

**COUNCIL
REGULATION
(EC) N^o
1206/2001**

IN A NEW TECHNOLOGY ERA...



Council Regulation (EC) no 1206/2001: article 17^o and the video conferencing as a way of obtaining direct evidence in civil and commercial matters

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I. Introduction

The direct taking of evidence is, nowadays, one of the most important topics related to the cooperation between Member States of the European Union in Civil and Commercial matters.

The beginning of a new age, based on the highest technology, cannot be forgotten. Today, there are no boundaries like before... In our time, there are no distances anymore! In our time there are no limits! Tokyo, Lisbon and New York can be together in the same room; Paris, Moscow and Cairo can be linked by a simple “click”...

It's a new era, a new reality.

The main goal of this paper is to be aware of the potential of globalization and of new technology in the judiciary life, mainly in the area of international cooperation between courts in European Union.

For matters of civil and commercial law, there is an important COUNCIL REGULATION (EC No 1206/2001 of 28 May 2001) that should be taken into account when the topic is the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

Throughout our reflexion, we will check out all the possibilities offered by this brand new concept of cooperation that is given by the EC 1206/2001.

Have globalization and high technology arrived to our courts?

That is what we want to answer...

The starting point of our work is the article 17^o of the EC Regulation 1206/2001.

There are several questions that immediately appear. For instance, is this article compatible with the sovereignty of each country? Or is this article a normal consequence of the development of an area of freedom, security and justice?

Where is this Council Regulation leading us? What is the path we are taking?

Among all the questions that arise from the direct taking of evidence, we also have as a main purpose to reflect (and maybe answer) about the possibility of video conferencing to be considered one of its multiple instruments. Is video conferencing a way of taking evidence directly? Which rules should be followed?

The world is changing, so is the law...

The European Union has to be capable of inventing solutions for the newest problems.

We, applicators and practitioners of law, must be open to the range of possibilities that technology has brought us!

II. The Principle of Immediacy: cornerstone of the civil procedure

Nowadays judgment in a European Court hasn't changed, in its essence, since the judicial system in the Roman Empire. Here, the party would find his opponent and bring him before the magistrate. The trial was ruled by orality and immediacy. The parties produced speeches about their plead, with introduction of evidence and would present it before the Court.

Nowdays, the principle of immediacy, closely related to the principle of orality (without which it doesn't exist), tells us that the judgment, as the obtaining of evidence, shall occur before the Judge that is responsible for deciding the case.

All Member States of the European Union (from Roman law system) foresee exceptions to the immediacy in their national civil procedure law. The anticipated taking of evidence is widely accepted (e.g., when the witness has a terminal disease), or the activity prosecuted to give an expert opinion (which occurs outside the Court's physical space).

However, these are exceptions, not the rule. There is no doubt that a direct contact of the Judge with the evidence only has advantages for the solution of the case.

We can define immediacy as a relation of proximity formed between the Court and the parties. Immediacy itself meaning without mediation, without interferences.

FRANCESCO CARNELLUTI (1879-1965) wrote that immediacy is “shorting the distance”. Surely, this brilliant Italian lawyer was saying that immediacy ensures that arguments, as also evidence, are put to the Court in the most direct manner possible, which allows a living and immediate contact and allows the Judge to evaluate the credibility of witnesses and experts involved in the case.

The immediacy of the Judge with the parties, and with the evidence, allows a quick clarification of the doubts that appear in Court (which will reflect in the time that the case is finished). We cannot forget that witnesses also speak by their face, by their eyes, by their voice tone and by many circumstances that develop the meaning of the words and give indications against, or in favor, of them.

Unquestionably, there are aspects in the evidence that must be directly appreciated. Immediacy makes it possible, in the appreciation of evidence, the creation of an irreplaceable opinion about its credibility.

All that has been written here are reasons to believe that the immediacy in the taking of evidence must become a reality between European courts.

The orality and immediacy also demand that the judgement takes place on the same day. In the Roman Empire it must be given before sunset. If not in the same day, the judgement must continue in the following day or, if not possible, in the shortest time possible. The reason is simple: the Judge must have a vivid picture of the pleading, the evidence and thereby be less liable to occur a mistake.

In summary, the principle of immediacy consists in allowing the taking of evidence by oral ways before the Judge that will decide, putting him in contact with the parties, witnesses and experts.

How is it possible then to maintain immediacy between European courts if the letter rogatory is still used as the principle way to hear witnesses in other Member

States? Hearing a witness by a letter rogatory will disable the Judge to evaluate the credibility of the witness, which may conduct to what we fight against everyday: an arbitrary judgment.

We believe that immediacy should be a reality between the National Courts of the European Union Member States.

That's why we intend to show in this paper that video conferencing is the way of obtaining direct evidence in civil and commercial matters between national courts in the European Union.

III. Methods for taking evidence: Active and Passive Judiciary Cooperation

It is crucial in a judicial proceeding to present evidence to the Court. In the territory of the European Union, characterized by free circulation of services and free movement of people, it is certain that many of the cases in European courts will have the need to take evidence in another Member State.

The European Council Regulation n.º 1206/2001, purporting the cooperation between courts of the member states of the European Union (with the exception of Denmark) in the taking of evidence in civil or commercial matters, stipulates and contemplates two different methods of cooperation, since 1st January 2004.

The two methods can be distinguished according to which court has the responsibility over the procedure of the evidence (in the first case it is the requested court, in the second case the requesting court).

For Criminal Matters The Convention on Mutual Assistance in Criminal Matters exists between the Member States of the European Union.

A. Taking of evidence by the requested court

[Active Judiciary Cooperation – article 1 (1) (a) and 10^o of the Council Regulation]

The Court that intends to obtain evidence must request it to the competent Court [article 4 (1) of the Regulation stipulates the rules relating to the form and the content of the request and its transmission between Courts). The European Judicial Network developed a great tool to facilitate this task to the national authorities, as also for lawyers and the parties: The European Judicial Atlas (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm).

The request, as also the reply, follows a standard form that is available online at the website of the European Judicial Network (http://ec.europa.eu/civiljustice/index_en.htm), which makes it extremely accessible for every national competent authority.

After the request is completed, the requested court has to acknowledge receipt within seven days and shall execute it without delay, *in maximum*, within the deadline of 90 days after the reception of the referred request [article 10 (1) of the Regulation].

How, then, shall the requested court execute the request for obtaining evidence? Article 10 (2) of the Regulation tells us that the required court shall execute the request in accordance with the legislation of its Member State. However, and this can have a very important impact on the legal action that was proposed, the requesting Court may call for the request to be executed in accordance with a special procedure, foreseen by the law of its Member State (e.g. special oaths that some Member States require the witnesses and experts to take).

It is the requested court that notifies the witness(es), or experts, to find a place and date for the hearing. It is possible for the requested court to apply coercive measures for the taking of evidences (article 13), which strengthens the cooperation in civil and commercial matters regarding the taking of evidence.

In this method of taking evidence, the parties, as also their representatives, can be present at the taking of evidence by the requested court (article 11). However, it is the request court that will determine the conditions under which they may participate if

that possibility is provided by the law of its Member State (this interpretation results from the general provisions of the execution in article 10 and also 12).

After the execution of the request, the requested court shall send to the requesting court the documents regarding the execution of the request of taking evidence.

Aware of the importance of video conferencing to guarantee the immediacy in obtaining evidence, article 10 (4) predicts that the requesting court may ask the requested court to use video conference and teleconference. But what is a step up can also be a step back: the requested court may refuse that request by practical difficulties.

Should practical difficulties (e.g. when a court doesn't have videoconference equipment) be accepted to refuse videoconference in 21st Century in Europe? In a legal action proposed in a court in Maia, north of Portugal, the parties requested the videoconference to hear a witness that lives in Koln, Germany. Almost one year after, after exchanging communication with the Portuguese court, the court of Koln informed that it does not have a videoconference system. Solution now found: letter rogatory.

Does this make any sense in the European Union? Where the Member States agreed in the free movement of people and services between the Member States? *The efficiency of judicial procedures in civil or commercial matters requires that the transmission and execution of requests for the performance of taking of evidence is to be made directly and by the most rapid means possible between Member States' courts (whereas 8 of the Regulation).* But a simple video conference between Portugal and Germany is not possible, in 2010,.

However, in meetings of Justice and Home Affairs Council, representatives of all Member States and from the European Institutions have presented their support to a wider use of video conferencing in cross-border court proceedings.

But Judicial Institutions cannot keep waiting for political solutions, despite the effort made by the European Judicial Network to spread out the use of videoconference (e.g. the practical guide available in

http://ec.europa.eu/civiljustice/publications/docs/guide_videoconferencing_en.pdf). For us, who work everyday to bring justice to cases that a party presents us, the lack of equipment cannot be an excuse, at least not for those of us who work daily to bring justice to the society. One solution could be to use equipment from other facilities, such as public departments, prisons, private institutions or even renting it. Even so, video conference equipment is nowadays very flexible and easy to operate.

B. Direct taking of evidence by the requesting court

[Passive Judiciary Cooperation – article 1 (1) (b) and 17° of the Council Regulation]

The second method of the taking of evidence consists in a direct intervention by the requesting court (article 17). A requesting court from a Member State, with the permission of the required court of another Member State, can obtain direct evidence in that Member State.

It is important to understand the method and procedure for the direct taking of evidence. As previously mentioned, article 17° constitutes the normative base for this procedure. It constitutes a situation of passive judiciary cooperation, in which the requesting court of a member state (the regulation doesn't give us an exact description or definition of the concept of "*court*", because it intended to comprise all the judicial systems of the European member states as well as their legislative and constitutional options) can obtain direct evidence in the territory of another Member State. The list of these "courts", with the attributions and competences to proceed in this direct taking of evidence, can be accessed on the internet, via the Judicial Atlas in Civil and Commercial Matters. For this purpose the court of the requesting country can actually enter into the territory of the requested court. This clearly represents an innovative and important resource that allows the mentioned direct taking of evidence, when this assumes an essential dimension for the discovery of the facts.

When the requesting court intends to use this method, it should request it to the central body or competent authority from the required Member State.

The request must be presented, according to article 4° of this regulation, making use of a specific form (formularies A or H). This form can be filled in online at the “Atlas”

(http://europa.eu.int/comm/justice_home/judicialatlascivil/html/te_filling_en.htm) and must contain the indication of the following elements:

A) The requesting and, where appropriate, the requested court;

B) The names and addresses of the parties to the proceedings and their representatives, if any;

C) The nature and subject matter of the case and a brief statement of the facts; In completing this provision, it may be useful to include with the summary of facts, the legal basis of the claim, a short description of the issues in the case and the relevance of the evidence to those issue;

D) A description of the taking of evidence to be performed;

E) If the request is for the examination of a person,

- The name(s) and address(es) of the person(s) to be examined;

- The questions to be put to the person(s) to be examined or a statement of the facts about which he is (they are) to be examined;

- Where appropriate, a reference to the eventual right to refuse to testify under the law of the Member State of the requesting court;

- The mention that the examination is to be carried out under oath or affirmation in lieu thereof, and any special form to be used;

- Any other element that the requesting court deems necessary;

All the documents deemed necessary by the requesting court for the execution of the request must be translated to the language adopted in the request itself. The request itself (article 6° of the Regulation) can be transmitted by any means deemed necessary and appropriated. Portugal accepts requests sent by post, telecopy or other means and in case of emergency by telegram.

Within 30 days after receiving the request, the required authority will inform if the request is accepted and can impose conditions under which (according to the law of its Member State) the taking of evidence will be carried out [article 17 [4]]. It can even be assigned a court of the requested Member State to participate in the performance of taking the evidence.

When the request for direct taking of evidence is accepted, it is for the requesting court to notify the witnesses, or experts, of the date, time and place where the evidence is to be taken and conditions for participation.

As to the taking of evidence itself, this can be undertaken by a magistrate/judge or by another person (e.g: expert), if the specific nature of the evidence to be taken demands a specific knowledge. This procedure must observe the legal requirements of the legislation of the member state of the requesting court.

The central body or the responsible authority of the requested member state must then inform the requesting court in 30 days, if the request was accepted or not, as well as of possible conditions to the execution of the request of the direct taking of evidence. It is also important to mention that the requested member state has the possibility, under article 17 (4), to assign one of its courts to participate in this diligence and assure that all legal requirements demanded by article 17° are observed.

The grounds for the dismissal or rejection of this request for direct taking of evidence are stipulated in article 17 (5). This can occur if the request is not referent to civil or commercial matters (eg: request for the taking of direct evidence in a criminal procedure) or if the request violates or offends fundamental principles of the required member state. However, because the regulation does not specify the exact nature of these “fundamental principles”, with exception of sovereignty reasons, only technical issues may be considered valid motives for the rejection of a request of this nature, under paragraph c) of article 17 (3) of the Regulation.

One should also mention that an important obstacle to the use of this juridical instrument is its non binding-nature. This means that the execution of this request is made on a strictly voluntary and non coercive form. If, for example, the requested taking of evidence purports the hearing of a witness, the requesting court must mention in the annex I, that the diligence in question has a voluntary nature, ergo, there is no possibility to impose the presence of the witness for that effect. In this situation the person to be heard must be informed, by the requesting court, that her deposition and presence has voluntary basis.

Because of this particular aspect, the use of the direct taking of evidence, assumes a smaller relevance because this constriction and limitation constitutes a

deterrent to the use of this form of cooperation in the domain of the obtaining of evidences.

Should not there be also coercive measures in the direct taking of evidence by the requesting court? The European legislator saw this as a matter of State sovereignty, but coercive measures would be possible here if the request court was also present in the performance of taking evidence. With no doubt, coercive measures make the taking of evidence more effective.

IV. Boundaries, Limits and Difficulties of the Direct Taking of Evidence

There is an undeniable truth: nowadays a Portuguese court can obtain proof directly in Spain, in France, in Italy or in any other Member State.

For the proper functioning of the internal market and also to achieve an area of freedom, security and justice, EU developed special measures that allow the direct taking of evidence.

However, despite the greatness of these winds of change that blew through European Union, there are some difficulties that emerge and that obviously have to be taken into account.

First of all, there are geographical limitations that can delay the procedures. As a matter of fact, it is not easy to travel to another country to obtain proof. There are lots of circumstances that can occur and it is obviously harder than taking evidence near the court.

Anyway, as we said above, the globalization and the advanced technology of nowadays allow us to defeat those difficulties. And we should put all the fears aside, otherwise the article 17 of EC Regulation 1206/2001 will become useless.

There are other aspects that deserve our attention, such as the sovereignty of State Members.

Do these procedures attack the capacity of each Member State to prosecute supremacy, independence and authority over its own territory?

The answer is NO!!!

The meaning of sovereignty has changed over the years. **JEAN BODIN** (*Six Books of the Commonwealth*) noted that sovereignty must be absolute and perpetual. He argued that sovereignty must not be bound by the laws of his predecessors. As a matter of fact, the French jurist and political philosopher defended that the sovereign must not be hedged in with obligations and conditions.

It's crucial to refer also the ideas of **HOBBS** (*Leviathan, 1651*). To this Author, sovereignty has to be absolute and indivisible. Sovereignty can't be shared; otherwise it would be impossible to solve a problem if the power would be divided.

From **ROSSEAU** (*Social Contract, 1763*) we can learn also that there's no law without sovereignty! Sovereignty is given by people to a government in order to receive or maintain social order.

Although it's essential to strengthen these thoughts and teachings, it's also decisive to explain that the sovereignty of the State Members isn't attacked by article 17°. There's full agreement in this matter and also there are important principles of cooperation that allow the countries to adapt themselves to a new reality in which the problems (lawsuits) are no longer connected only with one country, but sometimes with many.

The preamble (number 5) also states something crucial:

“In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives. “

This sentence shows that the main goal is not to cut part of the sovereignty of each Member State, but only to achieve a new area of justice and security!!!

It is crucial to emphasize the fact that the decision of the request belongs exclusively to the court. This is not a political procedure and in any case can political reasons be an obstacle or an impediment. There are specific rules to be followed but none of them are chained to political points of view.

The reasons of refusal are three:

(1) The request does not fall within the scope of this Regulation as set out in Article 1;

(2) The request does not contain all of the necessary information pursuant to Article 4;

(3) The direct taking of evidence requested is contrary to fundamental principles of law in the Member State.

Another essential aspect of the direct taking of evidence is, as we have seen above, its voluntary nature. Actually, direct taking of evidence may only take place if it can be performed only on a voluntary basis without the need for coercive measures. That's another reason that reinforces the sovereignty of each Member State. The court of request has no power on the territory of the requested court.

To conclude, we can state that political reasons are not taken into account, because each Member State signed the EC Regulation 1206/2001 and is obliged to respect it.

V. The use of Video conferencing, according to article 17 (4)

Once again the Regulation stipulates that central bodies and competent authorities shall encourage the use of technology, such as videoconference, and it is in this method of taking evidence that videoconference has more importance. The objective of the videoconference is to get as close as possible to the usual practice in a court session where evidence is taken directly before the Judge. The examination of the witness must follow as closely as possible the practice adopted when a witness is in a court room before the Judge and lawyers. During examination, the witness must be able to see the lawyer (or another legal representative) asking his questions.

The possibility to use videoconferencing in the Direct Taking of evidence [article 17 (4)], constitutes the cornerstone of the position for those countries and authors (Professor Fumagalli, Luigi. *“La nuova disciplina comunitaria dell’assunzione delle prove all’estero in materia civile, in Rivista de diritto internazionale privato e processuale”*, ano 2002, volume 38) who defend that videoconferencing constitutes also one of the forms that the direct taking of evidence can assume. Therefore, in order to comply with the requisites of article 1, there would be the need for the participation of the central authority of the requested member state. However, one can only consider

these understandings as being clearly contradictory with the ends envisaged by this form of judiciary cooperation and with the use of video conferencing itself.

Flexibility and efficiency in the course of judicial procedures, when they assume a cross-border nature, was the intended purpose of the European Council with the recognition of the use of videoconferencing in this regulation. But if one considers that videoconferencing is one of the forms of the direct taking of evidence, that, as we already mentioned, assumes a voluntary and non mandatory nature, these objectives are clearly put at risk. This understanding is also clearly contradictory with the scopes envisaged by this regulation. In fact this interpretation is not enough, in our view, to allow us to consider videoconferencing as being a form of direct taking of evidence. In fact videoconferencing, according to article 10 (4), can also be used in the taking of evidence by the requested court, following a previous request, transmitted directly from a requesting court, that corresponds to the other form of judiciary cooperation stipulated by this regulation.

With this form of cooperation, if the requiring court requires the use of videoconferencing (for example with the intent of inquiring a witness) by the required court, and this accepts [nevertheless, according to article 10 (4)], the required court isn't obliged to accept the use of this instrument], according also to article 13 of the Regulation (with the title "Coercive Measures") in the execution of this request, if necessary, the required court can enforce the requested diligence, making use of the juridical instruments existent in his juridical system. In Portugal, for example, a court could make use of article 519^o of the Civil Procedure Code in order to obtain the deposition of a witness.

VI. Video conferencing, an instrument to create flexibility in the taking of evidence and the cooperation in civil and commercial matters

As to the use of videoconferencing, one should also mention the fact that one of the principal obstacles to its use by other Member States is a consequence of the lack of technical means of the courts of this other Member States. Portugal, in this aspect is very well prepared to make use of this instrument because most, if not all of its courts, are equipped with the technical instruments necessary to the full application and use of this very innovative and important instrument in the scope of European judicial cooperation.

It is also an important instrument in order to promote a more trustworthy relationship between the courts of all member states and the direct contact between these, when necessary.

The greatest turning point and modification of paradigm in the domain of judiciary cooperation in the European Union has occurred with the possibility of direct contact between the courts of the several member states, with no need for the intervention of administrative or governmental authorities, a circumstance that clearly induces a more rapid response and evolution of judiciary proceedings, that by a number of reasons, purporting the taking or obtaining of evidence, demand the intervention of several judicial authorities.

This regulation and the possibility of the use of videoconference is clearly a step towards that direction, with that end. However, as previously mentioned, this can be put at risk, because, on the one hand, of the problems concerning the true nature of videoconferencing and, on the other hand, because many courts of other Member States do not yet dispose of the necessary equipment to make use of this instrument. In order to overcome this difficulty the Regulation contemplates the possibility of the courts of one member state facilitate the videoconferencing equipment for the courts of a different member state.

The use of videoconferencing, outside the regime of the direct taking of evidence, allows the obtaining of evidence (under articles 10 to 16 of the Regulation) without arousing any sovereignty issues, that could emerge from the dislocation of the court authorities of a member state to the territory of another member state.

One example of the practical use of this Regulation, and for example of video conferencing, is the case of A.O.P. (*Averiguações Oficiosas de Paternidade*) – judicial procedures destined to ascertain the identity of the father of a minor. If there is the need to obtain the testimony of eventual witnesses, or the deposition of one of the parents (e.g. mother), who may possibly live abroad, in another member state, in order to expedite and facilitate the obtaining of this evidence, the use of videoconferencing can be the best instrument to that end (at least when requested under article 10° to 16° of the Regulation).

However, videoconference demands some adaptations, e.g., to assure that the witness understands what is videoconference and which parties are involved in the judicial proceeding. Time-zone differences also need special attention.

A very important aspect relates to the use of interpreters. The requesting court must decide if it is preferable to have the interpreter to be at the requesting court or at the requested court. Consecutive interpretation is widely used in cross-border videoconference proceedings. However, we must assure that the interpreter has a proper visual contact with the witness or expert.

VIII. Is videoconferencing a true instrument of direct taking of evidence?

As we have seen above, videoconference is a set of interactive telecommunication technologies that allow two or more locations (courts) to interact via two-way video and audio transmissions simultaneously.

Are we standing before a way of direct taking of proofs? Are a webcam, a projector, a microphone, a loudspeaker and Internet enough to fulfil the conditions of the Article 17 of the EC 1206/2001?

Is the videoconference a standard form of communication?

It is hard to answer to these questions. There are several problems that emerge from this kind of communication. The most important one is the lack of eye contact. Although the video can provide images, there are still differences, such as failing to perceive the gestures of a witness or the person being inquired.

Anyway, technology improves every day and the quality of the video streaming is getting better and better. High speed internet plays also a very important role on this form of communication. The costs are also an important reason to choose a videoconference. There are plenty of advantages.

The most effective way for taking evidence directly is through videoconference. Otherwise, witnesses and experts would have to dislocate themselves to the requesting Court, in another Member State, which would increase the delay and the costs of judicial proceedings.

But are we standing before a true direct taking of evidence?

Is the use of videoconference ruled by articles 10 and 12 of the EC or by article 17?

Pursuant to Article 17 of Regulation 1206/2001 videoconference seems not to be excluded from the direct taking of evidence, therefore it is essential to reflect about the advantages and disadvantages of that inclusion.

Several Member States have been defending that videoconference corresponds to a form of direct taking of evidence. Professor **LUIGI FUMAGALLI** (Università degli Studi di Milano) has defended the same.

However, as states **CARLOS MARINHO** (*in Texts of Cooperation in Civil and Commercial Matters, Coimbra Editora, page 29*) and as we noted above, this conception and vision of videoconference has some contradictions.

On the one hand, EC 1206/2001 intends to simplify and to accelerate the cooperation; on the other hand, the particular regime of the direct taking of evidence imposes special precautions. It is definitely a mechanism to use with prudence, therefore there are plenty of limitations and there is a previous intervention of a Central Body or a Competent Authority that it is designated by each Member State for this subject (article 17 and article 3).

The preamble of the EC 1206/2001 is doubtless about this:

“For the purpose of the proper functioning of the internal market, cooperation between courts in the taking of evidence should be improved, and in particular simplified and accelerated.”

Let us follow a practical example given by **CARLOS MARINHO**: if a court requests to another one the interrogation of a witness, the witness is forced to appear and to collaborate (*article 13 “Where necessary, in executing a request the requested court shall apply the appropriate coercive measures in the instances and to the extent as are provided for by the law of the Member State of the requested court for the execution of a request made for the same purpose by its national authorities or one of the parties concerned”*).

On the other hand, if a court requests to another one the interrogation of a witness using videoconference, following the rules of article 17, any coercive measure can be taken. As we noted above, the direct taking of evidence has to be performed on a voluntary basis without any coercive measure.

So, we can conclude that probably, in many cases, the request of the court would not be successful, because there would be no agreement on the collaboration.

In our opinion, this is a fruitful discussion because it can lead us to a more perfect law.

For the future, our proposal is to reserve the rules of article 17 only to the situations in which one court has to dislocate to another Member State to obtain evidence.

In the present, we keep having two kinds of requests of videoconference: a request following the rules of article 17 (direct taking of evidence) and a request following the rules of articles 10 and 12. Maybe sooner than later a new regime can be created in which a court can directly take evidence without the restrictions of article 17.

The use of videoconferencing has been well promoted, but it needs to be stimulated in cross-border proceedings. However, it must be first stimulated in national legal procedures, so that Member States may advance for a European level.

Judges, public prosecutors, lawyers and other legal practitioners must be encouraged to use videoconferencing systems in national and cross-border procedures.

VII. Conclusion

Once **ROBERT SCHUMAN** dreamed of a new space, a new Europe...That dream came true!!!

However, as the *father of Europe* once stated **“Europe will not be made at once, nor according to a single master plan of construction. It will be built by concrete achievements, which create de facto dependence, mutual interests and the desire for common action”**.

Step by step it is possible to make our Europe much bigger, perfect and complete.

Throughout this brief reflection, it was our main goal to show the benefits of using new technology to achieve a new space of justice and security. Our law has to be adapted to the new reality and the practitioners have to be aware of the new range of possibilities that are already given by European Union law. Direct taking of evidence and video conference are two of these realities that cannot be put aside anymore.

There's a new era and there's a new Europe coming!!!