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#### "I/A" ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
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Subject:	Council Recommendations on cross-border videoconferencing

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1. Ever since the first European e-Justice Action Plan 2009-2013, the use of videoconferencing technology in the area of justice has been one of the key issues in the modernisation of justice at EU level. It was also included in the Multiannual European e-Justice Action Plan 2014-2018<sup>1</sup> adopted in June 2014 in the list of priority projects to be considered for implementation in the 2014-2018 period.
2. The expert working group on cross-border videoconferencing was set up in January 2014 under Austrian leadership to examine possible ways for Member States' authorities to promote and share experiences about the use of videoconferencing facilities in cross-border situations. The group presented its final report to the Working Party on e-Law (e-Justice) on 17 March 2015.<sup>2</sup>
3. The results of the final report show that the use of videoconferencing technology and facilities by the Member States' authorities in cross-border situations needs to be improved in several ways.

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<sup>1</sup> See OJ C 182, 14.6.2014, p. 2

<sup>2</sup> 8364/15 + ADD

4. The draft recommendations as set out in the Annex aim to offer concrete guidelines for the Member States to improve the use of videoconferencing technology in the area of justice on the basis of actions suggested by the informal working group.
  5. The Working Party on e-Law (e-Justice) examined and approved these draft recommendations at its meeting on 11 May 2015.
  6. Coreper/Council is therefore invited to adopt the recommendations as set out in the Annex.
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**Council Recommendations**

**'Promoting the use of and sharing of best practices on cross-border videoconferencing in the area of justice in the Member States and at EU level'**

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING:

1. The Strategy on European e-Justice 2014-2018 adopted by the Council (Justice and Home Affairs) on 6 December 2013<sup>1</sup>;
2. Paragraph 59 of the Strategy on European e-Justice 2014-2018, which stipulates that 'if necessary, informal groups of the Member States involved in specific projects can meet in order to make progress in these areas of work (...)';
3. The Multiannual European e-Justice Action Plan 2014-2018 adopted by the Council (Justice and Home Affairs) on 6 June 2014<sup>2</sup>;
4. The guidelines on the implementation of the Multiannual European e-Justice Action Plan 2014-2018 endorsed by the Council (Justice and Home Affairs) on 4 December 2014<sup>3</sup>, which set out the concrete steps for the follow-up of the Action Plan by the Working Party on e-Law (e-Justice), including the setting up of the informal working group on cross-border videoconferencing;
5. The results of the informal working group on cross-border videoconferencing as set out in the final report<sup>4</sup> presented to the Working Party on e-Law (e-Justice);

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<sup>1</sup> See OJ C 376, 21.12.2013, p. 7

<sup>2</sup> See OJ C 182, 14.6.2014, p. 2

<sup>3</sup> See 15771/14

<sup>4</sup> See 8364/15 + ADD

ACKNOWLEDGES that

6. Videoconferencing is a useful tool which has great potential not only at national level but also in particular in cross-border situations involving different Member States and even third countries. In cross-border cases smooth communication between the judicial authorities of the Member States is crucial. Videoconferencing is one possible way of simplifying and encouraging such communication. The advantages of videoconferencing were acknowledged by Union Law, that encouraged its use *inter alia* in cross border taking of evidence in civil and commercial matters<sup>1</sup> and in the European Small Claims Procedure<sup>2</sup>, or regulated procedures for its use in criminal proceedings<sup>3</sup>;
7. Videoconferencing technology can be used in all types of judicial proceedings (both in criminal and civil/commercial matters) and it provides courts and prosecution offices with greater flexibility to take testimony from victims and witnesses, to hear experts' opinions and to take suspects' and defendants' statements. Videoconferencing can help to reduce stress for vulnerable witnesses such as children. It also avoids travelling when victims, witnesses or experts from other Member States are required to give evidence. It also permits to provide immediate and effective safeguards such as the right to interpretation, the right to information, access to a lawyer to the suspect when arrested in a remote place (e.g. in case of an arrest in high sea). The use of such technology also reduces the cost of hearings for the national administrations. Significant cost and security benefits can be achieved by avoiding the transport of persons in custody;
8. In the framework of European e-Justice, the Member States of the EU have already started to work together to promote the use of videoconferencing and to exchange experience and best practices. Such work takes place *inter alia* in the context of the Working Party on e-Law (e-Justice) at EU level;

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<sup>1</sup> Council Regulation (EC) 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

<sup>2</sup> Regulation (EC) 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure

<sup>3</sup> Convention of 29 May 2000 on mutual legal assistance in criminal matters between the Member States of the European Union

9. Work undertaken so far in the area of videoconferencing at national and EU level under the first European e-Justice Action Plan 2009-2013 has already produced significant results. The e-Justice Portal offers information on the use of videoconferencing facilities in court proceedings in cross-border situations in all official languages, including a manual and, for most Member States, relevant contact details;
10. The second multiannual European Action Plan on e-Justice 2014-2018 aims to build upon the work already undertaken and to continue this positive development at national and European level. This work should also be seen as part of a broader development towards the modernisation of justice in the EU, taking into account the existing legal framework in this particular area and the need to respect the procedural safeguards in place at Member State and EU level;

UNDERLINES that

11. As outlined in the Multiannual European e-Justice Action Plan 2014-2018, going to court and initiating extrajudicial proceedings in cross-border situations should be facilitated through the availability of communication by electronic means between courts and parties to proceedings, as well as witnesses, victims, experts and other participants;
12. Furthermore, the use of videoconferencing, tele-conferencing or other appropriate means of long-distance communication for oral hearings, where appropriate, 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, and thus, through reduction of costs and efforts, contribute to effective access to justice;

13. As indicated in the Multiannual e-Justice Action Plan 2014-2018, future work in this area should be expanded to further facilitate the organising and running of cross-border videoconferences in all Member States by promoting the use of IT tools to support and organise videoconferences and by enhancing interoperability for videoconferencing. This work should also include designing a common form for requesting/confirming a cross-border videoconference. The establishment of a network for exchanging experiences and sharing best practice on videoconferencing, including training, should also be considered. The participation of legal practitioners such as judges, public prosecutors, lawyers, mediators as well as legal interpreters in this work should be taken into account;

WELCOMES:

14. The work undertaken by the expert working group on cross-border videoconferencing to help improve the overall functioning of e-Justice systems in Member States and at a European level. The expert group was established in January 2014 under Austrian leadership with the aim of promoting the practical use of cross-border videoconferencing and sharing best practices and expertise on organisational, technical and legal aspects;
15. The final report of the expert working group, presented in March 2015, with specific recommendations for future work in this area;

TAKES NOTE of the fact that

*a) expert working group*

16. In its final report, the expert working group identified a number of technical, organisational and legal obstacles hindering the use of videoconferencing facilities by Member States in cross-border situations. The results showed that while it is true that existing legal requirements have to be respected, the majority of immediate problems that arise in cross-border situations are more of an organisational and technical nature. It is these issues which should in particular be addressed as a priority either in the short or medium term;

*b) e-Justice Portal*

17. In addition, the information already available on the e-Justice Portal should be updated and supplemented. In particular, future plans could include adding: links to EU legislation and legislation of the Member States regulating the use of videoconferencing; consolidated information on all courts with videoconferencing facilities in the Member States; tools for the practical arrangement of videoconferences (electronic forms, possibly a booking system in the long-term); links to national instructions or manuals, where available; a section on examples of videoconferencing in cross-border proceedings and a collection of best practices; information on training and online training modules and a link to the interconnected interpreters' databases where available;

*c) synergies with other projects*

18. Potential synergies with other projects, such as e-CODEX, the AVIDICUS projects (interpretation during a videoconference) and the European Judicial Training Network should also be taken into account. In addition to the information already available on the e-Justice Portal, existing useful material from other sources, including the Member States and Eurojust, should also be used as far as possible;

*d) legal aspects*

19. Videoconferencing has gained legal recognition through international conventions and several EU legal acts, such as the Regulation on taking of evidence in civil and commercial matters, the Regulation establishing a European Small Claims Procedure and most recently, the Directive on the European Investigation Order in criminal matters;
20. While bringing added protection to suspects, victims, witnesses and vulnerable persons, it should be ensured that videoconferencing is not detrimental to the defence's rights; special care must be taken to ensure the principles of immediacy, equality of arms and contradiction are respected. This entails using equipment that is up-to-date, to achieve sufficient video and audio quality, and secure in proportion with the sensitivity of the case;

21. The impact of legislative developments, including in particular the European Investigation Order, which sets a detailed procedure for use of the videoconferencing in criminal cases, on the different procedural rules and guarantees applicable in the requesting and executing Member States will therefore have to be assessed. Other legal issues related to videoconferencing also include the identification of competent authorities;

**CALLS ON THE MEMBER STATES TO:**

22. Consider implementing at national level the following measures with a view to improving interoperability between the Member States:

*a) organisational aspects*

- a) Introduce a national videoconferencing contact point or contact points, where applicable, in each Member State. Consequently improve and update - in close cooperation with the Commission where necessary - the information on the e-Justice Portal (via the European Court Database) concerning national videoconferencing facilities, national videoconferencing contact points and relevant competent courts. Improve the organisation of contact points at national and court level;
- b) For individual videoconferences, agree on a common language, if applicable, along with appropriate translation and interpretation services and which time-zone will be used to determine when the videoconference starts. If interpreter support is required in a videoconference, the Member States should be aware of and to the extent possible follow the advice gained from the AVIDICUS projects;
- c) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, offer effective training for potential users, including for judges and prosecutors, to increase their confidence and ability to run a cross-border videoconference;



*b) technical aspects*

- d) Set up effective mechanisms, including an improved form for the effective exchange of variable and/or confidential videoconferencing parameters, in conjunction with public and static information on videoconferencing facilities for each Member State, to be published on the European e-Justice Portal;
- e) Draft practical guidelines for users and technical planning and support staff on the recommended technical standards;
- f) Improve interoperability between Member States by carrying out systematic practical tests between pairs of Member States to document working parameters. These can then be re-used to establish more reliable videoconferencing between Member States with sufficient audio and video quality;
- g) As a minimum, implement the following technical standards in order to improve the quality of videoconferencing sessions:
- Use a hardware-based video conferencing system (H.323/videoconference SIP);
  - Videoconferencing session to be IP-based;
  - Use firewall traversing infrastructure;
  - Use encrypted communications (AES-128);
  - Receive the presentation as a duo video (H.239)<sup>1</sup>;

*c) legal aspects*

- h) Assess the impact of adopted EU instruments, such as the European Investigation Order in relation to current procedural rules;

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<sup>1</sup> (Note: it might be necessary to use ISDN as backup solution, if a videoconferencing partner does not support IP yet)

INVITES THE WORKING PARTY ON E-LAW (E-JUSTICE) TO:

23. Begin exploring practical possibilities and solutions for a coordinated approach with a view to initiating cooperation in the area of videoconferencing with third countries in addition to the bilateral contacts that Member States already have in place in this area;
24. Continue the work undertaken in the framework of the expert working group on cross-border videoconferencing by setting up a network of cooperation between the Member States under the aegis of the Working Party on e-Law (e-Justice), with the aim of exchanging experiences and sharing best practices on videoconferencing, including training, on the basis of a proposal to be submitted by the expert working group. This network should:
  - a) Consider improving the use of videoconferencing facilities at the European level by creating secure "virtual videoconferencing meeting rooms" where the participating Member States could dial-in;
  - b) Draft a clear step-by-step description ('protocol') for preparing and running cross-border videoconferences which fits with the typical judicial cross-border videoconferencing use-cases and combines all organisational, technical and judicial elements needed;
  - c) Provide guidance for users on typical judicial use-cases which would benefit most from increased and better use of cross-border videoconferencing;
  - d) Improve electronic sending of forms for requests for cross-border mutual legal assistance by combining dynamic form functions from the European e-Justice Portal with e-CODEX, e.g. forms for 'direct taking of evidence' and '(indirect) taking of evidence';
  - e) Devise tools to help judicial authorities identify the legal instrument applicable for the organisation of a particular videoconference;
  - f) Devise tools to help judicial authorities identify the competent authority for the organisation of a particular videoconference;

- g) Identify the arrangements that should be made to guarantee the procedural safeguards in the exercise of the rights of the defence and
- h) Ensure sustainability of the work by:
- monitoring the implementation of improvement actions and projects,
  - monitoring new videoconferencing technologies,
  - suggesting new actions and projects for further improvements;

INVITES THE EUROPEAN COMMISSION TO:

25. Publish the final report of the expert group on cross-border videoconferencing on the e-Justice Portal for wider dissemination among legal practitioners and other interested parties.
26. Financially support the implementation at national level of the measures set out in paragraph 22 aimed at ensuring the cross-border interoperability of videoconferencing facilities in as far as this produces European added value in line with the applicable funding instruments.