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VIDEOCONFERENCE HEARINGS IN CRIMINAL PROCEEDINGS: A EUROPEAN LEGAL PERSPECTIVE

The use of videoconferencing in criminal proceedings has become increasingly common, particularly in cases involving cross-border elements. What was once considered an exceptional procedural tool is now more frequently used to facilitate cooperation between judicial authorities, reduce delays, and address practical difficulties related to distance, costs, and time constraints. This paper examines videoconference hearings in criminal proceedings within the European legal framework, focusing on the Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 EU MLA Convention), the Directive on the European Investigation Order, and Regulation (EU) 2023/2844 on the Digitalisation of Judicial Cooperation.

The paper provides an overview of the legal bases and main objectives of these instruments with regard to the use of videoconferencing for hearings, questioning of suspects, witnesses, and experts, as well as other procedural acts. It explores how videoconferencing is positioned as a tool for improving the efficiency of criminal proceedings while supporting judicial cooperation between states.

At the same time, the paper addresses the importance of ensuring that the use of videoconference hearings does not undermine fundamental procedural guarantees, including the rights of the defence and the right to a fair trial.

Keywords: videoconference hearings, criminal proceedings, European Union, judicial cooperation in criminal matters, digitalisation of justice.

1. INTRODUCTION: FROM EXCEPTIONAL MEASURE TO STRUCTURAL TOOL

The use of videoconferencing in cross-border criminal proceedings is not a new instrument within the European legal framework. Its origins lie in the traditional instruments of mutual

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legal assistance in criminal matters, developed within the framework of the Council of Europe (CoE), and later in the European Union (EU) legal order through the adoption of legal instruments based on the principle of mutual recognition of judicial decisions in criminal matters among EU Member States (MS). The EU had already promoted the use of videoconferencing long before the outbreak of the COVID-19 pandemic, recognising it as an efficient tool to facilitate and accelerate cross-border proceedings among MSs (Council of the European Union, *Videoconferencing as a Part of European e-Justice: The Essentials of Videoconferencing in Cross-Border Court Proceedings*, 2009; Council of the European Union, *Guide on Videoconferencing in Cross-Border Proceedings*, 2013). The outbreak of the COVID-19 pandemic significantly accelerated the digitalisation of justice system not only at the EU level (European Commission, 2020, *Digitalisation of justice in the EU – A toolbox of opportunities*, COM(2020) 710 final) but also within the national justice systems of the MS (Novokmet, Tomičić & Vidaković, 2025, p. 103; Žukovaitė, 2024, p. 78; Sanders, 2020, p. 1). In this context, the use of videoconferencing for the hearing of suspects, accused persons, witnesses, and experts became significantly more widespread, as the pandemic acted as a catalyst for its broader use in criminal proceedings. Today, the digitalisation of justice is a central feature of judicial cooperation in criminal matters both within the EU and within the framework of the CoE (European e-Justice Strategy 2024–2028; Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, CETS No. 227, Valletta, 2025, hereinafter: Third Additional Protocol to the ECMA).

In the light of these developments, the paper examines the European legal framework governing the use of videoconferencing in cross-border criminal proceedings. The analysis focuses exclusively on cross-border video hearings in criminal matters among MSs (all of whom are also members of the CoE) and does not address the use of videoconferencing in domestic proceedings. Particular attention is given to the interaction and areas of overlap between two parallel systems of cross-border judicial cooperation in criminal matters: the traditional system based on mutual legal assistance and the more recent EU system based on the principle of mutual recognition of judicial decisions. The analysis examines recent developments in the regulation of videoconferencing, in particular the Third Additional Protocol to the ECMA, ongoing initiatives for the modernisation of the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014, regarding the European Investigation Order in criminal matters (hereinafter: EIO Directive), and Regulation (EU) 2023/2844 on the digitalisation of judicial cooperation. It further assesses the implications of videoconferencing for the rights of the defence and the right to a fair trial under the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (the Charter), based on the jurisprudence of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR).

The paper applies the normative method by analysing and interpreting the relevant treaty law, EU legislative instruments and soft law documents governing cross-border judicial cooperation, alongside a comparative examination of the relationship between the CoE mutual legal assistance framework and the EU system of mutual recognition. The case law of the ECtHR and the CJEU is examined to assess the compatibility of videoconferencing with the right to a fair trial.

The analysis departs from two central hypotheses. First, that videoconferencing has undergone a fundamental normative transformation from an exceptional procedural measure into

a structural mechanism of cross-border judicial cooperation in criminal matters. Second, that significant divergences in the interpretation and application of the applicable legal framework persist, particularly regarding procedural safeguards and the principle of immediacy, which require legislative rather than judicial resolution.

2. VIDEOCONFERENCING IN INSTRUMENTS OF MUTUAL LEGAL ASSISTANCE

In the context of mutual legal assistance in criminal matters, the development of provisions on videoconferencing has taken place within two parallel normative frameworks: legal instruments adopted within the CoE and those developed within the EU. The European Convention on Mutual Assistance in Criminal Matters (CoE, ETS No. 30, Strasbourg, 1959, hereinafter: ECMA), often referred to as the “Mother Convention” (Militello & Mangiaracina, 2009, p. 174), served as the legal basis and principal model for EU legal instruments in this field, most notably the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12 July 2000, hereinafter: EUCMACM). The EUCMACM represents both the first EU legal instrument in the field of mutual legal assistance in criminal matters, adopted after the Treaty on European Union (TEU) entered into force, and probably the last instrument within the EU legal order based on the principle of mutual legal assistance, which was subsequently replaced by the principle of mutual recognition (Militello & Mangiaracina, 2009, p. 175).

According to the Explanatory Report on the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 379, 29 Dec. 2000, hereinafter: Explanatory Report to the EUCMACM), the Convention was not designed to establish a completely new regime of mutual legal assistance among the Member States, but rather to develop and modernise the existing framework based on the ECMA and the 1990 Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders (CISA)¹ (Craig & De Búrca, 2011, p. 938; Mitsilegas, 2009, p. 14). Its objective was to expand the scope and circumstances in which mutual legal assistance could be requested and to facilitate its practical application in order to improve efficiency, while taking into account political changes as well as social and technological developments.

The close relationship between these instruments is evident in the regulation of videoconference hearings. The adoption of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (CoE, CETS No. 182, Strasbourg, 2001, hereinafter: Second Additional Protocol to the ECMA), only one year after the EUCMACM, confirms this strong normative and chronological connection between these two parallel

¹ By the Treaty of Amsterdam, more specifically Protocol No. 2, the Schengen acquis was integrated into the EU legal framework, and its preservation and further development with a view to achieving an Area of Freedom, Security and Justice (AFSJ) without internal borders for EU citizens was subsequently confirmed by the Treaty of Lisbon, Protocol No. 19. See Protocol (No. 2) integrating the Schengen acquis into the framework of the European Union, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJ C 340, 10 Nov. 1997, pp. 93–96; Protocol (No. 19) on the Schengen acquis integrated into the framework of the European Union, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 202, 7 June 2016, pp. 290–292.

systems, while also revealing certain substantive differences in their respective provisions on videoconference hearings.

The EUCMACM introduced videoconferencing as a procedural mechanism for the taking of evidence in cross-border criminal proceedings among MSs, in particular for the hearing of witnesses and experts and, subject to specific conditions, accused persons. Videoconferencing may be requested where the person to be heard is present in the territory of another MS, and it is not desirable or possible for that person to appear in person before the competent authorities of the requesting State (Art. 10 para. 1). As explained in the Explanatory Report to EUCMACM, such requests require that the person concerned be heard as a witness or expert, and that their personal attendance before the judicial authority of the requesting MS be either undesirable or not possible. Attendance may be considered undesirable, for instance, in cases involving very young or elderly witnesses or persons in poor health, whereas attendance may be considered not possible, for example, where appearing in the requesting MS would expose the person concerned to serious danger (Explanatory Report to EUCMACM, p. 15). In this way, the EUCMACM provides an alternative to the in-person appearance of witnesses and experts while preserving the established framework of mutual legal assistance.

The requested MS is obliged to agree to the hearing by videoconference provided that the use of videoconferencing is not contrary to the fundamental principles of its law and that it possesses the technical means necessary to conduct the hearing. Where the requested MS does not have access to the necessary technical means, the requesting MS may provide them on the basis of mutual agreement (Art. 10, para. 2).

The EUCMACM establishes a clear division of responsibilities between the requesting and requested MS. A judicial authority of the requested MS must be present during the hearing and is responsible for ensuring both identification of the person to be heard and respect for the fundamental principles of the law of the requested MS. If the judicial authority of the requested MS considers that the fundamental principles of its law are being infringed during the hearing, it must immediately take the necessary measures to ensure that the hearing continues in accordance with those principles (Art. 10, para. 5, subpara. a).

At the same time, the hearing is conducted directly by, or under the direction of, the judicial authority of the requesting MS and in accordance with its own law (Art. 10, para. 5, subpara. c). This arrangement combines the principles *locus regit actum* and *forum regit actum*, since the execution of the request remains subject to the law of the requested MS, while the taking of evidence is governed by the procedural law of the requesting MS. This approach serves a dual purpose: 1) the need to avoid infringing the fundamental principles of the law of the requested State, and 2) the need to obtain evidence in accordance with the law of the requesting State in order to ensure its admissibility in the criminal proceedings conducted there (Gotovuša, 2025, p. 56).

The EUCMACM provides a number of protective measures for the persons to be heard. If necessary, at the request of the requesting MS or of the person to be heard, the requested MS must ensure that the person concerned is assisted by an interpreter. The person to be heard may also claim the right not to testify if such a right exists under the law of either the requesting or the requested MS. Appropriate protective measures may also be agreed upon between the competent authorities of the requesting and requested MS, if necessary (Art. 10, para. 5, subparas. b, d, e).

It should be noted that MSs may, at their discretion and subject to agreement between the competent judicial authorities, apply the provisions on videoconferencing to hearings involving an accused person. In such cases, the decision to hold the videoconference and the manner in which it is conducted must be agreed upon between the MSs concerned, in accordance with their national law and relevant international legal instruments, including the ECHR. However, the EUCMACM contains no reference to the Charter, as the Charter had not yet been adopted at the time of the Convention's drafting and therefore did not form part of the applicable EU fundamental rights framework. Prior to the Charter's entry into force, the protection of fundamental rights in the context of cooperation in criminal matters among member states was ensured primarily through the obligation enshrined in Article K.2 TEU, which required MSs to act in compliance with the provisions of the ECHR (Hendry, 1993, p. 307). With the entry into force of the Treaty of Lisbon, the Charter acquired the status of primary EU law (Art. 6 para. 1 TEU), substantially strengthening the protection of fundamental rights in the field of judicial cooperation in criminal matters among MS. In line with these guarantees, the consent of the accused person constitutes a *conditio sine qua non* for the holding of a videoconference hearing (Art. 10 para. 9).

The solutions adopted in the Second Additional Protocol to the ECMA concerning the hearing of witnesses, experts, and accused persons by videoconference largely mirror Article 10 of the EUCMACM (CoE, Explanatory Report to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, ETS No. 182, Strasbourg, 2001, hereinafter: Explanatory Report to the Second Additional Protocol to the ECMA, paras. 70–81). One important distinction should be noted nevertheless. Whereas the EUCMACM covers only hearings by videoconference involving an accused person, subject to his or her consent, the Second Additional Protocol to the ECMA expressly extends this possibility to suspects, thereby ensuring that persons at the investigative stage are not excluded on the basis of their formal procedural status (Explanatory Report to the Second Additional Protocol to the ECMA, paras. 82–83). The consent requirement and opt-out mechanism are preserved in identical terms (Explanatory Report to the Second Additional Protocol to the ECMA, para. 85).

The regime established by the EUCMACM and the Second Additional Protocol to the ECMA is characterised by three key features: 1) the requirement that the in-person attendance of a witness or expert be either undesirable or impossible; 2) the consent of the accused person or suspect as a *sine qua non* for the conduct of such a hearing; and 3) the opt-out mechanism enabling MSs to formally exclude videoconference hearings of accused persons or suspects from mutual legal assistance (Vermeulen, 2006, p. 90). As the following section will show, recent developments, most notably the Third Additional Protocol to the ECMA, point to a gradual shift away from the view of videoconferencing as an exceptional measure towards recognising its structural role in cross-border criminal proceedings.

2.1. Expanding the Scope: The Third Additional Protocol to the ECMA

The Third Additional Protocol to the ECMA was opened for signature by the CoE in September 2025 and is the most recent and comprehensive effort to modernise the mutual legal assistance framework established by the 1959 Convention.² Its adoption was motivated

² Pursuant to Article 10, para. 2, the Protocol shall enter into force on the first day of the month following the expiration of the period of three months after three Signatories have expressed their consent to be bound by it. As of the time of writing, the Protocol has been signed by 17 States. See Council of Europe Treaty Office.

by the structural limitations of the existing framework, against the backdrop of the dynamics of contemporary cross-border crime, the widespread digitalisation of communication, and growing reliance on technical surveillance measures in cross-border investigations.

With regard to videoconference hearings, Article 2 of the Third Additional Protocol, which replaces Article 9 of the Second Additional Protocol, introduces significant changes to the existing regime. Most notably, the grounds on which videoconferencing may be requested have been considerably broadened and are no longer limited to the narrow circumstances in which the in-person attendance of a witness or an expert was deemed undesirable or impossible under the previous regime. Videoconferencing is thus repositioned from a secondary or exceptional option into an equally valid, and where appropriate preferable, means of taking evidence, particularly in cases involving great distances, travel costs, security concerns, or limitations on the mobility of witnesses or experts (CoE, Explanatory Report to the Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, CETS No. 227, Valletta, 2025, hereinafter: Explanatory Report to the Third Additional Protocol to the ECMA, para. 20). In keeping with this approach, the Third Additional Protocol specifically emphasises that the decision to use videoconferencing must be based on an individual assessment of each case and accompanied by mandatory provision of appropriate safeguards, including the right of defence. It should be noted in this regard that the reference to “fundamental principles of law” in Article 2 (a clarification already established under the Second Additional Protocol) does not permit a requested State to refuse the execution of a videoconference request solely on the ground that such hearings are not provided for under its national law or that one or more detailed conditions for a hearing by videoconference would not be met under its national law (Explanatory Report to the Third Additional Protocol to the ECMA, para. 21; Explanatory Report to the Second Additional Protocol to the ECMA, para. 76).

Another important addition is introduced by the new paragraph 10 of Article 2, which allows Contracting States, through special bilateral or multilateral agreements, to replace or supplement the rules of the 1959 ECMA with regard to the conduct of hearings by videoconference. This gives Contracting States the flexibility to agree, in accordance with their national legislation, on different modalities for conducting such hearings, provided that such arrangements apply exclusively to proceedings conducted within the territories of the States concerned. In this context, the concept of ‘competent authorities’ is not to be interpreted restrictively, and it does not exclusively encompass central authorities,³ but it may also include other bodies and agencies which, under national law, are competent to organise videoconference hearings and authorised to conclude such agreements. By way of illustration, the drafters contemplate a situation in which the requested State may, with the consent of the requesting State, waive the obligation to ensure the presence of its judicial authority during the hearing (an obligation previously considered mandatory for the purposes of identifying the person to be heard and ensuring compliance with national legal standards). Such a waiver would be

Available at <https://www.coe.int/en-GB/web/conventions/full-list2?module=signatures-by-treaty&treaty-num=227> (25. 2. 2026).

³ The 1959 ECMA does not use the term ‘central authority’, which has nonetheless become established in practice as a functional designation for the authority to which requests are addressed under Article 15 – most commonly the Ministry of Justice. The determination of which authorities qualify as “judicial authorities” is left to each signatory State, which is required to specify this by declaration to the Secretary General of the Council of Europe. See CoE, 1959. Explanatory Report to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30). Available at: <https://treaties.fcdogov.uk/data/Library2/pdf/1992-TS0024.pdf> (25. 2. 2026).

permissible where the witness or expert voluntarily consents to provide evidence and there are no particular concerns regarding the protection of their rights. This arrangement is intended to reduce the burden on the courts of the requested State, which would no longer be required to ensure judicial presence at every videoconference hearing (Explanatory Report to the Third Additional Protocol to the ECMA, para. 23).

Concerning the hearing of suspects and accused persons, the Third Additional Protocol retains the normative approach of the Second Additional Protocol, under which such hearings are conditional upon the express consent of the person concerned and the prior approval of the competent judicial authorities of both States, while the opt-out mechanism is also preserved.

The significance of the Third Additional Protocol extends beyond the CoE framework. Its relevance to the modernisation of cross-border judicial cooperation in criminal matters (including reforms to the videoconferencing regime) has been recognised at the EU level, confirming the close and ongoing interplay between the two parallel systems. The European Commission has submitted a Proposal for a Council Decision authorising MSs to sign the Third Additional Protocol in the interest of the European Union⁴ (European Commission, 2025, COM(2025) 510 final), underscoring the Protocol's relevance to the EU's own judicial cooperation framework. The Proposal identifies several reasons why the swift entry into force of the Protocol is in the EU's interest: 1) it will better equip judicial and other competent authorities to request and provide evidence necessary for criminal investigations; 2) it will ensure that evidence-gathering measures are applied in a manner consistent with fundamental rights, including criminal procedural rights, the right to privacy, and the right to data protection; and 3) it is fully consistent with the objectives set out in ProtectEU, the European Internal Security Strategy of 2025 (European Commission, 2025, COM(2025) 148 final), thereby complementing existing EU and international legal instruments in the fight against serious and organised transnational crime.

The relationship between the CoE and EU legal frameworks in the field of videoconferencing is not restricted to the mutual legal assistance area. As will be seen in the following sections, it extends to the EU's mutual recognition framework, in particular the EIO Directive and Regulation (EU) 2023/2844 on the digitalisation of judicial cooperation. These instruments mark a significant shift in the role of videoconferencing in cross-border criminal proceedings, from an exceptional measure of last resort to a standard procedural mechanism.

3. VIDEOCONFERENCING IN THE EU MUTUAL RECOGNITION FRAMEWORK

The principle of mutual recognition, declared the “cornerstone” of judicial cooperation in criminal matters at the 1999 Tampere European Council (Tampere European Council,

⁴ As of the time of writing, the Proposal for a Council Decision authorising Member States to sign the Third Additional Protocol in the interest of the European Union has not yet been adopted by the Council. The proposal was submitted by the European Commission on 11 September 2025 (COM(2025) 510 final) and remains under discussion at the level of the Working Party on Cooperation in Criminal Matters (COPEN). A revised draft by the Presidency was circulated in October 2025, and a non-paper from the Commission services was submitted in January 2026, with further COPEN meetings scheduled through March 2026. See Council of the European Union, Working Party on Cooperation in Criminal Matters (COPEN). Available at: [https://www.consilium.europa.eu/en/meetings/mpo/2026/2/wp-on-judicial-cooperation-in-criminal-matters-copen-\(362965\)/\(25.2.2026\)](https://www.consilium.europa.eu/en/meetings/mpo/2026/2/wp-on-judicial-cooperation-in-criminal-matters-copen-(362965)/(25.2.2026)).

Presidency conclusions, 1999, para. 33) and subsequently formalised as a legally binding principle following the entry into force of the Treaty of Lisbon (Art. 82 (1) TFEU) (Satzger, 2019, p. 47), replaced mutual legal assistance as the primary mechanism for cross-border cooperation in criminal matters among MSs. In essence, mutual recognition operates on the premise that differences in how MSs regulate a given matter do not preclude the acceptance of each other's judicial decisions as legally equivalent (European Commission, 2000, COM(2000) 495 final, para. 3.1; Mitsilegas, 2009, pp. 118–120). The distinctive feature of mutual recognition, as compared to mutual legal assistance, lies in the direct recognition and enforcement of judicial decisions across MSs on the basis of equivalence and mutual trust, without the need for intermediate executive measures (Armada & Weyembergh, 2017, p. 116). It is within this framework that the regulation of videoconferencing under the EIO Directive and Regulation (EU) 2023/2844 on the digitalisation of judicial cooperation will be examined in the following sections.

3.1. Videoconferencing Under the EIO Directive and Its Modernisation

The 2014 EIO Directive is one of the central EU legal instruments governing the cross-border gathering of evidence in criminal matters among Member States, replacing – for the MSs that have adopted it – corresponding provisions of the mutual legal assistance framework previously established by the ECMA, CISA, and EUCMACM (Art. 34 para. 1, EIO Directive).⁵ Its provisions on videoconference hearings (Art. 24) are largely derived from Article 10 of the EUCMACM. The procedural architecture of Article 24 is therefore consistent with the mutual legal assistance framework: the hearing is conducted by or under the direction of the issuing State's authority in accordance with its own law, while the executing State's authority must be present throughout the hearing, verify the identity of the person to be heard, and ensure compliance with the fundamental principles of its own legal order (Art. 24, para. 5, subparas. a and c, EIO Directive).

One of the key novelties of the EIO Directive is its broadened personal scope, the categories of persons who may be heard by videoconference. Whereas the EUCMACM limited videoconference hearings to witnesses and experts, with the possibility of hearing accused persons left to the discretion of Member States and conditional upon the consent of the person concerned, the EIO Directive extends to suspects from the outset, without treating their inclusion as a discretionary or exceptional matter. This represents a normative step that reflects the Directive's broader ambition to provide a comprehensive and coherent framework for cross-border evidence gathering, covering all the relevant procedural status of a person, irrespective of their formal status in the proceedings. In doing so, the Directive aligns the videoconferencing framework with the realities of criminal investigations, in which the procedural status of a person may evolve over the course of the proceedings.

With regard to the conditions for requesting videoconferencing, the EIO Directive introduces a fundamental change from the EUCMACM framework. Under Article 10(1) of the

⁵ The question of which specific provisions of the ECMA, CISA, and EUCMACM are replaced by the EIO Directive remains unresolved. The Eurojust/EJN implementation note acknowledged that no detailed list of the “corresponding provisions” had yet been drawn up, expressed doubt as to whether such a list could in fact be compiled given the interpretive difficulties involved, and raised the further question of which institution would be competent to prepare it. See Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters – State of play of the implementation process, information by Eurojust and the EJN, Council of the European Union, 9936/17 JAI 571 COPEN 188 EUROJUST 85 EJN 41, 13 June 2017.

EUCMACM, videoconferencing could only be requested where it was “not desirable or possible” for the person to appear in person, a subsidiarity requirement positioning videoconferencing as a measure of last resort. Under Article 24(1) of the EIO Directive, by contrast, the issuing authority may issue an EIO for a videoconference hearing whenever the person to be heard is located in the territory of the executing State and is required to be heard by the issuing State’s authorities. The issuing authority is not required to demonstrate that in-person attendance is impracticable – it needs only to satisfy the general proportionality and necessity requirements applicable to all EIOs (Art. 6 para. 1, EIO Directive). This confirms the transformation of videoconferencing from an exceptional measure into a standard procedural option within the mutual recognition framework. This convergence is further evidenced by the Third Additional Protocol to the ECMA, which, by replacing the “not possible, or desirable, or practical, or economic” condition with the considerably broader standard of “where appropriate,” indicates a change of the CoE framework towards the approach adopted under the EIO Directive, further illustrating the strong connection between the two parallel systems.

Equally significant is the change in the obligation to execute. Under the EUCMACM, the requested State “shall agree” to a videoconference hearing subject to two conditions: that the use of videoconferencing is not contrary to the fundamental principles of its law, and that it possesses the necessary technical means (Art. 10 para. 2). Under the EIO Directive, the executing State is obliged to recognise and execute the EIO, and may refuse only on the limited grounds listed in Article 11(1), together with two additional grounds specific to videoconference hearings under Article 24(2): the absence of consent of the suspected or accused person, and conflict with the fundamental principles of the executing State’s law. The broad sovereignty-based grounds available under the mutual legal assistance framework (including national security, essential interests of the State, and similar discretionary public policy exceptions) do not form part of the EIO’s exhaustive list of refusal grounds. This represents a shift in the burden of justification: whereas under the mutual legal assistance framework the requested State retained broad discretion to decline cooperation on general sovereignty-based grounds, under the EIO the executing State must justify non-execution by invoking a specific enumerated ground.

Despite these differences, the *forum regit actum* principle, already established under the EUCMACM, is fully preserved in the EIO framework. Article 24 (5) (c) of the EIO Directive, in line with Article 10(5)(c) of the EUCMACM, provides that the hearing shall be conducted directly by, or under the direction of, the issuing authority in accordance with its own law. This continuity between the two instruments confirms that, even within the mutual recognition paradigm, the procedural sovereignty of the executing State is not entirely displaced. The executing State’s competent authority retains its role as a guarantor of fundamental rights compliance throughout the hearing and is required to intervene immediately if the fundamental principles of its legal order are being infringed (Art. 24, para. 5, subpara. a), EIO Directive).

This normative connection and the significance of the EIO’s videoconferencing regime have been recently confirmed by the CJEU. In its judgment in *Bissilli* (C-325/24, 18 December 2025), the CJEU confirmed that an EIO may be issued for a videoconference hearing of an accused person held in custody in the executing State, and that the executing authority’s possibilities for refusing such a request are narrowly limited by the exhaustive list of grounds in Article 24 (2). The CJEU further clarified that while executing States may adopt general guidelines for applying the refusal ground in Art. 24 (2) (b), such guidelines cannot replace an

individual examination of the specific circumstances of each case (Wahl, 2026). The Court's ruling reinforces the Directive's objective of making videoconferencing a reliable and predictable tool within the EU's mutual recognition framework.

Despite these developments, the practical application of Article 24 continues to be hampered by significant difficulties, as documented by the Final Report on the Tenth Round of Mutual Evaluations on the implementation of the EIO Directive (Council doc. ST-15834/1/24 REV 1).

The first problem concerns the execution of EIOs for videoconference hearings of the accused for evidentiary purposes at the trial stage. Several MSs refuse to execute such EIOs on the basis of the principle of immediacy, even where the accused has given consent. This position is difficult to reconcile with the ECtHR case-law, which has consistently held that videoconference participation does not in itself conflict with the ECHR, provided the measure pursues a legitimate aim and the arrangements governing its conduct are compatible with the requirements of due process.

The second, and more fundamental, problem concerns the scope of Article 24 itself, on which MSs remain deeply divided. A substantial number of MSs issue and execute EIOs to ensure that the accused, located in another MS, may participate remotely throughout the main trial, considering this an effective alternative to the European Arrest Warrant (EAW) and a means of preventing trials in absentia. Other MSs firmly reject this practice, maintaining that ensuring the accused's participation throughout the trial goes beyond the scope of the EIO Directive, as it does not constitute an "investigative measure" aimed at "obtaining evidence" within the meaning of Article 1. The CJEU's judgment in *FP and Others* (C-760/22, 2024, § 32) confirmed that videoconference participation at the accused's express request does not conflict with the right to be present at trial under Directive 2016/343, but it did not resolve the question of whether such participation falls within the scope of the EIO Directive. It was only through the subsequent *Bissilli* judgment that partial clarification was provided, though the question has yet to be definitively resolved through legislation (Wahl, 2026).

The third problem concerns the legal qualification of the grounds for refusal. Executing authorities have in a number of cases invoked Article 11 (1) (f), the general fundamental rights ground, when the more appropriate ground would be Article 24 (2) (b), fundamental principles of the executing State's legal order. These two grounds are legally distinct and failing to distinguish between them produces legally unsound refusal decisions, with potentially significant consequences for the coherence of the EIO regime.

The fourth issue is the controversial practice of "direct videoconferences" – hearings conducted by directly contacting persons located in another MS, with the consent of the person concerned and without issuing an EIO. Some MSs regard this as a legitimate proportionate option. Others consider it incompatible with the EIO framework and an infringement of the sovereignty of the State where the person is located. This practice remains unresolved and requires legislative clarification.

Finally, practical operational difficulties have been identified, including delays caused by EIOs being transmitted too close to the proposed hearing date, and technical incompatibility between the videoconferencing systems used by issuing and executing authorities across MS. In this regard, the Commission has been invited to examine the feasibility of a secure and interoperable EU-wide videoconferencing system for cross-border hearings.

Taken together, these findings illustrate that the EIOs videoconferencing regime, despite the progress made compared to the mutual legal assistance framework, continues to face significant differences in interpretation and application among MSs, which the text of the EIO Directive alone has not been able to resolve. It is in this context that the Commission's Call for Evidence (Ref. Ares(2026)56130) announces a legislative proposal pursuing two objectives: targeted amendments to close the gaps identified by mutual evaluations, and establishing common rules on the remote participation of suspects, accused persons, and victims in court hearings by videoconference from another MS (a considerably more ambitious objective given the diversity of national legal frameworks, and a matter currently unregulated at the EU level). This initiative further confirms the ongoing consolidation of videoconferencing as a standard procedural mechanism in cross-border criminal proceedings within the EU.

3.2. Embedding Videoconferencing: Regulation (EU) 2023/2844

The EU framework on videoconferencing in criminal matters extends beyond the EIO Directive. Regulation (EU) 2023/2844 represents a distinct development in this field. The Regulation operates horizontally, establishing common rules on digital communication, electronic exchanges, and the use of other means of distance communication technology applicable to cross-border judicial cooperation procedures falling within its scope. In this sense, it functions as a general digital framework supplementing, rather than replacing, sector-specific instruments in criminal matters (Pingen & Wahl, 2024; Ho-Dac, 2024).

In criminal matters, the Regulation applies only to the cross-border procedures exhaustively listed in Annex II.⁶ Its significance lies not in creating an autonomous regime for cross-border criminal videoconference hearings, but rather in that it embeds such hearings within a wider digital judicial architecture at the EU level. To that end, the Regulation addresses two important shortcomings in preceding instruments. First, it provides a common legal basis for the use of videoconferencing and other means of distance communication technology in the procedures listed in Annex II. Second, it introduces common procedural safeguards in situations where preceding instruments had allowed the use of videoconferencing without defining the conditions governing its operation or its relationship to fair trial guarantees (Žukovaitė, 2024, pp. 91–92).

Two aspects are particularly significant. One is the Regulation's introduction of the first EU-level definition of videoconferencing as audio-visual communication technology allowing the simultaneous transmission of image and sound in both directions (Art. 2 (6)). This definition is important not merely from a technical perspective, but also because it constitutes an attempt to preserve, in a digital form, procedural values such as immediacy and orality, which have traditionally been raised as objections to remote participation (Žukovaitė, 2024, p. 92). No less significant are the Regulation's more detailed provisions on consent. As a rule, participation by videoconference requires the free and unambiguous consent of the person concerned, which may only be given after that person has had the opportunity to consult a lawyer in accordance with Directive 2013/48/EU and has been informed of the relevant procedural rights (Art. 6 (2)). In addition, Member States must ensure access to the necessary technical infrastructure, the

⁶ The criminal law instruments listed in Annex II include the European Arrest Warrant framework, Framework Decision 2008/909/JHA on enforcement of custodial sentences, Framework Decisions 2008/947/JHA and 2009/829/JHA on mutual recognition of probation and supervision decisions, Directive 2011/99/EU on the European protection order, and Regulation (EU) 2018/1805 on freezing and confiscation orders.

confidentiality of communication between the person concerned and their lawyer before and during the hearing, and an effective remedy in the event of a breach of the guarantees laid down in the Regulation (Art. 6 (5)) (Pingen & Wahl, 2024).

The Regulation further provides that the use of videoconferencing or other means of distance communication technology may not be refused solely on the ground that the national law of the relevant MS does not explicitly regulate such technology. In such cases, the most appropriate national rules are to apply *mutatis mutandis* (Rec. 33). This solution is important because it reduces the extent to which shortcomings in national procedural law may obstruct digital cooperation and thereby enhances the practical availability of videoconferencing in cross-border proceedings falling within the Regulation's scope.

At the same time, the Regulation does not establish a comprehensive framework for all forms of videoconferencing in criminal proceedings. Recital 43 confirms that it has a complementary function, as its rules on videoconferencing do not apply to hearings for the taking of evidence or to trial hearings capable of resulting in a decision on the guilt or innocence of a suspect or accused person, which remain governed by the relevant sector-specific instruments, notably the EIO Directive, the EUCMACM, and Council Framework Decision 2002/465/JHA on joint investigation teams. As Ho-Dac (2024) observes, the Regulation forms part of the broader digitalisation and unification of the European judicial area.

4. VIDEOCONFERENCING AND THE RIGHT TO A FAIR TRIAL: JURISPRUDENTIAL FOUNDATIONS

Whether videoconferencing is consistent with the right to a fair trial has been addressed by both the ECtHR and the CJEU. Both courts share the view that videoconferencing is not inherently incompatible with fair trial guarantees, provided that adequate procedural safeguards are in place. Their approaches diverge, however, in the cross-border context, where the requirements of mutual recognition must be reconciled with the procedural standards of the executing State.

The ECtHR set out its approach in *Marcello Viola v. Italy*, where the Court held that videoconference participation does not in itself violate the ECHR, provided three cumulative conditions are met: the measure must pursue a legitimate aim; its modalities must be compatible with the requirements of due process; and the proceedings, taken as a whole, must remain fair (App. no. 45106/04, 2006, §§ 63–67). *Zagaria v. Italy* confirmed this point by finding a violation in a case in which a prison officer overheard privileged communications during a video link, establishing that even a single documented breach suffices to undermine the fairness of the proceedings (App. no. 58295/00, 2007, §§ 35–36). The Grand Chamber further developed this analysis in *Sakhnovskiy v. Russia*, establishing that confidential communication between the accused and defence counsel constitutes the basic requirement of a fair trial that must be guaranteed in practice – not merely prescribed in law (App. no. 21272/03, 2010, §§ 97–98).

However, it is important to distinguish between the treaty law of cross-border judicial cooperation and the autonomous fair trial standard under Article 6 ECHR. Although the CoE mutual legal assistance instruments make the videoconference hearing of a suspect or accused person conditional upon that person's consent, this does not mean that consent has been incorporated by the ECtHR as an independent requirement of Article 6. The ECtHR assesses consistency primarily by reference to effective participation, confidential communication with counsel, and the overall fairness of the proceedings. Consent is therefore best understood as an

important procedural safeguard in the specific cross-border mutual legal assistance context, rather than as an autonomous condition derived from Article 6 ECHR.

The move from the ECHR framework to the EU legal order represents a continuation rather than a departure: the EU builds on the fair trial standards developed by the ECtHR. Under Article 52 (3) of the Charter, Articles 47 and 48 must be given the same meaning and scope as the corresponding provisions of the ECHR, ensuring that the fair trial standards developed by the ECtHR remain the baseline against which the CJEU evaluates the procedural implications of videoconferencing in criminal matters.

In this context, the CJEU first ruled on this issue in *FP and Others*, holding that Article 8 (1) of Directive 2016/343, which guarantees the accused the right to be present at trial, does not prevent an accused person from participating by videoconference at their express request, on condition that they can follow the proceedings without technical impediment, and effective and confidential communication with their lawyer is ensured (C-760/22, 2024, §§ 28–29, 31–32). The CJEU’s reasoning was based on the fact that the Directive sets only minimum standards, leaving MSs free to determine the modalities of the right to be present at trial. On that basis, videoconferencing at the accused’s own initiative does not as such conflict with EU law (Pingen, 2024). This ruling, however, did not address the cross-border dimension of the question.

This gap, however, remains problematic. As *Bissilli* (C-325/24, 2025) confirmed, executing authorities must conduct a case-by-case assessment before invoking the fundamental principles ground under Article 24 (2) (b) of the EIO Directive, and may not apply general policies based solely on domestic procedural traditions. Yet the principle of immediacy, which is central to the Germanic legal tradition, remains a source of divergence. Neither court has directly addressed whether videoconferencing satisfies this principle as understood in continental procedural law. This unresolved divergence ultimately calls for legislative resolution rather than case-by-case judicial interpretation. The Commission’s forthcoming modernisation initiative is expected to address this question (Wahl, 2026).

5. CONCLUSION

The analysis presented in this article confirms that videoconferencing has undergone a fundamental transformation: from an exceptional procedural measure into a structural element of cross-border judicial cooperation in criminal matters within the European legal framework. This shift is visible across both parallel systems examined – the mutual legal assistance framework rooted in the ECMA and its Additional Protocols, and the EU mutual recognition framework built around the EIO Directive and Regulation (EU) 2023/2844, which is further supported by the convergent jurisprudence of both the ECtHR and the CJEU.

The two legal systems have evolved in parallel, each influencing and being influenced by the other. The Third Additional Protocol to the ECMA adopts a comparable standard to that of the EIO Directive regarding the conditions for requesting videoconference hearings. Regulation (EU) 2023/2844 embeds videoconferencing within a common digital infrastructure applicable across a broad range of cross-border criminal procedures. The CJEU, in *FP and Others* and *Bissilli*, draws directly on ECtHR standards while progressively narrowing the discretion of executing states to obstruct cross-border videoconference hearings.

Yet significant divergences remain, particularly regarding the scope of Article 24 of the EIO Directive and the compatibility of videoconferencing with the principle of immediacy

as understood in continental procedural law. These are questions that case-by-case judicial interpretation alone cannot resolve. The Commission's forthcoming modernisation initiative offers an opportunity to address them. A comprehensive legislative response is needed, one that completes the normative architecture that the instruments examined in this article have only partially established, and that definitively consolidates the role of videoconferencing as a standard procedural mechanism in cross-border criminal proceedings within the EU.

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