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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 (articles 1 to 15)

Delegations will find below the Presidency compromise text for the proposal for a Regulation on digitalisation of judicial cooperation for articles 1 to 15, which will be discussed during the meeting of the Working Party on e-Justice on 14 and 15 September 2022.

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter ~~and scope~~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~~ matters².

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.

¹ As the scope of the Regulation varies from one chapter to another, it is not possible to have a common provision on the scope of the Regulation. Therefore, it is proposed to limit Article 1 to the subject matter of the Regulation and to delineate the scope of the provisions of the Regulation within the related chapters.

² The provisions on communication between natural or legal persons and competent authorities do not apply in criminal matters.

~~2. 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.~~



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, mentioned or listed in the legal acts stated in Annexes I and II or as designated or communicated by the Member States in accordance with these legal acts**³, **as well as** Union agencies and bodies⁴ ~~and other authorities~~⁵ taking part in judicial cooperation procedures in accordance with the provisions of the legal acts listed in Annex II], **and for the purposes of Article 7 of this Regulation, any court competent in civil and commercial matters]**⁶;

³ This rewording is meant to ensure consistency between the definition of the competent authorities in the meaning of this Regulation and the competent authorities in the meaning of the legal instruments falling within the scope of the Regulation. The attention of the delegations is drawn to the fact that this definition may include professionals like notaries when they are competent authorities in the meaning of the legal instruments listed in Annex I. Reversely, this definition excludes insolvency practitioners in the meaning of Regulation 2015/848. If delegations share this interpretation, it could be clarified in a recital. Delegations are invited to share their opinion on this point.

⁴ The delegations are asked to share their views concerning the inclusion of the European public prosecutor in this definition and whether a reference to Union bodies is clear enough to include the EPPO.

⁵ 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.

⁶ This addition aims at ensuring consistency with Article 7 when this Article is applicable to procedures outside the scope of the instruments listed in Annex I. Of those who shared their opinion, more delegations have supported a broad scope of Article 7, including any civil and commercial procedure. If the scope of Article 8 was to be interpreted in a broad sense, as suggested by some delegations, such as covering for instance hearings under Article 33 (legal remedies) of the Regulation 2018/1805, a similar addition might be necessary to refer to any court competent in criminal matters for the purposes of Article 8.

- (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]⁷;
- (4) “*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) “*European electronic access point*” means 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) “*fees*” means payments levied by competent authorities in the context of the proceedings under the legal acts listed in Annex I.

⁷ The question remains whether it should be possible to file an application before a competent authority by sending through the European electronic access point a scanned copy of a paper document.

CHAPTER II

COMMUNICATION BETWEEN COMPETENT AUTHORITIES

Article 3

Means of communication between competent authorities⁸

⁸ Article 3 of this Regulation establishes an obligation for the competent authorities to communicate through a decentralised IT system. Chapter VII of the Regulation and the proposal for a directive accompanying this Regulation are supposed to amend the legal acts listed in Annex I and II accordingly.

The drafting of this revised text revealed potential uncertainties or inconsistencies between the general rules of Article 3 and the specific rules of the legal acts listed in Annex I and II. Firstly, the provisions of the legal acts are amended when they provide for specific means of communication. In such a case, these means of communication are replaced by a reference to Article 3 of this Regulation. But there are also provisions in these legal acts providing for communication between competent authorities without providing for a specific mean of communication. In this case, they are not amended. Nevertheless, Article 3 should also be applicable to these communication instances, as it is a general rule. For the sake of clarity, it could be worth considering whether a reference to Article 3 shall be made in these provisions.

Secondly, Article 3 provides for a mandatory use of the decentralised IT system. But in at least two cases, the amended provisions of the legal acts falling within the scope of the Regulation provide for an optional use of this system (use of the word: “may” in Article 25(3) of the Framework Decision 2002/584 on the European Arrest Warrant; in Article 16 (1) of the Framework Decision 2008/909 on mutual recognition of custodial sentences as modified by Articles 3 and 7 of the proposal for a directive). The consistency between the mandatory use of the decentralised IT system in Article 3 and the possibility offered by Article 86(2) of the Regulation 2019/111 to use “any mean that the court considers appropriate” for the direct cooperation and communication between courts is also questionable.

In addition, the relationship between this Regulation and Article 22a of the general approach as regards the digital information exchange in terrorism cases must be assessed, because the exceptions to the mandatory use of electronic communication are not the same in both texts. Paragraphs 1 and 2 of Article 22a are drafted as follows:

“1. *The communication between the competent national authorities and Eurojust under this Regulation shall be carried out through the decentralised IT system as defined in Regulation (EU) [.../...] of the European Parliament and of the Council* [Regulation on the digitalisation of judicial cooperation].*

2. *Where exchange of information in accordance with paragraph 1 is not possible due to the unavailability of the decentralised IT system or due to exceptional circumstances, it shall be carried out by the swiftest, most appropriate alternative means. Member States and Eurojust shall ensure that the alternative means of communication are reliable and provide an equivalent level of security.”*

The differences between both texts can be justified by the fact that their scope of application is different but delegations are invited to share their views on this point.

The relationship between Article 3 and at least two legal acts listed in Annex I has also to be assessed. Firstly, the attention of the delegations is drawn to Article 86(2) of the Regulation

2019/1111, which provides that direct cooperation and communication between courts “*may be implemented by any means that the court considers appropriate.*” It is possible to consider that the consistency between this provision and this Regulation is ensured by Article 3(3) of this Regulation and recital 15, which give flexibility for direct communication between courts under Regulation 2019/1111. Secondly, Article 58(7) of the Regulation 4/2009 provides that “*Central authorities shall employ the most rapid and efficient means of communication at their disposal.*” One might consider that the decentralised IT system is the most and rapid efficient means of communication once it is in place.

Delegations are invited to share their views on the relationship between this Regulation and these two provisions.



1. Written communication between competent authorities **of different Member States** in cases falling under the scope of the legal acts listed in Annex I and Annex II **or between a national competent authority and a Union agency or body 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 used⁹.
4. Paragraph 3 of this Article shall not apply to the exchange of forms provided by the instruments listed in Annex I and Annex II.

⁹ Recital 15 could be amended as follows in order to clarify the cases where another mean of communication may be used: “(15) 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 the Council, 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 persons in charge of a file within the competent authorities need more direct and personal communication. The decision to use other means of communication should be left to the discretion of the competent authorities on a case-by-case basis.**”

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 Annex II¹⁰.

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, to 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 instances¹¹**:

¹⁰ The optional use of the decentralised IT system, suggested by one Member State, has received a significant support from the working party. It raises the question of the respective roles of the Member States and the Commission. It can be considered that Member States have the full responsibility to take the necessary measures for the optional use of the decentralised IT system for the purposes of internal communication, without any implication of the Commission.

Delegations are invited to share their views.

¹¹ Of those who shared their opinion, more delegations were more in favour of a targeted list of cases of application than in favour of a global reference to Annex I. The procedure for lodging claims in accordance with Articles 53 and 55 of the Regulation 2015/848 is still a pending issue. If claims are lodged before courts, it might be possible to use the European electronic access point in accordance with this Regulation. But claims can be lodged before insolvency practitioners who are not competent authorities in the meaning of this Regulation. The consequence is that the lodgement of claims falls outside from the scope of this Regulation in Member States where the lodgement occurs before the insolvency practitioners. In addition, creditors might have other procedural rights than the right to lodge claims. It is doubtful that it is appropriate that the right to lodge claims might be exercised through the European electronic access point but not the other procedural rights. Delegations are invited to express their views.

- (a) **[Written communication from one Member State to another between natural or legal persons or their representatives and the competent authorities]¹²:**
- (1) **in procedures provided for by, Regulation (EC) No 1896/2006, Regulation (EC) No 861/2007 and Regulation (EU) No 655/2014;**
 - (2) **[in procedures provided for by Regulation (EC) No 805/2004¹³];**
 - (3) **in proceedings for recognition, declaration of enforceability or refusal of recognition or enforceability provided for by 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;**
 - (4) **in procedures related to the issuance, rectification and withdrawal of:**
 - **extracts provided for by Regulation (EC) 4/2009,**
 - **the European Successions Certificate and the attestations provided for by Regulation (EU) 650/2012,**

¹² The Working Party is more in favour of a limitation of the scope of the Regulation to cross-border communication than in favour of the initial scope as defined in the Commission's proposal. The establishment of a closed list of communication instances already limits the scope of application of Article 4 to procedures with a European dimension. In addition, the working party tends to consider that the scope should be limited to cross-border communication.

Delegations are invited to share their views and to indicate whether it is sufficient to establish a closed list of communication instances or whether the scope of Article 4 should be in addition limited to cross-border communication.

¹³ The question to refer to this Regulation is raised, depending on the conclusion of the evaluation and the report that will be published by the Commission regarding the advisability of repealing it.

- certificates provided for by Regulation (EU) 1215/2012,
- certificate provided for by Regulation (EU) 606/2013,
- attestations provided for by Regulation (EU) 2016/1103,
- attestations provided for by Regulation (EU) 2016/1104,
- certificates provided for by Regulation (EU) 2019/1111;

(b) **Written 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/EC¹⁴.**

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

32. The European electronic access point shall allow natural and legal persons **or their representatives** to ~~file claims, launch requests~~ **introduce procedures¹⁵**, send, ~~and~~ receive **and store¹⁶** procedurally relevant information **or documents** and communicate with the competent authorities.

¹⁴ Communication with central authorities has been maintained for the time being as only a few delegations took a position on this point and it is a so-called red line for the Commission. The debate is still open, and delegations are invited to indicate their position.

¹⁵ It is proposed to replace the words: “file claims, launch requests” by the more general terms: “introduce procedures” for the following reasons. Firstly, the difference between filing claims and launching requests is not clear. Secondly, it does not cover all cases which might fall within the scope of Chapter III. Not only requests could be made through the European electronic access point but also possibly, depending on the final scope of the chapter, appeal could be lodged through it.

¹⁶ Some delegations have asked for a time limit for storing the documents.

Without prejudice to Articles 5 and 9 of this Regulation¹⁷, the communication through the European electronic access point shall comply with the applicable procedural provisions of Union or national law. In particular, this Regulation does not affect the applicable rules on electronic service of documents¹⁸.

¹⁷ This sentence is added in order to indicate that the applicable procedural rules are not affected by the Regulation. There are only two exceptions to this rule. The first is that it should be possible for a natural or legal person or their representative to communicate electronically with the competent authorities, even if it is not provided for in the applicable procedural rules. The second is that an advanced signature should be sufficient for documents transmitted by a natural or legal person or their representative, even if the applicable procedural provisions provide for a higher level of electronic signature. Apart from these two exceptions, the applicable procedural provisions apply.

¹⁸ This sentence could be better placed in a recital. Independently from its location, the service of documents through the European electronic access point is a pending issue (see doc. 6265/2022 REV2, points 13 and 14). Delegations were asked to indicate whether provisions allowing for the service of documents through the European electronic access point should be provided for in this Regulation, in the legal instruments listed in Annex I or in the Regulation on the service of documents.

The Presidency identified a possible need to modify Article 13 of the Small Claims Regulation No 861/2007. This provision could be amended as follows:

“1. The documents referred to in Article 5(2) and (6) and judgments given in accordance with Article 7 shall be served:

(a) by postal service, or

(b) by electronic means:

(i) 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 and, if the party to be served is domiciled or habitually resident in another Member State, in accordance with the procedural rules of that Member State ; and

(ii) where the party to be served has expressly accepted in advance that documents may be served on him by electronic means or is, in accordance with the procedural rules of the Member State in which that party is domiciled or habitually resident, under a legal obligation to accept that specific method of service.

(iii) through the European electronic access point established by Article 4 of the Regulation (EU) No (...) of (...), where the party to be served is domiciled or habitually resides in another Member State and has expressly accepted in advance that documents may be served on him by electronic means.

The service shall be attested by an acknowledgment of receipt including the date of receipt.

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;:

(a) through the European electronic access point established by Article 4 of the Regulation (EU) No (...) of (...), where the party to be served is domiciled or habitually resident in another Member State and has expressly accepted in advance such mean of communication; or

(b) 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.”

Delegations are invited to share their views.

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

Article 5

Use of the European electronic access point

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]¹⁹.

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**²⁰.
3. ~~Communication under paragraph 1 shall be considered equivalent to written communication under the applicable procedural rules.~~²¹

¹⁹ This first subparagraph comes from the deleted Article 6 and has been amended in comparison with the wording of the Commission's proposal. The reference to the national IT systems has been put into square brackets because it is doubtful that an EU instrument can regulate the mandatory character of national IT systems.

²⁰ The attention of the delegations is drawn to the fact that as a result of this subparagraph, the competent authority might use different channels of communication, depending on the party with whom it is communicating – through the European electronic access point with the applicant, who gave prior consent for this type of communication; through the communication channels provided for under national law with the defendant.

²¹ It is proposed to delete the paragraph as it is redundant both with the new Article 4 (2), second subparagraph and with Article 5(2).

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 TECHNOLOGY²²

Article 7

Participation to a hearing ~~Hearing~~ through videoconferencing or other distance communication technology in civil and commercial matters²³

²² A delegation has proposed to introduce a provision along these lines : « *Articles 7 and 8 shall not preclude Member States from negotiating, concluding, acceding to, amending or applying international agreements and arrangements with third countries on participation in cross-border remote hearings in civil, commercial and criminal matters. This Regulation shall not preclude Member States from deciding on the acceptance of the accession of new contracting parties to such agreements and arrangements to which one or more Member States may decide to become a party.* »

Delegations are invited to share their views.

²³ The relationship between this Regulation and the Regulation on the taking of evidence still needs to be discussed and eventually clarified. The clarification is necessary due to differences between the conditions set up in this Regulation for a remote hearing and the conditions set up in the Regulation on the taking of evidence for the direct taking of evidence by videoconferencing. Contrary to Article 7 of this Regulation, Article 19 of the Regulation on taking of evidence provides for an authorisation by the requested Member State, specifies that the person heard must be informed that they can only be heard on a voluntary basis, allows the requested State to set conditions for the hearing by videoconference and provides that a court in the requested Member State may provide practical assistance.

There are two different approaches. Either it is considered that the scope of Article 7 and the scope of Article 19 differ, so that differences can be justified. Or it is considered that there may be an overlap or that there are similarities in both situations, in which case the procedures have to be aligned. In the latter case, the conditions set out in Article 19 of the Regulation on the taking of evidence could be duplicated and adapted in Article 7 of this Regulation or a reference to the procedure foreseen in Article 19 of the Regulation on the taking of evidence could be made, like in Article 8 of the Regulation 861/2007 establishing a European Small Claims Procedure (see footnote 29).

Delegations are invited to express their views.

OPTION 1:

- ± **In civil or commercial matters²⁴, ~~W~~without 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) 2020/1783²⁵ and in proceedings under Regulation (EC) 861/2007 and Regulation (EU) 655/2014²⁶, ~~and~~ upon request of a party to**

²⁴ Of those who shared their opinion, more delegations supported a broad scope of Article 7, including any civil and commercial procedure.

²⁵ This Regulation and the Regulation on the taking of evidence apply independently of each other (“without prejudice”).

²⁶ The relationship between this Regulation and the specific provisions on videoconferencing contained in other legal acts listed in Annex I should also be clarified in the operative part as it is proposed here or in the recitals (recital 22 could be the appropriate place).

Article 8 of the Regulation 861/2007 establishing a European Small Claims Procedure provides that “Where an oral hearing is considered necessary in accordance with Article 5(1a), it shall be held by making use of any appropriate distance communication technology, such as videoconference or teleconference, available to the court or tribunal, unless the use of such technology, on account of the particular circumstances of the case, is not appropriate for the fair conduct of the proceedings” and that “Where the person to be heard is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized, that person's attendance at an oral hearing by way of videoconference, teleconference or other appropriate distance communication technology shall be arranged by making use of the procedures provided for in Council Regulation (EC) No 1206/2001.” Therefore, both the procedural and substantial conditions for a remote hearing differ between this Regulation and the Small Claims Regulation. The differences in the substantial conditions might be justified in the sense that the Small Claims Procedure is meant to be a written procedure, therefore when the court intends to hold a hearing, it should be via videoconferencing as a matter of principle. But the differences in the procedural conditions are questionable. The reason why the conditions provided for in the Regulation on the taking of evidence have to be complied with in one case and not in another is not self-evident.

In the Regulation 655/2014 establishing a European Account Preservation order, Articles 9(2) and 36(3) also provides for remote hearing under specific conditions. Article 9(2) reads:

“Notwithstanding paragraph 1 and subject to Article 11, the court may, provided that this does not delay the proceedings unduly, also use any other appropriate method of taking evidence available under its national law, such as an oral hearing of the creditor or of his witness(es) including through videoconference or other communication technology.” Article 36 (3) reads: “Except where the application was submitted by the debtor pursuant to point (a) of Article 34(1) 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.” Here the conditions for a remote hearing are also different from the conditions set out in this proposed Regulation. In this case, the possibility of a remote hearing is subject to national law.

If the decision is taken to keep these differences, it is necessary to present the specific provisions of these two instruments as an exception excluding the application of this Regulation, as it is stated in recital 22 (“without prejudice to”). The question of aligning Article 7 and these specific provisions can also be discussed.

The other legal acts listed in Annex I may contain specific provisions on the hearing of a party but do not contain specific provisions on the use of videoconferencing. In these cases, Article 7 of this Regulation fully applies without any risk of inconsistency.

Delegations are invited to share their views.

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]²⁷, authorise the participation to a hearing of parties [or other participants to the hearing]²⁸ present in another Member State by videoconferencing or other distance communication technology, provided that:**

- (a) such technology is available²⁹[, 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.]³⁰

²⁷ The question is whether this is to be left to national law in accordance with paragraph 4 of this Article.

²⁸ The extension of the scope of Article 7 to the remote attendance to a hearing of other participants than the parties is still open. If the scope is to be extended, it is necessary to address the question of whether the extension should be worded in general terms, like it is proposed here, or whether the participants who may attend remotely should be specified. In the latter case, the opinion has been expressed to extend the scope to persons assisting or representing a party. The extension of the scope of Article 7 to experts is more contentious as it could make the distinction between this Regulation and the Regulation on taking of evidence in civil and commercial matters more difficult.

Delegations are invited to share their views both on the principle of the extension and on the determination of the participants to whom the scope of Article 7 should be extended.

²⁹ This condition means that Member States are not obliged to provide competent authorities with a tool for remote hearing. It is proposed to maintain this condition.

³⁰ The question is whether this is to be left to national law in accordance with paragraph 4 of this Article.

Delegations are invited to express their views.

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.~~
34. 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.~~

Article 8

Hearing³¹ through videoconferencing or other distance communication technology in criminal proceedings

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]³² [**with the exception of the Council Framework Decision 2002/465/JHA and the Directive 2014/41/EU**]³³, the competent authority **of the other Member State** shall allow their participation to the hearing by videoconferencing or other distance communication technology, provided that:
 - (a) such technology is available;

³¹ The title of Article 8 has not been changed, unlike the title of Article 7. This is because Article 7 allows for a remote court hearing in any kind of procedure in civil and commercial matter, in particular the hearing on the merits. Article 8 allows for the hearing of a person through videoconference in the course of a procedure conducted in accordance with legal acts listed in the Annex II. It does not include the main trial against an accused person. This distinction has been criticised by certain delegations.

³² Delegations are invited to indicate whether the Directive 2011/99 on the European protection order should be added here as Article 6(4) of this Directive may give rise to the application of Article 8. Article 6(4) provides that: “*Before issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.*”

³³ The scope of Article 8 is still a pending issue. As exposed in the discussion paper 6265/2022 REV2 in point 25, there are two main options. The first one is to keep the global reference to the legal acts listed in Annex II. The second one is to enumerate the specific instruments for which a need is identified. For the two following instruments, the application of Article 8 is nevertheless doubtful: Directive 2014/41 on the European investigation order (Article 24) (this directive contains its own rules on hearing via videoconferencing which are incompatible with those provided for in this Regulation, so that it is appropriate to exclude the application of Article 8 as is, after all, presumed by para 2 of Art. 8); the Framework decision 2002/465 on joint investigation teams (a request for a hearing of a suspected or accused person in a joint investigation team is executed in accordance with the national law of the executing State). It could be more appropriate to exclude these two instruments from the scope of Article 8. In addition to these two options, some delegations suggested to delete Article 8 altogether and to replace it by a specific amendment only to the relevant instruments of Annex II.

- (b) the particular circumstances of the case justify the use of such technology;
 - (c) the suspect, accused or convicted persons expressed consent on the use of videoconferencing or other distance communication technology.³⁴ ~~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.~~³⁵
2. Paragraph 1 is without prejudice to the provisions regulating the use of videoconferencing or other distance communication technology in the legal acts listed in Annex II.³⁶
 3. Subject to this Regulation, the procedure for conducting a videoconference shall be regulated by the national law of the Member State conducting the videoconference.

³⁴ The question is whether this is to be left to national law in accordance with paragraph 3 of this Article or is to be kept considering ECHR case law and Articles 47 and 48 of the Charter.

Delegations are invited to express their views on whether or not the requirement for the consent of the suspected, accused or convicted person actually follows from the case law and the Charter.

³⁵ The application of Directive 213/48/EU in this case appears to be a reminder and not an extension of its scope (as evidenced by the use of the word 'in accordance'). This addition was seen as unnecessary, as Directive 2013/48/EU applies in any event and not specifically to this issue of consent to a hearing by videoconference.

³⁶ This paragraph is explained by recital 22 which reads: “*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 legal acts, listed in Annex I and Annex II.*”. There is only one instrument containing specific provisions on the conditions of the use of videoconferencing: the Directive 2014/41 on the European investigation order. If the proposed change in paragraph 1 to exclude this Directive from the scope of Article 8 explicitly is deemed as acceptable by delegations, paragraph 2 could be deleted.

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.
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 Council³⁷ 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 child³⁸.
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 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.~~³⁹

³⁷ 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).

³⁸ Several delegations expressed doubts about the addition of this paragraph as notification of the holder of parental responsibility is already provided for in Article 5 of Directive (EU) 2016/800. Upon reading this Article and Article 4 to which it refers, however, it seems that the specific information regarding the hearing of a minor by videoconference is not expressly provided for in Directive (EU) 2016/800 and numerous delegations therefore accepted to keep the provision as it stands.

³⁹ The issue here is whether this paragraph creates a specific right of appeal in relation to the use or non-use of videoconferencing or whether it is a reminder of the application of an already existing right of appeal in relation to the hearing itself. Several delegations wondered which right of appeal was involved. Several delegations indicated that they were not in favour of introducing a new right of appeal.

CHAPTER V

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

Article 9⁴⁰

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, 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 Article 5 of this Regulation requires or features a seal or handwritten signature, advanced electronic seals, advanced electronic signatures, qualified electronic seals or qualified electronic signatures as defined in Regulation (EU) No 910/2014 may be used instead⁴¹.

⁴⁰ It is proposed to add a recital 23a as follows “**Where a document transmitted as part of the electronic communication under this Regulation requires or features a seal or handwritten signature, qualified electronic seals or signatures as defined in Regulation (EU) No 910/2014 may be used instead by competent authorities and advanced or qualified signatures or seals may 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 may be digital originals.**”

⁴¹ It is proposed to keep Article 9(3) as it is but to add the following lit. (e) to Article 12: “(e) *the means used for the electronic identification of the user of the European electronic access point, the assurance level of which shall be at least as high as the assurance level defined in Article 8(2)(c) of the Regulation (EU) 910/2014.*”

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 Annex 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 point⁴².**

⁴² The objective of this proposed wording is to reflect the payment solutions presented by the Commission during the working party of the 2nd of June 2022.

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) **the means used for the electronic identification of the user of the European electronic access point, the assurance level of which shall be at least as high as the assurance level defined in Article 8(2)(c) of the Regulation (EU) 910/2014.**
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 and the legal acts listed in Annex II, points 2, 6 and 10 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, 8 and 9 and the legal act listed in Annex II, point 11 shall be adopted by [3 years after the entry into force].
5. The implementing acts establishing the decentralised IT system for the legal acts listed in Annex I, points 6, 10, 11 and the legal acts listed in Annex II, points 3, 4, 5 and 9 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 and the legal acts listed in Annex II, points 1, 7 and 8 shall be adopted by [6 years after the entry into force].

Article 13

Reference implementation software⁴³

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.

⁴³ The wording of this Article comes from Articles 27 of Regulation 2020/1783 on the taking of evidence in civil and commercial matters and Regulation 2020/1784 on the service of documents in civil and commercial matters.

Article 14

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

1. Each Member State shall bear the costs of the installation, operation and maintenance of the decentralised IT system's access points ~~which are located on their territory~~. **[Member States shall not operate their access points in third countries.]**⁴⁴
2. Each Member State shall bear the costs of establishing and adjusting its 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.

⁴⁴ Inspired by Article 8(1) last sentence of the e-Codex Regulation (EU) 2022/850.

Article 15

Protection of information transmitted ⁴⁵

1. The competent authority shall be regarded as 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** the national law of the Member State to which the information is being sent.

⁴⁵ It is agreed to amend recital 30 as follows: “Regulation (EU) 2016/679 of the European Parliament and the Council, ~~and~~ Directive (EU) 2016/680 of the European Parliament and the Council, **and Regulation (EU) 2018/1725 of the Parliament and of the Council**, apply to the processing of personal data carried out in the decentralized 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.

ANNEX 1

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).
- [(x) 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

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.]⁴⁶
- (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.

⁴⁶ This instrument is put in brackets waiting for a clear position of the Members States concerning the exclusion of this Framework Decision from the Annex II.

(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.
