



Videoconferencing as a part of European e-Justice

EN



2009

VIDEOCONFERENCING

AS A PART OF

EUROPEAN E-Justice

THE ESSENTIALS

OF VIDEOCONFERENCING

IN CROSS-BORDER

COURT PROCEEDINGS

This booklet presents information concerning possibilities, basic technical issues and good practices in cross-border videoconferencing in legal proceedings. (The content of this booklet is primarily based on the *Guide on Videoconferencing in cross-border proceedings*.)

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WHY VIDEOCONFERENCING IN LEGAL PROCEEDINGS?



Videoconferencing is an efficient tool that has the potential to facilitate and speed up cross-border proceedings and to reduce the costs involved. In the context of European e-Justice, videoconferencing may be a new concept but it is one that already exists and has been widely used at national level, and which can still be developed further at European level and as an integral part of the European e-Justice portal.



The purpose of this booklet is:

- to promote and stimulate the use of videoconferencing systems in cross-border as well as national legal procedures;
- to illustrate the possibilities and basic technical details of videoconferencing and how it can be used in legal proceedings;
- to disseminate information on good practices and experiences in EU Member States where videoconferencing has already been implemented;
- to distribute the available information on videoconferencing in the EU; and
- to encourage judges, prosecutors, lawyers, other legal practitioners and decision makers to consider implementing and using videoconferencing systems in national and cross-border procedures.

A videoconference (also known as a videoteleconference) is a set of interactive telecommunication technologies which allow two or more locations to interact via two-way video and audio transmissions simultaneously.¹

1) Definition on: <http://en.wikipedia.org/wiki/Videoconferencing>.

This booklet covers the use of videoconferencing in legal proceedings, primarily in courts using a separate facility (e.g. witness room) or another method (e.g. mobile or portable equipment or a studio).

The European e-Justice action plan approved by the Council in November 2008² states that simplifying and encouraging communication between the judicial authorities and the Member States is of particular importance (e.g. videoconferencing or secure electronic networks). The European e-Justice action plan lists “Better use of videoconferencing” as one of the projects on which work should continue in 2009-2013.

2) OJ C 75, 31.3.2009, p.1.



THE FRAMEWORK FOR VIDEOCONFERENCING



Legal basis

More use could be made of the possibilities under existing Community legislation, in particular conducting witness, expert or victim hearings via videoconferencing, in accordance with legal instruments such as:



- The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union³ (Convention of 29 May 2000, the 2000 MLA Convention, Article 10).
- Council Regulation (EC) on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters (No 1206/2001 of 28 May 2001, Article 10(4) and Article 17(4)).⁴
- Council Directive relating to compensation to crime victims (2004/80/EC of 29 April 2004, Article 9(1)).⁵
- Regulation (EC) of the European Parliament and of the Council establishing a European Small Claims Procedure (No 861/2007 of 11 July 2007, Articles 8 and 9(1)).⁶
- Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA of 15 March 2001, Article 11(1))⁷.

For most EU Member States most of these instruments are already applicable.

3) OJ C 197, 12.7.2000, p. 24.

4) OJ L 174, 27.6.2001, p. 1.

5) OJ L 261, 6.8.2004, p. 15.

6) OJ L 199, 31.7.2007, p. 1.

7) OJ L 82, 22.3.2001, p. 1.



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VIDEOCONFERENCING TODAY



Currently there is already some information available concerning the use of cross-border videoconferencing in criminal or civil and commercial proceedings. It is clear that videoconferencing can be a useful tool in these proceedings. The taking of evidence is the most important use of videoconferencing in cross-border proceedings. Videoconferencing has proven especially practical in cases involving the hearing of vulnerable or intimidated witnesses. Furthermore, expert hearings (e.g. of forensic and medical experts) conducted via videoconferencing have ensured

a more effective use of resources. For a number of countries, videoconferencing has also proved to be a practical option for administrative proceedings.

Brief information on present achievements in the EU

At EU level there are several initiatives covering the use of videoconferencing in legal procedures.

The website of the European Judicial Network in civil and commercial matters⁸ contains information about videoconferencing in civil matters for most Member States, in the section *"Taking of evidence and mode of proof"*, in point 7.

The European Judicial Network in criminal matters⁹ provides a special service called Atlas, which helps potential users of videoconferencing to check the availability of equipment at the other court.

Eurojust¹⁰ has been successfully using videoconferencing technology in many cross-border investigations for the past two years.

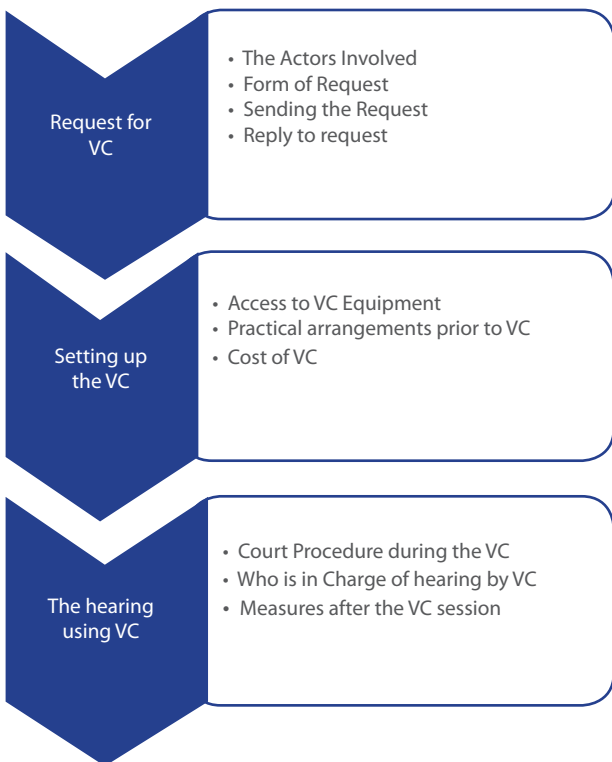
8) http://ec.europa.eu/civiljustice/index_en.htm

9) <http://www.ejn-crimjust.europa.eu/>

10) <http://www.eurojust.europa.eu/>

Practical videoconferencing¹¹

In the following chapters we would like to explain certain practical details of cross-border videoconferencing from an organisational perspective.



11) For more detailed information see the *Guide on Videoconferencing in cross-border proceedings*.

Request for videoconferencing

Both in civil and criminal matters, the request is made using a standard form. The forms are available on the websites of the European judicial networks.¹²

The reply to the request is made using another standard form. In civil matters, in case of a request for indirect taking of evidence pursuant to Articles 10-12 of the 2001 Taking of Evidence Regulation the requested competent court has to acknowledge receipt within seven days. In case of a request for direct taking of evidence (Article 17) the central body or the competent authority has to inform the requesting court whether the request can be accepted within thirty days. In criminal matters, the requested Member State must 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.

Setting up videoconferencing

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 to a request under Articles 10 to 12 of the 2001 Taking of Evidence Regulation, the requested court liaises with the witness to find a convenient place and date of the hearing. When requests for direct taking of evidence under Article 17 are accepted by the central body or other competent authority of the requested Member

12) European Judicial Network in civil and commercial matters
http://ec.europa.eu/civiljustice/index_en.htm (Taking of evidence and mode of proof)
European Judicial Network in criminal matters
<http://www.ejn-crimjust.europa.eu/> (Mutual Legal Assistance)

State, the requesting court notifies the witness of the date, time, place where the evidence is to be taken and 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.

Hearing by videoconferencing

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 for the videoconferencing session, and knows who the parties to the videoconferencing are, and their various roles.

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

Those involved in a videoconferencing session 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.

The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the courtroom. During examination, the witness must be able to see the legal representative asking the question and also any other person (whether another legal representative or the judge) making any statements with regard to the witness's evidence.

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.

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 as to 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.).

As regards the use of interpreters, attention should also be paid to whether the interpreter should be at the local site of the requesting court or at the remote site (or in some third location).

In cross-border videoconferencing consecutive interpretation is most commonly used. The use of simultaneous interpretation is more demanding, because it requires the use of booths for interpreters, use of earphones by the participants and precise control of microphones. It needs to be stressed that the interpreter needs a proper visual contact with the person whose speech is being interpreted.

Additional documents are sometimes quite appropriately introduced during the course of a witness's evidence. To cater for this, a document camera would be useful. However, a document camera is not useful for the client and the lawyer to discuss presented documents in private. Thus, a faxed copy of the document may be easier to use. For the flexible use of fax equipment, the requesting authority and the requested authority are advised to exchange accurate and updated information on fax numbers before the start of the videoconference.

In the long term, videoconferencing could be supplemented with shared document repositories or document servers. These capabilities are increasingly being used for the sharing of information, but within the justice context extra care needs to be taken to ensure that any such repository is secure and only accessible by the authorised parties connected to the case.

Technical aspects of videoconferencing

Equipment for videoconferencing is nowadays very flexible and easy to operate. Nevertheless, all equipment components should as far as pos-

sible be standardised on the basis of the same classes of equipment and the same configuration. To facilitate the use of the equipment, an attempt should be made to ensure that the equipment is positioned in the same way in all types of room. Videoconferencing equipment, whether custom-developed or a package system, should meet minimum industry standards to facilitate interoperability in cross-border connections. Individual technical standards are discussed in detail in the *Guide on Videoconferencing in cross-border proceedings*.

- *Positioning equipment:* Equipment (especially cameras and microphones) needs to be positioned in such a way that only minimal adjustments need to be made to the existing mutual orientation of participants in the courts. Equipment should be positioned in such a way that cases can also be handled without videoconferencing in the relevant courtroom.
- *Intelligibility:* speech must always be readily intelligible. No words must be lost during videoconferencing. The quality of the sound must be continuous, and no extraneous interference or crackling may occur. Certain requirements as regards to lip synchronicity must be met (a delay of less than 0.15 seconds). In addition, echo cancellation and background noise and reverberation must be reduced as much as possible.
- *Microphones* should be positioned in such a way that the sound in the other courtroom has no distortions caused by background noise. If interpretation is used, only one microphone should be on at one time. Simultaneous use of

microphones results in distortions in the interpretation (especially in simultaneous interpretation).

Mobile equipment – increased flexibility

Additional sets of mobile equipment (screen + camera + speaker + microphone + accessories) could facilitate the use of videoconferencing in the hearing of witnesses. Mobile equipment is easy to move between different locations and flexible in terms of its use. More limitations are expected to apply to mobile equipment than to fixed equipment (e.g. as regards the number of participants who can be filmed clearly at the same time). Mobile equipment may be used where required for hearing witnesses at special locations such as prisons or hospitals, and also in the event of equipment breakdown as a temporary supplement to fixed equipment.

Getting connected – operation of the videoconferencing system

The operation of the videoconferencing system 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 and off cameras and microphones, establishing the connection via a selection menu, establishing the set-up via an applications menu, terminating the connection and logging on/out. Usually the connection is established between two locations (point-to-point). For some cases it may be necessary to establish a connection between more than two locations simultaneously (multipoint). The links may be established through a third-party bridge.



SOME GOOD PRACTICES



Creating a booking system for videoconferencing – Austria

Austria has created a centralised booking system for the national courts for videoconferencing. The system is available for all national courts and it is possible to make direct bookings for the courtrooms with videoconferencing equipment.



Making videoconferencing flexible – Finland

Finland has started installing different kinds of videoconferencing equipment for different purposes. For the court sessions, there is a complete set, with high-definition HD quality of picture in cameras and screens. For the preliminary hearings, there is a separate set for meeting rooms. For hearing witnesses there is a basic set with a terminal, camera and microphone. For mobile use, e.g. in social centres, hospitals, asylum centres etc. the portable solution is available, including a laptop with software and a camera.

Assisting vulnerable witnesses – United Kingdom

In the United Kingdom, remote witness room videoconferencing links have been installed in a handful of Victim Support Offices and police premises as part of centrally funded national rollouts.

Utilising interpretation in videoconferencing – Germany

A simultaneous interpreting facility has occasionally been inserted into the videoconferencing equipment, so that an interpreter can be used in proceedings in which a number of defendants speak a foreign language. In administrative court proceedings, interpreters have also been involved via a videoconference link in order to reduce costs.

Speeding up the process – United Kingdom

Virtual Court, as a video link between a court and a police station, has made it possible to deal with first hearings within 2-3 hours of charge in simple cases and has the potential to hear a significant number of first hearings on the same day. Speed of process has proved an asset in cases involving domestic violence and many victims and witnesses are expected to receive a more responsive service.

More good practices

Good practices and success stories on the implementation and the use of videoconferencing systems in legal proceedings will be collected constantly and presented in the future revisions of the booklet and in the *Guide on Videoconferencing in cross-border proceedings* for use by courts and practitioners.



TYPICAL VIDEOCONFERENCING SCENARIOS



Witness hearing

Anne witnessed a criminal act and has been summoned by a court to appear as a witness in a case against the suspect.

Even though Anne has not been directly affected by the incident, she has been severely traumatised by the event and is currently being treated in a psychiatric hospital. Her doctor has advised against subjecting Anne to the rigours of travel, and has strongly opposed the suggestion of having Anne appear before the court, especially in the presence of the defendant.

Because the psychiatric hospital already has appropriate videoconferencing facilities in place, the court has agreed to establish a videoconference session and has appointed a magistrate to be present on site. In this way Anne's hearing can be conducted in a friendly environment and she does not have to travel.

A direct audiovisual connection from the court where the proceedings are being held to the remote facility where the witness is located is only made for the duration of Anne's testimony, and since the facilities are already in place at both locations the overall cost is kept to a minimum.

Expert hearing

Dr Abraham Knowall is a genetics expert summoned to give his expert testimony regarding evidence in two criminal cases. The trouble is, though, that Dr Knowall lives in Dublin, Ireland, and is expected to appear at a court in Berlin, Germany, and at a court in Ljubljana, Slovenia. The matter is complicated further as the most appropriate time for both cases would be on the same day – the Berlin testimony is planned for early morning, and the Ljubljana testimony is planned for noon on the same day.

Thanks to videoconferencing Dr Knowall can be at three different places at the same time, but only needs to travel to downtown Dublin as the court is only a few kilometres away from his home.

Promptly at 8:45 Dr. Knowall appears in the Dublin court where he is escorted to the videoconferencing room, where he is met by the local magistrate.

At 9:00 a videoconferencing connection is established with the court in Berlin and after a brief introduction by the German judge

Dr Knowall is called as the first witness of the day. At about 10:00 the hearing, which was followed by a cross-examination by both counsels, is concluded, and the videoconferencing session can be closed.

Dr Knowall and the Irish magistrate can now have an early lunch. At about 11:45 both Dr Knowall and the magistrate have returned to the Dublin court and a videoconferencing session can now be established with the Ljubljana court where Dr Knowall is expected to give another expert testimony in a criminal case.

During the cross-examination at the Ljubljana court the counsel for the defendant presents a document as evidence that has not previously been presented to Dr Knowall, and is not available in Dublin.

After the hearing Dr Knowall can return to his laboratory and get back to work, as thanks to videoconferencing he was spared travelling from Dublin to Berlin and from there to Ljubljana and back to Dublin which would have taken several days – just to spend an hour in a court in Berlin and another hour in court in Ljubljana.



CROSS-BORDER VIDEOCONFERENCING – QUESTIONS AND ANSWERS



- 1) *Can videoconferencing be used between all EU Member States?*

Yes, in practice most EU Member States have implemented the legal instruments in civil and criminal proceedings.



2) *Can videoconferencing be used with courts outside the European Union?*

Yes, if this is legally possible, if the courts agree and have the necessary equipment.

3) *Is videoconferencing an offer which your court cannot refuse?*

Yes, 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.

4) *Who covers the costs of videoconferencing?*

Usually the costs of experts, interpreters and the expenses of communication lines may be refunded by the requesting Member State to the requested Member State.

5) *Are there rules on where the interpreter should be located (local or remote)?*

No, but in criminal cases it is advisable to have the interpreter in the same courtroom as the witness. In particular, when accused persons are heard by videoconferencing, it is recommended to have the interpreter in the same courtroom as the accused person.

- 6) *Can the request for videoconferencing be made by telephone?*

No, the request concerning the taking of evidence is made using standard forms. The request may be sent by post, fax (all Member States) or e-mail (not to all Member States).

- 7) *Can the witness speak in his/her native language?*

Yes, if he/she so wishes. If necessary, an interpreter will be present.

- 8) *Who is the person in charge in the videoconference hearing?*

In civil proceedings, it is the judge of the requested court (with the exception of direct taking of evidence, where it is the judge of the requesting court). In criminal cases, it is the judge or prosecutor of the requesting court.

- 9) *Is it possible to show paper documents during the videoconference hearing?*

Yes, if document cameras are being used. If they are not available, it is always possible to use fax for the exchange of paper documents. In the future, more advanced uses of document servers will be more common.

- 10) *Is it possible to have a videoconference hearing elsewhere than in courtrooms?*

Yes, for example if the witness is in prison, in hospital, in police custody or if the only videoconferencing equipment of a country is in a diplomatic mission.

- 11) *Is it necessary to buy equipment for cross-border videoconferencing between courts?*

No, the equipment can be arranged for the hearing, if the requesting and requested courts so agree. The videoconferencing equipment of other institutions can be used as well.

- 12) *Do you need an engineer to operate the equipment?*

No, the equipment can be used by court clerks and judges, because there is usually an easy-to-use touch screen, cameras have pre-defined positions etc.

- 13) *Is it necessary to record the videoconference hearing?*

Usually the necessity to record the hearing (audio or video or both) is based on national law (codes of judicial procedure etc.)

- 14) *Can the identity of vulnerable or intimidated witnesses be protected?*

Yes, for example the video connection can be paused for the hearing or there can be a curtain or other measures to conceal the face of the witness.

- 15) *What are the security risks in videoconferencing?*

It depends on the infrastructure set-up of the court or other institution involved in the videoconferencing. If videoconferencing is restricted to certain users, using ISDN-lines or IP-addresses behind the firewall, authenticating the connection to the other side, then the videoconferencing process is sufficiently controlled and secure.

- 16) *Is there any reasonable environment-friendly alternative to videoconferencing?*

No, unfortunately not.



CATALOGUE OF USEFUL INFORMATION



Available information on cross-border videoconferencing

European Judicial Network in civil and commercial matters:

http://ec.europa.eu/civiljustice/index_en.htm

(Links under Taking of evidence and mode of proof)

European Judicial Network:

<http://www.ejn-crimjust.europa.eu/>

(Links under Mutual Legal Assistance)



Studie zum Stand des Einsatzes von Informations- und Kommunikationstechnologien (IuK) in der Justiz der EU-Mitgliedstaaten. Report by Europäische EDV-Akademie des Rechts gGmbH – European Academy of eJustice, May 2007. Available at info@eear.eu

Studies in judicial cooperation in civil and commercial matters:

http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm

Study on the application of Council Regulation (EC) N°1206/2001, on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matter:

http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm

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