



## Questionnaire for national reports

### On electronic evidence and videoconferencing

This questionnaire addresses practical and theoretical aspects regarding the taking of (electronic) evidence and videoconferencing in (cross-border) civil litigation. Each partner should provide substantive answers for their respective Member State (or additional Member State, if specifically stipulated by the coordinator). Certain questions require knowledge on instruments of cross-border enforcement in the EU, particularly Regulation (EU) 2020/1783 (“Recast Taking of Evidence Regulation”). The latter questions address the interplay between national law and the EU regime on cross-border enforcement in civil and commercial matters.

For useful information, especially relating to B IA and cross-border enforcement in the EU, please refer, among other sources, to:

- Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1783>),
- Impact assessment of the Taking of Regulation (EC) No 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 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0285>),
- Other *travaux préparatoires* of the Recast Taking of Evidence Regulation (see e.g. <https://www.europeansources.info/record/proposal-for-a-regulation-amending-regulation-ec-no-1206-2001-on-cooperation-between-the-courts-of-the-member-states-in-the-taking-of-evidence-in-civil-or-commercial-matters/>)
- Council Guide on videoconferencing in Cross-border proceedings (<https://www.consilium.europa.eu/en/documents-publications/publications/guide-videoconferencing-cross-border-proceedings/>)
- The Access to Civil Justice portal hosted by the University of Maribor, Faculty of Law together with the results of our previous projects, especially our previous project Dimensions of Evidence in European Civil Procedure (<https://www.pf.um.si/en/acj/projects/pr01/>).

The structure of each individual report should follow the list of questions enumerated below, to the utmost extent possible. If authors choose to address certain issues elsewhere within the questionnaire, then they are instructed to make cross-references and specify where they have provided an answer for the respective question (e.g. “answer to this question is already provided in 1.6.”). Following the structure of the questionnaire will enable and ease comparisons between the various jurisdictions.

The list of questions is not regarded as a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please address such issues on your own initiative where appropriate. On the other hand, questions that are of no relevance for your legal system can be left aside. If so, indicate expressly the lack of relevance and consider explaining the reason(s).



**Co-funded by  
the European Union**

*Digital communication and safeguarding the parties' rights:  
challenges for European civil procedure – DIGI-GUARD*

Project ID: 101046660 — DIGI-GUARD — JUST-2021-JCOO

Please provide representative references to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data. **Where the answer would be “no” or “not applicable”, because something is not regulated in your national legal order, please specify how you think it should be regulated.**

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

Languages of national reports: English.

Deadline: 31 March 2023.

In case of any questions, remarks or suggestions please contact project coordinators, prof. dr. Vesna Rijavec: [vesna.rijavec@um.si](mailto:vesna.rijavec@um.si) and prof. dr. Tjaša Ivanc: [tjasa.ivanc@um.si](mailto:tjasa.ivanc@um.si) ; or to assist. Denis Baghrizabehi: [denis.baghrizabehi@um.si](mailto:denis.baghrizabehi@um.si).



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## **1. General aspects regarding electronic evidence**

*(Note that the following definitions apply:*

- *Authentic evidence: the content of evidence was indeed created or drawn by a person or entity declared to be its creator or author; authenticity refers to the genuine source.*
- *Reliable evidence: the content of evidence is true, accurate and non-compromised; reliability refers to the truth and accuracy of content.)*

### **1.1. Does the law of your Member State provide any definition of electronic evidence?**

*(If applicable, cite the definition of electronic evidence.)*

### **1.2. Does the law of your Member State define of what is considered as paper document?**

*(If yes, please provide the definition. If not, please indicate the relevant case law.)*

### **1.3. How is electronic evidence categorised among means of evidence within the law of your Member State?**

*(In answer to this question, please explain whether electronic evidence is categorised among traditional means of evidence or if electronic evidence forms a new means of evidence. Please cite relevant provisions (esp. if electronic evidence forms a new means of evidence). If electronic evidence is categorised among traditional means of evidence, please explain the reason for this categorisation and elaborate to which category of traditional evidence electronic evidence is assigned (for example, elaborate when electronic evidence is considered a document and when it is an object of inspection). Should electronic evidence be categorised among traditional means of evidence, please also comment on possible problems regarding an analogous application of traditional evidence rules.)*

### **1.4. Does the law of your Member State explicitly regulate that evidence or data in electronic form has evidentiary value?**

*(If yes, please cite the provision regulating the evidentiary value of electronic evidence (e.g., “electronic data shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form”). Please also explain if there is any presumption regarding the evidentiary value, admissibility, reliability or authenticity of electronic evidence.)*

### **1.5. Does the law of your Member State explicitly differentiate between electronic and physical private documents as evidence?**

*(Please elaborate on whether the law of your Member State regulates electronic documents and if an electronic document has the same legal effect as a physical document. Please emphasise whether there are any provisions differentiating between electronic and physical documents. If applicable, please cite the provisions regulating electronic documents.)*

### **1.6. Does the law of your Member State recognise the special evidentiary value of public documents, and does this also apply to electronic public documents?**

*(If yes, please cite the provision regulating public documents in electronic form. Please emphasise whether any provisions differentiate between electronic and physical public documents.)*

### **1.7. Describe the legal effects of changing the form of electronic evidence to physical.**

*(In answer to this question, please explain whether it is admissible to change electronic evidence (e.g., websites, social networks, or e-mail) to a physical form and, what legal effect such change has. Please also specify, whether electronic evidence is treated as a copy and whether printouts are necessary when*



*submitting particular types of electronic evidence (e.g., websites, social networks or e-mail). If applicable, please cite the provisions relating to changing the form of electronic evidence.)*

**1.8. Describe the legal effects of changing the form of physical evidence to electronic.**

*(In answer to this question, please explain whether it is admissible to change evidence in the physical form to electronic and what legal effect such a change has. If applicable, please cite the provisions relating to changing the form of physical evidence.)*

**1.9. Explain the rules and what is considered to be an original and what a copy (the concept of original).**

*(If applicable, please cite relevant provisions.)*

**1.10. Describe the legal effects of a copy of electronic evidence within the law of your Member State.**

*(In answer to this question, please explain when electronic evidence is considered a copy. Please also elaborate on the legal effects of a copy of electronic evidence, and, if applicable, cite the relevant provisions. Should the law of your Member State not regulate copies of electronic evidence, please explain how the court perceives a copy of electronic evidence.)*



## **2. Authenticity, reliability and unlawfully obtained electronic evidence**

**2.1. Are there any particular procedure, guidelines, mechanism or protocol on how the parties shall obtain electronic evidence in order to preserve their authenticity and reliability before submitting them to the court?**

*(If applicable, also comment on possible effects regarding the admissibility of electronic evidence if they are not obtained in accordance with such procedures or technical guidelines.)*

**2.2. Is there any particular procedure on how the court should identify the source of electronic evidence?**

*(If any official guidelines, mechanisms or protocols are established within the law of your Member State to identify the source of evidence, by either the expert or the court, please mention those as well (e.g. in the case of evidence derived from cloud computing, blockchain or using AI algorithms).)*

**2.3. Does the law of your Member State stipulate different rules or provisions for different types of electronic evidence?** *(Please explain whether certain types of electronic evidence are presumed authentic and reliable and others inauthentic and unreliable. If applicable, please cite the provisions regarding (in)authenticity and (un)reliability of electronic evidence.)*

**2.4. Does an unfamiliarity with the technical part and a (high) possibility of manipulation of electronic evidence impact its evidentiary value?**

*(Please elaborate on whether the technical nature and a [high] possibility of manipulation of electronic evidence have any impact on the court's assessing of the evidentiary value.)*

**2.5. When should the court appoint experts to process electronic evidence?**

*(Please enumerate cases in which the court may or must appoint an expert when processing electronic evidence.)*

**2.6. Who bears the costs if an expert needs to be appointed to assess the reliability, authenticity and (un)lawful manner of obtaining electronic evidence?**

*(Please explain the distribution of costs related to potential expert assessments and opinions on the reliability, authenticity and lawful manner of obtaining electronic evidence.)*

**2.7. What options are available to a party claiming that electronic evidence has been compromised, tampered with, manipulated or obtained illegally (e.g. by hacking into an IT system)?**

*(Please explain whether any special procedures are established within the law of your Member State to challenge the reliability, authenticity or manner of obtaining electronic evidence. If no special procedure exists, explain regular remedies that would apply in such a case. If applicable, cite relevant provisions, case law, guidelines or other sources regulating the procedure to challenge the admissibility of compromised electronic evidence.)*

**2.8. How is the admissibility of compromised or illegally obtained electronic evidence regulated within the law of your Member State?**

*(Is the court bound by any rules regulating the admissibility of compromised or illegally obtained (electronic) evidence (e.g. explicit rules provided under your national legislation, rules developed through case law, etc.)? If the rules regulating the admissibility of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*



**2.9. Which party carries the burden of proving the (in)authenticity or (un)reliability of electronic evidence?**

*(Please explain whether the party producing electronic evidence carries the burden of proving such evidence authentic and reliable or whether the party who challenges electronic evidence is charged with proving its inauthenticity and unreliability.)*

**2.10. Does the court have the discretion to challenge the authenticity and reliability of electronic evidence even if neither party objects the authenticity and reliability of electronic evidence?**

*(Please explain if the court can challenge the authenticity and reliability of electronic evidence ex officio, e.g. when there is a high possibility that electronic evidence has been manipulated and neither party objected the authenticity and reliability of electronic evidence.)*

**2.11. How is the manipulation or (un)lawful manner of obtaining electronic evidence assessed by the court in the case of a challenge?**

*(In answer to this question, please explain whether judges are expected to assess if evidence was compromised or illegally obtained by themselves, whether an expert may or must be appointed, and whether any other rules and requirements have to be complied with.)*

**2.12. What are the consequences if the court finds that evidence was indeed compromised or obtained illegally?**

*(The question refers to procedural implications, e.g. the exclusion of evidence or considerations when assessing the weight of such evidence.)*

**2.13. Does the law of your Member State enable for the parties to submit written statements of witnesses?**

*(If yes, are pre-recorded oral statements of witnesses admissible as evidence?)*



### **3. Duty to disclose electronic evidence**

#### **3.1. How is the duty to disclose electronic evidence regulated within the law of your Member State?**

*(Please explain whether there are any special rules explicitly regulating the disclosure of electronic evidence or if general rules of disclosure apply instead. Should the rules regulating disclosure of particular means of evidence (e.g. documents, physical objects, affidavits) be applied to disclosure of electronic evidence by analogy, please explain which rules are to be used under which circumstances. Include the name of the act and the article(s) containing relevant provisions.)*

#### **3.2. What is the scope of the party's duty to disclose electronic evidence within the law of your Member State?**

*(Please address the circumstances under which the party is required to provide electronic evidence (e.g. the evidence was obtained in a particular manner, the evidence refers to both parties, the parties brought up the evidence when testifying, etc.), the type of evidence they are required to provide (if applicable) and procedural requirements (e.g. does the party in need of evidence have to request particular evidence with an explicit motion, does the court have any discretion when ordering disclosure, are there any time limits, etc). If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

#### **3.3 Does the duty to disclose electronic evidence apply to third persons?**

*(Please elaborate on whether persons not directly involved in proceedings must present or disclose electronic evidence under the same conditions as the parties or whether different rules apply. If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

#### **3.4. Are there any limits to the duty to disclose electronic evidence specified within the law of your Member State?**

*(Does your national legislation stipulate reservations and exceptions to the duty of disclosure that would apply to (or also to) electronic evidence? On the one hand, the question refers to the right to refuse disclosure, privileges, the protection of secrecy and similar restrictions. On the other hand, it refers to measures imposed to prevent abuse in the form of fishing expeditions (requesting non-specific or broad information and evidence in the hope of gaining compromising materials) or excessive disclosure (providing an unmanageable volume of information in the hopes of confusing the parties or the court and delaying proceedings). If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

#### **3.5. What are the consequences of a violation or non-compliance with the duty to disclose electronic evidence?**

*(Please explain whether any coercive measures or sanctions may be imposed against a party or a third person who unjustifiably refuses to comply with their duty to disclose (electronic) evidence. Does your national legislation provide for any presumptions or fictions regarding the truth of facts to be proved with undisclosed evidence? If the rules for disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

#### **3.6. Have there been any problems before the national courts in your Member State arising from differences in national regulations of the duty to disclose electronic evidence, or are such problems to be expected in the future?**



*(The answer to this question should contain an overview of any case law addressing the duty to disclose electronic evidence (or other evidence, if the same issue could arise concerning electronic evidence) in the context of cross-border proceedings, most notably any cases in which the problems resulted from national differences in the scope of the duty to disclose such evidence (e.g. a broader scope of the duty to disclose evidence in one participating Member State than in the other, privileges or exceptions existing in one Member State but not in the other, etc.). If no such case law exists, please explain any potential problems discussed in legal literature or any problems you expect to arise in practice.)*





#### **4. Storage and preservation of electronic evidence**

*(Storage and preservation of electronic evidence refer to the preservation of electronic evidence in active cases which have not yet been concluded with a final act. For archiving electronic evidence in closed cases, see the next part of the questionnaire.)*

##### **4.1. How is the storage and preservation of electronic evidence regulated within the law of your Member State?**

*(Please list legal acts or other documents establishing rules for the proper storage and preservation of electronic evidence (e.g. including guidelines, protocols and instructions) and shortly indicate their content or purpose. If the relevant solutions have developed in practice, explain these as well.)*

##### **4.2. Provide a short overview of requirements, standards, and protocols for properly storing and preserving electronic evidence.**

*(Please provide a summary of requirements, standards and protocols established to preserve and secure the reliability, authenticity, confidentiality and quality of evidence. If there are any special rules regulating the storage of metadata, please describe them.)*

##### **4.3. Is electronic evidence stored in one central location, or is the storage decentralised?**

*(Please explain the “physical” location of servers or media where electronic evidence is stored, e.g. each court might be responsible for storing electronic evidence to be used before that very court on their own premises/on their own servers; or some central agency, department or organisation might be authorised to store electronic evidence for all (or several) courts, etc.)*

##### **4.4. Who is entitled to carry out the activities related to storing and preserving electronic evidence?**

*(Please explain any potential requirements or limitations on who may carry out activities related to storing and preserving electronic evidence, e.g. private vs. public entities, certification or qualification requirements, etc.)*

##### **4.5. Who may access electronic evidence in a particular case and how?**

*(Please explain who has access to electronic evidence, which conditions must be met, and which procedure must be followed.)*

##### **4.6. How is the accessibility of stored electronic evidence preserved over time?**

*(Which measures are taken to guarantee the accessibility of stored electronic evidence in line with the evolution of technology? E.g. when old storage media (VHS, floppy disks, etc.) are no longer used or new, more secure types of storage media become available.)*

##### **4.7. How is the transmission of electronic evidence to other courts (e.g. to an appellate court) carried out in order to preserve the integrity of evidence?**

*(Please explain whether there are any special procedures to be followed by another court to access the stored electronic evidence and/or protocols for transmitting such evidence intended to preserve the integrity of the evidence and to prevent any manipulation.)*

##### **4.8. What are the rules regarding the conversion of electronic evidence into physical evidence and vice versa?**

*(Please describe rules regarding the possibility of a conversion from electronic form to physical and from physical form to electronic when storing evidence.)*



## **5. Archiving of electronic evidence**

*(Archiving of electronic evidence only refers to the preservation of electronic evidence in closed cases that have already concluded with a final act. Please include all information regarding the storing and preserving of electronic evidence in active cases in the preceding part of the questionnaire.)*

### **5.1. How is the archiving of electronic evidence regulated within the law of your Member State?**

*(Please list legal acts or other documents establishing rules for the proper archiving of electronic evidence (e.g. including guidelines, protocols, instructions) and shortly indicate their content or purpose. If relevant solutions have developed in practice, explain these as well. If the rules regulating the archiving of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)*

### **5.2. Shortly explain the requirements, standards and protocols for properly archiving electronic evidence.**

*(Please provide a summary of requirements, standards and protocols established to preserve and secure the reliability, authenticity, confidentiality and quality of electronic evidence. If there are any special rules regulating the archiving of metadata, please describe them.)*

### **5.3. Is electronic evidence archived in one central location, or is archiving decentralised?**

*(Please explain the “physical” location of archives, e.g. each court might be responsible for archiving electronic evidence collected before that very court on their own premises/on their own servers; or some central agency, department or organisation might be authorised to archive electronic evidence for all (or several) courts, etc.)*

### **5.4. Who may carry out the archiving of electronic evidence?**

*(Please explain any potential requirements or limitations on who may carry out the archiving, e.g. private vs. public entities, certification or qualification requirements, etc.)*

### **5.5. Must electronic evidence be archived indefinitely, or must it be deleted or destroyed after a certain period? How is the accessibility of archived electronic evidence preserved over time?**

*(As electronic evidence is generally kept in an archive for an extended period of time, which measures are taken to guarantee its accessibility in line with the evolution of technology? E.g. when old storage media (VHS, floppy disks, etc.) are no longer used or new, more secure types of storage media become available.)*

**5.6. What are the rules regarding the conversion of electronic evidence into physical evidence and vice versa?** *(Please describe rules regarding the possibility of conversion from electronic form to physical and from physical form to electronic when archiving evidence.)*



## **6. Training on IT development**

### **6.1. Are the judges, court personnel or other legal practitioners required to undergo any training on technological developments relevant to taking, using and assessing electronic evidence?**

*(Please explain whether there are any official requirements for judges or other professionals to undergo training aimed specifically at improving their skills related to technological aspects of taking evidence, and if any such trainings (voluntary or mandatory) are provided by ministries, state agencies or other entities.)*



## **7. Videoconference**

### **7.1. In general, does the law of your Member State provide for videoconference technology to be used in civil proceedings?**

*(If you answered in the affirmative, please list the legal grounds (e.g. “Art. 100 of the Civil Code”). Please indicate when the legal grounds entered into force (e.g. 01.02.2010) and specify any amendments to the legal grounds. If an online (official or unofficial) English translation of the relevant provisions exists, please provide the URL (link). If there are “soft-law” instruments (e.g. guidelines) that supplement rules on conducting the videoconference, then please specify them.)*

### **7.2. Does the law allow for videoconference technology to be used solely for the taking of evidence or also for conducting other procedural stages of the hearing? Videoconference in your Member State may be used for:**

- a) Witness testimony
- b) Expert witness testimony
- c) Inspection of an object (and/or view of a location)
- d) Document (document camera)
- e) Party testimony
- f) Other means of evidence (please elaborate)
- g) Conducting the hearing in broader/general terms (please elaborate)

*(Specify whether videoconference technology can be used only for the taking of evidence by highlighting the categories of evidence. Please note that some Member States may not use the same categorisation of evidence or contain all above categories (e.g. party testimony). In such cases, please approximate your answer and provide additional explanation if needed. If the technology can be used in other stages of the procedure, please specify the scope of the technology's use.)*

#### **7.2.1. If the law allows for (remote) view of location, how would such a videoconference be practically implemented?**

*(E.g. does the court appoint a court officer to operate the audiovisual equipment on site? For example, suppose there is a dispute between parties regarding the border/boundary between their immovable properties and the court needs to view the alleged border/boundary. Does a court officer carry the technical equipment to the site and follow instructions from the court, regarding the viewing angles etc.)*

### **7.3. Which applications (software) are used for videoconferencing in civil court proceedings?**

*(Please investigate whether the courts use multiple applications.)*

#### **7.3.1. Are the applications (see Question 7.3.) commercially available?**

*(If so, specify whether they are specially modified for use in court proceedings.)*

#### **7.3.2. Are the applications (see Question 7.3.) interoperable with other applications?**

*(e.g. can a subject, using application X, join a videoconference, which is conducted via application Y)*

#### **7.3.3. Does the application allow a text-based chat function during the videoconference; does it allow screen sharing and sharing of documents?**

*(whether and to what extent the court can restrict these functions (e.g., the parties can talk at any time, but only share their screen if permitted by the court.)*



**7.4. From the perspective of case management and party autonomy, under which circumstances is the use of videoconferencing technology allowed in your Member State when taking evidence?** (E.g. may the court order the use of the technology on its own motion (*ex officio*); with or without consulting the parties; only with the consent of (both) parties; only with the consent of the person providing testimony; at the request of (both) parties; only in exceptional circumstances etc.)

**7.5. From the perspective of case management and party autonomy, under which circumstances is the use of videoconferencing technology allowed in your Member State when conducting hearings?**

(E.g. whether the court may order the use of the technology on its own motion (*ex officio*); with or without consulting the parties; only with the consent of (both) parties; at the request of (both) parties; only in exceptional circumstances etc.)

**7.6. If the court orders the use of the technology, may the parties oppose that decision? If so, how do the parties make their opposition clear (e.g. appeal)?**

**7.7. Does the law of your Member State provide that courts can, in civil procedure cases, impose coercive measures against a witness or a party to provide testimony?**

(Explain also if the rules differ for videoconference testimony.)

**7.7.1. Under which circumstances may a witness refuse testimony?**

(Explain also if the rules differ for videoconference testimony.)

**7.7.2 Does the law of your Member State allow for cross-examination?**

(Explain also if the rules differ for videoconference testimony.)

**7.8. If videoconference technology is used to conduct hearings, how (if at all) can the court and/or parties terminate the use of videoconference technology and revert to regular (on-site) proceedings?**

(Please explain the powers of the court and the parties in relation to choosing to conduct regular proceedings after the court has already decided that the hearing will be conducted through videoconference.)

**7.9. Does the law (or best practice) provide, that the court should – before ordering the use of videoconference technology – check (please elaborate):**

- a) the internet connection availability (and/or speed) of the persons involved in the videoconference;
- b) the technical equipment of the persons involved in the videoconference;
- c) the technical literacy of the persons involved in the videoconference;
- d) the physical capacity of the persons involved in the videoconference (e.g. if they are located in the Member State, their health status (hospitalisation; vocalisation, hearing and seeing));
- e) other (please specify)?

(In addition, please specify if the court has to conduct a “test” session” before the actual videoconference.)

**7.10. Does the law (or best practice) offer special safeguards for vulnerable persons?**

(Please explain whether the use of the videoconferencing technology must follow any special rules for vulnerable partakers (e.g. children; persons with illness; persons located in hospitals; whistle-blowers; elder persons).)



### 7.11. Does the law of your Member State provide:

**a) The location of the persons engaged in the videoconference (i.e. where the videoconference must or may be conducted) and the use of virtual filters and backgrounds?**

*(Member States' laws may allow only for court2court videoconference; other laws may not contain restrictions and the partakers may enter the videoconference from the location of their choice; explain whether, for example, a person may join the videoconference through their mobile device from their domicile or a car etc. Explain whether a person may use filters or change the background/backdrop. If possible, please specify if the rules differ for the two forms of a videoconference, i.e. when taking evidence and when conducting the hearing.)*

**aa) How does the law sanction a person who does not conduct the videoconference at the designated location?**

**ab) Are there any rules for the inspection of the location where the person heard is situated and the privacy it offers?**

*(If the person is situated at a private location, does the person have to "show" the court whether any other person is present at the location and/or – where (professional/business) secrecy is involved – whether the location offers sufficient privacy. Must the location adhere to any form of decency or décor? If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)*

**ac) Suppose a person lives in a one-room apartment with family or a room rented with friends, and cannot find another suitable location. Does the law allow the presence of family members, roommates etc. in such cases? If yes, do these persons have to identify themselves?**

**b) the time when the videoconference may be conducted?**

*(Member States' laws may provide that videoconferences should not take place before e.g. 06:00 and no later than e.g. 18:00; does the law provide rules for videoconferencing if the persons are located in different time zones? If possible, please specify if the rules differ for the two forms of a videoconference, i.e. when taking evidence and when conducting the hearing.)*

**c) the apparel and conduct of the persons taking part in the videoconference?**

*(Member States' laws may compel partakers to dress or conduct themselves in a special manner (e.g. toga outfit; standing in attention of the judge); please explain how these rules or traditions are followed if videoconference technology is used. If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)*

**d) the identification of the persons taking part in the videoconference?**

*(If the videoconference takes place in a court2court setting, this concern is usually dispelled, since court officials may check the identity; however, checking the identity of a person entering the videoconference from a private location may be troublesome. If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)*

### 7.12. Can (or must) a videoconference be recorded?

**7.12.1. Does the recording of a videoconference contain video feedback from all cameras in the court or only the camera in focus?**



*(Many software applications pin or highlight only one of the persons during the videoconference and close or minimize other (usually non-active) persons. A recording might thus capture only the actions of one person at a time.)*

**7.12.2. Which persons are shown on video during the videoconference?**

*(I.e. which persons have a camera pointed at them and can be seen on the screen; e.g. judge, party, advocate, expert witness, interpreter, court staff, witness, public.)*

**7.12.3. How (which medium and format) and where is the footage of the videoconference stored and later archived?**

*(For example, it may be stored on a local machine or at a remote server.)*

**7.12.4. Does the footage of the videoconference enter the record of the case?**

**7.12.5. Who has access to view the footage after it has been recorded?**

**7.12.6. Presume that the proceedings have concluded at the first instance and an appeal or other recourse has been submitted by the party. May the second instance court access and view the recording of the videoconference?**

**7.12.7. If the court orders *ex post* transcription of the hearing, does the court reporter write the Minutes of the case by transcribing the footage of the videoconference or is there a separate audio log for transcription?**

**7.13. Concerning court interpreters – does the law (or best practice) provide for successive or simultaneous interpretation during the videoconference?**

**7.13.1. Where is the interpreter located during the videoconference?**

*(E.g. in the court room; in the room with the person being heard etc.)*

**7.14. Immediacy, equality of arms and case management**

**7.14.1. How does the law of your Member State generally sanction an infringement of the principle of immediacy?**

**7.14.2. Does the law of your Member State specify any special aspects regarding the principle of immediacy when using videoconferencing technology?**

**7.14.3. Have your courts dealt with cases alleging an infringement of the principle of immediacy or the impartiality of judges in videoconference proceedings?**

*(If so, please provide the core of the legal question addressed and the resolution, as well as citations.)*

**7.14.4. How do parties (and their advocates) express objections or pose questions during a videoconference?**

*(This may be especially important when “leading questions” are posed.)*

**7.14.5. How does an inspection of an object take place during a videoconference?**

*(For example, imagine a court has to examine a knife, which was submitted as evidence by a party in physical form to the court.)*



**7.14.6. Can documents only be presented by means of a document camera or also through the use of file/screen sharing in the videoconference application?**

**7.14.7. During the videoconference, does the application (software) highlight only the person actively speaking or are all participants visible at all times (and at the same size)?**

*(Often, the application will minimize or close the video of the person who is not active (speaking) during the videoconference.)*

**7.14.8. Suppose that the connection becomes unstable, and the quality of the audio and/or video feed drops. One of the parties considers that the quality does not allow for correct testimony. Consider also that the video feed breaks down before or in the middle of the videoconference and only the audio feed is available. What options do the court and parties have in regards to the continuation of the videoconference? Can a continuation in such circumstances constitute grounds for appeal?**

**7.14.9. If one party enjoys a better audio-visual experience due to better technical equipment and/or internet connection than the other, and the court allows the continuation of the proceedings, can the other party allege a breach of equality of arms?**

**7.14.10. During the videoconference, the court suspects that a person being heard is receiving outside help/suggestions or is under duress. Can the court order the person to turn the camera and show the apartment or share their screen? Can the court request the person to shut down other technological devices in their vicinity during the videoconference? Can the court request that other persons be removed from the location of the videoconference?**

**7.15. Does the law (or best practice) provide any special rules for the participation of the party's advocate (e.g. together with the party at the same location, or in separate locations)?**

**7.16. Are there any special rules pertaining to the distribution of costs in case of videoconferencing?**

*(Generally, a videoconference will have the effect of reducing the costs of the proceedings; nevertheless, does the law provide special rules on who bears the costs if, for example, one party opposes the videoconference but the court decides on it anyway? Are there special rules regarding the bearing of costs incurred for technical equipment? Are there special rules regarding the bearing of costs for interpreters?)*

**7.17. How does the law guarantee the publicity of videoconference hearings?**

*(Please also explain legal measures to avoid problems that could arise due to the public nature of the hearing (e.g. too many participants in the video conference).)*

**7.18. The Recast Regulation (EU) 2020/1783 on the taking of evidence in civil or commercial matters provides in Article 20 the primacy of direct taking of evidence through videoconference if the court considers the use of such technology to be “appropriate” in the specific circumstances of the case. What do you consider would fall in the category of “inappropriate”? In addition, should form N in Annex I of said Regulation be supplemented in your opinion (explain how and why)?**





## Instructions for contributors

### 1. References

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to examine carefully our sample references which are preceded by [-]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

#### 1.1. Reference to judicial decisions

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2], [ECLI] (NB: the “v” is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission, ECLI:EU:C:1990:353.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

#### 1.2. Reference to legislation and treaties

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol).
- Art. 267 TFEU.
- Art. 5 Uitleveringswet [Extradition Act].

#### 1.3. Reference to literature

##### 1.3.1 First reference

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

- J.E.S. Fawcett, The Law of Nations (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, ‘et al.’ will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English, French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, The Relation Between International Law and Municipal Law in the Netherlands and the United States (Sijthoff 1961) p. 10 – 13.



- D. Chalmers et al., *European Union Law: cases and materials* (Cambridge University Press 2010) p. 171.
- F.B. Verwayen, *Recht en rechtvaardigheid in Japan* [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

### 1.3.2 Subsequent references

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

### 1.4. Reference to contributions in edited collections

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co- editors only the name and initials of the first editor are given, followed by 'et al.')

[Author's initial(s) and surname(s)], ['Title of contribution'], [in] [Editor's initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, 'The Growth and Retreat of Federal Competence in the EU', in R. Howse and K. Nicolaidis (eds.), *The Federal Vision* (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

### 1.5. Reference to an article in a periodical

References to an article in a periodical should present the following form (NB: titles of well- known journals must be abbreviated according to each journal's preferred style of citation):

[Author's initial(s) and surname(s)], ['Title of article'], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, 'Re-Creating Legal Space for the First Law of Aotearoa-New Zealand', 17 *Waikato Law Review* (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, 'Bicameral Politics in the European Union', 48 *JCMS* (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

### 1.6. Reference to an article in a newspaper

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

- [Author's initial(s) and surname(s)], ['Title of article'], [Title of newspaper], [Date], [Page(s)]: T. Padoa-Schioppa, 'Il carattere dell' Europa' [The Character of Europe], *Corriere della Serra*, 22 June 2004, p. 1.



## 1.7. Reference to the internet

Reference to documents published on the internet should present the following form: [Author's initial(s) and surname(s)], ['Title of document'], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, 'Les Roms sont aussi des citoyens européens', <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens\_1409065\_3232.html>, visited 24 October 2010. (NB: 'http://' is always omitted when citing websites)

## 2. Spelling, style and quotation

In this section of the authors' guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like to emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as 'common' and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

### 2.1 General principles of spelling

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
- [...] the Court's case-law concerning direct effect of directives [...]
- The Court ruled on the applicability of Directive 2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.
- There is no requirement that the spouse, in the words of the Court, 'has previously been lawfully resident in another Member State before arriving in the host Member State'.
- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

### 2.2. General principles of style

- Subdivisions with headings are required, but these should not be numbered.
- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., 'the Court' for 'the European Court of Human Rights'). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their



use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.

- In English titles, use Title Case; in non-English titles, use the national style.

### **2.3. General principles of quotation**

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: 'aaaaa').
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: 'aaaaa "bbbb" aaaaa').
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].