Multi-aspect initiative to improve   
cross-border videoconferencing

"Handshake"  
Work-stream 1b

D1b Recommended step-by-step protocol for cross-border videoconferencing in judicial use-cases

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| --- | --- |
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| Project coordinator: | Austrian Federal Ministry of Justice Johann Kickinger, Robert Behr, Thomas Gottwald |
| Organisation name of lead partner for this deliverable : | Polish Ministry of Justice |
| Author(s): | Robert Typa, Rafał Reiwer |
| Partner(s) contributing : | AT, CCBE, HR, IT, LV, NL, PL, SE, SI, UK-E&W, UK-S and Eurojust |

Abstract:

*The recommended step-by-step protocol for typical judicial cross-border videoconferencing use-cases will guide judges, prosecutors and court clerks in the practical doings of preparing and executing a cross-border videoconference.*

**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

E-Justice aims at the use and development of information and communication technologies at the service of the Member States' judicial systems, in particular in cross-border situations, with a view to enabling greater access to justice and judicial information to citizens and legal practitioners and facilitating cooperation between judicial authorities of the MS.

It strives to enhance the effectiveness of the justice system itself whilst respecting the independence and the diversity of the judicial systems of the Member States as well as the effectiveness of the system and fundamental rights.

The overall objective of WS1b is dedicated for the best preparation of the cross-border videoconferencing session. The use of the recommended step-by-step protocol by all involved judicial authorities should help them to conduct a cross-border videoconference hearing effectively – within the applicable legal procedure.

This is especially important in the context of cross-border cases where essential steps are influenced by the national law of the different Member States involved. The use of interpreters and documents in foreign languages cannot be an obstacle for a civil or criminal procedure. For that reason the prepared Protocol can be modified according to the actual need of the authorities which are involved in cross-border cases.

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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

# Project goals

## 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.

## 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, penitentiaries, lawyers, defense agents and community centres** will benefit from smoother videoconferencing.

Since several hundred thousands of VC 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.

# 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, organisational and technical steps which are necessary to plan, organise 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. |

# Work-stream 1b goals

Goal of work-stream 1b was to produce a guideline document with improved step-by-step instructions ("protocol") for typical videoconferencing use-cases, which combines technical (e.g. starting, accepting a call) and judicial (e.g. identify witnesses, experts, suspected and accused persons) and organisational elements (e.g. requesting/confirming the detail parameters for the videoconference).

Additionally the elements of simplifying and encouraging electronic communication between the judicial authorities of the Member States are of particular importance (just by videoconferencing).

Also according to the Multiannual European e-Justice Action Plan 2014-2018[[1]](#footnote-1) going to court and initiating judicial proceedings in cross-border situations should be facilitated through the availability of communication by electronic means between courts and parties to proceedings, as well as witnesses, experts and other participants.

Furthermore, the use of video conferencing or other appropriate means of long-distance communication for oral hearings, where appropriate, should be extended in order to remove the need to travel to court to take part in judicial proceedings, in particular in cross-border cases (also from safety reasons).

To produce the intended results two dedicated workshops have been held during Meetings in Edinburg and Warsaw and this document has been produced in iterative steps by including additions and comments from all project partners:

1. **Meetings dedicated to WS1b**
2. Edinburgh, 22nd April 2016
3. Warsaw, 9th September 2016
4. **Prepared versions of the Step-by-step Protocol**
5. 16th of February 2016
6. 11th of April 2016 – discussed at Edinburgh meeting
7. 30th of May 2016
8. 15th of June 2016
9. August 2016
10. September 2016 – discussed at Warsaw meeting
11. October 2016 – final product

# Purpose of this document

Target group of the materials prepared in this work-stream 1 are all persons participating at the trial by using videoconferencing connection, especially the legal professionals of the courts and prosecution offices (e.g. **judges, prosecutors and court clerks**), who are engaged in cross-border videoconferencing. Using the WS1a delivery document **D1a** **"Judicial use cases with high benefits from cross-border videoconferencing"** they will gain better information on which typical judicial use-cases videoconferencing can be applied with high probability for benefits. The enhanced step-by-step protocol for typical judicial videoconferencing use-cases will guide them in the practical doings of a cross-border videoconference.

Improving the appropriate organisation and running of cross-border videoconferences between the European Union Member States by providing VC users enhanced guidelines and step-by-step protocol for typical cross-border VC use-cases is extremely important. It is also sign of our times.

The efforts of European Union institutions in the scope of better access to justice for EU citizens shall not be stooped by problems with the place of trial. By using the actual IT tools the Member States can provide appropriate conducting of applicable procedures concerning any case.

Additional objective was to develop an enhanced protocol for doing cross-border videoconferences in the typical uses-cases, in order that the VC users on both sides can follow a predefined common step-by-step protocol.

Taking into consideration the above mentioned reason the representatives of Member States who participated at this project are convinced that the recommended Protocol should be very useful for all EU citizens engaged in a cross-border hearing by videoconference.

# Recommendations

After a lot of work and discussion within members of working team, for the most important recommendations the Member States should recognize the following:

1. recommendation to use digital forms and transport them – when possible – via e-CODEX;
2. request is accepted or refused within 1 week or up to 2 weeks maximum;
3. using 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”;
4. using Suggestions for best practices concerning videoconferencing with third countries adopted by the JHA on June 2016;
5. report of Informal Working Group on Cross-border Videoconferencing

# Step-by-step Protocol

(Final text of Protocol)

Warsaw, 17 November 2016

**Recommended step-by-step protocol for cross-border videoconferencing in judicial use-cases**

*Practically-legal issues concerning civil/commercial and criminal proceedings*

## General description

For the purpose of this step-by-step protocol:

* the term **court** refers to any competent authority;
* the term **participant** refers to any natural or legal persons involved in the individual case, e.g. accused/suspected defendant, witness, expert, victim, lawyers or any other legal representative or claimant/defendant in civil cases.
* **requesting court** means a competent authority running the case and issuing the request for a VC;
* **requested court** means a competent authority assisting the requesting court in executing the VC;

The conducting of successful cross-border videoconference (VC) requires a fulfillment of the following three parts of activities/procedures from the side of all involved authorities:

1. **Before VC** - when the courts have to take into consideration all aspects of video-conference preparation
2. **During VC** - when the courts and participants are in the same situation like in the “court” (during trial)
3. **After VC** - when the courts are obliged to prepare all appropriate documents when proceeding is finished

## Detailed procedure/requirements (steps)

### Before Videoconference

1. **Courts involved**
   1. Requesting court sends the request to a court of another Member State (or to a central authority which determines the assisting court);
   2. Requested court acknowledges the reception of the request;
   3. If there are any problems the courts should contact each other immediately to avoid a situation that a request is not received.
2. **Form of request**
   1. Requesting court is obliged to use appropriate forms (e.g. available on e-Justice Portal);
   2. Additionally there is a proposal of a model form for requesting/confirming a VC: see WS4 deliverable document **D4 "Form for requesting/confirming a cross-border videoconference"**.
3. **Request sending**
   1. Request is sent through the European e-Justice Portal, by post, telefax or by email if accepted. Recommendation is to use digital forms and distribute them – when possible – via e-CODEX transport infrastructure.
   2. There is necessity concerning the precision of request (meaning of some legal terms might be different in particular judiciaries, e.g. “manslaughter”, “robbery”);
   3. In the case of any doubts, requested court asks requesting court for clarification.
4. **Reply to request**
   1. The requested court informs the requesting court about acceptation;
   2. If accepted, the request should be executed within 30 days after the receipt – or within the deadline specified by the applicable procedure;
   3. Requested court notifies to the requesting court the date, time, place and the conditions for participation;
   4. Requesting court notifies the participants of the date, time, place – if necessary assisted by the requested court to notify the participant;
   5. Both requesting and requested courts must reserve their room with VC equipment and book interpreters (if required) and technical staff (if needed);
   6. Before the date on which the VC is to be held, the requested court and requesting court should test whether VC rooms can connect satisfactorily to each other (test at similar time-frame as the hearing);
   7. Where a request is refused, the requested court must notify the requesting court within 30 days of receipt of the request giving the reasons for refusal;
   8. Recommended good practice could be that each request is accepted or refused within 1 week or up to 2 weeks maximum (in criminal the “2000 convention” allows the requesting authority to set a deadline); The requested court must answer if they can comply with this deadline or not.
5. **Contact points on national level (email/phone contact)**
   1. Direct contact between courts (if it is possible): use European Court Database to find competent court for a specific instrument concerning your request;
      1. If it necessary the court should refer to the contact point of the European Judicial Network (EJN) in Civil and Commercial or in Criminal Matters – or also to its Eurojust contact point (in criminal matters only) in each Member State in order to obtain the information on the competent court for taking of evidence by using the VC system;
   2. When another Member State does not reply the requesting court could contact also Ministry of Justice for assistance;
   3. For the technical contact points the requesting court could also consult the e-Justice Portal MS specific pages on VC.
6. **Arrangements concerning indirect and direct taking of evidence** 
   1. Upon to the request of the requesting authority the participant is summoned to the hearing which is maintained directly by, or under the direction of, the judicial authority of the requesting party in accordance with national laws;
   2. At the request of the requesting court or the participant to be heard, the requested court shall ensure that she/he is assisted by an interpreter, if necessary;
   3. If the summoned participant does not appear or refuses to testify the requesting or the requested court will decide on the consequences depending on national law (e.g. fines, costs, arrest warrant, new summon);
   4. The participant to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting court;
   5. The requesting court notifies the requested court what measures have to be taken to hear the participant who enjoys a certain degree of protection. In that case it will be necessary to pre-determine and mutually agree the protection measures;
   6. All necessary steps and measures have to be described by the requested court – including all details for contacts (e.g. for sending of summons of the requesting court) that will precede the hearing by video conference itself.

1. **Technical preparation (room, VC equipment – checking of connection languages – interpreters, etc.)**

(Pre)conditions concerning standards of the videoconferencing equipment (compatible devices): see 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” and the Videoconferencing pages on the e-Justice Portal[[2]](#footnote-2) plus our WS3 deliverable document **D3** **"Recommendations on the practical application of technical standards for cross-border VC".**

1. **Additional elements for hearings with the participation/representation of lawyers**
   1. In some countries the use of VC might be subject to the participants’ approval. It therefore needs to be verified whether it is necessary to seek explicit consent of them to participate in a VC, and, if so, under what conditions participants can refuse a VC, and whether a legal counsel needs to be present / consulted if participants explicitly consent or refuse.
   2. The lawyer should be able to sit together with her/his client. If this is not possible, arrangements must be made in order to enable the lawyer to participate in the VC from another location;
   3. The requesting and requested court ensure that the lawyers are able – if necessary – to identify themselves in accordance with national rules towards the (cross-border) judicial authorities;
   4. The requesting and requested court ensure that the lawyer is able to confer confidentially with her/his client (both in case lawyer and client are sitting together or remotely from each other);
   5. In cases where documents have to be shown to the participants, that should be done via an independent person present with them (court clerk or similar) who can ensure (e.g. from the point of view of the prosecution) that they are looking at the right page and (from the defense point of view) also ensure they are not looking at other documents;
   6. Instructions need to be provided to the lawyer by the relevant court as to the procedure they need to follow to present documents or other material during the VC. Arrangements need to be made to ensure that all participants in the VC can see the material that is presented during the VC;
   7. The procedure should allow that the participant testifies in presence of judicial authorities who will ensure that he/she is not instructed by other participants. It should be guaranteed that the participant to be heard does not confer with any person during her/his testimony as this may have an adverse impact on the proceedings.

### During Videoconference – running the hearing

1. Requesting court is running the hearing using VC under appropriate articles of civil and criminal procedure;
2. Courts must ensure that the participant has given her/his consent (when required) to the hearing by videoconference;
3. At the start of the hearing, requested court check the identity of each participant to be heard (if required);
4. Before the hearing of witness, the requesting court warns the participant to be heard of her/his right to refuse or legal obstacles to testify (e.g. witness is close relative of accused person) and criminal responsibility for submitting false testimony;
5. Requesting court receives promise (or religious oath) of witness;
6. The hearing may be different if participant to be heard is a child or other vulnerable person. In this case the court needs to provide specific measures to ensure their protection and care;
7. The lawyer of the defendant should be physically present during the hearing or she/he should participate from a remote location;
8. Participant to be heard, who was absent during a VC needs to present some justification of the absence, e.g. medical certificate;
9. The participant to be heard can present evidences using appropriate equipment (for. PC or document camera);
10. Any technical problems (sound, images, etc.) during the VC hearing should be solved by technical staff before the end of the hearing;
11. All rights and duties of court interpreter (if required) must be taken into account in order to enable transparent and lawful hearing.

### After Videoconference

1. The requesting court is responsible for drawing up the minutes and/or record of the VC. The requesting or requested court should record the VC – if this is in compliance with the national laws and whether it is feasible considering the court's technical possibilities;
2. The minutes must indicate the date and place of the hearing, the identity of the person heard, the identities and functions of all other individuals participating in the videoconference, any oaths taken, and a description of the technical conditions under which the videoconference took place;
3. To the minutes should be added all necessary documentation;
4. Also requested court should produce the minutes (just date and place of the hearing within 14 days of the hearing);
5. Sending of the minutes;
6. Proposal for presumptive next “session” (if necessary – possible date);
7. Requesting and requested court need to determine and agree on all costs of the requested court (travel and time costs, interpreter costs, transcription in writing costs, recording costs).

### Additional recommendations

In conclusion of this document the using of the all steps mentioned above can provide Member States for successful proceeding with the case.

For the most important recommendations we propose to recognize the following:

1. recommendation to use digital forms and transport them – when possible – via e-CODEX;
2. each request is accepted or refused within 1 week or up to 2 weeks maximum;
3. using 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” (Official Journal of the EU 2015/C 250/01);
4. using Suggestions for best practices concerning videoconferencing with third countries adopted by the JHA on 9th of June 2016;
5. Final Report[[3]](#footnote-3) from the Council "Informal Working Group on Cross-border Videoconferencing" which was the predecessor of the now official "Working Group on e-Law (e-Justice) - Expert Group on videoconferencing".

### Additional points for above mentioned aspects:

1. limitations of hearings by VC:
   1. depends on national law and the reservations of MS on the conventions;
   2. depends on compatible devices of VC equipment: whether the technical means are available and appropriate for usage by the requesting authority;
2. resolving a matter of costs occurred during VC hearing;
3. legal framework

*In order to get approval to do a cross-border VC you need to first submit a request for cross-border mutual legal assistance following the appropriate EU regulation:*

* + 1. ***For Civil / Commercial Matters:***

* + - 1. *Council Regulation (EC) No 1206/2001of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (“Taking of Evidence)*
      2. *Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure*
      3. *Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure*
      4. *Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters*
      5. *Regulation (EC) No 1393/2007 of the European Parliament and the Council of 13 November 2007 on the service in the MS of judicial and extrajudicial documents in civil or commercial matters (service of documents).*
    1. ***For Criminal Matters:*** 
       1. *“2000 Convention” on Mutual Assistance in Criminal Matters between Member States of the European Union (2000/C197/01)*
       2. *Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters*
       3. *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*
    2. *Note: Depending on the procedure used – the request must be submitted either to a “central authority” of the requested Member State (e.g. for “Direct taking of evidence”) or directly to the requested judicial authority – please see the appropriate regulation for details!*
    3. *Other (not EU) regulations[[4]](#footnote-4):*

*Council of Europe, Second Additional Protocol of 8 November 2001 to the 1959 European Convention on Mutual Assistance in Criminal Matters*

*HCCH (Hague Conference on Private International Law) Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.*

1. different stages of criminal procedure
2. References to external documents

**Council of the European Union. 2015.** *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’.* 31 July 2015. Official Journal of the European Union (2015/C 250/01).

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1. Multiannual European e-Justice Action Plan 2014-2018, O.J. C 182, 14.6.2014, p. 2–13 [↑](#footnote-ref-1)
2. These technical standards are summarised on the "Videoconferencing information pages" on the e-Justice Portal: Hardware-based video conferencing system (H.323/videoconference SIP); IP–based; Firewall traversing infrastructure; Encrypted communications (AES-128); Receive presentation as a duo video (H.239), see: <https://e-justice.europa.eu/content_manual-71--maximize-en.do?idSubpage=18> [↑](#footnote-ref-2)
3. See at the European e-Justice Portal under "Tools for courts and practitioners" and then "Videoconferencing" under the headline "Related Attachments": <https://e-justice.europa.eu/content_videoconferencing-69-en.do> [↑](#footnote-ref-3)
4. See also: Suggestions for best practices concerning videoconferencing with third countries. 27 May 2016. Council document 9337/16. [↑](#footnote-ref-4)