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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**COMMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**  
**PC-OC**

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**Hearing by video conference and security issues**

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters regulates hearing by videoconference. Paragraph 2 of Article 9 of the Second Additional Protocol states that the requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. The article further instructs more detailed rules for a hearing. In addition, Article 5(2) prescribes costs related to video conference. However, the Second Additional Protocol does not specify technical issues.

Moreover, identical provisions concerning video conference may be found in the EU MLA 2000 Convention (Article 10).

Finland has not yet ratified the Second Additional Protocol. However, its national law allows video hearing both nationally and in cross-border cases, at pre-trial stage and in courts. All Finnish first instance and appeal courts have video equipment. In practice video conferences between Finnish and foreign courts are common, especially with Estonia.

It is possible to organise a cross-border video hearing also at pre-trial stage, although this is not as popular as at trial stage. According to Finnish experience during pre-trial stage new types of problems may arise. Since court hearings are public, but pre-trial investigation is not, more attention must be paid to security issues while preparing video (Internet) connection. It should be noted that the Additional Protocol does not say anything about technical or security issues.

Since 2008 Finland and Russia have carried out a joint project with Russia aiming to increase the use of video conference in international legal assistance in criminal matters. At the moment the focus has been in pre-trial stage (not court stage) and hearing witnesses and experts (not accused), and only in criminal cases (not civil). A couple of seminars have been held on this subject for examining treaties and national legislation regulating the subject both in Finland and in Russia. Simulated cases have been used to test technical connections between Finnish courts and Russian courts. Also prosecutorial authorities have been involved.

Finally, in autumn 2010 Finnish and Russian authorities found a concrete case that could be used as a real, pilot case concerning hearing by video conference at pre-trial stage. A Finnish prosecutor wanted to hear some witnesses living in Russia, Niznyi Novgorod. The Finnish authorities (Central Authority, prosecutor, police and operator) cooperated with their Russian counterparts (Central Authority, Investigating Committee and their local office, and operator), first, to find authorization to organise such a hearing and, later, to technically build a connection. Both sides worked hard, but in the last minutes the hearing had to be cancelled. It appeared that the Finnish law (acts on publicity of government activities; data protection; information security in state administration; and pre-trial investigation) requires a secured (*AES encrypted*) connection while Russian law (presidential decree 2003) restricts the use of encryption equipment and software when used by governmental authorities.

The project went on and in spring 2011 Russian authorities specified their position: There is a new presidential decree of 2008 (amended in 2011) that, in fact, allows secure connection and equipment, but the provider must obtain a certificate to use them. According to our knowledge so far only two companies (CISCO, Stonesoft) have such a certificate. Currently, the Finnish and Russian authorities continue to solve legal, technical and practical problems related to video conference hearing.

As far as we understand, the RF Prosecutor General's Office is of the opinion that at the moment the RF Criminal Procedure Code allows cross-border video conference at pre-trial stage. Recently the Code has been amended and the possibilities to use video-conference *in courts* have been increased, especially in hearing witnesses; before that video conferences have been used only in national cases and mostly for hearing prisoners.

Meanwhile, Finland requested some European states to inform, whether they insist secured connection in video hearing. It can be read from the answers that some states have this kind of requirements, some states do not, and some decide *in casu* if a non-secured connection is possible. However, many states did not answer at all.

Since the Additional Protocol remains silent on this issue and these security issues came as a "surprise" for Finnish and Russian authorities in a concrete case, Finland would appreciate discussion and information about security requirements in member states in the use of cross-border video conference.