

Questionnaire relating to the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Evidence Convention)

Responding State:

Portugal

I. General Feedback

1. How does your State rate the general operation of the Evidence Convention?

(b) Good.

2. How does your State rate the useability of the HCCH publications developed to assist users of the Evidence Convention (the Practical Handbook on the Operation of the Evidence Convention ([Evidence Handbook](#)) and [Guide to Good Practice](#) – The Use of Video-Link)?

(b) Good.

3. What work could be carried out by the PB to facilitate the acceptance of accessions to the Evidence Convention (e.g., providing additional information or facilitating direct communication between your Central Authority and new Contracting Parties)?

“Contact between central authorities and new contracting states should be considered useful”.

4. Does your State’s Central Authority have a manual or electronic case management register or system that is used to track incoming requests under the Evidence Convention?

(b) Yes – electronic for incoming and outgoing.

5. If your State’s Central Authority has oversight for outgoing requests, please indicate if there is a system used to track the progress of these.

(d) Other.

“The requests sent through the Central Authority are overseen by the case Management System, but as general principle requests are sent directly without the intervention of the Central Authority”.

II. Scope of the Convention

6. In the previous five years*, has your State experienced any difficulties in interpreting the scope of the Evidence Convention?

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(d) No.

7. Does your State consider the Evidence Convention mandatory or non-mandatory?

(a) Mandatory.

8. Has your State adopted “blocking statutes” or laws which are known by any other description, which prevent evidence being taken in the territory of your State for use in foreign proceedings other than under the Evidence Convention (or other international instrument)?

(b) No.

9. Has your State received or submitted requests for the taking of evidence in connection with arbitration proceedings?

(b) No.

10. Have any decisions relating to the use of the Evidence Convention in arbitration proceedings been rendered by the judicial authorities of your State?

(b) No.

III. Operation of the Convention

A. Chapter I – Preparing, transmitting and progressing Letters of Request

Requesting State refers to the State from which a Letter of Request is, or will be, issued.
Requested State refers to the State to which a Letter of Request is, or will be, addressed.

11. As the **requesting State**, how are Letters of Request transmitted?

(a) Directly from a judicial authority to the Central Authority of the requested State.

12. As the **requesting State**, do the authorities of your State use the recommended Model Form?

(a) Yes, always.

13. Does your State consider further work on the Model Form would be beneficial? For example, a review of the Model Form with a view to including video-link and the preparation of guidelines outlining how to complete the Model Form.

(b) Revision is not required.

14. As the **requested State**, do the authorities of your State send an acknowledgement of receipt for a Letter of Request?

(b) No.

15. During the past five years*, as the **requested State**, has your State received a Letter of Request that is non-compliant?

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(a) Yes.

15.1. If the answer to Q15 above is “yes”, why was the request non-compliant?

(g) The request did not comply with the translation requirements under Article 4.

16. As the **requested State**, does your State provide advance assistance to foreign judicial authorities to prepare a Letter of Request to be sent under the Evidence Convention?
- (a) Yes.
“Telling them where to find the recommended form and about the requirements needed (eg. Language)”.
17. As the **requested State**, does your State provide advance assistance to legal representatives to prepare a Letter of Request to be sent under the Evidence Convention?
- (a) Yes.
“Telling them where to find the recommended form and about the requirements needed (eg. Language)”.
18. Once your State has received a Letter of Request, do your State’s judicial authorities rephrase, restructure, and / or strike out objectionable questions or offensive wording in order to execute a Letter of Request (also known as “blue-pencilling”)?
- (b) No.
19. As the **requested State**, can the execution of a Letter of Request that has been received be challenged?
- (a) Yes.
“If the evidence is subject, for instance, to confidentiality”.
- 19.1. If the answer to Q19 above is “yes”, is the requesting authority or the interested party permitted to respond to the challenge?
- (a) Yes.
“The requesting authority is informed, and can respond to the court”.
20. As the **requesting State**, can the sending of a Letter of Request abroad be challenged?
- (b) No.
21. As the **requested State**, which authority is generally responsible for informing the requesting authority of the time and place of the execution of a Letter of Request (Art. 7)?
- (b) Judicial authority competent to execute the request.
22. During the past five years*, as the **requested State**, has your State received a request specifying a particular method or procedure for taking of evidence (e.g., how witnesses are to be examined)? (Art. 9(2))
- *If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.
- (b) No.
23. As the **requested State**, does your State require the requesting State to reimburse costs?
- (b) Yes, sometimes.

- 23.1. If the answer to Q23 above is “yes”, please indicate circumstances where reimbursement is sought.
- (d) Costs incurred by employing an examiner (Art. 14(3)).
24. As the **requested State**, who may make a request for a Letter of Request to be withdrawn?
- (a) Requesting authority.
25. As the requested State, does your State reject a Letter of Request seeking discovery if it is too broad?
- (c) Not applicable, Article 23 declaration.

B. Chapter I – Execution of a Letter or Request – Witness Examination

All questions directed towards the Contracting Party operating as the requested State.

26. As the **requested State**, how is a hearing conducted for Chapter I requests?
- (a) Before a Judge, Magistrate, Special Master, or other court official.
 - (b) By a judicial officer.
27. Does your State require the Letter of Request to include specific questions to be used during the taking of evidence?
- (b) No.
28. In your State, are hearings public or private?
- (a) Public, unless otherwise ordered by a judge.
29. In your State, is a witness provided with a copy of questions / matters contained in the Letter of Request in advance of a hearing?
- (c) No.
30. In your State, what are the requirements for documents that are to be presented to a witness?
- (a) Any document presented to a witness must be attached to the Letter of Request.
31. In your State, are documents produced by the witness during the taking of evidence authenticated by the court or authority?
- (b) No.
32. In your State, can representatives of the parties who attend the taking of evidence ask additional questions and / or cross examine the witness?
- (a) Yes.
33. In your State, is an oath or affirmation administered to the witness before the taking of evidence?
- (a) Yes.

34. In your State, can the witness be subject to further examination?

(a) Yes.

34.1. If the answer to Q34 above is “yes”, is a second Letter of Request required?

(a) Yes.

35. Does your State have sanctions for the non-appearance of a witness?

(a) Yes.
“Judicial custody or a fine”.

36. During the past five years*, as the **requested State**, is your State aware of a person requested to give evidence invoking privilege?

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(d) Unknown.

37. Does your State require interpreters in the taking of evidence to be certified?

(b) No.

38. In your State, how is witness testimony transcribed?

(a) Verbatim recording through audio.

IV. Use of Information Technology

In 2019, the PB circulated a questionnaire on the use of information technology in relation to the operation of the Evidence Convention. That survey was concluded prior to the start of the COVID-19 pandemic. The questions below seek information from Contracting Parties on the use of technology and in light of the pandemic.

39. Does your State’s Central Authority accept Letters of Request to be transmitted electronically?

(b) No.

40. Does your State allow the taking of evidence by video-link under Chapter I?

(a) Yes.

41. Does your State allow the taking of evidence by video-link under Chapter II?

(a) Yes.

42. Does your State use the Model Form for video-link evidence?

(b) No.

43. What challenges has your State faced regarding the use of information technology under the Evidence Convention?

- (f) System interoperability / compatibility.
- (g) Security concerns.

44. Has your State adopted any new information technology measures to facilitate the operation of the Evidence Convention, particularly in response to the COVID-19 pandemic?

- (a) Yes.
"The use of information technology other than video conferencing".

45. In your State's opinion, what topics could the PB explore further (e.g., for the purposes of training, seminars, or conferences) in relation to the use of information technology under the Evidence Convention?

"To update the information about the acceptance of video conferencing, and gather information if the states oppose for the direct taking of evidence without prior request, if no intervention of the competent authority is needed (voluntary taking of evidence)".

46. In your State's opinion, what further work could the PB do on the use of information technology under the Evidence Convention?

- (a) None.

47. In addition to the Evidence Convention, is your State party to any bilateral, regional, or multilateral agreements that provide rules for the taking of evidence abroad?

- (a) Yes.
"Bilateral agreements with Angola; Mozambique; Cape Verde; São Tomé and Príncipe; Guinea-Bissau; Algeria; Regulation 2020/1783".

For Parties that answered yes to Q47 above:

47.1. Do any of these agreements provide for the use of electronic means to assist in the taking of evidence (e.g., video-link)?

- (a) Yes.
"Regulation 2020/1783".

For Parties that answered yes to Q47 above:

47.2. If yes, what electronic means or information technology does your State use in the taking of evidence?

- (c) Video conference.

V. 2023 Meeting of the Special Commission & Monitoring

48. Does your State have any suggestions that could assist in the promotion, implementation or operation of the Evidence Convention?

- (b) No.

48.1. If the answer to Q48 above is “yes”, please indicate whether the information provided may be published.

N/A

49. What are the three key topics or practical issues related to the Evidence Convention that your State would like discussed at the 2023 meeting of the Special Commission?

1. *“Use of video Link”*
2. -
3. -

49.1. Please indicate whether the information provided in Q49 above may be published.

(a) Yes.

50. The PB is in the process of revising the Evidence Handbook and the Guide to Good Practice – The Use of Video Link, with a view to consolidating these publications. Are there any specific topics, suggestions for presentation or formatting, or any other proposals you recommend for inclusion?

(b) No.

50.1. If the answer to Q50 above is “yes”, please indicate whether the information provided may be published.

N/A

DATA & STATISTICS FOR CONTRACTING PARTIES

I. Statistics under Chapter I

A. Incoming Requests

1. How many incoming Letters of Request for the taking of evidence did your State receive under Chapter I in each of the following years?

2017	56
2018	42
2019	58
2020	34
2021	33
2022	31
Unknown – <i>please explain.</i>	
-	

2. Which three States made the most requests?

Requesting State	Number
Brazil	183
Switzerland	52
Venezuela	12

3. What is the average time taken (in months) to execute a Letter of Request in your State?

“2 - 3 months”

4. If possible, please provide a breakdown of how long (in months) it took to execute incoming requests.

	< 1	1-3	3-6	6-12	> 12
2017	-	-	-	-	-
2018	-	-	-	-	-
2019	-	-	-	-	-
2020	-	-	-	-	-
2021	-	-	-	-	-
2022 (if data available)	-	-	-	-	-
Unknown – <i>please explain.</i> <i>“Requests are sent to the requesting authority directly by the competent authority in Portugal, without intervention of the Portuguese Central Authority”.</i>					

5. How many incoming Letters of Request for the taking of evidence did your State receive via **electronic transmission** under Chapter I in each of the following years?

2017	32
2018	36
2019	37
2020	30
2021	25
2022	23
Unknown – <i>please explain.</i> -	

B. Outgoing Requests

6. How many outgoing Letters of Request for the taking of evidence did your State make under Chapter I in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i> <i>“Most of the requests are sent directly to the requested Central Authority without intermediation of the Portuguese Central Authority”.</i>	

7. Which States were the subject of the most requests?

Requesting State	Number
-	-
-	-
-	-

8. How many outgoing requests for the taking of evidence did your State make via electronic transmission under Chapter I in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i> <i>“Most of the requests are sent directly to the requested Central Authority without intermediation of the Portuguese Central Authority”.</i>	

C. Video-Link

9. How many incoming Letters of Request for the taking of evidence did your State execute under Chapter I in each of the following years?

2017	0
2018	0
2019	0
2020	0
2021	0
2022	0
Unknown – <i>please explain.</i>	
-	

10. How many incoming requests for the taking of evidence did your State execute under Chapter II in each of the following years?

2017	0
2018	0
2019	2
2020	1
2021	3
2022	1
Unknown – <i>please explain.</i>	
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CASE LAW, ADDITIONAL INFORMATION & SUPPORTING DOCUMENTS

I. Case Law

Please list all your State's judicial decisions that have considered the Evidence Convention since 2014, and provide a link to, or upload, the decision (in PDF format only).

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II. Additional Documents

Please provide links to and / or any additional information or documentation to support your response (in PDF format only). This may include:

- ⇒ resources for the general public or guidelines for Central or other Authorities' staff;
- ⇒ implementation legislations, recent legislative developments; or
- ⇒ books, articles, or other published work.

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PUBLICATION OF RESPONSES

Please confirm whether your responses to this questionnaire can be published on the HCCH website.

- (a) Yes.