

EPPO and EU Law

(Jean Monnet Centre of Excellence - STEPPO)



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The EPPO and the digitalization of criminal justice.

Fabrizio de' Sanna



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- In December 2020, the European Commission adopted a package of initiatives to modernize the EU justice systems, including the Communication on the Digitalization of Justice in the EU.
- Ensuring the effective access of citizens and businesses to justice and facilitating judicial cooperation in civil, including commercial, and criminal matters between the Member States are among the main objectives of the Union's area of freedom, security and justice enshrined in Part three, Title V of the Treaty on the Functioning of the European Union (TFEU).
- Access to justice needs to be maintained and to keep pace with change, including the digital transformation affecting all aspects of our lives.
- It is sometimes difficult to access justice systems for a number of reasons such as formalistic and expensive legal procedures, long procedural delays and high costs of using court systems.



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The COVID-19 crisis has therefore underlined the need to strengthen the resilience of the justice system across the EU and the importance of cooperating, promoting shared best practices.

It is therefore important to develop appropriate channels to ensure that justice systems can cooperate efficiently, digitally. It is therefore necessary to establish, at Union level, an **IT system that allows for a rapid, direct, sustainable, reliable and secure cross-border electronic exchange of case information, while respecting the right to the protection of personal data.** Such a system should contribute to **improving access** to justice and transparency by allowing citizens and businesses to exchange documents and evidence in digital format with judicial or other competent authorities, where provided for by national or Union law.



This Communication is setting out a new approach to the digitalisation of justice based on a **‘toolbox’** – a comprehensive set of:

- **Legal,**
- **Financial,**
- **IT instruments,** to be used by the various actors in our justice systems according to their needs.

This approach would thus de facto ensure that everyone in our Union can make full use of new or additional digital tools in the justice area.



As a first step, the Commission carried-out a fact-finding (mapping) exercise, which took stock of the state of play of digitalisation of justice at both national and EU level. The mapping exercise is based on a comprehensive review of existing sources on the level of digitalisation of justice in Europe, as well as on additional surveys, which were conducted specifically for the purposes of this exercise.

It reveals a different level of progress amongst the Member States.

For example, in 2020:

individuals can access an electronic file of their ongoing cases in 10 Member States in all types of civil law procedure;

in the context of criminal law, victims can access an electronic file in seven Member States and defendants in nine;

evidence can be submitted to a court exclusively in digital format in the context of all types of criminal proceedings in 13 Member States;

in civil and commercial law, digital evidence is admissible in all types of proceedings in 10 Member States.



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- Overall, the results portray a very varied landscape across the Member States. The EU justice scoreboard and the mapping show that many areas of justice could benefit from further digitalisation.
- With certain exceptions, one area where a slow pace of digitalisation has been encountered relates to registers and databases. Individuals, businesses and legal practitioners all have difficulties in accessing the information to which they are entitled. In many cases, such access is not available online, resulting de facto in a number of inefficiencies.
- In addition, current EU legislation does not stipulate the medium or detailed arrangements for such transfers. As a result, most communication remains paper-based, thus generating inefficiencies in cross-border exchanges (mainly with regard to speed, reliability, traceability and cost), complicating individuals' and businesses' access to information, and slowing down exchanges between Member State authorities.



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- In order to effectively support the relevant Member States' authorities in the fight against cross-border crime, EU justice and home affairs (JHA) agencies and bodies have identified the need to enhance their digital cooperation capabilities.
- They have had to face a number of challenges, such as a lack of state-of-the-art digital infrastructure, a trusted communication channel and the necessary applications for the exchange of evidence between national authorities and between those authorities and the EU agencies and bodies. It is therefore essential that agencies and bodies such as the EU Agency for Criminal Justice Cooperation (Eurojust), the European Public Prosecutor's Office (EPPO), the European Anti-Fraud Office (OLAF) and the European Union Agency for Law Enforcement Cooperation (Europol) agree on a common approach that ensures smooth and secure cooperation with Member States, while complying with the applicable legal framework, in particular as regards personal data protection.



As anticipated, the 2020 Communication proposes a toolbox for the digitalisation of justice, in order to address the above challenges and advance the justice sector in the digital sector.

The tools are classified as follows:

1. **financial support;**
2. **legislative initiatives;**
3. **IT tools;**
4. **promotion of national coordination and monitoring tools that allow for regular monitoring, coordination, evaluation and exchange of experience and best practices.**

FINANCIAL INSTRUMENTS

It is no coincidence that the first of the instruments governed by the Communication is the financial one. It is clear that the development of appropriate IT systems for use in the field of justice takes time and, above all, **resources**. A comprehensive strategy to tackle the digitalisation of justice in the EU must therefore address access to funding.

The digital implementation of justice systems requires significant investments in infrastructure, design, implementation, maintenance, and training. To achieve a satisfactory level of advancement, a two-pronged approach is required:

- financial support to Member States to initiate a genuine digital transformation of their justice systems;
- support for the implementation of initiatives at EU level.



IT TOOLS - e-CODEX

e-CODEX system (e-Justice Communication via the Online Data Exchange – 'eCODEX system'), i.e. a **computerised system for the cross-border electronic exchange of data** in the field of judicial cooperation in civil and criminal matters.

It is a **software package** - the legal framework of which is set out in Regulation (EU) 2022/850 of the European Parliament and of the Council - **that enables** the connection between national systems, allowing users, such as judicial authorities, legal practitioners and citizens, to **send and receive documents, legal forms, evidence and other information quickly and securely**.



LEGISLATIVE INITIATIVES

On 29 November 2023, the **Council adopted the regulation** on the digitalisation of cross-border judicial cooperation and access to justice and the complementary **directive**, which aims to facilitate electronic communication in the context of cross-border judicial cooperation procedures in civil, commercial and criminal matters.

These measures have elevated the e-CODEX system to the main tool for cooperation: suffice it to say that, from May 2024, cross-border communications will have to take place through the aforementioned digital platform.



e-Justice strategy for the period 2024-2028.

The strategy not only describes the principles and objectives for the development of e-Justice for the next 5 years, but also sets out the actions that Member States and the EU should take to achieve these goals.

The main areas of work identified in the field of e-Justice are the following:

- (1) e-CODEX: further development of the decentralised IT system, including interoperability and security profiles and functionalities;
- (2) e-Justice Portal: information services and interconnections with external sources;
- (3) electronic access points: portal for procedures and connected user interface services;
- (4) real-time applications: videoconferencing, machine transcription and translation, interpretation and other real-time application services;
- 5) data: law and case law; legal and judicial data;
- (6) AI and other innovative IT services in the field of justice



It will therefore become possible to **convene hearings by videoconference**, with the obligation for Member States to ensure that the new digital modalities are accessible to all. Under the new rules, legal documents will be able to be exchanged electronically, using seals and electronic signatures, and electronic payment of taxes will be possible.

In this way, citizens will benefit from timely access to justice, as we increase the efficiency and security of communication between judicial authorities. The new rules will enter into force twenty days after their publication in the Official Journal, and the regulation will apply 15 months later.



European e-Justice Strategy 2024-2028

GENERAL PRINCIPLES

Initiatives in the framework of the digital transformation of justice must respect the independence of the judiciary and the rule of law, which represents, according to Article 2 of the Treaty on European Union, one of the core values on which the European Union is founded and which are common to the Member States. Such initiatives should be carefully assessed as regards their degree of protection of the rights of all.

Action should be taken in particular in the context of criminal justice, where the use of distance communication technologies could present serious risks to the fundamental rights of suspects and accused persons, in particular the right to a fair trial, the right to be present at the trial and the rights of the defence. In addition, the emergence of innovative technologies can give rise to radically new challenges and risks, such as cybersecurity breaches, a deepening digital divide or unwitting discrimination caused by biased algorithms or data sets.



Access to justice is another fundamental right and a cornerstone of the rule of law. Digital transformation has profoundly changed people's lives in recent decades and will continue to do so. Judicial systems are responding to these evolving needs and making the right technological possibilities available to citizens. The further digitalisation of Member States' justice systems, as well as the use of AI in justice systems, has enormous potential to continue facilitating and improving access to justice for all across the European Union. For example, in some cases AI can be used for low-risk purposes and be very useful for both citizens and judicial authorities

It is clear that, in order to promote a fair and balanced justice landscape across Europe, it is essential to reduce the digital divide that creates inequalities in access to justice. This is not only a potential source of exclusion for citizens, but also an obstacle to the exercise of their rights. This principle also concerns the need to work towards aligning the levels of digitalisation of justice in all EU Member States. By sharing best practices and efforts, we can collectively advance the digital transformation of justice, while maintaining a people-centred perspective to ensure that everyone's rights are protected and respected.



European e-Justice Strategy 2024-2028

PRINCIPLES OF OPERATION OF THE SYSTEM

Digital by default. Adopting a 'digital by default' approach will simplify procedures, reduce bureaucracy and improve the overall efficiency of court proceedings. The digitalisation of legal services will pave the way for a more accessible and user-friendly justice system, benefiting both legal practitioners and the public. This new justice system should be designed as a digital service, although non-digital alternatives need to be maintained so as to provide effective legal protection and access to justice to those who do not fully participate in technological developments.

Interoperability and cybersecurity. In a world where information flows freely, it is crucial to ensure interoperability between justice systems. The priority given to interoperability will allow for seamless communication and data exchange between different systems, improving coordination and cooperation between different legal entities and institutions, thereby breaking down barriers between different national legal systems.



Dynamic justice. Justice must be flexible and adaptable to the ever-changing needs of society. By taking into account the unique circumstances of individuals and institutions, including their capabilities and expertise, and effectively managing change, we can build a more resilient and responsive justice system that adapts to users' needs and expectations. Digital technologies and data can play an important role in this process. Digitalisation, data analytics and AI are increasingly being integrated into justice services in order to improve their efficiency and effectiveness. The COVID-19 pandemic has put a strain on the performance of justice services and accelerated the digital transformation of justice services, while highlighting the challenges raised by this change.

Data-driven justice. The importance of data-driven decisions is undoubted. Initiatives should therefore include, inter alia, data collection and analysis, as they are key to properly steer action, while addressing any associated risks such as data or technological biases.