Manuale

La presente guida riguarda l'utilizzo di apparecchiature di videoconferenza nei procedimenti giudiziari transfrontalieri nell'Unione europea. Esso tratta gli aspetti organizzativi, tecnici e giuridici dell'utilizzo delle tecnologie di videoconferenza. Analizza inoltre l'utilizzo di apparecchiature nelle aule di udienza e nei locali riservati ai testimoni, nonché l'utilizzo di apparecchiature portatili. Gli orientamenti riguardano i casi in cui la videoconferenza è utilizzata per qualsiasi fase del procedimento giudiziario, in particolare per l'assunzione delle prove da luoghi remoti in altri Stati membri.

Guida sulla videoconferenza nei procedimenti transfrontalieri (PDF)

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CROSS-BORDER VIDEOCONFERENCING IN THE EU

1.1. Scope and Background

1. This guide covers the use of videoconferencing equipment in cross-border court proceedings in the European Union. It discusses the organizational, technical and legal aspects of the use of videoconferencing technology. Furthermore, it analyzes the use of equipment in courtrooms and witness rooms, and the use of portable equipment. The guidance applies to cases where videoconferencing is used for any part of legal proceedings, in particular for taking of evidence from remote locations in other EU Member States.

2. This guide contains advice and guidance for legal professionals, court clerks and technical staff. The guide discusses practical considerations on the use of videoconferencing equipment that is of particular interest to legal professionals and court staff, and then examines technical aspects that are of specific interest to technical staff. The annex to the guide provides details on the legal framework for the cross-border use of videoconferencing in criminal, as well as civil and commercial matters. Further annexes outline the technical standards to be taken into consideration and provide a summary of key steps in the processes for using videoconferencing in cross-border court proceedings. This document aims to help users by providing advice and guidance. It does not replace detailed work instructions or detailed operating instructions.

3. This document is concerned mainly with the use of videoconferencing in legal proceedings in criminal, civil and commercial courts. However, many of the technical aspects on the use of videoconferencing are more generally applicable to its use within the wider justice community. The hearing of witnesses and experts does not always take place in courts and it is possible to arrange for a videoconferencing connection between courts and other locations, such as consular and diplomatic representations, prisons, hospitals and asylum centres. As such, this document can be used as a basis for the use of videoconferencing in other procedures.

4. Usually in cross-border civil proceedings there are two possible situations where witnesses and experts may be heard via videoconferencing:
Indirect taking of evidence, where the court in the requested state conducts thehearing of e.g. a witness (under certain conditions with the participation of therequesting court's representatives)
Direct taking of evidence, where the requesting court hears a witness in another Member State directly via videoconferencing.

5. In pre-trial criminal investigations, the investigating judge or prosecutor could decide to take evidence from a witness who is under threat or a witness or expert residing abroad, via videoconference or any other appropriate means of remote audiovisual communication, with the witness's agreement, if it is not possible or desirable for latter to appear at the trial in person.

6. The availability of expert witnesses has been identified as one cause of delays both in civil cases (e.g. medical experts and psychologists in child custody or child care cases) and in criminal cases (e.g. forensic or computer experts). The use of videoconferencing equipment will provide the courts with greater flexibility for when and how expert witnesses from other Member States are required to give evidence. When expert witnesses are heard, it is advisable to contact the expert before the hearing, in order to check what kind of technical equipment might be needed during the hearing.
7. For vulnerable and intimidated witnesses videoconferencing can be seen as a means of reducing the stress and discomfort which could be caused by the disruptive journey to a foreign court. For giving evidence to any foreign court, a separate witness room could be more practical than the court room.
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CROSS-BORDER VIDEOCONFERENCING IN THE EU
1.2. Overview of the Legal Framework in European Union law

8. Applications in criminal cases are usually governed by national acts and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29, 2000 (further referred to as the “2000 MLA Convention”).
9. Applications may also be made in civil cases on the basis of the EU Council Regulation No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (further referred to as the “2001 Taking of Evidence Regulation”).
10. The standard forms and information about procedures are also available on the websites of the European Judicial Network in Civil and Commercial Matters (in the European Judicial Atlas) and the European Judicial Network in Criminal Matters.
11. Further scope for the use of videoconferencing in the EU context can be found in the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. In accordance with Article 9(1) a) of the Directive the applicant may be heard by videoconferencing. In addition, Article 9(1) of the Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure foresees the possibility of taking of evidence through videoconference if the technical means are available. Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters emphasises that it should not in any way prevent the use of modern communication technologies in the mediation process.
12. For most EU Member States most of these instruments are already applicable (with some reservations made by some Member States, especially concerning the hearing of accused persons by videoconference).
In the arrangements for videoconferencing there are differences between on the one hand the civil and commercial and on the other hand the criminal proceedings. The steps that are necessary to undertake a hearing by videoconferencing and the differences between arrangements are given in the table in Annex III.
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PRACTICAL CONSIDERATIONS FOR VIDEOCONFERENCING
2.1. Preparatory arrangements

13. In cross-border court proceedings, the objective is to make the videoconferencing session as close as possible to the usual practice in any court where evidence is taken in open court. Compared to national judicial procedures, there are fairly small differences in the cross-border procedures. The arrangement of a cross-border hearing using videoconferencing requires that certain formal measures are taken.
14. In civil and commercial matters, the request concerning taking of evidence via videoconferencing is made using standard forms. These forms are available on the website of the European Judicial Atlas of the European Judicial Network in civil and commercial matters.
15. In criminal matters, there is no obligation to use certain request forms or cover notes. The European Judicial Network in criminal matters has developed a cover note for rogatory letters. By using the cover note, the requesting and the requested authorities will be able to establish direct contact on the content and /or the execution of the rogatory letter. (see Annex III).
16. The requests may be sent by post, courier, fax (in all Member States) or e-mail (not in all Member States). Some details on the rules in force in Member States can be found on the websites of the European Judicial Networks.
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PRACTICAL CONSIDERATIONS FOR VIDEOCONFERENCING
2.2. The Request

17. The nature of the request for using videoconferencing in mutual legal assistance or taking of evidence is different in civil and criminal matters and details are given in Annex III.
Forms are available in both civil and criminal matters and are sent by the requesting court to the requested court in another country (in criminal matters the use of forms is not obligatory). The forms include information used to contact the parties involved and representatives and details of the court. In some cases, information about payment for the use of equipment and the language to be used in the videoconference may also be given.
18. In civil matters, the 2001 Taking of Evidence Regulation provides for two possibilities for the use of videoconferencing in cross-border taking of evidence: Under Articles 10 to 12 the requesting court may request the requested court in another Member State to enable it or the parties to be present or participate by means of a videoconference in the taking of evidence by the requested court. Such a request may only be refused if it is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties. Article 13 then provides for coercive measures for the execution of the request. However, under Article 14 the witness may claim the right to refuse to give evidence in accordance with the law of the Member State of the requesting or the requested court.
Under Article 17 the requesting court itself takes evidence directly in another Member State with the consent of the central body or competent authority of this Member State. Under Article 17(4) the central body or competent authority is obliged to encourage videoconferencing for this purpose. Article 17(2) specifies that direct taking of evidence may only take place if it can be performed on a voluntary basis.
Apart from the possibility of coercive measures the main differences between the two methods are the court in charge of the taking of evidence and the applicable law.
19. The requesting court will send the request for videoconferencing and the required information together with a request form A or I from the 2001 Taking of Evidence Regulation to the requested court.

The reply to the request is also made using standard forms. If a request to a court in another Member State for participation by means of videoconference is refused, the court uses form E. In case of direct taking of evidence, the central body or the competent authority is obliged to inform the requesting court within 30 days (using form J) whether the request is accepted or not. If a request is accepted the requesting court may obtain the evidence within a timescale it decides.

20. In criminal matters, the requested Member State has to agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing.

Coercive measures may be ordered in the execution of a mutual assistance request (e.g. summons to appear with a sanction in the event of non-appearance) if the offence described in the request is also punishable in the requested state.

21. Where the videoconferencing equipment to be used is not supplied by the requesting court, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by the authority requesting the videoconference.

In accordance with the 2001 Taking of Evidence Regulation the general principle is that the execution of the request for indirect taking of evidence shall not give rise to any claim for any reimbursement of taxes or costs. However, if the requested court so requires, the requesting court should ensure the reimbursement of costs occasioned by the use of videoconferencing.

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PRACTICAL CONSIDERATIONS FOR VIDEOCONFERENCING
2.3. The Necessary Preparations

22. When the request is accepted, the practical preparations can start.

23. In cross-border civil and commercial proceedings, in case of a request to a court in another Member State, the requested court informs the requesting court and/or the parties of date, time and conditions for participation. Prior consultation with the requesting court on the date and time of the hearing should be considered. The requested court summons the witness and takes the necessary coercive measures, if so required. The request must be executed within ninety days of receipt.

24. In case of direct taking of evidence, the requesting court itself is responsible for organising the hearing and for notifying the witness of date, the time and place of the hearing as well as of the fact that the giving of evidence is voluntary.

The central body or competent authority of the requested Member state should assist the requesting court, as it is its duty to encourage videoconferencing. The requesting court has to comply with conditions set by the central body or competent authority, which can also assign a court of its Member State to ensure compliance.

25. In criminal matters, the judicial authority of the requested Member State serves a summons on the person to appear in accordance with its law. The method of requesting the person to appear in court is regulated by national legislation.

26. In addition, the requesting court and the videoconferencing facility in the requested Member State (which may be a court) need to make the booking for the court rooms or witness rooms. If interpretation will be used for the hearing, in civil matters in case of direct taking of evidence the requesting court contacts the interpreters and makes an agreement with the interpreters (concerning the fee, possible travel arrangements and other costs).

27. The usability of videoconferencing equipment plays a central role in the practical preparations.

There is always a need to have contacts between the technical experts of the respective courts, prisons or other videoconferencing locations in good time before the videoconference, in order to be sure that the videoconferencing equipment is functioning properly (cameras, microphones, screens, ISDN lines, etc).

It is advisable to test the equipment and the connections at least one day before the actual videoconference. In addition, it may prove useful to have the numbers of ISDN telephone lines and fax numbers sent to the technical staff and clerks of the respective courts.

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PRACTICAL CONSIDERATIONS FOR VIDEOCONFERENCING
2.4. Interpretation

28. In cross-border videoconferencing, there may be a need to have an interpreter either at the requesting court or at the requested court. **The interpreter can either work from a remote location, whilst the main parties are in the same location, for example, in the courtroom (remote interpretation), or, where a remote participant (e.g. a defendant or a witness) requires an interpreter, the interpreter is either co-located with the remote participant or located at the main site (videoconference interpreting).**

28 a. The use of interpretation during the videoconferencing (…) **is** a challenge to the participants in the hearing and to the interpreter. The witness may not be used to working with interpreters and the feeling of remoteness may cause problems with the interpretation. For the interpreters it is helpful if the judge coordinates the order in which the parties involved speak.

29. Taking of evidence is usually conducted with consecutive interpreting. In consecutive interpretation the judge plays a central role in administrating the interpretation and in giving instructions to the witness or the interpreter during the hearing. **Given the complexities of videoconferencing and interpreting in legal settings, it is recommended that the consecutive mode of interpreting should be used when the interpreter is separated from those who require interpreting, as this mode allows more easily for clarifications and interventions that may be necessary to ensure that the interpreting is accurate.**

29 a. Simultaneous interpretation is more demanding, since it requires that there is a special booth for the interpreter and that the interpretation is transmitted to listeners by means of special-purpose equipment (transmitter, receiver and earphones). **When written documents are presented during the hearing or trial, there is often the need to use oral "prima vista" translation of written text. If the interpreter is not in the courtroom where the document is presented, document cameras need to be utilized in the videoconferencing.**

30. When remote interpreters are used in a third location, outside the courtrooms, attention should be paid to the preparatory arrangements and prior information on the technical equipment of this third location and to the testing of the connections between the locations before the actual hearing. Furthermore, attention should be paid to the acoustics and quality of sound in the location of the remote interpreter.

30 a. Other aspects that should be considered are the layout of the rooms in which videoconferencing and interpreting are used and the positioning of the interpreter and the other participants. **Visual and non-verbal communication play a crucial role in helping an interpreter to understand what is said, to grasp nuances of meaning and to resolve potential ambiguities. Therefore, the interpreter should be able to see the faces, facial expressions and possibly lip movements of remote participants. This has consequences for the position of the participants in relation to the cameras that deliver the video image for the**

interpreter. The interpreter should have a frontal view of the remote participants. At the same time, the interpreter should not become the centre of attention simply by appearing on a video screen. In other words, the setup should not create a situation in which the main parties have to turn away from each other in order to see the interpreter.

30 b. Attention should also be drawn to both the reliability and the security of transmissions which should be ensured.

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

High quality communication and interpreting should be ensured;

During interpretation the impact of technical issues such as control over equipment (e.g. control over camera movement in video-based interpreting). **This may be particularly critical for remote interpretation, where view and image from the remote site must be ensured;**

Communication management is essential: there should be possibilities of intervention by the interpreter (before and during an interpreting assignment, for question clarifying the content);

The sound quality is crucial, as is the impact of data transmission delay (approx. 0.5 seconds) on interaction problems during the interpretation.

32. As regards the quality of interpretation, the qualifications required for court interpreters differ between Member States. This needs to be taken into account in the requests for using videoconferencing in mutual legal assistance or taking of evidence.

32 a. In order to overcome the difficulties of videoconferencing coupled with interpretation and the negative perceptions which could exists among the practitioners, the following recommendations on how to implement and use video-mediated interpreting could prove helpful:

A. The planning, procurement and installation of videoconferencing equipment for courtrooms

needs should be identified:

specific setting, such as who talks to whom, who needs to see whom, should be mapped out.

expertise should be involved at the planning stage:

it is highly important that the planning involves interpreting/linguistic, legal and technological experts to work out the specifics of the setting.

high quality technology should be used:

high-quality sound and video should be provided for all parties involved and additional equipment for the interpreter as required; a separate document camera (for the presentation of documents, images and other material that can facilitate interpreting) should be used. Note that simultaneous interpreting has specific requirements for (higher) audio and video quality and lip synchronisation than consecutive interpreting.

a ‘trial and error’ phase should be run:

especially before any large-scale purchase, implementation and roll-out of videoconferencing equipment. Critical instances in the communication process should be identified and the necessary adjustments made.

a stage-by-stage introduction of new technology should be allowed:

low-impact cases should be started with, in order to evaluate the effect of the technology at each stage and to assess the implications for the next stage.

appropriate work environment should be provided for the interpreter :

such as an ergonomic and quiet work environment and allowing the interpreter to control the equipment.

B. Enhancing the smooth use of remote interpreting via videoconferencing in the courtrooms

qualified participants and interpreters should be used:

appropriately qualified interpreters, and legal staff members who are experienced in working with interpreters, should be used, in order ensure a quality sufficient to safeguard the fairness of the proceedings.

training should be offered to the interpreters and legal staff:

an early-stage induction before rolling out the technology should be offered. Continuous professional training should then be available (including awareness of wider context, mastery of technology, communicative situation and supportive techniques such as stress management).

risk-assessment procedures should be agreed upon:

procedures for deciding whether or not a video link in combination with interpreting is appropriate should be used and experienced interpreters should be consulted.

guidelines/protocols should be developed:

these should specify who is responsible e.g. for booking, timing, testing, starting and controlling the connection; describe the procedure before, during and after the session (briefing of interpreter, beginning of session, introductions, rules during session, debriefing) for all participants.

provisions for breakdown should be made:

a protocol for communication breakdown or technological breakdown should be developed as it should not be left to the interpreter to resolve breakdowns.

code of best practice:

Judicial services, legal practitioners and interpreter associations should continue to cooperate to improve joint codes of best practice for videoconferencing and remote interpreting.

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PRACTICAL CONSIDERATIONS FOR VIDEOCONFERENCING

2.5. The Hearing

33. In most countries, the judge will be present at the site of the requesting authority before the video-link has been established and will not normally leave the site before the video link has been disconnected. They have a key role in conducting the hearing.

34. In criminal matters, the hearing is conducted directly by, or under the direction of the judicial authority of the requesting Member State in accordance with its own laws (2000 MLA Convention).

35. In civil matters, Article 12 of the 2001 Taking of Evidence Regulation states that representatives of the requesting court, including members of the judicial personnel, have the right to be present when the requested court takes evidence if this is compatible with the law of the requesting Member State.

Under Article 17 of the 2001 Taking of Evidence Regulation (requests for direct taking of evidence), the taking of evidence is performed by a judge or perhaps another person designated in accordance with the law of the requesting Member State.

36. In civil or criminal matters, the judge or the court clerk will usually handle the equipment. The examination of the witness at the remote site would follow as closely as possible the practice adopted when a witness is in the courtroom.

37. The persons concerned should be able to consult with one another without third parties overhearing. There may be cases where a party wishes to consult with his/her lawyer (whether or not via an interpreter) without the judge or another party overhearing. It is therefore necessary that mutual consultation is made possible without third parties overhearing. Usually the microphones may be turned off in the witness rooms, but in the court rooms they could only be turned off by the court clerk or the judge.
38. If the party and his or her lawyer are not present at the same site, they should be able to conduct private talks using for example secure phone line, mobile phone or, if possible, separate videoconferencing equipment. Any equipment is recommended to be set up in such a way that it is clearly separated from other parties to the court proceedings.
39. A procedure that stipulates how parties can interrupt each other and object to a question should be explained in advance. In some situations it might if possible be considered to supply the parties with an overview picture displaying all the professional parties as this can make it easier to handle unforeseen interruptions.
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PRACTICAL CONSIDERATIONS FOR VIDEOCONFERENCING
2.6. Minutes of the Hearing

40. In cross-border criminal proceedings, after the hearing is concluded, the judicial authority of the requested Member State needs to draw up minutes of the videoconference hearing. The minutes indicate the date and place of the hearing, the identity of the person heard the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document is forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.
41. In a similar manner, in civil and commercial cross-border proceedings for requests made under Articles 10 to 12 of the Taking of Evidence Regulation (that is indirect requests) the requested court sends to the requesting court the documents establishing the execution of the request and, where appropriate, returns the documents received from the requesting court. The documents are to be accompanied by a confirmation of execution using form H in the Annex of the 2001 Taking of Evidence Regulation.
42. For direct taking of evidence in civil and commercial matters, where the equipment to be used is not supplied by the requesting court, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will be the responsibility of the authority requesting the videoconference. The general principle for indirect taking of evidence is that the execution of the request shall not give rise to any claim for any reimbursement of taxes or costs. However, if the requested court so requires, the requesting court should ensure the reimbursement of costs occasioned by the use of videoconferencing.
43. In criminal matters, where the 2000 MLA Convention applies, the cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State are to be refunded by the requesting Member State to the requested Member State, unless the latter waives the refunding of all or some of these expenses.
44. Similarly in civil and commercial proceedings, if the requested court so requires, the requesting court shall ensure the reimbursement, without delay, of the fees paid to experts and interpreters, and the costs occasioned by the use of videoconferencing (application of Article 18 of the 2001 Taking of Evidence Regulation).
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TECHNICAL ASPECTS
3.1. Background to Technical Requirements

45. This section of the Guide discusses the technical aspects of videoconferencing and videoconferencing equipment. This includes placement of cameras, lighting, screens and microphones. The equipment provided should be selected and set up to support as well as possible the various steps involved in the process of the court hearing. The detailed technical standards for videoconferencing are contained within Annex II.

True-to-life principle

46. The objective is to make the videoconferencing session as close as possible to the usual practice in any court where evidence is taken in open court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by videoconferencing: for example, ensuring that the witness understands the practical arrangements of the videoconferencing session and which are the parties to the videoconferencing and what their various roles are. The following are suggested as a checklist of practical considerations that encourage best practice in the use of videoconferencing:
Time zone differences need to be considered when a witness abroad is to be examined by videoconferencing. The convenience of the witness, the parties, their representatives and the court should all be taken into account.
At the courtroom the videoconferencing tools should to the widest extent possible be installed and used in such a way that it supports the users' feeling of participating in a traditional meeting of the court.
Those involved with videoconferencing need to be aware that, even with the most advanced systems currently available, there are slight delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there will be a tendency to "speak over" the witness, whose voice may continue to be heard for a fraction of a second after he or she appears on the screen to have finished speaking.
With current technology, picture quality is good, but not as good as a television picture. The quality of the picture is enhanced if those appearing on videoconferencing monitors keep their movements to a minimum.
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TECHNICAL ASPECTS
3.2. General Arrangements and Quality Principles

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

Concerning the quality of the visual and audio connection, sufficient account should be taken of the interests of the persons concerned. Consequently, the videoconferencing system should be of high quality. Only then will a hearing conducted via videoconferencing provide a reasonable alternative to a face-to-face hearing.
More particularly, this means that sounds and images need to be aligned accurately and reproduced without any perceptible delay. Furthermore, the external appearance, facial expressions and gestures of the persons concerned should be clearly perceptible.

Videoconferencing Equipment

48. In order to facilitate the use of videoconferencing equipment, all equipment components should as far as possible be standardised on the basis of the same types of equipment and the same configuration.
The videoconferencing equipment should where possible be integrated with the established courtroom working arrangements and infrastructure.
At the courtroom the videoconferencing tools should to the widest extent possible be installed and used in such a way that it creates the atmosphere of a traditional meeting of the court. In the following sections, the various aspects of image, lighting, sound and the positioning and use of equipment (cameras, microphones and screens) are discussed.

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TECHNICAL ASPECTS
3.2.1. Videoconferencing Equipment - Image

49. In cross-border videoconferencing it is expected that the screen can be used for three different views:
A focusing view; for transmitting images of the participants in the other room
An overview view; for an overview of the situation in the other room
An information view; for transmitting documents and other information - (this includes also any screens located in participants' "work stations").
50. In order to guarantee objectivity, each participant should as far as possible be portrayed in the same way on screen. The lighting intensity, resolution and frame rate should be compatible for each participant. The lighting should as far as possible be such that facial expressions are always readily discernible, there is no shadowing around the eyes and there are no reflections on screens. As far as is possible, eye contact should be imitated.

Positioning of equipment

51. Equipment should be positioned in such a way that cases can still be handled without videoconferencing in the relevant courtroom. It should be possible to position cameras, screens, lighting and participants in such a way that the entire set-up is suitable for video hearing and video pleading in both civil and criminal proceedings. Care should be taken in positioning cameras to, where possible, avoid filming participants from above or below since this can give distorted view and affect the way the participant is perceived.

Screens

52. Viewing angle and viewing distance should be such that all participants can use the same screen in the same way. The size of the screen may be large enough to ensure that - in terms of viewing angle - the persons involved can preferably be shown to the same scale as would be perceived at a normal meeting. A minimum resolution of WXGA standard should be achievable. As to the frames/sec, a minimum of 30 frames/sec may be required. Facial expressions should be readily discernible and viewing comfort high.

Cameras

53. The cameras should preferably be fixed and they should have several pre-set positions for panning, tilting and zooming; one of the possible positions should be pre-set as a preference. This allows the person operating the equipment to quickly change the views without minimal disruption to the court proceedings. The angle size of focusing cameras should be large enough to ensure that the participant's face, shoulders and upper body are clearly visible and. All participants should be able to move and turn towards other persons within an area of 80 x 80 cm without disappearing from view.
54. Usually two cameras will be sufficient in the court room: one tracking camera directed at the examining judge, public prosecutor or lawyer, witness or suspect, depending on who is speaking (fixed points) and one camera to provide an overview of the court room when necessary. In some situations the overview picture can also be provided at the beginning of a session by panning a tracking camera.
55. Portable equipment is not able to provide multiple cameras, so the provision of overview views would be limited where such equipment is used. The use of a witness room may be necessary in some cases, requiring the installation of a camera. Consideration will need to be given to the need for a witness in such a room to confer with legal professionals out of sight of cameras.

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TECHNICAL ASPECTS
3.2.2. Videoconferencing Equipment - Sound

Speech

56. Speech will always need to be readily intelligible and no words should be lost during videoconferencing.
The quality of the sound will need to be continuous, with no extraneous interference. The risk that speech quality deteriorates as a result of speech compression should be avoided. This means meeting certain requirements as regards lip synchronicity (a delay of less than 0,15 seconds), echo cancellation and background noise and reverberation.
Such concerns are of particular importance in situations where interpreters are involved in the videoconference. It is desirable for the judge and court clerk to be able to adjust the volume on the site in order to compensate for differences in speech level.

Microphones

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

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TECHNICAL ASPECTS
3.3 Operation of the videoconferencing equipment

Portable equipment

58. Portable equipment (screen + camera + speaker + microphone + accessories) should be usable either in various combinations or in conjunction with a fixed set of equipment.

The equipment should be readily transportable (and hence not necessarily on wheels), easy to move between the different locations and flexible in terms of its use. Consequently, more limitations are expected to apply to the quality of portable equipment than to fixed equipment (e.g. as regards the number of participants who can be filmed clearly at the same time).

59. Portable equipment is suitable for hearing witnesses (e.g. at another country's request), in the event of equipment breakdown, as a temporary supplement to fixed equipment or at special locations such as prison hospitals.

Mobile equipment, however, can be somewhat fragile and difficult to operate as it might entail, for example, time-consuming readjustments of camera positions to match new locations (it is difficult to use preset positions).

Operation of the videoconferencing equipment

60. The operation of the videoconferencing system is most convenient with a touch screen. It is beneficial if operation is as user-friendly (i.e. as simple) as possible, and consists of only a limited number of manoeuvres, for example switching on/off, establishing and terminating the connection and logging on/off.

61. During use, the audiovisual solution should not require the intervention of the operator. If any problems arise, the operator should be able to ring a help desk. It is for the judge to decide whether to terminate a videoconferencing session that has been disrupted in this way.

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TECHNICAL ASPECTS
3.3.1. Recordings and Use of Documents

62. In most cases the videoconference proceedings do not require any recording other than those that would normally take place for such proceedings.

In cases in which the application to use videoconferencing also seeks to have the videoconference proceedings recorded, the requesting authority is obliged to arrange for recording equipment to be provided to the requested authority where necessary so that the evidence can be recorded by the requested authority in the correct format.

Video recording of proceedings may be subject to restrictions depending on the Member States involved.

63. It is expected that parties will have anticipated what documents will be required in the course of the proceedings and that they will have made copies available to those participating in advance.

The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the requesting authority should then send to the requested authority.

If technically possible, the documents could be presented by using a separate document camera as a part of the videoconferencing equipment.

64. In certain situations, a document camera is not a sufficient mean for exchanging papers. Using a camera is for example not directly possible for the client and the lawyer to discuss presented documents in private. Thus, a faxed copy of the document may be more easily available.

65. For the exchange of documents, videoconferencing could be supplemented with shared document repositories or document servers.

These capabilities are increasingly being used for sharing of information but within the justice context extra care needs to be taken to ensure that any such repository is secure, readily available to the parties and only accessible by the authorised parties connected to the case. Such repositories could be available via computers at both the sites of the requesting authority and the requested authority.

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TECHNICAL ASPECTS
3.3.2. Multipoint connections and bridging

66. In cross-border videoconferencing, it should also be possible for the system of the requesting authority to be linked up to systems of the requested authority. Usually the cross-border videoconferencing concerns the establishment of a visual and audio connection between two locations (point-to-point), the site of the requesting authority and the site of the requested authority. For some cases it may be necessary to establish a connection between more than two locations simultaneously (multipoint). This may be the case e.g. when an interpreter is connected to the court proceedings from a third location. The links may be established through a third party bridge.

67. Point-to-point connections and multipoint connections should also comply with the international standards applicable to videoconferencing. Those standards have been drawn up by the International Telecommunication Union (ITU). A detailed list is in Annex II of this guide. The cross-border connection of the videoconferencing systems should also be safeguarded in such a way as to prevent recordings from being intercepted unlawfully by third parties. If IP-to-IP connection is being used, the methods of encryption need to be agreed upon by the participating courts.

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LEGAL FRAMEWORK IN CRIMINAL MATTERS
4.1. The Legal Framework in Criminal Matters

68. In criminal matters, Article 10 of the Convention on Mutual Legal Assistance in Criminal Matters of 2000 provides the legal framework for cross-border cases. The following rules apply:

a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the requested Member State is of the view that during the hearing the fundamental principles of the law of the requested Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States;

the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;

at the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State

69. Article 10 of the 2000 MLA Convention establishes the principle that a request for a videoconference hearing may be submitted by a Member State in respect of a person who is in another Member State. The circumstances in which such a request may be made are that the judicial authorities of the requesting Member State require the person in question to be heard as a witness or expert and that it is not desirable or not possible for him or her to travel to that State for a hearing. 'Not desirable' could for example apply in cases where the witness is very young, very old, or in bad health; 'not possible' could for instance cover cases where the witness would be exposed to serious danger by appearing in the requesting Member State.

70. The requested Member State has to agree to videoconferencing provided that the hearing would not be contrary to the fundamental principles of its law and that it has the technical capacity to carry out the hearing. In that context the reference to 'fundamental principles of law' implies that a request cannot be refused for the sole reason that hearing of witnesses and experts by videoconference is not provided under the law of the requested Member State, or that one or more detailed conditions for a hearing by videoconference would not be met under national law.

Where the relevant technical means are lacking, the requesting Member State may, with the agreement of the requested Member State, provides suitable equipment to enable the hearing to take place. (Explanatory Report on the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters)

71. Requests for a hearing by videoconference shall contain information concerning the authority making the request, the object of and the reason for the request where possible, the identity and the nationality of the person concerned and where necessary the name and address of the person to be served. The request shall also contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and the names of the persons who will be conducting the hearing. This information is referred to in the 2000 MLA Convention. The judicial authority of the requested state shall summon the person concerned to appear in accordance with the forms laid down by its law.

72. In the 2000 MLA Convention, Article 10(8) provides that if, in the course of a hearing by videoconference, a person refuses to testify or provides false testimony, the state in which the person being heard is located should be in a position to deal with that person in the same way as if he or she were appearing at a hearing conducted under its own national procedures.

This follows from the fact that the obligation to testify at a videoconference hearing arises, pursuant to this paragraph, under the law of the requested state. The paragraph is in particular intended to guarantee that the witness, in case of non-compliance with an obligation to testify, is subject to consequences of his or her behaviour similar to those applicable in a domestic case where videoconferencing is not used.

73. In paragraph 9 of Article 10, the use of videoconference hearings is extended to accused persons. Each Member State enjoys full discretion as to whether or not it will agree to execute requests for such hearings. A Member State may make a general declaration to the effect that it will not do so. The accused person should consent in each case before the hearing takes place.

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LEGAL FRAMEWORK IN CIVIL AND COMMERCIAL MATTERS

4.2. The Legal Framework in Civil and Commercial Matters

74. 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 the 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.

75. Under Articles 10 to 12, the parties and their representatives may be present when evidence is taken by the requested court, if this is provided for by the law of the Member State of the requesting court. 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 this is allowed by the law of the Member State of the requesting court. 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.

76. 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.

77. 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.

78. 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 a 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.

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TECHNICAL STANDARDS
5. ANNEX II – TECHNICAL STANDARDS

79. Video and audio communications conferencing equipment should meet minimum industry standards to facilitate interoperability locally and globally. The following are common industry standards (mostly by the International Telecommunications Union (ITU)).

Video

80. H.320 and H.310 standards for Video over ISDN. These standards include guidelines for video compression and transmission and for audio and control signals. When a video system of one manufacturer conferences with another brand, both video systems automatically revert to the common denominator of H.320. H.310 is the standard for faster ISDN connections.

81. H.323 Standard for Video over Internet. The H.323 standard provides a foundation for audio, video, and data communications across Internet protocol-based networks. By complying with H.323, multi-media products and applications of different origin can interoperate, allowing users to communicate without concern for compatibility.

Data Conference

82. T.120 Standard for Data Conference. The T.120 is a data sharing protocol for multipoint data communication in a multimedia conferencing environment. It enables white board collaborations, file transfers, graphic presentations and application sharing.

Picture and Audio

83. H.263 and H.264. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336-384 kbps (kilobits per second). The standard of 30 frames per second ensures a near-broadcast quality picture. Examples of ITU standards that meet this requirement are H.263 and H.264.

84. H.239 - Picture-in-picture (PIP). Picture-in-picture or DuoVideo H.239, permits the codec to display at least two images on the monitor.

85. Standards for audio coding: G.711 (Pulse code modulation (PCM) of voice frequencies), G.722 (7 kHz audio-coding within 64 kbit/s); G.722.1 (Low-complexity coding at 24 and 32 kbit/s for hands-free operation in systems with low frame loss).

86. Echo cancellation microphones with a 100 to 7,000 Hz frequency response, audio muting, on/off switch and full-duplex audio.

87. H.281 - A far end camera control protocol for videoconferences using H.224. H.281 is the standard for local and far-end camera control protocol for ISDN (H.320) video conferencing, for camera(s) with ability to pan, tilt, and zoom, both manually and using presets.

Channels, Bandwidth and Bridging

88. Minimum of 6 channels for room videoconferencing systems using ISDN or video systems running as the sole application on a personal computer or larger room-type system should have the capacity to use 3 ISDN lines. This capacity is necessary to achieve 384 kbps at 30 frames per second. In general, the greater the bandwidth of the connecting circuits and processing power of the codec, the better picture quality especially in large screens.

89. Standards for Codecs: H.261, H.263 and H.264. The primary function of the codec is to compress and decompress video and audio. Multiple identical outputs can be provided from the single output system by a device commonly known as a “distribution amplifier.

90. Bandwidth On Demand Inter-Networking Group (BONDING) standards (ISDN and H.320 only) for inverse multiplexers. Inverse multiplexers combine individual 56K or 64K channels to create more bandwidth, which equals better picture quality.

91. H.243 - H.320/H.323 Standard for Bridging Technology. Multi-point bridging equipment is addressed under the standard H.243. The multipoint bridge connects all the participants by allowing a videoconferencing system to connect to more than two sites.

92. H.460 is a standard for the traversing of H.323 videoconferencing signals across firewalls and network address translation (NAT). H.460.18 and H.460.19 are standards that enable H.323 devices to exchange signaling and media across boundary imposed by NAT and firewalls.

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KEY STEPS FOR USING VIDEOCONFERENCING IN CROSS-BORDER PROCEEDINGS
6. ANNEX III - KEY STEPS FOR USING VIDEOCONFERENCING IN CROSS-BORDER PROCEEDINGS

Step	Videoconferencing – Civil and commercial matters	Videoconferencing -Criminal matters
1. Request for taking evidence		
1.1. The actors involved	**Court sends the request** Requests are transmitted directly by the court where proceedings have commenced (the 'requesting court') to the court of another Member State taking evidence (the 'requested court'). A request to take evidence directly (under Article 17) is submitted by the requesting court to the central body or the competent authority in the requested state.	**Court, prosecutor or other competent judicial authority sends the request** Requests are transmitted directly by the court (the 'requesting court') or other competent judicial authority (e.g. public prosecutors or Mutual Legal Assistance Centres) to the competent authority of the requested state.
1.2. Form of request	**Standard forms in the 2001 Taking of Evidence Regulation** The request must be made using the standard forms which are annexed to the 2001 Taking of Evidence Regulation. The request must contain details, such as the name and address of the parties to the proceedings, the nature and subject matter of the case, a description of the taking of evidence to be performed, etc. The relevant forms to be used are: Form A: request for the taking of evidence (under Articles 10 to 12);; Form I: request for direct taking of evidence (under Article 17).	**Standard form (not obligatory): Request for mutual legal assistance in criminal matters**. Requests for a hearing by videoconference shall contain, in addition to information concerning the authority making the request, the object of and the reason for the request, where possible, the identity and the nationality of the person concerned, and where necessary, the name of the judicial authority and of the persons who will be conducting the hearing. In addition, it has to include the reason why it is not desirable or possible for the witness or expert to

		attend in person, the name of the judicial authority and of the person who will be conducting the hearing.
1.3. Sending the request	Forms are found on the website of the European Judicial Atlas (European Judicial Network in civil and commercial matters) Request may be sent by post, courier, fax (in all Member States) or e-mail (only in 13 Member States).	
1.4. Reply to request	**1. (Indirect) Taking of evidence by a requested court:** **Acknowledgement of receipt:** In requests made under Articles 10 to 12 (i.e. indirect taking of evidence requests) within seven days of receipt of the request, the requested court shall send an acknowledgement of receipt to the requesting court using form B in the Annex. **Form:** The reply is made using form F, which is annexed to Regulation 1206/2001. It includes notification of the date, time, place of performance of the taking of evidence and the conditions for participation. **Time**: Within thirty days the requested court must inform the requesting court if the request cannot be accepted or further information is required. The notification is made using Form C which is annexed to the Taking of Evidence Regulation. If accepted, the request must be executed within ninety days of receipt. If a delay occurs, form G should be used to notify the requesting court. Where a request is refused (form H), the requested court must notify the requesting court within sixty days of receipt of the request. **Refusal to use videoconferencing:** The requested court shall comply with such a requirement unless this is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties.	The court responsible for handling the request will acknowledge receipt of the request as soon as possible. However, there is no obligation for the requested court to acknowledge the receipt of the request according to the 2000 MLA Convention. **Acknowledgement of receipt** will be sent to authority of the requesting Member State and it will contain the name, address, telephone and fax number of the court and, if possible, the judge responsible for processing it. The requested Member State shall execute the request for assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the requesting Member State. The requesting Member State shall explain the reasons for the deadlines. **Refusal to use videoconferencing:** The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing.

	Article 17 direct taking of evidence requests: Within 30 days of receipt of the request the central body or the competent authority shall inform the requesting court, by filling in form J, if the request is accepted or not and of any conditions under which the evidence may be taken. If it is accepted the central body or the competent authority may assign a court of its Member State to take part in the performance of the taking of evidence in order to ensure the proper application of this Article and the conditions that have been set out.	
1.5. Access to the VC equipment	If there is no access to the technical means referred to above in the requesting or in the requested court, such means may be made available by the courts by mutual agreement.	If the requested Member State has no access to the technical means for videoconferencing, such means may be made available to it by the requesting Member State by mutual agreement.
1.6. Practical arrangements prior to VC	**1. (Indirect) Taking of evidence by a requested court:** Requested court: notification to the requesting court and/or the parties of the date, time, place of performance of the taking of evidence and the conditions for participation. -summoning of the witness Requesting and requested courts: -booking of court room -activation of VC equipment (including testing of connections) -booking of interpreters and technical staff	The court or other judicial authority of the requested Member State serves a summons on the person to appear in accordance with its law. Requesting and requested courts or videoconferencing facility: -booking of court room or videoconferencing facility -activation of VC equipment (including testing of connections) -booking of interpreters and technical staff

	2. Direct taking of evidence: Requesting court: -notification to the witness of the date, time, place of performance of the taking of evidence Requesting court or videoconferencing facility (with the assistance of the central body or competent authority): -booking of court room or videoconferencing facility -activation of VC equipment (including testing of connections) -booking of interpreters and technical staff	
1.7. Languages and interpretation	**1. (Indirect) Taking of evidence by a requested court:** **The language** The language of the requested court will be used. **Use of interpreter** At the request of the requesting court or the person to be heard the requested court ensures that the person to be heard is assisted by an interpreter, if necessary. **2. Direct taking of evidence**: **The language** Subject to conditions imposed by the central authority or competent authority, the language of the requesting court will be used. **Use of interpreter** The requesting court ensures that the person to be heard is assisted by an interpreter, if necessary.	**The languages** In the request, the requesting court informs the requested court of the language to be used. The requesting and requested courts may, if appropriate, decide that proceedings are to take place wholly or partly in a foreign language. **Use of interpreter** At the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary.
2.1. Running the hearing using video-conferencing	**The law of the requested state is applied** The use of videoconferencing is arranged according to the law of the requested state. However, the requesting court may call for the request to be executed in accordance with a special procedure provided for by the law of its Member State. The requested court complies with this unless this procedure is incompatible with the law of its Member State or by reason of major practical difficulties. **In the direct taking of evidence** under Article 17 by the requesting court, the requesting court shall execute the request in accordance with its national law.	**The law of the requesting state is applied** The use of videoconferencing is arranged according to the law of the requesting state. The requested state shall comply with the formalities and procedures expressly indicated by the requesting state, provided that such formalities and procedures are not contrary to the basic principles of law in the requested state.
	The refusal to witness The person to be heard is entitled to refuse if there is support for this in either the legislation of the requested state or in the legislation of the requesting state. Requests for direct taking of evidence under Article 17 can only be performed on a voluntary basis without the need for coercive measures.	**The refusal to witness** The person to be heard is entitled to refuse if there is support for this either in the legislation of the requested state or in the legislation of the requesting state. **The presence of the judicial authority of the requested state** A judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State.
2.2. Who is in charge of the hearing by VC	**1.(Indirect)Taking of evidence by a requested court**: The requested court (the court of the requested state under Articles 10-12 of the 2001 Taking of Evidence Regulation) **2.Direct taking of evidence:** The requesting court (the court of the requesting state, under Article 17 of the 2001 Taking of Evidence Regulation).	The court or prosecutor of the requesting state
2.3. Costs of video-conferencing	The requesting court shall ensure the reimbursement of the fees paid to experts and interpreters, and of the videoconferencing arrangements. The execution of the request for	The requesting court shall ensure the reimbursement of the fees paid to experts and

	indirect taking of evidence should not give rise to any claim for any reimbursement of taxes or costs. However, if the requested court so requires, the requesting court should ensure the reimbursement of costs occasioned by the use of videoconferencing.	interpreters, and of the videoconferencing arrangements. The requested court can waive the refunding of all or some of these expenses.
3. Measures after the VC session	**1. In indirect taking of evidence** requests (i.e. those under Articles 10 to 12 of the Regulation) the requested court shall send without delay to the requesting court the documents establishing the execution of the request and, where appropriate, return the documents received from the requesting court. The documents are to be accompanied by a confirmation of execution using form H in the Annex of the 2001 Taking of Evidence Regulation. **2. Direct taking of evidence:** Unless otherwise imposed in conditions by the central body, no measures are required after the videoconference session.	The judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.

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