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IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation

and
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation

{COM(2021) 759 final} - {SEC(2021) 580 final} - {SWD(2021) 393 final}

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Glossary

Term or acronym	Meaning or definition
TFEU	Treaty on the Functioning of the European Union
JHA	Justice and home affairs
JHA agencies and EU bodies	Eurojust, Europol, Frontex, European Public Prosecutor's Office (EPPO) and European Anti-Fraud Office (OLAF)[1]
e-CODEX	e-Justice Communication via Online Data Exchange (communication system for the secure exchange of information developed for the judicial area)
eEDES	e-Evidence Digital Exchange System
e-Justice portal	The main tool that has been developed to improve access to information in the area of justice
EJN-civil	European judicial network in civil and commercial matters
EJN-criminal	European judicial network in criminal matters
eu-LISA	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
e-IDAS	Electronic Identification Authentication and trust Services
EAW	European arrest warrant
EIO	European investigation order
EPO	European payment order
CEHJ	European Chamber of Judicial Officers/Bailiffs
ICT system	Information communications technology system – a set-up consisting of hardware, software, data and the people who use them. It commonly includes communications technology, such as the internet.
IT	Information technology
IMI system	Internal Market Information system
iSupport	IT system for the cross-border recovery of maintenance obligations under the EU 2009 Maintenance Regulation and the 2007 Hague Child Support Convention, which makes use of e-CODEX for communication
SMEs	Small and medium-sized enterprises – businesses whose staff numbers fall below certain limits
RSB	Regulatory Scrutiny Board

[1] As per the Cross-Border Digital Criminal Justice Study

Reference implementation software	An user interface software developed for the purposes of distributed systems to be used by each Member State as an alternative to the national back-end system
SMEs	Small and medium-sized enterprises or small and medium-sized businesses - businesses whose personnel numbers fall below certain limits
Transaction	"Transaction" for the purposes of this document refer to the instance where a package of documents is sent cross-border with acknowledgement of receipt from a individual, legal entity, legal practitioner or court/competent authority in one MS to a court/competent authority in another MS.

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

Today's constantly expanding and evolving digital environment influences not only our daily lives and social contacts, but also the functioning of state institutions, including the judiciary. The ubiquitous process of digital transformation has tremendous potential to facilitate and accelerate judicial proceedings, including judicial cooperation across borders.

The aim of digitalisation in this area is to improve access to justice, cooperation between judicial authorities in cross-border cases, and the efficiency and resilience of justice systems. In order to further e-Justice at EU level, the Council of the EU has adopted a series of strategies and action plans in the past few decades, most recently the e-Justice strategy for 2019-2023[2] and the associated action plan for 2019-2023[3].

The digitalisation of justice is part of the work to create "*A Europe fit for the digital age*", as set out in the "*Political Guidelines for the next European Commission 2019-2024*"[4]. The Commission's guidelines acknowledge the central role that it, and the public sector in general, can play in stimulating the digital transformation process. e-Justice is also seen as central to post-COVID recovery[5] in improving access to justice and thus enhancing the business environment. More recently, the digitalisation of justice systems was deemed a key reform area in the context of the Recovery and Resilience Facility[6].

The Commission developed its vision of the EU's digital transformation by 2030 in its communication *"2030 Digital Compass: the European way for the Digital Decade"*[7] (9 March 2021). The Communication points out that digital transformation enables modern, efficient justice systems, the protection of consumer rights and more effective public action, partly through better law enforcement and investigation capacities (which must be equipped as well as possible to deal with increasingly sophisticated digital crimes).

The 2020 *Strategic Foresight report*[8] recognises the crucial importance of the digital transformation of public administrations and justice systems throughout the EU. The transition should work for everyone, putting people first and opening up new

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2 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52019XG0313(01)

3 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019XG0313%2802%29

4 https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf

5 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Europe's moment: repair and prepare for the next generation* (COM(2020) 456, 27 May 2020).

6 https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2021:057:TOC&uri=uriserv:OJ.L_.2021.057.01.0017.01.ENG

7 https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030_en

8 https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/strategic-foresight/2020-strategic-foresight-report_en

opportunities for all types of stakeholder. It should therefore address a broad range of issues.

In its July 2020 Security Union Strategy, the Commission committed to specific actions to enable law enforcement and justice practitioners to adapt better to new technology, thanks in particular to new tools, skills and investigative techniques.

At the beginning of June 2021, the Commission adopted a proposal for amending the e-IDAS Regulation[9] to establish a framework for a European digital identity[10]. The proposal addresses the increased private and public sector demand for electronic identity solutions that rely on specific attributes and ensure a high level of trust across the EU. The envisaged digital identity wallet storing attributes and credentials will allow individuals and legal entities to access public services.

The European Council[11] and the European Parliament[12] both recognised the pivotal role of digitalisation in helping to relaunch and modernise the EU economy following the COVID-19 crisis.

On 9 June 2020, the Council adopted conclusions on "*Shaping Europe's digital future*"[13], which recognise that 'the digitalisation of the justice systems of the Member States has the potential to facilitate and improve access to justice throughout the EU'. The Council calls on the Commission 'to facilitate the digital cross-border exchanges between the Member States both in criminal and civil matters and to ensure the sustainability and ongoing development of the technical solutions which have been developed for cross-border exchanges'.

The October 2020 Council conclusions on "*Access to justice – seizing the opportunities of digitalisation*"[14] call on the Commission to take concrete action to digitalise justice, including by:

- examining the potential for modernising the core provisions of instruments in civil and commercial matters in line with the 'digital by default' principle; and
- considering to which judicial cooperation instruments in criminal matters the e-Evidence Digital Exchange System (eEDES) might be extended.

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9 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

10 https://eur-lex.europa.eu/legal-content/NLEN/TXT/?uri=CELEX:52021PC0281

11 *A roadmap for recovery – towards a more resilient, sustainable and fair Europe*, endorsed on 23 April 2020.

12 Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences.

13 https://data.consilium.europa.eu/doc/document/ST-8711-2020-INIT/en/pdf

14 OJ C 342I, 14.10.2020, p. 1.

The December 2020 Council conclusions on the European arrest warrant (EAW) underline that digitalisation should play a central role in the operation of the EAW[15].

In November 2020, the Parliament and the Council adopted recasts of the Service of Documents Regulation[16] and the Taking of Evidence Regulation[17]. These require Member States' competent authorities to communicate with each other by electronic means (e.g. to exchange standardised forms, documents, etc.).

The work on the two Regulations was closely linked with the Commission's overall priority of digitalisation and e-Justice and the parallel work in the field of criminal justice[18]. Following the Commission's proposals in 2018[19], the co-legislators are negotiating a legislative framework on cross-border access to e-evidence. In this context, the Commission's proposals already highlight the importance of electronic platforms, e.g. for the submission of requests, the authentication of orders and responses by service providers[20]. The legislative framework established by the e-evidence proposal in criminal matters will rely on adigital channel for communication similar to the one considered in this initiative, for obtaining evidence from internet service providers.

In December 2020, the Commission adopted a Communication on the digitalisation of justice in the EU,[21] proposing a toolbox approach, i.e. a set of measures promoting digitalisation both for cross-border exchanges and at national level. It addressed the modernisation of the legislative framework for EU cross-border procedures in civil, commercial and criminal law, in line with the "digital by default" principle, while ensuring all necessary safeguards e.g. to avoid social exclusion. The Commission will be proposing legislation on digitalising cross-border judicial cooperation procedures in civil, commercial and criminal matters, as announced in its 2021 work programme[22] (see "digital judicial cooperation" package). This is the flagship initiative of the "digital judicial cooperation package". The package includes a proposal for amendments of the European Judicial Counter Terrorism Register and a proposal for the establishment of an IT platform to support the Joint Investigations Teams. All three initiatives aim at digitalising processes by employing different tools designed to serve the purposes of the respective procedures covered by them.

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15 https://data.consilium.europa.eu/doc/document/ST-13214-2020-INIT/en/pdf

16 Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).

17 Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast).

18 *Digital criminal justice* (Criminal Justice study).

19 COM(2018) 225 and 226 final.

20 See also SWD(2018) 118 final.

21 EUR-Lex - 52020DC0710 - EN - EUR-Lex (europa.eu)

22 https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents_en

The e-CODEX system is a suite of software components for EU judicial cooperation, developed by a consortium of Member States and co-financed by the Commission. It supports secure communication in civil and criminal proceedings by enabling the secure cross-border exchange of electronic messages and documents. Together with the December 2020 Communication (see above), the Commission adopted a legislative proposal for a Regulation of the European Parliament and of the Council on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system). It establishes a legal basis for the e-CODEX system and guarantees its sustainability and future management by entrusting it to the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)[23]. The e-CODEX system would thus be the most suitable tool for the digitalisation of cross-border judicial cooperation procedures. The Council has reached agreement on a general approach on the Commission's proposal[24].

2. PROBLEM DEFINITION

2.1. What is the problem?

This initiative aims to tackle two main problems:

- inefficient cross-border judicial cooperation; and
- barriers to access to justice in cross-border cases.

There is a comprehensive set of EU-level instruments designed to enhance judicial cooperation and access to justice in cross-border civil, commercial and criminal cases. Many of these provide a legal basis for communication between authorities, including Justice and Home Affairs agencies and EU bodies, and between authorities and individuals or legal entities. However, most of them do not provide for engaging in such communication through digital means. Even where they do, as is the case with the Small claims regulation or European order for payment regulation, which foresees the possibility for communication via e-mail or other electronic means, the use of such means depends on the law of the Member States involved in the case. In addition, other gaps exist, such as the lack of secure and reliable digital communication channels or the non-recognition of electronic documents, signatures and seals. e-CODEX, for example, is a system for secure communication in cross-border judicial cooperation procedures. However, the proposal for a Regulation governing e-CODEX only aims to establish a legal basis for e-CODEX and to regulate its governance and maintenance. It would not prescribe practical cases of application, which is to be achieved through this initiative. All this deprives judicial cooperation and access to justice of the use of the most efficient, secure and reliable channels available.

These problems directly impact the national authorities' ability to process cases (including the cross-border ones). National courts received (as per the 2021 EU Justice

[23] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0712
[24] https://data.consilium.europa.eu/doc/document/ST-9005-2021-INIT/en/pdf

Scoreboard) an average of 2.3 new cases per 100 citizens in 2019, when the average duration of civil and commercial cases was around 247 days in the first instance[25]. The latter figure does not reflect the fact that cases took on average twice as long in some countries[26] and that final resolution often involves a long appeal process before the higher courts, which in some cases can take more than 7 years[27]. A Council of Europe study[28] has concluded that the length of court proceedings in both civil and criminal cases (which affects the basic right to a fair trial) still constitutes a major concern Europe-wide. Considering the volume of cases and the need to resolve them expediently, digital tools that make judicial authorities more efficient, including in their communication between each other and with individuals/legal entities, are key for a well-functioning justice sector.

However, at national level, the infrastructure for digital communication does not always allow the use of modern communication technologies. The 2021 EU Justice Scoreboard[29] shows gaps in the provision of adequate infrastructure and equipment supporting secure electronic communication – 12 Member States do not have adequate infrastructure for electronic communication between courts and 19 Member States do not have such infrastructure for communication between prosecution offices. These gaps also affect the availability of digital infrastructure for use in cross-border cases as well as other issues specific to matters involving more than one Member State, such as the interoperability of communication systems, availability to foreign nationals, and rules governing identification and the legal validity of electronic documents and evidence.

These in turn create problems such as procedural delays, limited access to courts and communication channels that are less effective, resilient and efficient than is technologically possible (involving extra costs, e.g. for sending registered letters, scanning documents and printing). Germany and Austria conducted a pilot project on the use of digital communication technologies for the European payment order[30], which showed that the use of such technologies generally brought cost savings. It costs EUR 0.07 to send an electronic message, while postage for a registered letter is EUR 3-5, without counting the extra time and costs for printing, scanning and archiving paper documents.

Another consequence of the lack of secure digital communication channels is the use of unsecure channels, such as e-mail. The impact assessment accompanying the

[25] https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_quantitative_factsheet_2021.pdf (Figure 4 is relevant to civil and commercial cases).
[26] *Ibid* (Figure 7).)
[27] https://www.oecd.org/economy/growth/judicial-performance.htm
[28] https://rm.coe.int/1680747c36
[29] https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2021.pdf
[30] See Annex 9.

Commission's proposal for e-CODEX[31] identifies potential shortcomings of using unsecure channels (e.g. as regards long-term sustainability, data integrity and possible data leaks) and software that does not meet the requirements of EU judiciaries.

With regards to the security of the communication, the public consultation indicated data protection concerns as the second most important disadvantage of digitalisation of cross-border judicial cooperation with 50% of respondents considering it as a disadvantage (after cybersecurity with 63%)[32]. As a result of faster processing, the amount of personal data processed within a given timeframe (e.g. every year) may also increase.

The security of personal data processing is essential to protect data subjects. The e-CODEX system was designed specifically for the justice area, and uses encryption to ensure security. Using e-CODEX for cross-border exchanges would increase security and thereby mitigate the risk of security breaches. e-CODEX is therefore clearly an improvement compared to present exchanges using paper or unsecure e-mails.

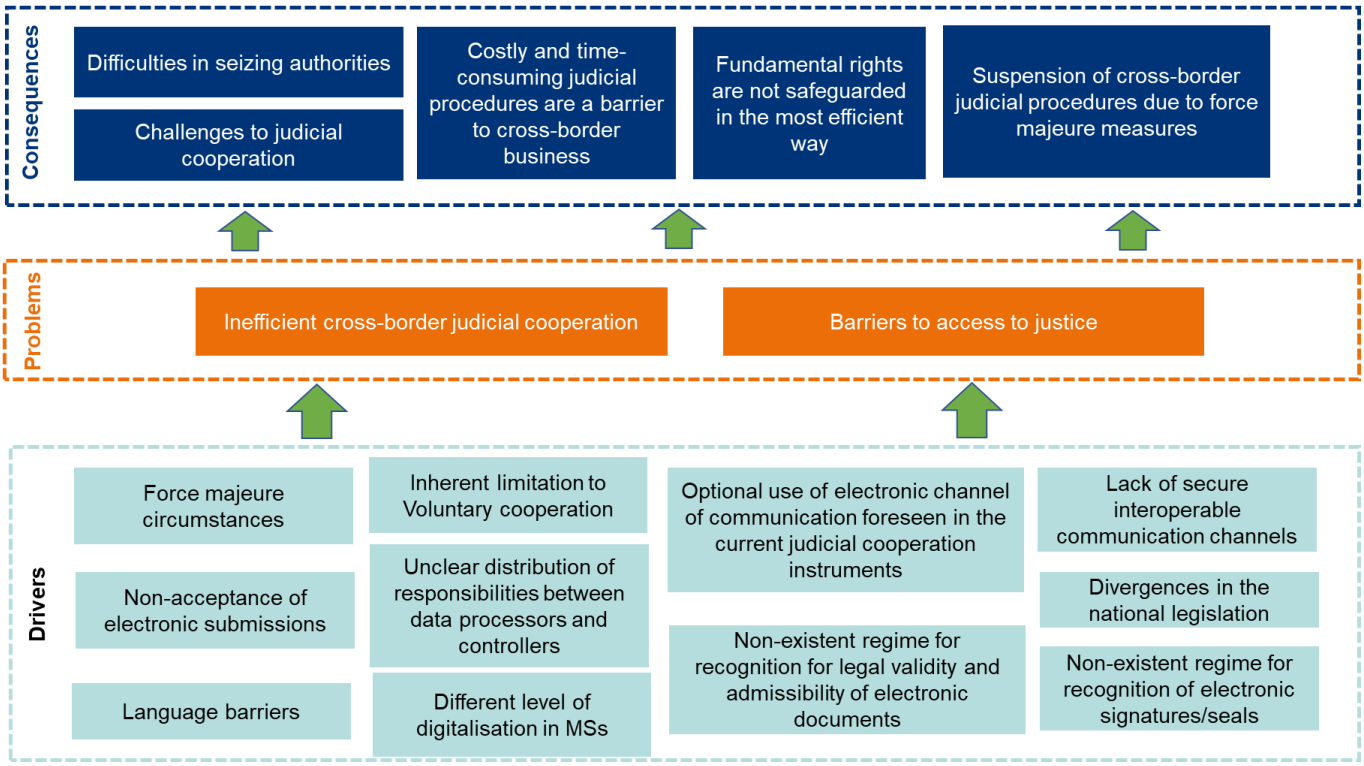
In addition, the digitalisation of existing data exchanges will not introduce any new personal data categories compared to what is already exchanged today through traditional means, nor will it affect the existing data processing arrangements. The increased personal data processing would be solely the result of increased efficiency/effectiveness and simplification, rather than of the digitalisation itself. Moreover, compared to the paper channel the use of digital tools would provide better traceability and audit capabilities and the possibility for automatic enforcement of personal data retention policies – the timely removal of personal data, which no longer needs to be stored.

The above problems, along with their causes and consequences, are summed up in the problem tree (Figure 1), which shows the issues faced in cross-border cases by competent authorities, individuals and legal entities communicating with competent authorities in another Member State.

[31] https://ec.europa.eu/info/sites/default/files/law/cross-border_cases/documents/e-codex-impact-assessment_en.pdf (p. 22).)

[32] Annex 3 of the final report prepared by VVA.

Figure 1: Problem tree



2.1.1. Inefficient cross-border judicial cooperation

Efficient cross-border judicial cooperation involves secure, reliable and time-efficient communication between courts and competent authorities, to reduce administrative burden and increase resilience to *force majeure* circumstances. This is also central for individuals and legal entities, as the conduct of judicial proceedings in a reasonable time is a crucial aspect of the right to a fair trial, as enshrined in Article 47(2) of the EU Charter of Fundamental Rights. It is equally important for the effective and speedy prosecution of crimes. In addition, lengthy proceedings are problematic, because they trigger higher costs for defendants (lawyers' fees, etc.) and longer detention times for individuals who have been arrested or are to be surrendered.

Data exchanges in cross-border cases – mainly those between competent authorities and with JHA agencies and EU bodies, but also procedures directly involving individuals and legal entities – are overwhelmingly paper-based and no IT system fully supports the communication process.

Among other disadvantages, the physical transmission of paper is inherently slow and relatively inefficient and unreliable. The average time declared by operators (postal services, carriers etc.) for posting a first-class letter in the EU-27 is 2 days (48 hours) and there are examples that this time may be much longer – between 3 to 15 days depending

on the destination[33]. It also often involves the sender making hard copies of digitally native documents, which are subsequently digitised by the recipient. This generates significant additional work and sacrifices many of the advantages of digitally native documents, such as searchability, resolution (in the case of pictures), etc. Moreover, due to the advance of digitalisation in all areas of life (including archiving) and the external costs of printing (in an economy that must become more sustainable), the limited availability of printing services[34] may soon pose a practical threat to the traditional means of communicating with the judiciary. Paper-based transmission channels are also particularly vulnerable to crises, such as the COVID-19 pandemic, during which Member States' lockdown measures have impeded access to courts and communication between competent authorities.

> *By way of example, at present the procedure for obtaining an EPO includes the following steps: The applicant accesses the e-Justice portal[35] to retrieve the standardised request form for issuing of an EPO and information regarding the competent court in the receiving Member State; The form is then filled in and, while online, automatically translated into the language accepted by the receiving Member State; The applicant prints the form, puts it in an envelope and goes to a post office (or a post box) to send it; On receipt of the request, the staff of the competent court in the receiving Member State have to register it manually (or, if there is an electronic case management system, scan it and enter the relevant data), create a case file and assign it to a judge; The assisting judicial clerk brings the case physically to the judge (or, if there is an electronic case management system, the judge receives it as an electronic file);The judge delivers a decision (using a standardised form), which is then printed, registered (manually or electronically) and sent to the applicant in the same way as the initial request was sent; The case is manually archived by the court staff.*

Currently, it is generally not possible to automate this process. However, this could be achieved by incorporating multilingual standard forms in the IT system, which would allow their automated generation, extraction of data from the database and automatic translation of the standardised content into all EU languages. It would also improve searchability, by making it easier to store data and retrieve it from the existing database. Automating the processing of EPO requests would significantly alleviate the administrative burden of processing them, making cross-border proceedings much more efficient.

Ultimately, the current delays mostly affect parties to the proceedings (individuals and legal entities) and their ability to protect and assert their rights effectively. Furthermore,

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33 Table 16 of the final report of the Study prepared by Valdani Vicari & Associati (VVA)

34 Printing industry | Internal Market, Industry, Entrepreneurship and SMEs (europa.eu).

35 Conceived as an electronic 'one-stop shop' in the area of justice, the portal contains information on Member States' justice systems, their national laws and EU judicial cooperation instruments, but also standardised forms used in the context of EU instruments in civil, commercial and criminal matters, in all EU languages.

the 2021 EU Justice Scoreboard states that reducing the length of court proceedings by just 1% (measured in disposition time) could boost firms' growth. Even such a minimal improvement is associated with higher trade turnover and productivity growth. In criminal law, access to justice across borders is particularly problematic for victims of crime and defendants. Lengthy periods spent by foreign suspects in pre-trial detention may be partly a result of the time it takes competent authorities to exchange European investigation orders (EIOs)[36] through traditional paper-based channels. Excessively long proceedings and high legal costs deter or even prevent victims from asserting their rights by taking cases to court[37].

> *During the COVID-19 pandemic, courts have been unable to maintain normal operations. The European judicial network in civil matters (EJN-civil), as the main EU body mandated with facilitating cross-border cooperation in civil and commercial cases, has produced a comparative table on the pandemic's impact showing that Member States were forced to take a number of measures in relation to judicial authorities, ranging from complete shutdowns to treating certain priority cases only[38]. Meanwhile, activities that could be conducted digitally (e.g. by e-mail, videoconference, etc.) continued uninterrupted. However, these solutions often did not satisfy common security, interoperability, data protection and fundamental rights standards, nor could all Member States guarantee the procedural acceptance or effect of communications, due to the lack of harmonised EU-level rules. Judicial cooperation therefore needs to be made less dependent on external factors.*

2.1.2. Barriers to access to justice in cross-border cases

As a basic principle of the rule of law, 'access to justice' involves individuals and legal entities being able to rely on effective procedures and accessible remedies for the protection of their rights. However, mere access to judicial authorities does not automatically constitute effective access to justice. What needs to be safeguarded is the effectiveness of the procedures and the elimination of practical difficulties. Individuals and legal entities should be able to protect their rights and have their obligations determined in a swift, cost-effective and transparent way. Otherwise, bottlenecks such as prolonged procedures, geographical distance and red tape (excessive bureaucracy and adherence to statutory rules and formalities) impair access to justice and the right to an effective judicial remedy. In addition, the pandemic has shown that *force majeure* circumstances can severely inhibit the normal functioning of judicial systems. These general problems constitute barriers to access to justice, which could be mitigated by increased digitalisation of judicial procedures.

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36 EIO is a judicial decision issued in or validated by the judicial authority in one EU country to have investigative measures to gather or use evidence in criminal matters carried out in another EU country.

37 A conclusion of the EU-level focus group meeting on 4 May 2021Focus Group conducted by the external contractor Valdani Vicari & Associati (VVA) for the purposes of the study.

35 EJN comparative table (Annex 5), Table 4

The use of paper files and traditional transmission channels continues to dominate national and cross-border judicial proceedings[39]. According to the findings of the national legal mapping conducted for the supporting study, in most Member States paper-based communications constitute the majority of all cross-border communications between courts/competent authorities of the Member States and between the latter and parties to proceedings[40]. Stakeholders point to the challenges created by the current paper-based exchange of documents and deem it important to be able easily to submit documents digitally and receive information from relevant authorities in a digital format[41].

However, there are no harmonised arrangements at EU level whereby individuals and legal entities can make and accept electronic submissions in cross-border cases. This state of affairs is in stark contrast to the increased use of digital tools in our everyday lives. It is particularly striking in a Europe of open borders, where individuals and legal entities can find themselves involved in litigation before the court of another EU country.

The lack of digital tools can curtail access to justice in many other ways, especially in cross-border cases, where geographical distance, language differences and a lack of experience of a foreign legal system can make it very cumbersome and expensive. This is particularly true for people in remote or rural areas, or those affected by disability or vulnerability. Attending oral hearings in person is often considered stressful and time-consuming. In criminal cases, remote video hearings may avert the need for surrender under an EAW and thus for long periods of pre-trial detention in a foreign country. Consumers and small (or even medium-sized) businesses may face disproportionate extra obstacles in pursuing low-value claims in civil cases that deter them from initiating a cross-border procedure. Delays caused by the lack of effective digital communication also impair effective access to justice.

For instance, the evidence gathered in the study supporting the Impact Assessment[42] indicated that victims and defendants risk being deterred or unable to enforce their rights by taking cases to court in cross-border cases. The results of the public consultation also indicate that there are barriers to access to justice which could be reduced by better use of digital tools. More than 80% of the respondents to the public consultation agree that the use of digital tools would lead to better accessibility of information and easier access to judicial procedures (≈86%). Additionally, respondents agree that it would result in time savings for both administrations and citizens/businesses (≈87%), and in lower costs of handling cases both for administrations and citizens/businesses (≈81%).

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[39] VVA EU-level focus group meeting (4 May 2021).

[40] Section 2.2.2 of the final report of the study prepared by the external contractor Valdani Vicari & Associati (VVA).

[41] *Ibid*.

[42] Section 2.1, page 19 of the final report of the study prepared by the external contractor Valdani Vicari & Associati (VVA).

2.2. What are the problem drivers?

The problems described above are the result of factors explored in this section. A detailed description of the problem drivers may be found in Annex 8.

2.2.1. Different level of digitalisation and voluntary use of existing digital channels

Degrees of digitalisation vary across the Member States[43], although all EU countries improved their digital performance in 2020[44], with Finland, Sweden, Denmark and the Netherlands scoring highest, followed by Malta, Ireland and Estonia. However, a higher ranking on digital performance does not always mean that a Member State's digital services will be available in cross-border cases.

The 2021 EU Justice Scoreboard[45] highlighted the different degrees to which judiciaries in the EU use the digital channel. The relevance of this issue was confirmed by the study carried out to support this impact assessment[46], with 49% of national stakeholders responding to a questionnaire seeing it as a barrier to digital communication. An additional 37.3% considered it a 'somewhat relevant' obstacle.

The e-CODEX system developed by the Member States is a good tool for the digitalisation of cross-border judicial procedures. However, although its geographical coverage is expanding and the number of users increasing[47], actual uptake by Member States remains low. This has led to fragmentation and continued inefficiencies, including the use of the paper channel, with its attendant costs and environmental impact[48]. The fragmentation also affects individuals' and legal entities' access to justice. Moreover, the fact that digitalisation is voluntary means that there is no guarantee that all Member States will be interconnected in the future.

One of the main reasons for the fragmented use of digital tools for cross-border communication is the voluntary participation in cooperation initiatives. Even where digital communication is foreseen in EU legislation, there is currently no uniform legal and technical framework for employing it nor for the acceptance of such communication. Efforts to establish voluntary digital communication channels have been ongoing since 2009 with limited success. This is evidenced by the fact that, to date, cross-border digital exchanges are based on bilateral implementation of the e-CODEX system with little uptake from the Member States. As of February 2020 only 6 Member States participate

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43 https://ec.europa.eu/info/sites/info/files/swd_digitalisation_en.pdf

44 https://ec.europa.eu/digital-single-market/en/digital-economy-and-society-index-desi

45 https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2021.pdf

46 Study by external contractor contractor – Study on the digitalisation of cross-border judicial cooperation in the EU prepared by Valdani Vicari & Associati (VVA)

47 Additional instruments for which the use of e-CODEX is envisaged are the Service of Documents and Taking of Evidence Regulations (evidence recasts): FD909 – Mutual Recognition of Sentences in Criminal Law.

48 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Digitalisation of justice in the European Union: a toolbox of opportunities* (SWD(2020) 540 final).

in the e-CODEX European order for payment pilot and 5 Member States participate in the Small claims pilot. The low voluntary participation is not limited to e-CODEX – for instance the voluntary implementation of the insolvency registers interconnection was joined by only 9 Member States. At the same time a similar initiative, the Business Registers Interconnection (BRIS) for which the connection is mandatory, is joined by 26 Member States. Indeed, to our knowledge all successful EU-wide large-scale cross-border IT systems have been established on the basis of mandatory participation[49]

2.2.2. Recognition of electronic signatures/seals and legal validity/acceptance of electronic documents

At present, there are no harmonised arrangements for the recognition of electronic signatures and seals in the area of cross-border judicial cooperation.

The e-IDAS Regulation defines electronic trust services and sets up a common EU regulatory framework for these (electronic signatures, electronic seals, time stamps, electronic delivery services and website authentication). Thus they are recognised across borders as having the same legal status as paper-based ones. The Regulation forms part of a predictable legal framework within which individuals, legal entities and public administrations can safely access services and carry out transactions online and across borders. e-IDAS solutions have reduced red tape for individuals and generated savings for businesses.

However, unless explicitly referred to, the Regulation does not cover the provision of services used exclusively within closed systems between a defined set of participants with no effect on third parties. Currently, there is no such reference in any of the applicable civil, commercial and criminal law instruments providing for judicial cooperation or access to justice and included in the intended coverage of this initiative. Therefore, and in the absence of legislation Member State participating in e-CODEX pilots carried out to date were compelled to conclude ad hoc so-called "circle-of-trust" agreements, to ensure that electronic documents and signature/seals would be recognised in the pilot procedures. The legal validity of such agreements in the respective national systems is however doubtful.

Even the seamless recognition of electronic signatures and seals across borders would not automatically result in the recognition of electronic documents. The legal validity and admissibility of documents transmitted electronically during judicial proceedings may be called into question by receiving Member States if not recognised in their national law. The experience clearly show that developing digital solutions without providing a legal basis for their use does not serve as an incentive for the MS to use these solutions.

The issues of voluntary participation, non-recognition of electronic documents, signatures and seals and the lack of interoperability standards and tools were also

[49] e.g. the Schengen Information System II (SIS II), Visa Information System (VIS), BRIS.

recognised as key barriers by the consulted stakeholders for the purposes of the study. Respondents (≈82%) noted that such issues hamper the use of digital solutions in the communication between the competent authorities of the Member States and between those authorities and parties to the proceedings in civil and commercial cross-border proceedings (the conclusions are similar for the criminal cases). The legal validity and admissibility of documents transmitted electronically to another Member State is a relevant barrier for ≈74%. The fact that electronic signatures/seals used by the issuing Member State may not be recognised by the receiving Member State is considered as a relevant barrier to digitalisation by ≈71% of the stakeholders. The lack of interoperability at international level (e.g. with the IT systems of the courts of other Member States) is also a relevant barrier to the digitalisation for ≈79% of the consulted stakeholders. The public consultation demonstrated a similar result.

2.2.3. Language barriers

Stakeholders point to language barriers as a problem in cross-border judicial cooperation[50], e.g. the issuing authority might need to translate documents into a language accepted by the receiving authority. Also, language issues mean that individuals are often not at ease when involved in judicial proceedings in another Member State.

In cross-border litigation, serious problems can arise when one or more of the parties is unfamiliar with the official language of the court. As a consequence, interpreters must often be used during trials and hearings, and the law has to determine whether a given document has to be translated.

For example, in low-value cases (e.g. involving a traffic fine to be paid by a foreign tourist), language could constitute a barrier to access to justice. A person receiving legal documents in a foreign language might consider it cheaper to pay the fine than to contest it and incur disproportionate translation costs.

2.2.4. Non-resilience of judicial systems to **force majeure** *circumstances*

The COVID-19 crisis has considerably impacted the functioning of Member States' justice systems and EU cross-border judicial cooperation. Many cross-border and national procedures have had to be suspended, *de facto* depriving many individuals and legal entities of effective access to justice. The pandemic has emphasised the need for further efforts towards the digitalisation of justice, including closer cooperation between Member States and with international partners, and the need to promote best practices in this area.

[50] VVA EU-level focus group meeting (4 May 2021).

2.3. How will the problem evolve?

Data on the frequency and trends in regards to cross-border exchanges in civil and criminal matters has been collected in the context of the supporting study[51]. However, due to the lack of a harmonised statistical framework, the gaps in the data do not allow for conclusions about trends in cross-border cooperation to be made.

This being said, it should be pointed out that the problem drivers above are linked to the increased EU mobility, primarily in the context of tourism, e-commerce, study abroad etc. There is a significant number of people who cross borders for the purposes of tourism – 64.7% of EU citizens aged 15 or more did so in 2019 and there is an upward trend in the number of nights that tourists spend in a country other than their own (from 100 in 2005 to 157.8 in 2019[52]). Furthermore, by relying on the internet (which knows no borders), including for their work, individuals are increasingly exposed to situations that can lead to cross-border disputes. The number of people living in a foreign country is also trending upwards – Eurostat has found that, in 2019, 3.3% of EU citizens of working age (20 to 64) lived in another Member State, as compared to 2.4% in 2009[53]. There is no hard evidence that the number of people living or working in a Member State other than their own increases the number of cross-border disputes. However, there is likelihood of correlation between the number of people travelling between their place of residence and their country of origin and the number of the cross-border cases. With more and more people finding themselves in a cross-border situation, it is to be expected that the number of cross-border litigations will increase, placing an even greater burden on judicial systems.

This trend is indirectly evidenced in the constant growth in the number of users of the e-Justice portal, from 12 934 in January 2019 to 40 555 in June 2021 in the criminal law area and from 44 632 in February 2019 to 97 971 in June 2021 in the civil law area[54]. There is no complete data on the number of cross-border cases as such statistics is often not prepared by the Member States. However, the size of the problem could be visualised by the number of cross-border cases, presented in more detail in Annex 7. For example, the number of exchanges of e-CODEX messages between Austria and Germany in the first quarter of 2021 on the European order for payment amounts to 574 messages sent from Germany to Austria and 863 messages sent from Austria to Germany. On an annual basis, Sweden, receives between 200 and 300 requests for issuing an European order for payment and 300 European arrest warrants.

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[51] Section 4 of the Study, tables 2, 3 and 4

[52] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Tourism_statistics#Nights_spent_abroad_by_EU_residents:_Luxembourg_leads_in_nights_per_inhabitant

[53] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_citizens_living_in_another_Member_State_-_statistical_overview

[54] Annex 6 – Extract 'Statistics for the use of e-Justice portal'

This tendency is likely to result in an increased workload for courts and a greater weight of expectation on them to deliver justice, provide individuals/legal entities with information, accept submissions and communicate with other authorities. A similar trend can be expected for other competent authorities dealing with cross-border judicial cooperation, such as central authorities, notaries and bailiffs.

New technologies have the potential to make judicial systems more efficient in this regard, by easing the administrative burden, shortening case-processing times, making communication more secure and reliable, and partially automating case handling. However, the development of national IT solutions independently by the Member States, leads to a fragmented approach with a lack of interoperability. Even where common digital solutions are developed at EU level, their uptake in cross-border judicial cooperation procedures can be expected to advance slowly and in an uncoordinated manner while participation remains voluntary. This contrasts with rapid digitalisation in the private and commercial sector, which has been further accelerated by the COVID-19 pandemic. Individuals and legal entities (in particular, businesses) would benefit from having their rights protected and their obligations enforced by the kind of digital means that they are used to in their everyday private or commercial activity. A continued lack of uniform digital tools to fully support cross-border judicial cooperation will probably reinforce or maintain the tendency to rely on paper-based communication, which results in financial costs and negative environmental impacts – currently the average cost per transaction is EUR 10.55[55] and estimations on an yearly basis show that 181 448 100 A4 standard 80g printing paper pages (out of which 31 833 000 for the individuals and legal entities) are used for communication purposes under the respective Union instruments with the overall average cost of EUR 2 216 160 (EUR 388 800 for individuals and legal entities)[56]. A continued lack of a coherent digital approach across Member States will also affect individuals' and legal entities' ability to use the most efficient tools to access justice.

The ongoing e-CODEX pilot projects[57] demonstrate benefits for courts, competent authorities, individuals and legal entities. However, they do not involve all Member States, have not resulted in a sufficient increase in the use of digital tools for cross-border cooperation and cross-border access to justice, and are insufficient in themselves to bring about a common EU-level approach.

3. WHY SHOULD THE EU ACT?

3.1. Legal basis

The use of digital channels for communication in cross border judicial proceedings would facilitate judicial cooperation in civil, commercial and criminal matters. Hence,

[55] See Annex 9, Table 15.
[56] See Annex 9 for detailed explanations and calculation.
[57] https://www.e-codex.eu/projects

the legal bases for this initiative are Articles 81 and 82 of the Treaty on the Functioning of the European Union (TFEU) .

More specifically, the use of digital channels for communication would facilitate judicial cooperation and the effective access to justice in civil matters in line with Article 81(2) of the TFEU. Article 82(1) of the TFEU is the legal basis for the Union to act in the field of judicial cooperation to facilitate the cooperation between Member States' judicial or other competent authorities in relation to criminal proceedings and the enforcement of decisions. While Article 82(2) of the TFEU cannot constitute a legal basis for the adoption of regulations, it is a valid legal basis for the proposed Regulation, since the Regulation will amend existing directives based on Article 82(2), both through its horizontal digitalisation provisions and through certain alignment amendments.

3.2. Subsidiarity: Necessity of EU action

The above problems and their causes could have negative repercussions in terms of delays, security concerns and the reliability of communication in the processing of cross-border cases. These could be mitigated by the use of modern technologies in the context of judicial case handling, be it in the area of civil, commercial or criminal law.

Under Article 4(1)(j) TFEU, the competence to adopt measures in the area of freedom, security and justice is shared between the Union and the Member States. Therefore, Member States may act alone to regulate the use of digital communication channels in the context of judicial cooperation and access to justice. However, experience shows that, without EU action, progress can be expected to be very slow and that, even where Member States take action, it is very difficult to ensure interoperability without EU intervention. In addition, cross-border matters are beyond the reach of individual Member States, as national legal action cannot be expected to reach past national borders. Therefore, the objective of this initiative cannot be achieved in a sufficiently harmonised manner by the Member States acting on their own, but only at EU level.

There are already EU-level provisions on the conduct of communication, some of which even allow for the use of modern technology. However, none has ensured the creation of an adequate infrastructure for electronic communication from individuals, legal entities or competent authorities with the authorities of another Member State. Moreover, the provisions have not been adopted as a coherent whole on which judicial authorities can rely.

EU action is necessary in order to harmonise the Member States' efforts and establish a coherent framework for the existing EU rules.

3.3. Subsidiarity: Added value of EU action

The added value of EU action lies in improving the efficiency, resilience, security and speed of cross-border judicial procedures, by providing an impetus for the simplification

and acceleration of communication between Member States' authorities and with individuals and legal entities. Thus, the administration of justice-related cases with cross-border implications is expected to improve.

Additional added value arises from driving forward the digitalisation of EU judicial cooperation for all Member States, as compared with the present situation, where only certain groups of Member States have taken action, resulting in a limited and fragmented response to the identified problems. Even in digitally well-advanced Member States, existing tools are not always available for cross-border cases. The digitalisation measures are also linked to existing instruments in the area of cross-border legal cooperation and aimed at improving how they function.

The establishment of an access point on the e-Justice portal would bring EU added value for individuals and legal entities who prefer to make submissions through a multilingual portal (with guidance in all EU languages) rather than through national portals, which will not necessarily have the same functionality.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1. General objectives

The general objective of the initiative is to improve access to justice and the efficiency of cross-border judicial cooperation by ensuring the establishment and seamless use of digital tools.

The COVID-19 crisis has shown the need for a more holistic approach to help modernise the European area of justice, make it resilient to emerging challenges, strengthen trust in Member States' judicial systems and safeguard fundamental rights in the EU. In particular, the objective is to improve the efficiency of cross-border judicial cooperation in civil, commercial and criminal matters, and to enhance access to justice for individuals, legal entities and legal practitioners, while fully respecting fundamental and procedural rights, in particular the right to a fair trial and the rights of defence.

These objectives can be achieved by deploying digital technologies to improve the context within which the communication takes place.

4.2. Specific objectives

The following specific objectives are proposed in response to the problems identified above:

i. ensure the availability and use of electronic means of communication in cross-border cases between Member States' courts/competent authorities and relevant JHA agencies and EU bodies, where such communication is provided for in EU legal instruments on judicial cooperation;

ii. enable the use of electronic means of communication in cross-border cases between individuals and legal entities, on the one hand, and courts and competent authorities, on the other; the possibility of individuals and legal entities to communicate in paper will be maintained.

iii. facilitate the participation of parties to cross-border civil and criminal proceedings in oral hearings through videoconference or other remote communication technology, for purposes other than taking evidence in civil cases[58];

iv. ensure that documents are not refused or denied legal effect solely on the grounds of their electronic form (without interfering with the courts' powers to decide on their validity, admissibility and probative value as evidence under national law); and

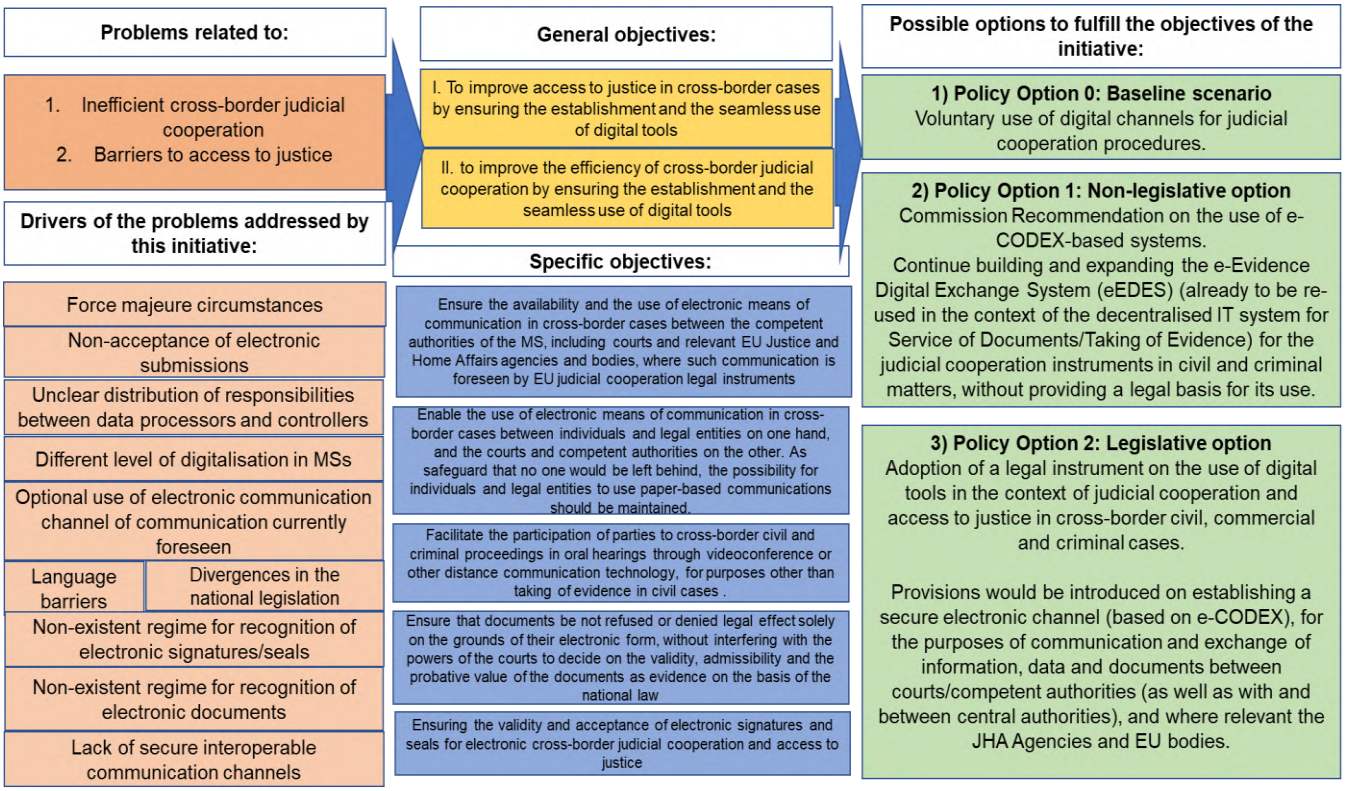
v. ensure the validity and acceptance of electronic signatures and seals for electronic cross-border judicial cooperation and access to justice.

The objectives of the proposed specific actions (operational objectives) are to ensure that the most rapid, secure and cost-effective technological solutions are used for communication in cross-border judicial cooperation procedures; ensure that exchanges of documents and data between courts/competent authorities of Member States and between the latter and parties to proceedings are executed expeditiously and efficiently; guarantee the legal validity of documents and commonly agreed types of electronic signatures/seals.

The intervention logic of the initiative, linking the policy options with the objectives and the problems that have been identified, is presented in Figure 2.

Figure 2: Intervention logic

[58] The use of videoconferencing or other remote communication technology is already provided for in the recently adopted recast of the Taking of Evidence Regulation (Article 20), which. is not intended to be covered by this new proposal.



5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

The policy options that have been identified include a non-legislative recommendation and legislative action providing for optional or mandatory use of digital communication means (although individuals and legal entities would still have the choice of using traditional means). The options are described in detail below.

5.1. What is the baseline from which options will be assessed?

Option 0 (baseline scenario)

No action is taken to drive forward the digitalisation of cross-border judicial cooperation and the use of digital tools to improve access to justice.

Member States' provision of a digital channel for cross-border judicial procedures **remains voluntary** and **no further action is taken at EU level**. Individuals' and legal entities' ability to file and follow up claims electronically or through videoconferencing tools, and judicial and other competent authorities' ability to exchange judicial documents electronically depend on the Member States involved, and the existence of bilateral agreements among them, and **thus remains uncertain**. Member States can continue to regulate the use of electronic signatures/seals and data protection responsibilities in diverging ways.

The likely consequences for the cross-border proceedings would be that interoperability and the lack of legal basis for digital services will remain an issue, which will prevent improving the efficiency of cross-border judicial cooperation. The uptake of digital communication technology would remain as demonstrated for the past use-cases. Existing barriers would remain, and access to justice, especially in case of force majeure circumstances would not be facilitated, which would lead to difficulties for the persons to ascertain their claims.

5.2. Description of policy options

Option 1 (Non-legislative option)

The Commission adopts **a recommendation** encouraging Member States to:

- enable and allow individuals and legal entities **to make electronic submissions** in cross-border cases through national IT systems and accept such electronic submissions from other Member States;
- allow parties to cross-border cases and their representatives (at their request) to participate in **oral hearings by videoconference** or other distance communication technology;
- incorporate **standards on trust services** in line with the e-IDAS Regulation; and
- allow for the **electronic payment of court fees**.

At the same time, the Commission continues **to build and expand the use of eEDES** (and the decentralised IT system for the recast Service of Documents and Taking of Evidence Regulations) for instruments in civil, commercial and criminal matters, without providing a legal basis for its use. The practice of allowing parties to attend hearings via videoconference remains regulated only at national level, as do arrangements for the recognition of electronic documents and the use of electronic signatures and seals. With regards to the language barriers identified above, the current arrangements would continue, meaning that where the applicable EU instruments require translation or interpretation, the regime will remain the same.

The Commission recommendation might include guidelines, but these remain **non-binding**. Nevertheless, the recommendation would set certain standards to which the Member States may decide to adhere. That would be a step towards the establishment of compatible national IT systems.

Option 2 (Legislative option)

A **legal instrument is adopted** on the **use of digital tools** in the context of judicial cooperation and access to justice, including **on the recognition and acceptance of electronic signatures and seals** in cross-border civil, commercial and criminal cases.

The instrument includes provisions **establishing a secure electronic channel** based on e-CODEX (identified as the most appropriate technical solution in the impact assessment on the Commission's proposal for a Regulation on e-CODEX[59]). This channel will be used for communication and exchanging information, data and documents between courts and competent authorities, with and between central authorities, and where relevant the JHA agencies and EU bodies. Provisions are also introduced in support of **communication between individuals and legal entities**, on the one hand, and Member States' **courts and competent authorities**, on the other. The responsibilities of different **data controllers and processors** are formally determined by clarifying that the competent authorities under national law are to be regarded as controllers within the meaning of Regulation (EU) 2016/679 and Directive (EU) 2016/680 with respect to personal data processing. A reference to the general legal framework established by Regulation (EU) 2016/679 and Directive (EU) 2016/680 is made.

Additional issues are addressed through suboptions in three areas, as set out below.

2.1 Removing barriers to cross-border judicial cooperation and introducing digital means supporting such cooperation (addressing specific objective i and iv).

The legislative option could either require the use of the established digital communication channel in cross-border judicial cooperation or leave it to the discretion of the Member States.

Common provisions would ensure the acceptance and legal validity of digital documents and evidence, and outline the data protection requirements inherent in cross-border communication.

Suboption 2.1.a *Voluntary use of digital channel*

The legal instrument **allows** Member States' authorities to use a common, decentralised IT system for the purposes of cross-border communication and exchange of information, data and documents with each other.

Suboption 2.1.b *Obligatory use of digital channel*

The legal instrument **requires** Member States' competent authorities (and central authorities established under EU law) and, where relevant, JHA agencies and EU bodies to use a common, decentralised IT system in communication with other Member States' authorities in the context of judicial cooperation under the relevant EU law.

Such an obligation could be subject to **well-defined and justified exceptions**, such as *force majeure*, technical unavailability and the transportation of material that cannot be transferred via digital means (e.g. blood samples).

[59] SWD(2020) 541 final

This option is based on the assumption that the IT systems for exchanges of EIOs and the service of documents/taking of evidence, as developed by the Commission, will be extended to cross-border judicial communication. Member States will be able to connect their national IT system to these or to use those developed by the Commission free of charge.

2.2 Introducing legal and technical measures supporting access to justice in cross-border cases (addressing specific objectives ii, iii and iv)

As regards access to justice, the legislative proposal would introduce legal and technical measures governing digital communication between individuals and legal entities, on the one hand, and Member States' competent authorities, on the other. This would include videoconferencing in cases other than taking of evidence in civil cases (which is already regulated in the Taking of Evidence recast regulation), as a means of access to justice.

In the context of criminal proceedings, adequate safeguards of the right to a fair trial must be ensured, such as:

- the right to a confidential consultation with a lawyer ('Access to a Lawyer Directive'[60]) – the confidential interaction between lawyers and suspects or persons accused during any questioning must be ensured. The lawyer must be in a position personally and effectively to participate in any questioning. Speaking to a lawyer by videoconference cannot replace in-person counselling;
- the right to be present ('Presumption of Innocence' Directive[61]) – remote hearings should not be imposed without the consent of the suspect or accused person[62]; and
- the right to protection (Victims' Rights Directive[63]) – in order to avoid further victimisation, the detailed arrangements for hearings by videoconference, the location where the victim is heard, the presence of adequate in-person support and other factors should all be taken into account.

In both civil and criminal cases, the parties' participation in oral hearings via **videoconferencing or other distance communication technology** would be subject to

[60] Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

[61] Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

[62] The European Court of Human Rights has laid down conditions for defendants' participation in the proceedings where they do not consent to a hearing via videoconference;, see *Marcello Viola* v *Italy* (Case No N45106/04, 5 October 2006).

[63] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

the same standards as in-person hearings as regards interpretation and the conduct of the proceedings in a language that the party understands[64].

Common provisions would ensure **the acceptance and legal validity of electronic documents and evidence**, and outline specific data protection requirements for cross-border communication.

To facilitate access to justice, provisions would be introduced to allow for **the online payment of court fees** in EU cross-border cases.

Suboption 2.2.a *Voluntary acceptance of electronic communication*

The legal instrument **does not oblige** Member States to allow electronic communication between individuals/legal entities and competent authorities. National law determines whether parties can take procedural action through digital means. Member States are free to decide whether:

- to accept electronic communication from individuals/legal entities;
- to develop a national solution for such submissions; or
- to use an EU-developed solution (e.g. 'small claims submissions' pilot through the e-Justice portal).

This option **does not provide a legal basis** for parties' participation in oral hearings in cross-border cases by videoconference. The development and use of such tools remains at the discretion of the Member States involved.

Suboption 2.2.b *Obligatory acceptance of electronic communication*

The legal instrument **obliges** Member States to accept electronic communication between individuals/legal entities and competent authorities. Such communication takes place via an access point to be established on the e-Justice portal[65] or through portals at Member-State level. This allows (but does not oblige) individuals/legal entities to file claims and communicate with courts (or other competent authorities) electronically in the context of the relevant EU law procedures. The access point is a user-friendly tool accessible online at any time, in all Member States and in all EU languages, and is equipped with online guidance for filling in standardised forms and making submissions. Traditional, e.g. paper-based, means of communication are maintained for individuals/legal entities to use if they prefer.

[64] For criminal proceedings, see Directive 2010/64/EU on the right to interpretation and translation (OJ L 280, 26.10.2010, p. 1).

[65] The access point would be particularly useful for making submissions to courts or competent authorities in Member States that have not established national portals.

This suboption also provides **a legal basis for parties** to cross-border cases, and their representatives on request, to participate in oral hearings by videoconference or other distance communication technology, subject to:

- the availability of such technology;
- the court's discretion, depending on the circumstances of the case; and
- the parties' consent.

In this case, the conduct of the oral hearing via videoconference or other distance communication technology is governed by the rules and procedures applicable to videoconferences for domestic cases.

2.3 Recognition and acceptance of electronic signatures and seals (addressing specific objective v)

For the purpose of the legal instrument, the use of electronic signatures and seals needs to be considered.

Suboption 2.3.a *Non-regulation of trust services*

The legal instrument **does not regulate** the use of electronic trust services in the context of cross-border judicial cooperation and access to justice, allowing Member States to:

- develop their own methods and standards with regard to the use of electronic signatures and seals; and
- accept or reject communication from other Member States through the secure decentralised IT system, depending on national law and bilateral/multilateral trust agreements.

Suboption 2.3.b *Regulation of trust services*

The legal instrument **regulates** the use of e-signatures and e-seals by explicitly referring to the e-IDAS Regulation[66], which would be needed in order to ensure the application of e-IDAS for communication in cross-border judicial procedures. It also clarifies the type of electronic signature or seal to be used for cross-border judicial procedures, i.e. simple, advanced or qualified by relying on the trust framework established by e-IDAS.

In this way, harmonised arrangements are set out for **ensuring the admissibility and recognition of electronic signatures and seals** where digital technology is used in the context of judicial cooperation or access to justice.

[66] Similarly to Article 5(2) of Regulation (EU) 2020/1784 and Article 7(2) of Regulation (EU) 2020/1783– "The general legal framework for the use of qualified trust services set out in Regulation (EU) No 910/2014 shall apply to the documents to be served, requests, confirmations, receipts, certificates and communications transmitted through the decentralised IT system.";

5.3. Options discarded at an early stage

A non-regulatory option involving **a promotion campaign** on the use of digital tools and e-CODEX for the purposes of communication in cross-border judicial procedures has been discarded. Such a campaign was considered **not to constitute a real alternative** to regulation and could in any case be carried out as part of the baseline scenario.

The option of **establishing a centralised IT system** for the electronic exchange of information and data was also discarded. While it may be technically feasible to leverage an existing centralised IT solution, such as the Internal Market Information (IMI) system, the **Commission considers that it is not appropriate**. On the other hand, e-CODEX, which was chosen as the most suitable solution for cross-border exchanges, is decentralised by nature. In addition, the use of a centralised IT system would be difficult to justify from the point of view of proportionality and subsidiarity, as all information, data and documents would be stored on Commission servers or the servers of the entity managing the system (e.g. eu-LISA), while these would not be party to the exchange. Moreover, this could involve a single point of failure as all data is stored in one place compared to a decentralised system where data is stored by each Member State. It would also render more complex the integration with current and future national systems and their evolution alongside the centralised system. The development of such a system would require separate efforts or technical modifications (e.g. to the IMI system).

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

The impacts of the policy options are discussed below.

The detailed analysis is presented in Annexes 1, 4 and 9, which set out the data sources, methodology and standard cost model computation that have been used.

Option 0 – Baseline scenario

If no action is taken, **the objectives outlined in Section 4.2 will not be achieved**, as the use of the digital channel of communication will remain voluntary for each Member State and there is no indication that the current limitations could be offset.

Concerning **economic impacts**, the status quo will be maintained. The cost of communication will remain at an average of EUR 10.55[67] per transaction[68]. The average time for delivering a first-class letter in the EU is 2 days (48 hours)[69] and this has been taken as an average for the time it takes to send a letter from one Member State to another Member State. However, anecdotal evidence[70] suggests that it actually takes

[67] See Annex 9, Table 15.
[68] By 'transaction', we mean the sending of a package of documents cross-border with acknowledgement of receipt from an individual, legal practitioner or a court in another Member State.
[69] See Annex 9.
[70] See study supporting this impact assessment.

much longer – between 3 and 15 days depending on the destination. We have used an average of 5 days per transaction. The time taken to process paper forms (i.e. registration, archiving, making copies, scanning) was estimated at 1.5 hours per transaction (45 min for sending and 45 min for receiving)[71]. Each transaction involves an average of 19.65 paper pages (the average length of the template forms for the cross-border instruments in question), at a cost of EUR 0.24[72]. We have assumed that at least three copies of each document are required during proceedings under each of the instruments: one that is sent, one kept in the file and one exchanged with the competent authority of the other Member State.

This will result in maintaining the status quo in terms of annual costs and transaction times in cross-border cooperation at EU level[73], maintain the current economic impacts for individuals, legal entities, legal professionals and courts/authorities:

- EUR 32 472 900 for communication using physical formats (out of which EUR 5 697 000 for the individuals, legal entities);
- 15 390 000 days for communication by post or equivalent services (out of which 2 700 000 days for the individuals and legal entities);
- 192 375 days in administrative overheads linked to paper processing which translates to 874 person-years in processing effort in courts; and
- 181 448 100 standard A4 80g paper pages printed (out of which 31 833 000 for the individuals and legal entities), at an overall average cost of EUR 2 216 160.

As regards **fundamental rights**, the barriers to access to justice and the challenges to cross-border judicial cooperation, as identified in Section 2, will remain. This refers to the inability of individuals and legal entities to ascertain their rights, specifically their right to seize authority or to be heard in person, where force majeure circumstances occur. Additionally, the length of the proceedings will remain unchanged and thereby affect the right to an effective trial.

The **social impacts** of the use of communication technology can be significant. The digital communication channel may improve public confidence in justice systems by speeding up access to justice and facilitating efficient functioning of the competent authorities. In the baseline scenario, these impacts would depend on the rate of uptake of the technology. It was demonstrated in Section 2 that the rate of uptake is low without a harmonised approach being implemented. For the baseline scenario no tangible change on the impacts could be expected for individuals and legal entities.

Under the baseline scenario paper based communication would continue, as would travel for the purposes of hearing. The above mentioned estimate of paper use per procedure would be maintained, together with the traveling. In particular, the main **environmental impacts** pertain to the use of non-renewable resources, due to paper-based

[71] See Annex 9, - Table 15
[72] See Annex 9.
[73] *Ibid*.

communication and the transport of letters/parcels, on the one hand, and parties attending hearings in person, on the other hand. The environmental impacts of both elements are expected to increase in line with the likely rise in the number of cross-border proceedings.

It could be clearly concluded from the consultation activities that the stakeholders and Member States are overwhelmingly in favour of adopting a legislative act establishing a digital communication channel to be used on a mandatory basis by the courts and competent authorities. Providing individuals and legal entities with the possibility to communicate with courts and competent authorities electronically, while maintaining the paper communication and the possibility for remote hearings also enjoy a broad support among the consulted stakeholders. Legitimate concerns in terms of safeguarding fundamental rights, data protection, cybersecurity, protection of vulnerable groups, are considered under the proposed policy options.

Option 1 – Non-legislative option

The non-legislative option would involve action to persuade Member States to use e-CODEX for cross-border judicial cooperation and access to justice. A Commission recommendation could encourage them to follow a harmonised approach with regard to the use of electronic communications, including videoconferencing, electronic documents, electronic seals and signatures. Given the voluntary nature of this approach, Member States would be free to develop digital tools on their own. Such action could be technically and operationally feasible, and cost-effectiveness would depend on the individual Member States' approach to digitalisation and on their needs and resources.

As regards the extent to which the option fulfils the objectives of the proposal, however, **a recommendation would not guarantee any actual implementation of digital tools** for communication, not to mention the interoperability of the digital channel, the acceptance of electronic documents and common standards of trust services. Therefore, any impacts of this option depend on the number of Member States which will follow the Commission recommendation and will adopt implementing measures for digital communication between the competent authorities and with the individuals and legal entities in the context of cross-border judicial procedures.

The current arrangements have shown that the voluntary approach to the digitalisation of the judiciary is not sufficient to ensure the availability of digital tools in all Member States so as to make them interoperable and readily available to all actors. Of the respondents to the questionnaire for national stakeholders, 82% saw voluntary participation as a "relevant" or "highly relevant" hurdle to the use of digital solutions in judicial cooperation. The approach resulted in a fragmented map of justice related digital services in the EU and there is no guarantee that a recommendation would improve the situation. The study supporting this impact assessment clearly demonstrates that differences between national IT solutions represent a barrier to cross-border judicial cooperation, which 57% of respondents considered as "highly" problematic and another 23% as problematic "to a limited extent".

Economic impacts: As regards the functioning of the internal market and the impact on businesses, SMEs included, it has been shown (see the 2021 EU Justice Scoreboard findings in Section 2.1.1) that company's growth is closely linked to the effective operation and the efficiency of the judiciary. Such benefits cannot be guaranteed with a non-legislative option.

Transaction costs and times in cross-border judicial cooperation, as presented in the baseline option, will start to decrease only when the first two Member States put in place interoperable IT systems fully supporting communication or if all Member States are fully digitising one procedure[74]. The voluntary initiatives of the past decade show a coverage of at most 1% of total transactions being carried out by digital means[75]. This has not been sufficient to produce any tangible cost savings, as most communication has been by traditional means. For the purpose of this assessment we will be using the calculation of the yearly benefits of digitising the European Payment Procedure as presented in the Impact Assessment of e-Codex. This is consistent with the current level of participation[76] in the e-Codex pilots which shows a maximum number of 6 Member States participating in a certain procedure. Therefore, it is safe to assume that any further voluntary cooperation can at best be approximated in terms of benefits with one procedure like the European payment order being fully digitised.

Based on tables 12 and 16 it will result that the costs for Member States will slightly decrease to:

- EUR 32 174 616 for communication using physical formats;
- 15 387 525 days for communication by post or equivalent services;

The e-Codex cost model do not offer us any indication of the savings in administrative costs or in paper. Impacts on fundamental rights: Digital communication cannot be effective and efficient in "asymmetrical" situations, i.e. it works only between entities that both have interoperable digital resources. If only one interlocutor has the necessary resources, communication has to take place in the traditional way. A particular cross-border instrument needs to be supported by the relevant digital tools for electronic communication to be possible. Otherwise, this would also jeopardise the effectiveness of voluntary cooperation.

With regards to the social impacts, the status quo would be maintained in case Member States do not follow the Commission recommendation. On the contrary, where Member States adopt digital technologies in line with the Commission recommendation, a positive social impacts such as increased public confidence in justice systems, improved access to justice and more efficient functioning of the competent authorities and the justice system

[74] Table 16 yearly benefits of the European Payment Procedure

[75] Currently, only the e-CODEX pilot implementations are providing for cross-border digital exchanges. This leads to the assumption that less than 1% of the total transactions in cross-border cases are digital..see tables 12 and 16

[76] Table 17 – Participation in e-Codex Pilots

as a whole, is to be expected. However, with an increased adoption of digital communication technology, the digital gap between those with access to such technology and others may be widened.

With EU-wide adoption of electronic means of communication, the use of the digital channel can be expected to have a positive **environmental impact**, due to the use of less paper and postage. While the production and operation of equipment will consume energy, the overall impact on the environment would be positive. In case videoconferencing or other means of distance communication technology are employed for oral hearings, that would lead to reduction of carbon emissions, because videoconferencing may produce only 7% of the carbon emissions caused by physical meetings[77]. Electronic communication has a smaller carbon footprint than equivalent standard mail (50 to 90% less per transaction)[78]. With lower rates of uptake of digital communication technology, there will be environmental impacts, but they would be closer to the status quo.

The impact to individuals, legal entities (including businesses), legal professionals, judges and Member States as stakeholders would depend on the uptake of digital communication technology with full adoption having an impact as described in Annex 1. However, considering the current trend of uptake, full adoption is not likely. These in addition to the analysis in Annex 1, would be the main impacts on the stakeholders.

Option 2 – Legislative option

Under the legislative option, a digital channel for cross-border communication would be established. Previous e-CODEX projects (e.g. eEDES, iSupport) have shown that this is technically and operationally feasible. The additional legal elements associated with this option (e.g. assurance that electronic documents and evidence sent through the channel would not be denied legal effect) ensure that the receiving Member State's authorities would accept digital communications as procedurally relevant. This would improve access to justice and the enjoyment of fundamental rights. In addition, enabling parties to pay court fees using the same functionalities as would be available for communicating with the competent authorities would be less time-consuming and more inclusive than the current situation, where they may need to visit a bank or a court in person.

As regards **economic impact**, the obligation to set up a digital channel would require new investment from the Member States to develop the necessary infrastructure to interact with e-CODEX. The scale of the investment would depend on their current degree of digitalisation, their level of involvement in the e-CODEX project, the interoperability of current solutions and the scope for electronic transmissions under national law. However, in the long run, the digitalisation of justice would significantly

[77] Impact assessment on the Taking of evidence proposal - EUR-Lex - 52018SC0285 - EN - EUR-Lex (europa.eu).
[78] ibid

reduce the costs incurred by national justice systems in cross-border procedures[79]. Furthermore, it would positively influence the process of digitalisation at national level.

Assuming that the IT systems for exchanges of EIOs and the service of documents/taking of evidence, as developed by the Commission, will be extended to cover communication in cross-border judicial procedures, the **total one-off cost** for extending the eEDES and service of documents/taking of evidence systems would be **EUR 18.7 million** over **5 years**. This cost will be covered by the EU budget through the Digital Europe Program and the Justice Program.

The costs for the Member States will be rather limited: EUR 8 100 000 per year i.e. EUR 300 000 per year per Member State. In the first 2 years, the cost of installation will EUR 100 000 per year per MS. This amount include hardware and the manpower to configure it. The remaining EUR 200 000 are necessary for support to the increasing number of users. As of the third year, there are no hardware and installation costs, but only cost for user support and maintenance of the system. This is estimated at EUR 300 000. Since the solution is web-based, there are no additional costs for courts and competent authorities since there is only one instance of the software to be installed at national level.

The cost per digital transaction[80] is **EUR 2.95**. The average overall **yearly saving** at EU level is **EUR 23 372 900 in postage costs** and **EUR 2 216 160 in paper costs** amounting to **a grand total of EUR 25 589 060**. The individuals and legal entities will be saving **EUR 4 098 600** in postage costs and **EUR 388 800** in paper costs.

The Member States will be gaining EUR19 274 300 per year in postage cost and EU 1 827 960 in postage costs. The overall saving of EUR 21 002 260 are offsetting the EUR 8 100 000 costs for installation, maintenance and user support that the MS will have to cover for running the IT system at national level.

The average posting time will be reduced to 0 resulting in an overall yearly reduction of the duration of the procedures by **15 389 999 days**. The the individuals and legal entities will be gaining **2 700 000 days** in average posting time.

874 person-years will be gained in processing effort at court/competent authority level.

181 448 100 A4 standard 80g printing paper pages will be saved out of which **31 833 000** by individuals and legal entities.

The other three measures refer to removing legal barriers. For instance making the oral hearings by videoconference legally possible does not entail any obligation of the courts to provide the technical means for it. Therefore, even though not travelling for a hearing would have positive environmental impact, cost savings for the parties and positive

[79] *Ibid*.
[80] Table 12

impact on fundamental rights due to the increased accessibility of the procedure and shortening of the delays, video-conference will remain subject to the availability of the equipment, the discretion of the court and the consent of all parties to the procedure. This is why the costs of equipment or travel savings were not taken into account in the cost/benefit analysis.

With its potential to cut substantially the cost of participating in cross-border cases, the initiative would also directly benefit individuals and legal entities (including SMEs) covered by the various EU civil law instruments. Individuals', legal entities' and legal practitioners' use of these instruments (e.g. European small claims procedure and EPO) is also likely to increase thanks to the new electronic access point on the e-Justice portal.

While this option will probably have positive economic impacts for certain categories of business, it will probably reduce the revenue of others. More specifically, the introduction of electronic channels of communication might have negative economic impacts on providers of postal service, paper and office supplies, transport services, etc. The revenue of such businesses is expected to decrease marginally due to the use of a digital channel, videoconferencing and other means of distance communication. A comparison of prices charged by transport service providers in three Member States for long-distance bus, train and air journeys shows that cross-border travel is around 17% more expensive than domestic travel[81]. With the availability of an electronic channel, parties will probably travel to hearings only within their own country or not at all. This will probably result in a loss of revenue for transport service providers.

Conversely, increased revenue is expected for providers of IT consulting services, internet and telecommunications services, cloud storage services and archiving services, and manufacturers of videoconferencing and other remote communication equipment[82]. Courts would probably have to spend around EUR 36 000 a year on videoconferencing[83]. Since there are about 6 000 courts in the EU[84] (of which a limited number already have videoconferencing facilities), videoconferencing equipment manufacturers and service providers could gain as much as EUR 216 million across all Member States, if all courts were to be equipped with at least one videoconferencing facility.

The **social impacts** are two-fold: a positive impact of introducing the digital communication channel would improve public confidence in justice systems, access to justice and the efficient functioning of the competent authorities and the justice system as a whole. A negative social impact is the potential widening of the digital divide. Therefore, the initiative would need to ensure equality between individuals who prefer to use the paper channel and those who opt for digital means. The initiative would safeguard the needs and interests of individuals who are not digitally skilled by maintaining the current communication channels.

[81] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0285
[82] EUR-Lex - 52018SC0285 - EN - EUR-Lex (europa.eu)
[83] Ibid.
[84] European Commission for the Efficiency of Justice (an initiative of the Council of Europe), 2014.

More efficient judicial cooperation and facilitated access to justice have the potential to increase the number of cross-border cases, which in turn will lead to higher workload for the courts. Such possible risk cannot be supported by the existing data and may only be presumed. Nevertheless, it should be noted that the initiative, and in particular the possibility for the parties to communicate with the competent authorities electronically and the mandatory use of the digital communication channel between the authorities, has the overwhelming support of the Member States. It could be concluded that Member States do not perceive the possible increase of the number of the cases as an obstacle to the digitalisation of cross-border procedures and attribute more value to the protection of fundamental rights, shortening the procedures, alleviating administrative burden (with minimum 874 person/years) and facilitating the processing of the cases. Therefore, the Impact assessment does not evaluate the possible risk of increased number of cross-border cases as a negative impact.

Other impacts under option 2, such as environmental and fundamental rights impacts, are suboption-specific.

Impacts of suboptions 2.1.a and 2.1.b (voluntary vs mandatory use of digital channel)

Concerning the use of electronic means of communication in cross-border cases between the competent authorities, the two suboptions proposed are to make such communication voluntary or mandatory. In case the legislative option would not impose the obligation to communicate electronically, the use of the digital channel would be left to the discretion of the Member States, and the frequency with which it would be used in cross-border cases could not be guaranteed. On the other hand, provisions which would impose the use of the digital channel as mandatory would come at no extra cost (as the channel would be established), but would ensure that the most efficient communication tools available are used in cross-border judicial proceedings. This would alleviate the competent authorities' administrative burden and shorten judicial proceedings. Since the communication channel will make it possible to identify the competent court or authority for each instrument, the risk of addressing the wrong recipient, and thus the risk of 'non-competence' refusals, would be reduced.

Regarding the impact on **fundamental rights**, shortening proceedings would bring tangible benefits for individuals, legal entities (including SMEs) and legal practitioners, as timely proceedings are an essential element of the right to a fair trial[85]. This was confirmed by the study supporting this impact assessment, with 57% of questionnaire respondents stating that regulating digital communication would have a 'very positive' effect on reducing administrative burden and an additional 21% stating that the impact would be 'rather positive'. Similarly, 45% and 38% of respondents respectively were of the opinion that such an initiative would impact the duration of judicial proceedings 'very' or 'rather' positively.

[85] Article Art47 of the Charter of Fundamental Rights in the European Union stipulates that everyone is entitled to a fair and public hearing within a reasonable time.

The use of the digital channel can be expected to have a positive **environmental impact**, due to the use of less paper and postage. These environmental impacts relate mainly to the adoption of electronic means of communication and a likely increase in the use of videoconferencing and distance communication instead of in-person hearings. While the production and operation of equipment will consume energy, the overall impact on the environment would be positive. Videoconferencing and other means of distance communication may produce only 7% of the carbon emissions caused by physical meetings[86]. Electronic communication has a smaller carbon footprint than equivalent standard mail (50-90% less per transaction).

Impacts of suboptions 2.2.a and 2.2.b (voluntary vs mandatory acceptance of electronic communication)

Obliging Member States to accept electronic communication from individuals and legal entities would have a positive impact on access to justice, by providing additional, faster, more secure and more reliable means of communicating with courts and thus shorter judicial proceedings.

Allowing individuals and legal entities to make online applications would not only eliminate potential travel costs and difficulties in accessing infrastructure (courts, post offices, etc.), but would make legal redress more accessible to all, including victims of crime, people in remote and rural areas, and vulnerable individuals.

Obliging Member States to accept electronic communication would have a positive impact on SMEs and companies that already operate in a digital environment, by allowing them to use similar digital tools when they communicate with courts/competent authorities as those they already use day to day. If the acceptance of electronic communication remains voluntary, the positive impact and legal certainty will be reduced, as there is no guarantee that Member States will allow such communication.

To ensure parties' autonomy and the rights of those without access to modern infrastructure, individuals and legal entities would be **free to opt for paper-based communication**. This would also mitigate the risks of digital divide and exclusion, which raise concerns among the stakeholders.

The concerns raised by stakeholders with regards to the right to a fair trial and effective legal remedy, the equal opportunity for both parties to make their case, the right to have knowledge of and to comment on all evidence and observations in adversarial proceedings and the right to a public hearing in criminal proceedings, not interfering with the rights of the defence, including access to a lawyer and the case file, are general concerns rather than ones entirely specific to this initiative. The legislative option would on one hand ensure easier access to justice and judicial cooperation, thereby positively impacting the above concerns, while on the other hand maintaining traditional

[86] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0285

communication channels. However, it should be considered that the aim of the initiative is not to interfere with courts discretion in safeguarding the procedural rights of the parties.

Implementing videoconferencing tools or other distance communication technology would have a similar impact, as it may eliminate the need to travel in some cases and make courts more accessible. This is expected to have positive **environmental impacts**, in view of the reduced traveling. At the same time, it would be beneficial for the effective protection of **fundamental rights**. In the context of *force majeure* events, such as the COVID-19 pandemic, the videoconferencing tools could enable parties to participate in hearings, thus ensuring the right to a fair trial. To avoid negative impacts on the right to a fair trial, safeguards would have to be provided for vulnerable individuals in case videoconference is used.

> *For example, where children are involved in criminal proceedings, they may have difficulties in understanding and following a procedural act. Therefore, the holder of parental responsibility or another adult (as appropriate) should be informed as soon as possible about the use of videoconferencing or other digital communication technology. Specific technical assistance should be ensured during the hearing for older people who are insufficiently familiar with modern communication technology. Also, people with mental disorders or intellectual incapacities may require special assistance in a digital environment.*
>
> *Remote hearings in EAW cases would, for example, enhance trust in the system of the executing state and support the operation of the European supervision order, as videoconferencing would allow the presence (next to the suspect or the accused and their defence lawyer) of the judicial authorities of both the issuing and the executing state. Information on the requested person's personal circumstances (e.g. family, home, work) could easily be shared with the issuing authority. The same goes for information on possible alternatives to pre-trial detention in the executing state, e.g. allowing the person to continue working or caring for family while awaiting trial in the issuing state. Thus, unnecessary surrender under the EAW would also be avoided.*
>
> *The use of videoconferencing or other remote communication technology would also eliminate the risk of further victimisation of victims of crime. For instance, the use of digital tools could reduce their contacts with the offender and limit unnecessary interaction with competent authorities. However, it must be ensured that each victim's rights are fully respected in accordance with their individual needs.*

Impacts of suboptions 2.3.a and 2.3.b ((non-)regulation of trust services)

If the acceptance and recognition of electronic signatures and seals are not regulated, the development of trust service standards will remain within the remit of the Member States, who will therefore decide whether signed communication originating from other Member States is to be accepted.

This would result in a negative impact on **fundamental rights**. Any uncertainty as regards the acceptance of communication and the required type of electronic signatures and seals would detract from the legal certainty and thus individuals' and legal entities' willingness to assert their rights via digital means of communication and they may feel obliged to incur travel or other associated costs.

On the other hand, regulating the acceptance of electronic communication would result in greater legal certainty and a more secure business environment.

No specific **environmental impacts** were identified for this particular sub-option.

In addition, suboption 2.3.b would lead to synergy with the digital identity framework, which would support identification of the parties for the purposes of making submissions or participating in remote hearings.

7. HOW DO THE OPTIONS COMPARE?

In this section, we compare the policy options and suboptions on the basis of the following four criteria:

- coherence with the existing legal framework at national and EU levels; and
- effectiveness, in terms of the potential to achieve the general and specific objectives of the initiative;
- efficiency, in terms of the probability of achieving cost reductions in cross-border judicial cooperation and access to justice in cross-border cases;
- EU added value, as compared with what could be achieved by Member States acting alone, and whether the objectives can be met more (cost-) efficiently at EU level.

The results of the analysis are summarised in the table below and explained in further detail in this section. The table should be read as follows: '0' if no new impact compared to the status a quo is expected; "-" if negative impacts are likely to arise; "- -" if the option will result in very negative impacts; "+" pointing to positive impacts; "++" referring to very positive impacts; and "+++" to the best performance among the options.

Table 1 - Policy option comparison table

	Option 0	Option 1	Option 2 (suboptions)					
			2.1.a Voluntary use of digital channel	**2.1.b** Obligatory use of digital channel	**2.2.a** Voluntary acceptance of electronic communication from individuals / legal entities	**2.2.b** Obligatory acceptance of electronic communication from individuals / legal entities	**2.3.a** Non-regulation of trust services	**2.3.b** Regulation of trust services
Coherence	-	+	++	+++	++	+++	++	+++
Effectiveness								
Achievement of objectives	0	+	++	+++	++	+++	++	+++
Social / fundamental rights impacts	0	+	++	+++	++	+++	++	+++
Economic impacts	0	+	+	+++	++	+++	++	+++
Environmental impacts	-	+	++	+++	++	+++	++	+++
Efficiency	0	+	+	+++	++	+++	++	+++
EU added value	0	+	++	+++	++	+++	++	+++

Under both the **baseline scenario** and the **non-legislative option**, Member States would use the digital channel for cross-border judicial cooperation in civil, commercial and criminal cases on a voluntary basis only. The non-legislative option could be more effective and efficient, mainly as a result of a Commission recommendation leading the Member States to digitalise their justice-related services more quickly and with a higher degree of technical and legal interoperability. While a recommendation could set out a harmonised approach to the adoption of e-CODEX-based tools (and common standards on trust services and the acceptance and recognition of electronic documents), its non-binding nature would mean that the Member States may not uniformly follow its principles. This is especially true for Member States that have already implemented national solutions as regards the digitalisation of judicial cooperation, as well as for those in which such solutions are not yet in place. Consequently, fragmentation (and thus inefficiencies) could be expected, as EU-wide coordination on the choice of instruments to be digitalised and IT tools and standards to be used would be difficult.

As concerns **coherence**, in the light of the above, the **baseline scenario** and the **non-legislative approach** could have negative impacts overall. This because the use of digital tools for cross-border judicial cooperation and access to justice in cross-border cases would result in some Member States joining voluntary initiatives (e.g. e-CODEX and eEDES) and others not being involved at all. This would probably reinforce or extend the current tendency to rely on the paper channel, which results in financial costs

and negative environmental impacts. Also, the use of unsecure electronic communication would probably continue, which might raise privacy and data protection concerns.

The **legislative option** would provide a digital communication channel for cross-border judicial cooperation and access to justice, and arrangements for the acceptance and recognition of electronic documents, and the online payment of fees. As a result, all Member States would have at their disposal the same tool, which would ensure secure, reliable and efficient communication. The tool would be adapted to the needs of the judiciary, as it would be based on e-CODEX, which has been developed specifically for the justice sector. In terms of **coherence**, the legislative option would have a positive impact, as an initiative on the digitalisation of justice would seek to provide a common framework for the digitalisation of the Union instruments in the civil and criminal area, and ensuring that they are treated under a common regime throughout the Member States would require legislative action so as to guarantee harmonisation.

In terms of **effectiveness**, the legislative option compares favourably to the baseline scenario and the non-legislative option. The data presented in section 2 allows us to make a limited projection of the expected results. However, the data still indicates that due to maintaining the status quo by the baseline option, and the voluntary element attached to the non-legislative option, the legislative option is the only one which ensures the achievement of the initiative's objectives. However, whether the objectives could be fully achieved depends on the suboptions under the legislative option:

- how much would Member States' authorities use the digital communication channel?
- would Member States accept electronic communication from procedural parties (including hearings conducted via videoconferencing)?
- would the same standards be applied to trust services?

Requiring Member States **to use the digital channel** in all instances of judicial cooperation covered by the relevant EU legal framework is the only way of guaranteeing its use. A voluntary approach would give rise to an economic impact in terms of resource allocation to develop the channel, but no significant additional assurance as to its use (as compared with the baseline scenario and the non-legislative option).

While one Member State's voluntary use of the digital channel could improve the functioning of the internal market, the enjoyment of fundamental rights and the capacity of the judiciary to process a volume of cases which is assumed to increase proportionally with the number of citizens and businesses finding themselves in a cross-border situation, there will always remain the possibility of another Member State's authority choosing to reply using paper-based communication, thus limiting the benefits of digitalisation.

The establishment of EU access point which allows the use translated and harmonised forms, will be the easiest way for citizens and businesses to access justice related

services. We assume that easier access to such services will result in an increased number of cross-border cases, due to the fact that barriers to initiating a cross-border cases (such as the need to appoint a lawyer at the forum Member State, the ned for translation, the use of postal services) will be removed. Requiring Member States' authorities **to accept electronic communication** from individuals and legal entities, regardless of whether it is made through the EU access point or a national platform, will ensure the use of the digital route in this context and the elimination of the above mentioned barriers. In the absence of such a requirement, there would be no legal certainty regarding the use of the digital channel and individuals/legal entities may therefore be reluctant to use this route. As access to justice depends partly on individuals' and legal entities' ease of access to judicial authorities, limiting the scope for quick and efficient communication would have a negative social impact and may impair the protection of fundamental rights, particularly in the case of vulnerable groups.

The same holds for the **use of videoconference** tools for oral hearings. By failing to provide a legal basis for this, the baseline scenario would leave the parties without the option of requesting the use of videoconferencing and the courts without a legal basis to set up remote hearings. The parties would therefore have fewer possibilities to participate in procedural action before the courts. This could negatively impact their procedural and fundamental rights and lead them to incur travel costs. In contrast, a legislative proposal providing for a legal basis for videoconferencing would ensure the existence of EU-level rules in this area, eliminating conflicts between possibly disparate national provisions and helping to overcome the consequences of the lack of such rules. Only binding legislation would ensure that parties in all Member States can participate in oral hearings via videoconference; this would not be the case with a Commission recommendation.

As regards **the regulation of trust services** (legislative option with regulation of common standards of trust services) or **their non-regulation** (common to the baseline scenario, the non-legislative option and the legislative option with no regulation of common standards), only the adoption of common standards would guarantee the acceptance and recognition of electronic seals and signatures from other Member States. Trust services are an essential component of a well-functioning digital communication infrastructure, because, even where all Member States agree to accept a form of digital communication, authorities may still refuse it if the standards for the identification of the sender are not compatible or if the trust service assurance level is deemed inadequate. The same applies to the identification of parties in the context of videoconferencing.

A Commission recommendation would encourage Member States to adopt standards on the use of the trust services under the e-IDAS regulation. However, the adoption of national measures may lead to a non-harmonised approach and disparities, putting a question mark over the acceptance of electronic communications.

Under option 2 and suboption 2.3.b, the legal instrument would introduce provisions on the use of e-signatures and e-seals as regulated under the e-IDAS Regulation. The

introduction of such provisions and common standards for the recognition of e-signatures and e-seals would strengthen legal certainty for individuals, companies and public administrations.

In this context, a common set of standards is necessary to ensure seamless judicial cooperation and access to justice.

In terms of **efficiency**, the non-legislative option would generate moderate costs. These will be offset by a range of indirect positive economic impacts as outlined in section 6. However, the legislative option can be expected to have significant positive economic effects on certain categories of business, whereas it will affect the revenue of other businesses. Overall, a range of benefits would likely arise: time savings, decreased legal fees, decreased travel costs, decreased labour costs etc. No impact other than the maintaining of the status quo can be expected under the baseline scenario.

In terms of the **EU added value** of the legislative option, it would be higher than it can be expected from the baseline scenario of the non-legislative option, given that by means of an EU instrument (allowing or requiring the use of the digital channel), a harmonized regime would be created in the Member States. This would likely tackle the current legal fragmentation and gaps across the concerned EU instruments and, thus, enhance access to justice and the resilience and the efficiency of justice in cross-border cases.

8. PREFERRED OPTION

In the light of the above comparison, **the preferred option is the legislative option (option 2), with suboptions 2.1.b, 2.2.b and 2.3.b**; i.e. in summary:

- ✓ requiring the use of the established digital channel for communication in cross-border judicial cooperation;
- ✓ requiring Member States' courts and competent authorities to accept electronic communication from individuals and legal entities via the access point on the e-Justice portal or via national portals. Individuals and legal entities would remain free to choose between electronic and paper-based communication;
- ✓ providing a legal basis for parties and their representatives to participate in oral hearings via videoconference or other distance communication technology tools;
- ✓ laying down provisions on e-signatures and e-seals through an explicit reference to the e-IDAS Regulation;
- ✓ regulating the online payment of court fees; and
- ✓ establishing the responsibilities of different data controllers and processors.

In cumulative terms the effects of the preferred option are expected to yield the following benefits: i) more accessible tools for initiation of cases and undertaking of procedural;

actions for citizens and businesses and ii) improved capacity of competent authorities to process the increased volume of cross-border cases[87].

Proportionality assessment of the preferred option

Despite imposing more obligations on Member States, the preferred option **would not require the adoption of measures** that would burden them beyond what is necessary for the achievement of this initiative's objectives. Member States would only have to implement measures that ensure the functioning and harmonised use of the digital communication channel. The analysis of policy options has shown that non-legislative measures cannot ensure that the objectives will be achieved.

As regards the suboptions under the legislative option, non-mandatory measures would not result in a broad, harmonised approach to digital communication and would thus not fully achieve the goals of this initiative. While the suboptions allowing for a voluntary approach to digital communication, videoconferencing and the regulation of trust services would be proportionate to their realistically achievable goals, this would encompass only some of the goals. **The objectives can be fully achieved only through legislative provisions requiring the use of digital communication, allowing videoconferencing and regulating trust services.** The legislative option and the suboptions imposing obligations on the above would thus be entirely proportionate to the objectives of the initiative.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

A sound system for monitoring the proposed legal instrument is needed, including a comprehensive set of qualitative and quantitative indicators, and a clear, structured reporting process. This is important for tracking whether the instrument is implemented efficiently in the Member States and whether it is successful in achieving its specific objectives.

In order to provide guidance in the monitoring process, Table 2 presents indicators that help analyse the extent to which the objectives are achieved. A full evaluation every 5 years would be useful for assessing impacts and contextual issues. Where electronic communication is used, monitoring will be facilitated by automatically compiling data and using the reporting features of the new IT system. For data that is not collected automatically, a monitoring sample of at least one court or competent authority to be designated by each Member State will be put in place.

[87] As analysed in Section 2.3, we can only assume the potential for an increased workload for courts and other competent authorities dealing with cross-border judicial cooperation. However, new technologies have the potential to make judicial systems more efficient in this regard, by easing the administrative burden, shortening case processing times, and partially automating case handling. Additionally, the Commission supports the efforts of Member States to organise their respective judiciaries, including innovative tools and efficient functioning, through the availability of RRF.

EJN-civil and EJN-criminal will play an important role in the implementation and application of the proposed instrument. These forums (which bring together national stakeholders and the central authorities and agencies dealing with the implementation of the relevant regulations) can be used to obtain feedback from Member States on the application of the instrument and identify practical problems.

Table 2: evaluation and monitoring framework

Assessment criterion	Indicator	Frequency
Horizontal aspects	Number of EU instruments under the scope of the regulation for which digital cross-border communication is available for use in the Member States.	Once a year. Source – Commission report.
	Costs of implementing and operating the IT system	For every evaluation. Source – Commission and Member States.
Further improving the efficiency and speed of judicial proceedings and reduce the burden for individuals and legal entities	Number of electronic transactions through the digital cross-border channel of communication.	Once a year. Source – Member States' reporting.
	Percentage of transactions through a paper channel in cross-border cases.	Once a year. Source – monitoring sample.
	Number of cross-border cases where videoconference or other distance communication technology was used for oral hearings	Once a year. Source – monitoring sample.

	Number of submissions of all type made by individuals and legal entities via the European access point on the e-Justice portal	Once a year. Source – Commission report.
	Duration of the communication in cross-border proceedings under the EU instruments in civil, commercial and criminal matters.	At least for every evaluation. Source – the monitoring sample.
	Estimates on transaction costs inherent to communication in cross-border proceedings under the EU instruments in civil, commercial and criminal matters incurred by the courts and the competent authorities (and where relevant JHA agencies and EU bodies) and the parties to the proceedings.	At least for every evaluation. Source – the monitoring sample.
	Number of disruptions to the IT system, duration of its unavailability and reasons why	Once a year. Source – Member States' reporting.
	Number of attempted or actual intrusions to the IT system; Number of security incidents.	Once per year. Source – eu-LISA on the basis of notification from Member States under the e-CODEX Regulation.

ANNEX 1: PROCEDURAL INFORMATION

Lead DG: Directorate General Justice and Consumers

D*e*cide Planning: PLAN/2020/8681 - Digitalisation of cross-border judicial cooperation.

The Initiative is part of CWP 2021- Digital judicial cooperation package, point 41 and is referenced under the Policy objective "A New Push for European Democracy". The adoption is planned for Q4 (December 2021).

Organisation and timing

An Interservice Group (ISG) was set up on 4 December 2020.

The Inception Impact Assessment was validated by the Vice President Jourová's Cabinet, the Cabinet of Commissioner Reynders and SG in January 2021 and published on 8 January 2021.

The ISG met two times and a written consultation was conducted before the submission of the Impact Assessment to the Regulatory Scrutiny Board on 25 August. The ISG made written comments to the Impact Assessment. These comments are summarised in a document submitted together with the present Impact Assessment. All comments have been addressed in a revised version of the Impact assessment, which was submitted to RSB.

Consultation of the RSB

An upstream meeting with the RSB took place on 22 February 2021, whose recommendations were duly taken into account.

This draft Impact assessment was submitted to RSB on 25 August 2021 towards the 22 September RSB hearing.

The RSB delivered a positive opinion on 27 September 2021. The following recommendationshave been made:

(1) The problem analysis should be reinforced to highlight the main problems this initiative aims to address. The analysis should be substantiated with evidence regarding voluntary participation in digitalisation, non-recognition of electronic documents, signatures or seals and interoperability.

(2) The report should explain how this initiative will ensure coherence with other EU-level instruments designed to enhance digitalisation that could be used in cross-border judicial cooperation. The report should also explain why Member States do not fully exploit the existing possibilities for digitalisation.

(3) The impact analysis should be strengthened with a transparent presentation of impacts, particularly investment costs and stakeholders affected. It should acknowledge the uncertainties in the assumptions made and the implications these have for the impacts assessed.

(4) The report should assess effects of a potential increase of cross-border cases. It should discuss whether there is a risk that improved access to justice and more efficient cross-border judicial cooperation could lead to delays in the treatment of cases due to higher workload for judges and the time legal proceedings take.

(5) The report should clarify the data protection issues and acknowledge that moving from a paper to a digital format entails other risks. The report should address potential sensitivities linked to the fact that having more data in digital format may not only ease their transmission, but also creates data protection and security issues. The concerns raised by stakeholders about data protection should be considered.

Additional recommendations have been sent with the quality check list.

In addressing the RSB recommendations, the following changes were introduced in the Impact assessment:

(1) The problem definition has been reformulated, so that it also reflected the actual problems analysed in Section 2.
(2) The coherence with other initiatives, such as e-CODEX and e-IDAS have been explained, as well as the interlinks with the e-Justice portal.
(3) The section on the impacts of the baseline and the policy options has been restructured and the main impacts (i.e. economic impacts, social impacts, impacts on fundamental rights) have been outlined for each of the options. The section also addresses in what way the main stakeholders will be affected by the initiative.
(4) The section on the impacts clarified whether there is a potential risk of increased number of cross-border cases and the capacity of the judiciary to deal with it.
(5) Clarification with regards to data protection has been added in the section on the impacts.

In addition, the report was supplemented with the data available from the supporting study and from Annex 7. The economic analysis and the costs for the Member States have been added to the report. The views of the consulted stakeholders have been outlined in the corresponding sections of the report. The technical recommendations, such as merging the outcome of the public consultation with Annex 2, numbering the pages of the Annexes, deleting the Annex on the subsidiarity grid, have been addressed.

Evidence, sources and quality

For more than a decade the Commission has been working in the framework of the e-Justice policy with different stakeholders. These stakeholders have been consulted on the objectives of the initiative and on the identified policy choices. Following the consultation strategy prepared for this initiative, a broad variety of different stakeholders have been contacted – consultations have been carried out within the e-Justice, Civil and Criminal Council Working Parties, EJN-civil, EJN-criminal. The following actions were envisaged as a minimum under the consultation strategy:

- Feedback on the Roadmap.
- Public consultation on the Commission's consultations website 'Have your say'.

Both the feedback on the Roadmap and the results of the public consultation are presented in Annex 2.

In addition, the Commission used the considerable amount of already collected factual data concerning digitalisation of justice in the EU, for instance from: the Justice Scoreboard, Rule of Law report, CEPEJ data (European Commission for the Efficiency of Justice, an initiative of the Council of Europe), a questionnaire sent to Member States by the Council General Secretariat and the Digital Criminal Justice study.

A study to support the preparation of the Impact assessment has been commissioned. The contractor employed the following stakeholder consultation activities specifically designed for the purposes of the study:

- EU level focus group;
- National stakeholder consultation on impacts of policy options
- National-level survey
- Focus groups at national level
- Bilateral interviews
- Validation of the policy choice

All data collected fed into the different steps in the preparation of the initiative, including in the Impact Assessment.

The Impact Assessment was based on certain assumptions, namely:

- It was estimated that the number of cross-border cases in civil, commercial and criminal matters would be growing with the increase of the number of people living and working in a Member State different from the one of their origin and with the increase of the number of people traveling for tourism purposes.
- It was estimated that the number of persons visiting and using the European e-Justice Portal will result in increased number of cross-border cases.

Other assumptions were used to help with the quantification of the current status quo and impacts of each policy option. The need for these assumptions was dictated by data heterogeneity that the Impact Assessment encountered.

The data limitations encountered in this Impact Assessment were the following:

- fragmented data on the number of cross-border cases in civil, commercial and criminal matters;
- fragmented data on the length and costs of the cross-border proceedings in civil, commercial and criminal matters. In particular, Member States do not keep records on the number of the cross border cases brought before their courts or the length of the cross-border proceedings. Therefore, the data regarding the number of cases, and average length and costs of the cross-border proceedings in civil, commercial and criminal matters had to be estimated or extrapolated based on the limited amount of data collected.

To mitigate the impact of the data limitations (to the extent possible), the external contractor followed up directly with some of the stakeholders to clarify certain aspects such as the length and the costs of the proceedings, sought to model certain use cases of cross-border judicial cooperation (e.g. EIO, EAW, EPO) and when feasible, attempted to corroborate the existing evidence through interviews with various stakeholder groups in different Member States. In addition, where quantification of costs and benefits was not feasible, a qualitative approach was chosen instead (description of processes and types of costs and benefits deriving from the options).

Annex 2: Stakeholder consultation

The consultation activities carried out in the preparation of the Impact assessment aimed at ensuring that all interested parties and stakeholders will have the opportunity to provide feedback on the various policy options that the Commission has identified with regard to its initiative, and their likely impacts, as well as on the relevance, effectiveness, efficiency and the added value of the initiative. In that context, the Commission reached out to a broad range of stakeholders, including Member State national authorities, non-governmental organisations, professional associations, business organisations and individual citizens.

- On 8 January 2021, the Commission published the Inception Impact assessment (Roadmap), which was opened for a feedback until 5 February 2021 with a total of 19 replies.
- In order to collect views from the general public, on 16 February 2021 the European Commission launched an internet-based public consultation on the Commission's consultations website 'Have your say' in 22 of the official EU languages. The consultation was questionnaire-based. The consultation period was twelve weeks and run until 11 May 2021. A total number of 89 replies have been received.

2.1. SUMMARY OF THE FEEDBACK ON THE ROADMAP

National Court administration, Finland:

The feedback suggests that a distinction should be made between transferring papers electronically and genuine digitalisation. The expressed preference is for a horizontal approach because a tailor-made solution to each EU instrument would not lead to a user-friendly outcome. Long-term and all-encompassing planning would ensure interoperability of the different systems and appropriate prioritisation of projects, and would allow for long-term financial planning. Digitalisation of justice is not simply a question of finding the technical solution. It is also a process that must involve the judiciary to ensure that their independence is not compromised.

Digitalisation should go hand-in-hand with training and building relevant skills.

Ministry of Justice of Poland:

The level of development of each Member State should be taken into account and digitalisation should be promoted for national proceedings as well. Otherwise, the digitalisation of cross-border cooperation will have limited effect if the operation of national justice is not digitalised first. Poland supports mandatory electronic communication between authorities subject to certain exceptions.

While there is a lack of EU competence to regulate technical standards and norms in the administration of justice, the use of a common IT system creates a new quality and is useful for the citizens.

Concerning the legal effects of electronic documents and the recognition of electronic signatures, Poland submits that the e-IDAS Regulation is sufficient and there should not be a further regulation and rather more training and exchange of good practices between courts in the field of assessing the reliability of evidence presented to the court and recognition of electronic signatures.

Ministry of justice Estonia:

Estonia fully supports the Commission's intention of making the digital channel the default option in EU cross-border judicial cooperation. The exchange and operability of data must replace the exchange of documents.

It is essential that digitalisation of cross-border judicial cooperation is implemented in full compliance with fundamental rights, such as the right to the protection of personal data, the right to a fair trial and the right to an effective remedy. The right to access justice should be fully respected also for disadvantaged groups and vulnerable people.

For the Justice sector to become more digitalised, decentralised digital solutions for the Union (e-CODEX) and the overall level of digitalisation of judicial systems in the Member States should be developed simultaneously. However, Union-level solutions should not force digitally more developed Member States to regress.

Estonia supports the development by the Commission of reference implementation software solutions for Member States' use by re-using the infrastructure being developed for the European Investigation Order in criminal proceedings (eEDES) and for the Service of Documents and Taking of Evidence.

National Council of the commercial court clerks, France:

The National Council welcomes the initiative and will work alongside the European Commission to achieve its goal.

A pioneer in digitalisation for several years, the National Council of the commercial court clerks has developed (with the assistance of GIE Infogreffe, of which each clerk is a member) digital tools allowing on the one hand the dissemination of company data and, on the other hand, facilitating business procedures and formalities as well as access to commercial justice. These additional and faster digital resources have made it possible for commercial justice to operate, particularly during the period of the health crisis, and for companies to continue their procedures online.

Ministry of Justice, Sweden:

Sweden recognises the importance of effective access to justice, especially in times of crisis.

The challenges to be addressed are outlined as follows: everyone should be able to take part in the digital society in a safe and reliable way - not to exclude those who cannot, or don't want to use digital tools; additional challenges are relating to information security, personal integrity, regulations, technology, and guarantees for finances.

The Ministry submits that the introduction of a mandatory digital system should be discussed in relation to each legal act, and in ensuring proper funding.

iSupport Governing Body (HCCH):

The iSupport governing body welcomes the initiative.

They insist on ensuring the coordination between the EU Regulation (Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations) side and the Convention (Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance) side of iSupport, as a divergence could be created by different technical requirements between the Convention and the Regulation.

Notes that iSupport is an example that could be relied upon for further development of applications to support cross-border communications in other areas than maintenance obligations.

Fair Trials, Belgium:

Fair Trials welcome the search for ways to make criminal justice systems more accessible through digitalisation. Digitalisation presents an opportunity not only to promote cooperation between law-enforcement agencies, but also to better implement existing EU standards on defense rights in cross-border proceedings, which remains problematic in practice, as reported by the EU Fundamental Rights Agency and the European Commission (e.g. on the right to access a lawyer).

They note the need to ensure that the fundamental rights enshrined in the six EU Procedural Rights Directives and the EU Charter of Fundamental Rights are protected in a digital setting.

They suggest the following approach:

Promote the use of alternative measures to the European Arrest Warrant (EAW)

- The Council has previously called for measures to address the overuse of pre-trial detention and to promote its alternatives. Reducing over-reliance of European Arrest Warrant is key in these efforts. Therefore, digital solutions (e.g. interviewing a suspect through videoconference) should be used to promote the use of the European Investigation Order instead of European Arrest Warrants for prosecution.

- Digitalisation can promote more effective access to justice, including the possibility to file submissions digitally in both the executing and issuing Member States.

This would also enable defense lawyers to challenge unnecessary detention and apply for less restrictive cross-border cooperation instruments.

Access to dual legal representation

- Article 10(5) of Directive 2013/48/EU requires Member States to cooperate to facilitate appointment of a lawyer in the issuing state. In European Arrest Warrant proceedings, digitalisation should seek to address a long-standing implementation gap in dual legal representation. Digital tools should be used to enable access to information on the appointment of a lawyer in the issuing State and legal aid schemes.

- Digital tools should also enable a cooperation between lawyers in the issuing and executing states to prepare an effective defense and seek an effective remedy where necessary.

Access to information

- To promote equality of arms in cross-border proceedings and the effective implementation of Directive 2012/13/EU on the Right to Information, the defense must also be able to access digitalised case information and materials in cross-border proceedings.

- In European Arrest Warrant proceedings, the defense must have access not only to the arrest warrant form but also to all documents necessary to understand its grounds in a timely manner. This could help prevent unnecessary arrest, detention and surrender of persons to other countries.

- The Letter of Rights in European Arrest Warrant proceedings (Article 5 of Directive 2012/13) should be made available in a digital format in different languages to ensure that every person receives information about their rights in a language they understand.

- Digitalisation also offers the possibility to enable persons to make online submissions using multilingual forms and to get the necessary information and assistance online in their own language, for instance on legal aid. This would promote access to justice also for all persons, including vulnerable persons.

Access to interpretation and translation

- In the EU Area of Freedom, Security and Justice, which enables the free movement of persons across countries, digital tools must help secure access to translation and interpretation enshrined in Directive 2010/64/EU, to enable people to understand and participate effectively in cross-border proceedings.

Council of the Notariats of the European Union:

The Council of the Notariats agrees with the findings of the Inception Impact Assessment to the extent that digitalisation is key and that some issues still have to be tackled in order

to ensure that cross-border exchanges can be carried out safely and securely by digital means.

They cautiously welcome the creation of multilingual online forms to enable remote procedures to be carried out and call for feasibility studies to be carried out, for legal professionals to be consulted beforehand,, for the advisory dimension to be preserved and for citizens to be able to have all the necessary safeguards so that procedures cannot be initiated against the will of the parties.

They are convinced that digitalisation can contribute to offer a better service to the citizen, for example in the field of company law.

The Council of Notariats believes that the creation of a new section on the European e-Justice Portal dedicated to the digitalisation of cross-border judicial cooperation would facilitate the access to information for the EU citizens and law practitioners. Information such as the list of providers of the digital certification services for the qualified electronic signature and documents mandatory in the national legislation for each service provider in the field of certification (information concerning trust chain, timestamp) could facilitate the recognition of the electronic signature from the issuing Member State to the receiving Member State.

They welcome the fact that the Inception Impact Assessment confirms the approach of interoperability between national systems rather than building complex European systems; it is important that the Member States and the legal professions can continue to build the most useful tools for their specific needs.

Further development of videoconferencing solutions and secure and reliable identification procedures for both legal professionals and their clients are of utmost importance when it comes to the further promotion and the fostering of digitalisation tools in cross-border proceedings. The notaries, in the context of their task of verifying the identity of the person appearing before them, must be able to check the identity documents of all EU citizens.

The outlined challenges are the following: it has to be guaranteed, that legal certainty and the quality of preventive legality control within the justice system as well as the reliability of public registers will not be impaired by an enhanced digitalisation of cross-border cooperation; the control of the technical solution is crucial; data protection, confidentiality and high securities standards in the digital world must be guaranteed in the same way as in the “physical world”; not to exclude citizens who do not have internet access or cannot use technologies for various reasons and make sure that these people will also continue to benefit from an efficient access to justice; the Commission should take into account the percentage of the EU population living in remote or rural areas, where access to internet or new technologies may not be easily achieved and where the drafting of documents on paper is necessary.

German Federal Ministry of Justice and Consumer Protection:

The Ministry welcomes the initiative of the Commission to promote the digitalisation of cross-border judicial cooperation by means of a draft legislation. Both the analysis of the problem and the goals of the project are fundamentally shared.

With regard to legislative options, consideration should be given to creating a minimum standard for the participation of Member States in cross-border digital communication via e-CODEX, which would offer a degree of trustworthiness of digital documents that is sufficient for a large number of the existing instruments in their current version. It should be checked whether such a minimum standard, which could be based on the qualified electronic seal in accordance with the e-IDAS Regulation, cannot already be integrated into the proposal for e-CODEX Regulation. Insofar as individual instruments of judicial cooperation have higher requirements for the electronic form for certain documents, corresponding requirements could then be added to the legal acts concerned, again linked to quality levels of the e-IDAS Regulation. This approach would avoid having to reform a large number of legal acts, which experience shows would take a considerable amount of time. It should be avoided under all circumstances to define new, parallel standards in addition to the established and directly applicable standards of the e-IDAS Regulation. Member States whose institutions already use qualified e-IDAS-compliant procedures must be able to rely on the fact that they will also be able to participate in future legal transactions on this basis.

In addition, there would still be room to regulate general aspects of digitalised judicial cooperation in a new regulation, such as the general obligation to use the digital channel and the obligation to accept digital documents if they meet the requirements of the e-IDAS Regulation. This would also ensure the uniformity of the formats and formal requirements used. Exceptions with regard to the availability of the digital systems and the specific requirements of certain procedures would also have to be regulated. Last but not least, the rules for setting up of any IT systems that are still required could be set on the basis of already proven structures such as e-CODEX.

The outlined challenges are the following: common IT solutions for judicial cooperation at European level must be designed in such a way that they respect the independence of the judiciary and the principle of subsidiarity; the judiciary in the Member States should have a say in the initial and further development of IT systems that enable cross-border legal exchanges; appropriate transition periods before an application becomes mandatory.

The Ministry notes the need of developing reference implementation software that can be used across the EU. The use of national IT systems instead of the reference implementations must remain possible if these systems meet the objective standards for security, authenticity and interoperability.

European Disability Forum, Belgium:

The Forum welcomes the initiatives of the European Commission to improve access and efficiency of the justice system. Modernising judicial cooperation between EU countries to improve access to justice in cross-border cases, through the use of digital technology,

can be very beneficial to persons with disabilities. Persons with disabilities currently face multiple barriers in the justice system (including digital barriers) that hinder their access to justice in cross-border cases. They are also affected by the digital gap. The recommendations made include recognising the accessibility as a core principle of the modernisation of the judicial cooperation between EU countries and ensuring accessibility is a requirement in all related EU initiatives.

Ministry of Justice of the Republic of Latvia:

Latvia agrees that the introduction of a common EU legal framework in the field of cross-border digitalisation of judicial cooperation would ensure faster and more efficient judicial cooperation between the Member States.

In cross-border matters, the electronic circulation of documents is currently rare in practice due to a lack of mutual trust between the countries. Electronic circulation is mainly ensured by converting paper documents into electronic format, scanning and sending them to the Member State concerned, but the Member States still require that the original documents are sent to them in paper form. This is a time consuming process and requires double labor resources. The introduction of a mutual mechanism for the recognition of electronic signatures between the Member States would speed up these processes.

The proposal to establish legal channels for the circulation of electronic documents between MS is also to be supported, because it reduces the risks of information leakage and creates certainty in cross-border judicial cooperation. Given that the instruments of judicial cooperation in both civil and criminal law are evolving and new electronic data transmission channels are being created, the idea of improving existing information transmission channels should be supported.

International Union of Notaries Professional Assistants:

Gathering all the necessary documents in digital form will be a great help, to send and receive digitally signed documents will save a lot of time and money. E-signature should be applied also in the copies of notarial acts with the same value in all countries.

The usual problem is the lack of training of citizens, people usually don't know how to use them or they are not informed. As the process goes, there should be online free seminars for everyone that is interested.

Studio Legale de Franciscis, Italy:

Studio Legale supports the establishment of a system for digital cooperation in cross-border cases. Modernisation and development in this sense must be encouraged, including the necessary protection of data. In case the system is not used – respective penalties to be provided for.

Brussels Human Rights and Development Organization:

Brussels Human Rights and Development Organization supports the initiative. The information must be protected and its safe transmission should be guaranteed. However, the paper exchanges should be kept.

Francois Gerin, a citizen from Belgium, a software engineer:

Mr Gerin submits that software which is coded will lead to challenges (as it happened with BE IDs), therefore the source should be open. Since this is an EU matter, and no foreign software maker (Google and Microsoft) should interfere or get monopoly on or profit from this project. Small software companies, which participate much more in the economy should be favored.

Anonymous citizen from France:

It seems weird that nowadays one cannot communicate electronically with authorities. The paper format however should be kept.

Giorgio Cannella, a citizen from Italy:

Sanctions should be applied if a private or public body of a Member State does not comply with the mandatory provisions of the Regulation.

2.2. PUBLIC CONSULTATION RESULTS

The public consultation sought the views and opinions of all stakeholders who could be impacted by the future initiative (citizens, ministries, courts, JHA agencies and EU bodies, legal practitioners) in order to take them into consideration when deciding on the possible options and the way forward.

A summary of some of the main findings could be found below. Detailed and visualised results of the Public consultation can be found in Annex 2.

Benefits and disadvantages of the digitalisation of EU cross-border judicial procedures

A large majority of respondents perceive benefits from the digitalisation of EU cross-border judicial procedures (≈98%), with only very few stakeholders (≈2%) indicating that they do not perceive benefits at all. More than 80% of the respondents agree with the statement that digitalisation will lead to speedier and more effective/efficient cross-border procedures (≈88%), will save time for both administrations and citizens or businesses (≈87%), that it will lead to better accessibility of information and easier access to judicial procedures (≈86%), and will lower costs of handling cases both for administrations and citizens/businesses (≈81%). A minority of stakeholders believe that it will increase the resilience of judicial systems (≈38%) or will lead to any other type of benefit.

With regards to the disadvantages, 62.5% of the stakeholders express cybersecurity concerns. Data protection is a concern for ≈49% of the respondents, and so is the risk of

exclusion due to different factors, including lack of digital skills (≈42%), lack of access to the internet/unreliable internet connection (≈32%) or due to lack of adequate equipment (≈31%). For 12.5% of the stakeholders the digitalisation will not bring any disadvantages.

Concerning the rights to a fair trial and the right of defense, more than two thirds (≈66%) of the stakeholders do not see in the digitalisation of cross-border judicial cooperation a threat to the right to a fair trial and the right of defense. A fifth of the respondents (≈20%) perceive a threat to these rights.

Key barriers to the digitalisation of cross-border judicial cooperation

A majority of stakeholders identify six specific barriers to digitalisation of cross-border judicial cooperation. These are i) the different level of digitalisation of the Member States (≈84%), ii) the lack of financial and human resources for developing and maintaining IT systems (≈68%), iii) the lack of digital skills of users and/or competent authority staff (≈65%), iv) lack of interoperable national IT systems which can communicate with each other (≈62%), v) the lack of regulation recognising legal effects of considering electronic evidence admissible under national law (≈54%), and vi) the lack of recognition of electronic identities and electronic signatures/seals between Member States (50%).

The stakeholders were asked further questions on other challenges that should be considered during the transition to digitalisation of cross-border judicial cooperation. 57 respondents provided open-ended responses. The most frequently mentioned challenge (13 respondents) was the need to secure harmonised or mutually recognised channels for communication that are interoperable; 8 respondents indicated the heterogeneous degree of digitalisation across the EU in general or in particular in relation to the justice system; 7 respondents indicated the security of the channels, and the same number of respondents pointed out challenges to the security, privacy, and independence of the judiciary and judicial bodies. Other challenges identified are the digital transition as such (6), issues related to equal access to justice and guarantees to fundamental rights (6), the admissibility of electronic documents and language issues (both 4).

According to ≈51% of respondents the digitalisation of cross-border judicial cooperation could lead to exclusion of individuals and businesses, including SMEs, due to lack of internet access, low digital skills, vulnerability or other reasons.

Preferred scenario for digitalisation of EU cross-border judicial cooperation and access to justice

Regarding the digitalisation of the cooperation between the courts and other competent authorities of Member States, 80% of the respondents would prefer the digitalisation of this cooperation to be mandatory, for only ≈16% that would prefer it to be optional. Among the public authorities, support for a mandatory digitalisation of the judicial cooperation is expressed by ≈68% of the respondents, for ≈26% of them that would prefer the electronic exchange to be optional. Roughly 67% of the respondents prefer the

electronic format as the most adequate for communication between judicial and other competent authorities across borders, while approximately 28% of the respondents prefer a combination of paper-based and electronic communication. Thus, 95% of the respondents identify the electronic format as the most appropriate channel for communication, either exclusively or in combination with the paper-based channel. The involvement of the JHA agencies and EU bodies in the digital channels of communication is thought to bring added value for a large majority of the respondents to the specific question (≈68%).

Regarding access to justice two thirds (≈66%) of the respondents support mandatory digitalisation of cross-border electronic communication of individuals and businesses with the courts and other authorities. The public consultation did not include a question on the use of the videoconferencing or other distance communication technology for the purposes of the oral hearings, because this option was identified after the public consultation was launched.

Two-thirds of the respondents indicated that they would directly benefit from an EU-developed IT solution provided to them in the context of a possible transition to a digital channel of communication for EU cross-border judicial cooperation procedures.

Results of the public consultation

Consultation on the Digitalisation of Cross-Border Judicial Cooperation in the EU

The main observations from the extraction of the 89 replies to the public consultation are the following: The most frequent (43) replies were from EU citizens, followed by public authorities (20). Their six main countries of origin were Spain (11), Germany (10,) Belgium (7) Italy, Portugal, and Romania (6).

Table 6 - Feedback by stakeholders

– **Stakeholder type**	– **Number of replies**
– Academic/research institution	– 4
– Business association	– 1
– Company/business organisation	– 6
– Consumer organisation	– 1
– EU citizen	– 43
– Non-governmental organisation (NGO)	– 7

– Other	– 7
– Public authority	– 20
– **Total**	– **89**

Table 7 - Feedback by country of origin/affiliation

– **Country**	– **Number of replies**
– Austria	– 5
– Belgium	– 7
– Bulgaria	– 4
– Croatia	– 2
– Cyprus	– 1
– Czechia	– 2
– Estonia	– 1
– Finland	– 1
– France	– 4
– Germany	– 10
– Greece	– 2
– Hungary	– 1
– Ireland	– 1
– Italy	– 6
– Latvia	– 1
– Lithuania	– 5
– Luxembourg	– 1
– Malta	– 2
– Netherlands	– 2
– Poland	– 3
– Portugal	– 6

– Romania	– 6
– Slovakia	– 2
– Slovenia	– 1
– Spain	– 11
– Switzerland	– 1
– United Kingdom	– 1
– **Total**	– **89**

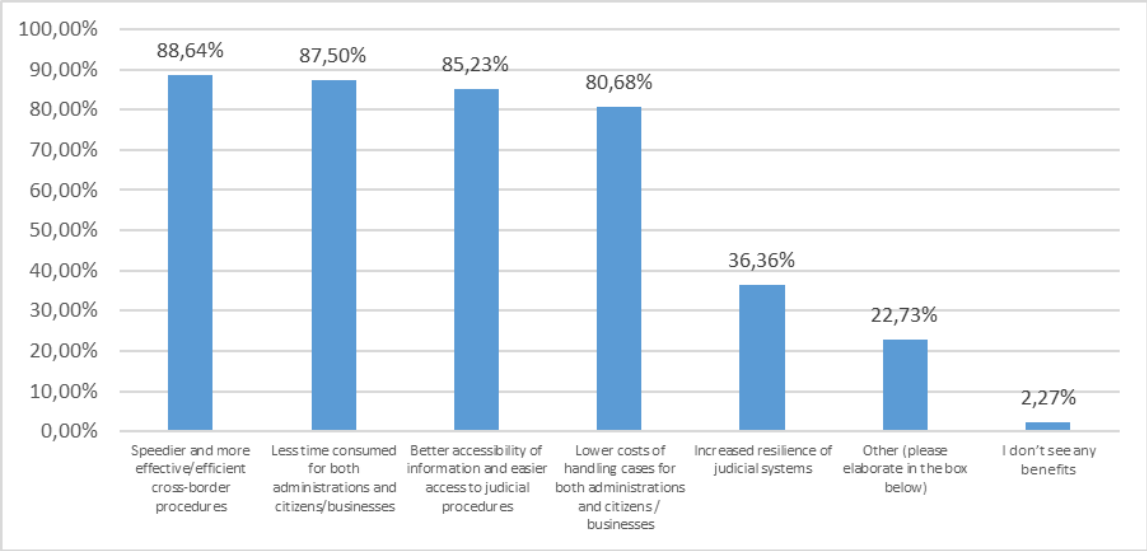
The overview below focuses on the main questions that can be analysed from a purely quantitative approach.

Benefits of the digitalisation of EU cross-border judicial procedures

A large majority of respondents perceive benefits from the digitalisation of EU cross-border judicial procedures (≈98%), with only very few stakeholders (≈2%) indicating that the do not perceive benefits at all. More than 80% of the respondents agree with the statement that it will lead to speedier and more effective/efficient cross-border procedures (≈89%), cause less time to be consumed for both administrations and citizens or businesses (≈88%), that it will lead to better accessibility of information and easier access to judicial procedures (≈85%), and to lower costs of handling cases both for administrations and citizens/businesses (≈81%).

A minority of stakeholders believe that it will increase the resilience of judicial systems (≈37) or lead to any other type of benefit.

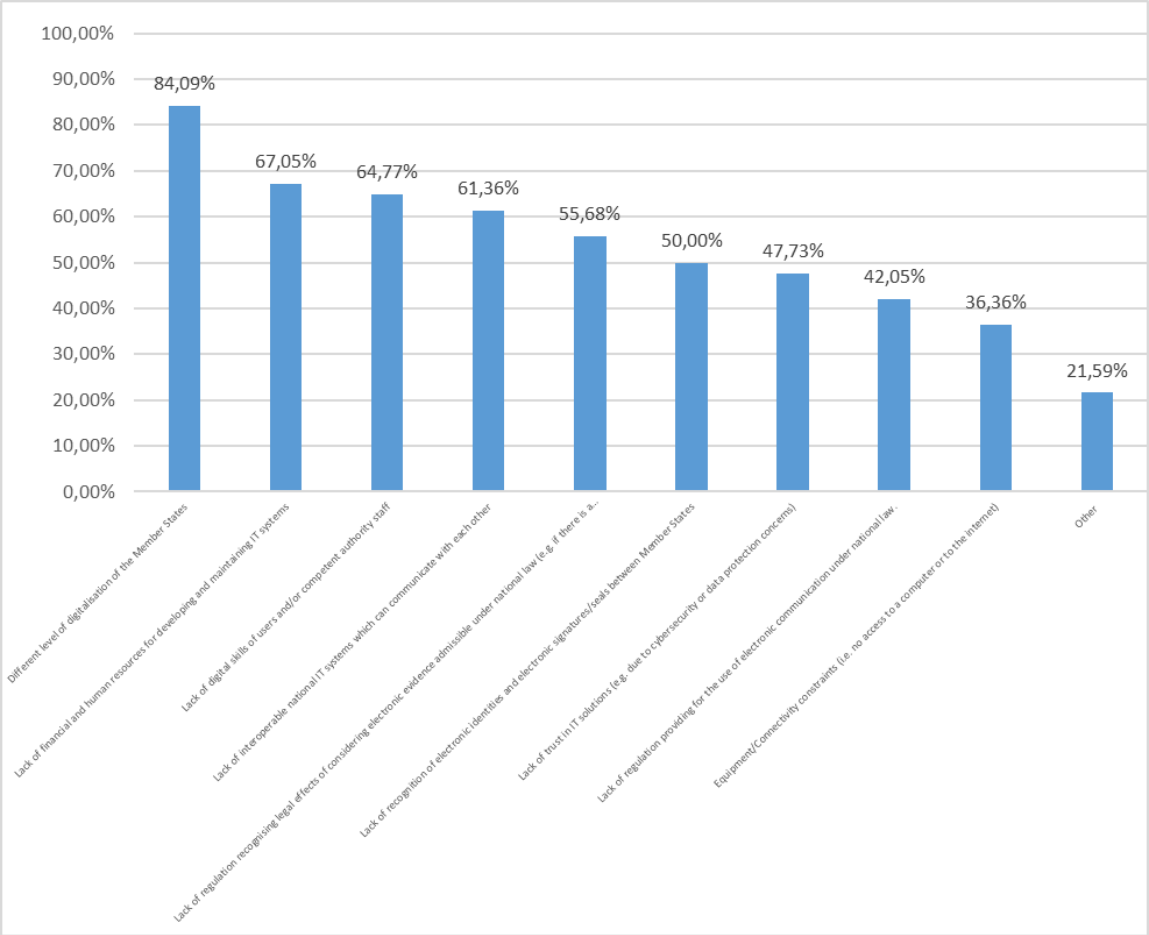
Figure 2: What would be, in your view, the benefits of the digitalisation of EU cross-border?



Key barriers to the digitalisation of cross-border judicial cooperation

A majority of stakeholders identify six specific barriers to digitalisation of cross-border judicial cooperation. The barriers perceived by the most stakeholders is the different level of digitalisation of the Member States (≈84%), followed by the lack of financial and human resources for developing and maintaining IT systems (≈67%), the lack of digital skills of users and/or competent authority staff (≈65%), lack of interoperable national IT systems which can communicate with each other (≈61%), the lack of regulation recognising legal effects of considering electronic evidence admissible under national law (≈56%), and the lack of recognition of electronic identities and electronic signatures/seals between Member States (50%).

Figure 3: What do you consider as key barriers to the digitalisation of cross-border judicial cooperation?

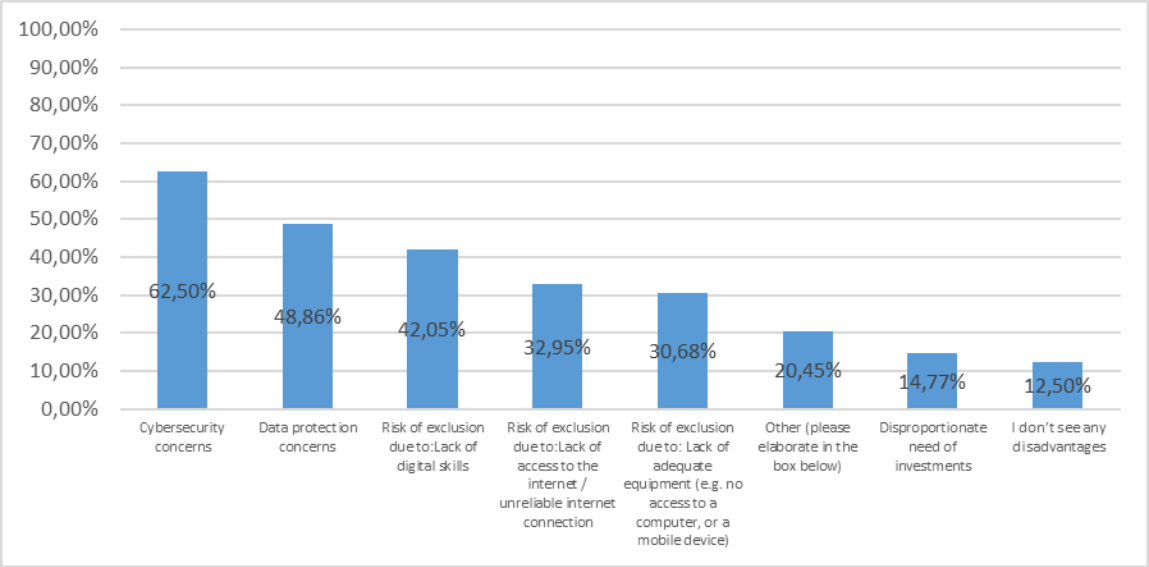


Disadvantages of the digitalisation of EU cross-border judicial procedures

Despite some concerns derived from the digitalisation of EU cross-border judicial procedures, 12.5% of the stakeholders do not see disadvantages of it.

Instead, 62.5% of the stakeholders express cybersecurity concerns. Data protection is a concern for ≈49% of the respondents, and so is the risk of exclusion due to different factors, including lack of digital skills (≈42%), lack of access to the internet/unreliable internet connection (≈32%) or due to lack of adequate equipment (≈31%).

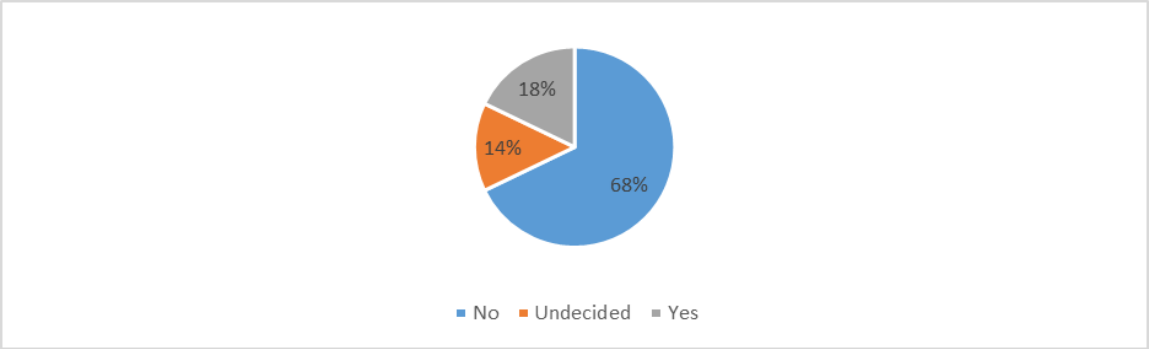
Figure 4: Disadvantages of the digitalisation of EU cross-border judicial procedures



Right to a fair trial and defence

More than two thirds (≈68%) of the stakeholders do not see in the digitalisation of cross-border judicial cooperation a threat to the right to a fair trial and the defence rights. Less than one fifth of the respondents (≈18%) perceive a threat to these rights.

Figure 5: Could digitalisation of cross-border judicial cooperation adversely affect the right to a fair trial and defence rights?

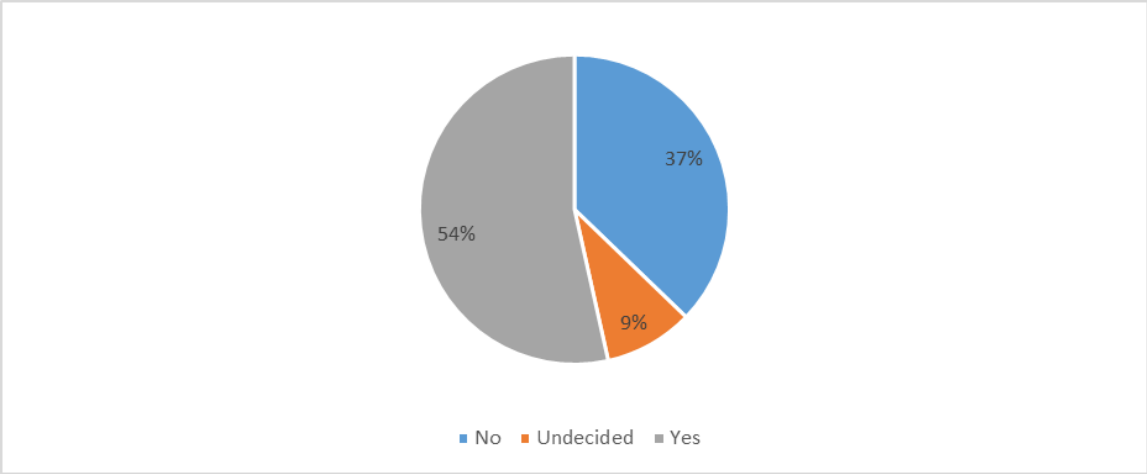


Risk of exclusion of individuals and businesses, including SMEs

A majority (≈54%) of the respondents to the question below identify that digitalisation of cross-border judicial cooperation could exclude individuals and businesses, including SMEs.

Figure 6: In the context of a possible transition to an electronic channel of communication for EU cross-border judicial cooperation procedures: a) do you consider that there are risks of exclusion of individuals and businesses (including SMEs) if the electronic channel becomes the

default one (e.g. owing to lack of internet access, low digital skills, vulnerability or due to other reasons)?

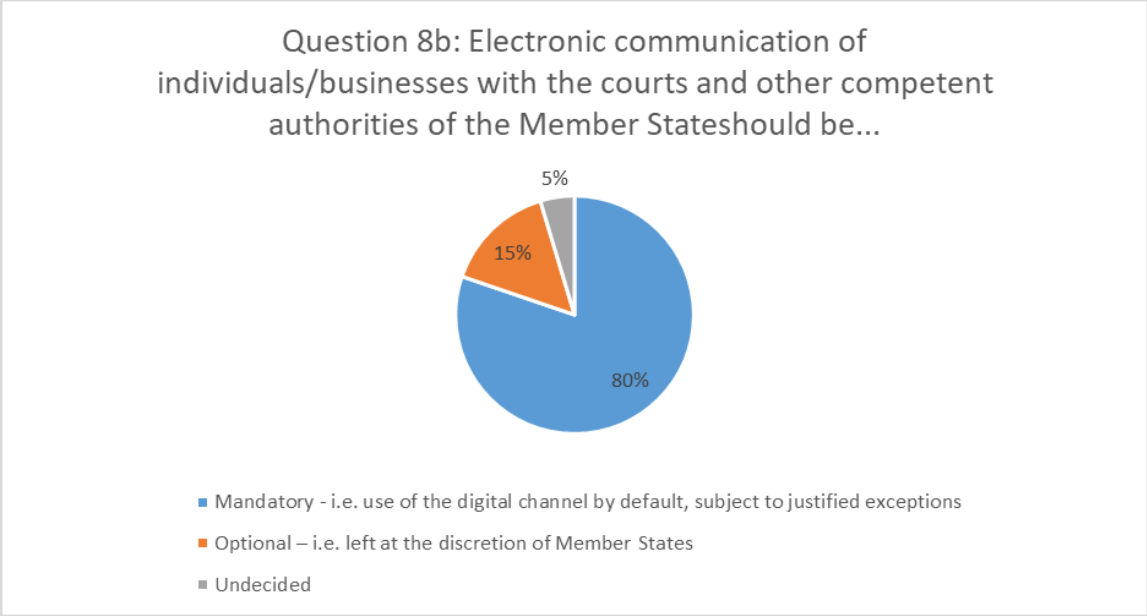


Preferred scenario for digitalisation of EU cross-border judicial cooperation

Electronic communication between courts and other competent authorities of Member States

Roughly 80% of the respondents would prefer electronic cooperation between courts and other competent authorities of Member States to be mandatory, for only ≈15% that would prefer it to be optional. Among public authorities, ≈68% of them would like to have mandatory digitalisation of cross-border judicial cooperation, for ≈26% of them that would prefer this to be optional.

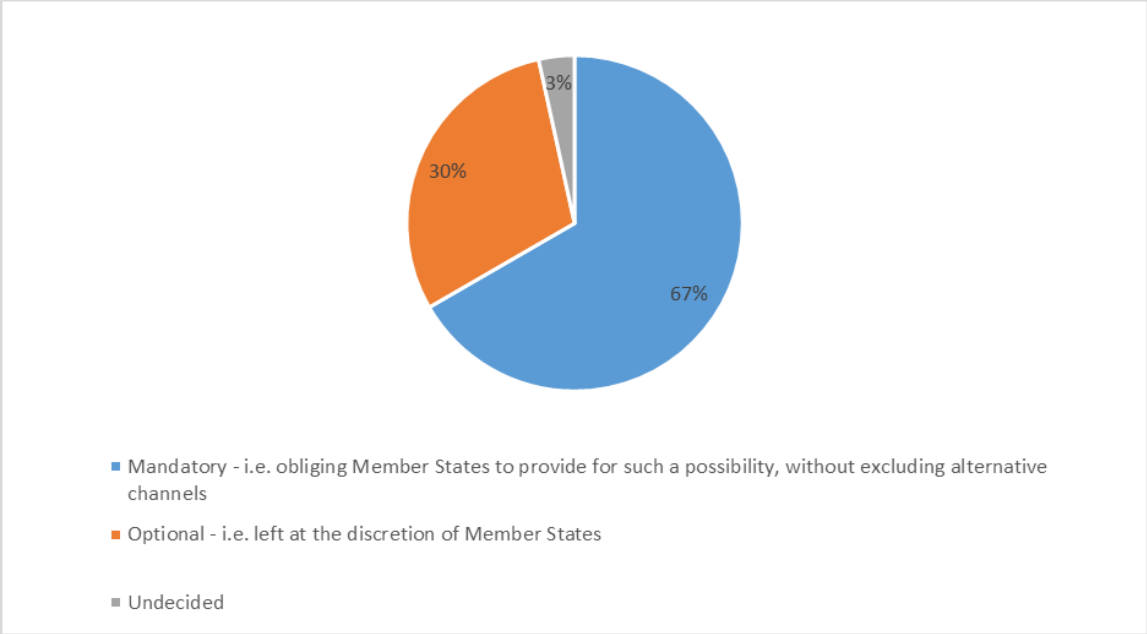
Figure 7: Electronic communication of individuals/businesses with the courts and other competent authorities of the Member States should be...



Electronic communication of individuals/businesses with the courts and other competent authorities of the Member States

Support for mandatory digitalisation of cross-border electronic communication of individuals and businesses with the courts and other authorities is relatively smaller, but majoritarian, with two thirds (≈67%) of the respondents supporting this option.

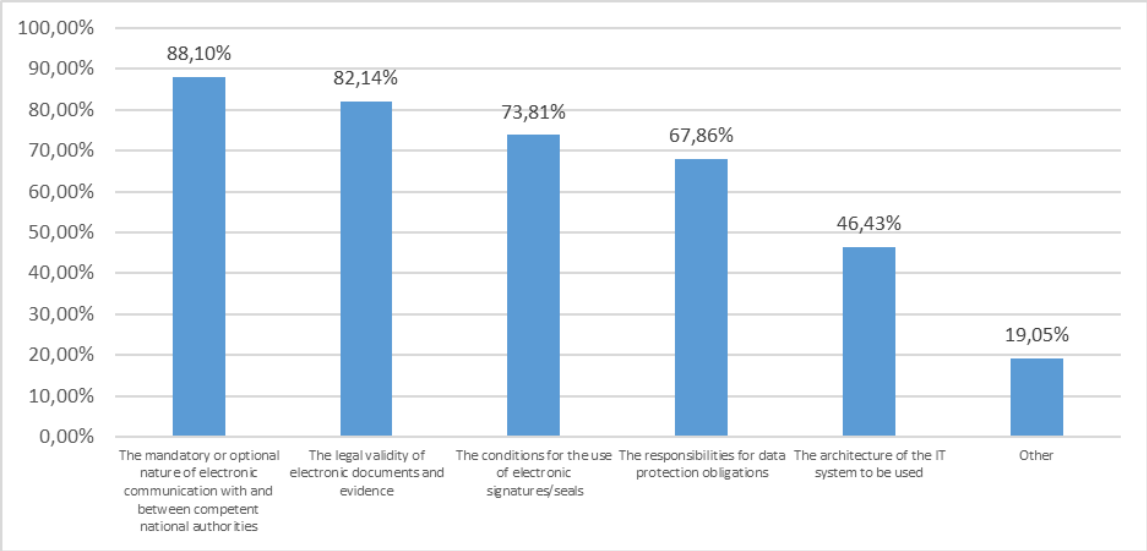
Figure 8: Electronic communication of individuals/businesses with the courts and other competent authorities of the Member States should be...



Aspects of digitalisation to be regulated through a new EU legal instrument

There is widespread support for the regulation of four aspects of digitalisation of cross-border judicial cooperation to be regulated in a new EU legal instrument. A large majority of consulted stakeholders (≈88%) indicate that the mandatory or optional nature of electronic communication with and between competent national authorities should be regulated. The legal validity of electronic documents and evidence should be subject to regulation for more than fourfifths of the respondents (≈82%). The regulation of the conditions for the use of electronic signature/seals (≈74%) and the responsibilities for data protection obligations (≈68%) also enjoy wide support.

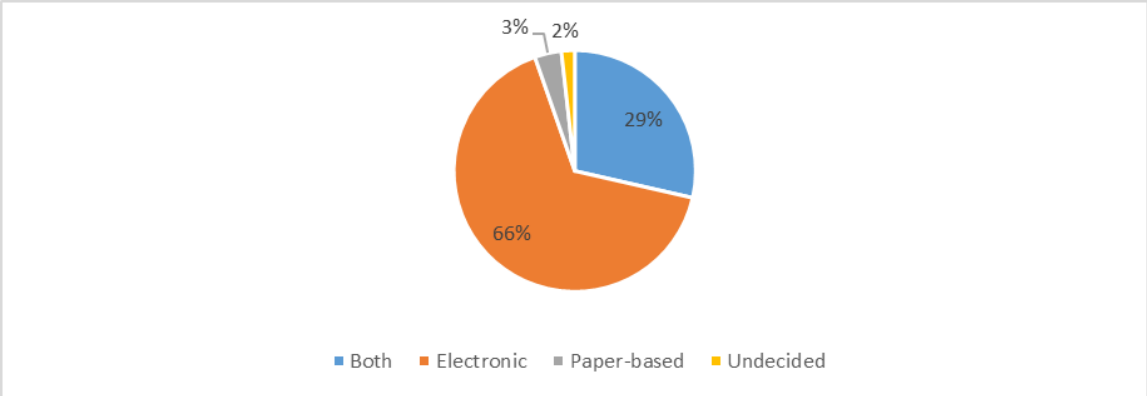
Figure 9: In case it is decided to propose a new EU legal instrument, what aspects of digitalisation should it regulate?



Most adequate legal channel for communication between authorities across borders

Roughly 66% of the respondents prefer the electronic format as the most adequate for communication between judicial and other competent authorities across borders, while approximately 29% of the respondents think that the combination of paper-based and electronic communication is preferred. 33 (≈37%) respondents out of 89 respondents of the survey did not indicate any opinion.

Figure 10: Which communication channel do you think is most appropriate for communication between judicial and other competent authorities across borders?



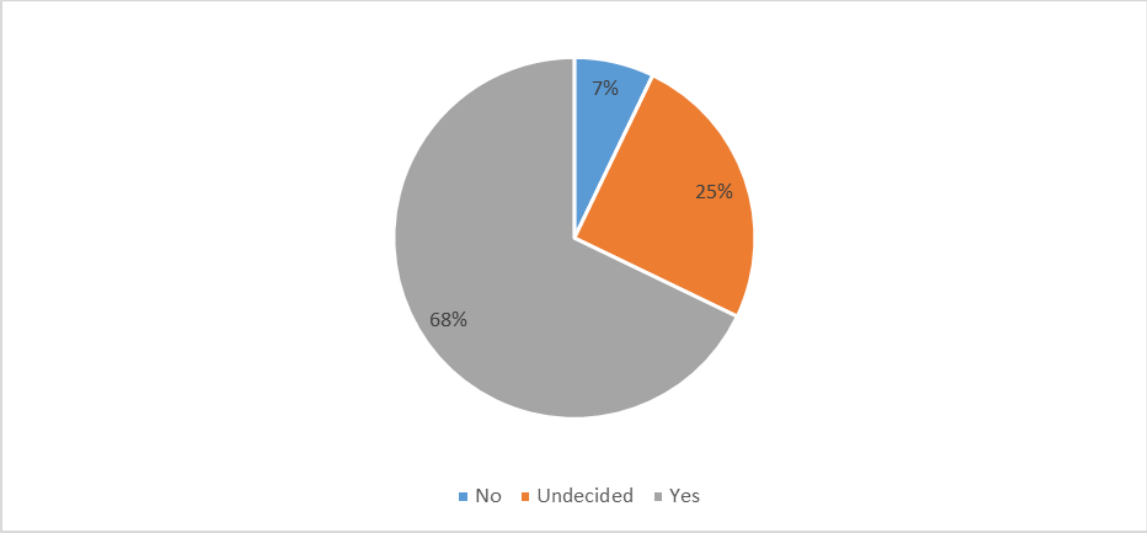
Involvement of EU bodies and services

The involvement of EU bodies and/or services in the digital channels of communication is thought to bring added value for a large majority of the respondents to the specific question

(≈68%). The reasons why respondents argue that this would deliver added value will be explored in the final analysis.

14 (≈25%) respondents out of 89 respondents of the survey replied that they were undecided and 7% did not reply to the question at all.

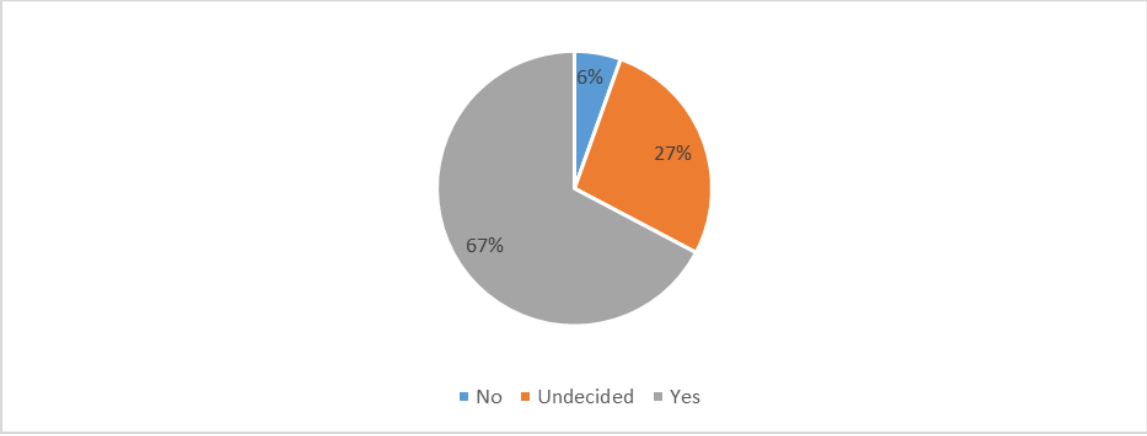
Figure 11: Do you consider that the involvement of EU bodies and/or services (such as the EPPO, OLAF, Eurojust) in the digital channels of communication would bring added value to the overall concept of digitalisation of judicial cooperation?



Benefits of from an EU-developed IT solution

Two-thirds of the respondents to the question below indicate that they would directly benefit from and EU-developed IT solution provided to them in the context of a possible transition to an electronic channel of communication for EU cross-border judicial cooperation procedures. 15 (≈27%) respondents out of 89 respondents of the survey indicated that they were undecided whereas the remaining 6% of the respondents did not answer to this question at all.

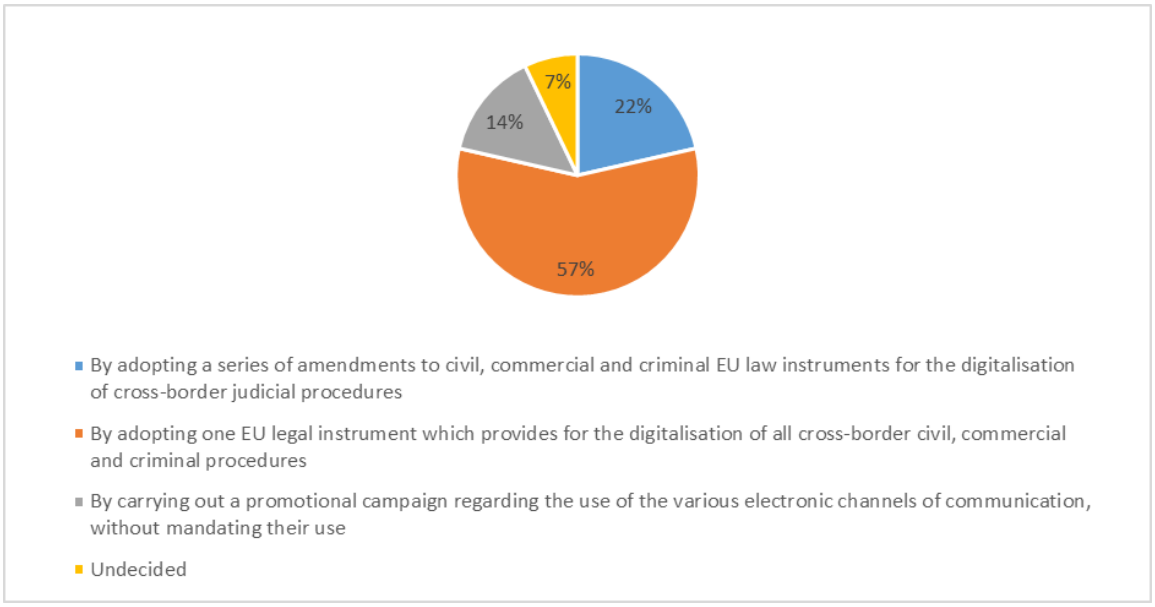
Figure 12: In the context of a possible transition to an electronic channel of communication



Optimum way to achieve full digitalisation of cross-border judicial procedures at the European level

A majority of the respondents (≈57%) indicate that the best way of achieving full digitalisation of cross-border judicial procedures at the EU level would be by adopting one EU legal instrument which provides for the digitalisation of all cross-border civil, commercial and criminal procedures. Less than one-fourth (≈22%) of the respondents are in favour adopting a series of amendments to civil, commercial and criminal EU law instruments for the digitalisation of cross-border judicial procedures, and one-seventh of the respondents (≈14%) would prefer a promotional campaign regarding the use of the various channels of communication without mandating their use.

Figure 13: What would be the best way to achieve full digitalisation of cross-border judicial procedures at the European level?



Annex 3: Who is affected and how?

1. Practical implications of the initiative

The preferred policy option would affect the following stakeholders:

1.1. Citizens

Introducing digital use for enhancing access to justice for cross-border cases in civil, commercial and criminal matters will affect the citizens. The possibility for the citizens to file claims and to digitally communicate with the courts and competent authorities, as well as the possibility to participate in oral hearings through videoconference or other distance communication technology will ensure improved access to justice in cross-border procedures, once they are digitalised. While the current possibilities for submission of claims online is limited to a few Member States and mainly under pilot projects, this will now be extended to cover all Member States. As a consequence, barriers for citizens to take action will be reduced. The use of digital tools will not require significant costs or investments on the part of the citizens. What would be needed is a computer and access to the internet. In order to ensure that citizens who lack digital skills, who live in remote areas or whose personal capacity does not allow them a seamless access to the digital tools, the paper based communication will be maintained.

1.2. Businesses and SMEs

The businesses will be affected by the new initiative in a similar manner as the citizens. All legal entities will have the possibilities to digitally communicate with the courts and the competent authorities and to take part of oral hearings though a videoconference or other distance communication technology. The paper-based communication will be maintained for the legal entities as for the citizens. There are no specific costs that are foreseen for businesses – in order to make use of the digital communication, they need to possess a computer and to have access to the internet. The businesses will benefit from the improved access to justice and more efficient protection of their rights, which is expected to have a beneficial effect on and to boost the cross-border trade.

Similarly, SMEs involved in cross-border transactions are expected to benefit directly from the improved access to justice, as well as from lower costs and shorter proceedings when enforcing their rights across borders. This could also give impetus to the SMEs to engage more in cross-border transactions within EU. The lower costs of proceedings will have an indirect effect by improving the competitiveness of the SMEs.

1.3. Legal professionals

Lawyers will be able to use the access point on the e-Justice portal or where established the national portals of the Member States, to electronically sign and send claims and other submissions in cross-border cases under the respective EU instruments to competent courts and authorities in the Member States. The bailiff and notaries who are competent to act under the EU instruments for judicial cooperation in civil matters would communicate between themselves and with the courts and the other competent authorities through the IT system which will be based on e-CODEX. To that end, the bailiffs and the notaries will need to be connected to the system, through the access point of the respective Member State, where they perform their duties.

1.4. National courts and other competent authorities

The e-CODEX based IT system will be used to facilitate the communication between the courts and competent authorities and where relevant the JHA agencies and EU bodies in the context of the cross-border judicial cooperation procedures. The digital channel will be used to transmit documents, requests, forms, messages and data from the courts/authorities of one Member State to courts/authorities in another Member State, with the purpose of conducting the proceedings as foreseen under the rules of the respective EU instruments. The processing of the communication will be similar to the exchange of requests, forms and documents under the recently adopted recasts of service of documents and taking of evidence regulations.

It is expected that Member States will incur one-off expenditures for installing the national access points interconnecting the national IT systems in the context of the decentralised IT system. Furthermore, each Member State will have to bear the costs for the operation and maintenance of its access points, as well as for establishing and adjusting its national IT systems to make them interoperable with the access points and for administering, operating and maintaining those systems. Member States will be free to use the Reference Implementation software which the Commission will develop for them, instead of their national IT systems. The e-CODEX tool is an open-source solution that could be used free of charge. All these extra costs from national authorities go alongside with co-financing from the European Commission. It should be highlighted that some Member States already possess and operate a pilot version of e-CODEX, which they may reinstall and upgrade for the current purposes. Similarly, eEDES and the decentralised IT system for the service of documents and taking of evidence recast Regulation, which is currently being set up, could also be re-used. These electronic systems follow a multifunctional approach for other digitalised EU mechanisms in order to avoid unnecessary expenses.

Courts and competent authorities, which are not equipped with videoconferencing tools, will have to invest in buying such equipment, if they are planning to use the possibility to organise remote hearings.

Finally, improving the efficiency of the communication in the context of cross-border judicial cooperation and access to justice by employing digital tools, will probably lead to an increased use of the EU instruments for cross-border judicial cooperation in civil,

commercial and criminal matters. That would bring about an increase in the costs for the national judicial systems.

It is expected that in the medium and long term, all these costs will be offset by the expected decrease in the length of proceedings, the expected decrease of the time for processing the cases, by the alleviated administrative burden and also by reducing the cost for the communication itself (the costs for sending electronic communication is lower than the costs for sending postal packages).

Summary of costs and benefits

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits (EUR)		
Compliance cost reductions	25,589,060	The average overall yearly savings in postage costs and in paper costs for individuals/legal entities and courts

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Action (a)	Direct costs	0	0	0	0	18,700,000	8,100,000
	Indirect costs						

Annex 4: Analytical methods

4.1 Methodology used to collect data

The evidence, relevant data and information collected to support the Impact Assessment were collected from the following sources:

- Study by an external contractor;
- Public consultation;
- Other sources of information – EU Justice Scoreboard and the accompanying factsheets; Eurostat surveys, data collected by CEPEJ; statistics on the European e-Justice Portal.

The data used in the Impact Assessment is largely based on the Study. The methodological approach used by the external contractor builds upon a variety of research methods to ensure that all relevant data is gathered to perform an in-depth assessment of the selected policy options and their impacts: (1) primary data collection methods (e.g. interviews, focus groups, workshop); (2) secondary data collection methods (e.g. desk research, national legal mapping in all 26 Member States (all Member States except Denmark), legal review of EU standards, literature review etc.); (3) quantitative analysis (e.g. costs benefits analysis) and (4) qualitative analysis methods (e.g. content analysis). The policies and legislation are assessed transparently, based on factual evidence and considering the views of the stakeholders concerned.

Specifically, the following stakeholder consultation activities were undertaken:

- EU level focus group;
- National stakeholder consultation on impacts of policy options
    - National-level survey;
    - Focus groups at national level;
- Validation by stakeholders.

EU level focus group

The EU-level focus group was held online on May 4, 2021. The aim of the focus group was to bring together the EU-level stakeholders that have knowledge and/or interest in the topic concerned in order to:

- Identify and discuss synergies with existing and planned digital channels of communication with the JHA agencies, EJN-criminal, and JITs;
- Analyse and discuss coherence with the e-IDAS and EU identity initiatives;

- Identify technical solutions that could be proposed for the purposes of digitalisation of cross-border judicial cooperation;
- Identify and analyse problems and issues related to the use of digital solutions in communications between the competent authorities of the Member States and between those authorities and the parties to the proceedings;
- Discuss potential impacts of the various proposed policy options, including impacts on fundamental rights, such as the right to a fair trial, right to defence, the right to data protection.

The focus group gathered representatives from relevant EU agencies (Eurojust, EU-Lisa, European Judicial Network in criminal matters, European Judicial Network in civil matters, FRA), institutions involved in EU pilots on digitalisation of cross-border communication (The e-CODEX consortium, E-Evidence group), consumer associations, legal and judicial practitioners, and NGOs.

National stakeholder consultation on impacts of policy options

The national-level targeted stakeholder consultation was concentrated around a limited number of Member States (15 Member States), on the basis of the following criteria:

- geographical criteria, e.g., larger and smaller Member States, Western and Eastern Member States, Northern and Southern Member States;
- Level of digitalisation of justice system, as assessed by the Justice Scoreboard, having Member States with high, medium and low levels of digitalisation;
- Participation in EU pilot projects, such as those for the e-Codex (e.g. European Payment Order, Small Claims procedures);
- Type of legal system.

The following Member States were selected for the national-level targeted stakeholder consultation: Austria, Belgium, Croatia, Czechia, Estonia, Finland, France, Ireland, Italy, Luxembourg, Poland, Portugal, Romania, Spain and Sweden.

The national stakeholder consultation was carried out by means of a (1) national-level survey of selected stakeholder groups in the 15 representative Member States; (2) national-level focus group with key stakeholders from the 15 representative Member States.

National-level survey

The national-level survey in the selected 15 Member States aimed to:

- Collect information for testing the legal, technical and political feasibility of the policy options, their efficiency and effectiveness, proportionality and relevance for the different categories of impacted stakeholders;
- Gather additional qualitative and quantitative inputs on the likely consequences of the policy options, to be included in the analysis of impacts and comparison of the options.

The following groups of stakeholders were targeted by this exercise:

- National Authorities, most specifically Ministries (e.g. Justice, Interior etc.), IT departments and agencies;
- National contact points of Eurojust and the EJN-civil and EJN-criminal;
- Organisations representing judges, prosecutors and courts in civil/criminal/commercial areas;
- Organisations representing legal/judicial practitioners in the civil, commercial and criminal justice system (lawyers, notaries, bailiffs);
- Consumers' organisations;
- NGOs involved in projects promoting digitalisation in judicial cooperation;
- NGOs representing citizens interests (e.g. NGOs providing legal support in cross-border proceedings);
- Chambers of Commerce or Business Associations providing legal support services in cross-border proceedings to businesses (including SMEs).

The questionnaire for the national-level stakeholder consultation remained open in the online survey platform Surveygizmo for approximately four weeks. Information about the survey was disseminated among relevant stakeholder groups, with follow-up and assistance provided, whenever necessary.

Data collected through the national-level focus group feeds into the analysis of policy options and their impacts, as well as into the comparison of policy options.

Focus groups at national level

The focus group at national level was carried out online on the 15th July 2021. The objective of the national-level focus group was to obtain an in-depth exploration of views of national-level stakeholders on the proposed policy options and their potential impact on various stakeholder groups. A total of 15 to 20 participants from the selected Member States were invited, and an equal representation of all relevant stakeholder groups ((Legal practitioners; Business organisations; Consumers organisations; NGOs providing legal assistance and representation) was ensured. While mainly qualitative information was collected through the focus group discussions, an attempt was made to also collect as much quantitative information as possible.

Data collected through the national-level focus group feeds into the analysis of policy options and their impacts, as well as into the comparison of policy options.

4.2. Methodology used to compare the policy options

The comparison of the policy options was performed based on their impacts. The policy options have been compared systematically, and their impacts presented in a user-friendly format. Strengths and weaknesses have been identified both qualitatively and quantitatively, to the extent possible. Specifically, each option has been evaluated with regard to how it addresses the identified problems.

The table below outlines the criteria used for the comparison of policy options.

Table 3 - criteria used for the comparison of policy options

Criterion	Key questions	Indicators/methods for comparison
Coherence	• To what extent is each policy option coherent with other relevant initiatives? • To what extent is each policy option coherent with wider EU policy? • To what extent is each option is contributing to establish a coherent framework by reducing the legal fragmentation across Member States?	• Identification of overlaps and/or synergies between policy options and relevant initiatives; • Identification of contrasts and/or discrepancies between policy options and relevant initiatives; • Identification of a preferred option, where possible.
Effectiveness	• What would be the (quantitative and qualitative) effects of each option? • Which policy option would be most effective in achieving the set objectives of the current initiative?	• Comparison of expected effectiveness of each policy option against the evaluation baseline; • Comparison of expected effectiveness of the policy options against each other; • Identification of a preferred option, where possible.
Efficiency	• What would be the incurred costs and benefits under each policy option? • To what extent will the costs associated with the intervention be proportionate to the benefits it is expected to generate? • How proportionate will be the costs of the intervention borne by different stakeholder groups, taking into account the distribution of associated	• Comparison of potential costs and benefits borne by each stakeholder group under each policy option; • Identification of a preferred option, where possible.

	benefits? • Which policy option would be most cost-effective?	
EU added value	• Are there clear benefits from EU level action? • Can the objectives be met more efficiently (less • costly) at EU level?	• Comparison of EU added value against the evaluation baseline; • Comparison of EU added value of each policy option; • Identification of a preferred option, where possible.

The application to each of the above criteria is described below to the identified policy options is explained below:

Coherence refers to synergies between the proposed options and existing initiatives such as e-CODEX, eEDES, the new e-identity initiative by the Commission and the digital solutions under the Digital Criminal Justice Study. Under this aspect, similarities and complementarities between initiatives on the one hand, and potential contrasts and discrepancies between them on the other hand have been detected. The final aim of this analysis was to identify the policy option(s) which would ensure the highest level of coherence with the existing initiatives. Moreover, coherence refers also to the level of harmonisation of the legal frameworks across Member States, involved under each option. In this regard, the options aimed to reduce legal fragmentation across countries, thus eliminating uncertainty for individuals and legal entities were identified. Finally, coherence was examined with regard to the existing EU instruments in civil/commercial and criminal law.

Effectiveness analysis considered how successful the proposed options would be in achieving or progressing towards their objectives. It examined whether the objectives of the initiative will likely be achieved or not.

Efficiency looked closely to the extent possible at both the likely costs and benefits of the proposed options as they accrue to different stakeholders, identifying what factors were driving these costs/benefits and how these factors related to the examined options.

The efficiency analysis was based on quantitative information collected through a national-level online survey, as well as through bilateral e-mail exchanges with representatives of Member States' authorities. Since the quantitative information gathered was heterogeneous, to overcome the encountered limitation of lacking comparable national-level quantitative data, the efficiency analysis was complemented with qualitative information (description of processes and types of costs and benefits deriving from the options), collected through interviews with various stakeholder groups in different Member States. The consultation with the relevant stakeholders revealed that little to no statistical data is collected by the Member States on the number of the cross-border cases, the cost and the length of the cross-border proceedings. Therefore statistical inferences had to be made. Similarly, data on the means of communication between the

courts/competent authorities is not systematically collected. Therefore, the analysis was based on the limited data collected through bilateral interviews with some of the stakeholders and estimations were made on that basis.

The EU added value considered the arguments about the value resulting from the proposed options that is additional to the value that would have resulted from interventions initiated at national levels.

Annex 5: COVID19 impact on civil proceedings – national measures

Table 4 - Comparative Table **of 14 April 2020**

– **COUNTRY**	– **Time limits in civil proceedings**	– **Judicial organization and Judiciary**	– **International/EU Cooperation**
– **AUSTRIA (AT)**	– Law on 22/03/2020 – **Procedural time limits** open on 22/03 or time limits that under normal circumstances would have started to run after this date are interrupted and will be suspended until 30-04-2020. They will start running again. That means that a 14-day time limit will end on 15/05 and a 4-week time limit will end on 29/05. – – Exceptions (inter alia): payment deadlines, forced psychiatric admission. In cases of imminent danger for safety or personal freedom as well as in cases of irretrievable damages, the court can end the interruption earlier. – – **Limitation periods** (e.g. prescription) are suspended between 22/03 and 30/04. – – **Enforcement proceedings**: Enforcement orders are only carried out in the event of imminent danger to life, limb, security or freedom or to avert substantial and irretrievable damage. Possible stay of a forced auction of movable and immovable property if the debtor faces economic difficulties due to the COVID-19 pandemic. Evictions can be suspended	– Restriction of contacts between courts and parties. – – **General shutdown of specific courts** if need be, accompanied by the possibility to direct urgent cases to other courts. –	– Case workers of Central Authorities are working from home : communication by email is recommended –

	upon request if the debtor would otherwise become homeless.		
– **BELGIUM (BE)**	– Adopted measures (8 April 2020): – – **Limitation periods and deadlines for introducing judicial remedies** that expire between the 8th of April 2020 and the 3rd of May 2020 are extended by one month after the expiration of this period (i.e. postponed to the 3rd of June 2020). If need be, the government may extend the final date of this period. – – **Deadlines in judicial proceedings in civil matters** that expire between the 8th of April 2020 and the 3rd of May 2020 and the expiration of which could lead to forfeiture or any other damage, are extended by one month after the expiration of the crisis period (i.e. postponed to the 3rd of June 2020). If need be, the government may extend the final date of the crisis period. This doesn't apply to urgent matters. – – Foreseen measures: – – Extension by 6 months of the deadlines in the context of judicial sales of immovable properties that expire between the 18th of March 2020 and the 30th of June 2020. – – Suspension of enforcement proceedings against companies.	– Adopted measures (8 April 2020): – – In civil matters, judicial hearings that were supposed to occur between the 10th of April 2020 and the 3th of June 2020 (this may be extended by the government) are cancelled when all parties have already sent their written conclusions. The judge shall take a decision without hearing, solely on the basis of the written conclusions, unless the parties oppose. If the parties oppose, the case will be postponed. – Civil courts have resorted to using video conference tools when continuing to proceed with handling cases in court. – – Foreseen measures: – – The following regime should be finalised soon. Legal deadlines that apply to notaries and that expire between 3 April 2020 and the entry into force of the foreseen royal decree are extended by one month. Notarized powers received from March 13, 2020 to June 30, 2020 and which take effect only from March 13 until June 30, 2020 will be free of charge. Notarized powers may be received remotely and electronically (on electronic support and with an electronic identification and signature). Removal of the requirement for witnesses and the presence of several notaries in an authentic will.	– Following the COVID-19 outbreak, the modality of work and the organisation of the Belgian Central Authorities in civil matters have not changed, with the exception that most Belgian Central Authority caseworkers only operate via telework. A few agents continue to be present 1 day per week, to check incoming post and secure outgoing post, for instance with regard to service of documents. – – A message has been sent out via the European judicial network to all contact points indicating that communications can continue to be sent exclusively by e-mail to the caseworkers. The Belgian Central Authorities remain available by telephone and e-mail. It has been advised to send new requests to the functional mailboxes with regard to child abduction, taking of evidence, legal aid, maintenance obligations, and child protection. – – The treatment of individual cases could be delayed as a result of lower staffing. So far, all agents remain active and cases continue to be handled on a daily basis as

			before the COVID-19 outbreak. – –
– **BULGARIA (BG)**	– **<u>Specific legislation:</u>** – *- Law on the measures and actions during the state of emergency declared by a decision of the National Assembly of 13 March 2020*, adopted on 23 march 2020 and amended on 6 April 2020. – – **<u>State of emergency:</u> 13 March – 13 May 2020** – Initially, the period of the state of emergency was fixed from 13 March until 13 April 2020. This period has been prolonged until 13 May 2020. – – **<u>Procedural deadlines:</u>** – ***<u>Suspension of deadlines:</u>*** – **All procedural deadlines** in civil judicial, arbitration and enforcement proceedings are suspended <u>except in the following civil and commercial litigation cases:</u> – 1. Cases for exercising parental rights only in respect of provisional measures; – 2. Cases under the Domestic Violence Protection Act only concerning an order for immediate protection or amendment thereof, as well as in cases where the request for protection is rejected;	– **<u>Court hearings</u>** – – Until the state of emergency is lifted, court hearings, may be held remotely, ensuring direct and virtual participation of the parties and participants in the proceedings. Minutes shall be drawn up for the meetings held and shall be published without delay and the minutes of the meeting shall be kept until the deadline for amendment and completion of the minutes. The court shall inform the parties when the hearing will be held at a distance. – – – The Supreme Judicial Council has issued orders for the provision of the necessary precautionary measures to prevent the spread of the virus in court buildings, for filing documents to courts by mail or electronically, as well as for consultation on the phone or electronically. For the mentioned hearings, summons is served by telephone or electronically. – – **<u>Registry proceedings</u>** – The services provided by the Commercial	– International legal assistance is still provided by the Ministry of Justice and by the courts but might be delayed. –

	– 3. Permits for withdrawal of funds from children's deposits; – 4.Interim proceedings; – 5. Evidence preservation cases; – 6. Requests under the Electronic Communications Act and in connection with termination of registry proceedings on the basis of an act of the court under the Law on the Commercial Register and the Register of Non-Profit Legal Entities; – 7. The cases under Art. 62, para. 3 of the Credit Institutions Act. concerning signing a declaration pledging to safeguard bank secrecy; – The prescription periods upon the lapse whereof rights are extinguished or acquired for individuals are suspended. – All public sales and coercive seizures of possession, announced by public and private enforcement agents, shall be suspended. After the lifting of the state of emergency, the public sales and the coercive seizures of possession shall be scheduled anew without levying new fees and costs. – ***<u>Extension of deadlines:</u>*** – Deadlines established by law (e**xcept in the cases mentioned above**), expiring during the times of the state of emergency and which are related to the exercise of rights and obligations of private persons, are extended from 1 month as of the end of the state of emergency. – – ***<u>Specific cases:</u>*** – The bank accounts of natural persons and of medical-treatment facilities shall be immune to preservation orders, labour	Register and Register of non-profit legal entities and other registers are accessible online. – – – **<u>Notarial procedures</u>** – Notarial procedures are limited only to the emergency ones. Notarial proceedings shall be limited to urgent matters while complying with the hygiene requirements. The Notary Chamber shall provide notaries on duty in a proportion of at least one notary per 50,000 residents for the area of practice concerned. – – – –	

	remunerations and pensions shall be immune to attachment orders, protective measures shall not be imposed against medical apparatus and equipment, and an inventory shall not be taken of corporeal movable things and corporeal immovables owned by natural persons, except for maintenance obligations, for damages sustained as a result of a tort or delict, and for claims for labour remunerations. – – Exempted from preservation/ protective measures shall be bank accounts of individuals and medical establishments, salaries and pensions, medical apparatus and equipment. No inventory of movable property and real estate owned by individuals shall be made, except for liabilities for maintenance, for damage caused by illicit injury and for claims for salaries. – The fulfilment of an obligation to surrender a child or the subsequent return of a child in accordance with the Civil Procedure Code shall not be suspended. – – **Until the state of emergency is lifted in case of delay in payment of obligations of individuals,** debtors under credit agreements and other forms of financing (factoring, forfeiting and others) provided by banks and financial institutions under Art. 3 of the Law on Credit Institutions, including when receivables are acquired from other banks, financial institutions or third parties, and under leasing contracts, **no interest and penalty interest are charged, the obligation cannot be declared early due and the contract it cannot be terminated by default and no property can be seized.** – –		
– **CROA**	– On 18 April 2020, amendments to the Act on Enforcement	– **All judicial authorities continue to work**.	– Parties must send their inquiries,

TIA (HR)	over Monetary Assets entered into force : **enforcement on accounts of natural persons are suspended for 3 months** (with a possible extension of additional 3 months). – The calculation of **statutory interests** is also suspended for the same time period. – –	However only those proceedings that have been identified as urgent are carried out by appropriate security measures. **Hearings and other non-urgent cases have been postponed until further notice**. – In cases where judges can make decision as single judges or in which the hearing is not required, it is first of all necessary to make decisions from home and then arrange for their dispatch. Heads of the judicial authorities have the mandate to allow employees to work from home where possible. – **Communication with parties and all participants in proceedings** is done electronically in all cases where that is possible. In cases requiring meeting or hearing, all precautionary measures imposed by the health authorities should be taken. In each situation, the technical means of distance communication available to judges and courts, including within the court (email, videolink, etc.) should be used. – – It is also recommended that enforcement proceedings, especially **enforcement related to vacating and handing over of real estate are postponed**. – – Due to the outbreak of epidemic of COVID-19 in Croatia all **electronic public auction openings in enforcement and insolvency cases have been postponed**, except those in which the bidding has begun by March 24, 2020 at the latest, which are to be finished according to published Calls for participation in Electronic	requests and applications to the Ministry of Justice during regular office hours by email, telephone and postal service providers. – – International legal assistance is still provided but might be delayed. –

		Public Auction. – All requests for sale received after the 13th of March, 2020, which have not been processed, will be processed upon termination of special circumstances of epidemic of COVID-19. All published Calls for down Payment for Costs and Calls for Participation in the Electronic Public Auction will be put out of force and will be reissued under the same conditions of sale by the end of the special circumstances of outbreak of epidemic of COVID-19. – –	
– **CYPRUS (CY)**	– **Procedural time limits are suspended** until 30.4.2020. – –	– **All hearings and other procedures are suspended** until 30.4.2020. Exceptions: application for extremely urgent interim order, extradition proceedings and other proceedings dealing with restrictions to personal freedom (e.g. illegal detention, detention in a psychiatric institution.) – The Registrar **accepts the filing of an action only if it is supported by an interim order** application and provided that it is – urgent for it to be heard. The matter of urgency is to be examined and decided by the judge.	–
– **CZECHIA (CZ)**	– Several measures have been taken to alleviate the most urgent difficulties of citizens with regard to court proceedings, executions or insolvency proceedings. Extensive use of existing provisions of the codes of procedure on waiver of missed time limits in court proceedings, if the time limit was missed due to limitations resulting from the extraordinary measures (mandatory quarantines, restrictions on movement	– The Ministry of Justice recommended postponing **all court hearings**. If postponement not possible, it must be carried out strictly in line with the Government Regulation on State of Emergency. Public is excluded in court hearings and its movement within the court building restricted.	– Office for International Legal Protection of Children **(Brussels IIa & Maintenance Regulation) :** The Office's agenda will be carried out in the state of emergency mode; all personal contact with the Office shall be replaced by written (written or electronic) and

	and gathering of persons). –	– Information provided by courts via telephone/email. – – Delay in legal proceedings resulting of the application of this recommendations will not be considered by MoJ as delays in the exercise of its supervisory powers. – – **Notarial service still available** to the public, but work carried out in restricted mode.	telephone contact; Office hours shall be limited to Mondays and Wednesdays from 9 am to 12 pm. – – **Czech Ministry of Justice (Central authority for Service of Document & Taking of Evidence Regulations)** : Staff members (including all contact points) are currently mostly working from home. Electronic communication/distance communication are strongly recommended. All time limits should be kept. – The only complication is the increasing restrictions on postal services in some States, which we try, in agreement with the Ministry of Foreign Affairs, to overcome by use of diplomatic channel for **service of judicial documents**. Foreign Central authorities should advise the courts/competent authorities to send all requests on service of documents and taking of evidence directly to the competent courts and not via Central Authority (Ministry of Justice) as this will currently significantly shorten the time limits for successful execution of the request.
– **DENMARK (DK)**	– No measures directed at legal proceedings have been introduced so far.	– The Danish courts have initiated an emergency procedure in order handle certain critical areas. The critical areas, which continue to be dealt with locally by the courts, are particularly by law	– In general, the Danish Courts seek to handle as much work as possible from home workplaces during the

	–	time-bound cases or are particularly intrusive. – – It is up to the courts to make an assessment in each case whether a case fulfills the conditions to be 'critical', and it is also up to the courts to organize the work taking into account the circumstances. – – The decision to prioritize critical cases entails that a number of significant case types, including cases with physical court meetings, will not be prioritized. These cases are postponed until further notice. – – The Danish Courts seek to handle as much work as possible from home workplaces during the emergency period. The Danish Court Administration has secured the possibility of establishing home workplaces for all employees. In addition, court employees can (to a limited extent) be physically present in the courts in order to ensure that they themselves and others can solve tasks from home. – – As far as possible, the courts use telephone conferences to prepare cases in several areas of law, including civil cases and bailiff cases. The family courts handle cases as far as possible without physical attendance. There are also certain probate cases that can be processed by phone.	emergency period.

		– – The Crisis Committee (consisting of The Danish Court Administration and a group of Presidents of the courts) have also called for the courts to consider, as far as possible, whether the current situation gives rise to further use of video conferencing, if it is deemed sound from a rule of law perspective.	
– **ESTONIA (EE)**	– General information in English may be found at the Government's webpage – – **Procedural time limits** are extended by courts on a case-by-case basis. Courts will take in to account the additional burden, tasks or difficulties for parties to a proceeding due to the crisis. – – No legislation on the extension of deadlines, judges have the discretionary power to set longer deadlines in the future or to extend existing deadlines. – – However, in order to prevent the spread of the COVID-19 virus by avoiding physical human contacts in care facilities **the terms for which mentally ill persons have been placed** in a psychiatric hospital or a social welfare institution as well as hospitalisation of persons suffering from a communicable disease will be suspended (**MoJ proposal**): – - in the case of extended provisional protection, for the duration of the emergency situation; – - in the case of placement, for the duration of the emergency situation and up to two months after termination of the	– State of emergency from 12/03 to 01/05. – In general, virtual meeting rooms have been created to raise the capacity of the Ministry of Justice, courts, prosecution offices and prisons to hold video conferences. This solution can also be used to hold oral hearings with parties to proceedings. In addition, available video conference equipment has been relocated to support the increase in demand within courthouses and prisons. – – **No legislative change regarding court proceedings**. The Council for Administration of Courts has issued recommendations. The work of Estonian courts is reorganised (opening hours 9.00–13.00) and courthouses on working days until 14.00. – – Where possible, cases are handled in writing through the information system of courts and by means of a digital court file application. –	– The Estonian Central Authority has been teleworking as of 13 March. **Communications (messages and documents) are established by email** (in civil matters and most of the criminal matters). If needed, original documents will be sent via airmail after the emergency situation ends. –

	emergency situation. – This is without prejudice to the obligation to terminate any placement and any application of provisional legal protection after the prerequisites for placement have ceased to exist or it becomes evident that the prerequisites were not fulfilled. – – In the area of **law of obligations**, currently no fundamental changes. The Ministry of Justice has analysed different legal options already provided in Estonian law and could be used in this difficult time. The focus has been on providing explanations and on answering information requests. There have also been proposals for amending certain rules in the area of law of obligations, but that discussion is still ongoing. – –	– **Urgent hearings and cases are held by electronic means of communication**, and if not possible, the Court decide on a case-by-case basis. The following cases could be considered as urgent : placing a person in a closed institution; separating a child from his or her family; establishing guardianship for an adult. In non-urgent case, electronic means of communication can be used by the court (or any other means necessary), but generally the court would postpone the hearing and/or the procedural act. – – According to the Code of Civil Procedure the court in exceptional and urgent cases related to children can give preliminary / protective orders without hearing them – many judges have used this possibility. – – **Service of procedural documents** are preferably executed by e-File and email. – – The **Chamber of notaries** authorized notaries to take all measures, such as the remote authentication service e-Notar which allows for the performance of notarial acts using a video bridge: while up until April 6 only certain types of acts could be done remotely (power of attorneys, sells of shares of private limited companies and a few more) then as of April 6 all kinds of acts can be remotely authenticated (the only exceptions are concluding marriages and divorces). So, even real estate can be sold now via online authentication. And this does not	

		apply only during the crisis, but also after the quarantine is over. The clients can do it from wherever they are (if the notary agrees with it - the remote authentication is still voluntary for the notaries, i.e. they may refuse to do it). – – The **Estonian Bar Association** has also encouraged its members to work remotely and to use all technical means of communication to continue providing legal counsel. It has also stressed the need to ensure attorney-client confidentiality. The Bar Association has further emphasized that limitations on rights imposed due to the emergency situation must be justified and should be challenged if this is called for in a particular case. Attorneys also have a duty to adapt quickly to changes in the working environment, show flexibility and innovation and to ensure that the possibilities for requesting extensions for time limits are not abused. – – The Chamber of **Bailiffs and Trustees in Bankruptcy** has also announced that bailiffs and trustees in bankruptcy have reorganized their work in order to work remotely. – –	
– **FINLAND**	–	– **Courts remain independent**. However, the National Court Administration (NCA) gives recommendations to courts on their	– International legal assistance is still provided, but Courts prioritise cases according to the resources

(FI)		management. – – NCA has provided guidelines recommending courts to continue handling cases, with precautionary measures, for instance **physical presence should be limited to urgent case**. The NCA advises courts to hold hearings by videoconference, or by other available and suitable technological means. – – Many court sessions scheduled in the coming weeks are cancelled. – – Contacts to the courts is encouraged to be made primarily by phone and email. –	available. – – Most of the caseworkers in the Finnish Central Authority (Regulations 2201/2003, 4/2009, 1393/2007 and 1206/2001) are currently teleworking. There is limited presence in the office for urgent cases. Communication by email is recommended when possible: – central.authority@om.fi – and – maintenance.ca@om.fi (maintenance matters only).
– **FRANCE (FR)**	– **Time limits (procedural), including limitation periods**, expiring between 12/03 and the end of the state of emergency period +1 month are extended. At the end of the aforementioned period, all time limits resume normally but within a limit of 2 months. The extended period does not however restrain parties to seek remedy or to exercise their rights of action in any possible manner during the state of emergency period, to the extent possible. – – In principal, performance duties and time limits provided for in contracts are not affected, national law being applicable to specific circumstances (force majeure etc.) will apply. However, **contractual sanctions of non-performance from**	– **Courts deal with urgent cases** (hearing regarding civil freedom and custody in civil matter, enforcement, child protection, family court urgent case, including protection orders, and emergency interim proceedings). – – Non-urgent hearings are cancelled or postponed, sometimes *sine die*. In this case courts inform parties by all means, including by electronic communications. –	– Regarding judicial cooperation**,** requests continue to be dealt with but competent authorities prioritize urgent cases. Central authorities have to be seized by e-mail. – – Family cooperation (Regulation 2201/2003): In the field of international child abduction and protection of children, the French central authority caseworker telework and continue to deal with ongoing cases and new requests

	debtor (penalty clause, termination clause etc.) are deemed ineffective within the state of emergency period, and will only enter into force after a period of one month following the end of the state of emergency period, if the obligation has not been performed by that time. – – Contract penalties, renewals and notice periods provided by law are also suspended.	– In case a Court cannot work, another court can be designated to deal with urgent cases. **All hearings and sessions can be closed to public or canceled**. Parties can seize the court only in writing. **Any type of communication (including phone, emails or letters) can be used for the judge to inform/hear the parties** during the course of the proceedings. Cases can be dealt by a single judge. – – **Parties are informed of the court decisions** by all means, in particular by email or by phone (decisions will not be considered as served to the recipient). – – Concerning protective measures for children and adults, those that expire during the state of emergency period are automatically extended, unless the judge decides otherwise. – – Enquiry and mediation measures are suspended and are extended by an additional two months after the end of the state of emergency period + one more month. –	received by e-mail. For urgent requests, caseworkers will be physically present in the office. All other central authorities have been informed about this new temporary organization. – Concerning child abduction, some courts hold hearings for cases reported as urgent, while other courts prefer postponing. Enforcement of decisions is postponed to the end of the health crisis, except for specific cases. – – <u>Taking of evidence (Regulation 1206/2001)</u>: French central authority deals with ongoing cases and new requests through electronic means and replies, where needed by email. However courts will only execute taking of evidence requests after the end of the emergency state. – – <u>Service of documents (Regulation 1393/2007)</u>: Under the current circumstances, service of documents is significantly slowed down. Electronic service can be performed on the condition that the recipient has given prior consent. Where electronic service is not possible, the service of document might be postponed if not urgent.

			– – The French Central Authority under these three regulations (2201/2003, 1206/2001, 1393/2007) communicates by email: entraide-civile-internationale@justice.gouv.fr – – The French Central Authority under regulation (CE) 4/2009 relating to maintenance obligations communicates by email : obligation.alimentaire@diplomatie.gouv.fr –
– **GERMANY (DE)**	– So far, **no measures on civil time limits**, only provisions regarding the longer interruption of criminal proceedings was adopted. – – (German civil procedure law contains provisions regarding the extension of time limits, stay of proceedings and the restitutio in integrum which help in litigation during the Covid 19 crisis – – For further information on legislative actions the webpage of the Federal Ministry of Justice and Consumer Protection can be consulted https://www.bmjv.de/DE/Themen/FokusThemen/Corona/Corona_node.html	– Statutory provisions for civil proceedings already provide the courts with an extensive scope to react flexibly to the current exceptional situation. It is for the respective courts and judges to decide what measures are taken in each individual case. Judicial independence is preserved. – –	– Family cooperation (Regulation 2201/2003): – The Federal Office of Justice as German Central Authority under Regulation 2201/2003 (Brussels IIa) has reduced physical presence of staff for protective health reasons, but is otherwise fully operable on reduced capacity. – – Taking of evidence (Regulation 1206/2001) and Service of documents (Regulation 1393/2007): – It should be noted that especially the execution of request for the

	–		taking of evidence remains at the discretion of the judge. In general it can be said that the working capacities of the courts are severely limited do to absence of judicial personnel. –
– **GREECE (EL)**	–	– By Ministerial Decision, **all procedures carried out before the Greek courts and their services are suspended until 27 Apri**l, with the exception of urgent and significant actions and cases. The operation of the judicial services is limited only to the necessary actions to carry out the necessary work and urgent cases. Meetings and any other action related to the operation of the judiciary is carried out remotely, if possible, using technological means.	– Precautionary and containment measures have been adopted by the Greek Government in order to address the danger of the spread of the coronavirus, its socio-economic impact and to ensure the good functioning of the market and the public sector. – The Ministry of Justice, in its capacity as Central Authority under Civil Law Conventions/Treaties and in compliance with EU Regulations on Judicial Cooperation in Civil and Commercial Matters, has established a mixed system of remote working and physical attendance at the workplace in rotation. – Until now, **the Central Authority is almost fully operational**, although occasional delays in processing some requests are inevitable due to the persisting health crisis. –
– **HUNG**	– **As a general rule time limits continue to run** during the	– **Access to justice and the continuity of the**	– With regard to judicial cooperation

ARY (HU)	period of the state of danger. The only **exception on this is where the procedural act in question cannot be carried out in writing or by electronic means** (i.e. procedural acts which require personal contribution and cannot otherwise be carried out) which brings the proceedings to a halt. In this case the period until the obstacle has been removed or the period until the end of the state of danger shall not be counted in a time limit. –	**pending proceedings is ensured, there is no recess for courts of justice in Hungary.** – – **In the courts procedural acts requiring physical contact are not performed.** Special procedural rules facilitate written communication, remote hearing and hearings using electronic means of personal identification. –	in civil matters, **there are restrictions on enforcement procedures during the state of danger.** With regard to the enforcement measures, for example no on-site proceeding and no auction of real estate may be conducted. Enforcement measures may not be ordered in respect of acts of transfer of children in cases of illegal child abduction and on the basis of Brussels IIa. – – The Central Authorities are operational. – – Execution of requests for legal assistance may be delayed in comparison to normal circumstances.
– **IRELAND (IE)**	– **No specific legislation on time limits**. Issue of proceedings where the statutory time limit to issue will expire before the end of the "restriction" period are considered essential business (see second column).	– **Court offices will remain open, and are accepting urgent papers**. Drop boxes are being provided for documents to be left in, reducing the need to interact with staff at the public counter. Court offices can continue to be contacted by email or by post. – – **Civil matters can be adjourned by consent via e-mail**. Only urgent cases will go ahead in the coming weeks. –	– Staff of the Ministry of Justice and Equality and the Central Authorities are mostly working from home. Communication by email only is preferred.

		– Applications relating to **urgent Family Law** matters are allowed, including protection orders, interim barring orders, emergency barring orders, extension of orders. – – Applications can also be filed for essential business such as urgent wardship matters or urgent judicial review applications. – – Videolink appearances are being facilitated from prisons for all people currently in custody following order of President of the High Court. – – Piloting underway to facilitate courts hearings remotely and by video with the consent of the parties. – – –	
– **ITALY (IT)**	– **Time limits for exercising judicial acts within civil proceedings** were initially suspended for the period 9/03 to 22/03 (then postponed to 15/04). – Decree Law No 23 of 8 April 2020 extended the postponement of hearings and the suspension of procedural deadlines until 11 May 2020. –	– Most **civil hearings** scheduled between the day following the entry into force of the decree (9 March 2020) and 22/03 (then 15/04, and finally 11 May) will not take place due to a mandatory postponement. – – All hearings scheduled during the crisis period	– A significant part of case Ministry of Justice staff members are working from home. – – The judicial cooperation in civil matters will be affected for an unpredictable period of time. Electronic communication of

	– – Where a time limit would normally begin during the period of suspension, the starting point is delayed until the end of the latter period. – – Exceptions: adoption of children, unaccompanied minors, foster care, compulsory health treatment, VTP, provisional enforceability & all matters entailing a risk of serious prejudice to the parties.	will be postponed (except urgent case). – – **Local courts can adopt their own organizational measures** (restricted access to buildings, office closed). – – – In particular, for non-suspended activities (those that have been declared urgent on a case by case basis or those considered by the law as top priority), civil hearings that require the presence of lawyers or parties only, subject to the respect of the adversarial process and the effective participation of the parties, may be held through remote connections. For this purpose, a decision by the Heads of the judicial offices is necessary, after hearing the advice of the Bar Association. – For the period between 11 May and 30 June 2020, the Heads of the judicial offices are than expected to take a series of organisational measures in order to avoid close gatherings and contacts between people within each office space. – These measures may include: – - the carrying out of civil hearings by means of remote connections that require the presence only of lawyers or the parties, subject to the respect of the adversarial process and the effective participation of the parties; – - the postponement of hearings after 30 June	requests of judicial cooperation (including request for information on foreign law under the London 1968 Convention). The documents sent in hard copy may be processed with a significant delay. – – All communications to be sent to ufficio2.dgcivile.dag@giustizia.it

		2020; – - the holding of civil hearings that require the participation only of the defendants through written procedure.	
– **LATVIA (LV)**	– **Written civil procedure if it does not violate rights of parties and court finds it possible.** Instead of postponing court hearings Latvia has switched to written court procedure unless it is absolutely necessary to hold a proper court hearing or there is high urgency to examine the case or there is high risk of grave infringement of rights. – – **Limitation periods** (e.g. prescription) are suspended between 12/03 and 01/07. – – **Enforcement proceedings**: the maximum term of voluntary fulfillment of obligations under the judgment concerning the returning of goods, recovery of debt, evictions from premises is prolonged from 10 days to 60 days except the cases when judgment should be enforced immediately. – – **Commercial pledge**. Time limits for taking the decision on delivering the commercial pledge is prolonged form 30 days to 60 days. – –	– The Republic of Latvia has issued *Guidelines for the organization of the work of the district (city) and regional courts during the emergency*. Those guidelines recommend that in urgent cases, hearings in the event of an emergency shall, where possible, be organized by means of a video conference – – If the hearing is organized in person, the necessary distance shall be provided between the persons at the hearing and other precautions shall be taken (rooms to be ventilated, etc.). – – – –	– In the event of emergency all the requests and attached documents are accepted sent electronically (via email) maintaining a moment of credibility. MLA requests are scanned and transformed to PDF form and forwarded to foreign countries from the official e-mail of the Ministry of Justice. The same is accepted from other countries. –
– **LITHUANI**	– Lithuania has not adopted official legal acts suspending or extending procedural deadlines in civil cases. The renewal or extension of procedural time limits is decided on a case-by-	– Judicial Council has issued recommendations to the Chairpersons of the Courts regarding the organization of work in their respective courts	– Most public authorities' employees work remotely. International legal assistance is still provided, but

A (LT)	case basis by the court hearing the case. – – The Judicial Council circulated recommendations to courts, urging Lithuanian courts to "*flexibly assess requests from individuals to renew a missed deadline for submitting a procedural document or to perform a procedural action"* during and after the quarantine period if said actions were impeded by the emergency state declared in the Republic of Lithuania and subsequently altered organization of work in state institutions. The person requesting to renew missed deadlines shall provide the court with the data substantiating such circumstances together with the request	during quarantine period, leaving the specification of the recommendations to the discretion of each Chairperson. – – **Civil proceedings, where possible by written procedure**, take place in the normal way. In civil cases where an oral hearing is mandatory and the parties have expressed a position that they wish to take part in the hearing, the scheduled oral hearings shall be adjourned without a date, informing the participants in the proceedings, agreeing on possible preliminary hearing dates with the parties. – – **Oral proceedings in courts are limited** to civil cases that must be dealt with immediately, such as civil cases concerning the court's permission to extend involuntary hospitalization and/or involuntary treatment, the removal of a child from an unsafe environment, cases provided for by the CPC and giving priority to the organization of oral meetings remotely if the court has the means to do so; – – In urgent cases, safety recommendations are followed during oral proceedings (social distancing, courtroom disinfection) – – **Judicial procedural decisions are sent by electronic means of communication**, giving priority to the judicial information system. In exceptional cases, documents are sent by e-mail and regular mail to persons who do not have access to the judicial information system. Procedural documents and other correspondence are sent to non-participants in the proceedings (e.g. bailiffs, notaries) via the state E-delivery system or by e-mail, and only in exceptional cases by post. Communication/cooperation takes place by electronic means of communication, by telephone.	some processes can take longer. –

		– – Upon the **suspension of the direct service** of persons in the courts, procedural documents are received electronically or sent by post. – – **Bailiffs**: After transitioning to working remotely as of 16-03, judicial officers are continuing to provide most of their regular services to creditors and debtors during the quarantine period. While direct contact is limited, judicial officers and their employees will communicate with participants of proceedings by phone, e-mail, via the website www.antstoliai.lt or by regular mail. The current quarantine is also not an obstacle for the submission of new enforcement orders: written enforcement orders may be submitted to judicial officers by mail, and electronic enforcement orders – by e-mail or via the Internet by logging into the Judicial Officers' Information System at http://www.antstoliai.lt/. During the quarantine period, judicial officers shall also refrain from announcing new auctions. – – Regarding the organization of the **notaries' work**, draft amendments to the Law on the Notarial Profession and the Civil Code are being prepared. They provide that the majority of notarial services will be moved online and provided remotely. The draft amendments propose granting notaries the right to perform remote notarial acts and execute them as electronic notarial documents. The information will be transmitted to operating state registers and information systems. Visits to notary offices would be reserved solely for the direct identification of a person or expressed will. It is also planned to refuse the participation of a notary in approving some simpler mandates and enable electronic registration of mandates for which a notarial form is not required. The remote notarial services will exclude certification of	

		wills and their acceptance into custody, as well as authentication of the fact that a person is alive. Also Notaries should not provide remote services if they believe that they would be able to ensure better protection of a client's legitimate interests only when meeting with him or her in person or in case they need to document a person's will, explain the consequences of notarial acts or ascertain a person's identity. – – Regarding the provision of **state-guaranteed legal aid services**, recommendations have been published on the State-guaranteed legal aid service webpage. It is strongly advised to avoid personal contact and organize the provision of legal aid using remote working tools, i.e. send all request by e-mail, provide consultations by phone, online or use other means of telecommunication. In urgent cases when the participation of an advocate is necessary in certain pre-trial investigation actions or court proceedings, act with due care, follow national guidelines for preventing the spread of Covid-19 (safe distance, hygiene, etc.), refuse to attend proceedings if adequate protective measures have not been taken (e.g. the room is not ventilated, there is no disinfectant, suspicions regarding the health of others in the room arise). – – The Lithuanian Bar has also published similar recommendations to all **practising advocates** in Lithuania. – – –	

– **LUXEMBOURG (LU)**	– The **state of crisis**, **based on a** grand-ducal regulation **of March 18,2020** introducing a series of measures in the context of the fight against Covid-19, has been **extended for three months by a** law **on March 24,2020.** – – The parliament cannot be dissolved during the state of crisis, preserves all its legislative powers and can at any moment, during the period of three months, adopt a law to end the state of crisis. The decrees adopted during this period legally cease to exist the day the state of crisis ends. – – The government adopted at **the council of government on March 25, 2020 a** grand-ducal regulation **drawn up by the** Ministry of Justice **suspending time limits in jurisdictional matters and adapting certain other procedural modalities**. – – A general provision suspends all the time limits prescribed in the proceedings before the judicial, administrative, military and constitutional courts. The text provides for some exceptions concerning the deprivation of liberty for which swift decisions must be taken. – – **Time limits in civil and commercial matters** – – Luxembourg suspended deadlines in legal proceedings and extended certain deadlines in specific procedures. –	– The Judicial Administration has put in place the necessary measures at this stage of the pandemic to, on the one hand, to guarantee a reduced functional service and on the other hand to safeguard as much as possible the health of all employees. – These **provisions are taken in strict compliance with the Constitution and Luxembourg's international commitments especially those relating to fundamental rights**. They are applied according to the **criteria of necessity and proportionality**. – – As part of the fight against coronavirus, many member states have imposed restrictions on movement. Luxembourg has done so too, whilst providing for a number of exceptions to these restrictions (for instance for workers in the healthcare sector and other essential sectors in the current crisis). – – One of these exceptions provides that **separated parents** are still allowed to leave their home for the exercise of their parental responsibility especially for the exercise of the right of access vis-à-vis their child. – – The courts in Luxembourg are functioning at a reduced pace but maintaining a sufficient level of activity to process the essential and urgent matters. During the period of the state of crisis, requests and requests addressed to the chambers of the council of the district courts and of the	– All instruments in the field of judicial cooperation in civil and criminal matters are executed and emitted by the central authority, the Prosecutor General. The working rhythm has been somewhat reduced to allow a maximum of people to work from home. –

	– Luxembourg also set some exceptions particularly for urgent matters that cannot suffer suspensions of deadlines. – – The time limits for appeal or opposition are suspended. – • In **tenancy matters**, the enforcement of eviction sentences has been suspended. The provision provides for the suspension of evictions in the area of residential leases. The deadlines for the execution of evictions in terms of commercial lease were also suspended, as were those for foreclosures and forced sale. – • In **matters of civil status**, the period of 5 days within which birth declarations must be made is suspended. For marriage certificates, the possibility of dispensing with the publication of banns eliminates any time constraint. – • A specific provision provides for the suspension of deadlines in **matters of succession**, outside any judicial procedure. It is important to preserve the rights of citizens, insofar as the liquidation of successions is a very formalistic procedure with many delays. – • It is planned to extend for three months the **deadlines for filing and publication of annual accounts, consolidated accounts and related reports of companies**. This only applies to financial years closed on the date of end of the state of crisis and for which the deadlines for filing and publication had not expired by March 18, 2020. – – –	Court of Appeal are judged based on a written procedure. – – The notaries continue their activity. Measures were taken to grant derogations in certain legal procedures in order to reduce the need of physical contact. – – The lawyers are also continuing their activity and are encouraged -during the crisis -to use electronic means of communication with the courts. – – As to avoid physical contact, the bailiffs serve documents not on the addressee in person but at the address of the addressees only in their post boxes. – –	
– **MALTA**	– As from 16-03 all legal and judicial times, including prescription in civil matters and any peremptory time limits	– With effect from the 16-03 the Courts of Justice and registries were closed - including the	– Cross-border judicial cooperation continued on a business as usual

(MT)	have been suspended until seven days after the Order for closure of the Courts is lifted. – – Apart from this, all ex lege time limits imposed upon Notaries Public have also been suspended during the time when the Courts are closed. The time limits for concluding a sale stipulated in a registered promise of sale agreement were also suspended. The suspension of time limits concerning Notaries shall last until twenty days after the Order for the closure of the courts is lifted. –	superior, inferior and appellate courts; any tribunal established by law operating from the building of the Courts of Justice; and any boards, commissions, committees or other entities, also operating from the same building of the Courts, and before which any proceedings are heard. – – Despite this closure, the Courts have nevertheless been given the power to order the hearing of urgent cases or of cases where the Court deems that the public interest should prevail in having the case heard. This was of course, however subjected to any specific arrangements for the guarding against the spread of the virus as the court may determine.	basis - of course as far as this is possible under the present circumstances particularly in the context of reduced activity in the Courts and reduced international travel. –
– **NETHERLANDS (NL)**	–	– Following the measures announced by the Dutch government on March 15, 2020, up to and including April 6, to combat the spread of COVID-19, the judiciary has accordingly taken the following measures: – 1. The courthouses have been closed since March 17, 2020. This means that physical sessions will not take place from that date until April 6, unless there is an urgent need for a hearing. 2. Urgent matters will continue, but as much as possible with the use of audio-visual means. Urgent matters include far-reaching decisions such as placing children out of the house, supervision orders and the detention of aliens for the purpose of deportation. 3. Justice is a vital process in the democratic constitutional state and must therefore continue in this crisis. The Judiciary does this by handling as many cases as possible in writing or with the aid of audio-visual means. 4. On March 31, 2020, the Dutch Government	– The central authorities in the Netherlands are mostly working in home office. Communication by email is recommended. –

		decided to continue the measures previously taken until April 28, 2020. In line with this, the Judiciary has decided to continue the measures previously taken, but also to increase the number and type of cases that are handled using audio-visual resources. In this way, it is possible to prevent the work stocks becoming too big. 5. Extending the handling of cases is possible, because many extra possibilities have been realized in recent weeks to make the use of audio-visual means and the digital submission of procedural documents. 6. The Judiciary has provided for a temporary adjustment of the procedural regulations for all jurisdictions and has created a page on its website with all current overview and instruction on how to work during the COVID-19 crises. www.rechtspraak.nl 7. The Dutch government is working on an emergency law that will, among other things, temporarily enhance the possibility of making use of audio-visual means in the Judiciary and facilitate the progress of cases. –	
– **POLAND (PL)**	– The Polish special legislation provides, among other things, for the suspension of a not yet started and postponement of commenced: – • **limitation periods of enforcement of judgements,** – • **time limits** in proceedings and for court's actions in legal proceedings, including in enforcement proceedings. – –	– Specific measures have been adopted to mitigate the negative consequences of the COVID-19 pandemic including. – – The **transfer of cases** among Polish courts (by judicial authority and for a defined period in urgent cases as defined by the special legislation concerning mitigating impact of the COVID-19 pandemic on the Polish justice system) has been made possible. – – The category of urgent cases is defined as following:	– Ministry of Justice employees working in the central authority are teleworking. – – All communication to the Polish Ministry of Justice as the Central Authority (including service of documents and taking of evidence), or Polish EJN contact point must be sent through electronic means with necessary attachments in the form of scanned copies.

		– 1. Proceedings concerning minors including: – - proceedings for the removal of a minor from parental authority or custody; – - proceedings concerning placement of a foreigner minor in a care and educational institution; – - proceedings for the establishment of a guardian to represent the interests of a minor in judicial proceedings; – - proceedings regarding placement or extension of a juvenile's stay in a juvenile shelter; – - enforcement proceedings involving minors. – 2. Proceedings concerning mentally ill and incapacitated persons – – The president of each competent Polish court may order that any case be considered urgent if the failure to adjudicate on such a case: - could cause danger to human or animal life or health; – - could cause serious harm to the public interest; – - could cause imminent and irreparable material damage; – - and when urgent adjudication on such case is required by the interests of justice. – – **Detachment of judges** to other courts is	

		simplified. Decisions in that regard are taken by judicial authorities, in accordance with the principle of independence of judges and for a period of time defined in advance. Such procedures will enable to provide support courts experiencing a heavier caseload. – – **Suspension and postponement of court's proceedings** is also possible in certain cases. – –	
– **PORTUGAL (PT)**	– The state of emergency was declared. – The national legislation concerning the Judiciary is: Decree 14-A/2020, Decree 17-A/2020 and Law 1-A/2020 amended by Law 4-A/2020. – – **In judicial processes deadlines are suspended within a period to be ended by Decree Law.** – – **Urgent judicial processes shall run without suspension of deadlines or acts.** – – **Limitation periods and prescription periods are suspended.** – – Eviction of tenants and enforcement of mortgages that fall on	– Any procedural acts are permitted through **tele/video conference**. – – The use of email instead of telephone is recommended to seek information from Courts. – – Telework is mandatory whenever the nature of the work allows it. – – Judges keep doing their normal work from home where they have access to the case management system. They remain available to go to Court whenever it is necessary. – – **Urgent acts and procedures in which**	– EJN Civil contact point are currently working from home, processing all the requests for cooperation and information as swiftly as possible. However the suspension of time limits and periods set forth Portuguese special law applies. – – EJN Civil contact points will go to their workplace whenever it is needed and in urgent cases. – – Preference should be given to communication by email to correio@redecivil.mj.pt in cases regarding judicial cooperation.

	private housing are suspended. – – The deadlines set forth for debtors to file applications to open insolvency proceedings are suspended. – – Acts in enforcement procedures, including enforcement measures, are suspended unless this causes irreparable damage or endangers the creditor´s livelihood. – – **Final remark:** – Although this information was carefully collected, it does not exempt from consulting the applicable legal texts and their further amendments. In light of Article 5(2)(c) of Decision 2001/470/EC, this information is not binding for the Portuguese High Judicial Council, for national Courts or for the Contact Point**.**	**fundamental rights are at stake are carried out in person** (urgent protection of children, procedural acts and trial of imprisoned defendants). – – **Trials and procedural acts that are not urgent have been adjourned except when Judges deem it necessary to hold hearings, namely to avoid irreparable harm or in cases where all the parties agree on using tele/video conference.** – – **Judgements can be pronounced if all the parties agree that further enquiries by the Court are unnecessary.** – – **Acts and procedures carried out in person shall take place in adequate rooms that were made available in each district Court, with protection and disinfection material. The number of attendants shall be adjusted by the Judge to the limits recommended by the health authorities.** – – Going to Court is not advised unless for those who are summoned to appear (presentation of a medical certificate of quarantine = force majeure). – In case of Court closure, which has happened in a few exceptional cases, periods and time limits	–

		are suspended. – – The Portuguese High Judicial Council stresses that Courts must remain the ultimate guarantor of fundamental rights. – – Practical information on the functioning of national courts during the emergency period is available in the website of the High Judicial Council – https://www.csm.org.pt/ –	
– **ROMANIA (RO)**	– According to the State of Emergency Decree No. 195/2020 and Decree for Prolongation of the State of Emergency No. 250/2020, **limitation and prescription time limits do not commence or they are suspended if they are running**, during the state of emergency. – **Interruption of time limits for lodging appeals**. – –	– State of emergency declared on 16/03, with specific measures regarding the organization of the justice system: – – **Judicial activity in civil matters is suspended**, except for urgent cases, which are determined by decision No. 417/24.3.2020 of the Council of Magistracy; – Decisions continue to be drafted, as well as the registrations of documents from the parties. – – **Use of videoconference is encouraged – including through letter rogatory**, as well as hearings closed to the public, where the situation permits. – – **All the documents of the parties are sent to the courts by electronic means**, exception being allowed where these persons have no such means.	– Part of the personnel of the Ministry of Justice is entitled to work from home. Judicial cooperation in civil matters will be affected for an unpredictable period of time. In order to minimise the delays, **electronic communication of requests of judicial cooperation** to the Central Authority is strongly encouraged. Documents sent in hard copy will be processed with significant delays. – – The Ministry of Justice acts on the basis of Article 3 c) of the **Service of Documents and Taking of Evidence Regulations** as transmitting/receiving authority in exceptional cases. All requests (service of documents, taking of

		– – Transfers of files from a court to another is made by electronic means; also the notification of judicial documents to the parties. – – Where the panel of judges cannot be completed, delegation of judges from another division of the court is allowed. – –	evidence, maintenance cases, child abduction cases etc.) are currently dealt by the Ministry of Justice as usually, with no prioritisation. – – The following e-mail addresses can be used: dreptinternational@just.ro, ddit@just.ro.
– **SLOVAKIA (SK)**	**Legal deadlines, enforcement proceedings, statutory interest rates:** On 27 March the **Act No 62/2020 Coll.** on certain extraordinary measures in connection with COVID-19 outbreak and on measures in the justice area (hereinafter the **"COVID Act")** (https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/62/) entered into force which introduced restrictive and other measures that required statutory legal basis. – – § 1 of the COVID Act temporarily (until 30 April 2020) suspended the running of the limitation and prescription periods in private law or introduced a waiver of such deadlines in specified cases – – Pursuant to §2 of the COVID Act the same applies to procedural deadlines on the part of the parties to the proceedings. If the extension of the deadline in not possible due to threat to life, health, security, freedom and possible significant damage, the court has a discretion not to apply this provision and continue within the set deadline.	– Article 3 of the COVID Act limited the necessity to conduct hearings in courts and the public participation if such hearings do take place during the emergency situation. In case the court hearing is conducted with the exclusion of public, there is a legal obligation to make an audio recording of the hearing which should be made accessible as soon as possible after the hearing. – – the law was complemented by guidelines for courts issued by the Ministry of Justice that instructed the courts to : - restrict the movement of the public within the court - introduce compliance with hygienic preventive measures - provide information via telephone/email - limit participation of public in court hearings - limit the conduct of hearings only to : o custodial matters, conditional release	– In the area of cross-border judicial cooperation in civil matters COVID Act did not introduce any specific restrictions, however general restrictions applies. – – The central authorities are mostly working from home. – – At the end of April we encountered first problems with postal delivery - the court letters addressed even to EU member states were returned undelivered. – In the absence of a secure electronic delivery the use of e-mails can is legally acceptable only in certain cases. Moreover, when using e-mails, there is a risk of breach of security and a risk of a leak of sensitive personal data. – There is also a problem with the

	– – No changes to statutory interest rates were introduced (yet). – – Restrictive provisions in the COVID Act are limited in time (30 April 2020). Possible extension will be subject to future consideration (consent of the Government and the Parliament will be required to amend the law). –	o proceedings related to minors and o matters where failure to act would cause irreparable damage Courts reduced working time and allowed work from home –	proof of delivery / service of documents. – Slovakia would welcome a uniform EU approach that would meet the criteria required for cross-border judicial cooperation. – – General requests/ questions to central authority may be sent via email: - the central authority for the Regulation (EC) No 1393/2007 and the Council Regulation (EC) No 1206/2001 (**Ministry of Justice**): civil.inter.coop@justice.sk – - the central Authority for **the** Council Regulation (EC) No 2201/2003 and the **Council Regulation (EC) No 4/2009** (The Centre for International Legal Protection of Children and Youth): info@cipc.gov.sk –
– **SLOVENIA (SI)**	– The Decree of March 13 of the President of the Supreme Court on the basis of a proposal by the Minister of Justice, determined that except in the urgent matters, **procedural deadlines** are suspended. – – A Law on temporary measures in judicial, administrative and other public matters in order to damage control of the spreading of the SARS-CoV-2 (COVID-19) was adopted on 20 march 2020 and came into force on 29 March 2020. All the measures determined in this law and any other measures taken	– The 13 March Decree invoked special measures stipulated in the Courts' Act that can be used in cases of natural disasters and large epidemics. – **Main hearings will only be held and decisions will only be taken in urgent matters** (what is urgent matter is established in the Courts act. The law authorised the President of the Supreme Court with the power to further limit the list of urgent procedures. – Second Decree of the President of the Supreme Court was issued on 31 March 2020	– The Central authority for Regulation (EC) No 1393/2007 and the Council Regulation (EC) No 1206/2001 (**Ministry of Justice**) established a system of teleworking. Therefore, communication should be transmitted as much as possible via e-mail instead of paper mail, to the following e-mail address: mailto:mgp.mp@gov.si**.** Due to these special circumstances,

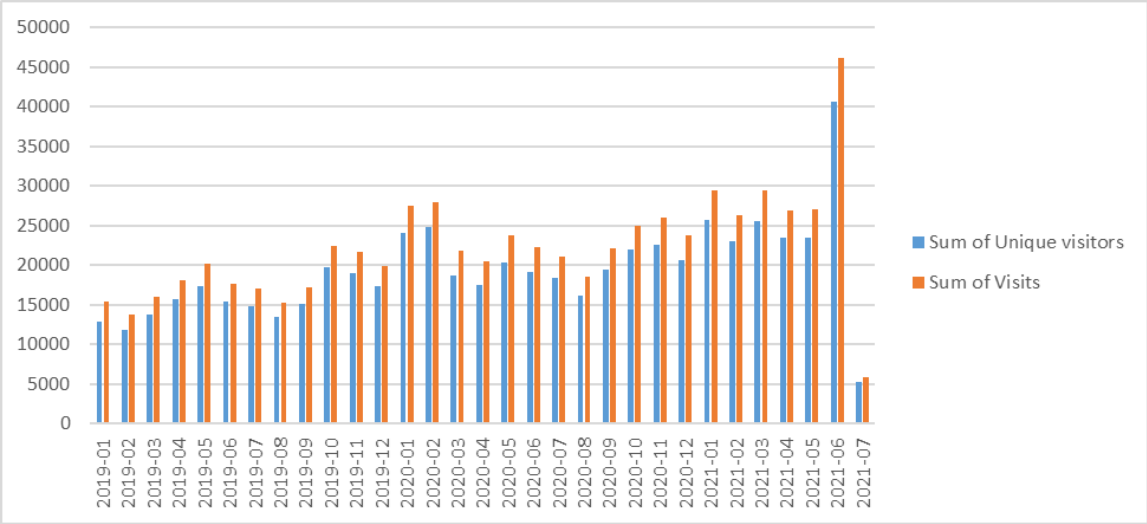
	on the basis of this law are valid until it is established by the decision of the Government, that the reasons for these measures have ceased, but at the longest **until 1 July 2020.** – – **The Law introduced provisions for all time limits (material and procedural).** Time limits to bring up a claim in judicial proceedings), which are determined by law, are suspended as from 29 March 2020. Deadlines in judicial proceedings (procedural deadlines) are also suspended as from 29 March 2020, except in judicial matters that are established as urgent. – – In addition, the deadline to lodge the constitutional complaint is suspended. – – Time limits will continue to run after the measures determined by the Law will expire. –	further limiting the list of urgent matters. – **Urgent civil matters are currently the following:** - security matters (i.e. securing evidence, withholding the payment, execution of forbidding of certain actions) except the actions where personal contact of the enforcement officers, parties and other persons is needed under the condition that these actions are not urgent in order to prevent danger for life and health of citizens or their property of higher value, - civil enforcement regarding child custody and alimony, - non-contentious maters regarding detention in psychiatric establishments**,** - Claims regarding publishing of correct information. – All main hearings, sittings of the court and hearings of witnesses/parties in urgent matters are to be held via videoconference, if the technical and spatial conditions are fulfilled. – All scheduled hearings in non-urgent matters are cancelled. – – **Communication with parties.** Except in urgent matters, during the time when special measures are in place, parties and their representatives and other persons: – 1. Are not allowed to enter court buildings, – 2. All applications, in the proceedings where this is possible, are to be filed by a postal way or via portal e-Justice, – 3. For the communication with courts, published email addresses or phone numbers are to be used during official hours. – During the time when special measures are in force, parties and their representatives and other persons who in urgent matters request information regarding their proceedings, have to give notice using the published e-mail addresses and phone numbers during the official hours.	transmitting of requests in paper mail to competent courts may be delayed. – – **The Ministry of Labour, Family, Social Affairs and Equal Opportunities,** the **Central Authority under the** Council Regulation (EC) No 2201/2003 has established a system of remote working, reducing physical presence at workplaces to a minimum. In view of the current situation, and as long as this situation persists, the Central Authority cannot guarantee the normal processing of all incoming requests. Processing of incoming applications can only be guaranteed when received by e-mail to gp.mddsz@gov.si. They strongly encourage keeping all communications by electronic means. Outgoing requests will be sent exclusively by electronic means. – – **Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia, the Central Authority** under the **Council Regulation (EC) No 4/2009** is currently operating remotely from

		– In all cases, that are not included in the examples from the first and the second paragraph of this point, courts determine one access to the court building, where all preventive measures against the COVID-19 infection are taken. – – **Judicial documents are not served as from 16 March 2020**. – – – **Enforcement of the decisions** is suspended, from the day of the entering into force of the COVID-19 law, except in cases of enforcement of maintenance claims, and in cases for damages for lost maintenance because of the death of the providing person. The suspension comes into effect by operation of law, therefore courts and tax authorities will not issue any decisions during this time. – – –	home. Therefore, the Central Authority would appreciate if the communications were sent via e-mail to the following e-mail address: jpsklad@jps-rs.si. The Central Authority will also communicate and send requests via email. – –
– **SPAIN (ES)**	– **All terms are suspended, and time limits provided for in the procedural laws for all jurisdictional orders are suspended and discontinued**. The calculation of the time limits will be resumed at the moment that the extensions of Royal Decree 463/2020 become invalid. – – Suspension of procedural deadline don't apply to a number of specific proceedings, including the protection of children. – – The judge or court may agree to conduct any judicial	– The work within judicial premises has been significantly reduced. I.T. solutions and communication tools have been provided or reinforced, in order to facilitate teleworking of judges, prosecutors, and other legal actors. – – Public Notaries and Public Registries are considered as an essential public service and they are guaranteed. –	– Spanish central authority cannot guarantee normal processing of incoming requests (especially paper requests). Requests must be sent by electronic means. – – - Taking of evidence (art 3 of Regulation 1206/2001 : Serious and urgent requests will be processed, requests must be sent to rogatoriascivil@mjusticia.es . All the rest must follow the usual

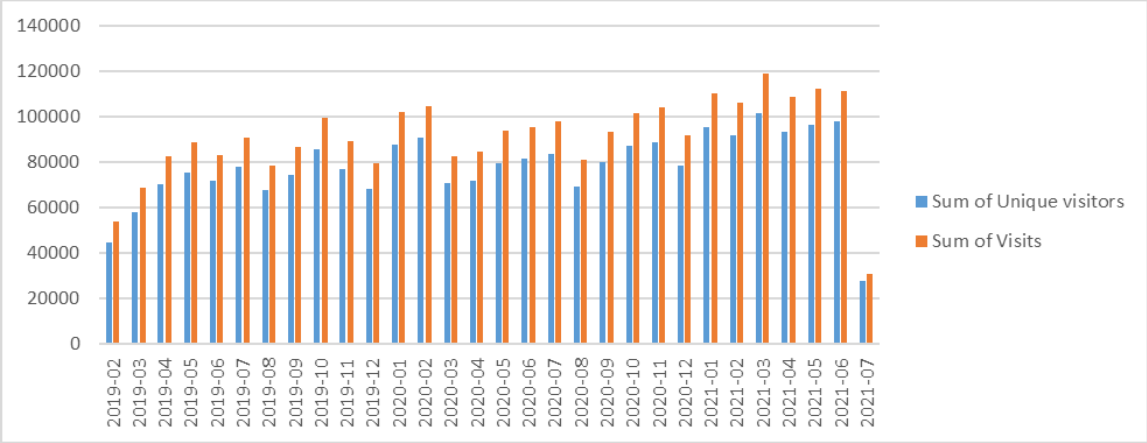
	proceedings that are necessary to avoid irreparable damage to the rights and legitimate interests of the parties to the proceedings. –		procedure by sending them directly to the competent Spanish Court in paper. – – – - Child abduction and maintenance recovery : Processing of requests can only be guaranteed when received by email. Enforcement shall be subject to urgency, taking into account the limitation of movement imposed on citizens. (sustraccionmenores@mjusticia.es) (SGCJIAlimentos@mjusticia.es) –
– **SWEDEN (SE)**	– No measures directed at legal proceedings have been introduced so far. –	– – The Swedish courts, that are independent from the Government, have taken diverse measures to face the current situation. In general, more hearings than usual have been cancelled, primarily due to illness of parties, lawyers and witnesses. The courts have increased the use of video- and telephone conference. The existing rules are used to carry on business as safe and effective as possible. –	–
–	–	–	–

Annex 6: Statistical data on the use of the e-Justice portal

Table 5 - Number of visitors of the e-Justice Portal's pages related to criminal matters



Number of visitors of the e-Justice Portal's pages related to civil and commercial matters



Annex 7: The standard cost model for estimating administrative costs

Detailed description of the approach to the assessment of costs and benefits

This annex provides a description of the approach to assess the main benefits and costs to competent authorities and EU citizens that can be attributed to the communication in cross-border judicial cooperation under the baseline scenario and for the selected policy measure. For the assessment of costs and benefits against baseline scenario, combination of reported data and estimated data based on the reported one was used.

- For the purpose if this analyses we consider the term "**transaction**" which refer to the instance where a package of documents is sent cross border with acknowledgement of receipt from a citizen, legal practitioner or court in one MS to a court in another MS.

The following **data** is used as **input** for the calculations:

The average **cost of communication** is **EUR 10.55** per transaction[88]. The calculation is based on an average of the costs of sending an international certified letter from Belgium, Bulgaria, Finland, France, Italy and Estonia. When further information was available online, it was factored in, including average cost of sending to different Member States (the Member States used were the remaining 5 in the list), the weight of the letter (250 grams was used) and the possibility to have the letter picked up in the facilities of the judicial authority.

The **average time** declared by operators (postal services, carriers etc.) for **posting a first-class letter in the EU-27** is 2 days (48 hours). This number has been taken as an average for the time it takes to send a letter from Member State A to Member State B. However, anecdotal[50] evidence suggests the time is much longer – between 3 to 15 days depending on the destination. Therefore, we have considered an average of **5 days per transaction**.

The **processing of paper forms** i.e. registration, archiving, making copies, scanning was estimated at **1.5 hours per transaction** (45 min for each instance, sending and receiving).

The **average number of paper pages per transaction** (the average length of the template forms associated to the considered cross-border instruments) is **19.65 at a cost of EUR 0.24** per transaction.

[88] Study by the contractor – Study on the digitalisation of cross-border judicial cooperation in the EU prepared by Valdani Vicari & Associati (VVA)

For the **administrative court processes**, there are at least **3 copies of each document**: the one being send, the one being kept in the file, one that is circulated with the enforcement authorities.

For each the resolution of each instrument we consider that a minimum of **3 transactions** take place: send a request, receive acknowledgement of receipt from the court, receive result of the request.

Data reported by Member States and centralised in table 10 show quite a heterogeneous availability of statistics and also ranging from 3 cases of request for the application of the Council Regulation (EC) No 2201/2003[89] in CZ in 2020 to 1530 active cases, with 3060 messages needed every year for the application of Council Regulation (EC) No 4/2009 in FR in 2020 and 20226 European Arrest Warrants issued in EU 27 in 2020. For the purpose of this analysis we considered and average of **1000 transactions per instrument per Member State**.

Total yearly transactions EU27: 3,078,000 = 1000 (transactions/instrument) x 3 exchanges x 38 instruments x 27 MS

Option 0 - Baseline scenario

The baseline scenario considers the as is situation i.e. the use of the digital channel of communication would remain voluntary for each Member State, and thus most of the cross-border judicial communication will be done in the traditional way.

This will result in continuing to have the following yearly costs and delays attached to cross-border cooperation at EU level:

- **EUR 32 472 900** for communication in physical format (out of which EUR 5,697,000 for the individuals, legal entities);
- **15 390 000 days** for communication by post or equivalent services (out of which 2,700.000 days for the individuals and legal entities);
- **192 375 days** in administrative overheads linked to paper processing which translates to **874 person-years** in processing effort in courts;
- **181 448 100** A4 standard 80g printing **paper pages** (out of which 31 833 000 for the individuals and legal entities) with the overall average cost of **EUR 2 216 160** (EUR 388 800).

Under this scenario, the digitalisation costs are not considered as their weight in offsetting these costs can be calculated only when instruments are fully digitised.

Option 1

Transaction costs and times in cross-border judicial cooperation, as presented in the baseline option, will start to decrease only when the first two Member States put in place interoperable IT systems fully supporting communication or if all Member States are fully digitising one procedure[90]. The voluntary initiatives of the past decade show a

[89] Council Regulation (EC) No 2201/2003
[90] Table 16 yearly benefits of the European Payment Procedure

coverage of at most 1% of total transactions being carried out by digital means[91]. This has not been sufficient to produce any tangible cost savings, as most communication has been by traditional means. For the purpose of this assessment we will be using the calculation of the yearly benefits of digitising the European Payment Procedure as presented in the Impact Assessment of e-Codex. This is consistent with the current level of participation[92] in the e-Codex pilots which shows a maximum number of 6 Member States participating in a certain procedure. Therefore, it is safe to assume that any further voluntary cooperation can at best be approximated in terms of benefits with one procedure like the European payment order being fully digitised.

Based on tables 12 and 16 it will result that the costs for Member States will slightly decrease to:

- EUR 32 174 616 for communication using physical formats;
- 15 387 525 days for communication by post or equivalent services;

The e-Codex cost model do not offer us any indication of the savings in administrative costs or in paper.

Option 2 - Preferred Option – Legislative option: mandatory establishment and use of a digital channel for cross-border communication

This option is based on the assumption that the IT systems for the exchanges of the European Investigation Orders and for Service of Documents/Taking of Evidence that are developed by the European Commission will be extended to cover the cross-border judicial communication (table 3). The total one-off cost for extending the eEDES and Service of documents/Taking of evidence[93] to the full scope of the legislative option would be **EUR 18 700 000 over 5 years**. This will result in a yearly investment of **EUR 3 740 000**. This cost will be covered by the EU Budget thorough the Digital Europe Program and the Justice Program. The yearly business as usual (maintenance and support) costs that are associated with operating the IT system at EU27 level is estimated at **EUR 8 100 000** which corresponds to 3 person-years/Member State x EUR 100,000. This is an average cost to be covered by each MS.

The cost per digital transaction is **EUR 2.95**. The average overall **yearly saving** at EU level is **EUR 23 372 900 in postage costs** and **EUR 2 216 160 in paper costs** amounting to **a grand total of EUR 25 589 060**. The **individuals and legal entities** will be saving **EUR 4 098 600** in **postage costs** and **EUR 388 800** in **paper costs**.

[91] Currently, only the e-CODEX pilot implementations are providing for cross-border digital exchanges. This leads to the assumption that less than 1% of the total transactions in cross-border cases are digital..see tables 12 and 16

[92] Table 17 – Participation in e-Codex Pilots

[93] Table 3 – investment and running costs for the e-Evidence Digital Exchange System and Service of Documents/Taking of Evidence IT system(s)

The average posting time will be reduced to 0 resulting in an overall yearly reduction of the duration of the procedures by **15 389 999 days**. The the individuals and legal entities will be gaining **2 700 000 days** in average posting time.

874 person-years will be gained in processing effort at court/competent authority level.

181 448 100 A4 standard 80g printing paper pages will be saved out of which **31 833 000** by individuals and legal entities.

Sensitivity analysis – after 1 year of implementation at 1/5 of digital exchanges

Even in the year 1 of implementing on 1/5 of exchanges digital will have a net gain of **EUR 4 672 404** in postage costs to which it adds **EUR 443 232 in paper**. Further deducting the yearly investment of **EUR 3 740 000** in the IT system, the partial digital exchange will generate a **net benefit** of **EUR 1 375 636**.

175 person-years will be gained in processing effort in courts.

36 289 620 A4 standard 80g printing paper pages will be saved.

This analysis demonstrated net benefits of implementing the digital channel even from the first year of hybrid operation digital/traditional, where the investment costs are offset by the gain in postal and paper costs.

- This analysis demonstrated net benefits of implementing the digital channel even from the first year of hybrid operation digital/traditional, where the investment costs are offset by the gain in postal and paper costs. The man/year effort saved in courts is substantial.

Sources of data

Statistics of cross-border communication by purpose of request[94]

This subsection presents an overview of available relevant statistics of cross-border communication inn judicial cooperation in EU Member States. Consultation of relevant stakeholders suggests that little to no statistical records are currently collected at the institutional and Member States level in what concerns the means of exchange of information (paper-based vs. digital). Where information is available, it indicates that the vast majority of cross-border exchanges are currently carried out in paper-based form.

According to a representative of **the Slovenian Office of the State Prosecutor General**, their Office is the first judicial authority in Slovenia that will be using e-CODEX for the purpose of exchanging requests in the frame of EIO and MLA (through the e-Evidence portal). Currently, they do not have a lot of EIO and MLA cases. According to an interviewed stakeholder, Slovenian Office of the State Prosecutor General joined EXEC

[94] Study by the contractor – Study on the digitalisation of cross-border judicial cooperation in the EU prepared by Valdani Vicari & Associati (VVA)

II[95] because of the fast exchange of digital information through this tool, as well as of the intention that other instruments will be included in the e-Evidence portal in the future.

The table below presents statistics for the exchange of data on received and issued requests regarding the European Investigation Order and the Mutual Legal Assistance in Slovenia in 2019:

Table 8 - Statistical data on received and issued requests regarding European Investigation Order and Mutual Legal Assistance in Slovenia (2019)

– European Investigation Order – issued requests	– 135
– EIO – issued	– 89
– Receipt of data	– 45
– Rejected EIO	– 1
– European Investigation Order – received requests	– 114
– EIO – received	– 68
– Answers – sent evidence	– 13
– Assignment to another authority	– 32
– Rejection	– 1
– Mutual Legal Assistance – issued requests	– 221
– Issued requests	– 154
– Closed cases - no answer	– 2
– Received answer	– 65
– Mutual Legal Assistance – received requests	– 173
– Received requests	– 105
– Closed cases - no answer	– 4
– Answers sent	– 64
– Events together [96]	– 637

[95] The EXEC II project (Electronic Xchange of e-Evidences) is the follow-up project of the previous EXEC and EVIDENCE2-e-CODEX projects. It provides a package of activities for its project partners to set up, roll out, maintain and integrate the eEDES (e-Evidence Digital Exchange System) of the European Commission.
[96] Excluded closed cases with no answer

According to the Austrian Federal Computing Centre, **Austria** currently exchanges e-CODEX messages predominantly with Germany – with other Member States there is no significant communication. The exchanges through e-CODEX between the two countries happen in relation to the European Payment Order and Small Claims, while iSupport is currently in evaluation, and EIO is in the course of preparation.

The table below presents statistics for the exchange of e-CODEX messages between Austria and Germany in the first quarter of 2021[97]:

Table 9 - Exchange of e-CODEX messages between Austria and Germany in the first quarter of 2021

Party	Service	Messages received by AT from DE	Messages sent by AT to DE
1/2021			
DE	EPO	133	194
	Totals	133	194
2/2021			
DE	EPO	186	373
	Totals	186	373
3/2021			
DE	EPO	255	296
	Totals	255	296
	Overall Totals	574	863

In turn, the consulted **Swedish national authority**, deals with the following number of cases (both received and issued requests) on a yearly basis:

- European Payment Order: 200-300;
- Small Claims: 30;
- Financial Penalties: 200-300;
- EIO and MLA: 1 300 from the Prosecution Authority of which the EIOs are about 90%;
- MLA: 500 from The County Administrative Board;
- iSupport: 2 000;
- European Arrest Warrants: 200.

No information is available on whether the above exchanges are implemented in paper-based or digital form.

Moreover, according to a representative of the **Directorate-General for the Administration of Justice of the Portuguese Central Authority**, for Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, there is an average of 40 new cases per month where Portugal is the requesting State. If the case is to be sent to another Member State, the initial request is always handled by post. Any further communication within Central Authorities of receiving Member States is carried out by e-mail.

[97] Statistics provided by the Austrian Federal Computing Centre

Each letter sent by post by the Portuguese Central Authority to another Member State has a cost between EUR 5.25 and EUR 8.80, depending on the letter weight and the distance to the recipient Member State. On average, each letter takes 10 minutes to be processed, which implies at least 6 hours per month dealing with letters that are sent by post. Portuguese authorities estimate that with digitalisation, processing of each case would take 5 to 10 minutes, depending on the volume of the case. The total monthly time dedicated to processing of requests would then be reduced by half in case of digitalisation of the process.

According to the information in the annual report of the **Sofia City Court in Bulgaria**, the following number of requests were received by the Court in 2019-2020:

Table 10: Requests for judicial cooperation procedures received by the Sofia City Court in 2019-2020

Judicial cooperation procedures	2019	2020
EPO applications	60	38
Enforcement of foreign judgments on maintenance	2	8
Requests for ToE	-	1
Requests for enforcement of judgments on uncontested claims	1	6
Requests for recognition of foreign judgments based on Brussels I and Brussels Ia	6	6
EIO	13	14
Requests for SoD	2	-

As an anecdotal example in the same court there was a civil case where the claim and the written evidence comprised twelve cartoon boxes full of paper and those had to be multiplied by the number of defendants (27) and sent to each one of them. Some of the defendants resided other EU countries and the expenses for sending the documents were especially high.

Although the figures above concern only certain Member States and apply only with regard to exchanges on specific EU instruments, it is clear that the paper exchanges are still prevalent in most EU Member States. Digitalisation of cross-border cooperation would speed up the exchange of information between competent authorities and would reduce costs and workload associated with this exchange.

Cross-border communication process, costs and benefits

The section below outlines some examples of cross-border processes provided by the consulted stakeholders that illustrate the time and activities involved in cross-border exchanges. The analysis of information collected through follow-up interviews and e-mail exchanges with relevant stakeholders (first consulted through the online survey),

suggests that the process of cross-border communication follows a similar logic in most Member States.

A prosecutor from the **Prosecution office in Italy**, which is the only Italian competent authority to deal with the European Investigation Orders (EIO), explained that she receives an average of one EIO per working day, all of which arrive in paper format[98]. According to the interviewee, handling the EIO is a very time- and effort-consuming process. Processing of the EIO typically follows the steps below:

- Scanning the received paper dossier for the prosecutor's own files (up to 15 minutes per case);
- Receiving the signature of the deputy prosecutor, in case their signature is required (up to one additional day);
- Making a physical copy of the received dossier for the judicial police, and sending the copy to the police (up to 15 minutes per case); the exact time of processing of the dossier by the judicial police is unknown.
- Once the documents are received back from the judicial police, the received files are scanned and added to the digitalised dossier (up to 40 minutes per case);
- Finalised paper documents are sent to the receiving Member State by post. The postal delivery takes between three and 15 days, depending on the destination.

Based on this information, the postal delivery of the documents between the Prosecution office and the sending/receiving Member State currently takes six to 30 days. The processing time could be reduced by this time (for postal delivery), if the document exchange was carried out through digital means. The prosecutor themselves would save approximately one hour per EIO case (so 22-23 hours per month). As regards costs, digitalisation would save 4-5 euros per postal package. The exchange of documents through digital means would also be more secure than by regular post, according to the consulted stakeholders.

According to data collected by the Commission through their September 2020 questionnaires to competent authorities and lawyers in Member States, Eurojust and EJN, most Member States execute an EIO and transfer the evidence to the issuing Member State within 31 to 60 days. Some Member States, however, stated to receive evidence from the executing State only within 91 to 120 days.

An interviewed representative of the **Portuguese EJN Civil Contact Point** stated that 100 % of their incoming and outgoing cross-border communication exchanges are carried out through digital means (by e-mail). The majority of the communication exchanges constitute requests for information, and approximately one third of cross-border communication are requests for cooperation. Cross-border communication requests in the EJN Civil Contact Point in Portugal are dealt within the same time frame as national procedures. If the receiving Member State requests so, cross-border communication with them may be carried out in paper-based form (per registered mail) as an exception. The interviewed representative of the EJN Civil Contact Point did not have statistics about the differences in cost between communication sent and/or received digitally and that sent and/or received by postal mail.

A representative of a **bailiff office in Luxembourg** explained that by current Luxembourg legislation, all internal and cross-border communication on judicial matters

[98] Interview with the Prosecution office in Italy, carried out by DG JUST of the European Commission.

is carried out exclusively on paper-based form, with some exceptions. The interviewee shared that they carry out two major types of work that may require cross-border communication: (1) service of documents and (2) enforcement of judgements. Communication related to the service of documents is typically a one-time operation, while the enforcement of judgements may require several communication exchanges.

Processing the incoming cross-border service of documents requests usually follows the steps below:

- Receipt of a letter with documents to be served, accompanied by request details. On rare occasions, requests may come in digitally (for example, requests from Germany).
- Opening a case and assigning a case number.
- Sending an acknowledgement of receipt to the transmitting agency in the sending Member State (always in a digital form, per e-mail).
- Analysing the received documents (checking whether the assigned bailiff is competent to serve the addressee; checking, whether the addressee's address is correct). The analysis of the documents typically takes one to two days.
- Delivering the documents to the addressee (by national law, the documents must be served to the addressee on paper). The addressee typically receives the documents three working days after they arrive to the bailiff's office.
- Issuing a certificate of proof of delivery and sending it to the transmitting agency (always in a digital form, per e-mail).
- Sending the documents back to the transmitting agency – five days after the documents first arrived to the bailiff's office.
- Closing the file.

Processing the outgoing cross-border service of documents requests usually follows the steps below:

- Preparing the paper documents;
- Identifying the competent receiving agency in the receiving Member State;
- If necessary, preliminarily getting in touch with the receiving agency by phone or per e-mail;
- Translating of documents in the language of the receiving Member State;
- Sending the documents to the receiving Member State (estimated receipt date: five-six days after the case is originated by the bailiff's office).

According to the interviewee, there are advantages and disadvantages of digitalisation of cross-border communication in judicial matters. On the one hand, digitalisation will speed up the delivery of the documents, and will thus reduce substantially the processing time for each case. On the other hand, it is time-consuming for the bailiffs to scan multi-page sets of paper documents to convert them to the digital form. Nonetheless, this time for scanning documents would be avoided if both the sending and receiving Member State were to exchange documents electronically.

In relation to the establishment and finalisation of the e-CODEX platform in the European Union, the interviewee assessed the expected national-level investment to equal 300 000 to 500 000 euros. He estimated the expected company-level investment to

equal 10 000 to 20 000 euros. The interviewee believes that the investment in the e-CODEX platform would pay off in approximately 10 years.

An interviewee from the **Network of Dutch Bailiffs** said that in the **Netherlands**, as well as in Luxembourg, all cross-border communication on judicial matters is carried out in paper-based format. According to the interviewee, the requests for services from abroad arrive to the Royal Chamber of Bailiffs of the Netherlands. The Royal Chamber receives and processes approximately 40 requests for services per week; it then distributes the requests among the bailiffs. All requests are processed within 1.5 days a week by a dedicated administrator.

The consulted stakeholders also shared some general considerations with regard to digitalisation of cross-border judicial cooperation:

- Some Member States (e.g. Netherlands, Spain) have a national justice system which is already digitalised and, thus, no major investments would be needed from them to digitalise cross-border justice. The investments would mainly pertain to the costs to make the national system 'interoperable'.
- All stakeholders agree that the process will be much faster if all Member States are connected to the same digital system. Efforts required by Member States would be paid off on the long term.
- While less time/resources would be needed if the documents are exchanged electronically, more work would fall on specific categories such as lawyers/judges, thus, highly qualified staff (costly) compared to administrative staff currently involved in handling paper exchanges;
- Investment in training on ICT skills would be needed for all judicial/legal categories should digitalisation be mandatory;
- Translation costs should also be taken into account.

Table 11 – Quantitative data from the MS

– Instrument	– Forms and pages per form	– No of pages per instrument	– Notes	– No of cases	– Time for communication	– Costs	– Other
– Civil law instruments							
– 1.Council Regulation (EC) No 44/2001	– Annex 5 (1), Annex 6 (1)	– 2	– No longer in force, Date of end of validity: 09/01/2015; Repealed by 32012R1215 which has Annex 1 (4), Annex 2(3), for a total of 7 pages for the instrument.	–	–	–	– SK – no electronic communication;
– 2.Council Directive 2003/8/EC	– N/A	–	–	–	–	–	– SK – no electronic communic

1.

							ation;
– 3. Council Regulation (EC) No 2201/2003	– Annex 1 (2), Annex 2 (2),Annex 3 (2),Annex 4 (2)	– 8	– In force: This act has been changed. Current consolidated version: 01/03/2005 Total pages for the consolidated version does NOT change.	– DE – between 2017-2020 – 2135 various cases; – CZ – for 2019 and 2020 – 3 cases; – BG – 95 exchanges by the Central authority; – HR – doesn't have a separate index for some of the civil law cases – for 2018-2021 – 67 cross-border civil law cases	– DE - Length of incoming Hague court return proceedings involving another EU MS – from the application made to court until a decision is issued at first instance: 2016 – 60 days, 2017 – 55 days, 2018 – 59 days, until a final decision is issued: 2016 – 93 days, 2017 – 82 days, 2018 – 93 days.	–	– BE – all requests received via post; – SK – no electronic communication; – BG – Central authority communicates mostly on paper; rarely – by e-mail

– 4. Regulation (EC) No 805/2004	– Annex 1 (3),Annex 2 (2),Annex 3 (2),Annex 4,(2)Annex 5(4),Annex 6(2)	– 15	– In force: This act has been changed. Current consolidated version: 04/12/2008 Total pages for the consolidated version CHANGES and are as follows: Annex 1 (2), Annex 2 (2), Annex 3 (2), Annex 4 (1), Annex 5 (3), Annex 6 (1).	– LT – between 2016 and 2020 – 498 cases (increasing each year); till July 2021 – 133 cases; – DE – between 2017 and 2019 – 1794 cases – CZ – for 2018-2020 – 576 certificates requested	–	–	– BE – files are sent to other MS by e-mail, followed by a phone call to confirm the receipt; Files received from other MS – on paper. – SK – no electronic communication;
– 5. Regulation (EC) 1896/2006 (EPO)	– Annex 1 (7),Annex 2 (2),Annex 3(2),Annex	– 20	– In force: This act has been changed. Current consolidat	– SE – 200-300 cases per year; – LT – between	–	–	– BE – all communication is mainly via post; rarely –an

	4(2),Annex 5(3)Annex 6(2),Annex 7(2)		ed version: 14/07/2017 Total pages for the consolidated version does NOT change.	2016 and 2020 – 112 cases; till July 2021 – 51 – DE – for 2018-3.706 cases; for – 2019- 3577 cases; for 2020-cases 3697; – CZ – for 2018-2020 – 443 requests; – FR – for 2016-202 – 2611 cases. – AT – for 2015 - 2241 cases of which 309 objections (14 %); for 2016 - 3328 cases of which 444 objections (13 %); for			agreement for e-mail exchange. – SK – no electronic communication; – DE - As soon as an application is submitted electronically not only as a pdf but in a structured data format, this could result in a considerable reduction in workload: the data entry work would be completely eliminated because the application

				2017 - 2420 cases of which 289 objections (12 %); for 2018 - 3807 cases of which 413 objections (11 %); for 2019 - 5251 cases of which 899 objections (17 %); for 2020 - 5167 cases of which 871 objections (17 %). –			data is read directly into the IT application for the European order for payment procedure. In this case, further communication would take place electronically (as far as legally permissible), so that no postal charges would incur. Up to now, this form of application has only been submitted via e-Codex by Austrian

							lawyers.
– 6. Regulation (EC) No 861/2007 (small claims)	– Annex 1 (7),Annex 2 (2),Annex 3(2),Annex 4(2)	– 13	– In force: This act has been changed. Current consolidated version: 14/07/2017 Total pages for the consolidated version CHANGES and is as follows: Annex 1 (10), Annex 2 (2), Annex 3 (3), Annex 4 (2), for a total of 17 pages for the instrument.	– SE – 30 cases per year; – LT – between 2018-2020 – 7 cases; till July 2021 – 2 cases; – DE – for 2017-2019 – 2200 initiated cases (increasing each year); – CZ – for 2018-2020 – 485 cases; – FR – for 2016-2020 – 1280 cases – HR – for 2018-2021 – 559 new cases.	–	–	– BE – all communication is mainly via post; rarely –an agreement for e-mail exchange. – SK – no electronic communication;

				– AT – for 2009- 183 cases; for 2010 – 177 cases; for 2011 – 218 cases; for 2012 – 222 cases; for 2013 – 258 cases; for 2014 – 270 cases; for 2015 – 233 cases; for 2016 – 215 cases; for 2017 – 255 cases; for 2018 – 287 cases; for 2019 – 306 cases; for 2020 – 402 cases. –			
– 7. Directive 2008/52/EC	– N/A	–	–	–	–	–	– SK – no electronic communication;
– 8. Council Regulation (EC) No	– Annex 1 (9), 2 (9), 3 (7), 4 (7), 5 (5),	– 56	– In force: This act has been changed.	– SE - iSupport, 2 000 per	– PT - On average- each letter takes 10	– PT - • E ach letter sent by	– BE – all requests received

4/2009	6 (7), 7 (10), 8 (1), 9(1)		Current consolidated version: 31/12/2018 Total number of pages in the consolidated version CHANGES and it has Annex 1 (8), Annex 2 (8), Annex 3 (7), Annex 4 (7), Annex 5 (5), Annex 6 (7), Annex 7 (11), Annex 8 (1), Annex 9(1) , for a total of 55.	year; – PT – 40 cases per month; – DE – requests under art.56 for 2018 – 8805; for 2019 – 9302; for 2020 – 9284 (see statistics sent by DE – elaborated under each Art.)* – CZ – for 2020 – 6 cases; – FR - 1530 active cases, with two messages a year on average (=3060 messages needed	minutes to be processed, which implies, at least, 6 hours per month dealing with letters that are sent by post. To this- to add the time for processing received correspondence by post from the initial requests that are sent to PT. With the digitalization process we can estimate 5 to 10 minutes, depending on the volume of the case.	post has a cost between € 5,25 and € 8,80, depending on the volume	via post; – SK – no electronic communication; – BG – communication mostly on paper; rarely via e-mail

				every year); – BG – for 2020 and 2021 – 297 communications by the CA –			
– 9. Regulation (EU) No 650/2012 Succession)	– N/A	–	–	– CZ – for 2019 and 2020 – 8 cases	–	–	–
– 10. Regulation (EU) No 1215/2012	– Annex 1(4),Annex 2 (3)	– 7	– In force: This act has been changed. Current consolidated version: 26/02/2015 Total number of pages does NOT change.	– CZ – for 2019 and 2020 – 98 certificates	–	–	– BE – all communication is mainly via post; rarely –an agreement for e-mail exchange. – SK – no electronic communication;
– 11. Regulation (EU) No 606/2013	– N/A	–	–	–	–	–	– SK – no electronic communic

							ation;
– 12. Regulation (EU) No 655/2014 (EAPO)	– N/A	–	–	– BE – 3 cases since entry into force – DE – for 2018 and 2019 – 758 cases; – BG – for 2020 – 4 requests to CA	– DE – time for the various requests – between 52 and 119 days	– NL - € 84.64 ex VAT (for execution)	– BE-All cases received via post; – SK – no electronic communic ation;
– 13. Regulation (EU) 2015/848	– N/A	–	–	–	–	–	–
– 14. Council Regulation (EC) No 2016/1103	– N/A	–	–	–	–	–	–
– 15. Council Regulation (EU) 2016/1104	– N/A	–	–	–	–	–	–
– 16. Regulation (EU) 2016/1191	– Annex 1(8), 2 (9),3 (9),4 (10), 5 (14), 6 (12), 7	– 117	–	–	–	–	– SK – no electronic communic ation;

	(10), 8 (13),9 (11),10 (10),11 (11)						
– 17. Directive (EU) 2019/1023	– N/A	–	–	–	–	–	–
– 18. Council Regulation (EU) 2019/1111	– Annex 1(6), 2 (4), 3 (11), 4 (7), 5 (8), 6 (7), 7 (2), 8 (3), 9 (10)	– 58	–	–	–	–	–
– Criminal law instruments							
– 1. Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders	– Annex 1 (7), Annex 2 (7).	– 14	–	–	–	–	–
– 2. Directive 2011/99/EU on the European protection	– Annex 1 (4), Annex 2 (2)	– 6	–	–	–	–	–

order							
– 3. Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings	– N/A	–	–	–	–	–	–
– 4. Council Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention	– Annex 1 (6), Annex 2 (3)	– 9	–	–	–	–	–
– 5. Council Framework Decision 2008/947/JHA on the application of the principle	– Annex 1 (6), Annex 2 (2)	– 8	–	–	–	–	–

of mutual recognition to judgments and probation decisions							
– 6. Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty	– Annex 1 (6), Annex 2 (1)	– 7	– In force: This act has been changed. Current consolidated version: 28/03/2009 Total pages for the consolidated version does NOT change. (also see notes for instrument n.19 of this list)	–	–	–	–
– 7. Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to	– Annex (11)	– 11	– No longer in force, Date of end of validity: 18/12/2020; Replaced by	–	–	–	–

confiscation orders			32018R1805, which has Annex 1 (7), Annex 2 (7). Total pages for the new instrument is 14. (also see notes for instrument n.19 of this list)				
– 8. Council Framework Decision 2003/577/JHA on the execution of orders freezing property or evidence	– Annex (5)	– 5	– No longer in force, Date of end of validity: 18/12/2020; Replaced by 32018R1805, which has Annex 1 (7), Annex 2 (7). Total pages for the new instrumen	–	–	–	–

			t is 14.				
– 9. Council Directive 2004/80/EC on compensation to crime victims	– N/A	–	–	–	–	–	–
– 10. Directive 2012/29/EU on victim's rights	– N/A	–	–	–	–	–	–
– 11. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant	– Annex (5-6)	– 5 or 6 (depending if we count the initial page with the title of the form only)	– In force: This act has been changed. Current consolidated version: 28/03/2009. Total number of pages for the new version does NOT change. (also see instrument n.19 of this list) –	– SE – 200 per year; – FR – for 2017-2020 6348 EAW through police cooperation; 6641 EAW received and – HR – for 2018-2021 – 314 EAW. – – In 2018,	–	–	–

				the 27 Member States issued 17471 EAWs. In 2019 the MS issued 20226 EAWs. –			
– 12. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order	– Annex A (8), Annex B (2), Annex C (2)	– 12	– In force: This act has been changed. Current consolidated version: 01/05/2014 Total pages for the consolidated version does NOT change.	– SE – EIO and MLA 1 300 per year from the Prosecution Authority of which the EIOs are about 90%. – SI – in 2019 - 135 EIO were issued and 114 EIO were received.	–	–	–
– 13 Convention established by the Council in	– N/A	–	–	– SE - 500 from The County	–	–	–

accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union –				Administrative Board; – FR – for 2017-2020 – 6817 MLA received; 3111 sent; – HR – for 2018-2021 – 379 MLA. – SI – in 2019 – 221 MLA were issued and 173 MLA were received.			
– 14. Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the	– N/A	–	–	–	–	–	–

Member States of the European Union –							
– 15. Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union –	– N/A	–	–	–	–	–	–
– 16. Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States	– N/A	–	–	–	–	–	–

of the European Union –							
– 17. Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams –	– N/A	–	–	–	–	–	–
– 18. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties –	– Annex (8)	– 8	– In force: This act has been changed. Current consolidated version: 28/03/2009 **Total pages for the consolidated version does NOT change.** (also see	– SE – 200-300 per year; –	–	–	–

			notes for instrument n.19 of this list) –				
– 19. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the	– N/A	–	– The forms are not given in full in the amendment. Any reference to forms here refers to other insturments (n. 5,6,7,11,18 of this list)	–	–	–	–

absence of the person concerned at the trial							
– 20. Proposal for a Regulation (EU) on European Production and Preservation Orders for electronic evidence in criminal matters –	– Annex 1 (5), Annex 2 (4), Annex 3 (3) –	– 12	–	–	–	–	–

Table 12 – Cost/benefit analysis paper vs digital

	No of Instruments	No of transactions	Cost of transaction (EUR)	Total cost of transaction (EUR)	Avg Posting Time (days)	Avg paper processing time (days)	Avg page #	Avg paper cost #
per transaction	38.00	1			5.00	0.06	19 65	0.24
baseline		3 078 000	10 55	32 472 900	15,390,000	192 375	181 448 100	2 216 160
fully digital		3 078 000	2 96	9 100 000	0	0	0	0
Savings (Baseline-Fully Digital)				23 372 900	15 389 999	192 375	181 448 100	2 216 160
baseline		3 078 000	10 5	32 472 900	15 390 000	192 375	181 448 100	2 216 160
baseline at 4/5		2 462 400	10 55	25 978 320	12 312 000	153 900	145 158 480	1 772 928
baseline difference				6 494 580	3 078 000	38 475	36 289 620	443 232
implementation Year 1 digital at 1/5		615 600	2.96	1 822 176	0	0	0	0
Savings (4/5 paper, 1/5 Digital				4 672 404	3 078 000	38 475	36 289 620	443 232

civil and commercial justice - Individuals and legal entities	20.00	1			5.00	n/a	19.65	0.24
baseline - Individuals and legal entities		540,000	10,5	5,697,000	2,700,000	n/a	31 833 000	388 800
fully digital - Individuals and legal entities		540,000	2,96	1,598,400	1	n/a	0	0
Savings (Baseline-Fully Digital)				4,098,600	2,699,999	n/a	31 833 000	388 800

2.

Table 13 –Investment and running costs for the e-Evidence Digital Exchange System and Service of Documents/Taking of Evidence IT system(s)

	eEDES[99]	SoD/ToE[100]	20 instruments with forms	20 instruments with free field	Technical support in the MS	Installation costs, including hardware
Year 1	1 000 000	1 000 000	2 000 000	100 000	5 400 000	2 700 000
Year 2	1 000 000	1 000 000	2 000 000	100 000	5 400 000	2 700 000
Year 3	1 000 000	1 000 000	2 000 000	100 000	8 100 000	0
Year 4	1 000 000	100 000	2 000 000	100 000	8 100 000	0
Year 5	1 000 000	100 000	2 000 000	100 000	8 100 000	0
Year 6	1 000 000	100 000	1 000 000	50 000	8 100 000	0

*this amount includes the modification to the e-Justice portal to support direct applications from citizens and businesses to judicial authorities in cross-border proceedings.

Table 14 - Average time for processing a cross-border request (EIO, EPO etc) from Member State A to Member State B including time for posting the documentation[101]

– **Average time for processing a cross-border request (EIO, EPO etc.) from Member State A to Member State B**

[99] DG Just IT Portfolio report Ares(2021)2343643
[100] The legislative financial statement for the Service of Documents/Taking of Evidence Regulations
[101] The study from the contractor

including time for posting the documentation				
– Communications channel	– MS A processing time	– Average time required for sending the documentation*	– MS B processing time	– **TOTAL**
– Paper-based	– 0.75 hrs	– 48 hrs[102]	– 0.75 hrs	– 49.5 hrs

Table 15 – Average costs for posting a first-class letter in the EU-27

Cost international letter in	EUR
Belgium	8.87
Bulgaria	5.62
Finland	22.35
France	7.5
Italy	8.5
Estonia	10.5
Average Cost	**10.55**

Table 16 - Yearly benefits of digitalisation of the European Payment Order procedure[103]

[102] Average time for EU-27 first class letter https://postandparcel.info/103425/news/post/50-first-class-letter-mail-within-europe-was-delivered-within-two-days-of-posting-in-2018/
[103] The e-Codex Impact Assessment

	Number of applications						Length of proceedings						
Column1	Weighting Number of applications lower value	Number of applications lower value	Weighting number of applications (average 2012/2013 AT, PT)	Number of applications (average 2012/2013 AT, PT)	Weighting number of applications higher value	Number of applications higher value	Length of proceedings	Weighted length of proceedings lower value	Length of proceedings lower value	Weighted average length of proceedings	Average Length of proceedings	Weighted length of proceedings higher value	Length of proceedings higher value
BE	2,7%	319	2,5%	319	2,2%	319	1-2 weeks	0,5%	7	0,5%	10,5	0,6%	14
BG	0,9%	109	0,8%	109	0,8%	109	30 days	2,2%	30	1,6%	30	1,2%	30
CZ (2013)	3,0%	358	2,8%	358	2,5%	358	2 weeks to	1,0%	14	5,0%	97	7,3%	180
DE	35,1%	4130	31,8%	4130	29,1%	4130	2-3 weeks	1,0%	14	0,9%	17,5	0,8%	21
EE	0,1%	6	0,0%	6	0,0%	6	1 week to	0,5%	7	4,1%	78,5	6,1%	150
IE	1,6%	189	1,5%	189	1,3%	189	2 weeks to	1,0%	14	5,0%	97	7,3%	180
EL	1,4%	168	1,3%	168	1,2%	168	1-2 month	2,2%	30	2,3%	45	2,4%	60
ES	0,5%	63	0,5%	63	0,4%	63	8 months	17,3%	240	12,4%	240	9,7%	240
FR	2,8%	335	2,6%	335	2,4%	335	2 months	4,3%	60	3,1%	60	2,4%	60
CY (2013)	0,1%	11	0,1%	11	0,1%	11	2 weeks -	1,0%	14	4,2%	82	6,1%	150
LT	0,1%	9	0,1%	9	0,1%	9	30 days	2,2%	30	1,6%	30	1,2%	30
LU (2013)	1,9%	218	1,7%	218	1,5%	218	1-2 month	2,2%	30	2,3%	45	2,4%	60
HU (2013)	3,8%	442	3,4%	442	3,1%	442	0-3 month	1,9%	26,3	3,7%	70,6	4,7%	115,6
MT	0,0%	1	0,0%	1	0,0%	1	1 week	0,5%	7	0,4%	7	0,3%	7
NL	3,2%	372	2,9%	372	2,6%	372	5 months	10,8%	150	7,8%	150	6,1%	150
AT	18,0%	2119	25,0%	3243	30,7%	4367	1,5-4 mon	3,2%	45	4,3%	82,5	4,8%	120
PL	15,3%	1800	13,9%	1800	12,7%	1800	4.5 month	9,7%	135	7,0%	135	5,5%	135
PT	2,5%	296	3,0%	390,5	3,4%	485	5 months	10,8%	150	7,8%	150	6,1%	150
SI	0,1%	12	0,1%	12	0,1%	12	5 months	10,8%	150	7,8%	150	6,1%	150
SK	0,7%	86	0,7%	86	0,6%	86	1-9 month	2,2%	30	7,8%	150	10,9%	270
SE	0,8%	91	0,7%	91	0,6%	91	142 days	10,3%	142	7,4%	142	5,7%	142
FI	5,4%	633	4,9%	633	4,5%	633	2 months	4,3%	60	3,1%	60	2,4%	60
UK				208			no data	100,0%	1.385	100,0%	1.930	100,0%	2.475
HR			.				.						
IT			.				.						
LV			.				.						
RO			.				.						
sum	100,0%	11.767	100,0%	12.986	100,0%	14.204							
Average no. of applications		534,9		590,3		645,6			63,0		87,7		112,5 Average length of proceedings

	Number of applications lower value	Number of applications (average 2012/2013 AT, PT)	Number of applications higher value	
				baseline (total no. applications * average length of proceedings)
	740.946	817.672	894.399	short duration - days of proceeding
	1.032.064	1.138.936	1.245.809	medium duration - days of proceeding
	1.323.564	1.460.623	1.597.681	long duration - days of proceeding
Reduced days of proceedings total, p.a.				
	35.301	38.957	42.612	3 days time reduction
35 301 days - 127 836 days	105.903	116.870	127.836	9 days time reduction
				3 days time reduction
	705.645	778.716	851.787	short duration - 3 days less of proceeding
	996.763	1.099.980	1.203.197	medium duration - 3 days less of proceeding
	1.288.263	1.421.666	1.555.069	long duration - 3 days less of proceeding
				9 days time reduction
	635.043	700.803	766.563	short duration - 9 days less of proceeding
	926.161	1.022.067	1.117.973	medium duration - 9 days less of proceeding
	1.217.661	1.343.753	1.469.845	long duration - 9 days less of proceeding

	Number of applications lower value	Number of applications (average 2012/2013 AT, PT)	Number of applications higher value	
Total savings on postage p.a. EUR 94 136 - EUR 298 284	€ 94.136	€ 103.884	€ 113.632	8 Euro postage
	€ 170.622	€ 188.290	€ 205.958	14.5 EURO postage (average)
	€ 247.107	€ 272.696	€ 298.284	21 Euro postage
Average savings on postage p.a./MS EUR 4 279 - EUR 13 558	€ 4.279	€ 4.722	€ 5.165	8 Euro postage
	€ 7.756	€ 8.559	€ 9.362	14.5 EURO postage (average)
	€ 11.232	€ 12.395	€ 13.558	21 Euro postage

Table 17 – participation in e-Codex Pilots by end of 2020

Legislative instruments	**Member States**[4]
European Order for Payment (EPO)	Active: AT, DE, EL, IT, MT, PL
European Small Claims (ESC)	Active: AT, CZ, DE, MT, PL (work finished),
Transmission of Mutual Legal Assistance in Criminal Matter (MLA) and/or European Investigation Order (EIO)	Active DE, NL, AT
Mutual Recognition of Financial Penalties (FP)	Active: FR, NL (pilot)
Service of documents via EJS/EUBF platform 1393 regulation	Active: FR, BE, LU

Annex 8: What are the problems and their causes?

Lack of digital tools fully supporting cross-border judicial cooperation

According to the findings of the legal mapping conducted as part of the Study on the Digitalisation of cross-border judicial cooperation, in most Member States (e.g. Belgium, Germany, Czechia, Spain, Malta, Lithuania, Slovakia), paper-based communications constitute the majority of cross-border communications. Besides, in some Member States (e.g. Czechia) it is common practice that paper documents are sent first, whereas the subsequent communication takes place for example by email. Digital means are, thus, used as a second option giving priority to the transmission via paper documents. For example, for Czechia the estimate is 90% paper-based versus 10% of digital communication.

A pilot project between Austria and Germany aimed at introducing an electronic communication channel based on e-CODEX between the respective national courts for the purposes of the European Payment Order procedure, has illustrated in a clear manner the disadvantages of paper-based communication. The conclusions of the concerned project were as follows:

- proceedings were made faster and safer, with messages being sent by e-mail in a secure and reliable manner;
- the transmission process was retraced, which made it easier to resolve technical failures to deliver a message;
- the use of timestamps allowed the determination of the exact time a recipient has received a message;
- the data transmitted was only structured data which allowed for its automatic processing in the receiving system instead of re-entering it manually. This shortened the time of the proceedings and was less error-prone as there was no manual intermediary step;
- some costs savings were realised in terms of postal fees (an electronic message costs EUR 0.07 to send, while postal fees amount to EUR 3-5 for a piece of recommended registered letter).
- the permanent availability of the electronic channel enhanced the work of judicial employees on night shifts or on weekend duties.
- the alignment and the optimisation of the internal workflows to a digital-first approach relieved the administrative burden since there was much less need to expensively digitalise paper messages afterwards.

Lack of digital tools facilitating access to justice

As per Eurostat data for 2019, 3,3% of EU citizens live in a Member State other than their Member State of origin. For these individuals and legal entities, the safeguarding of basic rights is very often additionally burdened with language differences, unfamiliarity with foreign legal systems, and geographical distance. Businesses may encounter these

difficulties in to the context of cross-border cases, such as in the scope of the European Payment Order procedure and, for individuals such difficulties also occur in family law cases, succession procedures, legal aid and others.

As illustrated by the study supporting this impact assessment, the availability of electronic means for submitting and following a claim online, varies significantly across Member States. The ability to use electronic means, e.g. for submitting claims, monitoring and advancing a judicial proceeding online, is a key element of the quality of justice systems, as it allows access to justice and reduces delays and costs. This may particularly affect those vulnerable categories of individuals, which for various reasons such as disabilities or residing in remote areas or others may not have easy access to judicial authorities.

Different level of digitalisation and the voluntary use of the existing digital channels:

- eight Member States participate in the European Order for Payment pilot;
- eight Member States take part in the Small Claims pilot;
- three Member States and the European Chamber of Judicial Officers/ Bailiffs (CEHJ) are interconnected under the European Account Preservation Order pilot;
- the procedure for Mutual Legal Assistance under the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has been piloted by seven Member States;
- the Mutual Recognition of Financial Penalties pilot connects two Member States;
- the e-Evidence Digital Exchange System (eEDES), developed by the European Commission enables the digital exchange of European Investigation Orders between the national competent authorities based on e-CODEX. Five Member States were connected by 2020 and 11 Member States are planning to complete their connection in 2021.

The fragmented approach to developing IT solutions and lack of interoperability between existing national systems can have negative consequences such as:

- low or no trust in terms of authentication and signature;
- lack of semantic interoperability between forms and data elaborated in one system by another system;
- no guarantee for the authenticity and integrity of the documents and the reliability of the communication;
- mutual misunderstanding regarding the execution of procedures because of diverging rules and traditions between the countries;
- incoming requests need to be manually entered into the national case management system. This process not only takes time, but also involves a high risk of human error, which could have serious consequences for the treatment of the request.

In addition to the absence of interoperability at EU level, there is a lack of interoperability between the judicial authorities within an individual country according to the consulted stakeholders.

The need for more interoperability was also emphasised by the stakeholders who attended the EU level focus group. They considered interoperability a key factor allowing respect for the legal differences between national systems. The interoperability, safety and security of digital communication channels is also a priority for many national stakeholders, consulted during the legal mapping conducted for this study. Many think that it is necessary to harmonise the certificates of secure devices, to ensure their performance, traceability, security level, etc.

Recognition of electronic signatures/seals and legal validity/acceptance of electronic documents

In the absence of commonly agreed assurance levels of electronic signatures/seals, those used by the issuing Member State may not be recognised by the receiving Member State in judicial proceedings. Although electronic identification frameworks are currently in place, few Member States have the infrastructures or experience to facilitate qualified e-signatures within the judiciary.

Data from 25 Member States in the context of the Public Documents Regulation show that only 13 Member States have legal coverage to recognise and admit public documents signed electronically and issued by another Member State. Out of 12 countries (one did not provide information), eight require the use of e-IDAS qualified electronic signatures. In two Member States, both qualified and advanced electronic signatures are legally admissible. One Member State requires the use of advanced electronic signatures whereas another one recognises electronic signatures not regulated by the e-IDAS Regulation.

In the case of cross-border transmissions using e-CODEX, the participating Member States established a "Circle of Trust Agreement" to overcome this impediment and ensure the validity and admissibility of documents and evidence transmitted electronically. In order to join the Circle of Trust, a document sent by the joining system must have the following characteristics: the document is uniquely linked to the user; the system is capable of identifying the user; the document is created using means that the user can maintain under their control and any subsequent change of the data is detectable. Despite the existence of this agreement, the latter only concerns direct users of e-CODEX and is not binding on them nor does it bind all participants in a judicial case. Therefore, it provides insufficient guarantees in the context of EU-wide judicial cooperation.

Non-resilience of judicial systems to force majeure circumstances

The main impacts on civil and criminal proceedings, due to national restricting pandemic measures include:

- complete or partial suspension of the work of courts and other judicial authorities;
- delayed or suspended activities of the competent and central authorities leading to practical issues, for instance delays in enforcing a decision in a cross-border context;

- temporary inability to obtain legal aid;
- difficulty to access information normally provided by the competent authorities;
- temporary adjustments in terms of communication with the public (by email, by phone or by postal mail);

In addition, the expiry of deadlines, due mainly to the restrictions on societal life and movement, have deprived individuals/legal entities or courts from the possibility to take procedural steps, such as appealing against a decision, the possibility to consult a lawyer, delays in the submission of legal documents to the courts due to delays in the postal services, etc. This already brought insecurity as to the application of judicial cooperation instruments and the Court of Justice of the European Union has already been seized with a preliminary referral regarding the interpretation of the rules applicable in the European order for payment procedure and the case is pending with the Court. Similar consequences would arise in case of other force majeure events, such as terrorist attacks and natural disasters which have serious negative impact on the everyday life of citizens and the functioning of the state institutions.