



DIPARTIMENTO DI  
GIURISPRUDENZA  
SCHOOL OF LAW

# THE EPPO and EU law: a step forward in integration



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## **EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION**

TOPIC 4: THE EPPO  
PROGRAMMING 2021-23:  
HIGHLIGHTS

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# THE EPPO AND THE DIGITALIZATION OF CRIMINAL JUSTICE

THE OPERATIONALIZATION OF THE EPPO WILL EQUALLY BUILD ON BROADER EU-LEVEL EFFORTS TOWARDS THE DIGITALIZATION OF JUSTICE, AND CRIMINAL JUSTICE IN PARTICULAR. 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. THE COVID-19 PANDEMIC HAS GIVEN AN EXTRA IMPETUS TO DIGITALIZATION EFFORTS



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# THE EPPO AND THE DIGITALIZATION OF CRIMINAL JUSTICE

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 thus underlined the need to strengthen the resilience of the justice system across the EU. It has also stressed the importance to further cooperate with its international partners and promote best practices also in this policy area. This represents an important component of a society based on European values, and of a more resilient economy.

In 2020, the Commission undertook several initiatives to step up digitalisation of justice to swiftly respond to emerging challenges.

It is thus important that appropriate channels are developed to ensure that justice systems can efficiently cooperate in a digital way. Therefore, it is essential to establish, at Union level, an information technology system that allows for the swift, direct, interoperable, sustainable, reliable and secure cross-border electronic exchange of case-related data, while always respecting the right to protection of personal data.

Such a system should contribute to improving access to justice and transparency by enabling citizens and businesses to exchange documents and evidence in digital form with judicial or other competent authorities, when provided by national or Union law. That system should increase citizens' trust in the Union and mutual trust between Member States' judicial and other competent authorities.

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The Communication on the Digitalization of Justice in the EU is setting out a new approach to the digitalisation of justice based on a 'toolbox' categorised as follows:

Financial support to Member States, to harness the potential for creating long-term impact;

Legislative initiatives, to set the requirements for digitalisation in order to promote better access to justice and improved cross-border cooperation, including in the field of Artificial Intelligence;

IT tools, which can be built upon in the short to medium term and used in all Member States. It is important that existing and new IT tools are interoperable by default, accessible for persons with disabilities, user-centred, fast, secure, reliable, resilient and data-driven, and ensure privacy, data protection and transparency;

Promotion of national coordination and monitoring instruments which would allow regular monitoring, coordination, evaluation and exchange of experiences and best practices.

# THE EPPO AND THE DIGITALIZATION OF CRIMINAL JUSTICE

On 1 December 2021, the European Commission tabled a proposal for a horizontal regulation on digitalisation of judicial cooperation and access to justice, intended to apply to both civil and criminal proceedings of a cross-border nature within the EU.

The proposal's subject matter is the establishment of a legal framework for electronic communication between competent authorities in both civil and criminal matters, and for communication in judicial procedures between private parties, on the one hand, and competent authorities, on the other. The proposed regulation is therefore transversal and indistinctive, in the sense that its rules cover both civil and criminal matters.

The proposed regulation lays down horizontal rules on the use of videoconferencing (or other distance-communication technology) for hearing i) parties in civil proceedings (but not witnesses or experts, as this is already regulated in the 2020 Taking of Evidence Regulation), and ii) suspects, accused and convicts in criminal proceedings. The proposal also provides for rules on using, in the scope of judicial cooperation, electronic trust services, acceptance of electronic documents (signed with e-seals and e-signatures), and the electronic payment of court fees in civil proceedings.

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- Article 3(1) of the proposal provides for mandatory use of electronic means for written communication between competent authorities in both civil and criminal cross-border cases. However, article 3(2) provides for exceptions from the use of electronic means owing to i) disruption of the decentralised IT system, ii) the nature of the transmitted material or iii) 'exceptional circumstances'.
- Article 8 regulates the use of videoconferencing or other distance-communication technology in criminal proceedings. The rule's scope *ratione personae* is limited to suspects, accused and convicts. *A contrario*, this rule does not apply to witnesses, victims or other parties to criminal proceedings (e.g. civil parties, who – in some Member States – may join criminal proceedings if they have a claim for damages to the person accused).
- Three prerequisites listed in article 8(1) are present: i) availability of videoconferencing technology; ii) justification for the use of videoconferencing technology by 'the particular circumstances of the case' – a concept not defined in the proposal; and iii) consent of the suspect, accused or convict.