



Brussels, 27 May 2016  
(OR. en)

9337/16

EJUSTICE 86  
JUSTCIV 130  
DROIPEN 97  
JAIEX 51

**'I/A' ITEM NOTE**

From:	Working Party on e-Law (e-Justice)
To:	Permanent Representatives Committee (Part 2)/Council
No. prev. doc.:	9206/15, 5599/3/16 REV 3
Subject:	Suggestions for best practices concerning videoconferencing with third countries - Adoption

1. One of the questions examined in the context of the Working Party on e-Law (e-Justice) and the expert group on cross-border videoconferencing during the first semester of 2016 was the issue of best practices in the area of videoconferencing with third countries.
2. The Working Party has examined this issue at its meetings on 3 February, 1 March and 4 May 2016. The expert group examined the question at its meeting on 11 January and 19 April 2016. At the meeting of the Working Party on e-Law (e-Justice) on 4 May it was agreed to submit the final version to Coreper/Council.
3. Accordingly, Coreper/Council are invited to
  - a) endorse the suggestions for best practices concerning videoconferencing with third countries as set out in the Annex, and to
  - b) take note of existing agreements between the Member States and third countries as set out in document 9488/16.

**I. Introduction**

1. As provided for in the Multiannual European e-Justice Action Plan 2014-2018<sup>1</sup>, better use of videoconferencing is one of the priorities for this period. As stated in the action plan, development of electronic communication between the judicial authorities of the Member States, more specifically in the framework of instruments adopted in the European judicial area in the field of civil, criminal and administrative law, should be continued further. In this context, the use of videoconferencing should be extended in order to remove the need to travel to court to take part in judicial proceedings, in particular in cross-border cases.
2. Similar work to share best practice could be done in respect of third countries, in full compliance with the existing or future national, EU and international legal framework. In addition to the necessary legal provisions regulating cooperation in this area, effective communication between practitioners is of paramount importance for the purposes of technical interoperability.

**II. Implementation – general approach**

3. A two-tier approach is preferable in order to facilitate this type of cooperation with third countries in the area of e-Justice:
  - a) *General framework*
4. The use of videoconferencing for taking of evidence in the context of a civil or criminal procedure between a Member State and a third state should be governed by a relevant legal framework. Already existing national structures and competences as well as the ones provided for in international or bilateral agreements should be taken into account.

---

<sup>1</sup> Multiannual European e-Justice Action Plan 2014-2018 (OJ C 182, 14.6.2014, p. 2), paragraphs 25 and 31.

5. This framework can be established by an international instrument applicable in the area of civil or criminal law (see section III).
6. If the third state in question is not a contracting party to one of these instruments, bilateral agreements between the third state and the Member State in question should be used.
7. If there is no applicable bilateral agreement in this area between the third state and the Member State in question, consideration should be given to whether their national legislation and the principle of reciprocity allow the use of videoconferencing.
8. At a later stage, if it becomes apparent that there is no applicable legal framework in this area and that a more specific legal framework is necessary for this kind of cooperation, the possibility of negotiating bilateral agreements should be considered. Third states should be encouraged to join already existing international conventions – in particular the “Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters” of the Hague Conference on Private International Law.
9. One possible solution in such cases, without prejudice to the EU and national competencies in this area, might be to draw up a model agreement on the use of cross-border videoconferencing in judicial proceedings, to be concluded between a Member State and a third state.

*b) Technical and organisational measures*

10. **Firstly**, specific arrangements for cross-border videoconferencing could be put in place between a Member State and a given third state or a specific group of third states in order to create a fixed framework for such cooperation.
11. Since there is a similarity from a technical and organisational point of view between cross-border videoconferencing among the EU Member States or between an EU Member State and a third state, reference could be made to the Council recommendations on promoting the use of and sharing of best practices on cross-border videoconferencing in the area of justice in the Member States and at EU level<sup>1</sup>.

---

<sup>1</sup> See OJ C 250, 31.7.2015, p.1, paragraph 22 a for organisational aspects and paragraph 22 b for technical aspects.  
[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015H0731\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015H0731(01)&from=EN)

12. It should be made clear that the aim is not to conclude a legally binding formal agreement between the European Union and its Member States and a third state or states, but to establish a common *modus operandi* (e.g. with the Ibero-American countries this could be done in the form of an agreement in principle, complemented by bilateral implementing agreements between individual Member States and specific Ibero-American states).
13. **Secondly**, in technical and organisational terms, when a hearing via videoconference is necessary during ongoing legal proceedings, the courts or the judicial authorities of the Member State and of the third state in question must agree between themselves the practical details with regard to setting up a working connection, in full compliance with all their respective internal rules in this area, including the principle of the independence of the judiciary.
14. In accordance with its mandate and legal framework, and in the context of this document, Eurojust may assist in the execution of a request for legal assistance in criminal matters seeking the taking of evidence between a Member State and a third State by way of a video-link<sup>1</sup>.
15. Even in this kind of situation, the confidentiality rules of the Member State in question must be followed, in accordance with the EU and national legislation.
16. In addition, it is recommended that third countries establish one or more national contact points, where applicable, for videoconferencing – taking into account the communication structures defined by existing international conventions and bilateral agreements.

---

<sup>1</sup> It is worth noting that in cases where such assistance is requested, arrangements addressing issues of concern associated with the provision of the assistance are to be agreed beforehand. At minimum, such arrangements should ensure that Eurojust is indemnified for any liability it may incur in relation to the assistance provided.

### III. Available international instruments

17. A number of international legal instruments can be used for this purpose, for instance the following conventions dealing with mutual legal assistance in criminal and civil/commercial matters:

*a) Main instruments applicable in criminal matters:*

- Council of Europe, Second Additional Protocol of 8 November 2001 to the 1959 European Convention on Mutual Assistance in Criminal Matters, (which more or less reproduces the EU 2000 Convention)
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, established by Council Act of 29 May 2000 in accordance with Article 34 of the Treaty on European Union
- Ibero-American Convention on the Use of Videoconferencing in International Cooperation between Justice Systems, signed at Mar del Plata on 3 December 2010 (Convenio Iberoamericano sobre el Uso de la Videoconferencia en la Cooperación Internacional entre Sistemas de Justicia)
- (The protocol to the above Convention, signed at the same place and on the same date and dealing with costs, languages and transmission, is not yet in force but may be extremely useful for a handbook.)
- UN Convention against Transnational Organised Crime (Palermo Convention), Article 18, adopted in New York on 15 November 2000 and signed in Palermo on 13 December 2000. It is complemented by two protocols:
  - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which entered into force on 25 December 2003
  - Protocol against the Smuggling of Migrants by Land, Sea and Air, which entered into force on 28 January 2004

- UN Convention against Corruption, adopted in New York on 31 October 2003
  - Council Decision 2009/820/CFSP of 23 October 2009 on the conclusion on behalf of the European Union of the Agreement on extradition between the European Union and the United States of America and the Agreement on mutual legal assistance between the European Union and the United States of America
  - Council Decision of 7 October 2010 on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters
- b) *Main instruments applicable in civil/commercial matters:*
- HCCH (Hague Conference on Private International Law) Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.
    - The Hague Conference on Private International Law has established an Experts' Group on the Use of Video-Link and other Modern Technologies in the Taking of Evidence Abroad.
    - The Council Working Party e-Law (e-Justice) expert group on videoconferencing should foster the exchange of experiences and good practices with this HCCH expert group.
-