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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Informal video conference of the Members of the Working Party on Judicial Cooperation on Criminal Matters (COPEN) on 8 December 2021.
- Presentation by the European Judicial Network (EJN) on point 10

Delegations will find attached the presentation used by the EJN for the presentation of the Conclusions of its 57th Plenary meeting (see point 10 of the agenda in [CM 5647/1/21 REV 1](#)).



Conclusions from the 57th EJM Plenary meeting

(18-19 October 2021, Ljubljana, Slovenia)

HEARING BY VIDEOCONFERENCE WITHOUT THE INVOLVEMENT OF THE EXECUTING MEMBER STATE

01. | Main reasons why the executing State should be involved

- technical means for enabling the videoconference to take place
- the competence of the executing State to use power
- the respect of the sovereignty of the executing State

02. | Could these points be discussed?

- almost everyone possesses a technical device that would allow him/her to participate in the trial remotely regardless of the location
- when a person gives consent – no need to use coercive measures
- with the consent of a person – is there the violation of sovereignty?
- mutual trust between the Member States

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Conclusions from the 57th EJM Plenary meeting

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03. | Conclusions by the EJM

- In general, the national legislation of the majority of the Member States foresees **no obstacles in using videoconferences in the national criminal procedure**
- Some Member States made amendments in the criminal procedure law that allowed the courts, in their domestic proceedings, **to send to a person a direct link enabling him/her to join the trial remotely** from any technical device that enables video and audio transmission – with a certain limitations
- Now in the **cross-border cases – it is not possible** to interview a person from abroad directly through a video link **without sending a European Investigation Order or MLA request** to the country in question
- However....

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- **rising number** of videoconferences, the **enhanced mobility** of people and **modern technical solutions** are the main reasons for considering a change in the international legal framework, but some aspects need deep analysis and examination:
 - security
 - identity
 - confidentiality
 - admissibility of evidence
 - sovereignty
 - rules of which country to apply
- EJM considers that setting up a working group of experts would allow evaluating whether such changes are realistic, taking into account all potential risks and also suggest solutions.

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