

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

Responding State:

Germany

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.
“An answer to this question is also given by the European Union.”
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)?

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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?
 - (f) Other.
“There are no federal registers used throughout Germany; some of the Länder use case management registers, some of them electronic registers, some manual registers or other means to track incoming requests. As a remark to questions 4. and 5. as well as preliminary to questions concerning data and statistics it must be underlined that in Germany, no official statistics are kept on the content of requests for mutual assistance pursuant to the Evidence Convention or on the time required to process them. The Ministries of Justice of the Länder, which appoint the Central Authorities for their area of competence, have an informal overview, but are only able to provide limited information on content-related aspects of Letters of Request and the time required to process them. Some of the following information is based on their records. It is only of limited informative value. An answer to this question is also given by the European Union.”
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.
 - (c) No.

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.

- (a) Yes, regarding the interpretation of “civil or commercial matters” (Art. 1).
“Distinction between private and public law matters especially where proceedings are brought by a State or a State is a party to the proceedings.”
- (c) Yes, other.
“Distinction between obtaining evidence and performing other judicial act.”

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

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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)?

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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?

- (b) Yes, sometimes.

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.

(a) Yes.

“Guidelines outlining how to complete the Model Form are considered beneficial.”

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?

(a) The matter was not “civil or commercial”.

(b) The request was not issued by a judicial authority.

(c) The request did not relate to judicial proceedings.

(d) The matter to which it related was not “commenced or contemplated”.

(e) The request related to a judicial act that is excluded from scope.

(f) The request did not comply with the content requirements under Article 3.

(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.

“Examples: Information on the permissibility of cross-examination, information on lawyers’ right to interrogate witnesses, explanations of the formal requirements to be fulfilled by a Letter of Request.”

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?

(b) No.

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.

“The Letter of Request is dealt with in the form defined by the Central Authority of the requested State; the judicial actions may for instance violate rights of the persons involved in proceedings.”

19.1. If the answer to Q19 above is “yes”, is the requesting authority or the interested party permitted to respond to the challenge?

(b) No.

20. As the **requesting State**, can the sending of a Letter of Request abroad be challenged?

(a) Yes.

“In Germany, the implementation of international mutual assistance in civil proceedings is categorised as judicial administration. Anyone asserting that his rights have been violated by a legal act by the judicial administration may appeal to the competent court under Sections 23 ff of the Introductory Act to the Judicature Act (Einführungsgesetz zum Gerichtsverfassungsgesetz - EGGVG).”

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.

(a) Yes.

“Procedure of taking and wording of the oath.”

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.

(a) Fees paid to experts and interpreters (Art. 14(2))

(c) Fees paid for translation (Art. 4(3))

(f) Other.

“Costs incurred by compensation of witnesses.”

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?

(a) Yes.

“This very much depends on the individual case and cannot be answered in general terms. According to Article 3 (f) of the Convention the Letter of Request is required to contain specific questions to the person to be questioned or to specify precisely the facts on which they are to be questioned. Whereas a list of questions is not necessarily required by Germany, a list of matters to be addressed would suffice if it is not intended to seek disclosure by an adversary of facts supporting a case.”

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.
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?
- (c) Other.
“Public, unless the proceedings are such from which, as an exception, the public is excluded in Germany, for example in family matters or for the purpose of protecting minors. The judge himself may also ask certain individuals to leave the courtroom for reasons of misconduct or other current importance.”
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.
(c) Other.
“Documents presented to a witness must be either attached to the Letter of Request or must be mentioned and their content described in the Letter of Request and they must be written in or translated into German. In case of their submission, the judge is required to examine them. It depends on the individual case whether authentication or similar formality is required.”
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.
“According to the German Code of Civil Procedure (ZPO) the parties’ right to ask questions begins pursuant to Section 397 when the court has fulfilled its duty to examine the witness. According to Section 397 (2) of the German Code of Civil Procedure (ZPO), it is primarily the parties’ lawyers who have the right to directly question witnesses. The party may also be permitted by the court to interrogate the witness directly. A limit is placed on the parties’ right to ask questions, however, when the question no longer serves the purpose of interrogation or of exhausting the subject on which evidence is to be given. Thus, for example, exploratory questioning und questions that have as their subject not the witness’s actual perceptions but his value judgements are inadmissible. Cross-examination is unknown in German civil proceedings.”

33. In your State, is an oath or affirmation administered to the witness before the taking of evidence?
- (b) No.
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.
“The sanctions are provided for in Section 380 of the German Code of Civil Procedure (ZPO). The witness may be charged for the costs caused by his failure to attend. A disciplinary fine may also be imposed on him and in such case as the payment of this fine cannot be enforced, confinement for contempt of court may be imposed . In the event of a witness failing to appear in several instances the forcible production of a witness may be ordered.”
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?
- (a) Yes.
38. In your State, how is witness testimony transcribed?
- (e) Other.
“Summary minutes: a record shall be made of the taking of evidence. Further details are regulated by Sections 159 ff of the German Code of Civil Procedure (ZPO).”

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?
- (b) No.

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?
- (b) Internal law limitations.
(c) Judicial or administrative structures.
(d) Implementation challenges (e.g., lack of resources, lack of infrastructure).
(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?
- (b) No.
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?
- "Trainings and seminars (online) as well as guidance on how to use information technology are considered as useful tools for practitioners."*
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.
"1. Supplementary agreements to the Hague Convention of 17 July 1905 and/or of 1 March 1954 were concluded with: Norway (1977) and Switzerland (1910). 2. Bilateral conventions on judicial co-operation: United Kingdom (1928) which now also applies to States other than the United Kingdom e.g., Australia, the Bahamas, Canada, Malaysia and New Zealand; Morocco (1985), Tunisia (1966). 3. Within the EU, 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 has been replaced by Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast). An answer to this question is also given by the European Union."

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 (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence). An answer to this question is also given by the European Union.”

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.
 (d) Other.
“An answer to this question is given by the European Union .”

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. *“Electronic transmission of Letters of Request”*
2. *“Germany would like to propose to develop a form for requests for direct taking of evidence under Chapter II”*
3. *“Information in case of delayed execution of requests”*

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	672
2018	717
2019	719
2020	456
2021	730
2022	1335
<p>Unknown – <i>please explain.</i> <i>“As preliminary remark it must be said that in Germany, no official statistics are kept on the number and content of requests for mutual assistance pursuant to the Evidence Convention or on the times required to process them. The judicial departments of the Länder, which appoint the Central Authorities for their area of responsibility, have an informal overview, but are only able to provide limited information on content-related aspects of Letters of Request and the time required to process them. Some of the following information is based on their records. It is only of limited informative value.”</i></p>	

2. Which three States made the most requests?

Requesting State	Number
Turkey	At least 3278
Switzerland	At least 119
USA	At least 53

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

“Approximately 3-6 months. As there are no official statistics kept the average time can only be estimated.”

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 – please explain. “No official statistics or records are kept.”					

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	0
2018	0
2019	0
2020	0
2021	0
2022	0
Unknown – please explain. “It is not yet possible to send a Letter of Request via electronic means. In the case of incoming Letters of Request a signature and official seal or stamp is required. There is not yet a cross-border electronic signature to identify the origin and authenticity of the Letter of Request on a global level.”	

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	254
2018	234
2019	299
2020	231
2021	243
2022	57 – <i>“in some of the Länder data is not yet available.”</i>
Unknown – <i>please explain.</i>	
-	

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

Requesting State	Number
Turkey	At least 364
Switzerland	At least 319
USA	At least 103

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	0
2018	0
2019	0
2020	0
2021	0
2022	0
Unknown – <i>please explain.</i> <i>“For outgoing Letters of Request, the German domestic Regulation on Judicial Assistance in Civil Matters (ZRHO) prescribes that they are to be signed by a judge and stamped with an official stamp or with an official seal. Besides the Regulation (EU) No. 910/2014 (eIDAS-Regulation) there is not yet a cross-border electronic signature to identify the origin and authenticity of the Letter of Request on a global level.”</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 – please explain. <i>“Taking of evidence by videolinks under Chapter I is – as direct taking of evidence - not permitted.”</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	0
2020	0
2021	6
2022	2
Unknown – please explain. -	

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).

“Oberlandesgericht Karlsruhe, Order dated 13 December 2017, 6 VA 12/17”

1 file uploaded.

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.

“An answer to this question is given by the European Union.”

PUBLICATION OF RESPONSES

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

- (a) Yes.