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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**

{SEC(2021) 580 final} - {SWD(2021) 392 final} - {SWD(2021) 393 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Efficient cross-border judicial cooperation requires secure, reliable and time-efficient communication between courts and competent authorities. Moreover, this cooperation should be carried out in a way that does not create a disproportionate administrative burden and is resilient to *force majeure* circumstances. These considerations are equally important for individuals and legal entities, as getting effective access to justice in a reasonable time is a crucial aspect of the right to a fair trial, as enshrined in Article 47 of the EU Charter of Fundamental Rights of the European Union<sup>1</sup> (the Charter).

To protect their rights, both individuals and legal entities should be able to rely on effective remedies. Mere access to judicial authorities does not automatically constitute effective access to justice. For this reason, it is important to find ways to facilitate the conduct of procedures and reduce practical difficulties as much as possible. Individuals and legal entities should be able to exercise their rights and comply with their obligations in a swift, cost-efficient and transparent way.

At EU level, there exists a comprehensive set of instruments designed to enhance judicial cooperation and access to justice in cross-border civil, commercial and criminal cases. Many of these govern the communication between authorities, including in certain cases with the EU Justice and Home Affairs (JHA) agencies and bodies, and between authorities and individuals or legal entities. However, most instruments do not provide for engaging in such communication through digital means. Even where they do, other gaps may exist, such as a lack of secure and reliable digital communication channels or non-recognition of electronic documents, signatures and seals. This deprives judicial cooperation and access to justice of using the most efficient, secure and reliable channels of communication available.

In addition, the COVID-19 pandemic has shown that *force majeure* events may severely affect the normal functioning of Member States' justice systems. During the crisis, in many cases national courts have been unable to maintain normal operations due to the spread of the virus. Member States were forced to take a number of measures ranging from full lockdowns to treating certain priority cases only. At the same time, the use of digital technologies (e.g. email, videoconference, etc.) helped to limit disruption<sup>2</sup>. However, many of the technical solutions employed were developed in an ad hoc manner, and did not necessarily satisfy security and fundamental rights standards to the full. Judicial cooperation and access to justice in EU cross-border cases have been similarly affected, and the COVID-19 pandemic has underlined the need to ensure the resilience of communication.

Against this background, the rules on digitalisation set out in this proposal aim at improving access to justice and the efficiency and resilience of the communication flows inherent to the cooperation between judicial and other competent authorities in EU cross-border cases.

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<sup>1</sup> Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–407).

<sup>2</sup> COM(2021) 700 final.

The use of digital technologies has the potential to make judicial systems more efficient in this regard, by easing the administrative burden, shortening case processing times, making communication more secure and reliable, and partially automating case handling. However, as experience has shown, leaving Member States to develop their own national IT solutions leads to a fragmented approach and risks solutions not being compatible.

Therefore, to guarantee a common approach towards the use of modern technologies in cross-border judicial cooperation and access to justice, this initiative aims to:

- Ensure the availability and use of electronic means of communication in cross-border cases between Member States' judicial and other competent authorities, including the relevant JHA agencies and EU bodies, where such communication is provided for in EU legal instruments on judicial cooperation.
  - Enable the use of electronic means of communication in cross-border cases between individuals and legal entities, and courts and competent authorities, except in cases covered by the Service of documents regulations<sup>3</sup>.
  - Facilitate the participation of parties to cross-border civil and criminal proceedings in oral hearings through videoconference or other distance communication technology, for purposes other than the taking of evidence in civil and commercial cases<sup>4</sup>.
  - Ensure that documents are not refused or denied legal effect solely on the grounds of their electronic form (without interfering with the courts' powers to decide on their validity, admissibility and probative value as evidence under national law).
  - Ensure the validity and acceptance of electronic signatures and seals in the context of electronic communication in cross-border judicial cooperation and access to justice.
- **Consistency with existing policy provisions in the policy area**

In December 2020, the Commission adopted a Communication on the digitalisation of justice in the EU<sup>5</sup>, proposing a toolbox approach. This approach includes a set of measures to bring forward digitalisation at both the national and EU level. The Communication also addresses modernising the legislative framework for EU cross-border procedures in civil, commercial and criminal law, in line with the 'digital by default' principle<sup>6</sup>, while ensuring all necessary

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<sup>3</sup> 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. 40–78) and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (OJ L 324, 10.12.2007, p. 79–120).

<sup>4</sup> 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. 1–39).

<sup>5</sup> COM/2020/710 final.

<sup>6</sup> In the context of this proposal for a Regulation, the “digital by default” principle should be understood as a way to improve the efficiency and resilience of communication, reduce costs and administrative burden, by making the digital channel of communication the preferred one to be used.

safeguards (for example, specifically acknowledging the need to avoid social exclusion). This proposal was announced by the Commission and included in its work programme for 2021<sup>7</sup> (see ‘digital judicial cooperation’ package).

Together with the December 2020 Communication, the Commission adopted a legislative proposal for a Regulation of the European Parliament and of the Council on a computerised system for communication in cross-border civil, commercial and criminal proceedings (e-CODEX system)<sup>8</sup>. The proposal aims to establish a legal basis for the e-CODEX system and guarantee its sustainability and future management by entrusting it to the European Union Agency for the Operational Management of Large Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA). The e-CODEX system is a suite of software components for EU judicial cooperation, developed by a consortium of Member States and financed by the Commission. It supports the communication in civil and criminal proceedings by enabling the secure and interoperable cross-border exchange of electronic messages and documents. The e-CODEX system would therefore be the most suitable tool for the digitalisation of cross-border judicial cooperation procedures.

In November 2020, the European Parliament and the Council adopted recasts of the Service of Documents Regulation and the Taking of Evidence Regulation. These require Member States’ competent authorities to communicate with each other through a decentralised IT system (e.g. to exchange standardised forms, documents, etc.), which is composed of national IT systems interconnected via an interoperable solution (such as e-CODEX). The two Regulations establish for the first time a comprehensive legal framework for electronic communication between competent authorities in cross-border judicial procedure. An identical approach for communication between competent authorities is taken under the current proposal, while the Service of documents and Taking of evidence Regulations (recasts) are left out of the scope of this proposal.

The work on the two Regulations was closely linked with the Commission’s overall priority of digitalisation and e-Justice and its simultaneous work in criminal justice. Following the Commission’s proposals of 2018, the European Parliament and the Council (the co-legislators) are negotiating a legislative framework on cross-border access to e-evidence. In this context, the Commission’s proposals<sup>9</sup> already highlight the importance of electronic platforms, e.g. for the submission of requests, the authentication of orders and responses by service providers. The exchange of e-evidence will take place via an identical decentralised IT system as the one envisaged under this proposal or the e-evidence proposal will refer directly to this proposal.

- **Consistency with other Union policies**

On 9 June 2020, the Council adopted conclusions on “Shaping Europe’s digital future”<sup>10</sup>, where it recognises that ‘the digitalisation of the justice systems of the Member States has the potential to facilitate and improve access to justice throughout the EU.’ The Council calls on the Commission “*to facilitate the digital cross-border exchanges between the Member States*

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<sup>7</sup> COM/2020/690 final.

<sup>8</sup> COM/2020/712 final.

<sup>9</sup> COM/2018/225 final - 2018/0108 (COD).

<sup>10</sup> Council conclusions on shaping Europe’s digital future 2020/C 202 I/01 (OJ C 202I, 16.6.2020, p. 1–12).

*both in criminal and civil matters and to ensure the sustainability and ongoing development of the technical solutions which have been developed for cross border exchanges.”*

The October 2020 Council conclusions on “Access to justice – seizing the opportunities of digitalisation”<sup>11</sup> call on the Commission to take concrete action to digitalise justice, including by:

- examining the potential for modernising the core provisions of instruments in civil and commercial matters in line with the ‘digital by default’ principle; and
- considering to which judicial cooperation instruments in criminal matters the e-Evidence Digital Exchange System (eEDES)<sup>12</sup> might be extended.

The December 2020 Council conclusions on “The European arrest warrant and extradition procedures – current challenges and the way forward”<sup>13</sup> underline that digitalisation should play a central role in the operation of the European arrest warrant (EAW).

This initiative is consistent and creates direct links with the e-IDAS Regulation<sup>14</sup>, as it introduces provisions on the use of trust services to the electronic communication between judicial and other competent authorities, as well as between these authorities, individuals and legal entities. Concretely, the proposal seeks to remove any doubts with respect to the legal validity of electronic documents exchanged in these contexts, and creates a common regime on the use and recognition of electronic signatures and seals in cross-border judicial procedures.

At the beginning of June 2021, the Commission adopted a proposal amending the e-IDAS Regulation to establish a framework for a European digital identity<sup>15</sup>. The proposal addresses the increased private and public sector demand for electronic identity solutions that rely on specific attributes and ensure a high level of trust across the EU. The proposed digital identity wallet storing attributes and credentials will allow individuals and legal entities to access public services, including digital public services allowing individuals and legal entities to engage in cross-border judicial proceedings. In the context of EU cross-border judicial cooperation and the communication of natural persons with the competent authorities in cross-border cases, the Commission’s proposal on a framework for a European Digital Identity should be taken into account in view of the future requirements the proposal sets out with respect to electronic identification. While the present Regulation does not address identification requirements insofar as access to national IT portals operated by the Member States or requirements with regard to the remote electronic identification of the parties in a videoconference may be concerned, Member States should take into account the requirements for the application of the European Digital Identity Wallet.

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<sup>11</sup> Council conclusions ‘Access to justice – seizing the opportunities of digitalisation’ 2020/C 342 I/01 (OJ C 342I, 14.10.2020, p. 1–7).

<sup>12</sup> Implemented further to the ‘Council conclusions on improving criminal justice in cyberspace’ of 9 June 2016.

<sup>13</sup> Council conclusions ‘The European arrest warrant and extradition procedures – current challenges and the way forward’ 2020/C 419/09 (OJ C 419, 4.12.2020, p. 23–30).

<sup>14</sup> 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).

<sup>15</sup> COM/2021/281 final.

Given the highly sensitive nature of the information exchanged, it is essential that the implementation of the toolbox approach on the digitalisation of justice, including through this proposal, takes place in a way that guarantees strong cybersecurity standards. This is consistent with the approach outlined in the EU's Cybersecurity Strategy<sup>16</sup> and the Commission's proposal for a Directive on measures for a high common level of cybersecurity across the Union (NIS2)<sup>17</sup>, aiming to improve further the cybersecurity capacities of public and private entities, competent authorities and the Union as a whole in the field of cybersecurity and critical infrastructure protection. While judiciary in Member States is not in the scope of NIS2 proposal it is of essence that Member States will put in place national measures that would ensure a comparable level of cybersecurity.

Training justice professionals on EU law is an essential tool to ensure its correct and effective application. To prepare justice professionals, make them fit for the challenges of the 21st century, and keep them updated on developments in EU law, the Commission adopted a European judicial training strategy for 2021-2024<sup>18</sup>. The strategy addresses training justice professionals on the use of the digital tools set by the regulatory framework in their daily work. Following the adoption of this proposal, in line with the strategy, timely training of all justice professionals would need to be organised to ensure correct and seamless application and use of new digital tools.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The use of digital channels for communication in cross-border judicial proceedings would facilitate judicial cooperation in civil, commercial and criminal matters. Therefore, the legal basis for this initiative are Articles 81(1) and 82 (2) of the Treaty on the Functioning of the European Union (TFEU)<sup>19</sup>.

The use of digital channels for communication would facilitate judicial cooperation and the effective access to justice in civil matters in line with Article 81(2) TFEU. Article 82(1) TFEU is the legal basis for the Union to facilitate the cooperation between Member States' judicial or other competent authorities in criminal proceedings and in the enforcement of decisions.

### **• Subsidiarity (for non-exclusive competence)**

Under Article 4(2)(j) of the TFEU, the competence to adopt measures in the area of freedom, security and justice is shared between the EU and its Member States. Therefore, Member States may act alone to govern the use of digital communication channels in the context of judicial cooperation and access to justice to the extent that the EU has not exercised its competence. However, without EU action, progress can be expected to be very slow and, even where Member States take action it is very difficult to ensure interoperability of the communication channels without coordination and intervention at the EU level. Moreover, the

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<sup>16</sup> JOIN/2020/18 final

<sup>17</sup> COM/2020/823 final

<sup>18</sup> COM/2020/713 final

<sup>19</sup> Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47–390).

envisaged digitalisation measures are strictly linked to existing EU legal instruments in the area of cross-border judicial cooperation and cannot be achieved by Member States acting alone. Therefore, the objectives of this proposal cannot be fully achieved by Member State acting alone, but only at EU level.

There are already certain EU rules governing the conduct of communication, some of which even provide for the use of modern technology. However, the existing rules do not ensure an adequate and holistic infrastructure for electronic communication between individuals, legal entities or competent authorities with the authorities of another Member State.

EU action is needed to coordinate Member States' efforts and establish a coherent framework for the existing EU rules. This will improve the efficiency, resilience, security and speed of cross-border judicial procedures, and will simplify and speed up communication between Member States' authorities and with individuals and legal entities. Therefore, the administration of justice-related cases with cross-border implications will improve.

Further benefits arise from driving forward the digitalisation of EU judicial cooperation and bringing on board all Member States, as this will improve the current situation, where only certain groups of Member States have taken action, resulting in a limited and fragmented response to the identified problems.

- **Proportionality**

Adoption of uniform measures for electronic communication in cross-border judicial cooperation and access to justice at EU level is a proportionate way of establishing a coherent framework for the existing EU rules. Overall compliance with the principle of proportionality would be guaranteed as the proposal will propose only measures that are necessary to ensure the use of digital technology in the context of judicial cooperation and access to justice in cross-border cases. The proposed actions will not burden Member States beyond what is needed to achieve the proposal's objectives. This is explained in more detail in the impact assessment accompanying the proposal (see Section 8 thereof)<sup>20</sup>. These objectives can be achieved only through rules requiring mandatory use of digital communication between the courts and competent authorities of the Member States, and obliging them to accept electronic communication from natural and legal persons, allowing videoconferencing and recognising trust services.

- **Choice of the instrument**

The proposal is a Regulation, which would provide a new standalone legal basis for the digitalisation of the EU judicial cooperation instruments. The aim is to have common rules applying to all EU judicial cooperation instruments in one single, binding act.

The Regulation will directly apply in all Member States and be binding. It therefore guarantees that the rules will apply and enter into force across the EU at the same time. It offers legal certainty by avoiding divergent interpretations in the Member States, therefore preventing legal fragmentation.

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<sup>20</sup> SWD(2021) 392

Since this initiative requires the alignment of conflicting civil, commercial and criminal matters rules with this Regulation, amendments in existing legal acts need to be adopted. While certain legal acts are Regulations, others are Framework Decisions and Directives. It is therefore appropriate to enact the amendments to the concerned Framework Decisions and Directives in a separate legal instrument, which would ensure alignment with the cohesive set of rules laid down in this Regulation. For this reason, a dedicated amending Directive should be proposed together with this Regulation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **• Stakeholder consultations**

For more than a decade, the Commission has been working on e-Justice policy in close cooperation with various stakeholders. These stakeholders have been consulted on the proposal's objectives and on the identified policy options. Following the consultation strategy for this proposal, a broad range of stakeholders were consulted. Consultations were carried out in the Council Working Party on e-Justice (EJUSTICE), the Council Working Party on Civil Law Matters (JUSTCIV), the Council Working Party on Judicial Cooperation in Criminal Matters (COPEN), the European Judicial Network in Civil and Commercial Matters, and the European Judicial Network in Criminal Matters.

In publishing the inception impact assessment and launching a public consultation, the Commission reached out to a broad range of stakeholders, including Member States' national authorities, non-governmental organisations, professional associations, business organisations and individuals.

The findings of the consultations show support for the proposals' objectives. The stakeholders favoured a compulsory use of the digital channel for communication against a voluntary use in judicial cooperation. They also supported the possibility for the parties to cross-border proceedings to take part in oral hearings through videoconferencing or other distance communication technology. While most stakeholders favoured mandatory electronic communication between individuals and legal entities and the courts and competent authorities, it is appropriate to maintain the possibility to use the paper channel of communication for individuals and legal entities. The main reason for keeping the electronic communication voluntary is to guarantee access to justice of vulnerable people, minors and people who need technical assistance or may not have access to digital means or the required skills.

#### **• Collection and use of expertise**

The Commission engaged the services of a contractor to prepare a study to support the impact assessment. The contractor carried out various stakeholder consultation activities specifically designed for the purposes of the study, such as organising an EU level focus group, national stakeholder consultation on the impacts of the policy options, carried out a national survey, held one-to-one interviews, etc.

All data collected informed the preparation of the proposal, including the impact assessment.

In addition, the Commission used the considerable amount of existing data on the digitalisation of justice in the EU. For instance from the EU Justice Scoreboard, the rule of law report, data from the Council of Europe's European Commission for the efficiency of justice (CEPEJ) and the Digital Criminal Justice study<sup>21</sup>.

- **Impact assessment<sup>22</sup>**

This proposal is supported by an impact assessment presented in the accompanying staff working document.

The Regulatory Scrutiny Board (RSB) discussed the draft impact assessment on 22 September 2021 and delivered its positive opinion on 27 September 2021. The RSB made the following recommendations:

(1) The problem analysis should be strengthened to highlight the main problems this proposal aims to address. The analysis should be backed by evidence on voluntary participation in digitalisation, non-recognition of electronic documents, signatures or seals and interoperability.

(2) The report should explain how this proposal will ensure coherence with other EU-level instruments designed to improve digitalisation that could be used in cross-border judicial cooperation. The report should also explain why Member States do not fully exploit the existing possibilities for digitalisation.

(3) The impact analysis should be strengthened with a clear presentation of impacts, particularly investment costs and stakeholders affected. It should acknowledge the uncertainties in the assumptions made and the implications these have for the impacts assessed.

(4) The report should assess the effects of a potential increase of cross-border cases. It should discuss if there is a risk that improved access to justice and more efficient cross-border judicial cooperation could lead to delays in the treatment of cases due to higher workload for judges and the time legal proceedings take.

(5) The report should clarify the data protection issues at stake and acknowledge that moving from a paper to a digital format entails other risks. The report should address potential sensitivities linked to the fact that having more data in digital format may not only ease their transmission, but also creates data protection and security issues. The concerns raised by stakeholders about data protection should be considered.

The RSB has also sent additional recommendations with the quality checklist.

In addressing the RSB's recommendations, the following changes were introduced to the impact assessment:

(1) The problem definition has been reformulated so that it reflects the actual problems analysed in Section 2.

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<sup>21</sup> <https://data.europa.eu/doi/10.2838/118529>

<sup>22</sup> SWD(2021) 392

(2) The coherence with other initiatives, such as e-CODEX and e-IDAS has been explained, as well as the links with the European e-Justice Portal<sup>23</sup>.

(3) Section 6 on the impacts of the baseline and the policy options has been restructured and the main impacts (i.e. economic impacts, social impacts, impacts on fundamental rights) have been outlined for each of the options. The section also addresses in what way the main stakeholders will be affected by the proposal.

(4) Section 6 on the impacts clarified if there is a potential risk of an increased number of cross-border cases and the capacity of the judiciary to absorb such a development.

(5) Clarifications on data protection have been added in Section 6.

In addition, the impact assessment was supplemented with the data available from the supporting study and from Annex 7 of the report. The economic analysis and the costs for Member States have been added to the report. The views of the stakeholders consulted have been outlined in the corresponding sections of the report. The technical recommendations, such as merging the outcome of the public consultation with Annex 2, numbering the pages of the Annexes, deleting the Annex on the subsidiarity grid, have been addressed.

The impact assessment identified one non-legislative and one legislative policy option with three sub-options. There were additional options that were discarded at an early stage. A promotional campaign on using digital tools and e-CODEX system for communicating in cross-border judicial procedures has been discarded because it was considered that such a campaign would not constitute a real alternative to regulatory action and could in any case be carried out as part of the baseline scenario. The option of the electronic exchange of information and data through a centralised EU system was not considered appropriate, as it was difficult to justify from the point of view of proportionality and subsidiarity. In addition, all information, data and documents would be stored in Commission infrastructure or infrastructure of the entity managing the system (e.g. eu-LISA), while these would not be party to cross-border exchanges. A centralised system would also constitute a single point of failure, as all data would be stored in one place compared to a decentralised system where data are stored by each Member State individually.

The baseline scenario against which the two main options were assessed did not envisage any action to drive forward the digitalisation of cross-border judicial cooperation and the use of digital tools to improve access to justice. Therefore, the use of electronic communication between the authorities would remain voluntary. The use of electronic signatures/seals and data protection responsibilities would continue to be fragmented. Therefore, the two options considered in view of the outlined objectives of the proposal were adoption of a Commission recommendation (non-legislative option) or adoption of a legal act – a regulation (legislative option).

The legislative option would require a package of a Regulation with horizontal provisions and amendments to existing Regulations to ensure consistency and a Directive with amendments to existing Directives and Framework Decisions.

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<sup>23</sup> The main IT tool that has been so far developed at the EU level, as a one-stop shop for access to information and services in the area of justice.

The non-legislative option would involve action to encourage Member States to use the e-CODEX system for digital cross-border communication and access to justice. A Commission recommendation could encourage Member States to follow a harmonised approach to the use of electronic communications, including videoconferencing, electronic documents, electronic seals and signatures. Given the voluntary nature of this approach, Member States would be free to develop their own digital tools. Such action could be technically and operationally feasible. Cost-effectiveness would depend on the individual Member State approach to digitalisation and on their needs and resources. However, on the extent to which the option fulfils the objectives of the proposal, a recommendation would not guarantee the actual implementation of digital tools for communication, the interoperability of the digital channel, the acceptance of electronic documents, or common standards on the use and recognition of trust services.

Under the legislative option, legislative measures (a Regulation and a Directive) will be adopted. A regulation will include rules establishing a secure electronic channel based on e-CODEX (identified as the most appropriate technical solution in the impact assessment on the Commission's proposal for a Regulation on e-CODEX). This channel, constituting a decentralised IT system, will be used for communication and exchange of information, data and documents between courts and competent authorities, and where relevant with JHA agencies and EU bodies. Rules will be introduced in support of communication between individuals and legal entities, and Member States' courts and competent authorities, including rules on the use of videoconference or other distance communication technology. The responsibilities of the data controllers and data processors will be outlined. This option is based on the assumption that the IT systems for exchanges of European Investigation Orders (EIOs) and the service of documents/taking of evidence, as developed by the Commission, will be extended to all cross-border judicial communication regulated in the EU judicial cooperation instruments. Member States will be able to connect their national IT system to a decentralised network or use the software solution developed by the Commission and provided free of charge. This will allow direct communication between the courts and/or competent authorities participating in the proceedings under the EU instruments in cross-border judicial cooperation in civil, commercial or criminal matters. Three sub-options were considered under the legislative option, namely a) compulsory or voluntary use of the digital channel, b) compulsory or voluntary acceptance of electronic communication regarding natural and legal persons, and c) regulatory or non-regulatory approach to the use and recognition of trust services. A Directive will amend the existing Framework Decisions and Directives to align them with the rules of the Regulation.

After comparing the policy options and the sub-options, and assessing them against the objectives of the proposal, the preferred option chosen is the legislative option. This option will make using digital communication compulsory (subject to justified exceptions) for communication between courts and competent authorities (and between them and the EU JHA agencies and bodies). It will also oblige courts and competent authorities to accept electronic communication from natural and legal persons, provide a legal basis for the use of videoconferencing or other distance communication technology for oral hearings in cross-border cases, and the use and recognition of trust services.

While the courts and competent authorities will be required to accept electronic communication from natural and legal persons, the use of the digital channel will be voluntary for the natural and legal persons. They will be free to use traditional means of communication, including a paper based one if they wish.

The use of the digital channel can be expected to have a positive environmental impact, due to the use of less paper and postage. These environmental impacts relate mainly to the adoption of electronic means of communication and a likely increase in the use of videoconferencing and distance communication instead of in-person hearings. While it could be presumed that the production and operation of equipment will consume energy, the overall impact on the environment will be positive.

On economic impact, the obligation to set up a digital channel would require new investment from Member States to develop the necessary infrastructure to interact with e-CODEX. The scale of the investment would depend on their current degree of digitalisation, their level of involvement in the e-CODEX project, the compatibility with current solutions and the scope for electronic transmissions under national law. However, in the long run, the digitalisation of justice would significantly reduce the costs incurred by national justice systems in cross-border procedures. It would also positively influence the process of digitalisation at national level.

Introducing digital means for improving access to justice for cross-border cases in civil, commercial and criminal matters will affect individuals and businesses, including the SMEs. The possibility to file claims and to digitally communicate with the courts and competent authorities, as well as the possibility to participate in oral hearings through videoconference or other distance communication technology will facilitate access to justice in cross-border procedures. This is because individuals will have more flexibility to seize courts and to participate in hearings taking place in another Member State. Businesses, including SMEs, will also benefit from an improved access to justice and more efficient protection of their rights, which is expected to have a beneficial effect on and boost cross-border trade.

Lower costs for proceedings will have an indirect effect by improving the competitiveness of the businesses, including SMEs. The average overall yearly saving at EU level is estimated at EUR 23 372 900 in postage costs and EUR 2 216 160 in paper costs amounting to a total of EUR 25 589 060. Natural and legal persons will be saving EUR 4 098 600 in postage costs and EUR 388 800 in paper costs.

Reducing the time for communication will lead to natural and legal persons gaining 2 700 000 days per year in average posting time at EU level. The average posting time will be reduced to zero resulting in an overall yearly reduction of the duration of the procedures by 15 389 999 days. There would be no additional costs for natural and legal persons and for the SMEs for using the digital channel of communication in a specific legal procedure. All that would be needed is a computer and internet connection. Digitalising the communication between courts and competent authorities will alleviate the administrative burden. The impact assessment concluded that 874 person-years will be gained in processing effort at court/competent authority level.

- **Regulatory fitness and simplification**

This proposal aims at introducing modern digital technology in access to justice and judicial cooperation in cross-border civil, commercial and criminal cases. The expected result is quicker, cheaper, more secure and reliable communication between the competent authorities and with natural and legal persons.

All natural and legal persons will have the option to digitally communicate with the courts and the competent authorities and to take part in oral hearings through a videoconference or other distance communication technology. Paper-based communication will be maintained for the natural and legal persons. There are no specific costs that are envisaged for businesses to

use digital communication – they simply need to possess a computer and to have access to the internet. Businesses will benefit from improved access to justice and more efficient protection of their rights, which is expected to boost cross-border trade. Similarly, SMEs involved in cross-border transactions are expected to benefit directly from the improved access to justice, as well as from lower costs and shorter proceedings when enforcing their rights across borders. This could also drive SMEs to engage more in cross-border transactions within EU. The lower costs of proceedings will have an indirect effect by improving the competitiveness of the SMEs.

The possibility for citizens to file claims and to digitally communicate with the courts and competent authorities, as well as the possibility to participate in oral hearings through videoconference or other distance communication technology will ensure improved access to justice in cross-border procedures, once they are digitalised. Such digital tools will not require significant costs or investments on the part of the citizens. What would be needed is a computer and access to the internet. To ensure that citizens who lack digital skills, who live in remote areas or whose personal capacity does not allow them a seamless access to the digital tools, the possibility for paper-based communication will be maintained.

- **Fundamental rights**

Making use of the digital channel of communication between Member States' courts and competent authorities will help to overcome delays, reduce the administrative burden and facilitate and accelerate the exchange of information between these authorities. As a result, the overall time for processing cases will be reduced, as well as the costs for the proceedings.

The possibility for individuals and legal entities to file claims and to digitally communicate with the courts and competent authorities, as well as the possibility to participate in oral hearings through videoconferencing or other distance communication technology will ensure improved access to justice in cross-border procedures, once they are digitalised. To respect the needs of disadvantaged groups and vulnerable people, the paper-based communication will be maintained as an option.

**THE PROPOSAL WILL ESTABLISH A DECENTRALISED IT SYSTEM FOR THE EXCHANGE BETWEEN THE COURTS AND THE COMPETENT AUTHORITIES AND BETWEEN THESE ENTITIES AND NATURAL OR LEGAL PERSONS. THE DECENTRALISED NATURE OF THE SYSTEM MEANS THAT THERE WILL BE NO DATA STORAGE OR DATA PROCESSING BY THE ENTITY ENTRUSTED WITH THE OPERATIONAL MANAGEMENT OF THE SYSTEM'S COMPONENTS. DEPENDING ON WHETHER AN ACCESS POINT TO THE SYSTEM IS OPERATED BY AN EU INSTITUTION, AGENCY OR BODY, OR AT NATIONAL LEVEL, AND DEPENDING ON WHICH NATIONAL AUTHORITIES ARE PROCESSING PERSONAL DATA AND FOR WHAT PURPOSES, EITHER REGULATION (EU) 2018/1725<sup>24</sup>, THE**

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<sup>24</sup> 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).

#### **GENERAL DATA PROTECTION REGULATION<sup>25</sup> OR DIRECTIVE (EU) 2016/680<sup>26</sup> WILL APPLY.4. BUDGETARY IMPLICATIONS**

The implementation of the Regulation will require the establishment and maintenance of a decentralised IT system. This system constitutes a network of national IT systems and interoperable access points, operating under the individual responsibility and management of each Member State, Union institution, agency or body, which enables secure and reliable cross-border exchange of information. Where Member States have not already developed appropriate national IT systems, the Commission will provide a reference implementation software, which Member States may choose to use instead. The reference implementation software will be built upon the eEDES and Service of Documents/Taking of Evidence IT system(s). These electronic systems already follow a multifunctional approach and could be built upon, thus avoiding unnecessary expenses.

The investment and running costs for these systems, including the modification to the European e-Justice Portal to support interactions between natural and legal persons and courts and competent authorities in cross-border proceedings, are presented in Annex 9 of the impact assessment<sup>27</sup>.

The Digital Europe programme<sup>28</sup> is the most appropriate funding instrument that could support the development and maintenance of the decentralised IT system and the establishment of a European electronic access point on the European e-Justice Portal. Under the overall objectives of supporting the digital transformation of areas of public interest, the initiative directly addresses the objectives of the programme to enable seamless and secure cross-border electronic communication within the judiciary and between the judiciary and other competent bodies in the area of civil and criminal justice, and to foster access to justice.

The costs for the Member States will be rather limited: a total of EUR 8 100 000 per year i.e. EUR 300 000 per year per Member State. In the first two years, the cost of installation will be EUR 100 000 per year per Member State. This includes equipment costs and the human resources needed to configure it. The remaining EUR 200 000 are needed to provide support to an increasing number of users. As of the third year, there are no hardware and installation costs, only costs related to user support and maintenance of the system. This is estimated at EUR 300 000 per year. The e-CODEX system is an open-source solution that could be used free of charge. While Member States are expected to bear these costs from their national budgets, they can nonetheless apply for EU financial support under the relevant financing programmes, such as the Justice programme and the cohesion policy instruments. It should

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<sup>25</sup> 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. 1–88).

<sup>26</sup> 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. 89–131).

<sup>27</sup> SWD(2021) 392

<sup>28</sup> Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11.5.2021, p. 1–34).

also be highlighted that some Member States already operate a pilot version of e-CODEX, which they may reuse and build upon for the newly defined purposes.

Courts and competent authorities, which are not equipped with videoconferencing equipment, will have to invest in buying such equipment, if they are planning to use the possibility to organise remote hearings.

## 5. OTHER ELEMENTS

### • **Implementation plans and monitoring, evaluation and reporting arrangements**

For the purposes of this Regulation, the decentralised IT system will be developed further through implementing acts adopted by the Commission. The implementing acts will set out the:

- technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;
- technical specifications for communication protocols;
- 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;
- minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system.

A European electronic access point will be established on the European e-Justice Portal, by modifying the already developed e-CODEX solution for filing small claims.

A system for monitoring the proposed legal instrument is envisaged, including a comprehensive set of qualitative and quantitative indicators, and a clear, structured reporting process. The purpose of the monitoring arrangements is to determine whether the instrument is implemented efficiently in the Member States and whether it is successful in achieving its specific objectives.

A full evaluation every five years is provided for assessing impacts and contextual issues. Where electronic communication is used, monitoring will be facilitated by automatically compiling data and using the reporting features of the decentralised IT system. For data that is not collected automatically, a monitoring sample of at least one court or competent authority to be designated by each Member State will be put in place. • **Detailed explanation of the specific provisions of the proposal**

*Article 1* defines the subject matter and the scope of the Regulation. The Regulation sets the legal framework for electronic communication in the context of the cross-border judicial cooperation procedures in civil, commercial and criminal matters and access to justice in civil and commercial matters with cross-border implications as regulated in the EU acts on judicial cooperation in civil, commercial and criminal matters. These legal acts are listed in the two Annexes to the Regulation, Annex I of which comprises legal acts in civil and commercial matters and Annex II - legal acts in criminal matters.

The Regulation also lays down rules on the use and recognition of electronic trust services, on the legal effects of electronic documents, on the use of videoconferencing or other distance communication technology for hearing of persons in civil, commercial and criminal matters. However, the regulation does not apply for the purposes of taking of evidence in civil and commercial matters, which is governed in a separate legal act and where similar digitalisation

provisions already exist. The Regulation does not lay down new procedures and applies only to electronic communication in the context of cross-border judicial cooperation procedures and access to justice in civil, commercial and criminal matters.

*Article 2* defines the terms used in the Regulation.

*Article 3* lays down that the electronic communication between courts and competent authorities is carried out through a secure and reliable decentralised IT system. This system consists of IT systems and interoperable access points, operating under the individual responsibility and management of each member State, JHA agencies and EU bodies, and enables interoperable cross-border exchange between the respective authorities of the Member States. The use of the system is compulsory, except in case of disruption of the system or in other specific circumstances.

*Article 4* establishes the European electronic access point, located on the European e-Justice Portal. This European electronics access point is part of the decentralised IT system and may be used by natural and legal persons for electronic communication with the courts and competent authorities in civil and commercial matters with cross-border implications.

*Article 5* requires Member States' courts and competent authorities to accept electronic communication from natural and legal persons in judicial procedures, but leaves the choice of the electronic means of communication at the discretion of the natural and legal persons. It provides for some of the digital communication channels, notably the European electronic access point and existing national IT portals, where developed by the Member States for the purposes of participating in judicial procedures.

*Article 6* requires competent authorities to accept electronic communication from natural and legal persons, making electronic submissions equivalent to the paper ones.

*Article 7* provides the legal basis and sets out the conditions for using videoconferencing or other distance communication technology in cross-border civil and commercial proceedings under the legal acts listed in Annex I and in civil and commercial matter where one of parties is present in another Member State. It refers to the national law of the Member State conducting the videoconference. Additional rules are set out on hearing children through videoconferencing or other distance communication technology.

*Article 8* provides the legal basis and sets out the conditions for using videoconferencing or other distance communication technology in criminal matters. Additional rules are set out on hearing a suspect, an accused or a convicted person and on hearing children through videoconferencing or other distance communication technology.

*Article 9* sets out the rules on using trust services (electronic signatures and seals) in electronic communication governed by the Regulation, by referring to the e-IDAS Regulation.

*Article 10* requires that electronic documents are not denied legal effects solely on the ground that they are in electronic form.

*Article 11* provides the legal basis for electronic payment of fees, including through the European e-Justice Portal.

*Article 12* lays down a framework for the Commission to adopt implementing acts.

*Article 13* mandates the Commission to create, maintain and develop reference implementation software.

*Article 14* sets out who bears the cost for the various IT development tasks.

*Article 15* lays down rules on the protection of personal data exchanged through digital means.

*Articles 16 – 18* set out procedural rules, such as the rules applicable to the Committee procedure, the legal basis for the Commission to collect and use data for evaluating the effectiveness of the Regulation.

*Articles 19-22* introduce amendments to the Regulations in civil and commercial matters, listed in Annex I to include reference to the digital means of communication as established by the Regulation and to avoid ambiguities as to the communication means to be used under the existing legal acts.

*Articles 23* introduces amendments to one Regulation in criminal matters to include reference to the digital means of communication as established by the Regulation and to avoid ambiguities as to the communication means to be used under the existing legal acts.

*Article 24* sets out the transitional period.

*Article 25* provides that the Regulation would enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*. It also sets the date on which the Regulation will start to apply.

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 EU<sup>1</sup> 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.
- (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, 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

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<sup>1</sup> 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

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 authorities.
- (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.
- (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, initiate 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, 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 Annex I and Annex II to this Regulation. Where the instruments listed in Annex I and Annex II to this Regulation explicitly state that national law should govern a communication procedure between competent authorities, this Regulation should not apply.
- (9) This Regulation should not apply to service of documents pursuant to Regulation (EU) 2020/1784 of the European Parliament and of the Council<sup>2</sup> and Regulation (EC) No 1393/2007 of the European Parliament and of the Council<sup>3</sup>, nor to the taking of evidence pursuant to Regulation (EU) 2020/1783 of the European Parliament and of

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<sup>2</sup> 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).

<sup>3</sup> Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

the Council<sup>4</sup> and Council Regulation (EC) No 1206/2001<sup>5</sup>, which already prescribe their own rules on digitalisation of judicial cooperation.

- (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, without any of the Union institutions being involved in the substance of those exchanges.
- (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 use instead of a national IT system, a Commission-developed software (reference implementation software). 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 Council<sup>6</sup> and Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>7</sup>, 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.
- (13) In order to provide swift, secure and efficient assistance to applicants, written communication between competent authorities, such as courts and Central Authorities

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<sup>4</sup> 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).

<sup>5</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

<sup>6</sup> 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).

<sup>7</sup> 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).

established under Council Regulation (EC) 4/2009<sup>8</sup> and Council Regulation (EU) 2019/1111<sup>9</sup>, 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.

- (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 impracticable, such as the transmission of physical/material evidence. 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 means or by postal service.
- (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<sup>10</sup>, 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.
- (16) In relation to the components of the decentralised IT system, which are under the responsibility of the Union, the entity managing the system's components should have sufficient resources in order to ensure their proper functioning.
- (17) For the purpose of facilitating access of natural and legal persons to the competent authorities, 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 procedurally relevant information and communicate with the competent authorities, for cases 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.
- (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.

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<sup>8</sup> 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)

<sup>9</sup> 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).

<sup>10</sup> 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).

- (19) In the context of the communication in cross-border cases of natural and legal persons with competent authorities, electronic communication should be used as an alternative to the existing means of communication. Notwithstanding, to ensure that access to justice through digital means does not contribute to 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 concerned. This is particularly important in order to cater for the specific circumstances of disadvantaged groups and people in situation of vulnerability, such as children or older people, who may lack the requisite technical means or digital skills to access digital services.
- (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, 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.
- (21) In order to facilitate oral hearings in proceedings in civil, commercial and criminal matters 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. The procedure for applying and conducting of hearings through videoconferencing or other distance communication technology should be governed by the law of the Member State conducting the videoconference. Conducting a hearing by 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*.
- (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 legal acts, listed in Annex I and Annex II.
- (23) The Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>11</sup> 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.
- (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 should be possible in an online environment by payment

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<sup>11</sup> 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).

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 Council<sup>12</sup>, Regulation (EC) No 861/2007 of the European Parliament and of the Council<sup>13</sup>, Regulation (EU) No 655/2014 of the European Parliament and of the Council<sup>14</sup>, Regulation (EU) 2015/848 and Regulation (EU) 2018/1805 of the European Parliament and of the Council<sup>15</sup>. 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]\*.
- (26) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>16</sup>, 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.
- (28) In such cases where data cannot be collected automatically, and for the purpose of alleviating the 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 data on its own proceedings

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<sup>12</sup> 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).

<sup>13</sup> 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).

<sup>14</sup> 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).

<sup>15</sup> 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).

\* 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, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation.

<sup>16</sup> 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).

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 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.

- (29) The application of this Regulation should be without prejudice to procedural rights as enshrined in the Charter of Fundamental Rights of the European Union<sup>17</sup> and Union law, such as the procedural rights directives<sup>18</sup>, 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.
- (30) Regulation (EU) 2016/679 of the European Parliament and the Council and Directive (EU) 2016/680<sup>19</sup> of the European Parliament and the Council, 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 Council<sup>20</sup>.

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<sup>17</sup> Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–407).

<sup>18</sup> 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).

<sup>19</sup> 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).

<sup>20</sup> 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 [...],

HAVE ADOPTED THIS REGULATION:

## **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 matters.

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.
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, Union agencies and bodies and other authorities taking part in judicial cooperation procedures in accordance with the provisions of the legal acts listed in Annex I and Annex II;
- (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) “*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 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.

## **CHAPTER II**

### **COMMUNICATION BETWEEN COMPETENT AUTHORITIES**

#### *Article 3*

##### *Means of communication between competent authorities*

1. Written communication between competent authorities in cases falling under the scope of the legal acts listed in Annex I and 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 used.
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.

## **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 and competent authorities in cases falling under the scope of the legal acts listed in Annex I.
2. The Commission shall be responsible for the technical management, development, maintenance, security and support of the European electronic access point.
3. The European electronic access point shall allow natural and legal persons to file claims, launch requests, send and receive procedurally relevant information and communicate with the competent authorities.

#### Article 5

##### *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) the European electronic access point; or
  - (b) national IT portals, where available.
2. Competent authorities shall communicate with natural and legal persons through the European electronic access point, where that natural or legal person gave prior express consent to the use of this means of communication.
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 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 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 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.

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

#### *Article 8*

#### *Hearing 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 in proceedings under the legal acts listed in Annex II, the competent authority shall allow their participation to the hearing by 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;
  - (c) the suspect, accused or convicted persons expressed consent on the use of videoconferencing or other distance communication technology. 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.
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.
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.
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 Council<sup>1</sup> 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

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<sup>1</sup> 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).

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.

## **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, 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 instead.

### *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.

## **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;
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 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.

### *Article 14*

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

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.
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.

*Article 15*  
*Protection of information transmitted*

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 the Member State from which the information is being sent, remains confidential in accordance with 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 182/2011<sup>2</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 17*  
*Monitoring and Evaluation*

1. Every five years after the date of application of Article 25, 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.

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<sup>2</sup> 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).

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 information relevant for the evaluation of the operation and application of this Regulation on:
  - (a) the costs incurred under Article 14(2) of this Regulation;
  - (b) 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.
3. Each Member State shall designate one or more competent authorities to provide the Commission on an annual basis with the following data:
  - (a) the number of cases handled by that authority, where communication was carried out by means other than through the decentralised IT system, in accordance with Article 3(2);
  - (b) 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. The reference implementation software and, where equipped to do so, the national back-end system shall programmatically collect the data referred to in point (a) of paragraph 3 and transmit them to the Commission on an annual basis.

#### *Article 18*

##### *Information to be communicated to the Commission*

5. 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 of national IT portals, where applicable;
  - (b) a description of the national laws and procedures applicable to videoconferencing;
  - (c) information on fees due in cross-border cases;
  - (d) 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.
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 1896/2006<sup>3</sup>*

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 of Regulation (EU) .../...[*this Regulation*]\*, or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin.”.

(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 shall be signed in accordance with Article 9(3) of Regulation (EU) .../...[*this Regulation*]\*. The electronic signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.”.

(3) 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 of Regulation (EU) .../...[*this Regulation*]\*, 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, the first subparagraph is replaced by the following:

“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 of this Article, it shall be signed in accordance with Article 9(3) of Regulation

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<sup>3</sup> 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)

\* 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 ...).

\* 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 ...).

\* 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 ...).

(EU) .../...[*this Regulation*]\*. The electronic signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.”.

*Article 20*  
*Amendments to Regulation (EC) No 861/2007<sup>4</sup>*

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 5 of Regulation (EU) .../...[*this Regulation*]\* 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 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*]\*.

*Article 21*  
*Amendments to Regulation (EU) No 655/2014<sup>5</sup>*

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

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\* 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 ...).

<sup>4</sup> 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)

\* 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 ...).

\* 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 ...).

<sup>5</sup> 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).

Member State in which the application is lodged or by the electronic means of communication provided for in Article 5 of Regulation (EU) .../...[*this Regulation*]\*.”

(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 of Regulation (EU) .../...[*this Regulation*]\*.”

(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*]\* 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*]\*; or

(b) creditor or bank that transmitted the documents an acknowledgment of receipt<sup>1</sup> 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).”

(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:

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\* 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 ...).

\* 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 ...).

\* 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 ...).

(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 5 of Regulation (EU) .../...[*this Regulation*]\*.”

(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*]\*.”

*Article 22*  
*Amendments to Regulation 848/2015<sup>6</sup>*

Regulation (EU) 848/2015 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*]\*,”.

(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 of Regulation (EU) .../...[*this Regulation*]\*.

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

(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*]\*.”

## CHAPTER VIII

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\* 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 ...).

\* 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 ...).

<sup>6</sup> 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)

\* 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 ...).

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

### Article 23

#### Amendments in Regulation (EU) 2018/1805<sup>7</sup>

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.”

(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

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<sup>7</sup> 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).

\* 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 ...).

\* 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 ...).

\* 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 ...).

\* 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 ...).

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 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:

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\* 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 ...).

\* 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 ...).

\* 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 ...).

\* 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 ...).

\* 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 ...).

“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*]\*.”

(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.”

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\* 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 ...).

\* 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 ...).

\* 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 ...).

\* 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 ...).

\* Proposal for a 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 (COM(2021) 759).

\* 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. 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 (2) from the first day of the month following the period of two 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 (2) from the first day of the month following the period of two 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 3(1), and 5(1) and (2) from the first day of the month following the period of two 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 3(1), and 5(1) and (2) from the first day of the month following the period of two 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.

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\* 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 ...).

\* 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 25*  
*Entry into force and application*

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*  
*The President*

*For the Council*  
*The President*

# LEGISLATIVE FINANCIAL STATEMENT

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## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and the Council on the digitalisation of judicial cooperation and access to justice in civil, commercial and criminal law matters, and amending certain acts in the field of judicial cooperation

#### 1.2. Policy area(s) concerned

Heading 1: Single Market, Innovation and Digital, Policy Cluster: European Strategic Investments

#### 1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action<sup>56</sup>

the extension of an existing action

a merger or redirection of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

The general objectives of this initiative are to:

- improve the efficiency of EU cross-border judicial cooperation in civil, commercial and criminal matters, and

- contribute towards facilitating access to justice by removing existing barriers and inefficiencies.

These general objectives directly dovetail with the efforts to drive forth the digital transformation of justice referred under Regulation (EU) 2021/694<sup>57</sup> (“the Programme”), in particular as articulated in Recitals (47) and (52) thereof, and under Specific Objective 5 of the Annex thereto.

##### 1.4.2. Specific objective(s)

###### Specific objective No 1

The initiative aims to improve the efficiency of EU cross-border judicial cooperation in civil, commercial and criminal matters, by mandating the use of a digital channel of communication between competent authorities.

###### Specific objective No 2

In the context of EU cross-border interactions, the initiative aims to tackle current barriers and contribute towards facilitating access to justice. This will be achieved by

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<sup>56</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

<sup>57</sup> Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240. (OJ L 166, 11.5.2021, p. 1–34).

obliging Member States to accept and recognise electronic submissions from citizens and businesses, introducing possibilities for electronic payment of fees, and allowing for the participation of the parties to proceedings through distance communication technology (videoconferencing).

1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The expected results and impact of this initiative on the target groups are:

- Improved efficiency and resilience of the national competent authorities taking part in cross-border judicial cooperation procedures;
- Time and cost savings for citizens, companies, legal practitioners, courts and other competent authorities;
- Reduced administrative burden for courts and other competent authorities in processing cross-border cases;
- Potential for a tangible increase in the use of the existing EU cross-border instruments, in particular in civil matters, stemming from facilitated means of communication for citizens, legal representatives and businesses with the national competent authorities and vice versa;
- Positive social impact from an access of justice perspective, given the possibility to submit claims, applications and other documents electronically, as well as to conduct remote hearings;
- Positive economic impact from the perspective of efficiencies gained in reduced administrative burden, postal and logistics costs;
- Positive environmental impact, mainly stemming from the reduced use of paper, printing consumables, need to travel and reduced reliance on traditional logistical means of transportation of documents.

1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

Indicator No 1 (Specific Objective No 1)

Number of electronic exchanges taking place through the decentralised IT system established by the Regulation. This indicator will be:

- Established with a scope of one or more judicial cooperation procedures established by EU law (e.g. the European Arrest Warrant);
- Measured against a baseline of the number of exchanges taking place over traditional (existing) means of communication. The comparison will be strictly done in the control group of competent authorities proposed by the Member States;
- Monitored on annual basis, starting not earlier than 1 year from the start of digital exchanges in the context of the monitored procedure(s), and for a duration of no less than 5 years.

Indicator No 2 (Specific Objective No 2)

Number of electronic claims, applications and submissions sent and received through the decentralised IT system established by the Regulation. This indicator will be:

- Established with a scope of one or more judicial cooperation procedures established by EU law where individuals and businesses have the possibility to make a claim to a competent national authority (e.g. the European Small Claims procedure);
- Measured against a baseline of the number of claims exchanged over traditional (existing) means of communication. This comparison will be strictly done in the control group of competent authorities proposed by the Member States;
- Monitored on annual basis, starting not earlier than 1 year from the moment the obligation to accept electronic submissions enters into force, in the context of the monitored procedure(s), and for a duration of no less than 5 years.

## **1.5. Grounds for the proposal/initiative**

### *1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

The implementation of this initiative will follow a phased approach. Upon entry into force of this Regulation, work will commence towards the adoption of an implementing act defining the technical conditions for the digitalisation of a first, prioritised “batch” of the judicial cooperation instruments within the scope of the Regulation, followed by technical implementation. At the same time, work on the implementing act for the next batch of prioritised instruments will be elaborated in parallel. It is foreseen that a “batch” would address the digitalisation of 6-10 legal instruments, with the objective to complete the full digitalisation of all in-scope civil, commercial and criminal law legal instruments by 2029:

A provisional implementation timeline can be illustrated as follows:

- 2022: Adoption of the Regulation
- 2023: Adoption of an implementing act defining digitalisation aspects related to the instruments included in Batch 1
- 2024-2025: Technical implementation of the decentralised IT system with regard to the Batch 1 instruments
- 2025: Adoption of an implementing act defining digitalisation aspects related to the instruments included in Batch 2
- 2026-2027: Technical implementation of the decentralised IT system with regard to the Batch 2 instruments
- 2027: Adoption of an implementing act defining digitalisation aspects related to the instruments included in Batch 3
- 2027-2028: Technical implementation of the decentralised IT system with regard to the Batch 3 instruments
- 2028: Adoption of an implementing act defining digitalisation aspects related to the instruments included in Batch 4
- 2028-2029: Technical implementation of the decentralised IT system with regard to the Batch 4 instruments

Notwithstanding, additional implementation activities will be necessary beyond 2029 in order to ensure continued coordination, technical management, maintenance, support and monitoring activities.

All the measures beyond 2027 will be subject to the availability of the allocations in the next Multiannual Financial Framework (MFF) and do not prejudge the future Commission's proposal for the MFF post-2027.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at European level (ex-ante)

The initiative seeks to improve the efficiency and resilience of cross-border judicial cooperation, and access to justice with regard to the body of EU judicial cooperation legal instruments by introducing holistic digitalisation provisions. While, as demonstrated in the Impact Assessment<sup>58</sup>, some previous good pilot projects exist, voluntary cooperation cannot achieve the initiatives' goals and objectives. This is also predicated by the existence of legal uncertainties (e.g. with regard to the recognition of electronic documents, signatures and seals), which cannot be overcome without coordinated legislative action that can only be carried out at EU level.

Expected generated Union added value (ex-post)

The initiative will contribute to more efficient and resilient EU cross-border judicial cooperation and facilitated access to justice, and potentially lead to an increase in the use of the relevant *acquis*. For more information on the expected positive added value refer to the impacts elaborated above.

- 1.5.3. *Lessons learned from similar experiences in the past*

The initiative takes into account the lessons learnt in the context of the various pilot use cases carried out on voluntary basis in the context of the development of the e-CODEX system<sup>59</sup>.

More recently, it builds on the experiences gained in the context of the Service of Documents<sup>60</sup> and Taking of evidence Regulation<sup>61</sup> (recast), where aspects related to the mandatory use of a decentralised IT system for digital cross-border communication were first introduced.

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<sup>58</sup> SWD(2021) 392

<sup>59</sup> <https://www.e-codex.eu/>

<sup>60</sup> 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. 40–78).

<sup>61</sup> 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. 1–39).

1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

This initiative is a follow-up to the Communication from the Commission on the Digitalisation of justice in the European Union adopted on 2 December 2020<sup>62</sup>.

It establishes synergies with:

- The proposal for a Regulation on the Computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system)<sup>63</sup>, given that the foreseen electronic exchanges and the underlying decentralised IT system would rely on e-CODEX as the technical solution for secure and interoperable cross-border communication.

- Regulation (EU) 910/2014<sup>64</sup> (the ‘e-IDAS’ regulation), as this initiative introduces the use of qualified trust services (qualified electronic seals and signatures) in the context of the electronic communication taking place through the decentralised IT system.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

The initiative will fully re-use the eDelivery building block, and potentially the one on eID and trust services that were developed under the Connecting Europe Facility (CEF) programme. Moreover, the initiative aims to re-use the platform developed in the context of the e-Evidence Digital Exchange System (e-EDES). In spite of leveraging these synergies, financing will be required for the digitalisation of the communication in the context of the judicial cooperation procedures, which currently takes place through traditional means (namely paper). Implementation will start with a preparatory analysis and finish with a solution rollout and operationalisation.

Member States would be able to seek financing for setting up/improving their relevant national infrastructure from existing Union programmes - in particular, the cohesion policy funds and the Justice programme<sup>65</sup>.

**1.6. Duration and financial impact of the proposal/initiative**

**limited duration**

–  in effect from [DD/MM]YYYY to [DD/MM]YYYY

–  Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

**unlimited duration**

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<sup>62</sup> COM/2020/710 final.

<sup>63</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system), and amending Regulation (EU) 2018/1726 (COM/2020/712 final).

<sup>64</sup> 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).

<sup>65</sup> Regulation (EU) 2021/693 of the European Parliament and of the Council of 28 April 2021 establishing the Justice Programme and repealing Regulation (EU) No 1382/2013 (OJ L 156, 5.5.2021, p. 21–38).

- Implementation with a start-up period from 2022 to 2029<sup>66</sup>,
- followed by full-scale operation.

### 1.7. Management mode(s) planned<sup>67</sup>

**Direct management** by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

**Shared management** with the Member States

**Indirect management** by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- If more than one management mode is indicated, please provide details in the ‘Comments’ section.

#### Comments

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<sup>66</sup> All the measures beyond 2027 will be subject to the availability of the allocations in the next Multiannual Financial Framework (MFF) and do not prejudge the future Commission’s proposal for the MFF post- 2027.

<sup>67</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

## 2. MANAGEMENT MEASURES

### Monitoring and reporting rules

*Specify frequency and conditions.*

The Regulation will be reviewed for the first time five years after its full application and then every five years. The Commission will report on the findings to the European Parliament and to the Council.

#### 2.1. Management and control system(s)

##### 2.1.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

This Regulation does not affect the existing management mode(s) and control systems employed by the Commission.

The Regulation establishes inter alia a digital channel for electronic communication between the competent national authorities for the entire corpus of EU law in the area of cross-border judicial cooperation in civil, commercial and criminal matters.

This requires the development of technical specifications and standards, software development work and coordination of the activities of national authorities. In view of the current low level of digitalisation with respect to communication in cross-border cases in the Member States, the Regulation foresees the development of a software product ('reference implementation') by the Commission. Furthermore, the Regulation foresees the development of an EU-level access point for citizens and businesses on the European e-Justice Portal.

In order to face these tasks, it is necessary to equip appropriately the Commission's services. The required resources amount to a total of 22 FTEs for the period until and including 2027, and excluding services provided by external suppliers):

For 2022:

- 1 FTE for legal and for policy work, including on coordination with the national competent authorities
- 1 FTE for IT implementation activities (Business, Project and Contract management)

For the 2023-2027 period (per annum):

- 2 FTEs for legal and for policy work, including on coordination with the national competent authorities
- 2 FTEs for IT implementation activities (Business, Project and Contract management)

##### 2.1.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

The main identified risks relate to:

- (a) Time and cost overruns due to unforeseen IT implementation issues with regard to the development of the decentralised IT system, and in particular the reference implementation solution to be developed by the Commission. This risk is mitigated by the fact that the key building blocks which can be used for the development of the

decentralised IT system already exist and are mature – namely, the e-CODEX system (which itself is based on the eDelivery building block) and the e-Evidence Digital Exchange System.

This risk will be addressed by implementing standard internal control systems, in particular project management controls applicable to all systems developed by the Commission (i.e. governance oversight, project and risk management).

(b) Implementation and rollout delays on the side of the Member States' respective authorities. This risk will be mitigated by ensuring feasibility and agreement on the implementation time plan at the time of elaboration of the implementing acts, regular follow-up and providing technical support to the national authorities in charge of implementation.

- 2.1.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

This Regulation does not affect the cost-effectiveness of the existing Commission controls.

## 2.2. **Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

The existing fraud prevention measures applicable to the Commission will cover the appropriations necessary for this Regulation.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>68</sup>	from EFTA countries <sup>69</sup>	from candidate countries <sup>70</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1	02.04.05.01	Non-diff.	NO	NO	NO	NO

- New budget lines requested

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>68</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>69</sup> EFTA: European Free Trade Association.

<sup>70</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated financial impact of the proposal on appropriations

#### 3.2.1. Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	Number	1
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DG: JUST			Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
• Operational appropriations									
Budget line <sup>71</sup> : 02.04.05.01	Commitments	(1a)	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>
	Payments	(2a)	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>
Budget line	Commitments	(1b)							
	Payments	(2b)							
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>72</sup>									
Budget line		(3)							
<b>TOTAL appropriations</b>	Commitments	=1a+1b +3	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>

<sup>71</sup> According to the official budget nomenclature.

<sup>72</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

<b>for DG JUST<sup>73</sup></b>	Payments	=2a+2b +3	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>
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• TOTAL operational appropriations	Commitments	(4)	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>
	Payments	(5)	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)							
<b>TOTAL appropriations under HEADING 1</b> of the multiannual financial framework	Commitments	=4+ 6	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>
	Payments	=5+ 6	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>

**If more than one operational heading is affected by the proposal / initiative, repeat the section above:**

• TOTAL operational appropriations (all operational headings)	Commitments	(4)							
	Payments	(5)							
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)							
<b>TOTAL appropriations under HEADINGS 1 to 6</b> of the multiannual financial framework (Reference amount)	Commitments	=4+ 6	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>
	Payments	=5+ 6	0	1.700	4.000	1.500	4.000	4.000	<b>15.200</b>

<sup>73</sup>

The appropriations will be made available to DG JUST by DG CNECT following the adoption of the relevant Work Programmes.

<b>Heading of multiannual financial framework</b>	<b>7</b>	'Administrative expenditure'
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
DG: JUST								
• Human resources		0,304	0,608	0,608	0,608	0,608	0,608	<b>3,344</b>
• Other administrative expenditure		0,006	0,254	0,254	0,254	0,254	0,254	<b>1,276</b>
<b>TOTAL DG JUST</b>	Appropriations	0,310	0,862	0,862	0,862	0,862	0,862	<b>4,620</b>

<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	0,310	0,862	0,862	0,862	0,862	0,862	<b>4,620</b>
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EUR million (to three decimal places)

		Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework</b>	Commitments	0,310	2,562	4,862	2,362	4,862	4,862	<b>19,820</b>
	Payments	0,310	2,562	4,862	2,362	4,862	4,862	<b>19,820</b>

### 3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year 2022		Year 2023		Year 2024		Year 2025		Year 2026		Year 2027					
	Type <sup>74</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost		
	SPECIFIC OBJECTIVES No 1 and 2 <sup>75</sup>																	
- Output	Number of digitalised EU judicial cooperation procedures								8	5,343					9	5,343	17	10,686
Subtotal for specific objectives No 1 and 2									8	5,343					9	5,343	17	10,686
<b>TOTALS</b>									8	5,343					9	5,343	17	10,686

<sup>74</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>75</sup> As described in point 1.4.2. ‘Specific objective(s)...’

### 3.2.3. Summary of estimated impact on administrative appropriations

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
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<b>HEADING 7 of the multiannual financial framework</b>							
Human resources	0,304	0,608	0,608	0,608	0,608	0,608	<b>3,344</b>
Other administrative expenditure	0,006	0,254	0,254	0,254	0,254	0,254	<b>1,276</b>
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	<b>0,310</b>	<b>0,862</b>	<b>0,862</b>	<b>0,862</b>	<b>0,862</b>	<b>0,862</b>	<b>4,620</b>

<b>Outside HEADING 7<sup>76</sup> of the multiannual financial framework</b>							
Human resources							

<sup>76</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

Other expenditure of an administrative nature							
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>							

<b>TOTAL</b>	<b>0,310</b>	<b>0,862</b>	<b>0,862</b>	<b>0,862</b>	<b>0,862</b>	<b>0,862</b>	<b>4,620</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

### 3.2.4. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

		Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027
20 01 02 01 (Headquarters and Commission's Representation Offices)		2	4	4	4	4	4
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
<b>XX</b> 01 xx yy zz <sup>77</sup>	- at Headquarters						
	- in Delegations						
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>		<b>2</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	<p>2 Legal/Policy Officers (AD) – responsible for the elaboration, drafting and adoption of the implementing acts, the analysis of legal requirements, organising and chairing the work of the committee(s) and liaising with eu-LISA.</p> <p>1 Business Manager (AD) – responsible for liaising with the Member State national authority stakeholders, defining business workflows, business and product requirements and onsite consulting services.</p> <p>1 IT Project Manager (AD) – responsible for the development, maintenance and support of the decentralised IT system, the reference implementation thereof, project, quality and contract management.</p>
External staff	

<sup>77</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

### 3.2.5. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

- can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

- requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

- requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

### 3.2.6. *Third-party contributions*

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N <sup>78</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

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<sup>78</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>79</sup>					Enter as many years as necessary to show the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
Article .....									

For assigned revenue, specify the budget expenditure line(s) affected.

[...]

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[...]

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<sup>79</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.