

Summary of survey to criminal defense lawyers on the use of video-conferencing in criminal and European Arrest Warrant proceedings

Based on the feedback collected from criminal defence lawyers across various EU member states, several concrete issues with the use of video-conferencing in criminal and European Arrest Warrant proceedings have been identified. These problems, highlighted by practitioners from countries such as Portugal, Italy, Spain, Romania, and the Netherlands, emphasise the need for better infrastructure and regulatory frameworks to ensure that digital tools do not compromise fundamental rights, especially in cross-border cases.

The survey outlines the initial findings from research conducted by the ECBA on the use of video-conferencing technology in criminal and European Arrest Warrant proceedings across various EU Member States. The results are based on responses collected from criminal defence lawyers within the network, focusing on the practical issues and challenges observed in different jurisdictions. If you require more details on any of the topics below, please reach out to secretariat@ecba.org.

This research is ongoing, with further data expected to enhance our understanding of video-conferencing's impact on the rights of the accused, procedural efficiency, and cross-border legal cooperation.

Challenges:

1. Lack of technology

One of the most common issues raised is the **lack of appropriate technology** for video-conferencing **on the court's side, where disruptions often arise from outdated or insufficient equipment and poor connection quality.**

Practitioners noted that while video-conferencing is legally permissible in many jurisdictions, the necessary court infrastructure is often unreliable or outdated, leading to delays and disruptions. These technical issues not only hinder the proceedings but also raise concerns regarding the security and confidentiality of sensitive legal communications.

Lawyers in **Italy** and **Estonia** reported significant challenges due to outdated or insufficient equipment. For example, in Italy, while the law permits videoconferencing, the necessary infrastructure is often not available, leading to disruptions in proceedings. Similarly, in **Finland**, lawyers highlighted the fact that **Skype**—a now outdated platform—is still being

used for hearings, which hinders the quality and reliability of the process. This not only causes technical difficulties but also raises concerns about the security and confidentiality of the communication, particularly when it involves sensitive legal matters such as attorney-client privilege.

In addition to equipment issues, **bad connections and technical disruptions** were also frequently reported. Respondents from **the Netherlands** and **Hungary** emphasized that poor internet connections during hearings often result in delays and miscommunication, sometimes rendering hearings ineffective.

2. Impact of non-verbal communication

In some cases, lawyers reported that **non-verbal communication**, such as body language, is almost completely lost in video-conferences, affecting the ability to accurately assess witness credibility or fully participate in cross-examinations. As a practitioner in **the Netherlands** noted, "Hearing witnesses online is not the same as in person because you miss a lot of non-verbal cues."

3. Inconsistent legal framework

Another major concern raised by practitioners from **Romania, Portugal, and Italy** is the **inconsistent legal frameworks** governing the use of video-conferencing. Many jurisdictions do not clearly define when and how video-conferencing should be used, particularly in cross-border cases. In some countries, such as **Portugal**, it is not clear whether the law permits video-conferencing in cross-border criminal cases for the interrogation of the accused (some courts accepting it, while others refuse it). In cases where the use of video-conferencing it is permitted, logistical issues arise, especially when coordinating proceedings involving multiple jurisdictions (for example with **Germany**). Even in countries where the law allows for remote participation, such as **Italy**, lawyers noted that the rules are often unclear, leaving significant room for interpretation. This inconsistency hampers lawyers' ability to adequately prepare and defend their clients, particularly in international cases.

An important consideration in the use of video-conferencing within cross-border criminal proceedings is the **adoption of direct platforms like Webex**. This platform is frequently utilised in jurisdictions such as Portugal and Spain, where courts permit video links for hearings and other procedures, even in the absence of clear national regulations. Practitioners from Portugal and Spain noted that, while the legislative framework is sometimes insufficient to ensure consistency in video-conferencing use, courts are employing platforms like Webex to facilitate remote participation, particularly in cross-border cases. This trend underscores the need for clearer regulation, as courts have found practical solutions to meet the need to

use these new tools and to address legislative gaps, albeit without the uniformity needed to safeguard procedural integrity.

Additionally, in several jurisdictions like **Ireland** and **the Netherlands**, lawyers raised concerns about the **absence of privacy** during client consultations held via video-conferencing. In some instances, such as in **Dutch prisons**, prison guards remain present in the room during the video consultation, violating the confidentiality of the lawyer-client relationship.

4. Trial in absentia

A particularly pressing issue is the widespread use of **trials in absentia**, which remains common practice in countries like **Spain**, **Italy**, and **Romania**. A large proportion of respondents, approximately **60%**, indicated that their legal systems allow for trials to be conducted without the physical presence of the accused, but do not permit the accused to participate remotely via video-conference. This limitation can have serious implications for the fairness of proceedings, particularly in cases involving minor offenses, and especially in cases of low and medium criminality with a cross-border dimension, where remote participation would otherwise be a reasonable alternative to detention and to a trial in absentia.

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