

PART XIV

CROSS-BORDER AND INTERNATIONAL DIMENSIONS

CHAPTER 5

DUE PROCESS - PROTECTING THE RIGHT TO FAIR TRIAL OF FOREIGN DEFENDANTS IN CROSS-BORDER PROCEEDINGS: COMPARING PRACTICES, INVESTIGATING CONFLICTING PRINCIPLES, AND SEARCHING FOR COMMON STANDARDS

*Felipe de Andrade*¹

*Geert Van Calster*²

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¹ Predoctoral researcher funded by the Research Foundation - Flanders (FWO) at the University of Antwerp and KU Leuven.

² Full Professor at KU Leuven and member of the Belgian Bar.

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1 INTRODUCTION

- 1 Procedural guarantees to the right of fair trial apply to cross-border civil litigation.³ The constitutionalization of civil procedure refers to the integration of constitutional principles and fundamental values in the interpretation and development of law.⁴ Human rights have a universally recognized character and stand at the centre of constitutional and fundamental values. In that aspect, due process is arguably a key venue where human rights, private international, and international civil procedure meet.⁵
- 2 The conduct of international proceedings may impact the procedural rights of foreign defendants. It is therefore of special interest to investigate rules which deal with international judicial cooperation for the service of documents and the obtaining of evidence abroad.⁶ Another chapter of this Part will discuss the rules on evidence. This chapter examines norms enacted to protect defendants that, in view of their foreign status, face difficulties in being notified of, appearing in and/or represented in proceedings. Those difficulties relate to language barriers, physical distance and national borders, limitations of international cooperation between judicial authorities, and differences between applicable procedural and substantive laws to disputes.

2 PROCEDURAL GUARANTEES FOR FOREIGN PARTIES

2.1 Sources of Procedural Guarantees

- 3 The sources of procedural equality and fairness are numerous. They can be traced back to national provisions, as well as supranational sources.⁷ Some examples of these rules include, at the national level: in Brazil, Art 5 LV of the Constitution protecting the equality of arms in the possibility of full defence in the adversary system and Art 7 of the Code of Civil Procedure stipulating procedural equality; in France, Art 6 and 16 of the French Declaration of the Rights of Man and of the Citizen of 1789 protecting the equality before the law and justice; in Germany procedural equality is derived from the principles of equality before the law of Art 3(1), the principle of the rule of law of Art 20(1) and the

³ See another chapter of this Part of the collection (B Hess 'History and Evolution (Actors, Factors and Debates)') for a detailed historical analysis of the developments concerning the rule of law and fair trial in cross-border proceedings.

⁴ For a discussion on the role of the CJEU in the constitutionalization of European Civil Procedure in light of the ECHR and CFREU, see D Düsterhaus, 'Constitutionalisation of European Civil Procedure as a Starting Point for Harmonisation?' in F G Inchausti and B Hess (eds), *The Future of the European Law of Civil Procedure* (1st edn, Intersentia 2020) 69.

⁵ J J Fawcett, M Ní Shúilleabháin and S Shah, '3 The Right to a Fair Trial', *Oxford Legal Research Library* (Oxford University Press 2016) para 3.01.

⁶ J Basedow, 'Human Rights and Private International Law: summary of the Report submitted in September 2018' (Institut de Droit International 2018) para 61.

⁷ See Part 4 of the CPLJ project for an extensive discussion on the Constitutionalization and Fundamentalization of Civil Procedural Guarantees and Principles, ie, Y Moon 'Constitutionalization and Fundamentalization of the Design of the Proceedings and the Parties' and the Judges' Respective Roles'.

right to be heard of Art 103(1) of the Basic Law; and the Fifth and Fourteenth Amendments of the US Constitution protect due process and the equal protection of the law.

- 4 As for the supranational level, it is worth mentioning Art 10 of the Universal Declaration on Human Rights (1948) and 14(1) of the International Covenant on Civil and Political Rights (1966) declaring the equality of parties before an independent, competent and impartial tribunal. The protection to the right of fair trial is of course also mentioned at Art 6 (1) of the European Convention on Human Rights (1950); Art 47 of the Charter of Fundamental Rights of the European Union (2000); Art 8 (1) of the American Convention on Human Rights (1969); and Art 7 of the African Charter on Human and Peoples' Rights (1981).

2.2 Different Models of Procedural Due Process

- 5 In spite of the constitutionalization of civil procedure being part of the agenda for the protection of human rights, there remain paradigmatic differences in the way different jurisdictions protect procedural rights.⁸
- 6 To start with, there are different approaches to due process – the checklist and the flexible models. Lobos (2022) has produced the following table with variables characterizing each model:⁹

Checklist model	Flexible model
Procedural guarantees from the criminal prong of the clause are applied in non-criminal cases	The Complexity of the case or its particular circumstances are used as a factor to determine whether a procedural guarantee is required
Legal procedure as provided by regulation is the one that is due	Practical effectiveness is of bigger concern than formal recognition
Procedural element or dimension is seen as a strict minimum required by the right to a fair trial	It is considered that there is greater latitude in civil than in criminal cases
Procedural element or dimension of due process is interpreted as a clear-cut rule	Less formalistic approach is required

⁸ R Michaels, 'Two Paradigms of Jurisdiction' (2005) 27 Michigan Journal of International Law 1003, 1012.

⁹ R Lillo Lobos, *Understanding Due Process in Non-Criminal Matters: How to Harmonize Procedural Guarantees with the Right to Access to Justice*, (vol 97, Springer International Publishing 2022) 78.

The entire content of the clause is to be applied to every type of proceeding	A procedural guarantee is required attending to the nature of the particular proceeding
Restrictions to due process are analyzed in an all-or-nothing fashion	Due process clause does not have a strict catalogue of guarantees
	Restriction of a procedural guarantee is analyzed through the lens of proportionality

Source: Lillo Lobos (2022, 78).

- 7 In a checklist model, there are clear and strict rules with minimum protections, especially when there is a higher risk of abuse of power. This model is predominantly adopted in the Inter-American system of human rights. It provides for a floor for the concept of due process, which includes the requirement of final enforceable judicial decisions, the right to an impartial, competent and independent tribunal, and the minimum requirements of prior notice and hearing.¹⁰
- 8 By contrast, under a flexible approach the protection of due process is dependent on a case-by-case analysis based on fairness. This seems to be the approach taken by the European Court of Human Rights (ECtHR) and the US Supreme Court. Particular circumstances of the case are then taken into account to decide whether the party was able to access the court and participate in the proceedings in a meaningful and effective way. In addition to that, the form of hearing and the available safeguards to the defendant will depend on the nature of the proceeding. Procedural guarantees may also be limited in an examination of proportionality.¹¹
- 9 In addition, there are differences in focus and language. In the United States (US), the assertion of jurisdiction is dependent on the requirements of due process of law as enshrined in the 5th and 14th Amendments of the US Constitution. The language of the constitutional clause is focused on the rights of the defendant, providing for limitations based on fairness.¹² Conversely, the courts of civil law countries assert jurisdiction not with a focus on the defendant's rights, but in view of the nexus between the court and the claim. Moreover, the language adopted by civil law jurisdictions is focused on access

¹⁰ Ibid 266–276.

¹¹ Ibid 259–260.

¹² Michaels (n 8) 1055.

to justice - the rights of the claimant to be heard by a court¹³ - even if the defendant's needs are also considered by verifying that he/she is sued in a foreseeable venue.¹⁴

- 10 Another point to be made refers to the guarantee of equal procedural fairness between foreigners and those domiciled in the jurisdiction. The US constitutional due process clause does not distinguish between foreign and domestic parties, nor does it vary with federal and state courts.¹⁵ In contrast to that, the EU's Brussels Ibis Regulation distinguishes clearly between EU-domiciled and third-country *defendants* (not claimants).¹⁶ Defendants can still be subject to member states' so-called exorbitant or 'parochial' jurisdictional rules which can disproportionately affect foreign parties (eg, jurisdiction based on temporary presence in the forum¹⁷ or on nationality of the claimant). The currently pending reform of the EU Brussels Ibis Regulation raises the possibility of equalizing access to justice between EU-based claimants and third-country defendants, however, proposals that level up the protection of access to justice of EU claimants seem to have more traction than reforms aiming at benefitting non-EU defendants.¹⁸

2.3 Procedural Guarantees in Cross-border Disputes: Common Standards

- 11 The paradigmatic differences mentioned in the previous section do not preclude the emergence of common standards or shared understandings among jurisdictions on the substantive concept of due process. Draft principles under international law recognize that human rights shall be respected and ensured in private relations of a cross-border nature.¹⁹ In doing so,

1. The national rules of civil or commercial procedures as applied to cross-border relations must take into account the interests of legal protection of all parties and be consistent with their right to fair hearing.

¹³ R A Brand, 'Access-to-Justice Analysis on a Due Process Platform Response' (2012) 112 Columbia Law Review Sidebar 76, 79.

¹⁴ D Liakopoulos, 'Integration and Cooperation of International and European Private Law According Charter of the Fundamental Rights of the European Union' (2019) 11 Cuadernos de Derecho Transnacional 150, para 96.

¹⁵ Brand (n 13) 78.

¹⁶ Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I Regulation Recast), 1215/2012 of 20 December 2012 (EU) Arts 6(1), 18(1), 21(2), 24, 25, 33 and 34. For a discussion on the prohibition of discrimination and private international law under EU and National rules, see J J Fawcett, M Ní Shúilleabháin and S Shah, '9 The Prohibition of Discrimination and Private International Law', *Human Rights and Private International Law* (Oxford University Press 2016).

¹⁷ Michaels (n 8) 1055.

¹⁸ M Poesen, 'Civil Litigation Against Third-Country Defendants in the EU: Effective Access to Justice as a Rationale for European Harmonization of the Law of International Jurisdiction' (2022) 59 Common Market Law Review 1597, 1609–1613.

¹⁹ Draft resolution Human Rights and Private International Law 27 January 2021 (Institut de Droit International), Art 2.

2. In the interest of effective legal protection of parties, States should promote international judicial cooperation. In implementing this cooperation, the requesting State and the requested State must respect the right of private parties to a fair hearing, especially by completing the request within a reasonable time.²⁰

- 12 In its current format, the draft resolution on Human Rights and Private International Law of the Institut de Droit International emphasizes the equal value of the protection of procedural rights between domestic and foreign parties. At the same time, it reiterates that, in spite of the universal character of human rights, the interpretation and implementation of human rights in cross-border relations is done within pluralistic and diverse jurisdictions and legal cultures.²¹
- 13 The right to a fair hearing is embedded in this diversity of norms, its realization varying pursuant to the step, stage, and type of proceedings relevant to the dispute. In this context, it is challenging to compare existing procedural guarantees to the right of fair hearing without going into the technicalities and countless variations in proceedings. The right to a fair hearing emerges as a common denominator to all the numerous steps in a given procedure, allowing for the distinction between required standards of protection and procedural formalities.²²
- 14 Soft law codifications attempt to solidify the content of international due process.²³ For instance, the ALI/UNIDROIT Principles of Transnational Civil Procedure²⁴ mention the procedural equality of the parties,²⁵ which translates into a ‘reasonable opportunity for litigants to assert or defend the rights’,²⁶ the ‘avoidance of any kind of illegitimate discrimination’ and the need to ‘take into account difficulties that might be encountered by a foreign party in participating in litigation’.²⁷ There is also a principle of due notice and right to be heard²⁸ that requires notice at the commencement of proceedings by means which are likely to be effective, with sufficient information on the allegations of the complaint, the procedure for response and possibility of default judgment.²⁹ The information requirement includes rules on content of notice³⁰ and translation requirements for documents and oral communication.³¹ The right to be heard relates to

²⁰ Ibid Art 6.

²¹ F Pocar, ‘4e Commission. Droits de l’homme et Droit International Privé : Rapporteur Fausto Pocar’ (2022) N° 4 *Revue critique de droit international privé* 944, 947.

²² M Cappelletti, ‘Fundamental Guarantees of the Parties in Civil Litigation: Comparative Constitutional, International, and Social Trends’ (1973) 25 *Stanford Law Review* 651, 699.

²³ C T Kotuby Jr, ‘General Principles of Law, International Due Process, and the Modern Role of Private International Law’ (2013) 23 *Duke Journal of Comparative and International Law* 411, 428.

²⁴ ALI/UNIDROIT Principles of Transnational Civil Procedure (2004) 4 *Uniform Law Review*, 756-808.

²⁵ Ibid Principle 3.

²⁶ Ibid Principle 3.1.

²⁷ Ibid Principle 3.2.

²⁸ Ibid Principle 5.

²⁹ Ibid Principle 5.1.

³⁰ Ibid Principle 5.2.

³¹ Ibid Principle 6.

the opportunity and adequate time to submit or respond to issues of fact and law to the court and give supporting evidence.³²

- 15 In the European context, the ELI/UNIDROIT Model European Rules of Civil Procedure³³ have a rule on a fair opportunity to present claim and defence.³⁴ There are also common rules on responsibility and methods of service, due notice and right to be heard,³⁵ with a section dedicated to cross-border issues focusing on understanding of the language of service, modification of time periods, and judicial cooperation under the HCCH.³⁶ Further rules protect the right to be heard when regulating the possibility to grant default judgments and the opportunity and timeframe to set aside default judgments.³⁷

2.4 Regulatory Measures for Cross-border Disputes

- 16 As mentioned in the previous section, the core elements of international due process make reference to the right to be informed, the right to understand, and the right to be heard. This chapter focuses on regulatory measures used to adapt civil disputes to the constraints of international disputes so as to allow foreign parties to defend their rights effectively. Such measures involve (i) rules on service abroad, especially regulations on the methods of service and information requirements, (ii) safeguards for defendants at the time of examination of proper service, the possibility of refusing service and extended time of response; (iii) limitations on the avoidance of international service; (iv) language requirements during proceedings, including the necessity of translations, the offer of language access services and the flexibility in the use of foreign languages during parts of the proceedings; (v) the requisites for issuing default judgments in the case of nonappearance and the conditions of issuance of payment orders, (vii) the possibility of challenging default judgments or reviewing payment orders; (viii) denial of recognition and enforcement. The subsequent sections address each of the regulatory measures described above separately. The argumentation developed in this study is based on illustrative cases stemming mostly from key European jurisdictions, Canada and the US. It does not aim to be exhaustive.

3 RIGHT TO BE INFORMED: SERVICE OF PROCEEDINGS ABROAD

- 17 A claim form, also known as an 'originating process' is a document that generally performs three roles. The first one refers to the internal administration of the court receiving or issuing the document, which will register it in its books and assign a case number to it. The second role is to notify the defendant so that he/she can take steps to provide for its defence. The third function is typical to common law jurisdictions, where

³² Ibid Principles 5.4 and 5.5.

³³ ELI/UNIDROIT Model European Rules of Civil Procedure (Oxford University Press 2021).

³⁴ Ibid Rule 11.

³⁵ Ibid Part VI sections 1 and 2.

³⁶ Ibid Rules 82-85.

³⁷ Ibid Rules 135-140.

service of parties is a basis for the jurisdiction of the court.³⁸ Canada is a notable exception to this typical third function of the common law approach, where service alone is no longer the basis for jurisdiction against foreign defendants.³⁹

- 18 Service abroad is needed ‘whenever the defendant cannot be served within the jurisdiction’ of a court.⁴⁰ For systems inspired by continental Europe’s legal tradition, the service of process is an official act carried out by judicial officials or authorized staff, whereby the invocation of the judicial function touches upon the sovereignty interests of the State.⁴¹ Common law countries take a different approach, typically requiring claimants to serve the process. Nevertheless, courts may still provide assistance to the requesting party by means of process-servers or the issuing of letters of request to foreign authorities when the defendant is not in the forum.⁴²
- 19 The different perceptions concerning service of proceedings become visible in the objections to optional methods of service as described in Art 10 of the Hague Service Convention which prescribes optional methods of service. The 1965 Hague Service Convention⁴³ is the most significant instrument in this area in terms of geographic coverage, with 81 contracting parties stemming from different legal traditions. While most common law countries do not object to postal service, less than half of civil law countries accept it.⁴⁴ The approach taken by common law is based on the principle that the claimant takes the responsibility to bring the necessary issues to the court, being postal service an efficient way to do so; in contrast to that, many countries see postal service as an intrusion into their territorial sovereignty.⁴⁵
- 20 Regardless of the difference in the practical perspectives between civil and common law courts, it is no surprise that service abroad is assumed to require the cooperation or the consent of the state where the proceedings will be served. Correct cross-border service may be relevant to establish jurisdiction and for international recognition and enforcement at a later stage.⁴⁶ Ensuring the participation of the defendant during proceedings is also important to protect the fairness of cross-border proceedings, given

³⁸ D McClean, ‘Chapter 12. Service of Process’ in P Beaumont and J Holliday (eds), *A Guide to Global Private International Law* (Hart Publishing 2022) 161–163.

³⁹ *Club Resorts Ltd. v Van Breda* (Supreme Court, Canada), Judgment 18 April 2012 [2012 SCC 17]; see S Pitel, ‘Six of One, Half a Dozen of the Other? Jurisdiction in Common Law Canada’, (2018) 55(1) *Osgoode Hall Law Journal* 63.

⁴⁰ McClean (n 38) 164.

⁴¹ E M Kieninger and W Hau, ‘Service of Documents’, *Encyclopedia of Private International Law* (2017) 1628, 1628.

⁴² McClean (n 38) 163.

⁴³ Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 (Hague Service Convention 1965), text available at <https://assets.hcch.net/docs/f4520725-8cbd-4c71-b402-5aae1994d14c.pdf> accessed 1 March 2023.

⁴⁴ McClean (n 38) 163–164, number updated to 1 June 2023.

⁴⁵ *Ibid* 163.

⁴⁶ E Storskrubb, ‘Due Notice of Proceedings: Present and Future’ (2014) 19 *Uniform Law Review* 351, 353.

that at the enforcement level the defendant will not have the possibility to influence the merits of the case.⁴⁷

- 21 This explains the early creation of channels for international judicial cooperation for international service.⁴⁸ Such arrangements face the difficult task of creating channels of cooperation that balance the respect for the sovereign authority of the foreign state where international service is taking place with the need for additional safeguards protecting the right of fair trial of the foreign defendants and the right of the claimant to obtain expedient access to justice and enforceable judgments.⁴⁹ Those three parallel perspectives become apparent in rules dictating acceptable methods of service, the timeframe for defendants to appear in proceedings, and the possibility of denying enforcement of judgments that have not respected rules that guarantee adequate service abroad.
- 22 Rules regulating service abroad are found in international conventions, bilateral agreements, (European) regulations, and national law. The first challenge for the operators of justice is to understand the scope of application of each rule and the applicable rule to the case. The fragmentation of the legal landscape and lack of familiarity with the existing instruments for cross-border disputes can be an impediment to the implementation of procedural rules designed for cross-border disputes and with additional protection for foreign defendants.⁵⁰ The complexity of the rules also increases the risk of errors in effecting service, something that can be strategically exploited by parties to the dispute.⁵¹

3.1 Rules on International Service

- 23 There is a patchwork of rules on international service. In the international context, the most important instrument is the 1965 Hague Service Convention.⁵² At the European level, in addition to the Service Regulation,⁵³ there are also EU civil proceedings that

⁴⁷ See generally F G Inchausti, 'Ensuring Adequate Protection in Cross-Border Enforcement for Debtors, Especially Consumers' in J von Hein and T Kruger (eds), *Informed Choices in Cross-Border Enforcement* (1st edn, Intersentia 2021) 438.

⁴⁸ For a detailed analysis of the different forums, forms and techniques for international judicial cooperation, see pt XIV ch 2 (B Hess 'History and Evolution (actors, factors and debates)').

⁴⁹ G Cuniberti, 'Making Cross-Border Enforcement More Effective for Creditors' in J von Hein and T Kruger (eds), *Informed Choices in Cross-Border Enforcement* (1st edn, Intersentia 2021).

⁵⁰ For an European perspective on cross-border enforcement and fragmentation of EU procedural law, see B Hess, 'Towards a More Coherent EU Framework for the Cross-Border Enforcement of Civil Claims' in J von Hein and T Kruger (eds), *Informed Choices in Cross-Border Enforcement* (1st edn, Intersentia 2021) 390; Inchausti (n 47) 430.

⁵¹ Storskrubb (n 46) 352.

⁵² Hague Service Convention 1965.

⁵³ Regulation on service of documents (recast) (Service Regulation), 2020/1784 of 25 November 2020 (EU), preceded by Regulation on service of documents, 1393/2007 of 13 November 2007 (EU).

contain rules on service - the European Order for Payment (EOP),⁵⁴ the European Enforcement Order (EEO),⁵⁵ the European Account Preservation Order (EAPO)⁵⁶ and the European Small Claims Procedure (ESCP).⁵⁷

- 24 Other examples of regional cooperation for the execution of service include the Inter-American Convention on Letters Rogatory (1975) and Additional Protocol (1979) (IACAP),⁵⁸ the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993)⁵⁹ and the Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (2002)⁶⁰ by the Commonwealth of Independent States (CIS); and the Convention on Judicial Cooperation of the 2004 Convention on Judicial Cooperation of the Central African Economic and Monetary Unit (CEMAC).⁶¹
- 25 In the national context, there are often specific rules designed for service outside one's jurisdiction. Examples thereof include: Art 40 of the Belgium Code Judiciaire 1967;⁶² Art 263-265 Civil Procedure Law of the People's Republic of China 1991⁶³ and 'Certain Provisions on Issues Concerning Service of Judicial Documents in Civil or Commercial Cases Involving Foreign Elements' (2006 SPC Provisions);⁶⁴ in England & Wales, the Civil Procedure Rules (CPR) for the service of documents out of the jurisdiction (6.30-6.47)

⁵⁴ Regulation creating a European Order for Payment Procedure (EOP), 1896/2006 of 12 December 2006 (EU), Art 13-15.

⁵⁵ Regulation creating a European Enforcement Order for uncontested claims (EEO), 805/2004 of 21 April 2004 (EU), Art 13-19.

⁵⁶ Regulation establishing a European Account Preservation Order (EAPO), 655/2014 of 27 June 2014 (EU), Art 28-29.

⁵⁷ Regulation establishing a European Small Claims Procedure (ESCP), 861/2007 of the European Parliament and of the Council of 11 July 2007 (EU), Art 13.

⁵⁸ Inter-American Convention on Letters Rogatory 1975, arts. 4,5, 8 available at <https://www.oas.org/juridico/english/treaties/b-36.html> accessed 10 April 2023 and Additional Protocol 1979, Art 3-4 available at <https://www.oas.org/juridico/english/treaties/b-46.html> accessed 10 April 2023.

⁵⁹ Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993, Art 10-11 available at <https://cis-legislation.com/document.fwx?rgn=26119>, <https://www.unhcr.org/media/convention-legal-aid-and-legal-relations-civil-family-and-criminal-cases-adopted-minsk-22> accessed 10 April 2023.

⁶⁰ Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 2002, Art 11-12 available at Convention of the CIS on legal assist <https://cis-legislation.com/document.fwx?rgn=4741>ance and legal relations on civil, family and criminal cases (cis-legislation.com) accessed 10 April 2023.

⁶¹ Convention on Judicial Cooperation of the Central African Economic and Monetary Unit (CEMAC) 2004, Art 8, available at <http://www.droit-afrique.com/upload/doc/cemac/CEMAC-Accord-2004-cooperation-judiciaire.pdf> accessed 10 April 2023.

⁶² Code Judiciaire /Gerechteleijk Wetboek (Judicial Code) 1967 (Belgium) available at < http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=frandla=Fandcn=1967101001andtable_name=loi accessed 5 April 2023.

⁶³ Civil Procedure Act 1991 (China) available at http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383880.htm accessed 5 April 2023.

⁶⁴ Certain Provisions on Issues Concerning Service of Judicial Documents in Civil or Commercial Cases Involving Foreign Elements (2006 SPC Provisions) (China).

and of documents from foreign courts or tribunals (6.48-6.52),⁶⁵ as well as the Practice Direction 6B supplementing rules for service out of jurisdiction;⁶⁶ Art 684-688 of the French Code de Procédure Civile (CPC) 2005;⁶⁷ sections 183-185 of the German Zivilprozessordnung (ZPO) 2005;⁶⁸ and Order V, Rules 25, 26 and 26-A of the Indian Code of Civil Procedure 1908⁶⁹.

3.2 Actors Responsible for Service and Available Channels of Communication

- 26 The Hague Service Convention established a Central Authority system to receive requests from other contracting States and to proceed to service of documents in accordance with the Convention.⁷⁰ Under the Convention, States are also allowed to resort to alternative channels of communication such as consular channels and even diplomatic channels.⁷¹
- 27 In view of the European Union (EU) level of integration and its principle of mutual trust in judicial co-operation, the EU Service Regulation goes one step further and provides for direct communication between receiving and transmitting agencies.⁷² The Central Bodies under the Service Regulation only exceptionally forward a request for service to the competent receiving agencies, maintaining a role as information supplier and solution seeker in case of difficulties in the transmission of documents.⁷³
- 28 The IACAP prescribes six different channels of transmission: consular channels, diplomatic channels, Central Authorities, the interested parties themselves, or judicial channels (staff of the court of origin).⁷⁴ Legalization of documents is required when transmission does not happen through the Central Authority, consular or diplomatic channels, except when courts transmit documents in areas just across the border.⁷⁵ The Additional Protocol was signed in 1979 and created in practice an alternative treaty regime that makes it mandatory for contracting states to make use of Central Authorities

⁶⁵ Civil Procedure Rules 2006 (UK) available at <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06> accessed 11 April 2023.

⁶⁶ Practice Direction 6B – Service Out of the Jurisdiction 2021 (UK) available at https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06/pd_part06b accessed 11 April 2023.

⁶⁷ Code de Procédure Civile (CPC) 1976 (France), as amended, available at https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070716/LEGISCTA000006149686/#LEGISCTA000006149686 accessed 11 April 2023.

⁶⁸ Zivilprozessordnung (ZPO) (Code of Civil Procedure) 2005 (Germany), as amended, available at https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html#p0753 accessed 11 April 2023.

⁶⁹ Order V of the Code of Civil Procedure 1908 (India), as amended, available at <https://www.indiacode.nic.in/bitstream/123456789/2191/1/A1908-05.pdf> accessed 11 April 2023.

⁷⁰ Hague Service Convention 1965, Art 2.

⁷¹ *Ibid*, Art 9.

⁷² Service Regulation (EU), Art 8(1).

⁷³ *Ibid* Art 4.

⁷⁴ Inter-American Convention on Letters Rogatory 1975, Art 4.

⁷⁵ *Ibid* Art 6-7; McClean (n 39) 171.

to transmit documents between them.⁷⁶ The CIS Conventions also prescribe that the documents' transfer etc shall be done by the Central Authorities – in this case their respective Ministry of Justice.⁷⁷ Conversely, the CEMAC Convention 2004 indicates that the transmission of judicial documents happens between judicial authorities.⁷⁸

- 29 Over and above the channel of communication, the format of transmission is also relevant for the effectiveness of cross-border communication between parties. The attempts by the HCCH to introduce direct electronic communications between central authorities are limited by the text of the Convention (and a lack of binding legal framework),⁷⁹ in view of concerns regarding the security of e-methods of transmission.⁸⁰ The HCCH has been entrusted with a mandate by the Counsel on General Affairs and Policy to work on an e-system to 'support and improve the operation of both the Service and Evidence Conventions',⁸¹ which is still in preparation.⁸² Options include the use of e-mail with public key cryptography, PKY, DKIM and DNSSEC security technologies,⁸³ the use of a common platform between Central Authorities⁸⁴ and even distributed ledger technology.⁸⁵
- 30 Initiatives at the regional level have so far advanced more in the shape of e-transmission of documents between Central Authorities. The Conference of Ministers of Justice of Ibero-American Countries cooperated to create Iber@, a secure transmission system between authorities⁸⁶ which, though not mandatory, may become the main means of communication under Inter-American arrangements.⁸⁷ At the EU level, it is foreseen that the cooperation between transmitting agencies, receiving agencies, and central bodies shall be done through a decentralized and interoperable IT system, preferably e-CODEX.⁸⁸ e-CODEX consists of 'an interoperable solution for the justice to connect the

⁷⁶ Additional Protocol to the Inter-American Convention on Letters Rogatory 1979, Art 2.

⁷⁷ Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993, arts. 10-11; Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 2002, Art 11-12; McClean (n 38) 173.

⁷⁸ Art 8.

⁷⁹ McClean (n 38) 173.

⁸⁰ TJ Folkman, 'Email as a secure means of transmission under the HCCH Service Convention' (2019) *The HCCH Service Convention in the Era of Electronic and Information Technology* 7, 7.

⁸¹ HCCH, 'Conclusion and Recommendations Adopted by the Council' (2019), para 40 available at <https://assets.hcch.net/docs/c4af61a8-d8bf-400e-9deb-afcd87ab4a56.pdf> accessed 1 April 2023.

⁸² *Ibid*, para 39.

⁸³ Folkman (n 80) 12.

⁸⁴ KV Ossenova, 'Use of an electronic platform for communication and transmission between Central Authorities in the operation of the HCCH Service Convention' (2019) *The HCCH Service Convention in the Era of Electronic and Information Technology* 14.

⁸⁵ E Van Gelder and E Themeli, 'Reflections on the use of distributed ledger technologies for the purpose of the HCCH Service Convention' (2019) *The HCCH Service Convention in the Era of Electronic and Information Technology* 20.

⁸⁶ *Medellín Treaty on Electronic Transmission of International Legal Cooperation Requests Between Central Authorities* 2019.

⁸⁷ McClean (n 38) 173.

⁸⁸ EU Service Regulation (EU), Art 5(1).

IT systems of the competent national authorities, such as the judiciary, and other organisations'.⁸⁹ A new regulation on the e-CODEX has entered into force in 2022,⁹⁰ as have two EU Commission Implementing Regulations⁹¹ and two Commission Implementing Decisions⁹² on the topic. Communication by means of the decentralized system should become obligatory by 2025.⁹³

3.3 Permitted Methods and Effectiveness of Service Abroad

- 31 From a due process perspective, service of proceedings should be set up in a way that gives preference to methods that provide for the acknowledgement of receipt of the process,⁹⁴ but this is not always possible.
- 32 In the US a
 fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.⁹⁵
- 33 In this context, if the place of residence is known, it is not justifiable to make of use of methods less likely to give notice to the beneficiary, such as notice by publication.⁹⁶
- 34 The relevant rules for serving foreign defendants outside the US will depend on whether service is done by state or federal courts. Many of the cases involving foreign parties – claimant or defendant – are taken to the federal courts based on the grounds of

⁸⁹ Regulation on a computerized system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), 2022/850 of 30 May 2022 (EU), Recital 8.

⁹⁰ Ibid.

⁹¹ Commission Implementing Regulation laying down the technical specifications, measures and other requirements for the implementation of the decentralized IT system referred to in Regulation (EU) 2020/1784 of the European Parliament and of the Council, 2022/423 of 14 March 2022 (EU); Commission Implementing Regulation laying down the technical specifications, measures and other requirements for the implementation of the decentralized IT system referred to in Regulation (EU) 2020/1783 of the European Parliament and of the Council, 2022/422 of 14 March 2022 (EU).

⁹² Commission Implementing Decision on the technical specifications and standards for the e-CODEX system, including for security and methods for integrity and authenticity verification, 2022/2519 of 20 December 2022 (EU); Commission Implementing Decision on the specific arrangements for the handover and takeover process of the e-CODEX system, 2022/2520 of 20 December 2022 (EU).

⁹³ M Celis, 'A Few Developments on the Modernisation of the Service of Judicial and Extrajudicial Documents and the Taking of Evidence in the European Union' (*Conflict of Laws*, 22 December 2022) <https://conflictoflaws.net/2022/a-few-developments-on-the-modernisation-of-the-service-of-judicial-and-extrajudicial-documents-and-the-taking-of-evidence-in-the-european-union/> accessed 8 August 2023.

⁹⁴ Model European Rules of Civil Procedure 2021 (ELI/UNIDROIT), Rule 73.

⁹⁵ *Mullane v. Cent. Hanover Bank and Tr. Co.* (Supreme Court, United States), [339 U.S. 306 (1950)] 314.

⁹⁶ Ibid 318.

‘diversity jurisdiction’⁹⁷ – in contrast to ‘federal question’ jurisdiction. When it comes to federal courts, the Federal Rules of Civil Procedure (FRCP) apply. With regard to individuals, there is a cascade of possible methods of service. First, service can be carried out as prescribed by internationally agreed means, such as the Hague Service Convention;⁹⁸ second, when there is no treaty or when the treaty does not specify the means, service can be done in accordance with the law of the receiving country, letter rogatory and, except if prohibited by the receiving country, by personal service, or by mail sent by a clerk of the court requiring signed receipt.⁹⁹ Third, claimants may request the court to serve by alternative ‘means not prohibited by international agreements’¹⁰⁰, even if such means would potentially ‘contravene foreign law’.¹⁰¹ With the exception of personal service, all the same methods of service are prescribed for corporations, partnerships, and associations.¹⁰² With regard to state law, many states have provisions covering the possibility of substituting international service to foreign corporations with service to the appointed representative of the corporation, a state official, or an affiliated company.¹⁰³

- 35 In evaluating the adequacy of service, the receipt of actual notice is an important criterion.¹⁰⁴ What is most relevant is substantial compliance with formal requirements of the FRCP: minor or non-prejudicial defects - typographical errors, lack of information on return date, missing copy of complaint attached to the summons - do not affect the adequacy of service.¹⁰⁵
- 36 At the European Level, the amount of case law interpreting the right to a fair trial in the context of service is extensive.¹⁰⁶ In interpreting Art 6 of the European Convention on Human Rights (ECHR), the ECtHR has confirmed the reasonable expectation that competent authorities will take appropriate steps to find and inform the parties of proceedings concerning them.¹⁰⁷ It is the responsibility of states to ensure that their authorities apprise the parties to the proceedings with due diligence so as not to

⁹⁷ 28 U.S.C.A. §1332 (2021).

⁹⁸ FRCP 4(f) (1).

⁹⁹ FRCP 4(f) (2).

¹⁰⁰ FRCP 4(f) (3).

¹⁰¹ *Freedom Watch, Inc. v. Org. of the Petroleum Exporting Countries* (US Court of Appeals, District of Columbia Circuit) [766 F.3d 74 (2014)] 84.

¹⁰² FRCP 4 (h) (2).

¹⁰³ E Porterfield, ‘Too Much Process, Not Enough Service: International Service of Process under the Hague Service Convention’ (2014) 896 *Temple Law Review* 331; W S Dodge, ‘A Primer on Service of Process’ (Transnational Litigation Blog, 30 January 2023) <https://tlblog.org/a-primer-on-service-of-process/> accessed 12 June 2023.

¹⁰⁴ FRCP 4 (l) (3).

¹⁰⁵ *Prewitt Enterprises v Org. of Petroleum* (US Court of Appeals for the Eleventh Circuit) [353 F.3d 916 (2003)] 925.

¹⁰⁶ F G Inchausti, ‘Service of Proceedings on the Defendant as a Safeguard of Fairness in Civil Proceedings: In Search of Minimum Standards from EU Legislation and European Case-Law’ (2017) 13 *Journal of Private International Law* 475, 478.

¹⁰⁷ *Dilipak and Karakaya v. Turkey*, Case 7942/05 24838/05 (ECtHR), Judgment 4 March 2014 [ECLI:CE:ECHR:2014:0304JUD000794205] para 85-88.

jeopardize their right to a fair trial.¹⁰⁸ The ECHR does not provide for a specific order of preference for service,¹⁰⁹ under the assumption that domestic courts are better placed to choose the most adequate methods in light of the circumstances of the case.¹¹⁰ Nevertheless, the Court recognizes that when service is not done in person, there is a bigger risk that the interested party will be prevented from appearing in proceedings and defending themselves.¹¹¹ Following this line, the Court of Justice of the European Union (CJEU) has held that the use of methods that do not allow for the acknowledgment of receipt and are based on the presumption of knowledge of the defendant are precluded.¹¹²

- 37 The European Courts have used the right to an effective appeal as a tool to reconcile the right of access to court of the claimant with the right to a fair trial of the defendant.¹¹³ The ECtHR has admitted the possibility of remedying a defect in the first instance, but only if the appeal body has full jurisdiction to either take a decision or to remit the case.¹¹⁴ The CJEU has held that the protection of the rights of the recipient should not obstruct the effectiveness of cross-border service as an instrument for the proper functioning of the internal market, as envisaged by the EU Service Regulation.¹¹⁵ That is the reason why mistakes in cross-border service such as omission of formality (eg, use of standard form for service) or non-respect of information requirements (eg, the right to refuse service) do not amount to the nullity of the act, but to the obligation of the receiving agency to correct the service.¹¹⁶
- 38 A flexible approach with regards to the methods and content of cross-border service may make it easier for the court effectively to reach the person to be served and deter courts from resorting to fictitious service. On the other hand, by making use of those same methods, there is an increased risk of applying techniques which are not compatible with the law of the requested state, leading to challenges to the recognition and enforcement of judgments at a later stage. The fact that digital and electronic

¹⁰⁸ *Schmidt v. Latvia*, Case 22493/05 (ECtHR), Judgment 27 April 2017 [ECLI:CE:ECHR:2017:0427JUD002249305], para 86.

¹⁰⁹ *Bogonos v. Russia*, Case 68798/01 (ECtHR), Judgment 5 February 2004 [ECLI:CE:ECHR:2004:0205DEC006879801].

¹¹⁰ *Gankin and Others v. Russia*, Case 2430/06, 1454/08, 11670/10 and 12938/12 (ECtHR), Judgment 31 May 2016 [ECLI:CE:ECHR:2016:0531JUD000243006] para 35.

¹¹¹ *Aždajić v. Slovenia*, Case 71872/12 (ECtHR), Judgment 8 October 2015 [ECLI:CE:ECHR:2015:1008JUD007187212] para 48.

¹¹² *Krystyna Alder and Ewald Alder v. Sabina Orlowska and Czeslaw Orlowski*, Case C-325/11 (CJEU), Judgment 19 December 2012 [ECLI:EU:C:2012:824].

¹¹³ Liakopoulos (n 14) para 94.

¹¹⁴ *M.S. v. Finland*, Case 46601/99 (ECtHR), judgement 22 March 2005 [ECLI:CE:ECHR:2005:0322JUD004660199] para 35; *Karakuş v. Turkey*, Case 32438/08 (ECtHR), Judgement of 7 March 2017 [ECLI:CE:ECHR:2014:0408DEC002178604] para 45.

¹¹⁵ Liakopoulos (n 14) para 83.

¹¹⁶ *Alpha Bank Cyprus*, Case C-519/13 (CJEU), Judgment 16 September 2015 [ECLI:EU:C:2015:603]; *Henderson v. Novo Banco SA*, Case C-354/15 (CJEU), Judgment 2 March 2017 [ECLI:EU:C:2017:157] para 58.

methods of service are not universally accepted, indicates that the legal benchmark for due notice may not be keeping up with the technological developments surrounding the circumstances of notice. This can have negative impacts on the effectiveness of service abroad¹¹⁷ and on the fulfilment of the mission of organizations responsible to communicate and effect international service.

3.4 Safeguards Protecting Fair Trial Rights of Foreign Defendants

3.4.1 Rules Protecting against Avoidance of International Service

- 39 The Hague Service Convention applies when there is an occasion to transmit documents for service abroad and when the defendant's address is known.¹¹⁸ Unlike the IACP, which does not preclude the use of other methods of service under national law,¹¹⁹ compliance with the Hague Service Convention is mandatory. The Convention does not specify situations in which documents need to be served abroad, leaving this determination to the *lex fori*. However, once it has been decided that there is an occasion to service abroad, only the methods mentioned under the Convention are permitted.¹²⁰
- 40 The EU Service Regulation takes a similar approach when the address of the person to be served is known.¹²¹ Even then, member states are requested to provide assistance in determining the address of the person to be served and have an open channel to address requests of this nature.¹²²
- 41 The lack of knowledge of the address of the person to be served per se is not enough to set aside the Hague Service Convention or the EU Service Regulation. First, US courts generally require 'reasonable diligence' from parties to identify the address of the other party;¹²³ as for the EU Service Regulation, it has been decided that default judgments can only be issued if the court seized of the matter is satisfied that 'investigations required by the principles of due diligence and good faith have been undertaken to trace the defendant'.¹²⁴ EU member states approaches are also such that a diligent search of

¹¹⁷ R Effron, 'The Invisible Circumstances of Notice' (2021) 99 North Carolina Law Review 1522.

¹¹⁸ Hague Service Convention 1965, Art 1.

¹¹⁹ *Kreimerman v. Casa Veerkamp, S.A. de C.V.* (US Court of Appeals, Fifth Circuit), Judgment 15 June 1994 [22 3d 634] 647.

¹²⁰ *Volkswagen Aktiengesellschaft v Schlunk* (Supreme Court, United States) [486 U.S. 694 (1988)] 704. In this judgment the United States Supreme Court held that the Convention was not engaged because the foreign defendant was validly served in the US in accordance with applicable Illinois law that allowed service on an affiliate deemed to be a 'foreign corporation's involuntary agent for service' (p 696). This situation is different from the hypothesis discussed in paragraph 44 of this text, in which agents contract around the Hague Service Convention and appoint a local agent for service.

¹²¹ Service Regulation (EU), Art 1(2).

¹²² *Ibid* Art 7.

¹²³ *Advanced Access Content Sys. Licensing Adm'r, LLC v. Shen* (United States, District Court for the Southern District of New York), Judgment 30 September 2018 [14-CV-1112 (VSB)].

¹²⁴ *G v Cornelius de Visser*, Case C-292/10 (CJEU), Judgment of 15 March 2012 [ECLI:EU:C:2012:142].

the address of the defendant who allegedly lived abroad be pursued before fictitious service is resorted to.¹²⁵

- 42 International service is complicated and time-consuming, which is the reason why courts make use of opportunities to avoid it altogether, usually by resorting to serving affiliated companies or state officials.¹²⁶ This practice raises the question of the necessity of sending a copy of the service to the defendant abroad so as to guarantee due notice, even if the service is already considered to be effected.¹²⁷ Countries such as Germany and Denmark have already imposed limits to the use of substituted service when the defendant is domiciled abroad.¹²⁸
- 43 In the US, another possibility to avoid international service is by contracting around the Hague Service Convention. This can be done by appointing a local agent for the service of process or by contractually waiving service outright. In Europe, the waiver of the right to a fair trial can only happen once the party knows of the existence of the right in question and of its related proceedings.¹²⁹ In the US, the practice is not yet widespread and may not be compatible with the existing regulated procedure for ex-post waving of service.¹³⁰ In any case, the possibility of creating a clear waiver regime is under discussion,¹³¹ especially after the California Supreme Court held that the waiver of ‘formal service of process in favour of a specified type of notification’ under Californian law did not represent an occasion of transmittal abroad, and thus the Convention did not apply.¹³²
- 44 The EU Service Regulation has incorporated safeguards against avoidance of international service. In its current format, the cross-border service of documents cannot be avoided by means of fictitious service (eg, service by posting an

¹²⁵ Judgment of Cass 2010 (1st Chamber Court of Cassation, Belgium), Judgement 1 April 2010 [AR C.08.0457.N].

¹²⁶ Kieninger and Hau (n 41) 1632.

¹²⁷ W S Dodge, ‘Substituted Service and the Hague Service Convention Substituted Service and the Hague Service Convention’ (2022) 63 William and Mary Law Review 1485, 1496.

¹²⁸ B Hess and others, ‘An Evaluation Study of National Procedural Laws and Practices in Terms of Their Impact on the Free Circulation of Judgments and on the Equivalence and Effectiveness of the Procedural Protection of Consumers under EU Consumer Law’ (European Commission 2017) JUST/2014/RCON/PR/CIVI/0082 58 <https://op.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1/language-en> accessed 24 March 2023.

¹²⁹ *Dilipak and Karakaya v. Turkey* (n 107) para 106.

¹³⁰ J F Coyle, RJ Effron and M Gardner, ‘Contracting Around the Hague Service Convention’ (2019) 53 UC Davis Law Review Online 53, 58–59.

¹³¹ T G Vanderbeek, ‘What’s in the Contract?: Rockefeller, the Hague Service Convention, and Serving Process Abroad’ (2023) 76 Vanderbilt Law Review 643.

¹³² *Rockefeller Tech. Invs. (Asia) VII v. Changzhou Sino Type Tech. Co.*, Judgment of 2 April 2020 (US Supreme Court California, United States) [460 P.3d 764 (2020)]. This decision was made in an arbitration context, where an agreement between the parties specified an alternate method of service and constituted a waiver of formal service as specified under Californian statutory law. The Court was specifically stated that its reasons were limited to that context and that its conclusions were narrow.

announcement at a notice board or depositing a document in the court file).¹³³ In addition, it does not apply to service of documents to a party's authorized representative in the forum of the member state where proceedings were brought but it applies to service of documents that need to be served to the party under the law of the forum of the member state, even if the documents have already been served with the appointed representative.¹³⁴

3.4.2 Content Requirements: Translation

- 45 The Hague Service Convention does not establish a general obligation to translate all documents but it is common practice to require translation into (one of) the official language(s) of the requested state.¹³⁵ The addressee retains the right to accept delivery of documents that are not translated voluntarily,¹³⁶ but the respective law prescribing the method of service will determine when this acceptance is valid and when it is not.
- 46 In view of the creation of a common area of freedom, security, and justice among member states with a diversity of official languages, the European Procedures and Regulations have addressed the issue of language and translation with some detail.¹³⁷ In other jurisdictions, such as in Brazil, the legislator has not regulated language and translation requirements for cross-border service: such issues are left to international and bilateral agreements for international civil cooperation. Even if the final result is the same, the finality of such agreements is to formalize the cooperation between countries, rather than to establish the rights of parties in the process.¹³⁸
- 47 The EU Regulation on the service of documents makes the point that there is no obligation to translate documents before service,¹³⁹ but the addressee is protected by the right to refuse service if the document is not written in a language that the addressee understands, or in an official language of the place where service is to be effected.¹⁴⁰ Such a right cannot be limited by national transmitting authorities or the court seized.¹⁴¹

¹³³ Service Regulation (EU), Recital 7; *Krystyna Alder and Ewald Alder v. Sabina Orłowska and Czesław Orłowski* (n **Fehler! Textmarke nicht definiert.**) para 24.

¹³⁴ Service Regulation (EU), Recital 6.

¹³⁵ Hague Service Convention 1965, Art 5 (3), 7; Astrid Stadler, 'Practical Obstacles in Cross-Border Litigation and Communication' (2012) 2012 Erasmus Law Review 151, 160.

¹³⁶ Hague Service Convention 1965, Art 5 (2).

¹³⁷ Cuniberti (n 49) 420.

¹³⁸ VRB Moschen and LN Barbosa, 'O processo civil internacional no CPC/2015 e os princípios ALI/UNIDROIT no processo civil internacional: uma análise de consonância da harmonização processual' (2018) 19 Revista Eletrônica de Direito Processual 217–218

¹³⁹ 'Zustellung Nach Art. 11 Abs. 1 EuVwZÜ Erfordert Keine Übersetzung' (2020) 20 Internationales Handelsrecht 219.

¹⁴⁰ Service Regulation (EU), Art 12 (1).

¹⁴¹ *Alta Realitat S.L. v Erlock Film Aps and Ulrich Thomsen* (CJEU), Judgment of 28 April 2016 [ECLI:EU:C:2016:316] para 74.

The applicant is therefore advised to provide a translation of the documents, even if this will be done at his/her own costs.¹⁴²

- 48 To balance the right of refusal with procedural efficiency, the CJEU has interpreted the EU Service Regulation in the sense that the defendant does not have the right to refuse service when annexes to the documents instituting proceedings are not translated when such documents relate to non-essential documentary evidence for understanding the subject of the claim and the cause of action.¹⁴³ Some jurisdictions, such as Denmark, seem to interpret the regime restrictively, requiring voluminous translations of documents. Similar considerations exist with regards to the EAPO, whereby documents submitted by the creditor to obtain the order will only exceptionally be translated to serve the debtor.¹⁴⁴ Parties, however, retain the right to receive a translation of the whole judgment, so as to allow them sufficient information to contest the enforcement of the judgment,¹⁴⁵ or, before that, to appeal the judgment in the state of origin.
- 49 Under EU law, the refusal of service is also not absolute: it is still possible to remediate defective service by sending the requested translation.¹⁴⁶ The same applies in the US: a party failing to comply with translation requirements to provide adequate notice will likely get an opportunity to try again.¹⁴⁷
- 50 The reality of national practice concerning translation of documents is complex. Under the Hague Service Convention, the scope of translation requirements is left to the internal law of contracting states. Without self-help of the interested parties and clear guidelines by Central Authorities, the interpretation of internal rules of the requested states can cause confusion to the requesting court.¹⁴⁸ Even in European proceedings, such as the EOP, there is little guidance on documents that require translation for the purpose of cross-border service.¹⁴⁹

¹⁴² Service Regulation (EU), Art 9 (1) (2).

¹⁴³ *Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin*, Case C-14/07 (CJEU), Judgment 8 May 2008 [ECLI:EU:C:2008:264].

¹⁴⁴ EAPO Regulation (EU), Art 49 (1).

¹⁴⁵ Brussels I Recast Regulation (EU), Art 43 (2).

¹⁴⁶ *Götz Leffler v Berlin Chemie AG*, Case C-443/03 (CJEU), Judgment of 8 November 2005 [ECLI:EU:C:2005:665].

¹⁴⁷ C Cheng, 'Translated Documents and Hague Service Convention Requirements' (1993) 14 Michigan Journal of International Law 383, 396.

¹⁴⁸ *Ibid.*

¹⁴⁹ M Velicogna, G Lupo and EA Ontantu, 'Comparative Perspectives: Simplifying Access to Justice in Cross-Border Litigation: The National Practices and the Limits of the EU Procedures: The Example of the Service of Documents in the Order for Payment Claims' (2017) 7 International Journal of Procedural Law 93, 120. As pointed out by the authors, the European Commission 'Practical Guide for the Application of the Regulation on the European Order for Payment' (2011) only mentions translation requirements at the level of enforcement (p 34) and does not go into detail about language requirements for the service of the European Order for Payment.

3.4.3 Time Limit for Service and of Response to Service

- 51 Cross-border service is entangled with delays and difficulties in reaching the defendant.
- 52 The EU Service Regulation legitimizes judgments by default, authorizing a court to give judgment even if no certificate of service or delivery of documents instituting proceedings has been received.¹⁵⁰ There is, however, a set of safeguards for that, including the lapse of a minimum adequate period of six months from the date of transmission of the service document.¹⁵¹
- 53 This six-month period is not an indication of harmonization of norms. In fact, countries within the EU set up their own rules concerning time limits to react to service, enter appearance, and organize their defence.¹⁵² In countries such as Germany, this is settled on a case-by-case scenario. Other countries such as Croatia and Lithuania, have a fixed range as set by law. There are countries with fixed deadlines, but more favourable regimes for foreign defendants: this is the case of Belgium, France, Italy, and the Netherlands, inter alia. Other countries, on the other hand – Austria, England and Wales, Spain, etc - have a fixed deadline irrespective of whether it is cross-border case or not.¹⁵³
- 54 Not only can the time limit to appear in court be extended, but proceedings can also be stayed to the benefit of defence of the foreign defendant. For instance, under the EU Brussels Ibis Regulation, courts are required to stay proceedings as long as it has not been shown that the defendant was properly served for him/her to arrange for his/her defence, or that steps were taken to this end.¹⁵⁴
- 55 Time limits can also be imposed to serve the defendant. In the US, a defendant should be served within 90 days after filing of the complaint, although this may be extended if there is good cause. This benchmark does not apply, however, to international service.¹⁵⁵ Time limits to serve a document after a claim has been lodged is a point of concern among European scholars because, under the EU Brussels Ibis Regulation, the institution of a claim triggers the application of *lis pendens* rules.¹⁵⁶

¹⁵⁰ Service Regulation (EU), Art 22 (2).

¹⁵¹ Inchausti (n 106) 517. A similar six-month period is prescribed in the law of Quebec (Art 495 Code of Civil Procedure) whereas Ontario does not prescribe a delay, nor does it set a time limit for challenging an eventual default judgment (Rule 19, Rules of Civil Procedure, RRO 1990, Reg 194).

¹⁵² G Chiapponi, 'Time Limits and Default Judgements in European Cross-Border Civil Litigation; Minimum Standards?' (2020) 12 Cuadernos de Derecho Transnacional 971, para 28.

¹⁵³ Hess and others (n 129) para 227–229. In comparison, Quebec requires a response from a foreign defendant within 30 days as opposed to 15 days for local parties (Art 490 Code of Civil Procedure). In Ontario, the delay is 40 days if the defendant is served in the United States and 60 days if served elsewhere outside Canada (Rule 18.01, Rules of Civil Procedure, RRO 1990, Reg 194).

¹⁵⁴ Brussels I Regulation Recast (EU), Art 28 (2).

¹⁵⁵ FRCP Art 4 (m).

¹⁵⁶ Brussels I Regulation Recast (EU), Art 3 (1)

56 In interpreting the provision of the Brussels regime, the England and Wales Court of Appeal held obiter that if the rules of the first seized court would allow for a default judgment against a non-served defendant, this would be a potential violation of Art 6 ECHR.¹⁵⁷ The applicant is under an obligation thereafter to take steps to serve the defendant, but some EU jurisdictions allow to activate the *lis pendens* effect earlier than others. In this case, parties may lodge a claim just to seize the desired court and then wait to take steps to serve the defendant, something that goes against procedural efficiency.¹⁵⁸

4 RIGHT TO UNDERSTAND: THE PARTICIPATION OF FOREIGN DEFENDANTS IN PROCEEDINGS

4.1 Translation and Interpretation Requirements

57 The lack of knowledge of the language of the court can put the foreign party at a significant disadvantage. This is a plausible justification for requiring the translation of documents and the availability of interpreters.

58 Language is an issue that goes beyond the parties involved in a dispute. Public authorities involved in the judicial process – judges, enforcement officials, clerks, etc – must also be able to communicate with the parties both in writing and orally. Those authorities may also change throughout the proceedings. Consequently, it is not practicable to assess *in concreto* the language abilities of individuals pertaining to this category. It is thus no surprise that public authorities as a rule communicate only in their official language.¹⁵⁹

59 There is a significant body of case law on the right to interpretation as well as the consequences in case of inadequate or faulty interpretation for criminal proceedings. The reason for that possibly lies in the explicit public interest in the proper administration of justice in such cases,¹⁶⁰ as opposed to civil proceedings where there is more room for procedural private ordering.¹⁶¹ Language-related fair trial rights are a guarantee that is afforded not only to foreign defendants but also to language minorities within a given country, as can be seen in the examples given by Brown-Blake (2006) on the right to interpretation in New Zealand, Nigeria, Australia, and Canada.¹⁶²

¹⁵⁷ J J Fawcett, M Ní Shúilleabháin and S Shah, *Human Rights and Private International Law* (1st edn, Oxford University Press 2016) para 4.239; *Marco Benatti v WPP Holdings Italy SRL, WPP 2005 Limited, Berkely Square Holding* (EWCA, United Kingdom), Judgment 28 March 2007 [EWCA Civ 263, 2007 WL 880936] para 67.

¹⁵⁸ Hess and others (n 128) para 234.

¹⁵⁹ Cuniberti (n 49) 420–421.

¹⁶⁰ See examples provided in C Brown-Blake, 'Fair Trial, Language and the Right to Interpretation' (2006) 13 *International Journal on Minority and Group Rights* 391, 404; R Dueñas González, 'Fundamentals of Court Interpretation: Theory, Policy and Practice', *Fundamentals of court interpretation theory, policy and practice* (2nd ed, Carolina Academic Press 2012).

¹⁶¹ Jaime Dodge, 'The Limits of Procedural Private Ordering' (2011) 97 *Virginia Law Review* 723.

¹⁶² Brown-Blake (n 160).

60 The translation requirement, however, comes at a cost and entails risks in view of the diverging quality and reliability of translations. The emergence of international commercial courts and the openness to admitting a foreign language during proceedings can be seen as a way to balance the costs and to share the risks of inaccurate translations among all actors involved in cross-border proceedings.

4.2 Possibility to Use Foreign Languages in all or in part of the Proceedings

- 61 Kern (2012) identified five degrees of incorporation/acceptance of foreign languages in civil proceedings: acceptance of documents without official translation; accepting written communications with the court and between the parties in another language; admission of oral communications with the court in another language, including with parties to the dispute and witnesses; a complete file in a foreign language, going beyond briefs and court letters and drafting the whole proceedings in a foreign language; lastly, writing the decisions of the court in a foreign language.¹⁶³
- 62 A study by the European Commission pointed out flexibilities that may reduce translation burdens during proceedings. The decision to translate documents can be left at the discretion of the Court (Sweden); alternatively, translation requirements can be set aside in case of unreasonableness in view of the content and volume of documents (Estonia); in addition, in some countries the judge uses his/her own knowledge of a foreign language to exempt parties from providing translations (Germany, France, the Netherlands).¹⁶⁴ The possibility of allowing to have hearings in another language is still rather exceptional, but not legally impossible (see case of Germany and France).¹⁶⁵
- 63 A higher degree of acceptance of foreign languages can be found in so-called 'international commercial courts', which are state courts specifically designed for international commercial litigation. These can be found in several regions of the globe: Europe (France,¹⁶⁶ Germany,¹⁶⁷ the Netherlands¹⁶⁸), the Middle East (Dubai¹⁶⁹,

¹⁶³ C A Kern, 'English as a Court Language in Continental Courts' (2012) 5 *Erasmus Law Review* 187, 193.

¹⁶⁴ Hess and others (n 128) para 195.

¹⁶⁵ *Ibid* para 200.

¹⁶⁶ 'International Chamber of the Commercial Court of Paris' <https://www.tribunal-de-commerce-de-paris.fr/en/chambre-internationale> accessed 18 June 2023.

¹⁶⁷ 'Chamber for International Commercial Disputes of the Landgericht Frankfurt am Main' <https://ordentliche-gerichtsbarkeit.hessen.de/landgerichtsbezirk-frankfurt-am-main/landgericht-frankfurt-am-main/chamber-for-international-commercial-disputes> accessed 18 June 2023; 'Commercial Court Stuttgart and Mannheim' <https://commercial-court.de/en/> accessed 18 June 2023.

¹⁶⁸ 'The Netherlands Commercial Court' <https://www.rechtspraak.nl/English/NCC/Pages/default.aspx>.

¹⁶⁹ 'Dubai International Financial Centre (DIFC) Courts' <https://www.difccourts.ae/> accessed 18 June 2023.

Qatar,¹⁷⁰ Abu Dhabi¹⁷¹), and Asia (Kazakhstan¹⁷², China,¹⁷³ and Singapore¹⁷⁴). There are also commercial courts in English-speaking countries that have a significant international commercial case load, such as the London Commercial Court¹⁷⁵ and the Commercial Division of the New York State Supreme Court¹⁷⁶. These institutions have been set up to make jurisdictions competitive in the international dispute resolution market and to attract international commercial disputes, which are often of great economic value.¹⁷⁷ On that aspect, the acceptance of English as a language of proceedings represents the acknowledgement that this language is the lingua franca for international business. Removing translation and other linguistic requirements would reduce the barriers of using those courts in cross-border commercial disputes.¹⁷⁸ In continental Europe,¹⁷⁹ there has been a recognition that there is some intrinsic value in having certain types of cases heard by their own courts.¹⁸⁰ There are, in fact, geopolitical motivations for establishing some of those courts – see the context of Brexit and Belt and Road Initiative.¹⁸¹

4.3 Language Access Services

- 64 It is true that translation costs may be an extra burden to cross-border proceedings, but such requirements exist not only to allow the functioning of the court in its official language but also to protect the rights of defendants who do not speak or understand the language of communication of the court. In that respect, the provision of language access services is a relevant element of the fairness of the proceedings.¹⁸²

¹⁷⁰ 'Qatar International Court' <https://www.qicdrc.gov.qa/> accessed 18 June 2023.

¹⁷¹ 'Abu Dhabi Commercial Court' <https://www.adjd.gov.ae/en/pages/courts/abu-dhabi-commercial-court.aspx> accessed 18 June 2023.

¹⁷² 'The Kazakhstan Astana Financial Centre Court' <https://court.aifc.kz/en> accessed 18 June 2023.

¹⁷³ 'China International Commercial Court' <https://cicc.court.gov.cn/html/1/219/193/195/index.html> accessed 18 June 2023.

¹⁷⁴ 'Singapore International Commercial Court' <https://www.judiciary.gov.sg/singapore-international-commercial-court> accessed 18 June 2023.

¹⁷⁵ 'London Commercial Court' <https://www.gov.uk/courts-tribunals/commercial-court> accessed 18 June 2023.

¹⁷⁶ 'Commercial Division – NY Supreme Court' <https://ww2.nycourts.gov/courts/comdiv/index.shtml> accessed 18 June 2023.

¹⁷⁷ LC Alcolea, 'The Rise of the International Commercial Court: A Threat to the Rule of Law?' (2022) 13 *Journal of International Dispute Settlement* 413, 413. See also X Kramer, J Sorabji (eds), *International Business Courts: A European and Global Perspective*, The Hague, Eleven, 250 pages; G. Dimitropoulos, S. Brekoulakis (eds), *International Commercial Courts: The future of transnational adjudication* (Cambridge, CUP 2020) 424.

¹⁷⁸ Kern (n 163) 188.

¹⁷⁹ G van Calster, 'Brexit, International Commercial Courts, and the Competition for Dispute Resolution: Whither the Rush to English Courts Post Withdrawal?', in G Dimitropoulos, S Brekoulakis, *International Commercial Courts: The Future of Transnational Adjudication* (Cambridge, CUP 2022) 501-514.

¹⁸⁰ Kern (n 163) 189.

¹⁸¹ W Gu and J Tam, 'The Global Rise of International Commercial Courts: Typology and Power Dynamics' (2022) 22 *Chicago Journal of International Law* 443, 453.

¹⁸² Dueñas González (n 160). This book offers a thorough description of language access services in the United States (Chapter 6) and across the globe (Chapter 13).

65 The provision of language services is especially relevant in the context of consumer and small claims disputes. In the EU, the courts of some Member States – Lithuania, Sweden, Czech Republic - seem to provide translation services themselves, even if at a cost.¹⁸³ Another way to provide access services is by means of standard forms and public information: this seems to be the strategy used by the EU in the EOP and ESCP Regulations. As point out by Ontanu and Pannebakker (2012), consumer associations have been active in providing assistance and arranging translations for this kind of claim.¹⁸⁴ Forms are already available in the official languages of the EU and courts can issue decisions that are easily recognizable within the Union.¹⁸⁵

5 RIGHT TO BE HEARD: DEFAULT JUDGEMENTS AND PAYMENT ORDERS

66 Default judgments and payment orders are simplified procedures to settle disputes expediently in the case of either a non-contested payment claim or a defendant absent from the proceedings. Given that these proceedings develop without much - if any - participation of the defendants, there are possible repercussions to their right to a fair trial.

67 For instance, the ECtHR took inspiration from case law concerning criminal proceedings and summarized the conditions for the legality of a default judgment¹⁸⁶ in *Bacaksiz v. Turkey*.¹⁸⁷ In the case, the Court verified whether (1) there was diligence in informing the defendant of the proceedings or whether there was a waiver of the right to appear in proceedings, (2) whether there are remedies under national law allowing for the default party to have their case analyzed afresh; and (3) whether the consequences of lack of diligence of the defaulting party are proportionate to the gravity of their actions and mindful of the principle of fair hearing.¹⁸⁸

68 This section addresses such concerns in the context of cross-border disputes and foreign defendants. It focuses on whether there is the opportunity to challenge those

¹⁸³ Hess and others (n 128) para 196–197.

¹⁸⁴ EA Ontanu and E Pannebakker, 'Tackling Language Obstacles in Cross-Border Litigation: The European Order for Payment and the European Small Claims Procedure Approach' (2012) 5 Erasmus Law Review 169, 175.

¹⁸⁵ Ibid 180. The idea of having forms or at least commonly agreed protocols has been proven to be useful even for communications between courts speaking the same language on complex insolvency matters, such as in the US as described by Stadler (n 135) 166.

¹⁸⁶ 'Guide on Article 6 of the European Convention on Human Rights - Right to a Fair Trial (Civil Limb)' para 353.

¹⁸⁷ *Bacaksiz v. Turkey*, Case 24245/09 (ECtHR), Judgment 10 December 2019 [ECLI:CE:ECHR:2019:1210JUD002424509], para 56-57, 60.

¹⁸⁸ *Sedovic v. Italy [GC]*, Case 56581/00 (ECtHR), Judgment 1 March 2006 [ECLI:CE:ECHR:2006:0301JUD005658100] para 81-88; *M.T.B. v. Turkey*, Case 47081/06 (ECtHR), Judgment 12 June 2018 [ECLI:CE:ECHR:2018:0612JUD004708106], para 48-64; *Dilipak and Karakaya v. Turkey* (n 107) para 80; *Aždajić v. Slovenia* (n 111) para 53, 71; *Gyuleva v. Bulgaria*, Case 38840/08 (ECtHR), Judgment 9 June 2016 [ECLI:CE:ECHR:2016:0609JUD003884008], para 34-48; *Gakharia v. Georgia*, Case 30459/13 (ECtHR), Judgment 17 January 2017 [ECLI:CE:ECHR:2017:0117JUD003045913] para 35, 49-50; *Schmidt v. Latvia* (n 108) para 95.

proceedings.¹⁸⁹ Issues concerning due notice have already been addressed in a previous section of this chapter (section 3). Limitations on recognition and enforcement are part of another chapter of this Part.

5.1 Challenging Default and Order for Payment Procedures

- 69 Default judgments are very common in cross-border proceedings. Within the EU, Latvian law is the exception and does not authorize default judgments against foreign defendants.¹⁹⁰ In cross-border disputes, courts of EU member states are allowed to issue a default judgment even if no certificate of service or equivalent document has been returned, as long as service was effected in accordance with the Regulation¹⁹¹. At the time of the reform of the EU Service Regulation, the EU legislator wanted to reduce the margin of manoeuvre of member states with regard to time limits to issue default judgments but this idea has not been retained in the recast Regulation.¹⁹² As a counterbalance to this situation, courts have the power to relieve the defendant who failed to enter an appearance of the effects of the expiry of the time for appeal of the judgment.¹⁹³ This measure brings the judgment back to the stage in which the defendant could have responded to the document initiating the proceedings.¹⁹⁴
- 70 In addition to that, many jurisdictions have special procedures for challenging default judgments and setting them aside. This is the case for France, Germany, and England. In other countries – Brazil, Spain and Taiwan – there is no special procedure for default judgments, and appeal is the only way to challenge default judgments.¹⁹⁵
- 71 There are specific rules for cross-border payment procedures around the world, all of which have review mechanisms in place. The debtor has first the possibility to oppose the credit claim. In the EU, the EOP Regulation sets a strict timeline for that – 30 days from the date of service. The debtor does not need to state reasons for the objection, it suffices to mention that he/she opposes it.¹⁹⁶ In another act with a cross-border purpose, the OHADA payment order,¹⁹⁷ the timeline is 15 days. In Europe, in addition to the opposition, there is an exceptional procedure of review¹⁹⁸ that can be granted even after the time limit to file an opposition has passed in an exclusive list of cases: EOP was served by methods without proof of receipt, service was effected without enabling the

¹⁸⁹ For an extensive comparative analysis of default judgments and payment orders, see another chapter of this collection by F Pantoja and V Richard ‘Default procedures and payment order procedures’ (pt XI ch 2).

¹⁹⁰ Hess and others (n 128) para 410, Civil Procedure Act 1998 (Latvia), Art 208.3.

¹⁹¹ Service Regulation (EU), Art 22 (2).

¹⁹² V Richard, ‘La Refonte Du Règlement Sur La Notification Des Actes Judiciaires et Extrajudiciaires’ (2021) 2 *Revue critique de droit international privé* 349, 360.

¹⁹³ Service Regulation (EU), Art 22 (4).

¹⁹⁴ Inchausti (n 106) 517.

¹⁹⁵ For more information see: Pantoja and Richard (n **Fehler! Textmarke nicht definiert.**) para 98-101.

¹⁹⁶ EOP Regulation (EU), Art 16 (2) (3).

¹⁹⁷ Uniform act on the simplified recovery of debts 1998 (OHADA), Art 10.

¹⁹⁸ EOP Regulation (EU), Art 20.

debtor to arrange for his/her defence, without fault of the debtor or force majeure. The possibility of review ensures the fairness of the procedure and balances out the limitations on questioning payment orders at the level of enforcement.¹⁹⁹

6 CONCLUSION

- 72 This chapter has discussed how the conduct of international proceedings may impact the procedural rights of foreign defendants. The text started by noticing how issues pertaining to language, geographical distance and the necessity of international judicial cooperation may hamper the effectiveness of foreign parties in cross-border proceedings. This discussion was followed by a section on the sources of procedural guarantees for foreign parties and the regulatory toolbox available to protect these rights. We classified the fair trial rights into three different categories – right to be informed, right to understand and right to be heard - and for each of them we identified existing rules addressing the specific condition of foreign defendants.
- 73 With regard to the right to be informed, we took notice of existing forms of international judicial cooperation, extended time to serve and to appear in proceedings, and rules preventing the avoidance of international service. As to the right to understand, we highlighted norms that guarantee language access services (translation and interpretation) and the acceptance of the use of foreign languages during proceedings. In turn, the protection of the right to be heard is done by means of rules that allow the defendant, under specific circumstances, to challenge judgments and review orders that were enacted or authorized without his/her participation in the proceedings. The analysis we conducted allows us to conclude two things:
- 74 First, adaptive doctrines of notice, flexibility in terms of language, and new technologies make it easier to reach the defendant in current times. This points to the importance of modernizing existing international agreements and furthering legislative work to devise common standards in cross-border service and recognition of judgments, including by updating the Hague Service Convention and promoting accession to the Hague Judgments Convention 2019.
- 75 Second, in the quest for protecting the right to a fair trial, different categories of defendants (and claimants), consumers and employees in particular, are likely to be increasingly recognized. Such recognition may lead, if not to the enactment of special rules for these categories, to the expansion of access to court services in the form of language support, the simplification of rules (use of forms) and flexible standards for notice, application for review and challenge of default judgments.

¹⁹⁹ Inchausti (n 47) 444.

ABBREVIATIONS AND ACRONYMS

ALI	American Law Institute
Art	Article/Articles
CIS	Commonwealth of Independent States
CEMAC	Convention on Judicial Cooperation of the Central African Economic and Monetary Unit
ch	chapter
CJEU	Court of Justice of the European Union
CPLJ	Comparative Procedural Law and Justice
EAP0	European Account Preservation Order
ECHR	European Convention on Human Rights
ECLI	European Case Law Identifier
ECTHR	European Court of Human Rights
ed	editor/editors
edn	edition/editions
EEO	European Enforcement Order
eg	for example
ELI	European Law Institute
EOP	European Order of Payment
ESCP	European Small Claims Procedure
EU	European Union
FRCP	Federal Rules of Civil Procedure
HCCH	Hague Conference on Private International Law
IACAP	Inter-American Convention on Letters Rogatory and Additional Protocol
ibid	in the same place
ie	that is
OHADA	Organization for the Harmonisation of Business Law in Africa
para	paragraph
seq	sequel
UK	United Kingdom
UNIDROIT	Institut international pour l'unification du droit privé (International Institute for the Unification of Private Law)
USCA	United States Codes Annotated

LEGISLATION

International/Supranational

Additional Protocol to the Inter-American Convention on Letters Rogatory 1979.

African Charter on Human and Peoples' Rights 1981.

American Convention on Human Rights 1969.

Charter of Fundamental Rights of the European Union 2000.

Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 2002.

Commission Implementing Decision on the specific arrangements for the handover and takeover process of the e-CODEX system, 2022/2520 of 20 December 2022 (EU).

Commission Implementing Decision on the technical specifications and standards for the e-CODEX system, including for security and methods for integrity and authenticity verification, 2022/2519 of 20 December 2022 (EU).

Commission Implementing Regulation 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, 2022/423 of 14 March 2022 (EU).

Convention on Judicial Cooperation of the Central African Economic and Monetary Unit (CEMAC) 2004.

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 (Hague Service Convention).

Draft resolution Human Rights and Private International Law 27 January 2021 (Institut de Droit International).

European Convention on Human Rights 1950.

Inter-American Convention on Letters Rogatory 1975 (IACAP).

International Covenant on Civil and Political Rights 1966.

Medellín Treaty on Electronic Transmission of International Legal Cooperation Requests Between Central Authorities 2019.

Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993.

Model European Rules of Civil Procedure 2021 (ELI/UNIDROIT).

Principles of Transnational Civil Procedure 2004 (ALI/UNIDROIT).

Regulation creating a European Order for Payment Procedure (EOP), 1896/2006 of 12 December 2006 (EU).

Regulation establishing a European Account Preservation Order (EAPO), 655/2014 of 27 June 2014 (EAPO) (EU).

Regulation establishing a European Small Claims Procedure (ESCP), 861/2007 of the European Parliament and of the Council of 11 July 2007 (EU).

Regulation on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), 2022/850 of 30 May 2022 (EU).

Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I Regulation Recast), 1215/2012 of 20 December 2012) (EU).

Regulation on service of documents (recast) (Service Regulation), 2020/1784 of 25 November 2020 (EU), preceded by Regulation on service of documents, 1393/2007 of 13 November 2007 (EU).

Uniform act on the simplified recovery of debts 1998 (OHADA).

National

Certain Provisions on Issues Concerning Service of Judicial Documents in Civil or Commercial Cases Involving Foreign Elements (2006 SPC Provisions) (China).

Civil Procedure Act 1991 (China).

Civil Procedure Act 1998 (Latvia).

Civil Procedure Rules (CPR) 2006 (England & Wales).

Code de Procédure Civile (CPC) 1976 (France).

Code Judiciaire /Gerechtelijk Wetboek (Judicial Code) 1967 (Belgium).

Code of Civil Procedure 2014 (Quebec, Canada).

Código de Processo Civil 2015 (Code of Civil Procedure) (Brazil).

Constitution of the Federative Republic of Brazil 1988.

Constitution of the United States 1787.

Declaration of the Rights of Man and of the Citizen of 1789 (France).

Federal Rules of Civil Procedure (FRCP) (United States).

Grundgesetz 1949 (Basic Law) (Germany).

Order V of the Code of Civil Procedure 1908 (India).

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Rules of Civil Procedure 1990 (Ontario, Canada).

Zivilprozessordnung (ZPO) (Code of Civil Procedure) 2005 (Germany).

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M.S. v. Finland, Case 46601/99 (ECtHR), Judgment 22 March 2005 [ECLI:CE:ECHR:2005:0322JUD004660199].

Götz Leffler v Berlin Chemie AG, Case C-443/03 (CJEU), Judgment 8 November 2005 [ECLI:EU:C:2005:665].

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Gankin and Others v. Russia, Case 2430/06, 1454/08, 11670/10 and 12938/12 (ECtHR), Judgment 31 May 2016 [ECLI:CE:ECHR:2016:0531JUD000243006].

Gyuleva v. Bulgaria, Case 38840/08 (ECtHR), Judgment 9 June 2016 [ECLI:CE:ECHR:2016:0609JUD003884008].

Gakharia v. Georgia, Case 30459/13 (ECtHR), Judgment 17 January 2017 [ECLI:CE:ECHR:2017:0117JUD003045913].

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Karakuş v. Turkey, Case 32438/08 (ECtHR), Judgement of 7 March 2017 [ECLI:CE:ECHR:2014:0408DEC002178604].

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