**Discussion paper for the second technical meeting** **ahead of the second plenary of the High-Level Forum on the Future of EU Criminal Justice**

**28 April 2025**

**Topic:**  **Digitalisation of cross-border judicial proceedings: cross-border videoconferencing**

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This topic will be discussed in parallel in both the High-Level Forum on the Future of EU Criminal Justice and the High-Level Forum on Justice for Growth to have in-depth discussions both from the criminal law and civil law perspectives respectively. Within the former, separate discussions started under the judicial cooperation and mutual recognition strand in relation to the potential introduction of new rules allowing for remote participation of suspects and accused persons in criminal court hearings from another Member State, and the associated procedural safeguards. This paper aims to address videoconferencing from a horizontal perspective.

1. General background

The purpose of this document, in line with the Council e-Justice Strategy 2024-2028 ([[1]](#footnote-2)), is to prepare a discussion on the challenges and the possible way forward to enhance the efficiency of the use of videoconferencing in judicial proceedings in civil, commercial and criminal matters with cross-border implications. In view of enhancing and facilitating the use of videoconferencing, the paper looks at the existing rules set out in the Regulations on Taking of Evidence in civil and commercial matters ([[2]](#footnote-3)), Small Claims ([[3]](#footnote-4)), the European Account Preservation Order ([[4]](#footnote-5)), the European Investigation Order (EIO) Directive ([[5]](#footnote-6)), and the Digitalisation Regulation ([[6]](#footnote-7)).

Videoconferencing facilitates the participation of parties located in different Member States in cross-border judicial proceedings. The findings of the SimpliVi ([[7]](#footnote-8)) project, involving a number of Member States, stress that remote participation in hearings saves time and travel costs for parties from different Member States and improves procedural efficiency by reducing the time required for hearings which is especially useful in case of large court case backlogs. Therefore, videoconferencing improves access to justice for businesses and individuals, and it facilitates the work of justice professionals. The use of videoconferencing – in particular in the context of cross-border judicial proceedings – reduces costs of the proceedings in general and such savings benefit both the parties and the courts. Videoconferencing as part of the overall digitalisation of justice process thus has the potential to make justice systems more efficient. Effective justice systems have a positive impact on economic growth and investment stability.

As evidenced during the pandemic, videoconferencing also ensures the continuity of judicial processes in case of crises and therefore tangibly contributes to the resilience of justice systems.

Finally, while acknowledging that the use of videoconferencing may give rise to a number of challenges (see section 3 below), the results of the SimpliVi project also highlight that videoconferencing may create more favourable conditions for disadvantaged groups to be heard by the court in situations where participation in person may be challenging for a variety of reasons (e.g. when the use of videoconferencing may allow hearings in a safe-setting).

1. Relevant EU legislation and policy documents on the use of videoconferencing
2. **Policy context**

The Commission’s 2020 Communication on Digitalisation of justice in the European Union – A toolbox of opportunities ([[8]](#footnote-9)), encouraged Member States to use videoconferencing in judicial proceedings. The Council's e-Justice Strategy for 2024-2028 states that Member States should have the possibility to seek funding for actions related to the digitalisation of justice through the various EUfinancial instruments.

The Recovery and Resilience Facility supports reforms and investments, among others, for the digital transition. One Member State decided to use it to increase the number of equipped videoconferencing rooms for the judiciary. However, while national plans under the Recovery and Resilience Facility cover five years, they were designed in 2020/2021 and their scope cannot be changed. The Recovery and Resilience Facility therefore would not allow to respond to recurrent and emerging needs in the quickly evolving area of digitalisation of justice.

Under the Justice programme, Member States can apply for funding on digitalisation of justice to the extent that there is a cross-border aspect, or if the project aims to connect Member States to databases/IT systems established at EU level. For instance, the SimpliVi project is funded through this Programme. Thus, the Justice programme focuses only on a limited scope of projects; it cannot be used either to finance purely national digitalisation of justice projects or to acquire hardware/software. Moreover, its budget is very limited.

The Digital Europe Programme funds strategic investments to deploy pan-European digital capacities and infrastructures. While it is for instance used by the Commission for developing the necessary IT tools required by the Digitalisation Regulation, it does not offer (under its Specific Objective 5) financing opportunities for Member States.

The Technical Support Instrument (TSI) assists EU Member States in designing and implementing technical and procedural reforms, without co-financing by the Member States. It covers also the digitalisation of national justice systems. The Technical Support Instrument can however not be used to acquire hardware/software. The Technical Support Instrument can be used for multi-country projects on digitalisation of national justice systems including videoconferencing, e.g. projects related to identification of parties, development of secure communication channel for lawyer-client communication, outlining cybersecurity measures, developing of requirements for text-to-speech and speech-to-text standards, etc.

1. **Current EU rules on the use of videoconferencing**

The Digitalisation Regulation provides a legal basis for cross-border videoconferencing in civil and commercial matters for the purposes of hearing the parties to the proceedings, and in certain instances of cross-border judicial cooperation procedures in criminal matters for the hearing of a suspect or an accused or convicted person, or an affected person.

Specifically, Article 5(1) provides for the possibility of participation to a hearing remotely in proceedings in civil and commercial matters where one of the parties or the representative is present in another Member State. Similarly, Article 6(2) provides for the hearing of a suspect or an accused or convicted person, or an affected person, but limited to certain hearings in the context of judicial cooperation procedures under the six EU instruments listed under Article 6(1)[[9]](#footnote-10)). The corresponding recitals clarify that the rules under that Regulation should not apply to hearings through videoconferencing or other distance communication technology for the purposes of taking of evidence or of holding a trial which could result in a decision on the guilt or innocence of a suspect or an accused person in criminal matters. The respective Recitals moreover not only clarify how the rules should apply but also show the intention of the EU legislator to make the use of videoconferencing effective and seamless.

In civil and commercial matters, the use of videoconferencing for the purposes of hearing the parties is also foreseen as a possibility under the Small Claims and the European Account Preservation Order procedures. As regards the examination of parties, witnesses or experts for the purposes of taking of evidence, the Taking of Evidence Regulation in civil and commercial matters provides for the possibility to do so through videoconferencing where the relevant person is located in a Member State different from the forum Member State. The use of videoconferencing for the purposes of taking of evidence is also foreseen as a possibility under the European Account Preservation Order.

In criminal matters, the EIO Directive provides for hearing by videoconference or other audiovisual transmission of a witness, or expert, suspect or accused person by the competent authorities for the purpose of obtaining evidence through videoconferencing or other audiovisual transmission.

Apart from the rules in its Articles 5 and 6, the Digitalisation Regulation relies on national law as regards the procedure for initiating and conducting videoconferencing (Articles 5(4), 6(9) and Recitals 36 and 42 Digitalisation Regulation). However, the non-existence of national rules on videoconferencing should not be used as a ground for refusing videoconferencing (Recital 33).

The Digitalisation Regulation acknowledges and strengthens, but does not affect, existing procedural guarantees in criminal matters, such as the right of access to a lawyer. Article 6(2) and (5) and Recitals 46 and 55 clarify that the competent authorities should ensure that communication between the suspect, the accused or convicted person or the affected person and their lawyer, both immediately before and during the hearing, is confidential and all procedural rights remain unaffected by the Regulation.

The intention of the legislator to apply similar safeguards to hearings via videoconferencing as in in-person hearings is also highlighted by the clarifications that the right to interpretation is not affected by the Regulation and that videoconferencing should allow for the use of interpretation (Recitals 34 and 55 Digitalisation Regulation).

The recording of the hearing is subject to national law for both civil/commercial and criminal matters (Articles 5(3) and 6(7) Digitalisation Regulation). Member States need to ensure that recordings are made and stored in a secure manner and not publicly disseminated. In civil and commercial matters, where national law provides for recording of the hearing, the parties should be informed of those provisions, and, where provided for, of the possibility for them to object to the recording (Recital 36 Digitalisation Regulation).

The Member States’ notification under Article 17 Digitalisation Regulation allowed to identify some topics which are regulated similarly in some Member States for civil, commercial and criminal matters in the national provisions on videoconferencing. These include for example: (i) ensuring the lawyer-client confidentiality before and during the videoconference; (ii) access to videoconferencing for the parties and their representatives; (iii) identification and authentication of parties and (iv) the possibility for the parties to ask questions and otherwise meaningfully participate in the hearing.

1. **Interoperability and data protection**

The existing EU legislation does not govern the interoperability of the videoconferencing tools used by the Member States. As regards data protection, the Digitalisation Regulation clarifies, in Recital 32 thereof, that the videoconferencing technology used should meet applicable standards for the protection of personal data, of the confidentiality of communications and of data security. The videoconferencing tool used should also allow for identification of the persons to be heard.

1. **Safeguards for the support of vulnerable persons, people with disabilities**

The participation of persons with disabilities, vulnerable persons or children should be made possible, according to Articles 5(2), 6(3) and 6(6) and Recitals 10, 29, 38, 39 and 47 Digitalisation Regulation. Accessibility should be guaranteed for everyone, and the competent authorities will need to assist and organise technical tests before the hearing, if necessary, taking into account the specific needs of the persons concerned (Recital 38). Access to the necessary infrastructure to use videoconferencing should also be ensured by the authorities (Recitals 38 and 47 thereof). Special emphasis is put on hearing of children (Recital 39, Article 6(6) Digitalisation Regulation). In particular in criminal matters, Article 6(6) Digitalisation Regulation requires that before deciding on hearing of a child the competent authority should take into account the best interest of the child and that the holders of parental responsibility or another appropriate adult are informed promptly.

1. Training

According to Article 11(2) and Recital 12 Digitalisation Regulation, the Commission shall ensure that the training of justice professionals in the efficient use of the decentralised IT system is among the training priorities supported by the EU.

According to Article 11(1) and Recital 12 Digitalisation Regulation, Member States should ensure that training is offered to all justice professionals concerned, including prosecutors, judges and administrative staff and competent authorities, to enable them to efficiently address any challenges that might arise during proceedings or hearings held via videoconferencing.

In its e-Justice Strategy, the Council also called for promoting digital skills of justice professionals through training. In its Conclusions on the use of AI in the field of justice ([[10]](#footnote-11)), the Council invites national authorities or bodies responsible for judicial training to take into account the need for training and empowering justice professionals to cope with the digitalisation of justice systems and calls on Member States as regards training for justice professionals and administrative staff of judicial authorities to improve the effective use of IT tools to promote the efficiency of justice systems. This means that - besides the EU funding for training required in Article 11(2) Digitalisation Regulation - Member States shall take the necessary steps themselves in order to improve the digital skills of the relevant justice professionals.

1. **Potential challenges for cross-border videoconferencing**

Different data collection exercises ([[11]](#footnote-12)) show challenges and difficulties for the use of videoconferencing, including in cross-border situations.

1. Lack of videoconferencing technology

A survey of the European Criminal Bar Association ([[12]](#footnote-13)) (ECBA) highlights that appropriate technology for videoconferencing is often lacking in courts and disruptions often arise from outdated or insufficient equipment and poor connection quality. The survey mentions Member States, where the law permits the use of videoconferencing, but where the necessary infrastructure of the relevant authorities is often not available or where poor internet connections during hearings often result in delays and miscommunication, sometimes rendering hearings ineffective. These problems have also been confirmed by the SimpliVi Project.

Such technical issues can also adversely impact the effective exercise of the rights of the parties to the proceedings. Both the European Criminal Bar Association survey and the SimpliVi Project mention a number of Member States, where legislation allows for the possibility of holding remote hearings but where the technical infrastructure of the relevant authorities is insufficient and the equipment in the courts does not meet the standards required for the effective conduct of hearings by videoconferencing in the situations provided under EU law.

1. Constraints and differences in the use of videoconferencing

The notifications received by the Commission in 2024 from the Member States in accordance with Article 17 Digitalisation Regulation and the findings of the SimpliVi Project provide examples of different constraints on the use of videoconferencing in Member States. The information gathered reflects the current situation, i.e. national regulation prior to the entry into application of Articles 5 and 6 Digitalisation Regulation. National rules or practice may change after the date of application of Articles 5 and 6 Digitalisation Regulation on 1 May 2025.

For instance, one Member State does not allow hearing of witnesses even in domestic civil cases by videoconferencing. If the witness is unable to travel or if transport cannot be provided, it would be impossible to order a remote hearing, both in domestic or cross-border matters. In another Member State, the parties will not be able to attend the hearing remotely, if they need an interpreter. The SimpliVi Project emphasises the importance of interpretation especially in cross-border videoconferences.

The SimpliVi Project points to the advantages of audio/visual recording of hearings, for instance points to one Member State where a robust recording system is in place allowing the recording to automatically be integrated into an electronic judicial file with full legal validity. However, the audio/visual recording of the hearing, notably in the context of hearings by videoconferencing, is another issue that is regulated differently in Member States. For instance, in the case of three Member States the audio/visual recording of the hearing in civil cases is optional, while in case of seven Member States the audio/visual recording of the hearing is mandatory.

1. Interoperability and data protection

The SimpliVi Project points to interoperability as a concrete issue for cross-border videoconferencing. Member States often use different platforms for videoconferencing. The most used software is Teams, Cisco, Skype or Polycom, but there is often a problem when Member States use different software that cannot interconnect with each other. This is particularly important in cases, for instance in criminal matters, where videoconferencing is organised between two competent authorities. At the moment there is no justice-adapted or pan-European videoconferencing solution for cross-border court hearings in the EU.

Another problem, pointed out by the Council of Bars and Law Societies of Europe (CCBE) ([[13]](#footnote-14)), with the software solutions used by Members States is that in many cases third-party products are being used, which could entail processing of personal data by third parties. It is often not clear who the data controller is, where the data is stored, what data is collected and how it is processed. The SimpliVi Project underlines in this context that confidentiality guarantees must be in place throughout the whole hearing. Videoconferencing systems used by the judicial authorities must prevent unauthorised recordings or improper use or re-use of data and images of the parties.

1. Safeguards for the support of vulnerable persons, people with disabilities

During the Commission outreach to justice community stakeholders, the CCBE mentioned that e-justice systems must ensure electronic equality of arms and access to justice for everyone but that this is not guaranteed for children and people with disabilities ([[14]](#footnote-15)). According to the AGE Platform Europe ([[15]](#footnote-16)) insufficient attention is also paid to older persons as a vulnerable group in accessing justice and remedy within national frameworks. This would be contrary to the requirements of Articles 5 and 6 of the Digitalisation Regulation.

1. Training

The CCBE ([[16]](#footnote-17)) also points to the need of specific training for judges, lawyers and administrative staff as one of the main actions that needs to be taken. The SimpliVi Project has also emphasised the importance of training for judges and support staff to build confidence and competence in using videoconferencing systems. This aspect is especially relevant in the context of organising and conducting cross-border hearings.

While the success of digitalisation relies also on the digital capacity of justice professionals and their knowledge on how to use digital tools and awareness of related gains, the relevant training is not sufficiently available. The Judicial Training Conferences held in 2023 and 2024 ([[17]](#footnote-18)) confirmed the need to boost the judicial training offer related to digitisation and AI. The annual Judicial Training Reports ([[18]](#footnote-19)) confirm that only a fraction of the EU judicial training funding is used for digitalisation-related topics and that national level training on digitalisation is limited.

1. Questions to be discussed

Against the background of the identified issues and differences in national law and practices and with the overall purpose to ensure in particular the effective application of videoconferencing rules and to promote in general the smooth use of videoconferencing for a more efficient justice, we would like to discuss the following questions:

1. Concerning points 2.A) and 3.A):
2. Should the European Commission continue to coordinate multi-country projects under the Technical Support Instrument programme covering also the area of videoconferencing from a technical perspective (e.g. secure channel for lawyer-client communication, two-way interpretation channel, text-to-speech/speech-to-text standards)?
3. Would you see a need for financing investments in videoconferencing under the next Multiannual financial framework (MFF), and if yes, for which purposes?
4. Concerning points 2.B) and 3.B):

In order to ensure effective application of Articles 5 and 6 Digitalisation Regulation in particular and smooth organisation and conduct of cross-border videoconferencing in general, would Member States agree that the Commission organises a concerted application and implementation action to remedy existing legal and practical problems for cross-border videoconferencing?

1. Concerning points 2.C) and 3.C):

Should the effective use of videoconferencing be strengthened by:

1. voluntary common technical standards for the conducting videoconferencing which Member States could use for example when procuring videoconferencing equipment?

b) examining the possibility to extend the functionalities of the European e-Justice Portal and develop an interface, gateway or hub to which each Member State could connect the videoconferencing tools they are using for cross-border hearings for the purposes of overcoming interoperability challenges?

1. Concerning points 2.D) and 3.D):

Do you think that the problem mentioned in 2.D) should be addressed in the concerted application and enforcement action mentioned under Question 2? Do you think the issue may be addressed with other non-legislative measures?

1. Concerning points 2.E) and 3.E):

Should the new Judicial Training Strategy have a strong focus on digitalisation and videoconferencing? Should the Judicial Training Strategy have a leveraging effect on national budgets, and should thus these national training budgets focus also more on training of justice practitioners for digitalisation of justice?

1. Do you see the need of any other non-legislative or legislative tools that could increase the efficiency and facilitate the use of videoconferencing in cross-border hearings? In case of legislative tools, do you think that some common rules could apply to both civil and criminal matters or should they be regulated separately?

1. (1) Cf. points 21, 25, 30, 34, 52, 59, 60, 79/4 thereof. [↑](#footnote-ref-2)
2. () Regulation (EU) 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. [↑](#footnote-ref-3)
3. () Regulation (EC) No 861/2007 establishing a European Small Claims Procedure. [↑](#footnote-ref-4)
4. () Regulation (EU) No 655/2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters. [↑](#footnote-ref-5)
5. () Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1). [↑](#footnote-ref-6)
6. () Regulation (EU) 2023/2844 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters. [↑](#footnote-ref-7)
7. () SimpliVi (Simplifying Cross-Border Judicial Videoconferencing in Europe) is an EU-funded project with the aim of improving cross-border judicial videoconferencing (project partners from AT, GR, PL, DE, ES and PT). On top of desktop research, online interviews (HR, IT, NL, HU, BG, LT, FR, SI, CAN, NO, BR) and study visits (SE, EL, DE, PL, PT, ES, AT) were conducted. [↑](#footnote-ref-8)
8. () Cf. point 3.4 [↑](#footnote-ref-9)
9. () Council Framework Decision 2002/584/JHA (42), in particular Article 18(1)(a); Framework Decision 2008/909/JHA, in particular Article 6(3); Framework Decision 2008/947/JHA, in particular Article 17(4); Framework Decision 2009/829/JHA, in particular Article 19(4); Directive 2011/99/EU of the European Parliament and of the Council (43), in particular Article 6(4); Regulation (EU) 2018/1805, in particular Article 33(1). [↑](#footnote-ref-10)
10. () 16933/24 Council Conclusions on the use of Artificial Intelligence in the field of justice (points 19, 20) [↑](#footnote-ref-11)
11. () Belgian Presidency questionnaire on the use of videoconferencing; Commission survey on the implementation of videoconferencing by Member States (according to Article 17 Digitalisation Regulation); DigiRights Project; SimpliVi Project; Commission outreach to justice community stakeholders. [↑](#footnote-ref-12)
12. () Survey for criminal defence lawyers on the use of videoconferencing in criminal and European Arrest Warrant proceedings – 1 November 2024. [↑](#footnote-ref-13)
13. () Council of Bars and Law Societies of Europe 2020: Analyses of videoconferencing tools (<https://tinyurl.com/Analysis-oc-VC-tools>) [↑](#footnote-ref-14)
14. () CCBE: Comments on the possible future priorities of the Commission in the area of digitalisation of justice - October 2024 [↑](#footnote-ref-15)
15. () The AGE Platform Europe (co-funded by the European Union) is the largest European network of organisations of and for older people consisting of 100 organisations from 28 European countries. [↑](#footnote-ref-16)
16. () CCBE: Comments on the possible future priorities of the Commission in the area of digitalisation of justice - October 2024) [↑](#footnote-ref-17)
17. () https://commission.europa.eu/law/cross-border-cases/training-justice-professionals-and-training-practices\_en [↑](#footnote-ref-18)
18. () https://e-justice.europa.eu/content\_the\_european\_judicial\_training\_policy-121-en.do [↑](#footnote-ref-19)