

On Digitalisation of Judicial Cooperation and Access to Justice: The Commission Proposal

Dr. Lenka Valkova, Researcher at the University of Milan, offers a description of the Proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the judicial cooperation, COM(2021) 759 final, issued on 1 December 2021.

Although a comprehensive set of instruments were designed to enhance judicial cooperation and access to justice in cross-border civil, commercial and criminal cases at EU level, most of them do not provide for engaging in communication between authorities and individuals or legal entities through digital means.

During the COVID-19 pandemic, in many instances national courts have been unable to maintain normal operations and were forced to switch to the use of digital technologies (e.g. email, videoconference, etc.). However, many of the technical solutions employed were developed in an *ad hoc* manner. Against this background, in December 2020 the Commission adopted a Communication on the digitalisation of justice in the EU proposing a set of measures to bring forward digitalisation at both the national and EU level in line with the 'digital by default' principle. Such 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 (on the Communication see here and Commission Staff Working Document Accompanying the Communication see here).

In this framework, and following the publication of The Roadmap and Public consultation, the Proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the judicial cooperation, was issued on 1 December 2021 (on the Proposal and also on the Impact Assessment see here). According to the Proposal, the Regulation shall apply to electronic communication between competent authorities and between natural or legal persons and

competent authorities, and videoconferencing in proceedings falling under the scope of the legal acts listed in Annex I, and notably the Brussels *Ibis* Regulation, the Regulation on European Order for Payment Procedure, the Regulation on European Enforcement Order for Uncontested Claims, the Regulation on European Small Claims Procedure, the Regulation on European Account Preservation Order, the Regulation on Insolvency Proceedings, the Brussels *Iiter* Regulation, the Maintenance Regulation, the Regulations on Matrimonial Property Regimes and on the Property Consequences of Registered Partnerships (on complete list of the legal instruments in Annex I see here).

To guarantee a common approach towards the use of modern technologies in cross-border judicial cooperation and access to justice, this initiative aims to make using digital communication compulsory for communication between courts and competent authorities through a decentralised IT system, subject to justified exceptions in case of disruption of the system or in other specific circumstances. Moreover, the Regulation should provide a legal basis for the electronic communication between courts and natural and legal persons and for the use of videoconferencing or other distance communication technology for oral hearings in cross-border cases. To this end, the European electronic access point, located on the European e-Justice Portal, which 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, will be established. 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. In fact, to respect the needs of disadvantaged groups and vulnerable people and 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 paper-based communication will be maintained as an option.

This Proposal and other EU initiatives concerning cross-border civil, commercial and family law in the digital world will be discussed on 8 December 2021 during the event PhD Book Club - EU PIL in Digital World. The event is organized under the auspices of the Digital in Law project, co-funded by the Erasmus+ Programme of the European Union.