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From:	Presidency
To:	Working Party on e-Justice
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation - Presidency compromise text

Delegations will find below the Presidency compromise text for the proposal for a Regulation on digitalisation of judicial cooperation, which will be discussed during the meeting of the Working Party on e-Justice on 14 November 2022.

The changes from the last version (11 October) are indicated in **bold** and ~~striketrough~~ with the exception of Article 22c, where the policy choice is still to be made.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the digitalisation of judicial cooperation and access to justice in cross-border civil,
commercial and criminal matters, and amending certain acts in the field of judicial
cooperation

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2)(e) and (f), and Article 82(1)(d) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In its 2 December 2020 Communication on the digitalisation of justice in the EU¹ the Commission identified the need to modernise the legislative framework of the Union's cross-border procedures in civil, commercial and criminal law, in line with the "digital by default" principle, while ensuring all necessary safeguards to avoid social exclusion.
- (2) Facilitating access to justice for natural and legal persons, and facilitating judicial cooperation between the Member States are among the main objectives of the area of freedom, security and justice enshrined in Title V of Part Three of the Treaty on the Functioning of the European Union.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Digitalisation of justice in the European Union. A toolbox of opportunities, COM(2020) 710 final.

- (3) For the purposes of enhancing judicial cooperation and access to justice, legal acts of the Union providing for communication between competent authorities, including Union agencies and bodies, and between competent authorities and natural and legal persons in civil and commercial matters, should be complemented by conditions for conducting such communication through digital means.
- (4) This Regulation seeks to improve the effectiveness and speed of judicial procedures and facilitate access to justice by digitalising the existing communication channels, which should lead to cost and time savings, reduction of the administrative burden, and improved resilience in force majeure circumstances for all authorities involved in cross-border judicial cooperation. The use of digital channels of communication between competent authorities should lead to reduced delays in processing of the cases, which should benefit individuals and legal entities. This is also particularly important in the area of cross-border criminal proceedings in the context of the Union's fight against crime. In this regard, the high level of security that digital channels of communication can provide constitutes a step forward, also with respect to safeguarding the rights of the persons concerned and protection of their privacy and personal data.
- (5) It is important that appropriate channels are developed to ensure that justice systems can efficiently cooperate digitally. Therefore, it is essential to establish, at Union level, an information technology instrument that allows swift, direct, interoperable, reliable and secure cross-border electronic exchange of case-related data among competent authorities².
- (6) There are tools which have been developed for the digital exchange of case-related data, without replacing or requiring costly modifications to the existing IT systems already established in the Member States. The e-Justice Communication via On-line Data Exchange (e-CODEX) system is the main tool of this type developed to date.

² This sentence is aligned with the e-CODEX Regulation.

- (7) Establishing digital channels for cross-border communication should contribute directly to improving access to justice, by enabling natural and legal persons to seek the protection of their rights and ascertain their claims, initiate³ proceedings, exchange case-related data in digital form with judicial or other competent authorities, in procedures falling under the scope of Union law in the area of civil and commercial matters.
- (8) This Regulation should cover the digitalisation of ~~written~~ communication in cases with cross-border implications falling under the scope of the Union legal acts in civil, commercial and criminal matters. These acts should be listed in Annexes to this Regulation. ~~Written~~ Communication between competent authorities and Union agencies and bodies, such as Eurojust, where provided for by the legal acts listed in ~~the~~ Annex II, **or the European Public Prosecutor Office where competent under the legal acts listed in Annex II**, should also be covered by this Regulation. At the same time, whether a case is to be considered a matter with cross-border implications, should be determined under the legal acts listed in Annexes I and ~~Annex~~ II to this Regulation. Where the instruments listed in Annexes I and ~~Annex~~ II to this Regulation explicitly state that national law should govern a communication procedure between competent authorities, this Regulation should not apply⁴.
- (8a) The obligations under this Regulation do not apply to oral communication such as by phone or in person⁵.
- ~~(8b) Where national competent authorities cooperate with the European Public Prosecutor's Office under Council Framework Decisions 2002/584/JHA, 2003/577/JHA, 2009/829/JHA, 2009/948/JHA, Directive 2014/41/EU or Regulation (EU) 2018/1805, the communication should as a rule be carried out through the decentralised IT system.~~⁶

³ See Article 4(3).

⁴ **The German delegation suggested to delete the last two sentences of this recital, however, the majority of the Working Party prefers to maintain the current wording of the text.**

⁵ This recital was added as a result of the deletion of “written” in Article 3.

⁶ **Reference to EPPO added in Recital 8.**

- (9) This Regulation should not apply to service of documents pursuant to Regulation (EU) 2020/1784 of the European Parliament and of the Council⁷ ~~and Regulation (EC) No 1393/2007 of the European Parliament and of the Council⁸~~, nor to the taking of evidence pursuant to Regulation (EU) 2020/1783 of the European Parliament and of the Council⁹ ~~and Council Regulation (EC) No 1206/2001¹⁰~~, which already prescribe their own rules on digitalisation of judicial cooperation. However, in order to enhance electronic service of documents to be effected directly on a person who has a known address for service in another Member State, certain amendments are introduced to Regulation (EU) 2020/1784 of the European Parliament and of the Council¹¹.
- (10) In order to ensure secure, swift, interoperable, confidential and reliable communication between Member States for the purposes of cross-border judicial procedures in civil, commercial and criminal matters, ~~any~~ appropriate modern communications technology should be used, provided that certain conditions as to the integrity and reliability of the document received and the identification of the participants in the communication are met. Therefore, a secure and reliable decentralised IT system should be used. Accordingly, it is necessary to establish such an IT system for data exchanges in cross-border judicial procedures. The decentralised nature of that IT system would enable secure data exchanges ~~exclusively between one Member State and another~~ competent authorities, without any of the Union institutions being involved in the substance of those exchanges.

⁷ Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (OJ L 405, 2.12.2020, p. 40).

⁸ The previous Regulation on service of documents is not included in Annex I and will no longer apply as of May 2025.

⁹ Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) (OJ L 405, 2.12.2020, p. 1).

¹⁰ The previous Regulation on taking of evidence is not included in Annex I and will no longer apply as of May 2025.

¹¹ Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) (OJ L 405, 2.12.2020, p. 40).

- (11) The decentralised IT system should be comprised of the back-end systems of Member States and the Union agencies and bodies, and interoperable access points, through which they are interconnected. The access points of the decentralised IT system should be based on e-CODEX.
- (12) For the purposes of this Regulation, Member States ~~should be able to~~ could use a software developed by the Commission (reference implementation software) instead of a national IT system. This reference implementation software should be based on a modular setup, meaning that the software is packaged and delivered separately from the e-CODEX components needed to connect it to the decentralised IT system. This setup should enable Member States to reuse or enhance their existing national judicial communication infrastructures for the purpose of cross-border use. For matters relating to maintenance obligations, Member States may also use a software developed by the Hague Conference on Private International Law (iSupport) ~~a Commission-developed software (reference implementation software)~~.

(12a) The Commission should be responsible for the creation, maintenance and development of this reference implementation software in accordance with the principles of data protection by design and by default. The Commission should design, develop and maintain the reference implementation software in compliance with the data protection requirements and principles laid down in Regulation (EU) 2018/1725 of the European Parliament and of the Council¹²and, Regulation (EU) 2016/679 of the European Parliament and of the Council¹³, and Directive (EU) 2016/680 of the European Parliament and of the Council¹⁴, in particular the principles of data protection by design and by default as well as high level of cybersecurity. The reference implementation software should also include appropriate technical measures and enable the organisational measures necessary for ensuring a level of security and interoperability which is appropriate for the exchange of information in the context of cross-border judicial procedures. **In order to ensure interoperability with national IT systems, the reference implementation software should be able to implement the digital procedural standards, as defined in Regulation (EU) 2022/850, for the corresponding legal instruments listed in Annexes I and II¹⁵.**

¹² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

¹³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹⁴ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

¹⁵ **Recital 12 has been divided into two separate recitals for easier readability of the text and the last sentence was added according to the proposal of the Spanish delegation.**

- (13) In order to provide swift, secure and efficient assistance to applicants, ~~written~~ communication between competent authorities, such as courts and Central Authorities established under Council Regulation (EC) 4/2009¹⁶ and Council Regulation (EU) 2019/1111¹⁷, should, as a rule, be carried out through the decentralised IT system. ~~In exceptional cases, other means of communication may be used if those are found to be more appropriate for the purposes of ensuring flexibility. However, the decentralised IT system should always be considered the most appropriate means for exchanging forms between competent authorities established by the legal acts listed in Annex I and Annex II to this Regulation.~~¹⁸
- (14) Transmission through the decentralised IT system could be impossible due to a disruption of the system or where the nature of what has to be transmitted makes transmission by digital means impracticable¹⁹, such as the transmission of physical/material evidence or the need to transmit the original document in paper format to assess its authenticity or in exceptional circumstances, such as the conversion of voluminous documentation into electronic form, imposing a disproportionate administrative burden on the sending competent authority. Where the decentralised IT system is not used, communication should be carried out by the most appropriate alternative means. Such alternative means should entail, *inter alia*, transmission being performed as swiftly as possible and in a secure manner by other secure electronic means²⁰ or by postal service.

¹⁶ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1–79).

¹⁷ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ L 178, 2.7.2019, p. 1).

¹⁸ **This rule is already a part of the normative text in Article 3(4) which goes even further, and it is therefore not necessary to repeat it here.**

¹⁹ **This also covers situations where a file may be too large to be transmitted through the decentralised IT system.**

²⁰ **This is meant to also cover secure email, where the competent authority has found its use appropriate in a specific case.**

- (15) ~~Unless exceptions apply, transmission through the decentralised IT system in accordance with this Regulation should be used in cases where under the legal act in criminal matters amended by this Regulation, the communication between the authorities is to be carried out through “means which are capable of producing a written record” or where there is a need for the official communication to be carried out in a written form for the purposes of keeping the files of judicial authorities. In cases where the legal act in criminal matters amended by this Regulation provides for the communication between the authorities to be carried out by “any means” or “any appropriate means”, authorities should have discretion as to which method of communication to use.~~ For the purposes of ensuring the flexibility of judicial cooperation in certain cross-border judicial procedures, other means of communication could be more appropriate. In particular, this may be appropriate for direct communication between courts under Regulation (EU) 2019/1111 and Regulation (EU) 2015/848 of the European Parliament and of the Council²¹, as well as direct communication between competent authorities under the Union legal acts in criminal matters. In such cases, less formal communication means, such as e-mail, could be used. This could also be the case when the competent authorities need direct personal communication²².
- (16) In relation to the components of the decentralised IT system, which are under the responsibility of the Union, in accordance with Regulation (EU) 2022/850 of the European Parliament and of the Council²³, the entity managing the system’s components, should have sufficient resources in order to ensure their proper functioning.

²¹ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19).

²² **The decentralised IT system enables to communicate authority to authority while on certain occasions it may be important to communicate to a specific person within a competent authority.**

²³ Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726 (OJ L 150, 1.6.2022, p. 1).

- (17) For the purpose of facilitating access of natural and legal persons to the competent authorities in civil and commercial matters, this Regulation should establish an access point at Union level (European electronic access point), as part of the decentralised IT system through which natural and legal persons should be able to file claims, launch requests, send ~~and~~, receive and store²⁴ procedurally relevant information and communicate with the competent authorities **in the instances covered by this Regulation** or be served with judicial or extrajudicial documents, ~~for cases in the instances covered by this Regulation~~. The European electronic access point should be hosted on the European e-Justice Portal, which serves as a one-stop-shop for judicial information and services in the Union. Where this Regulation requires consent for the use of the European electronic access point, such consent should be specific to the procedures in question and should be given separately for the purposes of communication and service of documents.
- ~~(18) Member States should be responsible for the establishment, maintenance and development of national electronic portals (national IT portals) for the purposes of electronic communication between natural and legal persons and the respective authorities which are competent in the proceedings under the legal acts listed in Annex I.~~

²⁴ The retention period for storing information and documents will be stipulated in the implementation act according to Article 12(1)(g).

- (19) In the context of the communication in cross-border cases of natural and legal persons with competent authorities in civil and commercial matters, electronic communication should be used as an alternative to the existing means of communication, including national ones. Notwithstanding, to ensure that access to justice through digital means does not contribute to a further widening of the digital divide, the choice of the means of communication between electronic communication, as provided by this Regulation, and other means of communication should be left to the discretion of the individuals concerned²⁵. This is particularly important in ~~order to cater for~~ the case of people in specific circumstances of ~~disadvantaged groups, such as persons with disabilities and people in situation of vulnerability, such as children or older people,~~ such as those who may lack the requisite technical means or digital skills to access digital services and those with disabilities, as the Member States and the Union have committed themselves to taking appropriate measures in accordance with the United Nations Convention on the Rights of Persons with Disabilities.
- (20) In order to enhance electronic cross-border communication and transmission of documents through the decentralised IT system, the European electronic access point and national IT ~~portals systems~~, where available, those documents should not be denied legal effect and should not be considered inadmissible in the proceedings solely on the grounds that they are in electronic form. However, that principle should be without prejudice to the assessment of the legal effects or the admissibility of those documents, which may constitute evidence in accordance with national law. ~~It should also be without prejudice to national law regarding the conversion of documents.~~

²⁵ **In response to the proposal of the Spanish delegation, it is worth clarifying that this Regulation does not change the way in which natural or legal persons communicate with their national authorities in accordance with national law. This Regulation only provides for one additional alternative of electronic communication, which will mostly be used for communication in cross-border situations.**

- (21) In order to facilitate oral hearings in proceedings in civil, commercial and criminal matters²⁶ with cross-border implications, this Regulation should provide for the optional use of videoconferencing or other distance communication technology for the participation of the parties in such hearings. This Regulation does not preclude persons assisting a party to also attend hearing through videoconferencing or other distance communication technology, in accordance with the applicable national law. The procedure for applying initiating and conducting of hearings through videoconferencing or other distance communication technology should be governed by the law of the Member State ~~conducting~~ **holding**²⁷ the videoconference. Conducting a hearing ~~by~~ through videoconferencing or other distance communication technology should not be refused solely based on the non-existence of national rules governing the use of distance communication technology. In such cases the most appropriate rules available under the national law, such as rules for taking of evidence, should apply *mutatis mutandis*. **In criminal matters, the requesting and requested competent authorities should agree on the practical arrangements for conducting the hearing**²⁸.
- (21-a) **Where a child is considered a party to proceedings in civil or commercial matters under national law, the child could participate in the hearing through videoconferencing or other distance communication technology under this Regulation.**

²⁶ **The Dutch delegation proposed to specify that hearings are understood as oral hearings by a court in proceedings in civil, commercial and criminal matters with cross-border implications. However, such limitation would be too restrictive as it would exclude authorities which were given competences under the legal acts in civil, commercial and criminal matters. It should also be recalled that the Union concept of civil and commercial matters is autonomous and cannot be based on national interpretation of these terms, e. g. some administrative authorities can deal with issues which are considered civil and commercial matters in the sense of Union law.**

²⁷ **“Holding” should cover all of the different stages of proceedings related to videoconferencing – including who can initiate or request, the evaluation by the court, the technical setup and the conducting of the actual hearing.**

²⁸ **This change has been made in accordance with the proposals of the Spanish and Italian delegations.**

- (21a) Where the competent authority requests the participation of a person for the purpose of taking evidence in civil or commercial matters, the participation of such person in the **remote hearing through videoconferencing or other distance communication technology** should be governed by Regulation (EU) 2020/1783. ~~The Directive 2014/41/EU should apply to the hearing by videoconference or other distance communication technology in criminal matters for the purpose of taking evidence.~~
- (21aa) **This Regulation should not apply to the use of videoconferencing or other distance communication technology in civil and commercial proceedings where such use is already foreseen in the certain legal acts, listed in Annex I.**
- (21ab) **The rules under this Regulation on the use of videoconferencing or other distance communication technology for hearings in judicial cooperation procedures in criminal matters should not apply to hearings through videoconferencing or other distance communication technology for the purposes of taking evidence or of holding a trial which may result in a decision on the guilt or innocence of a suspect or accused person. This Regulation should be without prejudice to the Directive 2014/41/EU, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and to the Council Framework Decision 2002/465/JHA.**
- (21b) In order to safeguard the right to a fair trial and the rights of defence, the suspect, accused or convicted persons should give their consent on the use of videoconferencing or other distance communication technology for a hearing in judicial cooperation procedures in criminal matters. Where a suspect, accused or convicted person is called to express their consent on the use of videoconferencing or other distance communication technology, this Regulation should apply taking into account the right of access to a lawyer as provided in Directive 2013/48/EU. The competent authority may derogate from the requirement of consent of the suspect, accused or convicted person only in exceptional circumstances when this is duly justified by the compelling reasons specified in this Regulation²⁹.

²⁹ Inserted instead of the second sentence in Article 8(1)(c).

- (21c) Where the rights of a suspect, accused, or convicted person are **breached violated** in the context of a hearing through videoconferencing or other distance communication technology, access to effective legal remedies should be guaranteed **in accordance with Article 47 of the Charter of Fundamental Rights of the European Union**. Access to effective legal remedies should also be guaranteed for affected persons other than a suspect, accused or convicted person in the context of their hearing through videoconferencing or other distance communication technology in proceedings under Regulation (EU) 2018/1805 of the European Parliament and of the Council³⁰.
- ~~(22) This Regulation should not apply to the use of videoconferencing or other distance communication technology in civil, commercial and criminal proceedings where such use is already foreseen in the certain legal acts, listed in Annexes I and Annex II.~~
- (23) The Regulation (EU) No 910/2014 of the European Parliament and of the Council³¹ sets up a common Union regulatory framework for recognition of electronic identification means and electronic trust services (electronic signatures, electronic seals, time stamps, electronic delivery services and website authentication) that are recognised across borders as having the same legal status as their physical equivalents. Therefore, this Regulation should apply the e-IDAS trust services for the purposes of digital communication.

³⁰ Inserted instead of paragraph 7 of Article 8.

³¹ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73–114).

- (23a) Where a document transmitted as part of the electronic communication under this Regulation requires a seal or signature, a qualified electronic seal or signature as defined in Regulation (EU) No 910/2014 ~~could~~ **should** be used instead by competent authorities and ~~an advanced or qualified signature or seal could~~ **electronic identification should** be used instead by natural or legal persons. However, this Regulation should not affect the formal requirements applicable to documents produced in support of a request, which could be digital originals or certified copies. It should also be without prejudice to national law regarding the conversion of documents.
- (24) For the purposes of facilitating payment of fees in cases with cross-border implications falling under the scope of the Union legal acts in civil and commercial matters, electronic payment of fees **by payment methods widely available throughout the Union, such as credit cards, debit cards, e-wallet and bank transfers** should be possible in an online environment **and accessible through the European electronic access point** ~~by payment methods widely available throughout the Union, such as credit cards, debit cards, e-wallet and bank transfers.~~

- (25) It is necessary, for the purposes of ensuring the full attainment of the objectives of this Regulation and for the alignment of the existing Union legal acts in civil, commercial and criminal matters with this Regulation, that amendments are introduced in the following legal acts: Regulation (EC) No 1896/2006 of the European Parliament and of the Council³², Regulation (EC) No 861/2007 of the European Parliament and of the Council³³, Regulation (EU) No 606/2013 of the European Parliament and of the Council³⁴, Regulation (EU) No 655/2014 of the European Parliament and of the Council³⁵, Regulation (EU) 2015/848 and Regulation (EU) 2018/1805 of the European Parliament and of the Council³⁶. Those amendments seek to ensure that communication takes place in accordance with the rules and principles set out in this regulation. Amendments to Directives and Framework Decisions in civil, commercial and criminal matters are enacted in a Directive of the European Parliament and the Council .../... [Amending Directive]³⁷.

³² Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).

³³ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p.1).

³⁴ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181, 29.6.2013, p. 4).

³⁵ Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L 189, 27.6.2014, p. 59).

³⁶ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1).

³⁷ Directive of the European Parliament and of the Council on amending Council Directive 2003/8/EC, ~~Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA~~, Directive 2011/99/EU and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation.

- (26) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making³⁸, the Commission should evaluate this Regulation on the basis of the information collected through specific monitoring arrangements for each of the legal acts, listed in Annexes I and II to this Regulation in order to assess the actual effects of this Regulation and the need for any further action.
- (27) The reference implementation software developed by the Commission as a back-end system should programmatically collect the data necessary for monitoring purposes and such data should be transmitted to the Commission. Where Member States choose to use a national IT system instead of the reference implementation software developed by the Commission, such a system may be equipped to programmatically collect those data and, in that case, those data should be transmitted to the Commission. The e-CODEX connector could also be equipped with a feature allowing retrieval of relevant statistical data.
- (28) In ~~such~~ cases where data on the number of hearings where videoconferencing was used cannot be collected automatically, and for the purpose of ~~alleviating~~ limiting the additional administrative burden of data collection, each Member State should designate at least one court or competent authority for the purpose of establishing a monitoring sample. The court or competent authority designated in this way should be tasked with collecting and providing the Commission with such data on its own ~~proceedings~~ hearings which should serve to provide an estimate on the level of a given Member State of the data necessary for the evaluation of this Regulation. The designated court or ~~competent~~ authority should be ~~representative of the scope of the~~ competent to conduct hearings through videoconference in accordance with this Regulation ~~insofar as the Regulation covers Union instruments in civil, commercial and criminal matters~~. In areas where authorities other than courts or prosecutors are considered as competent authorities within the meaning of this Regulation, such as notaries, the designated monitoring sample should be representative of their implementation of the Regulation as well.

³⁸ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1–14).

- (29) The application of this Regulation should be without prejudice to procedural rights as enshrined in the Charter of Fundamental Rights of the European Union³⁹ and Union law, such as the procedural rights directives⁴⁰, and in particular to the right to an interpreter, the right of access to a lawyer, the right of access to the case file, the right to legal aid, and the right to be present at the trial.

³⁹ Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–407).
⁴⁰ Directive 2010/64/EU of the European Parliament and of the Council of 22 May 2012 on the right to interpretation and translation in criminal proceedings (OJ 2010 L 280/1); Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142/1); Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ 2013 L 294/1); Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65/1); Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ 2016 L 132/1); Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016).

- (30) Regulation (EU) 2016/679 of the European Parliament and the Council ~~and~~, Directive (EU) 2016/680⁴¹ of the European Parliament and the Council and Regulation (EU) 2018/1725 of the Parliament and of the Council⁴², apply to the processing of personal data carried out in the decentralised IT system. In order to clarify the responsibility for the processing of personal data sent or received through the decentralised IT system, this Regulation should indicate the controller of the personal data. For this purpose, each sending or receiving entity should be regarded as having determined the purpose and means of the personal data processing separately.
- (31) In order to ensure uniform conditions for the implementation of this Regulation as regards the establishment of the decentralised IT system, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴³. The implementing acts should enable Member States to adapt their relevant national IT systems for connecting to the decentralised IT system.

⁴¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁴² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98).

⁴³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (32) Since harmonised digitalisation of cross-border judicial cooperation cannot be sufficiently achieved by the Member States acting alone, for reasons such as no guarantee as to the interoperability of IT systems of Member States and Union agencies and bodies, but can rather, by reason of coordinated Union action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (33) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (34) [In accordance with Articles 1, 2 and 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

OR

[In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...,] its wish to take part in the adoption and application of this Regulation.[]

- (35) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EC) No 2018/1725 of the European Parliament and of the Council and delivered an opinion on 25 January 2022,

HAVE ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter and scope⁴⁴

1. This Regulation establishes a legal framework for electronic communication between competent authorities in judicial cooperation procedures in civil, commercial and criminal matters and for electronic communication between natural or legal persons and competent authorities in judicial procedures in civil and commercial ~~and criminal~~ matters⁴⁵.

In addition, it lays down rules on:

- (a) the use of videoconferencing or other distance communication technology for purposes other than taking of evidence under Regulation (EU) 2020/1783;
- (b) the application of electronic trust services;
- (c) the legal effects of electronic documents;
- (d) electronic payment of fees.

⁴⁴ Following the Member States' contributions, a more general notion of the scope of the Regulation has been reintroduced as it represents a standard introductory provision.

⁴⁵ The provisions on communication between natural or legal persons and competent authorities do not apply in criminal matters. This type of communication occurs usually in the national context and is regulated under national law of the Member States.

2. This Regulation shall apply to electronic communication **in judicial cooperation procedures in civil, commercial and criminal matters, as specified in Articles 3 and 4**, and hearing⁴⁶ through videoconferencing or other means of distance communication technology⁴⁷ **in civil, commercial and criminal matters**, as specified in Articles ~~3, 4~~, 7 and 8.

~~This Regulation shall apply to:~~

- ~~(a) electronic communication between competent authorities in the context of the legal acts listed in Annex I and Annex II;~~
- ~~(b) electronic communication between natural or legal persons and competent authorities, and electronic payment of fees in cross-border civil and commercial matters, in the context of the legal acts listed in Annex I; and~~
- ~~(c) videoconferencing in proceedings falling under the scope of the legal acts listed in Annex I and Annex II or in other civil and commercial matters, where one of the parties is present in another Member State.~~

⁴⁶ As “hearing” is used in the title of Chapter IV, this covers both Articles 7 and 8 and there is no need to make a distinction.

⁴⁷ This expression is already used in previous legislative texts (e. g. Regulation on taking of evidence, Regulation Brussels IIb) and is considered to be more future proof.

Article 2
Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) “*competent authorities*” means courts, public prosecutors’ offices, central authorities and other competent authorities as defined in and, ~~mentioned or listed~~ designated or notified in accordance with the legal acts ~~stated~~ listed in Annexes I⁴⁸ and II ~~or as designated or communicated by the Member States in accordance with these legal acts~~, as well as Union agencies and bodies⁴⁹ ~~and other authorities~~ taking part in judicial cooperation procedures in accordance with the provisions of the legal acts listed in Annex II., ~~and~~ **For the purposes of Articles 7 and 8⁵⁰ of this Regulation, competent authority also means any court {or other authority} competent under national or Union law⁵¹ to conduct remote hearings⁵² through videoconferencing or other distance communication technology in civil, and or commercial or criminal matters;**

⁴⁸ It is suggested that this definition includes insolvency practitioners in the meaning of Regulation 2015/848 as Article 28 of the Restructuring Directive (EU) 2019/1023 already obliges the Member States to “ensure that, in procedures concerning restructuring, insolvency and discharge of debt, the parties to the procedure, the practitioner and the judicial or administrative authority are able to perform by use of electronic means of communication, including in cross-border situations, at least the following actions: (a) filing of claims (...)”. Therefore, it is not this proposal which creates an obligation to set up and use additional system, on the contrary, such obligation stems from in Article 28(1)(a) of Directive (EU) 2019/1023 and it must be complied with by 17 July 2024 (Article 34 of this Directive).

⁴⁹ This deletion seeks to avoid qualifying national authorities which are involved in judicial cooperation procedures but do not qualify as competent authorities in the meaning of the legal instruments listed in Annex I as competent authorities in the meaning of this Regulation. This deletion also seeks to avoid placing internal communication between the competent authorities of one Member State within the scope of this Regulation.

⁵⁰ **This addition was made in order to cover all courts or other authorities which may be competent to hear a person, for instance any court which would be competent in cases where Article 8 is used to hear an affected person who has invoked a legal remedy before a court in the executing state in accordance with its national law pursuant to Article 33(1) of the Regulation 2018/1805.**

⁵¹ **This change was made according to the proposal of the French delegation.**

⁵² **The notions of civil, commercial and criminal law are autonomous concepts of Union law and whenever a hearing is conducted in those matters, regardless of how a hearing is called under national law, it is covered by this initiative.**

- (2) “*electronic communication*” means digital exchange of information over the internet or another electronic communication network;
- ~~(3) “*electronic document*” means a document transmitted as part of electronic communication[, including scanned paper documents];~~
- (4 3) “*decentralised IT system*” means a network of IT systems and interoperable access points, operating under the individual responsibility and management of each Member State, Union agency or body that enables the secure and reliable cross-border exchange of information;
- ~~(5 4) “*European electronic access point*” means ~~an interface~~ **a portal** which is accessible to natural and legal persons or their representatives⁵³ throughout the Union, connected to an interoperable access point in the context of the decentralised IT system, ~~which is accessible to natural and legal persons or their representatives throughout the Union;~~~~
- (6 5) “*fees*” means payments levied by competent authorities in the context of the proceedings under the legal acts listed in Annex I.

⁵³ The definition of a representative is left to national law.

CHAPTER II

COMMUNICATION BETWEEN COMPETENT AUTHORITIES

Article 3

Means of communication between competent authorities

1. ~~Written~~ Communication between competent authorities of different Member States pursuant to ~~in cases falling under the scope of~~ the legal acts listed in Annexes I and ~~Annex~~ II or between a national competent authority and a Union agency or body pursuant to ~~in cases falling under the scope of~~ the legal acts listed in Annex II, including the exchange of forms established by these acts, shall be carried out through a secure and reliable decentralised IT system.
2. Where electronic communication in accordance with paragraph 1 is not possible due to the disruption of the decentralised IT system, the nature of the transmitted material or exceptional circumstances, the transmission shall be carried out by the swiftest, most appropriate alternative means, taking into account the need to ensure a secure and reliable exchange of information.
3. Where the use of the decentralised IT system is not appropriate in view of the specific circumstances of the communication in question, any other means of communication may be used⁵⁴.

⁵⁴ **It is necessary to leave flexibility for the discretion of judges on how to record instances of other types of communication while respecting the procedural rights of the parties to the proceedings and the confidentiality of information (Article 86 of Regulation Brussels IIb, Article 42 of Insolvency Regulation).**

4. Paragraph 3 of this Article shall not apply to the exchange of forms provided by the instruments listed in Annexes I and ~~Annex~~ II. In cases where the **competent** authorities of different Member States are present in the same Member State for the purpose of assisting in the execution of judicial cooperation procedures under the legal acts listed in Annex II, they may exchange the forms through other appropriate means.
5. Each Member State may decide to use the decentralised IT system for ~~written~~ communication between its national authorities in cases falling under the scope of the legal acts listed in Annex I ~~and~~ or ~~Annex~~ II.
6. Union agencies or bodies may decide to use the decentralised IT system for communication within the agency or body in cases falling under the scope of the legal acts listed in Annex II⁵⁵.

⁵⁵ This issue was discussed at the Working Party of COPEN on 16 September 2022 where 17 Member States as well as Eurojust supported the use of the decentralised IT system in the communications between Eurojust national desks. Therefore, it has been made possible for the Union agencies or bodies to choose to use the decentralised IT system.

CHAPTER III

COMMUNICATION BETWEEN NATURAL OR LEGAL PERSONS AND COMPETENT AUTHORITIES IN CIVIL AND COMMERCIAL MATTERS

Article 4

Establishment of a European electronic access point

1. A European electronic access point shall be established on the European e-Justice Portal.
2. ~~to~~ The European electronic access point may⁵⁶ be used for electronic communication between natural or legal persons or their representatives and competent authorities ~~in cases falling under the scope of the legal acts listed in Annex I~~ in the following instances:
 - ~~(a) [Written communication from one Member State to another between natural or legal persons or their representatives and the competent authorities];~~
 - (1 a) ~~in~~ procedures provided for ~~by~~, in Regulation (EC) No 1896/2006, Regulation (EC) No 861/2007 and Regulation (EU) No 655/2014;
 - (2 b) ~~[in~~ procedures provided for ~~by~~ in Regulation (EC) No 805/2004;]
 - (3 c) ~~in~~ proceedings for recognition, declaration of enforceability or refusal of recognition ~~or enforceability~~ provided for ~~by~~ in Regulation (EC) 4/2009, Regulation (EU) 650/2012, (EU) 1215/2012, [Regulation (EU) 606/2013,] Regulation (EU) 2016/1103, Regulation (EU) 2016/1104, Regulation (EU) 2019/1111;

⁵⁶ “May” is specifically used to ensure that any other methods of communication, especially national IT systems, may be used. However, mentioning this in the text itself would open up questions of which other methods should be added and specifications regarding the fact that national IT systems are not available for cross-border communication (due to language restrictions etc.) would have to be made.

(4 d) ~~in~~ procedures related to the issuance, rectification and withdrawal of:

- extracts provided for ~~by~~ in Regulation (EC) 4/2009,
- the European Successions Certificate and the attestations provided for ~~by~~ in Regulation (EU) 650/2012,
- certificates provided for ~~by~~ in Regulation (EU) 1215/2012,
- certificate provided for ~~by~~ in Regulation (EU) 606/2013,
- attestations provided for ~~by~~ in Regulation (EU) 2016/1103,
- attestations provided for ~~by~~ in Regulation (EU) 2016/1104,
- certificates provided for ~~by~~ in Regulation (EU) 2019/1111;

(e) lodging of a claim by a foreign creditor in insolvency proceedings under Article 53 of Regulation (EU) 2015/848;

(b f) ~~Written~~⁵⁷ Communication between natural or legal persons or their representatives with the Central Authorities under Regulation (EC) 4/2009 and Regulation (EU) 2019/1111 or the competent authorities under Chapter IV of Directive 2003/8/EC.

~~2. The Commission shall be responsible for the technical management, development, maintenance, security and support of the European electronic access point.~~

⁵⁷ Covered by Recital 8a.

3. The European electronic access point shall allow natural and legal persons or their representatives to, in the instances referred to in paragraph 2, ~~file claims, launch requests~~ ~~introduce~~ to initiate or engage in procedures, send, and receive and store procedurally relevant information or documents and communicate with the competent authorities or be served with judicial or extrajudicial documents.

Without prejudice to Articles ~~5 and~~ 9 of this Regulation, the communication through the European electronic access point shall comply with the applicable procedural provisions of Union ~~or~~ and national law. ~~In particular, this Regulation does not affect the applicable rules on electronic service of documents.~~

4. Competent authorities shall accept electronic communication transmitted through the European electronic access point **in the instances referred to in paragraph 2⁵⁸**.
5. Competent authorities shall communicate with natural and legal persons or their representatives **in the instances referred to in paragraph 2⁵⁹** or may serve documents on them through the European electronic access point, where that natural or legal person or their representative gave prior express consent to the use of that means of communication or method of service. Each consent shall be specific to the procedure in which it is given⁶⁰.
- ~~2~~ 6. The Commission shall be responsible for the technical management, development, maintenance, security, accessibility⁶¹, and support of the European electronic access point.

⁵⁸ **This change was made according to the proposal of the Swedish delegation.**

⁵⁹ **The Swedish delegation proposed to add this clarification after “European electronic access point”. However, it was moved since it would be possible to serve documents also in cases outside of the instances referred to in paragraph 2 according to the amendments made to the Regulation on the service of documents.**

⁶⁰ The notion of two separate consents has been clarified in Recital 17 that “where this Regulation requires consent for the use of the European electronic access point, such consent should be specific to the procedures in question and should be given separately for the purposes of communication and service of documents.”

⁶¹ The European Disability Forum has suggested additions regarding the accessibility of the European electronic access point to ensure it is compliant with the European Accessibility Act (EU) 2019/882.

Article 5

Use of the European electronic access point Means of communication between natural or legal persons and competent authorities

1. ~~Written communication between natural or legal persons and competent authorities falling within the scope of the legal acts listed in Annex I, may be carried out by the following electronic means:~~
 - (a) ~~Natural or legal persons or their representatives may choose to use the European electronic access point; or~~
 - (b) ~~national IT portals systems, where available.~~
2. ~~Competent authorities shall accept electronic communication under Article 5(1), transmitted through the European electronic access point [or national IT portals systems, where available].~~

~~Competent authorities shall communicate with natural and legal persons or their representatives through the European electronic access point, where that natural or legal person or their representative gave prior express consent to the use of this means of communication. This consent shall be specific to the procedure in which it is given.~~
3. ~~Communication under paragraph 1 shall be considered equivalent to written communication under the applicable procedural rules.~~

Article 6

Obligation to accept electronic communication

- ~~Competent authorities shall accept electronic communication under Article 5(1), transmitted through the European electronic access point or national IT portals, where available.~~

CHAPTER IV

HEARING THROUGH VIDEOCONFERENCING OR OTHER DISTANCE COMMUNICATION TECHNOLOGY

Article 7

*Hearing Participation to in a hearing through videoconferencing or other distance communication
technology in civil and commercial matters*

1. Without prejudice to specific provisions regulating the use of videoconferencing or other distance communication technology in proceedings under Regulations (EU) 2020/1783⁶², (EC) 861/2007 and (EU) 655/2014, in proceedings in civil and commercial matters where one of the parties is present in another Member State, competent authorities may allow⁶³ the participation of the parties⁶⁴ and their legal representatives in a hearing through videoconferencing or other distance communication technology.
2. **The procedure for holding a hearing through videoconferencing or other distance communication technology shall be regulated by the national law of the Member State conducting the hearing. Subject to paragraph 1, the national law of the Member State holding the hearing through videoconferencing or other distance communication technology, shall apply [to, in particular, the procedure for initiating and conducting the hearing, and where provided for by national law, obtaining the opinion of the parties]**⁶⁵.

⁶² This Regulation and the Regulation on the taking of evidence apply independently, see the new Recital 21a.

⁶³ **Some delegations asked to reintroduce the condition related to the availability of the technology. However, since the decision whether a hearing would be held through videoconferencing is left up to the competent authority, it is clear that where such technology is not available, such a hearing cannot be held.**

⁶⁴ **Both singular “party” or plural “parties” is covered by this expression.**

⁶⁵ This new version of Article 7 is the outcome of the discussions at the meetings of the Working Party. Delegations supported 1) broad concept of this Article 2) discretion of the court 3) inclusion of assisting persons to the hearing – see Recital 21a 4) clarification of the relationship with national law.

OPTION 1

~~— In civil or commercial matters, Wwithout prejudice to specific provisions regulating the use of videoconferencing or other distance communication technology in proceedings under the legal acts listed in Annex I the Regulation (EU) 2020/1783 and in proceedings under Regulation (EC) 861/2007 and Regulation (EU) 655/2014, and upon request of a party to proceedings falling under the scope of these legal acts or in other civil and commercial matters where one of the parties is present in another Member State, or upon request of their legal or authorised representative, competent authorities shall allow their participation to a hearing competent authorities may[, on their own motion or upon request of a party or upon request of their representative], authorise the participation to a hearing of parties [or other participants to the hearing] present in another Member State by videoconferencing or other distance communication technology, provided that:~~

~~(a) — such technology is available [, and~~

~~(b) — the other party or parties to the proceedings were given the possibility to submit an opinion on the use of videoconferencing or other distance communication technology.]~~

~~2. — A request for conducting an oral hearing through videoconferencing or other distance communication technology may be refused by the competent authority where the particular circumstances of the case are not compatible with the use of such technology.~~

~~3. — Competent authorities may on their own motion allow the participation of parties to hearings by videoconference, provided that all parties to the proceedings are given the possibility to submit an opinion on the use of videoconferencing or other distance communication technology.~~

~~3 4. — Subject to this Regulation, the procedure for requesting and conducting a videoconference shall be regulated by the national law of the Member State conducting the videoconference.~~

OPTION 2:

1. ~~In civil and commercial matters, when national law provides for the possibility of remote hearing in domestic cases and without~~ Without prejudice to specific provisions regulating the use of videoconferencing or other distance communication technology in proceedings under the Regulation (EU) 2020/1783 and in proceedings under Regulation (EC) 861/2007 and Regulation (EU) 655/2014 the legal acts listed in Annex I, and upon request of a party to proceedings falling under the scope of these legal acts or in other civil and commercial matters where one of the parties is present in another Member State, or upon request of their legal or authorised representative, competent authorities shall allow their participation to a hearing ~~competent authorities may authorise the participation to a hearing of parties [or other participants to the hearing] present in another Member State by videoconferencing or other distance communication technology, provided that:~~
- (a) ~~such technology is available, and~~
- (b) ~~the other party or parties to the proceedings were given the possibility to submit an opinion on the use of videoconferencing or other distance communication technology.~~
2. ~~A request for conducting an oral hearing through videoconferencing or other distance communication technology may be refused by the competent authority where the particular circumstances of the case are not compatible with the use of such technology.~~
3. ~~Competent authorities may on their own motion allow the participation of parties to hearings by videoconference, provided that all parties to the proceedings are given the possibility to submit an opinion on the use of videoconferencing or other distance communication technology.~~
42. ~~Subject to this Regulation, The the procedure for requesting and conducting a videoconference shall be regulated by the national law of the Member State conducting the videoconference.~~

~~NEXT TEXT AFTER OPTION 1 OR 2:~~

~~5. Requests under paragraph 1 may be submitted via the European electronic access point and through national IT portals, where available.~~

~~fArticle 8~~

~~Hearing through videoconferencing or other distance communication technology in criminal proceedings matters~~

1. Where the competent authority of a Member State requests the hearing of a suspect, accused or convicted person present in another Member State in proceedings under the legal acts listed in Annex II:

- Council Framework Decision 2002/584/JHA, **in particular Article 18(1)(a) thereof,**
- **Council Framework Decision 2008/909/JHA, in particular Article 6(3) thereof,**
- Council Framework Decision 2008/947/JHA, **in particular Article 17(4) thereof,**
- Council Framework Decision 2009/829/JHA, **in particular Article 19(4) thereof,**
- Directive 2011/99/EU, **in particular Article 6(4) thereof,**
- Regulation (EU) 2018/1805, **in particular Article 33(1) thereof,**

~~[with the exception of the Council Framework Decision 2002/465/JHA and the Directive 2014/41/EU]~~ the competent authority of the other Member State shall allow their participation to in the hearing by through videoconferencing or other distance communication technology, provided that:

- (a) such technology is available;

- (b) the particular circumstances of the case justify the use of such technology; and
- (c) the suspect, accused or convicted persons expressed consent on the use of videoconferencing or other distance communication technology. Without prejudice to the principle of a fair trial, the consent of these persons may not be required where the participation in a hearing in person may pose a threat to public security or **public health**. ~~Before expressing consent on the use of videoconferencing or other distance communication technology the suspect or the accused person shall have the possibility to seek the advice of a lawyer in accordance with Directive 2013/48/EU.~~⁶⁶

- 1a. Where in proceedings under Regulation (EU) 2018/1805 of the European Parliament and of the Council, the competent authority of a Member State requests a hearing of an affected person as defined in Article 2, point 10 of that Regulation, other than a suspect, accused or convicted person, present in another Member State, such hearing may be conducted through videoconferencing or other distance communication technology provided that the conditions of paragraph 1, points a) and b) of this Article are met.
2. ~~Paragraph 1 This Article~~ is without prejudice to the ~~provisions regulating other Union legal acts allowing for~~ the use of videoconferencing or other distance communication technology in ~~the legal acts listed in Annex II criminal matters~~.
3. Subject to this Regulation, the procedure for conducting a videoconference shall be regulated by the national law of the Member State ~~conducting~~ requesting the videoconference.
4. The confidentiality of communication between suspects, accused or convicted persons and their lawyer before and during the hearing through videoconferencing or other distance communication technology shall be ensured.

⁶⁶ See the new Recital 21b which was introduced following discussions at the last Working Party meeting.

5. Before hearing a child through videoconferencing or other distance communication technology, holders of parental responsibility as defined in Article 3, point 2 of Directive (EU) 2016/800 of the European Parliament and of the Council⁶⁷ or another appropriate adult as referred to in Article 5(2) of that Directive shall be informed promptly. When deciding whether to hear a child through videoconferencing or other distance communication technology, the competent authority shall take into account the best interests of the child.
6. Where the recording of hearings is provided for under the national law of a Member State for domestic cases, the same rules shall apply also to hearings through videoconferencing or other distance communication technology in cross-border cases. Member States shall take appropriate measures in accordance with national law to ensure that such records are secured and not publicly disseminated.
- ~~7. A suspect, an accused and the convicted person shall have the right to an effective legal remedy under national law in the event of a breach of this Article.⁶⁸~~

⁶⁷ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1–20).

⁶⁸ See the new Recital 21c.

CHAPTER V

TRUST SERVICES, LEGAL EFFECTS OF ELECTRONIC DOCUMENTS AND ELECTRONIC PAYMENT OF FEES

Article 9

Electronic signatures and electronic seals

1. The general legal framework for the use of trust services set out in Regulation (EU) No 910/2014 shall apply to the electronic communication under this Regulation.
2. Where a document transmitted as part of the electronic communication under Article 3 of this Regulation requires ~~or features~~ a seal or ~~handwritten~~ signature in accordance with the legal acts listed in Annexes I and II, the document shall feature a qualified electronic seals or qualified electronic signatures as defined in Regulation (EU) No 910/2014 ~~may be used instead~~.
3. Where a document transmitted as part of the electronic communication ~~under~~ in the instances referred to in Article ~~5~~ 4(2) of this Regulation requires ~~or features a seal or handwritten the~~ signature **of the person transmitting the document, the document shall feature an advanced electronic seals, advanced electronic signatures, qualified electronic seals or qualified electronic signatures that person shall fulfil this requirement by:**
 - a) **electronic identification with an assurance level as defined in Article 8(2)(c) of Regulation (EU) No 910/2014 ~~may be used instead~~⁶⁹; or**
 - b) **a qualified electronic signature as defined in Article 3(12) of Regulation (EU) No 910/2014.**

⁶⁹ **Changes in this Article were made to reflect the discussion at the last Working Party meeting and to facilitate access to justice of citizens not having qualified electronic signature while at the same time guaranteeing the authenticity of the document and the identity of the person transmitting the document.**

Article 10

Legal effects of electronic documents

Documents transmitted as part of electronic communication shall not be denied legal effect or be considered inadmissible in the context of cross-border judicial procedures under the legal acts listed in Annexes I and ~~Annex~~ II solely on the ground that they are in electronic form.

Article 11

Electronic payment of fees

1. Member States shall provide for the possibility of electronic payment of fees, including from Member States other than where the competent authority is situated.
2. ~~Member States shall provide for technical means allowing the payment of the fees referred to in paragraph 1 through the European electronic access point.~~ Where the available means of electronic payment of fees so allow, they shall be accessible through the European electronic access point.

CHAPTER VI

PROCEDURAL PROVISIONS AND EVALUATION

Article 12

Adoption of implementing acts by the Commission

1. The Commission shall adopt implementing acts establishing the decentralised IT system, setting out the following:
 - (a) the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;
 - (b) the technical specifications for communication protocols;
 - (c) the information security objectives and relevant technical measures ensuring minimum information security standards and a high level of cybersecurity for the processing and communication of information within the decentralised IT system;
 - (d) the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;
 - (e) digital procedural standards as defined in Article 3(9) of Regulation (EU) 2022/850;

- (f) an implementation timetable laying down, *inter alia*, the dates of the availability of the reference implementation software, referred to in Article 13, its installation by the competent authorities⁷⁰, and, where relevant, completion of the adjustments to national IT systems necessary for ensuring compliance with the requirements referred to in points (a) - (e); and
- (g) the technical specifications for the European electronic access point, including the means used for the electronic identification of the user of the European electronic access point, at the assurance level of which shall be at least as high as the assurance level as defined in Article 8(2)(c)⁷¹ of the Regulation (EU) 910/2014 and the retention period for storing information and documents.
2. The implementing acts referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 16.
 3. The implementing acts establishing the decentralised IT system for the legal acts listed in ~~Annex I~~, points 3 and 4 of Annex I and the legal acts listed in ~~Annex II~~, points 2, 6 and 10 and 11 of Annex II shall be adopted by [2 years after the entry into force].
 4. The implementing acts establishing the decentralised IT system for the legal acts listed in ~~Annex I~~, points 1, 7a, 8 and 9 of Annex I and the legal act listed in ~~Annex II~~, points 4 6 and 9a of Annex II shall be adopted by [3 years after the entry into force].

⁷⁰ **The Dutch delegation proposed to specify the competent authorities in the Member States that opt to use this software and to add a deadline for the availability of the relevant technical specifications at least two years before implementation. However, the first addition would be redundant as the installations only concern the Member States that will opt to use this software. Moreover, as is stated in the first sentence, the implementation timetable will be laid down in the implementing act.**

⁷¹ **According to Article 8 of the eIDAS Regulation, the assurance levels of electronic identification schemes are low, substantial, and high. Article 8(2)(c) refers to high level of assurance.**

5. The implementing acts establishing the decentralised IT system for the legal acts listed in ~~Annex I~~, points 6, 10, 11 of Annex I and the legal acts listed in ~~Annex II~~, points 3, 4, 5 and 9 of Annex II shall be adopted by [5 years after the entry into force].
6. The implementing acts establishing the decentralised IT system for the legal acts listed in ~~Annex I~~, points 2, 5, 7 and 12 of Annex I and the legal acts listed in ~~Annex II~~, points 1, 7 and 8 of Annex II shall be adopted by [6 years after the entry into force].
7. **The timetable for the adoption of the implementing acts according to this Article and the transition period according to Article 24 is set out in Annex III.**

Article 13

Reference implementation software

1. The Commission shall be responsible for the creation, maintenance and development of reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system. The creation, maintenance and development of the reference implementation software shall be financed from the general budget of the Union.
2. The Commission shall provide, maintain and support on a free-of-charge basis the reference implementation software.
3. The reference implementation software shall offer a common interface to communicate with other national IT systems.

Article 14

Costs of the decentralised IT system, European electronic access point and national IT portals systems

1. Each Member State or entity **operating an** authorised ~~to operate an e-CODEX~~ access point **as defined in Article 3(4) of Regulation (EU) 2022/850 of the European Parliament and of the Council**⁷² shall bear the costs of the installation, operation and maintenance of the decentralised IT system's access points for which they are responsible. ~~which are located on their territory. [Member States shall not operate their access points in third countries.]~~
2. Each Member State or entity **operating an** authorised ~~to operate an e-CODEX~~ access point **as defined in Article 3(4) of Regulation (EU) 2022/850 of the European Parliament and of the Council** shall bear the costs of establishing and adjusting its relevant national IT systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.
3. Member States shall not be prevented from applying for grants to support the activities referred to in paragraphs 1 and 2, under the relevant Union financial programmes.
4. Union agencies and bodies shall bear the costs of the installation, operation and maintenance of the components comprising the decentralised IT system under their responsibility.
5. Union agencies and bodies shall bear the costs of establishing and adjusting their case-management systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.
6. The Commission shall bear all costs related to the European electronic access point.

⁷² **This part was added to align the definition of the entity operating an authorised e-CODEX access point with the e-CODEX Regulation.**

Article 15

Protection of information transmitted

1. The competent authority shall be regarded as a controller within the meaning of Regulation (EU) 2016/679, Regulation (EU) 2018/1725 or Directive (EU) 2016/680 with respect to the processing of personal data sent or received through the decentralised IT system.
2. The Commission shall be regarded as a controller within the meaning of Regulation (EU) 2018/1725 with respect to personal data processing by the European electronic access point.
3. Competent authorities shall ensure that information transmitted in the context of cross-border judicial procedures to another competent authority, which is deemed confidential ~~in~~ under the law of the Member State from which the information is being sent, ~~remains confidential in accordance with~~ shall be subject to the rules on confidentiality laid down by Union and the national law of the Member State to which the information is being sent.

Article 16

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011⁷³.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

⁷³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13–18).

Article 17
Monitoring and Evaluation

1. ~~Every five~~ Six years after the date of ~~application~~ entry into force of the implementing act referred to in of Article ~~25~~ 12(6) and every five years thereafter, the Commission shall carry out an evaluation of this Regulation and present to the European Parliament and to the Council a report supported by information supplied by the Member States and collected by the Commission.
2. ~~As of [...] 2025,~~ Unless an equivalent notification procedure applies under other Union legal acts, the Member States shall provide the Commission on an annual basis with the following information relevant for the evaluation of the operation and application of this Regulation ~~on,~~ ~~where available, on:~~
 - (a) as of four years after the date of entry into force of each of the implementing acts referred to in Article 12(3)-(6), the costs incurred ~~under Article 14(2) of this Regulation~~ for establishing or adjusting their relevant national IT systems to make them interoperable with the access points;
 - (b) as of five years after the entry into force of the implementing act referred to in Article 12(4), the length of the first instance judicial proceedings, from the reception of the application by the competent authority until the date of the decision, under the legal acts listed in Annex I points 3, 4 and 8 ~~and Annex II~~, where available;
 - (c) as of five years after the date of entry into force of each of the implementing acts referred to in Article 12(3)-(6), the ~~average~~ length of time to transmit information on the decision ~~whether to recognise and execute~~ on recognition and execution of a judgement or a judicial decision or, if not applicable, to transmit the results of the execution of such a judgement or a judicial decision, under the legal acts listed in ~~Annex II~~ points 2-8 and ~~10~~ 9a-11 of Annex II, grouped by corresponding legal act, where available;

~~3. Each Member State shall designate one or more competent authorities to provide the Commission on an annual basis with the following data:~~

~~(a d) as of five years after the date of entry into force of each of the implementing acts referred to in Article 12(3)-(6), the number of cases requests handled by that authority transmitted where communication was carried out by means other than through the decentralised IT system in accordance with Article 3(2 1), where available;~~

~~(b e) the number of hearings conducted by that authority, where videoconferencing or other distance communication technology was used for oral hearings in accordance with Article 7 and Article 8;~~

4 3. Each Member State shall designate one or more⁷⁴ competent authorities to provide the Commission as of one year after the date of application of this Regulation, and on an annual basis thereafter, the number of hearings conducted by that authority, where videoconferencing or other distance communication technology was used in accordance with Articles 7 and 8.

4. The reference implementation software and, where equipped to do so, the national back-end system shall programmatically collect the data referred to in points (b), (c) and (a d) of paragraph 3 2 and transmit them to the Commission on an annual basis.

⁷⁴ This allows Member States to either designate one, two or more courts (as a monitoring sample) or to provide data from all courts.

Article 18

Information to be communicated to the Commission

15. Member States shall communicate by [*six months after entry into force*] to the Commission the following information with a view to making it available through the European e-Justice Portal:

~~(a) details descriptions of national IT systems portals used for the purpose of Article 5 (1), where applicable;~~

~~(b)~~ a) a description of the national laws and procedures applicable to videoconferencing in accordance with Articles 7 and 8;

~~(c)~~ b) information on fees due in ~~cross-border cases in~~ proceedings under the legal acts listed in Annex I;

~~(d)~~ c) details on the electronic payment methods available for fees due in cross-border cases;

Member States shall communicate to the Commission any changes with regard to this information without delay.

2 6. Member States may notify the Commission if they are in a position to operate the decentralised IT system earlier than required by this Regulation. The Commission shall make such information available electronically, in particular through the European e-Justice Portal.

CHAPTER VII

AMENDMENTS TO LEGAL ACTS IN THE AREA OF JUDICIAL COOPERATION IN CIVIL AND COMMERCIAL MATTERS

Article 19

Amendments to Regulation (EC) No 1896/2006⁷⁵

Regulation (EC) No 1896/2006 is amended as follows:

{(1) In Article 7, paragraph 5 is replaced by the following:

- “5. The application shall be submitted ~~in paper form~~, by electronic means of communication provided for in Article 5 4 of Regulation (EU) .../...[*this Regulation*]^{76*}, in paper form⁷⁷ or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin
.”}

⁷⁵ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).

⁷⁶ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁷⁷ Following the discussion of the Working Party, changes were made to emphasise the priority of using digital means of communication.

(2) In Article 7, paragraph 6, the first sub-paragraph is replaced by the following:

“6. The application shall be signed by the claimant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with paragraph 5, ~~it the requirement to sign the application~~ shall be ~~signed~~ fulfilled in accordance with Article 9(3) of Regulation (EU) .../...[*this Regulation*]^{78*}. The electronic signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.”.

(3) In Article 13 a new paragraph 2 is inserted as follows:

“(2) The European order for payment may be served on the defendant by electronic means of service provided for in Article 19 [and Article 19a]⁷⁹ of Regulation (EU) 2020/1784⁸⁰.”

⁷⁸ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁷⁹ **This insertion depends on which option is chosen in Article 22c.**

⁸⁰ **The requirement for a proof of receipt is fulfilled under both options listed in Article 19 of Regulation 2020/1784 (service of documents). This is also the case for service under paragraph 1(a) of this Article, which uses qualified electronic registered delivery services in accordance with Article 44 of Regulation 910/2014 (eIDAS). Paragraph 1(f) thereof requires the date of receipt to be indicated by a qualified electronic timestamp. In addition, the requirement for acknowledgment of receipt is provided for in both options of Article 22c.**

(3 4) Article 16 is amended as follows:

{(a) paragraph 4 is replaced by the following:

“4. The statement of opposition shall be submitted ~~in paper form~~ or by electronic means of communication provided for in Article 5 4 of Regulation (EU) .../...[*this Regulation*]⁸¹*, in paper form⁸² or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin.”}

(b) in paragraph 5 4 5, the first subparagraph is replaced by the following:

“~~4 5~~ 5. The statement of opposition shall be signed by the defendant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with paragraph 5 4 of this Article, **it the requirement to sign the application** shall be **signed fulfilled** in accordance with Article 9(3) of Regulation (EU) .../...[*this Regulation*]⁸³*. The electronic signature shall be recognised in the Member State of origin ~~and may not be made subject to additional requirements~~ **and may not be made subject to additional requirements**.”.

⁸¹ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁸² Following the discussion of the Working Party, changes were made to emphasise the priority of using digital means of communication.

⁸³ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

Article 20
Amendments to Regulation (EC) No 861/2007⁸⁴

Regulation (EC) No 861/2007 is amended as follows:

(1) In Article 4, paragraph 1 is replaced by the following:

“1. The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I to this Regulation, and lodging it with the court or tribunal with jurisdiction directly, by post, by electronic means of communication provided for in Article 54 of Regulation (EU) .../[*this Regulation*]^{85*} or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced. The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.”.

(2) In article 13, paragraph 1(a) is replaced by the following:

“(a) by postal service,”

(3) In Article 13, paragraph 1(b) is replaced by the following:

“(b) by electronic means of service provided for in Article 19 [and Article 19a]⁸⁶ of Regulation (EU) 2020/1784; or”.

⁸⁴ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).

⁸⁵ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁸⁶ This insertion depends on which option is chosen in Article 22c.

(4) In Article 13, paragraph 1, a new ~~letter~~ point (c) is inserted as follows:

“(c) through the European electronic access point established under Article 4(1) of Regulation (EU) ... / ... [this Regulation]⁸⁷.”

(5) In Article 13, paragraph 2 is replaced by the following:

“2. All ~~written~~ communications not referred to in paragraph 1 between the court or tribunal and the parties or other persons involved in the proceedings shall be carried out by electronic means attested by an acknowledgment of receipt, where such means are technically available and admissible in accordance with the procedural rules of the Member State in which the European Small Claims Procedure is conducted, provided that the party or person has accepted in advance such means of communication or is, in accordance with the procedural rules of the Member State in which that party or person is domiciled or habitually resident, under a legal obligation to accept such means of communication or by electronic means of communication provided for in Article 5 4 of Regulation (EU).../... [*this Regulation*].”

(2 6) In Article 15a, paragraph 2 is replaced by the following:

“2. The Member States shall ensure that the parties can make electronic payments of court fees by means of distance payment methods which allow the parties to make the payment also from a Member State other than the Member State in which the court or tribunal is situated, in accordance with Article 11 of Regulation (EU) .../... [*this Regulation*]^{88*}.”

⁸⁷ **The purpose of this provision is to provide for the situation when a Member State chooses to use the European electronic access point for the service of documents in a national case.**

⁸⁸ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

Article 21
Amendments to Regulation (EU) No 655/2014⁸⁹

Regulation (EU) No 655/2014 is amended as follows:

(1) In Article 8, paragraph 4 is replaced by the following:

“4. The application and supporting documents may be submitted by any means of communication, including electronic, which are accepted under the procedural rules of the Member State in which the application is lodged or by the electronic means of communication provided for in Article 5 4 of Regulation (EU) .../[*this Regulation*]^{90*}.”

(2) In Article 17, paragraph 5 is replaced by the following:

“5. The decision on the application shall be brought to the notice of the creditor in accordance with the procedure provided for by the law of the Member State of origin for equivalent national orders or by the electronic means of communication provided for in Article 5 4 of Regulation (EU) .../[*this Regulation*]^{91*}.”

⁸⁹ Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L 189, 27.6.2014, p. 59).

⁹⁰ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁹¹ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

(3) Article 29 is replaced by the following:

“Article 29

Transmission of documents

1. Where this Regulation provides for transmission of documents in accordance with this Article, such transmission shall be carried out in accordance with Regulation (EU) .../...[this Regulation]^{92*} as regards the communication between authorities, or by any appropriate means where communication is to be carried out by creditors, provided that the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible.”.
2. The court or authority that received documents in accordance with paragraph 1 of this Article shall, by the end of the working day following the day of receipt, send to:
 - (a) the authority that transmitted the documents an acknowledgment of receipt, in accordance with Article 3 of Regulation (EU) .../...[*this Regulation*]^{93*}; or
 - (b) creditor or bank that transmitted the documents an acknowledgment of receiptⁱ employing the swiftest possible means of transmission.

The court or authority that received documents in accordance with paragraph 1 of this Article shall use the standard form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2).”.

⁹² * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁹³ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

(4) Article 36 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The application for a remedy pursuant to Article 33, 34 or 35 shall be made using the remedy form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2).

The application may be made at any time and may be submitted:

- (a) by any means of communication, including electronic means, which are accepted under the procedural rules of the Member State in which the application is lodged;
- (b) by the electronic means of communication provided for in Article 54 of Regulation (EU) .../...[*this Regulation*]^{94*}.”

(b) paragraph 3 is replaced by the following:

“3. Except where the application was submitted by the debtor pursuant to Article 34(1), point (a) or pursuant to Article 35(3), the decision on the application shall be issued after both parties have been given the opportunity to present their case, including by such appropriate means of communication technology as are available and accepted under the national law of each of the Member States involved or under Regulation (EU) .../...[*this Regulation*]^{95*}.”

⁹⁴ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁹⁵ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

Article 22
Amendments to Regulation ~~848/2015~~ 2015/848⁹⁶

Regulation (EU) ~~848/2015~~ 2015/848 is amended as follows:

- (1) In Article 42, paragraph 3, the first sentence is replaced by the following: “The cooperation referred to in paragraph 1 of this Article shall be implemented in accordance with Article 3 of Regulation (EU) .../... [*this Regulation*]^{97*}”.
- (2) Article 53 is replaced by the following:

“Article 53

Right to lodge claims

Any foreign creditor may lodge claims in insolvency proceedings by any means of communication, which are accepted by the law of the State of the opening of proceedings or by the electronic means of communication provided for in Article 5 4 of Regulation (EU) .../...[*this Regulation*]^{98*}.

Representation by a lawyer or another legal professional shall not be mandatory for the sole purpose of lodging of claims.”.

⁹⁶ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19)

⁹⁷ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁹⁸ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

(3) In Article 57 paragraph 3, the first sentence is replaced by the following:

“The cooperation referred to in paragraph 1 of this Article shall be implemented in accordance with Article 3 of Regulation (EU) .../... [*this Regulation*]^{99*}”.

Article 22a¹⁰⁰

Amendments to Regulation (EC) No 805/2004¹⁰¹

Regulation (EU) 805/2004 is amended as follows:

In Article 13, paragraph 1, a new ~~letter~~ point (e) is inserted as follows:

“(e) electronic means of service provided for in Article 19 [and Article 19a]¹⁰² of Regulation (EU) 2020/1784.”

⁹⁹ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

¹⁰⁰ The amendments will be sorted chronologically at the final stage.

¹⁰¹ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, 30.4.2004, p. 15).

¹⁰² **This insertion depends on which option is chosen in Article 22c.**

Article 22b
Amendments to Regulation (EU) No 606/2013¹⁰³

Regulation (EU) 606/2013 is amended as follows:

(1) In Article 8, paragraph 2 is replaced by the following:

“ 2. Where the person causing the risk resides in the Member State of origin, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State of origin, the notification shall be effected by registered letter with acknowledgment of receipt or equivalent or by electronic means of service provided for in Article 19 [and Article 19a]¹⁰⁴ of Regulation (EU) 2020/1784. Where the person causing the risk resides in a third country, the notification shall be effected by registered letter with acknowledgment of receipt or equivalent.

Situations in which the address of the person causing the risk is not known or in which that person refuses to accept receipt of the notification shall be governed by the law of the Member State of origin.”

¹⁰³ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181, 29.6.2013, p. 4).

¹⁰⁴ **This insertion depends on which option is chosen in Article 22c.**

(2) In Article 11, paragraph 4 is replaced by the following:

“4. Where the person causing the risk resides in the Member State of origin, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State of origin, the notification shall be effected by registered letter with acknowledgment of receipt or equivalent or by electronic means of service provided for in Article 19 [and Article 19a]¹⁰⁵ of Regulation (EU) 2020/1784. Where the person causing the risk resides in a third country, the notification shall be effected by registered letter with acknowledgment of receipt or equivalent.

Situations in which the address of the person causing the risk is not known or in which that person refuses to accept receipt of the notification shall be governed by the law of the Member State addressed.”

¹⁰⁵ This insertion depends on which option is chosen in Article 22c.

Regulation (EU) 2020/1784 is amended as follows:

Option 1:

(1) Article 12, paragraph 5 is amended as follows:

“(5) The service of the refused document may be remedied through the service on the addressee, in accordance with this Regulation, of that document together with a translation into a language provided for in paragraph 1. In such a case, the date of service of the document shall be the date on which the document and its translation were served in accordance with the law of the Member State addressed **or with Article 19a**. However, where the law of a Member State requires a document to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document, determined in accordance with Article 13(2).”

¹⁰⁶ Delegations are invited to indicate their preference between Option 1 and Option 2 as proposed here. Option 1 focuses on creating a new Article 19a, as originally proposed by the Presidency in WK 12097/2022. Whereas Option 2 amends the existing Article 19, as Member States supported this idea during the last Working Party meeting. There are two disadvantages of Option 2 to be considered: 1) visibility of harmonised rules and possibility to use the European Electronic Access Point for service, 2) consolidated version is difficult to access (e. g. EUR-Lex), therefore references to individual paragraphs of Article 19 may be confused in practice.

In this Article, the bold parts are changes made in comparison to the Regulation on service of documents (recast).

¹⁰⁷ Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) (OJ L 405, 2.12.2020, p. 40).

(2) Article 12, paragraph 7 is amended as follows:

“(7) For the purposes of paragraphs 1 and 2, the diplomatic agents or consular officers in cases where service is effected in accordance with Article 17, and the authority or person in cases where service is effected in accordance with Article 18, 19, **19a** or 20 shall inform the addressee that the addressee may refuse to accept the document and that either form L in Annex I or a written declaration of refusal must be sent to those agents or officers or to that authority or person respectively.

(3) Article 13, paragraph 1 is amended as follows:

“(1) Without prejudice to Article 12(5), the date of service effected pursuant to Article 11 shall be the date on which the document was served in accordance with the law of the Member State addressed **or Article 19a.**”.

(4) **the following article is inserted after Article 19:**

“Article 19a

Electronic service through the European electronic access point

- (1) **The service of judicial documents may be effected directly on a person who has a known address for service in another Member State through the European electronic access point established under Article 4(1) of Regulation (EU) .../... [Digitalisation Regulation], provided that the addressee gave prior express consent to the use of this electronic means for serving documents in the course of these legal proceedings.**
- (2) **The addressee shall confirm the receipt of the documents with an acknowledgment of receipt, including the date of the receipt. Without prejudice to Article 12(5), the date of service of documents shall be the date specified in the acknowledgment of receipt.”**

(5) In Article 37, new paragraph 3 is added as follows:

“(3) Article 19a shall apply from the first day of the month following the period of three¹⁰⁸ years after the date of entry into force of the implementing acts referred to in Article 12(3) of Regulation (EU) .../[this Regulation].”

Option 2:

(1) Article 12, paragraph 5 is amended as follows:

“(5) The service of the refused document may be remedied through the service on the addressee, in accordance with this Regulation, of that document together with a translation into a language provided for in paragraph 1. In such a case, the date of service of the document shall be the date on which the document and its translation were served in accordance with the law of the Member State addressed **or with point (b) of Article 19a(1)**. However, where the law of a Member State requires a document to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document, determined in accordance with Article 13(2).”

(2) Article 13, paragraph 1 is amended as follows:

“(1) Without prejudice to Article 12(5), the date of service effected pursuant to Article 11 shall be the date on which the document was served in accordance with the law of the Member State addressed **or point (b) of Article 19(1)**.”

¹⁰⁸ The timeline depends on the final transitional provisions of this Regulation.

(3) Article 19 is amended as follows:

Article 19

Electronic service

1. The service of judicial documents may be effected directly on a person who has a known address for service in another Member State using the following methods:

(a) any electronic means of service available under the law of the forum Member State for the domestic service of documents, provided that:

- (i) the documents are sent and received using qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014 and the addressee gave prior express consent to the use of electronic means for serving documents in the course of legal proceedings; or
- (ii) the addressee gave prior express consent to the court or authority seised of the proceedings or to the party responsible for service of documents in such proceedings to the use of email sent to a specified email address for the purpose of serving documents in the course of those proceedings and the addressee confirms receipt of the document with an acknowledgement of receipt, including the date of receipt.

(b) the documents are sent and received through the European Electronic Access Point established by Regulation (EU) No .../... [this Regulation] and the addressee gave prior express consent to the use of this means for serving documents in the course of these legal proceedings and confirms receipt of the document with an acknowledgement of receipt, including the date of receipt. Without prejudice to Article 12(5), the date of service of documents shall be the date specified in the acknowledgment of receipt.

2. In order to guarantee the security of transmission, any Member State may specify and communicate to the Commission the additional conditions under which it will accept electronic service referred to in point **(a)(ii) 2** of paragraph 1, where its law sets stricter conditions in that respect or does not allow electronic service by email.

(4) In Article 37, new paragraph 3 is added as follows:

“(3) Article 19(1)(b) shall apply from the first day of the month following the period of three years after the date of entry into force of the implementing acts referred to in Article 12(3) of Regulation (EU) .../[this Regulation].”

CHAPTER VIII

AMENDMENTS TO LEGAL ACTS IN THE AREA OF JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article 23

Amendments ~~in~~ to Regulation (EU) 2018/1805¹⁰⁹

Regulation (EU) 2018/1805 is amended as follows:

(1) In Article 4, paragraph 1 is replaced by the following:

“1. A freezing order shall be transmitted by means of a freezing certificate. The issuing authority shall transmit the freezing certificate provided for in Article 6 of this Regulation directly to the executing authority or, where applicable, to the central authority referred to in Article 24(2) of this Regulation ~~in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~”.

(2) In Article 7, paragraph 2 is replaced by the following:

“2. The executing authority shall report to the issuing authority on the execution of the freezing order, including a description of the property frozen and, where available, providing an estimate of its value. Such reporting shall be carried out ~~in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~, without undue delay once the executing authority has been informed that the freezing order has been executed.”

¹⁰⁹ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1).

(3) In Article 8, paragraph 3 is replaced by the following:

“3. Any decision not to recognise or execute the freezing order shall be taken without delay and notified immediately to the issuing authority ~~in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~.”

(4) In Article 9, paragraph 4 is replaced by the following:

“4. The executing authority shall communicate, without delay ~~and in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~, the decision on the recognition and execution of the freezing order to the issuing authority.”

(5) In Article 10, paragraphs 2 and 3 are replaced by the following:

“2. The executing authority shall, immediately ~~and in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~, report to the issuing authority on the postponement of the execution of the freezing order, specifying the grounds for the postponement and, where possible, the expected duration of the postponement.”

“3. As soon as the grounds for postponement have ceased to exist, the executing authority shall immediately take the measures necessary for the execution of the freezing order and inform the issuing authority thereof ~~in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~.”

(6) In Article 12, paragraph 2 is replaced by the following:

“2. The executing authority may, taking into account the circumstances of the case, make a reasoned request to the issuing authority to limit the period for which the property is to be frozen. Such a request, including any relevant supporting information, shall be transmitted **directly to the issuing authority in accordance with Article 3 of Regulation (EU) .../...[this Regulation]**. When examining such a request, the issuing authority shall take all interests into account, including those of the executing authority. The issuing authority shall respond to the request as soon as possible. If the issuing authority does not agree to the limitation, it shall inform the executing authority of the reasons thereof. In such a case, the property shall remain frozen in accordance with paragraph 1 of this Article. If the issuing authority does not respond within six weeks of receiving the request, the executing authority shall no longer be obliged to execute the freezing order.”

(7) In Article 14, paragraph 1 is replaced by the following:

“1. A confiscation order shall be transmitted by means of a confiscation certificate. The issuing authority shall transmit the confiscation certificate provided for in Article 17 of this Regulation directly to the executing authority or, where applicable, to the central authority referred to in Article 24(2) of this Regulation, **in accordance with Article 3 of Regulation (EU) .../...[this Regulation]**.”

(8) In article 16, paragraph 3, the introductory wording, is replaced by the following:

“The issuing authority shall immediately inform the executing authority **in accordance with Article 3 of Regulation (EU) .../...[this Regulation]** where: (...)”

(9) In Article 18, paragraph 6 is replaced by the following:

“6. As soon as the execution of the confiscation order has been completed, the executing authority shall inform, **in accordance with Article 3 of Regulation (EU) .../...[this Regulation]**, the issuing authority of the results of the execution”.

(10) In Article 19, paragraph 3 is replaced by the following:

“3. Any decision not to recognise or execute the confiscation order shall be taken without delay and notified immediately to the issuing authority ~~in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~.”

(11) In Article 20, paragraph 2 is replaced by the following:

“2. The executing authority shall communicate, without delay ~~and in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~, the decision on the recognition and execution of the confiscation order to the issuing authority.”

(12) In Article 21, paragraph 3 is replaced by the following:

“3. The executing authority shall, without delay ~~and in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~, report to the issuing authority on the postponement of the execution of the confiscation order, specifying the grounds for the postponement and, where possible, the expected duration of the postponement”.

(13) In Article 21, paragraph 4 is replaced by the following:

“4. As soon as the grounds for postponement have ceased to exist, the executing authority shall take, without delay, the measures necessary for the execution of the confiscation order and inform the issuing authority thereof ~~in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~.”

(13a) In Article 25:

(a) the title should be replaced by the following:

“Means of communication”

(b) paragraph 1 is replaced by the following:

“1. Official communication under this Regulation between the issuing authority and the executing authority shall be carried out in accordance with Article 3 of Regulation (EU) .../...[*this Regulation*]¹¹⁰*.

Where a Member State has designated a central authority(ies), official communication with the central authority(ies) of another Member State. shall also be carried out in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].

Where necessary, the issuing authority and the executing authority shall consult each other without delay to ensure efficient application of this Regulation, using any appropriate means of communication.

For the purposes of this Regulation, where it is provided for the communication between the authorities to be carried out by any or any appropriate means, authorities should have discretion as to which method of communication to use.

¹¹⁰ * Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

(14) In Article 27, paragraphs 2 and 3 are replaced by the following:

- “2. The issuing authority shall immediately inform the executing authority, ~~in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~, of the withdrawal of a freezing order or confiscation order and of any decision or measure that causes a freezing order or confiscation order to be withdrawn.”
- “3. The executing authority shall terminate the execution of the freezing order or confiscation order, in so far as the execution has not yet been completed, as soon as it has been informed by the issuing authority in accordance with paragraph 2 of this Article. The executing authority shall send, without undue delay ~~and in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~, a confirmation of the termination to the issuing State.”

(15) In Article 31, paragraph 2, the third subparagraph, is replaced by the following:

“The consultation, or at least the result thereof, shall be recorded ~~in accordance with Article 3 of Regulation (EU) .../...[this Regulation]~~”.

CHAPTER IX

FINAL PROVISIONS

Article 24

Transitional provisions

1. Member States shall start using the decentralised IT system referred to in Articles 3(1) and ~~5(1) and~~ 4 (1) and (2) from the first day of the month following the period of ~~two~~ three years after the adoption of the implementing act referred to in Article 12(3).

They shall use that decentralised IT system to procedures instituted from the day referred to in the first subparagraph.

2. Member States shall start using the decentralised IT system referred to in Articles 3(1) and ~~5(1) and~~ 4 (1) and (2) from the first day of the month following the period of ~~two~~ three years after the adoption of the implementing act referred to in Article 12(4).

They shall use that decentralised IT system to procedures instituted from the day referred to in the first subparagraph.

3. Member States shall start using the decentralised IT system referred to in **Articles** 3(1), and ~~5(1) and~~ 4 (1) and (2) from the first day of the month following the period of ~~two~~ three years after the adoption of the implementing act referred to in Article 12(5).

They shall use that decentralised IT system to procedures instituted from the day referred to in the first subparagraph.

4. Member States shall start using the decentralised IT system referred to in **Articles 3(1), and ~~5(1) and~~ 4 (1) and (2)** from the first day of the month following the period of ~~two~~ three years after the adoption of the implementing act referred to in Article 12(6).

They shall use that decentralised IT system to procedures instituted from the day referred to in the first subparagraph.

Article 25

Entry into force and application¹¹¹

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [the first day of the month following the period of two years after the date of entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

¹¹¹ A distinction is made between the entry into force of this Regulation and the application of the arrangements introduced by it, which may be deferred. The purpose of the distinction is to enable the new systems provided for in the Regulation to be set up and to enable the Commission to adopt implementing measures.

ANNEX 4 I**Legal acts in the area of judicial cooperation in civil and commercial matters**

- (1) Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.
- (2) Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.
- (3) Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.
- (4) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.
- (5) Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.
- (6) Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.
- (7) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).
- (7a) Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters.

(8) Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

(9) Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

(10) Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

(11) Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

(12) Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.

ANNEX 2 II**Legal acts in the area of judicial cooperation in criminal matters**

- ~~(1) Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams.~~
- (2) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.
- (3) Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.
- (4) Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.
- (5) Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.
- (6) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.
- (7) Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.
- (8) Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.
- (9) Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

(9a) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.

(10) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

(11) Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.
