

# Summary of ex ante evaluation of video conferencing in court proceedings of foreign nationals in custodial detention

## Background

Video conferencing enables remote hearing of detainees and witnesses. In all cases in The Netherlands, the judge decides whether video conferencing is permissible or not. In custodial detention cases, the video comprises two-way equipment - one in the court room and the other in the custodial institution or detention centre. The parties in the court room can see the detainee and the detainee can view on a plasma screen the judge, the clerk of the court and the lawyer when they are speaking in the court. The detainee can have a discussion with his/her lawyer without the judge hearing the discussion. Once the video equipment is started, it can be operated with one or two buttons. The equipment is installed in the courtroom and in a separate room in a custodial institution or detection centre.

Video equipment is also installed in the chamber of the examining judge and is used by rogatory commissions when hearing witnesses and expert witnesses not present in the Netherlands.

Since the 1990s, consideration has been given to the use of video conferencing in hearing of defendants, of foreign nationals, and of witnesses/ experts outside the Netherlands. A pilot was carried out in 2002 with foreign nationals in custodial detention pending expulsion. In 2005, the option of using video conferencing in hearing foreign nationals and defendants was established in law, and a national roll out to custodial institutions, detention centres and court rooms was announced.

Currently, video equipment has been installed in the Law Court in Maastricht and the Detention Centre for foreign nationals pending expulsion in Dordrecht. Later in 2007, another law court and remand centre will probably be linked into the system for use in court proceedings. In the same year, equipment was installed in the chamber of the presiding judge in the court houses in Haarlem and The Hague, as well as in the communal Court of Curaçao. Subsequently, a national roll out is foreseen.

It is expected that video conferencing will lead to cost savings such as in the transport of foreign nationals and defendants to and from the court, and cost savings for rogatory commissions hearing witnesses outside the Netherlands. As opposed to this is the cost of

the video conferencing system and cost increases incurred by some parties in the chain. The 2007 national budget assumes a neutral position with regard to costs. In addition, procedural, legal, technological and psychological effects play a role in the final assessment of video conferencing.

The Minister has promised to provide the Dutch Parliament with insight into the costs and benefits of video conferencing in court cases as part of the evaluation of its implementation. ECORYS has been requested to carry out a financial cost-benefit analysis. Although reference is made to non-financial aspects, these have not been included in the analysis. This is an ex-ante evaluation in which only anticipated effects can be considered and not the actual effects. Especially the extent of the benefits can only be established afterwards.

## The Study

### *Purpose*

The study aimed to evaluate the potential costs and benefits of introducing video conferencing in court proceedings and to identify possible non-quantifiable aspects. The focus was on a financial-economic analysis, and an initial inventory was made of non-financial aspects.

This analysis concerns only the equipment procured by law courts, custodial institutions, and detection centres. Use made of video conferencing by other parties such as the police and public prosecutor's office was not analysed. It is expected that the equipment will be used in hearings of:

- foreign nationals in a detention centre;
- defendants in cases of requests for extended custodial detention;
- witnesses and experts outside the Netherlands.

Foreign nationals in detention centres are illegal immigrants and foreign nationals detained at the Dutch border, especially the airport Schiphol. The public prosecutor submits a request for detention if required after a period of police custody. In hearings of witnesses and experts outside the Netherlands, video conferencing saves rogatory commissions comprising a judge, clerk of the court and interpreter, public prosecutor and lawyer, from having to travel outside the country.

### *Assumptions*

This ex ante evaluation considers uncertain future developments. Thus, for the implementation, there is no project plan in which assumptions are made about the rate of implementation and the degree of usage. However, assumptions have been made on the basis of interviews and validated during a workshop in which various experts participated (see Appendix 6). Much is known about the cost of the system because equipment has already been purchased for a few locations. The main assumptions are about the implementation and use of video conferencing as follows:

- Installation of video equipment will be phased to cover all law courts, detention centres and custodial institutions by 2011;

- The judges will permit increasing use of video conferencing so that by 2011, it will be used in 67 percent of remand (extension) cases, 100 percent detentions pending expulsion and 65 percent of rogatory commissions.
- It has been assumed that the number of cases relating to extended custodial detention, foreign nationals in custodial detention pending expulsion and rogatory commissions, on which the study is based will remain constant.
- The reduction in number of kilometres detainees are transported by the Transport & Support Service (DV&O)<sup>1</sup> and public prosecutor's police detachment is directly proportional to the number of times detainees are heard by means of video conferencing.
- The number of kilometres travelled by the DV&O would decrease with or without video conferencing if detainees were located closer to the law courts. An annual decrease of 1 percent is assumed. The Dutch court police are responsible for transport within the district. Even without video conferencing, it is anticipated by 2021 there will be 14 percent less DV&O transport compared with 2006, when the proportion of DV&O in transport movements for court proceedings was 40 percent.
- Video equipment is to be installed in the law courts in one court room (for use in cases of extension of custodial detention and foreign nationals in custodial detention pending expulsion), and in the chamber of the examining judge for rogatory commissions.
- The video equipment will be completely replaced after three years.
- All calculations are excluding value-added tax.

## Financial outcomes

### *Base scenario*

The base scenario is based on the assumptions stated above and on complete installation in all custodial institutions. The financial consequences of introducing video conferencing were assessed using the Net Present Value method. In this method, the costs and benefits up until 2021 are brought to a common denominator by discounting with the cost-benefit analyses standard interest of 5.5 percent - see Table S0.1.

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<sup>1</sup> Dienst Vervoer en Ondersteuning

Table SO.1 Table SO.1 Total net present value base scenario (x1000 €)

Costs		Benefits	
Investment law courts	10,589	Transport DV&O	37,810
Investment custodial institutions and detention centres	7,266	Transport court police	6,220
Variable costs law courts	6,628	Rogatory commissions	19,530
Variable costs custodial institutions and detention centres	23,829	Law court surveillance	1,477
Central planning	1,363	Savings on surveillance leaving custodial institutions and detention centres	2,455
<b>Total costs</b>	<b>49,676</b>	<b>Total benefits</b>	<b>67,492</b>
<b>Balance</b>	<b>17,817</b>		
<b>IRR<sup>a</sup></b>	<b>34.1%</b>		

a) IRR = Internal Rate of Return. If all future contributions are discounted by this percentage, the balance of costs and benefits will be zero. This percentage is then the return on investment.

As a rule of thumb, investment in video equipment in the chambers of the examining judge would be recuperated with three rogatory commissions per year. For hearings of foreign nationals in custodial detention pending expulsion and applications for (extended) remands, the law courts, custodial institutions and detention centres are investing in order to make savings on travel costs. In the previous situation, the parties met in the law court and transport was organised by the court police. In video conferencing, the participants are at two locations and this requires central planning.

The accumulative costs between 2007 and 2021 represent after discounting the present amount of €50 million excluding value-added tax. Over the cost of video installations and building alterations in the law courts, custodial institutions and detention centres 19 percent value added tax is to be paid (€3.4 million) which goes back to the treasury. Opposed to the cost of €50 million excluding value-added tax is the accumulative discounted benefit of approximately €67 million. The balance of costs and benefits is the Net Present Value which is almost €18 million. The return (internal rate of return) is 34 percent per year. The costs and returns per calendar year up until 2011 are presented in Table SO.2.

Table SO.2 Overview of annual costs and returns on base scenario (x1000 €)

	2007	2008	2009	2010	2011
Total cost	756	4,212	5,054	4,999	6,567
Total return	136	1,202	3,676	5,992	7,730
<b>Balance</b>	<b>-620</b>	<b>-3,010</b>	<b>-1,378</b>	<b>994</b>	<b>1,163</b>

Analysis of the annual costs shows investments are made in equipment and building alternations in the first three years after which there is a positive balance in 2010. The costs are recuperated after seven years – in 2013.

A breakdown of the costs and benefits after for the three applications are presented in Table SO.3

Table SO.3 Overview net present value base scenario (x1000 €)

	Costs	Benefits	Balance
Foreign nationals in custodial detention	13,800	30,898	17,098
Detention extension	28,092	17,064	-11,028
Rogatory commissions	7,784	19,530	11,746
<b>Total</b>	<b>49,676</b>	<b>67,492</b>	<b>17,817</b>

From the cost breakdown, use of video conferencing in cases of foreign nationals in custodial detention pending expulsion and for rogatory commissions is very positive but very negative for extension of detention. The reason for the latter is that few people are detained in custodial institutions and thus the investment per video conferencing hearing is high. Also, the return per trip is relatively low because more detainees are transported by the court police within their own district than is the case of foreign nationals in custodial detention pending expulsion (60% versus 31%); the court police costs less than national transport because of the shorter distances and transport to one destination (district law court) instead of 19 destinations - law courts throughout the Netherlands.

#### *Optimal option for extension of custodial detention*

The analysis indicates that the project as a whole in the base scenario has a positive financial balance but a negative balance for the extension of custodial detention. The issue is then under what conditions the investment can become cost neutral. The main costs are for personnel and transport which are closely related to the number of people to be transported. Other factors affect the cost such as the distance to be travelled. Another scenario has been calculated with the installation of video equipment only in:

- the largest custodial institutions;
- law courts where video equipment has already been installed for foreign nationals in custodial detention (14 of the 19 law courts).

It appears that if the equipment is installed in six of the 37 largest Remand Centres in addition to such institutions where equipment has been installed for court hearings of foreign nationals in custodial detention, there is a neutral balance for court proceedings. The financial overview is presented in Table SO.4.

Tabel S0.4 Overview of net present value optimal scenario 2007-2021 (x1000 €)

Costs		Benefits	
Investment in law courts	9,156	Transport by DV&O	29,644
Investment in custodial institutions and detention centres	2,259	Transport by court police	2,755
Variable costs - law courts	5,578	Rogatory commissions	19,530
Variable costs custodial institutions and detention centres	7,375	Law court surveillance	1,283
Central planning	1,363	Savings on surveillance leaving custodial institutions and detention centres	1,434
<b>Total costs</b>	<b>25,731</b>	<b>Total benefits</b>	<b>54,646</b>
<b>Balance</b>	<b>28,915</b>		
<b>IRR<sup>a</sup></b>	<b>90.1%</b>		

In this scenario, the costs particularly for the custodial institution are substantially lower while the return declines less than proportionally. The positive balance of €29 million is significantly more than the €18 million in national implementation (base scenario). The expenses and returns for foreign nationals in custodial detention cases and rogatory commissions are in this case similar to the base scenario. For extension of custodial detention cases, the balance is about zero (expenses and returns are both €4.2 million).

#### *Financial sensitivity analyses and other scenarios*

As already stated, the analyses are based on a large number of assumptions and yet not a lot is known about the video conferencing project. The sensitivity analyses demonstrate the effects of the main assumptions made:

- A slower implementation of video equipment to be completed in 2016 instead of 2011 leads to a lower return. It will take longer to recover the costs but the total balance is positive. The balance for extension of custodial detention cases remains negative.
- If only half of the custodial institutions and detention centres will implement video conferencing, the balance will be much lower. For cases of foreign nationals in custodial detention, the balance is zero (implementation in three of the seven detention centres), the balance for court proceedings is more favourable, and for rogatory commissions is unfavourable.
- The number of court hearings done via video conferencing would need to be increased by 60 percent to achieve a positive balance. Use of video conferencing in cases of foreign nationals in custodial detention would need to decrease by 50 percent in relation to the base scenario before the balance is negative and in rogatory commissions by 60 percent.

As well as the risks identified in the sensitivity analysis, there are also windfalls. For example the implementation rate could be higher than assumed because half of the law courts have expressed a willingness to co-operate with video conferencing. The sooner

video equipment is installed in the law courts, custodial institutions and detention centres, the sooner results will be achieved (positive in custodial detention of foreign nationals and neutral/negative in cases of extension of custodial detention in optimal/complete implementation). The savings increase when video equipment is retained for four years instead of the proposed three years. The financial results of the possible added advantages listed above have not been taken into account.

## Non-financial aspects

Non-financial aspects of video conferencing are of juridical, technological, organisational and social-psychological nature. Juridical matters are outside the scope of this study.

### *Technological aspects*

In the workshop, quality, reliability and operating ease of the equipment were presented as vital to the success of the project. The quality of the picture and sound of the present equipment are considered to be good. With reliable equipment no back-up system is needed. The experience in a pilot in 2001 was positive. Once or twice the sound failed to work, but this disruption was quickly enough rectified thus preventing adjournment of the case (postponement of the case to a later date).

### *Organisational aspects*

In cases of extension of custodial detention and detention of foreign nationals as opposed to hearings before the presiding judge, no efficiency in planning is expected, because these cases are organised once or twice a week on fixed days of the week. Video hearings of witnesses outside the country are clearly more efficient (saving particularly on travel to other countries).

Adjournment of cases (postponements to a later date) or release because of transport problems occur so infrequently that even a sharp percentage reduction by using video conferencing of the total number cases would make very little difference.

There will be more pressure on custodial institutions and detention centres responsible for the constant flow of detainees, as well as interpreters and lawyers to the video room. The public prosecutor's office decides whether a case is brought, the judge decides then whether video conferencing is permissible, the interpreter and lawyer decide whether they go to the law court or to the custodial institution/detention centre. A standard practice needs to be organised with regard to video conferencing. It is anticipated that logistic planning will be coordinated via a central point.

### *Confrontation of defendants, victims and/or witnesses*

Confrontation between defendant and victim and/of witness is mentioned in the literature and also in the Netherlands as an essential element in court proceedings. This is not an issue in the present study because video conferencing is for the time being only used in cases of extension of custodial detention where in the Netherlands defendants are never confronted with victims and/or witnesses.

### *Effect on judgement*

In trial by jury, it has been found easier to sentence a person who is not physically present in the court. Dutch judges are well aware of these sensitivities. Video conferencing in Courts of Appeal is not foreseen and judges are reluctant to allow video conferencing for cases other than extension of custodial detention and custodial detention of foreign nationals.

### *No more travel*

From the evaluation of the 2002 pilot, about 90 percent of the foreign nationals experienced transport to and from the court as unpleasant. With video conferencing, detainees are not transported to the law court which in all probability detainees would consider to be positive.

### *Foreign nationals*

The detainees must be well prepared for this new way of communication. In addition, detainees retain the option to discuss directly with their lawyer without the judge hearing. Meanwhile video conferencing is gaining acceptance in Anglo-Saxon countries. As mentioned in the workshop, an added advantage is that video conferencing forces the parties to be more concise in their formulations.

### *Divided attention*

In trial by jury, the lawyers must divide their attention between the defendant/witness, judge and jury. This process is disrupted in video conferencing, as Anglo-Saxon literature points out. According to the supervision committee and workshop participants, this is not an issue for the defence in the Dutch context (no trial by jury).

### *Public information/transparency*

Video conferencing offers the possibility to publish pictures of court proceedings without the press being present. In Australia, this is legally one of the exceptional cases where video conferencing is permitted in court proceedings. In Netherlands, sittings of closed sessions and of rogatory commissions, however, are not public.

### *Psychological relationships*

If the lawyer and interpreter choose not to sit beside the detainee, the relationship with the detainees is more distant, which is considered to be a disadvantage. However, the detention guard feels undesirably involved with a detainee if he/she is also the guard during the tele-hearing.

## Conclusions

It is expected that video conferencing will be used in the future in cases of foreign nationals in custodial detention, extension of custodial detention and in rogatory commissions. While the cost of purchasing and installing the equipment is reasonably well established, there is still much uncertainty and lack of clarity about the implementation and use of video conferencing in law courts, custodial institutions and detention centres. The result of this study should therefore be interpreted with care.

From the financial analysis, there is a robust benefit balance for the base option from savings and costs of almost €18 million over 15 years (Net Present Value), and internal rate of return of 34 percent per year. From 2010, there is an annual positive balance, but before 2010 the annual return will not cover the annual costs. The time to recuperate the cost is seven years.

From the calculation, the balance is negative for cases of extension of custodial detention, and for the other two applications, the balance is positive. For extension of custodial detention cases, only when equipment is installed in only the six largest Remand Centres the balance for these cases is neutral. Hereby it is assumed that no equipment will be installed in the five smaller law courts which do not hear cases of custodial detention of foreign nationals.

The sensitivity analysis shows that the result of the basis scenario for national implementation is robust – all three applications the balance remains respectively positive or negative with strong assumptions about the implementation rate and the number of cases in which video conferencing is allowed.

There are costs and benefits for different parties. The law courts, custodial institutions and detention centres invest in the equipment and building alteration and in addition, custodial institutions and detention centres invest in extra personnel in order to save on transport costs (which ultimately accrue to the bureaus DJI and IND) and the rogatory commissions (which largely accrue to the public prosecutor's office).

There are some important non-financial effects to be expected. With regard to technology, a critical attitude is necessary but experience is decisively positive. A much broader application potential is foreseen for video conferencing, but it is anticipated that judges will permit video conferencing in the coming years at most in cases of foreign national in custodial detention and extension of custodial detention. In terms of process/procedures and social-psychological aspects, there are both advantages and disadvantages. Finally, the responsibility shifts from the law court to the custodial institution/detention centre for the smooth flow of detainees to court hearings (video room in the custodial institution/detention instead of the law court).

All in all, the financial analysis shows a robust positive balance for the whole project. When the three applications are considered separately, this holds for hearings of foreign nationals and of experts/witnesses outside the Netherlands but not for cases of extension of custodial detention. In such cases, investment in video equipment is only cost-effective in the largest custodial institutions.