WEBINAR

Video-conferencing and remote hearings in cross-border justice – what European lawyers need to know

23 NOVEMBER 2026, 10:00-13:00 CET



23 November 2026

10:00-13:00 CET

Online on Zoom

EUROPEAN LAWYERS FOUNDATION

#TRAVAR2 Project Co-funded by the EU

CCBE

Webinar on '*Video-conferencing and remote hearings in cross-border justice – what European lawyers need to know*'
23 November 2026

Videoconferencing and remote hearings in cross-border justice - the actions of the European Commission

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Directorate-General for Justice and Consumers

European Commission

Videoconferencing in cross-border criminal procedures: an overview

2000

MLA Convention

Art. 10 – hearing by videoconference

Scope: witnesses, experts, accused person

2012-2014

Directive 2014/41/EU - EIO

Art. 24 – hearings by videoconference for evidence gathering purposes

Scope: witnesses, experts, suspects and accused

Directive 2012/29/EU victims

Art. 17 Rights of victims resident in another Member State

2023

Digitalisation Regulation (EU) 2023/2844

Art. 6 – hearings in criminal matters

2024-2025

ECJ rulings

C-760/22, FP and Others (4 July 2024);

C-325/24, Bissilli (18 Dec 2025);

2026

Revision of the victims rights Directive

Directive 2026/1472 amending Art. 17 of Directive 2012/29/EU

EIO Recast Proposal introducing the European Remote Participation Order

COM(2026) 313

Article 10 – 2000 EU MLA Convention

The first EU-level rule

A request for mutual legal assistance to hear a witness or expert located in another Member State by videoconference.

Hearings of accused persons are optional: each Member State may decide whether to apply the rules, and the accused must consent.

Broad grounds to refuse

The requested State agrees unless the hearing is contrary to fundamental principles of its law or it lacks the technical means.

Requested authority present

A judicial authority of the requested State attends, identifies the person and safeguards fundamental principles of its law.

Procedural guarantees

Interpreter if needed; the right not to testify under the law of either State; minutes of the hearing.

Article 24 – EIO Directive 2014/41/EU

Mutual Recognition logic

Who

Witnesses and experts, and also suspects and accused persons, located in the executing State.

Purpose

Gathering evidence: the EIO is an evidence gathering instrument, not a tool for remote participation.

Strict refusal grounds

Art. 24(2): the suspect or accused does not consent, or the measure is contrary to fundamental principles of the executing State's law + standard grounds in Art. 11

Practical rules

Art. 24(5) largely reproduces Art. 10 MLA: executing authority present, identification, interpreter, rights not to testify, minutes.

Where Article 24 reaches its limits

C-760/22 FP and others

4 July 2024

Article 8(1) of Directive (EU) 2016/343 does not preclude an accused person from being able, at his or her express request, to participate in the hearings in his or her trial by videoconference, provided that the right to a fair trial is guaranteed.

C-325/24 Bissilli

18 December 2025

"An EIO may be issued for the purpose of hearing a suspected or accused person by videoconference ... even if the execution of that measure also involves the appearance of that person at his or her trial (…) ***in so far as that measure has an evidential objective and its execution does not go beyond what is necessary for the purpose of gathering evidence****."* para. 61

The gap

The 10th round of mutual evaluations found issues in the implementation of article 24 of the EIO Directive.

It called on the Commission to ‘address at legislative level the question of the participation of the accused

person in the trial via videoconference from another Member State’

National rules on cross-border remote participation exist only in some Member States and differ widely.

Article 17 – Victims' Rights Directive

Directive 2012/29/EU – rights of victims resident in another Member State

2012 text

Authorities must minimise the difficulties of victims resident in another Member State, in particular by:

- taking the victim's statement immediately after the complaint
- using videoconference and telephone conference calls, as far as possible, under the 2000 MLA Convention.

Revised by Directive (EU) 2026/1472

- Hearing by videoconference or other audiovisual transmission, linked to the MLA Convention and the EIO Directive
- New: facilitate the participation of cross-border victims through distance communication technology, within the limits of EU and national law and the victim's role

From hearing victims as witnesses to enabling their participation – complemented by the ERPO proposal.

Article 6 – Digitalisation Regulation

Regulation (EU) 2023/2844

Persons covered

Suspects, accused persons, convicted persons, and affected persons (in the context of freezing and confiscation proceedings).

Scope

Proceedings under **judicial cooperation instruments in criminal matters:**

(a) FD2002/584/JHA
(b) FD 2008/909/JHA,
(c) FD 2008/947/JHA,
(d)FD 2009/829/JHA,
(e) Directive 2011/99/EU
(f) Regulation (EU) 2018/1805

Conditions

Obligation to allow a request provided that the particular circumstances of the case justify it, and the person consents to the use of videoconference.

Safeguards

Informed consent, confidential lawyer–client communication, best interests of the child, effective remedies.

Going further: remote participation in criminal court hearings

Avoid trials in absentia

Accused persons living in another Member State can take part in their own trial without travelling.

Proportionate alternative to the EAW

Remote participation can replace physical surrender where coercive measures are not needed.

Protect victims and witnesses

Fewer journeys and less direct confrontation reduce secondary victimisation.

Save time and costs

Faster organisation of hearings, fewer transfers of detained persons, lighter logistics for courts.

European Remote Participation Order –COM(2026) 313 EIO Recast Proposal

23 June 2026

A judicial decision under mutual recognition

Enables a suspect, accused person, or victim of crime to take part in one or more criminal court hearings remotely by videoconference from another Member State where they reside, are temporarily staying in for justified reasons, or are detained in that State.

Covers all stages: investigation, trial and appeal.

Can serve as an alternative to surrender

- Negotiations ongoing: ordinary legislative procedure [Article 82(1)TFEU]

Article 37: three conditions for issuing

1. The person is, or will be, resident, justifiably temporarily staying, or detained in the executing State at the time of the hearing(s).
2. Issuing the ERPO is proportionate and appropriate in the specific case
3. The person consents to participating remotely

Exceptions: consent may be obtained after issuing but before execution; in extraordinary situations (serious threat to public security or health) no consent is needed, except for children and vulnerable persons.

How an ERPO hearing would work

Requirements and practical arrangements for execution

ISSUING STATE

- Conducts and directs the hearing under its own law
- Indicates formalities and procedures to be complied with by the executing State
- Ensures the suspect/accused is represented by a mandated lawyer, physically present in its courtroom
- Informs the person of applicable rights in accordance with national law
- Provides and is responsible for secure technical means

EXECUTING STATE

- Summons the person to the remote hearing
- Verifies identity of the person
- Has a competent authority (not judicial) present throughout the hearing, assisted by an interpreter if needed
- Informs the person of applicable rights under the issuing and executing State law
- Draws up minutes of the hearing and forwards them to the issuing authority, signaling technical conditions
- Provides and is responsible for secure technical means
- Provides emotional support for victims

Agreement between authorities on practical arrangements for execution (e.g. timing, measures to accommodate vulnerabilities/special needs)

Safeguards built in the ERPO

Guarantee fairness and procedural rights, and their effective exercise in a remote context

Member States shall take appropriate measures to ensure that existing rights can be effectively exercised remotely both **during and prior** to the remote hearings

Lawyer's specific protection

- Suspects and accused persons shall be represented by a **mandated lawyer physically present in the courtroom**;
- Secure and c**onfidential communication** with the lawyer shall be ensured throughout the remote hearing.

Extra protection for the vulnerable

- Best interests of the child are paramount;
- Appropriate **procedural arrangements** shall be ensured for vulnerable persons
- the consent derogation never applies to children or vulnerable persons.

Right to be physically present preserved

- Title III does not affect the right to be physically present at trial under Directive (EU) 2016/343;
- The person may revert to in-person participation at any time.

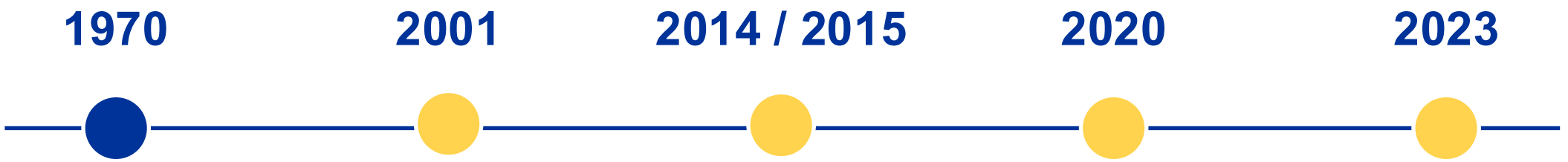
Effective remedies

- The person can challenge the ERPO in the issuing State and its recognition/execution in the executing State when their rights are affected;
- In case of technical failures, authorities shall cooperate to remedy the issues, if necessary suspending, postponing and repeating the hearing concerned

Victim support

Executing States must ensure victims retain access to emotional support throughout the hearing.

Videoconferencing in cross-border civil and commercial procedures: an overview



Hague Convention on taking evidence

Taking of evidence (witnesses, experts… parties?)

Technology neutral

Also non-EU (incl DK)

Taking of Evidence Regulation (EC) 1206/2001

Taking of evidence (witnesses, experts… parties?)

Technology neutral, but field in forms

EU except DK

EAPO (EU) 655/2014 + Amendment of Small Claims Regulation (EC) 861/2007

EAPO Art.9 – Taking of evidence incl. by VTC

SC Art. 8 – Oral hearing incl. VTC

Recast Taking of Evidence Regulation (EU) 2020/1783

Taking of evidence (witnesses, experts… parties?)

Dedicated provisions + forms

EU except DK

Digitalisation Regulation (EU) 2023/2844

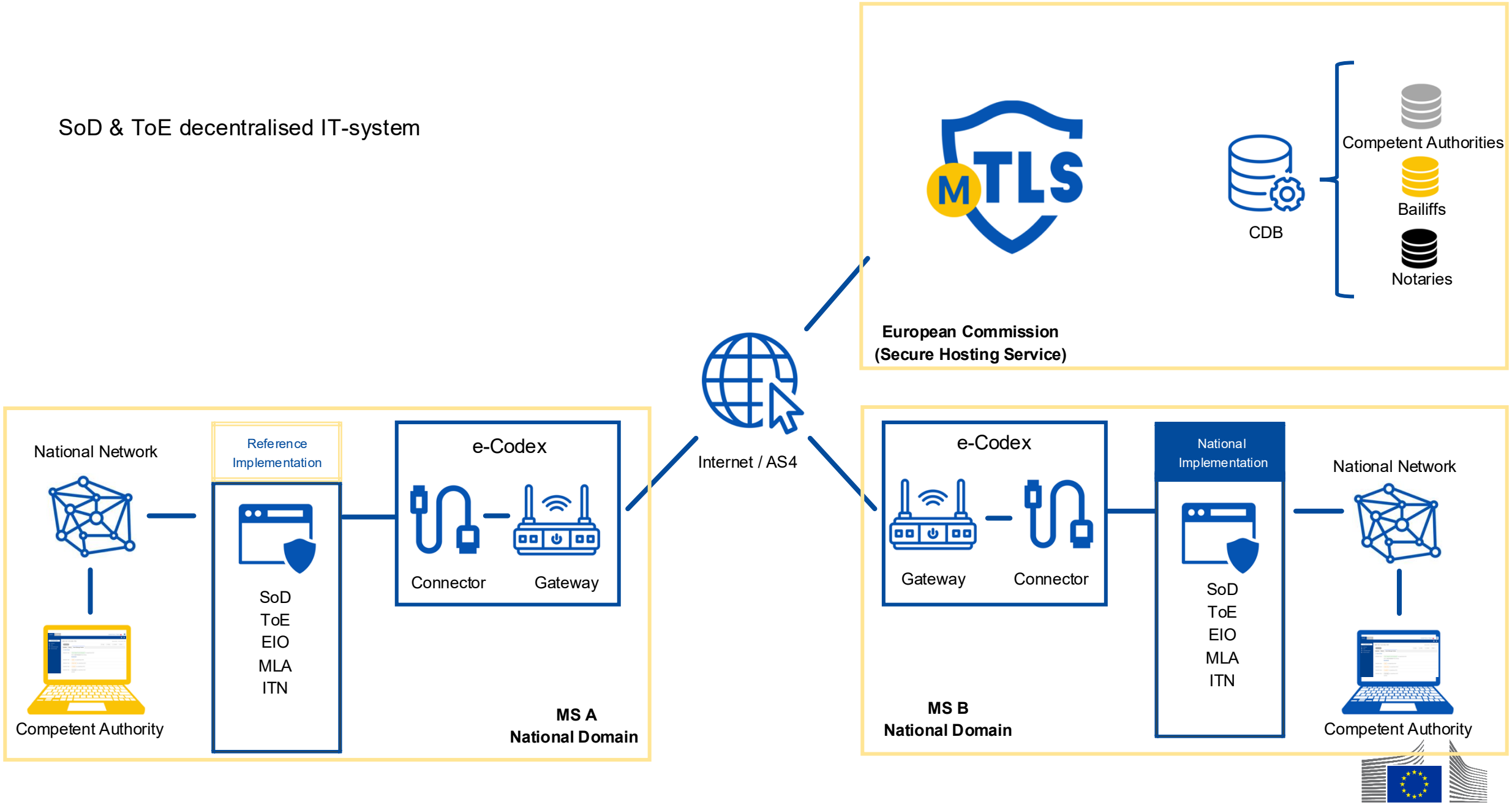
Art. 5 – Remote participation to a hearing

Parties and representatives

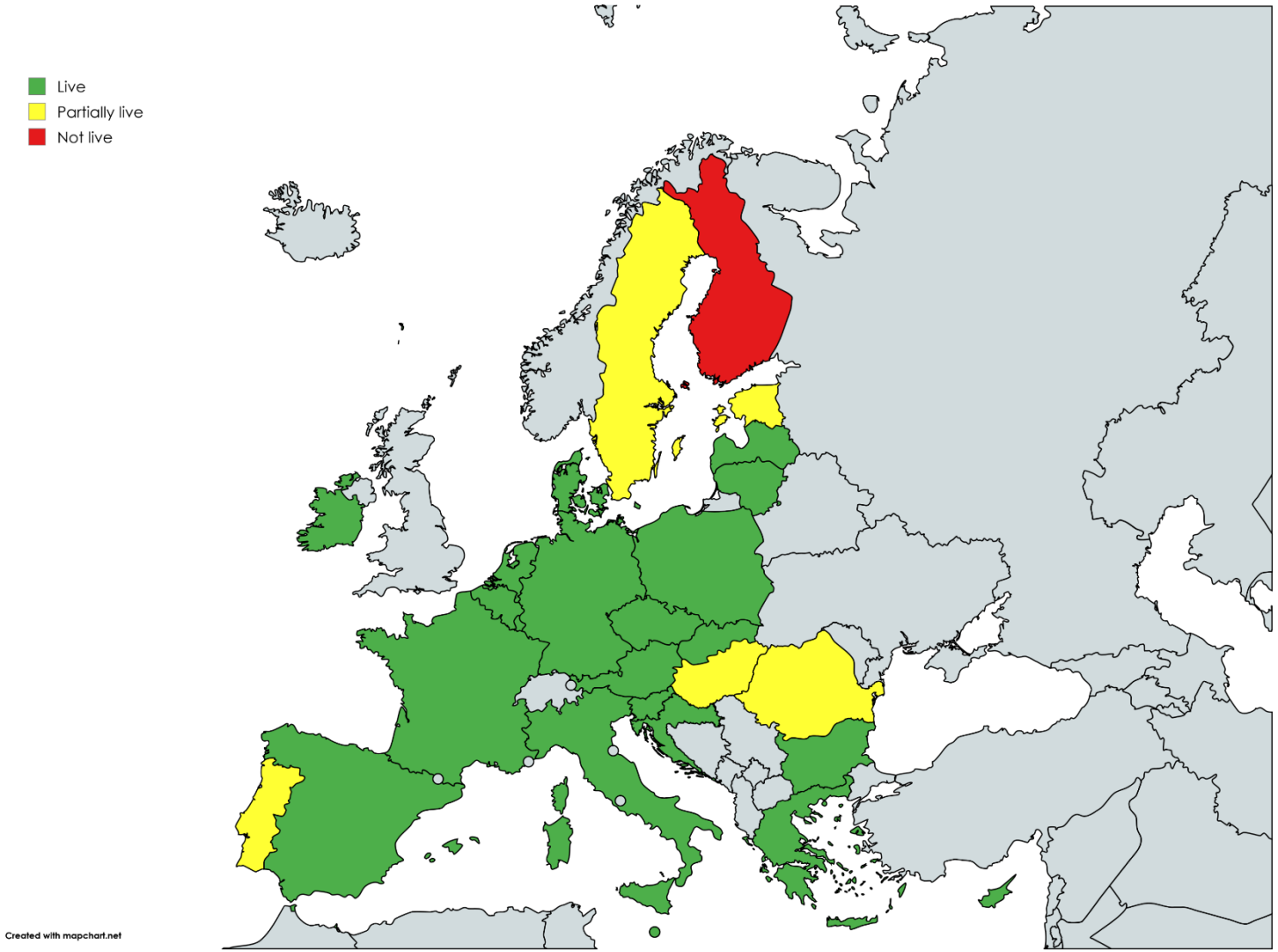
Taking of Evidence Regulation (2020/1783)

- civil or commercial matters in which the court of a Member State, in accordance with the law of that Member State, requests:
  - (a) the competent court of another Member State to take evidence; or
  - (b) to take evidence directly in another Member State.
- Does not apply to: where no judicial proceedings (commenced or contemplated)
- Territory – does not apply to Denmark
- Large definition of ‘court’
- CJEU: Optional nature

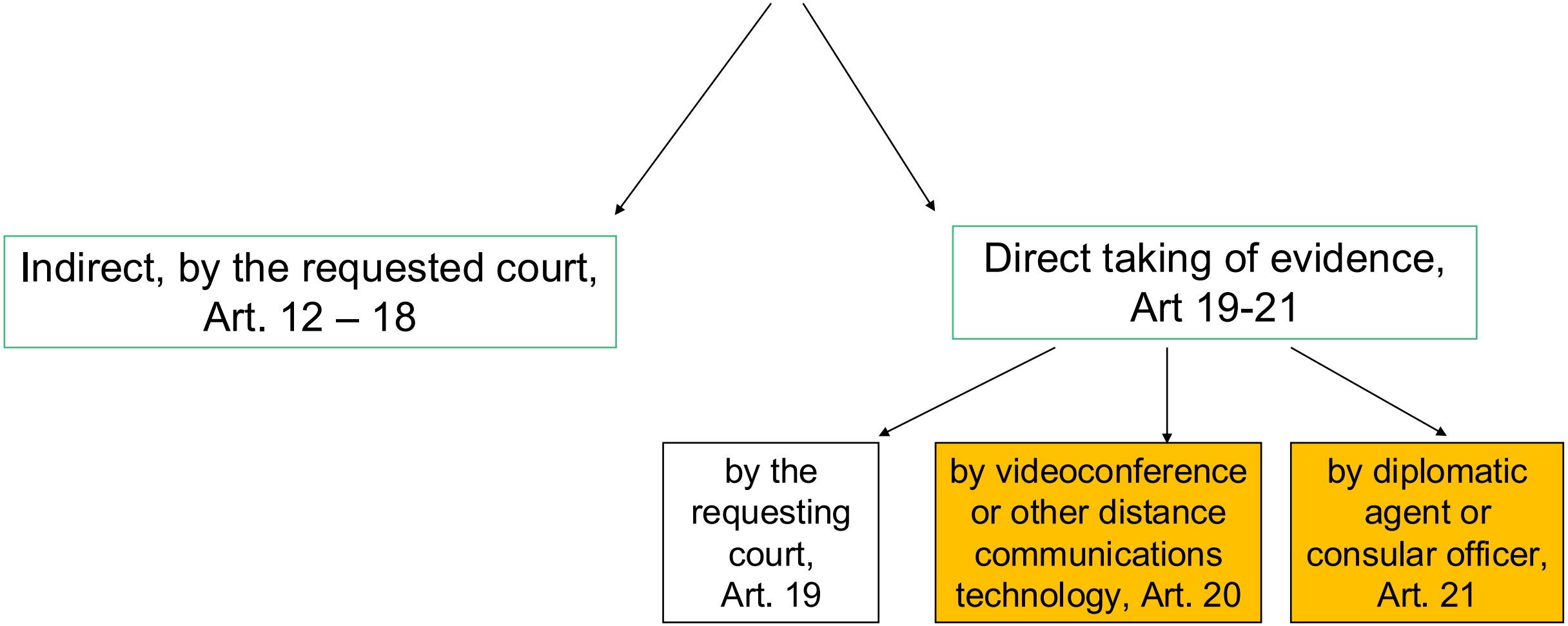
SoD & ToE decentralised IT-system



Status for SoD & ToE of December 2026



Taking evidence

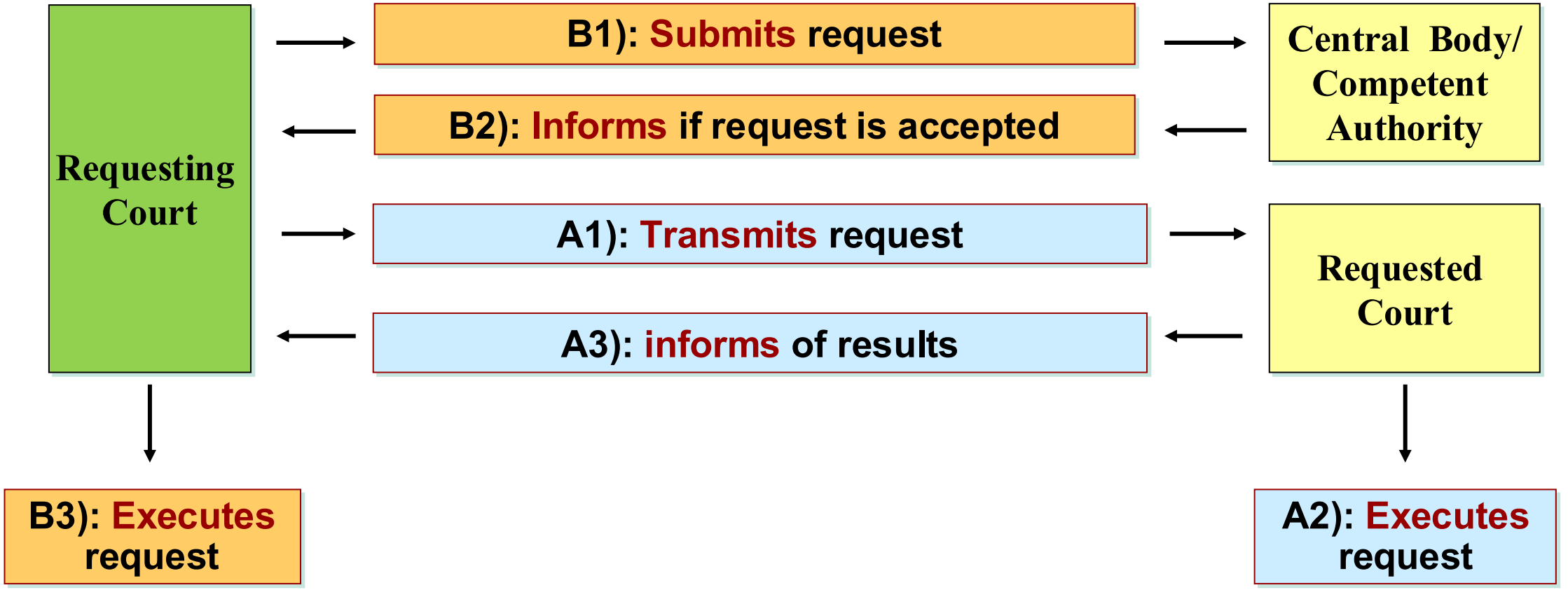


Indirect vs direct taking of evidence (1)

Taking of evidence

Indirect	Direct
By the requested court	By the requesting court
The court can use force if needed to get the person to attend	On a voluntary basis
Applicable law of the requested state	National law of the requesting court
Possible by VTC	**Possible by VTC**

Indirect vs direct taking of evidence (2)



Article 5 of the Digitalisation Regulation (1)

Upon request or on its own motion where a party or their representative is in another MS

May apply in purely domestic cases!

Large definition of **court**

Decision based on:

- availability of technology,
- opinion of parties,
- appropriateness of remote hearing

ToE vs Dig Reg:

What is the main aim of the hearing?

Applicable procedural rules: national law applies

- Procedure for initiating and conducting hearings through VTC,
- Need of recording or not – BUT if so, the parties need to be informed and, where provided for, of the possibility of them objecting to the recording,
- the appropriate method for exploring the opinions of the parties

Article 5 of the Digitalisation Regulation (2)

Link to be sent + technical assistance!

The technology should:

- allow authentication of the identity of the person,
- enable visual, audio and oral communication (not a mere phone call),
- meet applicable standards of protection of personal data, of confidentiality of communications and of data

A hearing conducted through VTC should not be refused **solely** on account of the non-existence of national rules governing the use of distance communication technology –

the most appropriate rules applicable under national law, such as rules on the taking of evidence, should apply *mutatis mutandis.*

Does not preclude persons assisting a party (such as lawyers) from attending the hearing through VTC in accordance with applicable national law

DigitalJustice@2030



Videoconferencing interoperability

- Action 8: The Commission will recommend voluntary, common EU-wide technical requirements for videoconferencing by the end of 2027.
- Action 9: In the context of the European Investigation Order Directive review, the Commission will seek to enable remote participation in criminal court hearings of suspects or accused persons from another Member State via videoconference, including the necessary procedural safeguards. The Commission will also assess the corresponding need to include rules to facilitate the remote participation of victims of crime as well as necessary safeguards, taking into account the outcome of the negotiations on the revision of the Victims' Rights Directive.
- Action 10: The Commission will study the feasibility and assess the costs and benefits of different options to overcome interoperability issues for cross-border videoconferencing in judicial proceedings by the end of 2027.

Thank you!



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WEBINAR

Video-conferencing and remote hearings in cross-border justice – what European lawyers need to know

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Alice Hamilton

FRA findings on the Fundamental Rights Benefits, Risks and Safeguards of Videoconferencing

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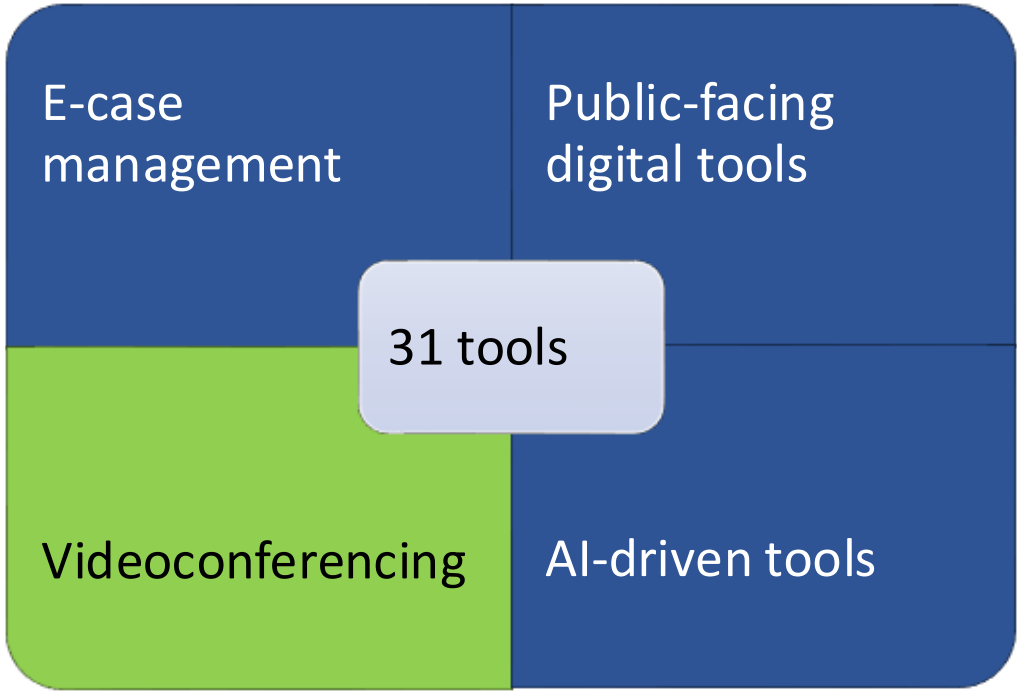
FRA's work on digitalisation of justice

- **Aim**: support legal practitioners in using digital tools to improve efficiency but also enhance access to justice and other rights, while feeding practical challenges and good practices into EU digital justice policy.

- **FRA's 'Digitalising justice' report, November 2025** - practical insights from practitioners & justice authorities on harnessing rights benefits and mitigating risks of digital tools.

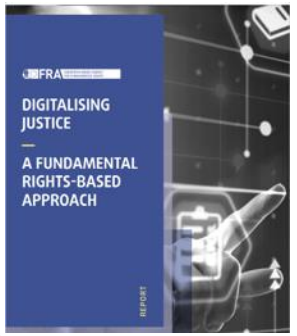
  - ❑ 31 digital tools covering 4 clusters in 7 Member States (covering criminal, civil and administrative justice).

  - ❑ **Methodology**: Desk research and 208 interviews (e.g. technical experts, justice practitioners (**including lawyers**), civil society).



Main report: https://fra.europa.eu/en/publication/2025/digitalisation-justice
FRANET country reports (for Austria, Estonia, France, Italy, Latvia, Poland and Portugal): https://fra.europa.eu/en/publication/2025/digitalisation-justice#country-related

FRA's 'Digitalising justice' report: practitioners' views



"I would like the digitalisation of the justice system to move in the right direction. I'd prefer it to take longer, but be done better."
(*Lawyer*)

"Digitalisation can make the [justice] system more efficient and speed up decisions. That would benefit everyone who turns to it to protect fundamental rights. But the risk is that poor digitalisation can instead make it harder to protect those rights."
(Judge)

Benefits to fundamental rights in remote proceedings

Potential benefits

- Better continuity and resilience of proceedings
- Reduced travel time and costs
- Easier participation in cross-border cases
- Protection from secondary victimisation for some victims and witnesses

Practitioners say:

When used appropriately and case-by-case, videoconferencing can strengthen rather than undermine fundamental rights.

From benefits and legal guarantees to practical realities

- **Legal basis:** EU law provides for videoconferencing in cross-border proceedings; domestic use remains subject to national procedural rules.
- **European case law:** Remote hearings are compatible with fair-trial rights, provided effective participation and access to legal assistance are guaranteed.
- **FRA findings**: some practitioner insights and concerns about practical impact on fundamental rights.

➢ **What can go wrong in practice?**

Risks to fundamental rights in remote proceedings

Fundamental rights (EU Charter) impacted	Practical risks (if safeguards weak or lacking)
Article 47 *– effective remedy and fair trial*	Reduced ability to assess credibility, non-verbal communication and equality of arms
Article 48 *– rights of defence*	Lack of confidential communication with legal counsel

'[A]s soon as it is related to the assessment of a person, the assessment of a person's abilities […] there should not be a videoconference. Generally, […] there must be this direct impression. […]' *Lawyer*

'I believe that … migrant interviews conducted online do not guarantee the ability to fully express oneself or fully understand the situations the judge is dealing with.' *Prosecutor*

Risks to fundamental rights in remote proceedings

Fundamental rights (EU Charter) impacted	Practical risks (if safeguards weak or lacking)
Articles 21, 24, 25, 26 *– non-discrimination and protection of vulnerable groups*	Digital exclusion, language barriers and inaccessible technology
Articles 7 and 8 *– privacy and data protection*	Commercial platforms, security vulnerabilities and unauthorised recording

Overall, FRA findings show

- **Videoconferencing is not just a technical tool; it is a legal and procedural choice. It can strengthen access to justice, but it can also undermine fundamental rights if rights' impacts are not considered/assessed.**

Fundamental rights assessments and safeguards

What does FRA say?

- **Address a current gap - assess fundamental rights impacts from the outset:** developers and deploying authorities should identify risks to fundamental rights. Involve/consult justice professionals, users and fundamental rights experts, and use existing data.

- **Use the assessment to identify safeguards:** determine and embed practical measures to prevent or mitigate risks throughout the entire videoconferencing lifecycle — before, during, and after the hearing.

Fundamental rights assessments and safeguards

Some examples of safeguards and actors involved :

Fundamental rights (EU Charter) impacted	Practical risks	Safeguards (& actors)
Article 47 *– effective remedy and fair trial (also Art 48 (in criminal proceedings)*	Reduced ability to assess credibility, non-verbal communication and equality of arms	• Prefer in-person hearings where direct assessment is essential and cannot be achieved remotely (*judge*) • Apply heightened scrutiny where a person is detained or faces a severe penalty (*judge*) • Set clear criteria for when remote hearings are suitable, while preserving judicial discretion (*Court / judicial governance body*)
Article 48 *– rights of defence (also Art 47 & Art 7 – respect for private life)*	Lack of confidential communication with legal counsel	• Secure confidential channel (*judge*) • Time and recesses for consultation (*court administration*) • Test the confidential channel with the client (*lawyer*) • Adjourn if confidentiality cannot be secured (*judge*)

Conclusions

- FRA research recognises the **benefits and overall value of videoconferencing**, based on practitioners' insights.
- But videoconferencing in court proceedings should be **rights-compliant by design and in practice**.
- **Format matters** – fundamental rights risks can arise from the hearing format, not only technical failure.
- For lawyers and other justice practitioners, the key question (including in cross-border settings) should not be: *"Can this hearing be held by videoconference?"* but rather ***"Can it be held by videoconference without weakening fundamental rights?"***
- The main challenge is not whether the technology exists, but if systems ensure *fairness, confidentiality, accessibility, equivalent participation across borders.*
- This is where fundamental rights assessments and resulting **safeguards come in – they are needed before, during and after the hearing.**

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Video-conferencing and remote hearings in cross-border justice – what European lawyers need to know

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Sebastian Leitner

SimpliVi project: Simplifying Cross-Border Judicial Videoconferencing in Europe

#TRAVAR2 Project Co-funded by the EU

Federal Ministry
Republic of Austria
Justice

SimpliVi

Funded by the
European Union.

bmj.gv.at

SimpliVi [sɪmplɪfʌɪ]

Simplifying Cross-Border Judicial Videoconferencing in Europe

Video-conferencing and remote hearings in cross-border justice – what European lawyers need to know
23 November 2026 - Webinar
Sebastian Leitner

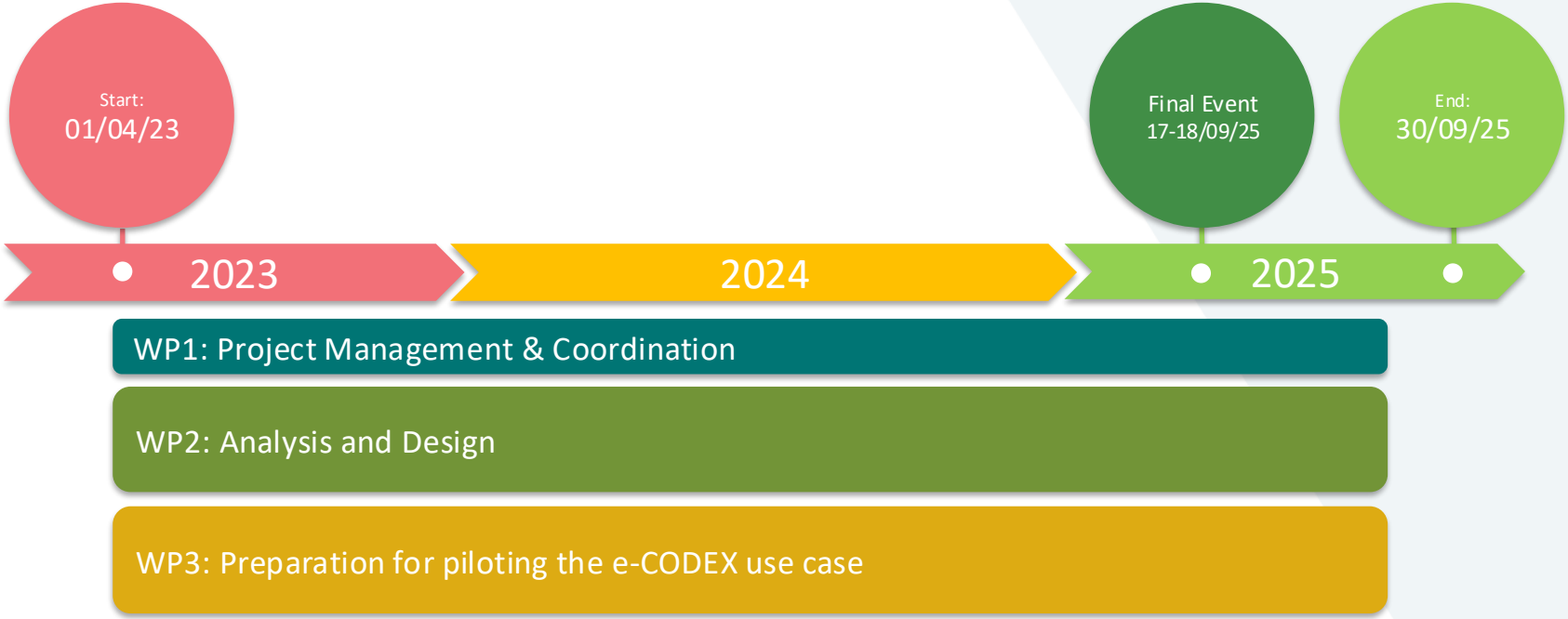
Needs

- Pandemic has shown the **increased need** for digitalisation, including VC
- Pandemic has significantly **increased the knowledge** and experience about VC
- Pandemic has led to **new solutions** from technical, organisational and legal aspects
- **Art 5 & 6 Digitalisation Regulation 2023/2844** establish a new legal basis for cross-border VC
- Setting up cross-border, judicial VCs is perceived as a cumbersome process
  - **Technical**: different standards, new technical solutions
  - **Organisational**: setup of a VC, support before and during a VC, lack of experience, language barrier
  - **Legal**: different legal constraints per country and per legal domain

Project Objectives

1. Providing hands-on **recommendations and best practises**
2. Drafting a **standard workflow** for the setup of a cross-border videoconference, including standardised forms
3. Supporting this workflow with an **e-CODEX implementation**
4. Drafting **recommendations for the European Court Database(s)** for additional attributes for cross-border videoconferences
5. **Promotion** of project results to increase their adoption in national judicial administration organisations

Timeline


Start:
01/04/23
Final Event
17-18/09/25
End:
30/09/25
2023
2024
2025
WP1: Project Management & Coordination
WP2: Analysis and Design
WP3: Preparation for piloting the e-CODEX use case

Project Partners

Austrian Federal Ministry of Justice	Austria
Aristotle University of Thessaloniki	Greece
Court of Appeal Wrocław	Poland
Ministry of Justice of North Rhine-Westphalia	Germany
Ministerio de Justicia	Spain
Portuguese Judicial High Council	Portugal



Statistics

12

Interviews or questionnaires

7

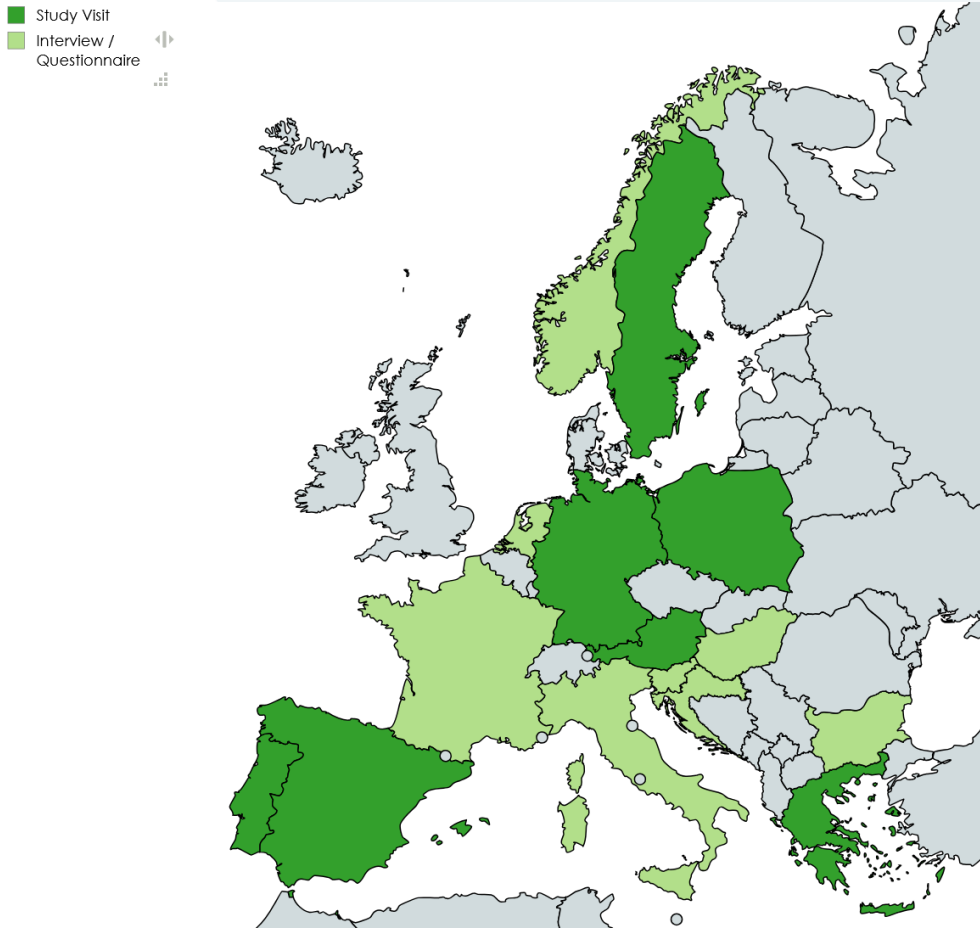
Countries visited

2075

Pages of desk research

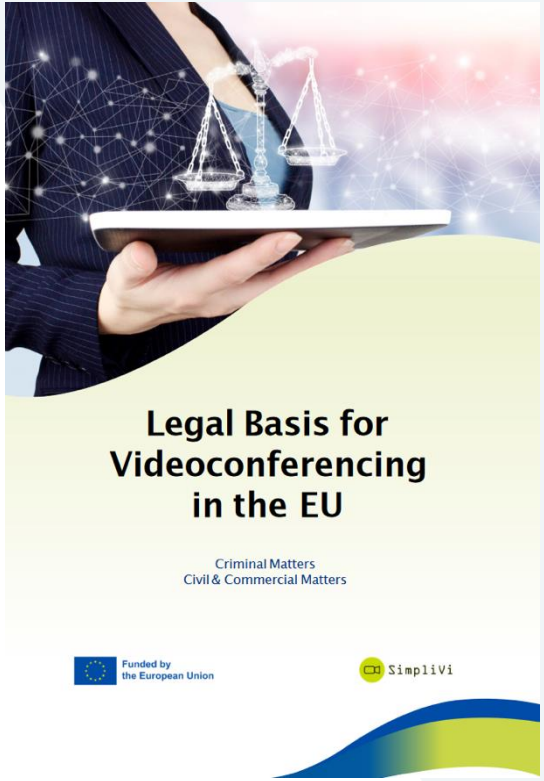
Interviews & Study Visits

- 30/08/2023 – Stockholm, Sweden: Study Visit
- 31/08/2023 – Jönköping, Sweden: Study Visit
- 18/10/2023 – Brazil: Interview
- 07/11/2023 – Croatia: Interview
- 15/11/2023 – Athens, Greece: Study Visit
- 23/11/2023 – Italy: Interview
- 29/11/2023 – Netherlands: Interview
- 14/12/2023 – Hungary: Interview
- 12/02/2024 – Bulgaria: Questionnaire
- 21/03/2024 – Düsseldorf, Germany: Study Visit
- 10/04/2024 – Wrocław, Poland: Study Visit
- 30/04/2024 – Norway: Interview
- 23/05/2024 – Lisbon, Portugal: Study Visit
- 07/08/2024 – Canada: Interview
- 11/09/2024 – Madrid, Spain: Study Visit
- 11/10/2024 – France: Questionnaire
- 25/10/2024 – Slovenia: Interview
- 2025 – Additional interviews with EJN contact points
- 25/6/2025 – Vienna, Austria: Study Visit



Project Results: Overview Legal Basis

- Leaflet **“Legal Basis for Videoconferencing in the EU”**
- **Quick overview** of legal basis for videoconferencing
  - European Investigation Order - Directive 2014/41/EU
  - Taking of Evidence - Regulation 2020/1783
  - Digitalisation Regulation - Regulation 2023/2844
- Covering: **When? Who? Conditions? How? Legal Aspects?**
- https://www.simplivi.eu/legalbasis



Project Results: Consolidation Document

- Purpose:
  - Consolidate vast amount of valuable input
  - Basis for subsequent Deliverables
- Still extensive document: 39 pages of condensed content
- Includes key findings per country
- https://www.simplivi.eu/consolidation

Findings

- **Broad difference** in prerequisites between countries: legal, technical and organisational
- **Positive impact** of the pandemic
  - Level of experience
  - Mindset / attitude of practitioners
- **National legal basis has been adapted** to the situation after the pandemic:
  - Expansion of videoconferencing options
  - Some expansive rules for the pandemic have lapsed
- **Clear focus on national VCs**; cross-border VC is a low-priority use case in most visited countries

Challenges

1/2

- **Legal aspects**
  - Differences of national procedural law obstacle in cross-border cases – admissibility of evidence? -> uncertainty might discourage beforehand
  - Issue of sovereignty for direct VC -> often pragmatic solutions
- **Practical issues**
  - Do not know who to contact, language barrier, scheduling
  - Complicated technical solutions (e.g. usability, tech support) demotivate users

Challenges

2/2

- **Few technical issues**
  - Especially with national judicial videoconferencing
  - Cross-border judicial videoconferencing: interoperability is crucial
- **Relevance** of cross-border videoconferencing?
  - Increase due to new legal basis?
- **Lack of statistics**
  - For judicial videoconferencing in general
  - For cross-border videoconferencing in particular

Project Results: Deliverable D2.1

- **“Recommendations for simplifying crossborder judicial videoconferencing”**
- Main output of SimpliVi
  - Selection of practical recommendations and best practises
  - Complete list of practical recommendations and best practises in annex
- Technical, Organizational and Legal aspects
- Target Groups: Practitioners, Policy Makers, Administration
- https://www.simplivi.eu/recommendations

Share the recommendations and best practises with your colleagues!

SimpliVi Recommendations - Examples 1/3

Legal

- R-L-026: Flexible legal basis
- R-L-027: Comprehensive Legal Basis
- R-L-028: Regulate technical matters in the appropriate legal form
- R-L-029: Expand Legal Basis for Direct Cross-Border VC without authorization

SimpliVi Recommendations - Examples 2/3

Technical

- R-T-002: Well-selected investment in videoconferencing technology
- R-T-023: Usability of your videoconferencing solution
- R-T-018: Central interoperability hub
- R-T-025: e-CODEX implementation for videoconferencing details

SimpliVi Recommendations - Examples 3/3

Organisational

- R-O-003: Continuous improvement of the videoconferencing setup
- R-O-006: Low-threshold technical support
- R-O-019: Statistics
- R-O-010: Use available information about videoconferencing framework
- R-O-009: Time zones
- R-O-016: Upfront testing
- R-O-020: Sufficient time to process videoconference requests

Best Practises - Examples

- BP-O-002: Direct taking of evidence
- BP-O-006: Recording of hearings replacing written minutes
- BP-T-008: Electronic identification of participants
- BP-T-009: Integration of videoconferencing systems
- BP-L-010: Step-by-step approach

Project Results: Deliverable D2.2

- **“Business collaboration for setting up crossborder judicial videoconferencing”**
- Analysis of **existing workflows** based on the legal acts
- **Integration** of videoconferencing aspects in the workflows
- Gap analysis: information needs for videoconferencing vs. existing forms
- **Proposal for a standardised videoconferencing workflow and form**
- Basis for a subsequent **e-CODEX implementation**
- https://www.simplivi.eu/workflows

Project Results: Deliverable D2.3

- **“Requirements for adapting European Court Databases”**
- Recommendations to add certain data for videoconferencing in the CDBs
- Derived from general SimpliVi recommendations
- To be provided to the European Commission as the CDB owner

Project Results: Deliverable D3.2

- **“e-CODEX implementation”**
- Integration in existing use cases instead of new use case
- 3 different proposals for possible e-CODEX implementation
- To be provided to eu-LISA as e-CODEX owner for further consideration

Project Results: SimpliVi Conference

- 17 & 18 September 2025, Wrocław, Poland
- ~100 participants (on-site and remote)
- Bring the European judicial **videoconferencing community** together
- Benefit from **experiences** in other Member States and organisations
- Discuss recent **legal, organisational and technical developments**
- Learn about **SimpliVi project results**
- https://www.simplivi.eu/node/69


Coffee break

Reception & Sustainability of Project Results after the project end

- Results have been presented at the **VC4 Justice - Expert Talk** - 12 December 2025, Brussels
- Results have been taken into account during discussions on the topic in the **e-Justice WP** of the Council
- Results have been used as a basis for the discussions of the ECs **High-Level Fora on Justice for Growth and on the Future of EU Criminal Justice** (March – November 2025)

  ➔ EC **DigitalJustice@2030 Strategy** builds on the discussions held in these High-Level Fora

  ➔ EC plans a study to support VC topics of the Strategy – **specifications for this study** rely also extensively on the SimpliVi results

WEBINAR

Video-conferencing and remote hearings in cross-border justice – what European lawyers need to know

23 NOVEMBER 2026, 10:00-13:00 CET



Monika Szwarc

The lawyer's perspective

#TRAVAR2 Project Co-funded by the EU

AGENDA

1. Videoconference and its uses in court proceedings
2. Standards of human rights
3. Procedures and tools in cross-border proceedings (civil and criminal matters)
4. Challenges from the perspective of a lawyer
5. The CCBE's minimum standards
6. Perspective of defence

Videoconference and its uses

‘videoconferencing’ means audio-visual transmission technology that allows two-way and simultaneous communication of image and sound, thereby enabling visual, audio and oral interaction » (Art. 2(6) of Reg. 2023/2844)

DIFFERENT USES

- court proceedings that take place entirely online, where the court and the parties meet only via tools of remote communications ; **videoconferencing for taking evidence and participation; the court room is in online environment**;
- court proceedings take place in the court room, with some elements of remote hearings of witnessess, experts and suspect/accused; **for evidence purposes;**
- court proceedings take place in one Member State in the court room, but **participation online in the court proceedings** is enabled to some parties, the suspect/accused or other party (e.i. civil party) cannot participate in person in the proceedings (detention, residence in another MS than the MS where the court proceedings take place)

! Enhanced scrutiny of possible use of videoconferencing in criminal matters

Standards of human rights

EUROPEAN CONVENTION OF HUMAN RIGHTS:

Art. 5 (liberty), **Art. 6** (fair trial, effective assistance of a lawyer, follow and test evidence in real time, interpretation), **Art. 8** (privacy and secrecy in contact with the counsel);

EU LAW, INL. CHARTER OF FUNDAMENTAL RIGHTS:

Art. 6 (liberty) **Art. 7** (privacy), **Art. 47** (fair trial; civil and criminal proceedings), **48, 49, 50** (criminal proceedings) of the CHR;

Procedural rights directives (in criminal matters): interpretation (Dir. 2010/64); information (Dir. 2012/13); access to a lawyer (Dir. 2013/48); presumption of innocence and presence at the trial (Dir. 2016/343); protection of children (2016/800), legal aid (2016/1919) ;

Confidential lawyer-client communication and **the right to an effective remedy** is still valid in proceedings with the use of the technology

! Digitalisation creates no new rights – only new ways to infringe them.

! Confrontation of two requirements: efficiency of the proceedings and preserving the core of the trial (the rights)

European Court of Human Rights

2006 **Marcello Viola v. Italy** **no. 45106/04**	• recourse to the videoconference in any given case must **serve a legitimate aim**; and • the arrangements for the giving of evidence via videoconference must be compatible with the **requirements of respect for due process**, as laid down in Article 6 of the Convention; • **effective participation** is crucial; No violation of Art. 6 ECHR
2010 **Sakhanowskiy v. Russia {GC] no. 21272/03**	it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and that effective and confidential communication with a lawyer is provided for; Violation of Art. 6 para 1 in conjunction with para 3(c), because: • no confidential communication between the client and the counsel before the hearing; • no sufficient privacy during the videoconference;
2021 **Dijkhuizen v. the Nederlands** **No. 61591/16**	• video participation may remain effective where physical presence is difficult; • Be aware that when a suspect/accused is given opportunity to participate via videolink and refuses, it can be recognised as the waiver to participate in the hearing (it was the appeal hearing); No violation of Art. 6 ECHR
2021 **Jallow v. Norway** **No. 36516/19**	Application of established rules to family-law case No violation of Art. 6 ECHR
2025 **Kucera v. Austria** **No. 13810/22**	Even the fully remote hearing is compatible with Art. 6 ECHR when the well established requirement of fair trial are respected and effective participation ensured No violation of Art. 6 ECHR

Procedures and tools – civil proceedings

Regulation (EU) 2020/1783 – the taking of evidence in civil or commercial matters (taking of evidence)

- For taking of evidence in cross-border cases - promotes videoconferencing; teleconferencing and other distance communication technologies (including e-CODEX)
- Videoconference – a requested court may use videoconferencing for witness examination; a court may directly take evidence in another MS via videoconference; technical information exchanged in advance

Art. 8 of Regulation on European Small Claims Procedure;

Art.9 of Regulation establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

Regulation 2023/2844

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

What is taken into account

- the availability of such technology;
- the opinion of the parties to the proceedings on the use of such technology; and
- the appropriateness of the use of such technology in the specific circumstances of the case.

! Resposibility of the competent court to ensure access to the videoconference for the hearing for the parties and their representatives, including persons with disabilities,

! Procedure for hearings through videoconferencing or other distance communication technology – governed by the national law of the Member State conducting the hearing

Procedures and tools – criminal matters

I. EUROPEAN INVESTIGATIVE ORDER (DIR. 2014/41) - for taking evidence only

II. REGULATION 2023/2844

- **what proceedings:** hearing via videoconference only in 6 crossborder procedures (mutual recognition);
- **when:** MS requests a hearing of a suspect/ accused/ convicted, staying in another MS and the circumstances justify the use of technology;
- **technical requirements:** Videoconferencing must verify the identity of persons, ensure visual, oral and audio communication (two-ways and simultaneous), enable effective participation; comply with data protection standards; ensure confidentiality of communications and data security;
- A mere telephone call is not sufficient for an oral hearing
- **consen**t of the suspect/accused/convicted (and affected person under Reg. 2018/1805) **is the rule:** given voluntarily and unequivocally; prior to the hearing; preceded by full information about rights and procedure; preceded by the possibility of seeking legal advice; recorded if national law allows it
- **derogation from the requirement of consent:** only for genuine, present or foreseeable threats to public security or health; strictly necessary

! Directness, immediacy and physical presence in the court room is central to the criminal proceedings

! Proposal for European Remote Participation Order and amending Directive on European Investigative Order [COM (2026) 313)

Court of Justice of European Union relevant tools

2021 **C-852/19 Gavanozov II**	Art. 6, 14, 24(7) of Dir. 2014/41; Art. 47 CFR European Investigation order involving a witness hearing by video cannot be issued wher the issuing Member State does not provide for effective remedy against its substantive grounds
2024 **C-760/22 FP and others**	Art. 8(1) of Dir. 2016/343
2025 **C-325/24 Bissilli**	Art. 3 and 24(2)(b) of Dir. 2014/41 The EIO may support hearing of the accused by video at trial if the evidential aim is genuine and the executing authority makes and individual assessment
Strinotto	Pending

Challenges

- Confidential communication
- Effective participation
- Equality of arms
- Witness examination
- Informed consent
- Interpretation
- Protection of privacy and data
- Technical reliability

The CCBE's minimum standard

- Videoconference as exception
- Consent
- Lawyer in custody
- Confidentiality of lawyer-client communication
- Face-to-face examination of witnesses
- Technical standards
- Training

Perspective of defence

ASK THE RIGHT QUESTIONS AND STAY ATTENTIVE TO PROCEDURAL AND TECHNICAL ASPECTS AT EACH STAGE OF THE PROCEDURE

- make sure that you know exactly the applicable law (EU law or EU Law with national law);
- make sure that you have updated state of law (new EU instruments ahead);
- pay attention to the stage of the procedure (the closer the conviction the more serious consequences of procedural or technical flaws);
- remember that in some cases the physical appearance is decisive (confrotation with witnesses, examining the expert, etc.); check whether the consent of interested person in conformity with legal conditions;
- protection of confidentiality: secure a confidential channel with the client; decision where the counsel stands in court or place of detention
- recording technical failures is important for the future (frozen image, problems with sound, no contact with counsel);
- remember that 'effective participation is crucial in particular in criminal proceedings, so think of challenging unlawful or unsafe practices (use of 47 CFR and procedural directives (in criminal matters);

! Competence in digital tools is part of professional diligence