NATIONAL REPORT FOR ESTONIA ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

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Project DIGI-GUARD 2023

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

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Questionnaire for national reports

On electronic evidence and videoconferencing

ESTONIA

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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 preparatoires* 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).

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 and prof. dr. Tjaša Ivanc: tjasa.ivanc@um.si ; or to assist. Denis Baghrizabehi: 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.)

The Code of Civil Procedure,[1] provides a general definition of evidence. Pursuant to Section 229 (1) Code of Civil Procedure, evidence in a civil case is any information that possesses the procedural form provided for by law and based on which the court, in accordance with the rules provided by law, ascertains the presence or absence of circumstances on which the claims and objections of the principal parties are based, as well as other facts relevant to achieving a just disposition of the case.

According to Section 229 (2) Code of Civil Procedure, evidence may appear as the testimony of a witness, the statement of a party to proceedings given under oath, an item of documentary or of physical evidence, an inspection or an expert opinion. In action-by-petition proceedings, the court may also deem other means of proof, including a statement of a party to proceedings that is not given under oath, to be sufficient in order to prove a circumstance.

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.)

The definition of the term 'item of documentary evidence' is laid down in Section 272 (1) Code of Civil Procedure. It means any document or other similar data medium which is rendered in writing or recorded by means of photography or of video, audio, electronic or other data recording, which contains information on circumstances relevant to disposing of the case and which can be presented at the trial or hearing in a perceptible form. Official and personal correspondence, judicial dispositions rendered in other cases and opinions of specialist witnesses filed with the court by a party to proceedings are also deemed documents (Section 272 (2) Code of Civil Procedure).

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] *Tsiviilkohtumenetluse seadustik, vastu võetud 20.04.2005* (RT I 2005, 26, 197), official English translation: <www.riigiteataja.ee/en/eli/522022023001/consolide>, visited 2 August 2024.

Given the broad definition of documentary evidence as indicated in point 1.2, almost anything that can be documented in some form may be used as evidence. This also applies to electronic evidence (documentary evidence recorded electronically), which is explicitly expressed in Section 272 (1) Code of Civil Procedure.[2]

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.)

See point 1.3.

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.)

There are no presumptions as to the correctness of certain documents under the Code of Civil Procedure, and no difference is made between different categories of documents. Based on the general rule of the free assessment of evidence provided in Section 232 (1) and (2) Code of Civil Procedure, all items of evidence shall be evaluated by the court pursuant to law in all respects, comprehensively and objectively, and, unless the principal parties have agreed otherwise, the court does not regard any item of evidence as having a predetermined weight.[3]

As derives from Section 272 Code of Civil Procedure, private documents are regarded as evidence. In the absence of special rules on the evaluation of private documents, they are evaluated together with other evidence without giving any particular weight to them. This equally applies to the case the other party contests the document.[4]

It follows from the legal definition of documentary evidence that electronic documents can be submitted to court. Section 274 Code of Civil Procedure specifies that electronic documents are filed with the court in the form of printouts or are transmitted electronically in a form that permits a person to acquaint themselves with the document and allows its safe storage in the Judicial Information System.

The Judicial Information System (Court Information System, *Kohtute infosüsteem* – KIS) is a central information management system used by Estonian courts of the first and second instance and the Supreme Court offering one information system for all types of court cases. This system

[2] See further M. Poola, Evidence in Civil Law – Estonia (Institute for Local Self-Government and Public Procurement Maribor 2015) p. 37. See also T. Ivanc, 'Theoretical Background of Using Information Technology in Evidence Taking', in V. Rijavec, T. Keresteš and T. Ivanc (eds.), Dimensions of Evidence in European Civil Procedure (Kluwer Law International 2016) p. 265.
[3] Poola 2015, supra n. 2, p. 39; 'Taking of Evidence: Estonia', <e-justice.europa.eu/76/EN/taking_of_evidence?ESTONIA&init=true&member=1>, visited 12 July 2024.
[4] Poola 2015, supra n. 2, p. 37.

enables the registration of court cases, hearings and judgments, automatic allocation of cases to judges, creation of summons, publication of judgments on the official website and collection of metadata.[5]

Pursuant to Section 80 (1) of the General Part of the Civil Code Act[6], unless otherwise provided by law, a transaction in the electronic form is deemed to be equivalent to a transaction in the written form. In order to comply with the requirements for the electronic form, a transaction must:

1) be carried out in a form that allows for permanent reproducibility and
2) contain the names of the persons who carried out the transaction and
3) be electronically signed by the persons who carried out the transaction (Section 80 (2) General Part of the Civil Code Act). The electronic signature must be given by a method that allows the signature to be linked to the content of the transaction, the person who carried out the transaction and the time the transaction was carried out. The rules for attributing an electronic signature to a person and for affixing the electronic signature are provided by law. The digital signature is a type of electronic signature (Section 80 (3) General Part of the Civil Code Act).

According to Section 24 (1) of the Electronic Identification and Trust Services for Electronic Transactions Act,[7] a digital signature shall be deemed an electronic signature that conforms to the requirements for a qualified electronic signature set out in Article 3 (12) of the Regulation (EU) No 910/2014 of the European Parliament and of the Council (eIDAS regulation).[8] This implies that whenever the Estonian legislation uses the term 'digital signature', it means the qualified electronic signature.[9]

The above-mentioned provisions of the General Part of the Civil Code Act also apply in civil procedure as regards documentary evidence. As provided in Section 336 (1) Code of Civil Procedure, court claims, petitions, applications and other documents that must be in writing may also be filed with the court electronically if the court is able to make printouts and copies of the document. The document must bear the sender's digital signature or be transmitted by another similar secure method that allows the sender to be identified. The sender is deemed to be uniquely identifiable if a certificate of authenticity created by their private key is attached to the e-mail. Hence, an electronic document that meets the indicated criteria is considered equal to written documents. Based on Section 80 General Part of the Civil Code Act, electronic form is considered equal to written form, therefore electronic documents have the same probative value as written documents.

Under the Code of Civil Procedure, the authenticity of any document may be contested by a party to the proceedings, and in this respect, a distinction is made between physical and electronic documents. According to Section 277 (1) Code of Civil Procedure, a party to proceedings may contest the authenticity of a document and move for the court not to consider

[5] See 'Court Information System', <www.rik.ee/en/international/court-information-system>, visited 5 August 2024.
[6] *Tsiviilseadustiku üldosa seadus, vastu võetud 27.03.2002* (RT I 2002, 35, 216), official English translation: <www.riigiteataja.ee/en/eli/ee/Riigikogu/act/518122023003/consolide>, visited 2 August 2024.
[7] *E-identimise ja e-tehingute usaldusteenuste seadus, vastu võetud 12.10.2016* (RT I, 25.10.2016, 1).
[8] OJ L 257, 28.8.2014, p. 73 – 114.
[9] See further I. Kull, L. Kask, 'Electronic Signature under the eIDAS Regulation in Domestic and Cross-Border Communication: Estonian Example', 12 Juridiskā Zinātne / Law (2019) p. 21 at p. 28 ff.

the document as an item of evidence if the party substantiates that the document is a forgery. Section 277 (3) provides that the authenticity of an electronic document bearing a digital signature may be contested only by substantiating the circumstances that give reason to presume that the document was not created by the signature owner. This also applies to electronic documents created by another secure method that makes it possible to establish the person who created the document and its time of creation.[10]

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.)

The general rules regarding the evidentiary value of documents described in point 1.5 shall apply to public documents, including the electronic ones.

Provisions on documents created by a public authority or by a person authorised to carry out public duties are contained in Section 276 Code of Civil Procedure. Where the court has doubts concerning the authenticity of a document created by a public authority or by a person authorised to carry out public duties, the court may request the authority or the person who appears to have created the document to certify its authenticity (Section 276 (1) Code of Civil Procedure). An apostille certificate according to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents – or legalisation by a competent consular official or envoy of the Republic of Estonia – suffices as proof of authenticity of a foreign public document. A foreign public document that does not bear an apostille and has not been legalised is assessed by the court according to its inner conviction (Section 276 (2) Code of Civil Procedure).

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.)

According to Section 273 (1) Code of Civil Procedure, a written document is filed as an original document or as a copy. Where a party to proceedings files the original document together with a copy, the court may return the original and include the copy, certified by the judge, in the case file (Section 273 (2) Code of Civil Procedure). On a motion of the person who filed it, an original document that was included in the case file may be returned on the entry into effect of the

[10] See Poola 2015, supra n. 2, p. 39.

judicial disposition concluding the proceedings. The case file retains a copy of the original, filed by the person to whom the original was returned and certified by the judge (Section 273 (3) Code of Civil Procedure). The court may set a time limit for persons to acquaint themselves with a document that has been filed; when the time limit expires, the court returns the document. In such a situation, the case file retains a copy of the document (Section 273 (4) Code of Civil Procedure). Where a document has been filed in the form of a copy, the court may require the filing of the original, or the substantiation of circumstances that prevent its filing. If the requirement is not complied with, the court decides on the probative value of the copy (Section 273 (5) Code of Civil Procedure).

As follows from Section 274 Code of Civil Procedure, electronic documents are filed with the court in the form of printouts or are transmitted electronically in a form that permits a person to acquaint themselves with the document and allows its safe storage in the Judicial Information System.

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.)

Much of the civil procedure in Estonia is conducted electronically. In practice, documents are often submitted to the court electronically (either as digitally signed electronic documents or electronic copies of written documents). Likewise, courts send documents to the participants in the proceedings electronically.[11] For details, see point 1.9.

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.)

As indicated in point 1.9, the Code of Civil Procedure provides rules on filing of electronic documents. Such documents may be filed with the court both in the form of printouts and in a form that permits a person to acquaint themselves with the document and allows its safe storage in the Judicial Information System (Section 274 Code of Civil Procedure). With regard to contesting the document's authenticity, a separate provision relates to electronic documents bearing digital signatures. The authenticity of this kind of document may be contested only by substantiating the circumstances that give reason to presume that the document was not created by the signature owner. This also applies to electronic documents created by another secure method that makes it possible to establish the person who created the document and its time of creation (Section 277 (3) Code of Civil Procedure).

[11] Poola 2015, supra n. 2, p. 37 – 38.

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).)

Pursuant to Section 277 (4) Code of Civil Procedure, where a document's authenticity has been contested, the court may, when rendering its judgment, disregard the document or exclude it from the evidence by an order. To check whether the document is a forgery, the court may commission an expert assessment or require other evidence to be produced.

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.)*

It is just against the background of contesting the document's authenticity that a difference can be noted between different types of electronic evidence. As laid down in Section 277 (3) Code of Civil Procedure already cited above, the authenticity of an electronic document bearing a digital signature may be contested only by substantiating the circumstances that give reason to presume that the signature owner did not create the document. This rule applies equally to electronic documents created by another secure method that makes it possible to establish the person who created the document and its time of creation.

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.)

As referred to in point 1.5, in line with the principle of free assessment of evidence, the court shall evaluate all items of evidence pursuant to law from all perspectives, thoroughly and objectively, and decide, according to its conscience, whether or not assertions made by a party to proceedings are proven; no evidence has predetermined weight for a court. However, according to Section 230 (1) Code of Civil Procedure, the parties to the proceedings may agree on a division of the burden of evidence that is different from what has been provided by law, as well as agree on the items of evidence that may be used to prove a certain fact. Such agreements made by the parties must take them into account by the court.

An exception to the principle of free assessment of evidence follows from Section 232 (3) Code of Civil Procedure. When ascertaining a disputed circumstance, the court is bound by the opinion given by a specialist witness appointed by mutual agreement of the principal parties, provided:

1) the dispute stems from a contract that the principal parties concluded in the course of their economic or professional activities, and
2) no circumstances are present that would constitute grounds for recusing the witness if they had acted as an expert in the proceedings, and
3) the witness was appointed according to the agreement, without giving preference to either of the parties, and

4) the opinion of the witness is not manifestly wrong.[12]

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.)

According to general rules, the court may, on a motion of a party to proceedings, invite an expert to provide their opinion in order to clarify circumstances that are relevant to the case and that require specialised knowledge. On a question of law, the court may, on a motion of a party or of its own motion, invite an expert to provide their opinion in order to ascertain the law in force outside the Republic of Estonia, international law or customary law (Section 293 (1) Code of Civil Procedure). The examination of a specialist to prove a circumstance or event whose perception requires specialised knowledge is governed by the provisions concerning the examination of witnesses. Where a party to proceedings has filed, with the court, the written opinion of the specialist and the person is not examined as a witness, the opinion is assessed as an item of documentary evidence (Section 293 (2) Code of Civil Procedure).

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.)

The costs of appraisal by an expert are allocated by the order by which the court fixes the value of the civil case. The court may decide that such costs must be borne, in part or in full, by the principal party who caused the need for the appraisal by failing to state the value of the case, by stating the wrong value or by unfoundedly contesting the value that had been stated (Section 136 (3) Code of Civil Procedure).

Unless the court rules otherwise, specific costs of considering the case, including the costs of experts, are paid in advance, to the extent ordered by the court, by the party to proceedings who filed the motion or application to which the costs are related. Where the motion or application has been filed by both principal parties or where a witness or an expert is summoned or an inspection is conducted of the court's own motion, the costs are paid by the parties in equal amounts (Section 148 (1) Code of Civil Procedure).

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.)

As mentioned in point 1.5, the Code of Civil Procedure allows the contestation of the authenticity of any document. With regard to an electronic document bearing a digital signature, its authenticity may be contested only by substantiating the circumstances that give reason to presume that the document was not created by the signature owner. This also applies to

[12] Poola 2015, supra n. 2, p. 23.

electronic documents created by another secure method that makes it possible to establish the person who created the document and its time of creation (Section 277 (3) Code of Civil Procedure).

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.)

Generally, there are no restrictions regarding the use of illegally obtained evidence in the Estonian law of civil procedure. The only exception is provided in Section 238 (3) clause 1 Code of Civil Procedure, according to which the court may refuse to accept an item of evidence and return it, or refuse to arrange the taking of the evidence, where the item has been obtained as a result of a criminal offence or of unlawful violation of a fundamental right. It is therefore at the court's discretion to accept the evidence despite the violations. It should be noted that no court practice has been developed with respect to this issue.[13]

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.)

Rules on the burden of evidence and of producing it are provided in Section 230 Code of Civil Procedure. In action-by-claim proceedings, each principal party must, unless otherwise provided for by law, provide evidence of the circumstances on which their claims and objections are based. Unless otherwise provided for by law, the principal parties may agree on a division of the burden of evidence that is different from what has been provided by law, as well as agree on the items of evidence that may be used to prove a certain fact (Section 230 (1) Code of Civil Procedure). Evidence is produced by the parties to proceedings. The court may invite the parties to produce additional evidence (Section 230 (2) Code of Civil Procedure). Unless otherwise provided for by law, the court may – in a matrimonial case, in a filiation case, in a dispute related to the interests of a child and in action-by-petition proceedings – arrange the taking of evidence of its own motion (Section 230 (3) Code of Civil Procedure). In a maintenance case, the court may require a principal party to provide the particulars and documents concerning their earnings and pecuniary situation and caution the party regarding the possibility of making the inquiry mentioned in subsection 5 (Section 230 (4) Code of Civil Procedure). In a situation provided for by subsection 4, the court may require relevant information to be provided by: the principal party's employer, including former employers; the Social Insurance Board or another authority or person who disburses payments related to old age or loss of capacity for work; insurance companies; the Tax and Customs Board; credit institutions (Section 230 (5) Code of Civil Procedure). The persons and authorities mentioned in subsection 5 are under a duty to provide

[13] Poola 2015, supra n. 2, p. 52. See also B. Nunner-Krautgasser and P. Anzenberger, 'Inadmissible Evidence: Illegally Obtained Evidence and the Limits of the Judicial Establishment of the Truth', in V. Rijavec, T. Keresteš and T. Ivanc (eds.), Dimensions of Evidence in European Civil Procedure (Kluwer Law International) p. 195 at p. 202, 205.

the information to the court within the time limit that the court sets. The court may impose a fine on the person or authority if the duty is violated (Section 230 (6) Code of Civil Procedure).

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.)

See points 1.5, 2.2 and 2.8. According to Section 277 (5) Code of Civil Procedure, a document whose authenticity has been contested or whose contents may have been changed is retained in the case file until the end of proceedings unless, in the interest of public order or in order to prevent the loss of the document, it needs to be transferred to another public authority. The court notifies any doubts regarding a document's being a forgery to the Prosecutor's Office.

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.)

See point 2.8.

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.)

See point 2.8.

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?)*

According to Section 253 (1) Code of Civil Procedure, where appearing before the court is unreasonably onerous to the witness and where, taking into consideration the substance of the questions and who the witness is, the court finds the provision of written testimony to be sufficient for evidentiary purposes, the court may make an order by which it requires the witness to provide written replies to the questions put to them within the time limit set by the court. In a situation mentioned in subsection 1, it must be explained to the witness that regardless of having provided written testimony, they may still be summoned to the trial or hearing to provide oral testimony. An explanation of the substance of Sections 256–259 Code of Civil Procedure and of the witness's duty to tell the truth must be provided. The witness must also be cautioned against refusing to give testimony without a valid reason and against giving knowingly false testimony, and must be required to sign the text of the testimony and of the caution (Section 253 (2) Code of Civil Procedure). A party to proceedings has a right to put written questions to the witness through the court. The court determines the questions to which the witness is requested to reply (Section 253 (3) Code of Civil Procedure). After receiving the witness's answers, the court transmits them without delay to the parties to proceedings together with the signed text of

the caution (Section 253 (4) Code of Civil Procedure). Where this is needed, the court may summon the witness to the trial or hearing to give their testimony orally (Section 253 (5) Code of Civil Procedure).

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.)

As a rule, the parties have a right to freely submit applications and evidence in the proceedings. The above-mentioned right is restricted by certain time constraints and the relevance of the submitted evidence. Pursuant to Section 329 (1) Code of Civil Procedure, the parties to proceedings must make their representations, motions, applications and objections – and produce their evidence – as early as is possible considering the status of the proceedings and insofar as this is necessary for disposing of the case expeditiously and justly. Once the pre-trial proceedings have been completed, new representations, motions, applications and objections may be made, and new evidence produced, only if it was not possible to make or produce them earlier because of a valid reason. In pre-trial proceedings, the court may direct the parties to proceedings to produce, amend or clarify any documents, to state their views concerning the documents produced by the opposing party, and to produce their own evidence, within the time limit set by the court. Any directions that the court gives must be notified to the parties (Section 329 (4) Code of Civil Procedure).[14]

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.)

See point 3.1.

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.)

[14] See Poola 2015, supra n. 2, p. 4.

Generally, third parties are required to submit information or documentary or physical evidence or appear at a court hearing as witnesses and to allow the performance of an inspection if it is so required by the court (Sections 254, 279 (3), 286, 292 Code of Civil Procedure). The court may fine a person for not complying with its order (Sections 279 (3), 286, 292 (2) Code of Civil Procedure). As far as testimony of witness is concerned, the court can fine a witness for not attending the court hearing or order compelled attendance (Section 266 (1) Code of Civil Procedure). Where a witness, without a valid reason, refuses to give testimony or sign an acknowledgement of having been cautioned or warned, the court may impose a fine or a short-term custodial sentence of up to 14 days on the witness (Section 266 (2) sentence 1 Code of Civil Procedure).[15]

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.)

See point 3.1.

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.)

As follows from Section 331 (1) Code of Civil Procedure, where a party to proceedings files a representation, motion, application or objection, or produces an item of evidence, after expiry of the time limit set for this by the court or in violation of the provisions of Sections 329 or 330, the court considers it only if it finds that accepting it will not cause a delay in disposing of the case, or if the party substantiates a valid reason for being late.

The court, however, has discretion to decide about what is a good reason for submitting the petitions, applications, evidence or objections after the time prescribed in Section 329 (1) Code of Civil Procedure. Furthermore, what derives from Section 331 (1) Code of Civil Procedure and has been confirmed in the court practice is that the court has a wide discretion to decide about whether to accept petitions, applications, evidence or objections submitted late, and that in some circumstances the court should accept the parties' petitions, applications, evidence or objections even if they are submitted late.[16]

[15] See Poola 2015, supra n. 2, p. 29.
[16] Poola 2015, supra n. 2, p. 35.

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.)

Rules relevant to filing of electronic documents are laid down in Section 274 Code of Civil Procedure. Electronic documents are filed with the court in the form of printouts or are transmitted electronically in a form that permits a person to acquaint themselves with the document and allows its safe storage in the Judicial Information System. See point 1.5.

With regard to the file of the civil case, an electronic document sent to or prepared by the court is included in the case file as a printout together with the particulars concerning the person who created the document, the person who printed it out as well as concerning the time that the document was created, the time it was sent to the court and the time it was printed out. An electronic document may also be included in the file as a recording in the Judicial Information System or on a digital data medium, provided preservation of a copy of the document in the system is ensured (Section 56 (3) Code of Civil Procedure). The case file may be kept in its entirety or in part in the digital form (Section 57 (1) Code of Civil Procedure). Paper documents are scanned and saved under the entry for the appropriate case in the Judicial Information System. The system automatically records the time of saving the document and the particulars of the person saving it. Documents saved in the system are deemed equivalent to paper documents (Section 57 (2) Code of Civil Procedure). Where this is needed, documents filed on paper in a situation mentioned in subsection 2 are preserved until completion of proceedings (Section 57 (3) Code of Civil Procedure).

An important role in this context is played by the eFile system being a central information system that provides an overview of the different phases of criminal, civil, administrative and misdemeanour proceedings, procedural acts and court adjudications to all the parties involved,

including the citizen and their representatives. It is an integrated system for proceedings enabling the simultaneous exchange of information between different parties.[17]
As laid down in Section 60[1] (1) Code of Civil Procedure, the eFile system for the management of procedural information is a database that is part of the State Information System. It is kept for processing procedural information and personal data in civil proceedings and its purpose is:

1) to provide an overview of civil cases that the courts are dealing with;
2) to reflect information concerning operations performed in the course of civil proceedings;
3) to facilitate organisation of the work of the courts;
4) to ensure the collection of judicial statistics required to make policy decisions in the field of justice;
5) to facilitate electronic transmission of information and documents.

The following particulars are recorded in the database:

1) particulars concerning civil cases that are being considered or have been completed;
2) information concerning operations performed in the course of civil proceedings;
3) digital documents in situations provided for by the Code of Civil Procedure;
4) particulars concerning the proceedings authority, parties to proceedings and persons participating in the proceedings;
5) judicial dispositions (Section 60[1] (2) Code of Civil Procedure).

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.)

See point 4.1.

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.)

Technically, the e-File is a central storage of electronic documents and metadata that is inserted by the users of the information systems of different authorities in justice system.[18]

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?

[17] 'e-File', <www.rik.ee/en/international/e-file>, visited 10 August 2024.
[18] Note from General Secretariat of the Council to Working Party on e-Law (e-Justice) on final results of the questionnaire on e-Filing and e-Delivery, 9204/15, <www.parlament.gv.at/dokument/XXV/EU/67106/imfname_10553485.pdf>, visited 14 August 2024, p. 50.

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

Rules on acquainting oneself with the case file provided in the Code of Civil Procedure are the following. The parties to proceedings have a right to acquaint themselves with the case file and to obtain copies of procedural documents in the file (Section 59 (1) Code of Civil Procedure).
The court may restrict the right of a party to proceedings to acquaint itself with the case file and to obtain copies of the file where it is manifest that this would be contrary to a compelling interest of another party or any other person. Restrictions may not be imposed if the party is a principal party to action-by-claim proceedings (Section 59 (1^1) Code of Civil Procedure).
The court may restrict the right of a party to proceedings to acquaint itself with the audio recording of the trial or hearing if the trial or hearing was declared closed to the public in its entirety or in part or if it involved compromise negotiations (Section 59 (1^2) Code of Civil Procedure).
During action-by-claim proceedings, persons other than the parties to proceedings are only authorised to acquaint themselves with the case file and to obtain copies of procedural documents in the file with the consent of the principal parties. A representative of the competent authority of the State may acquaint themselves with the file and obtain copies of procedural documents with the permission of the Chief Judge of the court dealing with the case, even without the consent of the parties, provided the authority substantiates its legally relevant interest to do so (Section 59 (2) Code of Civil Procedure).
Where proceedings in the case have been concluded with a disposition that has entered into effect, a person other than the parties to proceedings may acquaint themselves with the case file and obtain copies of procedural documents with the permission of the district court[19] that dealt with the case, even without the consent of the principal parties, provided the person substantiates a legitimate interest to acquaint themselves with the documents and obtain a copy. The person may not acquaint themselves with the file of a case in which the proceedings were closed to the public (Section 59 (3) Code of Civil Procedure).
In an action-by-petition case, a person other than the parties to proceedings may – unless otherwise prescribed by law – acquaint themselves with the case file and obtain a copy of a procedural document strictly with the permission of the court that dealt with or is dealing with the case provided the person substantiates a legitimate interest to do so. The person may acquaint themselves with procedural documents pertaining to adoption only with the permission of the adoptive parent and of the full-age child (Section 59 (4) Code of Civil Procedure).
A person may acquaint themselves with electronic procedural documents and documents recorded on digital or other data media under subsections 1–4 of only by a method that guarantees the integrity of the medium. An electronic copy, printout or extract of a procedural document may also be obtained (Section 59 (5) Code of Civil Procedure).
A note is made in the case file concerning the fact that the party to proceedings or their representative acquainted themselves with the file (Section 59 (5^1) Code of Civil Procedure).
On a motion of a party to proceedings or their representative, a data medium that is used in the case as an item of evidence, contains a State secret or classified information of a foreign State and is not included in the case file, is presented – in accordance with the rules provided by the State Secrets and Classified Information of Foreign States Act – to the party or their

[19] The English names of the types of Estonian courts used in this report are: district courts (courts of first instance), circuit courts of appeal (courts of second instance) and the Supreme Court (which considers the dispositions rendered in civil cases by the circuit courts of appeal) (see Sections 9 (1), 11 (1), 12 and 13 sentence 1 Code of Civil Procedure). This terminology is based on the English language version of the Code of Civil Procedure cited in supra n. 1.

representative to acquaint themselves with that medium. A note is made in the file concerning presentation of the medium (Section 59 (5^2) Code of Civil Procedure).
An order by which a person is denied permission to acquaint themselves with the case file is made by the judge or assistant judge. The order may be appealed. The order entered by the circuit court of appeal concerning the appeal cannot be appealed to the Supreme Court (Section 59 (6) Code of Civil Procedure).

Section 52 Code of Civil Procedure contains provisions regarding recording a procedural operation. A trial or hearing is audio recorded (Section 52 (1) Code of Civil Procedure). The trial or hearing or other procedural operation may be initially recorded in its entirety or in part on audio, video or other data media. In such a situation, the record of proceedings is created without delay after the trial or hearing or performance of other procedural operation (Section 52 (1^2) Code of Civil Procedure). With respect to the recorded testimony of witnesses, experts and parties to proceedings as well as of recorded results of an inspection, the record of proceedings only includes a note referring to these unless, in the course of the proceedings, a principal party requests – or the court deems it necessary – that a record be made of the main substance of such recordings (Section 52 (2) Code of Civil Procedure). According to Section 52 (3) Code of Civil Procedure, the recording is included in the case file.

As indicated in point 1.5, the Judicial Information System is used, i.a., for the purpose of the registration of court cases and hearings.

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.)

See point 4.1.

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.)

Section 58 Code of Civil Procedure contains provisions on archiving the case file. When the disposition by which the proceedings were concluded has entered into effect, the district court that dealt with the case archives the case file (Section 58 (1) Code of Civil Procedure). The case file and the procedural documents included in it are preserved after conclusion of the proceedings strictly for as long as is necessary in the interests of the parties to proceedings or of other persons, or in the public interest (Section 58 (2) Code of Civil Procedure).

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.)

See point 5.1.

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.)

See point 5.1.

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.)

See point 5.1.

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.)

Upon appointment, judges get access to the training of judges organised by the Supreme Court's Legal Information and Judicial Training Department and the Judicial Training Council. There is a special compulsory training program for newly appointed judges aimed at improving their professional knowledge and skills. One of the training activities is the use of legal information databases.[20]

Judicial clerks and candidates for judicial office may take part in training programs compiled for judges. The National Ministry of Justice is responsible for organising training, which it also provides in collaboration with courts. The training strategies, annual training programs and the exams program for judges are drafted by the Supreme Court and approved by the Training Council.[21]

According to the Bar Association Act,[22] all attorneys (attorneys-at-law and assistant attorneys-at-law) are obliged to undergo continuing legal training. The objective is to provide training for members of the Bar in various areas of legal practice. The purpose of the trainings is to maintain and develop attorneys' professional skills.[23]

Following some changes that have been introduced to the e-File system, the Estonian Bar Association has offered a legal training for users of the software. Moreover, the Estonian Registers and Information Systems Centre (Registrite ja Infosüsteemide Keskus – RIK) organises regular trainings for court staff.[24]

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

[20] 'Initial Training of Judges and Prosecutors in the European Union: Estonia', <e-justice.europa.eu/39442/EN/initial_training_of_judges_and_prosecutors_in_the_european_union>, visited 2 August 2024.

[21] 'Court Staff Training Systems', <e-justice.europa.eu/408/EN/court_staff_training_systems>, visited 2 August 2024; 'Court staff training systems in the EU: Estonia', <e-justice.europa.eu/fileDownload.do?id=76b7762c-e9b2-4dcb-adf5-19f4cd61cd37> , visited 2 August 2024.

[22] *Advokatuuriseadus, vastu võetud 21.03.2001* (RT I 2001, 36, 201), official English translation: <www.riigiteataja.ee/en/eli/519012021002/consolide>, visited 2 August 2024.

[23] 'Initial Training of Lawyers in the European Union: Estonia', <e-justice.europa.eu/38584/EN/initial_training_of_lawyers_in_the_european_union?ESTONIA&member=1>, visited 2 August 2024; 'Lawyers Training Systems in the EU: Estonia', <e-justice.europa.eu/fileDownload.do?id=beba3e57-cdc9-466c-958a-24c530d0114a>, visited 2 August 2024.

[24] C. Ginter and J. Lazonen, 'New Technologies = New Law: National Regulations. Estonia' (2021), <archiwum.hfhr.pl/wp-content/uploads/2021/09/CC_short_Estonia.pdf>, visited 2 August 2024, p. 7.

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.)

Under Estonian law, a court session may be held in the form of a procedural conference. This opportunity is available mainly for civil cases. Issues regarding a trial or hearing with distance participation are regulated in Section 350 Code of Civil Procedure. In line with these provisions, the court may hold a trial or hearing with distance participation such that it is possible for a party to proceedings or their representative or adviser to be off-venue during the time of the trial or hearing and perform procedural operations in real time from the off-venue location (Section 350 (1) Code of Civil Procedure). A witness or expert may also be heard by the method mentioned in subsection 1, and the party to proceedings who is off-venue may put questions to them (Section 350 (2) Code of Civil Procedure). In a trial or hearing held with distance participation, the right of every party to proceedings to make representations, motions and applications and to formulate its opinion on the representations, motions and applications of other parties must be guaranteed in a technically secure manner, as must any other conditions at the trial or hearing when transmitted in real time, in both image and sound, from the party off-venue to the court and vice versa. With the consent of the principal parties and the witness and, in action-by-petition proceedings, with the sole consent of the witness, the witness may be examined by telephone under the rules for trials or hearings with distance participation (Section 350 (3) Code of Civil Procedure). The Minister in charge of the policy sector may enact specific technical requirements for conducting a trial or hearing with distance participation (Section 350 (4) Code of Civil Procedure).[25]

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.)

See point 7.1.

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

[25] See further Poola 2015, supra n. 2, p. 43, 51; 'Taking Evidence by Videoconference: Estonia', <e-justice.europa.eu/39432/EN/taking_evidence_by_videoconference?ESTONIA&clang=en&idSubpage=&mtContentRequested=1>, visited 2 August 2024; 'Taking of Evidence: Estonia', <e-justice.europa.eu/76/EN/taking_of_evidence?ESTONIA&member=1>, visited 2 August 2024; Ginter and Lazonen, supra n. 24, p. 3.

(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.)

The location of a person remotely attending a court hearing is not legally regulated.[26] Each court has an employee of the Registers and Information Systems Centre working as an on-site IT specialist, who ensures the operation of the video conference equipment and deals with solving technical problems.[27]

7.3. Which applications (software) are used for videoconferencing in civil court proceedings?
(Please investigate whether the courts use multiple applications.)

Estonian courts use the Cisco Meeting Server for videoconferencing. It is a fully functional solution from public data centres, which means that no commercial cloud is used. This system allows users to connect from most platforms without first installing any software (video conferencing equipment, PCs, telephones). In addition to ongoing videoconferencing, this solution also allows users to stream, record, etc. Every virtual court hearing is unique, therefore it is not possible to use the same room name and passcode for entering the virtual court room after the hearing is over.[28]

Before and during the COVID-19 crisis, the main communication channel between the courts and the parties was the e-mailing system (Court Information System – KIS). Judges and court staff are also able to use KIS at their home. Judges used telephone and e-mail for technical matters, and the Cisco videoconference system for oral hearings (in the form of a procedural conference) and Skype Business for in-house meetings. With individuals who do not have an e-mail address, courts have communicated and continue to communicate by ordinary mail.[29]

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.)

See point 7.3.

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)

See point 7.3.

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

[26] Ginter and Lazonen, supra n. 25, p. 4.
[27] 'Taking Evidence by Videoconference: Estonia', supra n. 25.
[28] Republic of Estonia, Ministry of Justice, 'Follow-up Questions after Country Visit to Estonia – Response', <commission.europa.eu/system/files/2021-07/ee-additional_input.pdf>, p. 4; Ginter and Lazonen, supra n. 24, p. 4.
[29] K. Kerstna-Vaks, 'Estonia', in The Co-chairs of the Judicial Wing (eds.), COVID-19: Which Practical Measures Adapted by the Insolvency Courts because of the Pandemic are Desirable to Become Permanent Changes of Their Practice? (INSOL Europe 2022) p. 12 at p. 16.

(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.)

In the procedure for actions by petition, it is possible that a party or witness be heard by telephone in a procedural conference with the consent of the parties and the witness (see Section 477 (4) Code of Civil Procedure).[30]

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.)

See points 7.1 and 7.4.

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)?

In most cases, the parties have the possibility to ask for a virtual hearing instead of an in-person hearing in courthouse. It is up to the judge to decide, whether to hear a case in the courtroom or to use e-channels.[31]

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.)

Pursuant to Section 251 (1) Code of Civil Procedure, any person who may have knowledge of circumstances relevant to the case may be examined as a witness, provided the person is not a party to proceedings – or a representative of such a party – in the case. The court summons the witness to the trial or hearing and serves them with a summons. The summons must contain at least the following particulars:

1) the parties to proceedings and the subject matter of the dispute;
2) what the person is to be examined about;
3) the command to appear at the time and place stated in the summons to give testimony;
4) a warning that coercive measures provided for by law will be imposed if the witness does not appear for the examination (Section 252 Code of Civil Procedure).

[30] See Ginter and Lazonen, supra n. 24, p. 4.
[31] Report of the First Study Commission of the International Association of Judges – IAJ – 2021: Access to Justice during the COVID-19 Pandemic, <vkksu.gov.ua/sites/default/files/i_sc_2021_1st_study_commission_full_report_access_to_justice_during.pdf>, visited 2 August 2024, p. 19.

The liability of witnesses is regulated in Section 266 Code of Civil Procedure. Where a witness who has been summoned fails to appear before the court without a valid reason, the court may impose a fine or order the witness to be brought in forcibly (Section 266 (1) Code of Civil Procedure). Where a witness, without a valid reason, refuses to give testimony or sign an acknowledgement of having been cautioned or warned, the court may impose a fine or a short-term custodial sentence of up to 14 days on the witness. The witness is released without delay when they have testified or signed the acknowledgement, or when the trial or hearing has ended or the need to examine the witness is no longer present (Section 266 (2) Code of Civil Procedure). The witness bears the case costs caused by their refusal, without a valid reason, to provide signed acknowledgement of having been cautioned or warned, to give testimony or by their failure, without a valid reason, to appear at the trial or hearing (Section 266 (3) Code of Civil Procedure). The order of the district court or of the circuit court of appeal made under circumstances mentioned in subsections 1–3 may be appealed by the witness. The order of the circuit court of appeal concerning the appeal filed against the order of the district court cannot be appealed to the Supreme Court (Section 266 (4) Code of Civil Procedure). See also point 3.3.

7.7.1. Under which circumstances may a witness refuse testimony?
(Explain also if the rules differ for videoconference testimony.)

Under the Code of Civil Procedure, there are several situations in which a person summoned as a witness can refuse to testify.

Section 257 (1) Code of Civil Procedure provides a list of persons who have a right to refuse to testify as a witness:

1) any blood relative, in the descending or ascending line, of the claimant or defendant;
2) a sister, stepsister, brother or stepbrother of the claimant or defendant, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the claimant or defendant;
3) a step parent or foster parent or a step child or foster child of the claimant or defendant;
4) an adoptive parent or adopted child of the claimant or defendant;
5) the spouse of or a person permanently living together with the claimant or defendant, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended.

The above right to refuse to testify, however, does not apply in exceptional situations laid down in Section 258 Code of Civil Procedure. Regardless of the provisions of Section 257 Code of Civil Procedure, the witness may not refuse to give testimony concerning:

1) the performance and substance of a transaction that they were invited to attend as a witness;
2) the birth or death of a member of their family;
3) a circumstance related to a pecuniary relationship that arises from a family relationship;
4) an operation related to the disputed legal relationship that the witness performed as the legal predecessor or representative of a principal party.

Moreover, a privilege against self-incrimination as well as a privilege against incrimination of persons close to the witness are provided in Section 257 (2) Code of Civil Procedure. The witness may refuse to give testimony also if the testimony may incriminate them, or a person mentioned in subsection 1, in the commission of a criminal or misdemeanour offence.

The witness also has a right to refuse to give testimony concerning a circumstance to which the Act on State Secrets and on Classified Information of Foreign States applies (Section 257 (3) Code of Civil Procedure).

Finally, as follows from Section 257 (4) and (5) Code of Civil Procedure, a person processing information for journalistic purposes has a right to refuse to give testimony concerning a circumstance that makes it possible to identify the person who has provided the information. In such a situation, a person has a right to refuse to give testimony if they have professionally come into contact with circumstances that may identify the person who has provided information to the person processing information for journalistic purposes.

As referred to in point 7.1, in accordance with Section 350 (1), (2) and (3) Code of Civil Procedure, a witness may be heard remotely in a procedural conference, and in some circumstances by telephone.[32]

7.7.2 Does the law of your Member State allow for cross-examination?
(Explain also if the rules differ for videoconference testimony.)

Cross-examination is not in contradiction with the usual procedural policy of Estonia. Pursuant to Section 262 (5) Code of Civil Procedure, the parties to proceedings have a right to put questions to the witness that, in their view, are needed in order to dispose of, or establish the witness's connection to, the case. The parties put their questions through the court. With the permission of the court, a party may put their questions to the witness directly. The procedure of questioning a witness provided in the Code of Civil Procedure is based on the principle that the first to question the witness is the party to proceedings on whose motion the witness was summoned; after this, the witness is questioned by the other parties. A witness summoned of the court's own motion is questioned first by the claimant (Section 262 (6) Code of Civil Procedure). The court may ask questions at any time. In practice, after both the parties have examined the witness, each party may ask additional questions if needed.[33]

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 t he 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)?

[32] See further Poola 2015, supra n. 2, p. 42 – 43.
[33] Poola 2015, supra n. 2, p. 45.

(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).)

According to the requirements provided in Section 350 (3) Code of Civil Procedure, a court session held in the form of a procedural conference should be organised in a way that the right of every participant in the proceedings to file petitions and applications and to formulate positions on the petitions and applications of other participants in the proceedings is guaranteed in a technically secure manner, and the conditions of the court session in respect of the real time transmission of image and sound from the participant not present in court premises to the court and vice versa should be technically secure.[34]

The information system that allows to participate in the proceedings remotely offers a number of options for the convenience of people with disabilities: text enlargement, change of colour, use of a screen reader. There is still the opportunity to bring documents physically to a courthouse, as well as to receive court decision in paper form.[35]

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.)

The location of a person taking part in a videoconference is not regulated by law. As follows from Section 350 (1) Code of Civil Procedure, the court can organise a procedural conference in such a way that the person examined by videoconference does not have to be in court for questioning.[36] See point 7.2.1.

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?

[34] See Poola 2015, supra n. 2, p. 51.
[35] Ginter and Lazonen, supra n. 24, p. 7.
[36] 'Taking Evidence by Videoconference: Estonia', supra n. 25.

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.)

According to Section 347 (2) sentence 2 clause 1 Code of Civil Procedure, at the beginning of the trial or hearing, the court ascertains who of the persons summoned has appeared, and their identity. No more precise rules on checking the participants' identity at the court hearing are provided in the Code of Civil Procedure. The court must be convinced of the identity of the summoned person. For this purpose, the court checks, e.g., an identity document with a picture of the summoned person. The identity of the persons taking part in the videoconference can be determined, e.g., on the basis of a copy of a document previously submitted to the court.[37]

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

Court hearings can be recorded. Recording is carried out in accordance with the procedure provided for in Sections 52 or 42 Code of Civil Procedure that regard recording a procedural operation and relaying or recording the trial or hearing, respectively. The remote listening technique used in courts allows the recording of hearings based on Section 52 Code of Civil Procedure.[38]

Pursuant to Section 42 (1) Code of Civil Procedure, notes may be taken at a public trial or hearing provided this does not interfere with the proceedings. The trial or hearing may be photographed, filmed or audio recorded – or a radio, television or other broadcast of it made – strictly with the prior permission of the court.

[37] 'Taking Evidence by Videoconference: Estonia', supra n. 25.
[38] 'Taking Evidence by Videoconference: Estonia', supra n. 25.

In a trial or hearing closed to the public, the court may only permit the taking of notes (Section 42 (2) Code of Civil Procedure). The court may remove from the courtroom, and impose a fine on, any person who violates the provisions of subsection 1 or 2 (Section 42 (3) Code of Civil Procedure).

According to Section 52 (1) Code of Civil Procedure, a trial or hearing is audio recorded. Recording the trial or hearing may be dispensed with if:

1) it comes to light before the trial or hearing or in the course of its progress that recording is technically impossible;
2) the trial or hearing is held outside court premises;
3) the trial or hearing is held without the attendance of a principal party and the court dismisses the court claim, postpones consideration of the case or disposes of the case by the written procedure or by a default judgment;
4) the hearing is held to pronounce a judicial disposition;
5) it is a hearing before the Supreme Court (Section 52 (1^1) Code of Civil Procedure).

The trial or hearing or other procedural operation may be initially recorded in its entirety or in part on audio, video or other data media. In such a situation, the record of proceedings is created without delay after the trial or hearing or performance of other procedural operation (Section 52 (1^2) Code of Civil Procedure).

With respect to the recorded testimony of witnesses, experts and parties to proceedings as well as of recorded results of an inspection, the record of proceedings only includes a note referring to these unless, in the course of the proceedings, a principal party requests – or the court deems it necessary – that a record be made of the main substance of such recordings (Section 52 (2) Code of Civil Procedure).

The recording is included in the case file (Section 52 (3) Code of Civil Procedure).

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.)

There is no direct law that would oblige the parties to use cameras all the time during a videoconference, but usually it is required by courts.[39]

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?

In accordance with Section 52 (3) Code of Civil Procedure, the recording of a procedural operation, including a trial or hearing, is included in the case file. See points 4.5 and 7.12.

[39] Ginter and Lazonen, supra n. 24, p. 4.

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

See point 4.5.

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?

According to general rules, where a party to proceedings is not proficient in the Estonian language and does not have a representative in the proceedings, the court, where this is possible, enlists the assistance of an interpreter or translator in the proceedings on a motion of the party or of its own motion. The enlisting of such assistance is not required if the party's representations are understandable for the court and for the other parties to proceedings (Section 34 (1) Code of Civil Procedure). Where it is not possible for the court to enlist the assistance of an interpreter or translator without delay, the court makes an order by which it directs the party to proceedings who needs the interpreter or translator to secure, within the period determined by the court, the assistance of an interpreter or translator – or of a representative who has sufficient knowledge of Estonian. Failure to comply with the requirement does not preclude the court from disposing of the case. Where the person who does not comply is the claimant, the court may dismiss the court claim (Section 34 (2) Code of Civil Procedure).[40]

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.)

There is no special regulation in the Code of Civil Procedure regarding the location of the interpreter.[41]

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?

With reference to the principle of orality, following the recent reforms introduced in Estonia, it appears to be less important. This is connected with the current development of communication systems. Rather, the focus is on the rigorous preparation of the oral hearing, with the preliminary hearing being in writing (or electronic). Although an oral hearing is foreseen, the parties can always agree with the written procedure themselves. As a rule, the court should not hold an oral hearing at the pre-trial stage, although the courts do it in practice, but prefer the parties to submit

[40] See 'Taking Evidence by Videoconference: Estonia', supra n. 25.
[41] 'Taking Evidence by Videoconference: Estonia', supra n. 25.

their views in writing. Therefore, the written procedure in Estonia outweighs the oral procedure.[42]

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.)

The procedure for hearing witnesses is provided in Section 262 Code of Civil Procedure. The hearing of a witness is to start with the court explaining the object of the hearing to the witness and urging the witness to disclose everything that they know concerning the object of the hearing. Thereafter, the participants in the proceedings have the right to submit questions to the witness through the court. With the permission of the court, participants in the proceedings may also pose questions directly. The court excludes any leading questions and questions that are not relevant to the matter, as well as any questions posed with the aim of revealing new facts that have not been presented before, and repeated questions. If necessary, the court has the right to pose additional questions at any point during questioning in order to clarify or supplement the testimony, or to establish the basis for the witness's knowledge.

In case of a court session organised in the form of a procedural conference, a witness or an expert who is in another place may be heard, and a participant in the proceedings who is in another place may pose questions to them via videoconference.[43]

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

[42] K. Ševcová, 'Civil Process in the Context of Orality', 2 (5) Visegrad Journal on Human Rights (2019) p. 7 at p. 10. See further Ivanc, supra n. 2, p. 267 ff.
[43] 'Taking of Evidence: Estonia', supra n. 25.

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?

See point 7.12.2.

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)?

As regards confidential discussions between the attorneys and the parties during remote court hearings, in practice, lawyers use parallel chat solutions such as Microsoft Teams, Messenger or WhatsApp. This issue is not regulated by law.[44]

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?)

Pursuant to Section 148 (1) Code of Civil Procedure, unless the court rules otherwise, specific costs of considering the case are paid in advance, to the extent ordered by the court, by the party to proceedings who filed the motion or application to which the costs are related. Where the motion or application has been filed by both principal parties or where a witness or an expert is summoned or an inspection is conducted of the court's own motion, the costs are paid by the parties in equal amounts. Videoconferencing equipment is available in the courts and there should be no cost to use court video conferencing equipment.[45]

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).)

The principle of public hearing is considered one of the basic principles of Estonian civil procedure. In line with this principle, the proceedings are public, unless the public interest directed at the protection of the private sphere of the participants is larger than the public interest directed at maintaining public control over the judiciary reflected in the principle of public

[44] See Ginter and Lazonen, supra n. 24, p. 4.
[45] 'Taking Evidence by Videoconference: Estonia', supra n. 25.

proceedings. The principle of public hearing is expressed in Section 37 (1) Code of Civil Procedure, stating that the hearing of the case in court is public unless otherwise prescribed by law. Exceptions to this principle are provided in Section 37 (2) Code of Civil Procedure. The court may restrain a person who has expressed disregard for the court – as well as a minor, in order to protect their interests – from attending a public hearing of the case.[46]

The public can access digital hearings by requesting a link to a hearing from the court. Orders which are to be disseminated to the public are published on the website of the court and in the computer network at the place prescribed for such purpose. Moreover, courts provide an opportunity to watch hearings via video screens that are located in other rooms of the court, when a hall cannot accommodate every person who wants to watch an open proceeding.[47]

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)?

In specific situations, the use of videoconferencing in the court proceedings is not advisable. This is the case of, e.g., the hearing of a minor child in a guardianship case, which should take place in a special room with the participation of a psychologist.

[46] See Poola 2015, supra n. 2, p. 17.
[47] See Ginter and Lazonen, supra n. 24, p. 7 – 8.