NATIONAL REPORT FOR SLOVENIA ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

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National report: Slovenia

On electronic evidence and videoconferencing

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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.

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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.)

Slovenian law does not define evidence or electronic evidence, with the exemption of electronic data, which shall be regarded as a type of electronic evidence. The definition of electronic data is provided in the first point of Article 2 of the Electronic Business and Electronic Signature Act[1] (hereinafter EBESA) and the first point of Article 2 of the Electronic Identification and Trust Services Act.[2] Electronic data is respectively defined as data that are created, stored, sent, received or exchangeable by electronic means; and as data which are electronically created, stored, sent, received or exchangeable.

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.)

Slovenian law does not define paper or physical document. However, in Slovenian legal theory, a paper document is considered an object on which human thought is expressed or an object on which human thought is expressed in writing.[3] Furthermore, there are also a number of other definitions in which the document is defined by slightly different elements, such as the presence of human handwriting or manifestation of any thought and not only human.[4] Nevertheless, the most common definition is the one where a document is an object on which human thought is expressed in writing, e.g. Supreme Court of the Republic of Slovenia did in judgement I Ips 8050/2018 (from 29. 10. 2020, ECLI:SI:VSRS:2020:I.IPS.8050.20180111) also use the aforementioned definition of the document.

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.)

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[1] *Zakon o elektronskem poslovanju in elektronskem podpisu*, Official Gazette of RS, No 98/04 – official consolidated text, 61/06 – ZEPT, 46/14, 121/21 – ZEISZ and 130/22 – ZN-H.

[2] *Zakon o elektronski identifikaciji in storitvah zaupanja*, Official Gazette of RS, No 121/21, 189/21 – ZDU-1M and 18/23 – ZDU-1O.

[3] J. Juhart, Civilno procesno pravo FLR Jugoslavije (Univerzitetna založba 1961), p. 369.

[4] Compare J. Zobec, '224. člen', in L. Ude and A. Galič (eds.), Pravdni postopek, zakon s komentarjem, 2. knjiga (Uradni list, GV Založba 2006), p. 415; L. Ude, Civilno procesno pravo (Uradni list 2002), p. 265 and S. Triva, Građansko procesno pravo I (Narodne novine 1965), p. 420.

According to the traditional types of evidence, specific electronic evidence could be categorised as an inspection object or a document since the inspection object and document are the only means of evidence that are physical evidence.[5] Due to the contrasted nature of electronic evidence, it is impossible to categorise them all as the same means of evidence. The criteria for categorising electronic evidence should be conditioned by whether the electronic evidence meets the qualifying elements of documentary evidence. Suppose it does, then it is treated as such.[6] On the contrary, electronic evidence, which cannot be considered documentary evidence, is regarded as an inspection object.

The importance of distinguishing between means of evidence is reflected in the diversity of rules regulating means of evidence. If the evidence is treated as a document, when the text is in a foreign language, a certified translation of the document must be submitted to the court. The following distinguishing element is that the documents must be submitted to the court, while the inspection object is, at least in the majority of cases, conducted outside the court premises. The inspection object can be perceived directly by sight, hear, smell, taste and touch. Furthermore, documents are divided into originals and copies and public and private, which causes special legal effects in Slovenian civil proceedings.

A particular type of electronic evidence can be categorised in only one means of evidence, either as an inspection object or a document, as well as in both types simultaneously, e.g. a photo with annotations is in Slovenian legal theory considered both an inspection object and a document - the direct sensory perception of the content of the photograph is subject to the rules of inspection, while the evaluation of the annotation is considered as a document.[7] Accordingly, the circumstances of taking evidence impact the categorisation of electronic evidence among means of evidence.

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.)

The admissibility of electronic evidence in legal proceedings is based on Article 16.a of the Civil Procedure Act (hereinafter CPA)[8], which stipulates in the first paragraph that the electronic form shall be considered equivalent to the written if the data in electronic form is suitable for processing at court, accessible and appropriate for later use. The second paragraph of the aforementioned article stipulates that data in electronic form shall not be denied its evidentiary value solely on the grounds that they are in electronic form.

Nomotechnically, the second paragraph of Article 16.a of the CPA has the nature of a program norm since an explicit provision on non-discrimination of writing in physical and electronic form would not

[5] Juhart 1961, supra n. 3, p. 358.
[6] See also the answer to the question 1.2 »Does the law of your Member State define of what is considered as paper document?«.
[7] Zobec 2006, supra. n. 4, p. 416.
[8] *Zakon o pravdnem postopku*, Offical Gazette of RS, No 73/07 – official consolidated text, 45/08 – ZArbit, 45/08, 111/08 – odl. US, 57/09 – odl. US, 12/10 – odl. US, 50/10 – odl. US, 107/10 – odl. US, 75/12 – odl. US, 40/13 – odl. US, 92/13 – odl. US, 10/14 – odl. US, 48/15 – odl. US, 6/17 – odl. US, 10/17, 16/19 – ZNP-1 and 70/19 – odl. US, 1/22 – odl. US in 3/22 – ZDeb.

be necessary considering EBESA in Articles 4 and 13 stipulates[9] that the electronic form is equivalent to the written form, if the data in electronic form are accessible and suitable for subsequent reference[10], and that data in electronic form shall not be denied admissibility or evidentiary value solely on the grounds that they are in electronic form.[11] At the EU level Regulation No. 910/2014 determines the legal effects of electronic documents, as its Article 46 stipulates that an electronic document shall not be denied legal effect and admissibility as evidence in the legal proceedings solely on the grounds that it is in electronic form. Furthermore, Regulation (EU) 2020/1783 in Article 8 states that documents that are transmitted through the decentralised IT system shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form.

Where the probative value of (electronic) evidence is not specifically determined is the general rule the free assessment of evidence, which is determined by Article 8 of the CPA, and according to which the court is not bound by any legal rules on the evidentiary value of particular means of evidence.[12] The free assessment of evidence as a fundamental principle of litigation is, therefore, in conflict with the regulation of the preliminary determination of the "value level" of a certain means of evidence. The means of evidence are thus equivalent to each other.[13] The placement of electronic evidence among the means of evidence will therefore have no effect on the assessment of evidentiary value (except for the rules of a public document). Accordingly, in each individual case, the judge will evaluate the evidentiary value of particular (electronic) evidence with the principle of free assessment of evidence, even in the case of the creation of new sources, which reflect (rapid) technological development.[14]

Regarding assumptions, Regulation No. 910/2014 establishes the equivalence of the legal effects of a qualified electronic signature and a handwritten signature. Furthermore, the CPA contains in Article 224 of CPA a rule that establishes the probative value of the (electronic) public document as they are considered to be proof of the truth of what it certifies or regulates.[15]

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.)

As mentioned, 16.a Article of CPA states that where a written form is prescribed by this Act, the electronic form shall be considered to be equivalent to the written form if the information in electronic form is suitable for processing at court, accessible and appropriate for subsequent use. Almost identical is the first paragraph of Article 13 of EBESA. However, the second paragraph of Article 13 of EBESA states that the equivalence of written and electronic form shall not apply to:

[9] Proposal of Act Amending the Civil Procedure Act (ZPP-C), EPA 1375-IV, EVA: 2006-2011-0004, Number: 00720-4/2007/14, Ljubljana, 5. 4. 2007.
[10] See Article 13 of EBESA.
[11] See Article 4 of EBESA.
[12] J. Zobec, '8. člen', in L. Ude and A. Galič (eds.), Pravdni postopek, zakon s komentarjem, 1. knjiga (Uradni list, GV Založba 2005), p. 84
[13] Juhart 1961, supra n. 3, p. 358.
[14] Zobec 2005, supra n. 12, p. 84.
[15] See also the answer to the question 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?«.

1. legal acts by which property rights to real estate are transferred or by which some other real right to real estate is established;
2. contracts regulating testaments;
3. contracts regulating property relationships between spouses;
4. contracts on the disposal of property belonging to persons who have been deprived of legal capacity;
5. contracts on the delivery and division of property *inter vivos*;
6. life care contracts and agreements on the waiver of heirship prior to inheritance;
7. gift promises and deeds of gift *mortis causa*;
8. (Ceased to be in force);
9. other legal acts which an Act requires shall be concluded in the form of a notarial record.

Furthermore, the document can be transformed from written form to electronic and *vice versa*. The legal effects of this conversion are based on the first paragraph of Article 107 of CPA, which generally prescribes that the documents attached to the submission may be either an original or a transcript. Furthermore, a contained and stored microfilm or electronic (digitalised) copy, a reproduction or a certified transcript of this copy, and also an ordinary transcript or a microfilm or electronic (digitalised) copy, a photocopy or a reproduction of such copy shall be considered a transcript of a document in hard copy. An electronic copy that has been converted into a form suitable for reading and printing on paper shall be considered a transcript of a document in electronic form.[16] Notwithstanding the differentiating between paper and electronic transcript or copy, the Slovenian CPA does not have any special provisions regarding private electronic documents; therefore, general evidence rules for the private document apply.

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.)

Since the Act Amending the Civil Procedure Act – ZPP-C, the definition of a public document explicitly emphasises the equivalence between a public document in physical and electronic form. Pursuant to Article 224 of the ZPP, a public document is defined as a document in a hard copy or electronic format issued in the prescribed form by a state authority within the limits of its competence or a document issued in such form by a self-governing local community, a company or other organisation, or an individual in the course of executing its public authority assigned to it by an Act (a public document). Public document shall be proof of the truth of what it certifies or regulates. Furthermore, other documents shall have authority in terms of evidence when they are made equivalent in this respect to public documents by special laws and regulations. Therefore, the existence of a public document is conditioned by three conditions:

- the issuer of the document can be a state authority, a self-governing local community, a company or another organisation, or an individual in the course of executing its public authority;
- the issuer operates within the limits of its authority or public authority;
- the document is in the prescribed form.[17]

[16] See also the answer to the question 1.7. »Describe the legal effects of changing the form of electronic evidence to physical« and 1.8. »Describe the legal effects of changing the form of physical evidence to electronic.«
[17] Ude 2002, supra n. 4, p. 266 in accordance with Article 224 of CPA.

The third paragraph of Article 224 regulates that evidence by a microfilm or electronic copy of a document or a reproduction of this copy shall be equivalent to proof by a public document in hard copy provided that such a microfilm or electronic copy or the reproduction of this copy was issued by the competent state authority, a body of a self-governing local community or a holder of public authority.

Regarding public documents, there is a presumption of their evidentiary value, which refers to the reality of their content. This is a rebuttable presumption (*praesumptio iuris)*[18] and not of *praesumptio iuris et de iure*, which does not allow evidence to the contrary.[19]

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.)

In Slovenian civil procedure, any documents attached to a submission may be either in the original or a transcript. Evidence is considered as an attachment to a submission; therefore, Article 107 of CPA, which regulates the legal effect of changing the form of the document attached to a submission, also applies to the submission of evidence. According to the Article 107 of CPA, a transcript of a document in electronic form is considered an electronic copy that has been converted into a form suitable for reading and printing on paper. A printout of electronic evidence would therefore be treated as a transcript of an electronic document. However, in Slovenian civil procedure, there is no specific rule which would demand to submit evidence as a printout. On the contrary, the third paragraph of Article 107 of CPA stipulates that if a copy of the document has been attached, the court shall, on a motion of the opposing party, order the submitter to file the original document, and shall allow the opposing party to examine it. However, when an original document is attached by a party, the court shall keep such document and allow the opposing party to examine it. Once the original document is no longer needed by the court, it shall be returned to the party that has submitted it at his or her request, but the court may request the submitter to attach a copy of the document for the files.[20] Notwithstanding that the Article 107 of CPA regulates the legal effects of changing the form of documents, it can be analogically used for other forms of evidence.

According to the first point of the first paragraph of Article 27 of the Rules on electronic operations in civil procedures and in criminal procedure[21] , the electronic applications and electronic attachments filed in individual cases are stored in the electronic file. Henceforth, electronic evidence should be part of the electronic file. However, the electronic file is - notwithstanding it is regulated with CPA and Rules on electronic operations – still only a concept which should be eventually used in civil proceedings. Former is the reason electronic evidence is still frequently changed to paper form during the proceedings.

[18] The fourth and fifth paragraph of Article 224 states that it is admissible to prove that facts contained in a public document are false or that the document has been incorrectly composed and that it is admissible to prove that a microfilm or electronic copy or a reproduction of this copy differs from the original document.
[19] Ude 2002, supra n. 4, p. 266.
[20] Second paragraph of Article 107 of CPA.
[21] *Pravilnik o elektronskem poslovanju v civilnih sodnih postopkih in v kazenskem postopku*, Official Gazette of RS, No 158/20 and 28/23.

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.)

Based on Article 107 of CPA, it is admissible to change the format of physical evidence to electronic. According to the aforementioned article, a contained and stored microfilm or electronic (digitalised) copy, a reproduction or a certified transcript of this copy, and also an ordinary transcript or a microfilm or electronic (digitalised) copy, a photocopy or reproduction of such copy is considered a transcript of a document in hard copy.

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.)

In Slovenian civil procedure, a copy is interpreted as a form of transcript in the scope of the Article 107 of CPA, which regulates the change of format of documents attached to a submission.[22] The definition of the original is provided in the Decree on the protection of documentary and archive material[23] , where an original is regarded as any primary or original written content regardless of the written basis and method of writing. Furthermore, the aforementioned Decree also includes the interpretation of reproductions which are any forms of copies of documentary and archive material that partially or fully summarize the written content from which the copy was made (for example, photocopies, prints, transmissions, microfilm recordings, photographs, slides, digitized recordings, audio and visual recordings).[24] Decree on the protection of documentary and archive material applies when the file is filed in the archive. According to the Court rules, the file will be filed in the archive afterwards the final decision has been issued in the case and when all tasks have been completed.[25] Nevertheless, those definitions could be transmitted into the civil proceedings, especially as evidence is part of the file and regarded as documentary material after the final decision.

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.)

In Slovenian civil procedure, the legal effects of the copy stem from the legal effects of the transcript.[26] However, the Slovenian CPA does regulate solely the legal effects of the physical copy of electronic

[22] See also the answer to the question 1.7 »Describe the legal effects of changing the form of electronic evidence to physical« and 1.8 »Describe the legal effects of changing the form of physical evidence to electronic«.
[23] *Uredba o varstvu dokumentarnega in arhivskega gradiva*, Official Gazette of RS, No 42/17.
[24] Fourth and ninth point of the first paragraph of the Article 1 of Decree on the protection of documentary and archive material.
[25] First paragraph of Article 242 of Court Rules (*Sodni* red, Official Gazette of RS, No 87/16 and 127/21).
[26] See also the answer to the question 1.7 »Describe the legal effects of changing the form of electronic evidence to physical« and 1.8 »Describe the legal effects of changing the form of physical evidence to electronic«.

evidence and not the electronic copy of electronic evidence. Nevertheless, when the court shall evaluate the evidentiary value of a copy of (electronic) evidence, the principle of free assessment will be applied. The Supreme Court Republic of Slovenia did, in judgment II Ips 244/2012[27] emphasise that CPA does not require the submission of original documents attached to the applications, as Article 107 of the CPA stipulates that they can also be submitted as a transcript. The CPA also does not contain formal evidentiary rules that would determine that the copy of the document (or other evidence) is inherently inauthentic and unreliable. The court shall, with the principle of free assessment of evidence, evaluate the evidentiary value of a copy of the evidence. Therefore, the court shall, in each individual case, assess, depending on the circumstances, whether the party has proven legally important facts with a copy and other evidence.

2. Authenticity, reliability and unlawfully obtained electronic evidence

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

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

Slovenian law does not provide 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. Regardless, the (electronic) evidence must be authentic and reliable to have evidentiary value.

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).)

In Slovenian law, there are no established official guidelines, mechanisms or protocols to identify the source of evidence. However, Article 243 of CPA stipulates that the court take evidence with an expert if the finding or clarification of a fact requires expertise that the court does not have. In most cases where the court tries to identify the unknown source of the evidence, it will take evidence with an expert. Nevertheless, based on the first paragraph of the Article 228 of CPA the court may, on the motion of a party, order the third person to submit a document. The party's motion must contain the designation or type of the document, an indication of the fact to be proven by the document, the most accurate possible description of the content of the document, and an indication of the facts on the basis of which it can be concluded that the document is in possession of the other person. The aforementioned article also applies if it is necessary to inspect an object that is in possession of a third person.[28] Notwithstanding, if the party submitting the evidence cannot identify the source or the author of evidence, he or she will, according to the burden of proof, carry the consequences of not proving the authenticity of (electronic) evidence.

[27] From 27. 2. 2014, ECLI:SI:VSRS:2014:II.IPS.244.2012.
[28] Article 222 of CPA.

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.)*

Provisions of Slovenia's civil procedure do not stipulate different rules or provisions for different types of electronic evidence with the exception of the special evidentiary value of electronic public documents[29] and documents or objects signed with qualified electronic signature, which should have the equivalent legal effect of a handwritten signature (second paragraph of Article 25 of Regulation No 910/2014). Therefore, electronic evidence signed with a qualified electronic signature creates a factual presumption regarding the authenticity of electronic evidence.

However, Slovenian CPA and EBESA stipulate that data in electronic form shall not be denied its evidentiary value solely because it is provided in electronic form.[30] Furthermore, EBESA, in provisions regarding electronic business, regulates electronic messages and data in electronic form. Those provisions predominantly regulate the nature of electronic messages and data, e.g. who is considered to be the sender or recipient, what time of receipt shall be determined, when electronic data shall be deemed equivalent to the written form, etc. Nevertheless, no rules would stipulate (un)authenticity or (un)reliability of electronic messages or data.

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.)

In Slovenian civil procedure, a system of free assessment of evidence applies, where the judge creates his own concept of reality. The judge is not bound by any procedural assumptions or evidentiary rules that would previously determine the evidentiary value of evidence.[31] In Slovenian CPA there are no special rules regarding the lower or higher evidentiary value of electronic evidence. Nevertheless, the (high) possibility of manipulating electronic evidence can result in difficulty reaching the required standard of proof and subsequently negatively affect the evidentiary value of electronic evidence. However, despite the principle of free assessment of evidence, the court may not arbitrarily deny the evidentiary value of electronic evidence simply because it is in electronic form - this is based on Article 16a of CPA. On the other hand, unfamiliarity with the technical part should not impact the evidentiary value of electronic evidence, although it will probably cause the court will frequently take electronic evidence with an expert.

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.)

[29] See also the answer to the question 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?«.
[30] Article 16.a of CPA and Article 4 of EBESA.
[31] Juhart 1961, supra n. 3, p. 58.

Taking electronic evidence requires general knowledge of technological devices and a detailed understanding of individual types of electronic evidence. Judges do not have and cannot have technical knowledge about all the peculiarities of electronic evidence, which is the main reason to conduct evidence with the help of an expert. Pursuant to the Article 243 of CPA, the court shall take evidence by an expert to confirm and clarify certain facts for which expert knowledge is required which the court does not dispose of itself.

The court takes evidence with an expert upon a motion by a party or ex officio. The latter will be carried solely under the condition that the parties intend to dispose of claims that they may not dispose of. Nevertheless, suppose the judge considers that taking evidence with an expert is necessary for specific evidentiary tasks; in that case, he or she must inform the parties of this in the scope of material procedural guidance.[32] The decision as to whether an expert will be required to carry out the evidence is always within the court's jurisdiction.[33] Since the involvement of an expert is inherent in the court's expertise, if the court has the appropriate knowledge, it does not need to involve an expert to provide evidence.[34]

In practice, when the court shall take electronic evidence at the hearing, the worker from Court's technical service will be appointed to conduct the electronic evidence properly and to avoid all technical hurdles.

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.)

According to the provision of Article 249 of the CPA, an expert has the right to be refunded for travel expenses and food and accommodation expenses, for lost income, and for expenses arising from the expertise and the right to payment for the submitted expertise. Furthermore, according to the first paragraph of Article 153 of the CPA, when a party proposes to take evidence, he or she shall be obliged, by order of the court, to pay in advance the amount needed to cover the costs to be incurred in relation to the taking of evidence. If the amount needed to cover the costs is not advanced within the time limit set by the court, the court shall not take the evidence.[35] In such a case, the court shall, taking account of all the circumstances, assess, according to its own conviction, the importance of the fact that the party failed to advance the amount needed to cover the costs.[36] However, the general rule is that the party losing the litigation shall be obliged to pay the costs incurred by the opposing party.[37]

When the court orders the taking of evidence ex officio in order to establish the facts relating to the application of paragraph three of Article 3 of CPA and the parties fail to advance the specified amount, the costs for the taking of evidence shall be paid from the funds of the court notwithstanding the rule which stipulates that if the amount needed to cover the costs is not advanced within the time limit set by the court, the court shall not take the evidence.[38] It is not entirely clear whether the court only covers the

[32] V. Rijavec, 'Dokaz z izvedenci', 6-7 Podjetje in delo (2012), p. 1399 – 1400.
[33] J. Zobec '243. člen' in supra n. 4, p. 475.
[34] Juhart 1961, supra n. 3, p. 388.
[35] The second paragraph of Article 153 of CPA states if both parties propose the taking of evidence, the court shall order them to advance the amount needed to cover the costs in equal parts.
[36] Third paragraph of Article 153 of CPA.
[37] Article 154 of CPA.
[38] Fourth paragraph of Article 153 of CPA.

costs in advance or bears them at the end of the proceedings. The Slovenian legal theory, referring to the grammatical interpretation, states that the court only preliminarily covers the costs, and that at the end of the proceedings, it must decide on these costs ex officio.[39] However, the High Court in Ljubljana decided differently, as the costs incurred during the taking of evidence with an expert were covered by the court's funds.[40]

For those experts who have the status of court experts, the costs and remuneration are assessed according to the Rules on court experts, certified appraisers and court interpreters[41]; for the other experts, the reward is the subject of an agreement between the court as the entity ordering and the expert or is set at the amount ordinary paid for such work.[42]

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.)

According to the burden of proof rules, the opposing party can challenge the reliability, authenticity or manner of obtaining electronic evidence. However, the unreliability of the evidence will have to be demonstrated by the party who disputes the evidence. With the main evidence, the party bearing the burden of proof proves the truth of all the facts of an individual factual situation on which the application of a specific legal norm depends. The object of counter-evidence is diametrically opposed to the main evidence. However, the evidence will be successfully taken if the court is fully convinced that the fact is true. At the same time, a lower standard of proof is sufficient for counter-evidence, i.e. the main evidence must reach a higher standard of proof compared to the counter-evidence.[43] If prevailing probability as the standard of proof is applicable, the main and counter-evidence are balanced in evidentiary value. The successfulness of counter-evidence, in this case, is thus conditioned by the equalisation of its evidentiary value with the level established for the main evidence.[44] When demonstrating the inauthenticity and unreliability of the evidence, the party can propose all means of evidence (inspection, document, hearing of the witness, expert and hearing of the parties).

Slovenian law has no special rules regarding the demonstration of inauthenticity and unreliability of evidence.

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

[39] N. Betetto, '154. člen' in supra n. 4, p. 28. '
[40] Higher Court in Ljubljana decision IV Cp 2249/2018, from 17. 1. 2019, ECLI:SI:VSLJ:2019:IV.CP.2249.2018.
[41] *Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*, Official Gazette of RS, No 84/18 and 148/21.
[42] J. Zobec, '250. člen' in supra n. 4, p. 489.
[43] Juhart 1961, supra n. 3, p. 347-349.
[44] J. Zobec, '212. člen' in supra n. 4, p. 350.

With the provisions of CPA, EBESA and Regulation no. 910/2014[45] , the equivalence between electronic and physical data is established. This also applies to their admissibility.[46] However, no specific rules define electronic evidence as inadmissible because it is compromised or manipulated. Nevertheless, manipulated electronic evidence will have significant difficulties in meeting the required standard of proof. In Slovenian civil procedure, for the judge to be fully convinced, a high degree of probability must be given that no person experienced in life can any longer doubt the truthfulness or falseness of the fact.[47] Some more recent point of view, which have appeared both in theory and in judicial practice[48], emphasise that the evidentiary standard of conviction is exceeded in certain cases and is replaced by the standard of proof of prevailing probability.[49]

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.)

Applying the rules on the burden of pleading and burden of proof to the (in)authenticity and (un)reliability of the electronic evidence means that the burden is on the party who, with the use of electronic evidence, intends to prove the alleged facts. The authenticity and reliability of electronic evidence can be established with all means of evidence, especially with an expert.[50] The reliability of the claim must be proved by the party that affirms the existence of the fact and not by the party that denies its existence (*probatio incubit ei qui affirmant, non ei qui negat*).[51] In order to satisfy the burden of proof, it is not enough for the party to simply provide evidence that substantiates the decisive facts. Nevertheless, the burden of proof will be satisfied when the court, based on the evidence, establishes the reliability of the claim. The party that fails to prove the reliability of its claim will bear the consequences of the unsuccessful taking of evidence.[52]

Regarding the authenticity of the evidence, suppose the opposing party who is relying on a private document admits the authenticity of the signature but disputes the authenticity of the text of the private document; he or she bears the burden of proof.[53] The dogmatics of civil procedural law points out that if the authenticity of the signature is undisputed, a presumption is created about the truth of the statement expressed in the document, as a result of which the burden of proof is on the party who asserts that the

[45] See also the answer to the question 1.4. »Does the law of your Member State explicitly regulate that evidence or data in electronic form has evidentiary value?«.
[46] First paragraph of Article 1 of EBESA.
[47] Juhart 1961, supra n. 3, p. 347.
[48] Prevailing probability as the standard of proof was used by the Supreme Court of the Republic of Slovenia in the following decisions: Supreme Court of Republic of Slovenia decision II Ips 674/2003, from 09.12.2004, ECLI:SI:VSRS:2004:II.IPS.674.2003; Supreme Court of Republic of Slovenia judgement II Ips 402/2007, from 13.05.2010, ECLI:SI:VSRS:2010:II.IPS.402.2007; Supreme Court of Republic of Slovenia decision II Ips 125/2008, from 03.06.2010, ECLI:SI:VSRS:2010:II.IPS.125.2008; Supreme Court of Republic of Slovenia decision II Ips 515/2009, from 03.12.2009, ECLI:SI:VSRS:2009:II.IPS.515.2009; Supreme Court of Republic of Slovenia decision judgmenet II Ips 315/2013, from 20.02.2014, ECLI:SI:VSRS:2014:II.IPS.315.2013; Supreme Court of Republic of Slovenia judgement II Ips 171/2016, from 18.04.2018, ECLI:SI:VSRS:2018:II.IPS.171.2016.
[49] T. Pavčnik, 'Dokazni standardi', 6-7 Podjetje in delo (2012), p. 1407, 1414.
[50] Compare Juhart 1961, supra n. 3, p. 371.
[51] Triva 1965, supra n. 4, p. 408 – 409.
[52] Juhart 1961, supra n. 3, p. 351.
[53] Triva 1965, supra n. 4, p. 424.

document is unreliable.[54] This can also be analogically applied to other evidence signed with a qualified electronic signature.

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.)

In the first paragraph of Article 286, the CPA stipulates that the party shall declare his or her position about the statements and evidence offered by the opposing party. Therefore, it is assumed that the party bears the burden of declaration.[55] In accordance with Slovenian legal dogma, facts that a party does not deny or which he or she denies without giving reasons shall be deemed to have been admitted.[56] The court independently evaluates the importance of undisputed facts in accordance with the free assessment of evidence and the principle of material truth and decides whether an undisputed fact is reclassified as evidence in the proceedings. Thus, it is also a possibility that the court, due to the assessment of the facts as impossible, improbable, or unlikely, will not attribute legal effects to the undisputed fact.[57]

The court shall be authorised to take evidence that the parties have not presented only if it follows from the hearing and the taking of evidence that the parties intend to dispose of claims that they may not dispose of.[58] However, in the case of clearly manipulated evidence, when the opposing party does not make a statement about the facts and proposed evidence of the opposing party, the court cannot take evidence but may decide that the proposed evidence simply does not meet the required standard of proof and therefore indirectly protects the passive parties from negative procedural consequences, i.e. admission of the facts.

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.)

In accordance with the distribution of the burden of proof, the authenticity and reliability of the evidence shall be demonstrated by the party who disputes the evidence. The court can assess evidence itself if they have sufficient expert knowledge about particular electronic evidence; otherwise, the expert shall be appointed. However, when the court doubts whether it has the expertise necessary to confirm and clarify certain facts, it should nevertheless take evidence with an expert.[59]

The court takes evidence with an expert upon a motion by a party or ex officio. It will be carried out ex officio only under the condition that it is an illicit disposition of the parties. Nevertheless, if the judge

[54] M. Dika, Građansko parnično pravo, Utvrđivanje činjenica, VII. Knjiga (Narodne Novine 2018), p. 544.
[55] J. Zobec, '214. člen' in supra n. 4., p. 363.
[56] First and second paragraph of Article 214 of CPA.
[57] L. Varanelli, 'Sodišče in ocenjevanje dokazov v civilnem postopku: nekaj premislekov o drugem odstavku 214. člena ZPP', 31/2 Pravna praksa (2012), p. 7.
[58] See second paragraph of Article 7 of CPA.
[59] J. Zobec, '243. člen' in supra n. 4., p. 476 – 477.

considers that an expert is necessary for specific evidentiary tasks, he or she must inform the parties of this in the scope of material procedural guidance.[60] Regardless, in most cases, the assessment of authenticity and reliability or manipulations, an expert shall be used, who will, with expert opinion, present his or her factual findings regarding the possible manipulation of the evidence.

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.)

The evidentiary procedure consists of four stages. The first level contains the evidentiary proposal, the second level the evidentiary order, the third level the presentation of the evidence and the fourth level consideration of the results of taking evidence.[61] Regarding the consequences of compromised electronic evidence, the fourth level of the evidentiary procedure is decisive. The second paragraph of Article 284 of the CPA stipulates that during the course of the hearing, the evidence offered by the parties shall be taken, and the results of this taking of evidence shall be considered. Furthermore, the fourth paragraph of Article 324 of CPA declares that the court shall, in the statement of grounds, indicate the content of evidence taken, its assessment and the conclusions about the existence of facts that it has created based on the evidence presented.[62] Based on Article 8 of the CPA, the court shall decide which facts will be proved by assessing all the evidence presented individually and as a whole and considering the results of the entire proceedings. Therefore, when the evidence is found to have been manipulated, this results in unsuccessfulness in meeting the appropriate standard of proof and unprovenness of the alleged facts.

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?)*

Article 236.a of CPA states that a party may, at the request or consent of the court, submit to the court written and signed statements of the proposed witnesses on the facts about which said witnesses could testify at the hearing. However, submitting written statements of proposed witnesses is a special method of questioning them and not documentary evidence. The decision of whether the witness will be heard orally or whether a written statement will suffice is within the court's discretion.[63] The court may also directly summon the persons proposed as witnesses to give written statements and/or to answer certain questions, in particular where it assesses, in view of the content of the questions or the proposed witness, that such a manner will be sufficient. In summoning them, the court shall be obliged to point out that they may be invited to testify even if they give a written statement. In both cases, a copy of the proposed witness's identity document and contact information shall be enclosed with the written statement.[64]

Since the article mentioned above refers solely to written and signed statements of the proposed witnesses, it is believed that the pre-recorded oral statements of proposed witnesses would not be

[60] Rijavec 2012, supra n. 32, p. 1390 – 1400.
[61] Juhart 1961, supra n. 3, p. 360.
[62] L. Ude, '324. člen', in L. Ude and A. Galič (eds.), Pravdni postopek, zakon s komentarjem, 3. knjiga (Uradni list, GV Založba 2009), p. 193.
[63] N. Betteto, '236.a člen', in L. Ude and A. Galič (eds.), Pravdni postopek, zakon s komentarjem, 4. knjiga (Uradni list, GV Založba 2010), p. 181 – 182.
[64] Fourth and fifth paragraph of Article 236.a of CPA.

interpreted as a written statement of the witness in regard to Article 236.a of CPA. Nevertheless, pre-recorded witness statements could be admissible as an inspection object, which court shall treat in accordance with the free assessment of the evidence.

3. Duty to disclose electronic evidence

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

The only provisions explicitly regulating the duty to disclose evidence in Slovenian civil procedure are Articles 226 to 228 of CPA, which are systemised under the subtitle "Documents" and thus refer to all documentary evidence. Furthermore, Article 222 of CPA (systemised under the subtitle "Inspection") expands the scope of the duty to disclose evidence to include physical objects by stipulating that if it is necessary to examine an item that is in possession of one of the parties, a third person, a state authority or a legal person to whom it has been entrusted in the execution of a public authority, the provisions of Articles 226 to 228 shall apply *mutatis mutandis*. Likewise, as no legal provision explicitly addresses the duty to disclose electronic evidence, these articles should also be applied to electronic evidence. While it is always possible that some issues and ambiguities might arise when pursuing the duty to disclose a particular type of electronic evidence, such analogous use of Articles 226 to 228 should suffice in most cases, regardless of whether the piece of evidence under examination is considered a document or a physical object (e.g. a person is in possession of a relevant MS Word file, video recording, database, etc.). The duty to disclose electronic evidence would thus apply to all evidence that is by its nature suitable to be brought before the court, as well as when the participation of one of the parties, a third person, a state authority or a person vested with public authority is necessary for its inspection.[65]

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.)

There is no distinction between the rules regulating the disclosure of electronic and non-electronic evidence; therefore, the provisions analysed below also apply to electronic evidence (see point 3.1). The scope of the duty to disclose evidence depends on who has the relevant piece of evidence in their possession (the party requesting the taking of evidence, the opposing party, a third person, a state authority or a person vested with public authority). Under Article 226 of CPA, a party is required to submit a document which they refer to as proof of their statements. If the document is in possession of

[65] See also J. Zobec '222. člen', in L. Ude and A. Galič (eds.), Pravdni postopek: zakon s komentarjem, 2. Knjiga [Civil Procedure: Act with a Commentary, Book 2] (Uradni list, GV založba 2006), p. 412-413.

state authority or a person vested with public authority and the party is unable to arrange for the document to be handed over or shown, the court shall obtain it *ex officio*. Article 227 of CPA regulates the situation where the document to which a party is referring is in the other party's possession. In such a case, the court may, upon the party's motion, order the other party to submit such a document within a set time limit. The duty to disclose a particular piece of evidence arises when the court issues the order. The party may refuse the disclosure only if conditions provided under Articles 230 to 234 of CPA are met, but only to avoid criminal prosecution and not because the document would expose them to severe disgrace or significant material damage (for more, see point 3.4). Nor do they have the right to refuse if the document is otherwise detrimental to their case.[66] The party may not refuse to submit a document (even by invoking privileges under Articles 230 to 234 of CPA) if they themselves relied on it in the litigation to prove their statements or if the document has to be submitted or produced under the law or based on a legal transaction or whose contents relate to both parties to the litigation (e.g. a copy of the contract). No separate appeal is foreseen against the court's order to disclose such a document. For a situation where the document is in possession of a third person, see point 3.3.

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.)

There is no distinction between the rules regulating the disclosure of electronic and non-electronic evidence; therefore, the provisions analysed below also apply to electronic evidence (see point 3.1). Under Article 228 of CPA, if a document is in possession of a third person, the court may, upon the motion of a party, order them to submit it (after hearing them). If they deny their duty to disclose the document in their possession, the court shall decide whether they have such a duty and enforce the final order *ex officio.* Unlike the opposing party with the duty to disclose evidence, the third person can thus be coerced into submitting the document under the rules of Zakon o izvršbi in zavarovanju [Enforcement and Security Act] (henceforth: ESA).[67] On the other hand, they are more broadly protected with privileges under Articles 230 to 234 of CPA than the opposing party and may refuse disclosure if it would expose them or their close relatives to severe disgrace, significant material damage or criminal prosecution, whereas the party may only refuse it to avoid criminal prosecution (for more, see point 3.4). They also have the right to reimbursement of costs incurred in relation to the disclosure.

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.)

[66] See also Zobec 2006, supra, p. 428-429.
[67] Official Gazette of the Republic of Slovenia, No. 3/07 – official consolidated text, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – odl. US, 45/14 – odl. US, 53/14, 58/14 – odl. US, 54/15, 76/15 – odl. US, 11/18, 53/19 – odl. US, 66/19 – ZDavP-2M, 23/20 – SPZ-B, 36/21, 81/22 – odl. US and 81/22 – odl. US.

There is no distinction between the rules regulating the disclosure of electronic and non-electronic evidence; therefore, the provisions analysed below also apply to electronic evidence (see point 3.1).

Regardless of whether the requested document is in possession of the other party or a third person, the party motioning for disclosure must specify their request. The motion must contain the following: the designation or type of the document, the indication of the fact to be proven by the document, the most accurate possible description of the content of the document, and an indication of the facts based on which it can be concluded that the document is in possession of the other party or the third person (paragraph one of Article 227 and paragraph one of Article 228 of CPA, respectively).[68] The purpose of such a specification is to prevent fishing expeditions. In the case of electronic evidence, the cited provision should be applied analogously, but the party requesting disclosure should still specify the evidence and its content in as many details as possible.

Moreover, if a party with the duty of disclosure submits to the court extensive documents as evidence, the court may order the party to submit, within a set time limit, a summary in writing of the most significant statements and information in the attached documents, including the numbers of the pages on which these statements or information are to be found in the submitted documents (e.g. if the submitted documents lack transparency due to their number or content or if it may be reasonably expected that only individual parts are significant to establish the alleged facts). If the party fails to do so, the evidence is deemed withdrawn. These provisions (i.e. paragraphs four and five of Article 226 of CPA) can be especially relevant for the disclosure of a large or even unmanageable volume of electronic evidence that could – intentionally or not – significantly prolong evidence-taking procedure if reviewed in its entirety. While the non-selective disclosure of extensive documents is already problematic when submitted in their physical form, it might at least result in excessive costs for copying and delivery, a waste of time and resources. On the other hand, submitting unnecessary electronic evidence is often as easy as copying larger or additional files onto a hard drive, flash drive, cloud, etc., with minimum additional cost and engagement required. Therefore, the courts are expected to request the summary and specification of relevant information contained in such electronic evidence as set out in the above-cited provisions (by analogy). Naturally, the designations should be adapted to the nature of electronic evidence (e.g. indicating timestamps in video recordings or chat logs instead of pages in documents).

Articles 230 to 234 of CPA regulate justified reasons for refusing to testify or answer a particular question and apply *mutatis mutandis* to the right of a party or a third person to refuse to submit a particular document. In general, a person may not be heard as a witness (legal incapacity to testify) if their testimony would violate their duty to keep official or military secrets until they are relieved of such duty (Article 230 of CPA) and may refuse to testify (privileged witness) in order to protect a professional secret (e.g. lawyers, priests, doctors), unless the disclosure of certain facts is necessary for the greater public benefit or the benefit of some other person (Articles 231 and 232 of CPA). Furthermore, a witness may refuse to answer individual questions for well-founded reasons, especially if, by answering these questions, they or their close relatives might be exposed to severe disgrace, substantial financial damage or criminal prosecution (Article 233 of CPA). Article 234 of CPA lists certain topics regarding which they may not refuse to testify to avoid the possibility of financial damage (legal transactions in which they were present as an invited witness, activities which they undertook as a legal predecessor or representative of one of the parties, facts relating to birth, the conclusion of a marriage or death, etc.). According to paragraph three of Article 227 and paragraph one of Article 228 of CPA, the same situations represent possible exceptions to the duty to disclose (electronic) evidence (e.g. the refusal to

[68] See also the Supreme Court of the Republic of Slovenia Judgement III Ips 61/2010 of 15 October 2013.

submit a video recording that would expose a person to criminal prosecution or an electronic file containing confident information obtained from a party by an attorney). It should be emphasised that unlike the third person, the opposing party with a document in their possession may not refuse to submit it even if the disclosure might expose them to severe disgrace or substantive financial damage (but may refuse to submit it to avoid criminal prosecution).[69]

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.)

There is no distinction between the rules regulating the disclosure of electronic and non-electronic evidence; therefore, the provisions analysed below also apply to electronic evidence (see point 3.1). If a party or a third person who has been ordered to submit a document denies that the document is in their possession, the court may take evidence to establish this fact (paragraph four of Article 277 and paragraph four of Article 228 of CPA, respectively). If a party that has a document in their possession refuses to act according to the court order ordering them to submit the document or if the party denies, contrary to the court's conviction, that they are in possession of the document, the court may deem that the document exists and that its content is such as claimed by the opposing party (paragraph five of Article 277 of CPA).[70] It should be emphasised that the court should still examine all other evidence and freely decide, considering all circumstances of the case, whether the fact being proven with the document is true; however, the fact that the opposing party refuses to submit the document could be a strong indicator that this is, indeed, the case. Therefore, the provision contained in paragraph five of Article 277 does not establish a legal presumption that the content of the document is such as claimed by the party requesting its disclosure. No coercive measures are foreseen against the opposing party either, as they cannot be forced to act against their own interest.[71] On the other hand, if the third person denies their duty to submit the document in their possession, the court shall decide whether they have the duty to disclose the document and, if necessary, carry out *ex officio* the enforcement of the final order to submit the document in accordance with the rules governing enforcement proceedings (paragraphs four and five of Article 278 of CPA). Unlike the opposing party, who is motivated to submit the requested evidence by the possibility of an unfavourable decision, the third person has no such motivation, which is why they may be coerced into submitting the document in accordance with the rules of ESA.

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

[69] See also Zobec v Ude &co (komentar, 2. knjiga, 2006), p. 442-454.
[70] See also the Supreme Court of the Republic of Slovenia Judgement VIII Ips 28/2019 of 22 April 2020 and Higher Court in Ljubljana judgement I Cpg 1697/2013 of 9 April 2014.
[71] See also Zobec v Ude &co (komentar, 2. knjiga, 2006), p. 431.

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.)

There is no case law in the Republic of Slovenia that would address issues related to the duty to disclose electronic evidence arising from differences in national legislation or, in fact, any other issues related to the duty to disclose electronic evidence.

However, as long as there are significant differences between national legal systems in the area of evidence law, a risk remains of conflicts between national rules arising in situations involving the cross-border taking of evidence, both electronic and traditional. These differences can result in a lower evidentiary value of the evidence obtained abroad or even the inadmissibility of such evidence. In the case of evidence-taking by the requested court under Regulation 2020/1783,[72] differences should not pose a significant problem, as the proceedings will be conducted in accordance with domestic legislation. Even when the requesting court calls for the request to be executed following a special procedure provided for in its national law (paragraph three of Article 12 of Regulation 2020/1783), complying with such a request will often be unproblematic. For example, from the perspective of a Slovenian court conducting proceedings, there is no reason why the court would not comply with the request to keep the record of the main hearing (electronic or not) in the same manner it is kept in another member state, even though the CPA clearly states that the record shall contain only essential information about the contents of the acts undertaken (as opposed to additional information that would have to be included in another member state) (paragraph two of Article 123 of CPA).[73] Rejecting such a request would only be justified if a particular manner of keeping a record was expressly prohibited in domestic law (e.g. because it violates the parties' fundamental rights) and not merely because it was not regulated.[74] Similarly, cross-examination is not provided for in the CPA; however, Slovenian courts may still allow it since both parties are already permitted to ask questions, as long as any intimidating tactics or attempts to challenge the credibility of a witness, which are incompatible with Slovenian legal order, are prevented. On the other hand, a Slovenian court should reject a request to examine a person under oath, which is not recognised under national legislation and would thus constitute an illegal pressure and violation of that person's human rights.[75] In such a case, the requested court should simply take evidence in accordance with domestic procedural rules. However, rejecting a specific method of taking evidence can pose significant difficulties for the requesting court, as it can negatively affect the usefulness and effectiveness of the evidence obtained.

Issues caused by different national rules can become even more prominent in relation to the duty to disclose (electronic) evidence and exceptions to this duty and may result in a situation where the evidence will not only have limited evidentiary value but will not be obtained at all. Such is the case of a court requesting disclosure of documents, physical objects or electronic evidence, whereby national rules of the requesting court provide for the disclosure of a wide range of relevant evidence in another party's possession, while national rules of the requested court oblige the party only to submit specific

[72] 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), OJ L 405, 2.12.2020, p. 1–39.
[73] A. Galič and N. Betetto, Evropsko civilno procesno pravo [European Civil Procedure Law] (GV založba 2011), p. 47.
[74] N. Betetto, 'Introduction and practical cases on Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters', 4 The European Legal Forum (2006), p. 144 at p. 137 - 144.
[75] Galič and Betetto 2011, supra, p. 47.

documents that meet certain criteria and only upon a detailed motion specifying each piece of evidence requested (like in the Republic of Slovenia). In such a case, and in other cases where the scope of the duty of disclosure is broader in the requesting member state, the evidence will potentially not be obtained (or at least not obtained in the manner required for evidence to be admissible in the requesting member state).[76]

Similarly problematic is the regulation of privileges, which constitute an exception to the duty of disclosure, and the possibility to impose coercive measures against a person who refuses to deliver evidence in their possession. In that regard, the requested court may not hear a witness protected by a privilege under domestic legislation, even if the rules of the requesting state provide no such privilege.[77] Such a situation is a genuine possibility, for example, in cooperation between Slovenian and Italian courts. While Article 233 of the Slovenian CPA allows a witness to refuse to answer individual questions if they have significant reasons to do so, especially if their answer would expose them or their close relatives to major disgrace, substantial financial damage or criminal prosecution, the Italian legislation[78] exempts a witness from their duty to testify only when they are bound by professional, official or state secrecy. If an Italian court files a request with a Slovenian court to hear a witness who meets the conditions of Article 233 of the CPA, the Slovenian court will not carry out such evidence, even though the witness could be heard before the Italian court that is conducting the main proceedings.[79] As the rules regulating privileges apply, *mutatis mutandis*, to the duty to disclose documents or physical objects, the same problem could occur with privileges and exceptions from the duty to disclose those means of evidence (including electronic evidence).

[76] See also E. Storskrubb, Civil Procedure and EU Law: A Policy Area Uncovered (Oxford University Press 2008) p. 130.
[77] *Ibid.*
[78] Article 249 of Codice di procedura civile [Code on Civil Procedure]. <https://www.altalex.com/documents/news/2014/12/04/del-procedimento-davanti-al-tribunale-dell-istruzione-della-causa>, visited 13 April 2023.
[79] See also Betetto 2006, supra, p. 139.

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.)

There is no special legal act in the Slovenian legal system that would regulate the storage and preservation of electronic evidence in civil proceedings in a systematic and comprehensive manner. However, several provisions are spread through different acts that either govern relevant aspects of evidence taking in physical form but also apply to electronic evidence in the absence of special rules or that regulate broader aspects of electronic operations or electronic files and also pertain to (at least some types of) electronic evidence as an element of these concepts. The most important acts relevant for the storage and preservation of evidence are the CPA, Sodni red [Court Rules],[80] Pravilnik o elektronskem poslovanju v civilnih sodnih postopkih in v kazenskem postopku [Rules on Electronic Operations in Civil Procedures and in Criminal Procedure] (henceforth: Rules on Electronic Operations),[81] sectoral legislation regulating access to evidence of different persons involved in court proceedings (e.g. experts, interpreters, etc.). Some practical solutions have also been developed and are explained under relevant points below.

In the CPA, Article 105b states that an application can be submitted in physical form (handwritten or printed and hand-signed) or electronic form (signed with an electronic signature, which is equivalent to a handwritten signature). An application in electronic form is submitted through the e-justice information system, *e-sodstvo*. On the grounds of this provision and several other articles of the CPA (e.g. paragraph six of Article 132, paragraph three of Article 141a and paragraph eight of Article 149 on service by secure electronic means), the Ministry of Justice was charged with the task of establishing legal instruments, rules, guidelines, protocols, etc., for electronic operations in civil procedures. To that effect, the Rules on Electronic Operations came into force on 1 January 2021, which regulate the submission of electronic applications, electronic service and performance of other electronic activities in litigation and other civil proceedings and in criminal proceedings. They govern, *inter alia*, the organisation and functioning of the judiciary information system (*e-sodstvo* information system), the conditions and manner of submitting applications in electronic form or by electronic means, and the format of the applications in electronic form.

Moreover, Articles 332a to 332d of CPA contain special provisions regulating the handling of submissions, evidence and decisions containing classified information, which also apply to electronic evidence containing such information.

Court Rules stipulate in Article 241 that provisions regulating operations in judicial proceedings in physical form shall apply *mutatis mutandis* to electronic operations in judicial proceedings. Therefore, provisions of the Court Rules regulating, *inter alia*, handling of submissions and their attachments, access to the information and the case file (including evidence), copying, converting, handling, and

[80] Official Gazette of the Republic of Slovenia, No. 87/16 and 127/21.
[81] Official Gazette of the Republic of Slovenia, No. 158/20.

recording of documents, transfers of files to other courts, etc., should also be consulted and applied to the handling and storing of electronic evidence.

Relevant provisions of legal acts governing the protection of documentary and archival material also apply to activities related to the capture and storage of documentary and archival material. See point 5.1.

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.)

Even though the Rules on Electronic Operations regulate the submission of electronic applications accompanied with electronic attachments (including electronic documents in PDF format) – see below – they do not provide standards or protocols that would apply to all types of electronic evidence (e.g. video recordings), or that would specifically focus on the storage and preservation of electronic evidence. Therefore, in most cases, general rules and practices apply when handling electronic evidence during ongoing court proceedings. The CPA lays down the requirement that any applications and attachments to be served to the opposing party shall be delivered to the court in a sufficient number of copies for the court and the opposing party and in such form that they can be served by the court. If they are filed by electronic means, a single copy suffices, as the court will make as many electronic copies or photocopies as needed for the opposing party. Any documents attached to the application may be either in the original or a transcript. A contained and stored microfilm or electronic (digitalised) copy, a reproduction or a certified transcript of this copy, an ordinary transcript or a microfilm or electronic (digitalised) copy, a photocopy or a reproduction of such copy are considered to be a transcript of a document in physical form. An electronic copy that has been converted into a form suitable for reading and printing on paper is considered a transcript of a document in electronic form (Articles 107 of CPA). The Court Rules further specify that each attachment is assigned a special file number when entered into the case file (e.g. A1, A2, B1, B2, etc.). Letter A designates attachments submitted by the claimant, letter B attachments submitted by the defendant, and letter C stands for attachments submitted by other participants or third persons. If the volume of attachments is such that it is physically impossible to store them in the case file, they are stored in a separate cover or in another manner, as long as the transparency and usability of the case file are preserved (Article 209 of Court Rules).

As no e-storage is established for the purpose of storing electronic evidence in proceedings before Slovenian courts, the handling of electronic evidence mostly follows the same principles. In most cases, the parties submit electronic evidence stored on CDs, DVDs, flash drives and similar devices, which are then placed in the court file (in an envelope, plastic folder, etc.). The evidence is stored in the same format and on the same medium as provided by the parties. Upon the parties' request or if otherwise necessary, the court may order a physical or electronic copy (e.g. printing out MS Word documents while keeping the originals stored on the flash drive submitted by the party). No special protocols or standards are established to this effect, and issuing such orders is at the court's discretion. At the main hearing, the evidence is then reviewed in the courtroom (any format of electronic evidence can be taken, and any special hardware or software is arranged) with the assistance of technical and IT staff.

In Slovenian courtrooms, main hearings are subject to sound and video recording, depending on the available equipment. Sound recordings are used to facilitate the keeping of detailed records of hearings and other court actions. After the hearing, they are transcribed by stenographers, and only the transcript

becomes a part of the case file (as a written record), not the sound file. The court can also order a video recording of the hearing, in which case the sound and image are transmitted directly to the server located in Ljubljana, where the recordings are encrypted and stored. They can be decrypted and accessed by any person authorised by the court, but only with a special digital certificate. These video recordings do not become part of the case file and are not considered electronic evidence in the case; instead, they are mainly used to review certain acts to facilitate more accurate decisions (e.g. reviewing witness testimony to observe their body language).

As mentioned above, Slovenian legislation allows for electronic submissions, even though this option is not well-established in practice. The Rules on Electronic Operations define several important concepts that are further regulated under provisions of this act, including the electronic file (e-file), which is defined as a file in particular (civil) proceedings that is maintained electronically (paragraph two of Article 6). An e-file is kept in a central computerised database and contains all electronic applications and electronic annexes submitted in a particular case, all electronic court documents issued in the case, and all electronic proofs of service and written proofs of service converted into electronic form. Electronic documents kept in a central computerised database as part of the e-file must be accompanied by metadata linking them to the case (Article 27 of the Rules on Electronic Operations). The status of electronic evidence can be derived from the cited provision, which lists electronic attachments (i.e. a written document converted into an electronic form or a document originally created in electronic form that has been attached to an electronic application) as part of the e-file (paragraph one of Article 5 of the Rules on Electronic Operations). Consequently, rules regulating the handling and storage of e-files also apply to the handling and storing of electronic evidence during judicial proceedings, even if this is not explicitly stated or emphasised.

The submission of electronic applications and electronic attachments is regulated in Articles 20 to 25 of the Rules on Electronic Operations, which provide for two options; (1) *e-sodstvo* portal (i.e. a public website that is an integral part of the *e-sodstvo* information system) or (2) *e-sodstvo* repository (i.e. online services of the *e-sodstvo* information system, which enable submission of applications).
(1) The user submits an electronic application through the *e-sodstvo* portal by selecting the appropriate electronic task and entering the required information from the standardised part of the text of the application in the appropriate field of the online form; creating a separate electronic document from the non-standardised part of the text of the electronic application (see below); signing the electronic document containing a non-standardized part of the application with secure electronic signature and attaching it to the electronic task; and submitting the application to the *e-sodstvo* information system. Electronic attachments are submitted following the same steps but do not need to be signed with a secure electronic signature (Article 23 of the Rules on Electronic Operations).
(2) The user submits an electronic application and its electronic attachments through the *e-sodstvo* repository by submitting it to the *e-sodstvo* information system directly from their information system for secure electronic submission or indirectly through the provider of secure electronic submission services. The electronic application consists of a standardised part of the application in a machine-readable format and a non-standardised part of the application signed with a secure electronic signature. Electronic attachments do not need to be signed with a secure electronic signature. Upon its submission, the electronic application is equipped with a time stamp, and the user receives an automated electronic certificate stating the time the application was entered into the *e-sodstvo* information system (Article 25 of the Rules on Electronic Operations).

The user must convert the non-standardised part of the text of the electronic application that was originally drawn up as a written document and any attachments in the form of written documents into

electronic form by scanning it in order to attach it to the electronic task. The resulting electronic document must meet the following requirements:

1. it must be in PDF/A format and in black and white;
2. the resolution must be between 240dpi and 300dpi;
3. if the written document consists of several pages, all pages must be contained in a single PDF file so that there are no intermediate blank pages;
4. if two or more documents are attached, each document must be in a separate PDF file.

If the non-standardised part of the text of the electronic application is originally compiled as an electronic document, it must be attached to the electronic task in PDF/A format. The electronic application is considered incomplete if the electronic document fails to meet these requirements (Article 24 of the Rules on Electronic Operations).

Detailed instructions for submitting electronic applications and attachments (issued on 12 February 2021) are available at the *e-sodstvo* portal.[82]

The reliability, authenticity, confidentiality, and quality of electronic evidence are further preserved and secured under provisions of the Rules on Electronic Operations regulating the systemisation of users and the security scheme (see points 4.4. and 4.5.). It is worth repeating that solutions provided under this act fail to account for other types of electronic submissions that can not be converted to PDF format.

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.)

As no e-storage is established for the purpose of storing electronic evidence in proceedings before Slovenian courts, in most cases, electronic evidence is stored in the case file on the same medium and in the same format submitted by the party (CDs, DVDs, flash drives and similar). In such cases, evidence is stored at the court's premises (e.g. in the judge's office).

In the case of electronic applications and electronic attachments submitted according to the Rules on Electronic Operations, submissions are stored in the *e-sodstvo* information system, which operates on the secure private communication network used by state authorities (HKOM). The HKOM network is managed by the Ministry of Public Administration, and all data is stored on the central server of the HKOM network in Ljubljana.

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.)

In the case of electronic evidence attached to the case file on hard media (CDs, DVDs, flash drives and similar), court employees are responsible for storing and preserving such evidence in accordance with general rules and practices for the handling of case files (the CPA, the Court Rules, internal instructions

[82] Available at <evlozisce.sodisce.si/esodstvo/index.html>, visited 13 April 2023. Digital identity is required for maximum functionality.

and guidelines). Furthermore, court employees performing certain tasks related to capture, storage, and archiving are subject to regulations governing the protection of documentary and archival material. For example, under Article 39 of Zakon o varstvu dokumentarnega in arhivskega gradiva ter arhivih [Protection of Documents and Archives and Archival Institutions Act] (henceforth: PDAAIA),[83] employees of entities under public law who manage documentary material and employees of service providers who perform the tasks of capturing and storing material in digital form and accompanying services must complete at least a secondary education and pass the professional competence test at the competent archival institution. More detailed requirements for obtaining professional qualifications in this field are regulated by Pravilnik o strokovni usposobljenosti za delo z dokumentarnim gradivom [Rules on the Professional Competence for Handling Documentary Material] (henceforth: Professional Competence Rules).[84] See point 5.4.

In the case of electronic applications and electronic attachments (or other electronic documents) submitted to the *e-sodstvo* information system, several important tasks are assigned to the Centre for Information Technology (CIF), which is a special organisational unit operating at the Supreme Court of the Republic of Slovenia. CIF is responsible for selecting and procuring IT equipment for Slovenian courts, its maintenance, developing specialised software, education of end users, and technical and other support.[85] In relation to the *e-sodstvo* information system, the Rules on Electronic Operations authorise CIF to, *inter alia*, manage authorisations of users and administrators, manage access to the security scheme, provide substantive and technical assistance to users (e.g. assistance in registration procedures or when entering data in online forms and other electronic tasks, assistance in the case of technical problems) (Articles 10 to 19 of the Rules on Electronic Operations).

4.5. Who may access electronic evidence in a particular case and how?
(Please explain who has access to electronic evidence, which conditions must be met, and which procedure must be followed.)

The right to access electronic evidence is granted by general legislation and sectoral legal acts regulating the role, rights and duties of persons involved in judicial proceedings. Provisions regulating access to the case file and different elements of the file, especially those providing access to evidence in general, also apply to electronic evidence. For example, under the Court Rules, a court employee reviews any submitted documents or applications before processing them, placing them in the case file and handing them over to a judge (Article 203 and subsequent articles of Court Rules). The judge then examines the submitted documents or applications, classifies them according to their importance and urgency, and issues appropriate decisions or orders a hearing (Article 213 and subsequent articles of Court Rules). If the court receives electronic evidence stored on hard media (CDs, DVDs, flash drives), a court employee reviews their content, appropriately records and marks them, makes copies, if necessary, and delivers them to the judge responsible for the case. The judge also examines the content of electronic evidence, decides if any parts should be reviewed at the main hearing, and orders proper steps to be taken to ensure proper handling (e.g. ensure that proper hardware, software and technical support are available at the main hearing).

The parties (and their representatives) are granted the right to examine and copy the files relating to proceedings in which they participate by Article 150 of CPA, while other persons who have a legitimate interest may be allowed to access individual files by the presiding judge, the president of the court or

[83] Official Gazette of the Republic of Slovenia, No. 30/06 and 51/14.
[84] Official Gazette of the Republic of Slovenia, No. 66/16.
[85] For more, see <www.sodisce.si/sodisca/posebne_sluzbe/center_za_informatiko/>, visited 13 April 2023.

other authorised persons. If the case file is kept in physical form, the party has the right to make copies in both physical and electronic form, while if the case file is kept in electronic form, the party has the right to examine and copy it within the information system, after proving their identity with a qualified certificate, as well as monitor the course of proceedings in the information system (Article 150 of CPA and Articles 73 to 74 of Court Rules). In practice, the parties generally request copies of electronic documents; however, if they do not have access to the necessary equipment or the knowledge to review particular electronic evidence, they may request to review evidence in a courtroom with all necessary support.

Other persons involved in proceedings are granted the right to access electronic and other evidence by sectoral legislation regulating the performance of their function. Some examples: Zakon o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih [Court Experts, Certified Appraisers and Court Interpreters Act],[86] Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih [Rules on court experts, certified appraisers and court interpreters],[87] Zakon o odvetništvu [Attorneys Act],[88] Zakon o državnem odvetništvu [State Attorney's Office Act],[89] etc.

Therefore, in the case of electronic evidence attached to the case file that is kept in physical form, no special protocols or technical standards are provided for accessing them. The situation is somewhat different regarding electronic submissions and electronic attachments submitted under the Rules on Electronic Operations, which established a complex categorisation of users (i.e. persons who are authorised by law or other regulations to perform e-procedures) who are divided into three main groups that are then further divided into subcategories with a different scope of authorisations and user rights in the *e-sodstvo* information system (Article 10).

The three general groups of users of the *e-sodstvo* information system are the following:
(1) Ordinary users (users who do not need to prove their identity when using the *e-sodstvo* information system);
(2) Registered users (users who are required to prove their identity when using the *e-sodstvo* information system by entering a username and password); and
(3) Qualified users (users who are required to prove their identity when using the *e-sodstvo* information system by entering a username and password and using a qualified certificate).

Qualified users are further divided into the following categories:
A) Internal qualified users: judges and court employees who are authorised by law or court rules to perform electronic tasks in a particular type of civil or criminal proceedings.
B) External qualified users:
a) Independent external qualified users:
- Professional users: users who hold the position of a representative, authorised person or counsel of parties or participants in proceedings and perform these actions as part of their registered activities, or a court assistant. Professional users include notaries, attorneys, executors, managers, the State Attorney's Office of the Republic of Slovenia, state prosecutor's offices, real estate companies, municipal attorneys' offices, court experts, court interpreters and court appraisers.

[86] Official Gazette of the Republic of Slovenia, No. 22/18 and 3/22 – ZDeb.
[87] Official Gazette of the Republic of Slovenia, No. 84/18 and 148/21.
[88] Official Gazette of the Republic of Slovenia, No. 18/93, 24/96 – odl. US, 24/01, 54/08, 35/09, 97/14, 8/16 – odl. US, 46/16, 36/19 and 130/22.
[89] Official Gazette of the Republic of Slovenia, No. 23/17.

- Users – parties or participants in proceedings: users who act as parties or participants in proceedings, including their representatives or authorised persons. They include parties or participants in proceedings – legal persons, parties or participants in proceedings – natural persons, and state authorities and local communities authorities.

b) Persons representing independent users:

- Natural persons who are authorised on the basis of employment by an independent external qualified user, organised as a legal entity or a registered lawyer, to perform electronic tasks in civil or criminal proceedings on behalf of this user.
- Natural persons who perform a function or tasks with an independent external qualified user, which is a state authority or local community authority, based on which they are entitled to perform electronic tasks on behalf of this authority in civil or criminal proceedings.

In subsequent articles (Articles 11 to 17), the Rules on Electronic Operations regulate the security scheme for different groups of users (the administration of authorisations and requirements for qualified users), while the scope of rights of each group is determined by general legislation (e.g. CPA and Court Rules), as explained above.

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.)

In practice, the accessibility of stored electronic evidence in ongoing proceedings is not an issue, as the proceedings do not last long enough for the media the evidence is stored on to become obsolete or inaccessible with functioning equipment. Even in the case of media that has (relatively recently) fallen out of general use (e.g. floppy disks), state authorities are responsible for keeping and maintaining equipment and software that allows access to such evidence. In the case of e-information systems, any upgrade or development of new software must ensure that previously stored electronic evidence remains accessible. For long-term accessibility, see Part 5 on archiving.

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.)

In the case of electronic evidence attached to the case file on hard media (CDs, DVDs, flash drives, and similar), general rules on transmitting case files to other courts apply. For example, the Court Rules regulate transmissions of files to other courts in Articles 232 to 241. Before the file is sent to the appellate court, another court or another authority, all unnecessary parts must be removed from the file, and the file must be organised appropriately, perforated and tied with a string (regardless of the size of the file). The file sent to the appellate court is accompanied by a special form and all attachments (which would include electronic evidence stored on hard media), while seized objects are sent to the appellate court only if requested (Article 234 of Court Rules). Similarly, if a legal remedy is filed against the appellate court's decision, the file is transmitted to the Supreme Court (Article 236 of Court Rules). The court of first instance keeps a record of file circulations in accordance with Article 232 of Court Rules. Article 241 also stipulates that in the case of electronic operations, these provisions shall apply mutatis mutandis. Therefore, the integrity of electronic evidence in such cases is ensured simply by delivering

them to another court or authority in the same format and on the same medium as submitted by the party or another person.

In the case of e-files stored in the *e-sodstvo* information system, other courts may be granted access to the file through the security scheme as internal qualified users and the integrity of electronic evidence is ensured through the said security scheme.

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.)

When submitting the electronic application and electronic attachments to the *e-sodstvo* information system, the user must convert the non-standardised part of the text of the electronic application that was originally drawn up as a written document and any attachments in the form of written documents into electronic form by scanning it in order to attach it to the electronic task. The resulting electronic document must meet the following requirements: it must be in PDF/A format and in black and white; the resolution must be between 240dpi and 300dpi; if the written document consists of several pages, all pages must be contained in a single PDF file so that there are no intermediate blank pages; if two or more documents are attached, each document must be in its own PDF file. If the non-standardised part of the text of the electronic application is originally compiled as an electronic document, it must be attached to the electronic task in PDF/A format (Article 24 of the Rules on Electronic Operations). Detailed instructions for submitting electronic applications and attachments (issued on 12 February 2021) are available at the *e-sodstvo* portal.[90] See point 4.2.

In the case of other evidence (not submitted via *e-sodstvo* portal), Article 107 of CPA states that any documents attached to the application may be either in the original or a transcript (copy), whereby a contained and stored microfilm or electronic (digitalised) copy, a reproduction or a certified transcript of this copy, an ordinary transcript or microfilm or electronic (digitalised) copy, a photocopy or a reproduction of such copy are considered to be a transcript of a document in physical form. An electronic copy that has been converted into a form suitable for reading and printing on paper is considered a transcript of a document in electronic form. The Court Rules further define different types of transcripts in Article 111. Physical transcripts of documents produced in physical form are photocopies or computer printouts or copies of the original produced in another manner. They must be equipped with the court seal, a stamp with a note on the accuracy of the transcript, and the handwritten signature of the competent court employee. Electronic transcripts of documents produced in physical form are electronic documents created by scanning or other means of converting a physical document into electronic form. Such transcripts must be signed with a secure electronic signature of the *e-sodstvo* information system server, which must be visibly displayed on the copy. Physical transcripts of documents produced in electronic form are printed copies of these writings. They must be equipped with a printout showing the secure electronic signature used to sign the electronic original, html address where the authenticity of the electronic document can be checked, as well as the information required to carry out this check. Transcripts are intended for parties and other participants in the procedure, while electronic transcripts of documents produced in physical form are also intended for filing these documents into the e-file. In practice, it is also possible to convert an electronic file in one format into another electronic file in another format following the court's order if that is necessary to ensure the accessibility of evidence

[90] Available at <evlozisce.sodisce.si/esodstvo/index.html>, visited 13 April 2023. Digital identity is required for maximum functionality.

(e.g. the conversion of sound recordings to .mp3 file if the party is unable to access the equipment or software that would allow them to listen to the recording in its original format). However, this is rarely done, as it is generally possible to ensure access in another manner (e.g. allowing the party to listen to the recording in a courtroom, providing technical support, etc.).

See also point 5.6 concerning the capture of documentary material (including evidence) for archival purposes.

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.)

Court Rules contain basic rules regulating the archiving of case files and the attached documents (including electronic evidence) for a predetermined period after the conclusion of the case. For documents that have the characteristics of archival material according to the regulations governing the protection of documentary and archival material, they refer to PDAAIA and legal instruments adopted on the basis of this act.

PDAAIA stipulates the protection of documentary and archival material, the validity or probative value of such documents, the protection of public and private archival material as cultural monuments, access to archival material in archival institutions and conditions for its use, the tasks of public archival services, the supervision of the implementation of these provisions and the related implementing regulations (Article 1 of PDAAIA).

Uredba o varstvu dokumentarnega in arhivskega gradiva [Decree on the Protection of Documentary and Archival Material] (henceforth: DPDAM),[91] adopted pursuant to PDAAIA, regulates in more detail the creators of archival material, the capture, conversion and storage of documentary and archival material in digital form and the provision of accompanying services, the editing, evaluation and destruction of documentary material and the selection of archival material, the transferring of archival material, the storage and preservation of documentary and archival material, archival depots, protection of film archives, protection of private archival material, professional processing of archival material, records, use of archival material, registration of equipment and service providers, certification of equipment and services, electronic storage registers and the responsibilities of competent bodies (Article 1 of DPDAM).

Pravilnik o enotnih tehnoloških zahtevah za zajem in hrambo gradiva v digitalni obliki [Rules on Uniform Technological Requirements for Capture and Storage of Materials in Digital Form] (henceforth: Rules on Uniform Technological Requirements),[92] adopted pursuant to PDAAIA, regulate in more detail the method, scope and implementation of individual stages of preparation and implementation of capture, electronic storage and accompanying services for long-term storage of material in digital format, internal rules according to their purpose and area of regulation, request for confirmation of internal rules and associated documentation, adoption of model internal rules, demonstration of professional qualifications of internal supervisors, capture and digitalisation process, conditions for conversion to microfilm, content of additional professional and technical instructions for selecting archival material in digital form from documentary material, conditions for certification of hardware, software and services, request forms for registration of provider and certification of

[91] Official Gazette of the Republic of Slovenia, No. 42/17.
[92] Official Gazette of the Republic of Slovenia, No. 118/2020.

equipment and services and associated documentation (Article 1 of Rules on Uniform Technological Requirements).

Professional Competence Rules, adopted pursuant to PDAAIA, regulate in more detail the conditions for professional qualifications and the professional competence test for employees of public legal entities who handle documentary material and for employees of service providers who carry out the capture and storage of materials in digital form and accompanying services (Article 1 of Professional Competence Rules).

Pravilnik o strokovnih izpitih in pridobivanju strokovnih nazivov na področju varstva arhivskega gradiva [Rules on Professional Exams and the Acquisition of Academic Ritles in the Field of the Protection of Archives] (henceforth: Rules on Professional Exams),[93] adopted pursuant to PDAAIA, regulate the organisation of internships and training in the field of archival material protection, the syllabus and the course of professional test (a condition for obtaining a professional title in the field of archival material protection), and the types, conditions and procedure for obtaining professional titles in the field of archival material protection (Article 1 of Rules on Professional Exams).

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.)

General rules on archiving court files, which also apply to electronic evidence attached to the file, are stipulated in Chapter VI of the Court Rules. The case file is archived after the final decision has been issued in the case and when all tasks have been completed (exclusion of attached case files, liquidation of advance payments, liquidation of regular court deposits, exclusion of seized objects, paid court fees, etc.). When a court employee determines that these conditions have been met, they stamp the cover of the case file with a note stating "All orders executed", date it and sign it. Below this note, they stamp a note that states "Archive and keep..." and another note referring to court fees, date them and sign them. The stamps are only needed if these notes are not already printed on the cover of the file (Article 242 of Court Rules). Every court has a convenient and permanent archive (see point 5.3), where the files and documents are kept for a period specified for each type of document in an act issued by the president of the Supreme Court. After the expiration of this period, the documents are destroyed unless they have the characteristics of archival material according to the regulations governing the protection of documentary and archival material, in which case they are handed over to the competent archival institution (see point 5.5). All documents in electronic form are kept in the *e-sodstvo* information system (paragraph three of Article 244 of Court Rules).

According to definitions provided by Article 2 of PDAAIA, documentary materials are all types and forms of written content created or received during the activities of legal and natural persons and can be in physical form (stored on a physical medium (e.g., on paper, film, etc.), allowing for the reproduction of the content without the use of information and communication technologies or similar technologies), or electronic form (stored on a machine-readable medium). Documentary material in electronic form can be further divided into documentary material in analogue form and documentary material in digital form. Archival material is documentary material with lasting importance for history, other sciences and culture or lasting importance for the legal interests of legal and natural persons; such documentary

[93] Official Gazette of the Republic of Slovenia, No. 33/17.

material is considered a cultural monument. The basic principles followed in the protection of documentary and archival material are the principle of preservation of documents and usability of their content, the principle of durability, the principle of integrity, the principle of accessibility and the principle of cultural monument protection (Articles 3 to 7 of PDAAIA). Other provisions of PDAAIA, including those referring to the protection of documentary material in electronic form, reflect these basic principles.

PDAAIA contains special provisions regulating the capture, conversion, preservation, long-term preservation, validity, and evidential value of documentary material in digital form. The preservation of documentary material in the digital form includes the preservation of original documentary material and the secure storage of captured documentary material in digital form (Article 25 of PDAAIA). During the entire retention period, secure storage of original documentary material in digital form must ensure the following: (1) accessibility of original material (i.e., protection from loss and constant access for authorised users); (2) usability (i.e., capacity for reproduction and adequacy of reproduction for use); and (3) integrity (i.e., the unchanged state and intactness of reproduced content in relation to the content of the original material) (Article 26 of PDAAIA). The secure storage of captured documentary material in digital form must allow for the reproduction of the content of original documentary material during the entire retention period, whereby the reproduced content must meet the conditions of accessibility, usability, integrity and authenticity (i.e., provability of a connection between the reproduced content and the content of original material or the source of that material) to the same degree as the original material would (Article 27 of PDAAIA). Each unit of securely stored documentary material in digital form is considered equal to an individual unit of original documentary material if the capture and secure storage were conducted in accordance with applicable legislation (Article 31 of PDAAIA).

Where the prescribed period for storing material is longer than five years (long-term preservation), documentary material is stored in digital format and on a medium for long-term storage, thus ensuring the long-term preservation of the content of documentary material (Article 28 of PDAAIA). The format must ensure the preservation of the content of materials and all other conditions for storage in digital form for more than five years and, after that period, allow conversion into a new digital format that will then fulfil the conditions for secure storage. More precisely, it (1) ensures the preservation of the content of documentary and archival material in such a way that it represents an ordered entirety of all needed data and connections between them; (2) is widely recognized and established or used, and its use is supported with hardware and software available and established on the market; (3) is directly usable for the reproduction of the content or can be easily converted into a form that is directly usable; (4) is capable of automatically detecting and reporting unexpected conversion events; (5) is independent of specific software or hardware or environment; (6) its specification is stable and not subject to frequent changes, new versions are compatible with older versions; (7) is based on an international, national or widely recognised and generally open standard, if such standard exists and is not protected by intellectual property rights; and (8) fulfills other requirements laid down by PDAAIA and DPDAM (Article 29 of PDAAIA and Article 42 of DPDAM). The medium must meet all conditions for secure storage of materials and allow multiple copies to be made from the existing to the new media. The suitable medium for long-term storage (1) allows the preservation of stored data even when not connected to the network; (2) is widely recognized and established or used, and its use is supported with hardware established on the market; (3) the recording of data on such a medium is based on an international, national or widely recognised and generally open standard, if such a standard exists; (4) the conditions of use, the period of the durability of the record and the manner of ensuring the durability of the recording (e.g., periodic review, copies) are known; and (5) enables multiple copies from current to future media (Article 30 of PDAAIA and Article 43 of DPDAM).

Legal entities under public law and providers of capture and storage and accompanying services providing services for entities under public law must ensure that in the case of long-term storage, all documentary and archival material must be stored in the format and on the medium that meets the requirements listed above. Furthermore, in addition to secure storage at the primary location, they must ensure secure storage of at least two copies of documentary and archival material at two geographically remote locations, thus preventing the loss or unauthorised access to this material. In the case of storage of documentary and archival material in a computer cloud, they may store the materials only in a private cloud, whereby the physical location of the storage is known in all phases of storage and processing of documentary and archival material and must not be located outside the borders of the Republic of Slovenia. Other persons must ensure secure storage at the primary location and secure storage of at least one copy of the documentary and archival material at a geographically remote location (Article 44 of DPDAM).

Moreover, providers of storage services are required to ensure adequate physical protection of their hardware and maintain control over the physical accessibility of their storage information system. If their information and communication infrastructure is connected to another information and telecommunications network, it must be protected by reliable security mechanisms (system for the prevention and detection of hacking, firewall, etc.) that prevent unauthorized access through this network and limit access only via protocols that are absolutely necessary for data storage. Service providers must also prevent abuse by employees and uncontrolled data leaks, as well as perform regular documented security inspections (paragraphs 1 to 5 of Article 45 of DPDAM). Providers of capture and storage services and accompanying services providing services for entities under public law must use hardware and software certified by the state archives for the capture and storage of archival material in digital form and accompanying services. Entities under public law must also procure hardware and software certified by the state archives for the performance of these activities, unless in the case of in-house development; in such a case, software must be certified before being put into use (Article 41 of DPDAM). The requirements are further specified under the Rules on Uniform Technological Requirements, which also regulate the capture and storage of different types of electronic documentary material and items.

When capturing and storing electronic material, internal rules of entities performing these services determine a list of mandatory metadata, which are to be captured in the record, and the manner of their entry (automatic or manual) for each type of material (Articles 19 to 20 of the Rules on Uniform Technological Requirements). In the case of text-based and mixed documentary material, the minimum set of metadata includes a unique identification code, title or brief description of the content, date (of receipt, of creation), retention period, designation of entity (author, sender or recipient) (Article 21 of the Rules on Uniform Technological Requirements). The minimum set of metadata in the record of audio material contains a unique identification code, unique identification code, time of creation or date of recording, retention period, designation of the producer, person who recorded the material or external provider (when they are not the creator of the material), original format, original length or running time, type of medium (when a portable medium is being used) (Article 22 of the Rules on Uniform Technological Requirements). The minimum set of metadata captured for film and audiovisual material includes a unique identification code, title or brief description of the content, date and time of creation, retention period, format and codec (and some additional data in the case of archival film and audiovisual material, such as running time in minutes, frame size, frame aspect ratio, number of frames per second, original language, etc.) (Articles 23 to 24 of the Rules on Uniform Technological Requirements).

Legal entities under public law that publish material on their websites (internet, intranet) may establish the need to capture and store the material; in such a case, they must document the structure of the website

(map) and information on where the content that has the characteristics of documentary and archival material is located on the website. At least the following metadata is required when documenting the structure of the website: title or brief description of the content, composition (in the case of more complex content consisting of several sources or types of material), period of publication, the identifier of the published content (subpage), which uniquely and permanently identifies the object in the structure of the website (for example, URN) (Articles 25 to 26 of the Rules on Uniform Technological Requirements).

When capturing and storing e-mails, a list is created of electronic mailboxes whose contents have the characteristics of documentary or archival material. The record of e-mails must include at least the following metadata: the primary recipient's address (field "To"), other recipients' addresses (field "Kp"), the address of the recipient of responses (field "From"), the sender's address (field "Sender"), title/subject (field "Subject"), date and time of the e-mail (field "Date") (Articles 27 to 28 of the Rules on Uniform Technological Requirements).

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.)

Every court has a convenient and permanent archive. The convenient archive is located in the court building, while the permanent archive may be located in another location and shared by several courts. Files archived during the year are kept in the convenient archive of the organisational unit of the court and transferred to the permanent archive at the beginning of each year. If necessary, archived files may be kept in the convenient archive for a longer period, but no more than three years. Case files containing orders regarding the recovery of fines, court fees, costs of criminal proceedings, confiscated proceeds or disciplinary fines are kept in a convenient archive until the recovery procedure is completed (paragraphs one to four of Article 243 of Court Rules). These rules also apply to electronic evidence attached to the file on hard media.

All documentary material in electronic form is kept in the *e-sodstvo* information system (paragraph three of Article 244 of Court Rules), which operates on the secure private communication network used by state authorities (HKOM). The HKOM network is managed by the Ministry of Public Administration, and all data is stored on the central server of the HKOM network in Ljubljana.

After the retention period expires, documentary material with the characteristics of archival material is handed over to the competent archival institution according to the regulations governing the protection of documentary and archival material (or destroyed if they do not). Under paragraphs five and six of Article 45 of PDAAIA, the tasks of the state archive are performed by the Archives of the Republic of Slovenia, which are supervised by the Slovenian Ministry of Culture and located in the Gruber Palace in Ljubljana. They are responsible for ensuring uniform professional implementation of public archival activities. The tasks of regional archives (organised as public institutions) are performed by the Historical Archives of Ljubljana, the Regional Archives of Maribor, the Historical Archives of Celje, the Historical Archives of Ptuj, the Regional Archives of Koper and the Regional Archives of Nova Gorica. Among other documentary and archival material, the regional archives are responsible for storing archival material provided by courts and other authorities in their respective territories.

Under provisions of DPDAM, legal entities under public law and providers of capture and storage and accompanying services providing services for entities under public law must ensure secure storage of documentary and archival material at the primary location and also securely store at least two copies at two geographically remote locations, thus preventing the loss or unauthorised access to the material. In the case of storage of documentary and archival material in a computer cloud, they may store the materials only in a private cloud, whereby the physical location of the storage is known in all phases of storage and processing of documentary and archival material and must not be located outside the borders of the Republic of Slovenia. Other persons must ensure secure storage at the primary location and secure storage of at least one copy of the documentary and archival material at a geographically remote location (Article 44 of DPDAM). In both cases, these geographically remote locations must not be in the same flood or earthquake zone (Articles 50 and 51 of the Rules on Uniform Technological Requirements).

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.)

Slovenian legislation regulates in detail who may carry out activities related to the capturing, storing and archiving of materials (which includes electronic and non-electronic evidence). Under paragraphs seven to ten of Article 39 of PDAAIA, all legal entities under public law must ensure adequate material, personnel and financial conditions for performing these obligations and designate a person responsible for handling documentary material. Employees of entities under public law who manage documentary material and employees of service providers who perform the tasks of capturing and storing material in digital form and accompanying services must complete at least a secondary education and pass the professional competence test at the competent archival institution. The professional competence test is valid in the entire territory of the Republic of Slovenia. Competent archival institutions keep permanent digital records of professional competence test results for the purpose of monitoring the professional competence of staff handling documentary material. Article 49 of DPDAM further stipulates that providers of capture, storage and accompanying services must meet the following general conditions: they are registered with the competent court or other authority; no forced settlement proceedings, bankruptcy or liquidation proceedings or any other proceedings conducted for the purpose of terminating the provider's business have been instigated or proposed against the provider; provider's business is not run by special management and no other similar procedures have been instigated; they are financially viable (they have no current outstanding obligations); in the last five years, they have not been proven to have made any severe professional mistakes in the field related to the services of capture, storage and accompanying services. Furthermore, they must employ at least three people with at least a secondary education in the field of technical, organisational, information or related natural sciences who have also passed the above-mentioned professional competence test. The provider must also employ a person with a Master's degree (or equivalent) in the field of law or conclude a suitable consultancy contract with such a person.

The Ministry of Culture adopted the Professional Competence Rules to regulate in more detail the requirements for obtaining professional qualifications in this field for persons who are responsible for the reception, recording and forwarding of documentary material in the main office, coordination and supervision of the handling of documentary material before it is transferred to the permanent collection, safeguarding documentary material in the permanent collection and selecting and handing over archival material to the competent archive. Their professional competence for working with documentary material is demonstrated by a certificate of passing a professional competence test and certificates of updating and renewing professional knowledge after passing a professional competence test (Article 2 of the Professional Competence Rules).

Competent archival institutions are tasked with organising professional training for working with documentary material (training to prepare for the professional competence test and training for updating and renewing professional knowledge after passing the test), which focuses on relevant legal aspects, the performance of the archival activity, handling of documentary material in physical and digital form, and IT skills (Article 3 of the Professional Competence Rules). Employees of entities under public law who handle documentary material must pass a professional competence test at the competent archival institution, while employees of service providers who capture and store material in digital format and accompanying services must pass a professional competence test at the Archives of the Republic of Slovenia. Other persons and employees of legal entities working with privately owned documentary material may also take the professional competence test at the competent archive (Article 4 of Professional Competence Rules). The test is conducted orally on the premises of the competent archive by a three-member committee. If the candidate fails the test, a new date is set that must not be scheduled sooner than one month from the unsuccessful attempt. If the candidate successfully passes the professional competence test, they are issued a certificate (Articles 6 to 8 of Professional Competence Rules). A person who has successfully passed the professional competence test must regularly update and renew their professional knowledge in relevant areas by attending at least one professional training organised by the competent archival institution every three years (Article 10 of Professional Competence Rules).

The professional training, professional exams and academic titles of persons performing tasks in the field of the protection of archives are regulated by another legal instrument, the Rules on Professional Exams. First, the person wanting to obtain professional qualifications in this field must complete an internship at a competent archival institution or organisation that performs activities in the field of the protection of archives. The purpose of the internship is to acquaint the intern with the protection of archival material as a part of cultural heritage, with its preservation and archival public service, to allow them to adopt work methods in the field of the protection of archives, and to prepare them for the exam and subsequent professional work. The internship generally lasts six months for an intern with secondary education, nine months for an intern with a Bachelor's degree in the relevant field (or equivalent), and twelve months for an intern with a Master's degree in the relevant field (or equivalent) (Articles 2 and 3 of the Rules on Professional Exams). At the end of the internship, a candidate takes an exam corresponding to the level of education required for a particular title. The Rules on Professional Exams regulate the content, course and outcome of the exam in detail in Articles 10 to 20. The Archives of the Republic of Slovenia are responsible for conducting the exam, issuing certificates to candidates who have passed the exam, and keeping a record of successfully completed exams. After passing the professional exam, an individual can obtain one of the following titles: archival technician, independent archival technician, archival associate, senior archival associate, archivist, senior archivist, archival adviser, and archival councillor. The requirements for each title and the procedure for obtaining it are regulated under Articles 21 to 35 of the Rules on Professional Exams.

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.)

General rules determining the period of retention of case files also apply to electronic evidence. Under Article 244 of Court Rules, the court shall keep files and other documents for at least a period specified

for each type of document in an act issued by the president of the Supreme Court. After the expiration of this period, the documentary material is to be destroyed unless it is considered archival material according to the regulations governing the protection of documentary and archival material. All final decisions on the main matter of the case, registers, directories and auxiliary books are kept permanently. Documentary material that has the characteristics of archival material is handed over by the court to the competent archival institution after the retention period has expired, but no later than thirty years after it was created, in the manner and according to the procedure determined by the regulations governing the protection of documentary and archival material. The competent archival institution determines which documentary material has the characteristics of archival material with written instruction on the selection of archival material, and at least every two years, the courts are required to establish on record which documentary material meets these criteria. Before handing over the original archival material, the court may make a copy, a microfilm recording or another permanent recording (Article 245 of Court Rules). Documentary material that is not considered archival material may be destroyed after the expiration of the retention period (Article 246 of Court Rules).

The provisions of PDAAIA and DPDAM further specify the conditions for the destruction of documentary material. Article 13a of PDAAIA states that original documentary material may be removed and destroyed after the expiry of the statutory retention period if it is no longer relevant for the operation of an entity under public law and does not have the characteristics of archival material. The competent archival institution must be informed of the planned destruction if this is foreseen in the written instructions. A special committee for the removal and destruction of original documentary material established at the entity under public law is responsible for carrying out the removal and destruction of material and documenting the procedure with a written record based on the list of materials. The materials may be destroyed after 30 days of creating the record and informing the archival institution (where required). Articles 25 and 26 of DPDAM regulate in more detail the work of the committee and the content of the record.

Where original documentary material has been converted into documentary material in digital form or on microfilm, which fulfils the same usability requirements as the original documents, and storage of converted material meets the conditions under PDAAIA, original documents may be destroyed unless provided otherwise by PDAAIA or another act (Article 13 of PDAAIA). Original documentary material with a retention period of more than five years that does not have the nature of archival material may only be destroyed if the material has been converted into digital form for long-term preservation or recorded on microfilm unless provided otherwise by this or another act (Article 14 of PDAAIA). Original documentary material in physical form that has the nature of archival material may not be destroyed after its conversion into digital form or recording on microfilm unless explicitly allowed by the competent archival institution. The National Archives may determine materials which may never be destroyed, considering their cultural or historical value (Article 15 of PDAAIA).

In the case of the destruction of materials in digital form, the software must ensure the preservation of metadata that proves the existence of destructed material in the records. Metadata must contain at least the date of destruction, a unique identification code, title (if it exists), description (if it exists), the user responsible for destruction, and the reason for destruction (retention period, selection, elimination, or other manually entered reasons). The destruction of documentary material in digital form must be regulated with internal rules and documented with a written record. After its destruction, the recovery of material is no longer possible (Articles 45 and 149 of the Rules on Uniform Technological Requirements).

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.)*

For the submission and conversion of different formats of evidence in ongoing proceedings, see point 4.8.

Under provisions of PDAAIA, documentary material can only be captured (and stored) in digital form. If the material to be captured was originally created in digital form, its capture must ensure effective capture for an individual unit (capture of metadata, communication data and data necessary for intact display concerning content or form, etc.). However, if the documentary material was originally created in physical or electronic analogue form (but not also in digital form), it must be reliably converted. Conversion is deemed reliable if it preserves the integrity of the material and the usability of the content, ensures the authenticity of the material, contains adequate control of correctness and quality, remedies any errors or deviations, stores additional content and data regarding the conversion and original material separately from the original content, stores a sufficient volume of documentation proving that the methods and procedures ensure reliable conversion, and fulfils additional requirements stipulated by the Government (Articles 8 to 10 of PDAAIA).

If the prescribed period for the preservation of the material is longer than five years, captured material must be converted from the standard digital form into a digital form for long-term preservation. Such conversion is considered reliable if it preserves the integrity and usability of the material's content in standard digital form. If the authenticity of captured material is proven through the content that loses value or is reduced over time, the authenticity of captured material in the digital form for long-term preservation is assured through strictly controlled addition of content (e.g. re-signing of content with e-signatures) confirming the authenticity of captured material (Articles 11 and 12 of PDAAIA). The Rules on Uniform Technological Requirements refer to internal rules to determine valid formats used for long-term e-storage of individual types of material, which must meet the requirements stipulated under Article 42 of DPDAM (see point 5.2), as well as determine the procedure of conversion into the form suitable for long-term preservation (Articles 35 and 36 of the Rules on Uniform Technological Requirements).

Articles 12 to 15 of DPDAM regulate in more detail the capture and conversion of material into digital form, which must include metadata. The so-called digitisation of material originally created in the physical or electronic analogue form must thus include at least: (1) recording of all units of documentary and archival material, regardless of the format or medium, method of creation and other technological characteristics; (2) correct conversion and capture of the content of documentary and archival material into a digital form; (3) automatic or manual control of correctly implemented digitisation with the purpose of eliminating errors or deviations; (4) recording of digitised documentary and archival material; (5) storage of sufficient volume of documentation proving that the tools, methods and procedures used for digitisation ensure reliable capture in digital form. A responsible person must also be appointed for the correct implementation of the digitisation procedure (Article 13 of DPDAM). Even more detailed, Article 38 of the Rules on Uniform Technological Requirements states that digitisation must be regulated with internal rules, which must include at least the following:
(1) criteria for the selection of material (taking into account its size, state of preservation, quantity and frequency of use);
(2) review of material;
(3) recording of all units of documentary and archival material, regardless of format or medium, creation and other technological characteristics;
(4) preparation of material, which includes:

a) stacking in order, numbering the pages or checking the numbering,
b) cleaning, removing staples, adhesive tapes,
c) restoration (if necessary),
d) classification (content, chronological, by series),
e) preparation of technical instructions for digitisation (checklist),
f) transcription of illegible text (if possible),
g) preparation of metadata and data wrapper;
(5) correct conversion and capture of the content of documentary and archival material into a digital format, which:
a) includes all key content data,
b) captures or creates all necessary metadata, including data that ensure integrity (intactness of content), authenticity (provable connection of reproductions with the content of original documentary and archival material and its origin) and usability of the material (enabling complete interpretation of data as meaningful information with the possibility identification of units of material), and enable strictly controlled and documented addition of these data,
c) includes added content and technical metadata, which are distinctly and clearly separated, stored and marked differently than the original data, as well as all important notes and information about the capture procedure and the originals;
(6) digitization process, which ensures:
a) digitised files with at least 300 dpi,
b) digitised files with at least 600 dpi for material that is smaller than A6 (148 x 105 mm) or has a font size equal to or smaller than 5 pt,
c) digitised files with at least 600 dpi for images,
d) depending on the type of digitalisation, a colour depth of 8 bits for grayscale digitisation and a colour depth of 24 bits for colour digitisation,
e) formats of digitised files for long-term e-preservation, which are published by the National Archives on their website,
f) digitised files at least in the target resolution, not created by interpolation,
g) digitised files, the resolution of which is not reduced when converted into formats for long-term storage;
(7) automatic or manual control of correct digitisation to eliminate errors or deviations;
(8) recording of digitised material; and
(9) storage of a sufficient volume of documentation proving that the tools, methods and procedures used for digitisation ensure reliable capture in digital form.

Both DPDAM (Article 14) and the Rules on Uniform Technological Requirements (Article 39) contain similarly detailed rules on the recording of material on microfilm, which concerns all conversions of documentary or archival material from physical or digital form to a microfilm recording. For long-term preservation, the procedure of conversion must include the following:
(1) selection and review of material to be converted to microfilm;
(2) recording of all units of documentary and archival material, regardless of the original form or medium, origin and other technological characteristics;
(3) preparation of material, which includes:
a) removing wrappings, untying (if necessary),
b) stacking in order, numbering the pages or checking the numbering,
c) cleaning, removing staples, adhesive tapes,
d) restoration (if necessary),
e) classification (content, chronological, by series),
f) preparation of technical instructions for microfilming,

g) transcription of illegible text (if possible),
h) preparation of original records,
i) preparation of a detailed description of the content,
j) preparation of metadata and data wrapper;
(4) determination of:
a) the type of film (for example, silver halide, vesicular, diazo),
b) format (for example, 16 mm, 35 mm),
c) recording equipment (for example, step or traditional cameras, streaming or production cameras, special cameras, output computer technology or COM),
d) technical data (for example, image compression rate, resolution and decompression, density);
(5) processing of recordings;
(6) automatic or manual control of the correct conversion to microfilm to eliminate errors or deviations (for example, checking the density and resolution, sharpness and discernibility of the recording, the correctness of recorded documents and accompanying data, the correct sequence of documents);
(7) review of metadata (technical and content);
(8) providing adequate storage for microfilms, which includes at least:
a) physical preservation (e.g. proper inclusion in the reel, adequate technical protection),
b) microclimatic conditions (temperature, relative humidity),
c) cleaning of equipment,
d) place of storage;
(9) storage of a sufficient volume of documentation proving that the tools, methods and procedures used for conversion to microfilm ensure the preservation of the integrity and authenticity of the content of the converted documentary and archival material.

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.)

The central organisation for judicial education in the Republic of Slovenia is the Center for Judicial Education of the Ministry of Justice (CIP), which was established pursuant to the Zakon o sodiščih [Courts Act].[94] It regularly organises various forms of continuing education and training for judges, state prosecutors, state attorneys, judicial assistants, court staff and other employees of judicial authorities (seminars, lectures, workshops, consultations, simulations, etc.). It also represents the Republic of Slovenia in the European Judicial Training Network (EJTN), in which it participates as a partner in international educational projects.[95] Training activities organised by CIP cover various topics, including technological developments and novelties introduced as a result of the digitalisation of judicial proceedings. However, this training is not obligatory.

In practice, courts occasionally organise training for their own judges following the installation of new equipment, introduction of new software or protocols, etc. However, this training is not periodical, other court employees are often overlooked, and when judges circulate between different courts or job positions, they do not receive official introductory training (at most, they receive individual instructions from their colleagues or support staff), so their skills are sometimes lacking.

Court employees who handle documentary material must also meet requirements stipulated in Article 39 of PDAAIA (completing at least a secondary education and passing the professional competence test at the competent archival institution) and the Professional Competence Rules for handling documentary material. See also point 5.4.

[94] Official Gazette of the Republic of Slovenia, No. 94/07 – official consolidated text, 45/08, 96/09, 86/10 – ZJNepS, 33/11, 75/12 – ZSPDSLS-A, 63/13, 17/15, 23/17 – ZSSve, 22/18 – ZSICT, 16/19 – ZNP-1, 104/20, 203/20 – ZIUPOPDVE and 18/23 – ZDU-1O.
[95] <cip.gov.si>, visited 13 April 2023.

7. Videoconference

7.1. In general, does the law of your Member State provide for videoconference technology to be used in civil proceedings?
(If you answered in the affirmative, please list the legal grounds (e.g. "Art. 100 of the Civil Code"). Please indicate when the legal grounds entered into force (e.g. 01.02.2010) and specify any amendments to the legal grounds. If an online (official or unofficial) English translation of the relevant provisions exists, please provide the URL (link). If there are "soft-law" instruments (e.g. guidelines) that supplement rules on conducting the videoconference, then please specify them.)

Yes. Article 114.a of the ZPP provides for videoconferencing to be used in the proceedings, with the consent of the parties.[96] The legislator took inspiration from §128.a of the German ZPO.[97] The aforementioned Article 114.a of the ZPP was introduced with amendment ZPP-D.[98] It came into force on 1 October 2008. The provision was later amended once, with amendment ZPP-E.[99] It came into force in September 2017. The amendments expanded the use of the videoconference for taking evidence in form of documents and inspection of object (and/or view of location). There are no soft law instruments or supplementary rules. There is no up-to-date official or unofficial translation.

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.)

[96] A translation of the law is available on the governmental site http://www.pisrs.si/Pis.web/cm?idStrani=prevodi: »*By consent of the parties, the court may permit the parties and their counsels to be at another place at the time of the hearing and to undertake procedural acts there if audio and visual transmission is provided from the site of the hearing to the place, or places, where the party or parties and their counsels are located and vice-versa* (*video conference*).
Under the conditions laid down in the preceding paragraph, the court may also decide to take evidence by on-the-site inspection, documents, hearing of the parties and witnesses, and by a court expert.
No appeal shall be allowed against the court's order referred to in paragraphs one and two of this Article.«
[97] Galič A., 114.a člen. In: Galič et al., Pravdni postopek: zakon s komentarjem spremenjenih členov, 4. knjiga, GV Založba, Uradni list, 2010 str. 92.
[98] Zakon o spremembah in dopolnitvah Zakona o pravdnem postopku (ZPP-D), Uradni list RS, št. 45/08 z dne 9. 5. 2008
[99] Zakon o spremembah in dopolnitvah Zakona o pravdnem postopku (ZPP-E), Uradni list RS, št. 10/17 z dne 27. 2. 2017.

According to the current version of Article 114.a of the ZPP, videoconferencing can be used for witness testimony, expert witness testimony, inspection of an object (and/or view of a location), document and party testimony. According to the wording of the provision, the technology can be used for conducting the procedure proper, i.e. instead of conducting the hearing at the court, the hearing is held through the videoconference. The provision is contained in the eighth chapter of the law, which deals with "hearings" in general. It is therefore not limited solely to the taking of evidence.

7.2.1. If the law allows for (remote) view of location, how would such a videoconference be practically implemented?
(E.g. does the court appoint a court officer to operate the audiovisual equipment on site? For example, suppose there is a dispute between parties regarding the border/boundary between their immovable properties and the court needs to view the alleged border/boundary. Does a court officer carry the technical equipment to the site and follow instructions from the court, regarding the viewing angles etc.)

Through our research method (interview with a court appointed IT expert), we learned that a remote view of location is almost never opted-for in practice, although the law allows it. In the very limited number of cases where this would occur, the view would be performed with a mobile device capable of videoconferencing (e.g. mobile phone). The court and the parties would instruct the person operating with the device where to point the camera. It would be logical that court-appointed personnel would operate the device, however, one could also imagine that the person being heard would do so as well (e.g. demonstrating their injuries/scarring of tissue in a damages claim).

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

The software platform used by the Slovenian judiciary is Polycom.

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.)

The application is commercially available.

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)

The application enjoy direct connectivity with other applications. However, it operates on protocols which are also employed by other commercially available applications, e.g. Zoom. Hypothetically therefore, the Polycom application could be linked to a Zoom application; however, since the judiciary has not (yet) obtained all the required licenses for that matter, a direct linkage with the Zoom application is not possible. The courts do however have an interface/terminal, which allows for interoperability. In order to avoid technical difficulties, a test session is always held in advance (7-10 days in advance). Test sessions with other Slovenian courts are not required, since they employ the same platform.

7.3.3. Does the application allow a text-based chat function during the videoconference; does it allow screen sharing and sharing of documents?
(whether and to what extent the court can restrict these functions (e.g., the parties can talk at any time, but only share their screen if permitted by the court.)

The application does not allow for text-based chat functions during the videoconference. It does allow for (screen or file) sharing.

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.)

The court may order the use of the technology only if both parties consent to its use. The court may overrule the dissent of one party only if it finds that the dissent was exercised as an abuse of right.[100] The initiative for the use of the technology may come from either party or the court itself; in any case, the consent of both parties is required. However, even if both parties consent to the use of the technology, the court may exercise discretion as it does not need to order its use unconditionally. First of all, the law prescribes that proper equipment for the audio- and video transmission of the hearing must be available. If that is not the case, the court is not allowed to order the use of the technology in the first place. This does not seem to be a discretionary rule, but a necessary condition for the use of the technology. On the other hand, if the proper equipment is guaranteed, the court may take account of the efficiency of proceedings (e.g. if there will be less costs incurred or if it will make participation of a party more convenient), in order to grant or refuse the use of the technology.

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.)

The rules for the use of videoconferencing for the purposes of conducting a hearing in the general sense and for the taking of evidence are the same (Article 114.a ZPP). Thus the answer to Question 7.4. applies.

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)?
The court will first consult the parties on the use of the technology. Since consent of both parties is mandatory, a situation where a party would oppose its use is hard to imagine. One could hypothetically imagine that a party does not consent to its use in an abusive manner. If the court thereupon issues a decision to use the technology, the abusive party is precluded from appealing that decision, because the decision of the court is a "decision on the course of the proceedings" (Slovene: "sklep procesnega vodstva").[101] Even if the decision were to be appealable, the abusive party would logically not succeed, due to its abuse of rights.

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.)

[100] According to Galič 2010, supra n. 97, such an abuse could be considered contempt of court and the party could be sanctioned. See also: VSL Sklep II Cp 2018/2019.
[101] See: Article 298 ZPP.

According to Article 241 ZPP, if a witness who has been duly summoned, fails to appear without justifying his or her non-appearance, or if he or she leaves the place of appearance without permission or other justified reason, he or she may be subjected to a compulsory appearance (and pay the costs which might incur for this reason), and/or imposed a fine in the amount not exceeding 1.300 EUR. If a witness appears but, being warned on the consequences, refuses to testify or to answer particular questions for reasons considered unjustified, he or she may be subject to a fine in the amount not exceeding 1.300 EUR; if, thereupon, the witness still refuses to testify, he or she may be detained. The detention shall last until the witness becomes willing to testify or until his testimony is rendered unnecessary, but not longer than one month. The appeal lodged against the decree imposing a fine or detention shall not avert the same from being enforced, unless it is filed also to challenge the decision by which the court has overruled the reasons for withholding of testimony. Upon a motion by the party, the court may decide that a witness refund the costs occasioned by his or her non-appearance without justified reasons or by withholding of testimony. If a witness subsequently justifies his non-appearance, the court shall revoke the decree on punishment, and may exempt the witness from payment of the costs or a part thereof. The court may revoke its decree on punishment also if the witness subsequently declares that he or she will testify. Military personnel and members of the police may not be detained, but their command shall be advised of their refusal to testify in order to punish them. If they should be subject to compulsory appearance, the court shall contact their superior officer to order the appearance.

According to Article 266 ZPP no coercive measures are allowed against a party.

There are no special rules regarding coercive measures against a witness or a party to provide testimony in videoconference proceedings. It is hard to imagine how coercive measures would be different in case of failure to appear on a videoconference, refusal to testify or the disturbance of the videoconference. The compulsory appearance order would probably be aimed at guaranteeing the parties appearance at the court physically. A fine or compulsory appearance could also be rendered if the witness would intentionally sabotage its appearance or leave the videoconference without a justifiable reason.

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

According to Article 231 ZPP, a witness may refuse testimony:
1. on what the party has confessed to him or her as their attorney;
2. on what the party or other person has confessed to him or her as their religious confessor;
3. on facts of which he or she has learnt as a lawyer or a doctor or in the pursuance of another activity, if he or she is bound to protect the secrecy of what he or she learns in the practice of legal or medical profession or pursuing any such other activity. The court must inform witnesses of such a right.

According to Article 232 ZPP, a witness may not refuse to testify on the grounds of protection of a business secret if the disclosure of certain facts is to the benefit of the public or some other person, provided that such benefit outweighs the damage caused by disclosure of the secret.

According to Article 233 ZPP, a witness may refuse to answer a particular question for justified reasons, especially if, by answering, he or she might expose himself/herself, his or her relatives in a direct line, or in lateral line up to three removals, or his or her spouse or an extra-marital partner or an in-law up to two removals, regardless of whether the marriage has terminated or not, or his or her guardian or person under guardianship, or adoptor or adoptee, to a serious disgrace, considerable financial loss or criminal proceedings. A witness shall be instructed by the presiding judge on his or her right to refuse to answer the asked question.

No special rules in regards to videoconferencing.

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

The law does not provide for cross-examination as a separate or special method of witness testimony. In Article 239 ZPP, the law provides that a witness shall first be asked to state everything that he or she knows about the facts he or she is to testify about. After this, he or she may be asked questions for the purpose of evaluation, supplementation or explanation of his or her testimony. It shall not be permitted to ask questions, which already contain the answer to the question.

Both parties are given the opportunity to question the witness after the witness has provided its direct testimony. Parties may not, however, pose lead-on questions to the witness.

No special rules regarding videoconferencing.

7.8. If videoconference technology is used to conduct hearings, how (if at all) can the court and/or parties terminate the use of videoconference technology and revert to regular (on-site) proceedings?
(Please explain the powers of the court and the parties in relation to choosing to conduct regular proceedings after the court has already decided that the hearing will be conducted through videoconference.)

At the outset, it should be mentioned that there is no special rule that governs this issue.

The decision of the court to use the technology is a "decision on the course of the proceedings" (Slovene: "*sklep procesnega vodstva*"), which is, in line with Article 298 ZPP, a non-appealable decision and which can be reverted (the court is not bound to its own decisions on the course of the proceedings).[102] Thus, the court will always have the option to revert to regular on-site proceedings.

It can be indirectly deduced from Article 114.a ZPP, that the court shall revert to on-site proceedings, if the preconditions for videoconferencing are no longer met. Thus, if technical capacity of the parties is no longer adequate or if the parties no longer consent to videoconferencing, the court will decide to hold the proceedings on-site again. Apart from the *ex post* withering of the preconditions, the court should in our opinion also be able to decide to revert the proceedings back to on-site proceedings through the exercise of its discretionary powers, since the court merely "permits" the parties to join the hearing or take evidence through videoconferencing.

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));

[102] Betetto N., 298. In: Galič et al., Pravdni postopek: zakon s komentarjem, 2. Knjiga, GV Založba, Uradni list, 2006, str. 634.

e) other (please specify)?
(In addition, please specify if the court has to conduct a "test" session" before the actual videoconference.)

The law only provides that the court permits the use of the technology "if audio and visual transmission is provided from the site of the hearing to the place, or places, where the party or parties and their counsels are located and vice-versa". This means that the court should in practice check the internet (or other form of communication) connection availability and the technical equipment of the persons. There are however no uniform rules or standards on how this checking is done. Implicitly, the court also observes the physical capacity of the persons involved and the technical literacy; often, a physical incapacity (e.g. a bed-ridden patient) will be the cause of ordering the use of the technology in the first place.

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).)

The law does not provide special procedural safeguards for children or vulnerable persons in videoconferencing. The general safeguards as prescribed by international conventions (e.g. the right to effective participation in the proceedings) are provided (e.g. in Article 45 of the Non-Contentious Civil Procedure Act (ZNP-1)), however, nothing seems to be specially regulated in regards to videoconferencing.

Some courts have arranged for a special space (room) where children can be heard through videoconferencing technology in family and criminal cases. The room can contain toys, painting and drawing materials as well as furniture which accommodates the child to a more friendly and relaxed environment. The video-stream is one way only (from the room to the main courtroom), as the child cannot see the main courtroom (there are no screens in the special room). An adult officer of the court or social worker conducts the hearing with the child. The officer/worker is being fed questions by the court through an earpiece.

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 law does not prescribe the where the persons engaged in the videoconference should be situated. In theory therefore, the location can be anywhere. Naturally, practical considerations would point towards an arrangement of the location.

It should be noted that videoconferencing takes place almost exclusively in a court2court fashion. In the remainder of cases, videoconferencing is usually employed where physically incapacitated or vulnerable persons are involved (e.g. hospitals and retirement homes).

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

There are no provisions on this matter. At most, one can imagine this might, according to thee circumstances of the case, qualify as a contempt of court or – if the location is utterly unsuitable for a videoconference (e.g. at a concert) – as non-appearance of the person, or as an abuse of rights. No case-law exists to clarify the position.

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

There are no rules in place. Since the videoconferences usually take place court2court, this does usually not present an issue. However, even in court2court proceedings, there was a case where several witnesses were all situated in one of the court rooms and the court appointed personnel did not take notice of the fact (witnesses are to be heard separately).

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.)

There are no specific rules regarding the matter. The court will thus schedule the videoconference as any other hearing, with prior discussion on the matter with the parties. According to the court rules, hearing should not take place outside of the working hours of the court and not before 8:30 in the morning. However, as an exception and in the pursuit of effective management, courts may schedule hearings outside this timeframe as well.[103]

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.)

[103] Article 51 of the Court Rules (Sodni red (Uradni list RS, št. 87/16 in 127/21)).

No special rules in this regards. In regular hearings, lawyers and judges are required to wear special robes (toga).[104] This rule should apply in videoconferences as well.

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.)

In court2court proceedings this is not an issue, as court-appointed personnel may verify the identity of the person. In other cases, courts may send court-appointed personnel to verify the identity of the person in advance, especially when assisting the person being heard (e.g. a witness in a hospital). Otherwise, identification can take place by showing ID cards to the camera. No formal rules in regard to videconferencing. Article 238 ZPP provides rules for the identification of witnesses. A person is to state their name and surname, place of birth, age, names of parents, profession, place of residence and/or EMŠO number (citizen's identification number).

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

All videoconferences are recorded. The audio-visual recording is saved directly to a server located in the capital city of Ljubljana. Parties do not have access to the recording. Judges have insight.

Separately, an audio recording is made through a different channel. This recording is used for making transcripts for the record/minutes of the case (the audio-visual recording is not used for these purposes). All audio recordings are also uploaded to the central server in Ljubljana as well and encrypted. Parties and their representatives may access the recordings with a password. The recording must be transcribed within 5 days of the hearing. After receiving the transcription, a party has 5 days to submit an objection against the correctness of the transcription (Article 125.a ZPP).

In line with Article 125.a ZPP the court may also order an audio-visual recording of a hearing. In the same way as the audio recording, this recording is used to make transcriptions.

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.)

The recording contains everything that is shared on the screen during the videoconference. This means that persons having an active (open) microphone will be highlighted, while the recording of other participants is limited to the smaller screen-space they occupy.

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.)

[104] Article 77 of the Court Rules (Sodni red (Uradni list RS, št. 87/16 in 127/21))

The person who is the last one to switch their microphone is highlighted (takes up the majority of the screen); the video feedback from other persons is lessened (they take less screen-space). More persons can be highlighted manually, however, this requires manual inputs from the judge. The judge operates with a console (a tablet) and can switch the view (he acts as a "director" of the videoconference). Both solutions are sub-optimal.

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.)

The footage is stored on a central server in the capital city of Ljubljana. It is not stored locally.

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

In principle, no. The judge may ask for a part of the recording to enter the minutes.

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

The judge. Not the parties.

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?

Since the recording does not become a part of the minutes of the case, the second instance court should not be in a position to access it. This conclusion is somewhat perplexing, since – according to our research findings – the first-instance judge may access the recording even if the recording has not entered the minutes and even though the parties do not have access to it. The legal nature of the recording is thus vague, if not outright inappropriate, as it does not conform the notion of evidence, nor does it (usually) enter the Minutes.

On the other hand, audio and audio-visual recordings of hearings which are ordered separately, are transcribed and serve the purpose of equating the position of parties in cases where the minutes are directly transcribed during the hearing and the parties in cases where the minutes are transcribed after the fact, through the recording.[105]

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?

The reporter does not use the videoconference footage.

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

Interpretations are made successively. A person heard is instructed to talk in piecemeal sentences and slowly. Thereupon, the interpreter provides a translation. This process is cyclically repeated.

[105] VSRS sodba in sklep II Ips 104/2016.

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.)

The interpreter sits on the same bench as the plaintiff and uses his or her own microphone.

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?

In line with paragraph 2 of Article 339 ZPP, a substantial violation of civil procedure provisions occurs:

- if the court was incorrectly composed or if a judge or a lay judge who did not participate in the main hearing took part in the rendering of the judgment or
- if, contrary to the provisions of the ZPP, the court issued a judgment without holding the main hearing where it should have held one.

The above substantial violations of civil procedure are considered "absolute" in the sense that the law itself qualifies them as such. Any other alleged breach of the principle of immediacy is a "relative" substantial violation. In line with the first paragraph of Article 339 ZPP, the party alleging a relative violation will have to demonstrate that during the proceedings the court failed to apply or erroneously applied a provision of the ZPP which might have affected the making of a "lawful and proper" judgment.

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

No.

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.)

Yes, although not particularly (or exclusively) in reference to the principle of immediacy.

In one case, the court had to deal with a videoconference where a technical issue caused the video feedback to break down. The court proceeded to conduct the "video"conference with only the audio channel available. The second instance court held that this conduct does not necessarily invalidate the hearing, but that an overall assessment of the circumstances of the case at hand needs to be considered. On the one hand, there is the need to protect the parties right to be heard. A shoddy performance of a videoconference can constitute a breach of said right. On the other hand, legitimate counterweight rights, such as the right to life and health are also to be taken into account, especially during an epidemic outbreak. In the case at hand, it was evident that the person being heard had ample opportunity to understand the questions and provide answers of substance, thus the appellate court did not consider a need to repeat the proceedings or sanction/remedy the situation otherwise.[106]

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

[106] VSL Sklep I Cp 1623/2020.

(This may be especially important when "leading questions" are posed.)

A person wishing to interject, must enable their microphone. Thereupon, they may pose their question or provide an objection etc.

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.)

Answer to 7.2.1. applies *mutatis mutandis*.

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?

Both options are available.

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.)

Only the person who last engaged their microphone. Answer to 7.12.2. applies *mutatis mutandis*.

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

See answer to 7.13.3.

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?

Presumably, this might be the case only inasmuch the person with the worse equipment had its right to be heard breached (see answer to 7.13.3.) or if the technical limitations did not allow the principle of hearing of both parties (principle of contradictory proceedings – *audiatur et altera pars)* to take place (e.g. a party could not pose intelligible questions or could not properly hear the other party). Merely the fact that one party had a more crisp image or audio transmission should not constitute grounds for a breach of these principles.

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?

While there is no explicit power of the court to order the person to turn the camera and show the apartment/location, such a power could hypothetically be derived from the overall forbiddance of the abuse of rights and the duty of the court, the parties and other persons to conduct (manage) the proceedings in an orderly fashion. This could analogously apply to the power of the court to order the shut-down of devices – there, another ground could provide addition implicit powers, i.e. the forbiddance of recording hearings.
It is highly doubtful that a court would have the power to order any person to leave the location of the videoconference, unless another law allows the court to do so. If that other person is coercing the person being heard, the court could contact the law enforcement authorities and announce to them that there is suspicion of a criminal activity, whereupon the police would exercise their authority.

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)?

There are no special rules or practices in this regard. One hypothetical way of guaranteeing the party's access to his or her lawyer would be to allow the party and its advocate to temporarily exit the hearing into a break-out room. The latter is of course possible and rational where both the lawyer and the party are connected to the videoconference from a separate location.

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?)

No. If anything, the videoconference is meant to reduce the cost of proceedings.

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 public can attend the court room where the pleading is taking place. Wall-mounted screens provide the sitting members of the public to follow the videoconference. Of course the judge and court staff are present in the court room (as well as other persons or parties who did not join via videoconference).

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)?

The use of the technology could be considered inappropriate where it seems imperative that the principle of immediacy be respected to the utmost (a live hearing), i.e. where it is important that the court may observe the evidence (witness), including depth of perception (3D). The Annex N seems to suggest that videoconferencing be conduct in court2court settings. In the future, it may prove preferable to arrange for other settings and have the Annex amended accordingly.

Instructions for contributors

1. References

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

1.1. Reference to judicial decisions

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

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

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

1.2. Reference to legislation and treaties

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

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

1.3. Reference to literature

1.3.1 First reference

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

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

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

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

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

1.3.2 Subsequent references

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

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

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

1.4. Reference to contributions in edited collections

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

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

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

Subsequent references follow the rules of 1.3.2 supra.

1.5. Reference to an article in a periodical

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

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

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

Subsequent references follow the rules of 1.3.2 supra.

1.6. Reference to an article in a newspaper

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

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

1.7. Reference to the internet

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

- M. Benlolo Carabot, 'Les Roms sont aussi des citoyens européens', <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens_1409065_3232.html>, visited 24 October 2010. (NB: 'http://' is always omitted when citing websites)

2. Spelling, style and quotation

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

2.1 General principles of spelling

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

2.2. General principles of style

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

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

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

2.3. General principles of quotation

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