



DIGI-GUARD

BROCHURE DIGI-GUARD

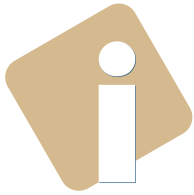
TAKING OF EVIDENCE

Digital communication and safeguarding the parties' rights:
challenges for European civil procedure

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GENERAL INFORMATION

The modernisation of the civil justice system is of the utmost importance in the current digital era, where electronic means of communication are widespread and are commonly used. Yet Member States may be reluctant to systematically implement digital communications, take or store electronic evidence, and resort to videoconferencing. Possible challenges range from practical to legal issues, including the impact of psychological aspects on the persons involved in the hearing. Old ingrained habits firmly rooted in paper can also play a role. The Regulation (EU) No. 2020/1783 on taking evidence, as well as other implementing EU legislation, are an important step towards making the use of this technology a reality.

RESULTS OF THE PROJECT



Research on electronic evidence and videoconferencing



Comparative Legal Expert report on the basis of 15 national reports



Recommendations that will contribute to the effective application of the Evidence Regulation



Increased knowledge and understanding of partakers in cross-border cases regarding the use of digital communication tools

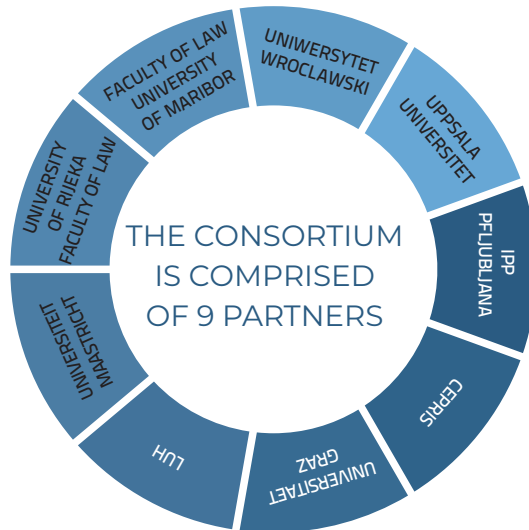


Recommendations for EU legal minimum safeguards in digital communications



Identify any possible barriers and necessary legal safeguards, with the ultimate goal of strengthening mutual trust and increasing the use of the Evidence Regulation

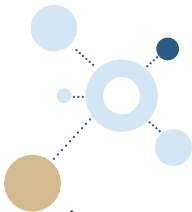
KEY POINTS ABOUT DIGI-GUARD



STATE OF PLAY

What is considered electronic evidence is not regulated in EU law and thus, its treatment differs from State to State.

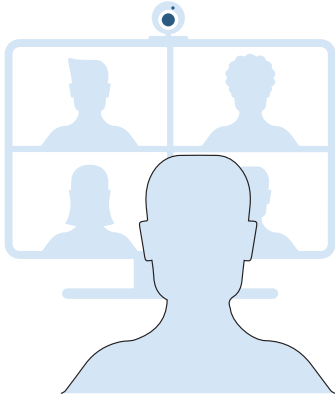
Every EU Member State conducts videoconferencing according to its own rules and procedures and thus compatibility issues may arise.



THE EFFECTIVE APPLICATION OF THE EVIDENCE REGULATION

A comparative analysis will attempt to identify different practices and legal requirements with regard to videoconferencing and the taking of electronic evidence. Sharing this knowledge among EU Member States will increase the effectiveness of the application of the Evidence Regulation

VIDEOCONFERENCING: THE PREFERRED CHOICE IN THE DIRECT TAKING OF EVIDENCE



The Evidence Regulation (No 2020/1783) provides for the direct taking of evidence by videoconferencing or other distance communication technology. In particular, it mandates the use of such technology if it is available to the court and the court considers that the use of such technology is appropriate in the specific circumstances of the case.

A form should be used when requesting a videoconferencing (form N in Annex 1 of the Evidence Regulation).

The requested court may decline to use specific technology if that would be incompatible with its national law or that specific State is unable to do so because of major practical difficulties.

Research will reveal any major obstacles in using such technology and how to overcome them.

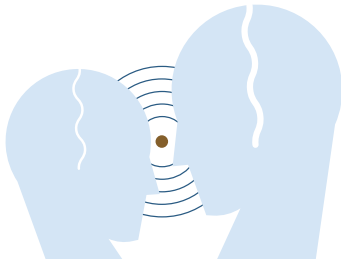
National practices of the participating jurisdictions will be compiled and assessed in the cross-border context.

In addition to the theoretical and practical aspects of the videoconferencing, DIGI-GUARD will analyse the **principles of immediacy and equality of arms**. Other topics such as **case management** are also considered.



POSSIBLE CHALLENGES IN THE TAKING OF EVIDENCE BY VIDEOCONFERENCE

- ▶ Lack of adequate or incompatible technology
- ▶ Disruption of the video feed
- ▶ Need of interpretation
- ▶ Proper identification of the witnesses (incl. analysis of prospects of certified identification methods)
- ▶ Ensuring the lack of duress of the witnesses



VIDEOCONFERENCE AND PSYCHOLOGICAL ASPECTS

Psychological perceptions that may result in a disadvantage to one of the parties



POSSIBLE CHALLENGES IN THE TAKING OF ELECTRONIC EVIDENCE

- ▶ Retrieval of the electronic evidence
- ▶ Determining that the electronic evidence is authentic, untampered and has not been obtained illegally
- ▶ Converting electronic evidence into a physical form
- ▶ Converting physical evidence into electronic form

MAIN FINDINGS

- 1 The importance of selecting access points for e-CODEX and the interoperability between national IT systems and the e-Codex platform has been underscored.
- 2 This comparative project contributes to an easier application of the Evidence Regulation.
- 3 In times of pandemic, States resorted to conducting videoconferences on a regular basis, and such practice has remained in some States after the pandemic.
- 4 Platforms that have been used to conduct videoconferencing are AnyMeeting, Cisco Webex, JitsiMeet, MS Teams, Polycom, Skype (for Business), ZOOM and customized systems developed by the judiciary that are not commercially available.
- 5 It was acknowledged the need to implement the Digitalisation Regulation (No 2023/2844), as well as the potential synergies with the project.


IN THE CROSS- BORDER CONTEXT

- 1 Contribution to comparative research regarding principles of civil procedure which are affected by modern means of communication
- 2 Identification of necessary legal safeguards in European civil procedure in the digital era and promotion of their implementation
- 3 Identification of technological barriers in way of a truly inclusive system of electronic communication between the EU judicial partakers

This research analyses elements that are considered important with regard to electronic evidence such as:



Legal effects and evidentiary value



Authenticity, reliability and unlawful obtention



Duty to disclose



Storage and preservation



Archiving

3 ADVANCING THE USE OF VIDEOCONFERENCING IN THE EU

1 Progress in this area is evident with the Evidence Regulation. The increasing use of videoconferencing is all the more relevant now after a recent worldwide pandemic, which imposed severe restrictions when conducting hearings in court proceedings.

DIGI-GUARD will contribute to the effective application of the Evidence Regulation. **Two outputs** are designed to help court officers, judges and lawyers involved in conducting a videoconference:

1 Final comparative expert report on electronic evidence and videoconferencing, which will identify good practices and necessary legal safeguards in European Civil Procedure in the digital era. It will also compare dogmatic and empirical concepts in the EU

2 Recommendations for videoconferencing

One output is relevant to selected EU Member States, in particular Slovenia:

! Cabinet study work of the interoperability between the selected national IT system and the e-CODEX platform and translation of those results



PROJECT ACTIVITIES REGARDING THE EVIDENCE REGULATION

- ▶ Kick-off meeting at University of Maribor, Slovenia
- ▶ Two expert meetings in Wroclaw (Poland) and Hannover (Germany)
- ▶ Questionnaire regarding taking of electronic evidence and videoconferencing
- ▶ National Reports
- ▶ First and second International Conferences in Slovenia
- ▶ An awareness raising seminar in each partner Member State
- ▶ Comparative expert report
- ▶ Conference proceedings
- ▶ Recommendations for videoconferencing

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