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I CROSS-BORDER VIDEOCONFERENCING IN THE EU

(a) Scope and Background

1. This Guide covers the use of videoconferencing equipment in a courtroom and in a separate room (e.g. witness room) or any other use of videoconferencing equipment (mobile or portable equipment or a studio). In any of these cases, the location at which the judge of the requesting authority sits is referred to as the "site of the requesting authority". The foreign site to and from which transmission is made is referred to as "site of the requested authority". The guidance applies to cases where videoconferencing is used for the taking of evidence and also to its use for other parts of any legal proceedings, however, the technical section can be applied to any use of videoconferencing.

2. This Guide contains advice and guidance on the use of videoconferencing equipment, the technical standards to be taken into consideration and the legal framework for the cross-border use of videoconferencing. It does not replace detailed work instructions or detailed operating instructions.
3. This document is concerned mainly with the use of videoconferencing within legal proceedings in criminal, civil and commercial courts, particularly in the taking of evidence remotely. However, many of the technical aspects on the use of videoconferencing are more generally applicable to its use within the wider justice community. The hearing of witnesses and experts are not always located in court rooms and it is possible to arrange the videoconferencing connection between courts and e.g. consular and diplomatic representations, prisons, hospitals, asylum centres or other locations equipped with suitable equipment (or using mobile/portable equipment). As such this document can be used as a basis for the use of videoconferencing in other procedures.
4. Usually in cross-border criminal proceedings there are two variants possible in cases where witnesses and experts are being heard: a) the witness/expert is heard outside the Member State at the (outgoing) request of the Member State (known as the "rogatory commission", the investigation conducted by a foreign judge). This requires one room fitted out with videoconferencing equipment. The other site is located outside the Member State (court room, prison or police custody) and a temporary connection will have to be established between the two locations. b) The witness/expert is heard in the Member State at another country's (incoming) request; this requires one room fitted out with videoconferencing equipment (in court, prison, police custody or other location). The other videoconferencing site will be located outside the Member State and a temporary connection will have to be established between the two rooms.
5. In pre-trial investigations, the investigating judge or prosecutor could decide to take evidence from a witness who is under threat or a witness or expert residing abroad, via videoconference or any other appropriate means of remote audiovisual communication, with the witness's agreement, if it is not possible or desirable for latter to appear at the trial in person.

6. In cross-border civil and commercial proceedings, the witnesses or experts can be heard using remote questioning and hearings via videoconferencing. The availability of expert witnesses has been identified as one cause of delays both in civil cases (e.g. medical experts and psychologists in child custody or child care cases) and in criminal cases (e.g. forensic or computer experts). The use of videoconferencing equipment will provide the courts with greater flexibility for when and how expert witnesses from other Member States are required to give evidence. When expert witnesses are heard, it is advisable to contact the expert before the hearing, in order to check what kind of technical equipment might be needed during the hearing (e.g. document camera, audio or video equipment, etc.).
7. For vulnerable and intimidated witnesses videoconferencing can be seen as a means of reducing the stress and discomfort which could be caused by the disruptive journey to a foreign court. For giving evidence to any foreign court, a separate witness room could be more practical than the court room. Conducting a scheduled videoconference can eliminate or reduce obstacles to case completion and provide better access for protected and vulnerable witnesses.

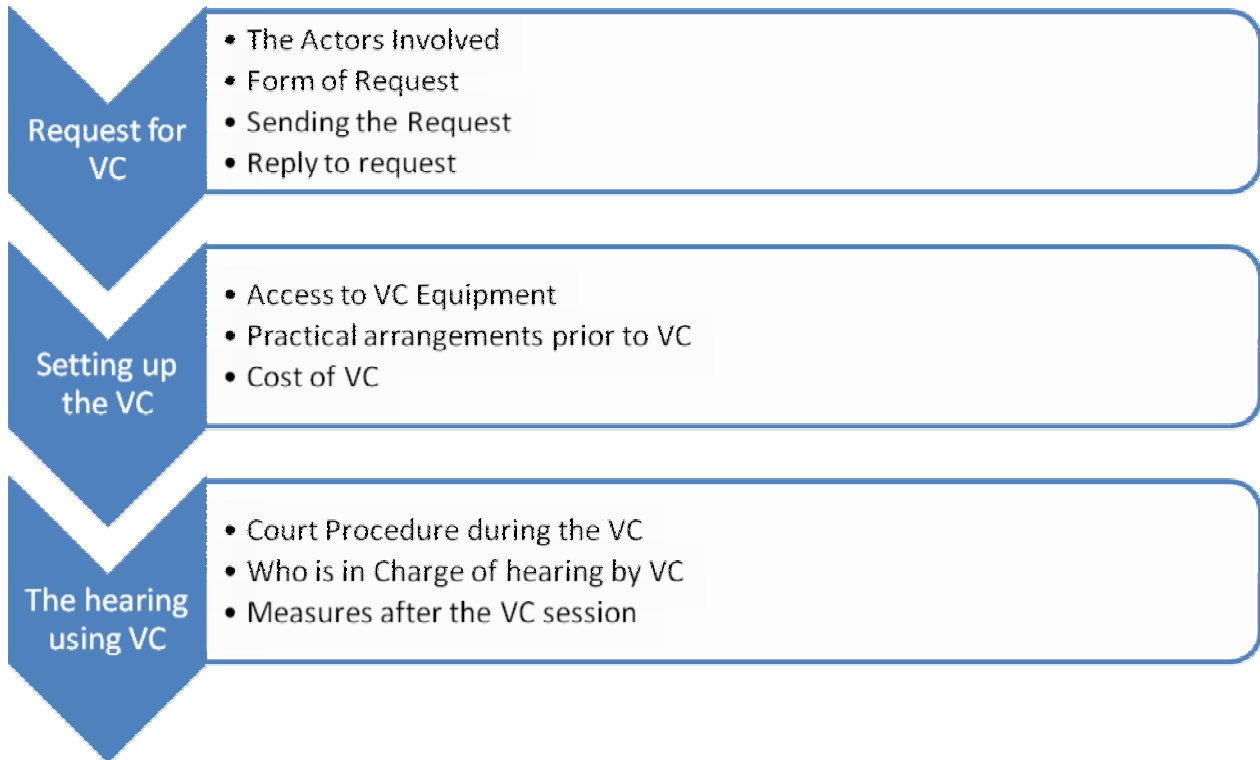
(b) Overview of the legal framework

8. Applications in all criminal cases are usually governed by national acts and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29, 2000 (further referred to as the “2000 MLA Convention”). Applications may also be made in civil cases on the basis of the EU Council Regulation 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 (further referred to as the “2001 Taking of Evidence Regulation”).
9. The forms and procedures that are described in this document are available in expanded form within the Judicial Network in Civil and Commercial Matters, and the European Judicial Network in Criminal Matters. The web sites for these networks can be found at <http://ec.europa.eu/civiljustice/> and <http://www.ejn-crimjust.europa.eu/> respectively.

10. Further scope for the use of videoconferencing in the EU context can be found in the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. In accordance with Article 9(1) a) of the Directive the applicant may be heard by videoconferencing. In addition, Article 9(1) of the Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure foresees the possibility of taking of evidence through videoconference if the technical means are available.
11. For most EU Member States these instruments are already applicable (with some reservations made by some Member States, especially concerning the hearing of accused persons by videoconference).¹
12. The following diagram gives an indication of the steps that are necessary to undertake a hearing by videoconferencing and the areas where there are differences between on the one hand the civil and commercial and on the other hand the criminal proceedings in the arrangements for videoconferencing. More details on the steps to be undertaken and the differences between arrangements are given in the table in Annex III

¹ Reservations to the MLA Convention of 2000 have been made by Denmark, Germany, Hungary, the Netherlands, Poland and the United Kingdom; Denmark is not party to the Taking of Evidence Regulation of 2001

13.



(c) General Considerations

14. The objective is to make the videoconferencing session as close as possible to the usual practice in any court where evidence is taken in open court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by videoconferencing: for example, ensuring that the witness understands the practical arrangements of the videoconferencing session and which are the parties to the videoconferencing and what their various roles are.

15. Time zone differences need to be considered when a witness abroad is to be examined by videoconferencing. The convenience of the witness, the parties, their representatives and the court should all be taken into account.

16. Those involved with videoconferencing need to be aware that, even with the most advanced systems currently available, there are slight delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there will be a tendency to "speak over" the witness, whose voice may continue to be heard for a fraction of a second after he or she appears on the screen to have finished speaking.
17. With current technology, picture quality is good, but not as good as a television picture. The quality of the picture is enhanced if those appearing on videoconferencing monitors keep their movements to a minimum.

(d) Preparatory arrangements - the necessary steps

18. The arrangement of a cross-border hearing using videoconferencing requires that certain formal measures are taken. The request concerning taking of evidence via videoconferencing is written using fixed forms. These forms are available at the websites of the European Judicial Atlas (European judicial network in civil and commercial matters) and the European Judicial Network in criminal matters (see Annex III). The request may be sent by post, courier, fax (all Member States) or e-mail (only 13 Member States). The rules in a Member State can be verified in the websites of the European Judicial Networks.

The request

19. The requesting court will provide to the requested foreign court:
- in writing the agreement of the witness of his/her willingness to provide evidence by video conference;
 - a contact number for the witness
 - details of at which court the witness wishes to give evidence (the requesting court will be given a list of courts with the necessary equipment);
 - the language in which the evidence will be taken (it is for the requesting court to deal with any interpretation and translation issues);

- arrange for payment for the videoconference – see Article 18 of the Taking of Evidence Regulation (the only costs that can be levied from the requesting court are fees paid to experts and interpreters) and Article 10 of the same Regulation (the use of communications technology including videoconferencing and any special procedure e.g. about tests etc.
- contact details for resolving problems in relation to the videoconference.

20. The permission of the requested court is required for any part of any proceedings to be dealt with by means of videoconferencing. Any evidence given by a witness or an expert must be on a voluntary basis. The requesting court will send this information together with a request form A or I from the Taking of Evidence Regulation to the requested court. Where the equipment to be used is not supplied by the requesting court, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by the authority requesting the videoconference.

21. The reply to the request is made using another fixed form (Form J of the Taking of Evidence Regulation). Within thirty days the central body or the competent authority shall inform the requesting court if the request is accepted or not. If accepted, the request must be executed within ninety days of receipt.

The necessary preparations

22. When the request is accepted, the practical preparations can start. In cross-border civil and commercial proceedings, as soon as the requesting court and the requested court agree upon the place and date of the hearing using videoconferencing, the requesting court notifies the witness of the date, time, place of the performance of the taking of evidence and the conditions for participation. In criminal matters, the judicial authority of the requested Member State serves a summons on the person to appear in accordance with its law. The method of requesting the person to appear in court is regulated by national legislation.

23. In addition, the requesting and requested courts need to make the booking for the court rooms or witness rooms. If interpretation will be used for the hearing, the requesting court contacts the interpreters and makes an agreement with the interpreters (concerning the fee, possible travel arrangements and other costs).
24. The usability of videoconferencing equipment plays a central role in the practical preparations. There is always a need to have contacts between the technical experts of the respective courts, prisons or other videoconferencing locations in good time before the videoconference, in order to be sure that the videoconferencing equipment is functioning properly (cameras, microphones, screens, ISDN lines, etc). It is advisable to test the equipment and the connections at least one day before the actual videoconference. In addition, it may prove useful to have the numbers of ISDN telephone lines and fax numbers being sent to the technical staff and clerks of the respective courts.
25. The cross-border proceedings, wherever they may take place, will normally form part of public proceedings to which the public is entitled to have access (unless restricted by law of the requested/requesting authority or the requesting/requested authority determining that they should be heard in private).

(e) Interpretation

26. In cross-border videoconferencing, there may be a need to have an interpreter either at the requesting court or at the requested court. The use of interpretation during the videoconferencing may be a challenge to the participants in the hearing and to the interpreter. The witness is perhaps not used to public speaking or working with interpreters. For the witness also the reduced 'social presence' or feeling of remoteness may cause problems, resulting in problems also in the interpretation. For the interpreters it is helpful if the judge coordinates the order of speaking (who is speaking). The judge plays a central role in administrating the interpretation and in giving instructions to the witness or the interpreter during the hearing. The judge may decide, after consultation with the interpreter, whether simultaneous or consecutive interpretation is used.

27. When interpreters are used in the process of videoconferencing, attention could be paid to the following aspects:

- during interpretation the impact of technical issues such as control over equipment (e.g. control over camera movement in video-based interpreting)
 - possibilities of intervention by the interpreter (before and during an interpreting assignment, for question clarifying the content) on communication management
 - the impact of data transmission delay (approx. 0.5 seconds) on interaction problems during the interpretation
 - when remote interpreters are used in a third location, outside the courtrooms, attention should be paid to the acoustics and quality of sound in the courtroom.
- Furthermore, it is necessary to get prior information on the technical equipment of this third location and to test the connections between the three locations before the actual hearing.

(f) Recordings and use of documents

28. In most cases the videoconference proceedings do not require any recording other than those that would normally take place for such proceedings. In cases in which the application to use videoconferencing also seeks to have the videoconference proceedings recorded, the requesting authority is obliged to arrange for recording equipment to be provided to the requested authority where necessary so that the evidence can be recorded by the requested authority in the correct format. Video recording of proceedings may be subject to restrictions depending on the Member States involved.

29. It is expected that parties will have anticipated what documents will be required in the course of the proceedings and that they will have made copies available to those participating in advance. The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the requesting authority should then send to the requested authority. If technically possible, the documents could be presented by using a separate document camera as a part of the videoconferencing equipment.

30. In certain situations, a document camera is not a sufficient mean for exchanging papers. Using a camera is for example not directly possible for the client and the lawyer to discuss presented documents in private. Thus, a faxed copy of the document may be more easily available. For the flexible use of telefax equipment, the requesting authority and the requested authority are advised to exchange accurate and updated information on telefax numbers before the start of the videoconference.
31. For the exchange of documents, videoconferencing could be supplemented with shared document repositories or document servers. These capabilities are increasingly being used for sharing of information but within the justice context extra care needs to be taken that to ensure that any such repository is secure, readily available to the parties and only accessible by the authorised parties connected to the case. Such repositories could be available via computers at both the sites of the requesting authority and the requested authority.

(g) The hearing

32. The procedure for conducting the examination of the witness will be determined by the judge of the requesting authority. In most countries, the judge will be present at the site of the requesting authority before the video-link has been established. Correspondingly, the judge will normally not leave the site before the video-link has been disconnected. The videoconference is established and ended in the presence of the judge with the court clerk or the presiding judge handling the equipment. The examination of the witness at the remote site would follow as closely as possible the practice adopted when a witness is in the courtroom.
33. A procedure should be explained and agreed upon in advance stipulating how parties can interrupt each other and object to a question. In some situations it might be considered supplying the parties with an overview picture displaying all the professional parties as this can make it easier to handle unforeseen interruptions.

(h) Cost of videoconferencing

34. Where the equipment to be used is not supplied by the requesting court, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by the authority requesting the videoconference.
35. According to the 2000 MLA Convention, the cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State are to be refunded by the requesting Member State to the requested Member State, unless the latter waives the refunding of all or some of these expenses.
36. Similarly in civil and commercial proceedings, if the requested court so requires, the requesting court shall ensure the reimbursement, without delay, of the fees paid to experts and interpreters, and the costs occasioned by the use of videoconferencing (application of Article 10(4) of the 2001 Taking of Evidence Regulation).

(i) Minutes of the hearing

37. In cross-border criminal proceedings, after the hearing is concluded, the judicial authority of the requested Member State needs to draw up minutes of the videoconference hearing. The minutes indicate the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document is forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.

38. In a similar manner, in civil and commercial cross-border proceedings the requested court sends to the requesting court the documents establishing the execution of the request and, where appropriate, return the documents received from the requesting court. The documents are to be accompanied by a confirmation of execution using form H in the Annex of Taking of Evidence Regulation.

III. TECHNICAL ASPECTS

(a) Background to technical requirements

39. This section of the Guide discusses the technical aspects of videoconferencing and videoconferencing equipment. This includes placement of cameras and lighting. The equipment provided should support the business process being undertaken. The detailed technical standards for videoconferencing are contained within Annex II.

(b) General arrangements

40. The videoconferencing system could be set up in such a way that the persons concerned are provided with an accurate picture of what is happening in the foreign site (of the requesting or requested authority).

41. Concerning the quality of the visual and audio connection, sufficient account should be taken of the interests of the persons concerned. Consequently, the videoconferencing system should be of high quality. Only then will a hearing conducted via videoconferencing provide a reasonable alternative to a face-to-face hearing. It is not acceptable, for example, for distorted images to be produced by zooming in or out in order to focus on a specific feature of a person. More particularly, this means that sounds and images could be aligned accurately and reproduced without any perceptible delay. Furthermore, the external appearance, facial expressions and gestures of the persons concerned could be clearly perceptible.

42. The persons concerned should be able to consult with one another without third parties overhearing. There may be cases where a party wishes to consult with his/her lawyer (whether or not via an interpreter) without the judge or another party overhearing. It is therefore necessary that mutual consultation is made be possible without third parties overhearing. Usually the microphones may be turned off in the witness rooms, but in the court rooms they could only be turned off by the court clerk or the judge.
43. If the party and his or her lawyer are not present at the same site, they should be able to conduct private talks using for example separate videoconferencing equipment available in another room, by secure phone line or by mobile phone. Any equipment is recommended to be set up in such a way that it is clearly separated from other parties to the court proceedings.
44. In cross-border videoconferencing, it should also be possible for the system of the requesting authority to be linked up to systems of the requested authority. Usually the cross-border videoconferencing concerns the establishment of a visual and audio connection between two locations (point-to-point), the site of the requesting authority and the site of the requested authority. For some cases it may be necessary to establish a connection between more than two locations simultaneously (multipoint). This may be the case e.g. when an interpreter is connected to the court proceedings from a third location. The links may be established through a third party bridge.
45. Point-to-point connections and multipoint connections should also comply with the international standards applicable to videoconferencing. Those standards have been drawn up by the International Telecommunication Union (ITU), which is part of the United Nations. A detailed list is at the end of this guide. The cross-border connection of the videoconferencing systems should also be safeguarded in such a way as to prevent recordings from being intercepted unlawfully by third parties. If IP-to-IP connection is being used, the methods of encryption need to be agreed upon by the participating courts.

(c) Videoconferencing equipment

46. All equipment components should as far as possible be standardised on the basis of the same types of equipment and the same configuration. In so far as the rooms in the judicial premises permit this, an attempt should be made to ensure that the equipment is positioned in the same way in all types of rooms.
47. The videoconferencing equipment should where possible be integrated with the established courtroom dramaturgy and infrastructure. At the local site the videoconferencing tools should to the widest extent possible be installed and used in such a way that it supports the users' feeling of participating in a traditional meeting of the court. In the following chapters, the various aspects of image, lighting, sound and the positioning and use of equipment (cameras, microphones and screens) are discussed.

Image

48. It is expected that in cross-border videoconferencing there are three main uses of the screen:
- Focusing screen; for transmitting images of the participants in the other room
 - Overview screen; for an overview of the situation in the other room
 - Information screen; for transmitting documents and other information (this includes also any screens located in participants' "work stations").
49. In order to guarantee objectivity, each participant should be portrayed in the same way on screen. The lighting intensity, resolution and frame rate should be compatible for each participant. All the images should be as objective as possible.

50. As far as is possible, eye contact should be imitated. The smaller the angle in the vertical and horizontal plane between the participants direction of gaze towards the person shown on the screen and the line of vision of the camera reproducing the image in the other room, the greater the impression of eye contact. All participants in the site of the requesting authority (e.g. the judge and the lawyer) should have an equally great impression of eye contact with participants in the location of the requested authority (e.g. the witness or suspect). The impression of eye contact gained from the position of the judge, for example, should not differ to a great extent from that gained from the position of the lawyer.

Lighting and contrast

51. The lighting/colour temperature should be such that facial expressions are always readily discernible, there is no shadowing around the eyes, skin colour is accurately reproduced, users are not dazzled, there are no reflections on screens and no distracting reflections on spectacles and the documents are easy to read.

Positioning of equipment

52. Equipment should be positioned in such a way that cases can still be handled without videoconferencing in the relevant courtroom.

53. It should be possible to position cameras, screens, lighting and participants in such a way that the entire set-up is suitable for video hearing and video pleading in both civil and criminal proceedings.

54. Care should be taken in positioning cameras to, where possible, avoid filming participants from above or below since this can give distorted view and affect the way the participant is perceived.

Camera-image mapping on screens

55. Image layout of focusing screen should be such that the following aspects are clear in respect of each participant: e.g. facial expressions and hands placed on the table. The position of the focused images of participants on the focusing screen (e.g. with the interpreter on the left and the lawyer on the right) should correspond to their actual position in the room and hence to the image of the same participants on the overview screen.

Screens

56. Viewing angle and viewing distance: should be such that all participants can use the same screen in the same way. The size of the screen should be large enough to ensure that - in terms of viewing angle - the persons involved can preferably be shown to the same scale as would be perceived at a normal meeting; because of the importance of the viewing angle, screen size should be determined in conjunction with the distance from the screen..
57. Resolution should be high enough to be able to convey a clear indication of facial expressions, lip movements and directions of gaze given the selected screen layout and image contents; possibly at least WXGA (a resolution of 1366×768 pixels) or similar. As to the frames/sec, a minimum of 30 frames/sec may be required. Facial expressions should be readily discernible and viewing comfort high. There are generally different views of the remote parties that are of use during a hearing though these may be shown on a single physical screen.

Cameras

58. Angle size of focusing cameras: should be large enough to ensure that: (1) the participant's face, shoulders and upper body and hands and objects placed on the table are clearly visible and (2) users do not feel restricted in their movements. All participants should be able to move within an area of 80 x 80 cm without disappearing from view. They should therefore be able to gesture, turn towards other persons present and lean forwards or backwards without disappearing from view.

59. Mounting and adjustability: cameras should preferably be fixed and should follow participants as they stand up and sit down where they are expected to do so regularly, e.g. public prosecutor or lawyer. In addition, cameras should have several pre-set positions for panning, tilting and zooming; one of the possible positions should be pre-set as a preference. This allows the person operating the equipment to quickly change the views without minimal disruption to the court proceedings.
60. Usually two cameras will be sufficient in the court room: one tracking camera directed at the examining judge, public prosecutor or lawyer, witness or suspect, depending on who is speaking (fixed points) and one camera to provide an overview of the court room. Mobile or portable equipment is not able to provide multiple cameras in which case the provision of such things as overview views would be limited.

Sound

61. Speech should always be readily intelligible. No words should be lost during videoconferencing. The quality of the sound should be continuous, and no extraneous interference or crackling should occur. Speech quality should not deteriorate as a result of speech compression. This means meeting certain requirements as regards lip synchronicity (a delay of less than 0,15 seconds), echo cancellation and background noise and reverberation.
62. It is desirable for the judge to be able to adjust the volume on the site in order to compensate for differences in speech level..

Microphones

63. Microphones should be positioned in such a way that all participants are clearly understandable in the other room with no distortions caused by background noise.. Microphones can be built-in (into desks or elsewhere) and should preferably be eavesdropping-proof, direction-sensitive, fitted with a mute button and remain permanently switched on.
64. During the hearing there can be situations when court staff needs to be able to switch off microphones (e.g. consultation of a party with his/her lawyer).

Mobile or portable equipment

65. Mobile or portable equipment. (screen + camera + speaker + microphone + accessories) should be usable either in various combinations or in conjunction with a fixed set of equipment. The mobile equipment should be readily transportable (and hence not necessarily on wheels), easy to move between the different locations and flexible in terms of its use. Consequently, more limitations are expected to apply to the quality of mobile equipment than to fixed equipment (e.g. as regards the number of participants who can be filmed clearly at the same time).
66. Mobile equipment is suitable for hearing witnesses (e.g. at another country's request), in the event of equipment breakdown, as a temporary supplement to fixed equipment or at special locations such as prison hospitals.

Operation of the videoconferencing equipment

67. The operation of the videoconferencing system is most convenient with a touch screen. Operation should be as user-friendly (i.e. as simple) as possible, and should therefore consist of only a limited number of manoeuvres, e.g.:
- switching on/off, logging on/off; using a password.
 - establishing the connection via a selection menu
 - terminating the connection.
68. During use, the audiovisual solution should not require the intervention of the operator. If any problems arise, the operator should be able to ring a help desk. It is for the judge to decide whether to terminate the videoconferencing session that has been disrupted in this way.

Network connection

69. The location of the network connector should be such that the system can easily be connected. The equipment should be suitable for other temporary connections with encryption; this is in order to make provision for applications such as the hearing of witnesses and experts who are located at the site of the requested authority.
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Annex I – Further explanation of the legal framework

70. According to Article 10 of the MLA Convention of 2000, with reference to hearing by videoconference, the following rules shall apply:

- (a) a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the requested Member State is of the view that during the hearing the fundamental principles of the law of the requested Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
- (b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States;
- (c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;
- (d) at the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- (e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State.

71. The Article 10 of the MLA Convention establishes the principle that a request for a videoconference hearing may be submitted by a Member State in respect of a person who is in another Member State. The circumstances in which such a request may be made are that the judicial authorities of the requesting Member State require the person in question to be heard as a witness or expert and that it is not desirable or not possible for him or her to travel to that State for a hearing. ‘Not desirable’ could for example apply in cases where the witness is very young, very old, or in bad health; ‘not possible’ could for instance cover cases where the witness would be exposed to serious danger by appearing in the requesting Member State.

72. The requested Member State has to agree to videoconferencing provided that the hearing would not be contrary to the fundamental principles of its law and that it has the technical capacity to carry out the hearing. In that context the reference to ‘fundamental principles of law’ implies that a request cannot be refused for the sole reason that hearing of witnesses and experts by videoconference is not provided under the law of the requested Member State, or that one or more detailed conditions for a hearing by videoconference would not be met under national law. Where the relevant technical means are lacking, the requesting Member State may, with the agreement of the requested Member State, provide suitable equipment to enable the hearing to take place.¹

73. Requests for a hearing by videoconference shall contain, in addition to information concerning the authority making the request, the object of and the reason for the request, where possible, the identity and the nationality of the person concerned, and where necessary, the name and address of the person to be served (this is information referred to in the European Mutual Assistance Convention), the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing. The judicial authority of the requested state shall summon the person concerned to appear in accordance with the forms laid down by its law.

74. In the MLA Convention, paragraph 8 of Article 10 provides that if, in the course of a hearing by videoconference, a person refuses to testify or provides false testimony, the state in which the person being heard is located should be in a position to deal with that person in the same way as if he or she were appearing at a hearing conducted under its own national procedures. This follows from the fact that the obligation to testify at a videoconference hearing arises, pursuant to this paragraph, under the law of the requested state. The paragraph is in particular intended to guarantee that the witness, in case of non-compliance with an obligation to testify, is subject to consequences of his or her behaviour similar to those applicable in a domestic case where videoconferencing is not used.

¹ Explanatory Report on the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (Text approved by the Council on 30.11.2000) (2000/C 379/02)

75. In the paragraph 9 of Article 10, the use of videoconference hearings is extended to accused persons. Each Member State enjoys full discretion as to whether or not it will agree to execute requests for such hearings. A Member State may make a general declaration to the effect that it will not do so. To safeguard the position of the accused person, he or she should consent in each case before the hearing takes place.
76. In the study on the application of the Taking of Evidence Regulation of 2001, it was noted that the implementation of the Regulation should be accompanied by a campaign to modernise the infrastructures of the States' administrations. According to the study, the monitoring of evidence-taking in a different Member State by means of videoconferencing would make the probative process more trustworthy and efficient. The use of communications technology, particularly videoconferencing, would make direct communication easier and it would provide for a genuine virtual immediacy between the various people involved in the procedure.¹

¹ Study on the application of Council Regulation (EC) No 1206/2001 on the taking of evidence in civil or commercial matters, European Commission, March 2007

Annex II – Technical Standards

Technical standards

77. Video and audio communications conferencing equipment, whether custom developed or a package system, should meet minimum industry standards to facilitate interoperability locally and globally. Videoconferencing systems should meet additional standards to ensure the short-term and long-term success of videoconferencing. With the exception of the system administration standards, all the following standards are recommended. The following are common industry standards and considerations for the civil and criminal justice organizations using videoconferencing.
78. H.320 and H.310 standards for Video over ISDN. The H.320 standard, as well as other communication standards, was established by the International Telecommunications Union and is a set of specifications adhered to by videoconferencing equipment manufacturers. These standards include guidelines for video compression and transmission and for audio and control signals. Manufacturers also develop their own proprietary video compression algorithms. When used in a conference session with another system of the same manufacturer, these algorithms give superior performance and picture quality above H.320. However, when a video system of one manufacturer conferences with another brand, both video systems automatically revert to the common denominator of H.320. H.310 is the standard for faster connections utilising ISDN. This standard also suggests that codecs have a line level input and output at 0 DBm, 600 ohm to permit connection to a public address system, VCR, or other equipment.
79. H.323 Standard for Video over Internet. The H.323 standard provides a foundation for audio, video, and data communications across Internet protocol-based networks. By complying with H.323, multi-media products and applications from multiple vendors can interoperate, allowing users to communicate without concern for compatibility.
80. T.120 Standard for Data Conference. The T.120 standard is a set of protocols and services that provide support for real-time, multi-point data communications. In addition, by adhering to this standard dissimilar video systems can screen share software applications and simultaneously mark-up online documents posted on the “white board.”

81. H.263 and H.264. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336-384 kbps (kilobits per second). The standard of 30 frames per second ensures a near-broadcast quality picture. Less than 30 frames per second may result in a jerky or ghost-like picture. Examples of International Telecommunications Union standards that meet this requirement are H.263 and H.264.
82. Minimum of 6 channels for room videoconferencing systems using ISDN or video systems running as the sole application on a personal computer or larger room-type system should have the capacity to use 3 ISDN lines. This capacity is necessary to achieve 384 kbps at 30 frames per second. In general, the greater the bandwidth of the connecting circuits and processing power of the codec, the better picture quality. This is important when using larger monitors, which require better picture quality for acceptable viewing.
83. H.261, H.263 and H.264 Standards for Codecs. The primary function of the codec is to compress and decompress video and audio. Multiple identical outputs can be provided from the single output system by a device commonly known as a “distribution amplifier.” To accommodate the broadcasters, this distribution system would need to be created for both the audio and video signal.
84. Bandwidth On Demand Inter-Networking Group (BONDING) standards (ISDN and H.320 only) for inverse multiplexers. Inverse multiplexers combine individual 56K or 64K channels to create more bandwidth, which equals better picture quality. Manufacturers of inverse multiplexers have adopted the “BONDING” standard to ensure communication between systems. This equipment can be incorporated in the design of the system or added on.

85. H.243 - H.320/H.323 Standard for Bridging Technology. Multi-point bridging equipment is addressed under the standard H.243. The bridge works much like a telephone conference call system; it connects all the participants by allowing a videoconferencing system to connect to more than two sites. A user can either purchase a bridge or contract for the service from a company that provides multi-point bridging on a usage basis. It is important for the user to verify that the provider's service meets the appropriate standards and has ISDN/IP access lines or equivalent.
86. H.239 - Picture-in-picture (PIP). Picture-in-picture or DuoVideo H.239, permits the codec to display at least two images on the monitor. The distant end video will usually occupy the whole screen except for a small window inserted in the corner of the screen, which can be closed when not needed.
87. Standards for audio coding: G.711 (Pulse code modulation (PCM) of voice frequencies), G.722 (7 kHz audio-coding within 64 kbit/s); G.722.1 (Low-complexity coding at 24 and 32 kbit/s for hands-free operation in systems with low frame loss) (Licensed by Polycom since 9/1999).
88. Echo cancellation microphones with a 100 to 7,000 Hz frequency response, audio muting, on/off switch and full-duplex audio.
89. H.281 - Camera(s) with ability to pan, tilt, and zoom, both manually and using presets. H.281 is the standard for camera control in videoconferencing, with title H.281 - A far end camera control protocol for videoconferences using H.224.

Annex III. Steps for cross-border videoconferencing in court proceedings

Step	Videoconferencing – Civil and commercial matters	Videoconferencing - Criminal matters
1. Request for taking evidence		
1.1. The actors involved	<p>Court sends the request</p> <p>Requests are directly transmitted by the court before which the proceedings have commenced (the 'requesting court') to the court of another Member State taking evidence (the 'requested court'). A request to take evidence directly is submitted by the requesting court to the central body or the competent authority (court) in the requested state.</p>	<p>Court, prosecutor or other competent judicial authority sends the request</p> <p>Requests are directly transmitted by the court (the 'requesting court') or other competent judicial authority (e.g. public prosecutors or Mutual Legal Assistance Centres) to the court or other competent authority of the requested state.</p>
1.2. Form of request	<p>Fixed form in 2001 Taking of Evidence Regulation</p> <p>The request must be made using form A, which is annexed to the 2001 Taking of Evidence Regulation. The request must contain details, such as the name and address of the parties to the proceedings, the nature and subject matter of the case, a description of the taking of evidence to be performed, etc. The forms being used are:</p> <ul style="list-style-type: none"> * form A: request for the taking of evidence; * form E: notification concerning the request for special procedures and/or for the use of communications technologies; * form I: request for direct taking of evidence. 	<p>Fixed form: Request for mutual legal assistance in criminal matters</p> <p>Requests for a hearing by videoconference shall contain, in addition to information concerning the authority making the request, the object of and the reason for the request, where possible, the identity and the nationality of the person concerned, and where necessary, the name of the judicial authority and of the persons who will be conducting the hearing.</p>
1.3. Sending the request	<p>Forms are found at the website of the European Judicial Atlas (European judicial network in civil and commercial matters)</p> <p>http://ec.europa.eu/justice_home/judicialatlascivil/html/te_documents_en.htm</p> <p>Request may be sent by post, courier, fax (all Member states) or e-mail (only 13 Member states)</p>	<p>Request form and cover note are available at the website of European judicial network in Criminal matters, www.ejn-crimjust.europa.eu</p> <p>Request may be sent by post, courier, fax (all Member states) or e-mail (only some Member states)</p>

<p>1.4. Reply to request</p>	<p>Acknowledgement of receipt: Within seven days of receipt of the request, the requested court shall send an acknowledgement of receipt to the requesting court using form B in the Annex.</p> <p>Form: The reply is made using form F, which is annexed to the Taking Evidence Regulation: notification of the date, time, place of performance of the taking of evidence and the conditions for participation.</p> <p>Time: Within thirty days the central body or the competent authority shall inform the requesting court, by filling in form J, if the request is accepted or not. If accepted, the request must be executed within ninety days of receipt. If the requesting court calls for the request to be executed in accordance with a special procedure (including the use of sound and image recordings), the requested court must comply with such a requirement unless there are legal or practical obstacles. Where a request is refused, the requested court must notify the requesting court within sixty days of receipt of the request.</p> <p>Refusal to use videoconferencing: The requested court shall comply with such a requirement unless this is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties.</p>	<p>The court responsible for handling the request will acknowledge receipt of the request as soon as possible.</p> <p>Acknowledgement of receipt will be sent to authority of the requesting Member State which sent the request or enquiry and will contain the name, address, telephone and fax number of the court and, if possible, the judge responsible for processing it.</p> <p>In cases of requests which have not been written in the national language of the requested state, the receipt is not sent until the necessary translation has been completed.</p> <p>Refusal to use videoconferencing: The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing.</p>
<p>1.5. Access to the VC equipment</p>	<p>If there is no access to the technical means referred to above in the requesting or in the requested court, such means may be made available by the courts by mutual agreement.</p>	<p>If the requested Member State has no access to the technical means for videoconferencing, such means may be made available to it by the requesting Member State by mutual agreement.</p>
<p>1.6. Practical arrangements prior to VC</p>	<p>Requesting court: - notification to the witness of the date, time, place of performance of the taking of evidence and the conditions for participation.</p> <p>Requesting and requested courts: -booking of court room -activation of VC equipment (including testing of connections) -booking of interpreters and technical staff</p>	<p>The judicial authority of the requested Member State: serves a summons on the person to appear in accordance with its law.</p> <p>Requesting and requested courts: - booking of court room - activation of VC equipment (including testing of connections) -booking of interpreters and technical staff</p>

<p>1.7. Languages and interpretation</p>	<p>The languages In the request, the requesting court informs the requested court of the language to be used. The requesting and requested courts may, if appropriate, decide that proceedings are to take place wholly or partly in a foreign language.</p> <p>Use of interpreter At the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary.</p>	<p>The languages In the request, the requesting court informs the requested court of the language to be used. The requesting and requested courts may, if appropriate, decide that proceedings are to take place wholly or partly in a foreign language.</p> <p>Use of interpreter At the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary.</p>
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<p>2.1. Running the hearing using videoconferencing</p>	<p>The law of the requested state is applied The use of videoconferencing is arranged according to the law of the requested state. However, the requesting court may call for the request to be executed in accordance with a special procedure provided for by the law of its Member State. The requested court complies with this unless this procedure is incompatible with the law of its Member State or by reason of major practical difficulties. In the direct taking of evidence by the requesting court, the requesting court shall execute the request in accordance with the law of its Member state.</p> <p>The refusal to witness The person to be heard is entitled to refuse if there is support for this in either in the legislation of the requested state or in the legislation of the requesting state.</p>	<p>The law of the requesting state is applied The use of videoconferencing is arranged according to the law of the requesting state. The requested state shall comply with the formalities and procedures expressly indicated by the requesting state, provided that such formalities and procedures are not contrary to the basic principles of law in the requested state.</p> <p>The refusal to witness The person to be heard is entitled to refuse if there is support for this either in the legislation of the requested state or in the legislation of the requesting state.</p> <p>The presence of the judicial authority of the requested state A judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State.</p> <p>Right to public defence counsel If a measure requested by a foreign state is directed against a suspect, accused or injured party, the suspect, accused or injured party has the same right to a public defence counsel, victim's legal advisor, or support person as in court proceedings of the requested state.</p>
<p>2.2. Who is in charge of the hearing by VC</p>	<p>The court of the requested state (with the exception of Direct taking of evidence: The court of the requesting state</p>	<p>The court or prosecutor of the requesting state</p>

2.3. Costs of video-conferencing	The requesting court shall ensure the reimbursement of the fees paid to experts and interpreters, and of the videoconferencing arrangements.	The requesting court shall ensure the reimbursement of the fees paid to experts and interpreters, and of the videoconferencing arrangements. The requested court can waive the refunding of all or some of these expenses.
3. Measures after the VC session	The requested court shall send without delay to the requesting court the documents establishing the execution of the request and, where appropriate, return the documents received from the requesting court. The documents are to be accompanied by a confirmation of execution using form H in the Annex of Regulation 1206/2001.	The judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.
