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### Article 2

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# ARTICLE 2

## DEFINITIONS

**Elena Alina Onțanu**

For the purposes of this Regulation, the following definitions apply:

- (1) ‘forum Member State’ means the Member State in which the judicial proceedings take place;
- (2) ‘decentralised IT system’ means a network of national IT systems and interoperable access points, operating under the individual responsibility and management of each Member State, that enables the secure and reliable cross-border exchange of information between the national IT systems.

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### A. INTRODUCTION

Article 2 is a new provision introduced by the Service of Documents Regulations Recast. **2.01**  
The article defines two concepts that are relevant for the purpose of the application of the Regulation: that of ‘forum Member State’, and that of ‘decentralised IT system’ designated as means of communication in the process of the service of documents between transmitting agencies, receiving agencies, and central bodies.

The introduction of definitions in the recasts of certain concepts used by a Regulation is not a new phenomenon. The approach has been already used for other private international law Regulations when revised. For example, this was the case for the Brussels I-bis Regulation,<sup>1</sup> Brussels II-ter,<sup>2</sup> and the Taking of Evidence Recast.<sup>3</sup> By choosing to introduce definitions, the **2.02**

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1 Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I-bis), OJ 2012 L 351/1.

2 Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), OJ 2019 L 178/1.

3 Regulation (EU) 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast), OJ 2020 L 405/1.

new Service Regulation seeks to provide clarity to users with regard to certain concepts that may raise questions as to their meaning within the framework of its application.

- 2.03** The final text of Article 2 nevertheless falls short of what, according to some delegations, would have been appropriate. Indeed, during the negotiation of the initial text of the proposal, some Member States, such as Portugal<sup>4</sup> and Latvia, considered the addition of certain definitions of concepts a desirable development. The latter, in particular, emphasized the need to include definitions especially with regard to technology developments – the decentralised IT system, the national IT systems, the communication infrastructure and the communication infrastructure access points<sup>5</sup> – in so far as they are a novelty of the recast.
- 2.04** The final text of the Regulation retained only the definition of the ‘decentralised IT system’.<sup>6</sup> Given the intention to rely on the e-CODEX system as a decentralised and interoperable system for the cross-border communication and exchange of documents between Member States,<sup>7</sup> it is here submitted that the other concepts for which clarification was deemed desirable by the Latvian delegation should be understood and interpreted from the perspective of the provisions of the e-CODEX Regulation.<sup>8</sup>

## B. FORUM MEMBER STATE

- 2.05** According to Article 2(1), ‘forum Member State’ means the Member State in which the judicial proceedings take place.
- 2.06** The definition corresponds to the initial proposal by the European Commission for this concept; it did not change during the institutional and intergovernmental negotiations, in spite of some suggestions in this sense. The Polish delegation had advocated in favour of additional clarifications, in the sense of explaining that the phrase ‘judicial proceedings’ refers as well to maintenance and divorce claims, which in Poland are handled by administrative authorities.<sup>9</sup>

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4 Regarding Portugal, see Opinion on the application of the Principles of Subsidiarity and Proportionality, ST 13500/18, Brussels, 24 October 2018, p. 6; Council of the European Union, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) – Comments from Member States, Interinstitutional File 2018/0204(COD), ST13744/18, Brussels, 30 October 2018, p. 22.

5 These concepts are related to the establishment of and reliance on a modern communication technology system for the speedy transmission and exchange of documents between Member States for the purpose of service: See Recital 10.

6 The same definition is used by Regulation (EU) 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast), OJ 2020 L 405/1 in Art. 2 (2).

7 Recital 10 Service Regulation Recast and Recitals 2 and 3 Commission Implementation Regulation (EU) 2022/423 laying down the technical specifications, measures and other requirements for the implementation of the decentralised IT system referred to in Regulation (EU) 2020/1784 of the European Parliament and of the Council.

8 Recital 8 and Art. 3 of the Regulation (EU) 2022/850 on a computerised system of communication in cross-border civil and criminal proceedings (e-CODEX system), and amending Regulation (EU) 2018/1826, OJ 2022 L 150/1.

9 Council of the European Union, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) – Comments from Member States, Interinstitutional File 2018/0204(COD), ST06067/19, Brussels, 5 March 2019, p. 98.

This request was not included in the final text of the recast; however, family matters are deemed to be covered by the scope of the Regulation. No provision of the Regulation points to a different interpretation.

The wording ‘forum Member State’ is not used by other Regulations dealing with matters of private international law, but from a functional perspective its meaning is similar – a Member State from which the proceedings or the concerned procedural documents originate.<sup>10</sup> **2.07**

The definition eliminates any doubts as to which Member State should be considered the forum for the purpose of this Regulation. This is to be understood as referring to the Member State in which proceedings were initiated – the court has been seized – and not the country in which service has to be carried out, although a court may be involved in the service of documents, if, for example, a member of the court staff is in charge of serving documents. **2.08**

### C. DECENTRALISED IT SYSTEM

Article 2(2) defines ‘decentralised IT system’ as a ‘network of national IT systems and interoperable access points, operating under the individual responsibility and management of each Member State, that enables the secure and reliable cross-border exchange of information between the national IT systems.’ **2.09**

The reliance on a decentralised IT system for the communication and exchange of documents for the purpose of service is one of the major novelties introduced by the Regulation.<sup>11</sup> Reliance on technology means that supporting the cross-border service of documents was one of the key objectives of the Service of Documents Regulation Recast, and a development that was welcomed by several Member States in the negotiation process.<sup>12</sup> **2.10**

The definition in Article 2(2), identifies the main characteristics of the ‘decentralised IT system’. This is based on: (1) a network that brings together the national IT systems and interoperable access points; (2) the management of the national system remaining the responsibility of the concerned Member State; and (3) the system having to provide for a secured and reliable way to ensure the cross-border exchange of information among national IT systems. The fact **2.11**

10 When definitions are included, these concern the term ‘court’ – see for example the Brussels II-bis Regulation (Regulation (EC) 2201/2003), Recast Taking of Evidence Regulation (Regulation (EU) 2020/1783), ‘court of origin’ – see for example the Maintenance Regulation (Regulation (EC) 4/2009) or the Brussels I-bis Regulation (Regulation (EU) 1215/2012) – or ‘Member State of origin’ – see for example the Brussels II-ter Regulation (Regulation (EU) 2019/1111), Maintenance Regulation (Regulation (EC) 4/2009), the Brussels I-bis Regulation (Regulation (EU) 1215/2012) or the European Account Preservation Order Regulation (Regulation (EU) 655/2014).

11 For a similar opinion on the novelty of this provision, see also Mathieu Chardon, ‘Le nouveau Règlement (UE) 2020/1784 présenté aux praticiens’, in Marc Schitz and Patrick Gielen (eds), *La signification des actes judiciaires et extrajudiciaires en Europe. Analyses, jurisprudences et perspectives du Règlement UE n° 2020/1784* (Bruylant 2022) 93; Vincent Richard, ‘La refonte du règlement sur la notification des actes judiciaires et extrajudiciaires’ (2021) Rev. crit. DIP 531.

12 Statement of Austria, Czechia, Estonia, Germany, Hungary, Italy, the Netherlands, Portugal, Slovenia and Spain for the minutes of COREPER and the Justice and Home Affairs Council regarding the Regulations on Service of Documents and Taking of Evidence in civil or commercial matters, General Secretariat of the Council (COREPER), ST13834/1/19, Brussels, 27 November 2019.

that the management of the national IT system remains the responsibility of the Member States concerned is in line with the EU principles of subsidiarity and proportionality.

- 2.12** The notion of a ‘decentralised IT system’ in the Service of Documents Regulation Recast coincides with the concept contained in Article 2(1) of the Taking of Evidence Regulation Recast.<sup>13</sup> It is also in line with the way the e-CODEX system is defined in the Regulation on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters.<sup>14</sup> Thus, this is a ‘decentralised and interoperable system for cross-border communication’ guaranteeing a ‘swift, secure and reliable’ transmission and exchange of data.
- 2.13** At this point, it is worth mentioning that the e-CODEX system has been identified as the preferred solution to be used for ‘an interoperable, secure and decentralised communication network between national IT systems in the area of judicial cooperation’<sup>15</sup> and the ‘main tool of this type developed to date’.<sup>16</sup> The decentralised nature of the system means that the exchanges of data will be carried out exclusively between the concerned Member States.<sup>17</sup> The interoperable nature of the access points guarantee that the existing national IT systems used are able to interconnect for the transmission of data. According to Article 3(2) of the e-CODEX Regulation, the access points are software packages installed on hardware infrastructure that are able to transmit and receive information in a secure and reliable manner, and in a format that is recognised and considered legally valid by the national IT system receiving the document.<sup>18</sup>
- 2.14** The use of this decentralised IT system for the communication and exchange of information, requests, receipts, and certifications between transmitting agencies, receiving agencies, and central authorities, finally integrates modern communication technology into the process of cross-border service of judicial and extrajudicial documents. This will further speed up the process of the transmission of documents between the authorities involved.

13 Regulation (EU) 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) OJ 2020 L 405/1.

14 Regulation (EU) 2022/850 on a computerised system of communication in cross-border civil and criminal proceedings (e-CODEX system), and amending Regulation (EU) 2018/1826, OJ 2022 L 150/1.

15 Recital 8 and Art. 3 (1) e-CODEX Regulation.

16 Recital 2 Commission Implementation Regulation (EU) 2022/423 laying down the technical specifications, measures and other requirements for the implementation of the decentralised IT system referred to in Regulation (EU) 2020/1784 of the European Parliament and of the Council, OJ 2022 L 87/9.

17 See Recital 10 Service Regulation Recast.

18 On the legal validity of electronically transmitted documents, see Elena Alina Onțanu, ‘Normalising the Use of Electronic Evidence: Bringing Technology Use into a Familiar Normative Path in Civil Procedure’ (2022) *Oñati Socio-Legal Series* 588; Marco Velicogna, Ernst Steingenga, Sandra Taal and Aernout Schmidt, ‘Connecting EU Jurisdictions: Exploring How to Open Justice Across Member States through ICT’ (2018) *Social Science Computer Review* 274; Marco Velicogna, ‘Reconfiguring the European Justice Service Provision to Meet the People’s Needs: An Introduction to the e-CODEX Solution and e-CODEX Plus Experience’ (2019) *e’ Meets Justice* 29; Marco Velicogna and Giampiero Lupo, ‘From Drafting Common Rules to Implementing Electronic European Civil Procedures: The Rise of e-CODEX’, in Burkhard Hess and Xandra Kramer (eds), *From Common Rules to Best Practices in European Civil Procedure* (Hart-Nomos 2017) 197; Marco Velicogna, ‘Coming to Terms with Complexity Overload in Transborder e-Justice: The e-CODEX Platform’, in Francesco Contini and Giovan Francesco Lanzara (eds), *The Circulation of Agency in E-Justice: Interoperability and Infrastructures for European Transborder Judicial Proceedings* (Springer 2014) 309.

With regard to the establishment, implementation, and mandatory use of the decentralised IT system indicated in the recast, some time will be necessary for all Member States to interconnect and develop the necessary national infrastructure where this is not already available. Developments remain fragmented and not all national justice systems are relying to a similar extent on the availability of information and communication systems for justice services.<sup>19</sup> The timeframe necessary for these developments has been addressed by Articles 25 and 37(2) of the Recast.<sup>20</sup>

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19 For a broader view on the national developments, see the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Digitalisation of Justice in the European Union. A Toolbox of Opportunities, SWD(2020) 540 final, Brussels 02.12.2020.

20 This choice of the European legislator is also in line with requests expressed, for example, by Estonia during the negotiation of the Service of Documents Regulation Recast. Council of the European Union, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) – Comments from Member States, Interinstitutional File 2018/0204(COD), ST06067/19, Brussels, 5 March 2019, 48.