



# Proposed amendments to the EU Regulation on the digitalisation of justice

European Disability Forum

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**EDF's Proposed amendments to the Regulation on the digitalisation of judicial cooperation and access to justice**

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## Introduction

This document presents amendments to the proposed regulation on the digitalisation of judicial cooperation COM (2021) 759 final. It should be read along with [EDF recommendations](#) to the public consultation on the subject in 2020.

### The European Disability Forum

The European Disability Forum (EDF) is an independent NGO that represents the interests of 100 million Europeans with disabilities. EDF is a unique platform which brings together representative organisation of persons with disabilities from across Europe. EDF is run by persons with disabilities and their families. We are a strong, united voice of persons with disabilities in Europe.

## Executive Summary

**We deeply regret the absence of accessibility requirements, procedural accommodations for persons with disabilities and reference to the United Nations Convention on the Rights of**

## **Persons with Disabilities (CRPD)<sup>1</sup> in the proposed Regulation on the digitalisation of judicial cooperation and access to justice.**

Under the **CRPD** the EU and its Member States have the obligation to ensure access to the justice system, both for legal professionals with disabilities and people with disabilities seeking justice. This includes ensuring the accessibility of the justice system and that procedural accommodations (e.g. sign language interpretation, remote participation, etc.) are available to people with disabilities throughout the justice process. This is very important in the digitalisation of justice at EU and national level.

Access to Justice is one of the priorities in the Union of Equality and the **European Disability Rights Strategy 2021-2030**<sup>2</sup>, with reference to International Principles and Guidelines on Access to Justice for Persons with Disabilities<sup>3</sup>. Accessibility also is part of the EU Justice Scoreboard 2022<sup>4</sup>.

### **EU legislation on accessibility**

The lack of accessibility in the proposed regulation is concerning, as several EU acts relating to digitalisation and accessibility already exist, covering a wide range of technologies and digital content. These EU legislations provide a set of accessibility requirements which are supported by European standards on accessibility.

We propose amendments in line with:

- The European Accessibility Act<sup>5</sup> (EAA)
- The Web Accessibility Directive<sup>6</sup> (WAD) – covering public body websites and mobile applications
- The Electronic Communications Code<sup>7</sup>
- The Public Procurement Directive<sup>8</sup>

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<sup>1</sup> [Council decision 2010/48/EC](#)

<sup>2</sup> [European Disability Rights Strategy 2021-2030](#), see 5.1.

<sup>3</sup> UN International principles and guidelines on access to justice for persons with disabilities [International Principles and Guidelines on Access to Justice for Persons with Disabilities \(un.org\)](#)

<sup>4</sup> [EU Justice Score Board 2022](#)

<sup>5</sup> [European Accessibility Act \(EU\) 2019/882](#)

<sup>6</sup> [Web Accessibility Directive \(EU\) 2016/2102](#) **Error! Hyperlink reference not valid.**

<sup>7</sup> [European Electronic Communication Code \(EU\) 2018/1972](#)

<sup>8</sup> [Public Procurement Directive 2014/24/EU](#) ; Article 42 covers **all procurement** “intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications shall, except

- Harmonised standard EN 301 549 Accessibility requirements for ICT products and services
- European standard EN 17161 Accessibility following a Design for all approach (up for harmonisation in relation to the European Accessibility Act)

**The text of the Regulation should make explicit references to the European Accessibility Act (EAA).** The EAA includes the same accessibility requirements for websites, apps and digital documents as the Web Accessibility Directive, but it also covers other ICT products and services, such as computers and operating systems, electronic communications, or digital identification and payment methods, among others, which would apply for judicial cooperation and access to justice. We propose such reference to the Accessibility Act to ensure legal coherence and implementation as for the accessibility for persons with disabilities.

## Proposed amendments to articles of the Regulation

### Article 4: Establishment of a European electronic access points

Commission proposal	Proposed amendments
<p>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.</p> <p>2. The Commission shall be responsible for the technical management, development, maintenance, security and support of the European electronic access point.</p> <p>3. The European electronic access point shall allow natural and legal persons to file claims, launch requests, send and receive procedurally relevant information</p>	<p>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. <b><i>The European electronic access point shall meet the accessibility requirements set out in annex I of Directive (EU) 2019/882 .</i></b></p> <p>2. The Commission shall be responsible for the technical management, development, maintenance, security, <b><i>accessibility</i></b>, and support of the European electronic access point.</p>

in duly justified cases, be drawn up to take into account accessibility criteria for persons with disabilities or design for all users.”

and communicate with the competent authorities.	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.
<p style="text-align: center;">Justification:</p> <p>To ensure equal access to justice it is paramount for European electronic access points to be accessible to users with disabilities, including members of the legal professions, employees, and citizens.</p>	

**Article 5: Means of communication between natural or legal persons and competent authorities**

<b>Commission proposal</b>	<b>Proposed amendments</b>
<p>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.</p> <p>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.</p> <p>3. Communication under paragraph 1 shall be considered equivalent to written communication under the applicable procedural rules</p>	<p>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.</p> <p>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 <b>and that it is accessible to persons with disabilities.</b></p> <p>3. Communication under paragraph 1 shall be considered equivalent to written communication under the applicable procedural rules</p>
<p style="text-align: center;">Justification:</p> <p>To ensure equal access to justice and the right to a fair trial it is paramount for European electronic access points to be accessible to users with disabilities, including natural persons such as members of the legal professions, employees, and citizens.</p>	

## Article 7: Hearing through videoconferencing or other distance communication technology in civil and commercial matters

Commission proposal	Proposed amendments
<p>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:</p> <p>(a) such technology is available, and</p> <p>(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.</p> <p>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.</p> <p>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</p>	<p>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:</p> <p>(a) such technology is available, and <b><i>accessible, as per accessibility requirements set out in annex I of directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, and</i></b></p> <p>(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;</p> <p><b>(c) procedural accommodations are granted at the request of any party with disabilities.</b></p> <p>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.</p> <p>3. Competent authorities may on their own motion allow the participation of</p>

	<p>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 <b>and that the videoconferencing or other distance communication technology is accessible as set out in accordance with paragraph 1 (a).</b></p>
<p style="text-align: center;">Justification:</p> <p>In order to ensure equal access to justice, videoconferencing solutions must be accessible to users with disabilities, including natural persons such as members of the legal professions, employees, and citizens.</p> <p>Procedural accommodations must be granted to parties with disabilities to ensure their right to access to justice, as required under Article 13 of the CRPD. They are measures aimed at removing barriers in accessing justice, for example measures needed to ensure communication with the court. Contrary to reasonable accommodations, procedural accommodations cannot be exempted based on “undue burden” including costs , as they are necessary to ensure the fundamental right to a fair trial. The right to right to an effective remedy and to a fair trial is protected under Article 47 of the Charter of Fundamental Rights of the European Union.</p>	

**Article 8: Hearing through videoconferencing or other distance communication technology in criminal proceedings**

<b>Commission proposal</b>	<b>Proposed amendments</b>
<p>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:</p> <p>(a) such technology is available;</p> <p>(b) the particular circumstances of the case justify the use of such technology;</p> <p>(c) the suspect, accused or convicted persons expressed consent on the use of videoconferencing or other distance</p>	<p>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:</p> <p>(a) such technology is available <b>and accessible as per accessibility requirements set out in annex I of directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services;</b></p>



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.

(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;

**(d) procedural accommodation is provided to the suspect, accused or convicted person with disabilities.**

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.

Justification:

In order to ensure equal access to justice and the right to a fair trial, videoconferencing solutions must be accessible to users with disabilities, including natural persons such as members of the legal professions, employees, and citizens.

Procedural accommodations must be granted to suspect, accused or convicted persons with disabilities to ensure their right to a fair trial, as required by Article 13 of the CRPD. They are measures aimed at removing barriers in accessing justice, for example measures needed to ensure communication with the court. Contrary to reasonable accommodations, procedural accommodations cannot be exempted based on “undue burden” including costs, as they are necessary to ensure the fundamental right to a fair trial. The right to right to an effective remedy and to a fair trial is protected under Article 47 of the Charter of Fundamental Rights of the European Union.



## Article 11: Electronic payment of fees

Commission proposal	Proposed amendments
<p>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.</p> <p>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.</p>	<p>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.</p> <p>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. <b><i>The payment systems shall be accessible for persons with disabilities.</i></b></p>
<p>Justification:</p> <p>Accessible payment systems are very important for users with disabilities. This means that it is also imperative that Article 4 on Establishment of a European electronic access points requires compliance with accessibility requirements set out in annex I of Directive (EU) 2019/882.</p>	

## Article 12 (adoption of implementing acts by the Commission) and article 13 (reference implementation software)

Commission proposal	Proposed amendments
<p>Article 12 Adoption of implementing acts by the Commission</p> <p>1. The Commission shall adopt implementing acts establishing the decentralised IT system, setting out the following:</p> <ul style="list-style-type: none"> <li>(a) the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;</li> <li>(b) the technical specifications for communication protocols;</li> <li>(c) the information security objectives and relevant technical measures ensuring minimum</li> </ul>	<p>Article 12 Adoption of implementing acts by the Commission</p> <p>1. The Commission shall adopt implementing acts establishing the decentralised IT system, setting out the following:</p> <ul style="list-style-type: none"> <li>(a) the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;</li> <li>(b) the technical specifications for communication protocols;</li> <li>(c) the information security objectives and relevant technical measures ensuring minimum</li> </ul>

<p>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;</p>	<p>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;  <b>(e) the accessibility of the decentralised IT system.</b></p>
<p>Article 13 Reference implementation software</p> <p>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.</p> <p>2.The Commission shall provide, maintain and support on a free-of-charge basis the reference implementation software.</p>	<p>Article 13 Reference implementation software</p> <p>1. The Commission shall be responsible for the creation, <b>accessibility</b>, 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.</p> <p>2.The Commission shall provide, maintain and support on a free-of-charge basis the reference implementation software.</p>
<p style="text-align: center;">Justification:</p> <p>Products intended for use by natural persons, whether general public or staff of the should take into account accessibility criteria for persons with disabilities or design for all users.</p>	

## Proposed new recitals

Commission proposal	Proposed amendments
	<p><b>New recital:</b></p> <p><i>By respectively ratifying and concluding the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), the Member States and the Union have committed themselves to taking appropriate measures to ensure equal access to information and communication technologies and systems, as well as access to justice for persons with disabilities, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants of the justice system. The Commission communication of the 3 May 2021 ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’ builds on the UN CRPD and sets out action to be taken in several priority areas including improving access to justice, legal protection, freedom and security.</i></p>
	<p><b>New recital</b></p> <p><i>Union law provides for accessibility requirements improving the equal access to persons with disabilities to information and communication technology that also have the potential to further improve access to justice of persons with disabilities. Directive (EU) 2019/882 sets out EU harmonized accessibility requirements for a range of ICT products and services, such as computers and operating systems, electronic communications, or digital identification and payment methods, among others. Union law is supported by harmonised standards that judicial administration can use to procure accessible technology in line with the Directive 2014/24/EU and Directive 2014/25/EU.</i></p>
	<p><b>New recital</b></p> <p><i>In the context of this Regulation, accessibility should be understood as principles and</i></p>

	<p><i>techniques to be observed when designing, constructing, maintaining, and updating websites, software, electronic communications, videoconferencing and other distance communication technology in order to make them more accessible to users, in particular persons with disabilities.</i></p>
	<p><b><i>New recital</i></b></p> <p><i>Procedural accommodation is essential to remove barriers in the justice system and to ensure equal access to remedy and fair trial for persons with disabilities. Such accommodation must be granted when needed and requested by persons with disabilities who are direct or indirect participants of the justice system. Such accommodation may include the provision of sign language interpretation, tactile sign interpretation, speech-to-text functionality, Easy to Read and Braille formats, among others, and should be considered in the implementation of this Regulation as a way to ensure equal access to hearing through videoconferencing or other distance communication technology.</i></p>
<p><b>Justification:</b></p> <p>These new recitals include essential references to the United Nations Convention on the Rights of Persons with Disabilities, as well as relevant EU policies and instruments setting out accessibility requirements necessary to ensure the equal rights of persons with disabilities in judicial cooperation and access to justice.</p>	

## Document credits

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