

Brussels, 18 October 2024
(OR. en)

14560/24

LIMITE

EJUSTICE 61
JAI 1507
COPEN 458
EVAL 26
CATS 90

NOTE

From: Presidency
To: Working Party on e-Justice
Subject: Use of videoconferencing in a judicial context - Next steps

I. CONTEXT

- Articles 5 and 6 of Regulation (EU) 2023/2844 of 13 December 2023 on the digitalisation of judicial cooperation (text in annex) deal with the cross-border use of videoconferencing in judicial proceedings, covering civil and commercial matters (Article 5) and criminal matters (Article 6).
- Article 6 (criminal matters) mentions the involvement of requesting and requested authorities for the organisation of a hearing through videoconferencing, whereas article 5 (civil and commercial matters) does not. In civil and commercial matters, an authority can decide to organise a hearing through videoconferencing for a person located in another Member State, without the intervention of any authority in this other Member State¹.

¹ Except for taking appropriate measures under national law to ensure that recordings of the hearings are made and stores appropriately.

3. Articles 5 and 6 of the Regulation will not be supplemented by implementing acts. Member States need to be in a position to apply them as of 1 May 2025.
4. A questionnaire on the use of videoconferencing in the context of judicial proceedings has been circulated in preparation of the meeting of the Working Party on e-Justice² of 18 June 2024. It has received a response from 19 Member States. The compilation of replies can be found in WK 12889/2024.
5. It should be noted that the cross-border use of videoconferencing is already applicable in criminal matters with Directive 2014/41/EU on the European Investigation Order (EIO). The 10th mutual evaluations round on the implementation of the EIO, which will soon be finalised, did not highlight widespread issues with regard to the use of video conference³. There seems to be no reason to believe that the use of videoconferencing in the framework of the criminal law instruments (such as the European Arrest Warrant or the European Protection Order) covered by the Regulation on the digitalisation of judicial cooperation would raise other practical challenges than in the framework of an EIO.
6. For the cross-border use of videoconference in situations where there is no requested authority, as envisaged in Article 5 for civil and commercial matters, the challenges are largely similar to the use of videoconferencing in national cases.
7. For this reason, there does not seem to be a need for very urgent action in view of the deadline of 1 May 2025.

² ST 10600/24

³ ST 14321/24

8. Nevertheless, as the cross-border use of videoconferencing is going to increase with the application of Articles 5 and 6 of the Regulation on the Digitalisation of judicial cooperation, and given the importance given to videoconferencing in the e-Justice Strategy, it seems useful to intensify the work of the Working Party on the videoconference.

I. Priority topics

9. The Presidency suggests beginning working on two topics which seem to be the most important:
 - a) the need for interoperability between videoconferencing systems in situations where national authorities are involved in the VTC hearing in both the requesting and the requested States (mostly in criminal matters);
 - b) the need for identification of the persons participating in VTC hearings in civil and commercial matters.

A. INTEROPERABILITY OF VIDEOCONFERENCING (MAINLY IN CRIMINAL MATTERS)

10. Ensuring the interoperability between different solutions used by authorities in different Member States may be challenging.
11. This has been noted, for example, in the draft final report for the 10th round of mutual evaluations on the implementation of the European Investigation Order⁴, which points out that practitioners had to deal with technical difficulties in a number of Member States (the relevant parts of the draft report are reproduced in Annex to this note) ⁵.
12. In addition, even if the VTC solutions are compatible, information on the VTC interoperability profiles needs to be exchanged between requesting and requested authorities. The above-mentioned report also deals with this aspect.

⁴ See footnote 3 above

⁵ This report has yet to be adopted, so the content may change in the final version.

13. For example, the videoconferencing system used in the requested State may be blocked by the firewall used by the requested authority or certain ports may need to be opened in the system to allow a remote connection. As regards information security, there is a need for a prior agreement between the authorities on the mechanisms for mutual authentication between the VTC systems and for the encryption/ decryption of the VTC streams. The technical standard used for formatting the VTC stream also needs to be prior agreed (especially when more than one soundtrack is implemented). All these elements are part of the VTC interoperability profiles.

B. IDENTIFICATION OF THE PERSON HEARD (IN PARTICULAR IN CIVIL AND COMMERCIAL MATTERS)

14. The issue of ascertaining the identity of the person in cases where there is no requested authority who can check this identity prior to the hearing would need to be tackled.
15. In criminal proceedings the person will often be heard by videoconference in the physical presence of authorities of the requested State which can therefore check the identity of the person concerned.
16. This will not be the case in civil and commercial matters.
17. The issue of verifying the identity of the person to be heard arises also in purely national cases (when videoconference is used to hear a person located in the State of the proceedings).
18. In cross border cases though (the person to be heard being located in another Member State), it will often happen that the party to be heard by videoconference being present in another State than the Member State where the proceedings take place will not have access to any national system in place in the Member States of the authority requesting the hearing to verify identity online. At this stage, it appears that one of the main practical issues faced for the cross-border use of videoconferencing in civil and commercial matters is that of the certification of the identity of the party heard by videoconference.

II. OVERVIEW

19. Although work could already begin on the two issues mentioned above, it is important to have a much broader look at the issue of videoconferencing. The 2024-2028 e-Justice Strategy notably mentions the importance of video conferencing and recommends considering specific actions in this context⁶.
20. The Presidency will discuss with the European Commission to avoid duplication of efforts.
21. An overview could be prepared by the GSC of past and ongoing work related to the use of videoconference in cross-border procedures, notably:
 - the replies to the questionnaire on the use of videoconferencing in a judicial context,
 - the Council Recommendations⁷, previously drawn up by the Working Party,
 - the information gathered through the 10th round of mutual evaluations on the EIO (see Annex I), and
 - the replies to the questionnaire of the Commission on remote participation in court hearings via videoconference in the context of criminal proceedings⁸.
22. Based on this overview, the Working Party would identify, plan and eventually launch new actions, while deciding where they will best be carried out (i.e., Commission, Member States, eu-LISA...). Among these actions, a study could be conducted on possible solutions for improving and generalising the use of videoconference in cross-border judicial proceedings.

⁶ Paragraph 21 of the 2024-2028 European e-Justice Strategy (15509/23)

⁷ 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', OJ C 250, 31.7.2015, p. 1-5

⁸ ST 9177/24. Both this questionnaire and the 10th round of mutual evaluation raise the issue of the cross border use of videoconferencing in criminal matters without issuing a request to the Member State where the person is located.

III. CONCLUSION

23. Delegations are invited to support the following approach for the Working Party:
- start working on the two priority topics of interoperability of videoconferencing systems, mainly in the context of criminal matters, and verification of identity of the person heard, mainly in the context of civil and commercial matters;
 - on the basis of the overview and draft assessment provided by the GSC, identify, plan and launch new actions (, aiming at improving and generalising the use of videoconference in cross-border judicial proceedings.
24. The details of these aspects will be discussed at a later stage.

Articles 5 and 6 of Regulation 2023/2844

Article 5

Participation in a hearing through videoconferencing or other distance communication technology in civil and commercial matters

1. Without prejudice to specific provisions regulating the use of videoconferencing or other distance communication technology in proceedings under Regulations (EC) No 861/2007, (EU) No 655/2014 and (EU) 2020/1783, and at the request of a party or their representative or, where provided for under national law, on its own initiative, in proceedings in civil and commercial matters where one of the parties or their representative is present in another Member State, the competent authority shall decide on the participation of the parties and their representatives in a hearing through videoconferencing or other distance communication technology, on the basis of:
 - a) the availability of such technology;
 - b) the opinion of the parties to the proceedings on the use of such technology; and
 - c) the appropriateness of the use of such technology in the specific circumstances of the case.
2. The competent authority conducting the hearing shall ensure that the parties and their representatives, including persons with disabilities, have access to the videoconference for the hearing.

3. Where the recording of hearings is provided for under the national law of the Member State in which the proceedings take place, the same rules shall apply to hearings conducted through videoconferencing or other distance communication technology. The Member State in which the proceedings take place shall take appropriate measures in accordance with national law to ensure that such recordings are made and stored in a secure manner and not publicly disseminated.
4. Without prejudice to paragraphs 1, 2 and 3, the procedure for hearings through videoconferencing or other distance communication technology shall be regulated by the national law of the Member State conducting the hearing.

Article 6

Hearing through videoconferencing or other distance communication technology in criminal matters

5. This Article shall apply in proceedings under the following legal acts:
 - a) Council Framework Decision 2002/584/JHA (42), in particular Article 18(1)(a) thereof;
 - b) Framework Decision 2008/909/JHA, in particular Article 6(3) thereof;
 - c) Framework Decision 2008/947/JHA, in particular Article 17(4) thereof;
 - d) Framework Decision 2009/829/JHA, in particular Article 19(4) thereof;
 - e) Directive 2011/99/EU of the European Parliament and of the Council (43), in particular Article 6(4) thereof;
 - f) Regulation (EU) 2018/1805, in particular Article 33(1) thereof.

6. Where the competent authority of a Member State requests (the ‘requesting competent authority’) the hearing of a suspect or an accused or convicted person, or an affected person, as defined in Article 2, point 10 of Regulation (EU) 2018/1805, other than a suspect or an accused or convicted person, present in another Member State in proceedings under the legal acts listed in paragraph 1 of this Article, the competent authority of that other Member State (the ‘requested competent authority’) shall allow such persons to participate in the hearing through videoconferencing or other distance communication technology, provided that:
 - a) the particular circumstances of the case justify the use of such technology; and
 - b) the suspect, the accused or convicted person or the affected person has given consent for the use of videoconferencing or other distance communication technology for that hearing in accordance with the requirements referred to in the second, third and fourth subparagraphs of this paragraph.

Before giving consent for the use of videoconferencing or other distance communication technology, the suspect or the accused person shall have the possibility of seeking the advice of a lawyer in accordance with Directive 2013/48/EU. Competent authorities shall provide the person that is to be heard with information about the procedure for conducting a hearing through videoconferencing or other distance communication technology, as well as about their procedural rights, including the right to interpretation and the right of access to a lawyer before the consent is given.

The consent shall be given voluntarily and unequivocally, and the requesting competent authority shall verify that consent prior to starting such hearing. Verification of the consent shall be recorded in the records of the hearing in accordance with the national law of the requesting Member State.

Without prejudice to the principle of a fair trial and the right to a legal remedy under national procedural law, the competent authority may decide not to seek the consent of the persons referred to in point (b) of the first subparagraph of this paragraph where participation in a hearing in person poses a serious threat to public security or public health which is shown to be genuine and present or foreseeable.

7. The requested competent authority shall ensure that the persons referred to in paragraph 2, including persons with disabilities, have access to the necessary infrastructure to use videoconferencing or other distance communication technology.
8. This Article is without prejudice to other Union legal acts that provide for the use of videoconferencing or other distance communication technology in criminal matters.

9. The confidentiality of communication between a suspect, an accused or convicted person or an affected person and their lawyer before and during the hearing through videoconferencing or other distance communication technology shall be ensured in accordance with applicable national law.
10. Before hearing a child through videoconferencing or other distance communication technology, holders of parental responsibility as defined in Article 3, point (2) of Directive (EU) 2016/800 or another appropriate adult as referred to in Article 5(2) of that Directive shall be informed promptly. When deciding whether to hear a child through videoconferencing or other distance communication technology, the competent authority shall take into account the best interests of the child.
11. Where the recording of hearings is provided for under the national law of a Member State for domestic cases, the same rules shall apply to hearings conducted through videoconferencing or other distance communication technology in cross-border cases. The requesting Member State shall take appropriate measures in accordance with national law to ensure that such recordings are made and stored in a secure manner and not publicly disseminated.
12. A suspect, an accused or convicted person or an affected person shall, in the event of a breach of the requirements or guarantees provided for in this Article, have the possibility of seeking an effective remedy, in accordance with national law and in full respect of the Charter.
13. Without prejudice to paragraphs 1 to 8, the procedure for conducting a hearing through videoconferencing or other distance communication technology shall be regulated by the national law of the requesting Member State. The requesting and requested competent authorities shall agree on the practical arrangements for the hearing.

Excerpt from the draft final report for
for the 10th round of mutual evaluations on the implementation
of the European Investigation Order⁹

Several cases were reported in which it was extremely difficult to comply with the date proposed for the hearing by the issuing authorities, as the proposed date was too close to the date on which the EIO was received. It was therefore recommended that EIOs for the hearing by videoconference should be sent well in advance, should indicate a timeframe for the hearing to take place in and should provide for alternative dates. This would give the executing authority sufficient time to locate and summon the person to be heard and book an adequately equipped courtroom, while taking into account the work schedule of the executing authority. It was also recommended that, where possible, the expected duration of the hearing should be indicated.

Practitioners also reported cases in which technical difficulties were encountered in the execution of a videoconference due to the incompatibility of the different videoconferencing systems or devices used by the issuing and executing authorities. Some Member States suggested that it would be most beneficial to have an EU-wide technical solution for holding videoconferences, in order to overcome such technical problems. Therefore, the Commission was invited to examine the possibility of providing a secure and interoperable system for cross-border videoconferencing that could be used by all Member States.

It was considered best practice to include in Section H2 of Annex A technical information and the contact details of a technician for establishing a connection between issuing and executing authorities. It was also suggested that Annex A should include a specific box for the technical contact details needed to ensure the smooth running of a videoconference.

⁹ ST 14321/24, pages 69-70

One Member State was praised for having implemented within the judiciary an automated booking system for videoconferences, which also ensures that contact and technical details are entered in advance and are correct.

Further best practice was identified in a standard form developed by the executing authorities of one Member State and sent to the issuing authorities to gather all of the technical information needed to facilitate the holding of the videoconference and avoid technical problems as far as possible.

Based on the findings of this round of evaluations, it can be said that Member States have generally provided the competent authorities with safe and adequate equipment to set up and efficiently conduct hearings by videoconference. Some Member States where shortcomings were identified were encouraged to take further steps to ensure that proper facilities and equipment for videoconferencing would be made available to the competent authorities.
