

Assessment of Video-Mediated Interpreting in the Criminal Justice System

AVIDICUS 2

Action 3

GUIDE TO VIDEO-MEDIATED INTERPRETING IN BILINGUAL PROCEEDINGS

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1 Introduction: video-mediated interpreting in bilingual legal proceedings

1.1 What is video-mediated interpreting?

The increased use of videoconferencing in legal proceedings also concerns (national and cross-border) proceedings that involve suspected or accused persons, defendants or witnesses who do not speak the official language of the jurisdiction and require an interpreter. The increased use of videoconferencing has therefore also affected the work of legal interpreters. Working in video links between courts and remote witnesses or courts and detainees in police stations, detention centres or prisons is becoming common practice for interpreters in many countries. Moreover, videoconference technology is used to gain access to remotely located interpreters who work, for example, from a videoconferencing hub and are linked to police interviews, lawyer-client consultations or court proceedings as the need arises.

The term '*video-mediated interpreting*' (*VMI*) refers to any interpreter-mediated situation that involves videoconferencing (VC) and entails partial or total physical separation of the interpreter from the other participants. Video-mediated interpreting takes two basic forms:

- In *videoconference interpreting* (*VCI*), the communication takes place between two video-linked sites, and the interpreter normally participates from one of these sites.
- In *remote interpreting* (*RI*), the interpreter is located at a remote site, whilst the main parties to the proceedings are all in one location (e.g. in a court).

The two forms have different motivations and should not be seen as interchangeable. *Videoconference* technology is used in proceedings where a video link is required to enable a party (e.g. a witness or a defendant) to participate from a remote location. This occurs in cross-border proceedings, for example, when a witness or defendant is in another country, and in national proceedings, for example, when a video link is used between a court and a prison to avoid the transport of a prisoner to court.

Videoconference interpreting has two variants in that the interpreter may be located at the main site (e.g. in court) or at the remote site (e.g. in prison). It is also possible for the interpreter to be in a third location. Which of these variants is appropriate for a given circumstance depends *inter alia* on the type of legal proceeding taking place, the locations of the participants, the location of the interpreter, the geography of the locale in which the procedure is taking place, and on what is permissible in that jurisdiction.

By contrast, the main motivation for using *remote interpreting* is to enable or optimise access to qualified legal interpreters.

The diagrams below illustrate the basic forms of video-mediated interpreting and their variants in **bilingual proceedings**. Other configurations will arise in multilingual proceedings, which involve more than two languages, but these are not covered by this guide.

Videoconference interpreting (Type A)

- The main parties to the proceedings are at two different locations (e.g. court and prison)
- The interpreter is at the main site (e.g. in the court room)



Videoconference interpreting (Type B)

- The main parties to the proceedings are at two different locations (e.g. court and prison)
- The interpreter is with the non-native speaker (e.g. in prison)



Remote interpreting

- The main parties to the proceedings are together in one location (e.g. in a police station)
- The interpreter is at a different location (e.g. a videoconference hub)



Videoconference + remote interpreting

- The main parties to the proceedings are at two (or more) locations (e.g. court and prison)
- The interpreter is at a further location (e.g. in a videoconference hub)



1.2 Legislative basis for video-mediated interpreting

References to the use of VC in criminal proceedings are fairly well established in European and national legislation. A number of older documents that permit the use of VC imply the use of *videoconference interpreting* as a consequence of using VC in proceedings that require an interpreter. More recent legislation—especially legislation resulting from the Stockholm Programme and the Roadmap to strengthen the procedural rights of suspected or accused persons on criminal proceedings—highlights the use of *remote interpreting* as a means of gaining access to a qualified legal interpreter. This section gives an overview of key references to VMI in European legislation.

1.2.1 Older legislation relating to *videoconference interpreting*

The European Convention on Mutual Assistance in Criminal Matters from 2001 is one of the legislative acts that permit the use of VC for the cross-border hearings of witnesses. Article 9 of the Second Additional Protocol to this convention states the following:

If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference [...]. (Article 9.1)

Paragraph 5 of this article makes explicit provision for the use of interpreters in a cross-border VC:

With reference to hearing by video conference, the following rules shall apply: [...] at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary. (Article 9.5d)

Other legislation permits the use of VCs to hear witnesses, though these do not explicitly make provision for the presence of an interpreter:

- Council Regulation (EC) on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters (1206/2001 of 28 May 2001, Article 10.4)
- Council Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA of 15 March 2001, Article 11.1)

1.2.2 Important drivers for *remote interpreting* since 2008

As pointed out above, recent European initiatives and legislative acts refer increasingly to the use of remote interpreting. Three items will be covered here: the Multi-Annual European e-Justice Action Plan 2008-13, the Stockholm Programme and the Procedural Rights Roadmap, which has resulted in a number of European Directives, and the European initiative to strengthen the rights of victims, also resulting in a new European Directive.

1. *Multi-Annual European e-Justice Action Plan 2008-13*

The European e-Justice Action Plan seeks to promote the use of information and communication technologies in the sphere of justice in Europe. This includes the use of videoconference technology:

Simplifying and encouraging communication between the judicial authorities and the Member States, more specifically in the framework of instruments adopted in the European judicial area, is of particular importance (e.g. **videoconferencing** or secure electronic networks). (Paragraph 29; emphasis added).

The Plan also highlights the need for the training of legal practitioners in the use of videoconferencing and the exchange of best practice.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:075:0001:0012:EN:PDF>

2. Stockholm Programme and Roadmap to strengthen the rights of suspected or accused persons

Measure A: the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU):²

The aim of measure A and its resultant Directive is a more consistent implementation of the rights to interpretation and translation set out in the European Convention on Human Rights. It also encourages the development of minimum standards for legal interpreting and translation in Europe.

Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings. (Article 2.1)

Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. (Article 2.8)

Where appropriate, communication technology such as **videoconferencing**, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings." (Article 2.6)

Measure B: the right to information in criminal proceedings (Directive 2012/13/EU):³

This Directive lays down rules concerning the right of suspected and accused persons to information, especially information about their rights and about the accusation against them. It refers to Directive 2010/64/EU and thus implies the possibility of using remote interpreting in connection with ensuring compliance with the right to information:

Member States should ensure that, when providing information in accordance with this Directive, suspects or accused persons are provided, where necessary, with translations or interpretation into a language that they understand, in accordance with the standards set out in Directive 2010/64/EU. (Preamble 25)

3. Strengthening the rights of victims of crime

The Directive establishing minimum standards on the rights, support and protection of victims of crime (Directive 2012/29/EU),⁴ which aims to protect the rights of victims of crime and their close family members, where appropriate, also makes reference to the use of remote interpreting:

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings. (Article 7.1)

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings. (Article 7.2)

As the recent Directives are transposed into the national laws of Member States, it appears likely that new communication technologies will increasingly be used as means of gaining access to appropriately-qualified legal interpreters. As more and more interpreters and legal professionals work under videoconference conditions, so the need for guidance increases.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010L0064:EN:NOT>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012L0013:EN:NOT>

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012L0029:EN:NOT>

1.3 Scope and Purpose of this Guide

Videoconferencing can potentially be a useful tool in

- national proceedings (e.g. links between courts and prisons for pre-trial hearings);
- cross-border proceedings, i.e. national proceedings with a cross-border dimension (e.g. to hear a witness in a different country);
- international proceedings such as at the International Criminal Court (not covered by this guide).

Each of these situations can entail the use of video-mediated interpreting. **This guide focuses on video-mediated interpreting in bilingual national and cross-border proceedings.**

Given the challenges of video-mediated interpreting, identified in the research underlying this guide, however, VMI should currently be used with caution. This document provides guidance on using the different forms of VMI in criminal proceedings: that is, the use of video-mediated interpreting up to and including a criminal trial. The practice of legal interpreting in these situations is guided by the principle of Fair Trial, which is underlying the legislation outlined in section 1.2 above.

Given the emphasis of current European legislation on the pre-trial and trial stages of criminal procedures, this guide is primarily aimed at members of the judiciary, prosecutors, defence lawyers, police officers, and those governmental, judicial and investigative authorities responsible for criminal proceedings in their national jurisdictions. A separate part of the guide is aimed at legal interpreters themselves. The settings covered by this guide include lawyer-client consultations, investigative interviews, court hearings and trials.

Criminal Justice Service is broader and, although not all parts of it have a strong legislative basis to provide legal translation or interpreting, those frequently working post-sentence, such as probation and prison services, may also find themselves working with an interpreter and via video link. In such cases, many of the guidelines for the judiciary, prosecutors and defence lawyers will apply. A further target group of this guide are VC system designers.

The remainder of this guide is divided into:

- basic key guidelines and recommendations, which are an amalgamation of the main points arising from research conducted to date and which should be applied with immediate effect;
- different sets of detailed guidelines, for different target groups.

2 Key Guidelines and Recommendations

1. Inter-institutional minimum standards and a code of best practice for the use of video-mediated interpreting in bilingual proceedings should be defined at European level.
2. An expert group should be convened to define and implement these standards and code, basing their work on the findings from relevant research. The group should include legal, linguistic and technological experts and representatives of all relevant stakeholders.
3. High-quality VC equipment and a high-speed broadband connection should be used to achieve an appropriate quality of service including clear sound and image, lip synchronicity and connection stability.
4. Institutions using VC should agree procedures for deciding whether or not video-mediated interpreting is suitable for a particular situation.
5. VC is useful for short-duration communication, especially in a small group of participants. It should not be used for extended, highly interactive communication and communication in a large group with many speakers. This is especially true for bilingual VCs, in which the physical toll of the session on the interpreter (increased fatigue, stress) has to be taken into account to ensure an appropriate quality of the communication and interpretation.
6. The introduction of video-mediated interpreting in criminal proceedings should be incremental and should include pilot phases for key stages to allow for additional experience to be gained and adjustments to be made before large-scale purchase and implementation of equipment.
7. Professional (i.e. trained and qualified) legal interpreters should be used. In countries where trained and qualified legal interpreters are not available, every effort needs to be undertaken to promote such training and qualifications (in line with Directive 2010/64/EU).
8. The institutional participants and interpreters should be trained in the use of the equipment and in communicative aspects (e.g. effective communication strategies). In the first instance, staff and interpreters with VC and professional experience should be used where possible.
9. Thorough preparation of all VCs is essential.
10. Interpreters need to be fully briefed about the purpose and content of the communication and about the fact that the communication takes place via VC.
11. An induction for the other-language speakers (through the interpreter) is also required. It is the responsibility of the police officer/legal practitioner to provide this induction.
12. Where 'videoconference interpreting' is used (see section 1) and where there is a choice for participant locations (i.e. location of interpreter, defence lawyer), the distribution should be such that strong asymmetries in the participant distribution are avoided. If possible, the other-language speaker should not be separated from all other participants and the interpreter.
13. Technical assistance should be available before and during a VC to check the equipment and the connection prior to its use and for continuous maintenance. Procedures for dealing with the breakdown of equipment should be available.
14. Given the complexities of video-mediated interpreting in legal settings, the consecutive mode of interpreting should be used. Clarifications and interventions, which may be necessary to ensure that the interpreting is accurate, are easier in this mode.

3 Guidelines for governmental institutions, and judicial and investigative authorities

Given the important role of videoconferencing in European e-Justice coupled with the frequency of bilingual proceedings, videoconference-based and interpreter-mediated proceedings are likely to become so frequent across Europe that the implementation of VC facilities in European jurisdictions should make appropriate provisions for the integration of interpreters. Even if an institution already uses VC for other purposes, due attention needs to be paid to the specific requirements of *bilingual* VCs that include an interpreter. In line with this, the current section is aimed at institutions and departments responsible for the planning, procurement and implementation of videoconferencing equipment for use in legal proceedings. It is also relevant for VC system designers.

In most jurisdictions, criminal proceedings that involve an interpreter use **consecutive interpreting** (i.e. sequential interpreting whereby the speaker pauses regularly for the interpreter) as the main mode of interpreting. The use of VC technology makes it possible to use simultaneous interpreting (with additional equipment). However, given the complexities of combining videoconferencing and interpreting in legal settings, it is recommended that the consecutive mode of interpreting should be used in bilingual videoconferences as clarifications and interventions, which may be necessary to ensure that the interpreting is accurate, are easier to manage in this mode.

3.1 The planning, procurement and installation of videoconferencing equipment

- (1) *The communication needs of all parties to the proceedings should be identified.* The specifics of the investigative and/or judicial procedures in which the VC equipment will be used, such as who talks to whom, who needs to see whom and where each party is located, should be mapped out during the planning process. Requirements will be different for different institutions. In a court building equipped with VC technology, for example, the rooms used for lawyer-client consultations should also include the possibility to integrate an interpreter either for ‘videoconference interpreting’ or ‘remote interpreting’ (see section 1 for definitions).
- (2) *Experts should be involved at the planning stage.* The planning should involve linguistic, legal and technological experts who work together to elicit the institutional needs and to ‘translate’ these into an appropriate functional and technical specification, paying due attention to the legal and linguistic requirements of the relevant setting(s). It is recommended that an institutional VC task force is formed to coordinate and oversee the implementation.
- (3) *Sound and image quality of high standard and lip synchronisation are essential.* Low-quality sound and images and/or a lack of lip synchronisation would mean that the participants—especially the interpreter—have to carry out additional cognitive processing to infer any visual information that is lost. High quality, best available technology should be used.
- (4) *Sufficient bandwidth should be available for high quality sound and images.* However, when the availability of bandwidth is problematic, the sound quality needs to take priority over the image quality. The sound quality is of crucial importance, especially where the communication includes an interpreter.
- (5) *Image and sound quality needs to be stable, i.e. the visual input should not be disrupted by a sudden drop in the image quality as a result of bandwidth problems or error frames in the image transmission; the sound should not become ‘tiny’ nor ‘cut out’.*

- (6) *The number of cameras and screens required will depend, for example, on the number of participants.* For a small group, it may be sufficient to have one camera and one screen per site to capture and display the image of all participants (but see section 3.3, paragraph 2). The involvement of a larger number of participants requires multiple cameras and multiple screens or a split screen showing the different participants.
- (7) *A separate document camera should be used* for the presentation of documents, images and other material that can facilitate interpreting, so that text, diagrams and images are clearly visible to the interpreter. For example, when written documents are presented during the hearing or trial, there is often the need to provide an oral translation of the written text. If the interpreter is not in the room where the document is presented, the use of a high-quality document camera is particularly important.
- (8) *The interpreters should be able to control the equipment.* They should at least be able to adjust the volume and the camera zoom, and they should be able to mute their microphone.
- (9) *An appropriate work environment should be provided for all participants, including the interpreter,* especially an ergonomic and quiet work environment. Where necessary, the rooms in which the VC session is conducted should be ‘closed’ and soundproof to ensure confidentiality, the right to a fair trial and the right of defence. To avoid interruption, a ‘traffic light’ or other sign system should be used outside a room to indicate when it is in use.
- (10) *Room layout, positioning and seating arrangements should be carefully considered, for the interpreter and for the other parties:* the room layout and the seating arrangements should enable all participants to see and hear each other. Asymmetrical situations, in which one party can see the others but cannot be seen, for example, should be avoided, as they can easily lead to confusion about who can see what (see section 3.2).
- (11) *When remote interpreting is used, attention should be paid to the preparatory arrangements.* This concerns especially prior information on the technical equipment of the interpreter’s location and the testing of the connections between the locations before the actual VC session. Furthermore, attention should be paid to the acoustics and quality of sound in the location of the remote interpreter. The interpreter should have the option of using headsets.
- (12) *A ‘trial and error’ phase of bilingual videoconferencing should be run,* especially before any large-scale purchase, implementation and roll-out of VC equipment. Critical instances in the communication process should be identified and the necessary adjustments made.
- (13) *A stage-by-stage introduction of new technology should be allowed:* as a start, low-impact cases should be used, in order to evaluate the effect of the technology at each stage and to assess the implications for the next stage.
- (14) *Mode of interpreting:* As was pointed out above, consecutive interpreting is recommended for all forms of video-mediated interpreting. Simultaneous interpreting has specific requirements for (higher) audio and video quality and lip synchronisation than consecutive interpreting. It is also logistically more complex, since it requires that there is a special booth for the interpreter or a ‘tour-guide system’ and that the interpretation is transmitted to listeners by means of special-purpose equipment (transmitter, receiver and earphones).
- (15) *Co-operation:* In the implementation phase, all stakeholders should co-operate to create the best possible solution for bilingual videoconferencing, to ensure that the fairness of justice is not jeopardised through combining VC and interpreting.

3.2 Room layout and audio-visual environment

- (1) *Mutual visibility*: as a basic principle, all participants should be able to see each other. The view of the remote site that is most appropriate depends to a certain extent on the number of participants.
- (2) *Near-end image*: apart from seeing the remote site, participants should also have access to their own image (also known as “near-end image”), preferably in the form of a small picture-in-picture. This image is an important monitoring tool. It enables participants to check whether they are in shot and whether their visual cues (e.g. hand gestures) are visible and effective. It also helps participants to maintain the impression of eye contact and to control their perception by others. The latter is important in the light of research that points to heightened self-awareness in VCs. This image is particularly important for the interpreter, who needs to be certain that his or her visual signals can be seen by those at the other end of the video link.
- (3) *Visibility of the main parties by the interpreter*: visual and non-verbal communication play a crucial role in helping an interpreter to understand what is said, to grasp nuances of meaning and to resolve potential ambiguities. Therefore, the interpreter should be able to see the faces, facial expressions and lip movements of remote participants as well as the participants with whom s/he is co-located. This has consequences for the position of the participants in relation to the cameras that deliver the video image for the interpreter. The interpreter should, as far as possible, have a frontal view of the remote participants.
- (4) *Visibility of the interpreter*: the interpreter should be visible to the other parties. At the same time, the interpreter should not become the centre of attention simply by appearing on an oversized video screen. Moreover, the set-up should not create a situation in which the main parties have to turn away from each other in order to see the interpreter (in person or on screen). This may necessitate the use of more than one camera even communication in a small group.
- (5) *Positioning in relation to each other at the same site*: it must not be necessary for participants nor the interpreter to sit or stand next to each other when this would not be the case in face-to-face communication. The positioning of those who participate from the same site should be such that their roles can be clearly identified and distinguished at the other site. At the same time, participants who are co-located should be able to communicate naturally with each other as well as with the remote participants.
- (6) *Sight lines and eye contact*: the impression of eye contact should be created as far as possible. However, when there is more than one participant at one site, e.g. a prosecutor and an interpreter, communicating with a remote witness, it may be advisable for the participants to sit in front of the screen in a slight angle (an angle of more than 90° and less than 180°) so that they can look at each other as well as at the screen.
- (7) *Distance from the camera*: It must be possible to recognise clearly the facial expressions, lip movement, gestures and body movement of all participants. Whilst this means that participants should be close to the camera, a balance must be struck between the requirement to identify aspects such as facial expressions and the need to accommodate changes in the participants’ position and posture during the VC to prevent them moving out of shot. Therefore, where possible, camera zoom should be available. Alternatively, participants should be positioned at a sufficient distance from the camera to accommodate the above requirement.

- (8) *Acoustics*: as was pointed out in section 3.1, sound quality is of utmost importance. Sound quality is determined by the audio transmission capacity and standard/protocol of the equipment used, but it is also influenced by number of environmental factors. The rooms in which VC equipment is implemented should have suitable acoustics, and background noise (e.g. from air conditioning or through noise outside the VC room) should be avoided.
- (9) *Microphones* should not pick up the sound from background sources, and therefore the use of unidirectional microphones is advised, but they should be positioned in such a way that they can accommodate changes in the participants' position, in relation to the microphone, during the VC.
- (10) *Sound transmission*: given that legal communication is often two-way communication and, when an interpreter is involved, three-way communication, the system must be able to cope with turn-taking and overlapping speech. Sound transmission should be full-duplex, allowing sound from both locations to be transmitted at the same time without the sound 'cutting out' and potentially leading to loss of information. Echo cancellation should be used.
- (11) *Background in the video image*: the background of the video image should be in keeping with the communicative situation, i.e. professional and neutral. It should not in any way be distracting or decrease visibility of the remote participants.
- (12) *Lighting*: particular attention needs to be paid to the lighting in the VC rooms. There should be no backlight (e.g. from a window behind the participants). Lighting should be such that no shadow falls on participants' faces, participant views are not distorted, over- and under-lighting are avoided and lighting sources are not distracting (e.g. avoid strip light and reflective surfaces).
- (13) *Technical assistance* should be available before and during a VC. Procedures for resolving technological breakdown of equipment should be available.

3.3 Guidelines ensuring the smooth use of video-mediated interpreting in criminal proceedings

- (1) *Each institution should clarify the procedure for setting up and booking a VC with an interpreter*: those who set-up and/or book the VC, should ensure that all participants, especially the interpreter and the other-language speaker, know in advance that a video link will be used.
- (2) *Qualified legal professionals and interpreters should be used*: appropriately qualified interpreters and legal staff members who are experienced in working with interpreters should be used, in order ensure a quality sufficient to safeguard the fairness of the proceedings.

The qualifications required for legal interpreters differ between Member States. This needs to be taken into account in the requests for using videoconferencing in mutual legal assistance or taking of evidence. To aid in this regard, minimum standards for the qualifications required by legal interpreters should be agreed upon at European level and implemented in the Member States as a matter of urgency. Protection of professional title for interpreters should also be adopted at the earliest possible opportunity.

- (3) *Training should be offered to the interpreters and legal staff*: an early-stage induction on how to use the equipment and how to communicate in a VC should be offered. Continuous professional training should then be available (including awareness of wider context, mastery

of technology, communication strategies, and supportive techniques such as stress management).

Interpreters and legal staff should be trained together, to allow for both groups to understand the obstacles faced by the other. The training should cover different settings, including the different configurations of video-mediated interpreting. It should also allow the active participation of those attending, for example through practical activities such as role plays. Specialised training should also be available for technical assistants, and cover aspects such as technical issues, impartiality and confidentiality.

- (4) *Guidelines/protocols should be developed:* these should specify who is responsible e.g. for booking, timing, testing, starting and controlling the connection; describe the procedure before, during and after the VC session (briefing of interpreter, beginning of session, introductions, rules during session, debriefing) for all participants.
- (5) *Procedures for deciding if a video link in combination with interpreting is appropriate should be agreed:* experienced interpreters should be consulted in this regard.
- (6) *Clear risk assessment procedures should be agreed.*
- (7) *Provision for technical assistance before and during sessions should be made,* but this must in no way jeopardise confidentiality.
- (8) *Video-mediated interactions should be kept short.*
- (9) *Any request by the interpreter for a break should be respected,* to ensure that the quality of the communication is maintained.
- (10) *Provisions for breakdown should be made:* a protocol for communication breakdown or technological breakdown should be developed as it should not be left to the interpreter to resolve breakdowns. The legal professional should take the lead role in this regard.
- (11) *Feedback should be sought from all participants as soon as possible after VC sessions:* this is particularly important during the implementation phase. Any reported problems should be dealt with as soon as possible, and discussed with legal professionals, legal interpreters and technology providers.
- (12) *Continuous evaluation is essential,* especially in the initial phase of use.
- (13) *A code of best practice should be developed:* investigative and judicial authorities, legal practitioners/police officers and interpreter associations should continue to cooperate in order to develop and improve joint codes of best practice for video-mediated interpreting.

4 Guidelines for the judiciary, prosecutors, defence lawyers and police officers

Research suggests that video-mediated interpreting is more challenging than traditional face-to-face interpreting. The guidelines in this section are intended to mitigate some of the challenges for those who need to work in videoconferences that involve an interpreter. The section specifically addresses legal practitioners/police officers. It is recommended that they read section 3 of this guide as well.

4.1 General guidelines to ensure the smooth running of the video-mediated session

- (1) *Qualified legal professionals and interpreters should be used:* appropriately qualified interpreters and legal staff members who are experienced in working with interpreters should be used in order to ensure a quality sufficient to safeguard the fairness of the proceedings.
- (2) *Training should be offered to legal staff:* legal practitioners/police officers who work in bilingual VC settings should attend an induction and or training in how to use the equipment and how to communicate in a VC.
- (3) *Guidelines/protocols should be developed:* these should specify who is responsible e.g. for booking, timing, testing, starting and controlling the connection; describe the procedure before, during and after the session (briefing of interpreter, beginning of session, introductions, rules during session, debriefing) for all participants.
- (4) *Procedures for deciding if a video link in combination with interpreting is appropriate should be agreed:* experienced interpreters should be consulted in this regard.
- (5) *Clear risk assessment procedures should be agreed.*
- (6) *Provision for technical assistance before and during sessions should be made,* but this must not jeopardise confidentiality in any way.
- (7) *Communication management is important:* a bilingual VC is a challenge to the participants in the parties of the proceedings and to the interpreter. The other-language speaker (e.g. a witness) may not be used to working with an interpreter, and the feeling of remoteness may cause problems. It can also be more difficult for the interpreter to intervene when s/he is at a remote location. Therefore, it is helpful if the individual instigating the communication (e.g. the judge in a courtroom setting) coordinates the communication. The interpreter should be able to intervene (to ask clarification question).
- (8) *Consecutive interpreting should be used:* given the complexities of bilingual VCs, the consecutive mode ('sequential interpreting') should be used. Whispered simultaneous interpreting (chuchotage) may be used when the interpreter sits next to the other-language speaker, but care needs to be taken to ensure that this does not create backchannel noise. The interpreter should switch off his/her microphone when using this mode.
- (9) *Video-mediated interactions should be kept short.*
- (10) *Any request by the interpreter for a break should be respected,* to ensure that the quality of the communication is maintained.
- (11) *Provisions for breakdown should be made:* a protocol for communication breakdown or technological breakdown should be developed as it should not be left to the interpreter to resolve breakdowns. The legal professional should take the lead role in this regard.

4.2 Before the video-mediated session

- (1) *Thorough preparation of a VC is essential:* the preparation should include a careful analysis of the communicative situation (i.e. who has requested the VC, which case does the VC relate to, what is the purpose, who participates, how are the participants distributed across the different sites, which languages will be used, what behaviours are to be expected).
- (2) *Each institution should clarify the procedure for setting up and booking a VC with an interpreter:* those who request or book the VC should ensure that all participants, especially the interpreter and the other-language speaker, know in advance that a video link will be used.
- (3) *A qualified and experienced legal interpreter should be used:* if possible, the interpreter should be trained in working via video link.
- (4) *The interpreter should be booked as far in advance as possible to enable preparation.*
- (5) *At the time of booking, the interpreter should be provided with practical details of the VC, e.g. date and time of the VC, the expected duration, who else is involved, and where they will be located. This is in addition to the normal briefing of the interpreter about the case.*
- (6) *If the interpreter has a choice of location (e.g. court or prison), ascertain their choice. Otherwise, inform them of where they will be located.*
- (7) *Let the other-language speaker know where the interpreter will be located.*
- (8) *Unless the video link is used on a regular basis, it should be set up and tested by a technician beforehand:* this is particularly important when a connection is established with a 'new' institution. Where possible, testing should also be done in the interpreter's presence. Images and sound in particular should be checked.
- (9) *The interpreter and others may need to be briefed before the VC session starts:* in addition to the briefing given to the interpreter at the time of booking, time should be allowed for a briefing before the VC session starts. When others need to be briefed together with the interpreter (e.g. a defence lawyer in advance of a police interview), the VC situation and especially the possibility that the interpreter and the others who require the briefing are at different locations should not impede this briefing. Where necessary, exhibits should be shown to the interpreter and others as appropriate, just as would be the case in a traditional setting.
- (10) *The mode of interpreting needs to be agreed in advance, taking into account the purpose of the interpretation. As stated above, it is recommended that consecutive interpreting is used.*
- (11) *Protocols for the start of the session and participant introductions should be agreed:* the individual instigating the communication (e.g. the police officer in an interview or the judge in a court setting) are responsible for the introductions.
- (12) *Communication procedures with the interpreter should be agreed before the VC session starts:* this should include for example, how long speech turns should be, how the interpreter will intervene for clarification, and so on.

4.3 During the video-mediated session

- (1) *Control the way you are positioned* in relation to the camera (or the camera that is nearest to you) and the screen(s). Control your non-verbal behaviour, such as facial expression and gesture.
- (2) *Check that all participants can see and hear each other* adequately before you start the proceedings.
- (3) *At the beginning of a VC, appropriate introductions should be made*, i.e. all participants should identify themselves or should be identified by the police officer/legal practitioner. It is the responsibility of the legal practitioner who instigates the communication to make or initiate the introductions.
- (4) *Monitor your output*. Pace your speech delivery carefully and ensure you follow the communication procedures you agreed with the interpreter before the session. Do not rush.
- (5) *Remember to pause regularly for the interpreter* and give them enough time to deliver the interpretation. Keep in mind that it is often more difficult in a VC than in a traditional setting to coordinate who speaks.
- (6) *If the interpreter uses whispered interpreting*, ask them to switch off their microphone to avoid backchannel noise.
- (7) *Speak clearly, but do not raise your voice unduly*. You should be able to speak as you would in a face-to-face encounter.
- (8) *Use clear, unambiguous language as far as possible*.
- (9) *Check periodically that all participants can be seen and heard clearly*.
- (10) *If you have to move out of shot*, explain what you are doing.
- (11) *Control disturbing noises*, such as tapping the desk near a microphone.
- (12) *Point out disturbances at your end*, e.g. noise, changes in visibility of participants.
- (13) *Respect the interpreter's requests for intervention*, e.g. to clarify and resolve problems, and requests for a break.
- (14) *The legal professional who instigates the communication has overall responsibility for chairing and coordinating the VC*. The interpreter is responsible only for coordinating the flow of communication to the extent that this is necessary to ensure that there is no loss of information (hence the interpreter may need to ask for clarification or for repetition when s/he did not hear something due to overlapping speech). However, it is not the interpreter's role to manage the communication. For the interpreter, it is helpful if the legal professional coordinates the order in which the parties involved speak.
- (15) *Guidance may be required*: individuals who are not used to speaking through an interpreter and/or who are agitated or emotionally vulnerable may find it difficult to adapt to speaking in short 'chunks' and to pause for the interpreter. They will need guidance and, if necessary, careful management by the legal professional.
- (16) *All participants should be able to contribute appropriately*. Given the generally weaker rapport between participants in a VC, and the difficulties arising from this for assessing a remote participant's behaviour (e.g. whether they wish to take the floor), the legal professional who is

responsible for the VC communication should also take due care that all participants can contribute appropriately, irrespective of their location.

- (17) *Stop the session if technological adjustments are required*, e.g. if the camera zoom needs to be altered or if the volume needs to be adjusted.
- (18) *Indicate problems that affect the fair trial principles, and interrupt if necessary for the protocol.* Factors that routinely apply in a face-to-face setting should not be dispensed with simply because the interaction is video-mediated.

4.4 After the video-mediated session

- (1) *Debriefing*: if possible and appropriate, have a short de-briefing with the interpreter after the session.
- (2) *Identify problems*: if you encountered particular problems during the session, try to identify the source of these.
- (3) *Report problems*: report any recurring problems, including those affecting the principles of fair trial, to your institution, technician or, if appropriate, technology provider.
- (4) *Keep a record*: keep a record of VC sessions in which you have participated, noting problems, how these were resolved during the session, and what points of good practice you observed.
- (5) *Adapt your VC behaviour*: revisiting this record periodically and modifying your VC behaviour will help improve VCs for you and for the other participants.

Remember:

The videoconference setting should be as similar to a traditional encounter as possible. Do not change anything just because of the video link if it is not necessary to do so.

5 Guidelines for interpreters

The responsibility for the day-to-day setting up, booking and preparing videoconferences in criminal proceedings lies with the investigative and/or judicial authorities and the legal practitioners who work on their behalf and participate in the VC. This section, which is aimed at providing guidance for legal interpreters working in videoconferences, assumes that the guidelines provided in the previous sections have been followed. Interpreters are advised to read these sections and to inform the authorities or legal practitioners of any problems with the implementation of a VC system that obstruct the delivery of a good-quality interpretation.

5.1 Before the video-mediated session

- (1) *When you are booked, you should be provided with practical details about the VC, in addition to the normal briefing, e.g. date and time of the VC session, expected duration, who else is involved, and where they will be located (see diagrams). If these details are not provided, ask for them.*
- (2) *Ascertain from the person booking you whether you have a choice of location (e.g. whether you could work from court or from prison). If you do, let the person know of your choice. If you don't, find out where you will be located.*
- (3) *If possible, arrive early and ask to get access to the VC room in advance of the session to acquaint yourself with the setup.*
- (4) *Unless the video link is used on a regular basis, it should be tested in advance in your presence. If it is not, ask for this to be done.*
- (5) *You should be briefed about the case before the VC session starts and exhibits should be shown to you if necessary, irrespective of where you are located.*
- (6) *The mode of interpreting needs to be agreed in advance, taking into account the purpose of the interpretation. Given the complexities arising from the combination of videoconferencing and interpreting, it is recommended that consecutive interpreting is used. If you sit next to the other language-speaker, it may be possible to use whispered simultaneous interpreting (chuchotage). You should, however, switch your microphone off to avoid back channel noise at the remote site. In any case, you should inform the legal practitioner conducting in advance of the session which mode(s) you will use.*
- (7) *Agree formal procedures with the legal professional conducting the session for the start of the session, including how the introductions will be carried out.*
- (8) *Agree communication procedures with the legal professional conducting the session; including communication management (e.g. how long speech turns should be, how you will intervene for clarification, visual signals to stop a speaker and so on).*
- (9) *Ask the legal professional what should happen in the event of technological breakdown.*
- (10) *Bear in mind that the situation may be new for everyone, including the other participants. Give advice on communicative matters and seating arrangements as appropriate and in line with your expertise as a legal interpreter.*

5.2 During the video-mediated session

- (1) *Control the way you are positioned* in relation to the camera (or the camera that is nearest to you) and the screen(s). Control your non-verbal behaviour, such as facial expression and gesture.
- (2) *Check that you can see/hear and be seen/heard.*
- (3) *At the beginning of the VC, follow the instructions given by the legal practitioner in charge* with regard to introductions. Do not feel you have to take on responsibility for explaining the videoconference setting.
- (4) *Do not rush*, allow yourself time to get used to the situation and the remote participants.
- (5) *Keep a comfortable seating position during the session*: do not lean into the screen and the camera.
- (6) *Monitor your comprehension closely* to avoid mishearings. Ask for clarification if you are unsure.
- (7) *Monitor your output*. Pace your speech delivery carefully and ensure you follow the communication procedures you agreed with the legal professional before the session.
- (8) *Speak clearly, but do not raise your voice unduly*. You should be able to speak as you would in a face-to-face encounter.
- (9) *Be clear* in your output and avoid repetitiveness.
- (10) *If you use whispered interpreting*, remember to switch off your microphone to avoid backchannel noise.
- (11) *Use the signals agreed at the start to take the floor*; if you use gesture, make sure your hands are visible to the other side.
- (12) *Control your non-verbal behaviour*: create an illusion of eye contact by looking at the screen and towards the camera, and control your facial expression.
- (13) *If you have to move out of shot*, explain what you are doing.
- (14) *Control disturbing noises*, such as tapping the desk near a microphone.
- (15) *Point out disturbances at your end*, e.g. noise, changes in the visibility of participants.
- (16) *Ask for a break if you need one*, including a break to fix a problem at your end.
- (17) *Stop the session if technological adjustments are required*, e.g. if the camera zoom needs to be altered or if the volume needs to be adjusted.
- (18) *Signal problems that affect the fair trial principles, and interrupt if necessary for the protocol*. Factors that routinely apply in a face-to-face setting should not be dispensed with simply because the interaction is video-mediated.

5.3 After the video-mediated session

- (1) *Debriefing*: If possible and appropriate, ask for a short de-briefing with the legal professional after the session.
- (2) *Identify problems*: If you encountered particular problems during the session, try to identify the source of these.
- (3) *Report problems*: Report any problems to the legal professional or the institution for which they work.
- (4) *Keep a record*: Keep a record of VC sessions in which you have participated, noting problems, how these were resolved during the session, and what points of good practice you observed.
- (5) *Adapt your VC behaviour*: Revisiting this record periodically and modifying your VC behaviour will help improve VCs for you and for the other participants.

Remember:

The videoconference setting should be as similar to a traditional encounter as possible. Do not change anything just because of the video link if it is not necessary to do so.

6 Further information and training

This final section aims to highlight the need for training in working with an interpreting and training in bilingual videoconferencing and video-mediated interpreting.

Directive 2010/64/EU makes reference to training of legal practitioners.

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication. (Article 6)

Furthermore, SIGTIPS, the European Language Council Special Interest Group on Translation and Interpreting for Public Services) recommends, based on their recent analysis of the situation, that the staff of Public Service Providers “should be trained to work with interpreters” (2011: 22). Similarly, Ozolins & Hale (2009) emphasise that interpreting quality in public service contexts is a shared responsibility, and Corsellis (2008) recommends that interpreters should participate in the training of public service staff.

A small but growing number of European initiatives, funded by the Criminal Justice Programme of the DG Justice, have addressed the training of legal interpreters and/or of legal practitioners in how to work with an interpreter, and have produced relevant resources for this domain, especially:

- Aequitas: Equal Access to Justice across Language and Culture in the EU. Antwerpen: Lessius, 2001. (GROTIUS Project 98/GR/131);
- Aequalitas: Equal Access to Justice across Language and Culture in the EU. Antwerpen: Lessius, 2003. (GROTIUS Project 2001/GRP/015);
- Aequilibrium. Instruments for Lifting Language Barriers in Intercultural Proceedings. Utrecht: ITV Hogeschool, 2005. (JAI/2003/AGIS/048);
- Building Mutual Trust 1 and 2 (JLS/2007/JPEN/219, 2008-10 and JUST/2010/JPEN/AG/1566, 2011-13);
- The TRAFUT project (JUST/2010/JPEN/AG/1549, 2011-13).

The specific challenges of video-mediated interpreting mean that training should now also cover the difficult methods of interpreting covered under this term. Furthermore, given the reference made to videoconferencing in Directive 2010/64/EU, training in video-mediated interpreting and bilingual videoconferencing should be included in interpreter training and in the training of legal practitioners/police officer in how to work effectively with an interpreter.

The AVIDICUS 1 and 2 projects (JLS/2008/JPEN/037, 2008-11 and JUST/2010/JPEN/AG/1558, 2011-13) have devised and piloted training resources specifically relating to bilingual videoconferencing and video-mediated interpreting. The AVIDICUS partnership can provide training accordingly.

For further information, please see the AVIDICUS website www.videoconference-interpreting.net.

All enquiries should be directed at the project co-ordinator:

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