruction Code),
  - a minor,
  - a person without legal capacity.

However, the persons who are considered as being unable to testify can still be heard by the court, but without taking an oath.

- Family restriction: Descendants can never testify/give evidence on a divorce or a separation proceedings launched by spouses.

- A company's director for the company.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

The Luxembourg law does not provide whether or not new technologies such as television or videoconferencing can be used to testify in civil and commercial matters. It will be at the discretion of the court.

- What is the role of the judge and the parties in the hearing of a witness?

During the hearing of a witness, the parties can not directly ask questions to the witness (article 414 NCPC), but their requests can be brought through their representatives, e.g. their lawyers. The judge leads the hearing by asking questions. Anything can be asked by the judge, even if the questions were not indicated within the decision ordering the investigation. The only limitation is that the proof of the facts must be legally admissible. Each time the judge is finished with the witness answers, he dictates to the clerk the drafting of the minutes of the hearing (article 419 and following of the NCPC).

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

The questions are freely asked by the judge and are not limited to the decision ordering the investigation (article 413 NCPC). The lawyers are also free to ask questions and do not have to submit a list of questions in advance. However, the parties must communicate the list of the witnesses they want to be heard (article 423 NCPC).

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

The judge can either order a measure of inquiry at the request of a party, or take evidence on his own motion (articles 379 and following of the NCPC).

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

There is no order to follow in conducting the taking of evidence in a Luxembourg trial.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

The taking of evidence by videoconference or teleconference is not provided by the Luxembourg law. It is at the discretion of the court to allow such evidence.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Yes, all parties or their representatives may attend the taking of evidence (i.e. expertise, social survey…).

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

Persons to be subject to the taking of evidence are free to refuse to be submitted to the taking of evidence save for certain situation (e.g. proceedings to challenge the authenticity of a document). However, the judge can condemn the witness to pay a fine as described in point I.7.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

Each party pays for the expenses generated by the taking of evidence. However, at the end, the expense will be at the cost of the losing party. Moreover, at the request of the counterparty, the losing party can be condemned to pay a certain amount corresponding to the proceedings expenses that the litigation generated (article 240 NCPC).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

The judge will not accept evidence which was illegally obtained.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

At the request of the court, or under the order of the court, administrative authorities will be obliged to submit requested information.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

No, the foreign court addresses a request to the Luxembourg court.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

Yes.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

There is no specific list of evidence that may be requested by the foreign court to the Luxembourg court. Any legally admissible proof can be granted by the Luxembourg court.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Yes. The foreign court transmits a request to the Luxembourg court (e.g. hearing of a Luxembourg witness, social survey…). The Luxembourg court will take evidence according to the Luxembourg law and sent a report to the foreign court.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Yes. The Luxembourg court may address a request to the responsible foreign central body.

Malta

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

There is no *ad hoc* definition of proof. In general, in civil matters proof is the evidence required to enable the judge to reach a decision on a balance of probabilities.

I.2 ¿ARE THE MEANS OF TAKING OF EVIDENCES RATED IN YOUR MS?

There is no "rating" or "ranking" of means of evidence. All evidence is considered on its merits so long as it is (1) relevant to the issue and (2) the best evidence which can be produced.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☑ Examination of the parties,;
- ☑ Public documents;
- ☑ Private documents;
- ☑ Expert testimony;
- ☐ Judicial examination – but see the answer to question 1.7 debajo de (debajo derôle of the parties and of the judge)
- ☑ Witness testimony;
- ☑ means of reproduction of words, sounds and images;
- ☑ Others (especify) – on site inspections

Please describe legal provisions:

The matter is regulated in Book Third, Title I (artt. 558 *et seqq.* of the Code of Organisation and Civil Procedure (COCP), Chapter 12 of the Laws of Malta[2].

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?
- In cases where public documents are in public registers, is the access to these registers free?
- If not, ¿what are the conditions to have access to them?

Please describe legal provisions

> 2 http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8577&l=1

Public documents are admissible in evidence without the necessity of any proof of their authenticity other than that which appears on the face of them, and shall, until the contrary is proved, be evidence of their contents. Public documents, in terms of art. 627 of the COCP, are the following:

(a) the acts of the Government of Malta, signed by the Minister or by the head of the department from which they emanate, or in his absence, by the deputy, assistant, or other officer next in rank, authorized to sign such acts;

(b) the registers of any department of the Government of Malta;

(c) all public acts signed by the competent authorities, and contained in the Government Gazette;

(d) the acts of the Government of Malta printed under the authority of the Government and duly published;

(e) the acts and registers of the courts of justice and of the ecclesiastical courts, in Malta;

(f) the certificates issued from the Public Registry Office and the Land Registry;

(g) the sea-protest made under the authority of the Civil Court, First Hall;

(h) certain documents mentioned in the Merchant Shipping Act (Chapter 234 of the Laws of Malta)

In general, the documents mentioned under (a) and (b) above are privileged and their production as evidence may not be compelled. The other documents (other than the acts and registers of the ecclesiastical courts) are in general accessible and copies may be obtained on payment of a prescribed fee. The acts and registers of the ecclesiastical courts are accessible only to the parties directly involved.

In addition, art. 629 provides that the following documents are also admissible and shall, until the contrary is proved, be evidence of their contents, provided their authenticity be proved:

(a) the acts and registers of any establishment, or public body, authorized or recognized by law or by the Government;

(b) the parochial acts and registers relative to births, marriages and deaths, and the dispositions made according to law in the presence of a parish priest;

(c) the acts and registers of notaries public in Malta;

(d) the books of traders kept according to law, only with regard to any agreement or other transaction of a commercial nature;

(e) the books of public brokers kept according to law, with regard to anything which may have taken place between contracting parties in commercial matters;

(f) certain other documents mentioned in the Merchant Shipping Act.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Please describe legal provisions:_____

Private documents also may be produced as evidence, subject to the maxim *scriptura non probat nisi contra scribentem*. The relative provision is that of art. 632 COCP:

632. (1) Any declaration made by a party against his interest, or any other writing containing any admission, agreement, or obligation is admissible as evidence.

(2) Any writing, whether printed or not, and any inscription, seal, banner, instrument or tool of any art or trade, tally or score, map, sign or mark, which may furnish information, explanation or ground of inference in respect of the facts of the suit, are admissible as evidence.

In addition, the rules of the *actio ad exhibendum* contained in art. 637 COCP apply:

637. (1) It shall be lawful to demand the production of documents which are in the possession of other persons -

(*a*) if such documents are the property of the party demanding the production thereof;

(*b*) if such documents belong in common to the party demanding their production and to the party against whom the demand is made;

(*c*) if the party demanding the production of the documents, although he is not the owner or a co-owner thereof, shows that he has an interest that such documents be produced by the other party to the suit;

(*d*) if the person possessing the documents, not being a party to the suit, does not declare on oath that, independently of any favour for either side, he has special reasons not to produce the documents;

(*e*) if the documents are public acts, or acts intended to constitute evidence in the interest of the public in general.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Please describe legal provisions:_____

The parties are competent and compellable witnesses just like any other witness, and their credibility is assessed by the court as in the case of any other witness.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

Art. 587 COCP provides that the witness shall answer any question which the court may allow to be put to him; and the court can compel him to do so by committing him to detention until he shall have sworn and answered.

- In what cases witnesses can refuse to testify?

A witness cannot be compelled to answer any question the answer to which may subject him to a criminal prosecution (art. 589). Moreover, it shall be in the discretion of the court to determine, in each particular case, when a witness is not bound to answer a particular question on the ground that the answer to such question might tend to expose his own degradation, or when a witness will not be compelled to give evidence as to facts the disclosure of which will be prejudicial to the public interest (art. 590). Also, a witness may not be compelled to disclose any communication made to him/her by his/her spouse during the marriage, nor may he/she be compelled to answer any question tending to incriminate his/her spouse (art. 566).

- The person who refuses to testify can be compelled to testify or punished?

Yes. See art. 587 por encima de.

- Are witnesses paid by their participation in the judicial process? If so, how much?

In practice, no.

- Are there people who can not testify?

In general, all persons of sound mind, unless there are objections against their competency, shall be admissible as witnesses (art. 563), and no objection to the competency of any witness shall be admitted on the ground that he is interested in the issue in regard to which his evidence is required or in the event of the suit, saving any objection touching his credibility (art. 567).

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

Yes. Such testimony must be given in the presence of a judicial officer in order to ascertain the identity of the witness and that he/she is not testifying under duress or undue influence.

- What is the role of the judge and the parties in the hearing of a witness?

The examination and cross-examination of witnesses is carried out by the parties through their counsel. Although judicial examination is not a means of taking evidence, art 582 provides that it shall be lawful for the court, at any stage of the examination or cross-examination, to put to the witness such questions as it may deem necessary or expedient (refer to question 1.3 above).

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

No preliminary list of questions is required.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

See art. 582, por encima de.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

In general, plaintiff calls his witnesses for examination, and they are then cross-examined by defendant. After plaintiff concludes his evidence, the process is repeated for defendant.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

It is allowed but is generally resorted to only for vulnerable witnesses. Distances are short and it is usually not a problem for a witness to attend at court.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Yes. Indeed, the general rule is that evidence is always taken in the presence of the parties.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

See answer to 1.7 above. Where necessary (*e.g.* in medical examinations), measures are taken to protect the privacy of the person.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

The expenses are in the first place paid by the requesting party, but are considered as judicial costs and may usually be recovered by the winning party.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

No. The "fruit of the poisoned tree" rule applies.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

In general, information related to tax and social security matters is privileged and may not be disclosed. Professional secrecy in general is regulated by the Professional Secrecy Act (Chapter 377 of the Laws of Malta), which, in terms of art. 5 thereof, applies also to "any person who receives or acquires secret information by virtue of a power of investigation or enquiry conferred by law or by virtue of any enactment which requires information to be communicated".

Artt. 8 and 9 of the Act provide as follows.

> **8.** … … … a person shall not be deemed to be compelled by law to give information to the public authority unless there is a statutory requirement to that effect.
>
> **9.** … … … a court may authorise or make an order requiring the disclosure of secret information pursuant to an express provision of law for the specific purposes for which that provision was enacted, or for the specific purpose of preventing, disclosing or detecting the commission of acts that amount or are likely to amount to a criminal offence:
>
> Provided that in the absence of any specific provision in relation to any particular calling, profession or office, nothing in this article shall be construed as modifying the existing rules of law in relation to the courts' power to release a witness in court belonging to any such calling, profession or office from the duty of professional secrecy:

> Provided further where the court authorises or requires such disclosure such evidence shall be held *in camera* and shall only be accessible to the court and to the parties:

For income tax purposes, the matter is regulated by art.4(1) and (2) of the Income Tax Management Act (Chapter 372 of the Laws of Malta):

> **4.** (1) Except as may be necessary for the purposes of the Income Tax Acts, or where the Prime Minister otherwise directs, every person having any official duty or being employed in the administration of the Income Tax Acts shall regard and deal with all documents, information, returns and assessments relating to the Income Tax Acts, or copies thereof, as secret and confidential and shall make and subscribe before the Court of Appeal a declaration on oath to that effect in the form prescribed.
>
> (2) No person appointed under or employed in carrying out the provisions of the Income Tax Acts shall be required to produce in any court, tribunal, Board or committee of enquiry, any return, document or assessment or to divulge or communicate to any court, tribunal, Board or committee of enquiry, any matter or thing coming under his notice in the performance of his duties under the Income Tax Acts except as may be necessary for the purpose of carrying into effect the provisions of the Income Tax Acts, or for the purpose, or in the course, of a prosecution for any offence committed against any of the provisions of the Income Tax Acts.

For social security purposes the matter is regulated by the proviso to art. 133(*b*) of the Social Security Act (Chapter 318 of the Laws of Malta):

> … … … except so far as may be necessary for the proper discharge of his functions and duties or for the purpose of a prosecution, the Director (of Social Security) shall be bound to observe secrecy in regard to any information furnished to him under this paragraph, which apart from this paragraph, ought to be treated as secret, and the provisions of article 133 of the Criminal Code shall apply to any wilful breach of such duty.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions:_____
___

There are no *ad hoc* provisions other than those contained in Council Regulation EC 1206/2001 of 28 May 2001 (on taking of evidence) which has direct effect.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

Internal rules apply so long as they are compatible with the Regulation.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

The same means of evidence may be requested.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Legal provisions

Chapter II, section 4 of the Regulation applies.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Please describe legal provisions:_____

Chapter II, section 4 of the Regulation applies.

Netherlands

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

There is no legal definition of proof.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

Only privately executed instruments and notarially executed instruments provide for imperative proof to the judge (Article 151par. 1 CCP). To provide proof to the contrary is always allowed, unless the law decides otherwise (Article 151 par. 2 CCP).
For all the other means of taking evidence there is no rating. The assessment of all the other means of evidence is up to the court.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

x Examination of the parties,;
x Public documents;
x Private documents;
x Expert testimony;
x Judicial examination;
x Witness testimony;
x means of reproduction of words, sounds and images;
x Others (especify),

The law states that proof can be provided for by all means (Article 152 CCP). All modern means of electronic proof, fotographs, films, and bloodproofs are accepted as proof. Means of proof are also the provisional hearing of witnesses, expert testimony, and official visit of the spot (by the court), furthermore: evidence preserving attachement in intellectual property cases (Article 1019b CCP).
Since 2001 there is the obligation to disclose evidence which is under the control of one party if it is claimed by the other party at his own expenses. He can claim access to documents, a copy or an extract of specific documents. This provision is modified in an extended way for i.p.rights as a result of the implementation of Directive 2004/48/EC on the Enforcement on I.P. Rights, including more means of proof.

☐ Please describe legal provisions:

The law gives legal provisions regarding public and private documents and criminal judgements (Articles 156-161 CCP); to make books available for inspection, or other written documents (Articles 162 CCP); rules to hear witnesses (Articles 163-185 CCP) and as a provisional measure - before the procedure has started - hearing of witnesses (Articles 186-193 CCP); expert testimony (Articles 194 -200 CCP); official visit of the spot (by the court) (Article 201 CCP); the expert testimony, and judicial examination can take place provisional before the procedure has started (Articles 202- 207 CCP). For all these means of proof the party has to ask the court to produce these in an incident .

Other means of evidence, like written documents, and electronic proof or proof laid down in a written document can be brought into the procedure without any consent of the court.

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

  Public documents provide for imperative proof for the judge and everybody else for the observations and activities the official has declared about (Article 151 par. 1 and 157 par. 1 CCP). A public document in the sense of Article 156 par. 1 CCP is a document drawn up in a specific required form concluded by official's in accordance to the law and to be used as proof (f.i. by a notary or a bailiff in his official function or a judge).The document of the bailiff in this sense is the writ of summons. A public document also provides for imperative proof between the parties regarding the truth of the declaration of a party, in case the declaration of that party is intended to be used as proof against the other party (Article 157 par. 2 CCP), unless it leads to a legal effect which is not in accordance with mandatory legal provisions.
  To provide proof to the contrary is always allowed, unless the law decides otherwise (Article 151 par. 2 CCP).

- In cases where public documents are in public registers, is the access to these registers free?

There are several public registers, like the landregister (to which the access is free, to be consulted in case the debtor is owner of a house), insolvency and bankruptcy register: (access free), matrimonial register (access free) and the registers of associations and companies of the Chamber of Commerce (access is free)

- If not, ¿what are the conditions to have access to them?

The most important register: the Population Register is not freely accessible, only accessible for official authorities, not for the civil courts or the parties.

Please describe legal provisions: the provisions about the landregister and the facts to be registered, see Articles 3: 16-31 CC (Civil Code). The landregister is a negative system, this means that the information in the register does not per se need to be in accordance with the actual legal situation.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Private instruments are all the instruments that are not public documents: Article 156 par. 2 CCP. The difference between private instruments and other written documents is that private documents are drawn up to be used as proof. F.i. a pass sheet, receipt or a ordinary contract – if not drawn up in a public instrument.
A private document provides for imperative proof between the parties regarding the truth of the declaration of a party, in case the declaration of that party is intended to be used as proof against the other party (Article 157 par. 2 CCP), unless it leads to a legal effect which is not in accordance with mandatory legal provisions. Article157 par. 2 CCP is not applicable when the private instrument is made up by and concerns just one party, and the obligation serves to pay an amount of money (acknowledgement of debt), unless the document is completely written by hand (Article 158 par. 1 CCP).

To provide proof to the contrary is always allowed, unless the law decides otherwise (Article 151 par. 2 CCP).

Private documents can also be drawn up as an electronic document. The legal obligation to provide for a private document can be fulfilled in another way only if the other party does agree with for instance an electronic document (Article 156a CCP).

Please describe legal provisions: See the articles mentioned above.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

The assessment of the evidence is up to the court. They can also testify under special conditions.

Please describe legal provisions: Article 152 par. 2 CCP.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify? In general, Yes (Article 165 par. 1 CCP)
- In what cases witnesses can refuse to testify?
  1) The husband or wife, or registered partner and relatives up to the second degree of the husband etc...., may refuse except when that person is operating as a formal party f.i. as guardian.
  2) professional privilege not to give evidence, like the docter, lawyer, notary and clergyman.
  3) If the witness or his close relatives will be exposed to a criminal conviction (Article 165 par. 2 and 3 CCP).
- The person who refuses to testify can be compelled to testify or punished? There are several sanctions for the witness who refuses to come or to testify: he can be brought to court by the police (Article 172 CCP), commitment if he refuses to comply with a judicial order (imprisonment, Article 173 par. 2 CCP). In addition criminal sanctions like a financial penalty and imprisonment.
- Are witnesses paid by their participation in the judicial process? If so, how much?
  The witness can ask for compensation for expenses like travelcosts, costs for loss of income, and costs for staying somewhere else (Article 182 CCP). The court will estimate these costs (Article 57 Wet tarieven in burgerlijke zaken). Compensation has to be paid in first instance by the party who brings forth the witness. At the end the court in its judgment decides who has to pay the costs.
- Are there people who can not testify? No. Until some years ago the parties could not testitfy. Since 20 years the party who is ordered to produce evidence can testify, but his testimony can only be brought forward if there is corroborative evidence.
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?
  In criminal cases these means are not unusual. In civil cases they are allowed however very unusual The courts are convinced that in cases of cross-examination it is much better to see the witness.
- What is the role of the judge and the parties in the hearing of a witness?

Each party can offer to produce witnesses, if the facts are challenged. The judge questions the witness, without the presence of the other witnesses (Article 179 par. 1 CCP). Parties, and their lawyers can ask questions to the witnesses, but the judge can forbid special questions (par. 2). In addition to the testimony produced the judge can question the parties. Parties themselves can also ask questions to each other (par. 3).

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?
  The party, who offers to produce evidence has to sufficiently specify this offer in order to prevent fishing expeditions. He has to indicate, which facts he wants to proof. The judge will consider whether the offer is specific enough (Article 166 par. 1 CCP).

Please describe legal provisions:_____
___

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?
No, Article 149 par. 1 CCP: as a consequence of party autonomy. However, the judge can instruct a party to bring forth witnesses, after which the party himself can determine which witnesses he will bring forth. But the court is not allowed to secure evidence (166 par. 1, 2end sentence, CCP). The court may only decide on the facts brought forward by the parties, and the general known facts (Newspapers, TV, etc) (Article 149 CCP).

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL?
THE WITNESSES OF THE PARTY WHO GOT THE INSTRUCTION TO PRODUCE EVIDENCE WILL BE HEARD FIRST. THEREAFTER, ON REQUEST OF THE OPPOSITE PARTY THE CONTRA-ENQUETE MAY TAKE PLACE. IF ONE OF THE WITNESSES IS ALSO A PARTY IN THE PROCEDURE, NORMALLY HE WILL BE HEARD BEFORE ALL OTHER WITNESSES, BECAUSE THE PARTIES ARE ALLOWED TO BE PRESENT AT THE EXAMINATION.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE? YES, BUT NOT OFTEN USED, EXCEPT IN CRIMINAL MATTERS.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?
THE PARTIES AND THEIR REPRESENTATIVES (LAWYERS) ARE PRESENT AND CAN AFTER THE TESTIMONY ASK QUESTIONS TO THE WITNESS, but the judge can forbid special questions (Article 179 par. 2 CCP). The judge may on his own motion or on the request of a party confront witnesses with each other or with one of the parties.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)
IN AFFILIATION PROCEEDINGS A PARTY MAY BE REQUESTED TO COOPERATE IN A BLOOD TEST. IF HE REFUSES THIS MIGHT BE USED AGAINST HIM. IF THE MAN DENIES AFFILIATION HE HAS TO COOPERATE IN A BLOOD TEST. IN PROCEDURES CLAIMING COMPENSATION IN A HIV-INFECTION-CASE THE SUPPOSED ASSAILANT IS REQUESTED TO COOPERATE IN A BLOOD TEST, REFUSAL MAY BE USED AGAINST HIM.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?
THE PARTY WHO IS ORDERED TO PAY THE COSTS OF THE PROCEDURE (USUAL THE PARTY WHO LOST THE CASE) HAS TO PAY THE COSTS OF THE WITNESSES, OF THE EXPERTS AND OF THE OFFICIAL VISIT OF THE SPOT (BY THE COURT).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?
YES, IT DEPENDS ON THE CIRCUMSTANCES OF THE CASE. F.I. ILLEGALLY, I.E. WITHOUT CONSENT OF THE OTHER PARTY, RECORDING OF A TELEPHONE CALL, DOES NOT HAVE TO BE COMPLETELY IGNORED.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

In the Netherlands the court or judicial authority does not secure evidence. The autonomy of the parties means that only the parties themselves can secure evidence (Article 149 CCP).

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

REGULATION 1206/2001 IS IMPLEMENTED THROUGH A SPECIAL LAW: UITVOERINGSWET EG-BEWIJSVERORDENING. § 2 (ARTICLES 4-11) CONTAINS PROVISIONS FOR THE REQUESTS FROM OTHER MS COURTS.

THE CONVENTION OF EVIDENCE OF 1970 IS IMPLEMENTED BY A SPECIAL LAW: UITVOERINGSWET CONVENTION OF EVIDENCE, ARTICLES 5-15A, AND THE SAME HOLDS FOR THE TREATY OF 1954 (ARTICLES 6-14A, UITVOERINGSWET CONVENTION RELATING TO CIVIL PROCEDURE 1954).

Please describe legal provisions: the provisions in the 1954 and 1970 convention relates to the execution of letters rogatory ; the language; the summons of the witnesses and the costs.

The provisions of the Reg. 1206/2001 concern the language of the request (English) and the translation in Dutch. The Dutch court can set conditions to the parties and there representatives (Articles 11 par. 3, 12 par. 4 and 17 par.4 Reg. 1206/2001). These provisions concern also the summons of the witnesses and the costs of the taking of evidence.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

THE DUTCH SUBSTANTIAL RULES ON THE EXAMINING OF WITNESSES ETC. ARE APPLICABLE.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?
THE SAME AS IN NATIONAL COURTS PROCEDURES, SO THE MEANS OF EVIDENCE ARE NOT LIMITED SO ALL MEANS ARE POSSIBLE.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?
THE DOMESTIC LAW OF CIVIL PROCEDURE DOES NOT KNOW THIS PROVISION, FOR INTERNATIONAL CASES IT IS INCLUDED IN THE "UITVOERINGSWET" REG. 1206/2001
Legal provisions: Article 8 par. 2: the proper authority may set special requirements, specially if due process so requires.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?
YES. UITVOERINGSWET REG. 1206/2001 gives provisions for the taking of evidence in another MS; and also for the direct taking of evidence of Article 17.

Please describe legal provisions: Article 12 par. 2 UITVOERINGSWET REG. 1206/2001. The requesting court can appoint a judicial authority or another person to take evidence in accordance to Article 17 par. 3.

Poland

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

There is no legal definition of proof in the Polish Code of Civil Procedure (CCP), regulating taking of evidence. However it was indicated in art. 227 of CCP that subject matter to be proved are facts of great significance for the decision on a case, with no definition of the facts (although it is not required for the facts generally known, known by a court officially or admitted by the adverse party in the course of proceedings to be proved).

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

According to art. 233 of CCP, appraisal of evidence is unrestricted – free (a court evaluates credibility and probatory force of evidence by its own conviction, upon comprehensive consideration of the collected materials of a case, the same with appraisal of a refusal to present an evidence by a party or obstacles in taking of evidences produced by a party against court's order). This kind of appraisal includes adjustment of the material, a reference to every evidence taken and indication which of the facts significant for the decision on a case happened or did not happen. The essence of the appraisal is the choice of evidence being a base of court's decision on a case and disqualification of evidence with no credibility and probatory force in court's opinion. The probatory force of evidence means a court's conviction gained after taking of evidence regarding happening or not happening of the fact determined (Courts' verdicts: Appelate Court in Gdansk dated 5th of May 2009, I ACa 111/09, Appelate Court in Poznan dated 22nd of December 2005, I ACa 540/05).

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

xExamination of the parties,;
xPublic documents;
xPrivate documents;
xExpert testimony;
xJudicial examination;
xWitness testimony;
xmeans of reproduction of words, sounds and images;
xOthers (especify)

Please describe legal provisions:_____

A court is competent to order inspection, with or without participation of experts, and in compliance with circumstances – also with witness testimony (art. 292 of CCP) and examination of a blood group (art. 305 of CCP). There is also an open catalogue of the evidence to be taken, not regulated by CCP: biological examination evidence (ability to procreate examination evidence, anthropological examination evidence, comparison of a date of sexual intercourse of a putative father and a mother of a child with a degree of newborn's development evidence, DNA evidence), experimental reconstruction arranged by a court, observation in a medical institution (also according to art. 554 of CCP), bank's information regarding deposits on accounts of natural persons, transmission devices (telegraph, fax machine, morse code apparatus) or recorders (cash register, electrocardiograph, electroencephalograph) printouts. CCP regulations regarding so called other evidences are applied respectively and the way of taking evidence is prescribed each time by a court.

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?
- In cases where public documents are in public registers, is the access to these registers free?
- If not, ¿what are the conditions to have access to them?

Please describe legal provisions:_____

Public documents drawn up in a prescribed form by competent organs of public authority and other state organs in a scope of their activities are proofs of thereof what was officially certified in them. The provision is respectively applied to public documents drawn up by professional, self-government, cooperative and other social organisations in a scope of activities delegated by the law concerning cases of public administration (art. 244 of CCP). There are two refutable legal presumptions regarding public documents: presumption of authenticity (a document was produced by a person or an organ shown as its drawer, so it was not falsified) and

presumption of truthfulness (a document certifies real situation). The second one makes the documentary proof the main instrument in taking of evidences and gives a court a base for a decision on a case. The first one is also applied to the private documents – it makes them convincing and trustworthy, a party is not obliged to prove that a document is not falsified.

The access to the public documents is free. However the parties are obliged to indicate proofs for the facts they derive legal consequences from to be stated (art. 232) and also to present the documents. If a document is in a public register, it is enough for the party to provide its legally attested copy. If the party cannot do it – a court is authorized to call public institution to provide the copy (or original document). A review of the original document by a court or an appointed judge - not in the court but in the public institution - can be also ordered.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Please describe legal provisions:_____

Private document is a proof that a person who signed it, also made a statement enclosed in it (art. 245 of CCP). The presumption of authenticity (a document was produced by a person shown as its drawer, so it was not falsified) is applied to the private documents, the same with presumption that a statement enclosed in it was made by a person who signed it. The presumption of truthfulness (a document certifies real situation) is not applied, which makes private documents less reliable than public ones. In a case of contradiction between contents of public and private document, the first one will be considered as a more reliable and decisive one.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Please describe legal provisions:_____

Taking evidence by hearing the parties is prescribed in CCP as a subsidiary instrument, mostly because parties are interested in specific, advantageous settlement of a dispute. Still a priori denial of probative value of party's examination is against art 299 of CCP

(according to the Supreme Court verdict dated 22nd of August 1950, C 147/50), which provides that a court is competent to allow for evidence obtained by hearing the parties to clarify unexplained facts of significance to a decision on a case, that were not explained, although all the means of taking evidences were applied or there was no evidence. A court also decides about examination of only one party (in a case of such a possibility resulted from reasons of legal or factual nature) regarding disputable circumstances or about total disregard of the examination (also when the other party or one of joint participants in proceedings did not appear or refused to give evidence), according to art. 302§2 of CCP.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?
- In what cases witnesses can refuse to testify?
- The person who refuses to testify can be compelled to testify or punished?
- Are witnesses paid by their participation in the judicial process? If so, how much?
- Are there people who can not testify?
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?
- What is the role of the judge and the parties in the hearing of a witness?
- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

Please describe legal provisions:_____
___

No one, except spouses of the parties, their ascendants, descendants, siblings and kinsmen (in-laws) of the same line and degree and also persons connected by adoption, can refuse testify as a witness. The right to refuse to testify lasts after a marriage or adoption is terminated, however refusal to testify is not acceptable in cases regarding origin/parentage rights, except divorce cases. A witness can refuse to answer the question asked, if the testimony could expose him or his above-mentioned relatives to criminal responsibility, dishonor or heavy and direct pecuniary damage or if the testimony would be connected with infringement of important professional secret. A clergyman can refuse to testify about the facts known from a confession (art. 261 of CCP).

A court will fine a witness for unjustified non-appearance, then will call him again, and in a case of next non-appearance will fine him again, and also is competent to order compulsory bringing of the witness to court for trial (the same with the witness who receded without court's permission) – art. 274 of CCP. A fine is up to 5 000 PL, it can be ordered provided that a person was called to witness and that this person was

aware of being called to witness (Supreme Court resolution dated 28th of May 1982, I KZ 154/82).

A witness is authorized to demand reimbursement of incurred expenses connected with his appearance in a court, and also remuneration for a loss of wage (advance of money for costs of journey and cost of living in a place of hearing can be decided) – art. 277 of CCP. The right of the witness to demand reimbursement concerns costs only of in fact incurred tune, not higher than the one calculated according to the rules concerning national business trips of civil servants. The remuneration of for a loss of wage or profit cannot exceed an equivalence of 4,6% of the basic amount prescribed in budgetary act. The cost are regulated in CCP, and also mostly in the Act of 28th of July 2005 on court fees and Decree of 26th of October 1950 on amounts due to witness, experts and parties. The second act, although still in force, is not applied in practice.

Evidence can be taken by videoconference in accordance to art. 235 § 2, 3 of CCP and the Decree of the Minister of Justice dated 24th of February 2010 on the technical equipment and resources that enable evidence to be taken remotely in civil proceedings. Polish law does not impose restrictions concerning certain people or types of evidence to be obtained by videoconference. The only restriction derives from art. 235 § 2 of CCP – it is a character of the evidence that should not stand against taking evidence this way.

Certain person cannot be witness: 1) a person incapable to perceive or to communicate his observations, 2) a military man and civil servant not excused from keeping secret of classified information with restricted or confidential classification, if his testimony would be connected with its infringement, 3) a legal representative of the party and a person who can be heard as a party being an organ of a legal person or other organization having capacity to be a party in civil cases, 4) a certain joint participant in proceedings, 5) a mediator with respect to the facts he got to know with connection with mediation, unless excused from keeping secret of mediation (art. 259-260 of CCP).

A party referring to oral evidence is obliged to precisely determine the facts that have to be stated by testimonies of respective witnesses and to adduce witnesses to make calling them possible (art. 258 of CCP). Also, according to art. 236 of CCP, a court is obliged to formulate in court decree regarding taking of evidences a thesis to be proved – which means facts to be stated by prescribed means of taking evidence. A thesis to be proved formulated by a party in application regarding taking evidence can be treated as its base. The parties are obliged to indicate proofs for the facts they derive legal consequences from to be stated (art. 232 of CCP). The party cannot hear the witness called according to his application with reference to circumstances not covered by his thesis to be proved – neither the adverse party can do it. The limits of hearing the witness cannot be extended and cover also the facts that could be pointed out in parties' applications regarding taking of evidences. However the witness can be

examined regarding the facts emerging during his hearing. A court is not limited and can ex officio extend the thesis to be proved.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

The parties are obliged to indicate proofs for the facts they derive legal consequences from - to be stated. A court is authorized to allow evidence not indicated by the party (art. 232 of CCP).

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

No, but taking evidence by hearing the parties is prescribed in CCP as a subsidiary, last instrument.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

According to art. 235 § 2, 3 of CCP, a court is able to order that taking of the evidence (if a character of the evidence does not stand against it) will be performed using technical equipment making the activity possible at a distance. The evidence should be taken in the presence of the requested court or of referee/court clerk from this court. The Minister of Justice determines the types of equipments and technical instruments, ways to use them and also the ways of storing, reproducing and copying of the recordings – in Decree of the Minister for Justice of 24th of February 2010 on the technical equipment and resources that enable evidence to be taken remotely in civil proceedings.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Lack of presence of the parties does not withhold the taking of evidence, unless the presence of them or of one of them proves to be necessary (art. 237 of CCP). Also every party is authorized to demand the trial to be conducted in his absence (art. 209 of CCP).

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

Spouses of the parties, their ascendants, descendants, siblings and kinsmen (in-laws) of the same line and degree and also persons connected by adoption, can refuse testify as a witness. The right to refuse to testify lasts after a marriage or adoption is terminated, however refusal to testify is not acceptable in cases regarding origin/parentage rights, except divorce cases. A witness can refuse to answer the question asked, if the testimony could expose him or his above-mentioned relatives to criminal responsibility, dishonor or heavy and direct pecuniary damage or if the testimony would be connected with infringement of important professional secret. A clergyman can refuse to testify about the facts known from a confession (art. 261 of CCP). A person who, asked if a writing in a document is authentic could as a witness refuse the answer, is released from obligation to provide the sample of handwriting (art. 254 § 2 of CCP). Also a person obliged by a court to produce within the determined time a document being in his possession as an evidence of fact significant for the decision on a case is able to evade of the obligation, if: 1) a document contains classified information, 2) it is a person who could as a witness refuse to testify or a person having a document on behalf of third person who could oppose producing the document out of the same reasons, unless a) its holder or a third person is obliged to do it with regard to even one of the parties or, b) a document is drawn up in the interest of the party who demands taking the evidence, c) a party also cannot refuse producing a document, if the damage out of it would be losing a cause in court (art. 248 § 2 of CCP). Certain means of taking evidences (inspection of a person, examination of a blood group) can be applied only with consent of a person whom they concern (art. 298, art. 306 of CCP).

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

Costs of procedure are all the costs connected with the procedure, if they are met in judgment ending the procedure, or as defined in CCP – costs indispensable to deliberately assert one's rights and deliberately defend (art. 98 § 1 of CCP). There is a general rule that a participant in the legal proceedings is obliged to pay the amount determined in legal acts before taking an action. A fee should be paid upon filing a pleading (petition, writ or any other letter). A failure to pay might lead to the return of a plea after an ineffective deadline for supplementation. The general rule comes from provision of CCP, providing that a court will not take any action concerning an unpaid writ (petition) – art. 126[2]. The costs of bringing an action to the court depend on the type of proceedings described in legal acts. The Act on court fees provides for fees and expenses. There are five kinds of fees: a) permanent fees, b) proportional fees, c) basic fees, d) provisional and final fees and e) clerical fees. The court fees are the charges for specific actions taken by the court as a result of written statement of claim or defence in a court action. Expenses are the costs connected with hearing of evidence and some other court actions. The issue of reimbursement of the costs incurred by the parties is regulated by

provision of art. 98 -110 of CCP. The general rule prescribed in art. 98 is that a party losing a lawsuit is obliged to reimburse on the opponent's request costs indispensable to deliberately assert his rights and deliberately defend.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

Only evidence obtained according to the rules of taking evidence can be taken into consideration while establishing the facts, appraisal of evidence and material of the case (Court of Appeals in Katowice verdict dated 22nd of January 2009, V ACa 551/08). Establishments of facts according to the evidence not formally permitted and not taken during a trial violate general rules of procedure of taking of evidences in the scope of directness, openness, equality of the parties and contradiction (verdicts of the Supreme Court: dated 13th of November 2003, IV CK 212/02, dated 20th of August 2001, I PKN 571/00, dated 23rd of June 1999, II UKN 9/99, dated 3rd of February 1997, I CKN 60/96) and also of free appraisal of evidence – their use as a reference point for the consideration of different evidence disqualifies the stated facts (Supreme Court verdict dated 9th of March 2005, III CK 271/04).

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

Everyone is obliged to present a document in his possession and being an evidence of fact significant for the decision on a case – when ordered by a court, unless the document contains classified information (art. 248 § 1 of CCP).

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions:_____

According to art. 44 § 2-4 of Act of the law on the structure of the law courts dated 27th of July 2001, courts are obliged to provide judicial assistance on a request of foreign courts, if the mutuality is guaranteed, the request addressed by Minister of Justice binds the

requested court (they are also obliged to proceed taking of evidences in the scope of civil procedure in other cases, when the request is addressed by Minister of Justice). The specific rules concerning cases of judicial assistance (also taking of evidences) request are provided by § 99-105 of Minister of Justice Regulation – statute of the law courts (SLC) dated 23rd of February 2007. There are also specific rules concerning judicial assistance in CCP (art. 1130-1136). In cases of taking evidence courts are authorised to contact both courts or other foreign organs and the Polish diplomatic and consular posts. A court can infer to be directly informed, as well as the parties and their representatives, about the place and date of taking evidence – to enable them taking part in it (when the Polish court is requested, it will inform them directly only when it was also requested, and in lack of different provisions). A court is also authorised to assign one of the judges to be present when taking of evidences by a requested organ or to take part in it, unless the law of requested state opposes it (the same with an expert presence or participation). When the Polish court is requested the taking of evidence by an organ, court or person assigned by requesting state depends on the consent of the court, when it is not against public order (public order clause). With the consent of the requested state, the evidence can be taken directly by a court or the judge assigned in the requested state. It also may be taken using technical equipment making the activity possible at a distance. Polish courts being requested, take evidence on foreign court's application – according to the Polish law or, requested by the foreign court, using means not prescribed by it, when it is not against the Polish law and not against the public order (public order clause). They are authorized to refuse taking evidence, when 1) it would be against public order, 2) it is not in the scope of courts' activities, 3) there is no mutuality between the requested and the requesting states, 4) a pre-payment covering future costs of participation of experts, interpreters, parties and other persons has not been made.
Taking of evidences in relations between European Union countries is regulated by Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS? -

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

According to § 99-105 of SLC they are the same as provided by CCP.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Legal provisions

There are certain rules related to the order concerning taking of evidences by the requested court. The requesting court should precisely describe what kind of actions should be done, determine facts and circumstances to be stated by certain persons, and if necessary – mention the facts and circumstances to pay special attention to. The court should also indicate addresses of the persons to be heard or informed that a date was set and give information who has to be questioned under oath (§ 99. 1 of SLC) . The only limitation, but generally applied to possibility to take evidence by another court, is a distance between place of residence of certain persons (witness, party, expert) and a place, where a requesting court is situated (if it is less than 50 km, there should be no request), according to § 100. 2 of SLC.
Also look at point II.1.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Please describe legal provisions:_____

Yes, look at the previous answer.

Portugal

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

According to the art. 341.º of the portuguese Civil Code (C.C.) proof is aimed to demonstrate the reality of the facts. The notion of facts relevant to this definition results from the art. 513.º of the portuguese Civil Procedure Code (C.P.C.), which concerns the object of proof and mentions that the object of proof are the facts relevant to the exam and decision of the cause that are controverting or needed of proof.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

This question must be answered considering two different levels:

I- *Abstract level* - In the portuguese civil system the means of evidence are not ranked in a general and abstract way, which means two things:

1. The legal means of taking evidence do not necessarily prevail over the means of evidence concerted by the parties in proof agreements (as long as they are admitted, and that implies they are celebrated within the domain of disposable rights and in the respect of the limits imposed by the public order and by the party's position fair equilibrium principle of the in the procedural relation , - art. 345.º C.C.).
2. There is not a general list organising the different kinds of means ok taking evidence according to priority criteria.

II- *Particular level* - There are some specific rules on what concerns some particular facts.

We will mention two kinds of specificities:

1. On the admissibility of means of evidence to prove a certain fact

In the absence of a special rule, the facts can be proved by any category of mean of evidence.

But there are some facts that must necessarily be proved by document.. If so, the court cannot discharge the special formalities required by law in order to prove a certain fact (art. 655.º, 2 C.P.C.)

This happens when the document is an *ad substantiam* formality (e.g. the immovable things sale agreements must be celebrated under the public deed or authenticated private document – art. 875.º cc) or when it is an *ad probationem* formality. In the first case, the proof of the agreement must be made by the document prescribed by law or by a document with a higher probative degree. In the last case the document mentioned in the legal rule can be replaced just by one of two other means of evidence: the express judicial admission or the extrajudicial confession made in a document with equal or higher probative degree (art. 364.º, n.º 2 C.C.).

2. On the court evaluation of each category of evidence – standard of proof

The general principle relevant in matter of evaluation of the proof relies on the art. 655.º, 1 C.P.C.. According to this rule, the court is free to appreciate the proof according to the careful judge's conviction the judge(s) form about each fact.

This general principle is also mentioned in several rules, related to specific means of evidence: expert testimony (389.º C.C.), judicial examination (391.º C.C.) and witness testimony (396. º C.C.), among others.

If, after the analysis of the proof , the court gets convinced of the reality of the fact, the other party (the one that is not on the burden of proof) must create on the court at

least the doubt about the verification of that fact in order to avoid the decision benefic to the other party ("The fact is proved") – art. 346.º C.C..
The party on the burden of proof must make probative evidence and the other party has the burden of making the counter proof (of creating the doubt on the judges mind).
But there are exceptions to this principle.
Some means of evidence (public documents-art. 371.º C.C., judicial confession – art. 358.º C.C. and rebuttable presumptions- 350.º, 2 C.C.) make full proof, which means the other party must make rebutting evidence (must demonstrate and convince the court that the fact *did not* happen) in order to avoid the decision that benefits the party who is on the burden of proof- art. 347.º C.C..

Other (more rare) means of evidence[3] make irrebuttable proof of the facts. In this case it is not admissible proof of the contrary. Example of that are the irrebuttable (conclusive) presumptions of law (according to the art. 1260.º, n. 3 C.C. the scrambling possession is necessarily qualified as bad faith possession, even when the possessor has a title).

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties – the examination of the parties is considered a mean of evidence just when it is a way of obtaining the acknowledgment of a fact that is unfavorable to the examined party and favorable to the opposite one - arts. 352.º - 361.º C.C., 552.º - 567.º C.P.C.
- ☐ Public documents – arts. 362.º - 372.º C.C., 383.º - 387.º C.C., arts. 523.º - 551.º-A C.P.C.
- ☐ Private documents – arts. 362.º - 368.º C.C., 373.º - 387.º C.C., arts 523.º - 551.º-A C.P.C.
- ☐ Expert testimony – arts. 388.º and 389.º C.C., 568.º - 591 C.P.C.
- ☐ Judicial examination – arts. 390.º and 391.º C.C., 612.º - 615 C.P.C.
- ☐ Witness testimony – arts. 392.º -396.º C.C., 616.º - 645.º C.P.C.
- ☐ means of reproduction of words, sounds and images – these means of evidence are included in the notion of document. The art. 362.º C.C. statues that document is any object made by men with the purpose of reproducing or representing a person, a thing or a fact.
- ☐ Others (especify) - Presumptions of fact- arts. 349.º and 351.º C.C.; presumptions of law (rebuttable and irrebuttable)- arts. 349.º and 350.º C.C..

I.4 REGARDING PUBLIC DOCUMENTS

What is the probative value of public documents?
The portuguese civil law statues that public documents are all those rendered, according to the legal formalities, by the public authorities within the limits of their competency or, within their scope of activity, by the notary or other public officer endowed with public faith – art. 363.º, n.º 2 C.C..
The authenticated documents are the private documents confirmed by the parties befote a notary, in the terms prescribed in the notarial law.
The notion of private documents includes all the documents that are not public.
According to art. 371.º C.C..,the public documents make full proof of the facts that are refered on them as practiced by the public authority or officer, as the facts that are attested on them on the basis of the perceptions of the documentor entity.
The mere personal judgements of the documentor count as elements submitted to the court discretion.

> [3] The qualification of the presumptions of law as means of evidence is not pacific in doctrinal interpretation.

If the document contains amended truncated, erasured or interlined words, without the due mention, it will be on the court discretion the determination of the extention to which the external vices of the document exclude or reduce its evidential ability (art. 372.º, 2 C.C.).
Moreover, just the demonstration that the public document is a false made instrument is able to rebut its evidential ability (art. 372.º, 1 C.C.) and it is false when it is attested that the public authority or officer perceived a fact that did not happen or that the responsable entity practiced an act that it did not practice. When the false nature of the document is evidenced by its external signs, the court can declare that the document is false regardless the parties demand (art. 372. C.C.).

- In cases where public documents are in public registers, is the access to these registers free?

The access to public documents is submitted to some objectiv and subjectiv restrictions.

- If not, ¿what are the conditions to have access to them?

  The general rules on what concerns the access to the administrative documents is regulated by the Lei n. 46/2007, 24 Agosto[4] . The access to these documents obeys to the publicity, transparency, equality, justice and impartiality principles.
  According to this law, everyone has the right of access to administrative documents, which comprehends the right of consultation, reproduction and information about its existence or content. The interest in the exercise of this right doesn't have to be justified.
  However, the access to documents that may contain information which knowledge may endanger or cause damage to the internal or external State security can be forbidden or temporarily (during the strictly necessary period) conditioned. That restriction must be executed by a classifying legal procedure. Public administration can also refuse the requests when they are repetitive or systematic or when, considering the number of documents requested, the request is clearly unreasonable.
  The access to the documents may occur by the applicants' free analysis of the document in the register entity, by copy (or other technical means, namely visual, sonorous or technical) or by certificate, but the use of the information is not allowed when it implies the copyright or industrial property rights violation.
  If the reproduction involves the risk of damage to the document, the petitioner may require, at its own expenses, the manual copy of the document or its reproduction by another safe way. However, public entities don't have the duty of creating or adapting documents if it implies a disproportionate effort. The costs of reproduction (that must be publicly advertised) are determined by the portuguese government and are assumed by the applicant. .
  But there are specific rules regarding certain documents in particular, namely the civil register documents (such as marriage, birth and death certificates). The access to civil register documents is ruled by the Civil Register Code (C.R.C.). According to the general principle (art. 214.º, n. 1 C.R.C.), any person can request civil register certificates. There are, however, some exceptions:
  -the adoptive children full content certificates or copies can be requested just by those to whom the register concerns or their descendents, heirs or ascendants, but the adoptive parents identity can not be revealed to the biological parents of the adopted child, except if they expressly allow it(art. 1985.º, 1 C.C.) and the biological parents can expressly declarate they do not allow the revelation of their identity to the adoptive parents (art. 1985.º, 2 C.C.). The biological filiation of the adopted is mentioned in the birth entry reporting certificates only if that is required, but it is

> [4] It replaces the Lei n. 65/93, 26 de Agosto and transposes the Directive n. 2003/98/CE, 17 Novembro.

always mentioned when the certificates are requested in order to document marriage procedures (213.º, 3 C.R.C.); - if the entry contains any registering of sex change and the consequent first name's change, the full content certificates or copies can be requested only by the people to whom the register concerns, their heirs or judicial authorities (for criminal investigation or instruction purposes); when the acknowledgment of child entry is secret, the certificate's request is admitted only for marriage preliminary or alimony procedures purposes; the judicial or police authorities and the IRN, I.P. (National Notarial and Register, Public Institute) are allowed to request any register or document certificates, exceptuated the above mentioned case of sex change.

The register certificates with filiation discriminatory references are, when possible, necessarily provided by informatic ways without those references, whatever the kind and purpose of use of the document, unless the person to whom the register concerns, his/her agent, ascendant or descendent request in writing a copy certificate of the entry (art. 212.º, 4 C.R.C.). It is also possible to request certificates of documents filed in the civil register authorities, except if they concern secret entries, but the medical death certificate can be requested just by whom demonstrates real and justified interest in the request. (217.º C.R.C.).Except the exemption previsions (namely, the fetus death certificates are always free- art. 215.º, 7 C.R.C.), the petitioner of acts practiced by the civil register authorities must pay the correspondent tax. The requests to which is not joined the proof of payment of the due price are preliminarily rejected (art. 299.º crc). The prices are established in the register and notarial emolument's Law (R.E.R.N.) and they must be affixed in the public buildings in an accessible and visible way (art. 6.º R.E.R.N.).

According to the R.E.R.N., the certificates are free when, among other cases, they are requested in order to be joined to adoption procedures, employment related accident procedures (when the certificate is requested by the victim or his/her relatives), luso-brazilian equality statut attribution procedure (regulated in the Friendship, Cooperation and Consultation Treaty, 22 April 2000) or when the petitioners demonstrate their poorness (art. 10.º, ns. 1, x), z), 2 and 3 R.E.R.N.).
The certificate fees (regardless the specific kind of register) are previewed in the art. 19.º R.E.R.N., according to which the general certificate price corresponds to €20. However, the tax decreases to €10 if the certificate is requested to security system or family allowance purposes and increases to €25 if it is a negative register certificate or to €35 if it is a nationality certificate. The requests of non certified copies imply the payment of €1 per page or fraction.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

According to the art. 373.º CC, the private documents must be signed by its author or contain an allograph (if the document's author is not able to sign due to illiteracy or other reasons). The allograph must be read or confirmed in front of the notary, alter the document's reading to its author. When the document is subscribed by someone who can not read, the subscription bounds the subscriber orly when it is done or confirmed befote a notary, after the document's reading to the subscriber.
But when the documents are issued in high quantities the signature can be replaced by simple mechanic reproduction.
The private document makes full proof of its author's declarations when the handwriting and signature (or just the signature) are certified in person by notary or when the other party accepts, doesn't contest or

declares not to know if they are of his/her authory (if the party who benefits of the document states that belonging) or when they are legally or judicially considered to be true. However, that proof can be rebutted by the invocation and proof of the document's falsehood.
The facts contained in the declaration are considered to be true as they are contrary to the interest of the declarant, but the declaration is indivisible in the same manner prescribed to the proof by confession.
If the document contains marginal notes, interlined words, deletions, amendments or other external vices, without the due reservation, the court is free to decide, according to its own criterion, if those vices exclude or reduce the document's probative value (arts 374.º to 376.º C.C.).

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

The plaintiff and defendant's statements are judicially relevant when they contain the recognition of unfavorable facts to its autor if that recognition is favorable to the opposite party (confession) - arts 352 C.C..
According to art. 358.º C.C. the written judicial confession has full probative value against its autor, but that probative value is restricted to the procedure where the examination of the parties was made (art. 355.º, 3 C.C.). However that full probative value doesn't exist if the confession is legally declared unsufficient or when it concerns to facts that, according to the law, cannot be recognized or researched, if it concerns to facts related to inalienable rights or if the confessed fact is impossible or notoriously inexistent (art. 354.º C.C.).
The judicial confession can be declared invalid in the general legal terms, even after the *res iudicata.*
The recognition of unfavorable facts that cannot be valued as confession is a probative element submitted to the court's free evaluation (art. 361.º C.C.).
It can be made spontaneously in the articulated pieces or in any other act of the procedure, when personally signed by the party or attorney specially authorized (art. 356.º, 1 C.C.). The non spontaneous judicial confession can be made in the examination of the parties (art. 356.º, 2 C.C.).
If the court orders a party examination or its attendance in order to provide informations or clarifications and it doesn't appear or refuses to testify or to provide the requested informations or clarifications , without proving justified impediment, or if it claims that it doesn't remember or doesn't know anything, the court appreciates the probative value of the party's procedural behavior according to its free criterion (art. 357.º C.C.).
The unwritten judicial confession is valued according to the free criterion of the court (art. 358.º, 4 C.C.).
The confession statement must be unequivocal (art. 357.º, 1 C.C.) and it is relevant even when the examination of the party is made by a judicial (or arbitral) court without jurisdiction (art. 355.º, 2 C.C.).

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

According to the art. 519.º, 1 C.P.C. everyone, even who is not a party, must collaborate in the discovery of truth, answering the questions made by the court, submitting to the necessary inspections, providing what is required and performing the acts determined by the court.

- In what cases witnesses can refuse to testify?

Witnesses can refuse to testify in the civil procedures when the parties are their ascendants, descendents, adopter, adopted, father-in-law, mother-in-law, spouses, ex - spouses or cohabitant in union under conditions similar to those of spouses (art. 618.º, 1 C.P.C.) and they must be informed by the judge that they have this right (art. 618.º, 2 C.P.C.). However, even this categories of witnesses cannot refuse to testify in civil procedures aimed to verify the birth or death of children (son/daughter).
Those who are under profesional, oficial or State secrecy must excuse to testify about the facts subject to confidentiality (618.º, 3 C.P.C.). In this case the court must apply the criminal procedural rules on the legitimacy excuse control and on the waiver of secrecy invoked.

- The person who refuses to testify can be compelled to testify or punished?

According to the art. 519.º, 2 C.P.C. all those who refuse to cooperate will be sentenced to a fine and submitted to the feasible coercive means.

- Are witnesses paid by their participation in the judicial process? If so, how much?

It is not legally previewed a standard amount of money due to the witnesses who testify in a judicial process, but all the witnesses notified to testify (even when they live in the court's county or when they do not testify) have the right to request the payment of travel expenses and the setting of a fair compensation (art. 644.º C.P.C.). The request must be made until the close of the trial session.

- Are there people who can not testify?

Only those who are not parties in the judicial process, who have physical and mental ability to testify about the facts which are the subject of proof and who are not prohibited by mental disorder can testify as witnesses. It is the duty of the judge to control the natural ability of persons listed as witnesses in order to assess the acceptability and credibility of their testimony (art. 616.º C.P.C.).

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

Witnesses can be heard by teleconferencing in the court of the county where they live when they don't live in the court's county of the lawsuit, when they live abroad or (in the case of the autonomous regions of Madeira and Açores) when they don't live in the island where the court is located (art. 623.º C.P.C.), if they are not presented by the parties. But when the lawsuit's court is located in Lisboa or Porto metropolitan areas, witnesses don't testify by videoconferencing if they live in those areas. However, when the witnesses' displacement to the court is impossible or hardly difficult, the judge can determine (if the parties agree and when that is compatible with the nature of the facts to investigate or clarify) that witnesses provide essential information to the satisfactory resolution of the dispute by phone or by other direct means of comunication with the court (art. 639.º- B C.P.C.).

- What is the role of the judge and the parties in the hearing of a witness?

The judge begins the witness hearing (559 CPC) warning the witness about the moral importance of its oath, about the duty to be faithful to the truth and about the consequences of false statements. The oath's formula is "I sweare on my honor to say the truth and nothing but the truth". If the witness refuses to take the oath that constitutes a refusal to testify. If the evidence is given before the collective court, the questioning is done by the lawyer of the party who listed the testimony and the other party's lawyer can inquire it on the facts about what it testified when that is necessary to complete or clarify the testimony. The presiding judge should prevent the lawyers to ask witnesses naughty, suggestive, misleading or vexatious questions. Besides, he and the assistant judges may ask witnesses the questions they deem suitable for ascertaining the truth. Therefore, the questioning and the instances are made by representatives of the parties, without prejudice to the clarifications sought by members of the court. The presiding judge can assume the inquire on its own as deemed necessary to ensure the tranquility of the witness or terminate improper questions (art. 638.º cpc)

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

The witness testimony is not free – the questioning of witnesses respects to the facts contained in a list of questions (called"base instrutória"-list of the disputed facts) previously prepared by the court with the parties cooperation (in the preliminary hearing – art. 508.º-A, d) C.P.C.) or just by the court (when there is not preliminary hearing – arts. 508.º B, 1, 510.º e 511-º C.P.C.). When there is not "base instrutória" the questioning of witnesses respects to the facts previously adduced by the parties in their articulated pieces or carried by the judge to the process. The parties ask the witnesses about the facts they invoked or contested, but each party cannot hear more than five witnesses for each fact (in that number are not included the witnesses who claim to know nothing) – art. 633.º C.P.C. (that limit is reduced to three witnesses in the "sumário" process – art. 789.º C.P.C.).

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

According to the art. 265.º C.P.C. the judge may, his own motion, conduct or order all the reasonable diligences to ascertain the truth and fair composition of the dispute on the facts he may know. This general principle is also mentioned in some specific rules, namely the arts. 579.º and 612.º, 1 C.P.C., which concern to expert testimony and judicial examination, respectively.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

Due to the art. 265-A C.P.C. (principle of formal adequacy) there isn't an *imperatival* order to follow in conducting the taking of evidence in the trial, on what concerns the different means of taking evidence. Even if, ordinarily (art. 652.º , 3 C.P.C.) the attempt of conciliation is followed by the parties examination, sound recordings or film reproductions, experts clarifications and witnesses inquiry, the expert testimony (or the judicial examination-not mentioned on that rule) do not *necessarily* precede the witnesses' hearing. Moreover, there are some priority rules on what concerns the legal status of each mean of evidence. In fact, as regards the examination of the parties, if both parties have to be examined, the defendant is examined first and only then the author (art. 558.º C.P.C.).With respect to the witnesses's testimony, the witnesses presented by the author are the first to be heard and then the defendant's, according to the order they were listed by each party, unless the judge determines that the order is changed or if the parties agree to change it. If, however, appears as a witness a judicial officer, it is the first to testify, although it has been offered by the defendant (art. 634.º C.P.C.).

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

Besides the above mentioned possibility of witnesses being inquired by teleconference (art. 623.º C.P.C.), it is also previewed that the parties can be examined by teleconference when they live outside the judicial circle or outside the island (in the case of the autonomous regions of Açores and Madeira) and that the experts from public institutions, laboratories or services are heard by teleconference from their workplace (arts. 556.º, n.º 2 and 588.º C.P.C. respectively).

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR SULEGISLATURES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

The art. 517.º CPC establishes the contradictory hearing principle, according to which, unless otherwise stated, the evidence will not be accepted or produced without the contradictory hearing of the party to whom it is to be opposed.

On what concerns the evidence produced in the trial, the parties will be notified (when they are not in default) to all acts of preparation and production of evidence, and shall be permitted to intervene in such acts in accordance with law; respect to the pre-constituted evidence, the opposite party has the right to contest its admission or probative value.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

The art. 519.º, n.º 2 C.P.C. establishes the admitted cases of refusal to cooperate. According to this legal rule, the refusal is legitimate if obedience imports violation of physical or moral integrity of individuals, interference with private or family life, interference in the home, correspondence or telecommunications or violation of professional, public officials or state secrecy.

If a person refuses to be submitted to the taking of evidence outside the above mentioned cases provided by law, it will be sentenced to a fine and submitted to the feasible coercive means. Besides, if it is a party, the court freely appreciates the value of the refusal for evidentiary purposes, and it may lead to the reversal of the burden of proof due to the precepts in art. 344.º, n. 2 C.C..

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

According to the art. 447.º C.P.C. the concept of legal expenses covers court fees, charges and expenses of the parties. The court fees is the amount owed by each party and is fixed according to the value and complexity of the case under the Rules of court costs. The charges are all the expenses that correspond to the acts required by the parties or ordered by the presiding judge. The expenses of party comprise what each party may have spent on the process and is entitled to be compensated under the condemnation of the other party pursuant to Rules of court costs. The expenses generated by the taking of evidence are a kind of charges. Except as provided in the law regulating the access to the law, each party pays the charges to which it has given rise. The charges are the responsibility of the party who requested the act, or if any of judge's motion, they are the responsibility of the party that takes advantage of it. When all the parties have the same interest in the proceedings or completion of the expense, take advantage of the same care or expense or when it is not possible to determine who is the interested party, the charge is shared equally between the parties. The charges are exclusively borne by the applicant, regardless of maturity or of condemnation in costs, when the requested taking of evidence are clearly unnecessary and dilatory. However, the application of this condemnation depends always on the judge (art. 447.º-C C.P.C. and art. 16.º, n.º 1, c), d),) and i) R.C.P.-procedural costs regulation). The action's, incident's or appeals' extinction decision condemns in costs the party who caused the judicial action or, if there isn't a prevailing party, who took advantage of the process. It is understood that the loosing party is the one who caused the judicial action and it is condemned in costs in proportion to the decay (art. 446.º C.P.C.).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

There isn't any civil rule about the evidence illegally obtained probative value in civil procedure. The admissibility or inadmissibility of such a proof is supported by different doctrinal arguments. The procedural celerity and the duty of procedural truth are arguments pro-admissibility. On the contrary, the juridical system unity, the good faith principle and the dissuasion to illegal activities are arguments against the admissibility of the illegal evidence use in civil procedure.

On what concerns the evidence produced in court, the art. 201, n. 1 C.P.C. establishes that it is forbidden the practice of acts not allowed by the law. The notion of law is interpreted to include the constitutional law, namely the fundamental rights and this interpretation allows the conclusion that it is not admitted the production of illegal proof in court.

With respect to the evidence produced extrajudicially there is not a similar rule. However, the art. 32.º, 8 C.R.P. (portuguese Constitution), whose title refers to the criminal procedure guarantees, determines that all the evidence obtained by torture, coercion, violation of moral or physical integrity, wrongfull interference in private life, home, correspondence or telecommunications is null. The expression "all the evidence" allows several authors to accept that this rule is applicable not only when the proof is obtained by public authorities but also when it is obtained by private and valued by the court.

Finally, remains one doubt: can this rule apply the civil procedure or is its application limited to the criminal procedure? The fact that it is not an exceptional rule and the content of the art. 10.º, 2 C.C. (when there are legal omissions it is applicable the legal rule justified by similar reasons) leads to the conclusion, supported by some civil procedure authors, that the prohibition is applicable to the civil procedure.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

The above mentioned art. 519.º C.P.C. does not exclude any person or authority neither from the duty of cooperation to the discovery of the truth nor from the consequences of its violation.

Moreover, the simple confidentiality of data that are available in the administrative services (in manual or computerized, and referring to the identification, residence, occupation and employer or allowing the financial position's control of either party in a judicial action does not preclude that the trial judge may (*ex officio* or upon request of any party), by reasoned order, to determine the provision of information to the court when it considers that is essential to the orderly process of the procedure or to the fair composition of the dispute. However, the information thus obtained must be strictly used as necessary to achieve the purposes which led to its request and may not be unduly disclosed or be subject to nominative information file (art. 519.º- A C.P.C.)

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

DE PAIS ESTRANGEIRO A PORTUGAL

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

According to the arts. 184.º to 188.º C.P.C. the national courts can be requested by a foreign court on the taking of evidence. That request must be presented in a letter rogatory. The requested court is obliged to cooperate with the foreign court, except if the first court has not jurisdiction power to the practice of the required act (in this case, the required court must send the rogatory letter to the competent national court and communicate that expedition to the petitioner foreign court – art. 177.º, n.º 2 C.P.C.), if the required act is absolutely forbidden by law¸ if the rogatory letter is not legalized (except if it is received through diplomatic mail or if the legalization is discharged by international treaty, convention or agreement), if the act violates the portuguese public order, if the rogatory letter enforcement infriges the state's sovereignty or security or if the required act implies the execution of a foreign court decision that must be reviewed and it is not yet reviewed or confirmed.

It is not prescribed any special formality on what concerns the way of reception of letter rogatory (except when a particular form is imposed by international treaty, convention or agreement) and the Department of Justice is the competent entity to promote the acts that follow the reception of letters rogatory by the diplomatic way. Once received, the letter rogatory is sent to the Public Department in order to allow its indictment on the eventual opposition to the letter enforcement considering the prevalence of the public interest and then it is decided if the letter must be enforced.

It is to the required court to regulate, according to the general national law, the letter enforcement. However, it may concede on the compliance of particular formalities required by the foreign court, as long as they are not schocking according to the Portuguese law.

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS? As mentioned above, if the requiring foreign court doesn't ask the observance of special formalities, the national court will apply the national law.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

There are not specific rules on the taking of evidence requested by a foreign court.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

The direct taking of evidence by foreign courts is not expressly provided (or forbidden) in the internal legal provisions, but Portugal is bound by the Council Regulation (EC) No 1206/2001 of 28 May 2001, on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, which provides (art. 17) the direct taking of evidence by the foreign requiring court.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

According to the art. 170.º, n.º 1 c.p.c., the national courts can send letters rogatory to foreign courts in order to require the taking of evidence. There are not specific

legal provisions on the direct taking of evidence request. But, when the required foreign courts are located in Member States bounded by the Council Regulation (EC) No 1206/2001 of 28 May 2001, on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, the portuguese courts can use the direct taking of evidence right previewed on art. 17.

Romania

MEMBER STATE REPORT COLLECTION FORM

Please describe the situation for your Member State, for each question, in a detailed manner

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

In civil and commercial matter there is no legal definition of proof. [5] Framework rules in matter of proof and material evidence in civil and commercial processes are given by the Civil Code and the Code of Civil Procedure.

With regard to this legal framework it is worth mentioning that from 1 October 2011 entered into force Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, no.511 of 24 June 2009, republished with subsequent changes in the Official Gazette, Part I, no.505 of 15 July 2011 (the new Civil Code, which repealed most of the previous Civil Code of 1864, the Commercial Code, as well as a number of other regulations).

Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, no. 409 of 10 June 2011, as amended and supplemented, provides, under Article 230 subparagraph a) that from 1 October 2011 is shall be repealed "*the Civil Codex (or the Civil Code of 1864), published in Official Gazette no. 271 of 4 December 1864 [...]* ***except for the***

[5] A legal definition of proof is provided, however, in the criminal law, namely under Article 63 paragraph (1) of the Code of Criminal Procedure, which states that: "***Shall constitute proof any element which serves to establish the existence or nonexistence of a crime, to identify the person who committed it and to have knowledge of the circumstances necessary for a fair settlement of the case."***

>

provisions of Articles 1169 to 1174 and 1176 to 1206, which shall be repealed upon the entry into force of Law no. 134/2010 on the Code of Civil Procedure." The exempted legal provisions that are, therefore, in force, refer to the regime of evidence, as part of Chapter IX of the old Civil Code - "***On obligations and payment evidence***".

I.2 ¿ARE THE MEANS OF TAKING OF EVIDENCES RATED IN YOUR MS?

No.[6]

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties;
- ☐ Public documents;
- ☐ Private documents;
- ☐ Expert testimony;
- ☐ Judicial examination;
- ☐ Witness testimony;
- ☐ means of reproduction of words, sounds and images;
- ☐ Others (specify) : **material evidence – Article 215 – Article 217 of the Code of Civil Procedure; assumptions - Articles 1199 to 1203 of the Civil Code**

- **All means of evidence mentioned above are allowed;**

I.4 REGARDING PUBLIC DOCUMENTS

- **What is the probative value of public documents?**

Romanian civil law distinguishes, in terms of documents, between authentic documents and private documents. The authentic document is defined by Article 1171 of the Civil Code as follows: ”*The authentic document is that document which was done with*

> [6] This issue is strictly regulated also in criminal matter, through the provisions of Article 63 paragraph (2) of the Code of Criminal Procedure, according to which *”**Evidence do not have a predetermined value.** Assessment of each and all evidence shall be made by the criminal prosecution body or by the court of law after examination of all submitted evidence, for the purpose of acquiring the truth.”*

solemnity required by law, by a civil servant who has the right to work in the place where the act was done. "

The authentic document enjoys the presumption of authenticity and validity. In this sense, Article 1173 paragraph (1) of the Civil Code provides that "*The authentic act can be fully trusted by any person in terms of its subject and clauses."*

The mentions comprised in the document, which represent personal findings of the attesting agent, perceived by his own senses, as well as the date of the authentic document, represent full proof and cannot be countered by evidence to the contrary. To remove them, the interested party must initiate the procedure of registration as forgery, procedure that may attract criminal liability of the attesting agent who mentioned in that document certain circumstances or statements that he did not know personally or that he distorted.

Mentions concerning the parties' statements, made before the attesting agent, but whose veracity can not be verified by him, are prima facie evidence.

Mentions that are not related to the subject of the document may constitute prima facie evidence (pursuant to Article 1174 paragraph 2 of the Civil Code**"** *[...] mentions concerning issues totally unrelated to that of the convention, can only serve as prima facie evidence*.")

The legal regime of authentic documents is enjoyed also by electronic documents meeting the requirements provided by Article 6 of Law no. 455/2001 on electronic signature, according to which "*The document in electronic form, to which was incorporated, attached or logically associated an electronic signature, acknowledged by the one to whom it is opposable, has the same effect as the authentic document between those who signed it and those who represent their rights."*

- **In cases where public documents are in public registers, is the access to these registers free?**
- **If not, ¿what are the conditions to have access to them?**

Please describe legal provisions:_____

As concerns the courts, access is free. Thus, according to Article 862 of the Code of Civil Procedure, *"In order to obtain data and information necessary for carrying out the procedure of communication of summons, of other acts of procedure, as well as for fulfilling any other responsibility related to their own jurisdictional activity, courts have the right directly access electronic databases and other information systems held by public authorities and institutions*.

The authorities and institutions mentioned in paragraph 1 have the obligation to take all necessary measures to ensure direct access of court to the electronic databases and information systems referred to in the same paragraph."

Article 176 of the Code of Civil Procedure stipulates that *" The court will not be able to require submission of plans and land books, of records of the authorities and of the original documents filed with courts or notaries public.*

The assessment of these documents shall be made, with the parties' summoning, by a delegated magistrate or, if the document is kept in another locality, through delegation, by the respective court."

As concerns citizens' access to such information, the normative acts with relevance in special matters are those which set the rates for information with respect to the data contained in various records or public registries.

Thus, for example, Order no. 39 of 6 April 2009 on approval of rates for services provided by the National Agency of Cadastre and Land Registration and its subordinate units and of licensing fee for people who realize specialized works in the fields of cadastre, geodesy and cartography, published in the Official Gazette of Romania, Part I, no.253 of 16 April 2009, establishes in Article 2.7 of the Annex.

I.5 REGARDING PRIVATE DOCUMENTS

- **What is the probative value of private documents?**

Please describe legal provisions:_____

The law does not define the private documents, but from the interpretation of relevant legal norms it results that these are documents prepared by the parties, without the intervention of an organ of state, signed by those who are bound by them.

According to Article 1176 of the Civil Code *"the private document, acknowledged by the person to whom it is opposable, or seen, according to the law, as acknowledged, has the same effect as the authentic document, between those who signed the same and between those who represent their rights."*

As results from these legal provisions, the private document that meets all formalities required by law has the same probative value as the authentic document, in the meaning that it is full proof for the relationship set forth therein.

According to Article 1178 of the Civil Code, "*When someone does not acknowledge his/her writing and signature, or when his/her successors declare that they do not acknowledge the same, then justice orders the verification of that document."*

Interpreting these provisions, the specialized literature and the case-law have established that the private document is not evidence if it is not recognized by the party to whom it is opposable or it is not verified by court by means of verification of records or by means of a graphologic expertise.[7]

Besides these documents, the legislator establishes also some documents that are not prepared with the intention to serve as evidence and which, in principle, are unsigned. The following

> [7] Maria Fodor, "Evidence in civil proceedings", Univ Jurid. Publishing House, 2006, p.167

documents fall into this category: registers of traders (Articles 1183 to 1184 of the Civil Code), registers, books or domestic papers (Article 1185 of the Civil Code), the annotations made by the creditor on debt securities or duplicates in the hands of the debtor or on receipt (Article 1186 of the Civil Code).

Concerning the probative value of the said documents:

- Article 1183 of the Civil Code **"***Traders' registers do not constitute evidence with respect to the sales therein against non-traders . [...]";* Article 1184 of the same Code **"***Traders' registers constitute evidence against them, but those wishing to use the same cannot separate their contents, leaving aside what could be in their disadvantage".*

- Article 1185 of the Civil Code**: "***Registers, books or domestic papers do not constitute proof for the one who drafted them, but they can be used against him:*

1. *when they clearly contain receipt of a payment;*

2. *when they comprise the express mentioning that the note or mention therein was made in order to replace a title in favour of the creditor."*

- Article 1186 of the Civil Code**: "(*1) Any annotation made by the creditor at the bottom, on the side, or on the back of a debt instrument shall be taken into consideration, even if it is not signed by him or does not bear a date, if it is a proof of payment by the debtor.

(2) Shall benefit of the same probative value also the note made by the creditor on the back, on the side or at the bottom of a duplicate of an act or a receipt, but only when the duplicate will be in the debtor's hands."

Of the legal regime of authentic documents benefit also the electronic documents meeting the requirements provided by Article 5 of Law no. 455/2001 on electronic signature, according to which "*The document in electronic form, to which was incorporated, attached or logically associated an extended electronic signature, based on a qualified certificate that at the time was nor suspended or revoked, and which was generated by means of a securised signature capture*

device, is assimilated, in terms of conditions and effects, to private documents."

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- **What is the probative value of statements made by the plaintiff and the defendant?**

Please describe legal provisions:_____

The provisions of the Civil Code regulate confession as means of evidence, under Article 1170 and Articles 1204 to 1206.

Judicial confession is carried out by means of interrogatory, evidence ordered at the request of the opponent or ex officio by the court of law, under the terms of Articles 218 to 225 of the Code of Civil Procedure.

Judicial confession constitutes common evidence, left to the discretion of the court. Thus, once the judge verifies the confession in terms of sincerity and veracity, in relation to the other evidence submitted in the case, he/she shall be able to consider it as full evidence, as evidence likely to be rebutted by contrary evidence or as prima facie evidence, or he/she will remove it with statement of grounds if he/she is fully convinced that the confession does not correspond to the truth.

Article 1206 paragraph (2) of the Civil Code establishes the rule of indivisibility of confession, stating that it "*can only be taken fully against the person who made the confession*".

According to Article 225 of the Code of Civil Procedure, "*If the party, without good reason, refuses to answer the interrogatory or fails to appear, the court may consider these circumstances as a full confession or only as prima facie evidence in favour of the opposite party."*

I.7 REGARDING THE WITNESS TESTIMONY:

- **Are witnesses obliged by the Law of your MS to testify?**

Yes, under the sanction of judicial fine (Article 1081 paragraph 2 subparagraph a) of the Code of Civil Procedure).

It is worth noting also the fact that pursuant to Article 188 of the Code of Civil Procedure: *"(1) Against the witness who does not appear after the first summoning, the court can issue a warrant.*

(2) In urgent matters, the court can order that witnesses be brought with warrant even from the first hearing.

(3) If, after issuing the warrant, the witness does not appear before the court, the court will be able to try the case on the merits.

(4) The court can agree to taking the witness's testimony at his/her residence, when he/she is unable to come to court."

- **In what cases witnesses can refuse to testify?**

According to Article 191 of the Code of Civil Procedure: *"Are exempted from being witnesses:*

1. *cults servants, doctors, midwives, pharmacists, lawyers, notaries public and any other workers that by law are obliged to keep secret the facts entrusted to them in the exercise of their duties;*

2 *civil servants and former civil servants, on the secret circumstances of which they had knowledge in their capacity;*

3. *those who by their answers would expose themselves or would expose any of those shown in Article 189 under sections 1 and 2 to a criminal punishment or public scorn."*

- **The person who refuses to testify can be compelled to testify or punished?**

According to Article 108[1] paragraph 2 subparagraph a) of the Code of Civil Procedure, "*Unless otherwise provided by the law, the court, [...] shall sanction [...] with judicial fine from 30 lei to 500 lei:*

a) legally summoned witness's failure to appear or his/her refusal to testify if he/she appears in court, except if he/she is a minor".

- **Are witnesses paid by their participation in the judicial process? If so, how much?**

According to Article 200 of the Code of Civil Procedure, **"***(1) The witness may request the reimbursement of his/her travel expenses, as well as compensation according to his/her state or occupation, as well as according to the distance and the time spent away from home.*

(2) The court's order is enforceable."

- **Are there people who can not testify?**

According to Article 189 of the Code of Civil Procedure, *"Cannot be heard as witnesses:*

1. relatives and in-laws up to the third degree inclusively;

2. spouse, even if separated;

3. persons subject to penal incapacity and those declared by law unable to testify;

4. those convicted for perjury or false testimony.

(2) The parties may agree, expressly or tacitly, to be heard as witnesses also the persons provided under paragraph 1 subparagraphs 1 and 2."

- **Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?**

In civil and commercial matters there are no specific regulations in this sense.[8]

[8] In criminal matters, this means of taking of evidence is governed by Article 862 of the Code of Criminal Procedure - Special procedures for hearing witnesses, namely: "In cases provided for in Article 861 (need of identification protection of witness data*) the prosecutor or, as applicable, the court may allow the witness to be heard without being physically present at the location of the criminal investigation body or in the room in which takes place the hearing, through technical means provided in the following paragraphs.*

- **What is the role of the judge and the parties in the hearing of a witness?**

The procedure for hearing witnesses is governed by Articles 192 to 199 of the Code of Civil Procedure, as follows:

At the request of the president of the court, the witness to be heard must indicate:

1. his/her name, occupation, residence and age;
2. whether he/she is immediate or close family to a party and to what degree;
3. if he/she is under employment contract with one of the parties;
4. if he/she is under court proceedings, in enmity or in any relationship of interest with any of the parties.

After having his/her personal data recorded, the witness takes an oath, according to the formula established by Article 193 paragraph 1 of the Code of Civil Procedure: "*I swear to tell the truth and not hide anything I know. So help me God!*" the reference to divinity in the oath formula changes according to the religious belief of the witness. Witness other than the Christian religion are not applicable to these provisions. These provisions are not applicable to witnesses of other religion than Christian. The witness without religion shall take the following oath: "*I swear by honour and conscience that I will tell the truth and not hide anything that I know*", and witnesses who for reasons of conscience or religion will not take the oath in court will instead say the following formula: "*I undertake that I will tell the truth*

[...]The witness can be heard through a television network having his/her image and voice distorted so that he/she can not be recognized.

[….] Statement of the witness heard in the conditions shown in par. 1-31, shall be recorded through video and audio technical means and shall be written down entirely.

> *[…] The support on which was recorded the witness's statement, in original, sealed with the prosecution office seal or, as applicable, of the court of law before which the statement was given, shall be kept in accordance with the conditions set forth in paragraph 5.The support containing the records made during criminal investigation shall be submitted to the competent court upon finalisation of the criminal investigation, together with the case file, and shall be kept in accordance with the same conditions".*

and not hide anything I know." Minor under the age of 14 years does not take an oath, but he is being specifically asked to tell the truth.

After the witness takes the oath, the president warns him/her that, if he/she does not tell the true, he/she will commit the offence of perjury.

The president of the panel established the order in which witnesses shall be heard, taking into account also the request made by the parties. Each witness shall be heard separately, and those waiting their turn cannot be present during the others' testimonies.

The judges or the parties may ask questions to the witnesses or to the experts only through the President of the Panel, who may allow them to ask questions directly (Article 130 of the Code of Civil Procedure).

After testifying the witness remains in the courtroom until the end of the hearing, unless the court decides otherwise.

Witnesses may be asked again if the court considers it necessary, and if their statements do not match they will be asked again, being confronted.

If the court considers that the question raised by the party may not lead to the settlement of the case, that it is offensive or tends to prove a fact whose proof is stopped by law, it will not approve it. The court, on request of the party, will mention in the Interlocutory Order both the question and the reason for its dismissal.

Testimony will be written by the Registrar, upon dictation by the president or the delegated judge, and will be signed on each page and at the end by the judges, the court clerk and the witness, after he/she became aware of its contents. If the witness refuses or is unable to sign, such shall be mentioned therein. Any additions, deletions or changes across testimony must be agreed to and signed by the judge, the clerk and the witness, under penalty of not being taken into account. Unwritten spaces in the testimony must be completed with lines so that nothing can be added.

If strong suspicions of perjury or bribing a witness arise from the hearing, the court will conclude a report and will send the witness to the criminal authorities.

It should be noted that the provisions governing civil proceedings stipulate also the lawyers' possibility of taking of evidence (Articles 241^1- 241^{21} of the Code of Civil Procedure). These provisions are applicable "*only on property disputes, except those relating to rights on which the law does not allow transactions*" (Article 241^1 of the Code of Civil Procedure).

- **Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?**

Please describe legal provisions:_____

There is no obligation to draft such a list.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

Given its active role, the court is required to itself seek the evidence it deems necessary for fair settlement of the case.

Article 129 paragraph (5) of the Code of Civil Procedure provides in this regard that *"Judges have a duty to insist, by all legal means, to prevent any mistake on finding the truth in the respective case, based on establishing the facts and correctly applying the law, with the purpose to deliver a legally grounded ruling. If the proposed evidence is not enough to fully clarify the process, the court shall order the parties to complete the evidence. Also, the judge, ex officio, may inform the parties on need to bring other evidence, which the judge can order even if the parties are against."*

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

No. The order to follow in conducting the taking of evidence is fully at the court's discretion.

Pursuant to Article 168 paragraph (2) of the Code of Civil Procedure: "***(2)*** *Taking of evidence shall be made in the order established by the court.*"

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

In civil and commercial matters there are no express regulations in this respect.[9]

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

The parties or their representatives have the opportunity to be present in the taking of evidence, and thus to fully exercise their right

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[9] In criminal matters, this method of taking evidence is regulated in detail under Article77[1] of the Code of Criminal Procedure, as follows

" Special methods for hearing the injured party and the claimant

If the life, the physical integrity or liberty of the injured party or of the claimant or of his/her close relatives can be jeopardized, the prosecutor or, where appropriate, the court may allow he/she be heard without being physically present at the place where the body conducting the criminal investigation is located or, as appropriate, where the hearing is taking place, by the technical means provided in the following paragraphs.

[…] The injured party or the claimant can be heard through audio and video networks.

During proceedings, the parties and their advocates may address questions, directly, to the injured party or to the claimant heard under the conditions of paragraphs 1 to 3. Questions are addressed in the order provided under Article 323 paragraph 2. The sitting president shall dismiss the questions that are not useful and conclusive for the settlement of the case.

The statement of the injured party or of the claimant, heard under the conditions of paragraphs 1 to 3, shall be recorded through video and audio technical means and shall be fully written down, signed by the judicial body, by the heard injured party or claimant, as well as by the counselor for victims protection and social reintegration of offenders, present at the deposition, and such shall be submitted to the case file.

The support on which was recorded the statement of the injured party or of the claimant, sealed with the prosecution office seal or, as applicable, of the court of law, shall be kept, in original, at their seats.

The provisions of Articles 75 to 77 and those of Article 86[5] shall be applied accordingly."

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to defence. Thus, according to Article 85 of the Code of Civil Procedure, *"The judge can not decide on an application until the citation or appearance of the parties, unless otherwise provided by law."*

Likewise, according to Article 208 of the same Code, *"(1) If for the expertise an on-site activity is needed, such cannot be made until after summoning the parties by registered mail, with proof of receipt, showing the days and hours when activity begins and continues. Proof of receipt will be attached to the expert's report.*

(2) The parties are requited to give to the expert any clarifications concerning the subject of the activity. "

If taking of evidence is going to take place in another locality, Article 169 paragraph 3 of the Code of Civil Procedure provides that such "*shall be performed, through delegation, by a court of the same level or even of a lower level, if in the respective locality there is no court of the same level. **If the type of evidence permits and the parties agree, the court taking the evidence can be exempted from summoning the parties***."

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

As pointed out above, according to Article 191 of the Code of Civil Procedure**: "***Are exempted from being witnesses:*

1. *cults servants, doctors, midwives, pharmacists, lawyers, notaries public and any other workers that by law are obliged to keep secret the facts entrusted to them in the exercise of their duties;*

2 *civil servants and former civil servants, on the secret circumstances of which they had knowledge in their capacity;*

3. *those who by their answers would expose themselves or would expose any of those shown in Article 189 under sections 1 and 2 to a criminal punishment or public scorn."*

It is worth mentioning that, under certain conditions, refusal of a person to be subject to taking of evidence constitutes an offence. Thus, for example, pursuant to Article 87 of Government Emergency Ordinance no.195/2002 concerning traffic on public roads, *"Refusal, resistance or escape of a tram or vehicle driver or of an instructor, in the process of instruction, or of an examiner of a competent authority, during examination of skills for obtaining driving licence, to be subject to biological samples collection or breath testing, in order to establish the presence of alcohol or drug products or medicines with similar effects, shall be punished with imprisonment from 2 to 7 years."*

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

Expenses generated by the taking of evidence are either paid by the requesting party, by the other party, or by both parties, as applicable, and upon request of the party who won the process, the loser party will be ordered to pay legal costs, the evidence related expenses being included in this concept.

Thus, according to Article 170 paragraph (1) of the Code of Civil Procedure, **"***If the court agrees with a local inquiry, expertise or witnesses evidence, the party requesting the same, within 5 days from acceptance, must deposit the amount established by the court for the expenses related to inquiry, travel and witnesses' compensation or expert's consideration; the receipt shall be submitted to the court registry."*

According to Article 171[1] of the same Code, *"If taking of evidence was ordered ex officio or at the prosecutor's request in the process initiated by the latter under the terms of Article 45 paragraph 2, the court shall establish, by means of an Interlocutory Order, the expenses for taking the evidence and the party who must pay the same, or it can order both parties to pay the said expenses."*

According to Article 274 paragraph (1) of the Code of Civil Procedure, "*The loser party* [author's note the person who lost the process] *shall be obliged, upon request, to pay legal costs."* And, pursuant to paragraph 2 of the same article, "*Judges cannot reduce stamp duties, procedure fees and proportional taxes, expert's consideration, witnesses' compensation, or any other expenses that the winning party can prove to have borne*."

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

In civil and commercial matters there are no explicit rules in this sense, the answer being deducted from the general principles governing the taking of evidence, one of these principles requiring that evidence not be stopped by law. In criminal matters, the issue of illegally obtained evidence is specifically regulated.[10]

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

Concerning documents**,** Article 175 of the Code of Civil Procedure provides that "(1*) If the document is kept by an authority or*

[10] Thus, pursuant 64 paragraph (2) of the Code of Criminal Procedure, "*Evidence obtained illegally can not be used in criminal proceedings*". In the taking of evidence account is given to the principle of loyalty, regulated in Article 68 of the Code of Criminal Procedure. Loyalty prohibits the judicial body from using deceit, threats or other means of coercion, as well as promises and exhortations in order to obtain evidence. The same legal text also provides that it is forbidden to cause a person to commit or continue committing a criminal act, in order to obtain evidence.
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another person, the court shall order that such be brought on the date established for that purpose. The person keeping the document is entitled to refuse such request n the cases provided by Article 173.

(2) Presentation and bringing of the document shall be made on the expense of the party requesting the evidence; the due amount shall be established by irrevocable Interlocutory Order".

Article 173 of the same Code provides that *"The court shall dismiss the request for submission of the document, in whole or in part, if:*

***1.** the content of the document concerns very personal issues;*

***2.** the submission of the document would violate the duty of secrecy."*

As concerns the information requested by courts to authorities, as well as professional secrecy, these are regulated by special normative acts applicable in the respective areas.

Thus, for example, Article 11 of the Tax Procedure Code provides, with respect to tax secrecy, as follows: „*(**1**) Public servants within the tax body, including those who do not have this capacity anymore, are obliged, under the terms of the law, to keep secret the information they have as a result of performance of their work duties.*

***(2)** Information on taxes, contributions and other amounts due to the general consolidated budget can be transmitted only:*

***a)** to public authorities in order to fulfil their obligations prescribed by law;*

***b)** tax authorities of other countries, based on reciprocal agreements;*

***c)** competent judicial authorities, according to the law;*

***d)** in other cases provided by law.*

***(3)** The authority that receives tax information is required to keep confidential the information received.*

*[…] **(3²)** For the purpose of applying the provisions of paragraph (2) subparagraph a), public authorities may enter protocols concerning the information exchange. […]"*

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions:_____
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Yes. They are regulated by Law no. 189/2003 on international judicial assistance in civil and commercial matters, governing international rogatory letters in civil and commercial matters, respectively "*the act by which a judicial authority of a state authorizes a judicial authority of another State to perform in its name and behalf, a judicial activity in an individual case"* (Article 14 paragraph 1 of the Law).

According to Article 15 of the same law, *"Rogatory letter allows: hearing of witnesses or other persons involved, obtaining documents, conducting surveys, conducting investigation or obtaining certain other documents or information necessary to solve a particular case."*

Romanian judicial authorities send the rogatory letter to the Ministry of Justice, which is the central body competent to send abroad the rogatory letters. After receiving the rogatory letter request, the Ministry of Justice performs the control of international regularity and transmits the rogatory letter directly to the competent central body of the state in which it is to be performed or, in cases of emergency, to the diplomatic or consular mission of Romania in the respective state, through the Ministry of Foreign Affairs, if such is permitted under the legislation of the respective state.

Romania's diplomatic or consular missions abroad may be required to formulate rogatory letters for people who have Romanian citizenship.

The rogatory letter shall contain the following information:

a) requesting authority;

b) requested authority;

c) identity and address of the parties;

d) subject matter of the case, a short presentation of facts;

e) subject of the rogatory letter;

f) name and address of the persons who are going to be heard based on the rogatory letter;

g) questions to be asked or the facts about which questions will be asked;

h) documents to be examined;

i) specification on whether the deposition is taken under oath or only by statements;

j) other special requests.

(2) No supra-legalization or other analogous formality is required.

Upon transmitting the request of rogatory letter abroad, it shall be requested the communication of the date and place set for carrying out the requested activities, with the consent of the requested judicial authority and with the advisory opinion of the Ministry of Justice and Civil Liberties, and Romanian judges will be able to assist to the carrying out of the rogatory letter.

Likewise, the Ministry of Justice is the central body competent to receive the request of rogatory letters submitted by judicial authorities from abroad, which it forwards to the local court in which jurisdiction is going to be carried out the requested judicial act. The documents whereby is ascertained the fulfilment of the rogatory letter are forwarded to the Ministry of Justice, which shall forward them, by the same means, to the requesting authority.

The competent requested judicial authority carries out the rogatory letter in accordance with the procedural rules of the Romanian law; however, use of a special procedure, on demand of the requesting judicial authority, can be taken into account, provided that such does not contravene Romanian law.

Concerning judicial assistance between Romania and European Union Member States, in matter of taking evidence, Romania applies the Council Regulation (EC) NO. **1.206/2001** of 28 May 2001.

Law no.189/2003 on international judicial assistance in civil and commercial matter establishes, in this respect, under Articles 35 to 37, the following:

"Article 35

*In application of the Council Regulation (EC) NO. **1.206/2001** of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, requests to take evidence by means of international letter rogatory shall be made as follows:*

a) Romanian courts shall send the requests directly to the competent requested judicial authority in the European Union Member States, and a copy of the request to take evidence shall be sent to the Ministry of Justice [...] for the record;

b) by the court in whose jurisdiction is going to be obtained the requested evidence from the European Union Member States. Upon restitution of documents, the court shall send a copy to the Ministry of Justice [...], for the record.

- *Article 36*

In application of the provisions of Article 34 subparagraphs a) and b) and of Article 35 subparagraph a), in order to obtain information concerning the language used to fill in the forms, as well as the language used for translation of documents attached thereof, accepted and notified to the European Commission by the European Union Member States, the competent Romanian authorities shall access the

specialized web page of the European Commission and shall consult the contact points of the European Judicial Network in civil and commercial matters.

Article 37

*(1) The Ministry of Justice [...] is the Romanian central body pursuant to Article 3 paragraph 1 of the Council Regulation (EC) NO. **1.348/2000** of 29 May 2000 and of Article 3 paragraph 1 the Council Regulation (EC) NO. **1.206/2001** of 28 May 2001.*

***(2)** The Ministry of Justice [...] carries out the communications concerning the information that are required pursuant to Article 23 of the Council Regulation (EC) NO. **1.348/2000** of 29 May 2000, as well as of Article 22 of the Council Regulation (EC) NO. **1.206/2001** of 28 May 2001.*

***(3)** On the grounds of Article 3 paragraph 3 of the Council Regulation (EC) NO. **1.206/2001** of 28 May 2001, the Ministry of Justice [...] carries out the tasks related to taking decisions on requests pursuant to Article 17 of the same Regulation."*

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

Not applicable, given the answer to the previous question

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

Idem

I.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

See the answer to question II.1

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

See the answer to question II.1

Slovakia

I.1 DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

All resources by which the state of matters can be established can serve as evidence, particularly examination of witnesses, expert evidence, reports and responses of bodies, natural persons and legal entities, documents, examination of parties. If the manner of taking evidence is not prescribed, the court shall specify it.
***§ 125** Code of Civil Procedure („CPC") – Act. Nr. 99/1963 Coll. As amended: „Means of proof are any means that allow to establish the facts, in particular examination of witnesses, expert opinions, reports and statements of bodies and legal persons, documents, inspection and examination of the parties. Where the method of examination of evidence is not prescribed, it shall be determined by the court."*

I.2 ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?
Parties are required to indicate evidence to prove their allegations. The court decides which of the indicated evidence to hear. The court may exceptionally take other evidence suggested by parties, if taking it is necessary for deciding matters.
The court approaches the consideration of individual evidence in terms of their trustworthiness and veracity. The court is not limited in what evidence to consider by legal regulations – the principle of unrestricted consideration of evidence applies. The consideration of the court is not arbitrary; it must proceed from everything which was brought to light in the proceedings. The court should respect these facts and must correctly determine their correlation. Simultaneously the court is not bound by any order of significance or conclusive force of individual evidence.

***§ 132 CPC**: "The court evaluates evidence at its discretion, evaluating each item of evidence separately and in its entirety, while taking due account of everything that has transpired in the proceedings, including statements made by the parties."*

I.3 WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- [X] Examination of the parties,; YES
  - [X] Public documents; YES
  - [X] Private documents; YES
  - [X] Expert testimony; YES
  - [X] Judicial examination; YES
- [X] Witness testimony; YES
  - [X] means of reproduction of words, sounds and images; YES
  - [X] Others (especify) see § 125 CPC below

Please describe legal provisions:
§ 125 CPC: "*Means of proof are any means that allow to establish the facts, in particular examination of witnesses, expert opinions, reports and statements of bodies and legal persons, documents, inspection and examination of the parties. Where the method of examination of evidence is not prescribed, it shall be determined by the court*."

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

See § 134 CPC below

- In cases where public documents are in public registers, is the access to these registers free?

Depending on the registers and on the applicant. If demanded by courts, the access is free. If provided by parties, general rules on fees apply.

- If not, what are the conditions to have access to them?

Varies depending on the registers and the applicant.

Please describe legal provisions:
§ 134 CPC: "*Documents issued by courts of the Slovak Republic or other State bodies within the bounds of their authority, and documents declared as public deeds under separate legal provisions, certify orders or declarations made by the body that issued them and, unless there is a proof to the contrary, the truth of the facts they certify or confirm*."

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Like any other means of proof. The court evaluates evidence at its discretion, evaluating each item of evidence separately and in its entirety, while taking due account of everything that has transpired in the proceedings, including statements made by the parties.

Please describe legal provisions:
No special rule, see § 132 CPC above.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

Same as I.5.

Please describe legal provisions: See § 132 CPC – above.

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

§ 126 (1) CPC: "*Every natural person is required to appear at court following a summons and testify as a witness. They must tell the truth and conceal nothing*."

- In what cases witnesses can refuse to testify?

A witness may refuse to give evidence only if it would cause them or persons close to them to be endangered by a criminal act. The court shall decide on the grounds for refusal to give testimony. They may refuse also where testimony would breach a secret of the confessional or confidential information revealed to them as a person entrusted with pastoral care verbally or in writing under the conditions of maintaining confidentiality.

- The person who refuses to testify can be compelled to testify or punished?

The court shall decide on the legitimacy of the refusal to testify. Appeal is not permissible against the court judgement. If, even despite the judgement of the court, the witness refuses to testify, the court may use procedural measures pursuant to ***§***

***53 CPC**, that is imposition of a procedural fine of up to 820 EUR. The court may by judgement impose a procedural fine of up to 1640 EUR repeated gross aggravation of the process of the court.*

- Are witnesses paid by their participation in the judicial process? If so, how much?

*The witnesses are not paid for their participation, they are however entitled for reimbursement of really incurred costs based on effectiveness and the necessity. The details are stated in **§§ 72 – 75 of the Rules on Administration of District, Regional, Special Court and Military Courts – Regulation of the Ministry of Justice Nr. 543/2005 Coll**. Following costs are reimbursement: - loss of income, allowance, lodging and transportation costs (except the witness is being heard in the town of habitance and has not used the general public transportation, the costs of the general public transportation is covered even in this case) up to the sum of public transportation costs (except special circumstances when individual transportation is necessary.)*

- Are there people who can not testify?

No legal provision.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

Yes.
***§ 115 (6) CPC**: "With the consent of parties, the Court may perform an oral hearing with the use of videoconference or other communication technologies."*

- What is the role of the judge and the parties in the hearing of a witness?

Before examining the witness the court must establish their identity and the circumstances which could affect their credibility. Furthermore, it is necessary to instruct the witness on the significance of the testimony, his rights and obligations and the criminal consequences of false testimony.
The presiding judge or sole judge invites the witness to coherently describe everything they know about the subject of the examination. After they ask the witness questions necessary for supplementing and clarifying the testimony. Judges from the panel may also ask questions and, with the consent of the presiding judge or sole judge, parties and experts as well.
The presiding judge may bar captious and suggestive questions questions or questions which are significant in terms of judgement of a matter asked by a party to proceedings or expert. They shall decide by judgement which is not delivered and against which no appeal is allowable. The judgement is also part of the court record.

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

No.

Please describe legal provisions:
See above

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

***§ 120 CPC: „(1)** The parties are obliged to adduce evidence to uphold their claims. The court may take also evidence that has not been adduced by the parties. The court shall base its decision on the facts ascertained from the evidence it has taken and on other facts of non-contentious nature concerning the litigants if it does not have reasonable or serious doubts about their veracity.*

(2) *Besides the evidence adduced by the parties, the court shall be under an obligation to take additional evidence when such evidence is necessary to establish the facts in the proceedings which can be initiated on the court's own motion, such as proceedings concerning the permission to contract marriage, determination or denial of paternity, adoption, company register and certain issues related to companies or cooperatives (Section 200e).*

(3) *Except in cases referred to in paragraph 2, the court may admit in evidence consensual statements made by the parties.*

(4) *Except in cases referred to in Section 120 paragraph 2, before concluding the examination of evidence the presiding judge must instruct the participants of the hearing that all evidence must be submitted or adduced before the decision on the closing of the examination of evidence, and in cases where no hearing is ordered (see § 115a CPC) before a decision is made on the merits, since no evidence will be admitted afterwards. The evidence submitted later is a ground for appeal only in a limited sense (§ 205a CPC).*

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL.

NO.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

YES.

§ 115 (6) CPC*: "With the consent of parties, the Court may perform an oral hearing with the use of videoconference or other communication technologies."*

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Evidence is heard (examined/realised) at a hearing, parties are therefore present at the hearing.

§ 122 CPC*:*

*„**(1)** The court shall hear evidence at an oral hearing.*

(2) *When appropriate, the court may ask another court to hear evidence, or it may be heard by the presiding judge outside of a hearing on the basis of authority vested upon him by the panel. The parties have the right to be present at the examination of admissibility of evidence. The results must be always announced at a hearing.*

(3) *Panels may always decide that admitted evidence be supplemented or repeated before the panel."*

§ 123 CPC*: „The parties have the right to give comments on any adduced or admitted evidence."*

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

§ 127 (3) CPC*: "(3) The presiding judge may order a party or other individual to be at the disposal of the expert, submit relevant things, make relevant statements, undergo medical examination and/or blood test, do something or suffer something done, where this is necessary for preparing the expert opinion." Further regulation laid down in the Code on Criminal Procedure (§ 155, Act Nr. 301/2005 Coll.).*

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

It is included in the concept of legal expenses and included in the court fee. An advance payment might be demamded by the court according to § 141 (1) CPC.

***§ 141 (1) CPC**: „The court may request the party who is not eligible for court fee exemption to give security on the costs of evidence adduced by the party or ordered by the court with a view to ascertaining the facts put forward by the party or the facts that are in his interest."*

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

Generally speaking, the court is not limited in what evidence to consider by legal regulations – the principle of unrestricted evaluation of evidence applies. There is no general prohibition of illegally obtained evidence. The majority of the academia nonetheless supports the view that evidence obtained illegally does not have any value before the court.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

According § 128 CPC: "*Public administration authorities and legal entities, as well as natural persons pursuing business activities, shall have to provide the court on application written information without undue delay concerning the facts that are relevant for judicial proceedings and decision-making for the compensation of material costs*."

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Please describe legal provisions: Please describe legal provisions:

If taking of evidence is requested by a foreign court from other than MS, then the taking on evidence is governed by bilateral and multilateral treaties on mutual legal assistance. If there is no such treaty between Slovakia and the requesting State, then the taking of evidence will be governed by specific rules on taking of evidence with transnational element which are contained in the Slovak legal order in the Act of 4 December 1963 No. 97 Collection of Laws on Private International Law and Rules of International Procedure (Act No. 97/1963).

According to Article 55 of the Act, judicial authorities shall communicate with foreign authorities through the Ministry of Justice. According to Article 56, Slovak judicial authorities shall provide, upon request, legal assistance to foreign judicial authorities, provided reciprocity is guaranteed. Legal assistance may be denied if:

(a) the performance of the requested assistance does not fall within the jurisdiction of the requested Slovak judicial authority; if, however, such assistance falls within the jurisdiction of another judicial authority or within the jurisdiction of other Slovak authorities, the request shall be forwarded to the competent authority for execution;

(b) the assistance requested is contrary to the Slovak ordre public.

According to Article 57 of the Act, the requested legal assistance shall be provided in application of the Slovak law; upon request by the foreign authority, foreign procedural rules may be applied if the requested procedure is not contrary to

the Slovak ordre public. If the foreign authority so requests, the witnesses, expert witnesses and parties may be examined under oath. The same shall apply to sworn affidavit of facts vital for the assertion or preservation of claims abroad. The oath for witnesses and parties shall read as follows: „I swear on my honour that I shall say the truth and nothing but the truth about everything I am asked by the court and shall withhold nothing.“ The oath for expert witnesses shall read as follows: „ I swear on my honour that I shall submit my expertise in accordance with my best knowledge and conscience.“ In the case of an oath submitted after the fact, the wording shall be altered accordingly.

§ 60 of the Act: „Service effected upon the request of a Slovak judicial authority by a foreign authority as well as evidence taken by the latter shall have legal effects even if they are not in conformity with the provisions of the foreign law as long as they are in conformity with the Slovak law.“

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

See answer in the section II.1.

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

See answer in the section II.1.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

No special internal legislation. Under the general rule on international legal assistance (§ 55 the Act Nr. 97/1963 Coll. on Private International Law and Rules of International Procedure): “Unless otherwise provided, judicial authorities shall communicate with foreign authorities through the Ministry of Justice.“

Plus EU regulations and bilateral agreements – not subject to analysis.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

See answer in the section II.4.

Please describe legal provisions:

see above

Slovenia

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

In the Slovenian legal order rules on taking of evidence are embodied in the ***Civil Procedure Act (Official Journal of RS, no. 73/2007 – third official consolidated text and later changes***) under Articles 212 to 263. Some specific acts in certain area of law (*lex specialis,* for example *the Heritage Act, the Non-Litigous Procedure Act*) determine some additional or different rules on taking of evidence, and thus making *the Civil Procedure Act lex generalis.*

The proof is defined as all means of cognition of conclusive (decisive) facts. The process of taking of evidence therefore extends over all facts, relevant for the decision (Article 213, paragraph 1 of *the Civil Procedure Act*). The decision regarding which proposed evidence shall be conducted, with aim of determining conclusive facts, is in the discretion of the presiding court (Article 213, paragraph 2 of *the Civil Procedure Act*). Further, the legal theory, regarding their function, differs ***three different categories of proof***[11]***:***

1.) ***The main proof (probatio)***: is the proof, with which parties' assertion of conclusive fact is being proved; hence the proof, about the fact that all elements or legal facts of state of affair (actual situation) on which the use of certain substantive rule depends, are given;
2.) ***The proof to the contrary (refutatio):*** its main function is to dismiss facts, proved by main proof. This will be successful only if probative value of the proof to the contrary is equal or greater as probative value of the main proof;
3.) ***The proof of conflict:*** with this proof legal assumption or alleged conclusion *(tesis)* is being challenged.

The result of process of taking of evidence therefore determines the existence or non-existence of conclusive facts and therefore directly affects the outcome of the civil procedure.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

The means of taking of evidence are listed under Articles 220 to 263 of *the Civil Procedure Act*. However the list is **not exhaustive**[12] and the means of taking of evidence are also **not rated** – the Court's decision is based on the principle of **free assessment of evidence** (Article 8 of *the Civil Procedure Act*). In accordance with

> [11] Ude et al, The Commentary of Civil Procedure Act, GV Založba, Ljubljana, 2006, II. book, page 350.

> [12] This can be concluded on court's case law, for example the Supreme Court of the RS in the decision No. II Ips 27/2000 from 28th June 2000.

the later the Court, on the basis of conscientious and attentive evaluation of each individual proof, evidence altogether (and on the basis of the results of process of taking of evidence as such), decides which conclusive facts have been proved with adequate level of probability. The Court is therefore, by an assessment, not bound by any formal rules, determining what probative value grant to certain proof. This is also in accordance with the principle of material truth, embodied in Slovenian legal system. Principle of free assessment of evidence applies practically to all phases of procedure of taking of evidence: the Court freely chooses the evidence, supplied by the parties, that will be conducted, it also freely determines the method of proof's realization, as well as it freely evaluates the probative value of evidence. The only limitation of free assessment of the evidence is in the case of a public document; i.e. public document are assumed to prove facts, contained therein (as it is explained in the answer regarding to public documents bellow); however also this assumption may be refuted.

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☒ Examination of the parties,;
- ☒ Public documents;
- ☒ Private documents;
- ☒ Expert testimony;
- ☒ Judicial examination;
- ☒ Witness testimony;
- ☒ means of reproduction of words, sounds and images;
- ☐ Others (specify)

The means of taking of evidence are listed under Articles 220 to 263 of *the Civil Procedure Act*. However the list is not exhaustive. The parties are free to choose other means. For each individual mean of taking of evidence *the Civil Procedure Act* in its provisions defines such mean of taking of evidence and determines the rules of its' performance.

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?
- In cases where public documents are in public registers, is the access to these registers free?
- If not, ¿what are the conditions to have access to them?

By the definition the public document is a document in written or electronic form, issued in prescribed formation by state authority/local authority/other organisation or individual person by exercise of public authority, entrusted to him by law, within the scope of its competences (Article 224, paragraph 1 of *the Civil Procedure Act*). Such **public document proves the existence of facts confirmed or determined therein**. Hence, a legal assumption is established, that the facts/relationship/state of affairs determined in the public document indeed exist. The same probative value is also given to other documents, which are, in accordance with legislative act, equated with public documents (Article 224, paragraph 2 *of the Civil Procedure Act*). Also if the Court doubts on the authenticity of the document, it may request the issuing authority to give a statement about the disputed public document (Article 224,

paragraph 5 of *the Civil Procedure Act*). Foreign public documents, which are certified, have the same probative value as domestic public document, under the condition of reciprocity and if the international contract does not determine otherwise (Article 225 of *the Civil Procedure Act*).

Nonetheless mentioned legal assumption may be refuted: **it is permitted to prove, that the facts in public document are untrue or that the document itself in incorrectly composed** (Article 224, paragraph 4 of *the Civil Procedure Act*).

Further, in cases where public documents are in **public registers**, the access to them is in general free. Whether the access to certain public documents is free, is established by substantive acts, regulating individual public registers (for example: *the Court Register Act* determines that the Court register is a public register to which free access is granted; Article 7). Certain substantive acts determine conditions to access to public registers, mostly that the party wanting to access to the public register, must show legal interest to be granted access (for example *the Personal Data Protection Act*).

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

Contrary as in the case of public documents, probative **value of private documents is not determined** – the Court evaluates such document in accordance with the principle of **free assessment of evidence**. *The Civil Procedure Act* determines solely that in case, when a party makes reference to certain private document by means of proving her statements, such private document has to be presented to the Court (Article 226, paragraph 1 of *the Civil Procedure Act*). Also the private document written in foreign language, has to have a certified translation attached (Article 226, paragraph 2 of *the Civil Procedure Act*). If the document is in possession of state authority or person to which execution of public authority is entrusted, and the party is not able to obtain the document, the Court obtains such document *ex officio* (Article 226, paragraph 3 of t*he Civil Procedure Act*). In cases where such referencing document is in hands of the opposite party, the Court demands from this party that he/she presents the document to the Court (Article 225 of *the Civil Procedure Act*).

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

The examination of the parties as means of evidence is embodied under Articles 257 till 263 of *the Civil Procedure Act*. It derives from Article 257 of *the Civil Procedure Act* that the Court may determine conclusive facts also by means of **examination of the parties**. The Court will, when examination of the parties is suggested by the parties, generally examine both sides – the plaintiff and the defendant, however if the Court assess that one of the parties is not acquainted with disputed facts or if examination of one party is not possible, the Court may decide that only other party is examined. Additionally, the Court will also examine solely one party, if the other party does not want to testify or when she does not respond to the invitation of the Court (Article 258 of *the Civil Procedure Act*). This is the case because in Slovenian legal system coercive measures, the aim of which is to compel the party to respond

to the Court's invitation to the examination, are prohibited. The Court evaluates, taking all relevant circumstances in the account, what is a significance of the fact, that the party does not want to be examined or has not responded to the invitation (Article 262 of the *Civil Procedure Act*). In cases where two or more individuals appear as the plaintiff or the defendant, the Court decides whether all or solely some of the persons are examined (Article 260, paragraph 3 of *the Civil Procedure Act*). Instead of a party without legal capacity, her legal representative is examined, but the Court may nonetheless decide that also/solely the party without legal capacity is examined (Article 260, paragraph 1 of *the Civil Procedure Act*). Further when a party is a legal person, its representative is examined (Article 260, paragraph 2 of *the Civil Procedure Act*).

Regarding the probative value of examination of the parties, legal theory emphasises, that there are two characteristics of this means of evidence. On one hand the parties are the one possessing the most knowledge about disputed facts or relationship and are from this view the most appropriate information tool; however on the other hand they are highly interested each in her own success in the procedure and are therefore also highly unreliable.[13] *The Civil Procedure Act* now in force treats the examination of parties equally as other means of taking of evidence (the examination of the parties is no longer subsidiary means of evidence as determined by *the Civil Procedure Act – 1976*). By evaluation of the facts, arising from parties' examination, caution is necessary; everything the parties testify is preconditioned by their views of the situation, opinions, beliefs and especially desirability to succeed in the civil procedure. Due to the later the Court will in practice use the examination of the parties as a confirmation of the facts already determined by other means of evidence (example private documents).

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?
- In what cases witnesses can refuse to testify?
- The person who refuses to testify can be compelled to testify or punished?
- Are witnesses paid by their participation in the judicial process? If so, how much?
- Are there people who can not testify?
- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?
- What is the role of the judge and the parties in the hearing of a witness?
- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

In the Slovenian legal order a person invited to the Court as a witness, is obliged to testify, unless otherwise determined by law (Article 229 paragraph 1 of the Civil Procedure Act). The law imposes on witnesses three types of duties: 1.) duty to respond to the invitation of the Court, 2.) duty to testify; and 3.) duty to tell the truth. As a witness individual incapable to testify on the facts, which are being proved, cannot be examined (Article 229 paragraph 2 of *the Civil Procedure Act*), as well as an individual, that would, if he testified, breach the duty of protection of official or military secret, cannot be examined, up until the competent authority releases him from her duty of protection (Article 230 of *the Civil Procedure Act*).

> [13] Ude et alt, The Commentary of Civil Procedure Act, GV Založba, Ljubljana, 2006, II. book, page 508.

Further on, the Slovenian legal order also regulates so called privileged witnesses (Article 231 of *the Civil Procedure Act*). These witnesses may refuse to testify. The privilege extends to the following persons: 1) legal representative of the party regarding the facts, that party declared to him as her representative; 2) religious confessor on the facts the party declared to him as a confessor; 3) advocate, medical expert or any other person, performing a profession, where duty of protection of secret about the facts declared to them, applies.

Hence, the mentioned persons can refuse to testify, if they made knowledge of certain conclusive facts in the scope of their profession and when duty of protection of professional secret is applicable. The later need not to be prescribed by the legislative acts, it may be determined in code of professional ethics. The rule of privileged witness is however not absolute and will not apply, if disclosure of certain facts in necessary for the protection of public benefit or benefit of some else, if this benefit is greater than protection of professional secret (Article 232 of *the Civil Procedure Act*).

As mentioned above, the witness is bound by the duty to tell the truth and not to conceal any facts. Nonetheless the exception of this duty is determined in Article 233 of *the Civil Procedure Act*: A witness may refuse to answer to questions, if she has grounded reasons for refusal, especially in cases where, by answering such questions she would cause burning shame, considerable material damage or prosecution of herself, her blood relatives in ascending line, persons related collaterally up to three times removed her spouse or cohabiting partner, relatives in relationship by marriage up to twice removed, regardless to the facts that the marriage has terminated, or his guardian or person in care, adopter or adoptee. The presiding Court informs witnesses about stated right (Article 233, paragraph 2 of *the Civil Procedure Act*). The refusal to answer to certain question due to causing great material damage is not allowed if the witness has to testify on legal business, by which she participated, on the actions the witness performed as legal ancestor or representative of either party, on the fact, relating to property relationship applying to family of matrimonial relationship, on the facts relating on birth, marriage or death, as well as in cases where a witness must apply, in accordance with the law, file an application or give a statement (Article 234 of *the Civil Procedure Act*).

When there are no grounds of refusal to testify, the witness not responding to the invitation of the Court may be brought to the Court by force on her expense, or punishment up to 1.300 EUR can be imposed to her by the Court. When a witness responded to the invitation of the Court, however she would not testify, the Court may impose penalty up to 1.300 EUR; if the witness still does not want to testify, a prison may be determined until the witness does not want to testify or up to 1 month. The Court may on the demand of a party also determine, that the witness, not responding to the invitation of the Court or refusing to testify, reimburses the costs, caused by such action

Further, witnesses can be examined by means of videoconference, if the consent of both parties is given (Article 114.a of *the Civil Procedure Act*). The witnesses are also entitled to apply for reimbursement of costs (example transport costs, loss of earnings, costs of accommodation) – the Court decides on these costs on the case-by-case basis. Fixed payment is not determined (Article 242 of *the Civil Procedure Act*). More detailed provisions are determined in Rules on reimbursement of civil procedure-related costs[14].

The draft of preliminary questions is not necessary and is in practice actually non-existent.

> [14] The Official Journal of the RS, No. 15/2003.

After the parties have proposed which witnesses are to be examined, it is in the competence of the Court to determine, which witnesses shall actually be examined. Before examination of the parties, the Court may determine that parties shall obtain written statements of proposed witnesses (Article 236a of *the Civil Procedure Act*). The witnesses are examined individually, without presence of other witnesses; after general questions (name, occupation etc.) it is demanded that the witness testifies on all the facts of which she has knowledge. After that, the presiding judge and parties ask questions the aim of which is to supplement, verify or clarify witness's testimony (Article 239 of *the Civil Procedure Act*). The witness is always asked how the witness gained knowledge on conclusive facts, suggestive questions are prohibited, the witnesses may also be confronted if their testimonies to not match (Article 239 paragraph 3 of *the Civil Procedure Act*).

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

Generally, taking of evidence in civil procedure requires the application of the party: each party must state all the facts and propose all evidence, on which her demand is based, or with which the statements and evidence of the opposite party are challenged (burden of claim and proof, Article 212 of *the Civil Procedure Act*). In special proceedings, for example in matrimonial disputes or disputes between parents and children or procedure of suppression of legal capacity (non-litigious procedure), the Court has greater competences in this respect and may *ex officio* conduct also evidence the parties have not proposed, if it considers them to be necessary for rendering a decision.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

The Civil Procedure Act does not prescribe any special order of precedence to be followed in conducting the taking of evidence; it is Court's assessment which evidence and when to conduct them.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

The video or telephone conference is allowed under the rules of procedure. In accordance with Article 114a of *the Civil Procedure Act* the Court may, with the consent of both parties, allow that parties and their representative, are at the time of hearing situated on different places wherefrom they can perform procedural acts; the voice, audio or visual transmission shall, of course, be ensured. The same applies also in case of expert examination, examination of the parties and witness testimony.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Due to the principle *audiatur et altera pars* (Article 5 of *the Civil Procedure Act*) the parties or their representatives shall be given the possibility to be present by conducting of evidence. Therefore all witnesses and experts are examined in the presence of both parties, all documents read in the presence of both parties in the

Court. Additionally, both parties or/and their representatives may participate at the judicial examination. Due to the same principle the parties are also allowed to ask questions to witnesses and experts, present their views and submit their comments of the conducting of evidence to the Court.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

The Civil Procedure Act does not determine any limitation.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

The expenses arising from conducting of evidence are during the procedure preliminary paid by the requesting party (Article 153 of *the Civil Procedure Act*). However these expenses are categorised as procedure expenses and if the party, that preliminary provided the payment of for example an expert or witness, has succeed in the procedure, the opposite party will have to reimburse all expenses arising from civil procedure. If the success is partial, also the reimbursement of the expenses will be partial (Article 154 of *the Civil Procedure Act*).

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

The Civil Procedure Act does not determine rules relating to evidence obtained illegally. Legal theory however argues that, in the case of illegally obtained evidence, the collision of two constitutional human rights arises. The collision of constitutional and basic human rights (bellow) will have to be eliminated by the weighing of rights. If the illegal evidence would not be conducted, the rules of contentious procedure could not be fully respected; on the other hand if the evidence would be conducted, the breach of other human rights could arise, for example the right to privacy or protection of personal data. Therefore in such cases the test of proportionality is needed. It evaluates if the limitation of constitutional and human rights have a legitimate aim, are indispensable and appropriate for attainment of the objective, and if protection of one human right outweighs the protection of the other.
It can be therefore concluded, that complete prohibition of illegally obtained evidence in civil procedure is not established. Weighting of constitutionally ensured human rights will be necessary (for example the right to privacy has to be balanced with the right to private ownership)[15].

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

The state authorities, local authorities, holders of public authority and other persons and organisations, in possession of data, important for the decision, are obliged to, regardless to provisions on the protection of personal and other data, on demand of the presiding Court provide free of charge such relevant data to the Court (Article 10 of *the Civil Procedure Act*).

> [15] The Supreme Court of RS, decision no. III Ips 55/2008 from 22nd February 2011.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Chapter 13 of *the Civil Procedure Act* regulates legal aid between domestic and foreign courts (Articles 174 till 178). The domestic court assures legal aid to the foreign court in a manner determined in domestic legislative act. Taking of evidence, requested by a foreign court, may be performed in a manner requested by a foreign court, if such procedure is not contrary to the public order of Slovenia (Article 176).

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

As mentioned above, the domestic court assures legal aid to the foreign court in a manner determined in domestic legislative act

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

There are no specific provisions relating to the list of evidence that may be requested by a foreign court. Therefore all evidence provided in national legislation may be requested from foreign court.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

The Slovenian legal system does not provide the possibility of the direct taking of evidence by foreign courts in Slovenia. However the foreign court may request competent Slovenian court to directly conduct evidence in Slovenia (such as witness testimony or expert testimony) and sent the records of such taking of evidence to the foreign court.

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

In accordance with Article 217 of *the Civil Procedure Act* the presiding judge may decide, that the evidence shall be conducted before foreign court, if reasoned grounds for such decision are given. Reasoned grounds for such decisions are various: for example to minimise the costs, in cases where witness lives abroad and is unable to travel, judicial examination of the place of caused damage etc. Only individual proof may be conducted abroad – delegation of whole process of taking of evidence to the foreign court is thus prohibited. The national court shall state which evidence shall be conducted, state of play of the proceedings and what are the circumstances to which special attention has to be attributed. Also, it has to notify parties the date of the hearing at the foreign court. Also, the time period in which the

evidence shall be conducted, may be determined in the application (Article 219 of *the Civil Procedure Act*).
The same as for the foreign courts *the Civil Procedure Act* does not determine the right of a national court to directly conduct taking of evidence abroad, where its competence is not given.

Spain

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 ¿DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? ¿WHAT IS THE LEGAL DEFINITION?

NO, THERE IS NOT LEGAL DEFINITION OF "PROOF" IN THE SPANISH DOMESTIC LAW.

I.2 ¿ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

Yes, they are in article 299 Spanish Civil Procedure Act:

1. *The taking of evidence in trials shall include:*
(i) Questioning the parties.
(ii) Public documents.
(iii) Private documents.
(iv) Experts' opinions.
(v) Taking of evidence by the court.
(vi) Questioning witnesses.

2. *Pursuant to the provisions set forth herein, any means to record words, sounds and images shall also be admitted, as shall any instruments that allow words, data and mathematical operations carried out for accounting purposes or any other purposes, which are relevant to the proceedings, to be saved, known or reproduced.*

3*. Where certainty about relevant facts may be attained by any other means not expressly set forth in the preceding paragraphs of this Article, the court may, at the request of a party, admit such means as evidence and shall adopt any measures which may turn out to be necessary in each case.*

I.3 ¿WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ Examination of the parties; yes
- ☐ Public documents; yes
- ☐ Private documents; yes
- ☐ Expert testimony; yes
- ☐ Judicial examination;
- ☐ Witness testimony; yes
- ☐ means of reproduction of words, sounds and images; yes

☐ Others (especify): According to paragrpah 3 of article 299, *Where certainty about relevant facts may be attained* ***by any other means not expressly set forth*** *in the preceding paragraphs of this Article, the court may, at the request of a party, admit such means as evidence and shall adopt any measures which may turn out to be necessary in each case.*

Please describe legal provisions: Articles 299 – 384 Spanish Civil Procedure Act (2000)

I.4 REGARDING PUBLIC DOCUMENTS

- **What is the probative value of public documents**? Public documents shall have the probative force set forth in Article 319 should the original, a certified copy or an irrefutable certification thereof be submitted on hard copy or on electronic media, or if a non-certified copy on hard copy or a digitised image thereof is submitted pursuant to Article 267 without its authenticity being contested. According to article 319, the public documents included under items (i) to (vi) of Article 317 shall provide full proof of the fact, action or state of affairs documented by them, as well as of the date in which such documents were produced, of the identity of those certifying them and of any other persons, if any, intervening in them with the requirements and in the cases set forth in the following articles. The probative force of administrative documents not included under items 5 and 6 of Article 317 to which the laws grant the nature of public documents shall be as laid down by the laws granting them such nature. Failing an express provision in such laws, the facts, actions and state of affairs recorded in the aforementioned documents shall be construed as true for the purposes of the judgement to be issued, except where other means of proof should diminish the certainty of what is documented by them.

- In cases where public documents are in public registers, is the access to these registers free? Yes, generally speaking although sometimes is necessary to be asked by the competent Court. For example, regarding economic data.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

According to article 326, Private documents shall provide full evidence in proceedings under the terms set forth in Article 319, where their authenticity is not contested by the party which they may harm.

Where the authenticity of a private document is contested, whoever may have filed such document may seek an expert's authentication of handwriting or any other means of proof that may turn out to be useful and relevant for such a purpose.
Should the document's authenticity be verified by authentication or any other means of proof, the provisions set forth in paragraph 3, Article 320 shall be followed. Where the authenticity of such document cannot be deduced or should there be no proof thereof, the court shall assess it in accordance with the rules of fair criticism.

Where the party having an interest in an electronic document's effects should seek them or where such document's authenticity is challenged, the provisions set forth in Article 3 of the Electronic Signature Act shall apply.

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

According to article 316, should they not contradict the other evidence, the facts that a party may have recognised as being true shall be construed as such in the judgement if such party had been personally involved in them and their ascertainment as being true is entirely harmful to such party.

In all other cases, the courts shall assess the testimonies of the parties and persons referred to in paragraph 2, Article 301 according to the rules of fair criticism notwithstanding the provisions set forth in Articles 304 and 307.

However, should a party summoned to questioning not appear at the trial, the court may ascertain the facts in which such person may have been personally involved as recognised and whose ascertainment as being true is entirely harmful to him, in addition of imposing on such party the fine referred to in paragraph 4, Article 292 herein.
The party in question shall be warned in the summons that the effects set forth in the preceding paragraph shall come about should he fail to appear without justification (article 304).

Should a party summoned to testify refuse to do so, the court shall warn him at the hearing that the facts referred to in the questions may be ascertained as being true unless a legal obligation to keep a secret should exist, as long as the person called to testify has been personally involved in them and their ascertainment as being true may turn out to be fully or partially harmful to him. Where the responses given by the party called to testify are evasive or inconclusive, the court shall warn him as set forth in the preceding paragraph on an ex officio basis or at the request of a party (article 307).

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify? Yes

Yes, they are.

- In what cases witnesses can refuse to testify?

According to article 379, when the witness has the duty to maintain silence as regards facts he is questioned on due to his state or profession, he shall state his reasons for this and the court shall consider the grounds for the refusal to declared and shall decide what is right in law through a procedural court order. If the witness is released from responding, this shall be recorded in the minutes.

If the witness alleges that the facts he is asked about belong to matters which are legally declared to be classified as reserved or secret, in the cases in which the court considers it necessary in order to satisfy the interests of the administration of justice, it shall ex officio request the competent organism for the official document which accredits this fact, through a procedural court order.

> Once it has verified the grounds of the plea of a reserved or secret nature, the court shall order the document to be attached to the records, with a record of the questions affected by official secrets.

- The person who refuses to testify can be compelled to testify or punished?

If a witness summoned to appear in court fails to appear without reasonable excuse, the court shall impose a fine thereon and shall decree that the attendance of the said witness during the next succeeding hearing be compelled. If a witness refuses to testify without reasonable excuse, the court shall impose a fine thereon (Art. 85, Para. 1 and 2).

According to Art. 167 any witness, who refuses to give testimony or to answer particular questions, shall be obligated to state the reasons for this in writing and to attest the said reasons before the hearing whereat the said witness is to be examined, or orally before the court (Para. 1). Any witness, who has failed to comply with the obligation thereof under Article 163 herein and has so delayed the proving:

> 1. shall reimburse the parties for the costs incurred as a result of non-compliance with the said obligation;
>
> 2. shall forfeit the entitlement to claim remuneration (Para.2).

- Are witnesses paid by their participation in the judicial process? If so, how much?

According to article 375, the witnesses who, complying with the summons, appear before the court, shall have the right to obtain compensation for the expenses and damages due to their appearance from the party which proposed them, notwithstanding what might be agreed as regards costs. If several parties propose the same witness, the compensation shall be paid proportionally by them.

The cost of the compensation shall be established by the court Clerk by an order, which shall take into account the data and circumstances which have been contributed. This order shall be dictated once the trial or hearing has finalised.

if the party or parties who have to pay compensation fail to do so within a time limit of ten days from the final decision mentioned in the preceding paragraph, the witness may directly have recourse to distraint proceedings.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

Yes, it is allowed under article 299 Spanish Organic Law on Judiciary (LOPJ).

- What is the role of the judge and the parties in the hearing of a witness?

Once the general questions are answered, the witness shall be examined by the party which proposed him, and if he has been proposed by both parties, the questions formulated by the claimant shall be asked first. the witness shall respond by himself, verbally, and shall not use a draft of responses. When the question refers to accounts, books or documents, he shall be allowed to examine these before answering. In each of his responses, the witness shall express the reason for his statements. When the witness has scientific, technical, artistic or practical knowledge of the matters referred to in the facts of the questioning, the court shall admit the statements added by the witness to his answers on the facts due to this knowledge.

Once the questions formulated by the attorney of the party which proposed the oral evidence, the attorneys of any of the other parties may ask the witness questions which they consider may lead to determining the facts. The court shall reject any irrelevant or useless questions.
In the event of the inadmission of these questions, the provisions in paragraph 2 of Article 369 on unconformity with the inadmission. In order to obtain clarifications and additions, the court may also question the witness.

When the witnesses incur serious contradictions, the court may ex officio or at the request of a party, agree that they submit to a confrontation. It may also be agreed that, due to the respective declarations, a confrontation is held between the parties and one or some of the witnesses. The procedure referred to in this article shall have to be requested at the end of the questioning and, in this case, the witness shall be advised not to leave so that this procedure may take place next.

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

It is free. According to article 368 The questions put to the witness shall be formulated verbally and with due clarity and precision. Neither valuations nor qualifications shall be included and, if they are included, they shall be deemed not made. The Court shall decide on the questions raised in the same act as the questioning, admitting those that may prove appropriate to ascertain the facts and circumstances at issue, which are related to the subject matter of the trial. The questions not referring to the personal knowledge of the witness shall not be admitted, in accordance with Article 360. If a question is replied to in spite of not having been admitted, the said reply shall not be placed on the record.

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION? YES. SOME EXAMPLES BELOW.

GENERALLY SPEAKING, IT REQUIRES THE APPLICATION OF A PARTY. tHERE IS ONE EXCEPTION in article 435: **1.** The court may solely agree to the taking of evidence as final proceedings at the request of a party in accordance with the following rules:

(A) The taking of evidence shall not be conducted as final proceedings if it could have been conducted in time and in the appropriate manner by the parties, including any evidence which may have been put forward after the court statement referred to in paragraph 1, Article 429.

(B) Where any of the evidence admitted has not been taken for reasons not imputable to the party that may have proposed it.
(C) The taking of new or newly known evidence that is useful and relevant, as referred to in Article 286, shall be admitted and taken.

Exceptionally, the court may, on an ex officio basis or at the request of a party, agree upon the taking of new evidence concerning relevant facts that have been alleged in a timely fashion if the evidence taken beforehand has not been conducive as a result of no longer existing circumstances which were independent of the will and diligence of the parties, as long as there are solid reasons to believe that the new procedures shall provide certainty regarding such facts.

In such a case, those circumstances and reasons and shall be set forth in detail in the court order agreeing to such final proceedings being conducted.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

Yes, there is. According to article 300, shall be taken in trials in the following order:

(i) Questioning the parties.
(ii) Questioning witnesses.
(iii) Experts' statements about their opinions or submission thereof, where they exceptionally have to be admitted at that moment.
(iv) Taking of evidence by the court, where it does not have to be conducted outside the court's premises.
(v) Reproduction before the court of any words, images and sounds captured through filming, recording and other similar instruments.

Where any of the evidence admitted cannot be taken at the hearing, the hearing shall continue so that the rest of the evidence may be taken in the appropriate order.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

Yes, it is allowed under article 299 Spanish Organic Law on Judiciary (LOPJ).

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

Yes, it is. Under article 291, although they are not the subjects or objects of evidence, the parties shall be summoned sufficiently in advance, which shall be, at least, forty-eight hours, for the taking of evidence which must be done outside the trial or hearing. In the evidence procedure, the parties and their attorneys shall have the interventions authorised by law in accordance with the means of evidence involved.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

Yes, there are these limitations, not being able to force a person to be subjected to medical tests or blood collection, for example in the investigation of paternity. However, the refusal to practice one of these tests can lead to a presumption of prejudice who refuses, when such refusal is not based on a cause which the Court deemed sufficiently justified. On the other hand, for example, not taking oath or affirmation to tell the truth in the interrogation of the parties, unlike what happens with witnesses or experts, it is considered that can not be violated, religious or morally, to a person to testify against himself.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

The principle is: the costs are to be bear by the party which has made the motion for evidences and paid finally by the loser party in the process. So, according to article 241 Apart from the provisions set forth in the Free Legal Assistance Act, each party shall pay for the proceedings' costs and expenses incurred at such party's request as they come about.

The proceedings' expenses shall be construed to be any payments that directly and immediately arise from the existence of such proceedings, and costs shall be construed as the part of any payments referring to the following items:

(i) Fees for the defence and for technical representation where they may be compulsory.

(ii) The placement of advertisements or public notices that may have to be published during the courses of the proceedings.

(iii) Deposits required to lodge appeals.

(iv) Experts' fees and any other payments which may have to be made to people involved in the proceedings.

(v) Copies, certifications, notes, affidavits and similar documents that may have to be requested in accordance with the law, except for any the court may request from public registries and records, which shall be free.

(vi) Duties which may have to be paid as a result of any procedures needed to conduct the proceedings.

2. The holders of any credit rights arising from procedural actions may claim them from the party or parties owing such rights without waiting for the proceedings to come to an end and independently of any eventual ruling imposing costs against them.

However, according to article 394, in declaratory proceedings, the costs in the first instance shall be imposed on the party who has had his pleas rejected unless the court considers and reasons that the case may pose serious de facto or de iure doubts.For the purposes of ordering a party to pay costs, in order to verify that the case is legally doubtful, the jurisprudence of similar cases shall be taken into account.

If the upholding or dismissal of the pleas is partial, each party shall pay the costs involved in his proceedings and the common costs shall be shared equally, unless there are reasons to impose the costs on one of these as he litigated recklessly.

In application of the provisions in paragraph 1 of this article, when the costs are imposed on the litigant who has lost the case, only he shall be obliged to pay the full amount of the part which corresponds to the attorneys and other professionals who are not subjects to rates or dues, which shall not exceed one third of the cost of the proceedings, for each of the litigants in this situation. Solely for such effects, the pleas which cannot be estimated shall be valued at three million pesetas, unless, due to the complexity of the case, the court decides otherwise.

The provisions in the preceding paragraph shall not apply when the court declares the recklessness of the litigant ordered to pay costs. When the party ordered to pay costs is the holder of the right to free legal assistance, he shall only be obliged to pay the costs arising in defence of the counter-party in the cases expressly stated in the Free Legal Assistance Act.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

According to article 83, no evidence must be admitted which is considered to be irrelevant as it has no relation to the subject of the proceedings. The evidence which, according to reasonable and secure rules and criteria, in no case can contribute to clarifying controversial facts must not be admitted owing to their useless nature. Any activity forbidden by law can never be admitted as evidence.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

Yes, they are when requested by a Court.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

Regulation 1206/2001 and Hague Convention 1970

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

Under Regulation 1206/2001 and Hague Convention 1970

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Under Regulation 1206/2001 and Hague Convention 1970

Sweden

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? WHAT IS THE LEGAL DEFINITION?

There is no explicit definition of "proof" in Swedish legislation. However, a distinction is made between material facts ("legal facts") (rättsfakta) and particulars ("evidentiary facts) (bevisfakta). To a material fact are attached certain legal consequences. Facts of this type will be objects for proof-taking. Particulars are facts that are of importance as proof of a material fact. Even particulars may be subject for proof-taking but the final theme of proof is always a material fact.

I.2 ARE THE MEANS OF TAIKING OF EVIDENCES RATED IN YOUR MS?

No, there is no explicit rating. In Swedish law, the principle of the admissibility of evidence applies. There are no general rules that specify the probative value of each piece of evidence. The court decides, based on an independent assessment of all that has occurred during the main hearing, what is considered proven in each case (Chapter 35, Section 1 the Swedish Code of Judicial Procedure (rättegångsbalken (SFS 1942:740), hereafter RB). However, written documents, such as agreements, normally have high probative value.

I.3 WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

- ☐ X Examination of the parties,;
- ☐ X Public documents;
- ☐ X Private documents;
- ☐ X Expert testimony;
- ☐ X Judicial examination;
- ☐ X Witness testimony;
- ☐ Xmeans of reproduction of words, sounds and images;
- ☐ X Others (especify)

Please describe legal provisions:

Examination of parties:

Parties can be heard for the purposes of proof, but may not testify (see RB Chapter 36, Section 1). It is a principle rule of Swedish law that in a civil action a party can be heard only on request of him or the other party. The court may not require the examination of a party (see RB Chapter 35, Section 6). Provisions concerning examination of parties are given in Chapter 37 of the Swedish Code of Judicial Procedure. Since the Chapter mainly refers to Chapter 36 (concerning testimony of witnesses), it only consists of three paragraphs. At the disposal of a party the court may hear a party either under affirmation of truth or without affirmation of truth (RB Chapter 37, Section 2). In the latter case there is no criminalisation of untrue statements as it is in the former case. An examination of a party for the purposes of

proof is to be held before any witness is heard, in avoidance of that the party otherwise might adjust his statements to the testimony of the witness (see RB Chapter 43, Section 8 para. 2)

Private documents

According to the Swedish Code of Judicial Procedure anybody who is holding a written document that can be assumed to be of importance as evidence is obliged to produce it (see Chapter 38, Section 2, para. 1). However, neither a party, nor any person related to him as stated in Chapter 36, Section 3 (relatives), is obliged to produce written communications between the party and such a related person or between such related persons. Neither a public official nor any person referred to in Chapter 36, Section 5, may produce a written document if it can be assumed that its contents is such that he may not be heard as a witness thereto. Further exemptions from the obligation to produce a written document are prescribed in the Code (see RB Chapter 38, Section 2).

Official documents:

If a public document can be assumed to be of importance as evidence, the court may order the document to be placed at the courts disposal. However, this does not apply to a document which contains particulars subject to secrecy pursuant to certain provisions in the Public Access to Information and Secrecy Act (offentlighets- och sekretesslag (2009:400) or to a provision to which is referred to in any of these provisions, unless the authority authorized to try the matter of releasing the document has given its consent thereto; a document for which the contents are of that kind that nobody who has dealt with the document may be heard about it or a document for which the production would disclose a trade secret, unless there is extraordinary reason for it (see Chapter 38, Section 8).

Expert testimony:

If the determination of an issue requires special professional knowledge, the court may obtain an opinion on the issue from a public authority or officer or from a person specially licensed to furnish opinions on the issue or may commission one or more persons known for their integrity and their knowledge of the subject to deliver an opinion (RB Chapter 40, Section 1). An expert can also be called by a party (RB Chapter 40, Section 19). In such a case, the expert will be regarded as an ordinary witness. As a rule, an expert shall submit a written opinion (RB Chapter 40, Section 7). He shall also be examined orally if a party requests it and it is not plainly without importance, or if the court otherwise finds it necessary (RB Chapter 40, Section 8).

Judicial examination:

In a dispositive case the court may not take evidence on its own motion (see RB Chapter 35, Section 6).

Witness testimony:

Everyone who is not a party to the case may be heard as a witness (RB Chapter 36, Section 1). There are some exemptions from the duty to testify, see below.

Others:

For the inspection of immovable property; objects that cannot be brought conveniently to the court or the scene of a particular occurrence, the court may hold a view at the locus in quo (RB Chapter 39, Section 1). A view may under prescribed conditions take place outside the main hearing (RB Chapter 39, Section 2).

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

As said above there are no general rules in Swedish law that specify the weight of evidence. In each case the court has, based upon an independent assessment of what has occured at the main hearing, to decide the probative value of a public document. Normally, however, public documents are considered to have high probative value.

- In cases where public documents are in public registers, is the access to these registers free?

The principle of public access to official documents is central to the Swedish law (see Chapter 2, Article 1 The Freedom of the Press Act (tryckfrihetsförordningen). This principle means that everyone has the right to make a request to study public documents and that one usually do not have to divulge why or who one is. Documents which are received or dispatched from an authority normally have to be registered (see Chapter 5 the Public Access to Information and Secrecy Act of 2009. Documents such as letters, decisions and reports received or dispatched from authorities are as a rule public documents and must normally be made available for anyone to read on site. Those wishing to obtain official documents are also entitled to obtain a transcript or a copy of the document for a fee.

In some cases, however, public documents or special parts of them, are not official but secret. All the exceptions for public access to official documents must be prescribed by the law (see Chapter 2, Article 2 of the Freedom of the Press Act). According to the Freedom of the Press Act, Chapter 2, Article 2, the right to access may be restricted only if restriction is necessary with regard to national security and foreign relations; fiscal, monetary or currency policy; the inspection, control or supervisory functions of public authorities; the interest of prevention or prosecuting crime, the public economic interest; the protection of privacy and the preservation of animal or plant species. In the Public Access to Information and Secrecy Act there are provisions on secrecy. According to Chapter 6, Section 5 this Act, an authority shall on the request of another authority provide information that it has at its disposal, unless the information is subject to secrecy or the provision of the information would impede the usual function of the authority. And on the request of a private party, an authority shall provide information from an offical document held by the authority, unless the information is subject to secrecy or the provision of the information would impede the usual function of the authority (see Chapter 6, Section 4).

the information would impede the usual functioning of the authority.

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

In Swedish law there are no rules that specify the weight of evidence. A private document produced in order to secure proof, for example a receipt, has, however, normally a high probative value (see Lindell B, Civil procedure in Sweden, 2004 p. 189).

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

The principle of the admissibility of evidence applies and therefore the probative value of a statement by a party must be decided case by case. A statement given under oath, however, normally should have a higher probative value than a statement not given under oath. And if a party in a dispositive case admits a certain circumstance, his admission constitutes full proof against him (RB Chapter 35, Section 3).

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

Yes, in principle, anyone who is not a party is obliged to testify (RB Chapter 36, Section 1).

- In what cases witnesses can refuse to testify?

A close relative to a party is not obliged to testify. This includes a person who is or was married to the party; a person who is in ascending or descending relationship with the party; a person who is a brother or sister of the party or a brother- or sister in-law and a person who is or has been married to a brother or sister to a party or is related in a similar way to the party (see RB Chapter 36, Section 3).

A person who is obliged to testify may decline to comment on a certain fact if a statement would mean that the witness was thereby forced to reveal that he or a person related to him as stated in Section 3, had committed a criminal or dishonourable act. Nor does a witness need to reveal trade secret and he may decline to comment on such a fact relating to an individual´s personal circumstances referred to in Chapter 35, Section 11 the Public Access to Information and Secrecy Act (see RB Chapter 36, Section 6).The king and foreign diplomats who have diplomatic immunity are not obliged to testify.

- The person who refuses to testify can be compelled to testify or punished?

A person who shall be heard as witness shall be summoned, under penalty of fine, to appear at the hearing before the court (see RB Chapter 36, Section 7). If a witness that has been summoned to attend pursuant to Chapter 36, Section 7 fails to do so, the court shall either direct a new default fine, provided that the case is scheduled to a subsequent date, or shall order that he shall be brought in custody before the court at once or at the scheduled day (see RB Chapter 36, Section 20).

If a witness, without a valid excuse, refuses to take an oath; to testify; to answer a question or to obey an order pursuant to RB Chapter 36, Section 8, the court shall order the witness to perform his duty under penalty of fine, and, if he persists in his refusal, under penalty of detention (see RB Chapter 36, Section 21).

- Are witnesses paid by their participation in the judicial process? If so, how much?

Witnesses are entitled to compensation for their participation in a judicial process. If a witness has been invoked by a private party the witness shall be paid by the party. In such a case compensation shall include reimbursement of necessary costs for travel and maintenance and loss of time in an amount deemed reasonable by the court. In cases where it is reasonable with regard to the party´s economic circumstances, the court may order that the compensation shall be paid out of public funds (see RB Chapter 36, Section 24).

- Are there people who can not testify?

Parties may not be heard as witnesses (RB Chapter 36, Section 1). Persons who have a duty of confidentiality outside the court are not allowed to testify in certain circumstances. This includes for example advocates, defense counsel, physicians and clergymen (see RB Chapter 36, Section 5). These people are obliged to testify but may not be asked questions concerning matters which fall within their duty of confidentiality.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

If there is reason for it, the court can allow a witness to testify by telephone- or videoconference. When it comes to decide whether there is such a reason, the court has to take in account the costs and inconvenience that would otherwise arise and whether any of the persons that take part in the session is afraid to appear in person. Participating via telephone or video link may not take place if it is inappropriate with regard to the purpose of the session and other circumstances (see RB Chapter 5, Section 10).

- What is the role of the judge and the parties in the hearing of a witness?

The party who has invoked the witness starts the hearing of the witness unless the court decides otherwise. The opposing party thereafter has an opportunity to conduct a cross-examination. If the opposing party is not present or if it is required by another reason, the court should conduct this part of the examination.Then the court and the parties may ask supplementary questions. The court shall reject questions that obviously have nothing to do with the case, that are confusing or that are otherwise inappropriate (see RB Chapter 36, Section 17).

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

A preliminary list of questions is not necessary. At the beginning of the examination the witness shall have an opportunity to give his testimony in a continuous sequence all by himself or, if necessary, with the support of questions (see RB Chapter 36, Section 17, para .1).

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION

In a dispositive case the court may not take evidence on its own motion (see RB Chapter 35, Section 6). The taking of evidence always requires the application of a party (see RB Chapter 35, Section 6).

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

If a party is to be heard for evidentiary purposes, the examination shall take place prior to the taking of witness evidence concerning the circumstance in question (see RB Chapter 43, Section 8).

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

Yes, according to RB Chapter 5, Section 10. See above.

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

The parties and their representatives may be present during the taking of evidence at the main hearing. If there is reason to believe that a witness in presence of a party would not tell the truth openly through fear or any other cause, the court may decide that the party may not be present during the examination. The same applies if a party hinders the witness from testifying by interrupting the witness (see Chapter 36, Section 18). When a testimony is delivered in the absence of a party, the party shall, if possible, be able to follow the testimony through sound transmission or through sound – and image transmission.

1.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

In the Swedish Constitution, the Instrument of Government, it is prescribed that everyone shall be protected in their relations with the public institutions against any physical violation and that everyone shall be protected against body searches and other invasions of privacy (see Chapter 2. Art. 6). Limitations in these rights may only be done by law (see Chapter 2. Art 20).

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

In principle, the losing party has to pay the expenses generated by the taking of evidence (see RB Chapter 18, Section 1). The expenses are considered as litigation costs. According to the Swedish Code of Judicial Procedure the following expenses are regarded as litigation costs: costs of preparation for trial and presentation of the action; costs for representation and counsel.; costs for a party´s work and loss of time and costs for evidence in the case (see RB Chapter 18, Section 8). If legal aid has been granted according to the Legal Aid Act (rättshjälpslagen (1996:1619)) the public pays the applicant´s expenses for legal assistance (to a certain limit); evidence; examination expenses; mediation and certain fees (see Sections 15-19 the Legal Aid Act).

I .14 DOES EVIDENCE OBTAINED ILLEGALY HAVE ANY VALUE?

The premise is that illegally obtained evidence is admissible under the principle of the admissibility of evidence. However, the manner in which evidence has been acquired may affect the probative value in a negative way. And due to the European Convention on Human Rights there are some limited opportunities to reject illegally obtained evidence.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

An authority shall at the request of another authority provide information that it has at its disposal, unless the information is subject to secrecy or the provision of the information would impede the usual function of the authority (see Chapter 6, Section 5 the Public Access to Information and Secrecy Act).

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

In relation to other EU member states, with the exception of Denmark, Sweden has to apply Council Regulation (EC) No 1206/2001 of 28 May on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. The regulation is complemented by the Act on the Council Regulation on the taking of evidence in civil or commercial matters (lag (2003:493) om EG:s förordning om bevisupptagning i mål och ärenden av civil eller kommersiell natur) and Notification concerning the Council Regulation on the taking of evidence in civil or commercial matters (Tillkännagivande (2003:483) om EG:s förordning om bevisupptagning I mål och ärenden av civil eller kommersiell natur). The EC Regulation shall, in relation to matters to which it applies, prevail over other provisions in agreements concluded by the Member States, for example the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial matters. According to the 2003 Act the taking of evidence for a foreign court in civil matters take place at a Swedish district court (§ 5.para 1). The court has to apply the rules in the Swedish Code of Judicial Procedure concerning the taking of evidence outside the main hearing, unless otherwise provided by the EC Regulation on the taking of evidence (§ 5 para.2).

Outside the EU, the Act on the taking of evidence for a foreign court of law (lag (1946:816) om bevisupptagning åt utländsk domstol) applies. According to this law, a request for the taking of evidence may for example relate to the taking of the oath; the examination of a party or the admission of evidence by a witness, expert, on-site investigation or by documentary evidence (§ 1). The foreign court shall submit its request for the taking of evidence to the Central Authority which forwards it to the competent Swedish court which is to perform the taking of evidence (§ 1). A request from one of the other Nordic states, however, is sent directly to the competent Swedish court (see Article 1 the Agreement 1974 between Sweden, Denmark, Finland, Iceland and Norway on mutual assistance in matters concerning service of documents and taking of evidence (SÖ 1975:42).

The procedure under the 1946 Act on the taking of evidence for a foreign court takes place in the compliance with the rules set out in the Swedish Code of Judicial Procedure, unless otherwise is prescribed in the Act of 1946 (§ 5). The matter shall be considered as taking of evidence outside the main hearing, but there is no need to call a party if he shall not be heard or perform something (§ 5, para. 1). If the foreign court has specific wishes with regard to the procedure, they will be followed insofar as they are not contrary to Swedish law (§ 8, para. 2). Foreign judges have the right to be present when the evidence is taken. When the evidence has been taken, the assignment is reported back - generally by a record of the taking of evidence - to the other state through the Central Authority (§§ 10 and 12). It should, however, be mentioned in particular that documents drawn up with reference to the taking of evidence under the 1954 Hague Convention, at the request of an Austrian court, should be forwarded by the Swedish court directly to the Austrian court. The Swedish state covers most of the costs incurred in connection with the taking of evidence (§ 9).

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

According to the EC Regulation on the taking of evidence one Member State may require permission to take evidence directly in another Member State (see Article 17). Regarding the relation to non-EU-states, the Swedish position has long been that it does not constitute the exercise of official power where another country holds a hearing by telephone with someone in Sweden. A foreign authority therefore may hold a hearing by telephone with someone in Sweden without any formalities and without involving Swedish authorities, provided the person to be heard consents to the hearing (see the Government Offices of Sweden, http://www.regeringen.se).

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Inside the EU the EC Regulation applies (see 11.4). According to the Act on the Council Regulation on the taking of evidence in civil or commercial matters (2003:493) a Swedish court may take evidence directly in another Member State if the request has been accepted by the central body or competent authority of that state. In addition, Swedish courts may , without a special request, take evidence directly in another Member State, if it is allowed under a special agreement (see § 4). In relation to non-EU states, there are no Swedish statutory rules regarding hearings by telephone in civil matters. However, according to established practice, such hearings may take place provided the other country so allows (see the Government Offices of Sweden, http://www.regeringen.se).

UK

I. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITHOUT TRANSNATIONAL ELEMENT

I.1 DOES THE LEGAL SYSTEM OF YOUR MS PROVIDE US WITH A DEFINITION OF "PROOF"? WHAT IS THE LEGAL DEFINITION?

All questions of fact are decided by the tribunal of fact (usually a single judge, who is the arbiter of facts and law) based on the oral evidence of witnesses, documents and real evidence and any inferences which may be fairly drawn from that evidence.

The burden of proof generally rests on whoever is asserting the fact, and the standard of proof required is to the tribunal's satisfaction on the balance of probabilities.

I.2 ARE THE MEANS OF TAKING OF EVIDENCES RATED IN YOUR MS?

It is unclear what this question is asking for.

I.3 WHICH OF THE FOLLOWING MEANS OF TAKING OF EVIDENCE ARE ALLOWED IN YOUR MS?

We have indicated with an 'x' to indicate where the means are permitted:

X Examination of the parties;
X Public documents;
X Private documents;
X Expert testimony;
X Judicial examination (but in the context of an adversarial system);
X Witness testimony;
X means of reproduction of words, sounds and images;
Others (specify)

Please describe legal provisions: **Relevant provisions are contained within the Civil Procedure Rules (CPR); CPR 32.**

I.4 REGARDING PUBLIC DOCUMENTS

- What is the probative value of public documents?

  It depends on individual facts and cases – each would be different, but they would be admissible as real evidence for the judge to attach such weight to as s/he thought appropriate.

- In cases where public documents are in public registers, is the access to these registers free?

Does "free" mean without charge? If so, parties would usually pay for a copy.
Does "free" mean unrestricted? If so, it would depend on the document, and whether any public interest can be claimed preventing access to it.

- If not, what are the conditions to have access to them?

  In some circumstances conditions are put in place to protect an individual's autonomy or to protect the national interest for Government documents etc.

  Please describe legal provisions: **Relevant provisions are contained within CPR 31**

I.5 REGARDING PRIVATE DOCUMENTS

- What is the probative value of private documents?

  There is no limit per se on the probative value of private documents, it as a matter for the tribunal of fact in each individual case.

  Please describe legal provisions: **Relevant provisions are contained within CPR 30 - 35**

I.6 REGARDING THE EXAMINATION OF THE PARTIES:

- What is the probative value of statements made by the plaintiff and the defendant?

  The parties are known as the Claimant and the Defendant in the UK.

  All parties are allowed to give evidence on their own behalf and the trier of fact determines the weight to attach to each witness's evidence in each individual case.

  Please describe legal provisions: **Relevant provisions are contained within CPR 30 - 35**

I.7 REGARDING THE WITNESS TESTIMONY:

- Are witnesses obliged by the Law of your MS to testify?

  If you are listed as a witness, you can be compelled by a 'summons' to attend court. Otherwise, you are not obliged under civil rules.

- In what cases witnesses can refuse to testify?

  If their evidence would lead to self-incrimination, or incrimination of a spouse, or disclosure of journalistic sources, or to breach of legal privilege, or patent privilege. Sometimes a judge may exercise discretion to allow a witness to refuse to answer a question where the public interest favours it (e.g., the disclosure of a police informant).

- The person who refuses to testify can be compelled to testify or punished?

A person who refuses to testify can be found to be in contempt of court, which can result in imprisonment.

- Are witnesses paid by their participation in the judicial process? If so, how much?

  No, but they can claim reasonable expenses incurred by their attendance at court.

- Are there people who can not testify?

  People who do not have 'capacity' due to lack of understanding of issues or the requirement to tell the truth e.g., children. However, the judge can assess the degree to which s/he thinks a witness may be able to offer useful testimony by questioning the witness.

- Can witnesses testify using new technologies such as television or videoconferencing? If so, under what conditions?

  Yes. When witnesses are out of the jurisdiction, or where the witness is in fear. The judge can make any order under the CPR to allow the testimony of a witness to be given in this way if s/he feels it is appropriate to allow the trial to be conducted fairly.

- What is the role of the judge and the parties in the hearing of a witness?

  The party calling the witness examines the witness 'in chief', the other parties cross examine the witness, and the judge can ask questions if s/he wishes to do so.

- Is necessary the draft of a preliminary list of questions in the interrogation of witnesses, or the witness testimony is completely free?

  Witness testimony is by way of a pre-prepared witness statement, which stands as the evidence 'in chief'. A witness is then cross examined on any issues (relevant to the proceedings) which the other party chooses.

Please describe legal provisions: **Relevant provisions are contained within CPR 30 - 35.**

I.8 DOES THE TAKING OF EVIDENCE ALWAYS REQUIRE THE APPLICATION OF A PARTY, OR CAN THE JUDGE IN CERTAIN CASES ALSO TAKE EVIDENCE ON HIS OWN MOTION?

In theory the judge has the power to call witness of his own volition (CPR 3) but this happens extremely rarely.

I.9 IS THERE AN ORDER TO FOLLOW IN CONDUCTING THE TAKING OF EVIDENCE IN THE TRIAL

Generally the Claimant gives evidence first, followed by the Claimant's witnesses, then the Defendant and the Defendant's witnesses. The order in which witnesses can be heard can be altered to suit the availability of witnesses during the trial.

I.10 IN YOUR MS IS ALLOWED THE TAKING OF EVIDENCE BY VIDEOCONFERENCE OR TELECONFERENCE?

See 1.7 (above).

I.11 IN YOUR MS IS PROVIDED THE POSSIBILITY OF THE PARTIES OR THEIR REPRESENTATIVES TO BE PRESENT IN THE TAKING OF EVIDENCE? IN WHAT CIRCUMSTANCES? UNDER WHAT CONDITIONS?

The parties to an action are permitted to be in court throughout. The witnesses are only permitted when they are giving testimony, or after they have given it.

I.12 IN YOUR MS IS THERE ANY LIMITATION ON THE OBLIGATION OF PERSONS TO BE SUBJECT TO THE TAKING OF EVIDENCE? IF SO, IN WHAT CASES A PERSON MAY REFUSE TO BE SUBMITTED TO IT? (MEDICAL PROOFS, BLOOD...)

There are provisions for the taking of blood in in matrimonial cases, and in cases involving the welfare of children, but no such provision exists elsewhere.

I.13 WHO PAYS THE EXPENSES GENERATED BY THE TAKING OF EVIDENCE (REQUESTING PARTY, THE LOSER PARTY IN THE PROCESS ...)? IS IT INCLUDED IN THE CONCEPT OF LEGAL EXPENSES? JUST CERTAIN TESTS (EXPERT TESTIMONY...)?

Evidence is taken by a party's legal team at their cost. Should the party have an order for costs made in their favour (often because they have won the case) the bill of costs they submit will include this figure. However, this is subject to taxation by the judge on the grounds of proportionality.

In terms of Experts, CPR places limits on the number of Experts who can be used and has provisions for the use of joint Experts which allows the costs to be controlled and shared.

I.14 DOES EVIDENCE OBTAINED ILLEGALLY HAVE ANY VALUE?

The domestic courts, in upholding the ECHR, will not allow evidence obtained by illegal means to be used.

I.15 ADMINISTRATIVE AUTHORITIES, SUCH AS SOCIAL SECURITY OR TAX OFFICES ARE OBLIGED TO SUBMIT THE INFORMATION REQUESTED BY A JUDICIAL AUTHORITY?

Yes.

II. INTERNAL LAW ON THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL PROCESSES WITH TRANSNATIONAL ELEMENT

II.1. IN YOUR MS IS ANY SPECIFIC RULE ON THE TAKING OF EVIDENCE REQUESTED BY A FOREIGN COURT (U.K. PART 34. WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS).

(1) This rule applies where a court in another Regulation State ('the requesting court') issues a request for evidence to be taken from a person who is in the jurisdiction.
(2) An application for an order for evidence to be taken –
(a) must be made to a designated court;
(b) must be accompanied by –

(i) the form of request for the taking of evidence as a result of which the application is made; and
(ii) where appropriate, a translation of the form of request; and
(c) may be made without notice.
(3) Rule 34.18(1) and (2) apply.
(4) The examiner must send –
(a) the deposition to the court for transmission to the requesting court; and
(b) a copy of the deposition to the person who obtained the order for evidence to be taken.

Please describe legal provisions: **Relevant provisions are contained within CPR 34.24**

II.2. IF NOT, ARE APPLICABLE THE INTERNAL RULES ON TAKING OF EVIDENCE REQUESTED BY NATIONAL COURTS?

N/A

II.3. IF SO, DO THESE RULES INCLUDE A LIST OF EVIDENCE (OR MEANS OF EVIDENCE) THAT MAY BE REQUESTED BY FOREIGN COURTS? OR ARE THEY THE SAME AS IN CASES WITH NATIONAL COURTS?

Evidence may be given orally or in answer to written questions, it may also be used to require the witness to produce documents, see above.

II.4. DOES YOUR LEGAL SYSTEM PROVIDE THE DIRECT TAKING OF EVIDENCE BY FOREIGN COURTS? IF SO, IS THERE ANY LIMITATION?

(1) Subject to rule 34.13A, this rule applies where a party wishes to take a deposition from a person who is in another Regulation State–
(a) outside the jurisdiction; and
(b) in a Regulation State.
(2) The court may order the issue of a request to a designated court ('the requested court') in the Regulation State in which the proposed deponent is.
(3) If the court makes an order for the issue of a request, the party who sought the order must file –
(a) a draft Form A as set out in the annex to the Taking of Evidence Regulation (request for the taking of evidence);
(b) except where paragraph (4) applies, a translation of the form;
(c) an undertaking to be responsible for costs sought by the requested court in relation to –
(i) fees paid to experts and interpreters; and
(ii) where requested by that party, the use of special procedures or communications technology; and
(d) an undertaking to be responsible for the court's expenses.
(4) There is no need to file a translation if –
(a) English is one of the official languages of the Regulation State where the examination is to take place; or
(b) the Regulation State has indicated, in accordance with the Taking of Evidence Regulation, that English is a language which it will accept.
(5) Where article 17 of the Taking of Evidence Regulation (direct taking of evidence by the requested court) allows evidence to be taken directly in another Regulation State, the court may make an order for the submission of a request in accordance with that article.

(6) If the court makes an order for the submission of a request under paragraph (5), the party who sought the order must file –
(a) a draft Form I as set out in the annex to the Taking of Evidence Regulation (request for direct taking of evidence);
(b) except where paragraph (4) applies, a translation of the form; and
(c) an undertaking to be responsible for the court's expense

Please describe legal provisions: **Relevant provisions are contained within CPR 34.23**

II.5. MAY YOUR NATIONAL COURTS APPLY TO FOREIGN COURT FOR THE DIRECT TAKING OF EVIDENCE ABROAD?

Please describe legal provisions: **See above in relation to a Regulation State.**

NOTE: Where the person from whom a party wishes to take a deposition is out of the jurisdiction and NOT in a Regulation State, evidence may be obtained by the High Court by issuing letters of request to the judicial authorities of the country in question, or by examination before the British Consular Authorities.

Relevant provisions are contained within CPR 34.13