Multi-aspect initiative to improve   
cross-border videoconferencing

"Handshake"

Work-stream 1a

D1a Judicial use cases with high benefits from   
cross-border videoconferencing

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| Deliverable Id : | D1a |
| Deliverable Name : | Judicial use cases with high benefits from  cross-border videoconferencing |
| Status : | Final version 1\_1 |
| Dissemination Level : | EU Commission and Member States |
| Due date of deliverable : | November 2016 |
| Actual submission date : | 31 January 2017 |
| Project coordinator: | Austrian Federal Ministry of Justice Johann Kickinger, Robert Behr, Thomas Gottwald |
| Work-stream : | WS1a – Identify judicial use cases which would benefit most from increased and better use of cross border VC |
| Organisation name of lead partner for this deliverable : | NL Ministry of Security and Justice |
| Author(s): | Willem Waslander (NL) |
| Partner(s) contributing : | AT MoJ, CCBE, HR MoJ, IT IRSIG-CNR, IT MoJ, LV Court Amin,  NL MoSaJ, PL MoJ, SE SNCA, SI Court Kranj, SI MoJ, UK-E&W MoJ, UK-S Scottish Government and Eurojust |

Abstract:  *The aim of this document is to show the daily practice in cross-border videoconferencing (VC) and the underlying legal principles that apply in the EU Member States for legal professionals and litigants. It shall help legal professionals engaged in cross-border proceedings as a guide of best practices for cross-border videoconferences within the European Union. It contains an overview on the typical judicial use-cases with high benefits from (cross-border) VC and in addition elaborates a typical use case both civil and civil/commercial proceedings in much greater detail. In form of building blocks for specific roles this document gives special advice on the treatment of vulnerable victims and witnesses – e.g. children – and advice in the use of interpreters. On the right places it also contains warnings on potential limitations for the use of VC from national law and how specific aspects of cross-border VC are influenced by differences in national law.*

**Disclaimer:** This publication has been produced with the financial support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of the partners of the Handshake project and can in no way be taken to reflect the views of the European Commission.

**Additional disclaimer:** Many practical aspects of preparing and running a videoconference are guided by national law (e.g. appointing an expert or interpreter, identifying a person, taking an oath) – so not all examples shown in this document might be directly applicable in your Member State.

Executive Summary

Video collaboration is a fast and effective way for face-to-face communication between judicial authorities and the activities they perform legally, anytime and anywhere. The legal framework for cross-border videoconferencing supports the hearing of witnesses, parties, victims, experts and even suspects or accused persons safely and effectively. Properly deployed video conferencing facilitates the hearing of vulnerable groups of people such as children. It can reduce costs, travel and environmental impact and increase security. It leads to a better informed decision-making process and is faster in a case that would otherwise be delayed.

The objective of the project "Multi-aspect initiative to improve cross-border videoconferencing" is to promote the practical use of and to share best practice and expertise on the organisational, technical and legal aspects of cross-border videoconferencing (VC) in order to help improve the overall functioning of e-Justice systems in Member States and at European level.

The overall objective of work-stream 1a (WS1a) is to identify judicial use cases with high benefits from cross-border videoconferencing and to explain the roles of judicial authorities and other participants in a cross-border videoconference. In order to properly explain/clarify these roles, we selected the most common judicial cases that are done using cross-border videoconferencing. The legal basis for this type of videoconferencing is explained and legal sources are listed.

These common cases, referred to as use cases, show that the legal and cultural differences within the European Union affect the manner in which the hearing of witnesses, accused persons or experts takes place. It is therefore recommended that judicial authorities take note of these differences before a cross-border videoconference is conducted. This document can be used as a good starting point especially in combination with the WS1b deliverable document D1b Recommended step-by-step protocol for cross-border videoconferencing in judicial use-cases.

# History

|  |  |  |  |
| --- | --- | --- | --- |
| *Version* | *Date* | *Changes made* | *Modified by* |
| (1) | 21/04/2016 | Draft discussed in Edinburgh | Author |
| (2) | 09/11/2016 | Draft discussed in Warsaw | Author |
| (3) | 14/10/2016 | Draft discussed in Vienna | Author |
| (4) | 27/10/2016 | Telephone conference: Handshake WS1 | Author |
| (5) | 09/11/2016 | 1st final draft; to be approved | Author |
| (6) | 17/11/2016 | Telephone conference: Handshake WS1&written comments | Author |
| 1\_0 | 30/01/2017 | Final changes for submission to EC | Johann Kickinger |
| 1\_1 | 15/11/2018 | Additional disclaimer on title page | Johann Kickinger |

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# List of Abbreviations

|  |  |
| --- | --- |
| *Acronym* | *Explanation* |
| AVIDICUS | AVIDICUS 3 is an EU funded project running from 2013 to 2015, which focuses on the use of videoconferencing in bilingual legal proceedings that involve an interpreter |
| bit/s | Bit rate of the transmission in bit per second:   |  |  |  |  | | --- | --- | --- | --- | | **Symbol** | **Name** | **Multiplier**  (base 10) | **Multiplier**  (base 1000) | | bit/s | bit per second | 1 | 1 | | kbit/s | kilobit per second | 103 | 10001 | | Mbit/s | megabit per second | 106 | 10002 | | Gbit/s | gigabit per second | 109 | 10003 | | Tbit/s | terabit per second | 1012 | 10004 |   See: <https://en.wikipedia.org/wiki/Bit_rate>  See: <https://en.wikipedia.org/wiki/ISO/IEC_80000#Information_science_and_technology> |
| CCBE | Council of Bars and Law Societies of Europe (CCBE) |
| CODEC | A codec is a device or computer program for encoding or decoding a digital data stream or signal.  A codec encodes a data stream or a signal for transmission and storage, possibly in encrypted form, and the decoder function reverses the encoding for playback or editing. Codecs are used in videoconferencing, streaming media, and video editing applications. (Source: Wikipedia) |
| Defence agent | Defence agents are external VC users in UK Scotland with responsibilities similar to a lawyer |
| DMZ | Demilitarized Zone |
| EAW | European Arrest Warrant |
| EIO | European Investigation Order |
| EU | European Union |
| Eurojust, | Eurojust is the European Union's judicial cooperation unit. It is a body of the European Union with its own legal personality and has its seat in The Hague (for details see: <http://www.eurojust.europa.eu> ).  Eurojust’s core business is to assist the competent authorities of Member States, when they deal with serious cross-border and organised crime, such as:   * Terrorism * Trafficking in human beings * Illegal immigrant smuggling * Drugs and arms * The sexual exploitation of women and children * Cybercrime * Online child abuse * Various kinds of fraud and money laundering * Counterfeiting * Environmental crime   Eurojust can also assist in such cases where a Member State and a non-Member State are involved. It can also help a Member State and the Commission when offences affect the European Union’s financial interests.  Eurojust’s goals are: first, to stimulate and improve the coordination between the national authorities, and to this end it works closely with EU partners such as the European Judicial Network (EJN), Europol, and OLAF where appropriate; second, to improve cooperation between the competent authorities, in particular by facilitating mutual legal assistance and the execution of mutual recognition instruments such as the European Arrest Warrant; and third, to support competent authorities in improving the effectiveness of their investigations and prosecutions, for example, by seeking solutions to recurring problems in judicial cooperation. In non-operational strategic matters, Eurojust works closely with EU and Member State institutions such as the European Parliament, national parliaments, the Council and the Commission.  Because crimes threatening European citizens are often global in nature, Eurojust has worked with various partners to help meet this threat. It has negotiated cooperation agreements for the exchange of judicial information and personal data outside the EU. Agreements have been concluded with Norway, Iceland, the USA, Switzerland, and the former Yugoslav Republic of Macedonia. Liaison prosecutors from Norway, Switzerland and the USA are based at Eurojust. In addition to cooperation agreements, Eurojust maintains a network of contact points outside the EU, and has memoranda of understanding with bodies such as the United Nations Office on Drugs and Crime and IberRed.  Eurojust supports this project in its normal role as EU body supporting the judiciary of the Member States in order that our project can benefit from Eurojust's experiences in videoconferencing and security and make best use of videoconferencing equipment at the European level, e.g. multi-point control units and their ability to create "virtual videoconferencing rooms". |
| H.239 | H.239 is an ITU (International Telecommunication Union) Telecommunication Standardization Sector (ITU-T) recommendation from the H.32x Multimedia Communications' macro family of standards for multimedia communications over various networks.  The H.239 recommendation is titled "Role management and additional media channels for H.3xx-series terminals". Practical importance of this recommendation is its setting forth a way to have multiple video channels (e.g., one for conferencing, another for presentation) within a single session (call). (Source: Wikipedia) |
| H.263 | H.263 is a video compression standard originally designed as a low-bit-rate compressed format for videoconferencing. It was developed by the ITU-T Video Coding Experts Group (VCEG). (Source Wikipedia) |
| H.264 | H.264 or MPEG-4 Part 10, Advanced Video Coding (MPEG-4 AVC) is a block-oriented motion-compensation-based video compression standard.  The intent of the H.264/AVC project was to create a standard capable of providing good video quality at substantially lower bit rates than previous standards (i.e., half or less the bit rate of MPEG-2, H.263, or MPEG-4 Part 2), without increasing the complexity of design so much that it would be impractical or excessively expensive to implement. An additional goal was to provide enough flexibility to allow the standard to be applied to a wide variety of applications on a wide variety of networks and systems, including low and high bit rates, low and high resolution video, broadcast, DVD storage, RTP/IP packet networks, and ITU-T multimedia telephony systems. The H.264 standard can be viewed as a "family of standards" composed of a number of different profiles. The decoder specification describes which profiles can be decoded. H.264 is typically used for lossy compression, although it is also possible to create truly lossless-coded regions within lossy-coded pictures or to support rare use cases for which the entire encoding is lossless.  H.264 was developed by the ITU-T Video Coding Experts Group (VCEG) together with the ISO/IEC JTC1 Moving Picture Experts Group (MPEG). The project partnership effort is known as the Joint Video Team (JVT). The ITU-T H.264 standard and the ISO/IEC MPEG-4 AVC standard (formally, ISO/IEC 14496-10 – MPEG-4 Part 10, Advanced Video Coding) are jointly maintained so that they have identical technical content. The final drafting work on the first version of the standard was completed in May 2003, and various extensions of its capabilities have been added in subsequent editions.  High Efficiency Video Coding (HEVC), a.k.a. H.265 and MPEG-H Part 2 is a successor to H.264/MPEG-4 AVC developed by the same organizations, while earlier standards are still in common use.  H.264 is perhaps best known as being one of the video encoding standards for Blu-ray Discs; all Blu-ray Disc players must be able to decode H.264. It is also widely used by streaming internet sources, such as videos from Vimeo, YouTube, and the iTunes Store, web software such as the Adobe Flash Player and Microsoft Silverlight, and also various HDTV broadcasts over terrestrial (Advanced Television Systems Committee standards, ISDB-T, DVB-T or DVB-T2), cable (DVB-C), and satellite (DVB-S and DVB-S2).  H.264 is protected by patents owned by various parties. A license covering most (but not all) patents essential to H.264 is administered by patent pool MPEG LA.[2] Commercial use of patented H.264 technologies requires the payment of royalties to MPEG LA and other patent owners. MPEG LA has allowed the free use of H.264 technologies for streaming internet video that is free to end users, and Cisco Systems pays royalties to MPEG LA on behalf of the users of binaries for its open source H.264 encoder.  (Source: Wikipedia) |
| H.323 | H.323 is a recommendation from the ITU-T that defines the protocols to provide audio-visual communication sessions on any packet network. The H.323 standard addresses call signalling and control, multimedia transport and control, and bandwidth control for point-to-point and multi-point conferences. (Source: Wikipedia) |
| IP | Internet Protocol (primary protocol in the Internet layer of the Internet protocol suite, has the task of delivering packets from the source host to the destination host solely based on the IP addresses in the packet headers). (Source: Wikipedia) |
| IPv6 | Internet Protocol version 6 (IPv6) is the most recent version of the Internet Protocol (IP), the communications protocol that provides an identification and location system for computers on networks and routes traffic across the Internet. IPv6 was developed by the Internet Engineering Task Force (IETF) to deal with the long-anticipated problem of IPv4 address exhaustion. IPv6 is intended to replace IPv4.  Every device on the Internet is assigned a unique IP address for identification and location definition. With the rapid growth of the Internet after commercialization in the 1990s, it became evident that far more addresses would be needed to connect devices than the IPv4 address space had available. By 1998, the Internet Engineering Task Force (IETF) had formalized the successor protocol. IPv6 uses a 128-bit address, theoretically allowing 2128, or approximately 3.4×1038 addresses. The actual number is slightly smaller, as multiple ranges are reserved for special use or completely excluded from use. The total number of possible IPv6 addresses is more than 7.9×1028 times as many as IPv4, which uses 32-bit addresses and provides approximately 4.3 billion addresses. The two protocols are not designed to be interoperable, complicating the transition to IPv6. However, several IPv6 transition mechanisms have been devised to permit communication between IPv4 and IPv6 hosts.  IPv6 provides other technical benefits in addition to a larger addressing space. In particular, it permits hierarchical address allocation methods that facilitate route aggregation across the Internet, and thus limit the expansion of routing tables. The use of multicast addressing is expanded and simplified, and provides additional optimization for the delivery of services. Device mobility, security, and configuration aspects have been considered in the design of the protocol.  IPv6 addresses are represented as eight groups of four hexadecimal digits with the groups being separated by colons, for example 2001:0db8:0000:0042:0000:8a2e:0370:7334, but methods to abbreviate this full notation exist.  (Source: Wikipedia) |
| ISDN | Integrated Services Digital Network (set of communication standards for simultaneous digital transmission of voice, video, data, and other network services over the traditional circuits of the public switched telephone network). (Source: Wikipedia) |
| ITU | International Telecommunication Union |
| ITU-T | ITU Telecommunication Standardization Sector |
| IWG | Informal Working Group. Note: the Informal Working Group on cross-border videoconferencing was appointed by the Council Working Party e-Law (e-Justice) |
| MCU | Multipoint Control Unit |
| MS | Member State |
| NAT | Network Address Translation |
| PC | Personal Computer |
| QoS | Quality of Service |
| SBC | Session Border Control |
| SIP | Session Initiation Protocol (SIP) is a standardized set of formats for communicating messages used to initiate, control, and terminate interactive user sessions with multimedia services such as Internet telephone calls, video conferencing, chat, file transfer, and online games. (Source: Wikipedia) |
| VC | Videoconferencing (sometimes also videoconference) |
| VTC | Video teleconference |
| WS | Work-stream (a subproject of this project) |

Table 1: Abbreviations

EU Country codes for Member States

|  |  |  |
| --- | --- | --- |
| **Code (1)** | **Short name** | **Official name** |
| AT | Austria | Republic of Austria |
| BE | Belgium | Kingdom of Belgium |
| BG | Bulgaria | Republic of Bulgaria |
| CY | Cyprus | Republic of Cyprus |
| CZ | Czech Republic | Czech Republic |
| DE | Germany | Federal Republic of Germany |
| DK | Denmark | Kingdom of Denmark |
| EE | Estonia | Republic of Estonia |
| EL | Greece | Hellenic Republic |
| ES | Spain | Kingdom of Spain |
| FI | Finland | Republic of Finland |
| FR | France | French Republic |
| HR | Croatia | Republic of Croatia |
| HU | Hungary | Hungary |
| IE | Ireland | Ireland |
| IT | Italy | Italian Republic |
| LT | Lithuania | Republic of Lithuania |
| LU | Luxembourg | Grand Duchy of Luxembourg |
| LV | Latvia | Republic of Latvia |
| MT | Malta | Republic of Malta |
| NL | Netherlands | Kingdom of the Netherlands |
| PL | Poland | Republic of Poland |
| PT | Portugal | Portuguese Republic |
| RO | Romania | Romania |
| SE | Sweden | Kingdom of Sweden |
| SI | Slovenia | Republic of Slovenia |
| SK | Slovakia | Slovak Republic |
| UK | United Kingdom | United Kingdom of Great Britain and Northern Ireland |
| (1) The abbreviations to use are the two letter ISO codes (ISO 3166 alpha-2), except for **Greece** and the **United Kingdom**, for which **EL** and **UK** are recommended (instead of GR and GB).   See: <http://publications.europa.eu/code/pdf/370000en.htm> | | |
|

# On this Document

The final version of this document is the main deliverable from WS1a Identify judicial use cases which would benefit most from increased and better use of cross border VC.

It is as a deliverable to be submitted by the Federal Ministry of Justice of the Republic of Austria (the action’s applicant) to the European Commission, DG Justice, Directorate B: Criminal Justice.



# Multi-Aspect Initiative to Improve Cross-Border Videoconferencing

This section is an overview of the project "Multi-aspect initiative to improve cross-border videoconferencing" and provides the context in which this Overall Test Report was being produced.

## Objectives

Objective of the project "Multi-aspect initiative to improve cross-border videoconferencing" is to **promote the practical use of and to share best practice and expertise on the organisational, technical and legal aspects of cross-border videoconferencing** (VC) in order to help improving the overall functioning of e-Justice systems in Member States and at European level. The sub-goals are:

* Improve organising and running cross-border videoconferences between the EU Member States by providing VC users enhanced guidelines and step-by-step protocol for typical cross-border VC use-cases.
* Enhancing the technical interoperability for videoconferencing by doing practical VC connection tests between the participating MS.
* Create an improved version of a form for requesting / confirming a videoconference together with static public information to be published on the European e-Justice Portal.

## Work-streams

To achieve the above goals the project has been organised in the following **work-streams** (WS):

* WS0 – Management and coordination of the project.
* WS1a – Identify judicial use cases which would benefit most from increased and better use of cross border VC.
* WS1b – Develop a step-by-step protocol with instructions for typical cross-border VC use cases.
* WS2 – Perform practical testing of point to point and multi point VC between different Member States.
* WS3 – Summarise recommended technical standards from a practical perspective.
* WS4 – Develop an improved form to request and/or confirm a cross-border VC between Member States in conjunction with public and static parameters to be published on the European e-Justice Portal.

## Document structure and interrelation

This project produced the following delivery documents:

|  |  |
| --- | --- |
| **Work-stream** | **Deliverable** |
| WS1a | **D1a** **"Judicial use cases with high benefits from cross-border videoconferencing"**  This guideline document identifies typical judicial use cases which benefit most from (cross-border) videoconferencing – both in criminal and civil/commercial matters.  It is closely related with delivery document D1b, which contains the step-by-step instructions ("protocol") to plan, organise and run cross-border videoconferences. |
| WS1b | **D1b** "**Recommended step-by-step protocol for cross-border videoconferencing in judicial use-cases**":  This guideline document helps the requester of the videoconference with detailed step-by-step instructions on all legal, organizational and technical steps which are necessary to plan, organize and run a successful cross-border videoconference.  This document is closely related with deliverable document D1a – as D1b shall support the typical judicial use-cases identified in D1a. |
| WS2 | **D2.1 "Overall Test Report"**  This document summarises the findings from all individual test reports from all bilateral and multilateral cross-border VC connection tests done between the project partners.  This document concentrates on the facts gained from the tests by summarizing things which went well and identifying the typical problems which occurred during the tests. The recommendations to address the problems identified during the practical VC connection tests will be found in deliverable D3.  **D2.2 "Test Plan"**  The Test Plan was an important document to plan and organise the VC connection tests between the project partners. It describes also the test procedure used and contains the template for the test logs (test reports) used to report the outcomes of each individual test.  As such tests can also be done with and between additional Member States - this document was included as additional deliverable to allow reuse of our test procedure for cross-border VC connection tests by other Member States. |
| WS3 | **D3** **"Recommendations on the practical application of technical standards for cross-border VC"**  This guideline document gives the recommendations on the practical application of the technical standards. It specifically cares to address the practical and technical problems identified in D2.1.  D3 is of utmost importance – as Member States following the recommendations of D3 will significantly increase the probability for establishing successful cross-border VC connections between their judicial authorities.  This document is closely related with D2.1 as D3 builds on the findings and experiences from the practical VC connection tests done. |
| WS4 | **D4 "Form for requesting/confirming a cross-border videoconference"**  This document describes an improved form which contains the relevant parameters for requesting/confirming a cross-border videoconference. This form is intended to be used as a supplement or appendix to the existing legal forms which have to be used as prerequisite to get legal permission to run a cross-border videoconference.  It includes recommendations which public and static VC parameters should be published on the European e-Justice Portal.  As an appendix it includes also the process documentation for the flow of the forms between the requesting and the assisting authority.  This document is closely related to D2.1 as the relevant technical parameters for a cross-border VC were identified when running the practical VC connection tests. |

## User groups who will benefit from this project

**Judges, prosecutors and court clerks** from the judiciaries of the Member States, who are involved in cross-border cases with remote hearings via VC, as well as the **technical staff** planning and supporting VC operations will benefit from the results of this project.

In addition also the external VC partners of the courts and prosecution offices e.g. **witnesses, external experts, (vulnerable) victims, police, prisons, lawyers, defence agents and community centres** will benefit from smoother videoconferencing.

Since several hundred thousands of VCs are already done by the European judiciaries per year and around 15% of them are cross-border, several tens of thousands of European citizens will benefit from the project results in addition to judges, prosecutors, legal professionals and external partners engaged in cross-border VC.

## Alignment with the European e-Justice Action Plan

This project specifically supports the implementation of the e-Justice Action Plan project number 30 “Videoconference” (Category A).

By following the suggestions of the Council “Working Party on e-Law (e-Justice) – Expert Group on videoconferencing" and building on other work-results and experiences from the Member States, Eurojust and the Commission, this project aims to support and improve the following sub-goals of project nr. 30 “Videoconference” of the European e-Justice Action Plan 2014 - 2018:

* Organising and running cross-border videoconferences (in all MS)
* Enhancing Interoperability for videoconferencing
* Form for requesting/confirming a cross-border videoconference
* Exchange of experience and sharing best practice on videoconference – including materials (e.g. improved step-by-step “protocol” for VC in typical judicial use-cases), that can be re-used later (after translation and national customization) by the Member States for better training of their VC users.

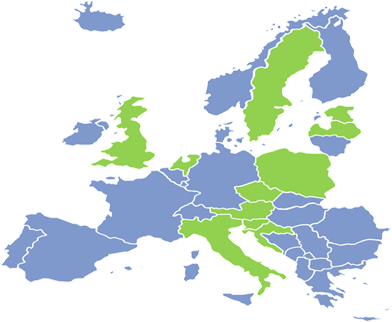
The innovative aspect is to combine the organisational, legal and technical view in the same project in order to substantially improve the use of cross-border videoconferencing between the judiciaries of the Member states.

The results of this project will raise the probability for successful cross-border videoconferencing connections and this will help to increase the confidence of judges and prosecutors in using videoconferencing technology for their cross-border cases – in both criminal and civil/commercial matters.

## Participants

The participants contributed to WS1a are judicial authorities and/or technical staff from:

1. AT Austria Ministry of Justice;
2. CCBE Belgium Council of Bars and Law Societies of Europe
3. HR Croatia Ministry of Justice;
4. IT Italy Ministry of Justice;
5. LV Latvia Court Administration;
6. NL Netherlands Ministry of Security and Justice;
7. PL Poland Ministry of Justice;
8. SE Sweden National Courts Administration;
9. SI Slovenia Ministry of Justice;
10. UK-E&W England & Wales Ministry of Justice;
11. UK-S Scotland Scottish Government;
12. Eurojust The European Union's Judicial Cooperation Unit.



# SETUP AND APPROACH OF WORK-STREAM 1A

## CONTEXT AND AVAILABLE DATA

In order to find an objective basis for this deliverable initially the approach was that the participating Member States would provide statistical data on the use of video conferencing. In part it concerned information on the use within the borders of its Member State and when applicable for cross border video conferencing. However the data provided by Member States showed that it was highly heterogeneous with regard to type, periods, quantities, aims and context. They also involve alternating rogatory and video conferencing in itself.

After careful analysis and consideration the main conclusion was that it was difficult to identify, on the basis of the data available, types of cross border cases with a high yield potential in the use and deployment of video links. It is clear that there is a necessity to collect the appropriate data by the Member States, otherwise we will have no way of knowing if the Project’s aims to increase Cross Border Video Conferencing (and the benefits this will bring) have been achieved.

Nevertheless, it was able to draw some general conclusions: The provided data makes no distinction other than EU Member States. The vast majority of cross-border VC use is for civil and commercial cases, for witness testimony and other types of evidence-taking. VC is used for in-between 10% to 20% for procedural hearings in criminal cases in courts.

Some use cases identified from the data supplied from Member States included evidence from witnesses and victims, hearings at courts with the accused in prison or police custody, defence consultations with the accused in prison or police custody and evidence from police staff to courts

## VC DATA: SWEDEN AND THE UNITED KINGDOM

Sweden and the United Kingdom were able to provide data on the overall number of hearings where a video link had been used. Both of these Member States have invested in recent years in installing modern video conferencing networks. Both also reported that the highest use cases are for witnesses and victims (including vulnerable and intimidated) and for those held in prison or police custody. In total in 2015 Sweden (with a smaller network) completed 33,095 sessions (within the Swedish courts during actual court hearings – not including investigation phase. Total is 19,000 hours) and UK England and Wales completed 125,000.

## VC DATA: AUSTRIA AND ITALY

**Austria**

Since 2005 the procedural preconditions exist for the use of video conference systems in the hearing of witnesses, parties, experts and interpreters in civil proceedings as well as in the hearing of witnesses in criminal proceedings (defendants only in preliminary proceedings). The video conference technology offers the judges the possibility to question people that were summoned to the court, which is nearest to their domicile and equipped with a video conference system. As a result, substantial time and cost saving arise because of the substantially shorter journey and the judges get a direct impression of the person. By avoiding legal assistance from other courts the duration of proceedings is shortened as well. For scheduling video conference hearings a database for room reservation was provided to judges via the intranet. The database features the possibility to book the required court rooms while automatically informing the person responsible for the video conference by e-mail. Since March 2011 all courts, public prosecution offices and prisons are equipped with video conference systems. In 2015 about 4000 video conferences were held throughout Austria, whereof 15 percent (600) were held with foreign courts. At the moment legal and technical frameworks are evaluated with the aim of widening the scope of video conferencing (court hearings, representatives of parties).

**Italy**

Italy provides two video conferencing systems allowed for criminal matters only. The first one is the Multipoint-Videoconferencing Service. It is dedicated for organized crime cases defined under art.41 bis of Italian Criminal Code Proceedings. Since 1998 this system supports the hearings in which witnesses under protection or inmates in high security prisons are involved. For these subjects the use of videoconferencing is mandatory. In 2014 the system completed almost 7,000 sessions, including more than 140 cross-border Multi-VC in 31 countries. The second one, running since 2014, is the Video Conference Microsoft Lync Service. The system is allowed but not mandatory for hearings related to the proceedings during the imprisonment. In absence of a specific regulations, the system can only be activated with the permission of the prisoner. During the first year of functioning, the service provided almost 500 sessions. This is the system under the testing phase of the project.

## VC DATA: CROATIA, SLOVENIA and LATVIA

**Croatia**

Within the Republic of Croatia videoconference equipment has been used at 5 County Courts (out of 15 second instance courts) Not all courts kept record of videoconferences which had been held during 2015. In the year 2015, 16 criminal cross border videoconferences took place with various member states in the EU. Based on Mutual legal assistance request 32 videoconferences took place.

Outside of the EU, with the rest of the world, 5 criminal and 5 Mutual legal assistance cross border videoconferences took place in the same period.

**Republic of Slovenia**

In the Republic of Slovenia Videoconferencing has been used since 2011. The equipment is available and in use in all District courts, Social Care centres in child friendly rooms, in one prison, one location of the Police and there are 3 mobile VK systems available for the use anywhere it is needed. The VC system is connected to the court`s audio recording system which is available in every courtroom in Slovenia.

Judges use the VC system mostly in criminal and civil cross-border cases as the distances between cities in Slovenia are relative short. In the national proceedings, VC is being used mostly for hearings of protected witnesses or children-victims (from a child friendly room).

The use of VC system has increased since its implementation and the trend is still slowly rising. In the year 2015 there were 132 hearings over VC in cross border cases, in the year 2016 there were 127 successful hearings over videoconference. Videoconference was used in hearings with the majority of Member States (Austria, Germany, Croatia, Italy, Romania, Bulgaria, Lithuania, Slovak Republic, France, Sweden, Czech Republic, Portugal, Malta, Ireland, Wels, England...) and with third countries (Bosna and Hercegovina, Serbia, Macedonia, Australia, Dominica Republic, Uruguay, Russia…).

**LATVIA**

In Latvia, the network density of video equipment in the courts, prisons and Institutions is adequate. Each Court house has at least one Court room equipped with modern videoconference equipment. Most courts however have several, often in combination with advanced Audio recording equipment.

An Audio protocol tagging system is in use.

This System has been envisaged for court hearing secretaries to develop court hearing protocol in PDF format.

The System provides the possibility to fix the data about the court hearing, participants and their expressions and automatically generates the minutes of the court hearing.

Target Indicators: 1 100 users ensured with audio protocol tagging system.

Public figures on the use of cross-border videoconferences are not available.

The expectation on the use of video conferencing in future years is that it will continue to increase.

## VC DATA: POLAND AND THE KINGDOM OF THE NETHERLANDS.

**POLAND**

Within the Polish Judicial landscape videoconferencing is common.

The use of video links in the digitized system of justice, as in the electronic protocol, is at the forefront of developments.

Cross-border videoconferencing is done several hundreds of times a year and stands at the beginning of its development.

Statistics concerning videoconference between courts from Poland and other countries shows a total number of 221. Those sessions were with courts from EU member States: Germany, Netherlands, Spain, Sweden, UK, Austria, Bulgaria, Latvia, Luxembourg, Romania, Italy, Ireland and Belgium.

Outside the EU there were sessions with: Norway, Israel, Kazakhstan and Switzerland.

**The Kingdom of the Netherlands**

The Kingdom of the Netherlands consists of four autonomous countries: the Netherlands, Aruba, Curaçao and St Maarten. The latter three are located in the Caribbean. The country of the Netherlands consists of a territory in Europe and the islands of Bonaire, Saba and St Eustatius in the Caribbean. The Kingdom of the Netherlands therefore has a European part and a Caribbean part. Aruba, Curaçao and St Maarten are not overseas dependencies of the Netherlands, but instead autonomous partners within the Kingdom, alongside the country of the Netherlands. Bonaire, Saba and St Eustatius have the status of public bodies (within the meaning of the Dutch Constitution). In broad terms, their position is similar to that of Dutch municipalities, with adjustments for their size, distance from the European part of Netherlands and geographic location in the Caribbean region. The current constitutional structure came into effect on 10 October 2010.

When we talk about cross-border videoconferencing, we often have a picture in mind of VC between different states. In addition, despite the fact that the kingdom of the Netherlands contains four independent countries, videoconference among themselves in the statistics is qualified as Domestic VC. Videoconferencing is often used within the judicial environment in the Netherlands. The police, the prosecution, the prison system and the judiciary have thousands of systems up and running in internal and external communications. International, cross-border, videoconferences are on a daily basis. Central Statistical monitoring is lacking because of the large degree of independence of these institutions within the Legal Order and the historical progress in the introduction of videoconferencing as a communication tool in the management of the individual organization. In addition, some of the statistical data has no public character because otherwise judicial activities and areas of interest can be traced. These arguments go largely within the criminal justice.

Nevertheless, it can be said with regard to these limitations in criminal law: During the year 2015 more than 4,000 video conferencing sessions took place with a total length of more than 6000 hours.

# CROSS-BORDER VIDEOCONFERENCING

In general, cooperation in the field of videoconferencing can lead fairly easy to face to face encounters and place to place encounters even though parties are located far away from each other.

Video collaboration is a fast and effective way for face-to-face communication between judicial authorities and the activities they perform legally, anytime and anywhere. Within the legal framework for cross-border videoconferencing it supports the hearing of witnesses, victims, experts and even suspects or accused persons safely and effectively. Properly deployed video conferencing facilitates hearing of vulnerable groups of people such as children. It can reduce costs, travel and environmental impact. It leads to a better informed decision-making process and faster in a case that would otherwise be delayed.

## NATIONAL LEGAL RESTRICTIONS

Although EU legislation allows the use of cross-border videoconferencing in the field of Justice, there are differences in the Member States as far as the applicability to specific individuals.

There are Member States that allow hearing of vulnerable groups of people and thereby see the way video connection as a substantive improvement in the quest for a secure interview.

But there are also Member States that build legal restrictions in their national law.

For example, in Member State Netherlands irrespective of the law, there are restrictions on the use of videoconferencing. In the following cases the use of videoconferencing is **not** permitted:

* In criminal law: With regard to a minor suspect or convict, from the stage of the detention;
* With regard to the accused if he or she is suspected of a morbid disorder or lack of development of the mental faculties;
* The suspect in a sex crime for which pre-trial detention is authorized;
* The suspect of an offence case involving a fatality;
* Regarding the suspect is if the victim makes uses of the right to speak.

**In order to avoid misunderstandings, it is wise to take note of the self-imposed legal limits of such Member States.**

It is important to emphasize that, by the relevant provisions of the Council Recommendations “Promoting the use of and sharing of best practices on cross-border videoconferencing in the area of justice in the Member States and at EU level” , it is stipulated that “While bringing added protection to suspects, victims, witnesses and vulnerable persons, the use of videoconferencing also has the potential to be detrimental to the defence’s rights and as such contradictory to the overarching principles of European law. Also it is pointed out that the respectfulness of “the principles of immediacy, equality of arms and contradiction” should be taken into account and that all this, therefore, “entails using the equipment that is up-to-date, to achieve sufficient video and audio quality, and secure in proportion with the sensitivity of the case”.

Following the previously said, the accused person should consent in each case before the hearing takes place.

## Adaptation of the original approach

Given the fact that the available statistical material provides insufficient handles to identify which judicial cases would benefit most from increased or better use of cross border VC - adaption of the original working approach was discussed and applied.

Following a qualitative approach, the main use cases for cross-border (and national) videoconferencing could be easily identified from successful videoconferencing examples of the Member States and organisations participating in this project.

In addition the shared view of all partners was that it would be worthwhile to elaborate two simple interrogation and interview use cases in greater detail:

* for civil law;
* for criminal law.

This approach was taken to demonstrate the quite high influence of national law on specific aspects of a cross-border videoconference (e.g. identifying a witness, selecting and appointing a certified interpreter).

Each case could then be considered as a building block, for the protocol to be delivered which should lead to an increased use of cross-border (and national) videoconferencing in judicial use cases**.**

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# Judicial use cases with high benefits from cross-border (and national) videoconferencing

From previous experiences gained in the Council Working Party e-Law (e-Justice) – Expert Group on videoconferencing and using the successful videoconferencing examples from the Member States and organisations participating in this project we can recommend the use of cross-border (and national) videoconferencing for the following list of judicial use cases.

Main use of videoconferencing is for taking of evidence – both in criminal and civil/commercial cases.

**Criminal**

* **Avoiding transport of persons in custody – hearing of prisoners via videoconferencing**
  + For many Member States this is definitely the use case with the highest immediate return on investment: it removes the high costs and security risks associated with prisoner transport to court by cutting down both transport and staff escort costs.
  + Removes security risks for both staff and the public and is extremely important where high risk offenders (or organised crime) are involved.
  + It saves suffering of the person being transported and hearing by videoconference is less intrusive than temporary surrenders.
  + Successful examples: AT: courts and prosecution offices can connect to prisons; UK England and Wales: Prisoner to Court Video Link (PCVL), Italy: hearing of inmates in high security prisons.
  + Other benefits: access to right of information, access to medical advice for prisoners
* **Take testimony of remote (vulnerable) victim or (intimidated) witness**
  + Remote victims or witnesses in another Member State can give testimony
  + Vulnerable and intimidated victims or witnesses can give statement or testimony from a location outside the courtroom to avoid re-victimisation or for their own safety. Successful examples: Croatia, Slovenia in child cases, UK England and Wales, Italy.
  + Saving police officer time to give evidence without travelling to court.
* **Hearing expert’s opinion** 
  + High skilled (e.g. medical or forensic experts) would not even have the time for travelling – as they have a very demanding job.
* **Suspects and accused persons’ statement:** 
  + Note: some MS limit this to the investigation phase (preliminary trial) and do not allow this during the main trail where the accused person has to stand physically in front of his judge for reasons of immediacy.
* **Confidential communication inmate (client) with lawyer** 
  + This is a leading edge use-case which requires careful setup to ensure the confidentiality of the conversation between the lawyer and its client: point-to-point connection with true end-to-end encryption.
  + Successful examples: Spain: Barcelona Bar has a facility to connect the lawyer with his client in a remote prison; Netherlands.

**Civil / Commercial matters**

* **Hearing of expert or witness**
  + This is the standard "Taking of evidence" use case in civil/commercial matters applicable for all Member States of the European Union.
* **Hearing of party, representative of party**
  + Some Member States (e.g. Netherlands, Sweden) have already the legal provisions in their national civil code to "virtualise" civil/commercial hearings with the parties/representatives and the judge sitting in remote locations.
  + Other MS are preparing their national legal provisions to allow this: e.g. Austria

# BUILDING BLOCK: THE CIVIL LAW CASE

This section summarizes “The Civil law case”.

The scenario of the civil use cases is as follows:

The civil law case concerns a situation in which a court in MS A wants to interview a witness who is living in MS B. The witness is not only living in MS B but has also the nationality of MS B and speaks only language B. At the location of the witness there is no lawyer involved. On the site of MS A the lawyer of the requesting party filled the questions to be raised by the court.

There is a language barrier which makes it necessary for an interpreter to be present. The interpreter speaks both languages fluently. In the preparation of the case is agreed that the interpreter is on the side of the witness. On both sides a judge is present as well a court Clark (this depends on the requested country who represents the judicial authority (e.g. judge or court clerk) – and this depends on the convention you are applying and on the national law. In UK it is a matter of practicality. Judges might not have the time to sit in any videoconference. Confirmation of identity is of course important: e.g. showing identity card or passport or driver's licence). The identification of the witness has to be established and he has to be sworn in.

Cultural aspects: the religion of State A is predominantly Catholic. The witness is a non-Christian.

Technical aspects: a document camera is available.

**Note:** In general **in Austria** in civil cases they only check the identity by inquiry; other MS by an identification-document and/or inquiry, **in Scotland** the identity is taken when the witness is sworn in. It is necessary to have adequate identification of parties/participants – according to the applicable law.

## LEGAL FRAMEWORK

The relevant legal framework for taking of evidence via videoconferencing in civil and commercial matters is Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

There are two possible contexts in which videoconferencing may be used in the cross-border taking of evidence under this Regulation. These are the taking of evidence by a requested court under Articles 10 to 12 and the direct taking of evidence under Article 17.

**"Indirect taking of evidence":**

Under Articles 10 to 12, the parties and their representatives may be present when evidence is taken by the requested court, if the law of the Member State of the requesting court provides for this. The requested court determines the conditions under which parties and their representatives may participate in accordance with Article 10. The requested court notifies them when and where the proceedings will take place.

Under Article 11 the requested court may also ask parties and their representatives to be present at, or be involved in the taking of evidence, if the possibility is provided for by the law of its Member State. Representatives of the requesting court may also choose to be present when evidence is taken by the requested court, if the law of the Member State of the requesting court allows this.

If participation of the representatives of the requesting court is requested when evidence is taken, the requested court shall determine conditions for participation in accordance with Article 10. In order to facilitate the presence or participation of the parties or the requesting court, the requesting court may ask the requested court to use communications technology, such as **videoconferencing**, at the performance of the taking of evidence.

The requested court must comply with this request unless it is incompatible with its law or by reason of major practical difficulties. In case of non-compliance the requested court has to inform the requesting court. If there is no access to the technical means, technical means may be made available by the courts by mutual agreement.

Except in case of a request for a special procedure by the requesting court, the requested court executes the request in accordance with the law of its Member State. It chairs the hearing and the hearing will normally be held in the official language of the requested court. The requested court is also in charge of arranging the hearing and summoning the witness. If required, **coercive measures** are applied in accordance with the law of the requested court. The witness may claim a right to refuse to give evidence under the law of the Member State of the requested or the requesting court.

**"Direct taking of evidence":**

Under Article 17, the court may request to take evidence directly in another Member State and submits a request to the central body or competent authority in the other Member State. Direct taking of evidence must occur on a voluntary basis **without use of coercive measures**. The requesting court must inform persons being heard that direct taking of evidence is voluntary.

Following the request, the central body or competent authority of the requested Member State informs the requesting court if the request is accepted and any conditions that may be required according to the law of its Member State (for example an assisting court of the requested Member State may be assigned to take part in the taking of evidence).

The requesting court executes the request in accordance with the law of its Member State, though conditions according to the law of the requested Member State must be respected.

As with Article 10, Article 17 encourages the use of **videoconferencing**. The request may be refused by the central body or competent authority if the request does not fall within the scope of the 2001 Taking of Evidence Regulation, if it does not contain all the necessary information or if direct taking of evidence is contrary to fundamental principles of law in its Member State.

# The Criminal law case

The scenario of the criminal use cases is as follows:

Criminal law case – taking of evidence (in pre-trial phase or within a court hearing).

The criminal case concerns a situation in which a suspect is being prosecuted for robbery and assaulting a citizen. The crime took place in broad daylight. Several witnesses observed the suspect demand money from the victim under the threat of a knife. When the money is not handed over he assaulted the victim. The victim was a tourist from one of the EU Member States.

The victim has the right to be heard (Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, article 10 (during judicial proceedings) – replacing Council Framework Decision 2001/220/JHA). The victim, during questioning by the police, which is stated, indicated that he wants to be heard during the proceedings of this criminal case to report on the impact of this crime on his welfare – however if possible on a remote distance from the suspect. After treatment in the hospital, he went back home to his Member State. The prosecutor, on the basis of a request for mutual legal assistance, requested the court in the town where the victim lives to make an interview room with a video facility available. The court agreed to establish and facilitate this video link.

**Minutes of the hearing**

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 being 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.

**Notes:**

* In criminal security issues to protect witnesses and victims need attention: e.g. encryption of the VC. Sometimes also the requested state requires encryption – depending on the assessment of the severity of the case.
* Costs (e.g. for travel, experts, interpreters) and language need to be clarified as well.
* Actors should explain their roles at the beginning.

## LEGAL FRAMEWORK

**Guiding principles**

Limitations of hearings by videoconference

*The principles of immediacy and equality of arms*

Some of the fundamental rights and principles of the criminal procedure enshrined in the European Convention of Human Rights (ECHR) and the Charter of Fundamental Rights of the EU (EU Charter) could potentially be compromised during a hearing by videoconference in a cross-border case.

In particular, the right to a “fair” hearing proclaimed in Art. 6(1) ECHR, and the rights of the suspected and accused persons to defend themselves in person, through legal assistance of his/her own choosing or to be given it free (Art. 6(3)(c)), the right to examine witnesses against him/her (Art. (3)(d)), and the right to have the free assistance of an interpreter (Art. 6(3)(d)) may be affected.

The above mentioned rights are not absolute and may admit certain limitations, provided that such limitations are prescribed by the law, pursue a legitimate aim, are necessary in a democratic society and proportionate. The principle of proportionality entails that there is a reasonable relationship between a particular objective to be achieved and the means used to achieve that objective[[1]](#footnote-1).

In the course of a hearing by videoconference, the limitations to the right of a fair trial or hearing[[2]](#footnote-2) are due to the fact that the actors involved (e.g. the judicial authorities, the suspected or accused person, his lawyer, the interpreter, the victims, the experts, the translators) are located in different Member States and do not have the same opportunity to interact among each other as if they were in the same room or court. These limitations are certainly aggravated if the quality of the videoconference system does not meet the necessary standards.

It is generally acknowledged that the use of videoconference implies certain limitations of the principle of immediacy, as the judicial authority of the requesting Member State does not have the same proximity with the suspects, the witness and the experts as if they were in his presence, and therefore will not be able to appreciate so closely their statements and explanations, their movements and body language, and the nuance of their voices. The judicial authority of the requesting and requested Member State, when assessing the possibility to replace the physical presence of a witness, expert, suspected or accused person by a videoconference, must consider carefully whether the limitations of the principle of immediacy are proportionate to the aim pursued in that particular case. In jurisdictions where the principle of immediacy is a cornerstone of the criminal procedural law, this will be one of the greatest hindrances for the use of videoconferencing (E.g. in Austria, the Higher Regional Court of Vienna recently issued a verdict which clearly forbids the use of videoconferencing in criminal trials).

Another principle that might be compromised is the right to an equitable process and two other principles intrinsically linked to it: the contradictory principle, and the equality of arms. According to the right of an equitable process, both parties should have the same probabilities of defending their own interests and expose them in hearings and trials in conditions that are not disadvantageous vis-à-vis the counterpart[[3]](#footnote-3). Equality of arms may be breached, for instance, if the accused person has some difficulties to liaise and communicate fluently with this lawyer, or to understand clearly a witness or an expert who is giving testimony in a different room.

**Added value of hearings by videoconference**

*Less intrusive measures than European Arrest Warrants and temporary surrenders.*

*Access to Justice of remote victims.*

*Costs-effectiveness*

In some situations a hearing by videoconference may constitute an effective, proportionate and less intrusive measure than the arrest and surrender of an individual for the purposes of executing a European Arrest Warrant (EAW). This will be the case when the presence of the suspect before the judicial authority is not absolutely necessary, for instance, if such presence is required for the sole purpose of informing the suspect about his rights and charges.

The Directive on the European Investigation Order promotes the issuing of EIOs for the hearing of suspects by videoconference as an alternative to the EAW, as follows[[4]](#footnote-4):

*“With a view to the proportionate use of an EAW, the issuing authority should consider whether an EIO would be an effective and proportionate means of pursuing criminal proceedings. The issuing authority should consider, in particular, whether the issuing of an EIO for the hearing of a suspected or accused person by a videoconference could serve as an effective alternative”.*

On the other hand, under certain conditions the use of videoconference or other technical means might ensure access to Justice for witnesses and victims of criminal offences that are in the territory of remote third States. This is the case of the victims of genocide, crimes against humanity or war crimes that do not have the possibility to report to the International Criminal Court or other competent authorities about the crimes committed in their territory. To enable them to report on such crimes and therefore ensure their access to Justice, Rule 122 of the Statute of the International Criminal Court states:

*“Lastly, a hearing by videoconference may also be convened for security reasons (e.g. suspected members of serious criminal organisations), in order to accelerate the investigation, or with the purposes of saving costs. The appropriateness of the use of videoconference in these cases must be examined carefully. In most of them, the convenience of accelerating the investigation or saving costs will not be reasons enough to justify the use of videoconference. “*

***Witnesses, victims and experts***

The starting point of the European and international instruments mentioned in Section (2) is the situation wherein a judicial authority that is in a State´s territory needs to hear, as a witness or as an expert, a person who is in another State´s territory. When the appearance in person of the witness or the victim is not possible or not desirable, the judicial authority may request a hearing by videoconference instead[[5]](#footnote-5).

Article 17 on the Rights of victims resident in another Member State of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, is noteworthy in this respect:

*“ 1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:*

*(a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;*

*(b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ( 1 ) for the purpose of hearing victims who are resident abroad.”*

Article 23(3) also requests to have certain measures available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings, such as:

*(a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;*

*(b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;”*

Their appearance will not be “desirable”, among other situations, where the witness is very young, very old or in bad health[[6]](#footnote-6). It will not be “possible”, for instance, where the witness would be exposed to serious danger if appearing in the requesting State[[7]](#footnote-7). The rogatory letter should indicate the reason why it is not desirable or possible for the witness or the expert to appear in person before the court[[8]](#footnote-8).

The hearing by videoconference of witnesses and victims is specially advisable where they are vulnerable persons and their appearance before the competent authority in another State´s territory may cause a second victimisation, as well as in cases of witnesses at risk of intimidation or in need of special protection, as evidenced by Rule 87 of the Rules of Procedure and Evidence in front of the International Criminal Court.

Some of the European and international Conventions on mutual legal assistance take special consideration of the situation of vulnerable victims and introduce specific rules to enable them to give testimony through videoconference[[9]](#footnote-9).

On the other hand, the European and international legal instruments recognise the right of the witness not to testify in accordance with the law of either the requesting or requested State[[10]](#footnote-10).

If however the witness has the obligation to testify and refuse it, or does not testify according to the truth, the law of the requested State should be applicable in the same way as if the hearing took place in a national procedure[[11]](#footnote-11).

The hearing by videoconference may also be useful for persons in custody in a Member State whose personal appearance as a witness or for the purposes of confrontation is applied for by another Member State. In these situations, a hearing by videoconference may constitute an alternative and less intrusive measure than the temporary transfer of the person in custody to the territory of the requesting Member State.

Germany has submitted a declaration to Art. 10(1) of the 2000 Convention, according to which *“pursuant to the national law of the Federal Republic of Germany, no costs may be imposed or regulatory measures laid down against a witness or expert (Art. 10(1)) who fails to respond to an invitation to a hearing by videoconference to be conducted by a foreign judicial authority”.*

As regards the experts, the provision of his opinion by videoconference may save time and expenses, without jeopardising the rights of the defence as soon as the suspected or accused person and his lawyers are given the opportunity to cross-examine the expert opinion in the same hearing.

**Suspected and accused persons and the assistance of a lawyer**

In most of the European and international Conventions, including rules on hearing by videoconference of witnesses and experts, such rules may be extended to suspected or accused persons[[12]](#footnote-12). This extension is however subject to several limitations or conditions.

The first limitation is that the decision to extend the rules on hearing by videoconference to suspected and accused persons is at the discretion of the signatory States. The Second Additional Protocol to the 1959 Convention states that:

*“Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by videoconference involving the accused person or the suspect”[[13]](#footnote-13).*

A wide range of States signatory to this Protocol have declared that they will not allow the hearing of videoconference of suspected or accused persons. In particular, this declaration has been made by Croatia, Denmark, France, Malta and Poland. The Netherlands has declared that *“it wishes to avail itself of the possibility of excluding the use of hearings by videoconference involving suspects”.* The United Kingdom has declared that *“it will not allow videoconferencing to be used where the witness in question is the accused person or the suspect”.* The same declaration has been made by Norway and, among the third States signatories of this Protocol, by Chile.

The 2000 Convention also enables the Member States to declare that they will not extend the rules on hearing by videoconference to suspects and accused persons[[14]](#footnote-14). This declaration has been made by Denmark, The Netherlands and the United Kingdom. France has declared that the hearing by videoconference is not possible in respect to *“accused persons when appearing before the trial court”.* Germany has declared that the hearing of an accused person by videoconference is not excluded in principle*, “however, such hearings can be conducted only on a voluntary basis”.* Hungary has stated that “the hearing of an accused person may be conducted by videoconference only if consent is given in writing”. Article 6 of the aforementioned Convenio Iberoamericano sobre el uso de la videoconferencia en la Cooperación Internacional entre Sistemas de Justicia, Mar de Plata 3.12.2010, regulates that for defendants is possible to apply the general rules on the development of videoconferencing, but is necessary to take account the national law of each party and all rights must be respected. A Party may declare that will not apply the agreement in this part.

The second limitation is that the hearing by videoconference of suspected and accused persons is possible *“where appropriate and with the agreement of their competent judicial authorities”.*

The third important condition is that the suspected or accused person must give his consent. In words of Art. 10(9) last paragraph of 2000 Convention,

*“Hearings shall only be carried out with the consent of the accused person”.*

The use of videoconference is intended to ensure that the suspected or accused person who is in another State´s territory may be informed of his rights and the charges against him, being subject to certain questions by the prosecutor or the court, or have the possibility to exercise his right to defence during an investigation or a trial.

The right to defence of suspects and accused persons requires, in most of cases, the assistance of a lawyer. With this assistance, the possible scenarios for a hearing by videoconference might be as follows:

1. the requesting judicial authority is located in a Member State, whilst the requested judicial authority, the suspected or accused person and his lawyer are in another Member State;
2. the requesting judicial authority and the suspected or accused person are located in a Member State, whilst the requested judicial authority and the lawyer are located in another Member State. The CCBE wonders whether this covers scenarios where the victim to be heard by videoconferencing is in location B, but the detained person is in location A – in which case it would be important to differentiate between cases where the lawyer is defending the rights of the victim or the witness who is in location B, or where there is a lawyer in location B, but he/she is there to protect the interests of the accused/suspect person who is in location A. ;
3. the requesting judicial authority and the lawyer are located in a Member State, whilst the requested judicial authority and the suspected or accused person are in another Member State.
4. An additional scenario, where the suspected/accused person is having a lawyer each in two places at the same time (both where the judges are and where the client is located) is identified by the CCBE.

Each scenario presents its own complexity. Scenario (a) seems to be the most protective of the rights of the defence, as it ensures direct communication between the lawyer and its client. Scenarios (b) and (c) would be also compatible with the rights to defence as soon as a direct line of communication (e.g. by phone, by a parallel videoconference system) is at the disposal of the lawyer and his client.

Lastly, the scenarios described above may become more complex when an interpreter is also necessary. The matter is analysed in the next section.

There is a fairly widespread international recognition of the right of the defendant to be present at all critical stages of their criminal proceedings. Nevertheless, there are important State to State variations depending on the legal system type, the seriousness of the offence and on how critical a certain stage the proceedings is deemed.

Most importantly for the purpose of this paper, there is ground for interpretation about what being present really means. As technology allows an increasingly blurred distinction between physical and virtual presence, the right to be present is to be reconsidered. Then again, this reinterpretation differs from one system to another, therefore affecting judicial international cooperation.

**Interpreters**

A hearing by videoconference may become quite complex when interpretation services are needed. The Second Additional Protocol of the 1959 Convention and the 2000 Convention refers to the assistance of an interpreter in two different occasions. First, they mention that the judicial authority of the requested Member State shall be present during the hearing “where necessary assisted by an interpreter”. The possibility to provide interpretation services in situations other than the hearings of suspects and accused persons must therefore be taken into consideration. Such interpretation services might be quite frequent in cross-border cases, as in many of them the judicial authorities involved will speak different languages.

The second occasion refers to the interpretation services provided to the suspect or accused persons: *“at the request of the requesting Member State of the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary”[[15]](#footnote-15)*. *In this situation, Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings[[16]](#footnote-16) applies.*

As anticipated in Section 4.2 of this Report, with the assistance of a lawyer and an interpreter the scenarios of the hearing by videoconference become quite complex:

1. the requesting judicial authority is located in a Member State, whilst the requested judicial authority, the suspected or accused person, his lawyer and the interpreter are in another Member State;
2. the requesting judicial authority and the interpreter is located in a Member State, whilst the requested judicial authority, the suspected or accused person and his lawyer are located in another Member State;
3. the requesting judicial authority, the suspected or accused person and the translator are located in a Member State, whilst the requested judicial authority and the lawyer are located in another Member State;
4. the requesting judicial authority and the suspected and accused person are located in a Member State, whilst the requested judicial authority, the lawyer and the interpreter are located in another Member State;
5. the requesting judicial authority, the lawyer and the translator are located in a Member State, whilst the requested judicial authority and the suspected or accused person are in another Member State.
6. Regardless the location of the suspect and his lawyer, the judicial authorities involved in the hearing may decide to make use of remote interpretation.

# BUILDING BLOCK CHILD, VULNERABLE PERSONS AND PROTECTED WITNESSES IN A CRIMINAL PROCEDURE

Some of the European and international Conventions on mutual legal assistance take special consideration of the situation of vulnerable victims and introduce specific rules to enable them to give testimony through videoconference (reference to the Final Report – Informal Working Group on Cross-border Videoconferencing). When one of vulnerable persons is a child the approach to the hearing and the way of taking the statement should be done with special care, approach and caution (as well as place and other participants involved), and for several reasons.

The child has different powers of observation and stating from adults (in qualitative and quantitative terms) and hearing of children should be done with the help of experts: psychologists, therapists and others. When a child is injured in the process, and when it is the victim of abuse, then this very special situation requires special personal involvement. On the one hand it is necessary to do everything not to traumatize the child by further examination of the case in question, on the other hand is practically impossible to get the relevant statement without the help of specially trained persons.

The Courts in Slovenia name a court expert mostly a clinical Psychologist who interviews child victims in a child friendly room at Social care centres. The Interview is being recorded and a videoconference with another room in the Social Care Centre or with the court gives the opportunity to protect also the rights of the suspected at the same time. From the other room or courtroom, judge, prosecutor and attorney can send additional questions for the child to the expert via internet. In 2015 Slovenia also conducted first multidisciplinary training for experts in different fields who deal with interviewing children in child friendly rooms with the use of video links. At this moment in the frame of implementing the Victims Directive (Directive 2012/29/EU) into the national legislation, in the Draft of Amendments to the Criminal Procedure Act it is proposed that all the interviews of vulnerable persons (e.g. children, juveniles) should be conducted in a child friendly environment and have to be recorded. The Draft shall be probably sent to the National Assembly of the Republic of Slovenia (the Parliament) by the Government of the Republic of Slovenia in February 2017.

Employing professional staff that examines the children made a step forward in Croatian judiciary. Sole acquisition of technical equipment and video links to courts, created the preconditions for non-traumatizing hearing of children in court proceedings. Now the child is examined by qualified personnel in a separate room, and the other participants in the proceedings, via video link from another room, can listen and observe the interrogation as well as they have a possibility to raise questions through the monitor or handset.

## The scenario of the criminal use cases when a child is involved:

Based on the indictment lodged for the physical and sexual abuse of a child, a criminal proceeding against one of the parents started before a court. The child abuse was committed repeatedly during one year. During one of the conversations with an expert, the child (witness) stated three times that its parent forced him doing things the child did not want to do.

This was the only time the child expressed those accusations. Given the absence of other evidences, some inconsistencies in the statements, taking into account gravity of the offence, the consequences and the punishment for such an act, the judge decided to order an interview of the child.

The Judge appointed a court expert (psychologist/psychiatrist) to examine the child about its sexual abuse.

The following scenarios would be usual in different countries:

a) the expert interviews the child in his premises or at the court; the expertise is in written form and sent to the court;

b) the expert interviews the child at the court in a different room (e.g. in Croatia); the interview is partly guided from the judge who, together with other participants of the proceeding, follows the interview via video-link from the courtroom and has the possibility to send additional questions to the expert;

The described scenarios of procedures substantially prevent additional traumatisation (secondary victimisation) because the child is not in the same room with the abuser and additionally in the scenario b) other participants could follow the child`s statement.

But, in the above mentioned particular case the child refused to go to court (to make a statement there). The judge used the opportunity to take the statement outside of the court. Therefore, he chose a child friendly room at a Child Protection Centre that disposes of the videoconference system and a room specially equipped and prepared for such interviews (example in Slovenia is a child friendly room at Social Care Centre). Finally, he ordered the interview to be recorded.

The described procedure was conducted with the use of psychological methods that enabled the child to feel as comfortable as possible in those circumstances. It is suggested that this should be the last or only interview with a psychologist, which was held in a relaxed, nonthreatening atmosphere, without any indication that this is a trial, and without the child's contact with the accused person and the other participants in the process. At the same time, the rights of all other parties are respected.

Avoiding the re-traumatizing of the child, by interrogation through video-link, was certainly one of the most important achievements not just in this particular case, but in all other similar cases before courts.

## General hints on the protection of children and vulnerable persons

Generally, according to the relevant provisions of criminal law, e.g. in Croatia – when the witness to be examined is a child who has been injured by the criminal offence – the interview is carried out with the assistance of an expert. An investigating judge shall order a video-recording of the interview. The interview shall be carried out in the absence of the judge and parties, i.e. in the separated room at the court, in such a manner that the parties through the investigating judge, psychologist, educator or other expert person can question the child. The video-recording of the interview shall be sealed and attached to the protocol. If it is necessary, additional interview can be ordered and preceded in the same manner or outside the court as it was previously mentioned.

Furthermore, where a child is interviewed as witness, as it is explained above, recording of the interview shall always be reproduced at the hearing. A judge may order the making of a transcript of the recorded testimony, which thus becomes part of the minutes concerning the interview.

Here, it is important to emphasize that if a person is a victim of a criminal offence against sexual freedom, domestic violence and of trafficking in human beings, he or she can request to be examined from another room/location by videoconference.

In the case of criminal offences against sexual freedom and sexual morality, the recording of a testimony shall always be transcribed (e.g. in Croatia - when minors or young adults have been involved). The person who carried out the transcript and the expert person who carried out the recording shall sign the transcript of the recorded testimony. Data collected through the technical devices for the transmission of picture and sound shall be kept for the same period as applicable to the criminal file. In some other countries, like Slovenia, the playing of the recording of a testimony is allowed at the next hearing.

Witnesses who cannot appear in court due to their old age, illness, serious physical disabilities or mental condition may give testimony in their dwellings or on any other premises where they are situated. These witnesses may be questioned by means of technical devices for videoconferencing and video recording. If required so by the condition of a witness, the questioning shall be organized in such a manner that the witness can be questioned by the parties without their presence in a room where the witness is situated, via-videoconference. For carrying out such a questioning, an expert person shall be appointed, and if necessary an expert witness-psychologist. If the person to be heard does not speak the official language of the Country, where the hearing shall be conducted, also an interpreter shall be appointed.

According to the special provisions of the Croatian criminal law, where the special manner of interrogation and participation of a protected witness in proceedings refers not only to the non-disclosure of data, but also to the concealment of his physical appearance, the interrogation shall be conducted by videoconference device. An expert shall operate the videoconference device.

The physical appearance and voice of the witness shall be distorted during the interrogation. In the course of the interrogation, the witness shall be placed in a room separate from the room where the judge of investigation and the other persons present at the interrogation are located. The judge of investigation may order that the interrogation of a protected witness via videoconference to be recorded by means of an audio-video or audio recording device. The decision on the making of a recording and on the manner in which the recording is to be made shall be taken by the judge of investigation who shall take particular account of the protection of the witness. In this case the judge of investigation shall not keep a protocol. The recording shall be transcribed within the time limit of three days. Before the start of the interrogation, the protected witness shall be warned. Where the interrogation of a protected witness is recorded, (e.g. in Croatia) the judge of investigation conducting the interrogation shall proceed by taking special care of the protection of the witness. Where the interrogation of a protected witness is recorded, two recordings of the interrogation shall be made, one of which shall immediately be sealed and handed over to the judge of investigation for safekeeping. This recording shall be signed by the judge of investigation, the witness at risk with his pseudonym and the expert who made the recording. The other recording shall be handed over to the State Attorney. The State Attorney shall transcribe the recording within the time limit of fifteen days and shall enclose it within the case file.

## Explaining the legal position of the participants during a court hearing

It is important to recognize what are the positions of the participants in the process. The role they accept from their office as well as the relationship to each other. If we start considering this from the point of a criminal case it is clear that in a courtroom during the proceedings the judge leads and directs the procedure. During the investigation of the treatment the prosecutor, the investigating judge or the preliminary investigation judge directs the procedure.

Nevertheless, the parties' rights and obligations to one another for the conduct of due process are vital to ensure a fair trial. This document therefore has a focus on ensuring effective communication.

Communication, understanding each other and understanding what is happening is of utmost importance – especially in situations where an interpreter is needed, as in almost all cross-border cases**.**

# Building block: The Judge – the court in relation to the interpreter i.e. the judge in relation to the interpreter

* The Judge monitors that the interpreter in the hearing room is positioned in such a way that the interpreter can do their job properly. The interpreter needs clear view of the facial expressions and the nonverbal behaviour of the process participants.
* The court decides at the beginning of the hearing which languages are necessary. He verifies that the interpreter is registered or is stated on the Alternate list and gives control of that evidence in the record of the hearing. If the interpreter is not registered as a sworn interpreter in the register the deviation is written in the record of the meeting as referred to in national law.
* The judge certifies the interpreter who is not registered. The judge explains to the participants the task of the interpreter. This includes the following aspects: the interpreter is neutral and independent; they will interpret everything, including questions raised by the non-X-speaking directly to the interpreter. The judge also explains that if the interpreter is not understood this instantly has to be expressed.
* The judge examines whether the interpreter and the foreign language process participant(s) understand each other and asks when this is not the case, to indicate this immediately.
* The Court monitors that the interpreter can concentrate on their task (including that it is quiet enough). The Court shall notify to the other participant to speak directly to the judge.
* The judge monitors the parties not speak directly to the interpreter. They ask, for example, not (to the interpreter): "Do you want to ask where he was on January 1?" But (to the suspect): "Where were you on January 1?"
* The Judge checks during the hearing that the interpreter can keep up the pace and will decide if a rest is needed.
* The judge will intervene if they suspect that a participant or interpreter does not understand the proceedings at the hearing.
* The Judge will ensure that the interpreter(s) is not prompted to explain something. It is up to the judge or other process operator, to explain a phrase, term, or a procedure.
* The Judge will ensure that the interpreter is not invited to express their opinion (for example, impressions on the whole) or is asked to carry out work that falls outside their job responsibilities or expertise.

# Building Block: General framework for Translators & Interpreters

Translators and interpreters in proceedings play an indispensable role. They are essential for the securement of the right to a fair trial. This right includes the right to free assistance from an interpreter to everyone charged with a criminal offence if he cannot understand or speak the language used in court (article 6, paragraph 3, part e, ECHR and article 14, paragraph 3, part f, ICCPR). In addition, a fair trial assumes that a suspect will be informed of the nature and cause of the accusation against him in a language which he understands (article 6 of the Member 3 Strand a ECHR and art. 14 para 3 Strand a ICCPR).

In both national and European law jurisprudence as in (inter) national laws and regulations there are the rights of the accused to interpretation and translation. In particular, see Council Directive 74/60/EEC and Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings. This directive was implemented in Netherlands as in several other Member States.

As ultimate guarantor of a fair trial, the judge has the duty to ascertain whether the accused can follow the process or if he requires the assistance of an interpreter (ECHR 24 September 2002, 32771/96). The right also ensures the quality of the interpreter assistance.

Also victims who lack the trial language will always have right to be assisted by an interpreter. They can – under certain circumstances – request (just like suspects) written translations of certain procedural documents. This follows from directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 laying down minimum standards for the rights, the support and the protection of victims of criminal offences, and replacing of Council framework decision 2001/220/JHA.

In the Netherlands in 2009 the law came into force for sworn interpreters and translators (see in Dutch: <http://wetten.overheid.nl/BWBR0022704/2016-01-18> ) which was followed by a register of sworn interpreters and translators. The law was introduced with regard to ensure the integrity of interpreters and translators in the form of a confidentiality obligation, an oath and if not sufficiently competent removal from the register.

To be registered an interpreter or translator must meet certain requirements. Requirements as to the quality and integrity of sworn interpreters and translators are spelled out in the decision of sworn interpreters and translators and the code of conduct within the framework of the law. In addition, there are also various international codes of conduct.

Certified interpreters and translators that specialize in criminal matters can have that recorded in the Register designate specialization. The purpose of such a register is not only giving overview of sworn interpreters and translators, but also to propose institutionalizing quality interpreters and translators. Austria, Czech Republic and Spain have similar systems with a register of interpreters/translator.

In Italy there are no specific rules to manage the interpreters and translators during the judicial proceedings. Every judicial office has their own lists based on the formal certification provided by the professionals interested to be listed. Different judicial matters have different lists of professionals. The quality of interpreters and translators are verified on the job. If someone of them has a mistake or an impediment in the proceeding, the parties can ask his or her recusal, decided by the judge

The criminal trial has its own specific requirements. The National Consultation board on criminal law has therefore decided - in addition to laws – to come up with a code of conduct for interpretation and translation in 'criminal justice'.

For sign language interpreters apply some details relating to the method of interpreting and positioning relative to process participants. These are due to the general nature of this best practice and not therein expressed. The best practice aims to provide a guide for interpreters/translators and all other parties involved in the criminal process for interpretation and translation prior to, during and after the hearing. Though the content binds the stakeholders, no rights can be derived from best practice.

The best practice has been drawn up following extensive exchange of views with judges, sworn interpreters and translators and representatives of the public prosecutor, the legal profession and interpreting and translation training.

# Building Block: General framework for interpreters; Rights and Duties.

* Sworn interpreters and translators have preferred an annotation specialization in criminal matters, as defined in the national register of sworn interpreters and translators.
* The assignment to the interpreter or translator means that during the exercise of his duties he shall act in accordance with the Code of Conduct.
* Depending on the duration and complexity of (the treatment of) the criminal case – one or several interpreters could be used. Consultation with the interpreter(s) is desirable if the assignments are more than one session.
* The interpreter is allocated in good time prior to the hearing and given the background of the criminal case so they can judge whether they are sufficiently equipped for it and, if that is the case, they can prepare properly for his interpreting work.
* The interpreter receives prior to the hearing (wherever possible) a copy of the charge. In complex criminal cases to the interpreter on request can obtain a copy of the records and other relevant documents, unless substantial interests dictate otherwise.
* Courts ensure that interpreters summoned in a criminal case can easily enter the respective buildings and spaces in accordance with national law. The security of the courthouse has a list of the interpreters for that day and also instructions for a smooth access to the premises of the interpreters included in that list. They will also have instructions on how to access interpreters not mentioned on the list.
* Courts make provisions for the safety of interpreters in criminal proceedings to protect personal information of the interpreter (address, access information etc.) as much as possible and to ensure they cannot be confronted by the accused and other stakeholders before and after the trail.
* Courts shall ensure that in or by the use of any audio equipment or video equipment the interpreter shall be able to carry out the interpreting work properly. This applies to both microphones and loudspeakers in courtrooms and image and sound carriers that are used to present evidence.
* If interpreter services are conducted through videoconferencing, by telephone or other remote means, the courts shall ensure that the quality of sound and image for the interpreter are sufficient to carry out the interpreting work properly.
* Process-Participants should avoid unnecessarily complicated legal jargon, proverbs / sayings, abbreviations etc. They should also adjust their speaking rate, articulation and speech volume, and keep their questions as short as possible and avoid sub-questions.
* Process-Participants must not address the interpreter with his name, but always with (Sir / Madam)
* Process-Participants shall, as far as possible, ensure that documents (such as a plea, indictment or written victim statement) will be made available to the interpreter before the hearing.
* The interpreter in accordance with national law, who has been called in a criminal case, follows the case wherever possible at any further hearings, for example suspension or adjournment of the hearing.
* The accused or witness may challenge an interpreter, if they consider that the interpreter provided to them is not sufficiently capable or that the interpreter is not impartial or is biased. Participants can process pursuant to a complaint concerning the association of a sworn interpreter or translator has acted in some matters of relating to him or another. The complaint procedure is also applicable to interpreters and translators who are listed on the Alternative List.
* The administrative process of interpreting and translation work (confirmation silhouetted interpreter notes, invoices / billing, payment) should be as minimal burden as possible for the interpreter and translator.
* There should be the opportunity to give feedback (for example, in the form of an evaluation form):

1. Trial participants should have the opportunity to give feedback on the perceived quality of the service provided by the interpreter or translator.
2. The interpreter or translator should have the opportunity to give feedback to the court on their experiences while performing the interpretation or translation.

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End of Document

1. . Delcourt c. Belgium, Judgment 17 January 1970 [↑](#footnote-ref-1)
2. . The limitations to the rights mentioned in Art. 6(3) ECHR are analysed in Sections 4.2 and 4.3 to this Report. [↑](#footnote-ref-2)
3. . Foucher v. France; Buruh v. Austria; Bobek v. Poland; Klimentyev v. Russia. [↑](#footnote-ref-3)
4. . Recital (26) Dir on EIO. However, the Directive on EIO clearly states that “where that person is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, a European Arrest Warrant (EAW) should be issued in accordance with Council Framework Decision 2002/584/JHA”. [↑](#footnote-ref-4)
5. . Art. 9(1) of Second Protocol to 1959 Convention; Art. 10(1) of 2000 Convention. [↑](#footnote-ref-5)
6. . Explanatory report to the Second Additional Protocol of 1959 Convention, parr. (74). [↑](#footnote-ref-6)
7. . Explanatory report to the Second Additional Protocol of 1959 Convention, parr. (74). [↑](#footnote-ref-7)
8. . Art. 9(3) Second Protocol of 1959 Convention; Art. 10(3) of 2000 Convention. [↑](#footnote-ref-8)
9. . See also Art. 9(5)(b) in relation to Art. 23 Second Protocol of 1959 Convention. [↑](#footnote-ref-9)
10. . Art. 9(5)(e) Second Protocol of 1959 Convention. [↑](#footnote-ref-10)
11. . Art. 9(7) Second Protocol of 1959 Convention; Art. 10(8) of 2000 Convention. [↑](#footnote-ref-11)
12. . See Art. 9(8) Second Protocol of 1959 Convention.

    13. Art. 9(9) Second Protocol of 1959 Convention. [↑](#footnote-ref-12)
13. [↑](#footnote-ref-13)
14. 14. Art. 10(9), second paragraph. [↑](#footnote-ref-14)
15. . Art. 10(5)(d) 2000 Convention. [↑](#footnote-ref-15)
16. . OJ L 280, 26.10.2010, p. 1. [↑](#footnote-ref-16)