

How to obtain a social report or social information in Portugal in cases regarding parental responsibilities

This document aims to facilitate judicial cooperation between

- **central authorities for the taking of evidence Regulation** (Regulation nº 1206/2001)
- **central authorities for the Brussels IIa Regulation** (Regulation nº 2201/2003)
- **national welfare authorities**
- **judicial authorities**

regarding requests for social reports and social information in cases of parental responsibility.

For this purpose, cases of parental responsibility include proceedings concerning the exercise of parental responsibility, commenced or contemplated in another Member State, in particular childcare and protection proceedings, aimed at the possible removal of children from biological families, that involve citizens national from or resident in Portugal, in which **it may be necessary for a judicial or central authority in another Member State, to obtain social reports and information in Portugal.**

To reconcile the different legal systems and judicial cultures existing in the EU Member States bearing in mind the primacy of the common European legal acquis, it is useful to give clear information on national proceedings regarding social reports and social information. Hopefully this will facilitate and speed up cooperation.

Thus, in the context of the proceedings mentioned above, the competent authorities of the requesting Member State (courts, central authorities or welfare services) have three different means of requesting social reports or social information in Portugal:

- 1. Taking of evidence according to Regulation nº 1206/2001 on cooperation between the courts of the Member States in taking of evidence in civil or commercial matters**
- 2. Taking of evidence without having recourse to Regulation nº 1206/2001 or to any other international legal instrument**
- 3. Request for a social report or social information under Regulation nº 2201/2003 (Brussels IIa Regulation), concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility**

These are alternative methods of taking evidence abroad. It is up to the requesting court/authority to choose the most appropriate among them. Depending on that choice, the request shall be addressed to different national authorities as mentioned below.

1. Taking of evidence in accordance with Regulation nº 1206/2001

In this case, it is possible for the requesting authority of another Member State to choose between indirect or direct taking of evidence.

A request (be it for direct or indirect taking of evidence) shall not be made to obtain evidence which is not intended for use in judicial proceedings commenced or contemplated.

a) Indirect taking of evidence in accordance with Regulation nº 1206/2001

The competent authority of the requesting Member State sends form A in the Annex to the Regulation to the competent Portuguese court, requesting the performance by the Portuguese authorities of a social report/information on a citizen residing in Portugal. This request is executed according to Article 10 of Regulation nº 1206/2001.

Once the request has been received, the competent Portuguese court shall acknowledge receipt and ask the national welfare services to make the report or collect the information in accordance with the Portuguese law applicable to this kind of evidence.

The authorities of the requesting Member State may, however, ask the Portuguese court to comply with any special formalities laid down in their legal system.

As soon as the social report/information has been produced by the Portuguese welfare services it will be sent to the Portuguese court, which will forward it to the requesting authority in the other Member State.

The address of the Portuguese courts and information on the means of communication they accept can be consulted in the European e-Justice Portal <https://e-justice.europa.eu>

b) Direct taking of evidence in accordance with Regulation nº 1206/2001

The competent authority of another Member State sends form I in the Annex to the Regulation, to the Portuguese Central Authority – DGAJ (Directorate General for the Administration of Justice) requesting prior consent for a foreign social worker appointed by the competent authority of the requesting Member State, to make the assessment in Portugal.

The request shall mention the name and professional address of the social worker that will perform the taking of evidence in Portugal.

This method applies when the requesting authorities of another Member State want to appoint a foreign social worker to perform direct taking of evidence in Portugal i.e. to collect direct information on a child **according to Article 17 of Regulation nº 1206/2001.**

The Portuguese central authority, DGAJ, confirms whether the requirements of the Regulation are met (e.g. if such application falls within the scope of civil matters, if the evidence is intended for judicial proceedings already commenced or about to commence). Following this assessment the Portuguese central authority will inform the requesting authority, within 30 days, using form J, if the request is accepted, and under what conditions, according to Portuguese law, such performance is to be carried out by the foreign social worker.

Additionally, DGAJ, the Portuguese central authority, will ask the cooperation of the Portuguese Social Security Institute (ISS, IP), to facilitate the collection of evidence using this method in order to speed up the performance of the request. ISS IP will then appoint a contact person and DGAJ, the central authority, will inform the foreign social worker accordingly. The contact person appointed by ISS IP will

give the foreign social worker the necessary support to facilitate the contacts with other authorities in Portugal.

At a first sight it does not seem necessary to assign a Portuguese court to take part in the performance of such a request (social report under Article 17 of the Regulation) but the Portuguese central authority may assign a court in specific cases, if it appears necessary to ensure the proper application of Article 17 of the Regulation and the conditions set out for the taking of evidence.

It is important to stress that direct taking of evidence under Article 17 of the above mentioned Regulation may only take place if it can be performed on a voluntary basis.

The address of the Portuguese central authority for Regulation nº 1206/2001 is the following:

Directorate-General for the Administration of Justice (DGAJ)

Av. D. João II, nº 1.08.01 D/E , Ed. H - Pisos do 0, 9º ao 14º

1990-097 Lisbon, PORTUGAL

TEL + 351 21 790 62 18

correio.dsycji@dgaj.mj.pt

2. Taking of evidence without using Regulation nº 1206/2001 or any other international legal instrument

The ECJ (European Court of Justice) ruled (case C-332/11), that Regulation nº 1206/2001 does not govern exhaustively the taking of cross border evidence, but simply aims to facilitate it, allowing use of other instruments having the same aim. Therefore, under certain circumstances that will be mentioned below, a social worker of a Member State may come to Portugal to make an assessment, without asking previous consent.

However, if the foreign social worker comes to Portugal in order to carry out the assessment in circumstances that affect the powers (*jus imperi*) of the Portuguese State, in particular where it is an investigation carried out in situations connected to the exercise of such powers or to which access or other actions are, under Portuguese law, prohibited or restricted to certain persons, then, the method of taking evidence laid down in Article 17 of Regulation nº 1206/2001 is the only means to enable the requesting Member State to carry out an expert investigation directly in Portugal.

To sum up, a foreign social worker can come to Portugal, to carry out the assessment alone, i.e., without the cooperation of the Portuguese authorities and without the prior consent of the Portuguese central authority, DGAJ, provided that the following conditions are met:

- The person or family assessed agree on the performance of the social report/information by a foreign social worker
- The investigation does not affect the powers of the Portuguese State
- The foreign social worker will not collect information in situations where the Portuguese State exercises its powers nor to which access is prohibited or restricted to certain persons according to national law.

To check if the conditions above are met, cooperation between the two Member States is still needed, according to the ECJ ruling mentioned above.

To that end, the Portuguese central authority, DGAJ, suggests that the social workers in the other Member State inform DGAJ in advance, and provide the later with the following information:

- name and contacts of the foreign social worker that will come to Portugal
- a brief description of the taking of evidence to be performed
- the physical places in Portugal to which the foreign social worker would like to have access
- the persons the foreign social worker would like to contact
- the agreement or the chances of obtaining the agreement of the persons/family to be assessed

This will allow the Portuguese central authority, DGAJ, to cooperate with the authorities of another Member State in the assessment of the conditions established by the ECJ ruling above, and to inform the foreign social workers about the places where Portugal exercises its State powers, or to which access is restricted or prohibited according to the Portuguese legal system.

3. Collection of social reports/information under Regulation nº 2201/2003 – Brussels IIa

Requests for social reports or social information regarding cases of parental responsibility may be addressed under Article 55 of Regulation nº 2201/2003, by the requesting central authority for Brussels IIa to the Portuguese central authority for Brussels IIa.

It is important to channel these requests through the central authorities for Brussels IIa not only to be compliant with Article 55 of the Regulation but also to ensure the safe transmission of sensitive data as it is the information regarding parental responsibility and family matters.

The request shall be addressed to the Portuguese central authority for Brussels IIa, DGRSP (Directorate General for Reintegration and Prison Services). There is not a mandatory form for the request.

The Portuguese central authority for Brussels IIa does not have the necessary resources to compile such reports and is not empowered by national law to order their performance by another authority.

In this context, in order to comply with Article 55 of the Brussels IIa Regulation, the Portuguese central authority, DGRSP, will search for the information/social report on the child's situation (including parents, siblings and other relatives where relevant) already available in national child welfare services or in national courts. If there is a previous report or social information already made in the context of national proceedings, DGRSP will collect it and subsequently provide the requesting central authority of the other Member State with such a report/information.

To facilitate the search at national level of existing social reports/information, it is very important that the requesting central authority in the other Member State provides the Portuguese central authority, DGRSP, with as complete information as possible on the child and/or other relatives, specifically:

- name
- parenthood
- birth date
- citizen's identification number

- tax identification number
- address
- profession
- case reference numbers already pending in Portugal when known
- authorities accompanying them (courts, local welfare services, local protection authorities etc.).

If no previous social report/information is found, DGRSP will inform the central authority of the requesting Member State that the latter will have to request the taking of evidence under Regulation nº 1206/2001 on the taking of evidence abroad. This will be without prejudice of using the option for direct taking of evidence without recourse to any international legal instrument.

The address of the Portuguese central Authority for the Regulation nº 2201/2003 (Brussels IIa) is the following:

Directorate-General for Reintegration and Prison Services (DGRSP)

Travessa Cruz do Torel, n.º 1

1150-122 Lisboa – Portugal

TEL +351 21 88 122 00

FAX +351 21 88 536 53

gic@dgrsp.mj.pt

Conclusions

- To obtain a social report/information in Portugal the competent authorities in another Member State may choose between the different methods mentioned above the most appropriate for the case.
- To speed up cooperation, namely in urgent cases, it is very important that the requesting authority in another Member State addresses the request to the competent Portuguese authority for that specific method of taking of evidence, and uses the mandatory forms where applicable, as mentioned above.
- Additionally, it is important to provide the competent Portuguese authority with as complete information as possible on the child and his/her relatives. That includes name, parenthood birth date, citizen's identification number, tax identification number, address, profession, case reference numbers already pending in Portugal if they are known, entities where these proceedings are pending (courts, local welfare services, local protection authorities etc.).
- When a foreign social worker wants to perform a social report in Portugal without recourse to any international legal instrument, the requirements established by ECJ case law shall be met. To that end, it is important that the foreign social worker provides the Portuguese central authority, DGAJ, in advance, with a brief description of the places in Portugal to which he/she would like to have access, the persons whom he/she would like to contact and the agreement or the chances of obtaining the agreement of the persons/family to be assessed.