NATIONAL REPORT FOR SWEDEN ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

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

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Questionnaire for National Reports

SWEDEN

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On electronic evidence and videoconferencing

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

- Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1783),
- Impact assessment of the Taking of Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0285),
- Other *travaux preparatoires* of the Recast Taking of Evidence Regulation (see e.g. https://www.europeansources.info/record/proposal-for-a-regulation-amending-regulation-ec-no-1206-2001-on-cooperation-between-the-courts-of-the-member-states-in-the-taking-of-evidence-in-civil-or-commercial-matters/)
- Council Guide on videoconferencing in Cross-border proceedings (https://www.consilium.europa.eu/en/documents-publications/publications/guide-videoconferencing-cross-border-proceedings/)
- The Access to Civil Justice portal hosted by the University of Maribor, Faculty of Law together with the results of our previous projects, especially our previous project Dimensions of Evidence in European Civil Procedure (https://www.pf.um.si/en/acj/projects/pr01/).

The structure of each individual report should follow the list of questions enumerated below, to the utmost extent possible. If authors choose to address certain issues elsewhere within the questionnaire, then they are instructed to make cross-references and specify where they have provided an answer for the respective question (e.g. 'answer to this question is already provided

in 1.6.'). Following the structure of the questionnaire will enable and ease comparisons between the various jurisdictions.
The list of questions is not regarded as a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please address such issues on your own initiative where appropriate. On the other hand, questions that are of no relevance for your legal system can be left aside. If so, indicate expressly the lack of relevance and consider explaining the reason(s).
Please provide representative references to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data. **Where the answer would be 'no' or 'not applicable', because something is not regulated in your national legal order, please specify how you think it should be regulated**.
Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.
Languages of national reports: English.
Deadline: 31 March 2023.
In case of any questions, remarks or suggestions please contact project coordinators, prof. dr. Vesna Rijavec: vesna.rijavec@um.si and prof. dr. Tjaša Ivanc: tjasa.ivanc@um.si ; or to assist. Denis Baghrizabehi: denis.baghrizabehi@um.si.

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1. General aspects regarding electronic evidence

(Note that the following definitions apply:

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

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

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

No, there is no proper definition of the expression 'electronic evidence' in Swedish law.

However, in the area of secret coercive measures in criminal procedure, similar concepts are used. Some examples are electronic information ('in electronic form stored information', the Code of Judicial Procedure (*rättegångsbalken [1942:740]*, hereafter: the Code), Ch. 27, Sec. 16 – note that no official translation to English is available of this section) and electronic communication (the Code, Ch. 27, Sec. 18). There is no further definition of these concepts, neither in law, nor in preparatory works.

However, the concept 'electronic document' is found in several areas of law, for example Public notice on summary imposition of a fine (*strafföreläggandekungörelse [1970:60]*), Sec. 5, and Law on the European order for payment (*lag [2008:879] om europeiskt betalningsföreläggande)*, Sec. 3. In both these examples, the concept is defined in law in almost the same way: as a 'document [*upptagning*] that has been produced with the assistance of automated processing and which content and issuer can be verified through a certain technical procedure'[1], Law on the European order for payment Sec. 3 (no official translation to English available).

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.)

There is no definition of 'paper document' in Swedish law. However, 'written documents' are treated in the Code, Ch. 38, Sec. 1, Para. 1, which reads: 'Written documents invoked as evidence should be produced in the original. A certified copy may be produced if this is found sufficient or if the original is not obtainable.'

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

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

[1] Cf. the definition in the summary imposition of a fine regulation *(strafföreläggandekungörelsen*, 1970:60*)*, Sec. 5: 'a document [*upptagning*] whose content and issuer can be verified through a certain technical procedure'.

The impact of the principle of free evidence is generally very strong in Swedish law, as expressed in the Code, Ch. 35, Sec. 1, para. 1, which states: 'After evaluating everything that has occurred in accordance with the dictates of its conscience, the court shall determine what has been proved in the case.' (official translation). This includes both the production and evaluation of evidence.[2]

Thus, there are no rules laid down by law that decides the value of certain kinds of evidence. Following this, there are no specific categorisations of evidence when it comes to evaluation of evidence.

However, different categories of evidence are dealt with in other areas of law. For example, the definition of different kinds of evidence is necessary when dealing with coercive measures, as the different kinds of evidence are listed in the relevant paragraphs, for example in the Code, Ch. 39, Sec. 5, about objects or written document that should be brought to court for inspection at a view. Electronic evidence is not mentioned here, but only 'written documents'. However, electronic documents are understood to be included in the paragraph. This was confirmed by the Supreme court, for example in NJA 1992 s. 307, where a video recording was the object for inspection. The video recording could be brought to the court according to the Code, Ch. 39, Sec. 5, even if it was not a proper 'written document'.

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.)

No, evidentiary value is unregulated in Swedish law due to the principle of free evaluation of evidence (see para. 1, question 1.3). The evidentiary value is decided by the court. An evidence can be rejected by the court under certain circumstances (the Code, Ch. 35, Sec. 7), but these circumstances are technique neutral and applies to all kinds of evidence in the same way.

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.)

See question 1.3 above about the (non)categorisation of types of evidence under Swedish law and their evidentiary value due to the principle of free evaluation of evidence. Thus, the law does not differentiate between electronic and physical evidence from an evidentiary perspective.

Other than when it comes to evidentiary value, categorisation of evidence (physical vs. electronic) can be of relevance in other situations. For example, the obligation to produce a document or an object in court as stated in the Code, Ch. 38, Sec. 2 ('Anybody holding a written document that can be assumed

[2] See Bylander, *Evidence in Civil Law – Sweden*, Maribor: Institute for Local Self-Government and Public Procurement, 2015, p. 8.

to be of importance as evidence is obliged to produce it', first sentence of first paragraph). However, the Supreme Court (*Högsta domstolen*) has in recent judgments confirmed that the interpretation of the paragraph should be made with the technological development in mind (NJA 2022 p. 249, para. 14) and that it also includes electronic documents, see for example NJA 1998 p. 829 and NJA 2020 p. 373, para. 13.

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.)

No, as the evidentiary value of all kinds of evidence is for the court to decide, such aspects are not generally regulated by law. There are some few exceptions, where the Code, Ch. 35, Sec. 1, para 2 applies.[3] It states: 'As to the effect of certain kinds of evidence, the specific provisions thereon shall govern.' As far as could be ascertained, no provision differentiates between electronic and physical public documents.

1.7. Describe the legal effects of changing the form of electronic evidence to physical.
(In answer to this question, please explain whether it is admissible to change electronic evidence (e.g., websites, social networks, or e-mail) to a physical form and, what legal effect such change has. Please also specify, whether electronic evidence is treated as a copy and whether printouts are necessary when submitting particular types of electronic evidence (e.g., websites, social networks or e-mail). If applicable, please cite the provisions relating to changing the form of electronic evidence.)

Changing the form of an evidence from electronic to physical is common due to practical reasons: physical evidence is more easily handled in court, for example. This does not change the evidentiary value of the evidence as such, and there is no formal difference under Swedish law between the electronical evidence as a printed copy of the same evidence. However, if a party questions the authenticity of the copy, this will be regarded by the court. If the other party does not question its authenticity, the court does not conduct any such investigations ex officio.

The Code, Ch. 38, Sec. 1, para. 1 states: 'Written documents invoked as evidence should be produced in the original. A certified copy may be produced if this is found sufficient or if the original is not obtainable'. This would thus indicate that only originals, and not copies, are allowed as evidence in court. However, the paragraph should be understood as advisory[4] and the accuracy of a copy does only become a question for the court if the other party holds that the copy is inauthentic or otherwise questionable. This then becomes a question about evidentiary value (as not even an inauthentic evidence is excluded, in accordance with the principle of freedom of production of evidence).

[3] Cf. Bylander & Andersson, *Legalisation of Public Documents within the EU Member States: Sweden – The Use of Public Documents in the EU: Legalisation Study Project Questionnaire*, British Institute of International and Comparative Law, London, 2007.
[4] See the preparatory works, NJA II 1943 p. 497

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.)

See question 1.7 above. There are no formal legal effects, as both the production and evaluation of evidence is generally unrestricted. As in question 1.7, this only becomes a matter for the court if the other party states that the new form of evidence is in some way inaccurate.

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.)

The concept of 'original' is used in the Code, Ch. 38, Sec. 1, which states that documents invoked as evidence 'should be produced in the original'. If it is found sufficient or the original is not obtainable, a 'certified copy' can be used, but as seen in question 1.7, this paragraph should be understood as advisory in its nature and is not a prohibition of non-certified copies, or certified copies when the original could be used instead. Neither of the concepts are defined in law.

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.)

There is no formal legal effect of a copy of electronic evidence due to the free evaluation of evidence, as explained above. The evidentiary value of an evidence, copy or not, is for the court to decide. It is only if a party lodges a complaint about the copy being unauthentic, tampered with, etc., that the fact that an evidence is a copy becomes relevant for the court.

A legal rule where the form of the evidence could be of importance is the rule about obligations to produce evidence of importance in the Code, Ch. 38, Sec. 2, as the wording of the paragraph only mentions 'written document'. However, bearing the development led by the Supreme court in mind (see question 1.5 above), it is now clear that also electronic documents are included in the extension of the obligation.

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.)

No, the question about the authenticity of an evidence is not a matter for the court, if it has not been brought up by any of the parties. Therefore, there is no protocol on how parties should obtain electronic evidence (or any other kind of evidence).

If the authenticity of an evidence is questioned by the other party, the party bringing forth the evidence have to attest the authenticity, but how this is done is up to the party. The court will then assess their evidence according to the principle of free evaluation of evidence.

There are rules for the preservation of evidence for the future in the Code, Ch. 41, but this does apply to all kinds of evidence that risk being destroyed and does not deal with specific forms of evidence (like electronic evidence).

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).)

No. As previously stated, the court does not engage ex officio in questions about the source or origin of an evidence.

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.)*

No, there are no rules stipulating whether certain types of evidence should be presumed to be authentic or inauthentic due to the principle of free evaluation of evidence.

However, there is an interesting case from the Supreme Court, NJA 2017 s. 1105, discussed in Question 2.9 below, that discusses the burden of proof and how the court should handle an electronic proof that is of a certain, recognised quality. The Supreme court cannot, however, lay down fully binding rules because of the principle of free evaluation of evidence, but the relevant cases from the court can still work as a guiding tool.

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.)

Firstly, a party needs to object and argue that an evidence has been subjected to manipulation. The court does not investigate this question in civil cases if not initiated by a party.

Secondly, the court is not expected to have any particularly profound technical knowledge. If an objection occurs, the party bringing forth the evidence in need of verification can attain supporting

evidence from an expert (the Code, Ch. 40, Sec. 19). The court can also decide to hear an expert, if special professional knowledge is needed to determine an issue (the Code, Ch. 40, Sec. 1).

Thirdly, the evidentiary value is decided by the court alone due to the principle of free evaluation of evidence (see question 1.7 above) and is thus not decided by law.

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.)

The court can appoint experts according to the Code, Ch. 40, Sec. 1, which in its entirety states: 'If, for the determination of an issue the appraisal of which requires special professional knowledge, it is found necessary to call upon an expert, the court may obtain an opinion on the issue from a public authority or officer or from a person specially authorised to furnish opinions on the issue or may commission one or more persons known for their integrity and their knowledge of the subject to deliver an opinion.' Thus, there are no rules deciding when courts *need* or *should* appoint an expert, and therefore not regarding the processing of electronic evidence either.

In civil cases, the court can decide to appoint an expert only when the case is not amendable to out-of-court settlement.[5]

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 Code, Ch. 40, Sec. 17, the compensation should be paid by the parties jointly and severally, if the matter at issue is amendable to out of court settlement. If only one party has requested the employment of the expert, that party should bear the costs. In all other cases, the expert should be paid out of public funds.

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.)

There is no special procedure decided by law. The party can object and state that the evidence is inauthentic or otherwise questionable, and have the possibility of appointing an expert to be heard in court to confirm the statement or invoke that the court hires an expert, see question 2.5 above. The evidence will not be dismissed by the court, but it is up to the court to decide on its evidentiary value.

[5] Borgström, Commentary on the Code of Procedure, Ch. 40, Sec. 1, note 1709, Karnov 2022-12-02

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.)

Under Swedish law, there are no procedural rules regarding the inauthenticity or unreliability of electronic evidence in particular, nor rules regarding the inauthenticity/unreliability of evidence in general. Therefore, regular rules of burden of proof are applicable. Neither these, however, are decided by law and have often been discussed in doctrine.[6] The point of departure is nevertheless that the party referring to the evidence is the one that bears the burden of proof of the authenticity of this evidence.

It can also be reminded that the court does not investigate the authenticity or inauthenticity of any proof on its own initiative, if the matter at issue is amendable to out of court settlement. It is therefore up to the parties to argue that the evidence is inauthentic or unreliable.

Regarding electronic evidence and burden of proof, the Swedish Supreme Court have in decision NJA 2017 s. 1105 dealt with the question of unauthorised use of electronic identification and how the burden of proof should be distributed. The matter in the case is a woman who is being sued for payment of a debt to a credit company for a loan that has been obtained online. However, the woman claims that her electronic identification has been used illegally by another person and that she therefore is in no duty to pay the debt. In para. 16 of the judgment the court states under the heading *The assessment of whether a particular electronic signature has been used* (our translation):

> It must be up to the lender, as the party providing the underlying technical system, to ensure that the technology meets high quality standards. An advanced electronic signature fulfils such standards. If a lender can prove that the technical solution used to conclude a loan agreement corresponds to the creation of an advanced electronic signature, and there is no indication that there were technical problems with the system used at the time, the burden on the lender should generally be considered as fulfilled. In such a situation, the starting point should be that the electronic signature has not been tampered with, but has been created by identification with the debtor's personal code.

It should be noted, however, that even if the Supreme Court in this case discusses how an advanced technical solution should impact the evaluation of evidence and the burden of proof, the ruling principle still is free evaluation of evidence for the courts.

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 a case amendable to out of court settlement the court have this discretion only if a party objects the authenticity or reliability.[7] This follows from the Code, Ch. 35, Sec. 3, first paragraph, first sentence,

[6] See for example Heuman, *Bevisbörda och beviskrav i tvistemål* (Burden of proof and evidentiary requirements), Norstedts juridik, 2005.
[7] See for example the court of appeal case RH 1992:96, published with the following heading: 'The carrier of sold goods refers to a signed consignment note in an uncertified photostat copy and claims (in the seller's place) on that basis that the buyer should pay for the goods. The buyer denies receipt of the goods and disputes the authenticity

which states: 'If, in a case amenable to out of court settlement, a party admits a certain circumstances, his admission constitutes full proof against him.

2.11. How is the manipulation or (un)lawful manner of obtaining electronic evidence assessed by the court in the case of a challenge?
(In answer to this question, please explain whether judges are expected to assess if evidence was compromised or illegally obtained by themselves, whether an expert may or must be appointed, and whether any other rules and requirements have to be complied with.)

See answers in 2.4–5 above.

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 fact that the court finds an evidence to be compromised is not a ground in itself to exclude the evidence under the Code, Ch. 35, Sec. 7. The reliability of the evidence will instead affect its evidentiary value, and can be deemed to be without effect in the case at hand. Generally, it is not preferrable to exclude evidence before the very process has begun.

The fact that the court finds an evidence to have been obtained illegally does not automatically render the evidentiary value to be low. The evidence is neither excluded, as its illegality is not a ground for exclusion according to the Code, Ch. 37, Sec. 7. The fact that an evidence has been obtained illegally is handled as a separate matter in criminal proceedings.

It has been discussed how this relates to the right to a fair trial in article 6 ECHR. A further discussion on the issue can be found in Lundquist, *Laga och rättvis rättegång – Om bevisförbud i rättspraxis*.[8]

However, an indirect effect of the fact that an evidence has been obtained illegally can be that there are difficulties for the court to determine how the evidence has been obtained (if this has been questioned by the other party), as persons involved might not want to share their information about how the evidence has been obtained.

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?)*

of the signature on the consignment note by which receipt was acknowledged. The Court of Appeal found that the carrier, by not producing the original consignment note, had not fulfilled its burden of proof and therefore dismissed the claim for payment.'

[8] Lundquist, *Laga och rättvis rättegång – Om bevisförbud i rättspraxis* (Fair and lawful trial – About exclusion of evidence in court practice, 2nd ed. 2017, not available in English) pp. 523 et seq.

In Swedish courts, the process is governed by a principle of orality as stated in the Code, Ch. 43, Sec. 5 ('The hearing shall be oral', first sentence). Therefore, the point of departure is that witnesses shall be heard orally.

Written statements from witnesses were previously allowed only in few and exceptional cases. However, since the 1st of January 2022, written statement from witnesses allowed on more general grounds according to the Code, Ch. 35, Sec. 14. Written statements are now more generally allowed, under the condition that both parties approves and it is not deemed to be manifestly inappropriate.

It has been pointed out in literature that the admittance of these kind of written statements should presuppose that the witness in question does not attend the court in person.[9]

According to the Code, Ch. 35, Sec. 14, para. 3, this also applies to sound and video recordings. In the preparatory works, it is said that a recording normally should be assigned a higher evidentiary value than a written statement, as the circumstances of the hearing can more easily be assessed, as well as the behaviour of the person heard[10].

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 duty to disclose written evidence is laid down in the Code, Ch. 38, Sec. 2, which states: 'Anybody holding a written document that can be assumed to be of importance as evidence is obliged to produce it'. There are no other provisions regulating other kinds of evidence and therefore not electronic evidence either.

However, the section quoted is nowadays understood to also encompass more modern forms of evidence, like electronic documents. This is confirmed by the Swedish Supreme court in cases NJA 1998 s 829, where electronic documents also were considered to be eligible for disclosure, and NJA 2020 s 373, where the Supreme court discusses the issue more thoroughly and comes to the same conclusion (see para. 11–14).

3.2. What is the scope of the party's duty to disclose electronic evidence within the law of your Member State?
(Please address the circumstances under which the party is required to provide electronic evidence (e.g. the evidence was obtained in a particular manner, the evidence refers to both parties, the parties brought up the evidence when testifying, etc.), the type of evidence they are required to provide (if applicable) and procedural requirements (e.g. does the party in need of evidence have to request particular evidence with an explicit motion, does the court have any discretion when ordering disclosure, are there any time

[9] Peter Borgström, Rättegångsbalk (1942:740), Ch. 35, Sec. 14, Karnov (JUNO), 2022-12-14
[10] See Government Bill (*Proposition*) 2020/21:209 p. 41 as well as Government Bill (*Proposition*) 2016/17:68 pp. 39 seq. However, this discussion concerns statements

limits, etc). If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)

The duty to disclose electronic evidence is not specifically regulated but coincides with the duty to disclose written evidence (see question 3.1 above). Therefore, also the scope of this duty is the same for non-electronic as for electronic evidence.

The circumstances under which a party has a duty to disclose evidence are not more thoroughly laid down in law, other than what is stated in the Code, Ch. 38, Sec. 2: 'Anybody holding a written document that can be assumed to be of importance as evidence is obliged to produce it…'.

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.)

The duty to disclose written evidence does also include a duty to disclose electronic evidence, see questions 3.1 and 3.2 above. In the Swedish Supreme court case NJA 2022 s 249, the court concludes that the storage of a document nowadays is more often conducted by a third-person through cloud-services than by a person storing them in physical form (paragraph 12). In this case, it is sufficient that the party has 'access to' the document (p. 11). This applies also if the document is stored by a third person. In normal cases, it should be enough that the party has an unconditional right, based on law or an agreement, to the document and can get access to the information through a login (p. 13). The legal basis is the Code, Ch. 38, Sec. 2 also for disclosure of evidence for third persons.

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.)

As stated above, no differentiation is made between electronic and non-electronic documents. The duty to disclosure is the same, the Code, Ch. 38, Sec. 2.

Para. 2 and 3 in this section declares exceptions from the duty to disclose evidence. For example, if a person is related to the party in any sense laid down in the Code, Ch. 36, Sec. 3 (for example spouse, former spouse, relative by blood or marriage in direct lineal ascent or decent, sibling of party, married or has been married to a sibling to party). These persons are not obliged to disclose evidence. A party is neither obliged to produce communication between the party and such related person (the Code, Ch. 38, Sec. 2, para. 2). There are also some exceptions regarding public officials (the Code, Ch. 38, Sec. 2,

para. 2, mom. 2) and regarding trade secrets (the Code, Ch. 38, Sec. 2, para. 2, mom. 3 together with the Code, Ch. 36, Sec. 6, para. 1, mom. 2).

Also, exceptions are made for 'jottings or any other like personal notes prepared exclusively for one's private use unless extraordinary reason exists for their production' (the Code, Ch. 38, Sec. 2, para. 3).

However, a general limitation of the duty to disclose documents is that so called 'fishing expeditions' are prohibited. This means that general and sweeping investigations with the help of the court are not allowed. This is understood to follow from the fact that the duty of disclosure needs to involve a 'specific document'[11].

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.)

The court can order someone to disclose evidence, the Code, Ch. 38, Sec. 2. If this is not adhered to, the court can order disclosure at the risk of a fine, the Code, Ch. 38, Sec. 5. If the court deems it to be more appropriate, it can decide the Swedish Enforcement Agency (*Kronofogden)* to order the evidence, the Code, Ch. 38, Sec. 5, third sentence. If someone destroys or gets rid of the evidence with a character of originality (a '*urkund'*), this can lead to criminal procedure, the Penal Code (*brottsbalken*, 1963:700), Ch. 14, Sec. 4.

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

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

In the case *NJA 2022 s. 249*, the Swedish Supreme Court addressed a question regarding an order to disclose evidence that was in electronic form and was located at an authority in Denmark. There was no question about conflict of laws but the case illustrates how cross-border cases might be assessed. Firstly, the court dealt with the question whether the electronical information was in the possession of the defendant. The court held that a document situated in a cloud or in a database could be in the defendant's possession when the defendant could access this on a legal or contractual basis for example by logging in to a website (which was fulfilled in the case).

[11] Bergström, Commentary to the Code of Procedure, Ch. 38, Sec. 2, Karnov (JUNO), 2023-01-10.

The next question addressed was whether the order could be imposed when the information was located in another country. As a primary point a court in Sweden may only access proof in another state if that state has approved it by a more general international agreement or an agreement in the singular case. Relevant EU-regulations and other international conventions were mentioned but the court concluded that an order to disclose evidence differed from other measures in an extraterritorial way. If the defendant is a resident in a foreign country, a Swedish court must be considered authorised to issue an order to disclose evidence if the obliged person also is a party to the proceedings and the order directs the subject to income with the document to a Swedish court. Nor was it considered that there was an obstacle to the imposition of this obligation by way of a penalty payment, since the order referred to something that shall be fulfilled in Sweden (the disclosure of evidence). Although, this was under the provision that the obliged was not ordered to violate any foreign rules. It was also stated that measures concerning executive measures needed to comply with international agreements. The defendant was ordered to disclose the evidence that was on a server at a Danish authority. Since the order should be fulfilled to a Swedish court, could the order not affect the Danish authority in a way that would demand a request of international legal assistance.

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.)

Since a document of evidence might become an *official document* ('allmän handling') for example by being submitted to the court, see question 5.1 below regarding the general rules for official documents and general demands of documentation. The relevant authority must determine if documents and other material are official documents or not and examine when an internal document might become an official one. Concerning other documents than official ones, there is a lack of both general and special regulations. This is mainly an internal matter for every authority so some authorities might therefore adopt internal regulations. We have not been able to obtain such internal material so the questions in this section are not possible to answer properly.

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

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

See question 4.1 above and question 5.1 below.

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.)

For safety reasons the physical location of the storage is confidential, as are the details of the storage, cf. 7.12.3 below.

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.)

Each court has the main responsibility as being the relevant authority. It has not been possible to prepare a more adequate response to this question.

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 judges and administrators concerned in the relevant court have direct electronic access to this information. It has not been possible to prepare a more adequate response to this question.

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.)

For a general answer regarding official documents see in particular questions 5.1, 5.5 and 5.6 below.

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.)

The central database is designed in such a way that a higher court after appeal can access the electronic case file from the lower court.

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.)

For a general answer regarding official documents see in particular questions 5.1, 5.5 and 5.6 below.

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.)

There is no special law on archiving of electronic evidence so the general acts must be consulted. However, many authorities have their own more specific provisions based on these general acts. The method is to examine if the proof is an official document or not since this is decisive for which regulations to apply. There is in general detailed law concerning official documents but almost no general law regarding non official ones. Evidence such as electronic documents that is submitted to the court by a subject outside the court are generally considered to be official documents (see below). It should also be noted that an official document or the information in it, might be confidential according to rules concerning secrecy, but this does not change the character of the document as official.

The access to official documents is regulated in the Freedom of the Press Act (*tryckfrihetsförordning*, 1949:105) which is one of the Swedish constitutional laws. According to Ch. 2, Sec. 3, a document means a written or pictorial representation or a recording which can be read, listened to or understood only by technical means. The important issue is the content as a source of information, not the form. An official document can also consist of an absorption for automatic treatment by electronical measures.[12] A recording can for example be a document provided in electronic form that can be displayed through a computer. The document is regarded as official when it is drafted by the authority or submitted to the authority (Ch. 2, Sec. 4). A document is for example submitted to the authority when a subject hands in an electronical document to the court that is accessible to the authority by technical means used by the authority itself for transmission in such a form that it can be read, listened to or understood in any other way (Ch. 2, Secs. 6 and 9). This means that an official document could be in written form, a picture, an e-mail or a video if it for example is accessible through a computer and is submitted to or drafted by the authority. The document remains official for the whole time when it is being stored by the authority (Ch. 2, Sec. 4). There are also special regulations regarding different kinds of documents but the issue is only briefly described here.

[12] Swedish Government Official Reports SOU 2010:4, *Allmänna handlingar i elektronisk form* (Official documents in electronic form) pp. 30 seq.

There are general regulations concerning archiving and storage of official documents in The Archives Act (*arkivlag*, 1990:782), the Archive Regulation (*arkivförordning*, 1991:446) and in The Public Access to Information and Secrecy Act (*offentlighets- och sekretesslag*, 2009:400). The archives of the authorities shall be kept in an orderly manner so they ensure the right of access to public documents, the need of information for the administration of justice and other administration and the needs of research (The Archives Act, Sec. 3). This demands different measures to ensure these interests such as a description of the archive, a systematic listing and different measures to keep the archive safe and in good order (the Archives Act, Sec. 6). The law also contains regulations regarding disposals of official documents. Archiving should be done when a case or a matter is closed or finished and documents not concerning a case or a matter shall be archived as soon as they are adjusted by the authority or when they are completed in another way (the Archive Regulation, Sec. 3).

The Public Access to Information and Secrecy Act contains similar regulations regarding storage and order of public documents which shall ensure fast access for the public, separation of official documents from others, ensure an easy search for the public, information about time of receiving and so on (Ch. 4, Sec. 1). The authority shall also provide a description of their official documents to ensure accessibility. Further, each public authority shall draw up a description providing information on technical aids that individuals themselves can use at the authority to access public documents (Ch. 4, Sec. 2). There is also a provision regarding registration of the documents which regularly should be done as soon as they are drafted by or submitted to the authority Ch. 5, Sec. 1). The law also contains detailed rules regarding secrecy which is the formal ground for balancing public access and confidential information.

There is also a general provision in the Administrative Procedure Act (*förvaltningslag*, 2017:900) that demands authorities (including courts) to document information which is received in other ways than through documents (Sec. 27). This could for example concern information that has been obtained during inspections by the court.[13] Such documentation does often become an official document.

The National Archive (*Riksarkivet*) is the authority that administrates archives on a general level and also provides different kinds of regulations and guidelines concerning the above mentioned laws and regulations (this is delegated through the Archive Regulation). It should be noted that, in general, every authority, and therefore every single court, has its own archive. The National Archive has provided regulations and general guidelines on electronic documents which concerns for example documentation, quality of information and information security.[14] There are also regulations and general guidelines concerning technical demands regarding electronic documents which contains definitions and technical standards for databases and registries.[15] The National Archive has also provided a general publication regarding electronic document management.[16] There is also a document containing regulations and general guidelines for planning, execution and operation of archive destinations which is applicable on digital storage.[17] The Swedish National Court Administration also provides regulations and guidelines regarding different questions but has limited competence connected to the general questions regarding archives.

[13] Bohlin, A, *Offentlighetsprincipen* (The principle of free access to public documents) Norstedts 2015 p. 29.
[14] RA-FS 2009:1, https://riksarkivet.se/rafs?pdf=rafs%2FRA-FS+2009-01.pdf visited 2023-04-24.
[15] RA-FS 2009:2, https://riksarkivet.se/rafs?pdf=rafs%2FRA-FS+2009-02.pdf visited 2023-04-24.
[16] Elektronisk dokumenthantering (*Electronic document management*), https://riksarkivet.se/Media/pdf-filer/doi-t/elektronisk-dokumenthantering.pdf, visited 2023-04-24.
[17] RAFS 1994-6, https://riksarkivet.se/rafs?pdf=rafs%2FRA-FS+1994-06.pdf, visited 2023-04-24.

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

See question 5.1 above. There are no special rules regarding electronic evidence so the question could only be answered on a general basis.

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.)

For safety reasons the physical location of the storage is confidential, as are the details of the storage, cf. 7.12.3 below. In some cases the National Archive is the final destination for the storage.

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.)

This is regularly done by the concerned authority but there is a possibility to coordinate the archiving with other authorities and possibly with the National Archive after an agreement, consultation or decision by the National Archive (The Archives Act, Sec 9).[18]

5.5. Must electronic evidence be archived indefinitely, or must it be deleted or destroyed after a certain period? How is the accessibility of archived electronic evidence preserved over time?
(As electronic evidence is generally kept in an archive for an extended period of time, which measures are taken to guarantee its accessibility in line with the evolution of technology? E.g. when old storage media (VHS, floppy disks, etc.) are no longer used or new, more secure types of storage media become available.)

See question 5.1 above regarding the time of archiving and general regulations. The National Archive has provided general regulations and guidelines concerning the storage room for example regarding safety risks as humidity, fire and unauthorized access.[19] There is also a general demand concerning safety copies which should be done to ensure that the documents can be restored.[20]

Official documents can be disposed after a decision from the authority but there is often special regulations concerning the time for when disposal is possible (The Archives Act, Sec. 10). There are two regulations concerning administrative courts and ordinary courts which contains regulations about

[18] See also RA-FS 2009:1, Sec. 7, https://riksarkivet.se/rafs?pdf=rafs%2FRA-FS+2009-01.pdf visited 2023-04-24.
[19] RAFS 1994-6, https://riksarkivet.se/rafs?pdf=rafs%2FRA-FS+1994-06.pdf visited 2023-04-24.
[20] RA-FS 2009:1, https://riksarkivet.se/rafs?pdf=rafs%2FRA-FS+2009-01.pdf, visited 2023-04-24.

disposal: regulation (1996:271) about cases and matters in ordinary court (*förordning [1996:271] om mål och ärenden i allmän domstol*)) and regulation (2013:390) about cases in administrative court (*förordning [2013:390] om mål i allmän förvaltningsdomstol*)). When a case or a matter is concluded or decided and the case or matter has entered into final force, shall duplicates of documents and other documents which not contains any information of importance, be disposed. There is special rules for example regarding proof of service when a subject has failed to appear (regulation 1996:271, Sec. 37). Other documents such as official ones can only be disposed in accordance with other regulations (see below). Both regulations contain an authorization for the National Archive and for the Swedish National Court Administration to provide further regulations and guidelines where the latter is authorized to provide regulations regarding system support for digital archiving (Secs. 38–39 respective 20–21). The Swedish National Court Administration is also developing an e-archive for the courts.[21]

The authority shall also follow decisions and regulation from the National Archive (the archive regulation, Secs. 12 and 14). Although, there is no general legislation concerning disposal of electronic evidence but the National Archive have provide several general regulations and guidelines regarding disposal of official documents with less value.[22] The National Archive has provided a special set of regulations and general guidelines concerning disposal of official documents concerning the national courts which directs to decisions by The National Archive and its other regulations.[23] In summary, the presumption regarding official documents is that the documents should be preserved and that disposal is an exemption.

It should also be noted that a change of storage or likewise is not allowed if it changes an official document in any way for example regarding the content. If the information is incorrect this should be noted and or corrected according to applicable rules, it is not allowed to erase information in official documents if it is not done by a correct disposal.[24]

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.)*

See question 5.5 above. The main rule is that the document should be archived in its original form. A conversion of an official document is also only allowed so long as the content is not affected since it otherwise will be seen as a disposal.[25] The National Archive has adopted regulations and general guidelines about transfers to formats for storage regarding electronic documents.[26] A change of format could be problematic since it could affect the content, the authenticity and measures for searching. All this must be addressed by the authority when assessing if a change of format is possible.[27]

[21] See approved PM from the Swedish National Court Adminstration to the Swedish Government, https://www.regeringen.se/contentassets/c1f239eb5b6c404ba354dd4badbd5a9d/domstolsverket-bor-ges-ratt-att-foreskriva-om-att-domstolarna-ska-anvanda-e-arkivet.pdf, visited 2023-04-24.
[22] For example RA-FS 2021:6-7, https://riksarkivet.se/rafs?pdf=rafs%2FRA-FS+2021-6.pdf, visited 2023-04-24.
[23] RA-MS 2019-24, https://riksarkivet.se/rams?pdf=rams%2fRA-MS+2019-24.pdf, visited 2023-04-24.
[24] Bohlin, A, *Offentlighetsprincipen* (The principle of free access to public documents) Norstedts 2015 p. 32 – 33.
[25] Government Bill (*Proposition*) 2001/02:70, Offentlighetsprincipen och informationstekniken (*The principle of free acess to public documents and the information technology*), pp. 35–36.
[26] RA-FS 2009:2, https://riksarkivet.se/rafs?pdf=rafs%2FRA-FS+2009-02.pdf, visited 2023-04-24.
[27] Webpage of The National Archive concering medium and format, https://riksarkivet.se/medium-och-formatval, visited 2023-04-24.

6. Training on IT development

The answers to the following questions are mainly based on an interview on 14 March, 2023, with two officers of the Swedish National Courts Administration (*Domstolsverket*), John Lagström (IT Strategist, IT Department, IT Coordination Unit), and Johan Allthin (Head of Technical Services Unit). 6.1 is also based on correspondence with Erik Brattgård, Rector of the Swedish Academy of the Judiciary (*Domstolsakademin*) on 17–19 March, 2023.

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.)

There is no mandatory training on technological developments. Nor is there any training that focuses only on electronic evidence.

However, the court personnel receive regular training in operational systems and the training includes elements concerning the reception of documents from a procedural perspective, such as where the documents should end up. All employees of the courts are also offered education and training on new or updated technology in the courtrooms which could include questions about presentation of electronically evidence, but this is not mandatory. Courses are organised by the Swedish Academy of the Judiciary (*Domstolsakademin*) and, primarily, the Learning Unit at the Swedish National Courts Administration (*Domstolsverket*), courses that are intended to provide increased knowledge of how to use programs for handling cases such as simple Word, Excel and PowerPoint programs in the most efficient way possible.

7. Videoconference

The answers to the questions 7.3.1–3, 7.12.1–3, and 7.14.6–7 are mainly based on an interview on 14 March, 2023, with two officers of the Swedish National Courts Administration (*Domstolsverket*), John Lagström (IT Strategist, IT Department, IT Coordination Unit), and Johan Allthin (Head of Technical Services Unit).

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, it does. This is mainly regulated in the Code, Ch. 5, Sec, 10, which states that a person who is to attend a hearing before the court should appear in person (first paragraph). However, if there are reasons for it, the court can decide that the person can participate through sound and image transmission (e.g. video link) or sound transmission (e.g. telephone) – irrespective of the specific technologic solution used (second paragraph). The third paragraph states reasons for the court to consider when deciding on participation through sound and image transmission or sound transmission which are (as listed in the paragraph):

1. The costs or inconveniences that can occur if the person needs to be present in the court room
2. If the party or witness is afraid to appear in the court room
3. If it can be presumed that someone that is to appear in the court room is the subject of pressure
4. If it is necessary due to safety reasons.

The participation through sound and image transmission or sound transmission cannot be admitted if it is inappropriate with regards to the purpose of the person participating and other circumstances (para. 4).

These rather generous possibilities to participate through sound and image transmission or sound transmission were introduced in 2008 and further altered in 2019, after a trial period in Swedish courts in 2000 and 2001. The trial period was deemed to have been successful: the possibility to participate though telephone/video had made the activities of the courts easier, the technical equipment worked well and the technical quality was high. The main rule, however, is still physical participation.[28]

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 – Yes
b) Expert witness testimony – Yes
c) Inspection of an object (and/or view of a location) – Yes, according to the Code Ch. 5, Sec. 11.
d) Document (document camera) – Yes
e) Party testimony – Yes
f) Other means of evidence (please elaborate) – Cf. 7.2.1 below.
g) Conducting the hearing in broader/general terms (please elaborate) – Sound and image transmission (e.g. video link) or sound transmission (e.g. telephone) – irrespective of the specific technologic solution used – may be used within the Swedish legal system according to Ch. 5, Sec. 10 of the Code. The hearing is held as if the person is present. The court shall ensure that those who are required to attend a hearing and who cannot be seated in the courtroom can follow the hearing by sound and image transmission in a room set up for that purpose (a 'side courtroom'). The court may also allow members of the public who cannot be seated in the courtroom to follow the proceedings by sound and image transmission in a side room.

According to the general rule in Ch. 5, Sec. 10, first para. 1 of the Code, a person who is required to attend a hearing before the court, no matter in what capacity, shall be present in the courtroom or where the hearing is otherwise held. The second, third and fourth paragraphs state:

[28] Government Bill (*Proposition*) 2018/19:81, *Stärkt ordning och säkerhet i domstol* (Strengthening order and security in courts), pp. 27–28.

'If there are grounds for doing so, the court may decide that the person who is required to attend a hearing shall participate by means of sound and image transmission. The presiding judge may decide on the matter if it arises during a hearing.
In assessing whether there are grounds for participation by audio or video transmission, the court, or the presiding judge, shall take into account in particular

1. the cost or inconvenience that would be caused if the person who is to participate in the hearing had to appear in the courtroom,
2. if a person attending the hearing feels afraid being present in the courtroom,
3. if there is reason to believe that someone attending the hearing is subject to pressure; and
4. if it is necessary for security reasons.

Participation under the second paragraph may not take place if it is inappropriate with regard to the purpose of the person's appearance and other circumstances.'

Ch. 5, Sec. 13 of the Code states:
'If there is reason for it, the court may decide that all persons attending the hearing as audience shall follow the hearing by sound and image transmission in a side room. The presiding judge may decide on the matter if it arises during a hearing.
In assessing whether there are grounds for an order for a side room, the court, or the presiding Judge, shall in particular take into account the following factors

1. whether it is likely that the audience will disrupt the proceedings or otherwise behave inappropriately in the courtroom,
2. whether any person attending the hearing feels afraid because of the presence of the audience,
3. if it can be assumed that someone who is to participate in the meeting is subject to pressure by the audience; and
4. if it is necessary for security reasons

If there are special reasons, members of the audience may be exempted from a decision on a side room.'

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

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

Ch. 5, Sec. 13 of the Code allows for remote view of location (*syn på stället*) if it is not inappropriate given the nature of the evidence and other circumstances. I am not aware of any case where it has actually been applied. According to judges I have spoken to about this, if it were to take place, they would have a court clerk visit the site with a camera and operate it according to instructions.

A similar, actually applied method reported to me by the president of a district court in the forested north of Sweden was the following.[29] The case concerned compensation for the denial of a logging permit for

[29] Information provided by email contact with Mr. Mikael Forsgren, President of the District Court of Umeå, 3 March, 2023.

a mountainous forest. The forest area was remote and an on-site inspection there would have required a helicopter flight and significant costs. The president suggested that the parties instead submit drone footage of the area and of a disputed stretch of road. The question was whether it was possible to transport timber along the route. The parties had to discuss what should be filmed, angles, etc. The Crown, which was one of the parties, used fairly advanced technology and, among other things, flew the two-kilometre stretch of road at a height of two metres to correspond to eye level if you were walking. This became an excellent basis for the decision (rendered in 2022). Formally, however, this was not a hearing, but the parties invoked this as alternative evidence, which replaced remote view of location.

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

The Swedish National Courts Administration (*Domstolsverket*) does not use any specific software for videoconferencing in civil court proceedings. Instead, the so-called H264 system for video conferencing is used. In comparison, for example, if the Skype programme is used, it requires that all participants have that specific programme open at the same time. A more transparent procedure and system-based approach has therefore been chosen.

It is possible to participate in a video conference (WebRTC) via a web browser or other software that supports the H264 open protocol. This requires that the software used is relatively up-to-date, as there may be problems with older software. If the software is up to date, you can participate via standard web browsers on computers and via smart phones.

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 so-called H264 system 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 system is not compatible with Skype, for example, but works independently. An updated browser on a suitable device is all that is required for participation.

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 allows for chat functionality but it has to be activated separately. The same applies to the possibility to use a blurred background. However, such features are disabled in court proceedings as their use is considered inappropriate.

Screen sharing is possible for digital material. The same system is used for both parties and witnesses. There is a touch screen in the courtroom that controls the video conferences so that the judge can, for

example, interrupt inappropriate data sharing. There are also document and object cameras in the court rooms for sharing printed documents.

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 decides on the use of videoconference technique during the process as stated in the Code, Ch. 5, Sec. 10, para. 2. The decision is in the discretion of the court, but the court is supposed to consider the views of the parties. However, the parties cannot stop the use of videoconferencing technology. Their consent is neither needed to use such technology.

In the preparatory works, the Government states that there are situations where a party's physical presence is not necessary at the same time as such presence would lead to costs or inconveniences or other non-efficient usage of resources that is not proportionate in relation to the importance of the attendance of the party. Therefore, the parties should not have a decisive influence over the decision. For other participants than parties, e.g. witnesses, experts etc., these arguments are said to be even stronger, meaning that they have even lesser reasons to have influence over the decision of the court regarding the usage of videoconference technology.[30]

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

As stated above (question 7.4), it is the court that decides matters concerning the process, e.g. all usage of videoconference technology, as stated in the Code, Ch. 5, Sec. 10. In the preparatory works, there is no differentiation made between the usage of videoconference technology in the taking of evidence and in hearings. Thus, the same reasoning as above is relevant also here: that the court is to decide whether a hearing should be conducted via videoconference technology due to efficiency reasons. The court thus decides ex officio but should hear the parties concerning the disposal of the case.

The parties can submit requests about the disposal of the case. They can therefore request that a hearing is held through videoconference (the Code, Ch. 42, Sec. 2, para. 2). The court should also communicate with the parties regarding the disposal of the case, the Code, Ch. 42, Sec. 6, para. 3, second sentence. However, it is up to the court to decide on the issue.

[30] Government Bill (*Proposition*) 2004/05:131, En modernare rättegång – reformering av processen i allmän domstol (*A more modern trial – reform of the process in general court*), p. 91 and p. 226.

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)?

Yes, the parties can oppose that decision in two ways. Firstly, the parties can object during the course of the case management, see question 7.5 above. Secondly, a party can appeal to the appellate court and argue that the court of appeal may set aside the judgment of the lower court on the ground that a procedural error has occurred, which can be assumed to have affected the outcome of the case and correction of the error cannot be accomplished in the court of appeal without substantial inconvenience. In more extreme cases the court of appeal can raise the question on its own motion if the appeal concerns some other aspects. See the Code, Ch. 50, Sec. 28.

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.)

The person that shall be heard as a witness shall be called to appear under a penalty of fine, according to the Code, Ch. 36, Sec. 7).

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

The main rule is that a witness is obliged to testify. A witness who refuses to testify must still appear in court. The court has a limited discretion in assessing the grounds for refusal. The general obligations and limitations are stated in law.[31] There are no special rules regarding videoconference testimony so the general rules of exception apply.

According to the Code, Ch. 36, Sec. 1, a starting point is that "everyone who is not a party in the case may be heard as a witness". According to the Code, Ch. 36, Sec. 4, the court shall, if testimony is sought from a person who is under the age of fifteen years or suffers from mental disturbance, determine in accordance with the circumstances whether he may be heard as a witness." There is a difference between being unfit to testify and the possibility for a witness to refuse to testify. If a person who is deemed to be unfit as a witness is summoned in court, he can refuse to give his opinion.[32] Such a witness could also refuse to testify under oath (the Code, Ch. 36, Sec. 13).

Close family is excluded from the obligation to give evidence (the Code, Ch. 36, Sec. 3). In some cases, the witnesses are allowed to refuse to give evidence with respect to secrecy which also regards different kinds of professionals such as lawyers, medical doctors, nurses and priests under the provision that they obtained the information by entrust in their profession. Some grounds are absolute forbids for testimony while others demand consent from for example, the authority that is affected by the secrecy (the Code, Ch. 36, Sec. 5). A witness could also refuse to give evidence with regard to self-incrimination of his- or herself or close family. There is also a refusal ground concerning business secrets (the Code, Ch. 36, Sec. 6).

[31] Bylander, *Evidence in civil law – Sweden*, Lex localis 2015, p. 19
[32] Bylander, *Evidence in civil law – Sweden*, Lex localis 2015, p. 19.

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

Yes, cross-examination is allowed under the Code, Ch. 35, Sec. 17, which states that the opposing party shall have the right to question witnesses. The rules do not discriminate between non-videoconference hearings and videoconference-hearing.

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.)

The court decides if videoconference technology should be used or not (the Code, Ch. 5, Sec. 10). The parties have therefore no absolute right for preferences.[33] If the question should arise during for example a hearing through videoconference, the court can decide that the hearing shall be continued on site instead, if the court finds this to be the best solution. This is a part of the discretion of the court as stated in the Code, Ch. 5, Sec. 10 (for elaboration, see question 7.4 above). However, the parties can and should be heard about their requests about the disposal of the case according to for example the Code, Ch. 42, Sec. 2, para. 2.

7.9. Does the law (or best practice) provide, that the court should – before ordering the use of videoconference technology – check (please elaborate):
a) the internet connection availability (and/or speed) of the persons involved in the videoconference;
-
b) the technical equipment of the persons involved in the videoconference;
-
c) the technical literacy of the persons involved in the videoconference;
-
d) the physical capacity of the persons involved in the videoconference (e.g. if they are located in the Member State, their health status (hospitalisation; vocalisation, hearing and seeing));
-
e) other (please specify)?
(In addition, please specify if the court has to conduct a 'test' session' before the actual videoconference.)

The general answer is that there are no rules under Swedish law regulating such aspects. It is under the discretion of the court to make appropriate decisions before and during the process. For example, if the internet connection of a witness is shown to be unstable and not working properly, the court can decide to take appropriate action, e.g. change to a telephone hearing or order that the hearing should be continued on site instead. There are no specific rules about these kinds of decisions, but the matter is considered to fall under the Code, Ch. 5, Sec. 10.

[33] Government Bill (*Proposition*) 2004/05:131, En modernare rättegång – reformering av processen i allmän domstol (*A more modern trial – reform of the process in general court*), p. 226.

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 Code, Ch. 36, Sec. 4 states that if a person is under the age of 15 years or suffers from 'mental disturbances', the court shall 'determine in accordance with the circumstances whether he may be heard as a witness'. This does not concern the use of videoconference, but whether a person should be heard as a witness at all. Also, see question 7.7.1 above.

Reasons for choosing between physical presence or video or telephone conference, could be that a party, a witness or another person who should participate in the proceedings; is afraid to participate, if it can be presumed that a person attending the meeting is a subject to pressure or because it is necessary due to safety reasons (the Code, Ch. 5, Sec. 10, para. 3). It is generally low qualifications for a possibility to participate through digital methods since it only demands reasons for the usage but as stated above, there are special circumstances that could be considered in the assessment. The circumstance that someone is vulnerable for different reasons might indicate physical participation as well as participation through digital methods. This must be assessed in the particular case regarding all relevant circumstances. Participation through video conference or telephone conference is seen as an exception from the presumption that court proceedings shall take place in physical form.[34] For example regarding fear, the fear should at least be based on some relevant circumstance.[35]

The presence of mainly the same reasons could result in a decision to place the spectators in a side court room to follow the proceeding through audio or video transfer (the Code, Ch. 5, Sec. 13, para. 1). Also, see question 7.17 below.

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.)

Under Swedish law it is the same regulation guiding both the evidence taking and the hearings when it comes to the usage of videoconference technology, and that is the previously mentioned the Code, Ch. 5, Sec. 10. There is no proper prohibition to use filters or backgrounds, but this can of course affect the assessment whether a hearing or the taking of evidence via videoconference shall be continued or substituted by action on site instead. It is under the discretion of the court to tell a party to turn off an

[34] Government Bill (*Proposition*) 2018/19:81, Stärkt ordning och säkerhet i domstol (*Strengthening order and security in courts*), p. 29.
[35] Government Bill (*Proposition*) 2018/19:81, Stärkt ordning och säkerhet i domstol (*Strengthening order and security in courts*), p. 30.

offensive or disturbing background picture, or tell a party or a witness to go somewhere more quiet, if the hearing is disturbed by background noise, etc. There are no rules on where a party should be when conducting the hearing or the taking of evidence, but the court can order someone to change location if the environment is found too loud or disturbing. If the person heard does not adhere to the request of the court, the court can decide that a party needs to be heard at site in court instead. This is also done under the provision of the Code, Ch. 5, Sec. 10.

All Swedish courts of first instance can offer videoconference possibilities and help each other by providing the technologies to parties and witnesses if needed. Thus, a person that lacks the technology or the possibility to conduct a hearing or an evidence taking at his or hers home can go to the district court and use the technology offered there.

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

A party or a witness can be called to court under penalty of a fine, the Code, Ch. 36, Sec. 7. When the usage of telephone or videoconference was introduced in Swedish courts, this provision did not extend to this use of technology but only physical hearings in court. This was due to the fact that during the trial period, the participation via telephone or videoconference technology was based on the consent of the parties and no sanctions was deemed to be needed. However, in the preparatory works (prop. 2005/05:131), the Government discusses the fact that when the possibility to participate via telephone or videoconference was made permanent and was no longer based on the consent of the parties but the decision of the court, the rule in Ch. 36, Sec. 7 was extended to also encompass this kind of participation.[36] Therefore, if a person does not conduct a videoconference as ordered by the court, a fine can be imposed on them.

If a person conducts the videoconference at a location that is not appropriate, as discussed in the question above, the court can order someone to change the location or to appear in court instead.

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.)

No, there are no specific rules about the inspection of the location where the party or the witness is located. However, as is stated in the Code, Ch. 5, Sec. 9, first sentence: 'The chairperson of the court is responsible for the maintenance of order at court sessions and for issuing the regulations necessary therefor'. This formulation can encompass many different scenarios where the court can make decisions to maintain the order in the court, e.g. order someone to show the room where they are situated, if there are indications that someone is present with them and disturbing the hearing or the taking of evidence. There is no differentiation made between the taking of evidence and hearings in this aspect.

[36] Government Bill (*Proposition*) 2004/05:131, En modernare rättegång – reformering av processen i allmän domstol (*A more modern trial – reform of the process in general court*), pp. 96–97.

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?

There are no laws that explicitly prohibits the presence of other persons during a hearing via videoconference or telephone, but if the court finds that these circumstances are disturbing the hearing or the taking of evidence, the court can change its decisions about the usage of videoconference technology or telephone and order the person to appear in court instead. This is also done with reference to the Code, Ch. 5, Sec. 9.

Regarding the question of identification of persons present during the hearing, not even the person heard (parties, witnesses, etc.) have to identify themselves. Thus, there are no rules that demands that other persons present needs to identify themselves. It is possible that the court could demand that a person identify him- or herself during a hearing or the taking of evidence, under the Code, Ch. 5, Sec. 9, but it is not heard of.

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 what times the hearings should take place, neither in court not via videoconference technology. However, in practice, court hearings are generally not held earlier than 09.00 nor later than 18.00, no matter the form.

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.)

Sweden is one of few countries where special garments for court are not used by neither of the procedural subjects. The participants does in general not rise in front of the court. The exception is in the Supreme court, where the procedural subjects do stand in attention of the judge.

Regarding the conduct of parties in general, the applicable rule is still the Code, Ch. 5, Sec. 9 (see question 7.11.ab above), which gives the court discretion to decide in matters about the order of the court.

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.)

There are no specific rules nor practice to ask participants to identify themselves in court, neither on site nor via videoconference. However, if the identity of a participant would be called into question, it is under the discretion of the court to verify the identity in an appropriate manner.

When witnesses are heard the court shall ask them about their full name, and if considered needed: age, occupation and residency (the Code, Ch. 36, Sec. 10, para. 1, first sentence). This is however not done by verifying their identity by documents of identification, but only by asking the witness. In the preparatory works it is stated that when conducting a hearing via telephone, such questions about identification can be necessary to ensure the identity of the person speaking.[37]

Before 1994, it was obligatory for the court to ask these questions, but the laws were changed with the purpose of protecting witnesses (see preparatory works, prop. 1993/94:143 and Peter Borgström, commentary on the Code, Ch. 36, Sec. 10, Juno, 2023-01-26).

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

In district courts evidentiary statements should be documented through video and sound recording, if there are no specific reasons that such documentation should not be made (the Code, Ch. 6, Sec. 6, para. 1, first sentence). Normally, the statements are recorded through video to be able to show them in higher court (as the parties and witnesses etc. are not heard again in higher court). According to the second sentence of the same paragraph, evidentiary statements in higher courts *can* be documented in the same manner. The same rules apply to hearings that has been made via videoconference.

The rules above are exceptions to a general rule in the Code, Ch. 5, Sec. 9b, para. 2, prohibiting the taking of pictures (understood in the sense where video is included) in the court room.

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.)

Usually, a videoconference starts with an overall picture but then one running camera is used to focus on the speaker. In a video call the speaker will appear in a larger image. In conferences with several participants, the speaker is usually shown in a large image and the others in smaller images. There are up to five cameras per room but usually only one camera is used at a time. The law clerk controls and chooses which camera to use. The cameras are not voice-controlled due to the risk of interference.

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.)

[37] Cf. Government Bill (*Proposition*) 1978/79:88, Försök med telefon vid rättegång, pp. 12 seq., 19, and 29.

The persons the court wants to see can be shown on camera. Initially, everyone is shown in the image, but later the camera will be focused on one person at the time . Either an overview camera or a directional camera is used, but both types are not used at the same time.

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.)

For safety reasons the physical location of the storage is confidential, as are the details of the storage. The image displayed in the court rooms is in HD quality and is later compressed to lower quality for storage. In general, some form of MPEC coding is used. Higher quality recordings are presented in the same HD quality in which they were recorded.

The recordings are deleted immediately after the judgement has become final, normally at night. There is otherwise no major difference between archiving and storage. The video films are not stored in the E-archive of the Swedish National Courts Administration (*Domstolsverket*). Backup copies are regularly created automatically.

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

The footage of the videoconference is stored digitally in the digital case file of the court, like all video recordings of the hearings.

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

Under Swedish law there is an extensive right for everyone to access public documents. This includes the recordings of hearings in court. However, only the sound recording are accessible to the public, due to secrecy for pictures that has been taken up in court, as stated in the Public and Privacy Act [*Offentlighets- och sekretesslagen*, 2009:400], Ch. 43, Sec. 4.

There are specific rules deciding the access to the footage for the parties of the case, so called 'part insight' [*partsinsyn*]. This is laid down in the Public and Privacy Act, Ch. 10, Sec. 3, which states that secrecy does not hinder a party from having access to the material in a specific case. There are some narrow exceptions to this rule, both in the second sentence in the same section (stating that the material should not be admitted to the party if it is vital for general or private interest that the secret information is not made public) and in the Public and Privacy Act, Ch. 10, Sec. 4, stating that when a party access such information from the court, the court can order that the party does not pass the information on to other persons.

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?

In the Swedish procedural system the general rule is that parties are heard and evidence is taken only in the district court. If a judgment is appealed and admitted to a higher court, the appellate court can access the recorded video material through the internal computer system. The evidence shall be produced again in higher court only if further questions need to be asked or if there are particular reasons to redo them (the Code, Ch. 35, Sec. 13, para.1, second sentence). In the Supreme court, an evidence can only be taken again if there are extraordinary reasons [*synnerliga skäl*], the Code, Ch. 35, Sec. 13, para. 3

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?

This question is not applicable to a Swedish context as the court would not order a transcription of the hearing. If such a transcription still would be made, the technical solution for the footage allows for video and audio being separated.

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

Both systems are applied in Swedish courts and there is no difference being made when a party is heard through videoconference. It is up to the interpreter to use whatever technique he or she prefer.

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.)

This is not specifically regulated in Swedish law, but common practice is that the interpreter sits next to the person being interpreted, if this is a party. It can also be the case that the interpreter is present through videoconference, even is the person they are interpreting is present in the court room. However, in most cases the interpreter is present in the court room.

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?

The court has a duty to maintain the principle of immediacy during the court procedures. If seriously infringed, this could form a basis for procedural error and cause the case to be remanded from the appellate court to the district court. There are no reasons to believe that an infringement of the principle can lead to prosecution about misuse of office.

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

The use of videoconference technology has been equated with on-site hearings in Swedish practice and there is no proper difference between these two forms of hearings or taking of evidence. Therefore, the

principle of immediacy is considered to be upheld in the two different procedures. A person who participates through videoconference is considered to be present in the court in the meaning of the Code, Ch. 5, Sec. 10: 'a person who is to attend a hearing before the court shall appear in the court room or wherever the hearing is otherwise held' (our translation). should appear in person. The purpose of this paragraph is to ensure the principle of immediacy during a court hearing.

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.)

We have not found any cases suggesting that this has been an issue in court.

7.14.4. How do parties (and their advocates) express objections or pose questions during a videoconference?
(This may be especially important when 'leading questions' are posed.)

Following the general pattern of the Swedish way to handle videoconference technology, no differentiation is made between on-site hearings or taking of evidence, and hearings and taking of evidence through videoconference. The possibility for the parties to cross-examine is handled in the same way in on-site situations as when using videoconference technology.

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.)

There are no specific rules regulating this situation – the party, witness or expert just shows the object in the camera. If the object cannot be satisfactory inspected via videoconference, the court can decide that the inspection should be conducted at the court (and thus that the person needs to attend the court in person instead). However, it is not heard of that this problem has ever occurred.

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 methods are available. See Question 7.3.3 above.

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.)

The speaker is shown in a larger image and the others in a smaller image. Some exceptions are made for recordings with many participants. The size division is automatic, with the active speaker appearing in the large image.

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?

This situation is regulated under the Code, Ch. 5, Sec. 10, para. 2, which states that the court can decide that a person can participate through videoconference or via telephone. This also applies during a hearing, why it is under the discretion of the court to decide that a hearing made through videoconference should be terminated and instead continued in an on-site hearing, if the technological quality is deemed to be lacking. The first option would be to try a different kind of technological solution, e.g. to conduct the hearing via telephone if the videoconference technology is not working properly. As is stated in the preparatory works, videoconference is preferrable from the perspective of evaluation of evidence, but the court can still decide that a hearing shall be continued via telephone. If the court should decide to continue the use of videoconference technology even if the quality is so low that it affects the quality of the hearing in such a way that a party has been negatively affected, this can constitute a procedural error and thus be a ground for the court of appeal to set aside a district court judgment and remit the action to the district court for further proceedings.

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?

As far as we know, this has not been argued in court. A more plausible outcome might be one mentioned above, in question 7.14.8: to argue procedural error to get the case remitted and the hearings re-done.

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?

The main rule is that the chairperson of the court is responsible for the maintenance of the order at court sessions (the Code, Ch. 5, Sec. 9, first sentence). This paragraph gives the court discretion to make the decisions it finds appropriate to maintain the order, which very well could encompass to order someone to show their surroundings when participating via videoconference, shut down other technological devices, etc. The court can also order that another person present in the room leaves. If the person heard does not comply to the orders of the court, the court can decide that the person needs to appear in court instead and that the hearing shall be conducted in person.

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 specific rules, but regular practice is that the advocate is present with the party.

The question has been dealt with in case law relating to matters other than civil procedure but should nevertheless provide some guidance in this area of law as well. A case from the Migration Court of Appeal, MIG 2020:23, was published with the following headline: 'A public counsel may be granted compensation for loss of time and expenses incurred in connection with an oral hearing on detention where the counsellor has been invited to participate by telephone but has instead chosen to appear at the same place as his or her principal. The main rule should be that the public counsel is present in the same place as the detainee.[38] Exceptions can be made if there are reasons for participation by telephone and these reasons outweigh the circumstances that spoke in favour of presence together with the detainee.'

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?)

There are no specific rules regarding bearing of the costs for a videoconference. The general rule, with several exceptions, is that the losing party shall reimburse the opposing party for litigation costs unless otherwise provided (the Code, Ch. 18 Sec. 1).

If the winning party is found to have initiated the action without the opposing party having given cause for it, or if the winning party has otherwise intentionally or negligently caused unnecessary litigation, the winning party shall reimburse the opposing party for the latter's litigation costs, or, if the circumstances so justify, each party shall bear his own costs. If the circumstances upon which the outcome rested were not known nor should have been known by the losing party prior to the commencement of the action, the court may order that each party bear its own costs (the Code, Ch. 18, Sec. 3).

Compensation for litigation costs shall fully cover the costs of preparation for proceedings and presentation of the action including fees for representation and counsel, to the extent that the costs were reasonably incurred to safeguard the party's interest. Compensation shall also be paid for the time and effort expended by the party by reason of the litigation. Negotiations aimed at settling an issue in dispute that bear directly on the outcome of a party's action are deemed to be measures for the preparation of the litigation (the Code, Ch. 18, Sec. 8). As a general principle, a party is not entitled to compensation for an unnecessary expensive way of session. Another example of something unnecessary might be costs for a witness who had no relevance for the case. Although, presence through videoconference should in most cases be seen as a minimizing of the costs. This rule may include compensation for technical equipment etc., if those costs are seen as necessary.

A party, a witness or someone else who is to be heard before the court, who do not speak Swedish or have functional difficulties, can request an interpreter which can be provided by the court. The costs for the interpreter are compensated by the court through public funds (the Code, Ch. 5, Secs. 6 and 8). If

[38] This basic approach can also be found in the criminal case NJA 2022 s. 714, where the Swedish Supreme Court stated (in paragraph 14): 'it would also appear inappropriate for the defence counsel to participate via video link if the client is present'.

the court do not provide an interpreter, when necessary, it could be considered to be a procedural error.[39] In general, interpreters are unconditionally provided up on request also in civil cases or when a court finds it suitable ex officio.

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).)

It should be noted that the founding rule is that the proceeding should be held in public (the Code, Ch. 5, Sec. 1, para. 1 first). However, this presumption does not offer spectators to be present digitally. There are several exemptions from this rule regarding for example underaged persons and cases concerning material which is subject to confidentiality.

There are general rules about maintaining order in court rooms in the Code, Ch. 5. The main responsibility for maintaining the order lays on the chairperson of the court who shall issue the regulations necessary therefor. The chairperson of the court may limit the number of spectators (the Code, Ch. 5, Sec. 9). This rule does only concern spectators' physical presence. The chairperson of the court may also expel any person who disturbs the order or otherwise behaves in an improper manner. A party of the case who is expelled shall, if possible, follow the hearing through video link or similar methods. If this is not possible, what occurs at the hearing shall be reproduced when the party is present again. The party shall be given the opportunity to put questions to a person heard in his or her absence (the Code, Ch. 5, Sec. 9 a). There are also general prohibitions for spectators to photograph or do other digitals uptakes in the court room (the Code, Ch. 5, Sec. 9 b).

The circumstances could also result in a decision to place the spectators in a side court room so the following of the proceeding can be done through audio or video transfer (the Code, Ch. 5, Sec. 13, para. 1). See question 7.10 above.

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)?

As already mentioned (in 7.2 above), according to Ch. 5, Sec. 10, fourth paragraph of the Code, participation by means of sound and image transmission may not take place in a Swedish court if it is 'inappropriate with regard to the purpose of the person's appearance and other circumstances.' On the basis of what has been stated in the preparatory works to this provision,[40] the following could be said about inappropriateness.

The parties' views on the matter should normally be taken into account. However, the parties do not have a decisive influence on the form of the appearance and the court has the ultimate responsibility. As a rule, there should be no question of deciding against a party's will to participate by video transmission.

[39] NJA 1974 s. 221.
[40] Government Bill (*Proposition*) 2004/05:131, En modernare rättegång – reformering av processen i allmän domstol (*A more modern trial – reform of the process in general court*), p. 225.

However, it should be possible to make exceptions where such participation is justified. This may apply, for example, if the importance of the party's presence in the courtroom is not deemed to outweigh, for example, the costs or inconvenience that would then arise. In the case of persons to be heard for the purpose of giving evidence, the wishes of the party who has invoked the evidence must generally be taken into account. In many cases, the opinion of the opposing party may also be relevant and should therefore be taken into account. If the parties, especially in dispositive civil cases, agree that a person can participate by sound and image transmission, there is generally no reason for the court to make a different judgement.

In its examination, the court shall make an overall assessment of all the relevant circumstances and, in particular, balance the interests of, in particular, the purpose of the person's appearance and the reasons why that person should participate by sound and image transmission. The importance of the person's presence in the courtroom must be weighed against the circumstances that favour his or her participation by sound and image transmission. The starting point is that the purpose of the hearing and the person's participation must be satisfied even if a person participates by audio or video transmission. Similarly, it must be possible to evaluate the evidence in a satisfactory manner even if the evidence is taken by means of audio or video transmission. There may be situations where a person's presence in the courtroom is deemed so crucial that the technology cannot be used, no matter how strong the reasons.

There may of course be situations where a person's presence in the courtroom is deemed so crucial that the technology cannot be used. The wording of the Regulation, Article 20, first paragraph (1), already invites an overall assessment of the circumstances of the individual case: 'the court considers the use of such technology to be appropriate in the specific circumstances of the case'. It is difficult to see the added value of more specific provisions.

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].