

Digitalisation of cross-border judicial cooperation

Consultatie

This consultation concerns cross-border judicial cooperation in the European Union. It refers to civil, commercial and criminal cases and involves, for various reasons, more than one EU Member State. The European Commission is planning a new initiative aiming at digitalising cross-border judicial cooperation procedures. The purpose is to make use of new digital tools for electronic communication between courts, other competent authorities of the Member States and also to give the possibility to individuals and businesses to start proceedings and to communicate with the courts and the other competent authorities in other EU countries electronically, to be able to submit electronic documents from the comfort of their homes and offices. Currently, the communication from individuals/businesses to judicial authorities and between the public authorities themselves is carried out mainly on paper, which causes delays, involves more costs and is susceptible to crises such as COVID-19 pandemic. The European Commission seeks the views and opinions of stakeholders and all persons who could be impacted by the future initiative in order to take them into consideration when deciding on the possible options and the way forward. Please note that the questions are optional and respondents may choose not to reply to all of them.

I. General questions

1. In principle, do you think that there is a need to transition to electronic means of communication in the context of the EU cross-border judicial cooperation procedures?

at most 1 choice(s)

☒ Yes

☐ No

☐ Undecided

2. What would be, in your view, the benefits of the digitalisation of EU cross-border judicial procedures (e.g. the use of the digital channel instead of paper with and between competent authorities)?

between 1 and 7 choices

☒ Better accessibility of information and easier access to judicial procedures

☒ Lower costs of handling cases for both administrations and citizens / businesses

☒ Less time consumed for both administrations and citizens/businesses

☒ Speedier and more effective/efficient cross-border procedures

☒ Increased resilience of judicial systems

☒ Other (please elaborate in the box below)

☐ I don't see any benefits

If Other, please specify:

1000 character(s) maximum

The use of electronic means of communication in cross-border judicial cooperation would in general be more time efficient and could provide additional safeguards with regard to the integrity, safety and security of the information transferred.

Furthermore, specifically with regard to e-evidence, the volatile nature of digital data necessitates to facilitate a considerable increase of speed of communication between appropriate authorities of member States in search of e-evidence in order to ensure that such data may be obtained before they are altered or disappear from internet. For individuals (including victims) and businesses, the digitalization of EU cross-border judicial procedures could provide better insight in the functioning of relevant procedures in other states and the current status of pending cases. Lastly, certain data or datasets are too extensive in volume to be communicated other than via electronic means.

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

between 1 and 10 choices

- X Different level of digitalisation of the Member States
- ☐ Lack of financial and human resources for developing and maintaining IT systems
- X Lack of digital skills of users and/or competent authority staff
- X Equipment/Connectivity constraints (i.e. no access to a computer or to the internet)
- X Lack of trust in IT solutions (e.g. due to cybersecurity or data protection concerns)
- X Lack of regulation providing for the use of electronic communication under national law.
- X Lack of regulation recognising legal effects of considering electronic evidence admissible under national law (e.g. if there is a requirement under national law for an original paper document, when a scanned electronic version is more easily available)
- X Lack of recognition of electronic identities and electronic signatures/seals between Member States
- X Lack of interoperable national IT systems which can communicate with each other
- ☐ Other (please elaborate in the box below)

4. What would be, in your view, the disadvantages of the digitalisation of EU crossborder judicial procedures?

between 1 and 8 choices

- X Risk of exclusion due to: Lack of digital skills
- X Risk of exclusion due to: Lack of access to the internet / unreliable internet connection
- X Risk of exclusion due to: Lack of adequate equipment (e.g. no access to a computer, or a mobile device)
- X Disproportionate need of investments
- X Cybersecurity concerns
- X Data protection concerns
- ☐ Other (please elaborate in the box below)
- ☐ I don't see any disadvantages

5. Do you consider that the digitalisation of cross-border judicial cooperation could adversely affect the right to a fair trial and defence rights (such as the right of access to a lawyer and the right of access to the case file)? Please select one of the choices below:

at most 1 choice(s)

- ☐ Yes (please elaborate)
- ☐ No (please elaborate)
- X Undecided

If Other, please specify:

3000 character(s) maximum

The Netherlands considers that digitalisation of cross-border judicial cooperation would, in general, make initiating legal proceedings and applying for legal aid more accessible, faster and more efficient. However, the possible disadvantages recognized under question no.4 raise concerns with regard to cybersecurity, data protection, and the equality of arms, specifically with a view to lack of digital skills or access. These concerns need to be adequately addressed in the process of taking next steps in order to safeguard inter alia the principle of the right to a fair trial and defence rights.

6. Which are the EU cross-border judicial cooperation legal instruments or areas that you consider should provide for an electronic channel of communication as a priority (if any)? Please, list them and explain why below.

3000 character(s) maximum

- The volatile nature of digital data necessitates a considerable increase of speed of communication between appropriate authorities of member States in search of E-evidence.
- In relation to cross border investigations into organized crime, as well as in confiscation cases, priority should be given to electronic communication with regard to the European Investigation Order and the European Arrest Warrant.
- The European Account Preservation Order, to facilitate cross-border debt recovery in civil and commercial matters.
- Find a Bailiff, to strengthen cross-border cooperation between the actors of civil proceedings and facilitate access to justice for citizens and companies by allowing them to easily identify the competent enforcement agent in another Member State.
- Brussels Ibis regulation, to be able to retrieve a certificate for cross border enforcement of judgments in civil and commercial matters directly from another Member State.
- Applying for cross-border legal aid (see also the answer to question no.5).
- European production – and preservation orders in criminal investigations (internal E-evidence package).

7. 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)?

at most 1 choice(s)

X Yes - How should these risks be addressed? (please elaborate)

☐ No

☐ Undecided

If Other, please specify:

1000 character(s) maximum

See the answer to question no.5

b. What potential additional challenges should be considered in the transition to digitalisation of cross-border judicial cooperation procedures within the European Union? Please explain in the box below:

3000 character(s) maximum

In general data protection challenges need to be considered and properly addressed. Proper safeguards need to be in place with regard to encryption and the risks of (digital) fraud, cybersecurity, and deepfakes. With regard to electronic communication between individuals and/or businesses and authorities, identification and authorization methods are required. Such communication should also be on a voluntary basis. Handling digital cross-border judicial cooperation procedures requires a dedicated skill set and training within organizations and for (legal) professionals. Unity in the cross-border trust and accessibility of digital transmission is important. If and when the electronic channel should become the default for serving documents, additional possibilities should be available as a back up-option. Related to this issue is the need to guarantee that the person receiving a document served to him or her digitally has taken good notice of its contents. In the event the recipient did not receive the document, or no proof admissible in court that the document has electronically been delivered can be provided, a back up-option is required. Additionally, in certain cases the communication channel provided for electronic judicial cooperation is not equipped to handle large files (for example tap data). Regarding the E-evidence proposal in criminal matters (the production – and preservation order) challenges are the cybersecurity concerns of direct cooperation between judicial authorities and internet service providers and verification of the judicial authority to avoid abuse.

8. What would be your preferred scenario for the potential digitalisation of EU crossborder judicial cooperation:

a. electronic communication between courts and other competent authorities of the Member States.

at most 1 choice(s)

- ☐ Mandatory - i.e. use of the digital channel by default, subject to justified exceptions
- ☐ Optional – i.e. left at the discretion of Member States
- X Undecided

b. electronic communication of individuals/businesses with the courts and other competent authorities of the Member States.

at most 1 choice(s)

- ☐ Mandatory - i.e. obliging Member States to provide for such a possibility, without excluding alternative channels
- ☐ Optional - i.e. left at the discretion of Member States
- X Undecided

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

between 1 and 6 choices

- X The mandatory or optional nature of electronic communication with and between competent national authorities
- X The legal validity of electronic documents and evidence
- X The conditions for the use of electronic signatures/seals
- X The responsibilities for data protection obligations
- X The architecture of the IT system to be used
- X Other (Please elaborate in the box below)

If Other, please specify:

1000 character(s) maximum

- If applicable: conditions with regard to identification and authorization
- If applicable: verification mechanism of sending/receiving party to avoid abuse

10. Are there any other points that you would like to make? Please elaborate in the box below

1000 character(s) maximum

With regard to electronic communications between individuals and/or businesses with competent authorities of Member States, additional safeguards are required in order to prevent malicious use of such communication means (for example, hiding malware in transmitted files).

II. The questions below are targeted at policy-makers or representatives of a judicial or competent authorities responsible for EU cross-border judicial cooperation

11. Which communication channel do you think is most appropriate for communication between judicial and other competent authorities across borders? Please select one of the choices below:

at most 1 choice(s)

- ☐ Paper-based
☐ Electronic
☐ Both (please elaborate)
X Undecided

If Other, please specify:

1000 character(s) maximum

The most appropriate channel for communication between judicial and other competent authorities across borders would be electronic, if and when inter alia all the conditions and concerns mentioned above are met. E-CODEX would provide for secure digital communication in such cross-border judicial proceedings.

12. 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?

at most 1 choice(s)

- ☐ Yes - if so, which services/bodies you find most relevant and why? (please elaborate)
☐ No (please elaborate)
X Undecided

If Other, please specify:

1000 character(s) maximum

In general, the Netherlands considers such involvement in accordance to the mandates of EU bodies and/or services beneficial to establish secure digital communication. Exceptions may however apply.

13. In the context of a possible transition to an electronic channel of communication for EU cross-border judicial cooperation procedures and in case you do not already use a national case management/IT system for the purposes of judicial cooperation, would you benefit from an EU-developed IT solution provided to you?

at most 1 choice(s)

- ☐ Yes
☐ No
☒ Undecided

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

at most 1 choice(s)

- ☐ By adopting one EU legal instrument which provides for the digitalisation of all cross-border civil, commercial and criminal procedures
☐ By adopting a series of amendments to civil, commercial and criminal EU law instruments for the digitalisation of cross-border judicial procedures
By carrying out a promotional campaign regarding the use of the various electronic channels of communication, without mandating their use
☒ Undecided

III. The below question is targeted to private individuals or representatives of a business, or their legal representatives:

15. In case you are involved in a cross-border case as an individual or representative of a business, or their legal representative – what would be your preferred way of communication? Please select one of the choices below:

at most 1 choice(s)

- ☐ I would prefer to use traditional paper-based means of communication
☐ I would prefer to use electronic communication with all the participants in the procedure
☐ I would prefer to have the possibility to use both means of communication
☐ Undecided

Not applicable

Additional response (draft)

In order to further the reflection on this topic, Member States are kindly invited to communicate their replies to the following questions.

- 1) What would be your preferred scenario for the potential digitalisation of EU cross border judicial cooperation with regard to electronic communication between the competent authorities of the Member States (and where foreseen by the respective instruments between Member States and the relevant EU bodies and Justice and Home Affairs agencies): mandatory (i.e. use of the digital channel by default, subject to justified exceptions) or optional (i.e. Member States are obliged to establish an electronic channel but the choice of the means of communication is left at the discretion of the requesting authorities)?**

The use of electronic means of communication in cross-border judicial cooperation by default (i.e. mandatory subject to justified exceptions) would in general be more time efficient and could provide additional safeguards with regard to the integrity, safety and security of the information transferred. Furthermore, specifically with regard to e-evidence, the volatile nature of digital data necessitates to facilitate a considerable increase of speed of communication between appropriate authorities of member States in search of e-evidence in order to ensure that such data may be obtained before they are altered or disappear from internet. Because of the wide range of possible forms of judicial cooperation, mandatory digitalisation may not be suitable or possible in all cases.

- 2) What would be your preferred scenario for the potential digitalisation of EU cross border judicial cooperation with regard to providing an opportunity for individuals/legal entities to communicate electronically with the judicial and other competent authorities of the Member States: mandatory (i.e. obliging Member States to provide for such a possibility, without excluding alternative channels) or optional (i.e. left at the discretion of Member States, which will not be obliged to provide for electronic channel of communication)?**

Individuals and legal entities would benefit from the possibility to communicate electronically with competent authorities in other Member States, for example when applying for legal aid. Because of the wide range of possible forms of judicial cooperation, mandatory digitalisation may not be suitable or possible in all cases.

- 3) In case that the Commission decides to propose a new EU legal instrument, and apart from what is proposed herein, what other aspects of cross border judicial cooperation should possibly be digitalised?**

If applicable: conditions with regard to identification and authorization.

If applicable: verification mechanism of sending/receiving party to avoid abuse.

- 4) Would you consider it beneficial for the parties to cross-border civil proceedings to take part in oral hearings via videoconference (or other distance communication technology) in those cases which are not regulated by the Taking of evidence regulation (recast)?**

In general: yes.

- 5) In the context of a possible transition to an electronic channel of communication for EU cross-border judicial cooperation procedures, should**

such a channel of communication be similar to (or the possible extension of) the one established for Service of documents and Taking of evidence or eEDES (e-Evidence Digital Exchange System) for EIO (European Investigation Order)/MLA (Mutual Legal Assistance) exchanges?

Depends on the form of judicial cooperation.

Additional notes:

The Netherlands considers the involvement of EU bodies and/or services in criminal cases, such as the EPPO, in the digital channels of communication, in accordance to their respective mandates, beneficial to establish secure digital communication.