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2021/0395 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

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

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.

At Union level, there exists a comprehensive set of instruments designed to enhance judicial cooperation 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. However, most instruments do not provide for engaging in such communication through digital means. Even where they do, other gaps still 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 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, those activities that could be conducted digitally (e.g. by email, videoconference, etc.) were able to continue without interruption. 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 in EU cross-border cases has been similarly affected, and the COVID-19 pandemic has underlined the need to ensure the resilience of communication.

Against this background, the Commission proposed the adoption of a harmonised set of rules on digitalisation, which 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 [Reference to *Digitalisation Regulation*]. The proposed Regulation provides that written communication between competent authorities taking part in judicial cooperation in civil, commercial and criminal matters should be conducted through digital communication channel, subject to justified exceptions. In order to ensure that communication is conducted uniformly under the scope of all Union legal instruments in the area of civil, commercial and criminal matters, certain provisions already governing communication need to be aligned with the goal of ensuring “digital by default”¹ information exchanges. The purpose of the amendments is to ensure legal certainty in such situations where existing provisions may govern communication differently than the proposed Regulation. Considering that a certain number of the concerned legal acts are Framework Decisions and Directives, it is appropriate to amend them by way of a Directive, which also sets out transposition aspects.

¹ In the context of this proposal for a Directive, 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.

As Framework Decision 2003/577/JHA² and Framework Decision 2006/783/JHA³ continue to apply not only between the Member States that are not bound by Regulation (EU) 2018/1805⁴ but also between any Member State that is not bound by Regulation (EU) 2018/1805 (notably Ireland) and any Member State that is bound by (EU) Regulation 2018/1805, amendments to these Framework Decisions are also proposed by the current proposal, in case Ireland opts in to the *Digitalisation Regulation**.

- **Consistency with existing policy provisions in the policy area**

The Commission's proposal on the digitalisation of judicial cooperation and access to justice in civil, commercial and criminal matters (hereinafter "the proposal for a regulation") lays down a comprehensive set of horizontal rules regarding the use of the digital communication channel between judicial authorities, the possibility for natural and legal persons to communicate with judicial authorities through electronic means and the use of videoconferencing.

Considering that the purpose of this proposal is to ensure alignment of Framework Decisions and Directives in the area of civil and criminal matters with the provisions of the proposal for a regulation and to amend conflicting legal provisions, the proposed Directive makes consistent references to the proposal for a regulation for all horizontal rules on communication.

- **Consistency with other Union policies**

Similarly, the proposal for a regulation fully complies with the existing statutory provisions in the area of trust services and data protection.

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 Strategy⁵ and the Commission's proposal for a Directive on measures for a high common level of cybersecurity across the Union (NIS2)⁶, 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.**

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

² Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).

³ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59).

⁴ 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 PE/38/2018/REV/1 (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 (OJ L ...).

⁵ JOIN/2020/18 final.

⁶ COM 2020/823 final.

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(2) and 82(1) of the Treaty on the Functioning of the European Union (TFEU)⁷.

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 Union 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 Union 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 envisaged digitalisation measures are strictly linked to existing Union legal instruments in the area of cross-border judicial cooperation and cannot be achieved by Member State acting alone. Therefore, the objectives of this proposal cannot be fully achieved by the Member States 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 judicial procedures having cross-border implications and will simplify and speed up communication between Member States' authorities. 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**

The proposed actions will not burden Member States beyond what is needed to achieve the objective of digital communication in judicial cooperation in civil, commercial and criminal matters. Provisions governing communication need to be amended so as to include the digital communication channel. Since these provisions are laid down in Union legal acts, the only appropriate means to amend them is through another Union act.

⁷ Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47–390).

The proposed amending Directive does not lay down new substantive rules, it is limited to expanding the rules on communication in order to include the digital communication channel, in-line with the proposal for a regulation.

- **Choice of the instrument**

Since the legal acts amended by this proposal are Framework Decisions and Directives, it is appropriate to amend them through a Directive, which also sets out transposition aspects.

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.

- **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.

- **Impact assessment⁸**

⁸ SWD(2021) 392

Since this proposal lays down alignment provisions to ensure coherence with the set of rules included in the proposal for a Regulation on digitalisation of judicial cooperation and access to justice in civil, commercial and criminal matters, the impact has been assessed as part of the impact assessment presented in the accompanying staff working document to that proposal.

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.

(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 Portal⁹.

⁹ The main tool that has been developed as a one-stop shop for access to information and services in the area of justice.

(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 the 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.

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.

- **Regulatory fitness and simplification**

This proposal aims at introducing modern digital technology in judicial cooperation in civil, commercial and criminal matters with cross-border implications. The expected result is quicker, cheaper, more secure and reliable communication between the competent authorities.

The use of the digital communication channel will alleviate administrative burden and will render processing of cases more efficient.

- **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 DECENTRALISED NATURE OF THE SYSTEM, ESTABLISHED BY THE PROPOSED REGULATION ON DIGITALISATION OF JUDICIAL COOPERATION AND ACCESS TO JUSTICE IN CIVIL, COMMERCIAL AND CRIMINAL MATTERS, FOR THE EXCHANGE BETWEEN THE COURTS AND THE COMPETENT AUTHORITIES AND BETWEEN THESE ENTITIES AND NATURAL OR LEGAL PERSONS, 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) 2018/1725¹⁰ OR THE GENERAL DATA PROTECTION REGULATION¹¹ OR DIRECTIVE (EU) 2016/680¹² WILL APPLY.**4. BUDGETARY IMPLICATIONS**

This proposal ensures coherence with the cohesive set of rules laid down in the proposed Regulation on digitalisation of judicial cooperation and access to justice in civil, commercial and criminal matters. Therefore, its budgetary impact is already considered as part of the proposed Regulation, which addresses technical implementation aspects, whereas this proposal only ensures legal alignment.

For this reason, the proposal for an amending directive will have no standalone budgetary implications.

¹⁰ 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).

¹¹ 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).

¹² 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).

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Since the technical aspects of implementing the judicial cooperation through the digital communication channel are governed by the proposed Regulation on digitalisation of judicial cooperation and access to justice in civil, commercial and criminal matters, the implementation, monitoring, evaluation and reporting on the achievement of its specific goals, shall be performed under the rules of the Regulation.

The scope of this proposal is limited to amending certain legal provisions on communication. Therefore, its impact should be monitored, evaluated and reported on under the individual amended instruments.

- **Explanatory documents (for directives)**

This Directive does not require Explanatory Documents on the transposition.

- **Detailed explanation of the specific provisions of the proposal**

Articles 1 – 11 - introduce amendments to the Framework Decisions and Directives in civil, commercial and criminal matters to include references to the digital means of communication as established by the Regulation on digitalisation of judicial cooperation and access to justice in civil, commercial and criminal matters, to avoid uncertainty as to the communication means to be used under the existing legal acts.

Article 12 – 15 - set out the transposition periods for the implementation of the amendments in the concerned Directives and Framework decisions.

Article 16 - provides that the Directive would enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

Article 17 – clarifies that the Directive is addressed to the Member States in accordance with the Treaties.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

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), points (e) and (f) and Article 82(1), (d) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In its 2 December 2020 Communication on the digitalisation of justice in the EU¹ the Commission identified the need to modernise the legislative framework of the Union's cross-border procedures in civil, commercial and criminal law, in line with the "digital by default" principle, while ensuring all necessary safeguards to avoid social exclusion.
- (2) Facilitating judicial cooperation between the Member States is among the main objectives of the Union's 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 in civil commercial and criminal matters with cross-border implications, legal acts of the Union providing for communication between competent authorities, including Union agencies and bodies, should be complemented by conditions for conducting such communication through digital means.
- (4) In order to achieve these goals, Regulation (EU) .../...[*Digitalisation Regulation*] has been adopted.
- (5) For the purposes of ensuring the full attainment of the objectives of Regulation (EU) .../...[*Digitalisation Regulation*], and for the alignment of the existing Union legal acts in civil, commercial and criminal matters with that Regulation, it is necessary to

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

amend the following legal acts: Council Directive 2002/8/EC², Council Framework Decisions 2002/465/JHA³, 2002/584/JHA⁴, 2003/577/JHA⁵, 2005/214/JHA⁶, 2006/783/JHA⁷, 2008/909/JHA⁸, 2008/947/JHA⁹, 2009/829/JHA¹⁰ and 2009/948/JHA¹¹, and Directive 2014/41/EU of the European Parliament and of the Council¹².

- (6) The amendments seek to ensure that communication between authorities takes place in accordance with the rules and principles set out in Regulation (EU) .../...[*Digitalisation Regulation*].
- (7) Whereas this Directive sets out amendments to rules already transposed into the national legal order of the Member States, it should also have specific provisions on the transposition of these amendments. The transposition provisions should be aligned with the implementation timeline provided for in Regulation (EU) .../...[*Digitalisation Regulation*].
- (8) 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 Directive and is not bound by it or subject to its application.
- (9) [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 Directive and is not bound by it or subject to its application.]

OR

² Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 026, 31.1.2003, p.41).

³ Council Framework Decision of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

⁴ 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision

⁵ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1–20).

⁶ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16–30).

⁷ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59–78).

⁸ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27–46).

⁹ Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337, 16.12.2008, p. 102–122).

¹⁰ Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, p. 20–40).

¹¹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42–47).

¹² Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1–36).

[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 Directive],

HAVE ADOPTED THIS DIRECTIVE:

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

Article 1 Amendments to Directive 2002/8/EC

In Article 13 of Directive 2002/8/EC, paragraph 4 is replaced by the following:

“4. The competent transmitting authority shall transmit the application to the competent receiving authority in the other Member State t in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]* within 15 days of the receipt of the application duly completed in one of the languages referred to in paragraph 2 of this Article, and the supporting documents, translated, where necessary, into one of those languages.”.

* 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 ...).”.

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

Article 2 Amendment to Framework Decision 2002/465/JHA

In Article 1 of Framework Decision 2002/465/JHA, the following paragraph is added:

“13. Written communications between Member States to set up a joint investigation team and sign a joint investigation team agreement, shall be made in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*.

* 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 3
Amendment to Framework Decision 2002/584/JHA

Framework Decision 2002/584/JHA is amended as follows:

(1) in Article 10, paragraph 4 is replaced by the following:

“The issuing judicial authority shall forward the European arrest warrant in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*, without prejudice to paragraphs 2 and 3 of this Article.”;

* 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 ...).”;

(2) in Article 18, paragraph (1), point (a) is replaced by the following:

(a) either agree that the requested person should be heard according to Article 19 or via video-conference in accordance with Article 8 of Regulation (EU) .../...[*Digitalisation Regulation*]

(3) in Article 25, paragraph 3 is replaced by the following:

“3. The transit request and the information set out in paragraph 1 of this Article may be addressed to the authority designated pursuant to paragraph 2 of this Article in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]. The Member State of transit shall notify its decision by the same procedure.”.

Article 4
Amendment to Framework Decision 2003/577/JHA

Framework Decision 2003/577/JHA is amended as follows:

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

“1. A freezing order within the meaning of this Framework Decision, together with the certificate provided for in Article 9 of this Framework Decision, shall be transmitted by the judicial authority which issued it directly to the competent judicial authority for execution in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”.

* 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 ...).”;

(2) in Article 5(1), the third subparagraph is replaced by the following:

“A report on the execution of the freezing order shall be made forthwith to the competent authority in the issuing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”;

(3) in Article 7, paragraph 3 is replaced by the following:

“3. Any decision to refuse recognition or execution shall be taken and notified forthwith to the competent judicial authorities of the issuing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”;

(4) Article 8 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the competent authority in the issuing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”;

(b) paragraph 3 is replaced by the following:

“3. As soon as the ground for postponement has ceased to exist, the competent judicial authority of the executing State shall forthwith take the necessary measures for the execution of the freezing order and inform the competent authority in the issuing State thereof in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”

Article 5

Amendment to Framework Decision 2005/214/JHA

Council Framework Decision 2005/214/JHA is amended as follows:

(1) in Article 4, paragraph 3 is replaced by the following:

“3. The decision or a certified copy of it, together with the certificate, shall be transmitted by the competent authority in the issuing State directly to the competent authority in the executing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*. The original of the decision, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official written communications shall also be made directly between the said competent authorities in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”

* 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 ...).”;

(2) In Article 7, paragraph 3 is replaced by the following:

“3. In cases referred to in paragraphs 1 and 2(c) and (g), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*, and shall, where appropriate, ask it to supply any necessary information without delay.”

(3) In Article 14, introductory wording, is replaced by the following:

“The competent authority of the executing State shall without delay inform the competent authority of the issuing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”

Article 6
Amendment to Framework Decision 2006/783/JHA

Framework Decision 2006/783/JHA is amended as follows:

(1) in Article 4, paragraph 2 is replaced by the following:

“2. The confiscation order or a certified copy thereof, together with the certificate, shall be transmitted by the competent authority of the issuing State directly to the authority of the executing State which is competent to execute it, in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*. The original of the confiscation order, or a certified copy thereof, and the original of the certificate shall be transmitted to the executing State if it so requires. All official written communications shall be made directly between the said competent authorities in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”.

* 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 ...).”;

(2) Article 10 is amended as follows:

(a) paragraph 3 is replaced by the following:

“3. In the case of postponement pursuant to paragraph 1, point (a), of this Article the competent authority of the executing State shall inform the competent authority of the issuing State thereof immediately in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*], and the competent authority of the issuing State shall comply with the obligations referred to in Article 14(3) of this Framework Decision.”;

(b) paragraph 4 is replaced by the following:

“4. In the cases referred to in paragraph 1, points (b) to (e), of this Article, a report on the postponement, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith by the competent authority of the executing State to the competent authority of the issuing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].

As soon as the ground for postponement has ceased to exist, the competent authority of the executing State shall forthwith take the necessary measures for the execution of the confiscation order and inform the competent authority of the issuing State thereof in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”.

(3) in Article 14(3), the introductory wording, is replaced by the following:

“The competent authority of the issuing State shall immediately inform the competent authority of any executing State concerned in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”

(4) Article 15 is replaced by the following:

“Article 15

Termination of execution

The competent authority of the issuing State shall forthwith inform the competent authority of the executing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*] of any decision or measure as a result of which the order ceases to be enforceable or shall be withdrawn from the executing State for any other reason. The executing State shall terminate execution of the order as soon as it is informed by the competent authority of the issuing State of that decision or measure.”;

(5) In Article 17, the introductory wording, is replaced by the following:

“The competent authority of the executing State shall without delay inform the competent authority of the issuing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]:”

Article 7

Amendments to Framework Decision 2008/909/JHA

Framework Decision 2008/909/JHA is amended as follows:

(1) in Article 5, paragraph 1 is replaced by the following:

“1. The judgment or a certified copy of it, together with the certificate, shall be forwarded, by the competent authority of the issuing State directly to the competent authority of the executing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*. The original of the judgment, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official written communications shall also be made directly between the said competent authorities in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”.

* 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 ...).”;

(2) in Article 16, paragraph 1 is replaced by the following:

“1. Each Member State shall, in accordance with its law, permit the transit through its territory of a sentenced person who is being transferred to the executing State, provided that a copy of the certificate referred to in Article 4 of this Framework Decision has been forwarded to it by the issuing State together with the transit request. The transit request and the certificate may be transmitted in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]. Upon request of the Member State to permit transit, the issuing State shall provide a translation of the certificate into one of the languages, to be indicated in the request, which the Member State requested to permit transit accepts.”;

(3) in Article 21, the introductory wording is replaced by the following:

“The competent authority of the executing State shall without delay inform the competent authority of the issuing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]:”.

Article 8

Amendments to Framework Decision 2008/947/JHA

Framework Decision 2008/947/JHA is amended as follows:

(1) Article 6 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. The judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1 of this Article, shall be forwarded by the competent authority of the issuing State directly to the competent authority of the executing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*. The original of the judgment and, where applicable, the probation decision, or certified copies thereof, as well as the original of the certificate, shall be sent to the competent authority of the executing State if it so requires. All official written communications shall also be made directly between the said competent authorities in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”.

* 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 ...).”;

(b) paragraph 7 is replaced by the following:

“7. When an authority of the executing State which receives a judgment and, where applicable, a probation decision, together with the certificate referred to in paragraph 1 of this Article, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, it shall, *ex officio*, forward it to the competent authority and shall without delay inform the competent authority of the issuing State accordingly in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”;

(2) in Article 12, paragraph 1 is replaced by the following:

“1. The competent authority of the executing State shall decide as soon as possible, and within 60 days of receipt of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) of this Framework Decision, whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. It shall immediately inform the competent authority of the issuing State of its decision, in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”;

(3) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The competent authority of the executing State shall without delay inform the competent authority of the issuing State, in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*], of all decisions on the:

(a) modification of the probation measure or alternative sanction;

(b) revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;

(c) enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;

(d) lapsing of the probation measure or alternative sanction.”;

(b) paragraph 3 is replaced by the following:

“3. The competent authority of the issuing State shall immediately inform the competent authority of the executing State, in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*], of any circumstances or findings which, in its opinion, could entail one or more of the decisions referred to in paragraph 1, points (a), (b) or (c) of this Article being taken. “;

(4) in Article 17, paragraph 3 is replaced by the following:

“3. Notice of the findings mentioned in paragraph 1 points (a) and (b) and in paragraph 2 of this Article shall be given using the standard form set out in Annex II. Notice of the facts and circumstances mentioned in paragraph 1, point (c), of this Article shall be given, in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*], including, where possible, through the form set out in Annex II of this Framework Decision.”;

(5) in Article 18, the introductory wording is replaced by the following:

“The competent authority of the executing State shall without delay inform the competent authority of the issuing State, in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*], of:”.

Article 9

Amendments to Framework Decision 2009/829/JHA

Framework Decision 2009/829/JHA is amended as follows:

(1) in Article 10, paragraph 2 is replaced by the following:

“2. The decision on supervision measures or a certified copy of it, together with the certificate, shall be forwarded by the competent authority in the issuing State directly to the competent authority in the executing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*. The original of the decision on supervision measures, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official written communications shall also be made directly between the said competent authorities in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”.

* 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 ...).”;

(2) in Article 20(2), the introductory wording is replaced by the following:

“The competent authority in the executing State shall, without delay, inform the competent authority in the issuing State in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”.

Article 10

Amendments to Framework Decision 2009/948/JHA

Article 7 of Framework Decision 2009/948/JHA is replaced by the following:

“Article 7

Means of communication

The contacting and contacted authorities shall communicate in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*.

* 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 11 *Amendment to Directive 2014/41/EU*

Directive 2014/41/EU is amended as follows:

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

“1. The EIO completed in accordance with Article 5 of this Directive shall be transmitted from the issuing authority to the executing authority in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*]*.

* 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 ...).”;

(2) in Article 15, paragraph 2 is replaced by the following:

“2. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”;

(3) Article 16 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. Without prejudice to Article 10(4) and (5) of this Directive the executing authority shall inform the issuing authority immediately by any means:

(a) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex A is incomplete or manifestly incorrect;

(b) if the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case; or

(c) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 9.

Upon request by the issuing authority, the information shall be confirmed without delay in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”;

(b) in paragraph 3, the introductory wording is replaced by the following:

“Without prejudice to Article 10(4) and (5) of this Directive the executing authority shall inform the issuing authority without delay in accordance with Article 3 of Regulation (EU) .../...[*Digitalisation Regulation*].”.

CHAPTER III TRANSPOSITION

Article 12

Transposition of Articles 3, 7 and 11

Member States shall adopt and publish, by [two years from the adoption of the Implementing act referred to in Article 12(3) of Regulation (EU) .../...(Digitalisation Regulation)] at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 3, 7 and 11. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions 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) of Regulation (EU) .../...[*Digitalisation Regulation*].

When Member States adopt those provisions, they shall contain a reference to Articles 3, 7 and 11 of this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 13

Transposition of Article 1

Member States shall adopt and publish, by [*two years from the adoption of the Implementing act referred to in Article 12(4) of Regulation (EU) .../...(Digitalisation Regulation)*] at the latest, the laws, regulations and administrative provisions necessary to comply with Article 1. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions 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) of Regulation (EU) .../...[*Digitalisation Regulation*].

When Member States adopt those provisions, they shall contain a reference to Article 1 of this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 14

Transposition of Articles 4, 5, 6 and 10

Member States shall adopt and publish, by [*two years from the adoption of the Implementing act referred to in Article 12(5) of Regulation (EU) .../...(Digitalisation Regulation)*] at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 4, 5, 6 and 10. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions 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) of Regulation (EU) .../...[*Digitalisation Regulation*].

When Member States adopt those provisions, they shall contain a reference to Articles 4, 5, 6, 10 and 11 of this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 15
Transposition of Articles 2, 8 and 9

Member States shall adopt and publish, by [*two years from the adoption of the Implementing act referred to in Article 12(6) of Regulation (EU) .../...(Digitalisation Regulation)*] at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 2, 8 and 9. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions 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) of Regulation (EU) .../...[*Digitalisation Regulation*].

When Member States adopt those provisions, they shall contain a reference to Articles 2, 8 and 9 of this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 16
Entry into force

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

Article 17

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President